



TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904
Telephone: (207) 475-1329 Fax: (207) 439-6806

KITTERY TOWN COUNCIL COUNCIL CHAMBERS

March 28, 2022

6:00PM

The public may submit public comments via email, US Mail, or by dropping off written comments at the Town Hall. Emailed comments should be sent to:
TownComments@kitteryme.org.

The public may participate in the meeting via Zoom webinar. **Register in advance for the webinar at:**

https://us02web.zoom.us/webinar/register/WN_OOq6u-7ORcyrp_9YfltV9w

After registering, you will receive a confirmation email containing information about joining the webinar. Webinar participants will be able to submit questions and comments during a public hearing and public comment.

Comments received by noon on the day of the meeting will become part of the public record and may be read in whole or in summary by the Council Chair.

1. Call to Order
2. Introductory
3. Pledge of Allegiance
4. Roll Call
5. Agenda Amendment and Adoption
6. Town Manager's Report
7. Acceptance of Previous Minutes
 - March 14, 2022 Regular Meeting
8. Interviews for the Board of Appeals and Planning Board
9. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials.

10. PUBLIC HEARINGS

- a. (030222-1) The Kittery Town Council moves to hold a public hearing on a new Victualer's License application from Crepe & Karak Mobile Food Unit, located at 154 Brackett Street, Westbrook, Maine.
- b. (030222-2) The Kittery Town Council moves to hold a public hearing on a new Victualer's License application from Red's Good Vibes Mobile Food Unit, located at 438 Portsmouth Avenue, Greenland, NH.
- c. (030222-3) The Kittery Town Council moves to hold a public hearing on Title 12.4.9 - Seapoint and Crescent Beach Fires.

11. DISCUSSION

- a. Discussion by members of the public (three minutes per person)
- b. Response to public comment directed to a particular Councilor
- c. Chairperson's response to public comments

12. UNFINISHED BUSINESS

13. NEW BUSINESS

- a. Donations/gifts received for Council disposition.
- b. (030222-4) The Kittery Town Council moves to execute Amendment 1 to the Intermunicipal Agreement between the Town of Kittery and the Town of Eliot for an additional 200,000 gallons per day of guaranteed flow.
- c. (030222-5) The Kittery Town Council moves to schedule a public hearing on April 11, 2022 to Authorize the Lease of Fire Apparatus.
- d. (030222-6) The Kittery Town Council moves to review the Town Meeting warrant articles for the June 14, 2022 election.
- e. (030222-7) The Kittery Town Council moves to review and approve the Fort Foster Rules Update.
- f. (030222-8) The Kittery Town Council moves to approve the increase of the Wetland Impact Fees.
- g. (030222-9) The Kittery Town Council moves to approve the appointments of Warden, Deputy Warden, and Election Workers for the ensuing elections.
- h. (030222-10) The Kittery Town Council moves to approve a renewal Liquor License application from Maine Beer Café, located at 439 US Route 1, Kittery.

- i. (030222-11) The Kittery Town Council moves to approve the collective bargaining agreement for the following.
 - Technical Unit
 - j. (030222-12) The Kittery Town Council moves to support an application for Congressionally Directed Spending for the reestablishment of a nature-based childcare program at the KCC.
 - k. (030222-13) The Kittery Town Council moves to support an application for Congressionally Directed Spending for the support of the Police Community Outreach Liaison program.
14. COUNCILOR ISSUES OR COMMENTS
15. COMMITTEE AND OTHER REPORTS
- a. Communications from the Chairperson
 - b. Committee Reports
16. EXECUTIVE SESSION
17. ADJOURNMENT

Posted: March 24, 2022



TOWN OF KITTERY

Office of the Town Manager

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1329 Fax: 207-439-6806

kamaral@kitteryme.org

Town Manager's Report to the Town Council March 28, 2022

1. **York v Kittery Border** – The Town of York has filed a complaint against the Town of Kittery to move the border of York south and claim land that has historically been in Kittery. We were aware this was coming; the Board of Selectpersons have been floating, discussing, and approving funding for the case for approximately four years.

As part of the Town's case, we have issued a FOAA to the Town of York to understand the underlying motives for this aggressive attempt to take land from Kittery. See attached information.

2. **Rice Library Project Final Stages** – We are entering the final stages of the Rice Public Library expansion and renovation project. Substantial completion is expected to be April 1, meaning the building is ready to begin the move-in process. Final completion including parking lot improvements, landscaping and punchlist close out will be completely by early May.

We will be closing the Taylor Building effective end of day April 9, so staff can begin the process of relocating materials, furniture, and their operations to the Rice building. We ask for the public's patience during this time, as staff will be solely focused on getting the Rice building ready for use and will not be able to process library requests. The soft-opening is expected the week of May 9th. A formal ribbon cutting is being planned for early June.

Over the next few months we will be continuing to move forward "owner" components of the project including design of exterior and donor signage, installation of some of the IT components, connection of the Community Room to our PEG services, and installation of the art hanging systems and artwork. These tasks were retained by the Town and are not part of the construction manager's scope of work.

The Children's Garden is in its design phase and will be constructed likely in the fall of this year. We will be seeking patron, donor, and public input on concept designs in the spring. Information about this process will be shared as we get closer to the dates.

3. **Diversity, Equity and Inclusion Ad Hoc Committee** – The Town is seeking applicants to participate in the DEI Ad Hoc Committee established by the Council at your last meeting. Our hope is to review applications in the coming weeks and propose a slate of members in April.

For information on how to apply to be on the DEI Ad Hoc Committee or other town boards, commissions, and committees please visit www.kitteryme.gov.

4. **March for Meals** – Please help me in thanking members of our leadership team for their participation in the March for Meals event on Tuesday, March 22. The March for Meals is an annual celebration that

commemorates the day President Nixon signed into law the Older Americans Act of 1965 to include nutritional programs for seniors 60 years and older such as Meals on Wheels.

Working with Southern Maine Agency on Aging, Patty Moore, Adam Causey, David Rich, Chief Richter, Chief O'Brien, Superintendent Eric Waddell, Suzanne Esposito, and I delivered meals prepared by Southern Maine Agency on Aging to seniors in our community. It was such a joy to assist our local seniors and help bring attention to the Meals on Wheels program. We have participated in the program for a number of years, prior to COVID-19, and it is a positive step forward to be able to do so again.

Upcoming Dates:

- Education Scholarship Applications Due – April 14, www.kitteryme.gov/scholarship
- Mooring Renewals Due April 15 – Harbormaster, www.kitteryme.gov/onlinemooring
- Easter Egg Hunt – April 9, Kittery Community Center
- AARP Tax Aide – by appointment, Wednesdays & Thursdays, February 2 – April 14, KCC
- KEEP Property Tax Payment Plan Applications Due – June 1, 2022, Town Hall
- Senior Tax Credit Application Due – July 1, 2022, Town Hall, www.kitteryme.gov/taxpaymentassistance

Respectfully Submitted,



Kendra Amaral
Town Manager

STATE OF MAINE
YORK, SS.

SUPERIOR COURT
Civil Action
Docket No. CV-22-36

TOWN OF YORK,)
)
 Plaintiff,)
)
 v.)
)
 TOWN OF KITTERY,)
)
 Defendant.)

**DEFENDANT’S MOTION TO
DISMISS WITH
INCORPORATED
MEMORANDUM OF LAW**

NOW COMES Defendant Town of Kittery (“Kittery”) and hereby moves this Court pursuant to M.R. Civ. P. 12(b)(6) to dismiss Plaintiff Town of York (“York”) for failure to state a claim upon which relief may be granted. Further, the complaint should be dismissed because York lacks standing to bring this Complaint, the claim is not ripe for judicial review, and the claim is barred by the doctrine of laches.

INTRODUCTION

York’s complaint stems from its desire to remove a single lot from within Kittery’s established borders to permit proposed development. In support of this thinly veiled attempt to serve a single property owner’s interest, York relies upon a report from 1995 identifying its border with the Town of Eliot (the “Report”). However, the Report merely ascertained the border between York and Eliot and is not binding upon Kittery or determinative of the border York now questions.

York has not complied with the statutory provisions governing the identification and dispute of municipal borders and has failed to demonstrate any controversy sufficient to give it standing or make this case ripe for judicial review. Further, York’s exceptional delay in raising

this claim renders it barred by the doctrine of laches. For these reasons, the Complaint should be dismissed in its entirety.

FACTUAL BACKGROUND

Beginning in the year 1821, all municipalities within Maine were required to perambulate their borders at least once every five years. *See* 1821 P.L. c. 114, § 8.¹ This requirement was intended to ensure municipal borders were clearly delineated and thereby limit disputes between neighboring municipalities. While the law was repealed nearly two decades ago in 2003 (*see* 2003 P.L. c. 7, § 1), it nevertheless required York to make as many as 40 separate perambulations of the York-Kittery border, and at least one since 1990. York has not pointed to any record of these perambulations or other perambulations as the basis for its claim that the York-Kittery border is the subject of a dispute. Instead, it now relies upon an action involving its border with the Town of Eliot as the basis for its unfounded assertion that the York-Kittery border is not as it has always been.

In 1991, the Town of Eliot filed a complaint against York under 30-A M.R.S.A. § 2852 seeking to identify the border between the two towns. *See* Complaint, *Town of Eliot v. Town of York*, No. CV-91-880 (Me. Super. Ct, York Cnty., Nov. 12, 1991) (Exhibit A).² Eliot and York had previously perambulated the border line in accordance with 30-A M.R.S.A. § 2851, which resulted in an identified controversy over their mutual border. *Id.* at ¶¶ 1-2. As a result of this complaint, the court appointed commissioners to ascertain the border and those commissioners provided the Report, which the court accepted on October 18, 1995. *See* Order Accepting Report

¹ This requirement was later reduced to one perambulation every ten years for municipalities that had erected stone monuments along their borders. *See* P.L. 1841, c. 5, § 26.

² The Court may take judicial notice of these proceedings and filings therein pursuant to M.R. Evid. 201(b)(2). Kittery hereby requests that the Court take judicial notice of those proceedings and the filings provided in Exhibits A and B to this Motion, pursuant to M.R. Evid. 202(c)(2). Judicial notice of record proceedings does not convert this motion to one for summary judgment. *See* *Moody v. State Liquor & Lottery Comm'n*, 2014 ME 20, ¶ 8-11, 843 A.2d 43.

of Boundary Commissioners, *Town of Eliot v. Town of York*, No. CV-91-880 (Me. Super. Ct, York Cnty., Oct. 18, 1995) (Exhibit B). The Report reviewed the historical border between York and Kittery for the sole purpose of ascertaining the border between Eliot and York and identified a straight-line border between York and Kittery only to identify the point at which Eliot, York, and Kittery meet. Notably, as the Report is not concerned with the York-Kittery border, it does not review any related historical records after 1810, when Eliot was severed from Kittery. Thus, the Report ignores over 200 years of applicable historical record and *all* of the perambulations required by 30-A M.R.S.A. § 2851 and its prior iterations.

Between the date on which the Eliot-York action was filed until 2003, when section 2851 was amended, York was statutorily obligated to perambulate its border with Kittery at least twice. It apparently did not do so. Instead, York took no action for over 20 years, until a single individual who had knowingly purchased property straddling the York-Kittery border found himself unable to develop his property as intended. Spurred, apparently, by this individual's desires, the York Select Board sent a letter to Kittery's Town Council on August 26, 2019. Ex. A to Compl. Without basis, the letter asserted that the current York-Kittery border was inconsistent with the legislatively established border. *Id.* Within the letter, York did not reference any prior perambulations of the border, invoke 30-A M.R.S.A. § 2851 or § 2852, or advise Kittery of the time or place for a perambulation of the border. *Id.* The letter merely requested "that the Kittery Town Council work with [York] to identify the proper straight-line border, or to acknowledge this as a contested boundary." *Id.* In response, on November 18, 2019, Kittery advised York that it believed the border was as it always had been and still was represented in current and historical maps and documents. Ex. B to Compl. Kittery did not indicate that it considered the legally established border to be in dispute, despite York's allegation of inconsistency. *Id.*

For more than two years, York again slept on this matter before bringing the instant complaint. Despite the lack of required perambulations, the limited application of the Report, the 200-year gap in the Report’s historical review, and passage of nearly 30 years since having notice of its conclusions, York now asserts that that it provides the basis for a boundary dispute. York has not requested a perambulation of the border line under 30-A M.R.S.A. § 2851 and has not previously communicated with Kittery regarding the allegedly disputed border.

STANDARD OF REVIEW

A motion to dismiss pursuant to M.R. Civ. P. 12(b)(6) tests the legal sufficiency of the complaint and, in reviewing such a motion, the court must accept the material allegations of the complaint as true. *Moody v. State Liquor & Lottery Comm’n*, 2004 ME 20, ¶¶ 7-8, 843 A.2d 43, 47. However, the Court is not obligated to accept bald assertions, conclusory allegations, or statements of legal conclusion or argument. *See Meridian Medical Systems, LLC v. Epix Therapeutics, Inc.*, 2021 ME 24, ¶ 37, 250 A.2d 122 (“more than conclusory allegations are required”).

A case is ripe for judicial review where there is a “genuine controversy between the parties that presents a concrete, certain, and immediate legal problem.” *Johnson v. City of Augusta*, 2006 ME 92, ¶ 7, 902 A.2d 855. Courts will not hear cases that present “merely theoretical disputes.” *See Johnson v. Crane*, 163 A.3d 832 (citing *Jipson v. Liberty Mut. Fire Ins. Co.*, 2007 ME 10, ¶ 5, 912 A.2d 1250). When reviewing ripeness, a court must consider both the fitness of the case for judicial review and the actual, not merely speculative, hardship the plaintiff would experience if review were withheld. *See Johnson v. City of Augusta*, 2006 ME 92, ¶ 8.

ARGUMENT

- I. York has failed to demonstrate any controversy over the York-Kittery boundary

sufficient to bring a claim under 30-A M.R.S.A. § 2852.

Title 30-A, section 2852 of the Maine Revised Statutes provides, in pertinent part, “*When a controversy over a boundary line exists between adjoining municipalities, either may file a complaint with the Superior Court.*” 30-A M.R.S.A. § 2852. The existence of a controversy between municipalities is the only element of this claim and yet York has failed to adequately plead the existence of such a controversy within the Complaint. York asserts only that the true boundary between it and Kittery was established in 1653, was confirmed by later perambulations, and that a controversy over the boundary exists. Compl. ¶¶ 4-6, 18. These unsubstantiated assertions should not be taken as true for purposes of this motion to dismiss. *See Carey v. Mt. Desert Island Hosp.*, 910 F.Supp. 7, 9 (“The Court need not accept ‘bald assertions’ or ‘unsubstantiated conclusions.’”) (*quoting Correa-Martinex v. Arrillaga-Belendez*, 903 F.2d 49, 52 (1st Cir. 1990)).³ York’s assertions are based only on the conclusions of the Report which, as indicated above, does not purport to identify the legislated border between York and Kittery and does not take into account the past 200 years of legislative actions in respect to that border. York does not reference the findings of any perambulations of the York-Kittery border which it was obligated to undertake until 2003 and which, if performed, would have set to rest the present claim. These baseless assertions are insufficient to demonstrate any controversy requiring resolution through section 2852.

York’s letters to Kittery are similarly insufficient for the purposes of demonstrating any controversy for the purposes of section 2852. In the Complaint, York asserts that its August 2019 letter invited Kittery to identify the boundary under 30-A M.R.S.A. § 2851 and that Kittery rejected that invitation. Compl. ¶¶ 14-16. A single reading of that letter reveals this to be patently

³ Federal decisions interpreting federal rules of civil procedure are useful for purposes of construing Maine rules. *See Bean v. Cummings*, 2008 ME 18, ¶ 11, 939 A.2d 676.

untrue. Under section 2851, the process for identification of municipal borders requires, *inter alia*, formal advisement of a dispute over the boundary, and 10 days' written notice of the time and place for perambulation of the border by the municipal officers. *See* 30-A M.R.S.A. § 2851. Within the letter, York does not reference section 2851, indicate any boundary dispute with Kittery, or set a time and place for perambulation. Ex. A to Compl. Rather, the letter merely request's Kittery's cooperation in identifying York's *desired* border. *Id.* The lack of any real intent to invoke section 2851 is underscored by the fact that York did not undertake a perambulation in the absence of Kittery's municipal officers, as authorized by subsection 2 of section 2851. Without having complied with the process provided by section 2851 here (or, apparently, ever), York cannot demonstrate the existence of any controversy over the border sufficient for a dispute under section 2852. York is amply aware of this fact by virtue of its prior dealings with the Town of Eliot, in which municipal officers from each town participated in a perambulation pursuant to section 2851 and only later filed a complaint under section 2852. *See* Ex. B, ¶¶ 1-3. As such, the letter is not sufficient to demonstrate any controversy between the towns.

Because York's Complaint does not assert facts sufficient to demonstrate any controversy over its shared border with Kittery, York has failed to state a claim for which relief may be granted under section 2852.

II. York lacks standing necessary to assert a claim under 30-A M.R.S.A. § 2852.

Furthermore, for the reasons set forth above, York lacks standing to bring a claim under 30-A M.R.S.A. § 2852. Section 2852 provides statutory standing to any municipality "[w]hen a controversy over a boundary line exists" between it and an adjoining municipality. *See* 30-A M.R.S.A. § 2852. When reviewing the language of a statute, the Court must take into account its "subject matter and purposes of the statute, and the consequences of a particular interpretation."

See Dickau v. Vermont Mut. Ins. Co., 2014 ME 158, ¶ 21, 107 A.3d 621. Section 2852 does not confer standing upon a municipality merely alleging a possible dispute. Rather, it requires that a boundary dispute *exist*. Here, York has provided no evidence of a dispute stemming from a perambulation or even that Kittery also questions their mutual border, but asserts that, because an unrelated report regarding an unrelated border *possibly* identifies a different line, a border dispute simply exists. The speculative nature of York's interest in a possibly different border is insufficient to confer standing under any analysis and especially so when an extant controversy is required, as by section 2852. *See Molleur v. Dairlyand Ins. Co.*, 2008 ME 46, ¶7 n. 3, 942 A.2d 1197 (noting that standing is limited "to parties with a real, rather than a hypothetical interest."). As such, York's Complaint should be dismissed.

III. York's complaint is premature and not ripe for judicial review.

York's claim is also not ripe for judicial review. York has provided only bald assertions of the existence of a boundary dispute but has not demonstrated any discrepancies in the historical or present boundary and has not demonstrated any disagreement by Kittery over the present boundary. York's failure to avail itself of the process provided by 30-A M.R.S.A. § 2851 now and in the past makes it nearly impossible to determine whether any real controversy exists. Rather, the Court is left only with the possibility that a controversy *may* exist. However, it is not the Court's role to hear or consider such theoretical disputes. *See Johnson v. Crane*, 2017 ME 113, ¶ 8. Denial of review would impose no actual hardship on York. Other than the need to abide by the process provided by statute for identification of its borders, York would only temporarily be deprived of the *possibility* that court-appointed commissioners identify a different border. This potential harm is insufficient for a finding of ripeness. *See Me. AFL-CIO v. Superintendent of Ins.*, 1998 ME 257, ¶ 9, 721 A.2d 633 (finding issue unripe where alleged

hardships were speculative ones that may or may not result from denial of review). As such, the Complaint should be dismissed.

Furthermore, allowing a premature adjudication of the type of controversy asserted would be contrary to sound public policy. Permitting a municipality to invoke 30-A M.R.S.A. § 2852 without any substantiated controversy or dispute over its borders, would invite wealthier municipalities to engage in speculative land grabs at great cost to their neighbors, thereby disturbing and creating uncertainty for property owners along those borders⁴ and unnecessarily consuming valuable judicial resources.

IV. York's inexplicable delay in bringing this action renders its claims barred by the doctrine of laches.

Alternatively, York's Complaint should be barred by the doctrine of laches, as York has failed to timely assert its rights since 1821 and for nearly thirty years since it received notice of the allegedly inaccurate border. "Laches is negligence or omission seasonably to assert a right. It exists when the omission to assert the right has continued for an unreasonable and unexplained lapse of time, and under circumstances where the delay has been prejudicial to an adverse party, and where it would be inequitable to enforce the right." *See Brochu v. McLeod*, 206 ME 146, ¶13, 148 A.3d 1220 (quoting *Dep't of Human Servs. V. Bell*, 1998 ME 123, ¶7, 711 A.2d 1292). Between 1821 and 2003, York was required to perambulate its borders at least once every five to ten years. It either failed to do so or, worse, did so and failed to take any action upon them. York received notice of the Report's conclusions in July 1995, nearly 27 years ago. However, once again, York did not perambulate the York-Kittery border or raise any questions over its accuracy.

⁴ Indeed, York has already unnecessarily impeded business development along the York-Kittery border by threatening and then delaying the commencement of this action. *See, e.g.,* Stephen Porter, *York, Kittery Maine border dispute: Still no lawsuit*, Seacoastonline.com (Feb. 2, 2021), <https://www.seacoastonline.com/story/news/local/2021/02/01/york-kittery-border-dispute/4333571001/> (last visited Mar. 5, 2022).

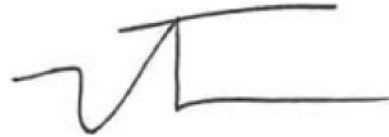
York has not attempted to excuse, justify or otherwise explain its reasons for ignoring its statutory obligations for over 150 years or for waiting nearly three decades to file the instant Complaint. Without any such explanation, one can only assume this action was precipitated by the narrow concerns of an individual property owner along the towns' mutual border. York's delay has seriously prejudiced Kittery's interests. For nearly 25 years since York received the Report, it neither objected to its border with Kittery nor informed Kittery that it regarded the border as being incorrect. Over that time, Kittery invested substantial resources in the land and roads along its border with York. Had Kittery been aware of York's potential claim, it may have chosen to resolve any questions before investing so heavily in those same areas. Permitting York to attempt to claim land within Kittery's borders would allow it to not only benefit from Kittery's investments—to the detriment of Kittery's taxpayers—but to simultaneously reduce its taxable base. York's desired modification of the established border would affect at least 25 residential properties covering over 300 acres and with a total assessed value approaching \$8,000,000. As a result of York's delay in bringing this claim and Kittery's investment in the potentially affected area, it would be inequitable to now permit York to unilaterally assert a boundary dispute and claim for its own benefit the fruits of Kittery's labors. Such a holding would additionally deter investment and development along municipal borders. Indeed, the present Complaint has already cast doubt over Kittery's planned stormwater infrastructure project along the border. If a municipality is permitted to sleep for decades on its rights under section 2852, no municipality would be willing to invest substantially in any non-essential developments or infrastructure improvements along its borders. Because York has failed to explain the unreasonable passage of time between learning of the potentially incorrect border and raising this claim, Kittery would be severely prejudiced by York's claims, and it would be inequitable and contrary to sound public

policy to permit York's claims, the Complaint should be dismissed with prejudice.

CONCLUSION

For the foregoing reasons, Defendant Town of Kittery respectfully requests that this Court dismiss Plaintiff Town of York's Complaint with prejudice because York has failed to state a claim pursuant to M.R. Civ. P. 12(b)(6), York lacks standing to raise the claim, the claim is not ripe for adjudication, and because York is otherwise barred from raising the claim by the doctrine of laches.

Dated at Portland, Maine this 22nd day of March, 2022.



Stephen E.F. Langsdorf, Esq., Bar No. 3500
Cameron A. Ferrante, Esq., Bar No. 6728
Preti Flaherty Beliveau & Pachios LLP
One City Center
P.O. Box 9546
Portland, ME 04112-9546
207.791.3000
slangsdorf@preti.com
cferrante@preti.com

IMPORTANT NOTICE

PURSUANT TO RULE 7(b)(A) OF THE MAINE RULES OF CIVIL PROCEDURE, YOU MUST FILE ANY OPPOSITION TO THIS MOTION WITHIN 21 DAYS OF THE FILING OF THIS MOTION UNLESS ANOTHER TIME IS SET BY THE COURT. FAILURE TO FILE A TIMELY OPPOSITION WILL BE DEEMED A WAIVER OF ALL OBJECTIONS TO THIS MOTION, WHICH MAY BE GRANTED WITHOUT FURTHER NOTICE OR HEARING.

TOWN OF YORK,)
)
 Plaintiff,)
)
 v.)
)
 TOWN OF KITTERY,)
)
 Defendant.)

**PROPOSED ORDER ON
DEFENDANT TOWN OF
KITTERY’S MOTION TO
DISMISS**

Upon motion and consideration, it is hereby ORDERED that Defendant Town of Kittery’s Motion to Dismiss is GRANTED, with prejudice, for the following reasons:

1. Plaintiff Town of York has failed to adequately state a claim upon which relief may be granted. A municipality may bring a complaint to dispute a border with an adjoining municipality where a controversy over their mutual boundary exists. *See* 30-A M.R.S.A. § 2852. Within the Complaint, Plaintiff alleges the existence of a controversy over its mutual border with Defendant. However, Plaintiff offers no facts demonstrating the existence of such a dispute or controversy. Plaintiff did not attempt to identify the boundary through the process prescribed within 30-A M.R.S.A. § 2851 and has not demonstrated that Defendant considers their mutual boundary to be inaccurate or subject to dispute.
2. Plaintiff lacks standing to assert a claim under 30-A M.R.S.A. § 2852. A municipality has standing to bring a claim under section 2852 where a controversy over a boundary with an adjoining municipality exists. Plaintiff has alleged a potential boundary dispute but has not demonstrated the existence of any dispute or controversy sufficient to confer

upon it standing under section 2852.

3. Plaintiff's claim is not ripe for judicial review. Plaintiff has asserted only the possibility that a controversy over its boundary with Defendant exists and will not suffer any hardship as a result of dismissal of this Complaint.
4. Plaintiff's claim is barred by the doctrine of laches. The doctrine of laches bars the assertion of a right after an unreasonable and unexplained passage of time where the assertion of that right would prejudice the adverse party and the right cannot be equitably enforced. *See Brochu v. McLeod*, 206 ME 146, ¶13, 148 A.3d 1220. Plaintiff slept on its rights for over 150 years and for an additional 25 years after receiving notice of the potential discrepancy along its established boundary. Plaintiff has provided no explanation for this lapse. Meanwhile, Defendant has invested substantial resources in maintaining and developing land and infrastructure along the boundary and may be seriously prejudiced by Plaintiff's desired relief. Given the potential prejudice to Defendant and Plaintiff's unexplained delay in asserting its rights, there is no means of equitably enforcing Plaintiff's claim. As such, the Complaint is barred by the doctrine of laches.

The Clerk shall incorporate this order on the docket by references to M.R. Civ. P. 79(a).

SO ORDERED.

Dated: _____

Justice, Superior Court

Exhibit A

STATE OF MAINE
YORK, SS.

STATE OF MAINE
SUPERIOR COURT COUNTY OF YORK
CIVIL ACTION CLERK'S OFFICE
DOCKET No. CV-91-880

Nov 22 10 27 AM '91

TOWN OF ELIOT, a municipal
corporation, of Eliot, in the
County of York and State of
Maine,

Plaintiff

vs.

TOWN OF YORK, a municipal
corporation, of York, in the
County of York and State of
Maine,

Defendant

COMPLAINT FOR ESTABLISHMENT OF
MUNICIPAL BOUNDARY LINE AND
APPOINTMENT OF COMMISSIONERS
PURSUANT TO 30-A M.R.S.A.
§2851 ET SEQ.

NOW COMES the Town of Eliot, a municipal corporation with a principal place of business in Eliot, in the County of York and State of Maine, and states as follows:

1. On or about July 25, 1991, duly authorized municipal officers of the Plaintiff Town of Eliot and Defendant Town of York after due notice met to perambulate the boundary line between the Town of Eliot and Town of York, pursuant to the provisions of 30-A M.R.S.A. §2851.
2. As a result of the perambulation of the boundary line by the municipal officers of the Plaintiff and Defendant Towns, a controversy arose over the exact location of the boundary line between the parties.
3. Because of the aforesaid controversy and lack of agreement, there continues to be a dispute between the Plaintiff and Defendant Towns as to the exact monumentation and location of the boundary line existing between the Town of Eliot and Town of York.

WHEREFORE, your Plaintiff prays that the Court, after due notice to the municipal officers of the Plaintiff and Defendant Towns:

A. Appoint three commissioners and empower them with authority to:

- (1) ascertain the true and correct boundary line between the Plaintiff and Defendant Towns;

Exhibit A

(2) determine the courses and distances of the boundary lines between the Plaintiff and Defendant Towns as so established;

(3) set temporary markers to indicate the established line; and

(4) report the proceedings of the commissioners.

B. Determine the proper compensation for the services of the commissioners so-named, and issue a warrant to the Plaintiff and Defendant Towns for the payment of said services in equal proportions.

C. Assess the share of the Plaintiff and Defendant municipalities for the expense of erecting permanent markers or monumentation reflecting the location of the boundary line between the Town of Eliot and Town of York as established by the commissioners so appointed.

D. Grant any further relief to the Plaintiff Town of Eliot as this Honorable Court deems fair and just.

Dated: November 12, 1991



Duncan A. McEachern, Attorney
for Plaintiff, Town of Eliot

McEachern & Thornhill
10 Walker Street, PO Box 360
Kittery, ME 03904
(207) 439-4881

A TRUE COPY

Attest 
Clerk of Courts

Exhibit B

STATE OF MAINE
YORK, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-91-880

TOWN OF ELIOT,)
)
 Plaintiff,)
)
 v.)
)
TOWN OF YORK,)
)
 Defendant.)

ORDER ACCEPTING REPORT OF BOUNDARY COMMISSIONERS

This matter represents a dispute between the Towns of Eliot and York concerning the true location of a portion of the boundary between those two municipalities.

By order dated February 2, 1995, the Court appointed three individuals to serve as Commissioners pursuant to 30-A M.R.S.A. § 2852. On July 21, 1995, those Commissioners filed with the Court a report of their proceedings in compliance with 30-A M.R.S.A. § 2852(4). Neither party has objected to the Commissioner's report as to matters of form or substance.

Accordingly, pursuant to 30-A M.R.S.A. § 2852(5), the Court hereby accepts the Commissioner's report and orders as follows:

1. The line established by the Commissioners in their report shall be the true line between the Towns of Eliot and York for every municipal purpose;
2. The Towns of Eliot and York shall replace any and all temporary markers set by the Commissioners with permanent monuments as provided in 30-A M.R.S.A. § 2851, splitting the expense of erecting those monuments equally between the Towns;
3. The Commissioners are allowed a proper compensation for their services. If the parties and the Commissioners are unable to agree upon the amount of such proper compensation, the Commissioners may apply to the Court for a determination of such proper compensation and for the issuance of a warrant for the collection of such compensation from the Towns of Eliot and York in equal proportions.

IT IS SO ORDERED.

Dated: *Oct 18, 1995*

W.S. Brodus
Justice, Superior Court

S:\VCB\ORD105.DOC

A TRUE COPY

Attest *Julie Kellford*
Clerk of Courts

March 22, 2022

VIA E-MAIL

sburns@yorkmaine.org

Stephen H. Burns
Town Manager
Town of York
186 York Street,
York, ME 03909

RE: Maine Freedom of Access Request

Dear Mr. Burns:

I write to respectfully request the following public records within the possession of the Town of York pursuant to the Maine Freedom of Access Act, 1 M.R.S. § 400, *et seq.* For the purposes of this request, “communications” includes but is not limited to letters, notes, memoranda, emails, text messages or social media messages. Further, the “Town of York” includes its boards, councils, commissions, divisions, and all officers, members, staff, employees, consultants and contractors thereof.

1. All communications between the Town of York, including but not limited to the Town Manager, Select Board, Town Planner, Town Assessor, and Code Enforcement officer, and prior and current owners of 524 U.S. Route 1, Kittery, Maine or 1 U.S. Route 1, York, ME (Tax Map 87, Lots 67 and 68) (the “Properties”), exclusive of standard or generic notices sent or communications made to Town of York residents, since December 1, 2017.
2. All internal or other communications of the Town of York regarding the Properties since December 1, 2017.
3. All applications, including building permits, site plan review, and conditional use review requests, related to the Properties and records of any deliberations or actions taken thereon by the Town of York, since January 1, 2019.
4. The records and findings of any perambulations of the York-Kittery border conducted pursuant to 30-A M.R.S.A. § 2851 between December 1, 1993 and December 31, 2003, including the dates of any such perambulations and persons in attendance.
5. All internal or other communications of the Town of York regarding its mutual border with the Town of Kittery since December 1, 1993.

PRETI FLAHERTY

Stephen H. Burns

March 22, 2022

Page 2

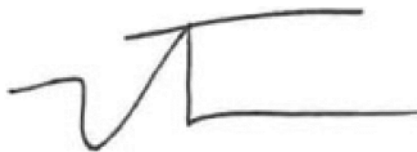
6. All surveys, plans, maps, drawings, or other data relating to the Town of York's mutual border with the Town of Kittery, including the Town of York's Tax Maps 201 and 203-206, made or collected since December 1, 1991.

Please send copies of all responsive documents electronically to my email address (slangsdorf@preti.com) or to my attention at Preti Flaherty Beliveau & Pachios, LLP, One City Center, Portland, ME 04112. My preference is for electronic transmission.

Please note that this request is time sensitive. For that reason, I ask that the Town fulfill request # 1-4 before proceeding to fulfill the remainder of the requests.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'S.E.F. Langsdorf', written in a cursive style.

Stephen E.F. Langsdorf

SEFL:caf

Stephen E.F. Langsdorf
slangsdorf@preti.com
207.623.5300

March 22, 2022

VIA E-MAIL

sburns@yorkmaine.org

Stephen H. Burns
Town Manager
Town of York
186 York Street,
York, ME 03909

RE: Maine Freedom of Access Request

Dear Mr. Burns:

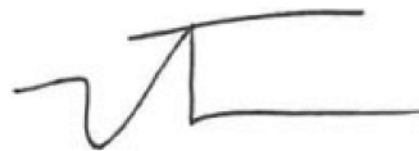
I write to respectfully request the following public records within the possession of the Town of York pursuant to the Maine Freedom of Access Act, 1 M.R.S. § 400, *et seq.* For the purposes of this request, “communications” includes but is not limited to letters, notes, memoranda, emails, text messages or social media messages. Further, the “Town of York” includes its boards, councils, commissions, divisions, and all officers, members, staff, employees, consultants and contractors thereof.

1. The records and findings of any perambulations of the mutual border of York and Kittery conducted pursuant to 30-A M.R.S.A. § 2851 or its prior iterations between March 8, 1821 and December 31, 2003, including the dates of any such perambulations and persons in attendance.
2. All internal communications of the Town of York regarding such perambulations.

Please send copies of all responsive documents electronically to my email address (slangsdorf@preti.com) or to my attention at Preti Flaherty Beliveau & Pachios, LLP, One City Center, Portland, ME 04112. My preference is for electronic transmission.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions.

