



TOWN OF FREEPORT, MAINE
30 Main Street
Freeport, ME 04032
Phone: 207-865-4743
www.freeportmaine.com

TO: Freeport Town Council
FROM: Caroline Pelletier, Interim Town Manager
RE: Water storage standpipe tank – transfer of ownership
DATE: Tuesday, May 2, 2023

Background: In January 2022, the Town Council had a discussion (see attached minutes) regarding the transfer of two water storage standpipe tanks from the Town of Freeport to Maine Water Company. One of the tanks is located on Bow Street/Torrey Hill and the other is located on Winston Hill/Stagecoach Road. The Town of Freeport currently owns the land beneath the structure at the Winston Hill/Stagecoach Road site, while the land at Bow Street/ Torrey Hill is owned by Maine Water Company. On both sites, the Town of Freeport currently has leases for space on the water tanks to multiple wireless telecommunication carriers.

As part of the proposed transfer, both tanks would be transferred from the Town of Freeport to Maine Water Company. Maine Water Company would grant the Town of Freeport Telecommunication Easements to have the ability to keep leasing space on the tanks to telecommunication carriers and the Town would still collect any revenue from such leases. There will be no transfer of ownership of the land beneath the tanks at either location. The above referenced transfers and easements, would be accomplished by the execution of the following documents which have been prepared in partnership by the attorneys for the Town of Freeport and Maine Water Company:

1. Municipal Release Deed from the Town of Freeport to The Maine Water Company transferring the standpipe on the Bow Street/Torrey Hill site owned by The Maine Water Company;
2. Telecommunications Easement Agreement between the Town of Freeport and The Maine Water Company regarding the Bow Street/Torrey Hill standpipe;
3. Municipal Release Deed from the Town of Freeport to The Maine Water Company transferring the standpipe on the Winston Hill/Stagecoach Road site owned by the Town of Freeport; and
4. Telecommunications Easement Agreement between the Town of Freeport and The Maine Water Company regarding the Winston Hill/Stagecoach Road standpipe.

Maine Water Company has reviewed and authorized the transfer based upon the draft documents provided for consideration. To note, there are some additional details that will be added such as adding an updated list of the existing telecommunication leases on the structures and attaching acknowledgements and transfers from those companies that they are aware of the transfer; the addition of the legal description of the easement area; and, there will be transfer tax declarations that will need to be prepared and executed for the value of the deeds.

**TELECOMMUNICATIONS EASEMENT AGREEMENT
(BOW STREET/ TORREY HILL)**

This Telecommunication Easement Agreement (“Agreement”) is made and shall be effective on the ____ day of _____, 2023 (“Effective Date”), by and between THE MAINE WATER COMPANY, a Maine corporation with an address of 93 Industrial Park Road, Saco, Maine 04072, formerly known as CONSUMERS MAINE WATER COMPANY and, previous to that, the FREEPORT WATER COMPANY (the “Company”), and the TOWN OF FREEPORT, a Maine municipal corporation (the “Town”) with an address of 30 Main Street, Freeport, Maine 04032.

RECITALS

WHEREAS, on near or even date herewith, the Town is conveying to the Company certain improvements consisting of the water storage standpipe tank (the “Tank”), together with all components and other appurtenances thereto, including, but not limited to, all pipes connected thereto and all other structural components thereof, located on certain real estate of the Company located on Torrey Hill near Bow Street in Freeport, Cumberland County, State of Maine, as described in a Deed from the Freeport Fish and Game Association to the predecessor of the Company, the Freeport Water Company, dated February 8, 1972, and recorded in the Cumberland County Registry of Deeds in Book 3212, at Page 236; and

WHEREAS, the Tank and certain adjacent areas of the land of the Company are, as of the date hereof, the site of existing telecommunications/wireless signal leases (the “Leases”) between the Town and third-party service providers as described in Exhibit A, the rights to which are specifically being reserved to and by the Town and which are not being assigned to the Company; and

WHEREAS, the Town wishes to retain in perpetuity the exclusive right and easement to furnish, grant, lease, convey or otherwise provide for telecommunications services to be located on the Tank both in connection with the Leases and with any further and future provision of telecommunications services which the Town may convey to any third parties pursuant to the terms and provisions of this Agreement;

NOW THEREFORE, in consideration of the recitals above, the transfer of the Tank by the Town to the Company, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and agreed, the parties agree as follows:

- 1. Reservation and Grant of Easement to the Town.** The Town reserves, for itself, its successors and assigns, an exclusive easement (subject however to the Leases and to the Company’s reserved rights below) for the Permitted Use defined herein, together with a non-exclusive access easement for ingress and egress to and from the Tank, seven days per week, twenty-four hours per day, and a non-exclusive utility easement to install, replace and maintain utilities servicing the exclusive easement for the Permitted Use, including, but not limited to the installation of power and telephone service cable, wires, switches, boxes and

the like as may be required by the Permitted Use (collectively the “Easement” in the areas further described and/or depicted in Exhibit B). The Company shall permit and hereby grants to the Town, for itself and for the benefit of its tenant(s), grantees, licensees and any of their affiliates, customers, tenants, subtenants, lessees, sublessees, licensees, successors and/or assigns (including and/or for the use by the Town and other units of government) together with any of the employees, contractors, consultants, and or agents of the foregoing to use the Easement for the installation, construction, operation, maintenance, repair, modification, relocation, replacement and removal of improvements and equipment (“Equipment”) on the Tank for the facilitation of telecommunications and other related uses, including, but not limited to, any uses permitted by the Leases (“Permitted Use”), together with sufficient ground space for the Town’s provision of the Leases or similar agreements to construct, maintain and operate typical telecommunications infrastructure. The Town’s use and exercise of its rights hereunder and the exercise of any rights granted to lessees, grantees, and/or licensees of the Town shall not, in the determination of the Company, materially interfere with the Company’s use of its land and the Easement area, Tank, nor any structure(s) or facilities located thereon from time to time in connection with their primary use and purpose as a public water supply facility. The Town may locate analog radio equipment, telecommunications, wireless data, and/or other signal equipment on the Tank and/or within the Easement and shall be permitted (without any charge or rent obligation) during the Term hereof to continue to locate and maintain and upgrade such equipment from time to time including but not limited to those upgrades as may be necessary within the Town’s reasonable discretion. The Town is further granted for itself, its and/or for the use by the Town and other units of government, sufficient ground space and utility rights to locate and operate (without any charge or rent obligation) municipally-owned communications systems on the Tank and/or within the Easement Area so long as such space is reasonably available. Once any municipally-owned equipment is located pursuant to the terms hereof, it shall not be removed or relocated without the Town’s consent, not to be unreasonably withheld. The Town’s rights granted and/or reserved hereunder shall specifically include sufficient interest both on the Tank and ground space within the Easement as may be reasonably necessary for the Town, its lessees, grantees, and/or licensee’s to comply with all necessary safety and communications regulations (including FCC regulations) that may apply to permitted equipment installed on the Tank.

