I. CALL TO ORDER – On Monday, September 17, 2018 at 6:30 p.m. a Council Meeting was held in the City Hall Auditorium.

II. RECOGNITION OF MEMBERS PRESENT – Mayor Marston Lovell recognized the members of the Council and determined that the Councilors present constituted a quorum. Councilors present: Marshall Archer, Roger Gay, William Doyle, Lynn Copeland, Alan Minthorn, Micah Smart and Nathan Johnston. City Administrator Kevin Sutherland and City Clerk Michele Hughes were also present this evening.

III. PLEDGE OF ALLEGIANCE

IV. GENERAL

➢ Change in Agenda – Mayor Lovell noted that Executive Session item #C would be moved up to just after item #A – Economic Development & Planning Director’s presentation on TIF’s. We will go into Executive Session, come out, and likely have a vote.

➢ Kiara Frischkorn, UNE Marine Science Student – Ms. Frischkorn initiated going out to the Camp Ellis Beach and cleaning it up. This in turn motivated some of her classmates and friends that they joined her this past Saturday. Mayor Lovell Thanked Kiara and the other students from the Marine Science class that were in attendance this evening.

➢ International Coastal Clean-Up Week – This will be held this week. This was part of Ms. Friscjkorn’s motivation for helping clean up the coast.

V. PUBLIC COMMENT

➢ Stephen Shiman – We are looking forward to the joint meeting on Wednesday, September 26th as per our agreement to have the first of four meeting this year that are joint between the School Board and the Council. We are very much looking forward to this and had a pre-meeting to discuss what we are going to discuss and then we decided that we would leave it informal. Following the workshop, you are invited to stay because there will be a presentation of the district report card of how we are doing. I think we are talking about working together with the council and really the community at large to make people more aware of not only what we are doing financially but how we are doing in terms of where we are strong and where we are weak. In the school system itself. So, this is part of that. So, there will be that report and there will also be brief speeches from principals and administration. So, you can get a better view of where people see we are at, at the present time. The workshop will start at 6:00 p.m. Mayor Lovell asked if it was possible to get that “Report Card” published and distributed before the meeting. Mr. Shiman stated he believed that was the intent. The School Board has asked the Superintendent to make materials available and I will remind him.

➢ Don Pilon, Glenhaven Circle – A couple of months ago I asked when the report of the hoarders grant from 2017 might be available. It was stated it would be coming the next month. It is now September and there has been no public report available. This is the grant that the Shalom House was going to facilitate, and the city was the recipient. City Administrator Kevin Sutherland noted that he did provide the information in one of his administrative updates. Mr. Sutherland stated he would reiterate it again in his administrative update.

VI. CONSENT AGENDA

A. ECO MAINE AGREEMENT

Councilor Minthorn moved, Councilor Smart seconded “Be it Ordered that “The City Council hereby authorizes the City Administrator to sign the ‘Memorandum of Understanding Regarding Contaminated Loads of Recyclable Materials with ecomaine’, effective September 2018”. Further move to approve the order.

Councilor Copeland noted the agreement has an effective date that is in the past and that seems irregular and it should reflect the date the agreement is signed. City Administrator Kevin Sutherland noted that he would negotiate the date change.

Mayor Lovell called for a vote on the motion. The motion passed with five (5) yeas and two (2) nays – Councilors Doyle and Minthorn.
MEMORANDUM OF UNDERSTANDING
REGARDING CONTAMINATED LOADS OF RECYCLABLE MATERIALS

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made this _____ day of ____________, 2018, by and between ECO MAINE, a non-profit, non-stock, public municipal corporation duly organized and existing under the laws of the State of Maine and having a place of business in Portland, Maine ("ecomaine"), and the CITY OF SACO, a municipal corporation established and existing under the laws of the State of Maine ("City"). The purpose of this MOU is to establish the manner in which eecomaine will handle contaminated loads of recyclable materials delivered by the City to ecomaine’s recycling facility.

WHEREAS, ecomaine owns and operates a single-sort recycling facility located at 64 Blueberry Road in Portland, Maine (the “Recycling Facility”) and also owns and operates a waste-to-energy facility at the same address; and

WHEREAS, the City is an Associate Member of ecomaine; and

WHEREAS, on October 16, 2006, the City and ecomaine entered into a Waste Handling Agreement ("WHA"), which has an expiration date of June 30, 2027; and

WHEREAS, the City is required to deliver all Recyclable Materials, as that term is defined in the WHA, collected by or on behalf of the City to the Recycling Facility, and ecomaine is required to handle all such Recyclable Materials delivered by the City; and

WHEREAS, ecomaine is currently receiving a negative value for some Recyclable Materials within the recycling market, meaning that it must pay to dispose of certain loads of Recyclable Materials; and

WHEREAS, since the effective date of the WHA, the City’s loads of Recyclable Materials have included non-recyclable materials that are excluded from the list of Recyclable Materials (hereafter, “Contaminants”); and

WHEREAS, although the recycling market has historically allowed for a certain level of contamination in loads of Recyclable Materials, the market has recently shifted and has become increasingly intolerant of the existence of Contaminants in such loads; and

WHEREAS, ecomaine’s current practice, with regard to other customers, is to charge reasonable fees for handling loads of Recyclable Materials depending on the levels of contamination in each load (in addition to charges for covering the negative value on the Recyclable Materials); and

WHEREAS, the City and ecomaine desire to cooperate in order to reduce the amount of Contaminants included in loads of Recyclable Materials that are delivered by the City to the Recycling Facility pursuant to the WHA;

NOW THEREFORE, in consideration of the mutual benefit to be derived hereunder by the Parties hereto and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually understood and agreed by the Parties as follows:

1. As of the effective date of this MOU, ecomaine may measure certain loads of Recyclable Materials that are delivered by the City to the Recycling Facility and will record the level of contamination of such loads as a percentage reflecting the ratio of the volume of Contaminants to the volume of the entire load. To the extent the level of contamination in any load is determined by ecomaine to be too high for sorting at the Recycling Facility, the load may be disposed of entirely, without sorting, and the City will be charged its current applicable municipal solid waste tipping fee.
2. As of the effective date of this MOU, to the extent the level of contamination in any load of Recyclable Materials rises to a level that would result in a fee under the Contamination Fee Schedule, included on Appendix A, which is attached hereto and incorporated herein, **ecomaine** will issue an invoice to the City. The City agrees to pay any applicable fees based on the level of Contaminants as set forth in the Contamination Fee Schedule.

3. The City’s WHA will continue to be a “neutral” agreement, meaning that **ecomaine** will not charge the City for the negative value of Recyclable Materials that are disposed of through the recycling market.

4. The City agrees to engage in reasonable outreach efforts in order to educate its residents as to the types of materials that are recyclable and those materials that constitute Contaminants. To the extent reasonably practicable, **ecomaine** will to assist in those education and outreach efforts.

5. This MOU shall have an effective date of September 1, 2018, and the City will be responsible only for those fees arising from loads delivered to the Recycling Facility on or after that date. Only loads that contain non-recyclable materials will be charged accordingly.

6. This MOU is subject to change and amendment to reflect the working practices and resulting agreements developed between the Parties in the performance of responsibilities under the terms of this MOU. No amendment or modification of this MOU shall be binding unless evidenced in writing signed by the Parties.

7. In the event that any issue arises under this MOU regarding the rights and responsibilities of the Parties, the Parties shall meet and attempt in good faith to resolve any such dispute before it is brought to any other forum.

8. If any provision of this MOU is held invalid or unenforceable, the remaining provisions will remain valid and enforceable to the fullest extent permitted by law.

9. This MOU contains the complete and entire agreement of the Parties.

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

ECOMAINE

Witness

By: Kevin Roche
Its: CEO/General Manager

CITY OF SACO

Witness

By:
Its:

APPENDIX A

Contamination Fee Schedule¹

<table>
<thead>
<tr>
<th>Level of Contaminants (by volume)</th>
<th>Per-Ton Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 3%</td>
<td>None</td>
</tr>
<tr>
<td>3-5%</td>
<td>None (warning notification may be issued)</td>
</tr>
<tr>
<td>6-10%</td>
<td>$35</td>
</tr>
<tr>
<td>11-15%</td>
<td>$45</td>
</tr>
<tr>
<td>16-20%</td>
<td>$55</td>
</tr>
<tr>
<td>21-25%</td>
<td>$65</td>
</tr>
<tr>
<td>26% or more</td>
<td>Current Municipal Solid Waste Tipping Fee</td>
</tr>
</tbody>
</table>

¹ Levels of contamination, as measured by **ecomaine**, will be rounded to the nearest whole number.
VII. AGENDA
A. DE-MYSTIFYING TIFS (PRESENTATION)

Economic Development Director Denise Clavette presented the following information on TIF’s:

**De-Mystifying Tax Increment Financing (TIFs)**

Overview of Tax Increment Financing

Presented to the Saxo City Council September 17, 2018

Denise M. Clavette
Planning & Development Director
City of Saxo

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**What is Tax Increment Financing**

- A great tool to catalyze economic development
- Allows municipalities to “shelter” increases in valuation (up to 30 years), avoid losses due to state and county fiscal formulas
- TIF revenue: can fund infrastructure enhancements related to / required for project development (public or private) and/or project costs; and
- A comprehensive development program can fund many municipal projects to enhance the economic development climate
- Development program needs to meet statutory requirements and local process

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**Benefits of TIFs**

- Assist in achieving economic development goals of comprehensive plan, or other planning / vision plans
- Attract new investment (i.e. tax dollars), jobs, improve local economy
- Accomplish significant infrastructure projects
- Tax shift benefits

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**Tax Shift Benefit**

- TIFs shelter new assessed value from a municipality’s state valuation
- The “state valuation” = equalized total assessed value in municipality
- The valuation impacts:
  - State education subsidies
  - County taxes
  - State revenue sharing subsidies
  - Local education contributions to the school district

---

**Fiscal Formulas Explained**

- **State Aid For Education Impacts**
  - Based on the State of Maine Essential Programs and Services funding model. Statewide mil rate is applied to a district’s state valuation to determine local property taxes for education – the higher the valuation, the more funds that need to be raised locally.

- **Municipal Revenue Sharing Received by a Municipality**
  - Based on population, taxes raised, and state valuation – the higher the valuation, the less $ of Revenue Sharing received by a municipality.

- **County Taxes Paid by a Municipality**
  - Based on the municipality’s % share of the County’s state valuation – the higher the share of valuation, the higher the County tax.

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**What is a TIF District**

- Geographic boundary is defined (project specific, or area-wide)
- Original Assessed Value (OAV)
- Development Program is created and managed locally
- Applications reviewed for statutory compliance by:
  - State of Maine Department of Economic and Community Development (DECD)
  - Maine State Housing Authority
TIF Process

- Municipality determines % of new valuation, and therefore associated revenues, to shelter within a TIF (up to 100%). What is not sheltered accrues to General Fund.

- Sheltered revenues can be used to support municipal expenditures in support of or made necessary by economic development, and/or;

- Can be used to ‘incentivize’ private investment by a business and/or developer (through Credit Enhancement Agreement - Municipality determines % to be shared and can be any amount between 0% and 100% of all TIF revenues)

Lost Revenue in Every New Tax Dollar

45% Lost Revenue  55% Available to City

Use of TIF program in Maine (as of 2017)

- 482 TIF districts in the State of Maine

- Approximately half include at least one Credit Enhancement Agreement (“CEA”)

- Special types of TIF districts

Special Types of TIF Districts

- Downtown TIFs

- Transit-Oriented TIFs

- Omnibus TIFs

- Affordable Housing TIFs

Nine TIF Districts in Saco

(2 are currently up for extension approval at Maine Department of Economic and Community Development (DECD))

- Industrial Park Road
- First Light
- Downtown Omnibus District
- Spring Hill
- Franklin Fuels
- Park North / Cascade
- Saco Island Mill Building #4
- Mill Brook
- General Dynamics
X. EXECUTIVE SESSION

Councilor Minthorn moved, Councilor Archer seconded “Be it Ordered that the City Council enter into executive session, Pursuant to [M.R.S.A. Title 1, Chapter 13, Subchapter 1, §405(6):

C. Economic Development: Discuss Terms of Potential TIF & Credit Enhancement Agreement”

The motion passed with seven (7) yeas. Time: 6:57 p.m.

XI. REPORT FROM EXECUTIVE SESSION

Councilor Minthorn moved, Councilor Smart seconded to come out of Executive Session at 7:32 p.m. The motion passed with seven (7) yeas.

Mayor Lovell, all the Councilors, and the City Administrator were present.

Councilor Gay stated there was no report this evening.

B. HORTON WOODS CONTRACT ZONE – (FIRST READING)

Applicant Riverside Meadows, LLC proposes a clustered subdivision on a 54.86 acre parcel adjacent to 464 Buxton Road. The contract zone is proposed with the goal of clustering development on a portion of the land, probably preferable to a standard two-acre lot subdivision over most of the property. This is a re-visit of a contract zone and clustered subdivision approved in 2005 and 2010, respectively, that was never built, part of a project that included the sale of a 100 acre parcel to the City, now recognized as Horton Woods, subject to a conservation easement in perpetuity for the public’s use and enjoyment.

Typically, clustered subdivisions must connect to both public sewer and water per Article 6 of the Zoning Ordinance. Public sewer is over 3 miles away, and public water is over 2 miles away, so the agreement would modify that requirement. The contract zone would also modify minimum lot size, frontage, density, and setback standards found in the Zoning Ordinance.

The Planning Board considered the proposal at its meeting on May 15, 2018 and forwards a positive recommendation. The City Council reviewed this item in Workshop on July 16, 2018 and includes changes suggested at that meeting.

Councilor Archer moved, Councilor Gay seconded “The City of Saco hereby Ordains and Approves the first reading and the findings in the contract zone document entitled ‘Contract Zone Agreement By and Between Riverside Meadows, LLC and the City of Saco,’ for the property adjacent to 464 Buxton Road as authorized by Section 1403 of the Zoning Ordinance, pursuant to 30A M.R.S.A. Section 4352(8), and further move to schedule a public Hearing for October 1, 2018.” The motion passed with seven (7) yeas.
Contract Zone Agreement

By and Between
Riverside Meadows, LLC and the City of Saco

May 15, 2018

THE CITY OF SACO HEREBY ORDAINS:

I. That the Zoning Ordinance of the City of Saco, dated January 2, 1985 and amended through March 12, 2018, be amended as further described in this Contract by and between the City of Saco and Riverside Meadows, LLC (Applicant).

1. The Applicant proposes to develop a clustered residential subdivision on a parcel (Subject Property) is identified as Tax Map 123, Lot 21-3 on City of Saco tax maps.

2. The Subject Property is owned by the Applicant, acquired at auction on April 11, 2018.

3. A copy of a Purchase and Sale Agreement Warranty Deed is submitted by the Buyer, identified as Riverside Meadows, LLC, P.O. Box 108, Portland ME 04112 as evidence of right, title and interest.

4. The Subject Property is in the C-1 zoning district.

5. The Applicant has submitted a written statement authorizing the Applicant to represent their property before the City of Saco.

6. The Subject Property has an area of 49.54 acres. The minimum lot area requirement in the C-1 zoning district is 80,000 square feet. The Subject Property is a conforming parcel with respect to minimum lot area.

7. The Subject Property has 448.80 feet of frontage on Buxton Road. The minimum frontage requirement for a parcel in the C-1 zoning district is two hundred (200) feet. The Subject Property is a conforming lot with respect to the frontage requirement.

8. The Applicant proposes to develop a clustered residential subdivision with thirty 27.30 single-family dwellings on the Subject Property. The project is proposed as a Clustered Residential Subdivision that would comply with requirements found in Article 6 of the Zoning Ordinance, save for two three: the Applicant recognizes that neither public water nor public sewer are readily available to service the Subject Parcel, as required by §230-602.C and 230-602.D, respectively. Instead, the Applicant proposes to provide on-site drilled wells and subsurface septic systems.

9. The Applicant proposes to establish 33.3 acres of the Subject Property as open space for use by residents of the subdivision.

II. This contract amends the Saco Zoning Ordinance as follows:

1. Section 230-602-C is amended to allow dwelling units in a cluster development that are not connected to the Maine Water Company system, and instead dependent on private wells.

2. Section 230-602-D is amended to allow dwelling units in a cluster development that are not connected to the municipal sanitary sewer system, and instead serviced by private systems.

3. Table 412-1 is amended to establish a minimum lot size of 10,000 square feet for individual building lots within this cluster development.

4. Table 412-1 is amended to establish a minimum frontage requirement of fifty (50) feet for individual building lots within this cluster development.

5. Table 412-1 is amended to establish a minimum front yard setback requirement of fifteen (15) feet for individual building lots within this cluster development.

6. Table 412-1 is amended to establish a minimum side and rear yard setback of ten (10) feet for individual building lots within this cluster development.

7. Table 412-1 is amended to reduce the Minimum Net Residential Acreage per Dwelling Unit to 65,000 square feet per unit, a reduction of 15,000 s.f. from the otherwise required 80,000 s.f. per unit.
III. This Contract Zone is subject to the following conditions and restrictions, as provided for in Section 230-1405 of the Saco Zoning Ordinance:

1. Development of a clustered residential subdivision by the Applicant is allowed on the Subject Property.

2. Requirements found in Sections 230-602.C and 230-602.D of the Zoning Ordinance that all dwelling units in a cluster development shall be connected to the Maine Water Company and to the municipal sanitary sewer system, respectively, shall be waived.

3. Minimum lot and yard requirements established in Table 412-1 of the Zoning Ordinance shall be reduced in accordance with Section II.3-6 above.

4. No more than twenty-seven (27) single family residences shall be permitted in the clustered residential subdivision allowed by this Contract Zone.

5. A 12-15 acre portion of the Subject Property shall be established as public open space, with access limited to the owners of lots, which will then be donated to the City of Saco prior to the issuance of any certificates of occupancy.

