- PUBLIC MEETING -
Rockport Select Board
Monday, May 13, 2019 – 7:00 p.m.
Geffrey C. Parker Meeting Room
Streamed at https://livestream.com/Rockportmaine

AGENDA

I. Call Meeting to Order

Please either turn off your cell phones and other electronic devices or set them to mute while in this meeting room or the hallways. If you need to take or make a phone call, please step outdoors.

II. Public Hearing

a. None this meeting

III. Minutes, Meetings and Announcements

a. Approval of the minutes of previous **meeting**(s):

- ➢ None this meeting

b. Announcements of upcoming Select Board **meeting**(s):

- ➢ Regular Select Board Meeting on **Tuesday, May 28th, 2019, 7:00 p.m.,** Geoffrey C. Parker Community Meeting Room, Rockport Opera House, to be streamed at https://livestream.com/Rockportmaine
- ➢ Organizational Meeting of new Select Board on **Wednesday June 12th, 2019,** at the conclusion of the Annual Town Meeting, Rockport Opera House, main stage

c. Announcements of upcoming Select Board **Workshop**(s)**:**

- ➢ Workshop on future development of the RES site, **Wednesday May 29th, 2019, 6:00 p.m.**, Rockport Opera Hours

d. Announcement(s) and/or Training(s):

- ➢ The Town Office will be closed on **Monday May 27th, 2019** in observance of Memorial Day
- ➢ The Annual Town Meeting will begin on **Tuesday June 11th, 2019 at 8:00 a.m.** with voting at the Town Office, then will adjourn at 8:00 p.m., resuming on **Wednesday June 12th, 2019 at 7:00 p.m.** at the Rockport Opera House for the open portion of the meeting to act on all remaining articles.

e. Committee Openings:

Application for Committee Service can be found at the Town Office and on the Town Website: www.town.rockport.me.us

NOTE: If a committee does not have any vacancies, it may still be possible to apply to join the committee as an alternate member. Alternate members can attend all meetings, participate in discussions, but may only vote in the absence of a regular member. If interested, please check with the town office to see if there are alternate member spots available for the committee of interest.

➢ Investment Committee – 1 vacant seat

➢ Zoning Board of Appeals – 1 vacant seat

f. Agenda Changes

g. Public Comment – public comment should be directed at issues not under discussion on this evening's agenda. Comment from the public will be welcome prior to each agenda item. Further comment will be granted only by permission from the Board. All public comment should be brief and to the point.

V. Town Manager's Report

VI. Consent Agenda

a. Accept Payment In Lieu of Taxes Maine Coast Heritage Trust $5,600.00

VII. Unfinished Business

a. Consideration of policy on allocating indirect costs to capital projects and tracking public works time on tasks outside the department

VIII. New Business

a. Presentation on the state of the schools from superintendent Maria Libby

b. Possible land transfer to Maine water company

c. Discussion of Harbor Committee member changes

d. Discussion of possible traffic calming issues at some locations in Rockport

e. Discussion of transition plan to the new town manager

f. Update on the development of an infrastructure bond

g. Quit Claim Deed for Map 6, Lot 71-1

h. Consideration of a contract to construct the new Rockport Public Library

i. Discussion of the charge of the Library Building Committee

j. Vote to close Limerock Street and sidewalk on Russell Avenue in front of the Library during the construction of the New Library

IX. Wastewater Commissioners

a. None this meeting

X. Liaison Reports

XI. Executive Session

a. Discussion of a Personnel Matter pursuant to 1 M.R.S.A. Section 405(6)(A) (if needed)

XII. Adjournment

Manager's Report – May 13, 2019

This has been a month focused largely on Library issues and getting ready to start construction.

Library Construction

Construction status

- The construction fence will be going up very soon, possibly as early as late this week. This fence will go around the park and the library site.
    - Some of the trees (not all) that are in the way of the fence, will come down prior to that. The small trees along Union Street will be salvaged and moved.
- The lower end of Limerock will be closed off during most of the construction,
- The construction on the stream will begin the week of May 13th this is expected to take about two weeks.
- Office trailers will begin to arrive soon after the fence goes up.
- We need to blast out ledge to get the building on the site. We knew this all along.
    - We will begin the pre-blast survey over the next few weeks. (this is important)
        - Impacted homeowners are being notified with a "certified, returned receipt letter in the mail over the next week. This will be asking to gain access to the property so the blasting company, Maine Drilling and Blasting can create a photographic record of the existing conditions of your property.
        - We had originally discussed doing our own survey however in the end we can just by the photography from Maine Drilling for our records.
- The "blasting "will take place the first week of June. This is not the type of blasting like you see on TV where rocks fly in the air. Maine Drilling is the best company in the State of Maine. They are taking a conservative approach.
    - The blasting will take 8-10 days, because they will be doing smaller charges, this produces less of a "bang" rather than having one big bang, to do the whole thing in one charge.
    - There is a small amount of ledge to be removed, but we are trying to do it the safest and most conservative way possible.
- Once the blasting is complete, the excavation will begin. Likely on or about, the second week of June. This will likely take about a week.
- This will be followed by forms going in and the foundation being poured. This work will likely be starting on or about the 3rd week of June.

- The goal is to have the building weather tight by November.
    - Construction will move inside for the winter months.

- The exterior masonry, windows etc. will not go in until next spring.

This is not an exhaustive list but will give you an idea as to the tentative schedule of the project.

In addition, I have been working on the Contract for Phi and locating a new construction manager for the project.

Ambulance Review Committee

The ambulance review committee was not able to meet because Lincolnville and Hope did not have representation for the meeting. The 4 town managers are meeting with NEMHS on Thursday, May 9, 2019 in Camden to discuss the proposed contract and we will be scheduling another meeting for the Review Committee soon. Our Contract with North East ends on June 30th so time is of the essence here.

MCSW

Mid-Coast Solid Waste is in the process of hiring a new manager. We are meeting on Monday May 15th to conduct interviews.

Town Clerk/ Tax Collector

Ballots have been sent to the printer, redemption letters sent out and we collected $900,000 on Tax Day.

Public Works Department

The public works department spent a lot of time repairing washouts from all the rain we had in April. In addition, they did end up plowing snow in April. This is a problem as the sides of the road are so soft. They put in all the floats at the harbor. They have begun doing a lot of ditching and replacing culverts, straightening up road signs and doing general clean up.

We lent a truck to the Town of Union to help during a storm because theirs was destroyed in a fire.

We will be installing the new water faucet at the West Rockport Fire Station.

Finally, Mike Young will be taking vacation because he is over his limit of accrued vacation time, so over the next 6 weeks or so he will be out a lot.