2. **Term.** This Agreement and the rights granted and/or reserved hereunder shall run in perpetuity and shall be held in gross by the Town. Upon notice to the Company as provided herein, the Town may surrender the Easement and execute such documents as are reasonably required to terminate this Agreement and release the easements and rights herein.
3. **Right to Lease, Renew and Replace Tenants and Grantees.** The Town shall have the right, title and interest of Lessor in and to all existing leases (and all obligations attendant thereto), including the Leases for the “Term” set forth therein, including the right to renew the Leases and to replace any tenant, licensee or easement grantee who may, from time to time, terminate or surrender its site location agreement on the Tank. If any tenant, licensee, or easement grantee is obligated to pay any fees for the purpose of utility service or access or tax reimbursement, the Town shall continue to be entitled to such fees.
4. **Approval of Installation of Communications Equipment by Company.** Prior to the installation of any communications equipment on the Tank and/or within any other area by

the Town or any third party as permitted under this Agreement, the Company shall have the right to review and approve such installation, which approval shall not be unreasonably withheld, conditioned or delayed, provided that such installation does not, in the reasonable determination of the Company, materially interfere with the Company's use of its land and the Easement area, Tank, nor any structure(s) or facilities located thereon from time to time in connection with their primary use and purpose as a public water supply facility.

- 5. Maintenance, Replacement, and Removal of the Tank.** The Company may and shall continue to reasonably perform all obligations and make all necessary alterations which relate to the use, ownership, and maintenance of the Tank for its primary purpose of public water supply as shall be reasonably determined by the Company as necessary, in such a manner that the purposes of this Agreement are reasonably supported so that the Town may have the benefits intended hereby, **provided however** that nothing herein shall obligate the Company to maintain the Tank in any particular manner or configuration nor for any period of time beyond its useful service life as determined by the Company within its sole discretion. In the event that the Tank is removed, destroyed, or otherwise becomes unfit for the purposes described herein, the Company shall allow the Town, for itself and for the benefit of its tenants, grantees, and licensees, to permit the location of temporary telecommunications equipment in the area of the Tank (if removed or destroyed) and the Easement. In the event that the Company determines that the Tank requires replacement with a new water tank (the "New Tank"), then all of the Town's rights, interests, and Easements herein shall automatically be and become appurtenant to the New Tank upon construction and any New Tank shall be designed and built in such a manner that the rights granted or reserved herein may be exercised and enjoyed in materially like manner as on the original Tank. Furthermore, in the event that the Tank is removed or destroyed without the intention of replacement or is taken out of service on a permanent basis, the Town shall have the right to construct or permit the construction of a tower or other equivalent structure in the former area of the Tank which shall be the personal property of the Town and to which the rights herein shall be and become appurtenant.
- 6. Town Cooperation and Non-interference.** The Company acknowledges that the Town is the permit issuing authority for the Town of Freeport, Maine, and cannot by contract vary or determine the status or qualification of any permit to be issued by the municipality. In the event that the Town shall transfer its interest during the term hereof, then any successor to the Town agrees to cooperate with the Company and/or any tenants or grantees of telecommunications rights (collectively, "**Tenants**") in obtaining all licenses, permits or authorizations from all applicable governmental and/or regulatory entities and in acquiring any necessary upgrades to or relocation of utility service to support the Permitted Use. The Company shall not use, nor shall the Company permit the use of any portion of its property or the Easement in a way which materially interferes with the operations of the Tenants who shall have peaceful and quiet possession and enjoyment of their rights granted by the Town.
- 7. Assignment.** The Town, its successors and/or assigns may pledge, assign, or otherwise encumber its interest created by this Agreement so long as the Town is not in default hereunder. It is the express intent of the parties that the Town's rights shall be assignable although held in gross. Reasonably prior to any such assignment the Town will advise the Company of the identity of the proposed assignee. Any such assignment or other transfer

shall be subject to the prior written consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed.

- 8. Taxes and Other Obligations.** The Company acknowledges that the Town of Freeport, Maine is the municipal property tax assessing and collection authority for the jurisdiction where the Easement is located. In the event that the Town of Freeport shall transfer or assign its rights hereunder, and any successor fails to pay when due any taxes or other obligations affecting the Tank location, then the Company shall have the right but not the obligation to pay such and demand payment therefor from the successor to the Town. Nothing herein shall be deemed a waiver of the Town of Freeport, Maine's tax-exempt status, nor a waiver of any immunity or defense at law on the basis of sovereign immunity.
- 9. Insurance; Indemnification.** The Town shall require all of its tenants, grantees, and/or licensees to maintain general liability insurance as required under their respective lease(s) or other relevant site documents. The Company shall maintain any insurance policies in place on the Tank and/or its own property. Furthermore, any leases, licenses, or other agreements between the Town and any third parties entered into pursuant to this Agreement shall provide that such third parties shall indemnify and hold the Company harmless against any and all claims, damages, costs and expenses (including reasonable attorney's fees and disbursements) caused by or arising out of the indemnifying party's exercise of its rights under any such lease, licenses or other agreement, or the negligent acts or omissions or willful misconduct by the indemnifying party or the employees, agents, or contractors of the indemnifying party.
- 10. Subordination and Non-Disturbance.** The Town agrees to subordinate this Agreement to any existing or future mortgage or deed of trust on the Company's property ("Security Instrument"), provided the beneficiary or secured party ("Secured Party") under the Security Instrument agrees for itself and its successors in interest and assigns that the Town's rights under this Agreement shall remain in full force and effect and shall not be affected or disturbed by the Secured Party in the exercise of Secured Party's rights under the Security Instrument, including the Town's right to collect and retain, in accordance with the terms of this Agreement, all rents, fees and other payments due from Tenants. Such non-disturbance agreement must apply whether Secured Party exercises its rights under the Security Instrument, including foreclosure, sheriff's or trustee's sale under the power of sale contained in the Security Instrument, and any other transfer, sale or conveyance of the Company's interest under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure.
- 11. Mutual General Indemnification.** The Town and the Company shall each indemnify and hold harmless the other against any and all claims, damages, costs and expenses (including reasonable attorney's fees and disbursements) caused by or arising out of the indemnifying party's breach or performance of this Agreement or the negligent acts or omissions or willful misconduct by the indemnifying party or the employees, agents, or contractors of the indemnifying party. Notwithstanding the foregoing, nothing herein shall constitute a waiver by the Town of Freeport, Maine of any of the provisions, protections, defenses or limitations under the Maine Tort Claims Act, 14 M.R.S. §8101 *et seq.*, nor any principle of sovereign immunity.

12. Environmental Representations and Indemnification.

- a. The Town states that, to the best of the Town's knowledge (being limited to the personal knowledge of the Town Manager and the Town Engineer of the Town of Freeport, Maine), no pollutants or other toxic or hazardous substances, as defined under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, or any other federal or state law, including any solid, liquid, gaseous, or thermal irritant or contaminant, such as smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed) (collectively, "Hazardous Substances") have been, or shall be discharged, disbursed, released, stored, treated, generated, disposed of, or allowed to escape or migrate (collectively referred to as the "Release") on or from the property that is the site of this Agreement. Neither the Town nor the Company shall introduce or use any Hazardous Substances on the property or the Easement in violation of any applicable federal, state or local environmental laws.
- b. The Town and the Company each agree to defend, indemnify, and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, cleanup, remedial, removal or restoration work required by any governmental authority, losses, judgments and reasonable attorneys' fees that the indemnified party may suffer or incur due to the existence or discovery of any Hazardous Substances on the property caused by the other party. Notwithstanding the foregoing, nothing herein shall constitute a waiver by the Town of Freeport, Maine of any of the provisions, protections, defenses or limitations under the Maine Tort Claims Act, 14 M.R.S. §8101 *et seq.*, nor any principle of sovereign immunity.

