



## **Cape Elizabeth Town Council**

**Minutes Monday, March 9, 2020**

**7:00 p.m. Council Chambers**

**Cape Elizabeth Town Hall**

Valerie A. Adams, Chairman  
Valerie J. Deveraux  
Jeremy A. Gabrielson  
James M. "Jamie" Garvin  
Caitlin R. Jordan  
Penelope A. Jordan  
Christopher M. Straw

**The meeting was convened at 7:02 p.m. by Town Council Chairman Valerie A. Adams.**

### **Roll Call by the Town Clerk**

All members of the town council were present.

Debra M. Lane, Town Clerk

Matthew E. Sturgis, Town Manager

### **The Pledge of Allegiance to the Flag**

### **Town Council Reports and Correspondence**

Councilor Penelope Jordan announced the next meeting of the ordinance committee will be held on Wednesday, March 11 at 7:00 p.m. in the council chambers at town hall. The committee will continue the review of short term rentals.

Councilor Garvin mentioned short term rentals were discussed at last week's COG Regional Voice Committee meeting. COG is considering developing a base short term rental ordinance.

Chairman Adams announced the 107<sup>th</sup> birthday of Cape Elizabeth's oldest resident Seth White. Happy Birthday Mr. White!

### **Finance Committee Report**

Finance Chairman Garvin reviewed the dashboard for February 2020 and reminded the public of the town budget workshops to be held on March 16 and March 19. The workshops will begin at 7:00 p.m. in the council chambers at town hall and will be broadcast live on CETV.

### **Citizen Opportunity for Discussion of Items Not on the Agenda**

None

### **Town Manager's Monthly Report**

I will begin this evening's report with announcing that after forty plus years of dedicated service to the Town of Cape Elizabeth, Bob Malley our beloved Director of Public Works will be retiring. Bob is planning to work through July and I know that we will all wish Bob well, when that day comes and that he will leave a tremendous void that will be a great challenge to fill.

The election last week was run exceptionally well, and I wanted to express our gratitude to Debra Lane and her elections staff for their efforts. That was the first of three elections to be held, and with much planning and testing of new measures, we are striving to be prepared for what is anticipated to be a record turnout in the November election.

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This morning all department heads were present for a full organizational discussion on the Town's preparedness for responding to the health crisis of COVID 19 which is challenging government, health, and public safety organizations. Discussions were held on proper measures for sanitizing work surfaces, high traffic public facilities, hygiene issues like washing hands, as well as preparing for responding to operations that may be impaired due to quarantine efforts. Chief Gleeson and EMA Director Charles Kennedy are currently in frequent discussions with the State CDC and Cumberland County EMA on best practices and preparedness.

Responses to the request for proposals for the solar power project at the Recycling Facility are due this Friday, with the Energy Committee planning on reviewing the responses shortly thereafter.

Finally, if a person is interested in entering the lottery for one of the highly desired boat rack slots at Great Pond, the lottery entry closes this Friday, March 13<sup>th</sup>.

Respectfully submitted,

Matthew E. Sturgis  
Town Manager

**Review of Draft Minutes of the meeting held on February 10, 2020.**

Moved by Jeremy A. Gabrielson and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council approves the minutes of the meeting held on February 10, 2020 as written.

(7 yes) (0 no)

**Item #39-2020 Confirmation of Director of the Thomas Memorial Library**

Present – Rachel Davis

Introduction – Mr. Sturgis

Moved by Valerie J. Deveraux and Seconded by Christopher M. Straw

ORDERED, the Cape Elizabeth Town Council confirms Town Manager Sturgis' appointment of Rachel Q. Davis to serve as the Director of the Thomas Memorial Library effective immediately.

(7 yes) (0 no)

**Revaluation Update**

Town Assessor Clinton Swett provided a PowerPoint presentation on the status of the upcoming revaluation.

