



AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – JUNE 16, 2010
REGULAR MEETING – 7:00 P.M.

NO NEW BUSINESS SHALL BE TAKEN UP AFTER 10:00 P.M.

- Item 1.** Call to Order.
- Item 2.** Pledge of Allegiance.
- Item 3.** Roll Call.
- Item 4.** Introduction of the new K-9 Police Dog.
- Item 5.** General Public Comments. (*Please see **NOTICE** at the end of the agenda.)
- Item 6.** Minutes: June 2, 2010 – Regular Meeting.
- Item 7.** Adjustment to the Agenda.
- Item 8.** Items to be signed: a. Treasurer’s Warrants.

Procedure for Addressing Council, please see end of agenda.

Order No. 10-42, 7:00 p.m. Public Hearing on the fifth amendment to the Contract Zoning Agreement IX [New England Expedition – Scarborough, LLC] of Chapter 405 – the Zoning Ordinance. [This item was postponed from the May 19, 2010, Town Council meeting.]

OLD BUSINESS:

NEW BUSINESS:

Order No. 10-58. Act to authorize the Town Manager to sign a Mutual Aid Agreement with other Municipalities in Cumberland.

Item 9. Non Action Items.

- Update on the Haigis Parkway/Route One Intersection Improvement Plans.

Item 10. Standing and Special Committee Reports and Liaison Reports.

Item 11. Town Manager Report.

Item 12. Council Member Comments.

Item 13. Adjournment.

***NOTICE Procedure for Addressing Council.**

202.0: PROCEDURES FOR ADDRESSING THE COUNCIL.

Any person wishing to address the Town Council will be given an opportunity to do so in accordance with the following procedures:

202.1: Procedure.

A Public Comment Period shall be conducted prior to the start of any Council business at each regular Town Council meeting, at which time citizens shall be given the opportunity to be heard on matters concerning Town business in general. Additional public comment shall be allowed during public hearings and on agenda items. Such public forums and/or public comment periods may be waived if no member of the public wishes to speak. Persons wishing to speak will preface their comments by giving their name and address.

202.2: Time Limit.

All such public forums, public comment periods and public hearings shall be conducted under the following guidelines:

202.2.a: General Public Comment: Persons addressing the Town Council during the public comment period at the beginning of the meeting shall limit their comments to (3) three minutes. Individuals may be permitted to speak more than once at the discretion of the Chair of the Council. The first (30) thirty minutes of the Council meeting will be allocated for general public comment. If it appears that the public comment period will exceed (30) thirty minutes, public comment may be suspended by the Chair, so the Town Council can conduct its business, in any case to occur prior to adjournment. (amended 10/21/09)

202.2.b.: Public Hearing Comment: Persons addressing the Town Council during a public hearing shall limit their comments to the particular agenda item and shall limit their comments to (3) three minutes. Individuals may be permitted to speak more than once at the discretion of the Chair of the Council. (amended 04/18/01; amended 10/21/09)

202.2.c: Public Comment on Agenda Items: Following the reading of each agenda item, the Chair shall ask if any member of the public wishes to speak on that item. Persons who have previously addressed the Town Council during the public comment portion and wishes to speak on an agenda item may do so only if there is new and pertinent information to be added and limit their comments to (3) three minutes. (amended 10/21/09)

202.3: Decorum.

Persons present at Council meetings are requested not to applaud or otherwise express approval or disapproval of any statements made or action taken at such meeting.

202.3.a: Citizens will strive to be accurate in their statements, avoid personalities, and conduct themselves in a manner expected of all meeting participants. (amended 04/18/01).

202.3.b.: It shall be at the discretion of the Council Chair to ask any persons making in-appropriate statements, and/or conducting themselves in a disrespectful manner to cease such action or risk being asked to be seated or removed.

AGENDA

SCARBOROUGH TOWN COUNCIL

WEDNESDAY – JUNE 16, 2010

REGULAR MEETING – 7:00 P.M.

Order No. 10-42. The second reading on the fifth amendment to the Contract Zoning Agreement IX [New England Expedition – Scarborough, LLC] of Chapter 405 – the Zoning Ordinance will be scheduled for Wednesday, July 21, 2010.

**FIFTH AMENDMENT
TO
CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH AND THE NEW ENGLAND EXPEDITION –
SCARBOROUGH, LLC**

THE GATEWAY AT SCARBOROUGH

This Fifth Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the ____ day of _____, 2010 by and among the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH II, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition II”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 3rd day of January, 2007 (hereinafter, the “Agreement”) creating Contract Zoning District Number 9 (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5th day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201 (the “First Amendment”); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Second Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7th day of November, 2007, and recorded in said Registry of Deeds in Book 25610, Page 171 (the “Second Amendment”); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Third Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 30th day of April, 2008, and recorded in said Registry of Deeds in Book 26060, Page 162 (the “Third Amendment”); and

WHEREAS, that portion of the Property comprising The Gateway Square at Scarborough was conveyed by New England Expedition to New England Expedition II by Quitclaim Deed With Covenant dated September 18, 2009, and recorded in said Registry of Deeds in Book 27269, Page 212; and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fourth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 3rd day of March, 2010, and recorded in said Registry of Deeds in Book 27642, Page 85 (the "Fourth Amendment"); and

WHEREAS, the New England Expedition and the New England Expedition II have requested that the Town approve this Amendment to the Agreement regarding (a) signage and banners, and (b) certain uses within the District.

NOW THEREFORE, in consideration of the mutual promises made by the parties to each other, the parties covenant and agree as follows:

1. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, in addition to the wall signs permitted under Section 2 of the First Amendment, one (1) additional doorway sign not exceeding fifteen (15) square feet, which sign may be two-sided and, in the case of a two-sided sign, not exceeding fifteen (15) square feet for each face with the width of such two-sided sign between such faces not to exceed one (1) foot, indicating the location of any entrance to a restaurant at which "pick-up," "take-out" or "to-go" orders can be picked up, may be affixed to the exterior of the building either parallel or perpendicular to the building wall, either attached directly to the building wall or attached to one or more supports attached to the building wall, and located over any such entrance, which sign may not extend more than three (3) feet from the building wall.

