

Settlement Agreement

Whereas, the Kennebunk, Kennebunkport & Wells Water District (hereinafter “the District”) is a quasi-municipal corporation created by Private and Special Act of the Maine Legislature, specifically P. & S.L. 1921, Ch. 159, as amended by P. & S.L. 1957, Ch. 86 and as further amended, operating as a water utility in Maine with offices in Kennebunk, Maine; and

Whereas, the Town of Sanford (hereinafter “the Town”) is a municipality located in York County, Maine; and

Whereas, the Branch Brook is a principal source of water supply to the District’s customers; and

Whereas, portions of the Branch Brook watershed are located in the Town as shown on Exhibit A attached hereto; and

Whereas, the District owns twenty-six lots of undeveloped real estate in Sanford, identified on the Town of Sanford tax maps as Map 19 Lots 22, 23, 23D, 24, 24A, 25, 26, and 26F, Map 22 Lots 26, 27, 28, 29, 31 and 32, and Map 23, Lots 1, 1A, 2, 3, 4, 5B, 6, 7, 7A, 8, 9, and 23 (the “District Property”); and

Whereas, a dispute exists between the District and the Town as to whether the District Property is subject to local property taxation and whether the Tree Growth Penalty assessed by the Assessor is valid; and

Whereas, to the extent the dispute relates to whether the District Property is subject to local property taxation, the dispute is the subject of a proceeding in the York County Superior Court in an action entitled Kennebunk, Kennebunkport & Wells Water District v. Inhabitants of the Town of Sanford, York County Docket No. AP-04-80; and

Whereas, the District and the Town have now agreed to settle their disputes regarding the Tree Growth Penalty and the taxation of the District Property and to the extent provided herein any future land purchased by the District that lies within the portion of the Branch Brook watershed identified as Zones A and B on Exhibit A attached hereto (which Zones A and B are the same as the Town's Public Water Supply Protection District I), and have further agreed to foster joint efforts to protect the Branch Brook watershed in accordance with the terms of this Agreement;

Now, therefore, in consideration of valuable consideration, including the mutual agreements and obligations of the parties as set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Town and the District agree as follows:

1. The Town and the District by virtue of signing this Agreement do hereby commit to working cooperatively to balance the need to preserve the quality of the Branch Brook watershed with the Town's goal of promoting the development of the Sanford Airport and the surrounding area.

2. The Sanford Town Council shall appoint a person nominated by the District to the Town's Airport Advisory Committee (hereinafter the "AAC"). This person shall receive copies of all meeting notices and other information provided to the AAC and shall have all the rights granted to regular members of the AAC except the right to vote.

3. The Town agrees to provide the District with notice of all development proposals within the portion of the Branch Brook watershed located in the Town of Sanford (said watershed boundary is shown as the Aquifer Line on Exhibit A attached hereto) by the earlier of the time the Town's Town Manager becomes aware of any such development proposal or the time such development proposal is submitted to the Town's

Codes Enforcement Officer or Building Inspector or its Planning Department for review or permitting and the Town agrees to provide the District, at the District's expense, copies of all planning documents developed or obtained by the Town that address current and future development within the Branch Brook watershed. The District will provide the Town with copies of all public notices regarding changes in the use of the District property described above including proposals to purchase or sell property in Sanford and changes that would impact abutting property owners in Sanford.

4. The Town agrees to use best management practices in the maintenance of the Sanford Airport and other property owned or controlled by the Town and located in the Branch Brook watershed in order to eliminate or minimize any adverse impacts on the Branch Brook watershed. The District may recommend to the Town that the Town adopt particular management practices at the Airport or such other Town property located in the Branch Brook watershed. In the event the District makes such recommendations, the Town will evaluate the District's recommendations in good faith. If the Town deems the recommendation reasonable and not unduly burdensome on the Town, the Town shall adopt and implement the District's recommendations or shall cooperate with the District to adopt and implement mutually agreeable recommendations. In the event that the Town or the District identify an activity within the Branch Brook watershed that is causing erosion or drainage of pollutants or other materials into Branch Brook or otherwise adversely affecting Branch Brook or the Branch Brook watershed, the Town shall work jointly with the District to take all reasonable measures in the parties' respective control to eliminate such erosion or drainage, provided however that if the expenses the Town will incur in a single fiscal year under this Agreement exceed \$10,000 and the additional

funds necessary to meet such expenses are not already in the Town's operating budget for the current fiscal year, the Town will not be obligated to appropriate additional funds in said current fiscal year, but will make a good faith effort to obtain a reasonable appropriation to meet such expenses for the following fiscal year.

5. The Town will provide the District with free access to the Town's GIS information and maps. The District will provide the Town with a copy of its Master Plan at no cost.

6. The Town will work with the District to conduct a drainage study of the Branch Brook watershed area. The Town will also, upon request of the District, provide the District with all information the Town has available to it related to drainage in the area of the Sanford Airport. If the District determines that a more detailed drainage study is needed, the Town will apply for grant funds from the Federal Aviation Administration to fund such a study. If grant funds are awarded, the District will pay the 5% matching amount. If the Town is unsuccessful in obtaining grant funding, the District will bear the cost of any such more detailed drainage study it requests.