**Item #40-2020 Fort Williams Group Use – Beach to Beacon**

Present – Kathy Raftice, Director of Community Services & Fort Williams Park

Introduction – Jim Kerney, Chairman Fort Williams Park Committee

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Moved by James M. Garvin and Seconded by Jeremy A. Gabrielson

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the Fort Williams Park Committee for the Beach to Beach 10K Road Race Tuesday, July 28 – Saturday, August 1, 2020 with a group use fee of \$27,500 and coming back later in the year to discuss years going forward as presented.

(7 yes) (0 no)

**Item #41-2020            Group Use Request Making Strides Walk at Fort Williams Park**

Present – Kathy Raftice, Director of Community Services & Fort Williams Park and Jim Kerney, Chairman Fort Williams Park Committee

Moved by Jeremy A. Gabrielson and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the Fort Williams Park Committee to approve the group use for Fort Williams Park for the American Cancer Society, Making Strides Walk on Sunday, October 18, 2020 with a group use fee of \$700.00 as presented.

(7 yes) (0 no)

**Item #42-2020            Consideration of Memorial Bench Fee at Fort Williams Park**

Present – Kathy Raftice, Director of Community Services & Fort Williams Park and Jim Kerney, Chairman Fort Williams Park Committee

Moved by Jeremy A. Gabrielson and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council approves the recommendation of the Fort Williams Park Committee to set the memorial bench fee for memorials at Fort Williams Park at \$1500.00 per bench including perpetual care. Said fee was \$600.00 per bench.

(6 yes) (1 no Councilor Straw)

**Item #43-2020            Consider Ordinance Committee Recommendation – Short Term Rental Permit Moratorium**

Public Comment

Doug Dransfield, 48 Richmond Terrace favors the moratorium.

Introduction – Ordinance Committee Chairman Penelope Jordan

Moved by Penelope A. Jordan and Seconded by James M. Garvin

ORDERED, the Cape Elizabeth Town Council sets to public hearing consideration of a moratorium banning any new short term rentals after June 1, 2020. The proposed moratorium would be for 180 days, effective June 1, 2020.

Moved by Penelope A. Jordan and Seconded by James M. Garvin

ORDERED, the Cape Elizabeth Town Council amends the motion to set the public hearing date for Monday, April 13, 2020 at 7:00 p.m. at the Cape Elizabeth Town Hall and to clarify the proposed moratorium would ban any new short term rental *permits*.

(7 yes) (0 no)

Original motion as amended: (7 yes) (0 no)

**Item #44-2020          Receipt of Audit Results FY 2019**

Moved by James M. Garvin and Seconded by Valerie J. Deveraux

ORDERED, the Cape Elizabeth Town Council acknowledges receipt of the results of the FY 2019 audit ending June 30, 2019 as prepared by Runyon Kersteen Ouellette as presented.  
(7 yes) (0 no)

**Item #45-2020          Vote Authorizing Expenditures for School Renovations**

Introduction – Mr. Sturgis

Moved by James M. Garvin and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council authorizes expenditures for school renovations of up to \$390,429 of which the town anticipates that 30% (estimated \$117,129) will be forgiven and the town will be obligated to repay 70% of the balance of the loan (estimated \$273,300), and the issuance of bonds as prepared by Bond Counsel Jim Saffian as presented.  
(7 yes) (0 no)

TOWN OF CAPE ELIZABETH, MAINE

Vote authorizing expenditures of up to \$390,429  
for school renovations  
and the issuance of bonds therefore

**WHEREAS**, the Town desires to obtain a loan through the Maine Municipal Bond Bank’s (the “Bond Bank”) School Revolving Renovation Fund (“SRRF”) under the Maine School Facilities Finance Program to finance renovations to Pond Cove Elementary School, the Middle School and the High School; and

**WHEREAS**, the Town expects to enter into a loan agreement with the Bond Bank in an amount not to exceed \$390,429, of which the Town anticipates that 30% of said loan (estimated to be \$117,129) will be forgiven and that the Town will be obligated to repay the 70% balance of said loan (estimated to be \$273,300);

**NOW, THEREFORE,**

Be it hereby voted by the Cape Elizabeth Town Council as follows:

VOTED: That the Town be authorized to expend up to \$390,429 to fund the costs of the following school renovations and improvements (including costs of issuance, capitalized interest, and any other costs related or ancillary thereto) (referred to as the “Projects”):

**Amount    Description**

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\$ 12,706	Pond Cove Elementary – Emergency Plumbing Fixtures
\$ 52,135	Middle School – Emergency Plumbing Fixtures
\$325,588	High School – Emergency Plumbing Fixtures / HVAC / Roof / Intercom and Public Address System

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- VOTED: In order to provide funds for the Projects, the Treasurer be and hereby is authorized to borrow up to \$390,429 in the name of and on behalf of the Town and that to effect such borrowing, the Treasurer be and hereby is authorized to enter into a loan agreement between the Town and the Bond Bank, such loan agreement to contain the usual and customary terms as it required by the Bond Bank under its SRRF program, such loan to be in the amount not to exceed \$390,429, of which 30% (estimated to be \$117,129) is expected be forgiven and 70% (estimated to be \$273,300) is expected to be repaid under the terms of the SRRF program (the “SRRF Loan”), such SRRF Loan to be evidenced by the Town’s general obligation bonds in the amount to be repaid under said SRRF program (anticipated to be an amount not to exceed \$273,300), the proceeds of which loan are hereby appropriated to fund the costs of the Projects.
- VOTED: The loan agreement and the bonds shall be signed by the Treasurer, countersigned by the Chairman of the Town Council and attested by the Town Clerk, all in the name of and on behalf of the Town.
- VOTED: The form, maturity, interest rate, terms and other details of said bonds and loan agreement shall be as determined by the Treasurer and the Chairman of the Town Council by their execution thereof, not inconsistent herewith, but the bonds or lease shall have a final maturity not later than 5.5 years from their date of issuance or effective date, as applicable.
- VOTED: That the Treasurer, Chairman of the Town Council and Clerk and other proper officials of the Town be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the bonds or loan agreement hereinabove authorized.
- VOTED: That if any of the officers or officials of the Town who have signed or sealed the bonds or loan agreement shall cease to be such officer or official before the bonds or loan agreement so signed and sealed shall be have been actually authenticated or delivered by the Town, such bonds or loan agreement nevertheless may be authenticated, issued, delivered and implemented with the same force and effect as though the person or persons who signed or sealed such bonds or loan agreement had not ceased to be such officer or official; and also any such bonds or loan agreement may be signed and sealed on behalf of the Town by those persons who, at the actual date of execution, shall be the proper officers or officials of the Town, although at the nominal date of such execution, any such person shall not have been such officer or official.
- VOTED: That if the Treasurer, Chairman of the Town Council or Clerk are for any reason unavailable to approve and execute the bonds or loan agreement of any other documents necessary or convenient to the issuance, execution and delivery of the bonds or loan agreement, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, be and hereby is authorized to act for such official with the same force and effect as if such official had performed such act.

**Item #46-2020            Acceptance of Police Department Grant**

Moved by Valerie J. Deveraux and Seconded by James M. Garvin

ORDERED, the Cape Elizabeth Town Council accepts and appropriates a \$6,356.00 grant from the Maine Bureau of Highway Safety for the Click It or Ticket program through the Cape Elizabeth Police Department for the period of March 1, 2020 to August 31, 2020.

(7 yes) (0 no)

**Item #47-2020            Write-Offs of Uncollectible Sewer Liens/Receivable**

Introduction – Mr. Sturgis

Moved by Jeremy A. Gabrielson and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council authorizes the Town Treasurer to write-off \$1,290.23 in sewer liens from 1989 – 1994 for property at U29 029 000 000 as the Town foreclosed on unpaid tax liens and took possession of the property and a \$359.62 sewer receivable for property at U29 051 D 000 as the mortgage holder foreclosed on the property and subsequently sold it without collecting the sewer bill due as of December 2013.