2. Section 2 and Section 3 of the Third Amendment is/are hereby amended/deleted in its/their entirety ~~to read as follows:~~

~~2. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, banners depicting seasonal or decorative scenes or images, and general or seasonal messages and greetings, together with the name or names of the sponsors of any such banners set forth thereon, may be affixed to light poles within the District. Banners announcing the opening of specific businesses within the District, and/or promoting sales of products by specific retailers within the District, may be affixed to those types of light poles within the District as depicted on Attachment 2 to this Amendment. Banners shall not be allowed to deteriorate in appearance so as to become unsightly.~~

~~3. Section 3 of the Third Amendment is hereby deleted in its entirety.~~

3. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, banners depicting seasonal or decorative scenes or images, and general or seasonal messages and greetings, may be affixed to those light poles within the District designated "Seasonal Banner Light Pole (Typ.)" on Attachment 1 to this Amendment. Banners promoting sales of products by specific retailers within the District may be affixed to those types of light poles within the District depicted on Attachment 2 to the Third Amendment. Banners shall not be allowed to deteriorate in appearance so as to become unsightly.

4. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, the existing Cabela's pylon sign depicted on Attachment 1 to the Third Amendment and located where shown on Attachment 1 to this Amendment may be modified so as to include one (1) additional sign for advertising purposes for one or more businesses that may be located within that portion of the District comprising The Gateway Shoppes subject to the following conditions:

- a. Said pylon sign shall not be increased in height; and
- b. Said additional sign shall not be greater in size than seventy-five percent (75%) of the size of the existing Cabela's sign as shown on said Attachment 1 to the Third Amendment.

This Section 4 shall not be deemed to eliminate the need to comply with applicable State law regarding signage located adjacent to the Maine Turnpike.

5. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, the following additional signage shall be permitted:

- a. One (1) business directory sign not exceeding one hundred fifty (150) square feet, which sign may be two-sided and, in the case of a two-sided sign, not exceeding one hundred fifty (150) for each face, advertising the businesses located within that portion of the District comprising The Gateway Shoppes, ~~may be located within or adjacent to the main entrance thereto on Payne Road or between said main entrance and the intersection of Payne Road and Haigis Parkway~~ the area designated "Shoppes Business Directory Sign Area" on Attachment 2 to this Amendment;
- b. Two (2) signs not exceeding thirty-two (32) square feet each, which signs may be two-sided and, in the case of a two-sided sign, not exceeding thirty-two (32) square feet for each face, ~~may be located between the main entrance to that portion of the District comprising The Gateway Shoppes on Payne Road and the most southerly boundary line thereof on Payne Road~~ designating the secondary entrance to The Gateway Shoppes on Payne Road for employees, trucks, buses, recreational vehicles, service vehicles, and delivery vehicles for deliveries to one or more named tenants, one of which may be located within the area designated "Shoppes Secondary Entrance Sign One Area" and one of which may be located within the area designated "Shoppes Secondary Entrance Sign Two Area" on Attachment 2 to this Amendment;
- c. ~~One~~Two (42) business directory signs not exceeding one hundred fifty (150) square feet, which signs may be two-sided and, in the case of a two-sided signs, not exceeding one hundred fifty (150) for each face, advertising the businesses located within that portion of the District comprising The Gateway Square, one of which may be located within or adjacent to the main entrances thereto on Payne Road and Haigis Parkway or, in the case of the entrance thereto from Haigis Parkway, within the areas between said entrance and the northeasterly and southwesterly boundary lines of The Gateway Square the area designated "Square Business Directory Sign One Area" and one of which may be located within the area designated "Square Business Directory Sign Two Area" on Attachment 3 to this Amendment; and
- d. Signs indicating the name of the project and/or the names of not more than three (3) of the businesses located therein may be affixed to the faces of the existing rock walls located on either side of the main entrances on Payne Road and Haigis Parkway to that portion of the District comprising The Gateway Square as shown and designated "Existing Stone Walls" on Attachment 3 to this Amendment.

The signage referred to in this Section 5 shall otherwise comply with all requirements of Section XII of the Zoning Ordinance, as it may be amended from time to time.

6. Nothing set forth in the Agreement as amended by this Amendment shall be deemed to limit or prohibit signage within the District that is otherwise allowed under Section XII of the Zoning Ordinance, as it may be amended from time to time.

~~7. “Farmers’ markets,” as defined under 7 M.R.S.A. § 415, shall be a permitted use within that portion of the District comprising The Gateway Shoppes, together with one or more temporary signs advertising same and directing persons thereto that may be located within The Gateway Shoppes the day of the event.~~

§7. The following additional uses and related signage shall be permitted within that portion of the District comprising The Gateway Shoppes:

- a. ~~No more than two (2) r~~Restaurants, one of which shall primarily sell coffee and items customarily sold with coffee, that include ~~one (1)~~ drive-up or drive-thru service windows to be located within the areas designated “Restaurants with Drive-Ups and Drive-Thrus” on Attachment 4 to this Amendment, the design of which shall be architecturally compatible with the existing buildings, provided that this provision shall not be deemed to prohibit the number of restaurants within the District that do not include ~~a~~ drive-up or drive-thru service windows;
- b. “Farmers’ markets,” as defined under 7 M.R.S.A. § 415, which shall be conducted not more than three (3) consecutive days a week during the months of June through October within the areas designated “Special Events” on Attachment 5 to this Amendment, together with temporary signs meeting the requirements of Section XII of the Zoning Ordinance advertising such event and directing persons thereto that may be located within the areas designated “Temporary Sign Areas” on Attachment 5 to this Amendment the day or days of the event.
- ~~b.c.~~ Craft shows and art shows, including the sale of items displayed therein, that may be conducted within any building or outdoors and that need not be related to, or accessory to, any existing building or use, which craft shows and art shows conducted outdoors shall be conducted within the areas designated “Special Events” on Attachment 5 to this Amendment, together with one or more temporary signs meeting the requirement of Section XII of the Zoning Ordinance advertising samesuch events and directing persons thereto that may be located within The Gateway Shoppesthe areas designated “Temporary Sign Areas” on Attachment 5 to this Amendment the day or days of the event; and
- ~~ed.~~ Outdoors sales and tent sales and that need not be related to, or accessory to, any existing building or use, which outdoor sales and tent sales shall be conducted within the areas designated “Special Events” on Attachment 5 to this Amendment, together with one or more temporary signs meeting the requirements of Section XII of the Zoning Ordinance advertising samesuch events and directing persons thereto that may be located within The Gateway Shoppesthe areas designated “Temporary Sign Areas” on Attachment 5 to this Amendment the day or days of the event.

e. Not more than an aggregate total of six (6) craft shows, art sales, outdoor sales and tent sales, which shall not exceed three (3) consecutive days each, including time for setup, dismantling and cleanup, may be conducted within a calendar year.

