



TOWN OF FREEPORT, MAINE

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MEMO

TO: Freeport Town Council
FROM: Peter Joseph, Town Manager
DATE: 01/12/23
RE: Dispatch and Animal Control Officer (ACO) Contracts

The Town of Brunswick currently provides Public Safety dispatching services to the Town of Freeport, and both Towns share an animal control officer (ACO) position, which is housed at the Brunswick Police Department.

The Police Chief, Fire Chief and I met with the Brunswick Police Chief this fall to discuss the agreements. We discussed the general operation under these agreements and a few small adjustments that could be made moving forward. At this time, Chief Goodman, Chief Conley and I are in unanimous agreement recommending the continuation of these agreements with the Town of Brunswick moving forward.

CHANGES

The biggest change that is being requested moving forward is an 11 percent adjustment to the agreement in the second year (next fiscal year) of the agreement. The reasoning for this adjustment is simply to adjust for increases to the actual costs for the Town of Brunswick to provide these services, which have significantly increased over the past two years and in the current fiscal year, while the annual increase in the previous agreement specified an annual increase of only 3%. Years 3, 4, and 5 of the agreement would return to a lower 4% annual increase, and reflect the expectation that the year two adjustment of 11% is a one time adjustment, not meant to continue into the later years of this agreement or into the next agreement five years from now.

A smaller but significant change is that while the Dispatch agreement has traditionally been a five year agreement, and the ACO agreement has traditionally been a one year contract, both are being proposed for renewal as five year contracts. When the "shared" ACO program was started between 3-4 years ago, there were questions as to whether the shared position would be successful, so a one year agreement was chosen as a test. Since that time, the shared position has been extremely successful, and both Police Departments would now prefer to continue this arrangement for a longer period of time.

ALTERNATIVES

- 1) Prior to recommending the renewal of the dispatch agreement with the Town of Brunswick, we received a quote from Cumberland County to provide the same services. Cumberland County provides dispatch services for several of our neighbors, and calculates their fee for this service on a per capita basis. Their estimate for the current year was approx. \$208,000,

compared to the proposal from the Town of Brunswick for \$164,000. Additionally, Cumberland County operates a different public safety software, and there would be a capital cost and staff cost to convert our software to this system and train staff on its use.

- 2) A quick estimate of the cost to provide 24 hour seven day dispatch service in house shows that a staff increase in the range of approximately five employees would be required, with a likely cost in the \$400,000 range. Additionally, there would be significant capital costs required to install and maintain dispatch terminals and systems.

**INTERLOCAL COOPERATION AGREEMENT
FOR DISPATCH SERVICES
TOWNS OF BRUNSWICK AND FREEPORT**

Pursuant to the provisions of 30-A M.R.S.A., Chapter 115, this Interlocal Cooperation Agreement (this "Agreement") is made and entered into effective the 1st day of July 2022, by and between the Town of Brunswick, Maine ("Brunswick") and the Town of Freeport, Maine ("Freeport") for the provision of certain dispatch services (the "Dispatch Services") by Brunswick to Freeport.

WHEREAS, Maine law permits municipalities and political subdivisions to enter into interlocal cooperation agreements to make the most efficient use of their powers and to cooperate with other municipalities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of Maine communities; and

WHEREAS, the respective Town Councils of Brunswick and Freeport have determined that it is in the best interest of their residents for Brunswick to provide Dispatch Services to Freeport, and that an appropriate agreement be created to facilitate the terms of this relationship.