13. Default and Notice.

- a. Jurisdiction and venue under this Agreement shall be in Cumberland County, Maine. The parties may enforce this Agreement and their rights under applicable law, and may seek specific performance, injunction, termination, appointment of a receiver and any other equitable rights and remedies available under applicable law. The prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs. Neither party shall be liable to the other for consequential, indirect, speculative or punitive damages.
- b. The non-defaulting party shall provide written notice of a default under this Agreement not more than thirty (30) days from discovery of the default. From the date of such notice, the defaulting party shall have thirty (30) days to cure the default, unless the default cannot reasonably be cured within thirty (30) days in which case the defaulting party shall have such additional time as necessary to cure the default so long as the defaulting party has commenced to cure the default and is diligently pursuing completion of the cure.
- c. Notices. All notices, demands and other communications hereunder shall be in writing and shall be given by one party to the other either: (i) by first class mail,

postage prepaid, registered or certified, return receipt requested, to the address set forth below; (ii) by hand delivery to the address set forth beneath each party's signature block; (iii) by Fed Ex, or similar overnight express mail, prepaid, to the address set forth below; (iv) by email to the email addresses listed beneath each party's signature block. All notices shall be deemed to have been duly given if postmarked prior to the expiration date and time specified herein (in the case of mailing) or upon delivery (if hand delivered) or when delivered to a Fed Ex (or similar overnight delivery service) courier or office at the time indicated on the proof of delivery (if sent by overnight delivery service) or upon time of confirmed receipt in case of emails received prior to 3:00 p.m. EST or if received thereafter shall be effective as of the next business day. Email receipt shall be confirmed by a reply email from the primary addressee.

14. Miscellaneous.

- a. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the parties to this Agreement. It is the intention of the parties hereto that all of the various rights, obligations, restrictions and easements created in this Agreement shall run with the Company's property upon which the Easement is located and be binding upon all future owners and lessees of the Company's property and all persons claiming under them.
- b. Casualty and Condemnation. In the event of any casualty or condemnation of the Easement in whole or in part, the Town shall be entitled to receive any insurance proceeds or condemnation award attributable to the value of the Easement, provided however that the foregoing shall not apply to any condemnation by the Town of Freeport, Maine and nothing herein shall vary or govern the Town's obligations under Maine law concerning the disposition of condemnation proceeds.
- c. Severability. If any provision contained in this Agreement (or any portion of such provision) shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement (or any portion of any such provision.)
- d. Counterparts. This Agreement may be executed in separate counterparts with each counterpart deemed an original and all of which together shall constitute a single agreement.
- e. Entire Agreement. This Agreement and any documents, certificates, instruments and agreements referred to herein constitute the entire agreement between the Town and the Company as to the subject matter hereof.

[Signature pages and exhibits follow.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date on page one above.

TOWN OF FREEPORT, MAINE

By: _____

Its _____

Print name

Town Notice Address:

30 Main Street
Freeport, Maine 04032
Attn: Town Manager
Email: _____

STATE OF MAINE

CUMBERLAND COUNTY

} ss.

On this ____ day of _____, 2023, before me personally appeared _____, in his/her capacity as _____ and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of said _____.

{affix notary seal or stamp}

Notary Public/Attorney at Law
My Commission Expires:

Print name

THE MAINE WATER COMPANY

By: _____

Its: _____

Print name

Company Notice Address:

93 Industrial Park Road
Saco, Maine 04072

Attn: _____

Email: _____

STATE OF MAINE

CUMBERLAND COUNTY

} ss.

On this ____ day of _____, 2023, before me personally appeared _____, in his/her capacity as _____ and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of said _____.

{affix notary seal or stamp}

Notary Public/Attorney at Law
My Commission Expires:

Print name

EXHIBIT A

EXISTING LEASES

PCS Lease between the Town of Freeport and Omnipoint Communications MB Operations, LLC, dated July 26, 2000, as amended by First Amendment to PCS Lease Agreement between the Town of Freeport and T-Mobile Northeast LLC, successor in interest to Omnipoint Communications MB Operations, LLC, undated, a Memorandum of said Lease having been recorded in the Cumberland County Registry of Deeds in Book _____, Page _____.

EXHIBIT B

LEGAL DESCRIPTION OF THE EASEMENT AREA

[Insert property legal description.]

MUNICIPAL RELEASE DEED

KNOW ALL PERSONS BY THESE PRESENTS THAT, the TOWN OF FREEPORT, a Maine municipal corporation, whose mailing address is 30 Main Street, Freeport, Maine 04032 (the "Grantor"), acting by and through its Town Council, for consideration paid, hereby grants and conveys to THE MAINE WATER COMPANY, a Maine corporation with a mailing address of 93 Industrial Park Road, Saco, Maine 04072 (the "Grantee"), the water storage standpipe tank, together with all components and other appurtenances thereto, including, but not limited to, all pipes connected thereto and all other structural components thereof (collectively, the "Standpipe"), situated on the property of the Grantee located in the Town of Freeport, County of Cumberland, and State of Maine, as more particularly described in a Deed from the Freeport Fish and Game Association to the Freeport Water Company, now known as The Maine Water Company, dated February 8, 1972, and recorded in the Cumberland County Registry of Deeds in Book 3212, Page 236.

Excluding, however, and not hereby granting and conveying to the Grantee, all cellular and similar telecommunication equipment, devices and structures owned by the Grantor or any third parties and installed on or attached to the Standpipe, including, without limitation, antennae, wires (above and underground), dishes and other items incidental to such installations. Reference is made to the Lease(s) listed in Schedule A attached hereto regarding such telecommunications equipment of third parties attached to the Standpipe, said Standpipe being granted and conveyed subject to such Lease(s).

Further reference is made to a Telecommunications Easement Agreement (Bow Street/Torrey Hill) between the Grantor and the Grantee of even date herewith to be recorded in the Cumberland County Registry of Deeds following the recording of this Deed.

IN WITNESS WHEREOF, the TOWN OF FREEPORT has caused this instrument to be executed by _____, its _____, hereunto duly authorized, as of the _____ day of _____, 2023.

[End of page. Execution page follows.]

WITNESS:

TOWN OF FREEPORT

By: _____

Its _____

Print name

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 2023

Personally appeared the above-named _____, _____ for the
TOWN OF FREEPORT, and acknowledged the foregoing to be his/her free act and deed in
his/her said capacity and the free act and deed of said TOWN OF FREEPORT.

Before me,

Notary Public/Maine Attorney at
Law

Print name

Commission Expires: _____

Schedule A

Standpipe Lease(s)

PCS Lease between the Town of Freeport and Omnipoint Communications MB Operations, LLC, dated July 26, 2000, as amended by First Amendment to PCS Lease Agreement between the Town of Freeport and T-Mobile Northeast LLC, successor in interest to Omnipoint Communications MB Operations, LLC, undated, a Memorandum of said Lease having been recorded in the Cumberland County Registry of Deeds in Book _____, Page _____.

**TELECOMMUNICATIONS EASEMENT AGREEMENT
(WINSTON HILL/STAGECOACH ROAD)**

This Telecommunications Easement Agreement (“Agreement”) is made and shall be effective on the ____ day of _____, 2023 (“Effective Date”), by and between THE MAINE WATER COMPANY, a Maine corporation with an address of 93 Industrial Park Road, Saco, Maine 04072, formerly known as CONSUMERS MAINE WATER COMPANY and, previous to that, the FREEPORT WATER COMPANY (the “Company”), and the TOWN OF FREEPORT, a Maine municipal corporation (the “Town”) with an address of 30 Main Street, Freeport, Maine 04032.