Sincerely,



Stephen E.F. Langsdorf

KITTERY TOWN COUNCIL Unapproved Minutes

March 14, 2022, 6:00PM

Council Chambers

- 1 1. Call to Order
- 2 Chair Spiller called the meeting to order at 6:33 p.m.
- 3 2. Introductory
- 4 3. Pledge of Allegiance
- 5 4. Roll Call
- 6 Councilors present: Chair Judith Spiller, Vice Chair George Dow, Councilor Cyrus Clark,
- 7 Councilor Cameron Hamm, and Councilor Colin McGuire. Councilors absent: Councilor
- 8 Jeffrey Pelletier, and Councilor Mary Stevens.
- 9 5. Agenda Amendment and Adoption
- 10 Add under NEW BUSINESS, item m. The Kittery Town Council moves to provide a
- 11 letter to the Land of Maines future in support of Kittery Land Trust application for funds
- 12 to acquire and to conserve the Sisk property.
- 13 Chair Spiller cast one vote to approve the adoption to the agenda.
- 14 6. Town Manager's Report
- 15 The Town Manager reported on: COVID Update, PFAS Update, John Tuttle's
- 16 Retirement, and Gorges Road Fire Station Expansion. Upcoming Dates: The Education
- 17 Scholarship applications are due – April 14, 2022, applications are available online at
- 18 www.kitteryme.gov/scholarship, Mooring renewals are open online at
- 19 www.kitteryme.gov/onlinemooring, Easter Egg Hunt is on April 9, 2022 at the Kittery
- 20 Community Center, AARP Tax Aide is by appointment, on Wednesdays & Thursdays,
- 21 February 2 – April 14, 2022 at the Kittery Community Center, and the Senior Tax Credit
- 22 applications are due on July 1, 2022, the applications are available at the Town Hall or
- 23 online at www.kitteryme.gov/taxpaymentassistance.
- 24 7. Acceptance of Previous Minutes.
- 25 February 28, 2022 – Regular Meeting
- 26 The Council approved the February 28, 2022 Council minutes as presented.
- 27 8. Interviews for the Board of Appeals and Planning Board - None
- 28 9. All items involving the town attorney, town engineers, town employees or other town
- 29 consultants or requested offices.

30 a. Introduction of Diana Minott, the new Tri Town Police Case Worker.

31 The Town of Kittery, Chief of Police, Robert Richter introduced Diana Minott, the new
32 Tri Town Police Case Worker.

33 Diana Minott, spoke to the Council about her qualifications and answered any questions
34 they may have had.

35 10. PUBLIC HEARINGS

36 a. (030122-1) The Kittery Town Council moves to approve a new Liquor License
37 application from Kashas Kitchen located at 435 US Route 1, Kittery.

38 Moved by Vice Chair Dow, seconded by Councilor Hamm.

39 Motion Carried 5-0-0

40 11. DISCUSSION

41 a. Discussion by members of the public (three minutes per person).

42 b. Chairperson may read written comments into the record.

43 Sarah, and Peter Drummond, 115 Pepperrell Road, Kittery, would like to express their
44 full support of the Kittery Art Association moving to the old library location in Wallingford
45 square.

46 Roger Cole, 149 Brave Boat Harbor Road, Kittery Point, spoke at the February 28, 2022
47 Town Council meeting, Mr. Cole asked Chair Spiller to read the letter he had written
48 regarding, the CIP open space reserve account, and asking the Council to reverse their
49 decision to not fund it.

50 c. Chairperson's response to public comments. - None

51 12. UNFINISHED BUSINESS - None

52 13. NEW BUSINESS

53 a. Donations/gifts received for Council dispositions

54 (030122-2) The Kittery Town Council moves to approve the following sponsored
55 spaces for the Rice Public Library.

56 Community Room – Given in memory of Eileen G. (Campbell) Pelletier, and Maker
57 Space – Given by Paul and Jessica McKeon.

58 Moved by Vice Chair Dow, seconded by Councilor Hamm.

59 Motion Carried 5-0-0

60 b. (030122-3) The Kittery Town Council moves to approve a renewal Liquor License
61 application from the Dance Hall located at 7 Walker Street, Kittery.

62 Moved by Councilor McGuire, seconded by Councilor Hamm.

63 Motion Carried 5-0-0

64 c. (030122-4) The Kittery Town Council moves to approve a renewal Liquor License
65 application from Bob's Clam Hut located at 315 US Route 1, Kittery.

66 Moved by Councilor Hamm, seconded by Councilor Clark.

67 Motion Carried 5-0-0

68 d. (030122-5) The Kittery Town Council moves appoint a Councilor to interview
69 John Corgan, along with the Chair of the Economic Development Committee
70 for a three-year term.

71 Moved by Vice Chair Dow to appoint Council Stevens, seconded by Councilor McGuire.

72 Motion Carried 5-0-0

73 e. (030122-6) The Kittery Town Council moves to appoint a Councilor to interview
74 H. Scott Mason, along with the Chair of the Economic Development Committee
75 for a three-year term.

76 Moved by Councilor Clark to appoint Councilor Hamm, seconded by Council McGuire.

77 Motion Carried 5-0-0

78 f. (030122-7) The Kittery Town Council moves to appoint a Councilor to interview
79 Edwin Thompson, along with the Chair of the Conservation Commission for a
80 three-year term.

81 Moved by Councilor Clark to appoint Councilor McGuire, seconded by Councilor Hamm.

82 Motion Carried 5-0-0

83 g. (030122-8) The Kittery Town Council moves to appoint John McCollett to the
84 Climate Adaptation Committee for a three-year term to expire 12/31/2025.

85 Moved by Vice Chair Dow, seconded by Councilor Clark.

86 Motion Carried 5-0-0

87 h. (030122-9) The Kittery Town Council moves to schedule a public hearing on
88 April 11, 2022 on Title 16 – Affordable Housing BL, BL1.

89 The Town Manager gave an overview on Title 16 – Affordable Housing BL, BL1.

90 Moved by Vice Chair Dow, seconded by Councilor Hamm.

91 All were in favor.

92 i. (030122-10) The Kittery Town Council moves to schedule a public hearing on
93 April 11, 2022 on Title 16 – Solar Energy Systems.

94 Moved by Vice Chair Dow, seconded by Councilor Hamm.

95 All were in favor.

96 j. (030122-11) The Kittery Town Council moves to approve a sign request from
97 the Kittery Rotary After Hours to place signs about Town advertising their Cinco
98 de Mayo drive through dinner on May 5, 2022.

99 Moved by Vice Chair Dow, seconded by Councilor Hamm.

100 Motion Carried 5-0-0

101 k. (030122-12) The Kittery Town Council moves to approve the collective
102 bargaining agreements for the following.

103 • Administrative

104 • Professional

105 Moved by Councilor Hamm, seconded by Councilor McGuire.

106 Motion Carried 5-0-0

107 l. (030122-13) The Kittery Town Council moves to establish the Diversity, Equity
108 & Inclusion Ad Hoc Committee (DEI Committee).

109 Moved by Vice Chair Dow, seconded by Councilor Clark.

110 Motion Carried 5-0-0

111 m. (030122-14) The Kittery Town Council moves to provide a letter to the Land of
112 Maines future in support of the Kittery Land Trust application for funds acquired and to
113 conserve the Sisk property.

114 Moved by Vice Chair Dow, seconded by Councilor Hamm.

115 Motion Carried 5-0-0

116 14. COUNCILOR ISSUES OR COMMENTS

117 Councilor McGuire thanked the Town Manager, and the staff for all their hard work the
118 past two years, while dealing with COVID, and he thought everyone was happy with
119 meeting in person tonight.

120 Councilor Clark mentioned, down with daylight savings. Councilor Clark also expressed,
121 Mother nature will always win, in referring to Climate change, and said we need to be
122 more responsible.

123 Councilor Hamm agreed with Councilor Clark's comment on Climate change, and spoke
124 about how a Climate Bill has not been passed in this country. He also stated since the
125 pandemic, over 1.5 million children have left the public-school systems.

126 Vice Chair Dow mentioned the Education Scholarship and encouraged graduating
127 students and students who are in college to apply. He also wanted to thank the Town
128 Manager, the Superintendent, the entire staff, and the people that have served this
129 community, for being so respectful during COVID.

130 15. COMMITTEE AND OTHER REPORTS

131 a. Communications from the Chairperson - None

132 b. Committee Reports - None

133 16. EXECUTIVE SESSION - None

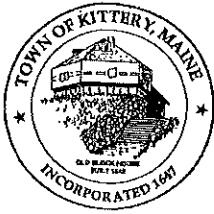
134 17. ADJOURNMENT

135 Vice Chair Dow moved to adjourn at 7:18 p.m., seconded by Councilor Hamm.

136 All were in favor.

Submitted by Kim Tackett

Disclaimer: The following minutes constitute the author's understanding of the meeting. Whilst every effort has been made to ensure the accuracy of the information, the minutes are not intended as a verbatim transcript of comments at the meeting, but a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website.



TOWN OF KITTEERY
Office of the Town Clerk
200 Rogers Road, Kittery, Maine 03904
Telephone: (207) 475-1313 Fax: (207) 439-6806

**APPLICATION FOR VICTUALERS, INNKEEPERS,
AND LODGING HOUSE OPERATORS LICENSE**

Ghazwan Alqayyar
Applicant's Name _____

154 Brackett st Westbrook
Applicant's Address _____
please print

Applicant's mailing address if different from above: _____

Ghazwan.alqayyar@maine.edu
Applicant's Email address (required) _____

06/17/1997
Date of Birth _____ Applicant's Telephone Number: 207-482-9816 _____

Crepe & Karak
Business Name: _____
please print

Mobile
Business Address: Various locations - with permissions _____
please print

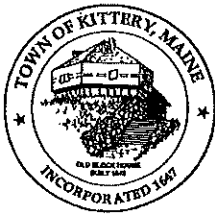
207-482-9816
Business Telephone Number: _____

Signature of Applicant [Signature] _____ DATE: 3/8/2022 _____

LICENSE FEE: \$ 50 _____

FIRST TIME APPLICATIONS: \$50.00
RENEWAL OF LICENSE: \$25.00

PLEASE SUBMIT THIS FORM WITH THE APPROPRIATE FEE TO THE TOWN CLERK'S OFFICE



TOWN OF KITTEERY
Office of the Town Clerk
200 Rogers Road, Kittery, Maine 03904
Telephone: (207) 475-1313 Fax: (207) 439-6806

**APPLICATION FOR VICTUALERS, INNKEEPERS,
AND LODGING HOUSE OPERATORS LICENSE**

Applicant's Name Red's Good Vibes / Caitlin McGrath-Levesque
please print

Applicant's Address 438 Portsmouth Ave Greenland NH 03840
please print

Applicant's mailing address if different from above: PO Box 1092 Portsmouth NH 03802

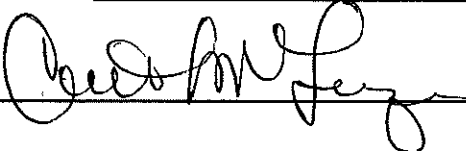
Applicant's Email address (required) caitlin@redsgoodvibes.com

Date of Birth 10/6/84 Applicant's Telephone Number: 603-312-5045

Business Name: Red's Good Vibes Inc
please print

Business Address: 438-Portsmouth Ave Greenland NH 03802
please print

Business Telephone Number: 603-312-5045

Signature of Applicant  DATE: 3/21/22

LICENSE FEE: \$ 50.00

FIRST TIME APPLICATIONS: \$50.00
RENEWAL OF LICENSE: \$25.00

PLEASE SUBMIT THIS FORM WITH THE APPROPRIATE FEE TO THE TOWN CLERK'S OFFICE

3/8/22

Message:

Good afternoon ,

My name is Caitlin McGrath-Levesque and I am the Executive Director of Red's Good Vibes Inc. We are a local Portsmouth NH based 501c3 Nonprofit organization. We operate a mobile soup kitchen, and have been working with local Kittery organizations to increase access to food to those in need. We are hoping to begin being able to operate within Kittery town limits and further collaboration with Footprints Pantry as well as the Seacoast Fridge. We contacted the state in regards to a State issued food service license. We were informed that because we are a nonprofit organization, and operate with no charge to patrons we do not need a license. This would only change if we were to operate in the State of Maine more than 12 times per year. Knowing this now we wanted to circle back with you, introduce ourselves a little further and see if the town would require further permitting for us to be able to cross the bridge and serve Kittery residents.

NH chronicle featured us recently and they did a wonderful job of capturing who we are and what we do. The short video clip can be found here:

<https://www.wmur.com/article/nh-chronicle-giving-thanks-for-reds-good-vibes-food-truck/38294281#>

Thank you so much for taking the time and for your consideration! We are so excited to work with the amazing people addressing food insecurity in our communities.

Please feel free to contact me at any point on my cell at 603-498-2172, or email me at Caitlin@redsgoodvibes.com



TOWN OF KITTERY
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329 Fax: 207-439-6806

REPORT TO TOWN COUNCIL

Meeting Date: February 14, 2022
Update: March 28, 2022
From: Beaches Fires Working Group
Subject: Title 12 – Seapoint and Crescent Beaches Fires
Council Sponsor: Chairperson Judy Spiller

EXECUTIVE SUMMARY

The Kittery Town Council formed the Beaches Fires Working Group to provide recommendations to address the neighborhood complaints about debris and late-night noise from the growing number of fires at Seapoint Beach, and the strong community-wide interest in allowing fires to continue at the beaches.

The Beaches Working Group was comprised of five residents and representatives from the Kittery Land Trust, the Parks Commission, Town Council, the Fire and Police Chiefs, the Animal Control officer, and the Town Manager.

The Working Group's review of how beach communities from South Portland to Cape Cod regulate beach fires indicated that communities either do not allow beach fires or carefully regulate them through a permitting system.

The Working Group is recommending the Council adopt regulations that would continue to allow fires at the beaches, while attempting to control debris, trash, and noise. The proposed regulation:

- Establishes an online permitting system that allows for 5 fire permits to be issued per day by the Fire Department from April 1 to November 1;
- Establishes a ban on burning construction debris, pallets, furniture, trash, etc. (only firewood allowed);
- Requires that fires are extinguished with sea water, leaving no burning coals;
- Requires that the permit holder remove all trash.

The Working Group felt that fires at the relatively distant Crescent Beach, the structure of which naturally extinguishes fires with each high tide, not be restricted. The Working Group did agree that fires should be prohibited on the north end of Seapoint, beginning at the northern edge of the lower parking lot, where residences directly adjacent to the beach; and reaffirmed that the marsh area should remain off limits.

The Working Group recommends that residents (transfer station sticker holders) not be charged for fire permits, but non-residents pay fifteen dollars (\$15) per permit. Finally, the Working Group suggests that the policy and resulting regulations, if adopted by Council, be reviewed the year following adoption.

BACKGROUND

The Beaches Fires Working Group was formed by Town Council in spring of 2021, in response to growing complaints about fires on Seapoint Beach. The Working Group met five times from July until

December. Its membership included five residents (Michael Blackman, Ed Golden, Mike Murphy, Drika Overton, and Todd Thayer) -- all of whom responded to the Town's solicitation for membership -- as well as Kittery Land Trust representative Melissa Paly, Parks Commission representative Denise Payne, Town Councilor Judy Spiller, Town Manager Kendra Amaral, Fire Chief David O'Brien, Police Chief Robert Richer, and Animal Control Officer William Walsh.

Complaints about the fires focused on the number of fires occurring at one time, litter (cans, broken bottles, and other debris) associated with the fires, fires still burning the following morning, fire materials such as construction debris, pallets, branches from trees in the marsh, and sometimes, furniture remaining on the beach, and fires built up against the marsh, posing a fire hazard. Daytime beach users complained about the debris from the fires. Residents living adjacent to the beach complained about late-night noise; people relieving themselves on their property; and on some summer nights, so much smoke from the fires that they had to keep their windows closed.

Others in the community argued that the fires are part of a Kittery tradition and that most extinguished their fires and took their trash home. Several commented that beach fires were one of few ways young people could gather safely during the pandemic.

Seapoint is a small beach less than a mile long, bordered on the northwest by private residences and on the west by an extensive salt marsh. There is a low vegetated dune crest along that western border. The only access point is the small parking area at the end of Seapoint Road. During the day, particularly when the weather is warm, a combination of families and others can be found picnicking, sun-bathing, and swimming; there are beach walkers, many with dogs, during the permitted hours; and photographers, bird watchers, and others use the beach as well. Early morning and late in the day, surf fishing is common. Seapoint/Crescent is one of the darkest locations in the Seacoast, attracting those watching the stars when celestial events occur.

The past three summers, however, the number of fires and the number of people at those fires increased significantly, which increased the trash left behind. Last summer, on a typical warm evening, there was at least one fire and sometimes a dozen or more spread the length of the beach though mostly clustered close to the parking lot. The inaccessible nature of Crescent Beach with its steep cobble scarp placed a natural limit on fires. At Crescent, the remains of the few fires were carried away with the next tide.

Policing the area has always presented challenges. The only access is the small parking lot at the end of Seapoint Road. Walking the length of the beach after dark can take twenty minutes or more. Parking is restricted after 11 pm and before 3 am, but some people clearly risk being ticketed and stay beyond that time.

Current regulations do require permission for a fire at Seapoint and Crescent:

§ 12.4.9 Fires.

No person may start or allow any fire to burn within Seapoint or Crescent Beaches except in suitable facilities provided by the municipality or where permission has been obtained from the municipal Fire Chief, Town Forest Fire Warden. A permit will not be required for the use of portable stoves which are fueled by propane gas, sterno or briquettes. In the event that any cooking or other fire or burning herein allowed is undertaken by any person, said person before leaving such fire must totally extinguish the same.

The restriction has not been enforced for many years. It dates from when there was a bathhouse and a road along the marsh. These were washed away by a hurricane in the seventies. Until the last two years, there were not enough fires to merit concern.

COMMITTEE PROCESS

Goal

The Working Group wanted to limit the debris, noise, and bad behaviors associated with the large number of fires, while still retaining the ability to have fires for those who conducted themselves responsibly. Aware of the challenges associated with rule enforcement after dark on a beach on the edge of town, and only accessible by foot, it sought a simple system that provided rules, but was realistic in the enforcement.

Coastal Community Examples

To understand how to control the negative effects of the fires without completely prohibiting them, the Working Group first looked at how other communities address beach fires. It interviewed community representatives from South Portland to Cape Cod. Virtually all either did not allow fires or strictly controlled the number of fires with a limited number of permits. On Cape Cod, restrictions were either lifted or lightened during the winter months.

Consideration of Options

The Working Group then generated a list of options. It agreed that the preferred option would likely be a compromise and should to the extent possible 1) be fair to those wanting the occasional small beach fire, and to residents, abutting the beach; 2) be enforceable; and 3) protect the marsh. The options considered included do nothing, banning fires completely, allowing a limited number of fires by permit, and limiting permits to residents only.

Doing nothing meant that the level of debris, noise, and potential for damage would likely increase. Banning fires meant that the community would be denied an activity they have long enjoyed. While resident-only access to fires seemed attractive, it raised constitutional issues around requiring people to provide identification. Enforcement would be particularly challenging. Further, Kittery's past efforts to restrict parking to resident only at the Pepperrell Cove Wharf and Seapoint ended unsuccessfully for the Town in the courts.

After the above consideration, the Working Group agreed that a permit requirement would increase responsible behavior on the part of the permit holder, be an opportunity to communicate rules, reinforce staying off the marsh, and be a basis for enforcement. The Working Group considered various combinations of permit restrictions, and ultimately are recommending that five permits a day would be a good starting place. Too many permits would simply replicate the problem; too few would not be fair to the community that have enjoyed having fires at the beaches for generations.

The Working Group felt residents and taxpayers should have some advantage, and so it agreed that permits be free for residents, identified by eligibility for a transfer station sticker, and all others should pay a modest fee of \$15.00.

The Working Group considered designating specific areas for fires, using concrete fire rings or some other form of demarcation, but Shoreland Zoning rules prohibit structures within a certain buffer of the water. Some were concerned that fire rings or markers would detract from the beaches' natural beauty. It also concluded that periodic high intensity storms would obliterate markers and wash away fire rings

CONCLUSIONS AND RECOMMENDATIONS

The Working Group is recommending the Council adopt regulations and rules that:

- Prohibit beach fires on Seapoint Beach north of Seapoint Road parking lot (see map)
- Require a permit for a beach fire on Seapoint Beach south of Seapoint Road parking lot (see map) from May 1 to October 31
- There be **no** restriction on fires at Crescent Beach, and from November 1 through April 30 on the south side of Seapoint Beach

Fire Rules

- Only firewood is allowed to be used as fuel for a beach fire. Pallets, construction debris, furniture, trash, and other non-firewood materials are prohibited from being burned on the beach.
- Fires must be completely extinguished with seawater, leaving no visible burning coals, before vacating the beach.

Fire Permits

- Permits will be limited to five permits per day; permits will be issued for a full day (no partial day permits allowed) and will be date specific (i.e. a permit holder will be permitted to have a fire on Monday, May 9).
- Anyone having a fire on the south-side of Seapoint Beach, between May 1 and Oct 31 without a permit will be subject to a fine or summons.
- Permits will be issued by the Fire Department M-F, and will be issued up to one week in advance only.
- Permits will cost \$0 for Kittery “residents” and \$15 for non-residents. “Residents” will be determined the same way eligibility is determined for the Dump Sticker (property owner).

The Working Group recommends any regulations and rules adopted be reviewed one year following enactment to assess effectiveness and outcomes.

The Working Group was concerned about the issue of trash on Seapoint. The Town’s policy is carry-in/carry out – which is consistent with other Seacoast public parks and parkland best practices. Daytime compliance is generally good. At night though making people pick up after themselves presents special challenges. The Working Group would like the Town to be proactive in assuring Seapoint and Crescent remain clean. We considered recommending the Town hiring additional staff to clean the beaches and/or encouraging volunteer groups to continue their ongoing efforts. The Working Group leaves this to the Town Council to determine what if any action should be taken.

UPDATE

The text was updated to fix a disconnect between the report and the draft ordinance. Specifically, permits are proposed to be required May through October, not April through October

ATTACHMENTS

- Draft Title 12 – Seapoint and Crescent Beaches Fires Amendments
- Draft Title 12 – Enactment

**TITLE 12
SEAPOINT & CRESCENT BEACHES
BEACH FIRES**

1. Amend Seapoint and Crescent Beaches fire regulations as follows:

§ 12.4.9 Fires.

~~No person may start or allow any fire to burn within Seapoint or Crescent Beaches except in suitable facilities provided by the municipality or where permission has been obtained from the municipal Fire Chief, Town Forest Fire Warden. A permit will not be required for the use of portable stoves which are fueled by propane gas, sterno or briquettes. In the event that any cooking or other fire or burning herein allowed is undertaken by any person, said person before leaving such fire must totally extinguish the same.~~

§ 12.4.9.1 Fire Prohibited

Fires are prohibited on the north-side of Seapoint Beach beginning at the public entrance on Seapoint Road.

§ 12.4.9.2 Beach Fire Permit Required

~~A. Fires are permitted only with a valid permit on the~~ On the south-side of Seapoint Beach, beginning at the public entrance on Seapoint Road and running south to Seapoint Beach's southern border with Crescent Beach, **fires are allowed with a valid permit only, between May 1 and October 31, inclusive.** Permits may be obtained from the Town of Kittery and are valid only for the day indicated on the permit. **Fires are allowed without a permit between November 1 and April 30 inclusive.**

B. Only firewood is to be burned on Seapoint and Crescent beaches. The burning of any other type of fuel such as trash, pallets, furniture, construction debris or materials, or chemically treated wood is prohibited.

C. No person creating a beach fire may leave it burning unattended. Fires must be fully extinguished prior to vacating the beach, by thoroughly dousing the fire with seawater until there are no coals or embers burning.

D. The Town Manager may promulgate, and revise as change in conditions warrant, specific rules and regulations known as the "Beach Fires" to govern the operation of beach fires on Seapoint and Crescent Beaches.

E. Beach Fire Permit fees are established by the town Council and contained in Appendix A.

§ 12.4.9.3 Enforcement, Violations and Penalties.

A. This chapter is enforced by the Fire Department and Police Department.

B. Any violation of this chapter will be assessed a penalty of \$50. Repeat offenders and/or those who fail to pay fines in accordance with this Chapter may be prohibited from obtaining a Beach Fire Permit, and may be issued a no trespass order for Town parks for one year.

§ 12.4.9.4 Review of chapter.

No later than one year from the date of enacting amendments, the Kittery Town Council will receive a report from the Town Manager on the status of compliance with the chapter, to determine if amendments are necessary.

2. Add the following fees to Appendix A:

Chapter 12.4 Seapoint and Crescent Beaches

Beach Fire Permits

35	<u>Kittery Property Owner</u>	<u>\$0</u>
36	<u>Non-Kittery Property Owner</u>	<u>\$15</u>

KITTERY TOWN CODE
TITLE 12
SEAPOINT AND CRESCENT BEACHES FIRES

1 **AN ORDINANCE** relating to the municipality's authority for Town governance to give due and
2 proper attention to its many demands pursuant to the Town Charter, Federal law, and Maine
3 Revised Statutes, and more particularly where set forth in Maine Revised Statutes Title 30-A,
4 Municipalities and Counties.

5 **WHEREAS**, the Kittery Town Council is authorized to enact this Ordinance, as specified in
6 Sections 1.01 and 2.07(3) of the Town Charter; 30-A MRS §3001, pursuant to its powers that
7 authorize the town, under certain circumstances, to provide for the public health, welfare,
8 morals, and safety, and does not intend for this Ordinance to conflict with any existing state or
9 federal laws; and

10 **WHEREAS**, the town has experienced a significant increase in recreational fires at Seapoint
11 and Crescent beaches in the past three years; and

12 **WHEREAS**, the increase in recreational fires on the beaches is also leading to increased litter,
13 unextinguished coals that harm other beach users, damage to the surrounding marsh, and
14 negative impacts on the quality of life of residents living adjacent to the beaches; and

15 **WHEREAS**, the Kittery Town Council seeks to establish certain regulations that limit
16 recreational fires on the beaches, and that require those having recreational fires on the
17 beaches to follow certain rules to prevent litter, avoid harm to other beach users, prevent
18 damage to the marsh, and mitigate the impact on the surrounding residents;

19 **NOW THEREFORE**, IN ACCORDANCE WITH TITLES 30-A MRS §3001 AND TOWN
20 CHARTER §2.14 THE TOWN OF KITTERY HEREBY ORDAINS AN AMENDMENT TO TOWN
21 CODE TITLE 12.4.9 SEAPOINT AND CRESCENT BEACHES – BEACH FIRES, AS
22 PRESENTED.

23 .
24 **INTRODUCED** and read in a public session of the Town Council on the ____ day of _____,
25 20____, by:_____ {NAME} Motion to approve by Councilor
26 _____ {NAME}, as seconded by Councilor _____ {NAME} and
27 passed by a vote of _____.

28 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,
29 Maine on the ____ day of _____, 20____, {NAME}, _____, Chairperson

30 **Attest:** {NAME}, _____Town Clerk



TOWN OF KITTEERY
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329

REPORT TO TOWN COUNCIL

Date: March 28, 2022
From: Kendra Amaral, Town Manager
Subject: Amendment to Eliot Sewer Agreement – Increased Guaranteed Flow
Councilor Sponsor: Chairperson Judy Spiller

EXECUTIVE SUMMARY

The Town of Eliot is seeking to secure the additional 200,000 gallons per day (gpd) of flow to the Kittery Waste Water Treatment Plant in accordance with prior negotiations conducted in 2012.

The Town of Eliot has been contemplating expansion of their sewer service/infrastructure since 2012. After multiple unsuccessful attempts at Town Meeting to approve the project, the voters of Eliot finally voted in favor of the expansion in 2020. That cleared the way to reintroduce the previously negotiated terms for the 200,000 gpd capacity increase from a decade ago.

Kittery and Eliot staff met approximately 5 times since June of 2021 to discuss options including incremental increase to Eliot's capacity guarantee, cost-sharing expectations and process for Pump Station 7 upgrades, and establishing a connection that bypasses Pump Station 7. Kittery staff reviewed Town records regarding the 2012 negotiations on the expanded capacity and evaluated whether expanded capacity allocation to Eliot would negatively impact future development opportunities for Kittery.

The discussions resulted in Eliot desiring to purchase the additional 200,000 gpd capacity in full rather than incrementally, and Kittery honoring the terms agreed to by the two towns in 2012 for Eliot to pay the \$669,000 fee (effectively the entrance/impact fee) upon execution of the amendment.

Kittery staff also agree it is in our collective best interest to evaluate the feasibility of pumping Eliot's flow directly to the plant (bypassing Pump Station 7), as it would eliminate the need to upgrade Pump Station 7 and could simplify the billing procedures if Eliot is on a dedicated meter.

The Town of Eliot is eager to move forward. MDOT is preparing to repave Route 236 in the next two years, which would set in place a moratorium on work under the pavement. Eliot's goal is to install the new sewer lines in the coming year.

Enclosed are the relevant records from Kittery and Eliot's negotiations on the expanded capacity guarantee.

PROPOSED SOLUTION/RECOMMENDATION

Approve Amendment No. 1 to the Inter-Municipal Agreement with Eliot as presented.

ATTACHMENTS

- Proposed Amendment No. 1
- Existing Inter-Municipal Agreement
- May 2012 Draft Inter-Municipal Agreement showing the terms for expansion of Eliot's guaranteed capacity (relevant section highlighted in blue)
- Eliot's comments on May Draft Inter-Municipal Agreement demonstrating the financial terms were agreed to
- Report to Council June 2012 indicating Eliot voters denied expansion leading to the removal of the expansion terms

INTER-MUNICIPAL AGREEMENT
Between the TOWN of KITTERY and the TOWN of ELIOT
For RECEPTION, TREATMENT, and DISPOSAL of WASTEWATER
From ELIOT's SEWERAGE SYSTEM

AMENDMENT No. 1

This Amendment No. 1 to the Inter-Municipal Agreement between the between the Town of Eliot, Maine, and the Town of Kittery, Maine (dated July 1, 2013), is made and entered into this 10 day of March 2022, by and between the Town of Eliot, Maine, and the Town of Kittery, Maine, in accordance with Article 11 of the agreement:

Article 3 – Technical Provisions

Add the following after Section 3.1.4 of the existing agreement:

3.1.4.1 Within 90 days of the effective date of this agreement, Eliot will purchase an additional reserved capacity of 200,000 gallons per day ADF in Kittery’s WWTF. Eliot shall pay Kittery a total payment of \$669,000 and must be paid in full within 90 days of the effective date of this agreement.

	Annual Average Daily Flow (ADF)	Maximum 24 Hour Flow	Peak One Hour Rate of Flow
	Gallons per day	Gallons per day	Gallons per day
Total	400,000	1,000,000	1,584,000 (or 1,050 gpm)

Note 1: Maximum day peaking factor = 2.5

Note 2: Peak hour peaking factor = 4.0

3.1.4.2 Eliot will make necessary improvements in Eliot’s existing collection system, including the portion located in Kittery that is owned by Eliot, to accommodate the flows, if needed.

3.1.4.3 Eliot will work with Kittery to evaluate the feasibility of pumping Eliot’s flow directly to the WWTF and bypass Kittery Pumping Station #7 and its force main to the WWTF. Eliot’s Current Allocated Capacity stated in Section 3.1.4 of the existing agreement remains unchanged with respect to Kittery Pumping Station #7. When Eliot’s average daily flow meets or exceeds 80% of the ADF limit for a 90 day period Eliot shall provide Kittery with a written plan detailing how Eliot will prevent exceedance of the average daily flow limit.

Article 4 – Cost Allocations

Delete Item 4.3.1 and **Replace** with the following:

4.3.1 Treatment Plant (WWTF)—Eliot shall be responsible to pay its proportionate share of Capitol Costs or Capitol Improvement Costs (not including operating budget replacement costs) of the Treatment Plant (WWTF). Capitol Costs (see Definition) will be necessary from time to time to meet existing or new effluent limitations; and/or replace equipment and other assets to maintain or expand the capacities of the WWTF. During the design state for each project, Eliot is to be given the opportunity to review and comment on the design drawings which Eliot is

responsible to pay its share. Eliot's proportionate share of costs for each project is the ratio of Eliot's Annual Average Allocated Daily Capacity (**400,000 gpd**) (see Section 3.1.4.1) to the Treatment Plant (WWTF) Annual Average Design Capacity per day (2,400,000 gpd) (see Section 3.1.3), and its costs are in accordance with the following formula.

$$\text{Eliot's Capital Improvement Cost Share}_{\text{WWTF}} = \frac{400,000 \text{ gpd}}{2,400,000 \text{ gpd}} \times \text{Total Project Cost WWTF}$$

IN WITNESS WHEREOF, the parties hereto have executed this amendment as of the day and year first above written.

TOWN of KITTERY, MAINE
by its Town Council

TOWN of ELIOT, MAINE
by its Board of Selectmen

Richard R. [unclear]

[unclear]

[unclear]

CERTIFICATE

I certify that I am the Town Clerk of the Town below named in the foregoing contract and that the Selectmen or Council members who signed said contract on behalf of the said Town were then Members of the Town Council or Board of Selectmen in said Town by authority of its governing body and is within the scope of its corporate powers.

Town Clerk, Kittery, Maine

Town Clerk, Eliot, Maine

(TOWN SEAL)

(TOWN SEAL)

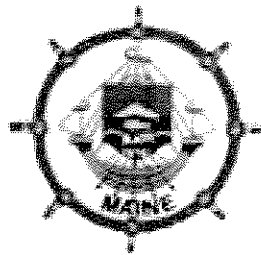
EXISTING AGREEMENT
INTER-MUNICIPAL AGREEMENT

Between the



TOWN of KITTERY

and the



TOWN of ELIOT

for

RECEPTION, TREATMENT, and

DISPOSAL of WASTEWATER

from

ELIOT'S SEWERAGE SYSTEM

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ATTACHMENT A: Collection System Schematic, Eliot & Kittery, Maine, dated 5/2012, by Underwood Engineers.

ATTACHMENT B: Sample Invoice

INTER-MUNICIPAL AGREEMENT
between the TOWN of KITTERY and the TOWN of ELIOT
for RECEPTION, TREATMENT, and DISPOSAL of WASTEWATER
from ELIOT'S SEWERAGE SYSTEM

This Inter-Municipal Agreement ("IMA" or "Agreement") is made and entered into this First day of July, 2013, by and between the Town of Eliot, Maine, ("Eliot"), and the Town of Kittery, Maine, ("Kittery"), collectively "the Parties".