Assessing

Kerry is working on a method where we can send one bill for time shares, it is an uphill swim but will save us a LOT of work, aggravation and money if he is successful.

Maine Revenue was here last week doing their annual audit.

Safety

Our shape inspection did not go as we had hoped. We have a new list of minor things to get fixed and Diane and department heads are working hard to get these all done. She is doing a great job keeping the group on task with this. We are hoping to get this done soon.

Finance

Megan said last week that for the first time since November she felt caught up. But then the pre audit started. She and Molli have attended several trainings over the past month.

In addition, she and Molli have been at the forefront of the WW inflow survey. This is a big undertaking to get started and they both have really worked hard on it. Megan is meeting with a Student from the Midcoast school of technology who is interested in being a Summer intern to work on the I&I Study.

Harbor

We received 40 piling tops from Bar Harbor that we will use to replace the pilings along the headwall with new decorative ones. The purpose of the old pilings was not to hold the wall in place but for the schooners and other working craft to lay along side and not up against the Granite wall. We have been replacing them with ones that were driven into the bottom and they serve no structural purpose. They do however give a sense of the edge of the grass.

We have replaced the Hot water tank that failed over the winter. Abbie attended the Maine Healthy beaches training. We have had 2 years of excellent reports from our testing with only one day of over the limits allowed. We are hopeful that we will see the same result this year. Possibly the many small changes we have made is working.

Library

Lots of events at the Library, Titanic, 4 activities for school vacation. Easter Egg hunt. Poetry month. They will be holding a 5K road race on June 23rd beginning at 8:30, I know this is true because I saw Ben out training for it.

Police Department

The Police Department has been busy with calls and put together a drug takeback program. Sargent Moore attended the FBI training and we had 4 officers trained in crime scene processing.

VI Consent Agenda

a. Accept Payment In Lieu of Taxes Maine Coast Heritage Trust $5,600.00

Manager's Comments:
The Town of Rockport received a donation in the amount of $5,600 from Maine Coast Heritage Trust as a payment in Lieu of taxes.

Suggested Motion:
I move to accept the donation in the amount of $5,600 from Maine Coast Heritage Trust as a payment in Lieu of taxes.

VII. Unfinished Business

a. Consideration of policy on allocating indirect costs to capital projects and tracking public works time on tasks outside the department

Manager's Comments:

Included in your packet is a draft policy revision for the Board to review, based on the discussion at the previous meeting. Section 29 is the section that was edited.

It is expected that this will have more changes and will be brought back to a future meeting for approval.

Internal Controls help to establish and maintain fiscal management, accountability and safety of municipal assets and resources.

Internal Control Policies & Procedures

General Rules
Cash Receipts
Deposits – Reconcilations
Investments – Reserves
Fixed Assets
Accounts Payable – Accounts Receivable
Payroll – General Ledger
Chart of Accounts – Leases

Best Practices for Financial Management of Municipal Finances

Rockport, Maine – January 28, 2019
Amended May 1, 2019

It is not good enough for things to be planned – they still have to be done; for the intention to become a reality, energy has to be launched into operation.

-Walt Kelly (1913-1973), Animator

Table of Contents

1. INTRODUCTION

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Internal controls are comprised of plans, methods, policies and procedures used to fulfill the mission, strategic plan, goals and objectives of the Town of Rockport. The internal control process provides reasonable assurance that the objectives of the Town will be achieved. These objectives include the following:

- Protection of assets;
- Effectiveness and efficiency of operations;
- Reliability of financial reporting; and
- Compliance with applicable laws and regulations.

This document, comprising the Town of Rockport's Internal Control Policies and Procedures, is referred to herein as the "Policies & Procedures" or as "the system of internal controls."

To the extent these Policies & Procedures refer to the responsibilities of municipal officers defined by State statute, it is the Town's policy to adhere to those responsibilities and practices. The Town has created positions not referenced in statute, including the Finance Director. The Finance Director is responsible for review, implementation, and monitoring of the Town's finances and these Policies & Procedures as set forth throughout this document.

2. DEFINITIONS

The following definitions shall apply:

2.1 Adverse Employment Action.

A materially adverse change in the terms and conditions of employment, including but not limited to: discipline, suspension, threatening to discipline or suspend, coercion, acts of intimidation and firing.

2.2 Best Practice.

A method or technique that has consistently shown results superior to those achieved with other means. It is a standard or benchmark against which practices may be compared and assessed. What constitutes a "Best Practice" can evolve to become better as improvements are discovered.

2.3 Capital Asset.

An item that has a value of more than $5,000, individually or collectively, with an estimated useful life of more than one (1) year. Capital assets may include but are not

limited to: computer equipment, office furniture, fiber optics, fleet vehicles, public works vehicles and machinery, and emergency response vehicles.

2.4 Capital Infrastructure.

Refers to facilities and systems that serve the Town and its residents, businesses and visitors with a value of at least $50,000 and a useful life of at least five (5) years. Examples include but are not limited to: buildings and other fixed structures, land, highways, roads, bridges, sidewalks, pathways and parking lots; utility structures such as elements of public water and sewer systems, public lighting systems, electric and communication cables or other transmission elements.

2.5 Cash.

Includes all items that are acceptable for deposit in a bank, e.g., paper currency, coins, checks, money orders, cashier's checks, and traveler's checks.

2.6 Change Funds.

A designated amount of cash on hand in which to make change from a cash drawer.

2.7 Control Environment.

As used in the public or government this term is what would be called, in the private sector, the entity's "corporate culture."

2.8 Fixed Asset.

An asset that is purchased for long-term use and is not likely to be converted quickly into cash such as land, buildings or equipment.

2.9 Fraud.

An intentional and deliberate deception to secure an unfair or unlawful gain, including but not limited to, a misappropriation of resources or the manipulation of data to the advantage or disadvantage of a person or entity. The definition of "fraud" as intended in these Policies & Procedure is determined by applicable laws and regulations.

Examples of fraud may include, but are not limited to;

- Falsification of expenses and invoices;
- Authorizing or receiving compensation for goods not received or services not performed;
- Theft of cash, fixed assets or other property;
- Alteration or falsification of records;
- Failure to account for monies collected;
- Knowingly providing false information on job applications;
- Authorizing or receiving compensation for hours not worked;
- Intentionally falsifying a time sheet; or

- Embezzlement, bribery or conspiracy.

2.10 Information Technology.

The application of computers and telecommunications equipment to store, retrieve, transmit and manipulate data, often in the context of a business or other enterprise. The term is commonly used as a synonym for computers and computer networks, but it also encompasses other information distribution technologies.