NOW, THEREFORE, pursuant to the authority granted by 30-A M.R.S.A., Chapter 115 and every other legal authority, and in consideration of the following mutual covenants and conditions set forth herein, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

Section 1. Description of Dispatch Services

- A. During the term of this Agreement, Brunswick will provide Freeport with 24-hour Dispatch Services. Such Dispatch Services shall include receiving emergency and non-emergency calls, including 9-1-1 calls, from citizens, visitors and responders located in Freeport and, as appropriate, directly dispatching emergency response services, including fire, police, ambulance or rescue services, or transferring the calls to public or private safety agencies for dispatch. In providing Dispatch Services, Brunswick will also serve as a warrant repository for Freeport. Brunswick will treat calls originating from Freeport with equal priority as calls originating from Brunswick, and dispatching decisions will be based on need, without regard to origin of the call.
- B. During the term of this Agreement, Brunswick agrees to consult with Freeport prior to making any material changes to the Dispatch Services provided to Freeport or to the dispatch facility or facilities through which such Dispatch Services are provided.
- C. During the term of this Agreement, Brunswick will consult with the Freeport Police Chief on all proposed hires by Brunswick of employees to provide Dispatch Services, provided that all final hiring decisions will be made by Brunswick.

AGREEMENT FOR ANIMAL CONTROL SERVICES

This Contract, effective July 1st, 2022, is made between the Town of Freeport, a municipality of the State of Maine wholly located within the boundaries of Cumberland County Maine (hereinafter referred to as "FREEPORT"), and the Town of Brunswick, a municipality of the State of Maine wholly located within the boundaries of Cumberland County, Maine (hereinafter referred to as "BRUNSWICK"), to provide animal control services within the town limits of FREEPORT.

WITNESSETH

WHEREAS, BRUNSWICK and Freeport are required by 7 M.R.S.A. § 3947 to appoint an Animal Control Officer to enforce state laws and perform other duties as the municipalities may require, respectively; and

WHEREAS, FREEPORT and BRUNSWICK desire to share the services of a full-time certified Animal Control Officer to provide animal control services; and

WHEREAS, BRUNSWICK has agreed to employ one full time Animal Control Officer and pay all necessary wages and benefits for his/her services to provide animal control services in FREEPORT and BRUNSWICK; and

WHEREAS, FREEPORT has agreed to contribute a fair share of the necessary wages, benefits and overhead expenses for the Animal Control Officer employed by BRUNSWICK.

NOW, THEREFORE, in consideration of the sums hereinafter set forth and for other good and valuable considerations, the receipt and legal sufficiency of which are hereby acknowledged, IT IS HEREBY AGREED AS FOLLOWS:

ARTICLE 1 - DEFINITIONS

- A. Animal Control Officer (hereinafter referred to as A.C.O.) shall mean an individual who is appointed pursuant to 7 M.R.S.A. Section 3947 to fulfill the statutory obligations outlined in 7 M.R.S.A. § 3947 and who meets the qualifications and training requirements of 7 M.R.S.A. § 3906-B (4).
- B. Fiscal Year shall mean July 1st through June 30th.

ARTICLE 2 - TERM

- A. This Agreement shall commence July 1st, 2022 and shall remain in full force and effect until June 30, 2027, all dates inclusive.
- B. The terms and conditions of this Agreement are contingent upon the approval of the Town Managers and Town Councils of each participating town, respectively.

ARTICLE 3 - EMPLOYMENT OF A.C.O.