RECITALS

WHEREAS, on near or even date herewith, the Town is conveying to the Company certain improvements consisting of the water storage standpipe tank (the “Tank”), together with all components and other appurtenances thereto, including, but not limited to, all pipes connected thereto and all other structural components thereof located on certain real estate of the Town located on Winston Hill near Stagecoach Road in Freeport, Cumberland County, State of Maine as described in a Deed from Consumers Maine Water Company to the Town dated October 19, 1994, and recorded in the Cumberland County Registry of Deeds in Book 11730, at Page 347; and

WHEREAS, the Tank and certain adjacent areas of the land of the Town are, as of the date hereof, the site of existing telecommunications/wireless signal leases (the “Leases”) between the Town and third-party service providers as described in Exhibit A, the rights to which are specifically being reserved to and by the Town and which are not being assigned to the Company; and

WHEREAS, the Town wishes to retain in perpetuity the exclusive right and easement to furnish, grant, lease, convey or otherwise provide for telecommunications services to be located on the Tank both in connection with the Leases and with any further and future provision of telecommunications services which the Town may convey to any third parties pursuant to the terms and provisions of this Agreement;

NOW THEREFORE, in consideration of the recitals above, the transfer of the Tank by the Town to the Company, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and agreed; the parties agree as follows:

- 1. Reservation and Grant of Easement to the Town.** The Town reserves, for itself, its successors and assigns, an exclusive easement (subject however to the Leases and to the Company’s reserved rights below) for the Permitted Use defined herein, together with a non-exclusive access easement for ingress and egress to and from the Tank, seven days per week, twenty-four hours per day and a non-exclusive utility easement to install, replace and maintain utilities servicing the exclusive easement for the Permitted Use, including, but not limited to the installation of power and telephone service cable, wires, switches, boxes and

the like as may be required by the Permitted Use (collectively the “Easement” in the areas further described and/or depicted in Exhibit B). The Company shall permit and hereby grants to the Town, for itself and for the benefit of its Tenant(s), grantees, licensees and any of their affiliates, customers, tenants, subtenants, lessees, sublessees, licensees, successors and/or assigns (including and/or for the use by the Town and other units of government) together with any of the employees, contractors, consultants, and or agents of the foregoing the right to use the Easement for the installation, construction, operation, maintenance, repair, modification, relocation, replacement and removal of improvements and equipment (“Equipment”) on the Tank for the facilitation of telecommunications and other related uses, including, but not limited to, any uses permitted by the Leases (“Permitted Use”). The Town reserves all rights to sufficient ground space for the Town’s provision of the Leases or similar agreements to construct, maintain and operate typical telecommunications infrastructure. The Town’s use and exercise of its rights hereunder and the exercise of any rights granted to lessees, grantees, and/or licensees of the Town shall not, in the reasonable determination of the Company, materially interfere with the Company’s use of its land and the Easement area, Tank, nor any structure(s) or facilities located thereon from time to time in connection with their primary use and purpose as a public water supply facility. The Town may locate analog radio equipment, telecommunications, wireless data, and/or other signal equipment on the Tank and/or within the Easement and shall be permitted (without any charge or rent obligation) during the Term hereof to continue to locate and maintain and upgrade such equipment from time to time including but not limited to those upgrades as may be necessary within the Town’s reasonable discretion. The Town further reserves for itself, its and/or for the use by the Town and other units of government, sufficient ground space and utility rights to locate and operate (without any charge or rent obligation) municipally-owned communications systems on the Tank and/or within the Easement Area so long as such space is reasonably available. Once any municipally-owned equipment is located pursuant to the terms hereof, it shall not be removed or relocated without the Town’s consent, not to be unreasonably withheld. The Town’s rights granted and/or reserved hereunder shall specifically include sufficient interest both on the Tank and ground space within the Easement as may be reasonably necessary for the Town, its lessees, grantees, and/or licensee’s to comply with all necessary safety and communications regulations (including FCC regulations) that may apply to permitted equipment installed on the Tank.

2. **Easement to the Company for Tank Access.** The Town grants to the Company, the perpetual right and easement to access the Tank at any and all times with personnel, vehicles, and equipment over the land, and any appurtenant access ways benefitting the land of the Town, from the nearest public road for the purposes of operating, maintaining, repairing, and replacing the Tank and all related components thereof. This right shall include the right to install utilities above and below ground, and/or to maintain those existing utility lines as of the date hereof which serve the Tank for the benefit of the Company, and to undertake any and all other activities as may be necessary in the discretion of the Company relating to the operation of the Tank and all related components thereof in connection with the Company’s providing of public water service.
3. **Term.** This Agreement and the rights granted and/or reserved hereunder shall run in perpetuity and, as to the Town, shall be held in gross by the Town. Upon notice to the Company as provided herein, the Town may surrender the Easement and execute such

documents as are reasonably required to terminate its rights and easements under Agreement and release such easements and rights herein. Provided, however, that any such surrender and termination by the Town shall not affect the rights and easements of the Company hereunder, which rights and easements shall remain in full force and effect.

4. **Right to Lease, Renew and Replace Tenants and Grantees.** The Town shall have the right, title and interest of Lessor in and to all existing leases (and all obligations attendant thereto), including the Leases for the “Term” set forth therein, including the right to renew the Leases and to replace any tenant, licensee or easement grantee who may, from time to time, terminate or surrender its site location agreement on the Tank. If any tenant, licensee, or easement grantee is obligated to pay any fees for the purpose of utility service or access or tax reimbursement, the Town shall continue to be entitled to such fees.
5. **Approval of Installation of Communications Equipment by Company.** Prior to the installation of any communications equipment on the Tank and/or within any other area by the Town or any third party as permitted under this Agreement, the Company shall have the right to review and approve such installation, which approval shall not be unreasonably withheld, conditioned or delayed, provided that such installation does not, in the reasonable determination of the Company, materially interfere with the Company’s use of its land and the Easement area, Tank, nor any structure(s) or facilities located thereon from time to time in connection with their primary use and purpose as a public water supply facility.
6. **Maintenance, Replacement, and Removal of the Tank.** The Company may and shall continue to reasonably perform all obligations and make all necessary alterations which relate to the use, ownership, and maintenance of the Tank for its primary purpose of public water supply as shall be reasonably determined by the Company, as necessary, in such a manner that the purposes of this Agreement are reasonably supported so that the Town may have the benefits intended hereby, provided however that nothing herein shall obligate the Company to maintain the Tank in any particular manner or configuration nor for any period of time beyond its useful service life as determined by the Company within its sole discretion. In the event that the Tank is removed, destroyed, or otherwise becomes unfit for the purposes described herein, the Company shall allow the Town, for itself and for the benefit of its tenants, grantees, and licensees, to permit the location of temporary telecommunications equipment in the area of the Tank (if removed or destroyed) and the Easement. In the event that the Company determines that the Tank requires replacement with a new water tank (the “New Tank”), then all of the Town’s rights, interests, and Easements herein shall automatically be and become appurtenant to the New Tank upon construction and any New Tank shall be designed and built in such a manner that the rights granted or reserved herein may be exercised and enjoyed in materially like manner as on the original Tank. Furthermore, in the event that the Tank is removed or destroyed without the intention of replacement or is taken out of service on a permanent basis, the Company shall promptly release its rights hereunder.