2.11 Internal Controls.

Systematic measures (such as reviews, checks and balances, methods and procedures), instituted by the Town to (a) conduct its business in an orderly and efficient manner, (b) safeguard its assets and resources, (c) deter and detect errors, fraud, and theft, (d) ensure accuracy and completeness of its accounting data, (e) produce reliable and timely financial and management information, and (f) ensure adherence to laws and regulations, and the Town's policies and objectives.

2.12 Petty Cash.

Petty cash is an amount of cash on hand used to pay for small items rather than going through the process of issuing a check.

2.13 Policy.

Principles and associated guidelines formulated and enforced by the Town to direct and limit its actions in pursuit of long-term goals.

2.14 Procedure.

A series of steps, taken together, to achieve a desired result. It is a particular way of accomplishing something as in a repetitive approach, process or cycle to accomplish an end result.

2.15 Purchasing Agent.

The purchasing agent as used in these Policies & Procedures means the Town Manager or the Town Manager's designee.

2.16 Reserve Account.

Used for financing the acquisition or reconstruction of a specific or type of, capital improvement; financing the acquisition of a specific item or type of capital equipment; or a sinking fund account for paying a funded debt.

2.17 Risk Management.

The identification, analysis, assessment, control, avoidance, minimization, or elimination of unacceptable risks. An organization may use risk assumption, risk avoidance, risk retention, risk transfer, or any other strategy, or combination of strategies, in proper management of future events.

2.18 Sinking Fund.

A sinking fund is a fund established by setting aside revenue over a period of time to fund a future capital expense or repayment of long-term debt.

3. PURPOSE

Policy: The Town has a responsibility to establish controls to ensure that all municipal assets are protected and secured appropriately. The purpose of the Town's system of internal controls is to provide reasonable assurance that:

- Obligations and costs are in compliance with applicable law and regulation;
- Funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation, and
- Revenues and expenditures are properly recorded and accounted for to permit the preparation of accurate and reliable financial and statistical reports and to maintain accountability over the assets.

4. REPONSIBILITIES FOR SYSTEM OF INTERNAL CONTROLS

Policy: It is the Select Board's responsibility to establish a system of internal controls and policies that adequately address the following components:

- The control environment;
- Risk assessment;
- Control activities;
- Information and communication; and
- Monitoring.

The Town Manager is tasked with overall monitoring and delegating to management the tasks required to operate and monitor the system of internal controls. Each individual within the Town government is responsible for being cognizant of, complying with, and maintaining the proper internal control procedures associated with their specific job responsibilities.

5. THE CONTROL ENVIRONMENT

Policy: The Select Board, Town Manager, Finance Director and Department Heads shall create a culture of compliance through their individual and collective actions exhibiting high ethical and professional standards of conduct. Leading by example sets the standard for the entire Town government. Internal controls must be communicated and followed. Failure to take appropriate disciplinary action for a violation of these established standards of conduct

sends a "message" that management is not committed to internal controls.

Procedure:

A favorable control environment requires that management communicate the importance of internal controls to Town staff at all levels and that Town staff perform their job responsibilities in a competent and honest manner.

5.1 Communication with Staff.

Upon adoption of these Policies & Procedures, and at least annually every January, Department Heads shall ensure that their departments have received and understand these internal controls, as they relate to everyone's job responsibilities.

5.2 Communication with Select Board.

(a) Following the election of a new Select Board member, a copy of these Policies & Procedures shall be provided to the Select Board member.

(b) The Select Board shall review these Policies & Procedures periodically, gauge the level of Town compliance with these internal controls, and take appropriate action to ensure that these established standards are met.

5.3 Compliance and Violations.

Compliance with these Policies & Procedures is essential to the proper, prudent, efficient and effective functioning of Town government. There shall be swift and appropriate disciplinary action for employees who violate the standards of conduct established by these Policies & Procedures, consistent with the Town's Personnel Policies.

6. MONITORING OF CONTROL PROCEDURES

Policy: Effective monitoring of the Town's system of internal controls requires that the Town's officials and management assess the quality of performance over time and determine whether controls are effective. Any financial policy that is adopted should be reviewed annually to ensure that it remains current.

Procedure:

6.1 Annual Review by Town Manager and Finance Director.

At least annually every November, the Town Manager and Finance Director shall review established internal controls to determine effectiveness. Based on the annual review a recommendation may be made to the Select Board to update or modify the internal control policies.

6.2 Select Board Review.

Periodically, the Select Board shall review the effectiveness of the system of internal controls with the Town Manager and Finance Director to mitigate any potential

weaknesses.

7. RISK ASSESSMENT AND MANAGEMENT

Policy: The Select Board, the Town Manager, Finance Director and Department Heads shall monitor and assess potential risks that could prevent or hinder them from achieving their objectives. Effective risk monitoring and assessment must involve not only management at all levels of Town government but employees performing day-to-day activities. Effective risk monitoring and assessment should include both the "macro" and "micro" components of the Town's activities.

Procedure:

7.1 Focus on Risk Monitoring.

Department Heads shall monitor, on an ongoing basis, the opportunities to reduce risk within their departments. Each Department Head should convey a risk-aware culture—encouraging all department employees to be aware of potential risk, to be vigilant about risk detection, and to make recommendations for improvement and risk mitigation in their daily job functions.

7.2 Sharing of Best Practices.

Department Heads who identify potential risk exposure and/or who have recommendations or receive recommendations from department employees about improvement to daily activities that will mitigate that risk exposure, should share them with management, including other Department Heads, in order to improve the risk practices across all levels and departments of Town government.

7.3 Safeguarding Employees and Citizens.

In order to ensure, to the extent possible, an exposure-free work and service environment which the Town's personnel and the public can enjoy in safety and security in the course of their daily pursuits, the Town shall establish and maintain sound operating practices and proper employee training. Department Heads shall convey, by example and through encouragement of a risk-aware culture, the fundamental importance of their responsibilities to safety and security for one another, their own well-being and that of the Town's people and protection of its assets.

7.4 Management Assessment.

In addition to the inherent risks addressed by these Policies & Procedures, the Select Board, Town Manager, Finance Director and Department Heads shall continuously monitor the manner and extent to which changes in the Town government and operations may affect the Town's risk environment. These changes may include, for example:

- Changes in the operating environment of the Town, e.g., reduced budgets, new regulations/ordinances, intense political debate or scrutiny;

- Changes in personnel;
- Changes in information systems and technology;
- New programs or services; or
- Changes in the Select Board leadership or management.