WITNESSETH

WHEREAS, Eliot, duly acting through the Board of Selectmen, is authorized to enter into contracts and agreements with Kittery, duly acting through the Town Council, for the purpose of aiding in the abatement of water pollution; and

WHEREAS, Kittery deems it to be in the public interest to enter into a contract with Eliot whereby Kittery would receive, treat, and dispose of Eliot's wastewaters through Kittery's water pollution control facility; and

WHEREAS, Eliot is desirous of treatment of its present wastewater flow and of retaining its currently reserved capacity of 200,000 gallons per day (gpd) for wastewater treatment and disposal; and

WHEREAS, Eliot has constructed, owns, operates, and maintains a wastewater collection system, with pumping stations, force mains, metering equipment, and appurtenances thereto in Eliot which delivers wastewater by force main to the Kittery town boundary on Route 103; and

WHEREAS, Eliot has constructed, owns, and maintains a continuation of that force main in Kittery for the purpose of transmission of collected wastewater from the Eliot Town boundary to the delivery point identified in Article 3, Section 3.1.2; and

WHEREAS, Kittery owns, operates, and maintains the shared gravity sewer main, constructed by Eliot in Kittery, from the above delivery point to pumping station #7 and will continue to own, operate, and maintain that shared gravity main and the shared pumping station #7; and

WHEREAS, to accept and treat the aforesaid wastes, an existing wastewater collection system within Kittery and the existing Kittery Wastewater Pollution Control Facility will continue to be owned, operated, and maintained by Kittery; and

WHEREAS, the U.S. Environmental Protection Agency has directed that Kittery, as owner and operator of wastewater treatment facilities, maintain and/or enter into an agreement with all Towns contributing wastewater to the Kittery Wastewater Pollution Control Facility in order to comply with its General Pretreatment Regulations (40 CFR Part 403), and that Kittery is required by federal and state law to have certain legal authorities in place in order to implement and enforce an industrial pretreatment program; and

WHEREAS, Kittery and Eliot intend to invoke such applicable enabling laws to empower Kittery to administer and enforce an industrial pretreatment program within Eliot;

NOW, THEREFORE, in consideration of these premises and mutual benefits to be derived by the Parties hereto, **IT IS AGREED** as follows:

ARTICLE 1. DEFINITIONS

For the purpose of this Inter-Municipal Agreement (IMA), the following terms are defined:

Kittery is the Town of Kittery, Maine, acting by and through its Town Council.

Eliot is the Town of Eliot, Maine, acting by and through its Board of Selectmen.

Eliot's Service Area is limited to properties inside the Eliot Town limits.

Acceptable Wastewater means the spent water of a community; from the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, business buildings, institutions, and industrial establishments; the characteristics of which are in compliance with the Kittery Town Code, state and federal rules and regulations, and this IMA.

Average Daily Flow (ADF) means the total annual flow divided by the number of days in the calendar year, expressed as gallons per day.

BOD (biochemical oxygen demand) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at twenty (20) degrees C, expressed in milligrams per liter as prescribed in Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association.

Capital Cost or Capital Improvement Cost means building modifications or additions, fixtures, machinery, equipment, accessories, appurtenances, or other changes to the existing Kittery Waste Water Treatment Facility, or shared portions of the Wastewater Collection System, which are intended to expand the capacity or improve or replace the existing facilities in an amount costing \$5,000 or more, when funded through the Kittery Sewer Department designated reserve account, or the Kittery Capital Improvement Program, or through bonded debt; these Capital Costs will be apportioned in accordance with Article 4.3 of this Agreement. Any capital replacement items costing less than \$5,000 funded through the operating budget will be apportioned in accordance with Article 4.1 and/or Article 4.2 of this Agreement.

Fiscal Year means the 12-month period commencing July 1st unless the Parties agree otherwise.

Industrial User means any non-governmental user of a publicly owned treatment works (POTW), when such user contributes industrial wastes as defined in the Code of Federal Regulations (CFR) 40 Part 403 to the Kittery Wastewater Treatment Facility.

Industrial Wastes means the liquid wastes from industrial manufacturing processes, trade, or business. Industrial Wastes are distinct from Sanitary Wastewater as defined below.

Maximum Daily Flow means the maximum gallons recorded during any 24-hour period during a calendar year.

Operating Costs means the costs incurred by Kittery necessary for the proper and efficient operation and maintenance of the Wastewater Pollution Control Facility and includes Replacement Costs as defined below. Operating Costs will be apportioned between the Parties in accordance with Articles 4.1 and 4.2 of this Agreement.

Peak Rate of Flow means the maximum instantaneous rate of flow recorded during any calendar year measured in gallons per day.

pH means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Project Cost means all direct and indirect Capital Costs associated with a project including, but not limited to, planning, design, construction, engineering, easements, land acquisition, and legal fees.

Replacement Costs means direct and indirect expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the service life of the Wastewater Pollution Control Facility to maintain the capacity and performance for which such facilities were designed and constructed. Replacement costs are funded by the Department's annual operating budget.

Service Life means the expected period of time during which the Wastewater Pollution Control Facility, or a component thereof, will be capable of performing its intended function.

Sanitary Wastewater means wastewater essentially free of industrial wastes or toxic materials and which originates from sanitary conveniences such as toilets, urinals, sinks, showers, drinking fountains, home laundries, kitchens, school cafeterias, and floor drains, and similar sources as approved under the Maine State Plumbing Codes.

Septage means sewage removed from the septic tanks of private systems and trucked to the WWTF for treatment and disposal.

Suspended Solids or **Total Suspended Solids (TSS)** means total suspended matter that either floats on the surface of, or is in suspension in water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed in Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, and referred to as nonfilterable residue.

Wastewater Collection System means the structures, pipes, pumping stations, and other facilities and appurtenances owned by Kittery required to convey sanitary wastewater and/or industrial wastes to the Kittery Wastewater Treatment Facility.

Wastewater Pollution Control Facility (WPCF) means all facilities owned by Kittery for the collection, treatment, and disposal of sanitary wastewater, industrial waste, and septage. The WPCF is comprised of the Wastewater Collection System and the Wastewater Treatment Facility as both terms are defined herein.

Wastewater Treatment Facility (WWTF) means Kittery's central plant facility for the treatment and disposal of Sanitary Wastewater, Industrial Wastes, and Septage.

ARTICLE 2. SCOPE and TERM of CONTRACT

2.1 Subject to the terms herein set forth, Kittery shall sell and deliver to Eliot, and Eliot shall purchase and receive from Kittery, wastewater collection, treatment, and disposal services as requested by Eliot at the premises to be served hereunder.

2.2 The provisions of this Agreement commence with the effective date of this contract and continue for twenty (20) years, after which time it will continue for subsequent ten (10) year periods unless and until this Agreement is either terminated or renegotiated by the Parties under the terms of Articles 11, 12, 13, or 14 below. Kittery and Eliot shall form a work-group to review the Agreement ten (10) years following the effective date or sooner if agreed upon by the Parties of this Agreement.

2.3 The effective date of this Agreement is July 1, 2013.

ARTICLE 3. TECHNICAL PROVISIONS

3.1 Transmission of Wastewater

3.1.1 Eliot owns and maintains the wastewater force main located in Eliot and Kittery on Route 103 which will continue to deliver wastewater in compliance with terms of this Agreement to the point of discharge into the gravity sewer in Kittery at the high point of the manhole located at Station 21+66, west of the I-95 overpass, as shown on a plan prepared by SEA dated 4/1986 (see Attachment A).

3.1.2 Kittery owns and maintains its wastewater collection system, including that part which transmits Eliot’s waste, namely, the gravity sewer line from the connection point with the Eliot force main at Station 21+66 to Pump Station #7 (PS#7) and from there by force main to the Kittery Wastewater Treatment Facility (WWTF).

3.1.3 The WWTF has an annual average design capacity of 2,400,000 gallons per day (gpd). Pump Station #7 has a design peak flow capacity of 550 gallons per minute (gpm).

3.1.4 Kittery shall provide transmission and treatment capacities in its facilities for the wastes from Eliot’s service area. Capacities for Eliot are limited to the maximum values defined below unless changed by duly executed amendments to this IMA.

Eliot’s Current Allocated Capacity

	Annual Average Daily Flow (ADF) Capacity	Maximum 24 Hour Flow	Peak One Hour Rate of Flow
	Gallons per day	Gallons per day	Gallons per day
Total	200,000	700,000 (note 1)	1,008,000 (or 700gpm) (note 2)

Note 1: Maximum 24-hour flow based on maximum historical observed flow.

Note 2: Peak one-hour based on observed maximum pumping rate from Eliot’s Pump Station #1 (King’s Highway) with two pumps running. Normal operation at Pump Station #1 is one pump running, with peak flow capacity of 495 gallons per minute (gpm).

3.1.5 Connections between the Eliot and Kittery sewer systems are limited to the one identified above. Additional connections between the Eliot and Kittery systems may be allowed only through an Amendment to this Agreement.

3.1.6 Kittery shall receive, treat, and dispose of Eliot's wastewater in accordance with applicable sections of Kittery's sewer use rules and regulations, other applicable regulations, Water Quality Standards, and orders and decrees of any governmental authority having jurisdiction over wastewater treatment and disposal. Kittery shall have sole discretion and authority to exercise all of its rights in any appeals or administrative proceedings and in addressing remedies under the laws, regulations, ordinances, standards, orders or decrees which it considers not practical, or practicable, or not in the best interest of both Parties.

3.1.7 The construction of any additional wastewater collection system facilities located in Eliot, and the operation and maintenance of all wastewater collection system facilities located in Eliot, and all costs associated with these facilities will remain the responsibility of the Town of Eliot.

3.1.8 Wastewater facilities owned by Kittery to provide wastewater collection, treatment, and disposal within Kittery of the wastewater of Eliot and Kittery will be the responsibility of Kittery. All Capital Costs, Replacement Costs, and Operating Costs associated with the Kittery wastewater facilities will be allocated in accordance with Article 4 of this IMA.

3.1.9 Eliot will maintain ownership of its wastewater force main in Kittery which connects the wastewater force main in Eliot to the gravity sewer in Kittery. The operation and maintenance and liability associated with the wastewater force main, and all costs associated with this facility, including future replacement costs, will remain the responsibility of the Town of Eliot.

3.1.10 Kittery shall notify Eliot in advance of any proposed road or utility work which may impact the operation of Eliot's force main.

3.1.11 Eliot shall not allow connections from properties outside of the Eliot Town limits without written permission from Kittery.

3.1.12 Prior to May 1st of each year, Kittery shall provide Eliot with an estimated O&M budget (including Replacement Costs, if any) for the upcoming fiscal year. This will allow Eliot two (2) months to plan accordingly and adjust rates, if necessary, to meet its financial obligation.

3.1.13 Prior to May 1st of each year, Kittery shall provide Eliot with an updated 5-year Capital Improvement Program (CIP) identifying capital projects in which Eliot will participate. This will allow Eliot to plan accordingly and adjust rates and/or secure funding as needed to meet its financial obligation.

3.1.14 Eliot does not currently have the right to dispose of septage wastes generated in Eliot or receive benefits related to disposing of septage at the WWTF. Kittery shall therefore quarterly credit Eliot for the Operating Costs and Capital Costs related to the operation, maintenance, replacement, or expansion of the facilities specific to the receipt, treatment, and disposal of septage at the WWTF.

3.2 Flow Monitoring in Eliot

3.2.1 Eliot will operate and maintain the flow meters at its Pump Station #1 required for the determination of the quantity of wastewater delivered into Kittery's system by Eliot. The meters are subject to approval by the Town of Kittery, which approval may not be unreasonably withheld, as related to but not limited to the configuration, make, model, type, installation appurtenances, access, etc., which must be of quality similar to meters utilized at similar Kittery facilities. It is the obligation of Eliot to determine that such metering equipment is maintained and calibrated, and to read the meter(s) on the final day of each billing period in the presence of a representative of Kittery, should Kittery so desire. In the event of incorrect registration of such meters, or their failure to register, the parties hereto shall mutually agree upon the adjustment by using past records as an indication of volumes and estimates of such volumes.

3.2.2 Eliot, at its own expense, shall periodically test and calibrate the meters installed by Eliot for the purpose of recording flows to Kittery, at intervals not exceeding twelve (12) months. Calibration and testing of the meters will be done by a representative of the meter manufacturer or supplier authorized to perform this service, and the representative shall provide both Eliot and Kittery with a written statement as to the accuracy of the meter(s).

3.2.3 At the written request of Kittery, Eliot shall make additional tests of the meters. If such calibration tests show that a meter is out of tolerance by five percent (5%) or more, Eliot shall pay for the testing service. Otherwise Kittery shall pay for the additional testing of the meters.

3.2.4 Eliot will notify Kittery two weeks prior as to the time and date of any routine meter service. Records of all inspections and calibrations, including those done more frequently than required herein, will be submitted to Kittery. In the event of the need for emergency meter service, Eliot will notify Kittery immediately.

3.3 Character of Eliot's Wastewater

3.3.1 Eliot shall take all reasonable efforts to insure that its allocated capacity and wastewater characteristics are not exceeded and that no violations occur in Eliot, and that Eliot, including its commercial and industrial users, meets its obligations for adhering to and enforcing all applicable local, State, and Federal laws, regulations, water quality standards, and orders and decrees of any governmental authority having jurisdiction over the treatment and disposal of said wastewater.

3.3.2 Eliot shall make every reasonable effort not to knowingly discharge into Kittery's wastewater facilities any volume, nature, or strength in excess of that agreed to in this IMA, that violate Kittery's Sewer Code, Chapter 13.1, Article II, entitled Dangerous and Harmful Wastes, including any wastewater containing the following characteristics:

- a. Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred (100) mg/l, or containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) degrees F (0 and 65 C).
- b. Any gasoline, benzene, naphtha, fuel oil or other liquid, solid or gas, in sufficient concentration to be flammable or explosive.
- c. A temperature higher than 150 F (65 C).

- d. Any wastes having a pH lower than 6.5 or higher than 9.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel at the wastewater facilities.
- e. Any wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any of the wastewater treatment processes, or to constitute a hazard to humans or animals, or to create any hazard in the receiving waters of the water pollution control facility.
- f. Waters or wastes containing substances, including dyes, which are amenable to treatment only to a degree such that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
- g. Any noxious or malodorous gaseous substance capable of creating a public nuisance.
- h. Any wastes having a BOD higher than 300 mg/l.
- i. Any wastes having or exhibiting TSS above 300 mg/l.

Note: Should such above conditions knowingly occur, and such discharges exceed the limits herein, Eliot shall notify Kittery as soon as possible, and Eliot shall follow up such notification with written notification of such discharges within three (3) business days and undertake immediately all reasonable efforts to cease or cure such actions.

3.3.3 No hazardous waste, or other foreign material, is allowed to enter Kittery's system but only approved wastewater. In particular, Eliot will also take all reasonable efforts to practice the prohibitions named in paragraphs A, B, C, and D of Section 13.1.2.5 of Kittery's Sewer Code. Eliot will also recognize the authority of Kittery's Sewer Superintendent's opinion regarding specific harmful discharges enumerated in paragraphs A through K in Section 13.1.2 10 of Kittery's Sewer Code.

3.3.4 In all instances where a Pollutant introduced to the Kittery wastewater collection system is an industrial waste, Kittery reserves the right to develop and enforce specific requirements and effluent limits for the industrial user(s) and all other users as appropriate to ensure compliance with Kittery's NPDES permit and/or sludge use or disposal practices. In all instances where Kittery sets requirements on a specific user in the Town of Eliot, Eliot shall assist Kittery with the enforcement of such limits and requirements set by Kittery. Kittery may require each industrial user to perform such tests on its effluent as are necessary to insure compliance. Eliot will develop and oversee a pretreatment program in compliance with 40 CFR Part 403 for any qualifying industries.

3.3.5 Eliot must annually submit to Kittery a list of all industrial connections to the Eliot wastewater collection system. The list must be submitted no later than January 31st each year and contain, for each connection, the name and address of the property owner, the address of the property, the type of wastewater discharged from the property, and the date of the connection. Type of wastewater will be identified as Sanitary Wastewater and/or Industrial Waste.

3.3.6 Eliot shall notify Kittery thirty (30) days in advance of any new connection to the Eliot wastewater collection system that may contain Industrial Wastes. Kittery may require the industry to install equipment to equalize and/or pretreat discharged flows.

3.4 Sampling of Eliot's Wastewater

3.4.1 Samples of Eliot's wastewater to be used to determine the characteristics of the Wastewater for compliance purposes must be obtained at Eliot's Metering Station (Pump Station #1). Kittery and Eliot both agree that the determination of character and concentration of wastes will be in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater, as proposed, approved, and published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation, or any other method mutually agreed upon by Kittery and Eliot, and subject further to the following subsections.

3.4.2 The sampling will be done by Kittery. Determination of the character and concentration of Eliot's wastes is the responsibility of Kittery or its authorized agent.

3.4.3 Samples will be collected by Kittery in such a manner as to be representative of the actual quality of the wastewater. Eliot shall provide access to the metering station as required in order to conduct intermittent or continuous wastewater sampling.

3.4.4 Kittery may perform quarterly sampling and testing of Eliot's wastewater for the following parameters in accordance with 40 CFR Part 136: BOD, TSS, pH, TKN, and Ammonia. The costs for this sampling and testing must be included in the quarterly operation and maintenance costs for the Kittery WWTF and apportioned in accordance with Article 4.1 of this Agreement. Sampling results must be provided to Eliot within thirty days of the receipt of the laboratory results. Eliot is not responsible for testing in Kittery unrelated to the WWTF.

3.4.5 Eliot may conduct independent sampling and testing of its wastewater. All laboratory results of Eliot-conducted sampling and testing must be submitted to Kittery within thirty days of the receipt of the laboratory results.

3.5 Regulatory Compliance

3.5.1 It is agreed Kittery is not liable for penalties or consequences from any discharges of liquid wastes by Eliot except for those wastewaters delivered by the Eliot sewage collection system in accordance with the terms described in this Agreement. It is further agreed, except as stated above, that Kittery alone is responsible for meeting the requirements of the Discharge Permit that authorizes a discharge from the Kittery WPCF to the Piscataqua River.

3.5.2 Eliot is considered to be a sewer user by Kittery and is therefore required to comply with Title 13, Chapter 13.1, "Sewer Service System", Articles I and II, of the Kittery Town Code as presently written, and as may be amended from time to time. Eliot is subject to fines, penalties, and costs associated with violations of Chapter 13.1 of the Kittery Town Code (Except that Articles III, IV, and V do not apply to Eliot or this IMA) as well as the violation of any federal and state regulations associated with the discharge of Eliot wastewater in quantities and/or concentrations in excess of those specified herein.

3.5.3 In the event that Eliot fails to comply with Section 3.5.2 of this Agreement in a timely manner, Eliot shall indemnify and hold harmless Kittery, its officers, officials, agents, servants, and employees for any/all damages, increased treatment costs, and any fines and/or penalties imposed by any governmental agency, as a result of Eliot's noncompliance. See Article 6 – LIABILITY and INDEMNITY.

Kittery shall indemnify and hold harmless Eliot, its officers, officials, agents, servants, and employees for any/all damages, increased treatment costs, and any fines and/or penalties imposed by any governmental agency, as a result of Kittery's noncompliance. See Article 6 – LIABILITY and INDEMNITY.

3.5.4 Kittery and Eliot shall comply with all present and future local, state, and federal laws regarding industrial pretreatment of wastewater, including the pretreatment standards of the Clean Water Act of 1977 and the General Pretreatment Regulations (40 CFR Part 403) as amended or replaced from time to time.

3.5.5 Eliot and Kittery are each responsible for all required reporting to the Maine Department of Environmental Protection (DEP) regarding their respective wastewater collection systems. Each Party shall provide the other copies of all reports, letters, and all other communications made by each Party to the DEP regarding the Eliot wastewater collection system.

3.5.6 Eliot hereby authorizes Kittery, and agrees to assist Kittery within Eliot, to administer and enforce all Federal and State laws and Town of Eliot regulations on water pollution as required by the pretreatment standards of the Clean Water Act of 1977 and General Pretreatment Regulations (40 CFR Part 403), as amended, and to administer and enforce Kittery's existing and future sewer use rules and regulations regarding industrial pretreatment. Kittery shall perform the reporting, monitoring, permitting, inspections, and other administrative functions relating to industrial users within Eliot that are necessary to implement industrial pretreatment programs in compliance with federal and state regulations. To the extent permitted by law, Eliot authorizes Kittery to halt actual or threatened discharges which may cause imminent endangerment to the public health and welfare, the environment, and/or the wastewater collection system and/or WPCF, and to seek civil, criminal, or injunctive relief necessary for the enforcement of the pretreatment program in Eliot, and in the event that Kittery's authority for such acts is deemed unauthorized or not permitted, Eliot agrees to carry out enforcement actions on Kittery's behalf.

3.5.7 The Eliot Selectmen agree to advance and support the adoption of sewer use ordinances at least as stringent as Kittery's sewer use rules and regulations insofar as they control or affect the amount, nature, and timing of Eliot's wastewater flows to Kittery, if such ordinances are not currently in effect. If Kittery amends its sewer use rules and regulations, Kittery shall inform Eliot in advance and include Eliot in such amendment process in such a substantive manner adequate to ensure that Eliot's rights and obligations hereunder are protected and addressed. The Eliot Selectmen shall likewise agree to advance and support the amendment of Eliot's sewer use ordinances regarding the amounts, nature, or timing of Eliot's wastewater flow to the Kittery WPCF to ensure that such ordinances are at least as stringent as Kittery's sewer use rules and regulations, as amended. Such amendments to Eliot's ordinances must be addressed by Eliot's Selectmen no later than sixty (60) calendar days after receipt of notification of the adoption by Kittery of amendments to its sewer use rules and regulations, and submitted for adoption at Eliot's subsequent legislative body meeting.

3.5.8 Subject to the confidentiality, trade secret, and other rights of industrial users secured by Federal, State, or local law, Eliot may, with sufficient notice and at reasonable times, review the records of the Kittery Sewer Department pertaining to Kittery's administration of the industrial pretreatment programs authorized by this Agreement. Kittery shall provide to Eliot copies of all enforcement actions taken against sewer users within Eliot.

3.6 Continuity of Service

3.6.1 Kittery shall use reasonable diligence to provide regular and uninterrupted services to Eliot as described in this Agreement. Kittery is not liable to Eliot for breach of contract or other damages related to the failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the reasonable control of Kittery. Kittery will treat and process the wastewater received from Eliot in the same manner as it treats and processes the wastewater received from Kittery.

3.6.2 When any single such failure, suspension, diminution, or variation of service, not excepted by Section 3.6.1, exceeds twenty-four (24) hours in duration, Kittery will, for each such event, make an equitable adjustment in the charge(s) specified in this Agreement. Such adjustments for these events shall be made in a timely fashion and be shown individually for each such event on the quarterly bill.

3.7 Penalties

3.7.1 Except as covered under Section 3.7.2, each Party is responsible to reimburse the other Party for any costs that result from either Party's noncompliance with this IMA.

3.7.2 Eliot will be assessed and is responsible to pay an excess use fee of \$500 per occurrence per day for any discharge volume or quality in excess of the limits set forth in Section 3.1.4, exceeding Eliot's Current Allocated Capacity, Maximum 24 Hour Flow or Peak One Hour Rate of Flow. This fee is in addition to any costs, fines, or penalties that may result from noncompliance with state and federal regulations. Kittery will notify Eliot of any instance of such exceedances within 24 hours of their occurrence.

ARTICLE 4. COST ALLOCATIONS

4.1 Quarterly Operation and Maintenance Cost Allocation - Treatment Plant (WWTF)

Eliot shall be responsible to pay its share of wastewater treatment and disposal costs at the WWTF. The cost is based upon the ratio of Eliot's actual volume of flow delivered to the WWTF, to the actual total flow treated at the WWTF. The total volume from Eliot will be based upon measurements taken at the flow metering devices at Eliot's Pump Station #1 (King's Highway). The total volume WWTF will be based upon measurements taken with the flow metering devices at the WWTF. Eliot shall pay its share of all costs associated with the operation and maintenance of the WWTF, including operating budget capital replacement costs and indirect costs for the administration and management of the WWTF, with deductions for septage costs as described in Section 3.1.14 above, in accordance with the following formula and the attached sample calculation (see Attachment B).

$$\text{Eliot's Quarterly O\&M Cost}_{\text{WWTF}} = \frac{\text{Eliot Total Quarterly Volume}}{\text{Total Quarterly Volume WWTF}} \times \text{Quarterly O\&M Cost of WWTF}$$

4.2 Quarterly Operation and Maintenance Cost Allocation - Pump Station #7 (PS #7)

Eliot shall be responsible to pay its share of the cost of the shared wastewater conveyance in the Kittery wastewater collection system to the WWTF. The cost will be based upon the ratio of Eliot's actual volume of flow conveyed in the part of Kittery's collection system used by Eliot, to the total actual wastewater flows conveyed in the same pipe system.

The total volume from Eliot will be based upon measurements taken at the flow metering devices at Eliot's Pump Station #1 (King's Highway). The total actual volume of the shared collection system will be based upon measurements taken at the flow metering devices at Kittery's PS #7.

Costs associated with the operation and maintenance of the shared collection system include: operating budget capital replacements costs and indirect costs for the administration and management of the shared collection system in accordance with the following formula and the attached sample calculation (see Attachment B).

$$\text{Eliot's Quarterly O\&M Cost Shared Collection System PS \#7} = \frac{\text{Eliot Total Quarterly Volume}}{\text{Total Quarterly Volume PS \#7}} \times \text{Quarterly O\&M Cost PS \#7}$$

4.3 Capital Improvement Cost Allocation - Treatment Plant & Pump Station #7

4.3.1 Treatment Plant(WWTF)--Eliot shall be responsible to pay its proportionate share of Capital Costs or Capital Improvement Costs(not including operating budget replacement costs) of the Treatment Plant (WWTF). Capital Costs (see Definition) will be necessary from time to time to meet existing or new effluent limitations; and/or to replace equipment and other assets to maintain or expand the capacities of the WWTF. During the design stage for each project, Eliot is to be given the opportunity to review and comment on the design drawings for which Eliot is responsible to pay its share. Eliot's proportionate share of costs for each project is the ratio of Eliot's Annual Average Allocated Daily Capacity (200,000 gpd) (see Section 3.1.4), to the Treatment Plant (WWTF) Annual Average Design Capacity per day (2,400,000 gpd) (see Section 3.1.3), and its costs are in accordance with the following formula.

$$\text{Eliot's Capital Improvement Cost Share WWTF} = \frac{200,000 \text{ gpd}}{2,400,000 \text{ gpd}} \times \text{Total Project Cost WWTF}$$

4.3.2 Shared Collection System (SCS) (shared gravity line, PS#7, and force main to WWTF). Eliot shall be responsible to pay its proportionate share of the Capital Costs associated with future projects that improve or upgrade the portions of the Kittery collection system that Eliot uses. Eliot's proportionate share for each project is the ratio of Eliot's Peak Allocated Capacity (495 gpm) to the Kittery PS #7 Rated Peak Flow Capacity (550 gpm), and Eliot's costs are in accordance with the following formula. During the design stage for each project, Eliot is to be given the opportunity to review and comment on the design drawings for which Eliot pays its share.

$$\text{Eliot's Capital Improvement Cost Shares CS} = \frac{495 \text{ gpm}}{550 \text{ gpm}} \times \text{Project Cost of Shared Collection System}$$

ARTICLE 5. BILLING and PAYMENT

5.1 Kittery on a quarterly basis will render to Eliot an invoice for payment of actual quarterly operating and maintenance costs, and replacement costs, and capital costs as prescribed in Article 4 (see sample at Attachment B).

5.2 All invoices for services must be paid within thirty (30) days of receipt except as noted in Section 5.4.

5.3 Invoices not paid within thirty (30) days, except invoices subject to errors as covered in Section 5.4, are subject to the fees, fines, and interest for late payment as are assessed to other Kittery wastewater customers.

5.4 In the event that billing errors are found by Eliot, Eliot will promptly notify Kittery. Kittery will promptly investigate reported billing errors, correct the billing as appropriate, and reissue a corrected invoice, if necessary.

ARTICLE 6. LIABILITY and INDEMNITY

6.1 Eliot Obligations

6.1.1 Eliot agrees, to the fullest extent permitted by law, to indemnify and hold harmless Kittery, its officers, officials, agents, servants, and employees against any and all liabilities, losses, costs, forfeitures, or damages, and all out-of-pocket expenses, including reasonable attorney's fees and court costs (collectively, "Liabilities"), resulting, or alleged to have resulted, from the negligence of Eliot, its officers, officials, agents, servants, employees, or contractors, during the term of this IMA. Notwithstanding the provisions contained in the sentence immediately preceding, Eliot has no obligation to indemnify Kittery for any damages or claims resulting from any act or omission for which Eliot is immune under any state or federal law, including, but without limitation, the Maine Tort Claims Act, codified at 14 M.R.S. § 8101, et seq.

6.1.2 Eliot shall defend any lawsuits with regard to claims related to its actions, responsibilities, and liabilities under this agreement, and shall pay any judgments which result from the lawsuits, provided Kittery furnishes Eliot with reasonable notice to enable Eliot to defend any lawsuits. "Lawsuits" as used in this Section includes arbitration proceedings, administrative proceedings, and all other governmental or quasi-governmental proceedings.

6.2 Kittery Obligations

6.2.1 Kittery agrees, to the fullest extent permitted by law, to indemnify and hold harmless Eliot, its officers, officials, agents, servants, and employees against any and all liabilities, losses, costs, forfeitures, or damages, and all out-of-pocket expenses, including reasonable attorney's fees and court costs (collectively, "Liabilities"), resulting, or alleged to have resulted, from the negligence of Kittery, its officers, officials, agents, servants, employees, or contractors, during the term of this IMA. Notwithstanding the provisions contained in the sentence immediately preceding, Kittery has no obligation to indemnify Eliot for any damages or claims resulting from any act or omission for which Kittery is immune under any state or federal law, including, but without limitation, the Maine Tort Claims Act, codified at 14 M.R.S. § 8101, et seq.

6.2.2 Kittery shall defend any lawsuits with regard to claims related to its actions, responsibilities, and liabilities under this agreement, and shall pay any judgments which result from the lawsuits, provided Eliot furnishes Kittery with reasonable notice to enable Kittery to defend any lawsuits. "Lawsuits" as used in this Section includes arbitration proceedings, administrative proceedings, and all other governmental or quasi-governmental proceedings.

6.3 Both Parties

Neither Party is responsible or liable to the other for any claim, loss, cost, expense, damage, or liability arising from any claim to the extent attributable to any acts or omissions of the other Party. The obligations of the Parties under this Section arising by reason of any such occurrence taking place during the term of this Agreement survive any termination of this Agreement.

ARTICLE 7. FORCE MAJEURE EVENTS

7.1 In the event that Kittery or Eliot is delayed, hindered in, or prevented from the performance of any act required under this IMA by reason of: strikes; acts of God; stoppages of labor; shortages of material or equipment; war; civil commotion; earthquake, flood, fire or other casualty; breakdown of transmission or other facilities; breakage or accident to machinery or pipe; governmental regulations; the binding order of any court or governmental authority; the exercise of power of eminent domain; or other contingencies beyond the reasonable control of the Parties not caused by negligence; then the performance of such act is excused for the period of the delay, and the period for the performance of any such act is extended for a period equivalent to the period of such delay.

7.2 The occurrence of any force majeure event within the meaning of Section 7.1 above does not excuse Eliot from liability for payments owed under this IMA for services rendered prior to or subsequent to such occurrence; nor does it excuse Kittery from liability for equitable adjustments identified in Section 3.6.2 occurring prior to or subsequent to such occurrence.

ARTICLE 8. COMMUNICATIONS BETWEEN the PARTIES

8.1 Notices and communications hereunder must be in writing and be personally delivered or mailed by certified mail, return receipt requested, or by confirmed facsimile transmission to Kittery or Eliot, as the case may be, at the following addresses:

Town of Kittery
200 Rogers Road
Kittery, ME 03904
Attn: Town Manager

Town of Eliot
1333 State Road
Eliot, ME 03903
Attn: Board of Selectmen

8.2 Each Party has the right to change its address for purposes of receiving notice from time to time by giving the other Party notice as herein provided. Separate copies of any notices issued pursuant to this section also must be delivered or mailed to the Kittery Town Manager and Eliot Board of Selectmen, (Attn: Administrative Assistant), at the addresses noted above, or such subsequent address(es) that may be provided in accordance with this section.

8.3 A notice is deemed received on the date of hand delivery (with signed acknowledgement of receipt), or the date noted on the return receipt in cases where notice was sent by certified mail, return receipt requested.

ARTICLE 9. NOTIFICATION of EMERGENCIES

9.1 Each Party shall notify the other of any emergency or condition in either Party's system which may affect the wastewater disposal system in either municipality. Notice must be given as soon as practicable after the proper municipal official has knowledge of said emergency or condition.

ARTICLE 10. SEVERABILITY

10.1 If any of the provisions of this IMA or the application thereof to any persons or circumstances is, to any extent, invalid or unenforceable, the remainder of this IMA or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable will not be affected thereby, and every provision of this IMA is valid and enforceable to the fullest extent permitted by law.

ARTICLE 11. AMENDMENTS

11.1 No officer, official, agent, or employee of Kittery or Eliot has the power to amend, modify, or alter this Agreement or waive any of its provisions or to bind Kittery or Eliot by making any promise or representation not contained herein, except by Article 12 or by an amendment, in writing, executed for Kittery by its Council, and for Eliot by its Board of Selectmen who may so act without the need of further Town Meeting approval. Neither Party may rely on any conduct, statements, action, inaction, or course of conduct of the employees, agents, or officers of the other Party as having changed, modified, or amended this Agreement. Neither Party will be construed as waiving any provision of this Agreement unless the waiver is executed in writing as an amendment to this Agreement.

11.2 No waiver by either Party of any default or breach constitutes a waiver of any subsequent default or breach. Forbearance or indulgence in any form or manner by either Party is not construed as a waiver of any term or condition herein nor does it limit the legal or equitable remedies available to that Party.

11.3 See Article 12.2 for the amending effects of judgments and decisions resulting from arbitration.

ARTICLE 12. DISPUTES

12.1 Mediation

Disputes, differences of opinion, and dissatisfactions which cannot be resolved in the neighborly spirit of this document must first be addressed by either Party serving Notice to the other of the issue(s) and a request for mediation. A Mediation Committee comprised of two members chosen by Kittery and two members chosen by Eliot must be formed to meet and discuss the issues and disputes and to attempt to find an acceptable resolution. The Mediation Committee shall have access to all documents and information from both Parties related to the dispute, and may call witnesses and consult experts as related to the dispute. The Mediation Committee may obtain the services of a professional mediator. The selection of the mediator must be agreed upon unanimously by the Mediation Committee and the cost of such professional mediation services is to be split evenly between the Parties. The Mediation Committee shall report within 120 days of the Mediation Notice to the Parties with its recommendations and the recommendations of the mediator if a mediator is retained.

12.2 Arbitration

If the Parties are not able to resolve the dispute by mediation, the matter will then be referred by the Parties to an Arbitration Committee for resolution at the expiration of the Mediation period. The Arbitration Committee consists of five (5) members: two (2) representatives (Arbitrators) each from Kittery and Eliot selected by the Town Council and Board of Selectmen respectively, and a fifth member, being the Chairman (Arbiter) to be mutually agreed upon and selected by the other four.

The Arbitration Committee shall adopt such procedures as are necessary to ensure that both Parties have a fair opportunity to advance and explain their positions, to make inquiries of the other Party for documents and information related to the dispute, which documents and information must be promptly provided, to hold hearings which allow the Parties to call witnesses and fully present their positions, and for the Arbitration Committee members to deliberate and to decide the dispute. The cost of such professional arbitration services is to be split evenly between the Parties. The Arbitration Committee shall report within 120 days of the commencement of the Arbitration to the Parties of its decisions.

12.3 Decisions

The judgments and decisions of the Arbitration Committee are binding upon both Parties in regard to matters in dispute and as set forth and pertinent to this Agreement. Such judgments and decisions shall have the immediate effect of amending and being an adopted amendment to this Agreement.