- 7. Town Cooperation and Non-interference.** The Company acknowledges that the Town is the permit issuing authority for the Town of Freeport, Maine, and cannot by contract vary or determine the status or qualification of any permit to be issued by the municipality. In the event that the Town shall transfer its interest during the term hereof, then any successor to the Town agrees to cooperate with the Company and/or any tenants or grantees of telecommunications rights (collectively, "Tenants") in obtaining all licenses, permits or authorizations from all applicable governmental and/or regulatory entities and in acquiring any necessary upgrades to or relocation of utility service to support the Permitted Use. The Company shall not use, nor shall the Company permit the use of any portion of its property or the Easement in a way which materially interferes with the operations of the Tenants who shall have peaceful and quiet possession and enjoyment of their rights granted by the Town.
- 8. Assignment.** The Town, its successors and/or assigns may pledge, assign, or otherwise encumber its interest created by this Agreement so long as the Town is not in default hereunder. It is the express intent of the parties that the Town's rights shall be assignable although held in gross. Reasonably prior to any such assignment the Town will advise the Company of the identity of the proposed assignee. Any such assignment or other transfer shall be subject to the prior written consent of the Company, which consent shall not be unreasonably withheld, conditioned or delayed.
- 9. Taxes and Other Obligations.** The Company acknowledges that the Town of Freeport, Maine is the municipal property tax assessing and collection authority for the jurisdiction where the Easement is located. In the event that the Town of Freeport shall transfer or assign its rights hereunder, and any successor fails to pay when due any taxes or other obligations affecting the Tank location, then the Company shall have the right but not the obligation to pay such and demand payment therefor from the successor to the Town. Nothing herein shall be deemed a waiver of the Town of Freeport, Maine's tax-exempt status, nor a waiver of any immunity or defense at law on the basis of sovereign immunity.
- 10. Insurance; Indemnification.** The Town shall require all of its tenants, grantees, and/or licensees to maintain general liability insurance as required under their respective lease(s) or other relevant site documents. The Company shall maintain any insurance policies in place on the Tank and/or its own property. Furthermore, any leases, licenses, or other agreements between the Town and any third parties entered into pursuant to this Agreement shall provide that such third parties shall indemnify and hold the Company harmless against any and all claims, damages, costs and expenses (including reasonable attorney's fees and disbursements) caused by or arising out of the indemnifying party's exercise of its rights under any such lease, licenses or other agreement, or the negligent acts or omissions or willful misconduct by the indemnifying party or the employees, agents, or contractors of the indemnifying party.
- 11. Subordination and Non-Disturbance.** The Town agrees to subordinate this Agreement to any existing or future mortgage or deed of trust on the Company's property ("Security Instrument"), provided the beneficiary or secured party ("Secured Party") under the Security Instrument agrees for itself and its successors in interest and assigns that the Town's rights under this Agreement shall remain in full force and effect and shall not be affected or disturbed by the Secured Party in the exercise of Secured Party's rights under the Security

Instrument, including the Town's right to collect and retain, in accordance with the terms of this Agreement, all rents, fees and other payments due from Tenants. Such non-disturbance agreement must apply whether Secured Party exercises its rights under the Security Instrument, including foreclosure, sheriff's or trustee's sale under the power of sale contained in the Security Instrument, and any other transfer, sale or conveyance of the Company's interest under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure.

12. Mutual General Indemnification. The Town and the Company shall each indemnify and hold harmless the other against any and all claims, damages, costs and expenses (including reasonable attorney's fees and disbursements) caused by or arising out of the indemnifying party's breach or performance of this Agreement or the negligent acts or omissions or willful misconduct by the indemnifying party or the employees, agents, or contractors of the indemnifying party. Notwithstanding the foregoing, nothing herein shall constitute a waiver by the Town of Freeport, Maine of any of the provisions, protections, defenses or limitations under the Maine Tort Claims Act, 14 M.R.S. §8101 *et seq.*, nor any principle of sovereign immunity.

13. Environmental Representations and Indemnification.

- a. The Company states that, to the best of the Company's knowledge (being limited to the personal knowledge of the Company's Engineer), no pollutants or other toxic or hazardous substances, as defined under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, or any other federal or state law, including any solid, liquid, gaseous, or thermal irritant or contaminant, such as smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed) (collectively, "Hazardous Substances") have been, or shall be discharged, disbursed, released, stored, treated, generated, disposed of, or allowed to escape or migrate (collectively referred to as the "Release") on or from the property that is the site of this Agreement. Neither the Town nor the Company shall introduce or use any Hazardous Substances on the property or the Easement in violation of any applicable federal, state or local environmental laws.
- b. The Town and the Company each agree to defend, indemnify, and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, cleanup, remedial, removal or restoration work required by any governmental authority, losses, judgments and reasonable attorneys' fees that the indemnified party may suffer or incur due to the existence or discovery of any Hazardous Substances on the property caused by the other party. Notwithstanding the foregoing, nothing herein shall constitute a waiver by the Town of Freeport, Maine of any of the provisions, protections, defenses or limitations under the Maine Tort Claims Act, 14 M.R.S. §8101 *et seq.*, nor any principle of sovereign immunity.

14. Default and Notice.

- a. Jurisdiction and venue under this Agreement shall be in Cumberland County, Maine. The parties may enforce this Agreement and their rights under applicable law, and may seek specific performance, injunction, termination, appointment of a receiver and any other equitable rights and remedies available under applicable law. The prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs. Neither party shall be liable to the other for consequential, indirect, speculative or punitive damages.
- b. The non-defaulting party shall provide written notice of a default under this Agreement not more than thirty (30) days from discovery of the default. From the date of such notice, the defaulting party shall have thirty (30) days to cure the default, unless the default cannot reasonably be cured within thirty (30) days in which case the defaulting party shall have such additional time as necessary to cure the default so long as the defaulting party has commenced to cure the default and is diligently pursuing completion of the cure.
- c. Notices. All notices, demands and other communications hereunder shall be in writing and shall be given by one party to the other either: (i) by first class mail, postage prepaid, registered or certified, return receipt requested, to the address set forth below; (ii) by hand delivery to the address set forth beneath each party's signature block; (iii) by Fed Ex, or similar overnight express mail, prepaid, to the address set forth below; (iv) by email to the email addresses listed beneath each party's signature block. All notices shall be deemed to have been duly given if postmarked prior to the expiration date and time specified herein (in the case of mailing) or upon delivery (if hand delivered) or when delivered to a Fed Ex (or similar overnight delivery service) courier or office at the time indicated on the proof of delivery (if sent by overnight delivery service) or upon time of confirmed receipt in case of emails received prior to 3:00 p.m. EST or if received thereafter shall be effective as of the next business day. Email receipt shall be confirmed by a reply email from the primary addressee.

15. Miscellaneous.

- a. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the parties to this Agreement. It is the intention of the parties hereto that all of the various rights, obligations, restrictions and easements created in this Agreement shall run with the Town's property upon which the Easement is located and be binding upon all future owners and lessees of the Town's property and all persons claiming under them.
- b. Casualty and Condemnation. In the event of any casualty or condemnation of the Easement in whole or in part, the Town shall be entitled to receive any insurance proceeds or condemnation award attributable to the value of the Easement, provided however that the foregoing shall not apply to any condemnation by the Town of

Freeport, Maine and nothing herein shall vary or govern the Town's obligations under Maine law concerning the disposition of condemnation proceeds.