8. RISK MANAGEMENT THROUGH RISK TRANSFER

Policy: The Town recognizes that risk should be identified and managed—not viewed as something to be eliminated or avoided. The Select Board believes that well-managed risk is fundamentally important to effective service delivery, maximizing opportunities for innovation in delivery of services and adapting to change in and outside the Town. One means of managing risk is to transfer unreasonable amounts of risk through bonding or insurance mechanisms.

8.1 Employee Bonding Requirements.

Policy: Elected officials and employees who handle municipal funds shall be appropriately bonded or covered by liability insurance to ensure that the taxpayers do not absorb the cost of financial loss because of an improper or illegal act of an elected or appointed official or public employee.

Procedure: At the Town's expense, all employees involved with the collection, custody or disbursements of the Town's finances shall be bonded for the amounts appropriate to complete their job functions. Bonding shall be reviewed and renewed annually by the Finance Director and the cost shall be included in the annual budget.

8.2 Risk Transfer Through Insurance and Risk-Pooling Mechanisms.

Policy: The Select Board, Town Manager and Finance Director shall review the Town's risk transfer strategies in the context of the overall risk framework of the Town to ensure that best efforts are made to identify risk, monitor and manage risk, and transfer that risk which is beyond the Town's capability of retaining.

Procedure: At least annually every April, the Town Manager and Finance Director shall review with the Select Board the extent of the Town's insurance, risk-pooling and other risk transfer mechanisms.

9. ACCOUNTING AND ANNUAL AUDIT

Policy: The Town shall utilize accounting practices that conform to generally accepted accounting principles (GAAP) as set forth by the Government Accounting Standards Board (GASB).

Procedure:

9.1 Monitor the Overall Budget.

All Town accounts shall be monitored by the Finance Director monthly. Financial records shall be securely maintained in the Finance Director's office.

9.2 Appointment of Annual Auditor.

Each year the Select Board shall appoint a Certified Public Accountant(s) for the purpose of conducting the annual audit of the prior fiscal year municipal finances, as authorized by law. The audit shall be conducted in accordance with Government Auditing Standards promulgated by the U.S. Government Accountability Office.

10. ACCOUNT CONTROLS

Policy: The Town Manager and Finance Director shall be responsible for establishing accounting practices, including but not limited to: journal entries, general ledger accounts, chart of accounts and other control practices, subject to Select Board oversight.

10.1 Staff Assignments and Internal Audits.

Policy: No one employee shall perform all related elements of an individual transaction. Internal audits shall be conducted.

Procedure:

(a) *Staff Assignments.* Staff responsibilities shall, to the extent possible, be made in a way that encourages checks and balances. No single individual shall be able to prepare, approve, process and record a transaction. Whenever possible, employee job functions shall be changed periodically to ensure rotation and cross-training.

(b) *Internal Audits During Leave.* Employees responsible for collecting and recording cash transactions shall be required to take vacation leave. During this time, the employee's records and cash accounts shall be reviewed and an internal audit conducted by management.

(c) *Unannounced Audits.* The Town Manager/Finance Director may perform unannounced cash audits of any/all cash drawers at any time.

11. GENERAL LEDGER

Policy: The general ledger represents the formal record of the Town's transactions. It holds the account information that is needed to prepare financial statements and includes accounts for assets, liabilities, and equity.

Procedure:

11.1 Limit General Ledger Maintenance to Finance Director.

No journal entries or corrections should be made to any general ledger accounts by anyone other than the Finance Director.

11.2 Submit Change Request to Finance Director.

If an employee notices a change that should be made to a general ledger account, the employee should submit a request with appropriate supporting documentation to the Finance Director. If, however, the requested change is in Cash Receipting the Town Clerk's office shall make the needed adjustments prior to posting.

12. CHART OF ACCOUNTS

Policy: The Town shall use a chart of accounts to maintain, track and record department expenses and revenues in a consistent and comparable manner. The chart of accounts shall be compatible with the needs of both budgeting and financial planning.

Procedure:

12.1 Finance Director Responsibility.

The Town chart of accounts is maintained by the Finance Director. It shall provide for a consistent way of tracking revenues and expenses across departments through a common numbering system. Any changes to an account shall be made by the Finance Director.

12.2 Requested Changes.

Departments shall submit any request for changes to accounts to the Finance Director for consideration and modification.

12.3 Records Grants and Programs.

(a) Grants or programs outside of the annual budget are not included in the chart of accounts.

(b) Revenues and expenses associated with grants or programs shall be maintained in the appropriate department budget.

(c) The Finance Director shall monitor grants or other program accounts on a monthly basis.

12.4 Journal Entries.

Any journal entries that are needed outside of normal transactions shall be completed solely by the Finance Director or designee. All journal entries shall be maintained in paper form for at least seven (7) years.

13. PERIODIC RECONCILIATION AND VERFICATION

Policy: It is important that related accounting records be compared periodically. At a minimum, all Town accounts shall be reconciled and verified on a monthly basis, or more often as may be appropriate. This review shall also include the financial reports of the Library

Committee which holds funds in a trust and should, therefore, be subject to appropriate checks and balances as are other Town assets. Monthly bank reconciliations are a crucial part of preventing fraud and maintaining accurate records of the financial stability of the Town.

Procedure:

13.1 Internal Reconciliation and Verification.

(a) *Monthly Revenue/Expense Reports to Departments.* The Finance Director shall provide each Department Head with monthly expense and revenue reports relating to their department. Periodically, but at least monthly, all revenue and expense reports, shall be reviewed by the responsible Department Head, Finance Director, and Town Manager (if necessary). On a quarterly basis the Town Manager and Finance Director shall meet with each Department Head to discuss their current budget standing.

(b) *Bank and Investment Accounts.* The Finance Director shall reconcile all bank and investment accounts on a monthly basis. The reconciliation shall include an examination of canceled checks as well as a review of bank statements in comparison to the general ledger accounts. This shall be completed within 30 days of the month end, unless prior approval from the Town Manager has been received.

(c) *Other General Ledger Accounts.* The Finance Director shall be responsible for the reconciliation of all other general ledger accounts, excluding reconciliation of taxes. Taxes shall be reconciled by the Tax Collector on a weekly basis and reports shall be provided to the Finance Director. Reconciliation reports shall be maintained by the Finance Director for the entire fiscal year until an annual audit is complete.

(d) *Library Funds—Monthly Reports.* Within 20 days of the end of each month, the Treasurer of the Library Committee shall provide the Finance Director with a report of all accounts held by the Library Committee.

13.2 Bank Reconciliation and Verification.

(a) *Monthly Reconciliation.* The Finance Director shall, within 30 days from the end of each month, reconcile every bank account maintained by the Town against the trial balance.