- A. **Employer.** BRUNSWICK will be responsible for employing one full time certified A.C.O. and said A.C.O. shall remain an employee of BRUNSWICK, respectively, during the term of this Agreement for all purposes including without limitation, pay, benefits, workers compensation and liability coverage. However, FREEPORT shall be entitled to participate in the selection process for the A.C.O.
- B. **Vacancy.** In the event that the A.C.O. position is vacant during a portion of the year, BRUNSWICK shall use its best efforts to fill the position as soon as possible, but shall not have a duty to provide A.C.O. services during the vacancy. FREEPORT's cost reimbursement fee shall be prorated accordingly and FREEPORT shall not have to pay for services during the term of the vacancy.
- C. **Representation.** All parties hereto agree that the A.C.O. shall be an employee of BRUNSWICK for all payroll purposes, but shall be separately acting as the sworn officer and agent of each participating town in the discharge of his/her services, duties, and responsibilities as Animal Control Officer within the scope of this Agreement. Each municipality shall independently qualify and appoint such A.C.O. for the purposes of statutory and local ordinance authorization, which appointment shall be made subject to the tenants of this Agreement. An appeal taken under the ordinance of any town on an action or decision of the A.C.O. acting as A.C.O. in that town shall not because of action or basis of appeal in another town.
- D. **Liability for Actions/Inactions of A.C.O.** BRUNSWICK assumes all liability for and shall hold FREEPORT harmless from any and all liability incurred while the A.C.O. responds to and handles BRUNSWICK calls for service or other BRUNSWICK matters. FREEPORT assumes all liability for and shall hold BRUNSWICK harmless from any and all liability incurred while the A.C.O. responds to and handles FREEPORT calls for service or other FREEPORT matters.
- E. **Wages and Benefits.** BRUNSWICK shall employ the A.C.O. on a full-time basis and provide wages and benefits as provided generally for other full-time municipal employees of the Town of Brunswick.
- F. **Right of Control.** BRUNSWICK shall have and maintain the responsibility for and control of the delivery of services, the standards of performance, the discipline of personnel, and other matters incident to the performance of services, duties, and responsibilities as described and contemplated herein with respect to their employed A.C.O. Notwithstanding any other provision of this Agreement to the contrary, BRUNSWICK, through its Chief of Police, shall have the right to receive and investigate complaints from residents of either town hereby served against their employed A.C.O., respectively. BRUNSWICK shall make the final determination on said issues with respect to their employed A.C.O. All decisions pertaining to employment discipline and discharge of personnel performance of duties and other personnel matters shall remain exclusively with BRUNSWICK.

G. Scope of Employment. BRUNSWICK and FREEPORT agree that the A.C.O. shall devote his/her work time, efforts, and attentions to the customary duties and responsibilities of an animal control officer and the administration related functions of the A.C.O. office as follows:

1. Average of 10 hours per week on Freeport matters; and
2. Average of 30 hours per week on Brunswick matters.

Training time, vacation time and sick time shall be split in the same proportion as the distribution of the work week. Duties shall include, but are not limited to calls for service, follow up investigations, management of quarantines, proactive enforcement, time spent attending meetings, required appearances in court, providing information and advice to citizens and municipal officials, state agencies, vendors, and other persons with interests and activities pertaining to the animal control functions of FREEPORT and BRUNSWICK. The Chief of Police of the police department of the respective town may establish the tasks/priorities for the hours the A.C.O. works on their town's matters.

H. Schedule. The A.C.O. shall generally work five eight-hour days, to include, vacation, sick time and other leave consistent with the Town of Brunswick personnel policies. The schedule will generally be weekdays unless otherwise agreed by the Chiefs of Police of the police departments.

I. After-Hours Response. After-hours responses shall be initiated accordance with the policies of the respective police department. The overtime costs of the after-hours response shall be exclusively paid for by the department that whose incident required the response of the A.C.O. The A.C.O. shall notify the respective Chief when overtime has been incurred on a call.

J. Unavailability. During times of unavailability including the hours in which the A.C.O. is not regularly scheduled to work or is on approved leave, each department is responsible for handling their respective A.C.O. calls.

K. Early Termination. Either party to this agreement may terminate it, with or without cause, prior to its expiration date with thirty (30) days advance notice. BRUNSWICK shall have no obligation to provide A.C.O. services past the early termination date and FREEPORT shall have no obligation to pay for A.C.O. services past the early termination date.