ARTICLE 13. CONTRACTUAL CHANGES

13.1 From time to time, changes to the Kittery and Eliot wastewater systems may be occasioned by local, state, or federal decree. In addition, changes in form and scope of those systems may result in additional areas and neighborhoods being served. When changes to this contract, including amendments, are deemed necessary by either Kittery or Eliot, the Kittery Town Council and the Eliot Board of Selectmen, or their designated representatives, agree to meet within thirty (30) days, at the written request of either, to determine if changes are necessary and to make such changes as must be made, in accordance with Article 11.

ARTICLE 14. TERMINATION

14.1 During the first fifteen years of the first twenty-year term of this Agreement as established in Article 2, termination of this Agreement requires the joint agreement of the Parties. Thereafter either Party may serve notice to terminate this Agreement by giving notice thereof to the other Party in writing. Notices of termination must be served on the other Party five (5) years prior to the requested termination date. Upon receipt of a notice of termination, the Parties will meet to discuss the requested termination within thirty (30) days and work to agree on terms that assure a fair and timely termination of the Agreement and to schedule meetings under Section 14.2 to work towards a fair disposition of the Parties' interests in the system, and rights and responsibilities under this Agreement. Any termination rights or privileges hereunder are also contingent upon the Maine Department of Environmental Protection (or its successor agency) granting approval of a permit for a wastewater treatment system suitable to serve the wastewater treatment needs of Eliot.

14.2 Before a termination, the Parties must enter into negotiations and determine what division and crediting of the capital investments and proportional contributions made by each Party should be credited to each Party. The division of each Party's interests will be based upon the existing conditions and economic factors at the time the investments were made and at the time of termination, including but not limited to the number of years that the facilities have been in operation, the existing anticipated useful life and capacity of the facilities being used by the terminating Party and non-terminating Party, and consideration of other appropriate factors to provide a fair and equitable termination and separation of the Parties. Penalties assessed under Section 3.7 are to be covered separately and not to be included as part of the determination of fair terms in the termination. If the Parties cannot agree on a negotiated distribution or award of proportional shares of the capital assets at termination, then the dispute resolution procedures in Article 12 must be followed.

ARTICLE 15. ADOPTION and ENFORCEMENT of APPLICABLE PROVISIONS WITHIN ELIOT

15.1 The Town of Eliot shall make all reasonable efforts to implement all necessary by-laws and ordinances to make the provisions of this Agreement enforceable within the Town of Eliot within sixty days after execution of this Agreement, and upon its approval and adoption by an Eliot Town Meeting if deemed necessary.

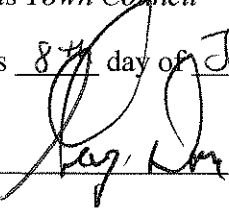
ARTICLE 16. REPLACEMENT OF PRIOR CONTRACTS and AGREEMENTS


16.1 This Agreement supersedes and replaces all prior wastewater collection and treatment contracts and agreements between the Parties hereto, including, but not limited to, the Sewage Disposal Service Contract dated July 19, 1983 as modified by the Award by Arbitration dated December 13, 1993.


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year below written.


TOWN of KITTERY, MAINE
by its Town Council


This 8th day of July, 2013





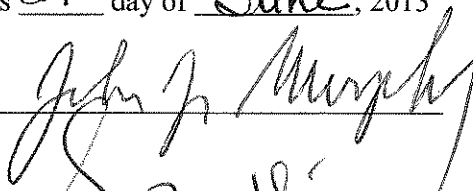





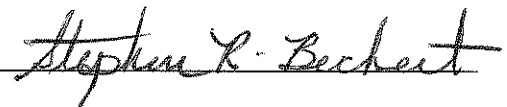


TOWN of ELIOT, MAINE
by its Board of Selectmen

This 27th day of June, 2013





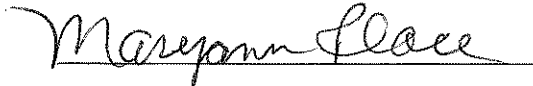


ATTACHMENT A - Collection System Schematic, Eliot & Kittery, Maine, dated 5/2012, by Underwood Engineers.

ATTACHMENT B - Sample Quarterly Invoice

CERTIFICATIONS by TOWN CLERKS

I hereby certify and attest that I am the Town Clerk of the Town below named, and that in my capacity as Town Clerk I can attest that the respective Selectmen or Council members who signed this Agreement on behalf of the Town I serve are each duly elected and sitting Councilors of the Town of Kittery Town Council or Selectmen of the Town of Eliot Board of Selectmen.



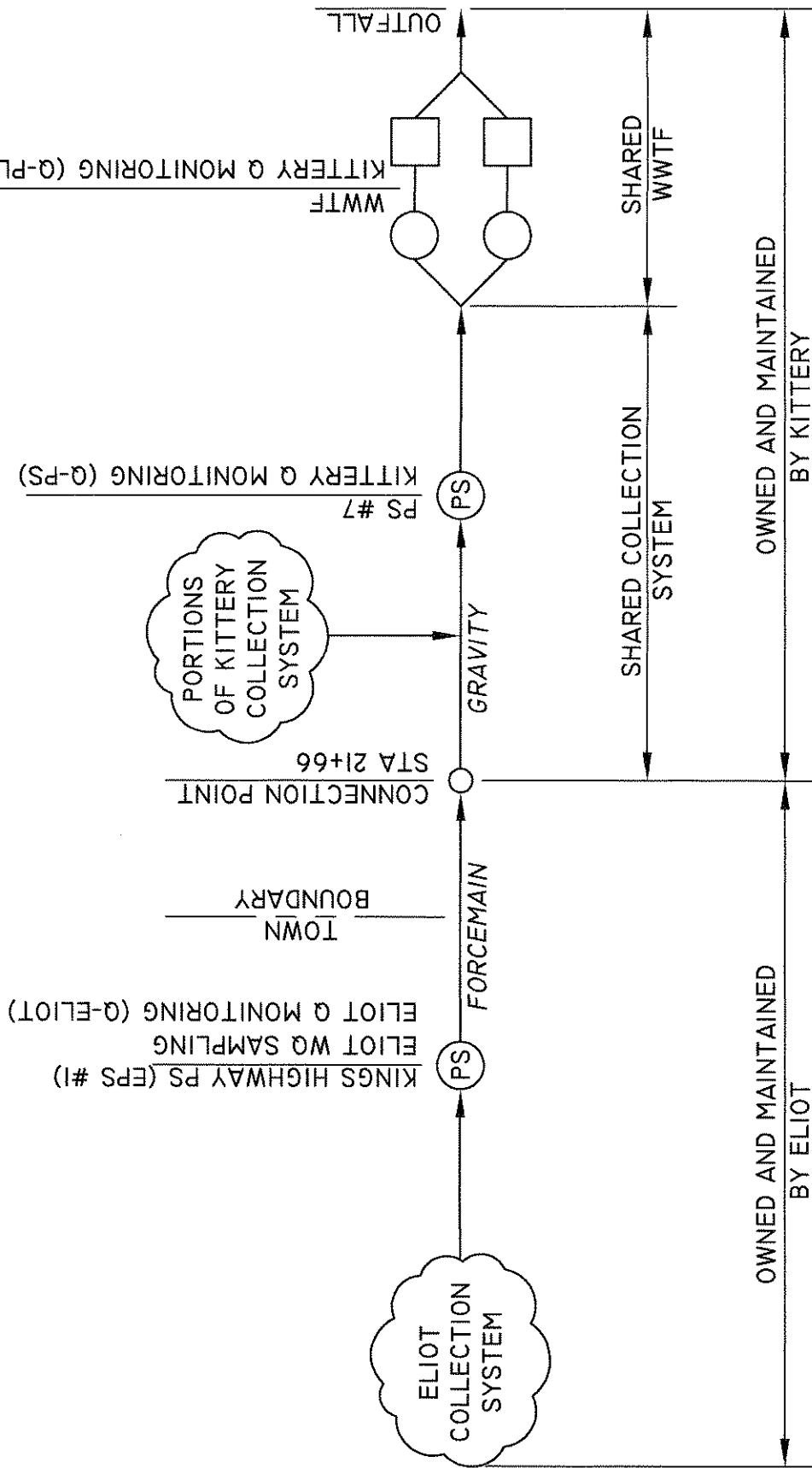
Town Clerk, Kittery, Maine

Maryann Place,



Town Clerk, Eliot, Maine

Wendy J. Rawski



NOTES:

1. Q-ELIOT IS MEASURED BY ELIOT'S KINGS HIGHWAY PUMPING STATION FLOW METER. SEE ARTICLES 4.1 AND 4.2 OF THE INTERMUNICIPAL AGREEMENT (IMA) FOR BILLING METHODOLOGY DESCRIPTION.
2. Q-PS IS MEASURED BY KITTERY'S PUMPING STATION #7 FLOW METER. SEE ARTICLE 4.2 OF THE IMA FOR BILLING METHODOLOGY DESCRIPTION.
3. Q-PLANT IS MEASURED BY THE WWTF INFLUENT METER. SEE ARTICLE 4.1 OF THE IMA FOR BILLING METHODOLOGY DESCRIPTION.

DATE:

1/2013

PROJECT:

1662



25 VAUGHAN MALL, PORTSMOUTH, N.H. 03801
TEL. 603-436-6192 FAX. 603-431-4733

INTERMUNICIPAL AGREEMENT
COLLECTION SYSTEM SCHEMATIC
ELIOT & KITTERY, MAINE

ATTACHMENT

A



TOWN OF KITTERY, MAINE – SEWER DEPARTMENT
 200 ROGERS ROAD, KITTERY, ME 03904
 PHONE: (207) 439-0452
 FAX: 207-439-6806

NOTE: MUNIS ACCOUNTING DATA USED FOR THIS EXAMPLE IS FY12 1ST QUARTER

TOWN OF ELIOT
 1333 STATE ROAD
 ELIOT, ME 03903

INVOICE DATE:		ENTER DATES		AMOUNT DUE		
				\$37,864.60		
Billing for sewer service for quarter ended:		1-Oct-12				
METER READ DATES		KITTERY TREATMENT PLANT METER (Gallons)	RESIDENTIAL VOL / % / COST	NAVY YARD BUILDING 292 (Gallons)	ELIOT PLEASANT ST. PUMP STATION (Gallons)	PUMP STATION # 7 (Gallons)
1-Jul-12	B	2,371,520,000	n/a	2,892,247,200	1,003,772,000	158,703,800
1-Oct-12	E	2,466,159,000	n/a	2,921,253,300	1,014,559,200	173,072,900
Totals		94,639,000	54,845,700	29,006,100	10,787,200	14,369,100
Pct of Volume		100%	57.95%	30.65%	11.40%	75.07%
Base Rate/1,000gal		\$2.84	\$2.84	\$2.84	\$2.84	
Pump Station Cost		\$74,189.53	\$61,680.96	\$7,730.14	\$4,778.43	\$6,365.11
Flow Volume Cost		\$268,884.37	\$155,825.31	\$82,410.92	\$30,648.14	
Capital Improvement Cost		\$23,803.12	\$11,843.84	\$9,521.25	\$2,438.03	
TOTAL COST		\$366,877.02	\$229,350.11	\$99,662.30	\$37,864.60	

CAPITAL IMPROVEMENT ALLOCATION (RESERVE PERCENT OF TOTAL CAPACITY)

ELIOT RESERVE	200,000	10.24%	<i>(NOTE: 12.05% of 85% - AS FROM PRIOR AGREEMENT)</i>
SHIPYARD RESERVE	960,000	40.00%	
KITTERY RESERVE	1,240,000	49.76%	
TOTAL	2,400,000	100.00%	

FORMULAE:

FLOW COST: TOTAL PLANT COST DIVIDED BY ACTUAL FLOW FROM USER = UNIT COST PER 1,000 GALLONS

INFRASTRUCTURE COST: USERS PAY TERRITORIAL INFRASTRUCTURE / COSTS OF CONNECTING PUMP STATIONS

NOTE: PS #7 HAS KITTERY RESIDENTIAL USERS - ELIOT'S SHARE IS THE VOLUME AS MEASURED FROM ELIOT

CAPITAL COST: PAYMENT OF DEBT AND CAPITAL EXPENDITURE AS A PERCENTAGE OF GUARANTEED RESERVE CAPACI

Certification:

I certify that the above bill is correct and just; that payment therefore has not been received that all statutory requirements as to the American production and labor standards, and all conditions of purchase applicable to the transactions have been complied with; and that state and local sales taxes are not included in the amount billed.

Town of Kittery By: _____
 NAME, Town Manager

PUMP STATIONS

602715	TOTAL PUMP STATION # 6 (SHIPYARD)	7,730.14
602716	TOTAL PUMP STATION # 7 (ELIOT)	6,365.11
602702	SEWER LINES	2,619.20
602710	PUMP STATION # 1	1,907.14
602711	PUMP STATION # 2	3,736.50
602712	PUMP STATION # 3	8,325.64
602713	PUMP STATION # 4	1,993.66
602714	PUMP STATION # 5	2,084.96
602717	PUMP STATION # 8	11,052.97
602718	PUMP STATION # 9	3,266.89
602719	PUMP STATION #10	1,544.89
602720	PUMP STATION #11	2,595.53
602721	PUMP STATION #12	2,889.11
602722	PUMP STATION #13	4,690.83
602723	PUMP STATION #14	1,905.54
602724	PUMP STATION #15	1,853.08
602725	PUMP STATION #16	1,816.42
602726	PUMP STATION #17	2,201.97
602727	PUMP STATION #18	1,912.92
602728	PUMP STATION #19	865.52
602729	PUMP STATION #20	729.59
602730	PUMP STATION #21	2,101.92
	TOTAL KITTERY PUMP STATIONS & SEWER LINES	60,094.28
	TOTAL PUMP STATION COSTS	74,189.53

ELIOT SHARE	
75.07%	4,778.43

WASTEWATER TREATMENT FACILITY

LABOR

602750 64010	TREATMENT PLANT LABOR	32,694.07
602750 64019	TREATMENT PLANT MAINT LABOR	9,541.91
602750 64030	OVERTIME	16,040.16
602760 64011	TOWN MANAGER SALARY	6,246.62
602760 64012	SUPERINTENDENT SALARY	18,361.72
602760 64013	OFFICE CLERK SALARY	10,966.82
	TOTAL LABOR	93,851.30

ELIOT SHARE	
11.40%	3,726.56
11.40%	1,087.61
11.40%	1,828.30
11.40%	712.01
11.40%	2,092.92
11.40%	1,250.03
11.40%	10,697.42

BENEFITS - WWTF LABOR

602750 64050	MAINE STATE RETIREMENT	3,662.58
602750 64060	FICA EMPLOYER SHARE	6,119.41
602750 64090	MAJOR MEDICAL INSURANCE	0.00
602750 65040	EDUCATIONAL/MT	229.00

11.40%	417.47
11.40%	697.51
11.40%	0.00
11.40%	26.10

BENEFITS - OTHER LABOR

602760 64050	MAINE STATE RETIREMENT	1,477.02
602760 64060	FICA EMPLOYER SHARE	2,574.83
602760 64090	MAJOR MEDICAL INSURANCE	38,322.06
602760 64051	ICMA EMPLOYER SHARE	443.16
602760 64091	DENTAL INSURANCE	514.56
602760 64092	DISABILILTY INSURANCE	828.16
602760 64070	WORKERS COMPENSATION	0.00
	TOTAL BENEFITS	54,170.78

11.40%	168.35
11.40%	293.49
11.40%	4,368.05
11.40%	50.51
11.40%	58.65
11.40%	94.40
11.40%	0.00
11.40%	6,174.53

TREATMENT PLANT & GENERAL

602750 65015	CELLULAR PHONE	18.90
602750 65020	TELEPHONE	1,047.40
602750 65200	ELECTRICITY	17,027.27
602750 65220	WATER	831.52
602750 65230	FUEL OIL	0.00
602750 65310	MOTOR VEHICLE	5,850.98
602750 65316	GENERATOR FUEL	0.00
602750 65410	COMPUTER SERV	79.90
602750 65480	OTHER PROF/CON	37,381.53
602750 65500	BLDG MAINT	177.83
602750 65525	HAZARDOUS WASTE	0.00
602750 65700	EXPENSES MISC	0.00
602750 65930	ALARMS	112.97
602750 65940	ALARM	0.00
602750 65955	SLUDGE MGT	21,935.72

11.40%	2.15
11.40%	119.39
11.40%	1,940.81
11.40%	94.78
11.40%	0.00
11.40%	666.91
11.40%	0.00
11.40%	9.11
11.40%	4,260.84
11.40%	20.27
11.40%	0.00
11.40%	0.00
11.40%	12.88
11.40%	0.00
11.40%	2,500.29

602750 66010	OFFICE SUPPLIE S	3,768.57	11.40%	429.55
602750 66300	SUPPLIES	293.39	11.40%	33.44
602750 66340	LAB CHEMICALS/SUPPLIES	1,106.34	11.40%	126.10
602750 66400	REPAIRS/STRUCT	1,106.17	11.40%	126.08
602750 66410	REPAIRS/EQUIPM	583.22	11.40%	66.48
602750 66420	TOOL/EQUIPMENT	1,998.77	11.40%	227.83
602750 66450	CHEMICALS	30,280.55	11.40%	3,451.46
602750 66520	SAFETY EQUIPMENT	961.26	11.40%	109.57
602760 65101	MMA RISK POOL	0.00	11.40%	0.00
602760 65350	TOWN OFFICE RENT	1,500.00	11.40%	170.97
602760 65430	AUDIT SERVICES	2,300.00	11.40%	262.16
TOTAL TREATMENT PLANT & GENERAL		128,362.29	11.40%	14,631.07

WWTF GRAND TOTAL 276,384.37

ELIOT SHARE	
11.40%	31,503.01

KITTERY SEPTAGE/GRANT REVENUE 7,500.00 ENTER

11.40%	854.87
--------	--------

WWTF ALLOCATION ADJUSTED 268,884.37

11.40%	30,648.14
--------	-----------

WPCF GRAND TOTAL 366,877.02

CAPITAL EXPENSES

602760 68060	DEBT SERVICE	0.00
602760 68400	DEPRECIATION - PLANT	306,578.72
602760 68920	AMORTIZATION EXPENSE	172,621.53
TOTAL - CAPITAL EXPENSES		479,200.25

GRAND TOTAL - CHECKSUM 829,774.15
GRAND TOTAL - FROM MUNIS PASTER 829,774.15

NOTE: DEBT SERVICE CALCULATED SEPARATELY BECAUSE IT IS ONLY PAID SEMIANNUALLY CAPITAL PROGRAM QUARTERLY ALLOCATION

TOTAL ANNUAL DEBT SERVICE	\$190,196.69
DEBT SERVICE - 2010 BOND (50.06%) BILLABLE	\$95,212.46
QUARTERLY ALLOCATION	\$23,803.12
DESIGNATED RESERVE FUNDS USED THIS QUARTER	ENTER
TOTAL DEBT SERVICE BILLING ALLOCATION	\$23,803.12

ELIOT SHARE	
10.24%	2,438.03

NOTE: CAPITAL FIXED ASSETS LESS THAN \$5,000 ARE ACCOUNTED IN THE OPERATING BUDGET

THOSE COSTING FROM \$5,000 - \$25,000 ARE APPROPRIATED ANNUALLY IN THE 5-YEAR CAPITAL IMPROVEMENT PROGRAM AS DEPARTMENT DESIGNATED RESERVES. CHARGED WHEN EXPENDED.

ABOVE \$25,000 CAPITAL COST REQUIRES VOTER APPROVAL AND/OR BOND AUTHORITY WHICH WOULD THEN BECOME PART OF THE DEBT SERVICE CALCULATIONS.

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2
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13

INTER-MUNICIPAL AGREEMENT

between the



TOWN of KITTERY

and the



TOWN of ELIOT

for

WASTEWATER RECEPTION

from

ELIOT'S SEWERAGE SYSTEM

Proposed Eliot Sewage Disposal Service Contract - 2012

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Proposed Eliot Sewage Disposal Service Contract - 2012

**INTER-MUNICIPAL AGREEMENT between the TOWN of
KITTERY and the TOWN of ELIOT for WASTEWATER
RECEPTION from ELIOT'S SEWERAGE SYSTEM**

This Inter-Municipal Agreement (“IMA” or “agreement”), made and entered into this _____ day of _____, 2012, by and between the Town of Eliot, Maine, (“Eliot”), and the Town of Kittery, Maine, (“Kittery”).

WITNESSETH

WHEREAS, Eliot, duly acting through the Board of Selectmen, is authorized to enter into contracts and agreements with Kittery, duly acting through the Town Council, for the purpose of aiding in the abatement of water pollution, and

WHEREAS, Kittery deems it to be in the public interest to enter into a contract with Eliot whereby Kittery would receive, treat and dispose of Eliot's wastes through Kittery's water pollution control facility, and

WHEREAS, Eliot is desirous of treatment of its present flow and reserving an amount of capacity to be used for future wastewater treatment and disposal needs, and

WHEREAS, Eliot has constructed, owns, operates and maintains a wastewater collection system, pumping stations, force mains, metering equipment and appurtenances thereto in Eliot which interconnect with the Kittery sewerage system at the delivery point **specified under the previous contract** identified with Article 3.1.2, and

WHEREAS, Eliot has constructed, owns, and maintains a force main system in Kittery for the purpose of transmission of collected wastewater from Eliot to Pump Station No.7 in Kittery, and

WHEREAS, Kittery owns and maintains the shared gravity sewer system constructed by Eliot in Kittery and will continue to own, operate and maintain the shared pumping station No.7, and

WHEREAS, to accept and treat the aforesaid wastes, an existing wastewater collection system within Kittery and the existing Kittery Water Pollution Control Facility will continue to be owned, operated, and maintained by Kittery, and

WHEREAS, Kittery, as owner and operator of wastewater treatment works that receives wastewater from Eliot, is required by federal and state law to implement and enforce an industrial pretreatment program, and

WHEREAS, the U.S. Environmental Protection Agency has directed that Kittery maintain and/or enter into an agreement with all Towns contributing wastewater to the Kittery Water Pollution Control Facility in order to comply with its General Pretreatment Regulations (40 CFR Part 403), and is required by federal and state law to have certain legal authorities in place in order to implement and enforce an industrial pretreatment program, and

WHEREAS, the Kittery Wastewater Treatment Facility (WWTF) has a design capacity of 2,400,000 Gallons Per Day (gpd) average and Pump Station #7 has a designed flow capacity of 550 Gallons Per Minute (gpm), and

Proposed Eliot Sewage Disposal Service Contract - 2012

95 **WHEREAS**, Eliot currently has 200,000gpd reserved capacity in the Kittery WWTF, and
96 Desires to increase its reserve up to 400,000gpd average which also requires an increase in the flow
97 capacity of Pump Station #7, and

98
99 **WHEREAS**, Kittery desires additional capacity in Pump Station #7 for future expansion and Eliot
100 and Kittery's engineering firms agree that the combination of both sets of requirements equal a
101 necessary design flow capacity of 1,500gpm with 70% allocated to Eliot and 30% allocated to
102 Kittery, and

103
104 **WHEREAS**, Kittery and Eliot intend to invoke such applicable enabling laws to empower Kittery to
105 administer and enforce an industrial pretreatment program within Eliot;

106
107 **NOW, THEREFORE**, in consideration of these premises and mutual benefits to be derived by the
108 parties hereto, **IT IS AGREED** as follows:

109

110 **ARTICLE 1. DEFINITIONS**

111 For the purpose of this Inter-Municipal Agreement (IMA), the following terms are defined:

112

113 **Kittery** is the Town of Kittery, Maine, acting by and through its Town Council.

114

115 **Eliot** is the Town of Eliot, Maine, acting by and through its Board of Selectmen.

116

117 **Eliot's Service Area** is limited to the boundaries of the Town of Eliot except if the option is
118 exercised per Section 3.1.3.

119

120 **Acceptable Wastewater** means the spent water of a community; from the standpoint of source, it
121 may be a combination of the liquid and water-carried wastes from residences, business buildings,
122 institutions, and industrial establishments; the characteristics of which are in compliance with the
123 Kittery Town Code, State regulations, federal rules and regulations, and this IMA.

124

125 **Average Daily Flow** (ADF) means the total annual flow divided by the number of days in the
126 calendar year, expressed as gallons per day.

127

128 **BOD (biochemical oxygen demand)** means the quantity of oxygen utilized in the biochemical
129 oxidation of organic matter under standard laboratory procedure in five days at twenty (20) degrees
130 C, expressed in milligrams per liter as prescribed in Standard Methods for the Examination of Water
131 and Wastewater, published by the American Public Health Association.

132

133 **Capital Cost** means building modifications or additions, fixtures, machinery, equipment,
134 accessories, appurtenances, or other changes to the existing Kittery Waste Water Treatment Facility,
135 or shared portions of the Wastewater Collection System, which are intended to expand the capacity
136 or improve or replace the existing facilities in an amount costing \$5,000 or more when funded
137 through the Department designated reserve account, Kittery Capital Improvement Program, or
138 bonded debt. Capital costs will be apportioned in accordance with Article 4.3 of this Agreement.
139 Any capital replacement items funded through the operating budget will apportioned in accordance
140 with Article 4.1 and/or 4.2 of this Agreement.

141

142 **Fiscal Year** means the 12-month period commencing July 1st unless the parties agree otherwise.

143

Proposed Eliot Sewage Disposal Service Contract - 2012

144 **Industrial User** means any non-governmental user of a publicly owned treatment works (POTW)
145 which contributes industrial wastes, identified in the Code of Federal Regulations (CFR) 40 Part 403.

146
147 **Industrial Wastes**
148 **Industrial Wastes** means the liquid wastes from industrial manufacturing processes, trade or business as
149 distinct from sanitary wastewater.

150
151 **Maximum Daily Flow** means the maximum gallons recorded during a 24-hour period during any
152 calendar year.

153
154 **Operating Costs** means the costs incurred by Kittery necessary for the proper and efficient operation
155 and maintenance of the Treatment **Works Facility** and includes "Replacement Costs". Operating
156 Costs will be apportioned in accordance with Article 4 of this Agreement.

157
158 **Peak Rate of Flow** means the maximum instantaneous rate of flow recorded during any calendar
159 year measured in gallons per day.

160
161 **pH** means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of
162 solution.

163
164 **Replacement Costs** means expenditures for obtaining and installing equipment, accessories or
165 appurtenances which are necessary during the service life of the sewage works to maintain the
166 capacity and performance for which such works were designed and constructed. Replacement costs
167 are funded by the Department's annual operating budget.

168
169 **Service Life** means the period of time during which the sewage works or a component of a waste
170 treatment management program will be capable of performing its intended function.

171
172 **Sanitary Wastewater** means the wastewater which is essentially free of industrial wastes or toxic
173 materials and which discharges from sanitary conveniences such as toilets, urinals, sinks, showers,
174 drinking fountains, home laundries, and from kitchens, school cafeterias, and floor drains, as
175 approved under the Uniform Plumbing Code.

176
177 **Suspended solids** or **Total Suspended Solids (TSS)** means total suspended matter that either floats
178 on the surface of, or is in suspension in water, wastewater or other liquids, and that is removable by
179 laboratory filtering as prescribed in Standard Methods for the Examination of Water and Wastewater,
180 published by the American Public Health Association, and referred to as nonfilterable residue.

181
182 **Wastewater Collection System** means the structures, pipes, pumping stations and other facilities
183 required to convey wastewater and/or industrial wastes to the wastewater pollution control facility.

184
185 **Wastewater Pollution Control Facility (WPCF)** means all facilities for the treatment and disposal
186 of wastewater and/or industrial wastes.

187
188 **Wastewater Treatment Facility (WWTF)** means the central plant facility for the treatment and
189 disposal of wastewater and/or industrial wastes.

190
191

Proposed Eliot Sewage Disposal Service Contract - 2012

192 **ARTICLE 2. SCOPE and TERM of CONTRACT**

193
194 **2.1** Subject to the terms ~~herein and conditions hereinafter~~ set forth, Kittery shall sell and deliver
195 to Eliot and Eliot shall purchase and receive from Kittery Wastewater Disposal Service (~~hereinafter~~
196 ~~called Service~~) requested by Eliot from Kittery at the premises to be served hereunder (~~hereinafter~~
197 ~~called the Location~~).

198
199 **2.2** The provisions of this Agreement commence with the date this contract is entered into and
200 continue for twenty (20) years, after which time it will roll over for subsequent ten (10) year periods
201 unless and until this Agreement is either terminated or renegotiated. Kittery and Eliot shall form a
202 work-group to review the Agreement ten (10) years following the date of this Agreement
203

204 **ARTICLE 3. TECHNICAL PROVISIONS**

205
206 **3.1 Transmission of Sewage**

207
208 3.1.1 Eliot owns and maintains a wastewater force main in Eliot which will continue to deliver
209 acceptable wastewater to the Kittery Town Boundary on Route 103.

210
211 3.1.2 Eliot owns and maintains a wastewater force main in Kittery which delivers wastewater from
212 the connection with the Eliot force main at the Town Boundary to the point of discharge to the
213 gravity sewer in Kittery at the high point at the summit manhole located at Station 21+66 per plan by
214 SEA dated 4/1986 (west of the I95 overpass). (See Attachment A.)

215
216 3.1.3 Kittery owns and maintains the wastewater collection system from the connection point at
217 STA 21+66 with the Eliot ~~sewer system~~ force main to the Kittery WWTF.

218
219 **3.1.4** Kittery shall provide transmission and treatment capacities in its facilities for the wastes from
220 Eliot's service area. Capacities for Eliot are limited to the maximum values defined below unless
221 changed by mutually agreed upon amendments to this IMA.

222 **Current Capacity**

	Annual Average Daily Flow <u>(ADF)</u>	Maximum 24 Hour Flow	Peak One Hour Rate of Flow
	Gallons per day	Gallons per day	Gallons per day
Total	200,000	700,000 (note 1)	1,008,000 (or 700 gpm) (note 2)

223 Note 1: Maximum 24-hour flow based on maximum historical observed flow.

224 Note 2: Peak hour based on observed maximum pumping rate from Eliot's Station with two
225 pumps running.
226

227 3.1.4.1 Within 90 days of the effective date of this agreement, Eliot will purchase (as defined
228 in 3.1.4.4 below) an additional reserved capacity of 200,000 gallons per day ADF in Kittery's.

	Annual Average Daily Flow (ADF)	Maximum 24 Hour Flow	Peak One Hour Rate of Flow
	Gallons per day	Gallons per day	Gallons per day
Total	400,000	1,000,000	1,584,000 (or 1,100 gpm)

229 Note 1: Maximum day peaking factor = 2.5

230 Note 2: Peak hour peaking factor = 4.0
231

Proposed Eliot Sewage Disposal Service Contract - 2012

232 3.1.4.2 Eliot will make necessary improvements in Eliot's existing collection system, including the
233 portion located in Kittery that is owned by Eliot, to accommodate the flows.

234
235 3.1.4.3 Pumping station #7 and its force main **to the WWTF** will be improved by Kittery to provide
236 a design flow of 1,500 gpm (current design flow = 550 gpm). Eliot will pay Kittery for their share of
237 the actual cost of the necessary improvement consistent with the capital cost allocation in this
238 agreement. The cost allocation will be based on the actual total project cost for planning design and
239 construction. For budgeting purposes the costs are projected as follows:

240
241 Pumping station #7 **including new force main —cost TBD = \$1,265,000.00**

242 ~~Pumping station #7 force main —cost TBD~~

243 Flow allocation is as follows:

244 Eliot = 1,050gpm (70.30%)

245 Kittery = 450gpm (30.29.7%)

246
247 Kittery will complete improvements to PS#7 and its force main within 24 months of the effective
248 date of this agreement. Kittery will bill Eliot no more frequently than quarterly for the work based on
249 actual expenditures. **Eliot shall be afforded the right to review and approve comment on engineering**
250 **drawings and inspect the progress of the work at its own expense.**

251
252 3.1.4.4 In consideration of the additional 200,000 gpd ADF capacity under section 3.1.4.1 (above),
253 Eliot shall pay Kittery:

254
255 A. \$317,000 for their **additional** share of the 1994 capital costs upgrades completed by Kittery.

256 B. \$352,000 for their **additional** share of the **2010** Phase I and Phase 2 capital **upgrade costs**
257 **upgraded** completed by Kittery.

258 C. The total payment will be \$669,000 and **shall must** be paid in full within 90 days of the effective
259 date of this agreement.

260
261 ~~3.1.4.3.1.5~~ When Eliot's average daily flow meets or exceeds 80% of the ADF limit for a 90 day
262 period Eliot shall provide Kittery with a written plan detailing how Eliot will **control the introduction**
263 **of new sewer users in a manner that will** prevent exceedence of the average daily flow limit.

264
265 ~~3.1.5.3.1.6~~ Connections between the Eliot and Kittery sewer systems are limited to the one
266 identified above. Additional connections between the Eliot and Kittery systems may be allowed only
267 through an Amendment to this Agreement.

268
269 ~~3.1.6.3.1.7~~ Kittery shall receive, treat, and dispose of Eliot's wastewater in accordance with
270 Kittery's sewer use rules and regulations, other applicable regulations, Water Quality Standards, and
271 orders and decrees of any governmental authority having jurisdiction over the treatment and disposal
272 of said waste. It is understood that Kittery has authority to exercise all its rights, appeals, and
273 administrative remedies concerning the laws, regulations, sewer ordinances, standards, orders and
274 decrees which it considers not practical or not in the best interest of both parties.

275
276 ~~3.1.7.3.1.8~~ The construction of any additional wastewater collection system facilities in Eliot,
277 and the operation and maintenance of all wastewater collection system facilities in Eliot, and all costs
278 associated with these facilities will remain the responsibility of the Town of Eliot.

279

Proposed Eliot Sewage Disposal Service Contract - 2012

280 3.1.9 The construction of any additional or improved wastewater collection system facilities,
281 required to convey Eliot approved wastewater from the Kittery Boundary to existing Kittery
282 wastewater collection system facilities, will be the responsibility of Kittery with the exception of
283 Section 3.1.11. All costs associated with the construction of such facilities will be allocated in
284 accordance with Article 4 of this IMA.

285

286 3.1.10 Wastewater facilities to provide wastewater collection, treatment and disposal within Kittery
287 of the wastewater for Eliot and Kittery will be the responsibility of Kittery. All capital costs,
288 replacement costs, and operating costs associated with the Kittery wastewater facilities will be
289 allocated in accordance with Article 4 of this IMA.

290

291 3.1.11 Eliot will maintain ownership of ~~the existing its that~~ wastewater force main in Kittery, which
292 connects the wastewater force main in Eliot to the gravity sewer in Kittery. The operation and
293 maintenance and liability associated with said sewage force main, and all costs associated with these
294 facilities, including future replacement costs will remain the responsibility of the Town of Eliot.

295

296 3.1.12 Kittery shall notify Eliot in advance of any proposed road or utility work which may
297 adversely impact Eliot's force main.

298

299 3.1.13 Eliot shall not allow connections from properties outside of the Eliot Town limits without
300 written permission from Kittery.

301

302 3.1.14 Prior to ~~_____~~ May 1st of each year, Kittery shall provide Eliot with an estimated O&M
303 budget (including replacement costs, if any) for the upcoming year. This will allow Eliot to plan
304 accordingly and adjust rates, if necessary to meet their financial obligation.