8. Farmers' markets, craft shows, art sales, outdoor sales and tent sales described in Section 7 above that are not being conducted by on-site businesses shall be subject to the review and approval by the Code Enforcement Officer in accordance with the following procedure:

a. No later than twenty-one (21) days prior to the date of commencement of the event, the Code Enforcement Officer shall be provided with written notification of the event, which notification shall contain the following information:

i. The type of event;

ii. The name, address and telephone number of the business or organization conducting the event, together with the name of an individual associated with such business or organization who can be contacted regarding the event;

iii. A sketch plan showing in which Special Events areas the event will be conducted and the approximate layout of the event facilities within those areas; and

iv. The date or dates during which the event will be conducted.

b. If the proposed event is anticipated to be repeated on multiple dates such as, by way of example, a farmers' market that occurs on multiple Sundays each week during the months of June through October, only a single notification in accordance with Subsection 8. a. above need be provided to the Code Enforcement Officer prior to the date of the first of such multiple repetitive events.

c. In the event that the Code Enforcement Officer should reasonably determine that the event fails to comply with the terms and conditions set forth herein, the Code Enforcement Officer shall provide written notice to the notifying party indicating in what manner the event fails to so comply. In the event the Code Enforcement Officer should not provide such notice to the notifying party within fourteen (14) days following the Code Enforcement Officer's receipt of the notification required in Subsection 8. a. above, the event shall be deemed approved.

9. The terms and conditions of this Amendment including, but not limited to, the review and approval process described in Section 8 above for farmers' markets, craft shows, art sales, outdoor sales and tent sales that are not being conducted by on-site businesses, shall not be applicable to farmers' markets, craft shows, art sales, outdoor sales and tent sales that are that are otherwise allowed to be conducted by on-site businesses in accordance with the Zoning Ordinance and other applicable Town regulations and procedures.

910. The Agreement, as amended by this Amendment and as previously amended by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment, remains consistent with the Comprehensive Plan.

~~1011~~. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.

~~1112~~. This Amendment shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

WITNESS:

TOWN OF SCARBOROUGH

By: _____
Thomas J. Hall, its Town Manager (duly
authorized by vote of the Scarborough Town
Council on _____, 2010)

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2010

Personally appeared the above named Thomas J. Hall, Town Manager of the Town of Scarborough, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Town of Scarborough.

Before me,

Notary Public/Attorney at Law

Print name

WITNESS:

THE NEW ENGLAND EXPEDITION-
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC, its
Manager

By: _____
Barry E. Feldman
Its Managing Member

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD, ss.

_____, 2010

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough, LLC.

Before me,

Notary Public

Print name

WITNESS:

THE NEW ENGLAND EXPEDITION-
SCARBOROUGH II, LLC

By FELDCO SCARBOROUGH, LLC, its
Manager

By: _____
Barry E. Feldman
Its Managing Member

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD, ss.

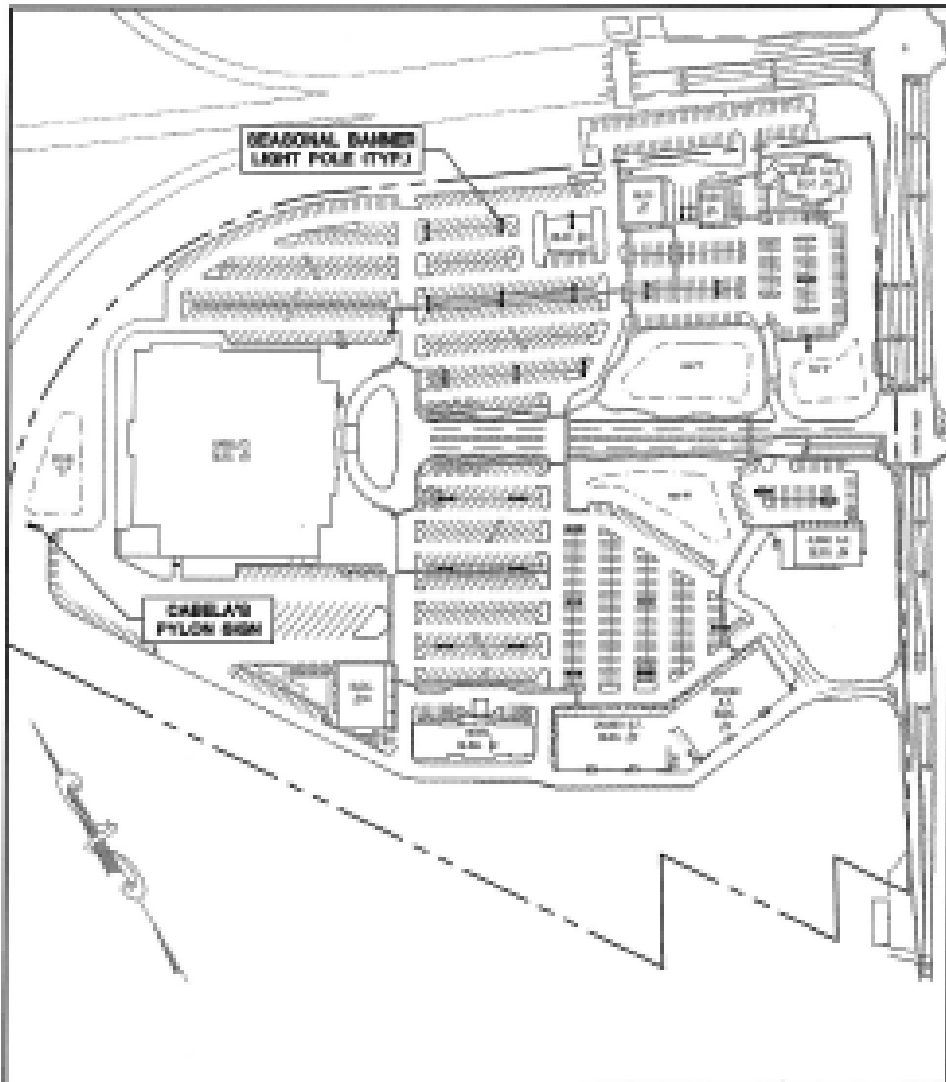
_____, 2010

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition – Scarborough II, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition – Scarborough II, LLC.