6. A homeowners association shall be established in order to maintain the open space, common facilities, and any other issues deemed necessary by the Planning Board, the developer, and/or owners of lots within the subdivision.

7. Except as addressed in this Contract Zone document, the project shall adhere to all other applicable provisions of the City of Saco Zoning Ordinance and Subdivision Regulations.

8. All details shown on the plans and submitted as application materials are hereby incorporated into this contract by reference. The site shall be developed in conformance with those plans and materials, while recognizing that the plan is subject to subdivision review by the Saco Planning Board. Minor changes may be approved by the staff of the City of Saco. If it is determined that the changes constitute a change in the contract, then the developer shall be required to obtain City Council approval of the changes.

9. This Document and Contract Zone affect only the parcel of land identified as Tax Map 123, Lot 21-3 on City of Saco tax maps.

10. This contract and its provisions shall specifically and exclusively apply to the Contract Zone request submitted by the Applicant.

11. This Document and the Contract Zone it creates shall not be transferable prior to development as proposed by the Applicant. However, in the event that the Applicant chooses to pursue the conveyance of the property to another party prior to or during development as proposed herein, said Party is required to demonstrate to the Planning Board's satisfaction that the Party’s technical and financial capacity to own, manage and complete the project is acceptable.

12. Failure of the Applicant to submit application for a clustered residential subdivision as proposed to the Planning Department for review and approval by the Planning Board within two (2) years of the approval of this Contract Zone shall render this Agreement null and void. In the event that permits or approvals are delayed due to circumstances beyond the control of the Applicant, this deadline may be extended by one (1) year upon written request submitted by the Applicant.

13. Breach of these conditions, restrictions and/or Agreement by the developer shall constitute a breach of the contract. Said breach of contract shall constitute a zoning violation, subject to enforcement action by the City of Saco.

14. Developer, for itself, and its successors and assigns, including any lot purchasers herein specifically, knowingly and intentionally releases City from any and all claims related to or in any way concerning or arising from water, water quality and water quantity at the project site, and the use of common wells. As consideration for this Contract Zone, Developer herein releases and holds the City harmless from such claims, demands, suits, etc., it being understood and agreed that and all remedies related to water, water quality and water quantity are the sole responsibility of Doyle Enterprises, and its successors and assigns, including lot owners; and, that this condition shall be recorded in the Registry of Deeds by Developer for notice purposes.
IV. Pursuant to authority found in 30A M.R.S.A. Section 4352 (8), and the City of Saco Zoning Ordinance, Section 230-1405, and by vote of the Saco Planning Board on May 15, 2018, and the Saco City Council on __________, 2018, the following findings are hereby adopted:

A. City Tax Map 123, Lot 21-3 is a parcel of an unusual nature and location, for the following reasons:

1. The Subject Property when originally conceived for a clustered, residential subdivision was part of a 165 acre parcel, bisected by Stackpole Creek and associated wetlands. The portion of the original parcel now proposed for development is in the Stackpole Creek watershed. The City’s Comprehensive Plan, Zoning Ordinance and Zoning Map recognize Stackpole Creek as a valuable natural resource that is protected via its designation as a Resource Protection zone.

2. The owners of the original Subject Property and the City of Saco negotiated the purchase of a 100.04 acre parcel, conveyed to the City in February, 2006, and subject to a permanent conservation easement for the benefit of the public.

3. The original Subject Property is a topographically diverse parcel, home to a variety of ecosystems including ridges forested with oak and maple, pine and hemlock groves, a ten-acre marsh, and a one-acre heath. Wildlife includes beaver, deer, moose, fisher, bobcat and waterfowl.

B. The proposed rezoning is consistent with the Saco Comprehensive Plan, based on the following goals:

Chapter 5: Community Goals and Policies
A. Population and Demographics
   2. The City should continue to provide for the construction of a wide range of types of housing at a variety of densities and types to assure that a diversity of people can continue to live in the City including younger households.

Chapter 6, Land Use Goals and Policies.
Rural Conservation Area
Allowed Uses: Uses in the Rural Conservation area are limited to agricultural and forestry activities, other natural resource related uses, and single and two-family homes including manufactured housing units on individual lots. The following types of uses are generally appropriate in this area as a permitted or conditional use:
--single and two-family dwellings including manufactured housing units on individual lots.
--small clustered residential development that preserve habitat blocks.

C. The proposed use is consistent with the existing uses and permitted uses within the original zone. The original zone is the Conservation-1 (C-1) zone, “... designed to promote and preserve agriculture and open space, while permitting low density residential uses that do not conflict with this overall purpose.” (Zoning Ordinance, Section 230-408-1.) Among the permitted and conditional uses allowed in the C-1 zone are Single and Two-family Dwellings, Clustered residential projects, Public parks and playgrounds, and Outdoor commercial recreation facilities.

D. The conditions proposed are sufficient to meet the intent of Section 230-1405. Contract Zoning, of the Saco Zoning Ordinance.
Cable Consultant Tony Vigue replied that “yes” we do. Mr. Michaud strongly suggested that we get that data routinely to determine if cable cutting is becoming an issue. Franchise fees are from at least my perspective, it is a rental cost for the company to pay the community. That rental cost drops into our general fund as do many other revenue sources. So, I think we need to know what are we getting? Are we asking for the yearly presentation of data and how we arrived at the cost? Do they do that for us every year? On page 37 it says, “Upon written request from the City, Company shall provide to the City a summary of the Company’s activities in the City for the previous calendar year including a summary of fees for cable or cable-related services”. It is not clear if they are talking about non-fees for receiving TV services or actual physical services like installations etc. I would interpret it to say that every year we can ask the cable company for a complete analysis of how you came up with what you
paid me. Do we ever ask for that? Tom Vigue stated that it was very common for cable operators prior to Charter Communication which we have now to give you a complete report as you described. Charter within the last 6 months has said that this kind of information is proprietary. Our position is to have the City Attorney send them a letter reminding them that this information is due to the city and if they consider it proprietary they can sign a non-disclosure agreement with the city so that it is available to the city fathers and people who have a need to know. That is one solution. There may be other solutions that I’m not aware of. But, Charter has taken a very hard line on what information they are willing to disclose to the public. Once it hits the city unless there is a non-disclosure agreement, it is in the public eye. Mr. Michaud stated that answered his question and was just what he thought is that they won’t tell you anything, but they will send you a check because they think it is what you ought to get and call it a day. The contract certainly does not specify that. It allows a community significant opportunity to request data and we should be requesting that data. IT Director Ryan Pinheiro noted that in the past Time Warner use to send us monthly counts of subscribers and it was pretty steady at about 6,400, total. Since it has become Charter what Tony said is very true where now they just send us the payment. I have requested from our representative Shelly Witchenbach counts for the City of Saco and that was met with somewhat of a this is proprietary information and they are looking for the city to request an audit instead. Mr. Michaud mentioned that this is an opportunity in item #C to do an audit and I don’t know if we would pay for that or whether they would pay for it. Tony Vigue noted that the city can request an audit, but the city has to pay for it unless it is found to be in our favor. If it turns out the audit in their favor and that they have been giving us the correct numbers, then we would end up paying for it. But, we can request an audit and see where it goes from there. Mr. Michaud noted that going forward not in the actual contract, but in the addendum, there is an issue about perhaps creating additional stations and spending finances etc. If we are thinking that way, we should be getting good hard financial data to determine if this is a service we want to be doing and what is the basis for doing so. So, we ought to be as clear as possible now with our future contractees rather than waiting for them to say sorry, you can’t get it. We all know what the 86 Cable Law did to us. We have very little control over them, but we do have some and we should take every effort to exercise it otherwise it will disappear. Also, on page 39, section 16 (B & C-4) there is talk about the company shall continue to provide the city with 2 shared channels. We have channel 3. Do we currently have another channel out there that is being broadcast? Ryan Pinheiro stated that we do not. The initial indication from council is that we are looking at to split education and government. Not on day 1, but it will happen soon if it is accepted later on down the road. Mr. Michaud noted is should say continue to provide. Mr. Pinheiro stated that Councilor Minthorn has also mentioned this and it will be changed in this document. Mr. Michaud not he doesn’t see channel 3 anyhow. So, other than that I understand the complexities of dealing with these folks. They have always been difficult to deal with. A couple of items that are not directly related to the contract but are attached as an addendum. One of them talked about the public comment for tonight September 17th public comments were held at the city office to gather input from residents and non-profit organizations, and that was it. The document says, “were held”, so it is a past tense. I think that is a little questionable wording. They are “being held”, they “weren’t held” and there should at least be some public comments in there I hope when the final document comes out. Because, the implications are predetermined “no public comment”. So, probably whoever wrote this was just looking a little forward. Now, my biggest concern is not the contract, but the addendum to the contract. This issue about 2-3 public stations, working with Thornton Academy, and public content station, and I know that Ryan was very clear that we were looking to the future, perhaps doing it. This issue of multiple stations and multiple channels and having full time personnel was looked at by your predecessor’s years ago and looked at by our predecessor’s years before that. This is nothing new, this issue. But, I will say this. In 22 years of campaigning door to door I had exactly 1 person come up to me and say, “Why don’t we have more stations in Saco”? Just 1 and he shall remain nameless. But, he had a reason to ask that question because his argument was franchise fees are for producing stations for public access etc. I went back and looked at the 86 Legislation and I couldn’t find a thing that talked about franchise fees being dedicated to any particular item. They are rental fees and go into the general fund and the local authorities decide the proper use. In 22 years I have dozens and dozens if not hundreds of people say, “what are you doing with my taxes”, “How are you increasing my taxes”? Plow my street, pave my sidewalk but don’t increase my taxes. Any use of franchise fees you need to be honest with the public is a use of taxes. That franchise fee coming out and being used for some other use means some increase in taxes. Now, the proposal that I looked at was a general proposal and I understand that, and it could never come to be. But, I want the record to show that at least 1 individual stood here before you and said using almost $250,000 of tax money to create additional stations in Saco is probably not the best use of funds. Now, you know that I’m on the Aging Committee and you folks have been very kind to us and we appreciate that. We are there because we want to help our aging in our community to stay in their housing as long as possible and your help is critical to that. But, it seems a contrary
statement to be thinking about using funds to create channels that would be tax dollars. So, you are kind of asking folks in our community to pay $25-$40 more a year in taxes to pay for this service. I’m not sure if you went out and asked them and said do you want to pay more on your cable bill and more in your taxes for this type of service that many of them if not most of them won’t even use would be a good use of funds. I think you need to think long and hard about that. It is one thing to broadcast meetings and to give Ryan some relief because he can’t be up there every meeting. Other meetings it would be nice to broadcast like the Planning Board and I understand that. But, there has got to be a more efficient way of doing it rather than hiring somebody on a full-time basis and running a full station. I would never see any of them because I’m a cord cutter and probably others as we go along that cut that cord. Part of taxes that I don’t get value for my services and that is okay. But, I don’t think many folks would say if you asked them right out through a poll would you rather pay $25 on your taxes or not get these additional channels. I would be interested in seeing what the output would be. So, I strongly encourage the council before you go too far down the road, give Ryan the relief he needs but do it frugally and financially sound. This year’s budget, you were very fortunate the last couple of years to have increased valuation and allot of increased valuations by portions of the community have helped deal with the increased needs. I can tell you having been here in 2009, 2010 and 2011 those times don’t last forever. The more you build into the budget routinely the more difficult you are going to make it on yourselves moving forward. So, please let that document be an interesting collecting item for the future. But, please do not go in that direction at least without a very through community inventory to see what the public is willing too that additional cost.

Mayor Lovell asked Ryan Pinheiro if cord cutters if they have internet access can actually watch City Council meetings in real time or past council meetings? Mr. Pinheiro stated is absolutely was true. The idea is not to only use this for only cable subscribers, it is using it for all other media. The biggest issue is that we don’t have the ability to create content for the city with our current staff. It is just not there. So, we were kind of talking about a position and that person would be the person to create the content. Also, it would benefit the age friendly. You all have information that you would like to put out to the public but what better way than someone who has access to channel 3 to be able to see that information.

Roland Michaud asked to talk content for a minute. Of course, you know that I worked that Thornton Academy for a number of years and I’m back there now temporarily and I know the contact person there and I know his predecessor and one of the biggest complaints I did hear when I was campaigning was “channel 3 has the same stuff all the time. So, I talked to the coordinator then and the coordinator now and the answer is that they don’t have enough content. Because people don’t give them enough content. Part of the content that we don’t produce. So, you may have additional content, but you don’t necessarily need more stations to get the content out. We just need to get it to the person who gets it out there in the streets. We have more than enough cable time. We don’t have enough material to fill the cable time. You can ask Mr. Tardif sitting back here how many times he has watched the same Thornton game over and over again because of lack of content. So, I think you can do content without spending any more money.

Councilor Minthorn moved, Councilor Smart seconded to close the Public Hearing and further move to set the final reading of City of Saco and Charter Communications Renewal Cable Television Franchise Agreement for October 1, 2018. The motion passed with six (6) yeas and one (1) nay – Councilor Archer.

CABLE TV FRANCHISE AGREEMENT
Between the City of Saco, Maine and
Time Warner Cable Northeast LLC

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Administrative Issues

1. Statement of Agreement

This Franchise Agreement (the “Agreement”) is made and entered as of _____________ between the City of Saco, Maine (the “City”) and Time Warner Cable Northeast LLC, LKA Charter Communications (hereinafter “Company” or “Time Warner Cable”) a Delaware corporation organized and existing in good standing under the laws of the State of Maine.

2. Title

This Franchise Agreement shall be known and cited as the “Saco, ME Cable Television Franchise”. Within this document it shall also be referred to as “this Franchise” or “the Franchise”.

3. Parties

A. City

1. Name: City of Saco
2. Contact: 
3. Mailing Address: 300 Main Street, Saco, ME 04072
4. **Telephone**  
(207) 282-1032

### B. Company

1. **Name:** Charter Communications Corporation  
2. **D/B/A:** Time Warner Cable Northeast LLC  
3. **Contact:** Local Franchising  
4. **Mailing Address:** 400 Old County Road  
   Rockland, ME 04841  
5. **Telephone:** 800-833-2253

As required by 30-A M.R.S.A. §3010 (1)(B) and 47 CFR §76.309(c)(1)(v), Company shall maintain a conveniently located business office that must be open during usual business hours and have a listed toll-free telephone number capable of receiving complaints, requests for adjustments and service calls.

1. **Business Office Address:** 118 Johnson Road, Portland, ME 04102  
2. **Toll-free Customer Service Number:** 1-800-233-2253

### C. Addresses

Such addresses may be changed by either party upon 30-days prior written notice to the other party.

### 4. Notices (Communications)

All notices required to be provided in this Agreement shall be provided in writing via e-mail, overnight or certified mail to:

1. **Company:** to the Company contact at the mailing address in Section 3  
2. **City:** to the City contact at mailing address in Section 3

### 5. Grant of Authority

Pursuant to the authority in 30-A M.R.S.A. §3008 and 3010, and subject to the terms and conditions set forth herein, the City of Saco as the Local Franchise Authority, hereby grants a non-exclusive, revocable cable television franchise to the Company authorizing and permitting the Company to own, construct, upgrade, install, operate and maintain a Cable Television System within the City of Saco.

### A. Franchise Area

Company is hereby granted by the City, where it has the right to do so, the right and privilege to own, construct, reconstruct, erect, operate and maintain, in the City of Saco (herein called the “Franchise area” or “City of Saco”), in, upon, along, across, above, over and under the Rights of Way as defined in the Saco Cable Ordinance now laid out or dedicated, and all extensions thereof and additions thereto, poles, wires, cables, optical fibers, underground conduits, manholes and other television and radio conductors and fixtures necessary for the installation, maintenance and operation of a Cable System. In the event of annexation by the City, any new territory shall become part of the area covered upon sixty (60) days advance written notice by the City to the Company.

### B. Limited Grant

The license is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide Company any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant. The license does not deprive the City of any powers, rights, or privileges it now has or may later acquire in the future to use, perform work on, or to regulate the use of, and to control the Right-of-Way in a non-discriminatory manner as to
all users of the rights of way, including without limitation the right to perform work on its roadways, Right-of-Way or appurtenant drainage facilities, including but not limited to, constructing, altering, removing, paving, widening, grading, or excavating.

C. **Non-Exclusivity**

Company’s rights and privileges are non-exclusive and the City expressly reserves the right to grant other such franchise agreements in the City provided, however, that any such additional franchise shall not be on terms and conditions that are materially more favorable or less burdensome than those provided for herein.

D. **Eminent Domain not Conferred**

No privilege or power of eminent domain is bestowed to Company by the City by this grant of this Franchise.

6. **Term**

This Franchise shall commence on [insert date], 2018 (the “Effective Date”), and shall expire fifteen (15) years thereafter, on [insert date] 2033, unless renewed, revoked or terminated sooner as herein provided.

7. **Governing Law**

This Franchise Agreement shall be governed by and be subject to federal law, all applicable FCC rules and regulations and the laws and rules of the State of Maine and the City of Saco. Company shall be subject to the jurisdiction of the courts of the State of Maine in any suit arising out of this Franchise Agreement except that this provision shall not limit Company’s right to initiate a proceeding or to remove a proceeding to the United States District Court for the District of Maine.

8. **Effect of Acceptance**

By accepting the Franchise, Company and the City: (1) acknowledge and accept each party’s legal right to execute and enforce the Franchise; and (2) accept and agree to comply with the provisions of this Agreement and generally-applicable, non-discriminatory municipal ordinances; and (3) neither party will raise any procedural claims attempting to invalidate the agreement.

9. **Definitions**

For the purpose of this Franchise Agreement, the following words, terms, phrases, and their derivations shall have the meanings given herein, unless the context clearly requires a different meaning. When not inconsistent with the context, words used in the present tense included the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory, except where noted. Where the following definitions are in conflict with definitions in law, it is the express intent that the definition in applicable Federal or State law shall take precedence.