305

306 3.1.15 Prior to ~~_____~~ May 1st of each year, Kittery shall provide Eliot with an updated 5-year
307 Capital Improvement Program (CIP) identifying capital projects ~~for in~~ which Eliot will participate.
308 This will allow Eliot to plan accordingly and adjust rates and/or secure funding as needed to meet
309 their financial obligation.

310

311 3.1.16 Kittery shall credit Eliot for O&M costs related to existing septage receiving facilities since
312 Eliot does not have the benefit of disposing septage at the facility

313

314 **3.2 Flow Monitoring**

315

316 3.2.1 Eliot will operate and maintain all meters required for the determination of the quantity of
317 wastewater delivered into Kittery's system by Eliot. The meters are subject to the approval by the
318 Town of Kittery, which approval may not be unreasonably withheld, as related to but not limited to
319 the configuration, make, model, type, installation appurtenances, access, etc, which must be of
320 quality similar to meters utilized at similar Kittery facilities. It is the obligation of Eliot to determine
321 that such metering equipment is maintained and calibrated, and to read the meter(s) on the final day
322 of each billing period in the presence of a representative of Kittery, should Kittery so desire. In the
323 event of incorrect registration of such meters, or their failure to register, the parties hereto shall
324 mutually agree upon the adjustment by using past records as an indication of volumes and estimates
325 of such volumes.

326

Proposed Eliot Sewage Disposal Service Contract - 2012

327 3.2.2 Eliot, at its own expense, shall periodically test and calibrate the meters installed by Eliot for
328 the purposes of recording flows to Kittery at intervals not exceeding twelve (12) months. Calibration
329 and testing of the meters will be done by a representative of the meter manufacturer or supplier
330 authorized to perform this service and the representative shall provide Kittery with a written
331 statement as to the accuracy of the meter(s).

332
333 3.2.3 At the written request of Kittery, Eliot shall make additional tests of the meters. If calibration
334 is out of tolerance by five percent (5%) or more, Eliot shall pay for the testing service. **ADD**
335 **CLARIFICATION FOR OVER (NO PAYMENT)-UNDER READINGS**

336
337 3.2.4 Kittery will be notified two weeks prior as to the time and date of any routine meter service.
338 Records of all inspections and calibrations, including those done more frequently than required
339 herein, will be submitted to Kittery.

341 **3.3 Character of Wastewater**

342
343 3.3.1 Eliot shall take all reasonable efforts to insure that its allocated capacity and wastewater
344 characteristics are not exceeded and that no violations occur in Eliot, and that Eliot, including its
345 commercial and industrial users, meets its obligations for adhering to and enforcing all applicable
346 local, State and Federal laws, regulations, water quality standards, orders and decrees of any
347 governmental authority having jurisdiction over the treatment and disposal of said waste.

348
349 3.3.2 Eliot shall make every reasonable effort not to knowingly discharge into Kittery's wastewater
350 facilities any volume and strength in excess of that agreed to in this IMA, including any wastewater
351 containing the following characteristics:

- 352
- 353 a. Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in
354 excess of one hundred (100) mg/l, or containing substances which may solidify or
355 become viscous at temperatures between thirty-two (32) and one hundred fifty (150)
356 degrees F (0 and 65 C).
 - 357
 - 358 b. Any gasoline, benzene, naphtha, fuel oil or other liquid, solid or gas, in sufficient
359 concentration to be flammable or explosive.
 - 360
 - 361 c. A temperature higher than 150 F (65 C).
 - 362
 - 363 d. Any wastes having a pH lower than 6.5 or higher than 9.5, or having any other corrosive
364 property capable of causing damage or hazard to structures, equipment and personnel at
365 the wastewater facilities.
 - 366
 - 367 e. Any wastes containing a toxic or poisonous substance in sufficient quantity to injure or
368 interfere with any of the wastewater treatment processes, or to constitute a hazard to
369 humans or animals, or to create any hazard in the receiving waters of the water pollution
370 control facility.
 - 371
 - 372 f. Waters or wastes containing substances including dyes which are amenable to treatment
373 only to a degree such that the sewage treatment plant effluent cannot meet the
374 requirements of other agencies having jurisdiction over discharge to the receiving waters.
 - 375

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- 376 g. Any noxious or malodorous gaseous substance capable of creating a public
377 nuisance.
378
379 h. Any wastes having a BOD higher than 300 mg/l.
380
381 i. Any wastes having exhibiting TSS above 300 mg/l.
382

383 Note: Should such conditions knowingly occur, and such discharges exceed the limits herein, Eliot
384 shall notify Kittery as soon as possible, and Eliot shall follow up such notification with written
385 notification of such discharges within three (3) business days and undertake immediately all
386 reasonable efforts to cease or cure such actions.
387

388 3.3.3 No hazardous waste, or other foreign material, is allowed to enter Kittery's system but only
389 approved wastewater.
390

391 3.3.4 In all instances where Pollutants introduced to the Kittery wastewater collection system are
392 an industrial waste, Kittery reserves the right to develop and enforce specific requirements and
393 effluent limits for the industrial user(s) and all other users as appropriate to ensure compliance with
394 the Kittery's NPDES permit and/or sludge use or disposal practices. In all instances where Kittery
395 sets requirements on a specific user in the Town of Eliot, Eliot shall assist Kittery for the
396 enforcement of any limits and requirements set by Kittery. Kittery may require the industrial user(s)
397 to perform such tests on its effluent as necessary to insure compliance. Eliot will develop and
398 oversee a pretreatment program in compliance with 40 CFR 403 for any qualifying industries.
399

400 3.3.5 Eliot must annually submit a list of all industrial connections to the Eliot wastewater
401 collection system. The list must be submitted on January 31st each year and contain the name of the
402 property owner, the address, the type of wastewater discharged from the property, and the date of the
403 connection. Type of wastewater will be identified as sanitary wastewater and/or industrial waste.
404

405 3.3.6 Eliot shall notify Kittery thirty (30) days in advance of any new connection to the Eliot
406 wastewater collection system that may contain industrial wastes. Kittery may require the industry to
407 install equipment to equalize discharge flows.
408

409 **3.4 Sampling**

410
411 **3.4.1** Samples of Eliot's wastewater must be obtained at Eliot's Metering Station to determine
412 wastewater characteristics. Kittery and Eliot both agree that the determination of character and
413 concentration of wastes will be in accordance with the latest edition of Standard Methods for the
414 Examination of Water and Wastewater, as proposed, approved and published jointly by the American
415 Public Health Association, the American Water Works Association and the Water Pollution Control
416 Federation, or any other method mutually agreed upon by Kittery and Eliot, and subject further to the
417 following:
418

419 **3.4.21** The sampling at the Metering Station(s) will be done by Kittery. Determination of the
420 character and concentration of Eliot's wastes, for the purpose of checking sewage strength, is the
421 responsibility of Kittery or its authorized agent.
422

423 **3.4.23** Samples must be collected by Kittery at the Metering Station(s) in such a manner as to be
424 representative of the actual quality of the wastes. Eliot shall provide access to the designated
425 locations as required to conduct intermittent or continuous waste sampling.
426

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427 3.4.34 Kittery may perform quarterly sampling and testing for the following parameters in
428 accordance with 40 CFR Part 136: BOD, TSS, pH, TKN, and Ammonia. The costs for the sampling
429 and testing shall be included in the annual operation and maintenance costs for the Kittery WWTF
430 and apportioned in accordance with Article 4.2 of this Agreement. Sampling results must be
431 provided to Eliot and Eliot is not responsible for testing unrelated to the WWTF.
432

433 3.4.5 Eliot may conduct independent sampling. All laboratory results of Eliot-conducted sampling
434 must be submitted to Kittery within thirty days of the receipt of the laboratory results.
435

436 3.5 Regulatory Compliance

437

438 3.5.1 It is agreed Kittery is not liable for any discharges of liquid wastes by Eliot except for those
439 wastewaters delivered by the Eliot sewage collection system in accordance with the criteria described
440 in this Agreement. It is further agreed, except as stated above, that Kittery alone is responsible for
441 meeting the requirements of the Discharge Permit that authorizes a discharge from the Kittery WPCF
442 to the Piscataqua River.
443

444 3.5.2 Eliot is considered as a sewer user by Kittery and is therefore required to comply with Title
445 13, Chapter 13.1, "Sewer Service System" of the Kittery Town Code as presently written, and as may
446 be amended from time to time. Eliot is responsible for all fines, penalties, and costs associated with
447 violations of Chapter 13.1 of the Kittery Town Code as well as the violation of any federal and state
448 regulations associated with the discharge of Eliot wastewater in quantities and/or concentrations in
449 excess of those specified herein.
450

451 3.5.3 Eliot, in the event that it fails to comply with Section 3.5.2 of this Agreement in a timely
452 manner, shall indemnify and hold harmless Kittery, its officers, officials, agents, servants, and
453 employees for any/all damages, increased treatment costs and any fines and/or penalties imposed by
454 any governmental agency, as a result of Eliot's noncompliance. Kittery shall indemnify and hold
455 harmless Eliot, its officers, officials, agents, servants, and employees for any/all damages, increased
456 treatment costs and any fines and/or penalties imposed by any governmental agency, as a result of
457 Kittery's noncompliance.
458

459 3.5.4 Kittery and Eliot shall comply with all present and future local, State and Federal laws
460 regarding industrial pretreatment, including the pretreatment standards of the Clean Water Act of
461 1977 and the General Pretreatment Regulations (40 CFR Part 403) as amended or replaced from time
462 to time.
463

464 3.5.5 Eliot and Kittery are each responsible for all reporting to the Maine Department of
465 Environmental Protection (DEP) regarding their respective wastewater collection systems. Each
466 party shall provide the other copies of all reports, letters and all other communications made by each
467 party to the Maine Department of Environmental Protection regarding the Eliot wastewater collection
468 system.
469

470 3.5.6 Eliot hereby authorizes Kittery to administer and enforce and Eliot will assist within Eliot all
471 Federal and State laws and Town of Eliot regulations on water pollution as required by the
472 pretreatment standards of the Clean Water Act of 1977 and General Pretreatment Regulations (40
473 CFR Part 403), as amended, and to administer and enforce Kittery's existing and future sewer use
474 rules and regulations regarding industrial pretreatment. Kittery shall perform the reporting,
475 monitoring, permitting, inspections and other administrative functions relating to industrial users

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476 within Eliot that are necessary to implement an industrial pretreatment program meeting federal and
477 state regulations.

478
479 To the extent permitted by law, Kittery is empowered to halt actual or threatened discharges which
480 may cause imminent endangerment to the public health and welfare, the environment and/or the
481 wastewater collection system and/or WPCF, and to seek civil, criminal or injunctive relief necessary
482 for the enforcement of the pretreatment program, and where not permitted, Eliot agrees to carry out
483 enforcement on Kittery's behalf.

484
485 3.5.7 Eliot shall adopt sewer use by-laws or regulations at least as stringent as Kittery's sewer use
486 rules and regulations, if such by-law or regulations are not currently in effect. If Kittery amends its
487 sewer use rules and regulations Eliot shall be informed in advance and be included in such process in
488 such a substantive manner as to ensure Eliot's rights and obligations hereunder are protected and
489 addressed, Eliot shall likewise amend its sewer use by-laws or regulations to ensure that such by-
490 laws or regulations are at least as stringent as Kittery's sewer use rules and regulations, as amended.
491 Such amendments to Eliot's by-laws or regulations must be considered no later than sixty (60)
492 calendar days after adoption by Kittery of amendments to its sewer use rules and regulations, and
493 submitted for adoption at the subsequent Town vote (June or November) of any calendar year.

494
495 3.5.8 Subject to the confidentiality, trade secret and other rights of industrial users secured by
496 Federal, State or local law, Eliot may, with sufficient notice and at reasonable times, review the
497 records of the Kittery Sewer Department in connection with its administration of the industrial
498 pretreatment program authorized by this Agreement. Kittery shall provide to Eliot copies of all
499 enforcement actions taken against sewer users within Eliot.

500

501 **3.6 Continuity of Service**

502

503 3.6.1 Kittery shall use reasonable diligence to provide regular and uninterrupted service at the
504 service location. Kittery is not liable for damages, breach of contract or otherwise to Eliot for failure,
505 suspension, diminution or other variations of service occasioned by or in consequence of any cause
506 beyond the control of Kittery. Further, Kittery is to ensure wastewater received from Eliot is
507 processed and treated the same as wastewater received from Kittery.

508

509 3.6.2 When any such failure, suspension, diminution, or variation of service exceeds twenty-four
510 (24) hours during the fiscal year, an equitable adjustment must be made in the charge specified in this
511 contract.

512

513 **3.7 Penalties**

514

515 3.7.1 Each party is responsible to make restitution to the other party for any costs that result from
516 either party's noncompliance with this IMA.

517

518 3.7.2 Eliot is responsible to pay an excess use fee associated with any discharge volume or quality
519 in excess of the limits stated herein. A fee of \$500 per occurrence per day ~~shall~~will be assessed to
520 Eliot in the event that exceedances significantly contribute to, or directly result in, violation of state
521 and federal regulations that impact Kittery.

522

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523 ARTICLE 4. COST ALLOCATIONS

524

525 **4.1 Annual Operation and Maintenance Allocation - TREATMENT PLANT**

526 Eliot shall be responsible to pay its share of the cost of wastewater treatment and disposal costs at the
527 WWTF. The cost is based upon the actual volume of flow delivered to the WWTF as a ratio of the
528 total flow treated at the WWTF. The total volume from Eliot will be based upon the flow metering
529 devices at the Eliot connection point. The total volume WWTF will be based upon flow metering
530 devices at the WWTF. Eliot shall pay its share of all costs associated with the operation and
531 maintenance of the facility including indirect costs for the administration and management of the
532 WWTF.

533

$$534 \text{ Eliot's Annual O\&M Cost}_{\text{WWTF}} = \frac{\text{Eliot Total Volume}}{\text{Total Volume WWTF}} \times \text{O\&M Cost of WWTF}$$

535

536

537 **4.2 Annual Operation and Maintenance Allocation - PUMP STATION #7**

538 Eliot is responsible to pay its share of the cost of the shared wastewater conveyance in the Kittery
539 wastewater collection system to the WWTF. The cost will be based upon the actual volume of flow
540 conveyed in the Kittery collection system used by Eliot as a ratio to the total wastewater flows
541 conveyed in the same pipe system. The total volume from Eliot will be based upon the flow
542 metering devices at the Eliot connection point (King's Highway). The total volume will be based
543 upon flow metering and estimates of wastewater discharges for Kittery system users. Eliot shall pay
544 for its share of all costs associated with the operation and maintenance of the shared collection
545 system including indirect costs for the administration and management of the collection system in
546 accordance with the formula below and the attached sample calculation ([See Attachment B](#)).

547

$$548 \text{ Eliot's Annual O\&M Cost}_{\text{PS7}} = \frac{\text{Eliot Total Volume}}{\text{Total Volume Shared}} \times \text{O\&M Cost of Shared Collection System}$$

549
550
551

552 **4.3 Capital Improvement Cost Allocation - TREATMENT PLANT & PUMP STATION #7**

553

554 4.3.1 Eliot will compensate Kittery for its share of capital improvements to the WWTF. Capital
555 upgrades/improvements will be necessary from time to time to meet existing or new effluent
556 limitations; to replace equipment and other assets to maintain the WWTF; and/or to provide
557 additional capacity. Eliot is responsible to pay for the costs associated with expansions (increases in
558 capacity), when the increase in capacity is required to provide Eliot with increased capacity at Eliot's
559 request in excess of the reserved capacity defined in Section 3.1.4.1 of this IMA. Compensation is
560 based upon the proportionate share of the capacity as compared to the total value of the project as it
561 is applicable to treating and disposing the wastewater from Eliot. ~~All p~~Project-related costs, ~~which~~
562 include, but are not limited to, the cost of financing, planning, engineering, design, bidding,
563 construction and resident engineering services, owner's project manager charges, other professional
564 services related to the Capital Project, including legal fees and the cost of recordings, and the pro rata
565 cost of Kittery staff management salaries attributable to oversee or coordinate the Capital Project.

566

567 The proportionate share is based upon the current capacity of Eliot at the WWTF, as compared to the
568 total rated capacity of the facility as expressed in Average Daily Flow. Payment for increased
569 capacity under this section is separate from and in addition to the cost associated with Sections 4.1,
570 3.1.4.1, and 3.1.4.4, of this IMA and will require an amendment to this IMA or a separate
571 Memorandum Of Understanding agreed to by both Kittery and Eliot.

572

Proposed Eliot Sewage Disposal Service Contract - 2012

573 Eliot's Capital Share_{WWTF} = $\frac{\text{Eliot's ADF Capacity}}{\text{ADF Capacity of the WWTF}}$ x Total Project Cost WWTF
574
575

576 4.3.2 Eliot is responsible to pay for costs associated with expansions (increases in capacity) when
577 the increase in capacity is required to provide Eliot with increased capacity at Eliot's request in
578 excess of the reserve capacity defined in Article 3.1.4.1 of this IMA. Compensation is based upon
579 Eliot's proportionate share of the capacity as compared to the total value of the project as it is
580 applicable to transporting, treating, and disposing of the wastewater from Eliot. ~~All~~Project related
581 costs, ~~which~~ include, but are not limited to, the cost of financing, planning, engineering, design,
582 bidding, construction and resident engineering services, testing, owner's project manager charges,
583 other professional services related to the Capital Project, including legal fees and the cost of
584 recordings, and the pro rata cost of Kittery staff management salaries attributable to oversight or
585 coordination of the Capital Project.

586
587 4.3.2-3 Eliot shall compensate Kittery for its share of future capital costs associated with
588 improvements of the shared Kittery collection system. Eliot is responsible for costs associated with
589 projects that improve or upgrade portions of the collection system that Eliot uses. Compensation is
590 based upon the proportionate share of wastewater collection system capacity allocated to Eliot as
591 compared to the total peak design capacity of the collection system capital project. The
592 proportionate share is based upon the capacity allocated to Eliot, as compared to the total rated
593 capacity of the collection system project as expressed in Peak Rate of Flow. Eliot is to be given the
594 opportunity to review and comment on design drawings for which Eliot pays a share.
595

596 Eliot's Capital Share_{CS} = $\frac{\text{Eliot's Peak Capacity}}{\text{Capacity (Peak Rate of Flow)}}$ x ~~Total Shared Collection System~~ Project Cost
597 of shared WPCF
598 of Asset
599
600

ARTICLE 5. BILLING and PAYMENT

601
602
603 **5.1** Kittery will render to Eliot an invoice for payment for quarterly operating costs, replacement
604 costs, and capital costs as prescribed in Article 4, rendered in quintuplicate to the Town of Eliot. [\(See](#)
605 [Sample at Attachment B\)](#)
606

607 **5.2** All invoices for service must be paid within thirty (30) days.
608

609 **5.3** Invoices not paid within the allotted time period are subject to fees, fines, and interest for late
610 payment. Fees, fines, and interest will be consistent with the current charges payable by Kittery
611 customers.
612

613 **5.4** In the event that billing errors are found by Eliot, Eliot will notify Kittery as soon as errors
614 are noted.
615

ARTICLE 6. LIABILITY and INDEMNITY

616
617
618
619 **6.1** To the fullest extent permitted by law, each party (obligor) agrees to indemnify and hold
620 harmless the other party (obligee), its officers, officials, agents, servants, and employees against any
621 and all liabilities, losses, costs, forfeitures, or damages, and all out-of-pocket expenses, including
622 reasonable attorney's fees and court costs (collectively, "Liabilities"), resulting, or alleged to have

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623 resulted, from the negligence of the ~~other party obligor~~, **it's** officers, officials, agents, servants,
624 employees or contractors during the term of this IMA. Notwithstanding the provisions contained in
625 the sentence immediately preceding, a party has no obligation to indemnify the other party for any
626 damages or claims resulting from any act or omission for which the first party is immune under
627 any state or federal law, including, but without limitation, the Maine Tort Claims Act, codified at
628 14 M.R.S. § 8101, et seq. Neither party, however, is responsible or liable to the other for any
629 claim, loss, cost, expense, damage, or liability arising from any claim to the extent attributable to
630 any acts or omissions of the other party.

631
632

633 **6.2** The ~~parties obligor~~ shall defend any lawsuits with regard to claims for such liabilities, and
634 shall pay any judgments which result from the lawsuits, provided ~~sued party obligee~~ furnishes the
635 ~~other party obligor~~ with reasonable notice to enable the ~~other party obligor~~ to defend any lawsuits.
636 "Lawsuits" include arbitration proceedings, administrative proceedings, and all other governmental
637 or quasi-governmental proceedings. The obligations of the parties under this Section arising by
638 reason of any such occurrence taking place during the term of this Agreement shall survive any
639 termination of this IMA.

640

641 **ARTICLE 7. FORCE MAJEURE**

642

643 **7.1** In the event that Kittery or Eliot are delayed, hindered in, or prevented from the performance
644 of any act required under this IMA by reason of strikes; acts of God; stoppages of labor, shortages of
645 material or equipment; **fire**; war; civil commotion; earthquake, flood, fire or other casualty;
646 breakdown of transmission or other facilities; breakage or accident to machinery or pipe;
647 governmental regulations; the binding order of any court or governmental authority; the exercise of
648 power of eminent domain; or other contingencies beyond the reasonable control of the parties; then
649 performance of such act is excused for the period of the delay and the period for the performance of
650 any such act is extended for a period equivalent to the period of such delay.

651

652 **7.2** The occurrence of any force majeure event within the meaning of Section 7.1 above does not
653 excuse Eliot from liability for payments owed under this IMA for services rendered prior to or
654 subsequent to said occurrence.

655

656 **ARTICLE 8. COMMUNICATIONS**

657

658 **8.1** Notices and communications hereunder must be in writing and be personally delivered or
659 mailed by certified mail, return receipt requested, or by confirmed facsimile transmission to Kittery
660 or Eliot, as the case may be, at the following addresses:

661

662 Town of Kittery
663 Town Manager
664 200 Rogers Road
665 Kittery, ME 03904

Town of Eliot
Board of Selectmen
1333 State Road
Eliot, ME 03903

666

667 **8.2** Each party has the right to change its address for purposes of receiving notice from time to
668 time by giving the other party notice as herein provided. Separate copies of any notices issued
669 pursuant to this section also must be delivered or mailed to the Kittery Town Manager, and the Eliot
670 Administrative Assistant, c/o Board of Selectmen, at the addresses noted above, or such subsequent
671 address(es) that may be provided in accordance with this section.

672

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673 **8.3** A notice is deemed received on the date of hand delivery (with signed acknowledgement of
674 receipt), the date of receipt of facsimile transmission, or the date noted on the return receipt in cases
675 where notice was sent by certified mail, return receipt requested.
676

ARTICLE 9. EMERGENCIES

677
678
679 **9.1** Each party shall notify the other of any emergency or condition in either party's system
680 which may affect **the** wastewater disposal system in either municipality. Notice must be given as
681 soon as practicable after the proper municipal official has knowledge of said emergency or condition.
682

ARTICLE 10. SEVERABILITY

683
684
685 **10.1** If any of the provisions of this IMA or the application thereof to any persons or
686 circumstances is, to any extent, invalid or unenforceable, the remainder of this IMA or the
687 application of such provision or provisions to persons or circumstances other than those as to whom
688 or which it is held invalid or unenforceable will not be affected thereby, and every provision of this
689 IMA is valid and enforceable to the fullest extent permitted by law.
690

ARTICLE 11. AMENDMENTS

691
692
693 **11.1** No officer, official, agent, or employee of Kittery or Eliot has the power to amend, modify or
694 alter this Agreement or waive any of its provisions or to bind Kittery or Eliot by making any promise
695 or representation not contained herein except by an amendment, in writing, executed by both
696 municipal corporations in the same manner as this Agreement is executed. Neither party may rely on
697 any conduct, statements, action, inaction or course of conduct of the employees, agents or officers of
698 the other party as having changed, modified or amended this Agreement. Neither party will be
699 construed as waiving any provision of the Agreement unless the waiver is executed in writing as an
700 amendment to this Agreement.
701

702 **11.2** No waiver by either party of any default or breach constitutes a waiver of any subsequent
703 default or breach. Forbearance or indulgence in any form or manner by either party is not construed
704 as a waiver of any term or condition hereto nor does it limit the legal or equitable remedies available
705 to that party.
706

ARTICLE 12. DISPUTES

707
708
709 **12.1** Disputes, differences of opinion and dissatisfactions which cannot be resolved in the
710 neighborly spirit of this document must be referred for resolution to an arbitration committee. The
711 arbitration committee consists of five (5) members including two (2) representatives each from
712 Kittery and Eliot, selected by the Town Council and Board of Selectmen respectively, and a fifth
713 member, being the Chairman to be mutually agreed upon and selected by the other four.
714

715 **12.2** The judgments and decisions of the arbitration committee are binding upon both towns as
716 regards matters pertinent to this Agreement.
717

ARTICLE 13. CONTRACTUAL CHANGES

718
719
720 **13.1** From time to time, changes to the Kittery and Eliot wastewater system may be occasioned by
721 local, state or federal decree. In addition, changes in form and scope of those systems may result in
722 additional areas and neighborhoods being served. Where changes to this contract appear warranted

Proposed Eliot Sewage Disposal Service Contract - 2012

723 by either Kittery or Eliot, the governing bodies (Town Council and Board of Selectmen, or their
724 designated representatives) agree to meet within thirty (30) days, at the request of either, to determine
725 if changes are necessary and make such changes as must be made.

726

727 **ARTICLE 14. TERMINATION CLAUSE**

728

729 **14.1** Either Eliot or Kittery may terminate this Agreement by giving notice thereof to the other
730 party in writing five (5) years prior to the termination date. Upon receipt of said notice, both parties
731 will enter into discussion within thirty (30) days to assure proper termination of the Agreement.

732

733 **14.2** The parties will at the time of any termination enter into negotiation to determine what part of
734 the Capital Investment the terminating party should give credit for to the non-terminating party based
735 upon the existing conditions and economic factors at that time, including but not limited to the
736 number of years that the facilities have been in operation, the existing anticipated useful life, capacity
737 of the facilities being used by the terminating and non-terminating parties and other appropriate
738 factors to resolve a fair resolution and termination. Penalties are not to be a part of the determination
739 of a fair agreement.

740

741 **ARTICLE 15. ENFORCEMENT of APPLICABLE PROVISIONS WITHIN ELIOT**

742

743 **15.1** The Town of Eliot shall make all reasonable efforts to implement all necessary by-laws
744 and/or ordinances to make the provisions of this agreement enforceable within the Town of Eliot
745 within sixty days execution of this Agreement.

746

747 **ARTICLE 16. PRIOR CONTRACTS and AGREEMENT**

748

749 **16.1** This Agreement supersedes and replaces all prior wastewater collection and treatment
750 contracts and agreements between the parties hereto.

751

752 **IN WITNESS WHEREOF**, the parties hereto have executed this contract as of the day and year
753 first above written.

754

755

756 TOWN of KITTERY, MAINE
757 *by its Town Council*

TOWN of ELIOT, MAINE
by its Board of Selectmen

758

759 _____

760

761 _____

762

763 _____

764

765 _____

766

767 _____

768

769 _____

770

771 _____

772

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773 **CERTIFICATE**

774
775 I certify that I am the Town Clerk of the Town below named in the foregoing contract and that the
776 Selectmen or Council members who signed said contract on behalf of the said Town were then
777 Members of the Town Council or Board of Selectmen in said Town by authority of its governing
778 body and is within the scope of its corporate powers.

779
780
781 _____

782
783 Town Clerk, Kittery, Maine

782
783 Town Clerk, Eliot, Maine

784
785
786
787 (*TOWN SEAL*)

784
785
786
787 (*TOWN SEAL*)

788
789
790 **ATTACHMENT A - ~~STATION 21+66 PLAN BY SEA DATED 4/1986~~ Collection System**
791 **Schematic, Eliot & Kittery, Maine, dated 5/2012, by Underwood Engineers.**[MT1]

792
793 **ATTACHMENT B - SAMPLE INVOICE**

DRAFT Eliot Review of Draft IMA

May 16, 2012

By: Underwood Engineers, Inc. and Town of Eliot

Suggested modifications (by line number or Article):

Lines 67- 70 strike out ~~specified under the previous contract~~ and replace with:

"identified per Article 3.1.2"

Line 117 add to end of sentence:

....Town of Eliot **"except if the option is exercised per 3.1.13"**.

Line 124 Add the following after **Average Daily flow**:

"(ADF)"

Line 148 **Note: Kittery Wastewater Disposal - new definition since it is referenced in IMA?**

Line 192 Modify 2.1 as follows:

Subject to the terms **herein** set forth., Kittery shall sell and deliver to Eliot and Eliot shall purchase and receive from Kittery Wastewater Disposal Service (~~hereinafter called Service~~) **treatment and disposal services** requested by Eliot from Kittery at the premises to be served hereunder (~~hereinafter called the Location~~).

Line 214 Modify 3.1.3 as follows:

Kittery owns and maintains the wastewater collection system from the connection point at STA 21+66 with the Eliot (~~sewer system~~) **force main** to the Kittery WWTF.

Line 217 Modify 3.1.4 and the table as follows:

Kittery shall provide transmission and treatment capacities in its facilities for the wastes from Eliot's service area. Capacities for Eliot are limited to the maximum values defined below **unless changed by mutually agreed upon amendments to the IMA.**

Modify the table as follows (Add "Current Capacity" title and add "(ADF)" to 1st Row, 2nd Column:

Current Capacity

	Annual Average Daily Flow <u>(ADF)</u>	Maximum 24 Hour Flow	Peak One Hour Rate of Flow
	Gallons per day	Gallons per day	Gallons per day
Total	400,000	1,000,000	1,584,000 (or

			1,100 gpm)
--	--	--	------------

Note 1: Maximum day peaking factor = 2.5

Note 2: Peak hour peaking factor = 4.0

Line 231 Modify first sentence of 3.1.4.3 as follows:

Pumping station 7 and its force main **to the WWTF** will be improved by Kittery to provide a design flow of approximately 1,500 gpm (current design flow =550 gpm).

Line 231 Section 3.1.4.3
Add comment that Eliot shall be given the opportunity to review and approve design drawings.

Line 251 Modify first sentence to read:

A. \$317,000 for their **additional** share...

Line 252 Modify first sentence to read:

A. \$352,000 for their **additional** share...

Line 257 Modify 3.1.5 to read:

“When Eliot’s average daily flow meets or exceeds 80% of the ADF limit for a 90 day period Eliot shall provide Kittery with a written plan detailing how Eliot will ~~control the introduction of new sewer users in a manner that will~~ prevent the exceedence of the average daily flow limit.”

Line 287 Modify 3.1.11 first sentence as follows:

“Eliot will maintain ownership of ~~the existing~~ **that** wastewater force main in Kittery; **[delete comma]** which connects the wastewater force main in Eliot to the gravity sewer in Kittery.....”

Line 302 Modify the first line of 3.1.15 as follows:

“Prior to May 1st of each year, Kittery shall provide Eliot with an updated 5-year Capital Improvement Program (CIP) identifying capital projects **in** which Eliot will participate.”

Line 340 **3.2.3 Need to address that payment will only be made if calibration shows meter was under reading. No payment if it is reading high.**

Line 404 Add 2 lines after “3.4 Sampling” and move paragraph to line 406

Line 406 Add Article heading: “**3.4.1** ” before paragraph “Samples of Eliot’s wastewater must be obtained at Eliot’s metering station to determine wastewater characteristics”.....

Line 412 **Article 3.4.1 - Renumber to Article 3.4.2**

Line 416 **Article 3.4.2 - Renumber to Article 3.4.3**

Line 420 **Article 3.4.3 - Renumber to Article 3.4.4**
Add note that sampling results shall be provided to Eliot and that Eliot is not responsible for testing that is not related to the WWTF.

Line 436 Modify 3.5.2 as follows:

“.....Eliot is responsible for all fines, penalties, and costs associated with violations of Chapter **13.1** of the Kittery Town Code.....”

Line 465 **Article 3.5.6** Modify to read:

“...CFR Part 403”...

Line 500 **Note that a prorated flow adjustment shall be made with Kittery and Eliot when reduced treatment capacities occur**

Line 525 **Article 4.1 - Add brackets to fraction part of equation**

Line 539 **Article 4.2 - Add brackets to fraction part of equation**

Line 545 Modify to read:

“...Capital **improvements** will be necessary from time to time to meet existing or new effluent limitations; to replace equipment and other assets to maintain the WWTF.”

Add new paragraph and new heading number, modify to read:

4.3.2 “ Eliot is responsible to pay for the costs associated with expansions (increases in capacity) when the increase in capacity is required to provide Eliot with increased capacity at Eliot’s request in excess of the reserved capacity defined in Article 3.1.4.1 of this IMA. Compensation is based upon **Eliot’s** proportionate share of the capacity as compared to the total value of the project as it is applicable to **transporting**, treating and disposing of the wastewater from Eliot. All project related costs, which include, but are not limited to, the cost of financing, planning, engineering, design, bidding, construction and resident engineering services, **testing**, owner’s project manager charges, other professional services related to the Capital Project, including legal fees and the cost of recordings, and the pro rata cost of Kittery staff management salaries attributable to ~~oversee or coordinate~~ **oversight or coordination** of the Capital Project.”

Line 564 **Article 4.3.2 Add brackets to fraction part equation**
Modify to read:

“.....X ~~Total~~ Project Cost **of shared WPCF**...”

Line 567 **Article 4.3.2 - Change to Article 4.3.3**

Line 575 **Add brackets to fraction part of equation**

- Line 578** Add note that Eliot shall be given the opportunity to review and comment on design drawings for which Eliot pays a share.
- Line 601** Article 6.1
Change spelling of ~~it's~~ to " its officers, agents...."
- Line 604** Article 6.2
Note: Mediation is preferred by Eliot as a first step prior to arbitration
- Line 615** Article 7.1-modify as shown:
"....material or equipment; ~~fire~~, civil commotion; ..."
- Line 647** Article 9-Modify as below:
Add a line after Article 9. EMERGENCIES
- Line 648** Add heading 9.1 and begin with "Each party shall notify the other of any emergency....."
Line 649 Add word "the" - ..."affect the wastewater disposal system in either municipality."
- Line 652** Article 10. SEVERABILITY
Add a line after Article 10. SEVERABILITY
Add heading 10.1 before "If any of the provisions of this IMA or the application thereof....."
- Line 677** after Article 12.1
NOTE - Mediation is preferred by Eliot as a first step prior to arbitration
- Line 686** Article 13
Add a line after Article 13. CONTRACTUAL CHANGES
Add heading 13.1 before "From time to time, changes to the Kittery and Eliot wastewater system may be occasioned...."
- Line 696** Article 14.1
NOTE - Eliot requests that the first 20 years of this agreement shall be by mutual written agreement to terminate
- Line 709** Article 15
Add a line after Article 15. ENFORCEMENT OF APPLICABLE PROVISIONS WITHIN ELIOT
Add heading 15.1 BEFORE "The Town of Eliot shall make all reasonable efforts to implement all necessary by-laws...."

Line 714

Article 16

Add a line after Article 16. PRIOR CONTRACTS AND AGREEMENT

Add heading 16.1 BEFORE “This Agreement supersedes and replaces all prior wastewater collection and treatment contracts and agreements.....”