Before me,

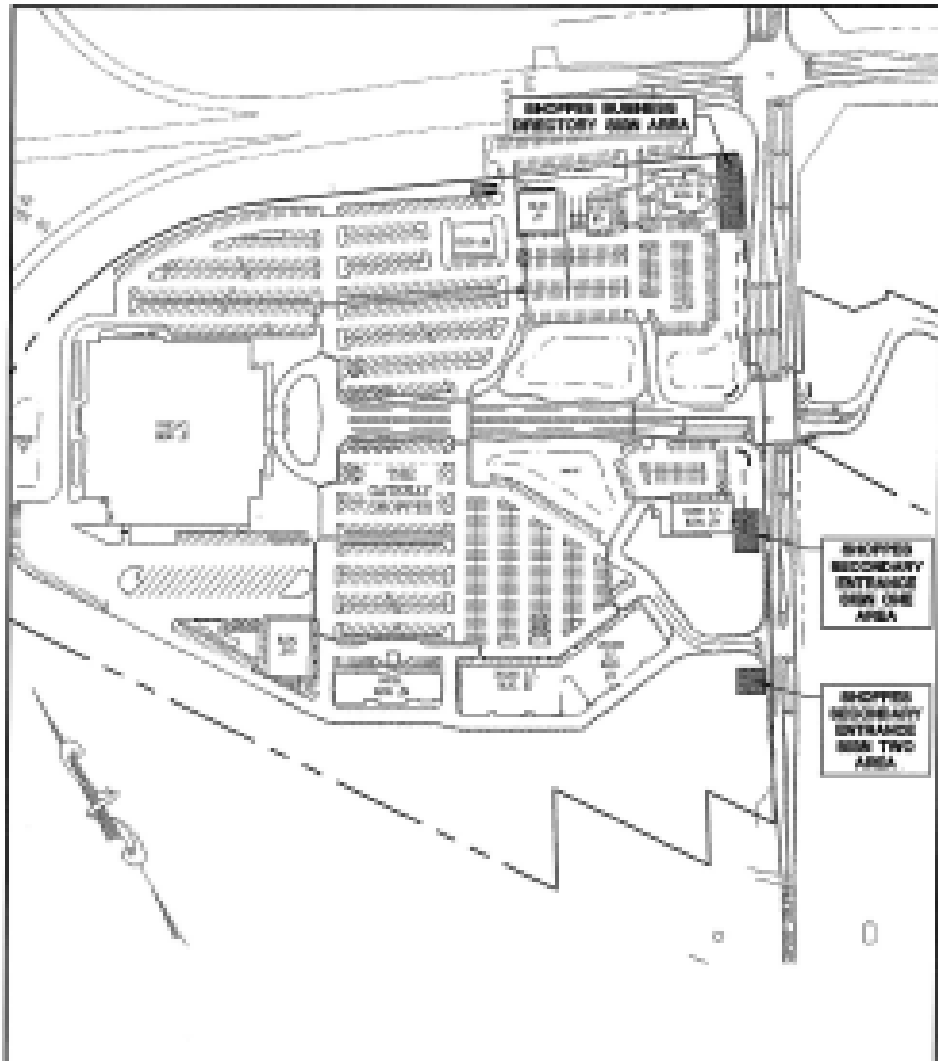
Notary Public

Print name

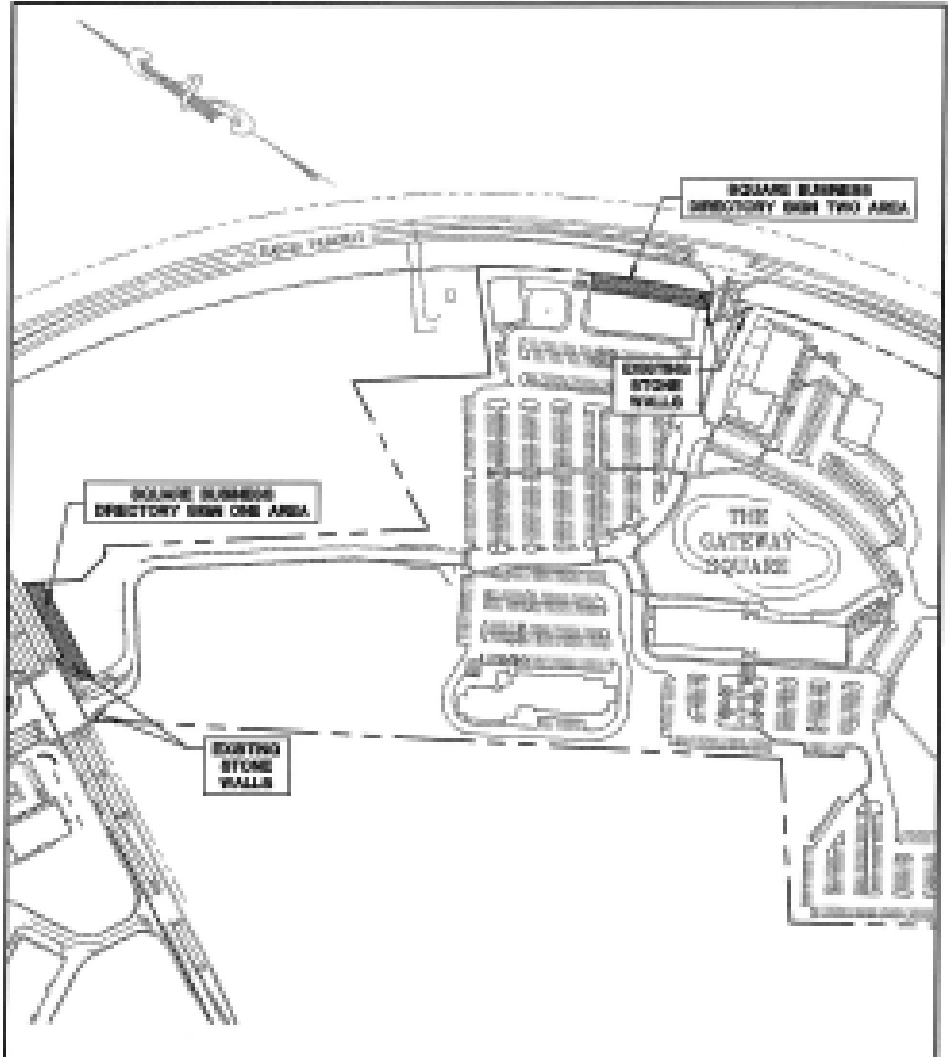


PROJECT:	The New England Expedition - Scarborough, LLC The Gateway at Scarborough Route 26 & High Street - Scarborough, Maine	PROJECT NUMBER:	20100200
		PROJECT MANAGER:	GRC
		DATE OF RECORD:	2010
	TITLE: GATEWAY SHOPPING SEASONAL BANNERS & PYLON SIGN	CAD FILE:	
		DRAWN BY:	GRC
		DATE:	June 2010
		SCALE:	N.T.S.
		SHEET NO.:	Attachment 1

