

AMENDED AND RESTATED INTERLOCAL AGREEMENT
KENNEBUNK RIVER COMMITTEE

WHEREAS, the Towns of Arundel, Kennebunk and Kennebunkport entered into an Interlocal Agreement dated 03-25-95 and establishing the Kennebunk River Committee; and

WHEREAS, the Agreement was amended on July 1, 2000; and

WHEREAS, the Town of Arundel has withdrawn from the Agreement pursuant to Section 6.2 of the Agreement; and

WHEREAS, the remaining parties wish to amend and restate the Agreement to clarify the responsibilities of the remaining parties and the authority and organization of the River Committee; and

WHEREAS, 38 M.R.S.A. § 7 grants to municipalities the authority to adopt ordinances regulating activities in their harbors, including establishment of a harbor committee to oversee the ordinances regulating such harbors and to oversee the activities of the harbor master; and

WHEREAS, the parties to this Agreement are authorized to contract pursuant to the Maine Interlocal Cooperation Act, 30-A M.R.S.A. §§ 2201-2207;

NOW, THEREFORE, the Towns of Kennebunk and Kennebunkport do hereby agree as follows:

Article 1-Description of Shared Resource

1.1 The purpose of this Agreement is to establish the Kennebunk River Committee and to give it sufficient authority to act as a planning, management, and appeals board in order to assist in the management of the shared resource.

1.2 For the purposes hereof the shared resource, known as the Kennebunk River, is defined as all portions of said River within the party municipalities which extends and runs generally southerly from the Boston and Maine Railroad Bridge, so-called, and extending to a line drawn between the extreme offshore limits of the jetties at the mouth of said River, and including all waters to the high tide levels thereof.

Article 2-Kennebunk River Committee

2.1 A Committee is hereby created which shall act as the representative of the parties for the purposes of implementing this Agreement.

2.2 Membership: Membership shall consist of seven members; three persons from each party municipality shall be appointed by the Board of Selectmen of the respective

municipality. The seventh member (hereafter referred to as the "non-resident member") shall be appointed jointly by both Boards of Selectmen and shall be (i) a resident of a municipality other than either of the party municipalities and (ii) someone who demonstrates an interest in the functioning and success of the River as described herein. All members shall serve three year terms, including the initial term of the non-resident member, except in the case of a vacancy of any member, in which event the vacancy shall be filled for the remainder of the term. Each member shall continue to serve after expiration of a term until a successor is appointed and qualified.

2.3 Each municipality may appoint alternates for one or more of its members. Any alternate is authorized to vote in place of a regular member from his/her municipality, if the regular member is unable to attend a meeting, is unable to participate due to a conflict of interest, or is unable to participate for any other reason. An alternate may be appointed for the non-resident member, if agreed to by the Board of Selectmen of each member municipality. Such an alternate will be appointed in the same manner as the non-resident member.

2.4 The Kennebunk River Harbormaster shall serve as a non-voting member.

2.5 Each member, except the Harbormaster and the non-resident member, shall be a resident of the municipality he/she represents.

2.6 After notice and hearing, a member or alternate may be removed for cause by the Selectmen of the member's municipality, or upon determination that such member or alternate is not a resident of the municipality that appointed the member. The non-resident member may be removed for cause by a majority vote by the Board of Selectmen for each member municipality.

2.7 Nothing in this Agreement shall be construed as altering any term of any member duly appointed by the Board of Selectmen of either party municipality prior to the approval of this Agreement. Such members shall continue their terms in accordance with Section 2.2.

2.8 The members of the Committee shall hold an annual organizational meeting and elect officers. The officers shall consist of a Chairperson, Vice-Chairperson, Secretary, and Treasurer, who shall hold office for terms of one year and who shall continue in office until their successors have been elected. If an officer resigns before the term has expired, the Committee may replace the officer by a special election. Persons serving as officers at the date of adoption of this Agreement shall continue in office until the end of their term.

2.9 Meetings may be called by the Chairperson or by any four regular members by written notice of the time, place, and business to be considered. Notice to all members and alternates shall be given at least seven days prior to a meeting unless the Chairperson determines there is an emergency, in which case the Chairperson may waive the seven day notice provision provided that each municipality is represented by at least one member and a quorum of the members are present.

2.10 A quorum shall consist of representation by not less than four members or their alternates, with at least one Committee member or alternate from each municipality. An affirmative vote of at least one member (or alternate) from each municipality shall be required to pass any measure. A quorum is needed to conduct an official meeting and take any action. A meeting consisting of less than a quorum may establish another meeting date.

Article 3: Powers and Duties

3.1 The Committee shall have all powers necessary and incidental to the implementation of this Agreement, including but not limited to:

- a. Recommending for adoption ordinances relating to the Kennebunk River to the party municipalities;
- b. Developing and recommending for adoption short and long range plans for the Kennebunk River for consideration by the party municipalities;
- c. Administering any appropriations from the municipalities to carry out the purposes of this Agreement;
- d. Hearing and deciding any appeal of any person aggrieved by any decision, act or failure to act of the Harbormaster(s) for the Kennebunk River;
- e. Adopting its own procedural by-laws to govern the conduct of its business and hearings;
- f. Reporting to the Selectmen of each party municipality at least once a year about its activities and presenting its annual budget; and
- g. Adopting and administering rules and regulations of the Kennebunk River including establishing and collecting fees for moorings and harbor usage, overseeing the day to day performance of the Harbor Master and making recommendations to the Boards of Selectmen on the Harbor Master's initial hire.