- c. Severability. If any provision contained in this Agreement (or any portion of such provision) shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement (or any portion of any such provision.)
- d. Counterparts. This Agreement may be executed in separate counterparts with each counterpart deemed an original and all of which together shall constitute a single agreement.
- e. Entire Agreement. This Agreement and any documents, certificates, instruments and agreements referred to herein constitute the entire agreement between the Town and the Company as to the subject matter hereof.

[Signature pages and exhibits follow.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date on page one above.

TOWN OF FREEPORT, MAINE

By: _____

Its _____

Print name

Town Notice Address:

30 Main Street
Freeport, Maine 04032
Attn: Town Manager
Email: _____

STATE OF MAINE

CUMBERLAND COUNTY

} ss.

On this ____ day of _____, 2023, before me personally appeared _____, in his/her capacity as _____ and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of said _____.

{affix notary seal or stamp}

Notary Public/Attorney at Law
My Commission Expires:

Print name

THE MAINE WATER COMPANY

By: _____

Its _____

Print name

Company Notice Address:

93 Industrial Park Road
Saco, Maine 04072

Attn: _____

Email: _____

STATE OF MAINE

CUMBERLAND COUNTY

} ss.

On this ____ day of _____, 2023, before me personally appeared _____, in his/her capacity as _____ and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of said _____.

{affix notary seal or stamp}

Notary Public/Attorney as Law
My Commission Expires:

Print name

EXHIBIT A

EXISTING LEASES

1. PCS Lease between the Town of Freeport and Omnipoint Communications MB Operations, LLC, dated July 26, 2000, as amended by First Amendment to PCS Lease Agreement between the Town of Freeport and Omnipoint Holdings, Inc., successor in interest to Omnipoint Communications MB Operations, LLC, executed by the Town of Freeport on May 10, 2001, and by Omnipoint Holdings, Inc. on May 14, 2001, and further amended by Second Amendment to PCS Lease between the Town of Freeport and T-Mobile Northeast LLC, successor in interest to Omnipoint Communications MB Operations, LLC and Omnipoint Holdings, Inc., undated, a Memorandum of said Lease having been recorded in the Cumberland County Registry of Deeds in Book _____, Page _____.

2. Lease Agreement between the Town of Freeport and Atlantic Cellular Telephone of Delaware, LLC, by and through its manager, AT&T Wireless Services, Inc., d/b/a AT&T Wireless, dated March 21, 2001, a Memorandum of said Lease having been recorded in the Cumberland County Registry of Deeds in Book _____, Page _____.

EXHIBIT B

LEGAL DESCRIPTION OF THE EASEMENT AREA

[Insert property legal description.]

MUNICIPAL RELEASE DEED

KNOW ALL PERSONS BY THESE PRESENTS THAT, the TOWN OF FREEPORT, a Maine municipal corporation, whose mailing address is 30 Main Street, Freeport, Maine 04032 (the "Grantor"), acting by and through its Town Council, for consideration paid, hereby grants and conveys to THE MAINE WATER COMPANY, a Maine corporation with a mailing address of 93 Industrial Park Road, Saco, Maine 04072 (the "Grantee"), the water storage standpipe tank, together with all components and other appurtenances thereto, including, but not limited to, all pipes connected thereto and all other structural components thereof (collectively, the "Standpipe"), situated on the property of the Grantor located in the Town of Freeport, County of Cumberland, and State of Maine, as more particularly described in a Deed from Consumers Maine Water Company, now known as The Maine Water Company, to the Grantor, dated October 19, 1994, and recorded in the Cumberland County Registry of Deeds in Book 11730, Page 347.

Excluding, however, and not hereby granting and conveying to the Grantee, all cellular and similar telecommunication equipment, devices and structures owned by the Grantor or any third parties and installed on or attached to the Standpipe, including, without limitation, antennae, wires (above and underground), dishes and other items incidental to such installations. Reference is made to the Lease(s) listed in Schedule A attached hereto regarding such telecommunications equipment of third parties attached to the Standpipe, said Standpipe being granted and conveyed subject to such Lease(s). Also excluded and reserved to Grantor is the fee interest of all land underneath or surrounding the Standpipe as may be owned by Grantor, subject however to the rights in favor of Grantee as are set forth herein.

Further reference is made to a Telecommunications Easement Agreement (Winston Hill/Stagecoach Road) (the "Easement") between the Grantor and the Grantee of even date herewith to be recorded in the Cumberland County Registry of Deeds following the recording of this Deed.

In addition to the rights set forth in the Easement, Grantor further reserves all other and further rights to use the land reserved for any purpose which does not materially or unreasonably interfere with Grantee's use or operation of the Standpipe.

IN WITNESS WHEREOF, the TOWN OF FREEPORT has caused this instrument to be executed by _____, its _____, hereunto duly authorized, as of the _____ day of _____, 2023.

[End of page. Execution page follows.]

WITNESS:

TOWN OF FREEPORT

By: _____

Its _____

Print name

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 2023

Personally appeared the above-named _____, _____ for the
TOWN OF FREEPORT, and acknowledged the foregoing to be his/her free act and deed in
his/her said capacity and the free act and deed of said TOWN OF FREEPORT.

Before me,

Notary Public/Maine Attorney at
Law

Print name

Commission Expires: _____

Schedule A

Standpipe Lease(s)

1. PCS Lease between the Town of Freeport and Omnipoint Communications MB Operations, LLC, dated July 26, 2000, as amended by First Amendment to PCS Lease Agreement between the Town of Freeport and Omnipoint Holdings, Inc., successor in interest to Omnipoint Communications MB Operations, LLC, executed by the Town of Freeport on May 10, 2001, and by Omnipoint Holdings, Inc. on May 14, 2001, and further amended by Second Amendment to PCS Lease between the Town of Freeport and T-Mobile Northeast LLC, successor in interest to Omnipoint Communications MB Operations, LLC and Omnipoint Holdings, Inc., undated, a Memorandum of said Lease having been recorded in the Cumberland County Registry of Deeds in Book _____, Page _____.
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COUNCIL MEETING #02-22
JANUARY 18, 2022

ITEM # 195-21 To consider action relative proposed amendments to the Official Zoning Map for the Town of Freeport (pertaining to Shoreland Zoning).

BE IT ORDAINED: That proposed amendments to the Official Zoning Map for the Town of Freeport (pertaining to Shoreland Zoning) be approved.

Note: The boundaries of the Shoreland Zone, as regulated by State law, will be updated. Many areas previously designated as Resource Protection 1 are being amended to "shoreland area". Areas within coastal flood plains will remain in Resource Protection however will not be shown on the map, as the boundaries will be based upon the FEMA (Federal Emergency Management Agency) Flood Insurance Rate Maps, as adopted by the Town Council.