DATE PLOTTED: 06/24/10 10:58 AM

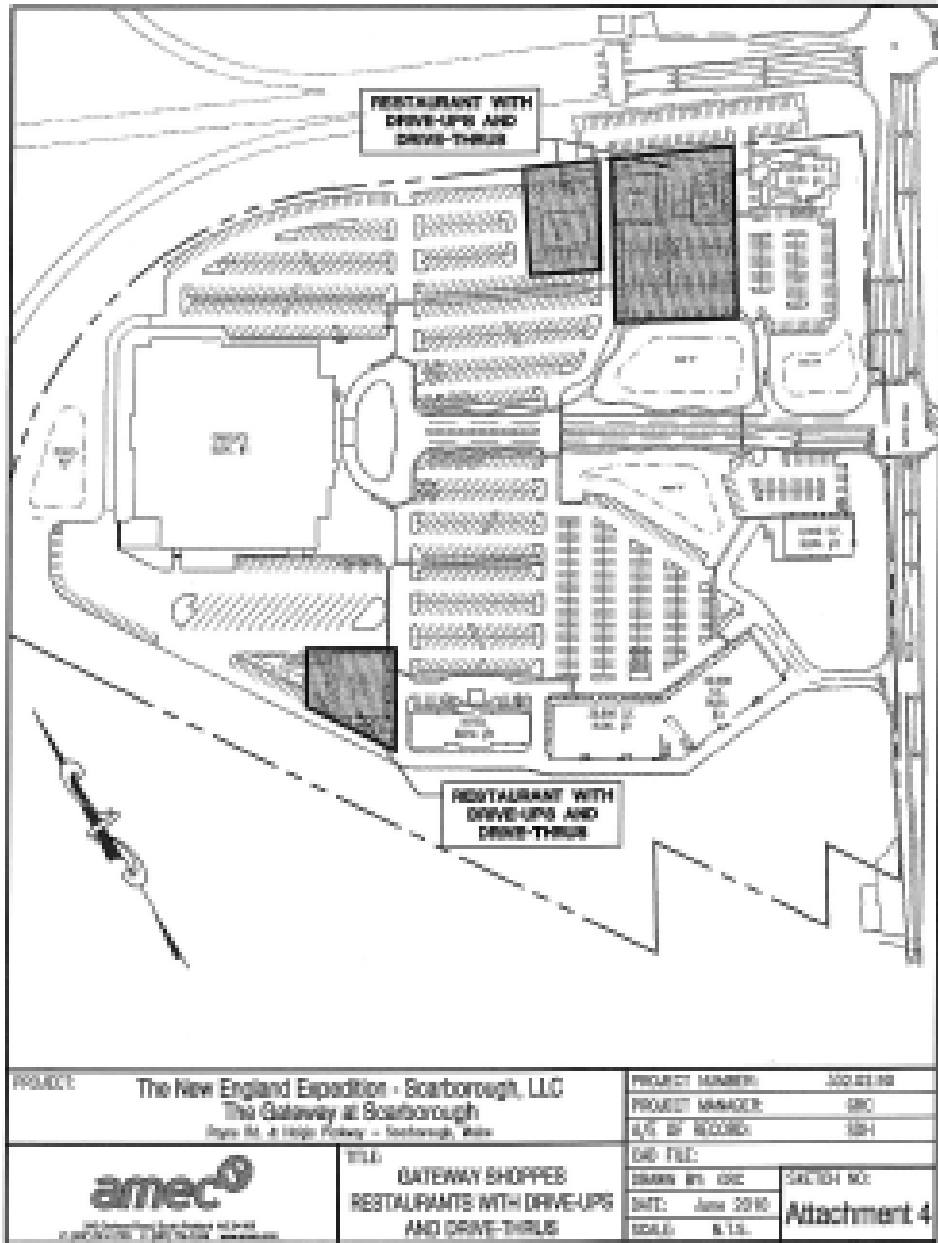



PROJECT The New England Expedition - Scarborough, LLC The Gateway at Scarborough <small>Phase III - High Parking - Scarborough, Maine</small>	PROJECT NUMBER: 202.01.00	
	PROJECT MANAGER: GRC	
 <small>AMERICAN MECHANICAL ENGINEERS & ARCHITECTS, INC.</small>	SHEET NO. GATEWAY SHOPPES DIRECTORY AND SECONDARY ENTRANCE SIGNS	
	DATE P.L.C.:	SHEET NO.:
	DRAWN BY: GRC	Attachment 2
	DATE: June 2018	SCALE: N.T.S.