REPORT to the KITTERY TOWN COUNCIL

1 RESPONSIBLE INDIVIDUAL: Beers

Date: 06/19/12

2
3 Subject: Eliot Sewer Agreement Negotiations - Update 9

4
5 Background:

- 6
7 • Eliot voters denied expansion program June 12, 2013
- 8 • Kittery request to negotiate issues related to current contract, Jul 26,2011 (*encl 1*)
- 9 • Negotiation team presented draft document acceptable for all purposes, including Eliot
- 10 expansion program (previously provided) which was endorsed by Eliot Selectmen
- 11 • Council at May 30th regular meeting addressed two open issues with consensus agreement:
- 12
- 13 ▪ Dispute resolution calling for arbitration as with current agreement to be amended to
 - 14 include mediation as the first step. Eliot would prefer to have a mediation step.
 - 15
 - 16 ▪ Eliot request that the first 20 years of the agreement be terminated only by mutual
 - 17 agreement not accepted
 - 18
- 19 • There are a few grammar/clarifications remaining of no substantive impact in the presented
- 20 draft.
- 21 • According to reports, Eliot Selectmen intend to place the expansion program question before its
- 22 voters in November, 2012.
- 23 • If approved at that time, an addition several months to complete an agreement would mean
- 24 that issues and billing would not be corrected , now past three years awaiting resolution, for
- 25 another year.
- 26

27 Current Situation:

- 28
- 29 • Eliot has advised in the past that their Board of Selectmen does not have the authority to
 - 30 renegotiate the current contract without voter approval, however Article 10 seems to indicate
 - 31 that meeting, "to determine and make such changes as must be made." is a contractual
 - 32 obligation.
 - 33

34 **10. CONTRACTUAL CHANGES**

35 From time to time, changes to the Kittery and Eliot sewerage system may be occasioned by local, state or federal decree. In addition, changes in form and scope of those systems may result in additional areas and neighborhoods being served. Where changes to this contract appear warranted by either Kittery or Eliot, the governing bodies (Town Council and Board of Selectmen, respectively) shall agree to meet within thirty (30) days, at the request of either, to determine and make such changes as must be made.

- 36 • Should Eliot disagree that the Board has the authority, Kittery's only option for timely resolution
- 37 is contained in Article 9:
- 38

REPORT to the KITTELY TOWN COUNCIL

9. DISPUTES

(a) Disputes, differences of opinion and dissatisfactions which cannot be resolved in the neighborly spirit of this document shall be referred for resolution to an arbitration committee. The arbitration committee shall consist of five (5) members, including two (2) representatives each from Kittery and Eliot, selected by the Town Council and Board of Selectmen respectively, and a fifth member, being the Chairman, to be mutually agreed upon and selected by the other four.

(b) The judgments and decisions of the arbitration committee shall be binding upon both towns as regards matters pertinent to this contract.

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41
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44

Recommendations: Determine from Eliot whether the Board of Selectmen may have the authority, and are willing to, complete negotiation for a current contract revision. If not serve notice of demand for arbitration.



TOWN OF KITTERY
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329

REPORT TO TOWN COUNCIL

Date: March 28, 2022
From: Kendra Amaral, Town Manager
Subject: Fire Apparatus Rescue 3 Lease/Purchase
Councilor Sponsor: Chairperson Judy Spiller

EXECUTIVE SUMMARY

The current Rescue 3 apparatus was purchased in 2001 and scheduled for replacement in FY2026. The estimated cost for replacement (with normal inflation) was projected to be \$773,674 in 2026. The funds needed to replace it would have been secured by FY2026 in accordance with the CIP funding schedule.

However, during the latest annual maintenance and safety inspection, the frame was found to be severely corroded in the rear end area. Repairs have been made to keep the vehicle safe for operating in the short-term; but the repairs will not last the four years needed to keep to the CIP schedule of ordering the replacement in FY2026.

The FY2023 – FY2027 Capital Improvement Plan, adopted by the Council in February, noted a warrant article will be proposed to purchase the apparatus currently priced at \$760,659. That warrant article is being considered by the Council concurrently with this request and is intended to go hand-in-hand with the lease/purchase proposal.

Lead times for the manufacturing of fire apparatus is typically 12 months; however, shortages of materials and labor are stretching that up to 24 months. If the Town approves the lease/purchase we will be able to order the apparatus now and get a guaranteed 13-month delivery timeframe based on our place in the manufacturing queue.

The manufacturers are also experiencing rapid inflation, as is everyone else. If the Town approves the lease/purchase we will lock in the bid price of \$760,659. If the Town waits until the warrant article is decided we will need to rebid and can reasonably expect the price will go up.

These conditions create a viable scenario for a lease/purchase agreement, where the Town utilizes a lease to lock in the price and the place in the manufacturer's queue, while we await a vote on the warrant article. It also allows us to take advantage of a prepayment discount of \$17,184 off the bid price. If the warrant article is approved, the Town can then pay off the lease in its entirety on July 1.

The lease/purchase will:

- lock in the current price of \$760,659 and avoid further price inflation
- take advantage of the discount for upfront payment equating to \$17,184
- allow full pay-off of the lease in July if the warrant article is approved by the voters; payoff penalty is 0.5% of the borrowed amount ~ \$2,277
- Net savings ~ \$14,907 or approximately 1.9%

If the warrant article is not approved in June, the Council could transfer funds from other reserves or projects (for example ARPA funds) to cover the lease payment in FY2023 and fund the subsequent two years of lease payments in the CIP beginning in FY2024. The Council could also choose to cancel the order, at a cost of \$2,277. Cancellation will likely result in higher replacement costs and a delay in delivery of a replacement apparatus.

PROPOSED SOLUTION/RECOMMENDATION

Approve the Town Manager to enter into a 3-year lease agreement for a new fire apparatus to replace Rescue 3.

ATTACHMENTS

- Lease Authorization Enactment
- Lease Price Sheets and details



2525 West State Road 114
Rochester, IN 46975
(800) 700-7878
Fax: (800) 865-8517

www.republicfirstnational.com

March 14, 2022

To: Patty Moore
Vendor: Bulldog Fire Apparatus
From: Angie Deming

Customer: Town of Kittery

Thanks for the opportunity to give you a quote on your latest project!

Equipment: One (1) New Fire Apparatus

Unit Cost: \$ 760,659.00
Down Payment / Discount: \$ 305,184.40 (\$288,000 Down Payment + \$17,184.40 Prepay Discount)
Net Financed: \$ 455,474.60
Frequency of Payments: Annual

Term in Years:	<u>3</u>	<u>4</u>	<u>5</u>
Payments:	\$ 160,248.69	\$ 121,873.43	\$ 98,851.13
Factor:	0.35183	0.26757	0.21703
APR:	2.75%	2.77%	2.79%

Delivery Date: To be determined
First Lease Payment Due: March, 2023

- * To qualify for the quoted rates, audited financial statements required.
- * This is a proposal only and not a commitment to finance. This proposal is subject to credit review and approval and proper execution of mutually acceptable documentation.
- * This transaction must be designated as tax-exempt under Section 103 of the Internal Revenue Code of 1986 as amended.
- * Lessee's total amount of tax exempt debt to be issued in this calendar year will not exceed the \$10,000,000 limit.
- * Payments and rates reflect pre-application of escrow earnings and manufacturer discounts, if any.

Sincerely,
Republic First National Corporation

Angie Deming
angie@rfnonline.com

"Our Experts, Your Needs, Financing Done Right"

**KITTERY TOWN CODE –
FIRE APPARATUS – RESCUE 3 REPLACEMENT
LEASE AUTHORIZATION**

1 **AN ORDINANCE** relating to the municipality’s authority for Town governance to give due and
2 proper attention to its many demands pursuant to the Town Charter, Federal law, and Maine
3 Revised Statutes, and more particularly where set forth in Maine Revised Statutes Title 30-A,
4 Municipalities and Counties.

5 **WHEREAS**, the Kittery Town Council is authorized to enact this Ordinance, as specified in
6 Sections 1.01, 2.07(3), and 6.11(3) of the Town Charter; and 30-A MRS §3001, pursuant to its
7 powers that authorize the town, under certain circumstances, to provide for the public health,
8 welfare, morals, and safety, and does not intend for this Ordinance to conflict with any existing
9 state or federal laws; and

10 **WHEREAS**, the Town of Kittery needs to purchase a new rescue vehicle for the Fire
11 Department, to replace the existing Rescue 3; and

12 **WHEREAS**, by entering into a lease agreement the Town can lock in the existing price and take
13 advantage of discounts while it awaits a June warrant article seeking approval to appropriate
14 funds to purchase the apparatus outright; and

15 **WHEREAS**, the Town understand that if the warrant article to appropriate the amount needed to
16 buy out the lease immediate, it can remain in the lease and pay annually, or cancel the lease
17 and the apparatus build order;

18 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A MRS §3001, AND TOWN
19 CHARTER §§2.14 and 6.11(3), THE TOWN OF KITTERY HEREBY ORDAINS APPROVAL
20 FOR THE TOWN MANAGER TO EXECUTE LEASE AGREEMENT FOR A FIRE APPARATUS
21 – RESCUE 3 REPLACEMENT.

22 **INTRODUCED** and read in a public session of the Town Council on the ____ day of _____,
23 20____, by: _____ {NAME} Motion to approve by Councilor
24 _____ {NAME}, as seconded by Councilor _____ {NAME} and
25 passed by a vote of _____.

26 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,
27 Maine on the ____ day of _____, 20____, {NAME}, _____, Chairperson

28 **Attest:** {NAME}, _____ Town Clerk

**TOWN OF KITTERY
TOWN MEETING WARRANT
JUNE 14, 2022**

To Robert V. Richter, a Constable of the Town of Kittery, in the County of York, State of Maine.

In the name of the State of Maine, you are hereby required to notify and warn the inhabitants of the Town of Kittery in said county and state, qualified by law to vote in town affairs:

To meet, in said town, on Monday the 13th day of June 2022, at 6:00 p.m. to hold a public hearing on Articles 2 through 10.

To hold a **Municipal Election** at the Kittery Community Center Gymnasium, in said town, on Tuesday, the 14th day of June, 2022 at 8 a.m. to 8:00 p.m.

Act on Article 1 to elect a moderator by written ballot and to act on Articles 2 through 10 by secret ballot

The polls will be open from 8:00 a.m. until 8:00 p.m.

Absentee ballots will be processed centrally at 9:00 a.m., 10:00 a.m., 11:00 a.m., 12:00 p.m., 1:00 p.m., 2:00 p.m., 3:00 p.m., 4:00 p.m., 5:00 p.m., 6:00 p.m., 7:00 p.m., and 8:00 p.m.

Article 1. To elect a moderator to preside at said meeting and to vote by written ballot.

Article 2. Shall the town vote to authorize the Town Council to transfer up to \$125,000 from unassigned funds (unencumbered surplus) and appropriate and expend up to \$125,000 when necessary to maintain a positive fund balance in the Compensated Absences account and to pay for accrued vacation and/or sick leave to settle any unpaid benefits owed to retired or terminated employees in the fiscal year?

Town Council Recommends – Vote: Yes _____ No _____

Explanation:

The purpose of this article is to provide funds from the town’s unassigned funds (unencumbered surplus) to pay for accrued benefits owed when a municipal employee retires or leaves. The reserve account balance is currently \$289,739. The unassigned fund balance (unencumbered surplus) is currently \$8,131,323.

Article 3. Shall the town vote to authorize the Town Council to transfer up to \$25,000 from unassigned funds (unencumbered surplus) and appropriate and expend up to \$25,000 when necessary for the purpose of paying the town’s cost on accepted insurance claims against the town?

Town Council Recommends – Vote: Yes _____ No _____

Explanation:

The purpose of this article is to provide funds from the town’s unassigned funds (unencumbered surplus) to pay the deductible and other associated costs on insurance claims that may be made in the fiscal year. The unassigned fund balance (unencumbered surplus) is currently \$8,131,323.

Article 4. Shall the town vote to authorize the Town Council to transfer up to \$500,000 from unassigned funds (unencumbered surplus) and appropriate and expend up to \$500,000 when necessary for the purpose of providing the town’s match to federal, state, and non-profit grants?

Town Council Recommends – Vote: Yes _____ No _____

Explanation:

Grant applications are filed by different town departments to assist with the operations and capital purchases. These grants, if successful, often require a local match to be raised. The purpose of this article is to provide funds from the town's unassigned funds (unencumbered surplus) when and if necessary, for the purpose of meeting grant match requirements. The unassigned fund balance (unencumbered surplus) is currently \$8,131,323.

Article 5. Shall the town vote to authorize the Town Council to transfer up to \$40,000 from unassigned funds (unencumbered surplus) and appropriate and expend up to \$40,000 when necessary for the purpose of covering shortfalls in the town departments' fuel accounts due to the unpredictable fuel pricing markets?

Town Council Recommends – Vote: Yes _____ No _____

Explanation:

The purpose of this article is to provide departments, who have exhausted their allocated fuel budgets in the fiscal year, access to funds for fuel needs. The Town Council favored keeping the fiscal year fuel and utility accounts as low as possible, with this article making available surplus funds as a safety net in case of an unstable market for fuel. The unassigned fund balance (unencumbered surplus) is currently \$8,131,323.

Article 6. Shall the town vote to authorize the Town Council to transfer up to \$40,000 from unassigned funds (unencumbered surplus) and appropriate and expend up to \$40,000 when necessary for the purpose of providing for the town's General Assistance Program as required by town, state, and federal laws in the fiscal year?

Town Council Recommends – Vote: Yes _____ No _____

Explanation:

The General Assistance Program is budgeted from the town's operational budget each year. The program assists town citizens with welfare type services by following very strict state and federal guidelines for income eligibility within the General Assistance Ordinance. The purpose of this article is to create a method for the Town Council to supplement the General Assistance budget if needed. The unassigned fund balance (unencumbered surplus) is currently \$8,131,323.

Article 7. Shall the town vote to authorize the Town Council to transfer up to \$50,000 from unassigned funds (unencumbered surplus) and appropriate and expend up to \$50,000 when necessary for the purpose of paying for emergency repairs and energy efficiency improvements to town-owned facilities that are not contemplated in the regular fiscal year operating budget?

Town Council Recommends – Vote: Yes _____ No _____

Explanation:

Occasionally, repairs to town facilities are needed that have not been budgeted. In addition, energy efficiency projects are being identified to further save the town funds. The purpose of this article is to allow the Town Council to make unplanned emergency facility repairs and undertake energy efficiency projects that may arise in the fiscal year. The unassigned fund balance (unencumbered surplus) is currently \$8,131,323.

Article 8. Shall the town vote to authorize the Town Council to transfer up to \$50,000 from unassigned funds (unencumbered surplus) and appropriate and expend up to \$50,000 for a Municipal Property Tax Assistance program to credit property taxes owed by certain residents that meet the program requirements?

Town Council Recommends – Vote: Yes _____ No _____

Explanation:

The Senior Tax Credit program allows for taxpayers that qualify to receive a credit on their property taxes each year. The program assists seniors with their property tax obligations. The unassigned fund balance (unencumbered surplus) is currently \$8,131,323.

Article 9. Shall the town vote to authorize the expenditure of up to \$460,000 from unassigned funds (unencumbered surplus) for the purchase of a fire rescue vehicle for the replacement of Rescue 3, the Kittery Fire Department’s primary fire apparatus?

Town Council Recommends – Vote: Yes _____ No _____

Explanation:

The current Rescue 3 apparatus was purchased in 2001 and scheduled for replacement in FY2026. The estimated cost for replacement, with normal inflation, was \$773,674 in FY2026. The funds needed to replace it would have been secured by FY2026 in accordance with the CIP funding schedule. However, during the latest annual maintenance and safety inspection, the frame was found to be severely corroded in the rear end area. Repairs have been made to keep the vehicle safe for operating in the short-term; but the repairs will not last for four years (FY2026). The purpose of this article is to allow the Town to replace the fire apparatus now and avoid a reduction in service response from the Fire Department. Due to rapid inflation of parts, materials, and labor, the cost to replace the apparatus based on a current bid is approximately \$746,000. The Fire Apparatus Holding Account has a balance of \$288,591. The unassigned fund balance (unencumbered surplus) is currently \$8,131,323.

The Registrar of Voters will hold office hours while the polls are open to correct any error in, or change a name or address on, the voting list; to accept registration of any person who becomes 18 years of age on Election Day or after the close of registration prior to it; and to accept new enrollments.

A person who is not registered as a voter may not vote in any election.

Dated at Kittery this 28th day of March, 2022.

Municipal Officers

A true copy

ATTEST: _____
Town Clerk

RETURN ON THE WARRANT

County of York
of Maine

State

Pursuant to the within warrant to me directed, I have notified and warned the inhabitants of Kittery, qualified as herein expressed, to meet at said time and place, and for the purposes therein named, by posting an attested copy of said warrant at the Kittery and Kittery Point Post Offices, Kittery Municipal Office, Kittery Community Center, and Kittery Resource Recovery Facility in said town, being public and conspicuous places in said town on

_____, 2022, being at least seven days before the meeting.

Robert V. Richter

Date



TOWN OF KITTERY
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329

REPORT TO TOWN COUNCIL

Meeting Date: March 28, 2022
From: Kendra Amaral, Town Manager
Subject: Fort Foster Rules
Councilor Sponsor: Chairperson Judy Spiller

OVERVIEW

A number of changes have been made relative to Fort Foster in the past two years. Changes include new animal control ordinances, opening of the gate in winter months, a project to install new signage to communicate the rules, and changes in the department responsible for managing the pavilion reservations.

The last piece of the puzzle in this effort is updating the Fort Foster rules published on our website and made available to staff and visitors. The Fort Foster rules are a critical tool for visitors and staff alike. The rules serve as the foundation for addressing visitor questions, for providing consistent guidance to park staff, and for managing the park effectively.

The existing Fort Foster rules are out-of-date, and have a number of inconsistencies with town ordinance and state law. The proposed updated rules address the inconsistencies and modernize the layout for ease of use.

The proposed updated rules were developed by staff including DPW, our lead seasonal staff member at Fort Foster, the KCC Director, and the Animal Control Officer. The document was presented to the Parks Commission at their March 10, 2022 meeting for feedback and input.

PROPOSED SOLUTION/RECOMMENDATION

Approve Fort Foster Rules as proposed.

ATTACHMENTS

- Proposed Updated Fort Foster Rules
- Existing Fort Foster Rules
- Fort Foster Map



FORT FOSTER PARK POLICIES AND REGULATIONS

Fort Foster is a local treasure, steeped in history with trails, beaches, play areas and outdoor function space. Fort Foster is also a complex and vital natural resource providing habitat to native and endangered animals, plants and trees.

Please help the Town of Kittery protect this vital natural resource for our generation and generations to come.

A. SCHEDULE AND HOURS OF OPERATIONS

1. The park bathrooms and parking lots will be open on weekends, from 10AM to sunset, in May before Memorial Day and in September after Labor Day.
2. The park bathrooms and parking lots will be open seven days a week, from 10AM to 8PM or sunset, whichever is earlier, between Memorial Day and Labor Day, inclusive.
3. The park parking lots may be open October through April, excepting when snow or ice events have made the park roads and/or parking lots unsafe for vehicles.

B. PARKING AND VEHICLES

1. The speed limit on all park roads is 5MPH.
2. Parking is allowed in designated areas only.
3. Non-motorized watercraft, windsurfers, sea kayaks and canoes may be brought in on car-tops or trailers. If trailers are used, the trailer must be parked with their vehicle after the visitor has dropped off their watercraft at Windsurfer's Beach.

C. USE OF PARK

1. Use of the park is at own risk at all times.
2. There are no trash receptacles in the park. All litter, trash, and pet waste must be carried out. Littering is prohibited in accordance with Kittery Town Code and State Law.
3. Grills are provided for charcoal use only, and only for the purpose of cooking. Bonfires are not permitted.
4. Consumption of alcoholic beverages are prohibited by State Law.
5. The Town is not responsible for lost or stolen property or items.
6. There are no lifeguards on duty. Swimming is at own risk.
7. There is no swimming or diving allowed from the pier.
8. Non-motorized watercraft, windsurfers, sea kayaks and canoes may only be launched from Windsurfer's Beach.
9. Removal or destruction of any buildings, facilities, flora, or fauna is prohibited.
10. Use of metal detectors is prohibited.
11. Hunting is prohibited.

12. Scuba diving is only permitted at the designated Scuba Beach. Scuba diving is not permitted from the main beach area, or in areas signed as prohibited.
13. The Town Manager may close the beaches when water quality testing determines the water to be unsafe for human contact.

D. DOGS AND OTHER ANIMALS

1. With the exception of dogs, no domestic animals are allowed in the park.
2. Dogs are prohibited on Pier South Beach, as designated by signs, on weekends in May and September, and every day from Memorial Day to Labor Day, inclusive.
3. Dogs must be on leash 10AM to park closing on weekends in May and September, and every day from Memorial Day to Labor Day, inclusive.
4. Dogs must be on leash 10AM to 3PM from the day after Labor Day of one year, to the day before Memorial Day of the next year.
5. The maximum leash length allowed is 10 feet.
6. Visitors must immediately collect and secure pet waste while in the park. Visitors must maintain possession of their pet's waste while on public property; it may not be left behind for future retrieval.
7. Visitors may not bring in more than three dogs at any time while in the park.

E. SEASON and DAY PASSES

1. All pass fees are established by the Town Council in Appendix A of the Kittery Town Code.
2. No visitor may enter the park during park operating hours without a valid Season Pass or a Day Pass.
3. Season Passes are good for the calendar year in which they are issued.
4. Town residents or property owners, except organizations and corporations, may obtain a Resident Season Pass.
5. Proof of residency can be satisfied by one or more of the following showing a Kittery address:
 - a. Maine Driver's License
 - b. State of Maine ID
 - c. Maine vehicle registration
 - d. Utility bill
 - e. Personal check
 - f. Rent or lease agreement
 - g. Buyers order for a new home
 - h. Registered voter in Kittery
6. A season pass may be used by the season pass holder and their immediate family residing within the same household.
7. Town residents or property owners age 62 or older may obtain a Senior Citizen Season Pass.
8. Disabled American Veterans who are 100% disabled may obtain a free season pass upon presentation of a Federally issued 100% Disabled Veteran Identification Card or a Veterans Administration Awards Letter of Entitlement stating 100% disability.
9. All others may obtain a general Season Pass.
10. Season passes are assigned to a vehicle. To apply for a pass the applicant must provide proof of registration for the vehicle that will be associated with the pass. Once issued, the season pass

must be affixed to the vehicle, no higher than 4 inches from the bottom line of the driver's side of the windshield.

11. Failure to affix the Season Pass to the vehicle as directed will result in denied entrance or the requirement to purchase a day pass for that day. No exceptions will be made.
12. Replacement passes may be obtained if lost, for a fee. Receipt of the original pass purchase is required.
13. Up to five "pass cards" will be issued to each season pass holder and allows for entry on foot or bicycle for the pass holder.
14. Vehicles with a capacity of more than 15 passengers may not obtain or use a season pass. These vehicles must use a Day Pass to enter the park.
15. All other means of entry while the park is open will be through the purchase or issuance of a day pass.
16. Only one day pass purchase may be used for credit towards the purchase of a season pass. The day pass must have been purchased in the same calendar year as the season pass.

F. RESERVATION OF PAVILIONS

1. All pavilion reservation fees are established by the Town Council in Appendix A of the Kittery Town Code.
2. The pavilions may be reserved for group-use.
3. The maximum number permitted in any group is one hundred (100) people.
4. Groups may reserve a pavilion only once per season.
5. The reservation fee for a pavilion assures the reservation holder that the pavilion will be reserved for their use.
6. All groups reserving a pavilion must leave the area in as good condition as it was found. Future pavilion reservation or access to the park may be revoked, and/or fees to repair damage may be incurred.
7. All trash and waste must be removed by the group. Waste receptacles will not be provided by the Town.
8. Any group reserving a pavilion must leave the area by 7:00PM, or one hour before posted gate closing, whichever is earlier.
9. Reservation applications for the pavilion are available through the Town.
 - a. January 1 - April 15 - Reservations accepted from any Kittery group on a first come, first serve basis.
 - b. April 16-September 23 – Reservations accepted from the general public.
10. Two signs must be placed by the reservation holder, on the day of their reservation. One must be placed at the intersection of the Pier Road and the Pavilion Road, and the other at the Pavilion stating the following: PAVILION RESERVED TODAY - (NAME OF GROUP). Signs should be 2'X2'. Signs must be removed at the end of the day by the reservation holder.
11. Payment of the pavilion fee does not include the park entrance fee for visitors associated with the reservation. Visitor entrance fees will be collected at the gate.
12. Kittery based civic, social, or non-profit organizations will be allowed into the park for one day per season free of charges provided:
 - a. The reservation is made for weekends in May or September or weekdays from Memorial Day through Labor Day; and

- b. The organization submits a written application to reserve the pavilion and for the fees to be waived at least 7 days prior to the desired date.
- c. Traip Class Reunions must be celebrating their 10th, 20th, 25th, or 50th anniversary for fees to be waived.

G. SPECIAL EVENTS

- 1. The park may be used for special events organized by the Town or Kittery-connected non-profits and community organizations upon approval of the Town Manager.
- 2. All special events must be compatible with the mission of the park.
- 3. The Town Manager will seek recommendations on applications for special events from the Parks Commission, Public Works Department, and any other Town department or state entity as may be relevant to the special event application.
- 4. Fees may be charged for special events to cover the costs of Town employees and resources needed for the special event (e.g., providing access to the park, bathroom facilities, etc.). Fees will be determined on a case-by-case basis, specific to the needs and nature of the special event.

H. COMMERCIAL USE

- 1. Commercial activities, such as selling merchandise and providing guided tours or instructional courses where participants pay a fee for the services, are prohibited from the park without prior approval of the Town Council.
- 2. Commercial tours involving non-motorized watercraft (e.g., sea kayak tours) are prohibited from launching within the park.

I. AMENDMENTS

- Approved as amended 06/09/97
- Approved as amended 09/03/97
- Approved as amended 12/20/99
- Approved as amended 04/24/00
- Approved as amended 05/29/02
- Approved as amended 08/23/04
- Approved as amended 06/27/05
- Approved as amended 09/26/05
- Approved as amended 01/28/08
- Approved as amended 04/14/08
- Approved as amended 10/16/13
- Approved as amended 11/24/14
- Approved as amended 06/26/17
- Approved as amended 01/24/19

FORT FOSTER PARK
POLICIES AND REGULATIONS

() indicates when policy/regulation went into effect

A. SCHEDULED HOURS OF OPERATION

1. Gate attendants will open the park on weekends in May before Memorial Day and September after Labor Day from 10:00 a.m. to 8:00 p.m. or sunset, whichever is earlier. (9/3/97)
2. The park will be open from 10:00 a.m. to 8:00 p.m., seven days a week from Memorial Day to Labor Day. (9/3/97)
3. There shall be no persons permitted except for authorized personnel within the park from sunset to sunrise. (9/3/97)
4. Pedestrian/foot traffic will be allowed from sunrise to sunset from October 1 to April 30 and weekdays in May before Memorial Day and in September after Labor Day. During these off-season times the park is closed to unauthorized vehicular traffic including motorcycles, snowmobiles and all terrain vehicles. (11/25/85), (9/3/97)

B. GENERAL REGULATIONS

1. The vehicular speed limit within the confines of the park is 5 M.P.H. (9/3/97)
2. Littering is prohibited as provided by Chapter 8, Section 8.04.07 of the Kittery Town Code and users of the park must take their trash with them when they leave the park. (5/29/91), (9/3/97)
3. Fires are permitted only in grills or pits designed for cooking uses. (6/9/97), (9/3/97)
4. Consumption of alcoholic beverages is prohibited by State statute. (prior to '81)
5. Vehicles are permitted only on access roads and must park in designated parking areas. (9/3/97)
6. The Kittery Park Division and its employees are not responsible for lost or stolen property. (9/3/97)
7. Lifeguards are not provided and due to strong tidal currents, there is no swimming or diving allowed from the pier.
8. Non-motorized, windsurfers, sea kayaks and canoes are to be launched only from the area referred to as "Windsurfer's Beach." Such watercraft may be brought in on car-tops or trailers. If trailers are used, the trailer must be parked in the Upper Parking Lot after the visitor has dropped off their watercraft at Windsurfer's Beach. Commercial tours involving non-motorized watercraft (e.g., sea kayak tours) are not allowed to launch within Fort Foster. (8/23/04)
9. Dogs must be kept on a leash at all times. Owners will be asked to leave the park if their dog is not under control. (9/3/97)
10. A "pooper scooper" rule is in effect for dogs. Owners must take their dog waste with them when they leave the park. (6/9/97), (9/3/97)
11. Dogs are prohibited from Pier Beach east of the Pier for approximately 400 feet, or as designated by signs. (8/23/04)
12. Removal or destruction of any buildings, facilities, flora, or fauna is not permitted in order to preserve the environmental integrity of the park. (9/3/97)
13. No hunting and no firearms allowed in the park. (prior to '81)
14. Scuba diving is restricted to areas not within the main beach area, i.e. restricted

- to areas outside the main beach and signs will be erected on either side of the main beach stating that no scuba diving is allowed between these points. (6/16/83)
15. Early entry into the park for the purpose of reserving a table is not permitted (9/3/97)
 16. Commercial activities, such as selling merchandise and providing guided tours or instructional courses where participants pay a fee for the services, are prohibited from the Park without prior approval of the Town Council. (8/23/04)

C. SEASON PERMIT FEES (9/3/97)

1. Persons meeting Town residency requirements or property owners, except organizations and corporations, are entitled to a season permit for \$20.00 issued to them and their immediate family which means an individual, husband and/or wife and their blood relations that are residing in the same household. This includes a ward, foster child, or stepchild. (9/3/97), (9/26/05)
2. Kittery resident senior citizens (persons 62 years of age or older) may obtain one season permit for their own vehicle at a charge of \$5.00. (5/29/91), (9/3/97) (12/20/99)
3. Those persons not qualifying under No. 1 above may obtain at the Kittery Municipal Building or Fort Foster gate a season permit for \$75.00 per year. (9/3/97) (12/20/99), (9/26/05), (1/28/08), (10/16/13), (1/24/19)
4. A charge of \$5.00 shall be made for a duplicate resident, or resident senior citizen (62 years of age or older), or 100% disabled American veteran vehicle sticker. A charge of \$15.00 shall be made for a duplicate non-resident sticker. Receipt of original permit purchase required. (4/2/84), (10/16/13)
5. When an individual or family member goes to the Kittery Municipal Building to purchase a Fort Foster season permit, they must present the registration for the vehicle to which the sticker is to be attached. Pass cards may be issued at .50 each to any member of the immediate family with their full name and sticker number on that card. This pass allows entry only for the individual owner of the card. Vehicles may not enter the park using a pass card. (9/3/97), (9/26/05)
6. One and only one day pass may be used for credit towards the purchase of a resident or resident senior citizen (62 years of age or older) season permit. Amounts exceeding the cost of the permit will not be refunded and may not be applied towards the purchase of duplicates. (9/3/97)
7. All vehicle season stickers must be affixed no higher than four (4) inches from the bottom line of the driver's side of the windshield. (9/3/97), (9/26/05)
8. Vehicles with a capacity of more than 15 passengers can not obtain a season permit and must pay the regular day pass rates. (9/3/97)
9. Disabled American Veterans who are 100% disabled may obtain at the Kittery Municipal Building one free season permit for his/her own personal vehicle free of charge upon presentation of a Federally issued 100% Disabled Veteran Identification Card or a Veterans Administration Awards Letter of Entitlement stating 100% disability.

D. DAY-USE VISITOR PASS FEES

1. Motor Vehicle Day Pass - \$20.00 (includes pass for vehicle and occupants); (12/20/99), (1/24/19)

2. Permanently Disabled American Veterans are allowed to receive a free Motor Vehicle Day Pass upon presentation of a Federally issued 100% Disabled Veteran Identification Card or a Veterans Administration Awards Letter of Entitlement stating 100% disability.
3. Bus Day Pass - \$100.00; (4/24/00)
4. Recreational Vehicle-\$50. (1/24/19)
5. Student School Bus Day Pass with adult chaperone(s) - \$75.00. (4/24/00), (1/24/19)
6. Day-use visitor walk-ins or bike-ins shall pay \$5.00 per adult and \$1.00 per child under twelve years of age. (12/20/99) (4/24/00)

E. RESERVATION OF PAVILIONS

1. General
 - a. The maximum number permitted in any group is one hundred (100) people. (6/9/97), (9/3/97)
 - b. The pavilions are the only areas of the park which may be reserved for group use except for special events made by application and approved by the Town Council. (6/27/05)
 - c. Reservations are limited to one group for the season.
 - d. All groups reserving the pavilion area must leave the area in as good condition as it was found or be prohibited from using the facility in the future.
 - e. All trash must be removed by the group using the pavilion. Waste receptacles will not be provided by the Town. (5/29/91)
 - f. All groups using the pavilion must leave the area by 7:00 p.m. (5/29/91)
2. Reservation applications are accepted as follows: (5/29/91), (9/3/97), (9/26/05)
 - a. Reservation forms are available from the Community Center Director, 120 Rogers Road, Kittery, Maine 03904, phone 207-439-3800, and checks should be made payable to the Town of Kittery. Forms must be completed and payment made prior to finalizing of the reservation date. (9/3/97) (1/24/19)
 - b. January 1 - April 15 Reservations accepted from any Kittery group on a first come, first serve basis.
 - c. April 16-September 23. Any group or non-profit organizations. (9/3/97)
 - d. Each group or organization must provide two (2) 2' x 2' signs saying:

TOWER PAVILION
RESERVED TODAY
(NAME OF GROUP)

These signs should be posted by the group at the intersection of the Pier Road and the Pavilion Road and one at the Pavilion.

3. Tower Pavilion Reservation Fees: (5/12/86)
 - a. The reservation fee assures the group or organization that the pavilion will be reserved for their use. Payment of the pavilion fee does not include the park entrance fee, which will be collected at the gate. (9/3/97)
 - b. Groups must pay the following fee rates: (6/9/97), (9/3/97)

1. Small pavilion, group 35 or fewer people, \$100.00 (9/26/05) (11/24/14) (1/24/19)
2. Tower pavilion, group 50 or fewer people \$200.00 (9/26/05) (11/24/14), (1/24/19)
3. Tower pavilion, group 51-100 people \$300.00 (9/26/05) (11/24/14), (1/14/19)
4. Cancellations will be charged a \$50.00 service fee. (6/3/97), (9/26/05)
4. Pavilion Use By Kittery Non-Profit Organizations (9/3/97)
 - a. Kittery based civic, social, or non-profit organizations like scouts, fire department, Traip class reunions or church groups will be allowed into the park for one day per season free of charges provided: (9/3/97)
 - (1.) The reservation is made for weekends in May or September and weekdays from Memorial Day through Labor Day; (9/3/97)
 - (2.) The head of the Kittery group or non-profit organization must submit a completed written application in order to reserve the pavilion and have free entrance to the park. The application must give the desired reservation date; alphabetized list of the names and number of people of the group; the individual responsible for the group; and be submitted at least 7 days prior to the anticipated function date, otherwise gate fees will apply. (9/3/97)
 - (3.) The Community Center Director will issue a written response and confirmation to the head of the organization. (9/3/97), (1/24/19)
 - (4.) Traip Class Reunions must be celebrating their 10th, 20th, 25th, or 50th anniversary, for other anniversary years regular charges are required. (6/9/97)
 - (5.) Except for item 4.a, above all appropriate fees shall be assessed. (9/3/97)

F. SPECIAL EVENTS (6/27/2005)

1. The Park may be used for special events such as the annual Isles of Shoals Race, scout camporees, special Town or School uses, or other activities upon approval of the Town Manager. Application for special events should be made through the Community Center, and the Community Center Director will then forward the request to the Town Manager. The Town Manager should request the recommendations of the Parks Commission, Community Center Department, Public Works Department, and may wish to include input from others, i.e., Police and Fire Departments. (6/27/05), (6/26/17), (1/24/19)
2. Fees may be charged for special events to cover the costs of Town employees providing services in association with the event (e.g., opening a gate early). The Commissioner of Public Works will estimate the costs associated with the event and forward these to the Town Manager (with a copy to the Parks Commission) for inclusion with the Commission's recommendation concerning the event. The Town Manager will then issue a decision in writing to the applying group. (8/23/04)
3. All special events must be compatible with the mission of the Park. (8/23/04)

DEFINITIONS

Town residency requirements: Proof of residency can be satisfied by one or more of the following showing a Kittery address:

- Maine drivers license
- State of Maine ID
- Maine vehicle registration
- Utility bill
- Piece of mail
- Personal check
- Rent or lease agreement
- Buyers order for a new home
- Being a registered voter in Kittery.

