

ITEM

18-030

To authorize the Town Manager to execute an easement deed with Fred Kinney for the Blanchard Road pump station through March 2027



M E M O R A N D U M

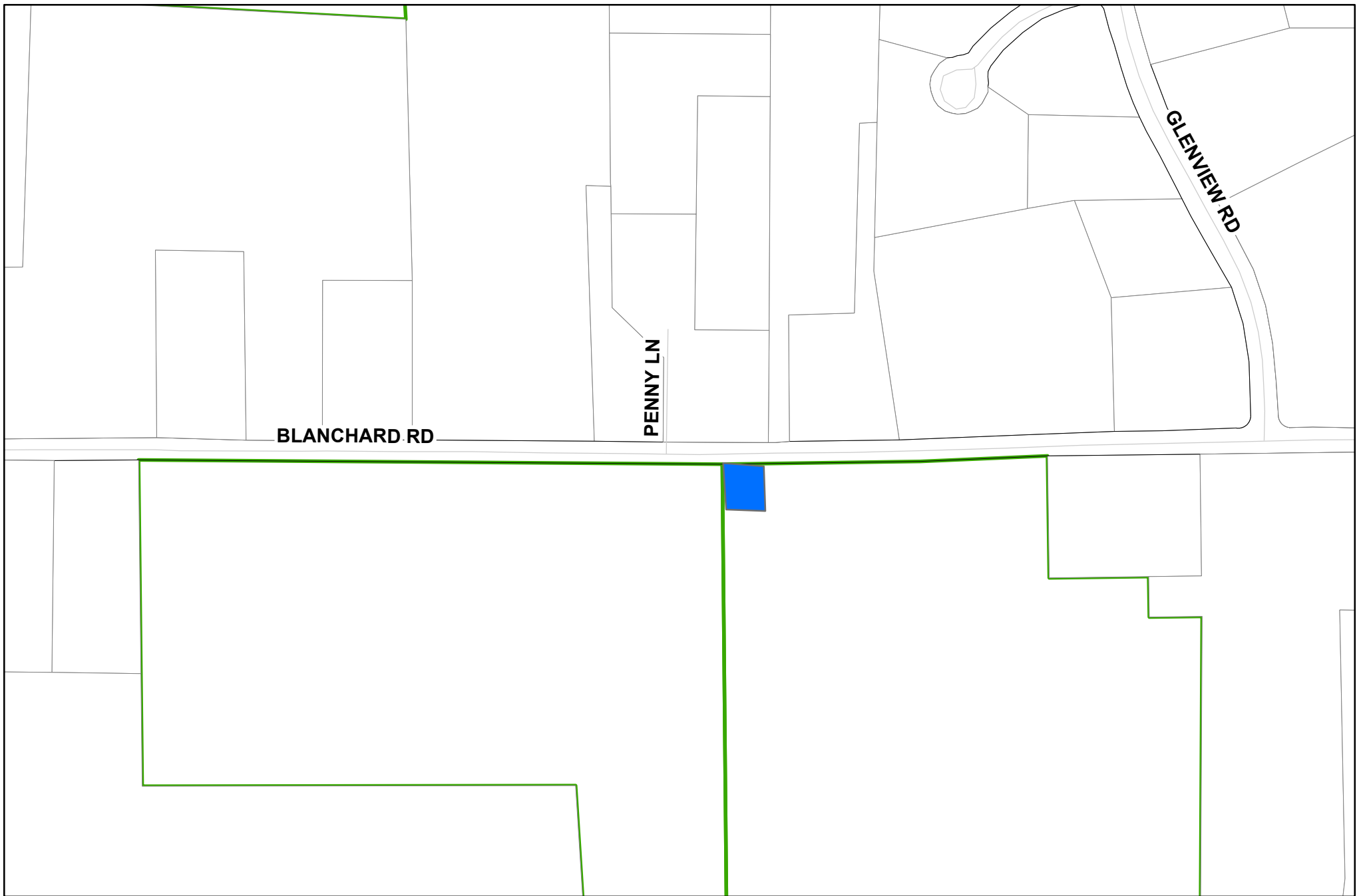
TOWN OF CUMBERLAND, MAINE
290 TUTTLE ROAD
CUMBERLAND, MAINE 04021
TEL: 207-829-2205 FAX: 829-2224

To: Town Council
From: William R. Shane, Town Manager
Date: March 7, 2018
Re: Fred Kinney

This is a renewal of a 10 year agreement we have had with Fred Kinney to allow us to have a water pump station on his property on Blanchard Road. I expect it will need to be in place for 7-10 more years until a water tank can be built to service the West Cumberland water distribution system.