1. **“Access” or “Access Cablecasting”**: Cablecasting on the Cable System’s access channels for the following purposes: (i) non-commercial and non-discriminatory use by the public; (ii) carriage of non-commercial educational programs or information; and (iii) non-commercial use for governmental purposes in accordance with the Cable Act.

2. **“Access Channel(s)”**: A video channel(s) which the Cable Operator shall make available to the City of Saco, without charge, for the purpose of transmitting programming by/for members of the public, City departments, boards and agencies, public schools, educational, institutional, non-profit and similar organizations in accordance with the Cable Act.
3. **Affiliate or Affiliated Person:** An entity which owns or controls, is owned or controlled by, or is under common ownership with a Company.

4. **Area Outage:** An area outage occurs when cable or equipment is damaged, fails, or otherwise malfunctions (collectively called “malfunctions”), and ten or more Subscribers receiving services from that section of cable or that equipment receive unusable or no service as a result of that malfunction.

5. **Basic Cable Service:** The lowest service tier transmitted to all Subscribers, which includes, at a minimum, (a) all signals of domestic television broadcast stations entitled to "must carry" status under FCC rules, and (b) any public educational and governmental programming required by this Franchise Agreement to be carried on the basic tier and (c) any additional video programming signals added to the basic tier by the Cable Operator in its sole discretion.

6. **Broadcast:** Over-the-air transmission by a radio or television station.


8. **Cablecast:** Programming (exclusive of Broadcast signals) carried on the Cable System.

9. **Cable Programming Service:** Any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than (1) video programming carried on the Basic Service Tier, and (2) video programming offered on a pay-per-channel or pay-per-program basis.

10. **Cable Service:** The one-way transmission to Subscribers of video programming or other programming service, together with Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

11. **“Cable Operator”:** Any Person or Persons owning, controlling, operating, managing or leasing a Cable System within the City, pursuant to the Cable Ordinance of the City, and pursuant to any Franchise granted to it by the City. This term shall include any lawful successor(s) to the interest of such Person or Persons where consent to such successor(s) is approved under the provisions of the City of Saco Cable Ordinance and under any applicable terms of a Franchise Agreement entered into pursuant to said Ordinance.

12. **Cable System:** Shall be defined in accordance with Section 602 of the Cable Act. This means a facility serving the City which is owned, constructed, installed, operated and maintained by Company, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide cable service including video programming and which is provided to multiple subscribers within a head end service area. Such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves subscribers without using any public right-of-way; (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services; or (d) an open video system that complies with section 653 of this title, or (e) any facilities of any electric utility used solely for operating its electric utility systems.

13. **Channel or Video Channel:** A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.
14. **Company**: Any Person or Persons owning, controlling, operating, managing or leasing a Cable System within the City, pursuant to any Franchise granted to it by the City. This term shall include any lawful successor(s) to the interest of such Person or Persons where consent to such successor(s) is approved under any applicable terms of the Franchise Agreement.

15. **Contractor or Subcontractor or Agent**: Any person or entity who or which directly or indirectly works for or is under the direction of “The Company” for the purpose of installation or repair of any portion of the Company’s Cable system in the City.

16. **Converter**: A special tuner or device attached to the Subscriber’s television set that expands reception capacity and/or unscrambles coded signals distributed over the Cable System.

17. **Designated Access Provider**: The entity or entities which may be designated from time to time by the City to provide PEG access to the residents of the City of Saco.

18. **Downstream Channel**: A channel over which Signals travel from the Cable System Head end to an authorized recipient of programming.

19. **Downstream Transmission**: Signals traveling from the head-end to the Subscriber’s location.

20. **Drop or Cable Drop**: The interconnection between each home or building and the feeder cable of the Cable System.

21. **FCC**: The Federal Communications Commission or any successor agency.

22. **Feeder Cable**: The cable, connected to trunk cable, from which cable television signal service is distributed to multiple Subscribers, as distinguished from trunk cable (which distributes cable television service throughout the Franchise area) and drop cable.

23. **Franchise Authority**: The City Council of the City of Saco.

24. **Franchise Agreement**: The non-exclusive Cable Television License to be granted to Company by this instrument to include the right, privilege and franchise to construct, operate and maintain a Cable System, and appurtenances or parts thereof, in the Streets, roads, alleys, and other Public Ways of the City.

25. **Gross Annual Revenue**: Revenue of any form or kind received by the Company from the carriage of Cable Service including, without limitation: the distribution of any Cable Service over the System; Basic Service monthly fees; all other Cable Service fees; fees paid for pay and/or pay-per-view services, installation, reconnection, downgrade, upgrade and any other similar fees; fees paid for channels designated for commercial use; converter, remote control and other equipment rentals, and/or leases and/or sales; all home shopping service(s) revenues; and advertising revenues. Gross Annual Revenue shall not include any taxes or fees other than franchise fees on services furnished by Company imposed directly on any Subscriber or user by any governmental unit and collected by Company for such governmental unit. In the event that an Affiliate is responsible for advertising on the Cable System in the City, advertising revenues shall be deemed to be the pro-rata portion of advertising revenues excluding commissions and/or applicable agency fees, paid to the Company by an Affiliate for said Affiliate’s use of the Cable System for the carriage of advertising. It is the intention of the parties here to that Gross Annual Revenues shall only include such revenue of Affiliates and/or Persons relating to the provision of Cable Service over the Cable System and not the gross revenues of any such Affiliate(s) and/or Person(s) itself, where unrelated to Cable services. Gross Annual Revenue shall be computed in accordance with Generally Accepted Accounting Principles.

26. **Head-end**: A company owned or leased facility through which Broadcast and cablecast signals are electronically acquired, translated, or modified for distribution over the Cable System.
27. **Interactive Service:** Any service that offers to Subscribers the capability of both transmitting and receiving Signals of any kind.

28. **Institutional Network or I-Net:** A communication network which is generally available only to municipal and educational institutions for non-commercial purposes.

29. **Leased Channel or Leased Access:** A video channel which the Licensee shall make available pursuant to Section 612 of the Cable Act.

30. **Origination Point:** A connection to the cable system which is provided to allow for live or recorded programming to be transmitted from that location Upstream to the Head-end and from there Downstream to the Subscribers over one or more access channels, also referred to in this Agreement as a return feed.

31. **Other Programming Service:** Information that Company may make available to all Subscribers generally.

32. **Outlet:** An interior receptacle, generally mounted in a wall, that connects a subscriber’s or user’s television set to the Cable System.

33. **Parent:** When used in reference to Company, any Person holding direct or indirect ownership or control of thirty percent (30%) or more of the rights of control of Company; and any Person holding such ownership or control of a Parent to Company.

34. **Pay Cable or Premium Service:** Optional programming delivered for a fee or charge to Subscribers on a per-channel basis, or as a package of services.

35. **Pay-Per-View:** Programming delivered for a fee or charge to Subscribers on a per-program or time basis.

36. **PEG Programming:** Public, Educational, and Governmental programming that is non-commercial, used in conjunction with Access Channels, support and facilities.

37. **Person:** Any corporation, partnership, limited partnership, association, trust, organization, other business entity, individual, or group of individuals acting in concert.

38. **Programming or Video Programming:** Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

39. **Public Building:** All state accredited public schools, police and fire stations, public libraries, City Hall, and other public buildings owned or leased by the City, but shall not include buildings owned by the City but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

40. **Public Way, Streets or Rights-of-Way:** The surface of, and the space above and below, any public Street, highway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, Public Way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City, in the City which shall entitle the Company to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. “Street” or “Public Way” shall also mean any easement now or hereafter held by the City within the City for the purpose of public travel, or for utility or public service use dedicated for public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Company to the use thereof for the purposes of installing or transmitting the Company’s Cable Service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System. Reference herein to “Public Way” or “Street” shall not be
construed to be a representation or guarantee by the City that its property rights are sufficient to permit its use for any purpose, or that the City shall gain or be permitted to exercise any rights to use property in the City greater than those already possessed by the City.

41. **Signal:** Any transmission of electromagnetic or optical energy which carries Video Programming from one location to another.

42. **State:** The State of Maine.

43. **Subheadend:** A building or shelter, usually smaller than a headend, which takes an already processed video signal from a headend and transmits it to a local community (or multiple communities), and is the middle point between the head end and the nodes that feed individual homes in a Cable System.

44. **Subscriber:** Any person, firm, corporation, or other entity who or which elects to subscribe to for any purpose, a Cable Service provided by the Company by means of, or in connection with, the Cable Television System.

45. **Subscriber Network:** The 750 MHz bi-directional-capable network to be owned and operated by the Company, over which Cable Service(s) can be transmitted to Subscribers.

46. **City:** The City of Saco organized and existing under the laws of the State of Maine and all territory within its existing and future territorial corporate limits.

47. **Transfer:** The disposal by the Company directly or indirectly, by gift, assignment, sale, merger, consolidation or otherwise, of the ownership or control of the System or of the Franchise Agreement to a Person, or a group of Persons acting in concert.

48. **Two-way Capability:** The ability to transmit audio and video signals upstream and downstream on the Cable System.

49. **Upstream Channel:** A channel over which Signals travel from an origination point to a system distribution point.

50. **Upstream Transmission:** Signals traveling from origination points on the Cable System to a cable distribution point.

10. **Construction and Maintenance**

A. **General Provisions**

1. **Quality**

In the construction, reconstruction, maintenance and repair of the Cable System, Company shall ensure the Cable System meets the rules and regulations of the Federal Communications Commission.

2. **Compliance with Laws and Regulations**

All work, including all working conditions and facilities, associated with the construction, operation, maintenance, repair and removal of the Cable System shall comply with:

   a. All applicable Federal Laws, Rules and Regulations;

   b. All applicable State Laws, Rules, Regulations and Codes, including building and electrical codes; and,

   c. All generally applicable ordinances, including zoning ordinances, of the City.

Company shall obtain all generally applicable permits before commencing any construction, reconstruction, repair, maintenance, or other work or property use in the public rights of way. Permits
for emergency work shall be obtained as soon as possible, but in no event later than one business day after the work is begun. The grant of permits by the City shall be timely and shall not be unreasonably withheld.

3. Public Ways Hazards

Any openings or obstructions in Streets or other municipal or public property made by Company shall be guarded and protected at all times by the placement of adequate barriers, fences, boardings, or other protective devices at the sole expense of Company. During the periods of dusk and darkness, the protective devices shall be clearly designated by warning lights.

4. Tree Trimming

Company shall have the authority to trim any trees upon and overhanging the City’s Streets or Public Ways to the minimum extent necessary to prevent the branches of such trees from coming in contact with the wires and cables of Company; provided that, except for incidental trimming done by Company employees in the course of performing their other duties, any tree trimming within the rights of way of the City’s Streets and Public Ways done by Company shall take place only after providing 48-hour notice to the City of Saco Public Works Department. In performing tree trimming, Company shall notify the abutting property owner(s) prior to starting work. Company shall use its best efforts to avoid any unnecessary damage or injury to trees, and shall comply in all respects with any City ordinances governing tree trimming.

5. Restoration of Damage

Company, at its sole expense, shall restore all damage to property, both public and private, caused by the construction, operation, maintenance or repair of the Cable System, so as to return the damaged property to a condition as good as reasonably possible before the damage was done. Such restoration shall be made as soon as practicable after completion of work necessitating the restoration. Absent force majeure, such restoration shall be made insofar as reasonably possible within fifteen business days, weather permitting, after Company’s receipt of notification from the owner of the property so damaged unless otherwise mutually agreed by Company and the property owner; provided, that if any such damage involves curbs, sidewalks or driveways, the damage shall be repaired to the satisfaction of the City (curbs and sidewalks) or the owner or tenant in possession of the property (driveways) within ten business days. Company shall provide the City with immediate notice for any damage Company causes to: Streets, water-mains, storm or sanitary sewers, or other public facilities. If Company does not make the repairs to such public facilities, Company shall be financially liable for the reasonable cost of any repairs. If Company fails to make such restoration on a timely basis, the City may fix a reasonable time for such restoration and repairs shall notify Company in writing of the restoration and repairs required and time fixed for performance hereof. Upon failure of Company to comply within the specified time period, the City may cause proper restoration and repairs to be made and the reasonable expense of such work shall be paid by Company upon demand by the City.

6. Contractors, Subcontractors and Agents

All contractors, subcontractors and agents of Company must be properly licensed under all applicable federal, state and local laws and regulations.

7. Emergency Power

The Cable System shall incorporate equipment capable of providing standby powering of the Headend and all Subheadends for a minimum of four hours.
B. Cable System Location

1. Map of Physical Facilities

With reasonable advanced notice to Company, the City shall have the right to inspect street maps which identify the location of all trunk and feeder runs including underground. Said maps will be maintained by Company and available upon request.

2. Location of System

Wherever available to Company on reasonable terms and conditions, the distribution system shall use the existing facilities of the public utilities. Poles shall not be installed for the sole purpose of supporting a portion of the distribution system without written justification and approval of the City, which approval shall not be unreasonably withheld, pursuant to the City’s generally applicable law, ordinances, rules and regulations.

   a. Where the cable or wire facilities of the public utilities are installed underground, Company shall install its cable distribution system underground. Vaults and pedestals shall be suitably landscaped.

   b. In all areas where public utility lines are aerially placed, if subsequently during the term of this Franchise Agreement such utility lines are relocated underground, Company shall similarly relocate its cable distribution system underground at its sole expense. If other owners of utility lines or other users are entitled to reimbursement for such relocation costs and the source of funding for said reimbursement allows it, Company shall have its relocation costs reimbursed as well.

3. No Interference with Rights of Way

Except during temporary construction, installation, or maintenance activities, all lines, cables and distribution structures, and equipment, including poles and towers, erected, installed or maintained by Company within the City shall be located so as not to obstruct or interfere with the proper use of Streets and Public Ways and to cause minimum interference with the rights of property owners who abut any of the said Streets and Public Ways, and not to interfere with existing public utility installations. Company shall not place new poles, towers or other obstructions in Streets or Public Ways, or relocate existing poles, towers or other obstructions, without first obtaining the City’s approval, which approval shall not be unreasonably withheld. Company shall have no vested right in any location, and such construction shall be removed by Company at its own cost and expense whenever the same restricts or obstructs or interferes with the operation or location or any future operation or location of said Streets or Public Ways by the City for a municipal purpose.

Company shall at all times comply with applicable state laws including but not limited to 35-A M.R.S.A. Chapter 25 (e.g., pole location permits) and 23 M.R.S.A. §2351(excavation permits).

4. Construction by the City

If at any time during the term of this Franchise Agreement the City shall elect to alter, or change the grade or location of any Street, or shall engage in any construction, reconstruction, widening, repairs or other public works in, on or under the Streets, Company shall, upon reasonable notice by the City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures (“fixtures”) at its own expense, and in each instance comply with the City’s generally applicable, non-discriminatory standards and specifications. If other owners of utility lines or other users are entitled to reimbursement of costs for relocations required by this section and the source of funding for said reimbursement allows it, Company shall have its relocation costs reimbursed as well.
5. No Interference with Other Fixtures

Company shall not place fixtures above or below ground where the same will unreasonably interfere with any existing or fully permitted gas, electricity, telephone fixtures, water hydrants, or other utility use, and all such fixtures placed in or upon any Street shall be so placed as to comply with all generally applicable requirements of the City or other state authority.

6. Temporary Relocations

Company shall, on request of any Person holding a permit issued by the City or other appropriate authority, temporarily move its fixtures to permit the moving or erection of buildings or other objects, with the expense of any such temporary removal to be paid in advance by the Person requesting same, and Company shall be given reasonable notice to arrange for such temporary relocation. Company shall bear any expense to temporarily move its fixtures to permit the moving or erection of publicly owned or constructed buildings or other objects. The City shall have the power at any time to order and require a Cable Operator to remove or relocate any pole, wire, cable or other structure machinery or equipment located within a public way that is dangerous to life or property. In the event that a Cable Operator, after notice, fails or refuses to act within a reasonable time, the City shall have the power to remove or relocate the same at the sole cost and expense of the Cable Operator.

C. Communications

1. Company Notice

Except in an emergency, and except for interruptions of four hours or less, Company shall give Subscribers at least 24 hours’ notice, if practical, of any interruption of service for purposes of maintenance or repair. In an emergency, Company shall give such notice as is reasonable in the circumstances. Notice given on the alphanumeric channels on Basic Cable Service shall be considered sufficient. During the rebuild of the Cable System, Company shall not be required to provide 24 hour notice of any interruption of service if such interruption is the direct result of rebuild work. However, Company shall be required to provide written notification to Subscribers and the City of planned rebuild work schedules and when Subscribers may experience service interruptions in excess of four hours. Company shall use its best efforts to minimize the length of any service outage due to the rebuild. Company shall promptly notify the City in writing of any significant interruption in the operation of the Cable System. For this purpose, a “significant interruption” shall mean any interruption of more than four hours to more than ten Subscribers.

2. Subscriber Requesting Maintenance

Subscribers may request maintenance at the Business Office of Company or by calling the toll-free telephone number each of which is required by 30-A M.R.S.A. §3010(1)(B).

3. Company Responses

Company responses to such requests shall be governed by the applicable standards of the Federal Communications Commission and state law.

4. Subscriber-Owned Equipment Excluded

The requirements for maintenance and repair shall not apply to Subscriber television or radio receivers or other Subscriber-owned equipment.

11. Operations
A. Performance Standards

1. System Design
   
a. Upon request, Company shall provide the City with a description of the current system design and operational standards. Such description shall include at a minimum, Cable materials, (i.e. coaxial cable or fiber), the bandwidth capacity of the system in MHz, the channel capacity of the system, bi-directional capability, overall measured system reliability and performance in respect to FCC requirements and any other relevant standards that the Company may wish to describe.

b. If the Company elects to upgrade its system in the Franchise Area, the Company shall notify the City.