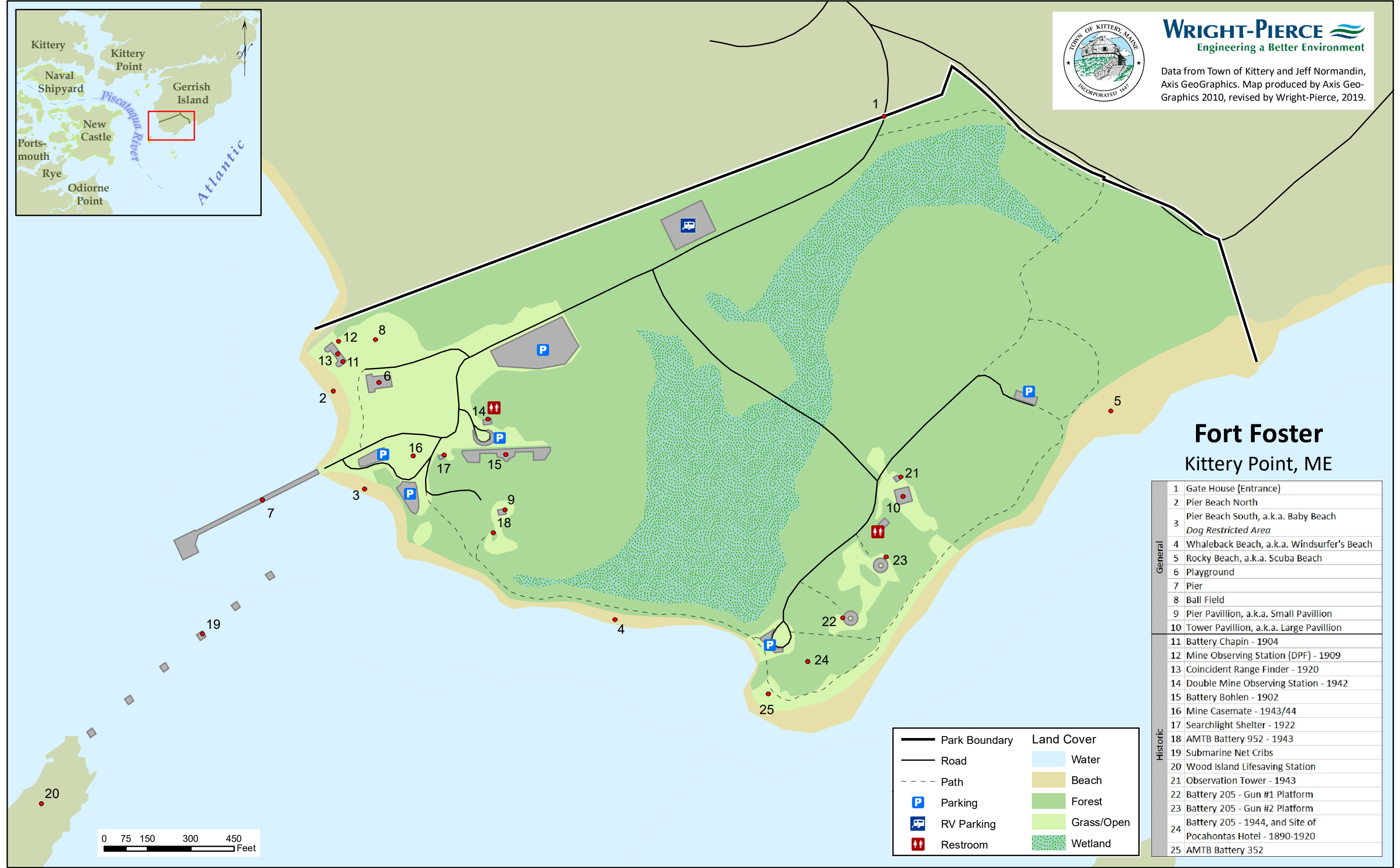
Season Permit: Includes a sticker, which allows entrance to Fort Foster for the current season, to be affixed to the windshield or your vehicle and includes a walk-in pass for each member of the immediate family identified as an individual, husband and/or wife and their blood relations who are residing in the same household, which includes a ward, foster child, or step-child. (9/3/97)

- Approved as amended 06/09/97
- Approved as amended 09/03/97
- Approved as amended 12/20/99
- Approved as amended 04/24/00
- Approved as amended 05/29/02
- Approved as amended 08/23/04
- Approved as amended 06/27/05
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- Approved as amended 01/28/08
- Approved as amended 04/14/08
- Approved as amended 10/16/13
- Approved as amended 11/24/14
- Approved as amended 06/26/17
- Approved as amended 01/24/19



WRIGHT-PIERCE
Engineering a Better Environment

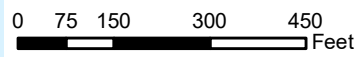
Data from Town of Kittery and Jeff Normandin, Axis GeoGraphics. Map produced by Axis GeoGraphics 2010, revised by Wright-Pierce, 2019.



Fort Foster Kittery Point, ME

General	Historic
1 Gate House (Entrance)	11 Battery Chapin - 1904
2 Pier Beach North	12 Mine Observing Station (DPF) - 1909
3 Pier Beach South, a.k.a. Baby Beach <i>Dog Restricted Area</i>	13 Coincident Range Finder - 1920
4 Whaleback Beach, a.k.a. Windsurfer's Beach	14 Double Mine Observing Station - 1942
5 Rocky Beach, a.k.a. Scuba Beach	15 Battery Bohlen - 1902
6 Playground	16 Mine Casemate - 1943/44
7 Pier	17 Searchlight Shelter - 1922
8 Ball Field	18 AMTB Battery 952 - 1943
9 Pier Pavillion, a.k.a. Small Pavillion	19 Submarine Net Cribs
10 Tower Pavillion, a.k.a. Large Pavillion	20 Wood Island Lifesaving Station
	21 Observation Tower - 1943
	22 Battery 205 - Gun #1 Platform
	23 Battery 205 - Gun #2 Platform
	24 Battery 205 - 1944, and Site of Pocahontas Hotel - 1890-1920
	25 AMTB Battery 352

Land Cover	
	Water
	Beach
	Forest
	Grass/Open
	Wetland





Town of Kittery, Maine

Conservation Commission

200 Rogers Road, Kittery, Maine 03904

Date: March 11, 2022

To: Kendra Amaral, Town Manager
Judy Spiller, Town Council Chair

From: Earldean Wells, Chair

Re: Wetland Impact Fees

At the March 3, 2022, regular meeting of the Conservation Commission, we discussed, moved, voted on and unanimously agreed upon requesting an opportunity to discuss with the Planning Board the possibility of raising the wetland impact fees from \$4.00 sq. ft. to \$8.00 sq. ft or \$10.00 sq. ft.

At the March 10, 2022, regular meeting of the Planning Board our request was discussed, moved, and unanimously voted on to send a letter advising the Town Council of their agreement with the Conservation Commission to raise the Wetland Impact Fee to \$10.00 sq. ft.

The Conservation Commission wishes to make clear that the intent of raising the Wetland Impact Fee to \$10.00 sq. ft. is not to punish developers or to amass more funds in the Wetland Impact account. We wish to give developers an incentive to create new and innovative ways of avoiding wetlands impacts altogether. If it is less expensive fill a wetland for a new road, they are not likely to consider building a bridge over or paving a road around it. At a \$10.00 sq. ft. they will clearly have a financial incentive to avoid impacting the wetlands.

When considering the possible impacts to our town from the expected increased rain events of longer duration, and the higher tides expected due to Climate Changes, Kittery wetlands will become one of our most valuable assets in controlling the flood waters and the accompanying erosion. We need all our wetlands to be healthy and functioning properly to hold and release storm waters slowly to control flooding. Continuing to fill wetlands for road crossings and structures reduces their ability to function properly. It is important to understand that to reconstruct a wetland that has been filled or to repair an impacted wetland requires a great deal of money and constant maintenance for years and will cost millions of dollars per wetland. Several years ago, the Conservation Commission was invited by the Portsmouth Shipyard to be part of the information loop on the progress of a wetland reconstruction on their property. The wetland had been filled-in years before; it was dug out; hydric soils and wetland vegetation were replaced. We monitored this new wetland for a few years but when the project hit one million dollars all communications stopped. We need to protect the wetlands we have today if they are to protect Kittery from Climate Change impacts.

Therefore, the Conservation Commission respectfully requests that the Town Council add an item to the March 28, 2022, meeting agenda to consider raising the Wetland Impact Fee to \$10.00 sq. ft.



TOWN OF KITTERY, MAINE

OFFICE OF THE TOWN CLERK
200 Rogers Road, Kittery, ME 03904
(207) 475-1313 Fax: (207) 439-6806

03/28/2022

Dear Town Council,

The following are Election Staff appointments for your approval for the 2022-2024 ensuing elections.

Warden – Joyce Tobey

Deputy Warden – Sandi Lutts

Karen Estee – Registrar

Kim Tackett – Deputy Registrar

Jennifer Wheeler – Deputy Registrar

Laurah Yow – Deputy Registrar

Laura Adams – Election Staff

Emma Cancelada – Election Staff

Nancy Long-Broughton – Election Staff

Alexander MacPhail – Election Staff

Carmelo Cruz-Diaz – Election Staff

Paula Cruz – Election Staff

Bonnie Pierce – Election Staff

Laura Calhoun – Election Staff

Bob Guay – Election Staff

Patty Odams – Election Staff

Christina White – Election Staff

MaryJane Rowen – Election Staff

Michael Cocco – Election Staff

Jonathan McPhee – Election Staff

Respectfully submitted by:

Karen Estee – Town Clerk and Registrar of Voters

4. Indicate the type of license applying for: (choose only one)

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Restaurant
(Class I, II, III, IV) | <input type="checkbox"/> Class A Restaurant/Lounge
(Class XI) | <input type="checkbox"/> Class A Lounge
(Class X) |
| <input type="checkbox"/> Hotel
(Class I, II, III, IV) | <input type="checkbox"/> Hotel – Food Optional
(Class I-A) | <input type="checkbox"/> Bed & Breakfast
(Class V) |
| <input type="checkbox"/> Golf Course (included optional licenses, please check if apply)
(Class I, II, III, IV) | <input type="checkbox"/> Auxiliary | <input type="checkbox"/> Mobile Cart |
| <input type="checkbox"/> Tavern
(Class IV) | <input type="checkbox"/> Other: _____ | |
| <input type="checkbox"/> Qualified Caterer | <input type="checkbox"/> Self-Sponsored Events (Qualified Caterers Only) | |

Refer to Section V for the License Fee Schedule on page 9

5. Business records are located at the following address:

439 US ROUTE 1 Kittery, ME 03904

6. Is the licensee/applicant(s) citizens of the United States? Yes No
7. Is the licensee/applicant(s) a resident of the State of Maine? Yes No

NOTE: Applicants that are not citizens of the United States are required to file for the license as a business entity.

8. Is licensee/applicant(s) a business entity like a corporation or limited liability company?

Yes No If Yes, complete Section VII at the end of this application

9. For a licensee/applicant who is a business entity as noted in Section I, does any officer, director, member, manager, shareholder or partner have in any way an interest, directly or indirectly, in their capacity in any other business entity which is a holder of a wholesaler license granted by the State of Maine?

Yes No

Not applicable – licensee/applicant(s) is a sole proprietor

10. Is the licensee or applicant for a license receiving, directly or indirectly, any money, credit, thing of value, endorsement of commercial paper, guarantee of credit or financial assistance of any sort from any person or entity within or without the State, if the person or entity is engaged, directly or indirectly, in the manufacture, distribution, wholesale sale, storage or transportation of liquor.

Yes No

If yes, please provide details: _____

11. Do you own or have any interest in any another Maine Liquor License? Yes No

If yes, please list license number, business name, and complete physical location address: (attach additional pages as needed using the same format)

Name of Business	License Number	Complete Physical Address

12. List name, date of birth, place of birth for all applicants including any manager(s) employed by the licensee/applicant. Provide maiden name, if married. (attach additional pages as needed using the same format)

Full Name	DOB	Place of Birth
David D'Auteuil	02/06/1971	Lewiston, Maine

Residence address on all the above for previous 5 years	
Name	Address:
David D'Auteuil	16 Fernald Road Kittery, Maine 03904
Name	Address:
David D'Auteuil	8 Blueberry Lane Kittery, Maine 03904
Name	Address:
Name	Address:

13. Will any law enforcement officer directly benefit financially from this license, if issued?

Yes No

If Yes, provide name of law enforcement officer and department where employed:

14. Has the licensee/applicant(s) ever been convicted of any violation of the liquor laws in Maine or any State of the United States? Yes No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

15. Has the licensee/applicant(s) ever been convicted of any violation of any law, other than minor traffic violations, in Maine or any State of the United States? Yes No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

16. Has the licensee/applicant(s) formerly held a Maine liquor license? Yes No

17. Does the licensee/applicant(s) own the premises? Yes No

If No, please provide the name and address of the owner:

Harrison E Lemont Corp 439 US Route 1 Ste 5 Kittery, Maine 03904

18. If you are applying for a liquor license for a Hotel or Bed & Breakfast, please provide the number of guest rooms available: _____

19. Please describe in detail the area(s) within the premises to be licensed. This description is in addition to the diagram in Section VI. (Use additional pages as needed)

Our Bar, Dining Room and Outside Seating

20. What is the distance from the premises to the **nearest** school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel?

Name: Church at Spruce Creek


Distance: 1.3 Miles

Section II: Signature of Applicant(s)

By signing this application, the licensee/applicant understands that false statements made on this application are punishable by law. Knowingly supplying false information on this application is a Class D Offense under Maine's Criminal Code, punishable by confinement of up to one year, or by monetary fine of up to \$2,000 or by both.

Please sign and date in blue ink.

Dated: 3/21/2022


Signature of Duly Authorized Person

Signature of Duly Authorized Person

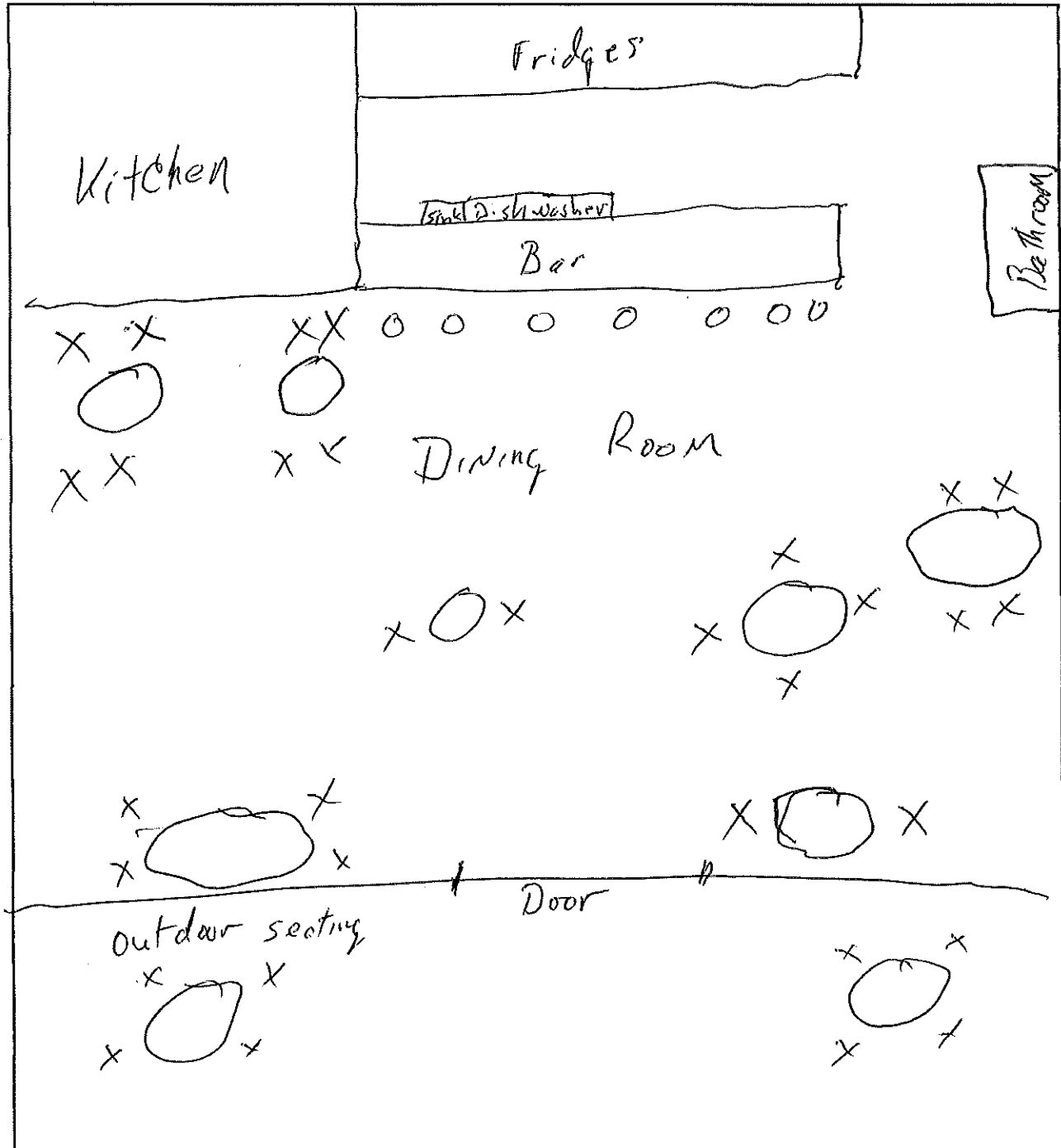
David D'Antoni
Printed Name Duly Authorized Person

Printed Name of Duly Authorized Person

Section VI Premises Floor Plan

In an effort to clearly define your license premise and the areas that consumption and storage of liquor authorized by your license type is allowed, the Bureau requires all applications to include a diagram of the premise to be licensed.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the following areas: entrances, office area, coolers, storage areas, display cases, shelves, restroom, point of sale area, area for on-premise consumption, dining rooms, event/function rooms, lounges, outside area/decks or any other areas on the premise that you are requesting approval. Attached an additional page as needed to fully describe the premise.



Section VII: Required Additional Information for a Licensee/Applicant for an On-Premises Liquor License Who are Legal Business Entities

Questions 1 to 4 of this part of the application must match information in Section I of the application above and match the information on file with the Maine Secretary of State's office. If you have questions regarding your legal entity name or DBA, please call the Secretary of State's office at (207) 624-7752.

All Questions Must Be Answered Completely. Please print legibly.

1. Exact legal name: York Harbor Brewery Corp
2. Doing Business As, if any: Maine Beer Cafe
3. Date of filing with Secretary of State: 10/2012 State in which you are formed: Maine
4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine:

5. List the name and addresses for previous 5 years, birth dates, titles of officers, directors, managers, members or partners and the percentage ownership any person listed: (attached additional pages as needed)

Name	Address (5 Years)	Date of Birth	Title	Percentage of Ownership
David Marten	16 Pernald Rd Kittery, ME 47 US RT / Bypass Kittery, ME	2/6/71	VP	100
	8 Blueberry Lane Kittery,			

(Ownership in non-publicly traded companies must add up to 100%.)

AGREEMENT BETWEEN
TOWN OF KITTERY

And

TEAMSTERS LOCAL UNION NO. 340

affiliated with the International Brotherhood of Teamsters
TECHNICAL EMPLOYEES

EFFECTIVE: July 1, 2021
EXPIRATION: June 30, 2024

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This Agreement is entered into between the TOWN OF KITTERY, MAINE, hereinafter referred to as the "TOWN" or "EMPLOYER," and TEAMSTERS LOCAL #340, affiliated with the International Brotherhood of Teamsters, hereinafter referred to as the "UNION."

ARTICLE 1 - PREAMBLE

Pursuant to the provisions of the Municipal Public Employees Labor Relations Act (Title 26, Chapter 9-A, M.R.S.A. 961 through 974, as amended), the parties hereto have entered into this Agreement in order to establish mutual rights, to preserve proper employee morale, and to promote effective and efficient operations.

ARTICLE 2 - RECOGNITION

The Town recognizes the Union as the sole, exclusive bargaining agent for the purpose of negotiating salaries, wages, hours, and terms of employment for all eligible employees within the bargaining Unit, as provided in accordance with applicable state statutes: Waste Water Treatment Plant Maintenance Worker, Treatment Plant Operator Class I, Treatment Plant Operator Class II, Treatment Plant Operator Class III (Chief Operator), Laboratory Technician I and Laboratory Technician II.

ARTICLE 3 – CONTRACT ADMINISTRATION

Section 1. The Town and Union mutually acknowledge that problems can arise in the administration of a collective bargaining agreement. The Town and Union therefore agree that they shall meet periodically to confer with respect to personnel policy and practices and matters affecting working conditions. Such meetings will be held at a mutually acceptable time and date. Union representatives consist of the Business Agent and one other member, who represent all members of the Unit.

Section 2. Management will recognize the stewards and chief steward appointed by the Union. The number of stewards is one (1) per Unit. The Union shall supply the Town in writing, and shall maintain with the Town on a current basis, a complete list of all authorized stewards together with the location each is authorized to represent.

Section 3. The Employer agrees that reasonable time during working hours, without charge to leave, is to be made available to the Union's officers, stewards, and chief steward while engaged in official activities, in the interest of the efficient conduct of Town business and the economical use of Town time, and in order to draw a reasonable distinction between official and unofficial activities, those activities concerned with the internal management of the Union, membership meetings, solicitation of membership, campaigning for Union offices, and the conducting of election for Union offices will be conducted outside regular working hours.

Section 4. All officers, representatives, stewards, and employees will request permission from their supervisors when they wish to leave their assigned duties for official activities. The supervisor's permission will normally be granted. Permission will also be obtained from the supervisor of any employee being contacted. The officers and stewards will report to their supervisors when they return to their assigned duties. An employee may be excused from his/her job for a reasonable period of time, without charge to leave, to discuss an appropriate matter with an official of the Union.

ARTICLE 4 - HOURS OF WORK

Section 1. The administrative work week is the period of seven (7) consecutive calendar days used as a Unit in computing pay. It consists of the regularly scheduled work week and the regular days off. The work week will begin at 1530 hours on Friday and end at 1530 hours the following Friday.

Section 2. The basic forty (40) hour work week will consist of five (5) consecutive eight hour days, Monday through Friday.

Section 3. The Employer shall provide to the employees, reasonable time at the beginning of the lunch period and the end of the work day for clean-up of work area, performing personal hygiene, and putting away work tools and other Town equipment in their possession. No employee will be required to remain beyond the end of the work day for this purpose.

Section 4. The Town will provide for two (2) fifteen (15) minute breaks, one (1) in the morning and one (1) in the afternoon. Employees will also have a thirty (30) minute lunch that is uncompensated. Breaks may be combined or used to alter the start or end time of the work day, upon mutual agreement of the Department Head and the employee.

Section 5. Paid status consists of regular work, sick leave, vacation time, compensatory time, and when suspended with pay.

Section 6. Union members' scheduled working hours will not be changed to avoid the payment of overtime.

Section 7. Upon completion of a snow, ice or emergency event with a duration in excess of twenty-four (24) hours, all non-essential employees may be released, upon completion of their work duties, for the remainder of the regular work day schedule without penalty or use of paid-time off. Employees can be recalled if necessary for public safety. If recall occurs during the normal work schedule day, call back time (Article 5 Section 7) does not apply.

ARTICLE 5 - OVERTIME COMPENSATION

Section 1. Overtime work will be restricted to only those skill requirements essential to meet operational needs. The Employer agrees to an equitable distribution of overtime, on a rotational basis, within specific operating Units where overtime is required.

Section 2. The Town agrees to make every effort to give employees as much notice as possible when overtime is required.

Section 3. An employee has the right to refuse an overtime assignment, provided he/she has a legitimate reason and a qualified employee is available to take his/her place. If the Employer is unable to find a replacement, the employee will work the overtime. However, an employee would not be required to work overtime if the additional work would impair health or efficiency, or cause extreme hardship.

Section 4. The term "overtime compensation" is defined as time and one-half an employee's regular hourly base rate of pay and is paid for all approved time necessarily spent in an approved paid status in excess of forty (40) hours in any work week.

Section 5. Employees who are required to work more than forty (40) hours within a payroll week have the option of taking compensatory time in lieu of receiving overtime pay. Compensatory time must be taken at a time that is mutually agreeable to the Employer and the employee. Accrued compensatory time may not exceed a maximum of sixty (60) hours for each employee.

Section 6. Overtime pay is compensated at the rate of one and one-half (1 1/2) times the employee's regular straight time hourly rate of pay. For the purpose of computing overtime pay, any "paid status" counts as hours worked. Paid Status consists of regular work, sick leave, vacation leave, compensatory time

use, and when suspended with pay.

Section 7. An employee called back to work will receive a minimum of four (4) hours pay at one and one-half (1 1/2) times the normal rate of pay for the work for which he/she is called back, unless the employee is called back to work one hour or less before their normal start time, in which case they will receive two (2) hours pay at one and one-half times the normal rate of pay for the work which he/she is called back. In the event that the employee called back works in excess of four (4) hours, said hours will be paid at one and one-half (1 1/2) times the normal rate. This section applies to an ordered-in situation and not to scheduled overtime.

Section 8. An employee must indicate to the Employer during the work week in which the overtime is earned whether or not he/she wishes to receive overtime pay for said overtime or wishes to take compensatory time in lieu of receiving overtime pay.

Section 9. Time for clean-up continues to be allowed prior to the end of an overtime shift in the same manner as provided in Article 4, Section 3.

Section 10. The Employer agrees to make available pertinent records of overtime to the Union, upon its request, for the resolution of employees' complaints.

ARTICLE 6 - CLOTHING ALLOWANCE

Section 1. The Town shall provide the following: Eleven (11) changes of clothing (shirts and pants), two (2) jackets, one (1) safety jacket and one (1) vest and one (1) pair of coveralls.

Section 2. A yearly allowance in an amount of two hundred and fifty (\$250) dollars per contract year will be paid on the first payroll in January each year, in a separate check, from the Employees weekly payroll check, for the purchase of safety-toed, chemical resistant footwear that meet ANSI standards. Upon ratification of the 2021-2024 Agreement, the clothing allowance for Year 1, less any amounts used to date will be paid to the employees.

If said footwear becomes damaged or contaminated due to contact with chemicals or substances associated with working for the technical unit, the boots will be replaced, at the Town's expense within one (1) business day or as soon as is practicable. The Superintendent of Sewer will determine if the boots meet the aforementioned requirement vs. wear and tear or intentional damage.

ARTICLE 7 - SAFE WORK PRACTICES AND EQUIPMENT

Section 1. The Town and the Union recognize the Employer's responsibility to provide a safe work place.

Section 2. The Town and the Union recognize the responsibility of each employee to work in a safe manner and to follow safety rules and requirements when operating the Employer's equipment and when on the Employer's premises.

Section 3. The Town and the Union will cooperate in efforts to provide and maintain safe working conditions and to ensure that employees work in a safe manner.

Section 4. The Employer may not require employees to take out any vehicle on any street or highway, or use and operate any equipment that is not in safe operating condition.

Section 5. The Employer may not require any employee to work in a hazardous area, or with or around any hazardous materials, unless proper safety equipment and clothing are provided.

ARTICLE 8 - STRIKES AND LOCKOUTS

Section 1. All disputes between the parties to this Agreement must be settled in accordance with the grievance procedure set forth in this Agreement.

Section 2. There will be no strikes, slowdowns, cessation of work, and/or interference with the operations or regular work of the Employer by employees during the term of this Agreement, and there will be no lockouts by the Employer during the term of this Agreement.

Section 3. Employees participating in any of the acts indicated above may be subject to disciplinary action.

ARTICLE 9 - GRIEVANCE PROCEDURE

Section 1. A grievance is hereby defined as any controversy, dispute, complaint, or misunderstanding that may arise involving the interpretation or application of a specific article or section of this Agreement. Any grievance arising between the Town, the Union, or an employee represented by the Union must be settled in the following manner:

Step 1. The employee and/or his/her Union representative will discuss the grievance with his/her Supervisor within ten (10) working days from the occurrence of the event in an attempt to resolve the grievance.

Step 2. If the grievance is not successfully resolved at Step 1, the employee and/or his/her Union representative will take up the grievance with the employee's Department Head within five (5) working days after the discussion with the employee's immediate supervisor. Prior to the initiation of Step 2, all grievances will be reduced to writing by the employee, will specify the article and section of this Agreement at issue, and be signed by the employee. Any grievance not meeting the above requirements at Step 2 in the grievance procedure will be waived and/or dismissed. The Department Head shall render a decision on the grievance in writing within five (5) working days after his/her discussion with the employee and/or his/her representative.

Step 3. In the event that the grievance is not satisfactorily resolved at Step 2, the employee, the Union, or its representative may then take the written grievance up with the Town Manager, as long as this is done within five (5) working days from receipt of the Department Head's decision. At this step in the grievance the Union must identify the specific article of the contract which the Town has allegedly violated. The Town Manager shall, within ten (10) working days after his/her discussion with the employee and/or his/her representative, render a written decision on the grievance.

Step 4. If the Union is not satisfied with the decision of the Town Manager, then the Union may file a request with the Maine Board of Arbitration and Conciliation for arbitration of the grievance within ten (10) working days from its receipt of the Town Manager's written decision. At the same time that a request for arbitration is filed, the Union shall also provide the Town Manager with a copy of the request. The decision of the arbitrator is final and binding upon the parties, and the arbitrator will be requested to issue his/her written decision within thirty (30) days of the conclusion of testimony and final arguments.

Section 2. Expenses for the arbitrator's services and for the proceedings shall be borne equally by the Town and the Union. Each party is responsible, however, for compensating its own representatives and

witnesses. If either party desires a verbatim record of the proceedings, it may cause a record to be made, providing it pays for the record and makes a copy available without charge to the other party.

Section 3. The arbitrator has no authority to add to, subtract from, change, or modify any provision of this Agreement, but is limited solely to the interpretation and application of the specific provisions contained herein.

Section 4.

- A. An employee has the right to represent himself/herself at all steps in the grievance procedure short of arbitration.
- B. Union has the right to be present at any grievance step meeting and will receive copies of written determinations, if any, at all steps. No resolution of a grievance may be inconsistent with the provisions of this Agreement.
- C. Any grievance involving two or more employees may be initiated and processed jointly, as long as said written grievance indicates and is signed by the employees involved.
- D. The Town Manager and Union may mutually agree, when circumstances warrant, to bypass steps of the grievance procedure.
- E. The Town Manager and Union may mutually agree to extend any of the time limits prescribed herein.
- F. The employee and/or his/her representative have the right to inspect and to obtain copies of any books, records, or documents directly related to the grievance that are in the Town's possession, except that access to said books, records, and documents is limited by the requirement of confidentiality statutes.
- G. A grievant and any employee witness will not suffer any loss of pay as a result of participation in the processing of a grievance during such employees' regular working hours.
- H. All documents, communications, and records dealing with the processing of a grievance must be filed separately from the personnel files of the participants until such time as the grievance is resolved by the parties.

ARTICLE 10 - DISCIPLINE

Section 1. Except for probationary employees, no employee may be discharged, suspended, demoted or otherwise disciplined by the Town except for just cause.

Section 2. The Town agrees to abide by the principles of progressive discipline. However, there may be instances which may warrant taking other disciplinary actions which may not follow the progressive discipline steps.

Section 3. Any discharged employee must be paid in full for all wages owed him/her by the Town, including earned vacation and compensatory time, if any, in the week following the date of discharge.

Section 4. All warning notices given to an employee must be placed in the employee's personnel folder and remain in the employee's personnel folder for a period of one (1) year.

ARTICLE 11 - SENIORITY

Section 1. A seniority list must be established naming all the employees covered by this Agreement, with the employee with the greatest seniority (years of continuous service) listed first. Seniority is based upon the employee's last date of hire. Seniority, for the purpose of this Agreement, means length of continuous service only, and is a factor in all matters affecting layoff, recall and vacation preference, provided all other qualifications are equal.

Section 2. In the event it becomes necessary for the Town to lay off employees for any reason, employees in the impacted position category must be laid off in the inverse order of their seniority in the position. There will be two position categories based on licensing requirements, which are: Category 1: Treatment Plant Maintenance Worker, Treatment Plant Operator Class I & II, and Laboratory Technician. Category 2: Chief Operator. All affected employees must receive a two (2) calendar week advance notice of layoff and the Town must meet with the affected employees prior to the actual occurrence of layoff.

Section 3. For a period of eighteen (18) months after layoff, employees must be recalled from layoff according to seniority by certified mail, to the employee's last known address. It is the responsibility of laid off employees to furnish any change of address in writing to the Employer for recall notices.

Section 4. The seniority list must be made available to the Union within thirty (30) days after the signing of this Agreement and posted on the Union bulletin boards in employees' work area. Corrections to the seniority list will be made within thirty (30) days of such posting. After such thirty (30) day period, the seniority list is deemed correct. An updated list must be made each year on January 2 and a copy of the list shall be sent to the Union.

Section 5. An employee's seniority terminates under the following conditions:

- 1) If the employee quits, retires or is justifiably discharged.
- 2) If, following a layoff, the employee fails or refuses to notify the Town of his/her intention to return to work within seven (7) calendar days after a written notice recall is sent by certified mail to his/her last address on file with the Town; unless, however, the employee has previously notified the Town Manager or his/her designated representative in writing that he/she will be on vacation and will not be able to be reached at a specific location, in which case he/she is not subject to recall until he/she has notified the Town Manager or his/her designated representative of an address at which he/she can be reached; or, having notified the Town of his/her intention to return to work, fails to do so on the day on which he/she is scheduled to report.
- 3) If the employee accepts full-time employment elsewhere while on leave of absence, unless he/she has prior written approval for such employment from the Town Manager, or does not return to work immediately following the expiration of a leave of absence.
- 4) When the employee has been laid off for a continuous period of time in excess of eighteen (18) consecutive months.