(b) *Discrepancies.* Discrepancies may be reconciled through assistance with the Town's auditor and discussions with the bank.

(c) *Questionable Transactions.* If, during the reconciliation process, the Finance Director discovers a transaction that is not valid, the Finance Director shall immediately report these findings to the Town Manager for immediate action.

(d) *Sign-off.* Once the reconciliation(s) has been completed by the Finance Director, the Finance Director and the Town Manager shall sign off on the reconciliation.

(e) *Record Retention.* Reconciliation records shall be maintained by the Finance Director for seven (7) calendar years.

13.3 Reconciliation Discrepancies and Investigations

(a) *Discrepancies*. The Finance Director shall report any reconciliation discrepancies to the Town Manager. The Town Manager shall, in turn, report to the Select Board any discrepancies of a significant nature, whether amount, frequency or nature of the discrepancy. In any event, when the Town Manager believes that the Finance Director may be at the cause of the discrepancy, the Town Manager shall report same to the Select Board. If the Finance Director believes that the Town Manager is the source or cause of the discrepancy, the Finance Director shall report same to the Select Board.

(b) *Investigations*. The Town Manager or the Select Board may initiate an investigation, consistent with the Town Charter. If the discrepancy involves the Town Manager, the Select Board shall initiate the investigation.

(c) In the event that personnel action is appropriate, it shall be taken as soon as possible and consistent with the Town's Personnel Policy.

14. RESERVE FUND & RESERVE ACCOUNTS

Policy: The purpose of reserves is to set aside funds for specific projects, acquisitions, renovations, or reconstruction of capital improvements, capital equipment or paying a funded debt, in accordance with 30-A M.R.S.A. §5801. Each reserve account shall be established or eliminated by the Select Board.

Procedure:

14.1 Select Board Established Reserves.

Reserves shall be established in accordance with the Reserve Account Policy as adopted or amended by the Select Board.

14.2 Reserves Established for a Specific Purpose.

After conferring with and through coordination with the Town Manager, a Department Head may recommend to the Select Board the establishment of a reserve account. The Department Head shall state the purpose of the account and specify how the account will be funded.

14.3 Select Board Approval Required.

(a) The Select Board shall review any requests for the establishment of a reserve account and either approve or deny the request based on the criteria outlined in the Reserve Account Policy.

(b) If approved, the Select Board shall decide whether to place a limit on the amount of funds that can remain in the reserve.

14.4 Finance Director Required to Manage Reserves.

(a) *Monitor Reserves*. The Finance Director shall monitor the reserve accounts and ensure ongoing compliance with the Reserve Account Policy.

(b) *Report Reserves*. As part of the budget process the Finance Director shall report on the status of all reserve accounts, including the current balance.

14.5 Expenditure of Reserve Funds.

(a) *Expenditures of $2,000 or More*. Any expenditure from the reserve funds in the amount of two thousand dollars ($2,000) or more shall require approval by the Select Board.

(b) *Expenditures of Less than $2,000*. Use of reserve funds in an amount less than two thousand dollars ($2,000) shall be subject to approval by the Town Manager.

14.6 Five-Year Capital Expenditure Plan.

Annually the Town Manager shall submit to the Select Board a five-year capital plan for the use of the Town's reserves. This plan may be issued as part of the annual capital improvement plan submitted by the Finance Director and Town Manager in preparation of the annual municipal budget process.

15. INVESTMENTS

Policy: The Town has an established Investment Policy and shall endeavor to maintain that policy with the help and guidance of an appointed Investment Committee. The Investment Policy addresses the methods, procedures and practices, which must be exercised to ensure effective and judicious fiscal and investment management of the Town's funds. All Town investments and policies shall conform to applicable statutes and regulations.

Procedure:

15.1 Duties of Town Treasurer.

The Town Manager is also the Town Treasurer, charged with the responsibility of managing the Town's investments. According to state statute the Treasurer is authorized to delegate those duties to another with the consent and approval of the Select Board.

15.2 Select Board Appoints Investment Committee.

(a) The Select Board shall annually appoint a Board liaison to work with the Investment Committee.

(b) The Finance Director shall be designated by the Treasurer as the Town liaison to the Investment Committee.

(c) The Investment Committee shall be appointed by the Select Board, operate under approved bylaws, and in accordance with state statutes and regulations.

15.3 Accounts Reconciled Monthly.

(a) The Finance Director shall receive monthly investment statements and portfolio reports.

(b) The Finance Director shall provide the Investment Committee with a copy of the investment report, an in-house investment accrual report of all investments as well as a copy of the portfolio provided by the investment banking institution.

(c) The Finance Director shall reconcile the account on a monthly basis to the general ledger and all investment accounts shall be updated. This process shall be completed within 30 days from the end of the prior month.

15.4 Investment Strategies Reviewed Periodically.

(a) The Investment Committee shall periodically review the investment portfolio to make sure the investments are being managed as directed by the Town.

(b) The Investment committee shall periodically meet with the investment banking institution representative to make sure the Town's investments are managed in the Town's best interest.

16. FINANCIAL REPORTING

Policy: The Town Manager shall have in place systems that ensure the collection and compilation of the data needed for the timely and accurate preparation of financial statements.

Procedure:

16.1 Reports to the Town Manager.

(a) The Finance Director shall provide the Town Manager with a current trial balance and municipal budget expense and revenue report, on a monthly basis, or more often if directed.

(b) The Finance Director shall review all reports prior to submission and specify any concerns, in writing, to the Town Manager.

16.2 Reports to Department Heads.

(a) The Finance Director shall provide all Department Heads and, if necessary, committee chairs, their respective municipal budget expense and revenue reports monthly.

(b) The Town Manager and Finance Director shall meet with Department Heads, as necessary, to discuss any concerns that may have been brought to the Town Manager's attention. Action shall be taken, as appropriate, to correct or alleviate those concerns.

16.3 Reports to Select Board.

(a) The Finance Director shall provide current budget reports to the Select Board at least quarterly. The financial reports shall include a detailed explanation of the reports and specify any concerns.

(b) The reports shall also be provided to the Town Manager and posted to the Town website.

17. FRAUD – ZERO TOLERANCE POLICY

Policy: The Town's goal is to establish and maintain an environment of fairness, ethics and honesty for its employees, citizens, vendors and anyone else with whom the Town has a relationship. The Town has a zero-tolerance policy regarding fraud—and is committed to the deterrence, detection and correction of fraudulent conduct, misconduct and dishonesty.

Commented [DH2]: Megan I did some formatting here – please note that up through 17.5 the formatting is correct and this is the line-up that should be throughout the document. Starting with 17.6 again it is not correct nor is it correct up to this point. I would use 17 through 17.5 as the guide throughout the document.