2. Operations

   The Cable System shall be constructed, operated and maintained to comply with all applicable standards of the Federal Communications Commission.

B. Performance Testing

   The City is entitled to review copies of FCC Proof of Performance upon request.

C. Emergency Alert System

   Company shall comply in full with the requirements for an Emergency Alert System (EAS) as provided in FCC regulations, 47 CFR Part 11, and with any applicable State emergency notification requirements not preempted by Federal law.

D. Video Recording Device/Cable Compatibility

   Company shall comply with applicable Federal Communication Commission standards for compatibility with consumer electronics equipment.

12. Insurance

   A. Company Insurance

      1. Company shall maintain insurance throughout the term of this Franchise and any removal period, with an insurance agency authorized to conduct business in the State of Maine, protecting as required in this Franchise, Company and listing the City as an additional insured, against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of its Cable System. The amount of such insurance for liability for damage to property shall be on a replacement cost basis, no less than Three Million Dollars ($3,000,000.00) as to any one occurrence. The amount of such insurance for liability for injury or death to any person shall be no less than Three Million Dollars ($3,000,000.00) as to any one occurrence. The amount of such insurance for excess liability shall be Five Million Dollars ($5,000,000.00) in umbrella form. Policy will contain a provision that the City will be provided thirty (30) days written notice prior to any cancellation, material modification or non-renewal.

      2. Company shall carry insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability in the amount of One Million Dollars ($1,000,000.00). Policy will contain a provision that the City will be provided thirty (30) days written notice prior to any cancellation, material modification or non-renewal.
3. All insurance coverage, including Workers’ Compensation shall be maintained throughout the period of this Franchise. All expenses incurred for said insurance shall be at the sole expense of the Company.

4. Company shall provide the City with certificates of insurance upon execution of this Agreement or as otherwise provided by its insurance company.

B. Insurance to be provided by Subcontractors

All contractors and subcontractors of Company shall maintain adequate insurance coverage in the same amounts as listed in Section 12.A and shall name the City as an additional insured in all policies.

C. Indemnification of the City

Company hereby indemnifies and holds the City, its officers, agents, employees, members of boards and committees, with respect to the construction, installation, operation and maintenance of the Cable System, harmless from and against all expenses, losses and claims, demands, payments, suits, actions, recoveries, and judgments of any nature and description, other than as a result of the negligence of the City, including reasonable attorney's fees, resulting from claims, any or omission of Company, its agents or employees, in the construction, operation, maintenance, repair or service of its Cable System, or by reason of any suit or claim for royalties, license fees, or infringement of copyright or patent rights arising from Company’s performance under this Franchise Agreement. In the event of the commencement of any action against the City, or its officers, agents, employees, or members of boards and committees which is within the scope of this indemnification, the City will give notice thereof to Company within fifteen business days after the City is formally served in any such action, and, after consultation with the City, Company will have the right to select and furnish counsel for the defense of any such action, at no cost or expense to the City. The City’s failure to give timely notice to Company of the commencement of any such action shall not relieve Company of its obligations under this section unless such failure to give timely notice causes actual prejudice to Company's ability to defend any such claim. Except for settlements involving only the payment of money, no settlement which creates an obligation for the City, or any such action, or any claim therein, shall be made by Company or by counsel selected by Company without the approval of the City, which approval shall not be unreasonably withheld. The extent of the indemnification agreement will not be limited by the requirements for liability insurance in this Agreement.

D. Indemnification of Company

The City will indemnify Company for any and all claims arising out of programming of PEG channels, except where Company or its agents or employees provided the programming.

E. Municipal Immunities

Nothing herein, including the indemnity provisions in sub-sections C and D and the procurement by Company of insurance policies meeting the requirements of this section 12, shall be interpreted or construed to effect any waiver, suspension, release or alteration of or to any and all immunity or other immunities or limitation of liability as may be available to the City by law including, without limitation, the Maine Tort Claims Act, codified at 14 M.R.S.A. §§ 8101-8118.

13. Performance Bond

A. Performance Bond

Company shall obtain and maintain during the term of this Franchise Agreement, at its sole cost and expense, and file with City, an irrevocable performance bond, running to the City, with a surety authorized to do business as a surety in the State of Maine, to guarantee the faithful performance by
Company of all of its obligations under this Franchise Agreement. Such performance bond shall be in the amount of at least one hundred thousand dollars ($100,000).

B. **Conditions**

The performance bond shall provide, but not be limited to, the following conditions. There shall be recoverable by the City, jointly and severally from the principal and surety, subject to the provisions in Section 23(C), within 30 days after written request by the City, any and all penalties due to the City and any and all damages, losses, costs and expenses suffered or incurred by the City resulting from the failure of Company to comply with the material provisions of this Franchise Agreement. Such losses, costs and expenses shall include, but not be limited to, reasonable attorney’s fees and other legal, consulting and auditing expenses. Not less than thirty days’ prior notice to the City shall be provided of Company’s or the surety’s intention to cancel, materially change, or not to renew the performance bond.

C. **Forfeiture**

Subject to the provisions in Section 23C, the total amount of the bond or security fund shall be forfeited in favor of the City in the event Company fails to complete any construction or rebuild obligations or breaches any material provision of this Franchise Agreement. Neither the provisions of this Section, nor any bonds accepted by the City pursuant hereto, nor any damage recovered by the City there under, shall be construed to excuse unfaithful performance by the Cable Operator or limit the liability of the Cable Operator under this Ordinance or the Franchise Agreement for damages, either to the full amount of the bond or otherwise.

D. **Replenishment**

In the event that any portion of the performance bond is forfeited or withdrawn for any reason, Company shall be required to post an additional bond in an amount equal to the forfeiture within 30 days of the date of the forfeiture or withdrawal. Failure to post an additional bond on a timely basis shall constitute a violation of a material provision of this Franchise Agreement within the meaning of Section 23 hereof.

E. **City Rights**

The rights reserved to the City with respect to the Performance Bond are in addition to all other rights of the City, whether reserved by this Franchise Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such sections shall affect any other rights the City may have.

14. **Records and Reports**

A. **Availability of Records to the City**

Upon reasonable written notice to the Company, the City shall have the right to inspect Company’s books and records during Normal Business Hours and on a non-disruptive basis, as are reasonably necessary to ensure compliance with the material terms of this Franchise, including any federal, state, laws or regulations or generally applicable ordinances referenced herein. Records should be produced within 5 business days of receipt of written request, unless for good cause Company responds that a longer amount of time will be needed. Such written notice from the City shall specifically reference the section or subsection of the Franchise which is under review, so that Company may organize the necessary books and records for appropriate access by the City. Company shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, Company shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its books and records not relating to the provision of Cable Service in the Franchise Area. The City shall treat any information disclosed by Company as confidential and shall
only disclose it to employees, or the City’s agents bound by a confidentiality and non-disclosure agreement reasonably acceptable to Company, or as may be necessary to enforce the provisions hereof. Company shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, and 47 USC §551.

Company shall at all times after the Effective Date maintain:

1. Records of all written complaints for a period of two (2) years after receipt by Company (The term “complaint” as used herein refers to complaints about any aspect of the Company’s service operations, Complaints recorded will not be limited to complaints requiring an employee service call.);

2. Records of area outages for a period of two (2) years after occurrence, indicating date, duration, and the number of Subscribers affected, type of area outage, and cause;

3. Records of service calls for repair and maintenance for a period of two (2) years after resolution by Company, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

4. Records of installation/reconnection and requests for service extension for a period of two (2) years after the request was fulfilled by Company, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

5. a map showing the area of coverage for the provisioning of Cable Services.

The City reserves its right to copy books and records as allowed under FCC regulation.

B. Annual Report

Upon written request from the City, Company shall provide to the City a summary of the Company’s activities in the City for the previous calendar year including a summary of:

1. Total miles of new cable plant installed;

2. Total number of service calls indicating number of dispatches and number repaired;

3. Listing of all charges and fees for cable or cable-related services;

4. All area outages, including date and duration;

5. Equipment or equivalent funding provided to the PEG channels(s) (if any);

6. Other information Company chooses to include.

C. Charges for Audits or Tests

If an inspection or audit of Company’s records shows that Company underpaid the franchise fee by four percent or more for any payment period, Company shall reimburse the City for all reasonable costs including expert fees arising from the inspection or audit, and any additional inspection or audit until it is determined Company is in full compliance. In addition, except as federal law prevents the City from enforcing any standards, if it is determined that Company has not materially complied with FCC standards, the City shall have the right to charge all costs arising from these tests, including expert fees, to Company until it is determined that Company is in full compliance. Notwithstanding the foregoing, the obligation to pay the City’s costs for tests of the performance of the Cable System shall only arise if the City’s test is (1) a test of an area where Company has represented that it has corrected a problem, and the problem was not in fact corrected; (2) a second test of an area by the
City, where Company had been notified of the problem and been given an opportunity to cure it; or (3) where Company challenged the validity of a City test, and the City agrees to retest, and the retest confirms the validity of the initial City test. These charges are incidental to the enforcement of the Franchise; they do not limit any right the City may have to exercise any other remedy.

Municipal Benefits

15. Franchise Fee

Company shall provide a Franchise Fee to the City or its designee, equal to five percent (5%) of Company’s Gross Annual Revenues. Upon ninety (90) days’ notice to the Company, the City, by action of its City Council, may increase or decrease the Franchise Fee, up to a maximum of five percent (5%) of Company’s Gross Annual Revenues.

A. Payment

Company shall pay the Franchise Fee to the City on a quarterly basis, no later than forty-five (45) days after the end of the calendar quarter for which payment is made. The payment for the last quarter of the last year of the term of this Franchise shall be due and payable forty-five (45) days after the end of that quarter. The quarterly payment shall include a statement showing the basis for the payment, including a breakdown by category (e.g., basic service, home shopping channels, advertising) and source of Gross Annual Revenues for the quarter.

The City shall be furnished a statement with each payment, prepared by a financial representative of the Cable Operator, and verified as correct, reflecting the total amount of Gross Annual Revenues generated by all activities within the City, and the above charges, deductions and computations, for the three month payment period covered by the payment. The Cable Operator shall prepare and maintain financial information and records in accordance with generally accepted accounting principles and generally accepted auditing standards in the cable television industry.

At City’s option, the information provided by the Company shall be subject to audit by an outside firm of certified public accountants selected by City. Any such audit shall be at City’s expense except unless such audit shall disclose an underpayment of any franchise fees of more than four percent (4%) payable for the period of the audit, in which event the Company shall reimburse City for the expense of such audit. Repeated failure to pay the franchise fee on a timely basis is a violation of a material provision of the Franchise Agreement for purposes of the termination provisions of this Franchise.

<table>
<thead>
<tr>
<th>Due Date</th>
<th>Quarter</th>
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<tbody>
<tr>
<td>May 15</td>
<td>First (January 1 – March 31)</td>
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<tr>
<td>August 15</td>
<td>Second (April 1 – June 30)</td>
</tr>
<tr>
<td>November 15</td>
<td>Third (July 1 – September 30)</td>
</tr>
<tr>
<td>February 15</td>
<td>Fourth (October 1 – December 31)</td>
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B. Late Payments

In the event that the fees herein required are not tendered on or before the dates fixed in Section 15A above, interest shall accrue on any and all overdue franchise fees at the rate of twelve percent (12%) simple interest per annum.

C. Acceptance of Payment

Acceptance of payment by the City shall not be construed as accord that amount paid is the correct amount. The City reserves its rights to inspect relevant books and seek any underpayments due. If the City has not begun process to challenge or audit payment of franchise fee within 36 months of receipt of final annual payment, and breakdowns provided pursuant to subsection A are certified, payment is deemed accurate. If the breakdowns provided pursuant to subsection A are not certified, the time frame hereunder is 48 months.
16. **Public, Educational and Governmental Access (PEG)**

A. **Use of PEG Access Channel**

Channel capacity for public, educational and governmental (“PEG”) access shall be provided in accordance with federal law, 47 USC §531 and §546 as further set forth below.

B. **Channels**

Company shall continue to provide the City with two shared channels for public, educational and governmental (“PEG”) access programming. A third channel shall be available, subject to the provisions herein, before the tenth (10) year anniversary of the effective date of this Renewal Franchise. In order to obtain said third Access Channel, the City of Saco shall provide written notice to the Company that the existing Access Channel(s) have been substantially programmed with non-duplicated, non-character generated programming of community interest for six (6) hours per day, five (5) days per week, during the previous three (3) months, and that there is a need for a third Access Channel in order to provide additional programming for the benefit of City subscribers. The City of Saco shall provide documentation to verify such programming, including, but not be limited to, program logs that list (i) program titles, (ii) length of program and (iii) whether the program is original or repeat. In the notification to the Company, the City of Saco shall state, in good faith, that such a third Access Channel (i) will be substantially programmed with non-duplicated, non-character generated programming; and (ii) is necessary to accomplish the stated Access Programming goals of the City. Such a third Access Channel will not be used simply to repeat Access Programming that is already carried on the other Access Channels, but will be used to carry substantially new Access Programming. The City of Saco agrees that such a third Access Channel shall not be utilized solely to carry character-generated messages; provided, however, that the City may use said third Access Channel to carry character-generated messages along with other new Access Programming.

All PEG access Channels shall at all times be accessible to all of Franchisee’s subscribers in the City of Saco.

To facilitate live programming within the City of Saco, Company shall install and maintain video and audio origination points at the public buildings and public locations as designated below:

1. Saco City Office  300 Main Street
2. Thornton Academy  438 Main Street
3. Saco Parks and Recreation
4. (other)

C. **Exclusive Use, Channel Designations and Interconnectivity**

1. City, or its designee(s), shall have the exclusive use of the PEG Access Channels. Use of PEG Access Channel shall be for locally produced, non-commercial purposes and subject to such rules as the City, or its designee(s), may adopt.

2. There shall be no charge by Company for the use of the PEG Access Channels.

3. Company shall not appropriate PEG programming for use by company on any other channel without approval by the PEG originating source.

4. Unless otherwise agreed to by the parties, PEG channels shall be carried on the basic tier.

5. PEG channels shall not be separated numerically from other local broadcast channels carried on the cable operators’ basic cable or video service offerings or tiers and the channel numbers for the PEG channels shall be the same channel numbers used by the incumbent cable operator, unless prohibited by federal law. After the initial designation of PEG channel numbers, the channel numbers shall not be changed without the agreement of the PEG Originator, unless the
change is required by federal law. This requirement shall be retroactive such that any PEG channels that have been moved without the consent of the PEG Originator will be restored to their original location and number.

6. Company shall include appropriate designation of the City’s PEG Access Channels on channel cards and channel listings provided to Subscribers in a manner comparable to which it identifies other Channels. This provision does not obligate Company to list PEG programming content on said channel cards and channel listings. If Channels are selected by a viewer through a menu system, Company shall display the City’s PEG Access Channels designation in a similar manner as other channels.

7. Within 90 days of request by the City, Company shall install the video return feed connection and transmission equipment from the Saco City Hall to the designated PEG Access provider to permit the transmission of the PEG programming on the PEG channel to (at a minimum) the cable subscribers in the City of Saco. In the event of a relocation of the facilities, Company shall provide a connection to the relocated facility Provided that Company has existing unutilized fiber available and the connection involves a standard aerial drop of 150 feet.

D. PEG Facilities and Equipment Support:

No later than 90 days from the execution of this Franchise, Company shall provide to the City of Saco a PEG capital grant in the amount of $100,617.00 to be utilized by the City of Saco to purchase Public Educational and Governmental access facilities and equipment determined by the parties during renewal discussions. An additional $52,000.00 shall be provided to the City at the onset of years 5, 10 and 15. Such amounts, to the extent utilized in accordance with the provisions of federal law, are in addition to and may not be counted as an offset from any Franchise Fee imposed on Company.

E. Minimum PEG Signal Quality and Transmission Standards

The PEG access signal and channel shall meet FCC Technical Standards. PEG channels shall be afforded the same quality format as provided to other local broadcast channels on the basic cable or video service offerings or tiers. That is, if a high definition or current technology signal is sent to the cable operator by the PEG Originator, the cable operator shall not diminish, down convert or otherwise tamper with the signal quality or format provided to them. Said channel signals as delivered to the subscriber shall be of equivalent quality and format to the primary local broadcast signals carried on the system if provided as such by the PEG Originator. All cable television operators shall simultaneously carry each PEG access channel in both a high definition format and a standard digital format in the same manner as the primary local broadcast channels are provided, unless prohibited by federal law.

With respect to any new or existing PEG channel as defined in this franchise and subject to 30-A MRSA §3010 (5), and 47 U.S.C. §522 Definitions, the equipment associated with the interconnection of PEG transmission facilities between a PEG facility and the Franchisee’s head end within the Franchisee’s cable system as well as the formatting of PEG programming for transmission to the subscriber is considered “PEG facility or equipment” and the costs and maintenance thereof shall be borne by the Company.

F. PEG Promotion

In the event that the Company implements local advertising sales on Channels received by Subscribers within the City, the City or its designee(s) may want to seek time for non-commercial PEG Access program or service promotional spots on said channels. Nothing in this section shall be construed to require the Company to provide access to promotional spots at no cost to the City or its designee(s).

17. Build-out

A. Area To Be Served
1. Company shall make Cable Service available to every residential dwelling unit within the City where the minimum density is at least fifteen (15) year round single family residences per aerial mile providing however, that any plant extension is measured from the existing Trunk and Distribution System and Company is able to obtain from property owners any necessary easements and/or permits on terms and conditions acceptable to Company. Subject to the density requirement, Company shall offer Cable Service at standard installation rates to all new homes or previously unserved homes located within 150 aerial feet of Company’s Distribution Cable. For non-Standard Installations (those exceeding 150 aerial feet or underground) Company shall, upon receipt of payment and pending any identified construction or other issues (e.g., make ready, weather) offer said service within thirty (30) days of a Subscriber requesting such for aerial installations and sixty (60) days of a Subscriber requesting such for underground installations.