ARTICLE 4 - COSTS

A. Reimbursement. FREEPORT shall reimburse BRUNSWICK at the rate of \$20,762 (twenty thousand, seven hundred and sixty two dollars) per year to cover wages, benefits, uniforms, vehicle usage, fuel and administrative costs. This fee shall be adjusted annually, effective July 1, 2022 and each July 1 thereafter, in accordance with the following rate schedule:

2023-2024 – 11%
2024-2025 – 4%
2025-2026 – 4%
2026-2027 – 4%

- B. **Timing of Payment.** Payment for the first six months of the fiscal year shall be made by October 15th and the second six months of the fiscal year by March 15th. BRUNSWICK shall bill FREEPORT for reimbursement of any overtime costs incurred on FREEPORT A.C.O. calls semi-annually and bills shall be paid within thirty days of invoice.
- C. **Shelter Fees.** BRUNSWICK and FREEPORT are each responsible for entering into agreements with the shelter and paying any fees due the shelter pursuant to their respective agreement with the shelter. Each town shall receive any fees collected on behalf of the Town by the shelter. Each town shall receive any court fine payments which result from the respective town's ordinance violations.
- D. **Vehicle.** BRUNSWICK shall provide a vehicle for the A.C.O. to use and pay for the maintenance and fuel of the vehicle. The vehicle will be stored at the Brunswick Police Department when not in use. Brunswick shall letter the vehicle so that it is labelled "Brunswick-Freeport Animal Control".
- E. **Other Obligations.** Each town shall be individually responsible for providing work space, furniture, equipment and support, legal counsel and defense costs and appeals processes, as needed. Each town shall individually provide such additional support and other necessary resources and functions as the town shall deem necessary and prudent for the proper administration of animal control in the town.

ARTICLE 5 - RECORDS

- A. **Time.** In order to monitor the hours of work on each town's animal control matters and to provide data to evaluate this agreement in the event that the parties desire to renew it, the A.C.O. shall keep a log of time spent on each town's animal control matters. The hours assigned each town are intended to be averages and the parties understand that there may be times that the A.C.O. needs to spend additional (or less) time than the average depending on the nature, number and severity of calls.
- B. **Transports.** The A.C.O. shall also keep other statistics reasonably requested by the respective Chief of Police such as number of animals transported to the shelter, summonses issued, dog bites, etc.

ARTICLE 6 - ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the towns. If any clause, section, or provision is held to be invalid or unenforceable, that shall not affect the entire agreement and the towns agree to meet and negotiate a new clause, section, provision or agreement.

IN WITNESS WHEREOF, the Towns of FREEPORT and BRUNSWICK, by order duly adopted by their Town Councils have caused this Agreement to be signed by the Town Managers, all on the day and year first above written.

For the Town of Brunswick:

For the Town of Freeport:

John Eldridge
Town Manager

Peter Joseph
Town Manager

Date: _____

Date: _____

D. During the term of this Agreement, Brunswick agrees to take reasonable efforts to ensure that all Brunswick employees providing Dispatch Services to Freeport maintain all certification levels required by the State of Maine for the functions performed by such employees.

Section 2. Operations and Fees

- A. The provision of all Dispatch Services shall be under Brunswick's direct control and supervision. No separate legal or administrative entity is created by this Agreement. The administrator responsible for administering the provision of Dispatch Services pursuant to this Agreement within the meaning of 30 -A M.R.S.A. § 2203(3) is and shall be the Brunswick Chief of Police who shall consult periodically with the Freeport Chief of Police regarding the provision of Dispatch Services to Freeport.
- B. The cost to provide Dispatch Services, including the cost of necessary systems, personnel, necessary telephone lines and services, and all necessary communications and other equipment, shall be borne by Brunswick except as otherwise set forth herein or as otherwise agreed to by the Parties. All equipment and facilities will be owned and maintained by Brunswick, and Brunswick will be responsible for and have necessary authority to acquire, hold and dispose of real and personal property used to provide Dispatch Services pursuant to this Agreement.
- C. Freeport shall pay Brunswick a monthly fee for the Dispatch Services provided pursuant to this Agreement (the "Monthly Dispatch Services Fee"). The Monthly Dispatch Services Fee will be paid in full no later than the fifteenth (15th) day of the applicable month for which payment is made, with the first such payment due July 15, 2022. For Dispatch Services provided between July 1, 2022 and June 30, 2023, the Monthly Dispatch Services Fee shall be thirteen thousand, seven hundred and thirty-two dollars (\$13,732); an increase of three percent (3%) from the previous year. The Monthly Dispatch Services Fee shall be adjusted annually, effective July 1, 2022 and each July 1 thereafter, in accordance with the following rate schedule:

2023-2024 – 11%

2024-2025 – 4%

2025-2026 – 4%

2026-2027 – 4%

Section 3. Other Agreements

Nothing in this agreement is intended to supplant or supersede any other agreement made by or between Brunswick and Freeport, nor is it intended to preclude either community from requesting assistance from the other pursuant to any existing agreement between the communities.

Section 4. Effective Date and Term

This Agreement will be effective on the date it is fully executed by the Parties. The Term of provision of Dispatch Services pursuant to this Agreement is five (5) years, beginning July 1, 2022 and ending June 30, 2027. Neither Party may terminate this Agreement without cause. Freeport may terminate this Agreement for cause by providing Brunswick with a written Notice of Termination at least six (6) months prior to the effective date of termination, unless a shorter period of notice is agreed to by the Parties, with the termination to be effective on the last day of the calendar month designated in the Notice of Termination. Any termination of this Agreement shall not terminate any duty or obligation of either Party that arose prior to the effective date of termination, including but not limited to any payment obligation; which payment obligation shall be pro-rated through the last day of the last month of this Agreement in which the termination is effective.

Section 5. Defaults and Dispute Resolution

- A. In the event Freeport fails to pay the Monthly Dispatch Services Fee on a timely basis, which failure to pay has not been cured within thirty (30) days after Brunswick delivers a written notice of default to Freeport, Brunswick may, at its option, terminate this Agreement and/or pursue all of its remedies at law to recover damages associated with Freeport's failure to pay, including recovery of its costs of collection, including reasonable attorneys fees.

- B. In the event of any dispute between the Parties hereto regarding the performance of either Party under this Agreement or as to the determination of any rights or obligations or entitlements arising from or related to this Agreement, other than a dispute involving a failure to pay the Capital Payment or a Monthly Services Fee, the Parties shall refer the matter to their duly authorized Town Managers for resolution. Should such Town Managers fail to resolve the dispute within thirty (30) days from such referral, the Parties agree that any such dispute will be referred to binding arbitration in Portland, Maine. Either Party may give notice in writing to the other of its desire to submit the dispute to arbitration, and may designate an arbitrator. Within fifteen (15) days after the receipt of such notice, the other Party may, in writing, serve upon the Party invoking such arbitration, a notice designating an arbitrator on its behalf. The two arbitrators so chosen shall within fifteen (15) days after the appointment of the second arbitrator, in writing, designate a third arbitrator. Upon the failure of the Party notified to appoint the second arbitrator within such time, the Party invoking such arbitration may proceed with the single arbitrator. No arbitrator, whether chosen by a Party hereto or appointed, shall have the power to amend or add to this Agreement. The arbitrator or arbitrators shall, thereupon, proceed promptly to hear and determine the controversy pursuant to the then current rules of the American Arbitration Association for the conduct of commercial arbitration proceedings, except that if such rules shall conflict with the then current provisions of the laws of the State of Maine relating to arbitration, such conflict shall be governed by the then current provisions of the laws of the State of Maine relating to arbitration. Such arbitrator or arbitrators shall fix a time within which the matter shall be submitted to him or them by either or both of the Parties, and shall make his or their decision, within ten (10) days after the final submission to him or them unless, for good reasons to be certified by him or them in writing, he or they shall extend such time. The decision of the single arbitrator, or two of the three arbitrators, shall be taken as the arbitration decision. Such decision shall be made in writing and in duplicate, and one copy

shall be delivered to each of the Parties. The arbitrator or arbitrators by his or their award shall determine manner in which the expense of the arbitration shall be borne, except that each Party shall pay the costs of its own counsel. Each Party shall accept and abide by the decision. The award of the arbitral tribunal shall be final except as otherwise provided by applicable law. Judgment upon such award may be entered by the prevailing Party in any court with jurisdiction, or application may be made by such Party to any such court for judicial acceptance of such award and an order of enforcement. No dispute shall interfere with the Parties' continued fulfillment of their obligations under this Agreement pending the decision of the Arbitrators.