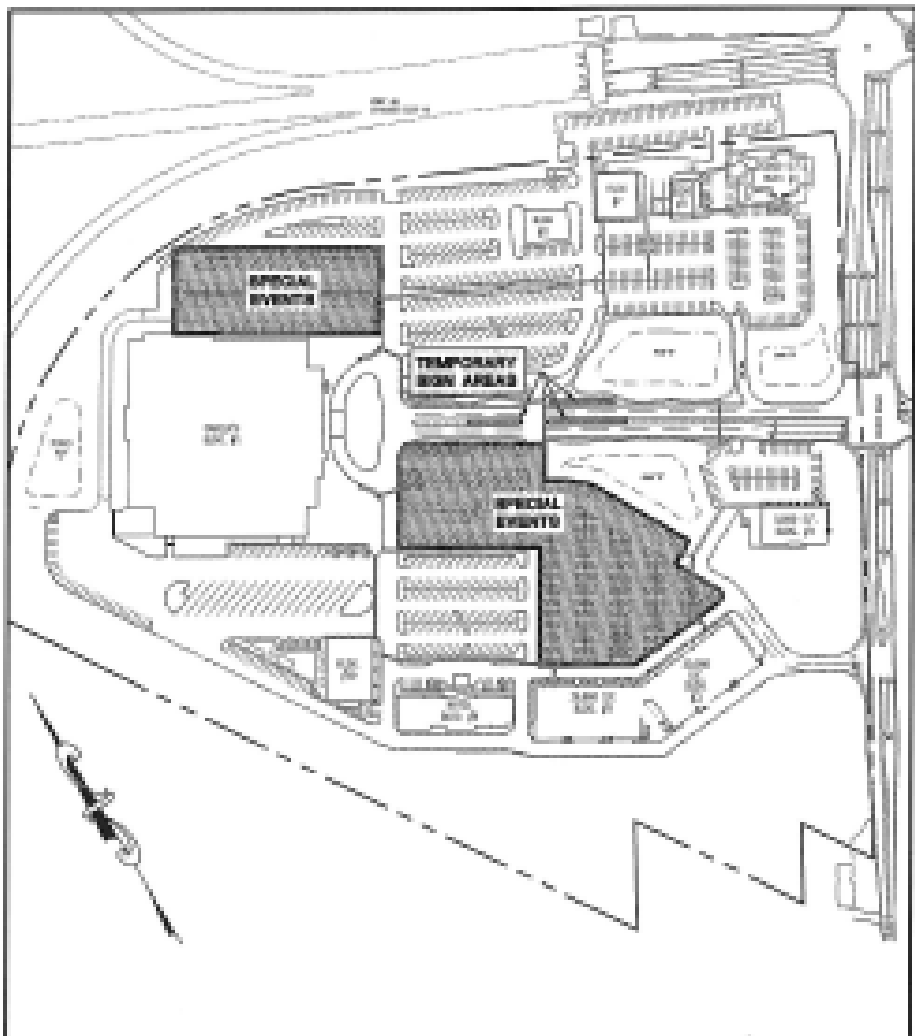
 <small>AMERICAN MECHANICAL ENGINEERING COMPANY</small>	TITLE GATEWAY SQUARE DIRECTORY AND EXISTING STONE WALL SIGNS	PROJECT NUMBER: 11100150	PROJECT LEADER: GRC A/E OF RECORD: SOR
		PROJECT: The New England Expedition - Scarborough, LLC The Gateway at Scarborough <small>Route 26, 4th Stage Parking - Scarborough, Maine</small>	
DATE PLO:		DRAWN BY: GRC	SHEET NO.: Attachment 3

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PROJECT:	The New England Expedition - Scarborough, LLC The Gateway at Scarborough <small>Open to a High Policy - Scarborough, Maine</small>	PROJECT NUMBER:	200421.00
		PROJECT MANAGER:	GRD
		S/C OF RECORD:	SRH
 <small>AMERICAN MECHANICAL ENGINEERS CONSULTANTS ARCHITECTS INC.</small>	TITLE: GATEWAY SHOPPING RESTAURANTS WITH DRIVE-UPS AND DRIVE-THRUS	DATE:	June 2010
		SCALE:	N.T.S.
		SECTION NO.:	Attachment 4

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PROJECT: The New England Expedition - Scarborough, LLC The Gateway at Scarborough <small>Project No. 4 - High Parkway - Scarborough, Maine</small>	PROJECT NUMBER: 2002000	
	PROJECT MANAGER: DRC	
 <small>AMERICAN MECHANICAL ENGINEERING COMPANY</small> <small>AMERICAN MECHANICAL ENGINEERING COMPANY</small>	FILE: GATEWAY SHOPPES SPECIAL EVENTS	
	SHEET NO.: 504	
	DATE: June 2010	SHEET NO.: Attachment 5
	SCALE: N.T.S.	

**THIRD AMENDMENT
TO
CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH AND THE NEW ENGLAND
EXPEDITION - SCARBOROUGH, LLC**

THE GATEWAY AT SCARBOROUGH

This Third Amendment to Contract Zoning Agreement (hereinafter, this "Amendment") is made as of the 20th day of April, 2008 by and between the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the "Town"), and THE NEW ENGLAND EXPEDITION - SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, "New England Expedition"), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the "Zoning Ordinance").

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 1st day of January, 2007 (hereinafter, the "Agreement") creating Contract Zoning District Number 9 (hereinafter, the "District") as described in Section 300(1) of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7th day of September, 2007, and recorded in said Registry of Deeds in Book 25462, Page 38 (the "First Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Second Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7th day of November, 2007, and recorded in said Registry of Deeds in Book 26410, Page 171 (the "Second Amendment"); and

WHEREAS, Cabala's proposes to modify the pylon sign permitted under the Agreement relating to the Cabala's building described in the Agreement; and

WHEREAS, New England Expedition proposes that banners be allowed to be affixed to light poles within the District; and

WHEREAS, New England Expedition has requested that the Town approve this Amendment to the Agreement (a) permitting a modification of the Cabala's pylon sign, and (b) permitting banners to be affixed to light poles within the District.

NOW THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

WITNESS

[Signature]

TOWN OF SCARBOROUGH

By: *[Signature]*
Ronald W. Owens, Jr. Town Manager
(duly authorized by vote of the
Scarborough Town Council on April 30,
2008)

STATE OF MAINE
COUNTY OF CUMBERLAND, ss

May 2, 2008

Personally appeared the above named Ronald W. Owens, Town Manager of the Town of Scarborough, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Town of Scarborough.

Before me,

[Signature]
Notary Public/Attorney at Law

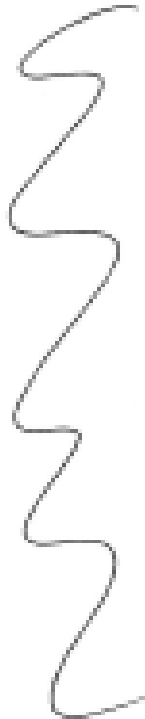
[Signature]
Notary

NOTARY PUBLIC
STATE OF MAINE
COMMISSION EXPIRES 12/31/2011

Case# 20580 District Pet 1ad

Attachment 1

Modification of Cabela's pylon sign consisting of one (1) page.