Fred Kinney Easement Area



Fred Kinney Easement Area

AMENDMENT TO EASEMENT

THIS AGREEMENT, dated the 23rd day of February, 2018, is between **FRED T. KINNEY** (“Grantor”), an individual residing in Cumberland, Maine, with a mailing address of 263 Blanchard Road, Cumberland, ME 04021 and the **TOWN OF CUMBERLAND** (“Grantee”), a Maine municipal corporation with a mailing address of 290 Tuttle Road, Cumberland, ME 04021. The parties agree as follows:

1. Recitals. By Easement Deed (the “Easement Deed”) dated July 12, 2007, recorded in the Cumberland County Registry of Deeds in Book 25299, Page 328, Grantor granted to Grantee an easement for the purposes therein described, over, under, along and through that part of Grantor’s land described in the Easement Deed. The easement created by the Easement Deed expired by its terms on March 1, 2017. The parties wish to reinstate the easement created by the Easement Deed, as if it had never been terminated, on the terms set forth in this Amendment.

2. Extension of Term. The term of the easement created by the Easement Deed shall be for successive six (6) month periods beginning on March 1, 2017, and concluding, if not sooner terminated pursuant to other provision of this agreement, on March 1, 2027.

3. Continued Escalation of Payment Amount. The annual payment due from Grantee to Grantor under the Easement Deed for the period beginning September 1, 2017, is six thousand three hundred two and 00/100 dollars (\$6,302.00). Grantee shall continue to make such payments in equal semi-annual installments, as provided in the Easement Deed, during the extended term provided in this Amendment. Moreover, the annual payments due under the Easement Deed shall continue to increase on September 1 each year by three and one-half percent (3.5%) per annum, as provided in Exhibit A to the Easement Deed. The payment schedule for the term of the Easement Deed, as extended, is attached to this Amendment.

4. Ratification of Easement Deed. All other terms of the Easement Deed shall remain in full force and effect, as if the Easement Deed had never expired, and the parties hereby ratify and affirm the terms of the Easement Deed (as amended by this Amendment).

EXECUTED at Cumberland, Maine, as of the 23rd day of February, 2018.

WITNESS:

GRANTOR:

Fred T. Kinney

WITNESS:

GRANTEE:
TOWN OF CUMBERLAND

By:
Its:_____

STATE OF MAINE
COUNTY OF CUMBERLAND, SS. February ___, 2018

Then personally appeared the above named Fred T. Kinney and acknowledged the foregoing instrument to be his free act and deed, before me,

Notary Public/Attorney at Law
Print Name_____
My

Comm.Exp._____

STATE OF MAINE
COUNTY OF CUMBERLAND, SS. February ___, 2018

Then personally appeared the above named _____, duly authorized _____ of the Town of Cumberland, and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of said Town, before me,