Section 6. Miscellaneous

- A. Brunswick agrees to work with representatives of Bustins Island in good faith in an effort to identify and implement a workable and acceptable solution to Bustins Island's emergency response needs.
- B. In the provision of Dispatch Services to Freeport, Brunswick and its agents and employees retain all of the immunities available at law.
- C. Neither Party shall be considered to be in default of its obligations under this Agreement if the Party's failure to perform is caused by one or more events, conditions, or circumstances beyond the Party's reasonable control and that by exercise of reasonable diligence the Party is unable to prevent or overcome, including without limitation, storm, flood, lightning, earthquake, explosion, civil disturbance, labor dispute, sabotage, terrorism, war, insurrection, act of God or the public enemy, equipment failures which require lengthy repair or replacement of equipment, labor or material shortage, and action or inaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority (a "Force Majeure" event). Any obligation to pay an amount otherwise owed may not be excused by Force Majeure. If either Party is rendered wholly or partly unable to perform its obligations hereunder because of Force Majeure as defined above, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that: (i) the non-performing Party will, as soon as practicable after the occurrence of Force Majeure, give the other Party written notice describing the particulars of the occurrence; (ii) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure; and (iii) the non-performing Party shall use due diligence to remedy its inability to perform.
- D. Neither Party may assign its rights or obligations under this Agreement without the express written consent of the other Party.
- E. The Parties agree that nothing contained herein is intended to be or should be construed in any manner as creating or establishing the relationship of co-partners between the Parties hereto or as constituting an agency relationship in any manner whatsoever. The individual Parties are and shall remain independent entities with respect to all Dispatch Services provided under this Agreement. Each Party represents that it has, or will secure all its expense, all personnel required in performing its service obligation under this Agreement and

that the acts of its employees performing the service under this Agreement shall be the acts of employees of that entity alone. Each Party agrees that in the performance of its obligations, its employees shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the other Party to this Agreement, including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability, Worker's Compensation, Unemployment Compensation or severance pay.

- F. This Agreement constitutes the entire understanding between the Parties hereto with respect to the subject matter hereof, supersedes any and all previous understandings between the Parties with respect to the subject matter hereof, and binds and inures to the benefit of the Parties, their successors and permitted assigns. Any alteration or amendment or modification of this Agreement shall be valid only if set forth in writing and signed by duly authorized representatives of both Parties.

- G. The invalidity or unenforceability of any provisions of this Agreement shall not affect the other provisions hereof. If any provision of this Agreement is held to be invalid, such provision shall be severable from this Agreement and will not affect the validity of the remaining portions of this Agreement. If necessary to preserve the intent of the Parties hereto, the Parties shall negotiate in good faith to amend this Agreement, adopting a substitute provision for the one deemed invalid or unenforceable that is legally binding and enforceable.

- H. A waiver of any term or condition of this Agreement must be in writing and signed by the waiving Party. Any express or implied waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission.

- I. This Agreement shall be governed exclusively by the laws of State of Maine. The venue for any legal action brought by any Party arising out of or pursuant to this Agreement shall be the Cumberland County Superior Court in Portland, Maine.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties hereto have caused this Agreement to be duly executed by their respective duly authorized Town Managers.

For the Town of Brunswick:

For the Town of Freeport:

John Eldridge
Town Manager

Peter Joseph
Town Manager

Date: _____

Date: _____