2. Regardless of the density requirements outlined above, Company shall provide a cost-sharing arrangement as follows. On the request of a resident desiring service, Company shall prepare an engineering survey and cost analysis to determine the cost of plant extension required to provide service to the subscriber. If a request for extension of service into a residential area requires the construction of cable plant that does not pass at least twenty homes per mile (aerial), Company and those residents requesting cable services will each bear their proportionate share of construction costs. For example, if there are five single family homes per mile (aerial) who agree to subscribe to cable service, Company shall share one-half of the construction cost and the remaining cost will be shared equally among the residents requesting cable services. Company may require advance payment of the customer pro-rata cost prior to commencing construction.

3. Installation costs shall conform with the Cable Act. Any dwelling unit within an aerial 150 feet of the Trunk and Distribution Cable shall be entitled to a Standard Installation rate in accordance with applicable federal and state laws. Underground installations are considered non-standard installations. All non-standard installations shall be provided at a rate established by the Company in accordance with applicable federal and state laws.

4. Provided Company has at least ninety (90) days’ prior written notice concerning the opening of residential subdivision trenching, or of the installation of conduit for the location of utilities, and the density requirements outlined above are met, it shall install its cable in such trenching or conduits or may seek permission to utilize alternative trenching or conduits within a comparable time frame. The City, or its designee, shall exercise reasonable efforts to have the Planning Board and developers give timely written notice of trenching and underground construction to Company. Developer shall be responsible for the digging and back-filling of all trenches.

5. Additional roads to be serviced by virtue of the execution of this Franchise are:
   a. Specify
   b. etc

18. **Cable Service to Municipal Buildings**

Company shall provide and maintain one cable drop, including standard installation of basic cable service to municipally owned and occupied facilities serviceable by a standard aerial drop located within 150 feet of Company’s distribution system and capable of an aerial drop. The Municipality shall be responsible for equipment charges, if any.

The following buildings are required to have courtesy cable TV drops.

City Office; 300 Main Street
Thornton Academy; 438 Main St.
Station 1 Fire; (address)
Station 2 Fire; (address)
Consumer Issues

19. Rates & Services

A. Prices and Charges

1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by Company for any Cable Service as of the Effective Date shall be in accordance with all applicable FCC’s rate regulations. Before any new or modified rate, fee, or charge is imposed, Company shall follow the applicable FCC and State notice requirements and rules and notify affected Subscribers, which notice may be by any means permitted under applicable law. Nothing in this Franchise shall be construed to prohibit the reduction or waiver of charges in conjunction with promotional campaigns for the purpose of attracting or retaining Subscribers. Complete information concerning billing and collection procedures, including dispute resolution, procedures for ordering changes in, or termination of services, and Company’s discontinuation policies and procedures shall be provided to each subscriber at least annually.

2. The City acknowledges that certain costs of Public, Educational and Governmental ("PEG") Access and other Franchise imposed costs, at the Company’s option may be passed through to Subscribers in accordance with federal law.

B. Basic Cable Service

Company shall make available a Basic Cable Service tier to all subscribers in accordance with 47 USC §534 and applicable regulations, including 76.1618 of the FCC Rules and Regulations, and shall provide notice of the basic tier pursuant to 30-A M.R.S.A. §3010.

C. Programming

Pursuant to federal law, all Video Programming decisions, excluding PEG Access Programming, are at the sole discretion of Company, except that pursuant to 47 USC §544(b)(2) (B) and (h) and 47 CFR §76.1603 the City may require “broad categories” of programming.

20. Rights of Individuals

A. Customer Service

Company shall comply with all customer service federal laws, regulations of the FCC and state laws as they may be amended from time to time.

B. Protection of Subscriber Privacy

Company shall comply with all applicable federal and state privacy laws and regulations, including 47 USC §551 and regulations adopted pursuant thereto and 30-A M.R.S.A. §3010.

C. Employee Identification Cards

All of Company’s employees, and subcontractors, including repair and sales personnel, entering private property shall be required to display an identification card issued or approved by Company indicating that employee or subcontractor is working on behalf of Company.

D. Monitoring

Company may only monitor customer accounts consistent with applicable federal and state law.
E. Privacy Written Notice

At the time of entering into an agreement to provide any Cable Service or other service to a Subscriber, and annually thereafter to all Cable System Subscribers, the Company shall provide Subscribers with written notice, as required by Section 631(a)(1) of the Cable Act, (47 USC §551) which, at a minimum, clearly and conspicuously explains the Company’s practices regarding the collection, retention, uses, and dissemination of personal subscriber information, and describing the Company’s policy for the protection of subscriber privacy.

F. Subscriber's Right to Inspect and Verify Information

1. The Company shall make available for inspection by a Subscriber at a reasonable time and place all personal subscriber information that the Company maintains regarding said Subscriber.

2. A Subscriber may obtain from the Company a copy of any or all of the personal subscriber information regarding him or her maintained by the Company. The Company may require a fee for making said copy.

3. A Subscriber may challenge the accuracy, completeness, retention, use or dissemination of any item of personal subscriber information. Such challenges and related inquiries about the handling of subscriber information shall be directed to the Company. The Company shall change any such information upon a reasonable showing by any Subscriber that such information is inaccurate.

21. Unauthorized Connections/Continuity of Service

It shall be the right of all Subscribers to receive Cable Service insofar as their financial and other obligations to the Company are honored, provided that the Company shall have no obligation to provide Cable Service to any Person who, or which the Company has a reasonable basis to believe, is using an unauthorized Converter or is otherwise obtaining Cable Service without required payment thereof or who threatens Company’s employees or damages Company’s equipment. The Company shall ensure that all Subscribers receive continuous, uninterrupted Service, except for necessary Service interruptions. When necessary non-routine Service interruptions in excess of four hours can be anticipated, the Company shall notify Subscribers of such interruption(s) in advance.

22. Subscriber Complaints

A. Dispute Resolution

The Company shall establish a procedure for resolution of Complaints by Subscribers. Said procedure shall at a minimum include the provisions of 30-A M.R.S.A. §3010.

B. Investigation of Complaints

Upon reasonable notice, the Company shall expeditiously investigate and resolve all complaints regarding the quality of Service, equipment malfunctions and similar matters. In the event that a subscriber is aggrieved, the City or its designee(s) shall be responsible for receiving and acting upon such subscriber complaints and/or inquiries, as follows:

1. Upon the written request of the City or its designee(s), the Company shall, within ten (10) business days after receiving such request, send a written report to the City with respect to any complaint. Such report shall provide a full explanation of the investigation, finding and corrective steps, if any, taken by the Company.

2. Should a subscriber have an unresolved complaint regarding cable television operations, the subscriber shall be entitled to file his or her complaint with the City or its designee(s), who shall have primary responsibility for the continuing administration of this Renewal License.
and the implementation of complaint procedures. The subscriber shall thereafter meet jointly with the City or its designee(s) and a representative of the Company, within thirty (30) days of the subscriber's filing of his or her complaint, in order to fully discuss and resolve such matter in accordance with applicable laws.

3. Complaint Records: Company shall maintain records of all oral and written complaints regarding quality of service, equipment malfunctions, billing procedure, and similar matters that requires further action on the part of the Company. Such records shall show the exact date and time of receipt of all such customer complaints, identifying the subscriber, the nature of the complaint and the exact time action was taken by the Company in response thereto, together with a description of such action. Company shall also maintain a record of all whole or partial system outages, including the date, approximate time and duration, type and probable cause of each outage, except for outages caused by routine testing or maintenance. Such records shall be available at the Company’s local office for at least two (2) years, for inspection by City as it may from time to time request, during regular business hours and upon reasonable notice, subject to any privacy restrictions imposed by law. Company shall, within ten (10) days after receiving a written request therefore, send a written report to City with respect to any complaint. Such report shall provide a full explanation of the investigation, finding(s) and corrective steps taken.

C. Complaint Policy

Company shall provide the City a copy of Company’s complaint policy annually and no later than 30-days after any revisions. If Company maintains a publicly available website, Company’s complaint policy shall be posted on its website.

23. Credits and refunds, notice on subscriber bills

Pursuant to 30-A M.R.S.A. §3010 (2-A), “every franchisee shall include on each subscriber bill for service a notice regarding the subscriber's right to a pro rata credit or rebate for interruption of service upon request in accordance with subsection. The notice must include a toll-free telephone number and a telephone number accessible by a teletypewriter device or TTY for contacting the franchisee to request the pro rata credit or rebate for service interruption. The notice must be in nontechnical language, understandable by the general public and printed in a prominent location on the bill in boldface type”.

24. Transfers

A. Company’s Right to Transfer

Neither this Franchise Agreement, nor any rights or obligations of the Company in or pursuant to this Franchise Agreement or the Cable System shall be transferred in part or as a whole, by assignment, trust, lease, sublease, and is not to be sold, transferred, leased, assigned, or disposed of in part or as a whole, either by forced sale, merger, consolidation, or otherwise, nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any Person, nor shall any change in control of the Company or the Cable System occur, either by any act of the Company or by any parent company of the Company, by operation of law or otherwise, in each such case without the prior consent of the City, which consent shall not be unreasonably withheld or delayed, and which shall be expressed in writing, subject to reasonable and lawful conditions, including, but not limited to, curing any Franchise non-compliance. Any assignment or transfer without such prior written consent or without “deemed consent” under applicable federal law shall constitute a violation of a material provision of any Franchise Agreement.

No consent will be required for a transfer in trust, mortgage or hypothecation to secure an indebtedness, provided that such transaction will not in any respect prevent the Company or any successor from complying with all of its obligations under this Franchise Agreement, but the exercise
of any right to foreclose or seize such pledged assets shall be subject to the provisions of this paragraph. No transfer of control will be deemed to have taken place if the transfer is to an entity under common control with the Company provided such entity has equal or greater financial resources than the transferor and provided the transfer does not involve a change in the management or day to day operations of the Company.

B. **City’s Right to Approve**

Pursuant to 47 U.S.C. § 537, the City, as Local Franchise Authority, reserves its right to approve any sale or transfer of the Cable System. Municipal approval shall not be unreasonably withheld.

For purposes of this Section, any sale, assignment or any other disposition of a twenty percent (20%) ownership interest of the Company or parent company of the Company to any one Person or group of Persons acting in concert, in one transaction or a series of related transactions, shall be deemed to be a change of control of the Franchisee. The word “control” as used in this section is not limited to major stockholders but includes actual working control in whatever manner exercised. A transfer or assignment of a Franchise or control thereof between entities under common control, between affiliated companies, or between parent and subsidiary corporations, shall not constitute a transfer or assignment of a Franchise or control thereof. An “affiliated company” is any person or entity that directly or indirectly or through one or more intermediaries controls, is controlled by, or is under common control with another person or entity.

C. **Notice to City**

Company shall provide the City with reasonable Notice of the proposed transfer. The contents of the Notice shall include:

1. An original and three (3) copies of its FCC Form 394 (or such other or successor form used to request consent to any such Transfer or assignment), which form shall fully describe the action or proposed action and clearly state the basis on which the Transfer or assignment should be approved. The Company shall include with the application complete responses to the informational requests attached to this Franchise Agreement as Exhibit A. The request for approval of Transfer or assignment shall also contain all reasonably appropriate documentation and such additional information as the City may reasonably require, provided that to the extent the City requests additional information other than as described in Exhibit A, the City shall issue such request to the Company within thirty (30) days of receipt of the application, and the Company shall respond to such requests for additional information within thirty (30) days. The Transfer or assignment form shall be signed by the Company and by the proposed transferee or by its representative, evidence of whose authority shall be submitted with such petition.

2. Certification by transferee that it will accept the provisions of this Franchise Agreement for the remainder of the Franchise Term.

D. **Time to Review**

The City shall have 120 days from receipt of the Notice to take action on the request for transfer. The City need not, but may, act to approve the transfer. If the City does not act within 120 days of receipt of Notice, the transfer shall be deemed approved.

E. **Public Hearing**

The City’s consent to transfer shall be given only after a public hearing, if such a hearing is deemed necessary by either the City or the transferee, to consider the written request for Transfer. The City shall complete review of the request for Transfer and make a decision thereto no later than one hundred twenty (120) days after receipt of the request for Transfer. If the City fails to render a final decision on such request within said 120 days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time. In the event the City makes a reasonable
request for additional information and the Company fails to provide responses within thirty (30) days of receipt of such request, the City’s deadline to make a decision on the transfer request, and the date by which such transfer request is deemed granted, shall be thirty (30) days after the City’s receipt of such responses. The City may conduct a public hearing on the proposed transfer no later than 90 days after the receipt of the notice of transfer.

F. City Consent

For purposes of determining whether it shall consent to any such change of control and ownership, the City shall inquire into the legal, financial, management and technical qualifications of the prospective controlling or owning Person, and including, but not limited to, such Person's cable-related experience and service record, if any, in other communities, the changes, if any, it intends to make in the operations, maintenance, technology and services of the Cable System serving Saco, any and all matters relative to the ability and likelihood of such Person adhering to all of the terms and conditions of this Franchise Agreement, and whether the proposed change of control and ownership is in the public interest.

G. Transferee Obligations

Any proposed controlling or owning Person or transferee approved by the City shall be subject to all of the terms and conditions contained in the Franchise Agreement, including curing any Franchise non-compliance.

H. Costs

The Company shall reimburse the City for its reasonable expenses (including reasonable attorney’s fees) incurred as a result of the reviewing and acting upon the Company’s request to transfer. The Company’s liability for reimbursing the City shall not exceed Two Thousand and Five Hundred Dollars ($2,500).

I. No Waiver or Release

The consent or approval of the City to any Transfer of the Cable System or this Franchise Agreement granted to the Company shall not constitute a waiver or release of the rights of the City in, and shall by its terms be expressly subordinate to, the terms and conditions of this Franchise Agreement.

25. Successors/Assigns

The obligations of this Franchise apply to any and all successors and assigns of the Company, unless the City expressly and in writing agrees to release the successors and assigns from this Franchise or any portion thereof.

26. Renewal

This Franchise may be renewed by the parties in accordance with state and federal law. The City may assess reasonable fees to defray the costs of public notice, advertising and other expenses incurred by the City in acting upon applications for renewal Franchise agreements.

27. Revocation and Termination

A. Right to Revoke or Terminate

In addition to all other rights and powers of the City by virtue of this Franchise Agreement and after notice and opportunity to cure pursuant to section 27B, the City may revoke this Franchise Agreement and all rights and privileges of Company hereunder in the event Company either:

1. Violates any material provision of this Franchise Agreement or any rule, order or determination of the City made pursuant thereto where such violation remains uncured for a
period of thirty (30) days following written notice to Company by the City that such violation is deemed to exist unless cure is not feasible in such time period in which event the parties shall meet and agree to a cure schedule;

2. Attempts to evade any material provision of this Franchise Agreement or practices any fraud or deceit upon the City; or

3. Fails to provide or maintain in full force and effect the insurance coverages and the performance bond as required by the City Cable Ordinance and the terms of the Franchise Agreement, where such violation remains uncured for a period of thirty (30) days or,

4. Arbitrarily ceases to provide service over the Cable System or fails to restore service after ninety-six (96) consecutive hours of interrupted service except in cases of force majeure or when approval of such interruption is obtained from the City.

B. Procedures to Revoke or Terminate

1. If the condition(s) giving rise to the City’s termination of the Franchise Agreement are not cured within the time frames set forth in Section 27.A, the Agreement shall be terminated and the City may initiate the process for revoking the Franchise under the City of Saco Cable Television Ordinance.

28. Abandonment

If company shall cease providing service in the City pursuant to 30-A M.R.S.A. §3008(3)(B), the Company shall remove all of its supporting structures, poles, transmission and distribution systems, and other appurtenances from the Public Ways and shall restore the areas to their original condition as is reasonably possible and as soon as reasonably possible. If such removal is not complete within six (6) months of such end of service, the City may deem any property not removed as having been abandoned. Upon written request of the Company, the City may waive this requirement of removal for good cause shown.

29. Expiration of Agreement

Upon the expiration and non-renewal, or revocation of this Franchise Agreement and exhaustion of all judicial appeals, the Cable System shall be disposed of according to 47 USC §546 and this Franchise Agreement.

30. Changes in Law

In the event a federal or state law, regulation or decision by a court of competent jurisdiction renders a provision in this Franchise Agreement void or otherwise unenforceable, the provision shall be considered preempted. This preemption will last for as long as the law, regulation or decision is effective; if the law, regulation or decision is subsequently repealed, rescinded, amended, voided, overturned or otherwise changed so that the preemption is nullified, the provision shall thereupon return to full force and effect as provided by such proceeding and shall be binding and enforceable in accordance with the terms thereof.

31. Amendments

This Franchise Agreement may be amended in the future by written agreement of both parties to reflect changed circumstances, including changes in federal or state law. This Franchise Agreement shall not be amended or modified except by written agreement executed in the same manner as this Franchise Agreement. Where applicable, the amendment shall be consistent with the provisions of 47 USC §545.

32. Miscellaneous
A. **Force Majeure**

The Parties shall not be responsible for any delay or failure to perform their obligations under this Franchise Agreement if doing so is prevented by Act of God, flood, storm, fire, explosions, strikes, riots, wars whether or not declared, insurrections, epidemics, or any law, rule or act of any court of competent jurisdiction or instrumentality of government or any cause or event beyond the control of the City or the Company.

B. **Severability**

If any provision of this Franchise Agreement is held by any court or Federal or State agency of competent jurisdiction to be invalid as conflicting with any Federal or State law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, said provision shall be considered a separate, distinct and independent part of this Franchise Agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof, all of which shall remain in full force and effect for the term of this Franchise Agreement.