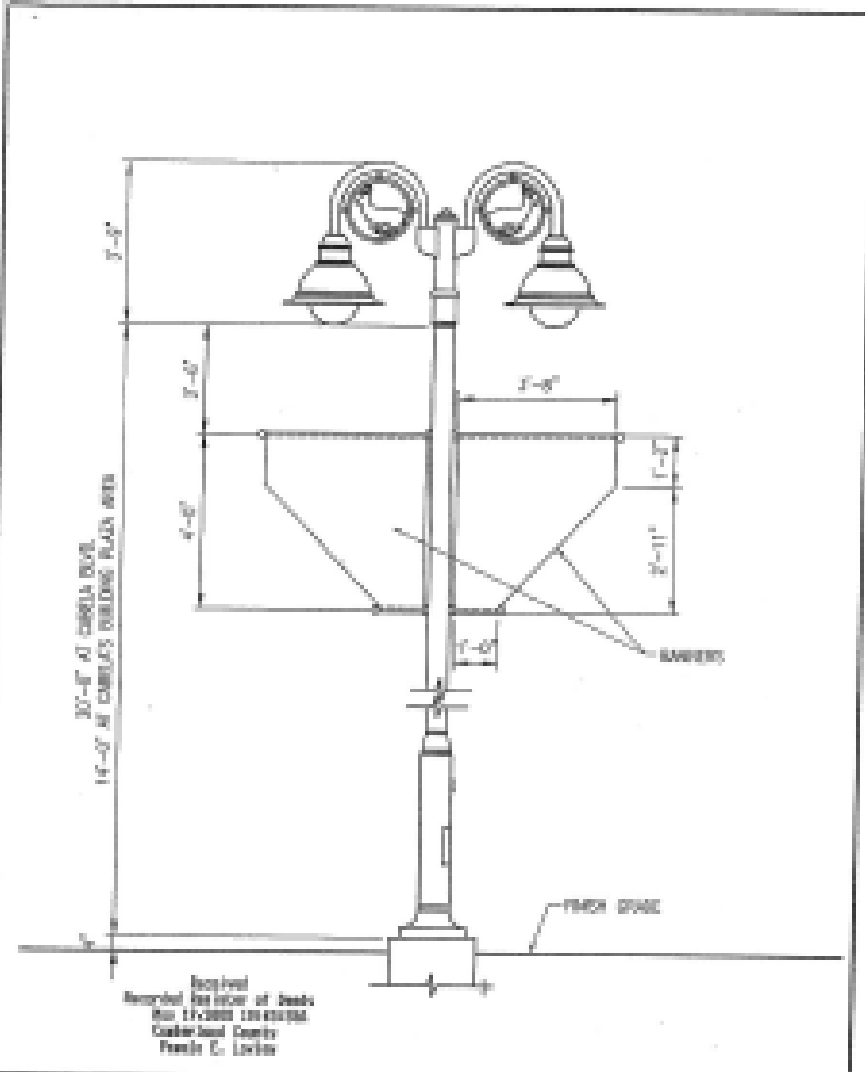


Scott 20581 Increase Fee 148

Attachment 2

Types of light poles on which temporary banners may be affixed consisting of two (2) pages.





<p>OEST Associates, Inc. 242 Gorton Road - South Portland, ME 04106 1-800-851-0000 FAX: 603-887-0000</p>	<p>The New England Exposition 225 Elm St., Suite 204 New Canaan, CT 06840 LIGHT POLE WITH TWO BANNERS SCALE: 3/32"=1'-0" DATE: FEB 2008 PAPER: J10-03</p>
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AGENDA

SCARBOROUGH TOWN COUNCIL

WEDNESDAY – JUNE 16, 2010

REGULAR MEETING – 7:00 P.M.

Order No. 10-58. Move approval to authorize the Town Manager to sign a Mutual Aid Agreement with other Municipalities in Cumberland, as follows:

**AGREEMENT BETWEEN
MUNICIPALITIES IN CUMBERLAND COUNTY
TO PROVIDE MUTUAL AID**

AGREEMENT made this _____ day of _____, 20____ by and between the undersigned municipalities.

W.I.T.N.E.S.S.E.T.H.

WHEREAS, 30-A M.R.S.A. §2674 authorizes the assignment of police officers from one municipality to another to assist with police activities; and

WHEREAS, the undersigned municipalities wish to provide mutual aid to one another, on a short-term, emergency basis; and

WHEREAS, said municipalities agree to assign their police officers upon reasonable notice of the request from the Chief of Police or other designee of the municipality requesting aid;

NOW, THEREFORE, the parties do hereby agree as follows:

1. DEFINITIONS

REQUESTING MUNICIPALITY: The municipality which is asking another municipality to provide police assistance.

RESPONDING MUNICIPALITY: The municipality which is asked to provide another municipality with police assistance.

2. PURPOSE

The purpose of this agreement is to set forth the framework through which the law enforcement agencies of Cumberland County will work together by providing each other with easy access to police resources or specialties that may be needed in a police emergency and to provide emergency service resources in quantities or specialties beyond the means of any single department.

3. ASSIGNMENTS

3.1 The **RESPONDING MUNICIPALITY** agrees to assign its officers to provide police services on a temporary, short-term basis within the **REQUESTING MUNICIPALITY**. The specific individual(s) to be assigned are to be determined by the **RESPONDING MUNICIPALITY**. Such temporary assignments shall not exceed twenty-four (24) hours except by the specific written agreement of the Chiefs of Police or other designee of each municipality.

3.2 Assignments shall be made only if the Chief of Police of the **RESPONDING MUNICIPALITY** determines in his or her sole discretion that the **RESPONDING MUNICIPALITY** has adequate personnel available.

4. EMPLOYER-EMPLOYEE RELATIONSHIP RETAINED

- 4.1 The RESPONDING MUNICIPALITY shall be the sole and exclusive employer of persons assigned hereunder; persons assigned hereunder are not intended, nor shall they be deemed, to be employees of the REQUESTING MUNICIPALITY as a result of said assignment. In addition, nothing herein shall be construed to create a joint employer relationship between the REQUESTING MUNICIPALITY and the RESPONDING MUNICIPALITY. The RESPONDING MUNICIPALITY retains all of the legal responsibilities of the employer-employee relationship while its officer(s) are on assignment in the REQUESTING MUNICIPALITY.
- 4.2 Police officers assigned hereunder shall be paid by their employer their wages and fringe benefits and shall accrue benefits in the customary manner. No overtime work shall be permitted by officers while on assignment, unless approved by the RESPONDING MUNICIPALITY.

5. TRAINING

- 5.1 Each municipality shall be solely responsible for the training and equipment of its personnel.
- 5.2 The RESPONDING MUNICIPALITY shall not assign an employee to the REQUESTING MUNICIPALITY to perform a function that the employee is not trained or equipped to perform.
- 5.3 The REQUESTING MUNICIPALITY shall not ask or assign an employee of the RESPONDING MUNICIPALITY to perform a function that the employee is not trained or equipped to perform.