7. The District will apply to place the District Property in the tree growth program and will take the actions required to maintain the property in tree growth status. The Town agrees to waive permanently the Tree Growth Penalty it assessed the District on November 30, 2004. By agreeing to place the property in tree growth, the District does not admit or concede that the District Property in Sanford is, or could be, subject to local property taxation. By waiving the Tree Growth Penalty, the Town does not admit or concede that the District was not subject to the Tree Growth Penalty or would not be subject to it upon any failure in the future by the District to take those actions necessary

to qualify the property for tree growth taxation. The Town agrees that the Town will not in the future take the position that, by placing the District Property in tree growth, the District has admitted or agreed that the District Property is subject to local property taxation. The District agrees that the District will not in the future take the position that, by waiving the Tree Growth Penalty previously assessed, the Town has admitted or agreed that the District Property is not subject to local property taxation.

8. Annually on June 30th of each year, beginning on June 30, 2005, the District will pay the Town a watershed protection fee of \$10,000, which funds shall be used to compensate the Sanford Regional Airport for time and expenses the Airport incurs in watershed protection activities. This fee shall be adjusted annually by the lesser of 3% or the CPI-U, All City Index for the previous calendar year.

9. The parties agree to stipulate to the dismissal, without prejudice and without costs to either party, of the pending litigation brought by the District in the York County Superior Court and pending in Docket No. AP-04-080.

10. The Town agrees to waive permanently the collection of any real estate property taxes on the District Property assessed in the past against the District Property, including taxes that were assessed for tax years 2003/2004 and 2004/2005. Further, for so long as this Agreement remains in place, the Town of Sanford agrees that it will not assess or attempt to collect real estate property taxes on the District Property so long as such property is used by the District only for watershed protection purposes. This does not prevent the Town from maintaining assessment records and valuations of the District Property.

11. By entering this agreement, the Town does not agree or concede that the District Property is exempt from real or personal property taxes, and the District does not agree or concede that the District Property is subject to real or personal property taxes.

12. This agreement may be terminated by mutual written agreement of both parties. Beginning on the fifth anniversary of this Agreement, this Agreement may be terminated by either party by giving written notice to the other party at least one year before the effective date of the termination. The giving of such notice of termination shall not relieve the parties of their duty to perform all obligations to each other under this Agreement up to and including the termination date. In the event of a default by a party to this Agreement, the other party may terminate this agreement if the default has not been cured within sixty (60) days of written notice by the non-defaulting party to the defaulting party. In the event of termination of this Agreement, the Town shall have no right to collect any real property taxes from the District that accrued or could have accrued prior to the effective date of the termination of this Agreement, except that if the default consists of the failure of the District to pay the sum due hereunder, the Town shall have the same right to assess and collect taxes as of the April 1 assessment date immediately prior to the termination date that it would have had in the absence of this Agreement.

13. The District agrees to permit non-motorized public access to the District Property.

14. This is the entire Agreement between the parties with respect to the subject matter hereof. Each party acknowledges and agrees that no representations or promises have been made to or relied upon by any of them or by any person acting for or on their

behalf in connection with the subject matter of this Agreement which are not specifically set forth herein.

15. This Agreement shall be governed by the laws of the State of Maine. Either party may enforce this Agreement in the Maine courts and both parties submit to personal jurisdiction in the York County Superior Court for that purpose. In any action to enforce this Agreement, the prevailing party shall be entitled, in addition to other remedies, to recover its reasonable attorneys' fees and costs of suit.

16. The Town and the District, by and through their undersigned authorized representatives, each represent that they have carefully read this Agreement and understand its terms and conditions without reservation.

17. This Agreement may be signed in several counterparts, but all when taken together shall constitute but a single document when executed by both parties. This Agreement shall not constitute the Agreement of the parties until such time as both parties have executed it.

18. This Agreement shall be binding upon and shall inure to the benefit of the parties, their respective successors, legal representatives, officers, employees, agents and assigns.

19. This Agreement and all documents and instruments executed in connection herewith or in furtherance hereof may not be amended, modified or supplemented except by an instrument in writing signed by both parties.

20. Each party agrees to execute such further and additional documents, instruments and writings as may be necessary, proper, required, desirable or convenient for the purpose of fully effectuating the terms and provisions of this Agreement.

21. Each party represents to the other that the official signing this agreement for it is duly authorized thereunto and that this agreement is binding other party and enforceable according to its terms.

22. Nothing contained in this agreement shall operate to modify or limit the legal rights and responsibilities of the parties that would exist in the absence of this agreement, except as expressly set forth herein, and this agreement shall not constitute an admission by either party or be admissible as evidence on any contested issue in the event of litigation or any other proceedings between the parties, except that this agreement shall be admissible in any litigation directly involving the implementation, interpretation or enforcement of this agreement.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement on the dates written below.

Date: June ____, 2005

Town of Sanford

Witness: _____

By: _____
Mark Green
Its Town Manager
Thereunto Duly Authorized

Date: June ____, 2005

**Kennebunk, Kennebunkport, & Wells
Water District**

Witness: _____

By: _____
Normand Labbe
Its Superintendent
Thereunto Duly Authorized