C. **Effect on Prior Agreements**

This Franchise Agreement shall supersede any prior franchise agreements between the parties. Immediately upon the taking effect of this Franchise Agreement, all prior franchise agreements and any and all extensions thereof, shall terminate and shall have no further force and effect; provided, however, that any vested rights relating to billings and the City’s rights to receive franchise fees shall not be affected thereby.

D. **Non-Enforcement Not Waiver**

Neither party shall be excused from complying with any of the terms and conditions of this Franchise Agreement by any failure of either party upon one or more occasions to insist upon or to seek compliance with any such terms or conditions. No course of dealing between the Company and the City, nor any delay on the part of the City or Company in exercising any rights hereunder, shall operate as a waiver of any such rights of the City or Company or acquiescence in the actions of the Company or the City in contravention of such right, except to the extent expressly waived by either party or expressly provided for in this Franchise Agreement. No decision by the City or Company to invoke any remedy under this Franchise Agreement or under any statute, law or ordinance shall preclude the availability of any other such remedy. This provision does not extend any applicable statute of limitations.

E. **Company Warranties**

Company warrants, represents and acknowledges that, as of the Execution Date of this Franchise Agreement:

1. The Company is duly authorized to do business under the laws of the State;

2. The Company has the requisite power and authority under applicable law and its bylaws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the execution date of this Franchise Agreement, to enter into and legally bind Company to this Franchise Agreement and to take all actions necessary to perform all of its obligations pursuant to this Franchise Agreement;

3. This Franchise Agreement is enforceable against Company in accordance with the provisions herein; and
4. There is no action or proceedings pending or threatened against Company that would interfere with performance of this Franchise Agreement.

5. The Company has the financial and technical capability to carry out the obligations set forth in this Franchise Agreement.

Execution

**Signatures:**

**Date: ____, 2018**

**CITY OF SACO, MAINE**

By: ____________________________

By: ____________________________

By: ____________________________

**Date: ____, 2018**

**TIME WARNER CABLE NORTHEAST LLC**

By: ____________________________

Mark FitzPatrick

SVP, CFO Residential Services

**EXHIBIT A**

**INFORMATION TO BE PROVIDED WITH ANY FUTURE REQUESTS FOR APPROVALS OF SALES, TRANSFERS, CHANGES IN CONTROL**

1. Identify any circumstances in the past ten years when Buyer/Transferee was unable to pay any of its debts when due including the date, creditor, matter at issue, amount and current status.

2. Provide evidence of Buyer/Transferee’s authority to conduct business in Maine, including a copy of all filings made to obtain such authority.

3. Describe in detail the ownership and management structure of the Seller/Transferor’s Maine cable systems upon completion of the transaction with Buyer/Transferee. Provide an ownership flowchart that identifies the legal entities that will be in the chain of ownership of the Buyer/Transferee upon completion of the transaction, including the nature of each entity and who will own each such entity.

4. Identify all cable systems currently owned, managed or operated by Buyer/Transferee, including the locations and numbers of subscribers for each, and a list of the name and address of all municipal franchise authorities with a contact person with each franchise authority.

5. Describe in detail Buyer/Transferee’s plans for any rebuilds or upgrades of the cable system serving Saco after the closing, including (a) the specific time schedule for the rebuild or upgrade (b) the anticipated cost of the rebuild or upgrade, (c) a detailed description of the nature of the rebuild or upgrade, and (d) a detailed description of the architecture of the rebuilt system.

6. Provide a copy of the anticipated complete rate schedules and service offerings to be offered to subscribers in Saco by Buyer/Transferee after the closing of the transaction.

7. Provide a copy of any Buyer/Transferee customer service standards, repair or maintenance policies, complaint resolution policies, or other similar customer policies or protocols that will be in Saco after acquisition by Buyer/Transferee.
8. Describe in detail any and all planned management changes, operational changes, technical changes, changes to customer service functions (including changes in the telephone, MIS and billing systems), and changes in engineering and technical support, for the cable system serving Saco.


**D. ZONING CHANGE FOR KENNELS IN MU-3 – (FIRST READING)**

Kendall Beal of 58 Shadagee Rd in Saco has, by petition, asked the city to consider amending the MU-3 zoning district to add the already defined use of “Boarding Kennel” as a permitted use. This could be accomplished via simple amendment by adding “Boarding Kennel” as a permitted use to Section 230-410.6 of the Saco Zoning Ordinance.

Boarding Kennels are currently allowed as a permitted use in the B-2a, B-2b, B-6, and C-1 zones only.

The Planning Board held a public hearing for this request on August 7, 2018. After discussion, the Planning Board decided the Boarding Kennel use is more appropriately added in the MU-3 zoning district as a conditional use, rather than a permitted use. The Planning Board then voted unanimously to forward a positive recommendation to the City Council to add the already-defined use of “Boarding Kennel” as a conditional use in the MU-3 zone district.

Councilor Doyle moved, Councilor Gay seconded “The Saco City Council hereby ordains and approves the First Reading of the proposed amendments to the Zoning Map that amends the MU-3 zoning district to include the use of boarding kennels as a conditional use and further move to set the Public Hearing for October 1, 2018.” The motion passed with seven (7) yeas.

**E. BLASTING MORATORIUM – (SECOND & FINAL READING)**

There are currently no regulations in Saco concerning blasting. Unregulated blasting may cause undue psychological, physical or nuisance damage to the people, property and environment of the City. Thus, until an official ordinance can be approved a moratorium must be put in place for non-emergency or already approved projects.

Councilor Doyle moved, Councilor Gay second “Be it Ordered that “The City Council hereby ordains and approves the Second and Final Reading of a 180-day moratorium on new permits or projects that come through the site plan process which utilize blasting charges. This would exclude any currently approved or local government specific projects”. Further move to approve the Order.

Amendment – Councilor Smart moved, Councilor Minthorn seconded that requests for blasting before this moratorium is supersede by the ordinance “that they come before the council for council approval. The motion passed with seven (7) yeas.

Mayor Lovell called for a vote on the main motion. The motion passed with seven (7) yeas.

**F. BUDGET AMENDMENT #2 CAMP ELLIS JETTY (FIRST READING)**

The Saco Bay Erosion Working Group has been meeting for the past year to advocate for a resolution to the Camp Ellis Jetty and the expansion of a spur. As a part of its draft report in July, the District Office for the Army Corps of Engineers has proposed a plan to add a perpendicular 750 foot spur to the Jetty and require the City of Saco to maintain the structure and provide sand nourishment going forward (known as Option 6).

The City does not believe this is the best plan for protecting Camp Ellis for the long-term and that another project identified in the report, Option 25A could be afforded with the same allocation of $26.9 million outlined in the 2007 Water Resource Development Act (WRDA) from technical review by a third party.

This $25,000 budget amendment would provide resources to further analyze and price out options from the 2006 Wood Hole Group report and further review the federal law language that would need to be changed to provide the best possible outcome for Saco. The money will be appropriated into its own special revenue fund dedicated to Section 111 Camp Ellis Jetty Erosion Mitigation to ensure unused funds are available without continuing Council Motion in future years.
Councilor Copeland moved, Councilor Johnston seconded “Be it Ordered that City Council approves the first reading of ‘Budget Amendment #2 FY2019’ and moves to schedule a second and final reading for October 1, 2018.” Further move to approve the order. The motion passed with seven (7) yeas.

City of Saco
Budget Amendment Request Form
Revenue & Appropriation
Amendment # 2 Camp Ellis Advocacy

9/17/2018
Date
Administration
Department

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**Notes:** This money was appropriated as part of the FY 2018 Budget but was not utilized and therefore would have fallen to the fund balance at the close of the fiscal year. This amendment pulls the funds back from the fund balance.

Finance Director certifies that funds are available:

[Signature]

Gloria Salas, Finance Director
9/14/2018

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**City of Saco, Maine**

**Exhibit Item: 2**

**Administration**
Saco City Hall
300 Main Street
Saco, Maine 04072-1538

**Kevin L. Sutherland, City Administrator**
Telephone: (207) 282-4191 x341
Email: KSutherland@SacoMaine.org
Facebook: /sacomaine
Twitter: @SacoMaine

September 14, 2018

William Conde, Colonel
District Engineer
US Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA 01742

Re: Saco River and Camp Ellis Beach, Saco, Maine, Section 111: Shore Damage Mitigation Project

Dear Colonel Conde:

The Saco Bay Erosion Working Group, a collaborative of concerned Saco residents, City Council representation, the Mayor’s office, and City staff have reviewed the Final Decision document for the Section 111: Shore Damage Mitigation Project at Camp Ellis in Saco, Maine.
Since the installation of the Camp Ellis Jetty in the late 1800s, the Camp Ellis community has experienced significant erosion. For the past 65 years, the City has cooperatively worked with the Federal Government to mitigate further erosion and future property loss. We have worked closely with the District Office to ensure our concerns are captured within the report and executive summary; however, we have additional points that we would like to review with the ACOE as outlined below.

The City does see the ACOE preferred Option 6 as an immediate erosion mitigation benefit, however, if all future nourishments are the responsibility of the City, our City Council and community cannot support this project.

Below are our responses to the four points outlined on page 15 in the Executive Summary:

1. There are no lands, easements, rights-of-way, or disposal areas that the Corps will require of the City other than easements over City lands for access to the project. The City will execute any easements necessary for project completion.
2. If the City will be responsible for the maintenance of the engineered components of Option 6, that is not feasible on the local level. If the ACOE requires the City to maintain the engineered components of the project, the City requests a partnership of determining that scope and that the performance of this alternative does not make the City of Saco liable should the spur fail with the agreed upon inspection and maintenance:
3. In June of 2018, the Council approved a Beach Management Agreement that could be signed by both parties. On September 4th, the City Council further amended ordinances that needed to be changed to comply with the Beach Management Agreement. Saco will be in compliance with this requirement.
4. The City understands that Federal funding for this project is currently limited by WRDA2007 to $26.9 million which is the current estimate for the Federally Implementable Plan recommended in the report. The City understands that it would be responsible for any costs above that Federal limit. Since the Federally Implementable Plan will not provide the full cost of the initial design beach fill originally included in Plan 6, the City requests that any cost savings identified during project design or resulting from the contracting/bidding process be applied to increasing the initial sand fill volume, and or towards the Federal 50% share of future nourishment events. The City also intends to continue to work with its Congressional delegation to increase the $26.9 million Federal funding limit to levels that would permit Federal funding to complete the initial beach fill volume and participate in future nourishment.

Based on additional analysis performed by City staff and supported by the City Council, we believe Option 25A could optimize the allocation of resources and maximize the impact of mitigation. Were the ACOE to restructure the funding allocation of Option 25A, such that the City as the Non-Federal sponsor delivered the beach nourishment portion of the project, Option 25A would then fit within the allocated funding of Section 3085 of the WRDA2007, specifically $26.9 million allocated to Camp Ellis. We believe that this would reduce the burden of future nourishment costs.

The City and its elected officials understand this may delay action for FY19, but we ask that the ACOE consider our Locally Preferred Plan in their decision-making process and work with the City of Saco to find a way to provide the best value option at the lowest cost.

Sincerely,

Kevin L. Sutherland, City Administrator

CC: Mayor Marston Lovell, City of Saco
    Senator Angus King, United States Senate
    Senator Susan Collins, United States Senate
    Representative Chellie Pingree, United States House of Representatives
Executive Summary

This Decision Document for shore damage mitigation at the Saco River and Camp Ellis Beach in Saco, Maine was prepared under the continuing authority of Section 111 of the 1968 River and Harbors Act, as amended.

The report consists of a main report summarizing the existing conditions of the project area, problem identification, plan formulation and evaluation, and a recommendation. An Environmental Assessment of the proposed action is included with the report. Appended supporting documents include: Correspondence, Coastal Engineering Study Reports, Geotechnical Design, Engineering Design and Cost Estimates, Economics, Real Estate, and Cultural Resources. The study accomplished the following:

- Examined existing conditions and assessed the extent of problems associated with shoreline erosion caused by the existing Saco River Navigation project.
- Developed and evaluated alternative solutions to shoreline erosion at Camp Ellis Beach.
- Determined the extent of Federal interest in participating in mitigating for shoreline erosion.
- Developed the most cost effective plan to mitigate for shoreline erosion caused by the Federal navigation project.
- Assessed the environmental and other impacts of alternative solutions and the selected plan.
- Scoping that plan to fit within the Federal project cost limit set by the Water Resources Development Act of 2007.
- Identified the capability and willingness of the non-Federal sponsor, the City of Saco, Maine, to participate in recommended improvements.

The Saco River and Camp Ellis Beach are located in the City of Saco, Maine, about 16 miles south of Portland, Maine. The beach is situated on the southern portion of the Saco Bay shoreline as shown in Figure ES-1. The Saco River meets the North River at a point 2,500 feet above the elevation of Saco Beach. The river forms the boundary between the cities of Biddeford to the south and Saco to the north. The confluence with the river, the Saco River Federal Navigation Project consists of an 8-foot deep channel, 200 feet wide, that runs from a 2,000-foot-long jetty to the north and by a 4,800-foot-long jetty to the south. The 8-foot channel continues upriver about 6 miles to the head of navigation below the dams at the centers of the two cities. An 8-foot anchorage basin at the head of the project surrounds a shallow shoal known as Half Tide Island.

The navigation project currently supports a wide variety of commercial and recreational activities. A commercial fishing fleet of nearly 40 vessels anchors and unloads at the fishing pier at Camp Ellis. The pier is also used by several charter and sport fishing boats. A commercial boat yard, situated further upstream on the Biddeford side, manufactures and services commercial and pleasure craft. Until recently approximately 120 tons of paper products were also exported from the pier at this boat yard yearly but those shipments have now ceased. There are three marinas that provide berths or moorings for about 290 recreational boats, and three public boat ramps provide additional access to the river. The State ramp at Meeting House Eddy is the most heavily used ramp in the State with over 300 launches per day. Other related activities, such as marine programs at the University of New England and kayak rentals, are supported by the project.

As shown on Figure ES-2, Camp Ellis Beach lies adjacent to the north jetty and extends about 2,500 feet north to Ferry Beach, which extends about 5,500 feet further north along the bay to the Three Sisters and Kennebunk Shores beaches and to Goosefare Brook which forms the boundary between Saco and the Town of Old Orchard. The north jetty separates the Saco River from Camp Ellis Beach to the north. The Federal navigation project was authorized and constructed in 1828 and 1906. Initial construction consisted of a wooden jetty with a 2,000-foot-long timber crib and a 4,600-foot-long jetty to the south. Persistent inlet instability and shoaling resulted in the reconstruction and extension of the north jetty between 1867 and 1873. Shoaling continued and sediment continued to collect in the navigation channel and areas along the Biddeford coastline south of the inlet. This prompted construction of a south jetty that was initiated in 1891. The South Jetty has continued to form sand shoals in areas to the south, and wave forces in this area have formed a typical crescent shaped beach south of the jetty and accretion on the south side of the jetty.

Following initial construction of the South Jetty channel instability continued and the South Jetty was extended to 4,500 feet in 1911. Severe erosion on the north side of the North Jetty prompted construction of a 400-foot spur jetty in 1915 to prevent flanking of the jetty. Continued erosion in this area has overwhelmed this small spur jetty which can now be seen as a dispersed ribbon of rocks about 300 feet from shore. Inlet instability continued and sections of the jetty raised and tightened, and sections were added in 1930 and 1938 to achieve the current length of 6,600 feet. During the last modification in 1968, the shoreward end of the North Jetty was raised and tightened to reduce the maintenance dredging frequency in the river channel by keeping sand from Camp Ellis from working its way into the channel.

The jetties provide for navigation safety at the mouth of the river and a reduction in the frequency of maintenance of the lower river channel and anchorage areas. However, the jetties also have impacts to the adjacent shoreline. While the South Jetty is largely protective of the Biddeford shoreline in its lee, the north jetty has more adverse effects on the Saco shoreline to the north. The area of Camp Ellis Beach and the south end of Ferry Beach within about a quarter mile of the North Jetty has experienced severe erosion over the past several decades, with losses of over 30 homes and other property, roadways, and public and private infrastructure since the 1950s. These continuing losses prompted the city of Saco to request federal financial assistance from the Corps of Engineers to reduce or eliminate further shoreline impacts. Historic shoreline positions and shoreline areas lost to erosion are shown on an aerial photo included as Figure ES-3.
Section 111 provides authorization for the Corps of Engineers to study, plan and implement structural and/or nonstructural measures to prevent or mitigate damage to shorelines to the extent that such damages can be directly attributable to Federal navigation projects. The Federal share of costs for any one project is normally limited to $10 million. However, as costs of plans to mitigate further shoreline erosion were expected to exceed this limit, action by the Maine Congressional delegation resulted in the inclusion of Section 3085 in the Water Resources Development Act of 2007 that raised the limit at Camp Ellis to $26.9 million. As current cost estimates for a solution to the erosion problem exceed that limit, the Government would not be able to construct the entire project with Federal funds.

Shoreline change at Camp Ellis has been the subject of numerous studies over the years. These studies, conducted by the Corps and others, indicate that the Saco River has been the primary sediment source for the Saco Bay beaches, and that the primary direction of sediment movement along the shoreline is south to north. However, with construction of the north jetty, sands from the Saco River were retained in the channel or transported offshore into deeper waters, and were not available to nourish Camp Ellis Beach. The other major impacts to the

<table>
<thead>
<tr>
<th>Saco River and Camp Ellis Beach, Maine</th>
<th>ES-4</th>
<th>Final Decision Document</th>
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</tr>
</thead>
</table>

area are significant wave reflection off of the northern jetty and development under certain conditions of silt currents along the face of the structure. Upon impacting the structure, waves are reflected back towards Camp Ellis Beach and a portion of shoreline directly adjacent to the breakwater is impacted not only by incident wave energy, but also by reflected wave energy. The silt currents can also move material off the beach and into deeper water in the Bay. In summary, the high erosion rate can be attributed to several factors directly related to construction of the north jetty. These include interruption of natural riverine sediment supply to the downdrift beach, diversion of riverine sediment and beach material farther offshore, and wave focusing along the beach due to reflection of waves by the breakwater.