ARTICLE 12 - WAGES

Section 1. The Town agrees to pay new members of the Technical Unit the base wages listed below and grandfathered employees the Grandfathered base wages list below.

July 1, 2021

Positions and (Minimum License Requirements)	Start	12 Months	24 Months	36 Months	48+ Months
Treatment Operator (Grade I/Grade II)	\$22.77 (Grade I)	\$23.22 (Grade I)	\$23.69 (Grade II)	\$24.16 (Grade II)	\$24.64 (Grade II)
Lab Technician (Grade III)	\$24.80	\$25.30	\$25.80	\$26.32	\$26.84
Chief Operator (Grade IV)	\$34.00	\$34.68	\$35.37	\$36.08	\$36.80
Grandfathered Rate: Matthew Connolly	\$26.82				

July 1, 2022 (3% increase)

Positions and (Minimum License Requirements)	Start	12 Months	24 Months	36 Months	48+ Months
Treatment Operator (Grade I/Grade II required)	\$23.45 (Grade I)	\$23.92 (Grade I)	\$24.40 (Grade II)	\$24.88 (Grade II)	\$25.38 (Grade II)
Lab Technician (Grade III required)	\$25.54	\$26.06	\$26.57	\$27.11	\$27.65
Chief Operator (Grade IV required)	\$35.02	\$35.72	\$36.43	\$37.16	\$37.90
Grandfathered Rate: Matthew Connolly	\$27.62				

July 1, 2023 (3% increase)

Positions and (Minimum License Requirements)	Start	12 Months	24 Months	36 Months	48+ Months
Treatment Operator (Grade I/Grade II)	\$24.15 (Grade I)	\$24.64 (Grade I)	\$25.13 (Grade II)	\$25.63 (Grade II)	\$26.14 (Grade II)
Lab Technician (Grade III)	\$26.31	\$26.84	\$27.37	\$27.92	\$28.48
Chief Operator (Grade IV)	\$36.07	\$36.79	\$37.52	\$38.27	\$39.04
Grandfathered Rate: Matthew Connolly	\$28.45				

An employee who holds a license that is higher than the minimum requirement for their position receives an additional twenty-five (25¢) cents per hour so long as the license is active.

Section 2. The wages listed in Sections 1 are base amounts that do not include additional payments for longevity.

Section 3. Standby: The following standby compensation will apply to Technical Employees:

- A. One hour at time and one-half for each day of the week.
- B. Two hours at time and one-half for coming in on Saturday.
- C. Two hours at time and one-half for coming in on Sunday.
- 1. Seven hours at time and one-half for holidays.

Section 4. In the event any new rates or job titles are added to any Unit, the Town will negotiate wages with the Union.

Section 5. Longevity is paid as follows:

- A. Two (2%) percent after four (4) years of service.
- B. Four (4%) percent after eight (8) years of service.
- C. Six (6%) percent after twelve (12) years of service.
- D. Eight (8%) percent after sixteen (16) years of service.
- E. Ten (10%) percent after twenty (20) years of service.
- F. Twelve (12%) percent after twenty-four (24) years of service.
- 1. Fourteen (14%) percent after twenty-eight (28) years of service.

Section 6. After completing the required years of continuous service, an employee's longevity payment is computed annually on his/her anniversary date, and computation is based upon his/her base annual salary. If an employee receives a salary increase in base salary, longevity is computed using his/her new annual base salary.

Section 7. Upon successfully completing the requisite probationary period, the employee receives the rate established in the contract.

Section 8. During the effective period of this Agreement, the annual salaries of employees are paid weekly on Thursday through mandatory direct deposit to an approved financial institution.

ARTICLE 13 – PROBATIONARY PERIOD

Section 1. The purpose of the probationary period is to provide an opportunity for the Town to determine whether or not an employee has the abilities and attributes that will qualify him for regular employee status, provided, however, that employees hired prior to the effective date of this Agreement are subject to the probationary period in effect at the time of their hiring. During this probationary period, an employee may be laid off or terminated based upon the sole discretion of the Town and without regard to his/her length of service.

Section 2. The probationary period is nine (9) months from the date of hire for all other positions in existence at the time of the signing of this Agreement and covered by this Agreement.

Section 3. An employee may be retained beyond the end of his/her probationary period only if his/her Department Head and the Town Manager affirm in their written evaluation of the employee that his/her services have been found to be satisfactory.

Section 4. All employees retained after said probationary period are placed on the seniority list as regular employees.

Section 5. Employees on probation will be provided all of the benefits during probation attributed to a permanent full time regular employee, and the employee's probationary period will be included in calculating the retirement pension years of service.

Section 6. An employee hired or promoted without the requisite license(s) required for the position will have 6 months from date of hire or promotion to achieve their required licensure. The Town Manager may grant an extension, if the employee is able to demonstrate the delay in achieving licensure is due to no fault of their own.

ARTICLE 14 – RETIREMENT

Section 1. Employees are entitled to participate in the Maine Public Employees Retirement System (MainePERS) in accordance with the requirements of the Maine Public Employees Retirement System. Participation in the Maine Public Employees Retirement System is voluntary on the part of each employee covered by this Agreement. Employees currently participating in MainePERS may, on a voluntary basis, participate in the ICMA-RC in accordance with the Kittery Administrative Code, Chapter 2.20.1601.1&2. There is no employer match for voluntary participation in the ICMA Retirement Plan.

Section 2. Effective July 1, 2001, the Town agreed to expand the coverage of the ICMA- RC 457 plan currently in effect. This plan is available for current employees who are not enrolled in the Maine Public Employees Retirement System and any newly hired employee who wishes to enroll in the ICMA plan instead of the MainePERS plan. The Town will match the employee's contribution into the 457 plan, up to a maximum Town contribution of six percent (6%). The Town will make a contribution to either MainePERS or the ICMA plan, but not both.

ARTICLE 15 - UNION SECURITY

Membership in the Union is not compulsory. Employees have the right to join, not to join, maintain or drop their membership in the Local Union as they see fit.

Neither party shall exert any pressure on, or discriminate against, any employee in regard to such matters. In this regard, thirty (30) days after the date of hire or effective date of this Agreement, whichever is later, employees will elect to join or not join the Union.

All employees who are members of the Union as of the date of this Agreement, and all employees who hereafter become members of the Union shall maintain their membership in good standing in the Union for the duration of this Agreement.

If an employee chooses not to join the Union, the employee may elect to pay 80% of their current dues for representation purposes. If an employee does not elect either membership or the 80% fee for representation, and desires representation, the employee shall pay the Union directly for the costs of representation.

ARTICLE 16 - DEDUCTION OF UNION DUES

Section 1. The Town will deduct regular monthly dues and fees (on a weekly basis) upon receipt of signed authorization from members (a copy of which is to be retained by the Town) and a certified statement from the Secretary-Treasurer of the Union as to the amount for dues and fees. The Town will forward all such dues and fees collected to the Secretary-Treasurer of the Union by the 10th of the following month in which deductions were made.

Section 2. The Union shall indemnify and save the Town harmless from any liability that may arise out of the Town's reliance upon any payroll deduction authorization cards presented to the Town by the Union. Such indemnification applies to damages that are sustained as a result of procedural errors or due to reason of mistake of fact that was in the control of or the responsibility of the Union.

ARTICLE 17 - UNION ACTIVITIES

Any employee who is a member of the Union and who acts in any official capacity whatsoever on behalf of the Union will not be discriminated against for his/her acts as a member of the Union so long as such acts do not interfere with the conduct of the Employer's business and are in conformance with the requirements of this Agreement, nor will there be any discrimination against any employee, by the Town or the Union, due to his/her membership in the Union and activities on behalf of the Union, or as a result of his/her lack of membership in the Union or lack of participation in the Union's activities.

ARTICLE 18 - IDENTIFICATION FEES

Should the Employer find it necessary to require employees to carry personal identification, such requirement shall be complied with by the employees. The cost of such personal identification is borne by the Employer.

ARTICLE 19 - SEPARABILITY AND SAVINGS CLAUSE

If any article or section of this Agreement, or any supplement thereto, should be held invalid by operation of law or by the final decision of any tribunal of competent jurisdiction, or, if compliance with or enforcement of any article or section should be restrained by such tribunal, the remainder of this Agreement and its supplements is not affected thereby, and the parties shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement for said article or section.

ARTICLE 20 – NON- DISCRIMINATION

It is the policy of the Town not to discriminate against any applicant or employee because of race, religion, color, age, sex, sexual orientation, national origin, ancestry, genetic information or physical or mental disability in the selection, placement, compensation, training and advancement of employees. The Town Manager is the designated person responsible for the enforcement of this non-discrimination policy.

ARTICLE 21 - HOLIDAYS

Section 1. The following holidays are paid holidays for all employees covered by this Agreement:

New Year's Day
Martin Luther King Day
President's Day
Patriot's Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Columbus Day
Veteran's Day
Thanksgiving Day
Christmas Eve (Half Day)
Christmas Day
New Year's Eve (Half Day)

Section 2. If an observed holiday occurs during the work week in which an employee is actually on scheduled vacation, the employee will not be charged with a vacation day for the observed holiday; an extra day may be added for the vacation.

Section 3. Any holiday falling on a Saturday will be observed on the preceding Friday, and any holiday falling on Sunday will be observed on the following Monday.

ARTICLE 22 - HOLIDAY PAY

Section 1. In the event an employee who is entitled to overtime pay is ordered in to work works any recognized legal holiday, as listed in this Agreement, he/she receives his/her regular holiday pay based upon the normal work day of eight (8) hours at his/her normal straight- time rate of pay, plus overtime for all hours worked, at the rate of one and one-half (1 1/2) times his/her normal straight-time rate of pay, but the receipt of said overtime pay is contingent upon meeting the following conditions:

- 1) The employee is on authorized paid status the days immediately preceding and following said holiday.
- 2) The employee has accumulated forty (40) hours during the pay period in which the holiday occurs.
- 3) An employee not working the recognized legal holiday receives his/her normal, straight-time rate of pay for said day based upon the normal work day of eight (8) hours, provided the employee is in an authorized paid status the days immediately preceding and following said holiday.

Section 2. An employee may elect to take another day off with pay, in lieu of receiving additional holiday pay, at a mutually agreed upon time, provided that the Town may impose reasonable limitations upon any such election arising out of manpower and workload requirements of the Town and the availability of qualified, replacement personnel.

ARTICLE 23 – PERSONAL DAYS

Employees are entitled to 3 personal days each calendar year. With the approval of the Department Head, employees are eligible to take their personal days. One personal day will be used for the day after Thanksgiving. The two other personal days must be taken during the year earned. Personal days may be taken in hourly increments.

ARTICLE 24 - INSURANCE

Section 1. The Town shall contribute to the Allegiant Care ("Allegiant") or its actuarial equivalent (equivalency is subject to mutual agreement) eighty-five (85%) percent of the total premium for family, two person or single coverage per month, payable at the office of Allegiant monthly on the fifth day of the month following the month in which due. The employees shall contribute the remaining fifteen (15%) percent each month through weekly payroll deductions. In years 2 and 3 of this Agreement, any premium increases from Allegiant of more than two (2%) percent shall be shared equally between the Town and the employee. (Example: 3% increase to the policy would result in 2% being affected by the 85/15, 1% is split equally. The above listed Town contribution represents the Town's maximum percentage payment and the employee's maximum percentage payment is twenty (20%) percent. The Town is responsible for remitting the employer and employee shares of the premium on a monthly basis to the Trust. In addition, Allegiant shall endeavor to offer multiple plan designs for the employees' option within the term of this Agreement.

The liability of the Town may not exceed the above amounts together with any and all delinquency and interest charges.

The Town agrees that its Agreement hereunder constitutes an obligation for the sums herein provided directly to Allegiant, and further that the Town will be bound by the terms and provisions of the Trust Indenture of Allegiant and any and all amendments thereto, as well as applicable rules and regulations from time to time promulgated by the Trustees thereto.

The Town is not responsible for the administration of the Plan and is held harmless for any claims made against Allegiant.

Section 2. The Town shall provide Workers' Compensation coverage as required by State Statute. The Town agrees to pay its share, plus the employee's share, of Maine Public Retirement System (MainePERS) for as long as the employee remains out of work due to the work-related injury/illness. If an employee returns to work on a partial basis, the employer's share of MainePERS is prorated. If the injury or illness qualifies as FMLA, the employee will be notified they are being placed on FMLA. Employees may use their accrued earned time to offset the difference between their workers' compensation benefit and their weekly wage in order to make themselves whole. This includes any waiting period that may exist under the Maine Workers' Compensation Statute.

Section 3. Disability/Life/Accidental Death and Dismemberment Insurance: Disability, life, and accidental death and dismemberment insurance shall be provided by the Town for all full-time employees. The Town shall assume the cost for all full-time employees. Primarily, the plan will provide for fifty-two (52) weeks of benefits commencing on the thirty-first (31st) day following an accident or sickness. The life insurance benefit equals the employee's annual salary rounded to the next highest \$1,000.00.

Section 4. The Town will pay the monthly health insurance premium for the single person level of coverage for any unit member who retires from the Town of Kittery having worked for the Town of Kittery for a minimum of fifteen (15) years and having met the age and/or years of service requirements contained in the MainePERS policy currently in effect for that particular employee. Should the retiree choose to elevate the health insurance coverage level to a two-person coverage plan or family coverage plan, the retiree will be responsible for any additional premiums owed to the insurance provider. The additional payments will be

made to the Town on a monthly basis. The Town will forward all required payments to the insurance carrier on behalf of the retiree. Upon reaching the age of eligibility for Medicare, the employee's health insurance plan will be converted to a Medicare companion plan.

In the event that it becomes necessary to change insurance providers, the Town will ensure that there is no lapse of coverage of the retiree, and that the new coverage level will be comparable to the existing level of coverage. Upon reaching the age of eligibility for Medicare, the employee's health insurance plan will be converted to the Medex 2 supplement plan through Allegiant, or a comparable plan. The Town shall contribute seventy (70%) percent of the total premium for the Medex 2 supplement plan through Allegiant, or a comparable plan. Any additional premiums required for spousal conversion to a companion plan are the responsibility of the retiree.

The fifteen (15) year minimum service requirement applies only to any employee hired after May 1, 2004.

Section 5. The Town agrees to provide the employees with the opportunity to participate in a Flexible Spending Account (FSA) under Section 125 of the IRS rules, which will include the employee paid portion of the qualified insurance programs. The Town will contract with a professional firm to provide administration for the FSA. Employees may choose to enroll in the debit card program; however, employees will be responsible for the debit card's annual fee.

ARTICLE 25 - SOCIAL SECURITY

The Town agrees to pay its required Social Security premiums in accordance with provisions of the agreement between State Agency and Political Subdivision of the State of Maine for the purpose of extending Social Security benefits to the employee of such Political Subdivision and its subsequent amendments which Agreement was entered into between the Maine State Retirement System and the Town in 1952.

ARTICLE 26 – TRAVEL

The Town agrees that employees furnishing their own vehicles for transportation directly related to their work will be paid mileage at the current mileage reimbursement rate established by the IRS. To be eligible for such payments, a municipal vehicle must not be available to the employee, and therefore an employee must use his/her personal vehicle while on the job.

ARTICLE 27 - BULLETIN BOARDS

Section 1. The Town shall make available bulletin board space for the use of the Union at each work location where bulletin boards are presently provided for the purpose of posting bulletins, notices, and other materials. The posting of any Union materials is restricted to such bulletin board space only, except that, in each work location where bulletin board space is not provided for the Union, the Town will designate an appropriate alternative space where such materials may be posted.

Section 2. In no instance may the Union post any material that is profane, obscene, or defamatory to the Town, its representatives, or any individual, or which constitutes campaign material between competing employee organizations, if it is determined that the posting of such material would violate any obligation of the Town for neutrality. The Union is solely responsible for the accuracy and ethical standards of any material posted pursuant to this article.

Section 3. The Town reserves the right, upon consultation with the Union, to remove any materials that do not relate to Union business or which are in violation of this article.

Section 4. All posted Union materials shall be signed by an authorized representative of the Union.

ARTICLE 28 - SEPARATION OF EMPLOYMENT

Section 1. Upon separation of employment and prior retirement, the Employer shall pay the employee full face value of all accrued vacation, holiday, and compensatory time on the payday in the week following such separation. Payment for accrued and unused sick leave will be in accordance with Article 30. Payment for accrued personal days will occur only if the employee is not separated while in a probationary period.

ARTICLE 29 - RESERVE SERVICE LEAVE

Section 1. Leaves of absence will be granted to employees who are active in the National Guard or a branch of the Armed Forces Reserve for the purpose of fulfilling their training obligations and/or responding to any civil disorder. Written notification for leaves of absence for such purposes will be made to the Town Manager as soon as possible after the employee's receipt of orders.

Section 2. If an employee is granted a leave of absence for the purposes herein set forth and if his/her daily rate of compensation for such government service is less than the gross daily rate that he/she would have earned had he/she been providing service to the Employer, then the Town shall pay the employee the difference between the pay rates.

Section 3. The employee utilizing reserve leave shall furnish the Town with an official statement of reserve service pay received and reserve service time served.

Section 4. For the purpose of this section, the phrase "daily rate of compensation" is defined as the employee's normal, daily straight-time rate of pay, and does not include overtime or call-in time.

ARTICLE 30 - MILITARY LEAVE

The Town agrees to provide all benefits as required by the Selective Service and Training Act and any other applicable laws then in effect.

ARTICLE 31 - LEAVE WITHOUT PAY

Section 1. An administrative or special leave may be granted to an employee, with approval by the Town Manager, for the purpose of settling the estate of a member of the immediate family, for educational purposes when such education will foster a systematic improvement of the knowledge and/or skills required in the performance of his/her work, for illness or injury when such leave extends beyond the employee's earned sick leave days, and for other reasons that may be beneficial to the employee and the Town.

Section 2. All such leave must be without pay, not disrupt the normal operations of the employee's department, and be specific as to its duration, 12 weeks being the maximum duration. Any leave which falls under FMLA will be subject to the Town of Kittery's FMLA policy.

Section 3. The employee is expected to return to work upon the expiration of an approved leave or to arrange for an extension of the leave with the Town Manager prior to its expiration. Failure on the employee's part to return to work upon the expiration of an approved leave without having made prior arrangements for an extension of said leave is deemed a resignation from Town employment.

Section 4. An application for leave without pay must be in writing and must specifically state the reasons for such application and the length of time requested. Should the reason be for illness or injury, such

request must be substantiated with a physician's statement, and the cost of such statement will be paid by the employee.

Section 5. Upon application of an employee who has exhausted his/her paid sick leave time, a leave of absence without pay may be granted by the Town Manager for a period of disability, due to sickness or injury, the first time that a request is made for the same illness. The Town Manager may, from time to time, require that the employee submit a certificate from the attending physician certifying the need for continued leave. In the event of a failure or a refusal to supply such a certificate, the Town Manager may cancel such leave and require the employee to report for work on a specified date. Should the employee fail to report as required, his/her employment may be terminated.

Section 6. An employee is eligible to request an unpaid leave without pay upon the completion of one (1) year of continuous employment.

Section 7. Time spent on leave of absence without pay may not be credited toward vacation leave and sick leave, and an employee on said leave of absence without pay is not eligible for holiday pay. Employees on leave of absence without pay will have to pay for his/her own health insurance premiums.

ARTICLE 32 - SICK LEAVE

Section 1. Sick leave is accumulated at the rate of one (1) day per month to a maximum of one hundred fifty (150) days; said accumulation could be applied to retirement, as permitted by the Maine Public Employees Retirement System. The remaining days will be given as early retirement. At the end of the calendar year (December 31), all sick leave over one hundred fifty (150) days will be given back and the Town will pay fifty (50%) percent of the face value, at the employee's normal rate of pay for the days that were given back. There will be no sick leave buy back for employees hired after July 1, 2014.

Section 2. Employees who retire or resign from the Town (after a minimum of ten [10] years continuous service) and who have accrued vacation and sick leave time to their credit at the time of such resignation or retirement will be paid the wages equivalent to the vacation and sick leave. Sick leave payment will only be made if separation is in good standing. There will be no sick leave buy back for employees hired after July 1, 2014.

Section 3. Qualified employees are eligible for paid sick leave from and to the extent of their unused accumulated paid sick leave credits in the following situations:

- A. When it is established to the Town's satisfaction that the employee is incapacitated and cannot safely perform the employee's duties due to sickness, pregnancy, or injury.
- B. When it is established that, due to exposure to a contagious disease, the health of others would be affected by attendance at work. A physician's statement recommending absence from work shall be required.
- C. When it is established that an illness exists in the immediate family of the employee, and then for such periods as the attendance of the employee is necessary. The term immediate family is defined as including spouse, domestic partner, children, grandchildren, parents, mother-in-law or father-in-law, domiciled with the employee. In addition, immediate family also includes other relatives domiciled with the employee.

Employees will be allowed to utilize up to forty (40) hours of sick time to care for their spouse, parents or children who are not domiciled with the employee.

Section 4. If an employee is absent for more than three (3) consecutive days, or in cases of suspected abuse, the Employer may require medical proof for said sick leave, in which case the employee involved is required to provide a written statement from his/her physician certifying the necessity for said absence, and the ability of the employee to return to work and perform the required functions of the employee's duties. Should the Employer require a medical statement, the Employer shall pay the portion of the cost for the visit which is not covered by medical insurance.

Section 5. In order to qualify for sick leave payments, an employee must notify his/her Department Head, or, in the Department Head's absence, the Department Head's designee, not later than the employee's normal starting time, on the first day of the absence. In addition to the above, the employee, if absent three (3) or more consecutive days, is required to provide a physician's statement, and will notify his/her Department Head when his/her physician has cleared him/her to return to work.

Section 6. No employee may be reimbursed for sick leave outstanding if the employee is discharged by the Town. Nothing in this section shall constrain an arbitrator or the parties from crafting a settlement related to a grievance under which sick time is paid to an employee following the cessation of his/her employment.

Section 7. Whenever sick leave payments are made under this article, the amount of such payments/hours is deducted from the employee's unused, accumulated sick leave.

Section 8. In the event the employee is temporarily disabled to the extent that the employee is unable to perform all of the duties and functions normally required of the employee the Town Manager, in his/her judgement, may approve the employee returning to work on a limited basis. It is understood and agreed that the Town Manager has the sole and complete discretion and authority to determine the number of employees who may be allowed to work on a limited duty basis, if any, and the duration thereof.

Section 9. Falsification of evidence in substantiating sick leave is cause for disciplinary action.

Section 10. In the event of the death of an employee with more than ten (10) years of service, the Town shall pay to the designated beneficiary one hundred (100%) percent of the accumulated and unused sick leave. There will be no sick leave pay out for employees hired after July 1, 2014.

ARTICLE 33- BEREAVEMENT LEAVE

Section 1. An employee may be excused from work for up to five (5) successive days of work, due to a death in his/her immediate family, without loss of pay or other benefits. The term "immediate family" means spouse, domestic partner, parents, step-parents, children, step-children, brother, sister, grandmother, grandfather, mother-in-law, and father-in-law. Up to three (3) days of leave may be granted for the death of other relatives upon approval of the Town Manager.

Section 2. During this absence, an employee will be paid at his/her regular base rate of pay for the scheduled hours of work missed. Not more than eight (8) hours per day will be paid under this article. It is intended that this time be utilized for the purpose of handling necessary arrangements for and attendance at the funeral.

Section 3. An employee wishing to utilize bereavement leave shall notify the Department Head or Town Manager by e-mail or phone call, and said request will indicate the number of days requested and the reason for said request.

Section 4. In the event of an employee's death, representative employees, determined mutually by the Town Manager and the Union, may utilize leave without pay for the purpose of attending the funeral.

ARTICLE 34 – VACATION

Section 1.

- A. Town employees may not receive extra pay in lieu of utilizing vacation leave.
- B. The vacation calendar for all Town employees is from January 1st to December 31st.
- C. A maximum of 40 hours may be saved from one year to the next. Additional hours may be carried over with approval of the Town Manager.

Section 2. Entitlement to vacations under this article are determined as of the employee's anniversary date of each year.

- A. Employees will receive forty (40) hours of vacation upon completion of the probationary period, and an additional forty (40) hours of vacation upon completion of one (1) year of continuous service.
- B. Employees who have completed more than one (1) year of currently continuous service, but less than five (5) years will receive eighty (80) hours of annual vacation leave.
- C. Employees who have completed five (5) years of currently continuous service, but less than ten (10) years, receive one hundred twenty (120) hours of annual vacation leave.
- D. Employees who have completed ten years of currently continuous service but less than twenty (20) years receive one hundred sixty (160) hours of annual vacation leave.
- E. Employees who have completed twenty (20) years or more of currently continuous service receive two hundred (200) hours of annual vacation leave.

Section 3. In the event that an employee covered under this Agreement dies during the term of this agreement, his/her accrued vacation credits, if any, will be paid by the Town, in equivalent wages, to the employee.

Section 4. In the event of the dismissal of an employee for cause, or if an employee voluntarily leaves, or retires from his/her employment, said employee is entitled to vacation pay for all unused vacation earned.

Section 5.

- A. An hour of vacation pay as provided for in this article equals one (1) hour of pay at the employee's regular straight-time rate of pay at the time that the employee takes his/her vacation.
- B. The Employer shall determine the number of employees who can be assigned for vacation purposes at any one time, provided, however, that any such determination will be based upon the anticipated manpower and work load requirements of the Town.
- C. A seniority list will be posted not later than January 15th of each calendar year, and all employees shall indicate, prior to April 15th of that calendar year, the dates on/during which they desire to take their eligible vacation leave. In the event that two (2) or more employees desire the same vacation date(s) and it is determined by the Town Manager that both employees cannot be assigned for vacation purposes, the employee having the least amount of seniority selects alternate dates for vacation. A final vacation list indicating those dates agreed upon shall be prepared by the Town Manager and posted no later than May 15th of any calendar year.

Section 6. In the event that an employee does not select a vacation period prior to April 15th, he/she is permitted to select a vacation period from the available remaining dates. If two (2) or more employees have failed to make selections by April 15th, their selections are made on a first come, first served basis.

Section 7. The Town will make every effort to see that employees who have scheduled their vacation time receive it when scheduled; but due to unforeseen required work or other emergency situations, if the employee is unable to take his/her vacation during the assigned period, the Town Manager shall make every effort to reschedule a vacation period convenient and agreeable to the employee and the Town in the calendar year in which the employee's vacation period was assigned.

Section 8. A newly hired employee becomes eligible to utilize accrued vacation leave upon the successful completion of six (6) months of continuous employment. Employment begins on an employee's first full day on the job, and time on layoff, suspension, or leave without pay is not counted in determining the date of completion of a full month or a full year of employment.

ARTICLE 35 - USE OF FACILITIES

Section 1. The Town shall provide to the Union use of appropriate rooms for meetings of employees and representatives of Union, provided that the following conditions are met:

- A. Rooms must be reserved in advance.
- B. Such meetings must be held during non-working hours.
- C. Meetings of regular Town Boards, commissions, and committees receive preference in the scheduling of the use of rooms.

Section 2. The business agent, stewards, and secretary of the Unit are permitted to use, in conjunction with their Union duties, Town telephones to which they normally have access for non-toll or toll-free calls.

Section 3. The Town shall provide all members of the Unit with one (1) free annual pass to Fort Foster.

Section 4. The Town will provide the employees one (1) free annual Kittery Community Center membership.

ARTICLE 36 - EMPLOYEE DEVELOPMENT AND TRAINING

Section 1. To the extent made possible through the annual allocation of budgeted funds, the Town will attempt to provide funding for training that is directly related to the duties of an employee's job.

Section 2. An employee wishing to attend a training course or seminar shall make a written request to the Town Manager to do so, and said written request will include, at a minimum, the date, time and length of the training; the location of the training; the tuition/registration cost and other costs associated with attendance; the reason(s) that said training would prove beneficial to the Town and to the employee.

Section 3. Complete and final authority shall rest with the Town Manager to review, and upon completion of said review, to approve or deny said requests for training.

Section 4. The Town agrees to pay for the renewal of required Wastewater Treatment Operator licenses.

ARTICLE 37 - PROTECTION OF EMPLOYEES

Section 1. No employee shall suffer a reduction in existing salary for a period of one (1) year as a result of reclassification or reallocation of his/her position.

Section 2. It is agreed that all employees will have clean, dry, heated areas, as now exist, in which to eat their lunches.

Section 3. Absence for the purpose of attending court as a witness on behalf of the Town, or for jury duty, is not chargeable as leave and will not result in loss of pay. When called to perform these civic duties, the employee will promptly notify the Employer and submit a copy of the official summons for jury duty or witness service as far in advance as possible prior to the beginning of such service. Upon completion of such service, the employee will present to the Employer written evidence of the time served on such duties. The employee will turn over to the Town any jury fee, but will keep any travel pay.

Section 4. The Town shall pay the reasonable cost of the repair or replacement of an employee's clothing that is damaged or destroyed while working. Payment will not be made for the repair or replacement of the above items if due to negligence on the employee's part.

ARTICLE 38 - PERSONNEL FILES

Section 1. Upon request to the Human Resources Manager, an employee is permitted, at any reasonable time during normal working hours, to review the materials in his/her personnel file. He/she is allowed to have placed in such file a response to anything contained therein that he/she considers being adverse.

Section 2. Upon request to the Human Resources Manager, an employee will be provided with an initial copy of any or all materials in his/her personnel file. Should a subsequent request be made for a copy of the same materials, an employee shall be charged the current cost per page for copying materials for the general public.

Section 3. Copies of all materials to be placed in an employee's personnel file will be given to such employee simultaneously with placement in the personnel file.

ARTICLE 39 - LEAVE WITH PAY FOR NEGOTIATIONS

One Unit member designated by the Union is granted administrative leave with pay to that individual Town employee so designated by the Union to participate in the collective bargaining meeting(s), mediation proceedings, fact-finding, and/or arbitration proceedings. The Union shall give a twenty-four (24) hour notice to the Town's negotiator whenever a Town employee who is a bargaining Unit member is required to attend any meetings.

ARTICLE 40 - MANAGEMENT RIGHTS

The parties hereto recognize and agree that, except as specifically limited or abrogated by the terms and provisions of this Agreement, all rights to manage, direct and supervise the operations and personnel covered under this Agreement are vested in the Employer, in a full unrestricted manner, as provided by the laws of the State of Maine and the Town of Kittery.

ARTICLE 41 - COPIES OF AGREEMENT

The Town shall have this Agreement reproduced and shall furnish one copy to each member of the bargaining Units with the Union as soon as practicable following final agreement by the parties upon the terms and conditions of this Agreement.

ARTICLE 42 - DURATION OF AGREEMENT

Section 1. This Agreement is effective as of July 1, 2021 and it remains in full force and effect until June 30, 2024. It is automatically renewed from year to year thereafter unless either party shall notify the other, in writing, at least one hundred and twenty (120) days prior of the anniversary date that it desires to modify this Agreement. In the event that such notice is given, negotiations begin no later than sixty (60) days prior to the anniversary date. This Agreement remains in full force and be effective during the period of negotiation and until notice of termination of this Agreement is provided to the other party in the manner set forth in the following paragraph.

Section 2. In the event that either party desires to terminate this Agreement, written notice of desire to cancel or terminate the Agreement must be given to the other party not less than sixty (60) days prior to the desired termination date, which may not be before the anniversary date set forth in the preceding paragraph.

Section 3. In the event of an inadvertent failure by either party to give the notice set forth in Sections 1 and 2 of this Article, such party may give such notice at any time to the termination or automatic renewal of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set forth hands and seals this _____ to be effective as of July 1, 2021.

Town of Kittery

Teamsters Local Union No. 340
affiliated with the International Brotherhood



Kendra Amaral
Town Manager

TOWN OF KITTERY
Office of the Town Manager
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329 Fax: 207-439-6806
kamaral@kitteryme.org

DRAFT

Honorable Senator Susan Collins

Dear Senator Collins,

On behalf of the Town Council of Kittery, please accept this letter of support for the Congressionally Directed Spending application to fund the start-up of a new nature-based childcare program at the Kittery Community Center.

Until March of 2020, the Kittery Community Center was the site of a forest preschool that served approximately 55 children. When COVID-19 disrupted the nation, the program was shut down to make space for a gap-childcare program that served as a vital resource for working families faced with reduced school schedules during the 2020-2021 school year.

As we emerge from the pandemic, the Town seeking to reestablish a high-quality early childhood education and care program that offers learning through a connection to our natural spaces. Studies have proven time and again, that quality childcare is vital to the health of an economy. Additionally, access to enriching early childhood learning opportunities provides a solid foundation for educational attainment and positive learning outcomes.

The Kittery Community Center has been in initial discussions with regional partners, recognized for their excellence in early childhood education and nature-based programming, to develop a new enriching preschool program. The Community Center remains an ideal location to house for such a program. It is easily accessible for residents and workers in the community. The building has the space to house up to three classrooms for the indoor portion of the learning program, and over 39 acres of land ideal for outdoor exploration and enrichment.

The new program, as currently conceived, will prioritize the community of residents and workers in Kittery. The financial plan anticipates providing financial aid to qualifying families; thereby ensuring lack of financial resources is not a barrier to accessing the program.

The Town is seeking CDS funding to support the start-up costs for the program and to support seed funding for the financial aid. Once the program is up and running, a combination of tuition revenues and grants will sustain both the program and the financial aid component.

A vibrant community, sustained by a healthy economy and educational resources for families of young children relies on quality early childhood learning and care opportunities. Kittery is willing and excited

to provide this vital service to our community.



Kendra Amaral
Town Manager

TOWN OF KITTERY
Office of the Town Manager
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329 Fax: 207-439-6806
kamaral@kitteryme.org

DRAFT

Honorable Senator Susan Collins

Dear Senator Collins,

On behalf of the Town Council of Kittery, please accept this letter of support for the Congressionally Directed Spending application to fund the expansion of the Kittery Police Department's Community Outreach Liaison program.

The Community Outreach Liaison provides a wholistic component to the public safety services provided by the Police Department, by working directly with Officers and community members to identify and address the array of underlying social issues that trigger common law enforcement engagement such as mental health, substance use disorders, food and shelter insecurity, and elder issues.

The Outreach Liaison Program is an emerging best practice in law enforcement nationwide. Typically implemented by larger departments with the resources to dedicate to such a role, an embedded social worker has shown promising results in improving community relations and reducing repeat calls and offenses. The approach shifts the public safety focus from strictly enforcement to supportive, ongoing engagement with the victims, families, and community.

The Town of Kittery, in partnership with two neighboring communities and York County Community Action, launched a regional Liaison program in March of 2022. A social worker is shared among the three towns, providing follow-up contact for those engaged in a police call-for-service, assessing needs, and connecting the community members to various social service programs that can help reduce or eliminate a public safety crisis in the future. This pilot program represents a starting point and proving-exercise for communities of our size.

The Town of Kittery wishes to take this program even further. The requested DCS funding will support the expansion of the program by dedicating resources and staff time to focus on the creation of new resources for local law enforcement to engage collaboratively with social service providers, building a network for law-enforcement-connected social workers in the region to share innovations and information, and identifying and securing long-term funding.

Kittery has already committed \$28,000 to the pilot program for Year 1. The DCS funding will provide vital resources to leverage the existing community investment and ensure the program is a success for years to come.

Your thoughtful consideration of this request is greatly appreciated.

Sincerely