17.1 Prohibition and Deterrence.

Policy: All elected officials, appointed committee/commission/board members and employees of the Town, as well as any individual entity doing business with the Town, are prohibited from engaging in fraudulent conduct in the course of their employment, duties or business relations with the Town. The Town's system of internal controls is designed to provide reasonable assurance for the prevention and detection of fraudulent conduct, and other similar irregularities.

Procedure:

All new employees are subject to background investigations and criminal background checks. Prior to making an offer of employment, the Town shall verify a prospective employee's employment history, education, personal references and previous employers.

17.2 Report of Fraud, Theft or Irregularities.

Any time an indication of fraud, theft or other irregularities of municipal financial accounts is discovered, it shall be immediately reported as follows:

(a) *Employee Reports Fraud to Department Head.* If an employee suspects fraud or witnesses a fraudulent act, the employee shall report the incident to the employee's Department Head.

(b) *Employee to Report Department Head Fraud to Town Manager*. If an employee

has reason to believe their Department Head may be involved in the inappropriate activity, the employee shall report the incident directly to the Town Manager.

(c) *Employee Refrains from Further Action.* The reporting employee shall refrain from further investigation of the incident, confrontation with the alleged violator or further discussion of the incident with anyone, unless specifically requested by the Town Manager.

(d) *Department Head Reports Fraud to Town Manager*. If a Department Head suspects an employee under his/her supervision, an employee in another department or another Department Head of wrongdoing, he/she shall report the suspected fraudulent activity directly to the Town Manager.

(e) *Fraud by Town Manager reported to Select Board.* If anyone suspects the Town Manager of fraud, a member of the Select Board shall be contacted, and an immediate Executive Session of the Select Board shall be held.

(f) *No Retaliation for Reporting Fraud.* An employee reporting a suspected act of fraud; or assisting, testifying or participating in a fraud investigation, acting in accordance with these Policies & Procedures, shall not be subject to any Adverse Employment Action unless it is determined that the employee made the allegation knowing it to be false.

17.3 False Allegations.

Any attempt by an employee to make false allegations against another with the intent to disrupt or cause harm shall be subject to disciplinary action, up to and including termination of employment.

17.4 Investigation of Fraud.

Commented [DH3]: Delete the italics on the subsection letters.

(a) *Town Manager Investigation.* The Town Manager shall be responsible for investigating allegations of fraud, unless he/she is subject to investigation for fraudulent activities.

(b) *Select Board Investigation.* The Select Board may undertake an investigation into any department, based on allegations of fraud or for other reasons as set forth in the Town Charter. However, the Select Board shall undertake such investigation of allegations of fraud are made against the Town Manager.

(c) *Report to Law Enforcement.* The Select Board shall report, or cause to be reported, the incident to law enforcement, depending on the seriousness of the allegation and/or the findings of the Town Manager's or the Select Board's

investigation.

(d) *Investigation by Law Enforcement or other Outside Authorities.* Nothing in this section shall prevent the Town Manager, with approval of the Select Board, or prevent the Select Board from contacting law enforcement or other external authorities for the purpose of conducting an investigation.

17.5 Confidentiality.

All investigations shall be conducted in confidence insofar as reasonably possible, consistent with statutes, regulations and the Town Charter.

17.6 Corrective Action.

(a) *Personnel Action.* In the event the offender is a Town employee, the Town Manager or Select Board, as the case may be, shall take immediate action in accordance with the Town's Personnel Policy, including termination of employment.

(b) *Third Parties.* All other persons or entities that are found to have engaged in fraudulent activity, shall be removed from the applicable committee, commission or board or be subject to suspension by the Town from future business transactions for a specified period of time.

(c) *Select Board Misconduct.* In the case of a Select Board member involved in fraudulent activity, pursuit of any action shall be in accordance with Maine statutes and the Town Charter.

(d) Appropriate cases shall be referred for possible prosecution.

(e) *Recovery of Loss*. In cases involving monetary loss to the Town of Rockport, the Town Manager and Select Board shall pursue every reasonable effort, including court-ordered restitution, to obtain recovery of Town losses from the offender or other appropriate sources, unless cost of such recovery would exceed the recovered amount.

18. ACCOUNTING – SOFTWARE AND TECHNOLOGY

Policy: A computerized accounting system makes financial operations faster, more accurate, allows for the automatic generation of financial reports and allows officials to see the real-time state of the Town's financial position.

Procedure: The accounting software required of the Town shall be customized for municipal requirements, and shall provide timely recording of financial transactions, easy viewing of transaction data, and timely creation of financial reports. The software shall have the capability of performing necessary Town functions, including but not limited to:

- Record Town revenue, including tax payments;
- Assist the Town in the payment of Town expenses;
- Calculation of the Town's weekly payroll;
- Producing tax billing and assessments;
- Provide necessary financial reports;
- Preparation and management of the annual budget; and
- Capital asset accounting, accounts receivable and other necessary requirements of running a medium sized municipality.

18.1 Access to Software System.

Policy: To prevent accidental or intentional changes to data, access to financial records shall be limited to those who require specific access.

Procedure:

(a) *Finance Director as Administrator*. The Finance Director shall serve as the system administrator, having the authority and responsibility to provide personnel with access to only those programs pertinent to their job requirements.

(b) *Passwords*. Passwords shall be used to protect all financial information. Passwords shall be changed regularly and not shared with other officials or employees.

18.2 IT and Internet Security.

Policy: The Town shall use Best Practices to maintain a high level of IT and internet security to protect the Town's assets. Procedures shall be established and maintained to ensure adequate systems and processes are in place to secure financial and other data. Management shall ensure that plans are in place to allow the Town to continue to provide services even in the event of a disaster.

Procedure: IT personnel and management shall make every effort to secure the Town's computer network, which may include but is not limited to:

- Installing and maintaining a network firewall;
- Installing and maintaining anti-malware software;
- Regularly patching and updating internet browsers, Adobe, Java and/or others as needed;
- Protecting the network by blocking connections to irrelevant websites, external e-mail providers and social media websites, as necessary;

- Using security validation for internet banking;
- Using caution surrounding e-mails from unknown sources that include attachments, links and downloadable files; and
- Developing a disaster recovery plan to include contracted IT services.

18.3 Response to Security Breach.

Policy: In an effort to mitigate damage to the Town's IT network or an invasion of Town assets, the Town shall develop an incident response plan to prevent expansion of a security breach once detected.

