

## COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the **CITY OF SOUTH PORTLAND**, a municipal corporation organized and existing under the laws of the State of Maine and located in South Portland, County of Cumberland, State of Maine (the “City”), and the **TOWN OF CAPE ELIZABETH**, a municipal corporation organized and existing under the laws of the State of Maine and located in Cape Elizabeth, County of Cumberland, State of Maine (the “Town”).

WHEREAS, the City and the Town share a common boundary line;

WHEREAS, several local streets run between the two municipalities at their common boundary line at the southerly boundary of South Portland and the northerly boundary of Cape Elizabeth, namely Edgewood Road/Red Oak Drive, Stone Drive and Cliff Avenue (the “Local Streets”);

WHEREAS, the Local Streets are shown with more specificity on Town Tax Map U01 and City Tax Map 11, copies of which are attached hereto and incorporated herein as *Exhibit A*;

WHEREAS, due to inadequate turning areas for snow removal equipment at the municipal boundary located in the vicinity of the Local Streets, the City and Town have shared in an effort to safely terminate their snow removal operations; and

WHEREAS, the City and the Town have been cooperating with one another in an effort to formalize their existing cooperative agreement.

NOW, THEREFORE, in consideration of the mutual promises and obligations undertaken herein, the parties hereby agree as follows:

1. **City Snow Removal/Vehicle Turnaround Route in Town for Local Streets**. In an effort to safely terminate the City’s snow removal operations, the Town agrees to allow City snow removal and related vehicle turnaround in the Town as follows:

- Red Oak Drive: City snow removal personnel and equipment may travel from the City into the Town via Red Oak Drive; turn right onto Fernwood Lane; back up to the easterly terminus of Fernwood Lane; and return to the City via Red Oak Drive.
- Stone Drive: City snow removal personnel and equipment may travel from the City into the Town via Stone Drive to its terminus by property at Lot 93B on Town Tax Map U01; back up on Stone Drive and onto the paper street located between Lots 94 and 93C on Town Tax Map U01; and return to the City via Stone Drive.
- Cliff Avenue: City snow removal personnel and equipment may travel from the City into the Town via Cliff Avenue to its terminus by property at Lot 93B on Town Tax Map U01; back up on Cliff Avenue and onto the paper street located between Lots 74 and 60-999 on Town Tax Map U01; and return to the City via Cliff Avenue.

2. **Town Snow Removal/Vehicle Turnaround Route in City for Local Streets.** In an effort to safely terminate the Town’s snow removal operations, the City agrees to allow Town snow removal and related vehicle turnaround in the City as follows:

- Edgewood Road: Town snow removal personnel and equipment may travel from the Town into the City via Edgewood Road; turn left onto Phillips Road and back out onto Edgewood Road; and return to the Town via Edgewood Road.
- Stone Drive: Town snow removal personnel and equipment may travel from the Town into the City via Cottage Road and Stone Drive; and return to the Town via Stone Drive and Cottage Road.
- Cliff Avenue: Town snow removal personnel and equipment may travel from the Town into the City via Cottage Road and Cliff Avenue; and return to the Town via Cliff Avenue and Cottage Road.

3. **Operations.** Any snow removal on the Local Streets shall be conducted in accordance with all applicable laws in a good and workmanlike manner, and in as timely a fashion as possible, given weather conditions and equipment limitations. Each party is responsible for its own costs, personnel and equipment associated with any snow removal on the Local Streets. Any shared winter maintenance of the Local Streets is provided to the other party without financial consideration.

4. **Contact Person.** Each municipality’s Public Works Director or his/her designee shall act as the party’s representative for purposes of any coordination needed to implement this Agreement.

5. **Term.** The commencement date of this Agreement is the date written above. The term of this Agreement shall run from the commencement date to June 30, 2020, and shall automatically renew for a term of one (1) year of July 1 to June 30 each year, unless either party provides the other party with written notice of its election not to renew, which notice must be received at least thirty (30) days prior to the expiration of the then current term.

6. **Indemnification.** The City hereby agrees to indemnify, save and hold harmless the Town, its officers, agents and employees, from and against any and all liabilities, claims, expenses, fees and costs, demands and actions, or causes of actions whatsoever, for personal injury or death which may result from the City's use of said Local Streets, except for personal injury or death caused solely by the intentional misconduct or negligent acts of the Town, its officers, agents or employees. The Town hereby agrees to indemnify, save and hold harmless the City, its officers, agents and employees, from and against any and all liabilities, claims, expenses, fees and costs, demands and actions, or causes of actions whatsoever, for personal injury or death which may result from the Town's use of said Local Streets, except for personal injury or death caused solely by the intentional misconduct or negligent acts of the City, its officers, agents or employees. Nothing in this Agreement is intended, or shall be construed, to constitute a waiver of any defense, immunity or limitation of liability that may be available to the City or the Town, their officers, agents and employees, pursuant to the Maine Tort Claims Act or as otherwise provided by law.

7. **Dispute Resolution.** The parties have entered into this Agreement in good faith and in the belief that it is mutually advantageous to them. With that same spirit of cooperation, the parties agree to attempt to resolve any dispute amicably without the necessity of litigation. Accordingly, except in the event of an emergency requiring immediate injunctive or other relief, the parties shall endeavor to enter into good faith negotiations and non-binding mediation through a neutral mediator within thirty (30) days (or such lesser or greater period as may be agreed to by the parties) of notice of any dispute from the other party in order to attempt to resolve their differences, prior to any litigation. Each party shall bear its own costs and attorney's fees and shall share equally in the costs of the mediator. In the event that litigation cannot be avoided, except as otherwise expressly agreed by the parties in writing, exclusive venue for any civil action shall be in Cumberland County, State of Maine.

8. **Notice.** Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by certified mail, return receipt requested, postage prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice:

City: City of South Portland  
25 Cottage Road

South Portland, ME 04106  
Attention: City Manager

Town: Town of Cape Elizabeth  
P.O. Box 6260  
Cape Elizabeth, ME 04107-0060  
Attention: Town Manager

9. **No Assignment**. Neither party shall assign this Agreement without the other party's written consent.

10. **Extent of Agreement**. This Agreement embodies the entire agreement between the parties regarding its subject matter. This Agreement is made and shall be construed under the laws of the State of Maine. This Agreement may be amended only by written instrument signed by an authorized representative of the City and the Town. If any provision of this Agreement is invalid it will be considered deleted from this Agreement, and will not invalidate the remaining provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

**CITY OF SOUTH PORTLAND**

By: \_\_\_\_\_  
Scott T. Morelli  
Its City Manager, duly authorized

**TOWN OF CAPE ELIZABETH**

By: \_\_\_\_\_  
Matthew Sturgis  
Its Town Manager, duly authorized