Mitigating for shoreline loss along Camp Ellis involved the development and evaluation of a wide range of alternatives that included both structural and non-structural measures. More than 30 plans and combinations were modelled and studied. Structural measures included increments of jetty removal or modification, and construction of spur jetties, breakwaters and T-groins along the beach. Beach nourishment, as a stand-alone alternative, or in conjunction with other measures was also considered. The primary non-structural alternative was the purchase and demolition of structures within the potential area of erosion and restoration of the area into a more stable frontal dune. The effects of structural alternatives were evaluated using the results of extensive modeling studies that were conducted as part of the study. These modeling studies included extensive data collection and numerical modeling to simulate existing conditions in the vicinity of Camp Ellis. The numerical modeling portion of the study was used to evaluate the performance of each considered alternative. Initial screening phases resulted in carrying four plans forward for final analysis, including the buy-out plan.

1) Beachfill Only Plan (712,000 CY)
2) Alternative 6 – 750-foot Spur Jetty and Beachfill (365,000 CY)
3) Alternative 25A – 500-foot Spur Jetty, Two Offshore Breakwaters (about 400 feet each), and Beachfill (328,000 CY)
4) Buy-Out Plan – Property Acquisition, Building Demolition, and Site Restoration

Final screening of alternatives was conducted based on performance criteria of completeness, effectiveness, efficiency, and acceptability. Plan selection under Section 111 is based on the least costly plan, as measured by annual cost (including design, implementation and renovation), that meets the goal of preventing further shore damage to the extent that the underlying Federal navigation project is determined responsible for that damage. Benefit-cost analysis is not used in the least cost evaluation. The final least-cost analysis is shown in Table ES-1 below. The annual cost shown is based on the historic rate of sea level change. Analysis of the project plans under conditions of intermediate and high rates of sea level rise yielded the same result for the cost rankings of the several plans.

<table>
<thead>
<tr>
<th>Table ES-1</th>
<th>Annual Costs for Final Array of Alternatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alternative</td>
<td>Annual Cost</td>
</tr>
<tr>
<td>Beach Fill Only Plan</td>
<td>$1,965,000</td>
</tr>
<tr>
<td>Alternative 6 – Jetty plus Beachfill</td>
<td>$1,324,000</td>
</tr>
<tr>
<td>Alternative 25A – Jetty plus Two Breakwaters plus Beachfill</td>
<td>$1,695,000</td>
</tr>
<tr>
<td>Buy-Out Plan</td>
<td>$1,697,000</td>
</tr>
</tbody>
</table>

Note: Least cost analysis was based on FY17 Price Levels
Final screening resulted in the selection of Alternative 6 (750-foot long spur jetty and about 365,000 CY of beach nourishment) as the least costly, technically feasible, and environmentally acceptable shore damage mitigation plan. However, as the costs of this Selected Plan (Alternative 6) exceed the Federal funding limit of WRDA 2007, it was necessary to scale the plan back to fit that limit.

Scaling the least costly plan to fit the Federal funding limit was determined to best be achieved by reducing the width of the beachfill provided after construction of the spur jetty. Construction of the spur jetty as initially designed is necessary to interrupt the wave energy and currents due to the main jetty. Beach fill to the extent of any remaining Federal funding capability would be the second priority. Beach fill, both initial and for future renourishment is also more readily implemented by non-Federal interests compared to jetty construction or modification. The recommended Federal plan will therefore include full construction of the 750-foot-long stone spur jetty and reinforcement of adjacent sections of the main north jetty, followed by construction of a reduced width section of the beachfill component of the project. Non-Federal interests could, if they chose, supplement the initial beachfill volume and width provided by the Federal cost-scaled plan and perform any future beach renourishment at their own cost. This scaled-back version of Alternative 6 will be the Federally Implementable Plan (FIP).

Both Alternative 6 and the recommended Federally Implementable Plan (see Figure ES-4) consist of a 750-foot-long spur jetty and beachfill along Camp Ellis Beach to prevent further shoreline losses north of the existing north jetty. The spur jetty would be attached to the existing north jetty at a point about 1,475 feet from the shoreline. The top of the structure would be about 15 feet wide and at an elevation of 14.5 feet MLLW. Seaward and landward side slopes of the jetty would be 1 vertical on 2 horizontal. Due to increased turbulence at the spur and jetty junction, about 400 feet of the existing jetty seaward on the spur jetty would require reinforcement. Modifications to the first 200 feet of the north jetty include raising the top elevation to reduce overtopping, flattening the slope to 1 vertical on 2 horizontal, adding armor stone, and reinforcing the toe to prevent scour. An additional 200 feet of the north jetty would receive toe reinforcement only.

Alternative 6, the least costly plan recommended by the modelling study and cost analysis, also includes a beach nourishment component. Beachfill along Camp Ellis Beach would begin at the north jetty and extend about 3,250 feet to the north. The beach berm elevation proposed in the model and design analysis is 17.4 feet MLLW, which is roughly equivalent to the natural beach berm elevation in areas north of the study area and the top elevation of the north jetty. The design seaward slope of the beachfill would be 1 vertical on 10 horizontal to satisfy requirements for shorebirds. The estimated volume for sand required for initial beach construction under Alternative 6 was about 365,000 cubic yards, with beach renourishment required about every 12 years to maintain an effective beach width, determined to be a beachfill section of no less than 30 percent of the initial placement volume. Sand volumes for each renourishment would vary depending on actual changes in future sea levels. Estimated volumes for 12-year renourishment events under the three potential sea level change scenarios are: 116,000 cubic yards for the historic rate; 192,000 cubic yards for the intermediate rate; and 236,000 cubic yards for the high rate.

The recommended Federally Implementable Plan includes a reduced beachfill component. In order to keep the project cost below the $26.9 million limit established in WRDA 2007 the initial beachfill section was reduced to 225,000 cubic yards by reducing the design berm width and seaward slope. Further there would be no Federal financial involvement in future renourishment activities as the Federal funding limit would be reached by initial construction. Figure ES-4 shows the Federally Implementable Plan for the spur jetty and the reduced beachfill of 225,000 cubic yards. The figure also shows the extent of the full beachfill of 365,000 cubic yards under Alternative 6 – the Selected Plan.

The major environmental impact of the proposed project is the loss of subtidal habitat due to the placement of sand on the beach and construction of the spur jetty. This impact, however, is offset by the creation of stone reef along the spur that will provide habitat for numerous species, the availability of upland sandy beach areas suitable for Piping Plover nesting, and increased stability of the shoreline. Actions related to the project as proposed will provide little measurable cumulative impact.

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There are three aspects to non-Federal cost-sharing for Section 111 projects: (1) the per-project Federal funding limit measured by the total cost of studies, design and implementation of the project, (2) cost-sharing of design and implementation costs, and (3) cost-sharing for future renourishment.

Per-Project Federal Funding Limit: Section 111 states that the Federal share of costs is limited to $10 million. Section 3085 of the Water resources Development Act of 2007 raised the Federal limit to $26.9 million for mitigation of shore damages at Saco-Camp Ellis. However, as current estimates for studies, ongoing design, and implementation of the least costly alternative identified by modelling and other studies exceeds that increased $26.9 million Federal limit, the beachfill section of the project was reduced to keep costs within the limit.

Cost-Sharing: Design and Implementation of Section 111 projects are cost shared with the non-Federal sponsor in the same proportion as the costs for the navigation project features contributing to the damage were shared. Under the WIIN/WRDA 2016 that cost-sharing basis was also applied to the sharing of feasibility study costs. As all costs associated with the design and construction of the navigation project causing the damage were 100 percent Federal, the Federal government will be responsible for 100 percent of the feasibility costs, and 100 percent of the initial cost for design and implementation of the project up to the project’s Federal funding limit.

Future Renourishment: Based upon Section 215 of Public Law 106-53 (Water Resources Development Act of 1999), non-Federal interests are responsible for 50 percent of the costs for periodic beach renourishment. Renourishment under the least costly plan was estimated to be required every 12 years, or four times during the 50-year economic life of the project. Each renourishment event is expected to cost about $3.8 to $4.4 million at FY 18 price levels, escalated out to their construction points over the 50-year project economic life these costs total about $47,907,000. The Federal government could provide one-half of those renourishment costs so long as the total project cost does not exceed any limit included in the additional legislative authority required to implement the project. The non-Federal sponsor would be responsible for the remaining half of any renourishment costs. However the Federal funding limit for this project as provided in WRDA 2007 will be reached when initial construction of the Federally Implementable Plan is completed, and therefore there can be no Federal participation in future renourishment.

Prior Feasibility Costs: Feasibility costs must also be considered in determining total project cost. Federal feasibility funds for the study of the Saco-Camp Ellis project were allocated in two periods. Between 1991 and 1994 about $648,000 was provided and expended on field investigations and model studies which resulted in the December 1991 coastal process report, the May 1992 Section 111 Reconnaissance Report, the August 1995 Coastal Model Report. This study was formally terminated by memo dated 27 February 1996. A second Federal feasibility study effort began in FY 2001 and continued through FY 2012. These funds were used to prepare the August 2001 Section 111 Feasibility Report and to pursue studies and investigations resulting in the current recommendation. The total allocation of Feasibility funds for this study effort was $520,000. Total feasibility study costs for both efforts totaled $1,168,000.

Prior Design Costs: Additional funding used to pursue the model studies and to prepared design documents and the final report were provided as design phase funds. These funds are not included in the separate final design and implementation phase funds in the cost estimates. These prior design phase funds total $2,285,000 based on funds allocated from FY 2002 to FY 2018.
The estimated cost of both the least costly plan from the design analysis, and the cost scaled Federal Recommended Plan consistent with the Federal fund limit provided by WRDA 2007, are shown below in Table ES-2. These costs are presented for the current fiscal year (FY18) level, the program year (FY19) level, and fully funded level (mid-point of construction). The estimates also account for prior feasibility and design costs.

When escalated to the mid-point of construction the total estimate for the cost-scaled Plan 6 are $26,898,000. The beachfill volume has been reduced to 225,000 cubic yards from that initially recommended to as to fit the WRDA 2007 Federal funding limit. The additional cost of the remaining 140,000 cubic yards of beachfill to reach the originally recommended volume of 365,000 cubic yards is estimated at $4,897,000 at fully funded levels and could be funded by non-Federal interests at their option. Supplementing the initial beachfill volume and width provided under the Federally Implementable Plan by non-Federal interests would improve project performance and reduce the frequency of future renourishment actions.

<table>
<thead>
<tr>
<th>Work Item</th>
<th>October 2017 Cost (FY18)</th>
<th>Program Year (IQ19) Cost</th>
<th>Fully Funded Cost (FY20)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federally Implementable Plan</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spur Jetty and Jetty Reinforcement</td>
<td>$11,481,000</td>
<td>$11,747,000</td>
<td>$12,190,000</td>
</tr>
<tr>
<td>Beach Fill – 225,000 Cubic Yards</td>
<td>$6,797,000</td>
<td>$6,937,000</td>
<td>$7,435,000</td>
</tr>
<tr>
<td>Lands, Easements, Rights of Way and Relocations</td>
<td>$632,000</td>
<td>$849,000</td>
<td>$866,000</td>
</tr>
<tr>
<td>Engineering and Design</td>
<td>$1,535,000</td>
<td>$1,594,000</td>
<td>$1,704,000</td>
</tr>
<tr>
<td>Supervision and Administration (S&amp;A)</td>
<td>$1,078,000</td>
<td>$1,120,000</td>
<td>$1,249,000</td>
</tr>
<tr>
<td>Total Initial Construction</td>
<td>$21,723,000</td>
<td>$22,216,000</td>
<td>$23,445,000</td>
</tr>
<tr>
<td>Prior Feasibility Phase Costs</td>
<td>$1,168,000</td>
<td>$1,168,000</td>
<td>$1,168,000</td>
</tr>
<tr>
<td>Prior Design Phase Costs</td>
<td>$2,285,000</td>
<td>$2,285,000</td>
<td>$2,285,000</td>
</tr>
<tr>
<td>Total Feasibility and D&amp;I Costs</td>
<td>$25,176,000</td>
<td>$25,669,000</td>
<td>$26,898,000</td>
</tr>
<tr>
<td>Additional Non-Federal Cost for the Selected Plan - Full Plan 6 Beachfill Section</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beach Fill – Add 140,000 Cubic Yards</td>
<td>$4,181,000</td>
<td>$4,266,000</td>
<td>$4,574,000</td>
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<tr>
<td>Additional Engineering &amp; Design Costs</td>
<td>$31,000</td>
<td>$32,000</td>
<td>$34,000</td>
</tr>
<tr>
<td>Additional S&amp;A Costs</td>
<td>$249,000</td>
<td>$259,000</td>
<td>$289,000</td>
</tr>
<tr>
<td>Total Additional Beachfill Costs</td>
<td>$4,461,000</td>
<td>$4,557,000</td>
<td>$4,897,000</td>
</tr>
</tbody>
</table>

The costs above do not include future renourishment. Periodic renourishment is necessary for the project to function as predicted in the hydrodynamic modelling and coastal engineering evaluation over the 50-year economic life of the project. Under the least costly plan with a full initial beachfill section (365,000 CY), beach renourishment is expected to be required once every 12 years, when continued erosion is projected to have reduced the initial placed beachfill volume by 70 percent. Determining the point at which only 30 percent of the initial design volume remains on the beach would require monitoring surveys. Since the Federal funding limit provided by WRDA 2007 is reached during initial construction of the project there can be no Federal participation in future monitoring or renourishment.

The costs of periodic renourishment of the beachfill are shown in Table E-3 below for consideration by the non-Federal Sponsor. These costs include design and construction costs and contingencies. Costs are presented for the base year cost (FY18) and the budget year cost (FY19) as with the project design and implementation costs above. Costs are also shown as fully-funded, escalated to the mid-point of construction for each renourishment event. The final renourishment sand volume and cost were adjusted for the additional two years of erosion from year 48 to year 50.

Adding the cost of the Federally Implementable Plan as limited by WRDA 2007, the cost of additional initial beachfill to reach the full section, and the cost of future renourishment, the total cost of mitigating shore damages over the 50-year project economic life increases significantly as shown in Table E-4 below.
Table ES-3
Saco River and Camp Ellis Beach, Saco, Maine
Shore Damage Mitigation Project — Costs of Non-Federal Periodic Renourishment

<table>
<thead>
<tr>
<th>Work Item</th>
<th>October 2017 Cost (FY18)</th>
<th>Program Year (1Q19) Cost</th>
<th>Fully Funded Cost (FY20)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Renourishment Event #1 — Year 12</td>
<td>$3,876,000</td>
<td>$3,968,000</td>
<td>$5,894,000</td>
</tr>
<tr>
<td>Renourishment Event #2 — Year 24</td>
<td>$3,876,000</td>
<td>$3,968,000</td>
<td>$8,298,000</td>
</tr>
<tr>
<td>Renourishment Event #3 — Year 36</td>
<td>$3,876,000</td>
<td>$3,968,000</td>
<td>$12,050,000</td>
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<tr>
<td>Renourishment Event #4 — Year 50</td>
<td>$4,440,000</td>
<td>$4,545,000</td>
<td>$21,665,000</td>
</tr>
<tr>
<td>Total 50-Year Renourishment Cost</td>
<td>$16,068,000</td>
<td>$16,450,000</td>
<td>$47,907,000</td>
</tr>
</tbody>
</table>

Table ES-4
Saco River and Camp Ellis Beach, Saco, Maine
Shore Damage Mitigation Project
Costs of the Federal Plan, Additional Beachfill and Future Renourishment

<table>
<thead>
<tr>
<th>Work Item</th>
<th>October 2017 Cost (FY18)</th>
<th>Program Year (1Q19) Cost</th>
<th>Fully Funded Cost (FY20)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Initial Construction as Authorized under WRDA 2007</td>
<td>$25,176,000</td>
<td>$25,669,000</td>
<td>$26,898,000</td>
</tr>
<tr>
<td>Additional Costs for Full-Scale Initial Beachfill Section (Add 140,000 CY)</td>
<td>$4,461,000</td>
<td>$4,557,000</td>
<td>$4,897,000</td>
</tr>
<tr>
<td>Renourishment Costs over 50 Years</td>
<td>$16,068,000</td>
<td>$16,450,000</td>
<td>$47,907,000</td>
</tr>
<tr>
<td>Total Project Cost with Renourishment</td>
<td>$45,705,000</td>
<td>$46,676,000</td>
<td>$79,702,000</td>
</tr>
</tbody>
</table>

Actual costs for completion of PED, construction contracts and construction management will require a re-evaluation of project cost-sharing throughout the process of soliciting bids, awarding a contract and constructing the project. Future interest rates, fuel and labor prices, bidding climate, weather, and many other factors would determine actual future costs.

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Real Estate interests required for construction and future operation and maintenance of the recommended plan include easements over existing parcels and public lands where the beachfill material will be placed, as well as over public roads and rights-of-way that access the beach and the jetty. Staging areas onshore may also be required, but would be treated as part of contractor mobilization depending on the equipment and methods used for construction.

Benefits of the project include reduced hurricane and coastal storm damage to public and private property along the Camp Ellis shore, and reduced emergency response and infrastructure repair costs. The value of property losses prevented by the least costly plan ranges from about $17.5 million measured at the historic rate of sea level rise up to $25.4 and $30.1 million at intermediate and high sea level changes. Estimates of savings in emergency response and repair costs range from about $84,000 to $113,500 and to $123,000 from historic to intermediate to high sea level change rates.