Notary Public/Attorney at Law
Print Name_____
My

Comm.Exp._____

Supplement to Exhibit A
Easement Deed from Fred T. Kinney
to Town of Cumberland

Payment Amounts from 9/1/2011 through 3/1/27

<u>Payment Date</u>	<u>Annual Amount</u>	<u>Payment Amount</u>
9/1/2011	\$5,127	\$2,563
3/1/2012		\$2,563
9/1/2012	\$5,306	\$2,653
3/1/2013		\$2,653
9/1/2013	\$5,492	\$2,746
3/1/2014		\$2,746
9/1/2014	\$5,684	\$2,842
3/1/2015		\$2,842
9/1/2015	\$5,883	\$2,942
3/1/2016		\$2,942
9/1/2016	\$6,089	\$3,045
3/1/2017		\$3,045
9/1/2017	\$6,302	\$3,151
3/1/2018		\$3,151
9/1/2018	\$6,523	\$3,261
3/1/2019		\$3,261
9/1/2019	\$6,751	\$3,376
3/1/2020		\$3,376
9/1/2020	\$6,988	\$3,494
3/1/2021		\$3,494
9/1/2021	\$7,232	\$3,616
3/1/2022		\$3,616
9/1/2022	\$7,485	\$3,743
3/1/2023		\$3,743
9/1/2023	\$7,747	\$3,874
3/1/2024		\$3,874
9/1/2024	\$8,018	\$4,009
3/1/2025		\$4,009
9/1/2025	\$8,299	\$4,150
3/1/2026		\$4,150
9/1/2026	\$8,590	\$4,295

EASEMENT DEED

KNOW ALL MEN BY THESE PRESENTS that **Fred T. Kinney** whose mailing address is 263 Blanchard Road, Cumberland, ME 04021 in consideration paid grants to the **Town of Cumberland**, a municipal corporation, whose mailing address is 290 Tuttle Road, Cumberland, ME 04021 an easement for the purposes hereinafter described, over, under, along and through so much of Grantor's land described in deed recorded in Book 10621, Page 64 of the Cumberland County Registry of Deeds as is particularly bounded and described as follows:

Beginning at a point marked by an iron rebar set flush to the ground on the southerly side of Blanchard Road, where said sideline intersects the northeasterly terminus of a certain Field Road depicted on a certain survey plan by Boundary Points Professional Land Surveying, LLC entitled "Proposed Pump Station Site 5 For Town of Cumberland on Blanchard Road Cumberland, Maine" dated January 31, 2007, said point of beginning being located approximately 85 feet, more or less, in a northwesterly direction from Pole #37, as depicted on said plan, and having an approximate geographic position of 43°48'23.11" North Latitude and 70°16'42.87" West Longitude;

Thence S 55°46'21" E, along Blanchard Road, a distance of 50.00' to sea iron rebar;

Thence S 34°13'39" W, through land now or formerly of Fred T. Kinney as described in Deed Book 10621, Page 64, a distance of 100.00' to a set iron rebar;

Thence, N 55°46'21" W, through land now or formerly of Fred T. Kinney, a distance of 50.00' to a set iron rebar;

Thence, N 34°13'39" E, through land now or formerly of Fred T. Kinney, a distance of 100.0' to the point of beginning,

The basis of bearings for this easement was the Maine State Plane Grid West Zone N.A.D. 1983 Coordinate System.

Containing an area of 5000.00 square feet, or 0.115 Acre, more or less and being hereinafter referred to as the "Easement Area".

Grantee, its heirs, successors and assigns are hereby granted the right within said Easement Area to install, maintain, repair and replace one (1) water line pumping station for the transmission of public water and all necessary appurtenances thereto.

The term of this Easement shall be for successive six (6) month periods beginning on the date hereof and concluding, if not sooner terminated pursuant to other provision of this agreement, March 1, 2017. As consideration for the rights granted herein, Grantee shall pay to Grantor, in advance, the amounts and on the dates as set forth in Exhibit A attached hereto.

This Easement and all rights granted to Grantee hereunder shall cease to exist upon the earliest of the following to occur;

- (a) Grantee's election to terminate upon written notification to Grantor of same.
- (b) Grantee's nonpayment of any amount due on the date(s) as set forth in Exhibit A.
- (c) March 1, 2017
- (d) Upon the occurrence of either (a) or (b) above, Grantor's affidavit as to same duly recorded in the Cumberland County Registry of Deeds shall be deemed conclusive evidence of the termination of this Easement.

Grantor and Grantee further acknowledge that the rights and easement herein provided are expressly subject to the following:

1. Grantor shall not install and/or construct within the Easement Area any improvements which shall interfere with Grantee's rights hereunder.