Procedure: The Town Manager shall ensure that employees receive adequate training, including but not limited to the:

(a) Requirement to notify supervisors of any suspicious activities on Town equipment; and

(b) Necessity of appropriate, fast and effective response to minimize any loss of Town assets.

18.4 Electronic Backups and Safekeeping of Non-Electronic Records.

Policy: The Town shall use Best Practices to maintain the security and safety of the computer system(s) on which the Town operates its financial software. The Town shall use best efforts to safeguard all non-electronic Town records and comply with applicable record retention schedules.

Procedure: The Town Manager shall ensure that procedures for the following are in place:

(a) *Secure System.* Virus protection software shall be installed as it becomes available;

(b) *Live Backup.* The Town shall provide a live vault backup system that backs up the financial data every 20 minutes and shall schedule full back-ups to run each night;

(c) *Backup Testing.* Periodically, the back-ups shall be tested to make certain data is being backed-up correctly and data can be used from the back-up if it is necessary to restore the accounting system;

(d) *Off-Site Backup.* If, and to the extent available, the Town shall backup financial data to an off-site location;

(e) *Non-electronic Records.* The Town shall endeavor to safeguard all non-electronic records in a safe and secure environment, protected against environmental dangers; and

(f) *Record Retention Schedules.* The Town shall retain electronic and non-electronic records for the periods of time specified by statute, regulation or guidelines applicable to Town records.

19. DISTRIBUTION OF MAIL AND CASH COLLECTIONS

Policy: The Town receives and deposits substantial amounts of cash daily, weekly and annually in carrying out the various functions of the municipality. These operations shall be carried out efficiently and expeditiously with adequate financial control and accountability. The Town Manager shall be responsible for establishing and maintaining adequate processes for safeguarding cash and ensuring all funds are deposited in a timely manner.

Procedure:

19.1 Distributing Mail.

It shall be the responsibility of the Town Manager's Executive Assistant to receive and distribute the mail on a daily basis. If the Executive Assistant is out of the office, the Town Manager shall be responsible for receiving and distributing the mail or designating another employee to do so.

19.2 Processing Mail.

(a) All cash received via mail shall be processed the same day. In the event this is not possible the Town Clerk/Tax Collector shall notify the Town Manager in writing and, if approved, shall be processed the next business day.

(b) During periods of high volume, such as tax season, the Town Clerk/Tax Collector may (and shall, if directed by the Town Manager) request the assistance of other properly bonded employees, such as those in the Finance Department, to help process mail. Additionally, the Town Clerk/Tax Collector may request from the Town Manager a standing exception from the daily processing requirement during the high-volume period until the mail backlog is expeditiously resolved.

19.3 Processing Funds Received.

All cash received by the Town shall be processed through the Town's accounting software system.

19.4 Town Clerk/Tax Collector Responsibilities.

The Town Clerk/Tax Collector shall be responsible for overseeing the receipt of payments made to the Town for real estate and personal property taxes, excise taxes, permits, licenses, and other miscellaneous payments.

19.5 Payments at Other Town Locations.

(a) *Same Day Delivery to Town Clerk.* Other Department Heads and other Town locations may receive monies for payment of services, donations, or sales of

merchandise. Cash received on the Town's behalf shall be forwarded to the Town Clerk/Tax Collector the same day received. In no event shall cash be retained or placed in another location without being processed the day of receipt, unless previously approved by the Town Manager.

(b) *Receipt for Delivery of Cash.* When a department delivers cash and cash receipting reports to the Town Clerk's office the receiving employee shall provide the department a written, numbered receipt for the cash received. The receipt shall be signed by both the delivering and receiving employees.

(c) *Non-Routine Payments.* The Finance Director shall be consulted about any non-routine payments to ensure they are deposited to the appropriate account.

19.6 Opera House and Parks & Recreations Rental Deposits.

The Town generates income from the rental of Town properties that include the Opera House building and various parks throughout the Town.

(a) *Scheduler Responsibility*. The scheduler is required to manage the rentals and collect all fees associated with the rental.

(b) *Nature of fees.* The fees shall include a security deposit as well as rental fee that includes a minimum two-hour rental.

(c) *Fees Collected in Advance of Event.* All fees are to be collected in advance of the event for the expected number of hours the facilities or parks are to be rented.

(d) *Receipts for Fees.* Upon receipt of these fees, the scheduler shall provide the renter with a written receipt; receipts to be issued in sequential order.

(e) *Delivery of Fees to Finance Director*. Within a day of receipt, the scheduler shall provide the Finance Director or designee with the receipt; funds collected; name and address of the renter; date, time and place of the event, as well as the anticipated review of the facility, after which the security deposit can be returned if facilities are left in good condition.

(f) *Refund of Fees.* Should the facilities be rented for less time than anticipated but no less than two hours, the renter shall be refunded the difference.

(g) *Refund of Security Deposit.* Upon confirmation that the renter left the facility or park in good condition, the security deposit shall be requested by the scheduler within seven (7) days of the event.

(h) *Refunds Through Accounts Payable Process*. Any refund as provided in subsection (f) and (g) above, shall be released to the renter through the accounts

payable process.

19.7 Use of Separate Cash Drawers.

(a) *Use Only Assigned Cash Drawer*. The Town Clerk/Tax Collector and staff collect and process cash transactions by using individual cash drawers. Clerks shall only use their assigned cash drawer to process transactions and not mix monies or transactions with another clerk's cash or transactions. If change needs to be made from one drawer to another, a second individual shall verify and sign off on the process.

(b) *Other Departments.* All other departments that collect money shall have separate cash drawers.

19.8 Change Funds.

Policy: Certain offices shall have access to change funds to provide change when necessary. The Town does not permit petty cash on hand. All Town purchases shall be done using a Town credit card, store credit card, store charges, or through the accounts payable process.

Procedure:

(a) *Reconciling Cash Drawers/Change Funds.* When reconciling cash drawers, the change funds must be subtracted from the receipts to properly account for the monies received.

(b) *Discrepancies.* Any discrepancies in the cash drawers/change funds shall be immediately reported to the employee's Department Head and the Finance Director. The Finance Director shall inform the Town Manager, if necessary, depending on the circumstances and/or amount of discrepancy.

(c) *Amount of Change Funds.* The change funds assigned to each office may vary in total but the amount for any one location shall remain constant. The amount of change funds shall be as follows;

(i) **Town Clerk Change Funds**

Town Clerk - $70.00
Deputy Town Clerk - $70.00
Assistant Town Clerk - $70.00
Other change funds stored in the vault - $150.00

(ii) **Harbormaster Change Funds**

Harbormaster - $50.00

Deputy Harbormaster - $50.00
Park Attendant - $50.00

(iii) **Library Change Funds**

A single cash draw - $50.00

(iv) **Police Department Change Funds**

A Single cash draw - $50.00

19.9 "For Deposit Only" Stamp and Acceptable Checks.