OTHER BUSINESS:

1. Discussion of Water Tanks

Mr. Joseph advised that he has a document that he handed out with answers to a lot of the questions that have come up. He has notes from some residents and some Councilors. He offered to go through some of the supporting information. The original construction costs to the taxpayers for Bow Street Tank was \$225,000 in 1972-1974. The Winston Hill Tank was at no cost. It was primarily grant funded with local matches provided by the Sewer District and by the donation of the land to the Town by the Water Company. The Town is all in \$225,000. What were we paid back from Consumers Water and Maine Water Company? Of that \$225,000 the Town was paid \$43,000 until approximately 2000. In 2000 the Town had begun to generate lease revenue from the exterior of those tanks and the Town forgave the debt to Maine Water at that time. The Town said we are making so much money off this at this time that we don't need the money from the rate payers. It was a decision the Town made in 2000.

We got a question about industry norm for rent from a tank. Mr. Joseph noted this is a very tough one because it is not a common thing to have happened. Utilities generally own their tanks so the reasons why you might have a tank owned by somebody and operated by another party are pretty much limited to scenarios like this and are really weird. He wouldn't want to say there is an industry norm because it shouldn't happen this way in the industry which is why they want us to get rid of the tanks and give them to them so it does become the industry norm.

Revenue received by the Town for ownership of the tanks? We don't have good records prior to 2009 but we switched financial systems in 2009 and have records since then. We generated \$3,148,540 in revenues since 2009. The estimate moving backwards looking at the old records was \$159,000 a year before that. We would have to go back to the records to determine when the first lease was signed.

Mr. Joseph can tell the Council that it is probably closer to \$4M that has been generated off those tanks. None of that would have been generated if the water rate payers financed the tanks. It would have all gone to support the water rate payers instead of the General Fund. We spent \$225,000 but generated \$4M off the tanks.

Where was it stated that it was the intent of the Town to turn over the tanks to the Water Company? Mr. Joseph feels this is an interesting question for local government geeks like him to research. In 1972 there was an agreement between the Board of Selectmen. The Selectmen were authorized by Town Meeting to

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negotiate with Maine Water so they made this agreement. No. 10 on this agreement said: It is the intent of both the Water Study Committee and the company although the Town is not formally authorized to contract in this respect, the ownership of the stand pipe should be transferred for nominal consideration from the Town to the company at the termination of the lease. Mr. Joseph explained what a stand pipe is. What they meant by that is they don't have authorization because they were not a Legislative Body at the time. They were an Executive Body as the Selectmen so Town Meeting would have had to authorize that but it was the intent of the Selectmen to bring something back to them, which they did. It was brought to the Town Council at the termination of these leases. However, for two reasons they were not renewed. One is that the Town decided to build a second tank and utilize a similar type of agreement where the Town utilized federal grant money which was how Winston Hill was constructed in the 90s. That is why they didn't do it in the 90s and transfer it back. In 2000 they started to get the Telecom revenue and as he mentioned before, the former Town Manager did a really good job of looking out for the Town's finances and basically said, we are not going to go down that route. Let's renew this for another 20 years because the Town did not want to give up the leasing revenue. How was that changed? The Water Company said it didn't want the leasing revenue and the Town could take the exterior of the tanks and lease it in perpetuity as long as these tanks stand to your heart's content, they just want the ownership of the actual facility.

Again, Mr. Joseph feels the Town made the right decision not to transfer it and get the leasing rights to it. Maine Water Company has since changed their tune and are fine transferring it without the leasing rights if that stands in the way. That is why things are different and Mr. Joseph is here talking to the Council.

The expected lifespan of the assets, both of them are over 80 years and that translate to one more painting cycle. The painting happens every 20 years. Mr. Joseph will put this up on the website.

The value of the assets: the Town currently appraises them at \$400,000 for Winston Hill and \$665,000 for Bow Street and that is the value we would levy a tax on if they are transferred to a private owner. They are currently non-taxable because they are a municipal facility. That is what we say they are worth right now. Maine Water Company has told us there are 945 active accounts right now. More customers are served but do not have hookups for example, vacant parcels that are not built on yet. There are also roughly 100 fire services that are non-metered so they pay a rate yearly for that.

What would happen if the Town performed a public takeover of the Water Company assets? Mr. Joseph noted this has been in the back of his mind since this process started. He discussed this with Rick at Maine Water, the way that those values are calculated, it is from the rate payers' perspective and the value is automatically zero if it is an asset given or transferred into the system. This is by the PUC rules and there is no variance allowable here. If they don't put out rate payer money on the purchase of the asset, it is worth zero in a public takeover. There would be a great value placed on all the pipes, pumps and everything else in the system but not the tanks.

Would the cost of water increase? The cost to the rate payer would only increase if there is a cost to them to purchase it from the Town. Why transfer these tanks now from the Town's perspective? Maine Water has agreed to allow leasing which is the biggest single financial consideration of this whole thing which wasn't on the table 20 years ago. The existing agreement expired as of December 31 so if we are not going to go ahead with this, he needs to at least renew an agreement for one year or 20 years, whatever we want to do. Maine Water will continue to pay all maintenance costs because they will operate the facility so there is no cost to the Town. Maine Water is responsible for the future replacement of the tanks because it is likely to be the negotiated outcome if something were to happen to a tank or fail or a replacement needed to be made in 40 years. It is not guaranteed if we are holding the tank. It would be negotiated between the parties. It could be really messy. It is not a position he would like to leave the

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Town in 40 years from now. There would be some tax benefit from it that we are not collecting right now but it is not enough to make a decision on but it is an added bonus.

The question was who owns Freeport Water? Freeport Water was the original company and was always privately owned. It was owned by Consumer's Water of Maine at the time when all these agreements were put in place in 1972 and has been acquired by Maine Water Company who serves 11 additional communities besides Freeport, Maine. There are four public utilities owned by this public utility company. It is a U.S. company but it is a conglomerate water company. They have always been a private corporation.

Structural valuation performed on the tanks, they look at them yearly two or three times but Mr. Joseph does not have access to those reports but he could request them. They do evaluate them but in the off chance we become aware of a problem before they do, we call them and they have an engineer that is here as they have for years and repair the tank. We do not regularly check it. Dan's neighbors call us if there is a problem. They have an Internet control system and they are remotely monitored all over the place.

Councilor Fournier asked if they took over South Freeport? Mr. Joseph advised that they operate under contract to South Freeport for the operation and the billing. Councilor Fournier asked if they are trying to take that system over? Mr. Joseph advised that they wouldn't take it over but they are happy with the contract and service they have. Councilor Fournier recalled that there used to be an operator who lived in town and would respond on second alarm fires and open valves to get more water flow. He asked where are we on that? Mr. Joseph advised that they do not have anybody that lives in town. There is an engineer that runs a couple or three districts in southern Oxford County. A lot of the system is computer controlled but not everything.

Councilor Lawrence asked what happens at the end of the life of these towers? If they are replaced, do we still get the revenue from the towers and do we still own the outside if they are replaced? Mr. Joseph advised that it is not contemplated. On one of the parcels where we are retaining the land, it will be an easy negotiation. The other one on Bow Street there is no guarantee 40 or 50 years from now. The only way around it is if we owned it and commit to rebuild it in 40 or 50 years. That is what we are giving up potentially.