Article 4: Finances

4.1 Any funds received by the Committee pursuant to this Agreement shall be applied to the costs of operating the Committee except capital reserve funds which shall be segregated for that purpose.

4.2 The Committee shall prepare a recommended annual budget for each municipality on or before January 1 of each year.

4.3 The Committee is not authorized to incur any obligations beyond the amounts described in any appropriations made by the parties.

Article 5: Property

5.1 Any funds remaining with the Committee upon the termination of this Agreement shall be divided equally among the municipalities which are parties at the time of termination except capital reserve funds which shall be returned to the municipality of origin.

Article 6. Breach

6.1 Breach: A party shall be deemed to be in breach of this Agreement if it fails to appoint three voting members, or if it fails to perform or comply with any of the terms, provisions, or conditions of this Agreement or of the by-laws of the Committee. The Committee shall give a party written notice of specific acts or omissions which constitute breach. The party so notified shall have thirty days to conform. If the party fails to conform within the above-mentioned time period, then that party shall be deemed to have withdrawn pursuant to Article 6.2 hereof. Any provisions to the contrary herein notwithstanding, any vote of the Committee with regard to any breach of any party shall be undertaken by only the non-resident member and the members of the party municipality which is not the subject of the vote referencing the alleged breach.

6.2 Withdrawal: Any party may withdraw from this Agreement subject to the following:

- a. Withdrawal becomes effective no less than thirty days from the date upon which notice of the party's intent to withdraw is given to the committee, or upon the expiration of the thirtieth day without any conforming action required pursuant to Section 6.1.
- b. Any payments due during the notice period shall be paid to the Treasurer. If the Treasurer is a representative of a withdrawing party, payment shall be made to the Committee.
- c. Upon the effective date of withdrawal the withdrawing party shall lose all rights to benefits derived of this Agreement, and to funds previously contributed, and shall lose any interest in property held for the benefit of the parties.
- d. The withdrawing party shall pay the Committee the entire amount of any outstanding debts of the Committee; however, any capital reserve monies shall be forfeited.

Article 7: Adoption and Amendment

7.1 Duration: This Agreement shall continue until fewer than two municipalities remain as parties.

7.2 Effective Date: This Agreement shall take effect once it has been approved by the legislative bodies of all of the parties, signed by an authorized officer thereof, and filed with the Municipal Clerks and the Secretary of State.

7.3 Amendment: This Agreement may be amended by the parties by following the procedures established in Section 7.2 above, provided that amendments shall not be required to strike out the names, numbers and terms of Committee members and any other information written in this Agreement applying to parties who withdraw from this Agreement.

Article 8: Regional Review

8.1 This Agreement shall be filed for review with the Southern Maine Regional Planning Commission at least thirty days prior to the date of legislative action by any of the parties. Title 30-A M.R.S.A. § 2342(6).

Article 9: Appeals

9.1 Applications to have the Committee consider an appeal from a decision, act, or failure to act of the Harbormaster shall be made within thirty days of the decision, act, or failure to act which precipitated the appeal by any person aggrieved by a Harbormaster's decision, act, or failure to act, on forms prepared by the Committee and available at the Municipal Offices. The application shall be filed with the Town Clerk of one of the party municipalities. The Clerk is responsible for notifying the Committee Chairperson that an appeal has been filed.

9.2 The Committee shall schedule a public hearing on the appeal within thirty days of receipt of a complete application. Notice of the hearing shall be made in a daily newspaper of general circulation, once, at least seven days prior to the hearing. The Harbormaster shall be notified in writing. A complete record of the hearing shall be kept, and written findings and conclusions shall be issued within seven days of the Committee making the decision.

9.3 Decisions by the Committee may be appealed to the Maine Superior Court pursuant to the Maine Rules of Civil Procedure, Rule 80B, within thirty days of the rendering of the Committee's decision.

9.4 In deciding any appeal the Committee shall hear, it shall approve, approve with conditions or modifications, or disapprove the decision, act, or failure to act of the Harbormaster from which the appeal is made. In reaching its decision the Committee shall be guided by its interpretation of all current state laws, local ordinances and rules and regulations.

9.5 Enforcement of the Committee decisions shall be the responsibility of the Harbormaster, if applicable and upon direction of the Committee, and the party municipalities.

This Amended and Restated Agreement shall take effect upon its approval by the legislative bodies of both of the parties and execution by the authorized Officers thereof. The River Committee shall cause an executed copy of this Amendment to be filed with the Secretary of State, the Southern Maine Regional Planning Commission and the Municipal Clerks of each member Town.

IN WITNESS WHEREOF, the parties have by their authorized officers caused this agreement to be executed.

**BOARD OF SELECTMEN
TOWN OF KENNEBUNK**

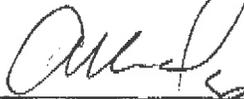
By:

Arthur J. ...
David ...
John ...
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Dated: 6/28/11

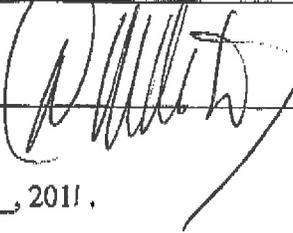
**BOARD OF SELECTMEN
TOWN OF KENNEBUNKPORT**

By:





Sarah Matthews-Bull

Dated effective this 30th day of June, 2011.