2. Grantee's exercise of its' rights hereunder shall be undertaken to the greatest extent practicable, so as not to interfere with the use of the Easement Area by Grantor, and in particular Grantor's access over and along the aforesaid Field Road located in Easement Area.

3. Upon termination of this Easement, Grantee shall promptly remove any and all pumps, pipes, conduits, equipment and/or appurtenances it has caused to be placed upon the land and shall restore the surface of the Easement Area wherever disturbed by Grantee, as closely as reasonably practicable, to the condition of such surface before being disturbed. Notwithstanding any other provision herein, Grantee shall remain liable for any and all amounts set forth in Exhibit A until completion of said removal and restoration.

4. Subject to the limitations of the Maine Tort Claims Act, Grantee agrees to indemnify, defend (with counsel acceptable to Grantor) and hold Grantor harmless from and against any and all losses, costs, claims, expenses and liabilities suffered by Grantor on account of any injury to persons or damage to property caused by Grantee, or any agents, employees, or contractors of Grantee, while Grantee, or any agents, employees, or contractors of Grantee, are on the Easement Area pursuant to the rights granted by this easement.

5. Release and Waiver of Subrogation. Insofar as and to the extent that the following provisions may be effective without invalidating or making it impossible to secure insurance coverage obtainable from responsible insurance companies doing business in the State of Maine (even though extra premium may result therefrom), Grantor and Grantee mutually agree that with respect to any loss which is covered by insurance then being carried by them respectively, the one carrying such insurance and suffering such loss, releases the other of and from any and all claims with respect to such loss, to the extent of the insurance proceeds paid under such policies, and Grantor and Grantee mutually agree that their respective insurance companies shall have no right of subrogation against the other on account thereof.

6. Grantee shall list Grantor as additional insured on the Grantees property and liability insurance policies for the duration of the Easement.

EXECUTED at Cumberland, Maine, this 12th day of July, 2007

WITNESS:

Brenda L. Stufflee

GRANTOR:

[Signature]
Fred T. Kinney

WITNESS:

Brenda L. Stufflee

GRANTEE:
TOWN OF CUMBERLAND

W.D. O. IL
By
Its: Town Manager

STATE OF MAINE
COUNTY OF Cumberland, SS.

July 12, 2007

Then personally appeared the above named Fred T. Kinney and acknowledged the foregoing instrument to be his free act and deed, before me,

[Signature]
Notary Public/Attorney at Law
Print Name Karen J. Cyr
My Comm. Exp. 9-27-2009

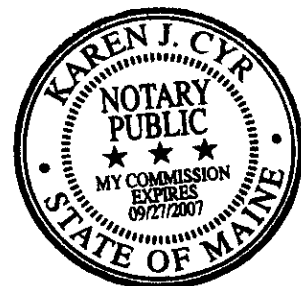


Exhibit A**Property Tax for Fred Kinney- 142 Blanchard Road****July 1, 2006 to June 30, 2007****\$4,317**

	Payment Date	Payment Amount	Annual Amount
Payment 1	3/1/07	\$2,159	
Payment 2	9/1/07	\$2,234	\$4,468
Payment 3	3/1/08	\$2,234	
Payment 4	9/1/08	\$2,312	\$4,624
Payment 5	3/1/09	\$2,312	
Payment 6	9/1/09	\$2,393	\$4,786
Payment 7	3/1/10	\$2,393	
Payment 8	9/1/10	\$2,477	\$4,953
Payment 9	3/1/11	\$2,477	
Payment 10	9/1/11	\$2,563	\$5,127

This Schedule shall be the basis for compensation for the easement and access to the water line pump station on Blanchard Road. Payments shall be made every 6 months while the pump station is operational. The estimate length of time on the easement is 3-5 years. Should the easement need to be extended, the payment shall be calculated with a 3.5% escalator over the previous year. Payments shall not be pro-rated and shall be paid if any portion of the 6 month period is used for the Pump Station site.

Received
 Recorded Register of Deeds
 Jul 18, 2007 11:24:19A
 Cumberland County
 Pamela E. Lovles