(6 yes) (1 no Councilor Straw)

**Item #48-2020            FY 2021 Municipal Budget**

Introduction – Mr. Sturgis

Moved by James M. Garvin and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council refers the proposed manager's municipal budget for FY 2021 (July 1, 2020 – June 30, 2021) to the finance committee for review.

(7 yes) (0 no)

**Item #49-2020            Town Council 2020 Goals**

Moved by Penelope A. Jordan and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council adopts the latest draft goals for 2020 as presented.

(7 yes) (0 no)

See attachment.

**Item #50-2020            Cooperative Agreement with the City of South Portland  
Relating to Snow Removal/Vehicle Turnaround Routes on Local Streets**

Moved by Penelope A. Jordan and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council authorizes the town manager to sign the Cooperative Agreement between the City of South Portland and Town of Cape Elizabeth related to snow removal/vehicle turnaround routes on Edgewood Road/Red Oak Drive, Stone Drive and Cliff Avenue as reviewed by the town attorney.

(7 yes) (0 no)

See attachment.

**Item #51-2020          Refer Health and Sanitation Ordinance to Recycling Committee Relating to Single Use of Disposable Bags and Certain Disposable Food Service Containers**

Moved by Valerie J. Deveraux and Seconded by James M. Garvin

ORDERED, the Cape Elizabeth Town Council refers to the Recycling Committee a recommendation on review, revision, or repeal based on recently enacted State laws relating to single use disposable bags and certain disposable food service containers.

(7 yes) (0 no)

**Citizens may at this point in the meeting raise any topic that is not on the agenda that pertains to Cape Elizabeth local government.**

None

**Item #52-2020          Annual Evaluation of the Town Manager**

Moved by Penelope A. Jordan and Seconded by Valerie J. Deveraux

ORDERED, the Cape Elizabeth Town Council enters into executive session at 8:24 p.m. pursuant to 1 MRS §405 6 A to continue the annual evaluation of the town manager.

(7 yes) (0 no)

Moved by Caitlin R. Jordan and Seconded by Jeremy A. Gabrielson

ORDERED, the Cape Elizabeth Town Council exits executive session and reenters public session at 8:33 a.m.

(7 yes) (0 no)

**Adjournment**

Moved by Caitlin R. Jordan and Seconded by Jeremy A. Gabrielson

ORDERED, the Cape Elizabeth Town Council adjourns at 8:33 p.m.

(7 yes) (0 no)

Respectfully Submitted,

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Debra M. Lane, Town Clerk

## **Cape Elizabeth Town Council 2020 Goals**

### **Approved March 9, 2020**

#### **1. Effective Leadership**

*We will provide leadership for the community by enhancing good governance aspects such as transparency, accountability and integrity, and ensuring strong management structures.*

##### **Potential Implementation Opportunities**

- Work with the town manager to commit to the development and implementation of services that address community needs, always keeping the One Town concept in mind;
- Encourage the town manager to continually evaluate optimal organization/structure of departments and utilization of staff, along with ongoing succession planning and professional development in all departments;
- Continue to examine opportunities to share services and resources with other communities and regional organizations;
- More actively advocate for Cape Elizabeth with state legislators and others groups focused on promoting issues and interests of importance to our community;
- Demonstrate through action adherence to the town council rules and Code of Ethics.

#### **2. Sustainable Community**

*We are committed to a sustainable future and implementation of policies and projects to improve the social, economic, and environmental wellbeing of the community.*

##### **Potential Implementation Opportunities**

- Continue implementation of Comprehensive Plan priority areas and monitor progress toward recommendations;
- Develop climate change goals to be implemented within the next five to ten years, including, but not limited to, identifying staff needs, reviewing town ordinances for necessary changes to support goals, and considering regional collaboration with neighboring municipalities and/or GPCOG;
- Review funding mechanisms for land preservation and for the stewardship of the town's open spaces;
- Support opportunities to enhance the community's diversity, including a focus on development and preservation of affordable housing both locally and regionally;
- Consider crafting a coastal access plan, including both public access and specific access for commercial fishermen as outlined in recommendations from the 2018 Harbors Committee report;
- Work toward being an age-friendly community by evaluation needs among senior residents and assessing programming needs to include, but not limited to, food security programs, transportation programs, community gardening, and/or a "sandbuckets-for-seniors" program;
- Continue to implement and promote energy efficiency projects, to include current solar energy project, referring solar and renewable energy standard permit regulations to Planning Board to begin review, LED streetlight conversion, installing electric car charging station(s);
- Work with Cape Fisherman's Alliance and other interested parties to explore a town committee to help inform marine resources;
- Consider the need for a pesticide/herbicide ordinance;