Environmental impacts of the project include conversion of shallow subtidal habitat in the footprint of the new spur jetty, and conversion of shallow subtidal and intertidal habitat within the footprint of the beach fill to intertidal and supratidal elevations. The potential for the beachfill area to attract nesting shorebirds will require the City to enact and enforce restrictions on beach use and access during the nesting season of the piping plover. Quarry sources for the rock and sand will also need to be examined to ensure there are no adverse impacts to other species of concern.

Risk and uncertainty with the project include the adequacy of project design, accuracy of construction cost estimates, and the estimated frequency and volume of future renourishment needs. With respect to construction cost estimates a contingency risk analysis was used to develop cost contingencies including allowance for weather delays, availability and proximity of stone and sand sources, materials delivery time, bidding climate, availability of equipment, and other factors. Risks with project design and renourishment needs are related to sea level change and storm frequency and intensity. Computer modeling attempted to address this issue and designs for more frequent and greater volume of renourishment actions were developed for intermediate and high level projects of sea level rise. Increases in the spur jetty design dimensions were not considered as corresponding increases in the dimensions of the remaining inshore length of the existing jetty would carry more significant cost.

These risks are greater with the initial beachfill section scaled-back to fit the Federal cost limit authorized by WRDA 2007. Where the Selected Plan was developed to fully address mitigation of further shore damages at Camp Ellis, the Federally Implementable Plan will only function with regard to completeness, efficiency, and effectiveness if non-Federal interests at their discretion undertake to either (1) complete the initial beachfill placement and perform the 12-year renourishment cycle required for the Selected Plan, or (2) perform the 4 to 5-year renourishment cycle under the Federally Implementable Plan. Without further non-Federal action the Federally Implementable Plan will not be complete, efficient or effective.
Once initial construction of the Federal project is completed the Sponsor is encouraged to monitor the performance of the beachfill and could adjust the frequency and volume of renourishment actions to address impacts of any weather events beyond those predicted. If the Sponsor elects to supplement the initial beachfill section at their cost, then the total beachfill section should not be allowed to erode to less than 70 percent of its original placement volume before renourishment is accomplished so as to maintain the ability of the beachfill section to prevent further shore retreat. If the Sponsor elects not to supplement the initial beachfill section beyond that provided by the Federally Implementable Plan then more frequent renourishment (estimated at about 233,000 cubic yards every four to five years) would be needed to prevent further shorefront property losses.

Cost apportionment for the project requires identifying the Federal and non-Federal cost sharing for each project phase. Under Section 111 cost sharing for feasibility, design and implementation of projects are shared in the same percentage as the cost sharing required for the underlying navigation project. The jetty and channel features of the Saco River Federal Navigation Project were all constructed without any non-Federal cost sharing. All feasibility and design phase costs to date for the Section 111 study have been 100 percent Federally funded. All costs of design and initial construction of the project will also be 100 percent Federally funded. Future renourishment costs would typically be cost-shared 50/50 between the Federal government and the non-Federal sponsor. Beyond renourishment, the costs for future operation, maintenance, replacement, repair and rehabilitation of the project is a non-Federal responsibility. The annual cost to the non-Federal Sponsor for required periodic inspections and repairs to the spur jetty and reinforced section of the existing north jetty are estimated at about $68,000. The optional non-Federal annual cost of monitoring and managing the beach to document further storm damage and erosion is estimated at about $19,000 annually. The cost of monitoring and administering the beach in accordance with plans for protecting endangered species would be determined in conjunction with the U.S. Fish and Wildlife Service during final project design.

The total Federal cost limit for Section 111 projects is normally $10 million. For the Saco River and Camp Ellis Beach project WRDA 2007 increased that total Federal project cost limit to $26.9 million. Any project costs above $26.9 million would be a non-Federal responsibility. The following table shows the cost apportionment for the various project phases based on the Federally Implementable Plan and the fully-funded project cost.

### Table ES-5

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<table>
<thead>
<tr>
<th>Costs Allocation for the Federally Implementable Plan and Required and Optional Non-Federal Costs</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Project Phase (Fully Funded Price Levels - FY20)</th>
<th>Fully Funded Cost</th>
<th>Federal Cost</th>
<th>Non-Federal Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feasibility Costs FY91-FY12</td>
<td>$1,168,000</td>
<td>$1,168,000</td>
<td>$0</td>
</tr>
<tr>
<td>Prior Design Expenditures FY02-FY17</td>
<td>$2,285,000</td>
<td>$2,285,000</td>
<td>$0</td>
</tr>
<tr>
<td>Final Design and Construction</td>
<td>$23,445,000</td>
<td>$23,445,000</td>
<td>$0</td>
</tr>
<tr>
<td>Total Feasibility and D&amp;C Costs</td>
<td>$26,898,000</td>
<td>$26,898,000</td>
<td>$0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Optional Non-Federal Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Additional Initial Beachfill Costs</td>
</tr>
<tr>
<td>Renourishment Costs over 50 Years</td>
</tr>
<tr>
<td>Total Project Cost with Renourishment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-Federal Operation, Maintenance, Repair and Rehabilitation Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required Future Spur Jetty Maintenance, Inspection, and Repair - Annualized</td>
</tr>
<tr>
<td>Optional Future Annual Beach Monitoring and Management Costs</td>
</tr>
<tr>
<td>Required Beach Monitoring &amp; Management for Endangered Species Protection</td>
</tr>
</tbody>
</table>

The city of Saco is aware of the non-Federal requirements for future project maintenance, inspection and beach management. The City is also aware of the option for non-Federal funding to supplement the initial design beachfill section as recommended by the design evaluation, and their options to maintain the beachfill through future renourishment whether or not they choose to supplement the initial beachfill. The City supports implementation of the project. However, the City’s views depart from the recommended Federally Implementable Plan in a number of ways, principally those listed below.

1. The City prefers that Plan 25A be implement in lieu of either the lesser-cost Plan 6 or the Federally Implementable Plan. Plan 25A includes two northerly offshore breakwaters, each about 400 feet long, in addition to a shorter 500 foot spur jetty and beachfill. The additional stone structures would reduce the volume and frequency of future renourishment required to maintain the beachfill.

2. The City does not concur with the limitation on Federal cost authorized in WRDA 2007 as the City believes the USACE should bear the entire cost of mitigating shore damages.
G. ADOPT OFFICIAL POSITION REGARDING THE CORPS OF ENGINEERS PLAN FOR CAMP ELLIS

The Saco Bay Erosion Working Group has been meeting for the past year to advocate for a resolution to the Camp Ellis Jetty and the expansion of a spur. As a part of its draft report in July, the District Office for the Army Corps of Engineers has proposed a plan to add a perpendicular 750 foot spur to the Jetty and require the City of Saco to maintain the structure and provide sand nourishment going forward (known as Option 6).

The City does not believe this is the best plan for protecting Camp Ellis for the long-term and that another project identified in the report, Option 25A could be afforded with the same allocation of $26.9 million outlined in the 2007 Water Resource Development Act (WRDA) from technical review by a third party.
This motion is to determine if the City is resolved to finding a solution to the erosion of all of Saco’s beaches that recognizes the source of this erosion is the Federal structure that juts into Saco Bay at Camp Ellis. That the appropriate solution markedly diminishes wave energy reflecting off this Federal structure. That the Federal government recognizes its responsibility for the future upkeep and maintenance of its structures.

Councilor Copeland moved, Councilor Minthorn seconded “Be it Resolved that the City will seek to find a resolution to the damage being caused by the federal navigation structure at Camp Ellis and that the City will not incur responsibility for the federal navigation structure nor the effort undertaken by the federal government to remedy this disaster.” Further move to approve the resolution. The motion passed with seven (7) yeas.

VIII. ADMINISTRATIVE UPDATE

MEMORANDUM

TO: Mayor Lovell and City Council
FROM: Kevin L. Sutherland, City Administrator
DATE: September 17, 2018
RE: Administrative Update

Call from Hannaford team
Beginning October 8th, Hannaford will be charging 5 cents for paper bags in communities with an effort to change public behavior. They have affordable re-usable bag options (as low as $.50) and are hopeful the community will work toward bringing their own bags. I’ve asked Emily to reach out to their corporate Marketing team to work on a positive message for all of the communities who have adopted similar ordinances and how to share this with the general public and their customers.

Personnel Committee
Met last week to review a draft document. We’ll be looking to review and discuss the findings and the re-drafted document at the October 9th Council Workshop.

Public Meeting
Saco Route 112/Exit 36 area transportation study public meeting number 2 will be taking place on September 27th 6pm-7:30pm in the Auditorium. There will be representatives from MTA, MDOT, and the City of Saco.

City Hall Closed for an hour
On Thursday September 27th, City Hall will be closed for the lunch hour to allow all City Hall staff to participate in the Employee BBQ. We will have signs up at all City Hall entrances to inform members of the public as we get closer to the date.

Update on Hoarding
This was originally reported to the Council at the July 23 meeting. A member of the public requested this be read again.

On September 5th of last year, Saco had a workshop and public hearing for a grant to develop a compulsive hoarding program. We partnered with Shalom House to apply where the City acts a pass through while the experts (Shalom House) created the program and now administer it. On September 18th, Council accepted the CDBG grant as part of its consent agenda.

This grant is for up to 50,000. They have spent just under 20,000 of it. Since starting services for the Saco/Biddeford area in September:
Individual in-home clients: 18
Support group attendees: 10
Number of support group meetings: 21 (2 hours per meeting)
Training with the book CBT for Hoarding Disorder by Dr. David Tolin Volunteer in-home Hours: 243
Sorting, discarding, donating and removal Shalom staff in-home hours: 140
Sorting, discarding, donating and removal Training CBT for Hoarding
Hoarding 101 trainings: 4
Number trained: 73

Task Force Meetings: 2
Task Force Sub Committee meetings: 5
Formed a collaboration with USM to find funding for programing after the current CDBG grant has ended

Submission/Posting of Council Packets

At the present moment, the Council packet is primarily a logistics issue.

The policy is currently: Department’s provide information for Council packets two Friday’s before it is supposed to show up on an agenda.

Unfortunately it has strayed away from this over the last few months because we’ve been trying to get items through the process in a timely fashion. Council meets on Monday – at the Tuesday staff meeting, departments are informed about the items that need to be prepared for the following Monday – sometimes there isn’t enough time to get all the information together by Wednesday.

I meet with the Mayor to review the agenda on Wednesday afternoons and our meeting lasts well past the time at which staff is still here. I have meetings most Thursday mornings which means we do not get the edits taken care of until Thursday afternoons or first thing Friday morning.

This past week was particularly difficult because I took some time Thursday and Friday to work on my house and there was a last minute item added – a communication error between myself and the Mayor. I thought the budget amendment was a clear enough indication of the Council’s support for the letter I sent, the Mayor wanted a separate action for the Council to consider. I now know to save house work for weeks when there isn’t a meeting on the following Monday.

As for the online link. There was one. For the first document. It was removed and replaced, but it did not save properly. In addition to the language added to the website, there is user action to show the attempt was made to post the packet. In addition, the agenda was posted in City Hall on Friday which satisfies Charter requirements.

We can get back to the two weeks out, but it is not always all that business friendly – so working with the Mayor, we’ve made exceptions at the expense of when the packet can get out.

I have some thoughts and will look for some feedback about how to best move forward:

• Send a completed agenda item to the Council in email once it is ready (by Wednesday evening when I know which items the Mayor wants to see on the agenda along with a draft agenda). And the completed packet once it is entirely complete? That would reduce the number of new items you’d have to review on Friday or over the weekend.
• Meet more frequently (4 meetings/workshops) and have fewer items on the agenda? – to ensure packets are out on Thursday
• Meet twice a month with longer meetings – this will enable us to have the packets out on Wednesday afternoon, but will delay when something comes before Council.

IX. COUNCIL DISCUSSION AND COMMENT
➢ Councilor Copeland - Inquired if the hoarding numbers quoted were just Saco numbers only. City Administrator Kevin Sutherland stated that they were Saco specific.
Mayor Lovell - Noted that the reason the packet came out late was because he felt the council needed to make policy statement on Camp Ellis. Councilor Minthorn - Stated this wasn’t necessarily business friendly or community friendly but I think we need hard and fast deadlines so as to not burden staff or the city administrator and yourself and to have some more defined cut-offs so that we are not every other week in this continual Wednesday, Thursday, Friday helter skelter and the packet arrives Friday afternoon and we are trying to read 80-100 pages by Monday. Maybe some things will fall through the crack. But, burning people out by having a crunch every week on Wednesday, Thursday and Friday is just futile. I for one would much prefer to have the packet by noon on Thursday. So, that I have several extra days to read it that don’t interfere with weekend activities and if there is a question, we have the time to ask it. The way it is now we get the packet and are just done reading it by the time that we get here. If we have questions it is too late to get answers by Monday night. There has been much discussion on this issue going back a year now. We have to draw a line in the sand to protect staff, council, and the community so that we don’t continue on this path in the future. Other councilors have expressed a similar sentiment prior to the meeting tonight. Councilor Archer – To build off Councilor Minthorn’s comment. It needs to be done because I don’t like being ill informed and having to make a decision. One of the tools we as councilors have is the ability to table. The last thing I want to do is to start tabling because I don’t feel informed on a decision. It is important to me because I have done this conversation with a couple of other councilors in the past. It is very important to make wise decisions. Councilor Gay – It would also be helpful if you could get the information that you know for sure maybe out Wednesday like you suggested and if you have to add onto it, add onto it by at least Thursday. Councilor Copeland – I want to thank the staff for working so hard and jumping on this. But, maybe we should let the pressure off there as well. You guys don’t have to have a meeting tomorrow and come up with all of these solutions and be ready on Wednesday. That doesn’t seem enough time for staff to turn it around either. It is a bit of a rush. So, maybe we can plan farther out and give staff, city administrator and mayor another week and put stuff on for the further week. City Administrator Kevin Sutherland noted that the biggest challenge is when we have a workshop and not understanding collectively that because we have a workshop on one Monday, the next Monday those items are not necessarily going to be on the agenda. They would be on the first meeting of the next month. The challenge is if it is a business looking to do something, we are scrambling to get this information as quickly and effectively as possible. I don’t have a solution. I want the council to understand the challenges and stresses of ensuring that we are giving a good quality product that you are comfortable with. Knowing, having read and understood before making a decision but at the same time trying to work with the community who comes to us for answers. Councilor Copeland noted that she completely understands, but that we need to have a better balance. You need some time and we need time to make important thoughtful decisions. Like my fellow councilors were saying, we need time to mull it over. Perhaps, do some research, ask some questions and we don’t always have that time. I don’t think that is best for our citizens and our government. Councilor Minthorn – Replied to the City Administrator that if everyone in town knows that Wednesday isn’t a hard and fast deadline, they will take advantage of it. What we have to do is make it hard and fast whether it is the Wednesday before or the Wednesday before that, if we have hard and fast deadlines and they know if they are going to bring it before us, this is the lead time we need. It will relieve the pressure on all the points after that. That is all I’m suggesting. I want to relieve it for everybody. Councilor Johnston – Stated that he was conflicted on this because he understands everybody’s issue. I have 2 small children myself and I find myself cramming this entire packet usually in the late hours of the night in one night. I go back Monday afternoon and figure out my talking points. But, at the same time I think we are talking out of both sides of our mouth because we sit here and are constantly on Kevin’s case about getting things that we want done. Yet, now we are saying to dial it back. Prior to myself getting here or maybe my first year on the council we didn’t have allot of meetings during the summer. Ever since Kevin started we have worked right through the summer because there is so much to do. So, having sat in on these Wednesday meetings and we are kind of cherry picking things we can’t put on the agenda right that day and there is still a long list of things that haven’t moved up to the point of being on the agenda. I completely understand people’s desire to have a packet at a set point. But, traditionally when the previous administrator was here we didn’t get our packet till Friday and that gave you only the weekend. I can remember 300-400 page packets then. I don’t have an answer for it, I’m just throwing out points. Mayor Lovell stated that in his recollection follows yours. I actually thought before we even came close to summer that we weren’t going to be meeting 3 Monday a month through the summer months because we hadn’t before. We had an executive session today that didn’t have a report but it was
important to give them some comfort and I hope that they got comfort from this. But, it adds ½ hour onto our meeting time and it is an additional item. It certainly could have been something that we pushed off, but on the other hand by showing that we are responsive government we are more likely to promote economic development. So it is really a 2 edge sword. Councilor Copeland – I don’t think that we are reinventing the wheel here. There is no need to. What do other communities do? City Administrator Kevin Sutherland stated that they don’t have as much going on as Saco. Some communities don’t have to meet as often as we do. We meet often because there are allot of requests of this community that this council needs to be privy to and make decisions about. Mayor Lovell – I have to check South Portland, but I think they meet frequently. We meet frequently so I will have to check with other governments to see how often they meet. The economy is heating up and it is to our benefit. Councilor Smart – I see the benefit in pretty much all the comments that have been made here. I just want to make sure that whatever policy or changes that we do implement that it is not so inflexible that we are missing opportunities.

X. EXECUTIVE SESSION

Councilor Minthorn moved, Councilor Doyle seconded “Be it Ordered that the City Council enter into executive session, Pursuant to [M.R.S.A. Title 1, Chapter 13, Subchapter 1, §405(6):
A. Patrol and Command Union Negotiations”

The motion passed with seven (7) yeas. Time: 9:16 p.m.

XI. REPORT FROM EXECUTIVE SESSION

Councilor Minthorn moved, Councilor Copeland seconded to come out of Executive Session at 10:15 p.m. The motion passed with seven (7) yeas.

Mayor Lovell, all the Councilors and the City Administrator were present.

There was no report this evening.

XII. ADJOURNMENT

Councilor Minthorn moved, Councilor Copeland seconded to adjourn the meeting at 10:16 p.m. The motion passed with seven (7) yeas.

Attest: ______________________________

Michele L. Hughes, City Clerk