Councilor Daniele asked if we could include that we will give this to you but if any other existing tanks get built in Freeport by you, we want to be able to utilize the exterior. Mr. Joseph added its replacement on that site would probably be the easiest way. Mr. Joseph was not looking to grow but maintain would be good and we can talk about it for sure. Councilor Fournier added that we never thought we would have a Winston Hill but there has been talk about expanding up to North Freeport. He asked if we could put something there that would allow us to use a new tank for cellular or communication so we could continue with our current revenue stream like we have with our two. He wonders if they would be open to that? Mr. Joseph noted it is money but he doesn't know if they could have all of our future money. Vice Chair Egan asked what would be the economic incentive to pay for the whole new tank and give us the cellular revenue? Councilor Fournier did not know. It would probably not make economic sense for them. We have been very fortunate to do what we have done with cellular but there would be no incentive for a private company. Mr. Joseph added that he would not sign that deal if he was in those shoes. It is kind of how the calculus is done when you build a new tower and how much you can offset through the uses and stuff like that. He provided examples.

More discussion followed. Councilor Bradley advised that they are asking us to transfer the ownership of the water tower to them. Why are we giving them something for nothing? We already have the revenue stream from the outside. We know they are going to continue to use this for their rate payers and make the

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money they want even if we keep it. He is thinking that a taxpayer is going to ask him why he voted to give away the water tower that has some value to them for no return to the taxpayer. He does not know the answer to that question and none of this what we might negotiate helps him get there. Mr. Joseph explained the whole reason we owned them in the first place was to save money for the rate payers. The whole reason we took on that ownership, took on the loan for one and the grant financing for the other one was to save money for the ratepayers. We asked for that money from the ratepayers. That is coming straight from the ratepayers. That is how it is calculated. Councilor Bradley asked if there is some value they are asking us to give them and we are considering giving it to them for nothing other than to continue a right we already have. Mr. Joseph advised that we are giving it so we won't have to build a \$5M, \$20M or \$30M water tank in 2050 when it comes up for replacement.

Councilor Bradley asked why is the decision not to convey title to these water tanks preclude them or us from building a tank whenever a replacement is required? Why does our decision not to convey ownership of these tanks mean that we will have to build a replacement when replacement comes up? Mr. Joseph advised that it is certainly guaranteed that if we are not holding the tank, we are not in the discussion. Councilor Bradley noted fair enough but there is no requirement if we give them the ownership of these tanks that they are going to replace them in 50 years. Councilor Pillsbury added that it is also the ongoing maintenance and liability. We would have to pay to paint it and repair it. Mr. Joseph advised that the reason we don't pay for it now is that it is in the agreement that expired in December that they will do all annual maintenance. They may continue to do that or they may want a different conversation about it if we go forward. Councilor Bradley mentioned he is just trying to figure out how to explain to somebody that we gave somebody something but didn't get anything for it. He is still not hearing it but is open to hearing it. Councilor Lawrence tried to clarify it.

Vice Chair Egan asked since the contract expired, do we have any iron clad assurance that we get to keep the cell tower revenue if we charge them a fee? Mr. Joseph advised that it is the only thing we will get iron clad assurance because we own it. The ongoing maintenance costs and the replacement costs are not iron clad. They are negotiable. The only thing we can dictate is we own the exteriors of those tanks just like we own the inside of them right now. The question is do we want to continue to own the insides? Vice Chair Egan asked what the annual revenue is on the cell towers? Mr. Joseph advised that it is close to \$300,000 now. Vice Chair Egan noted we get to keep \$300,000 a year in revenue and the maintenance and liability of the replacement tank or we get to keep the \$300,000 in revenue and get rid of the liability and replacement costs.

Councilor Bradley added that Vice Chair Egan says we get rid of the liability and replacement costs but we wouldn't do it. It doesn't mean that they have to do it just because we gave them ownership of these tanks. It still doesn't answer his question of why we give it to them for no money? Chair Piltch pointed out that the maintenance is not insignificant and Mr. Joseph added that we are talking about hundreds of thousands a year for two tanks together probably. Chair Piltch feels if we don't give it to them, they may ask us to maintain them ourselves. Mr. Joseph mentioned it would become a much more drastic cost on the ratepayers. His question is what is the benefit to keeping them? He understands the question of asking for money if there is a negotiated price for some reason that we want the ratepayers to pay the taxpayers, he doesn't understand why that it is. The only reason we got into this in the first place was to save money for the ratepayers. If we want to milk the ratepayers now for this instead. Councilor Bradley noted he does not want to milk anybody. He is looking if there is a value for these assets we are considering transferring? Only the ratepayers use them. None of the people in his district or many other districts use, so is it fair to ask the whole town to pay for the value they use? He thinks there is at least a reasonable question there but he doesn't know what the answer to it is. He would like to know what the value would be and make some sense of that and then we can talk through the other issues.

COUNCIL MEETING #02-22
JANUARY 18, 2022

Councilor Fournier advised that he receives a benefit from the ratepayers because the hydrant on Bow Street is within a 5-mile radius from his home and he receives a lower insurance premium. He asked if we give them the tanks and we expand the system and go higher on Winston Hill, can we add more cell service to Winston Hill if that tank goes higher? Will that be part of the agreement we are going to have? If we are going to give away these tanks and maybe they come out with a new stand pipe 40 years from now and make the stand pipes bigger than here. He wants to have the access for communications in perpetuity. Mr. Joseph feels it could be negotiated and believes he could have that conversation. Assuming the technology stays the way it is, it is likely that radio or some sort will be required so he thinks it is a good assumption that we would at least want it for the same reason we want to retain the land since it is the highest land in town even if water tanks aren't a thing in the future, towers might still be and we might need to use that.

Chair Piltch asked Councilor Bradley if there is a benefit to the people in his district for not having a vibrant town burn down for lack of water? He thinks it is a benefit to everybody having hydrants up and down Main Street to protect it.

Mr. Joseph added that the closest he can come to this is looking at the financials. We built a \$150,000 asset with \$75,000 in finance fees and saved the ratepayers \$75,000 at the time in extra finance fees because they would have paid double on the market. That is what this whole thing was about. They paid us back \$43,000. That is really what the taxpayers expected. We are talking about what we expended on behalf of the rate payers. Because we did that, we are making millions of dollars extra that we never would have made before so in his opinion, we just hit red on a 14-color roulette table. It shouldn't have happened but we got lucky. If we want to go after the ratepayers for what the tax payers are owed, we can do that. It is a legitimate policy point if we want to charge the ratepayers for that \$180,000 difference but to him it seems like we ended up \$3.9 when you take into account those first ten years or close to \$4M in the positive. Understand that ratepayers' rates will go up and we will have to justify that. Probably 500 of those are in District One. It is not wrong to ask for the money back, however, it is really relevant on the scale of \$4M to talk about whatever that \$180,000 would be in today's dollars. Somebody at the time wanted to do a handout. Somebody in 2000 also agreed that Maine Water could stop paying us rent because we were doing so well off the returns. Chair Piltch advised that it strikes him as being greedy to ask for more when we have gotten so much out of this already and we will continue to get it. It strikes him that it is the fair thing to do to give them the tanks. Others agreed and Councilor Bradley gave up. Mr. Joseph advised that he will bring back the documents that our attorneys have been working on with the proposed transfer agreement at the next meeting. It sounds to him that to get this deal done, that might be something they would want to throw in. Councilor Lawrence feels we need to get this going so we can get the antennas on by the summer. We need to do that now, not April. Chair Piltch requested that anyone watching to please not shoot holes in the water tank. Mr. Joseph feels there is still some question about the details.

MOVED AND SECONDED: To adjourn at 9:53 p.m. (Egan & Lawrence) **VOTE:** (7 Ayes) (0 Nays)

Respectfully submitted,

Sharon Coffin, Council Secretary