- Continue revision of short-term rental ordinance;
- Assess food security needs within the town and develop strategies to address food insecurity in coordination with appropriate departments.

### **3. Fiscal Management**

*We will develop budgets and manage finances in a way that balances the established priorities of the town with economic realities, in alignment with public policy, financial oversight, and operational accountability.*

- Maintain a spirit of openness and transparency while being fully accountable to the public for the town's fiscal activities;
- Ensure that any new goal or program is reviewed with business model principles;
- Review all town funding sources, seeking opportunities to optimize existing revenues while also identifying areas of potential new revenues;
- Support town manager and new finance director to evaluate potential new strategic planning, financial planning, and budgeting processes, including GFOA certification;
- Continue to monitor and evaluate the new senior citizen tax relief program.
- Take advantage of budget and/or service-level efficiencies gained from cooperative purchasing and resource sharing with neighboring towns, cities, and other regional entities;
- Consider feasibility of "downtown" development program/leadership role for town in promoting development in Town Center;
- Complete tax revaluation process;
- Implement routine review of town fee schedules;
- Put out to bid contracted services to determine competitiveness of rates;
- Develop running overview of debt-servicing and coordinate capital needs with debt-servicing plan to minimize significant year-to-year tax increases.

### **4. Engaged Citizens**

*We will improve and expand communications with citizens and other stakeholders.*

#### **Potential Implementation Opportunities**

- Continue public forums on specific issues and topics of interest to members of the community;
- Explore new ways to solicit public input including citizen surveys.
- Develop new communications tools and better leverage existing ones to disseminate information to the public;
- Continue with standardized response protocol for citizen inquiries and communications, and considering formalizing as policy;
- Continue plans to redevelop and improve town website.

### **5. Effective Boards and Committees**

*We will work with advisory boards and committees to ensure strong focus and alignment of priorities.*

#### **Potential Implementation Opportunities**

- Conduct an annual orientation and information session for all boards and committees and direct staff to implement standardized agenda format, which is intended to promote citizen engagement;
- Council to provide direction to committees on conceptual basis, while respecting each committee's freedom to recommend solutions;

- Implement a system of reporting to enhance communication between the council and committees, including potential regular updates at monthly workshops or regular meetings;
- Recognize the service of the town's volunteers.

## **6. Improved Infrastructure, Facilities, Public Safety, and Services**

*We will continue to improve and enhance municipal infrastructure, facilities, public safety, and delivery of services.*

### **Potential Implementation Opportunities**

- Continue to make traffic safety improvements throughout town, as well as continue to review issues with tourism related traffic in specific areas and work with public safety and public works to develop mitigation initiatives;
- Develop a specific plan for continued delivery of fire and rescue services with a report that focuses on near-term and long-term strategies to ensure safety and level of service needs for our community, to be completed by January 2021;
- Support the Fort Williams Park Committee in developing an updated master plan;
- Seek ways to leverage the Spurwink School building as a historical town asset;
- Encourage projects throughout town that create and improve livability and walkability for residents and prioritize high-need areas for bike paths and sidewalks;
- Continue to develop plans for access for commercial and recreational watercraft in the Kettle Cove/Crescent Beach area, as detailed in the 2018 Harbors Committee recommendations;
- Begin to study feasibility of expanding and improving cellular coverage throughout the entire town, including the possibility of installing small cells and outdoor distributed antenna systems (oDAS);
- Continue planning and engineering work in advance of Shore Road reconfiguration and update;
- Consider plan for burying power lines on feeder streets.

## **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