6. DEFENSE AND INDEMNIFICATION

- 6.1 To the fullest extent permitted by law, the REQUESTING MUNICIPALITY, at its own expense, shall defend or cause to be defended, the RESPONDING MUNICIPALITY, its officers and employees, from and against any and all claims, causes of action or suits, just or unjust, arising out of, or in any way connected with the act(s), omission(s) or negligence of any officer or employee of the RESPONDING MUNICIPALITY occurring while such officer or employee is working hereunder, including but not limited to a determination, under Paragraph 3.2 of this Agreement, not to assign officers or employees to the REQUESTING MUNICIPALITY.
- 6.2 In addition to, and without limiting the foregoing, the REQUESTING MUNICIPALITY shall indemnify and hold harmless the RESPONDING MUNICIPALITY, its officers and employees, from any and all liability, costs, damages, expenses or judgments resulting from or in any way connected with the act(s), omission(s) or negligence of any such officer or employee of the RESPONDING MUNICIPALITY occurring while such officer or employee is working hereunder, including, but not limited to a determination, under Paragraph 3.2 of this Agreement, not to assign officers or employees to the REQUESTING MUNICIPALITY, subject to the exclusions set forth in the attached and incorporated herein Exhibit A.

- 6.3 In the event that it is determined that the RESPONDING MUNICIPALITY, its officers or employees, require separate legal representation, the selection of such counsel shall be subject to the approval of the REQUESTING MUNICIPALITY. Reasonable requests for separate legal representation shall be subject to the approval of the REQUESTING MUNICIPALITY. Selection, approval and requests for legal representation shall be subject to the limitations and requirements, if any, of REQUESTING MUNICIPALITY'S liability coverage.
- 6.4 Any case or claim in which RESPONDING MUNICIPALITY, or its officers or employees, is a party shall not be settled without the approval of RESPONDING MUNICIPALITY, which approval as to the RESPONDING MUNICIPALITY and its officers and employees shall not be unreasonably withheld. In the event that the RESPONDING MUNICIPALITY does not approve a proposed settlement of RESPONDING MUNICIPALITY, or its officers or employees, which is otherwise acceptable to a claimant and to the REQUESTING MUNICIPALITY, the REQUESTING MUNICIPALITY shall be relieved of any further obligation which it may have to defend under Paragraph 6.1 and any obligation which it may have to indemnify or hold harmless under Paragraph 6.2, if said obligation is in excess of the proposed settlement offer. The settlement process will be subject to the limitation and requirements, if any, of the REQUESTING MUNICIPALITY'S liability coverage. An admission of liability on the part of the RESPONDING MUNICIPALITY, its officers or employees, shall be included in a settlement agreement only with the consent of the RESPONDING MUNICIPALITY.
- 6.5 The RESPONDING MUNICIPALITY shall be fully responsible for all workers' compensation coverage for its officers or employees hereunder and the RESPONDING MUNICIPALITY hereby waives any right of subrogation or lien pursuant to 39-A M.R.S.A. §107 against the REQUESTING MUNICIPALITY, its officers or employees, arising out of or resulting from said workers' compensation claims.
- 6.6 The REQUESTING MUNICIPALITY shall give the RESPONDING MUNICIPALITY immediate notice in writing of any notice of claim, legal action or suit filed related in any way to the incident which required mutual aid or which may affect the performance of this Agreement. The RESPONDING MUNICIPALITY shall give the REQUESTING MUNICIPALITY immediate notice in writing of any notice of claim, legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under this Agreement.
- 6.7 Nothing herein waives or limits the sovereign or qualified immunity of the parties under Federal, State or constitutional law, including, but not limited to immunity pursuant to the Maine Tort Claims Act.

7. DESIGNATED REPRESENTATIVE

The municipal officers of each municipality shall designate the Chief of Police or other designee for implementation of this Agreement, except as otherwise provided by municipal charter or ordinance.

8. COMMAND

All persons assigned hereunder shall be subject to the direction and control of the command officers in the REQUESTING MUNICIPALITY for the duration of said assignment.

9. RECORDS & REPORTS

Records regarding performance of the obligations required by this agreement will be maintained by the respective parties. Each party will maintain the confidentiality of agency records as required by State and Federal law. Parties may seek access to the other party's records on an as needed basis and to the extent allowed by law.

10 MEDIA

The REQUESTING MUNICIPALITY is expressly authorized to release to the public / media the details of law enforcement actions within that community, as appropriate.

11. DURATION & TERMINATION

This agreement shall become effective upon proper execution and agreement of the parties. This agreement may be modified upon the mutual written consent of the parties. Said agreement shall remain in effect until termination by the municipality upon thirty days written notice to the other municipalities subject to this agreement. The decision of one municipality to terminate its participation in this agreement shall not affect the validity or operation the agreement as to the other municipalities. Any existing defense and indemnification obligations shall survive any such termination of this agreement.

IN WITNESS WHEREOF, the undersigned municipalities have caused this Agreement to be signed by their authorized representatives, as of the day and year first above written.

Town of Gorham

Town of Falmouth

By _____

By _____

Title _____

Title _____

City of South Portland

Town of Cumberland

By _____

By _____

Title _____

Title _____

City of Westbrook

By _____

Title _____

City of Portland

By _____

Title _____

Town of Bridgton

By _____

Title _____

Town of Scarborough

By _____

Title _____

Town of Cape Elizabeth

By _____

Title _____

Town of Windham

By _____

Title _____

Town of Freeport

By _____

Title _____

Town of Brunswick

By _____

Title _____

Town of Yarmouth

By _____

Title _____

EXHIBIT A

Exclusions

The REQUESTING MUNICIPALITY'S obligation to indemnify and hold harmless pursuant to Paragraph 6.2 shall not apply:

- (a) to any liability, cost, damage, expense or judgment to the extent that it is finally determined to be the intentional misconduct or gross negligence of the RESPONDING MUNICIPALITY, its officers or employees, other than those acts necessary to preserve life or property
- (b) to any liability arising out of the willful violation of any statute or ordinance if committed at the direction of the RESPONDING MUNICIPALITY or any of its officers or employees; or
- (c) to any liability arising from defamation if the defamatory statement was made by or at the direction of the RESPONDING MUNICIPALITY or any of its officers or employees with knowledge of its falsity or reckless disregard for the truth.