(a) *For Deposit Only Stamp.* A "For Deposit Only" stamp, including the Town's bank account number, shall be created for each cash account entrusted to the Town. After reviewing each check's printed information to include bank routing and account number, name, address, telephone number, that the check has a current date (no post-date or stalled date), and the payee is the "Town of Rockport," each check received shall be stamped with the "For Deposit Only" stamp immediately during the transaction process.

(b) *No Third-Party Checks.* Third party checks shall not be accepted as payment.

(c) *Prohibition Against Cashing Checks.* Checks shall not be cashed by the Town. The prohibition on check cashing includes but is not limited to: payroll checks, accounts payable, travelers' checks, and personal checks.

(d) *Overpayments Through Accounts Payable.* Overpayment of goods, taxes or services provided for payment shall be refunded by the accounts payable process.

(e) *Returned Checks.*

(i) Returned checks for insufficient funds will be assessed a fee as soon as the check is returned. The Finance Director shall be notified as soon as the check is returned and advised of the nature of the services for which the check was initially accepted. If the check was for a tax payment or other Town service, the payment must be reversed out of the system the day the check is returned. If the check was for a State service, the appropriate Town personnel shall follow the process provided by the State, however the return check fee shall be assessed.

(ii) The Town Clerk/Tax Collector shall attempt to locate the check writer to advise him/her of the uncollectable funds and to seek alternative means of collecting the fees due.

(iii) If the funds are uncollectable after three (3) attempts to obtain

payment, then appropriate authorities shall be notified as warranted.

20. ONLINE TRANSACTIONS

Policy: The Town accepts debit and credit card both on-site at designated customer counters and online using the Town's website. Debit and credit card payments are allowed for various Town payments including tax bills.

Procedure:

20.1 Credit Card Transactions

(a) *Credit Card Processor*. The Town contracts with Maine PayPort as the credit card processor.

(b) *Same Process as for Cash.* Credit card transactions shall be handled in the same manner as cash or check transactions.

(c) *Numbered Receipts.* The payee shall receive a numbered receipt as well as a slip to sign for the actual credit card transaction (this may be the same receipt slip).

(d) *Processing Fees.* The individual making the payment shall be responsible for any credit card processing fees and shall be notified of this responsibility at the time of the transaction.

(e) *Include Phone Number and Address.* The current system requires the processor to input a phone number and address for the card owner, which shall be done on every transaction.

21. DOCUMENTATION FOR RECEIPT OF FUNDS

Policy: The Town Manager shall be responsible for developing policies and procedures that provide for the accurate and proper accounting of all funds received by the Town in a manner that minimizes risk and enhances accountability.

Commented [DH4]:

Commented [DH5R4]: We don't need to reference consistent with these Policies and Procedures as this is merely a statemen of policy.

Procedure:

21.1 Numbered Receipts.

Each monetary transaction shall require a numbered receipt.

21.2 Receipts Provided by Town Clerk/Tax Collector.

The receipt provided by the Town Clerk/Tax Collector and staff shall be generated by the accounting software system when logging payments. The accounting system numbers each receipt sequentially.

21.3 Receipts from other Departments/Locations.

Other departments, excluding the Opera House, that accept cash shall follow the same process as the Town Clerk/Tax Collectors office. For the Opera House, upon receiving funds, the Opera House Manager shall record the receipt of the funds, and turn said funds over to the Finance Department for tracking, then the Finance Department will provide said funds to the Clerk's office for deposit.

Commented [DH6]:

Commented [DH7]: If we are excluding the Opera House we need to say how they are treated.

Commented [DH8R7]:

21.4 Documentation of Transaction.

Each transaction shall be documented and recorded at time of transaction and funds placed immediately in a locked cash drawer.

22. DAILY CASH-UPS

Policy: Cash-ups for all Town employees accepting money shall be done on a daily, before the employee completes the work day. Deposits shall also be made daily. Incoming checks shall be stamped "For Deposit Only" with the Town's bank account number printed on the check.

Commented [DH9]: Megan, per Ron, I changed "on a nightly basis" to "daily."

Commented [DH10]: I added the word "also" here to highlight that cash-ups and deposits are two different things.

Procedure:

22.1 Daily Cash-Ups.

In preparing the daily cash-up, each clerk or person collecting cash shall reconcile their own cash collected with their teller cash receipting report and shall initial the report. Should any errors come up will reconciling the individual reports, the individual shall correct the issue prior to submitting the report for final reconciliation. Ex: if a customer comes in and pays with a check, we reverse the transaction as if it was cash, the reversal needs to be corrected to indicate that it was paid by check.

22.2 Delivery of Cash-ups and Teller Reports.

Once the individual has completed their own cash-up, they shall provide all monies collected and the teller cash report to the Town Clerk's designee (alternating between Deputy Town Clerk and Assistant Town Clerk on a monthly basis).

22.3 Deadline for Cash-ups/Teller Reports to the Town Office.

If a department outside of the Town Office is collecting funds, they need to have their completed teller cash-ups to the Town Clerk's Office by 4:30 pm every day. The cash shall be handed over to the Town Clerk's designee, who shall provide the department with a signed, dated, and numbered receipt for the cash received. These receipts shall be maintained for a minimum of one year, or until that year's fiscal audit has been completed.

22.4 Final Close-out Process.

Once all reports have been received by the Town Clerk's designee, the final close out process shall begin. The Town Clerk's designee shall review all of the teller reports to ensure that they match the cash received. The Town Clerk's designee shall provide their individual cash-up to another person to be verified before completing the final closeout

process. Once all receipts and teller reports have been verified the reports shall be closed out.

22.5 Delivery of Cash for Deposit.

All cash and deposit slip shall be put in a locked bag and provided to a Police Officer to deliver to the financial institution's nightly drop box.

22.6 Checks Electronically Deposited.

(a) Any checks received shall be processed through the electronic check system on a nightly basis after the daily cash-up has been completed. This process shall be completed by the Town Clerk's designee who performs the final close-out process.

(b) Once the checks have been submitted online, the Finance Director shall review, and if appropriate, approve the transaction.

(c) The Town Clerk shall maintain the scanned checks for a period of seven (7) days to ensure that the deposit was properly made and recorded

22.7 Summary Provided to Finance Director.

The Town Clerk's designee shall provide a copy of the cash-out summary to the Finance Director. This summary shall include the signatures of both the Town Clerk and the Town Clerk's designee responsible for processing the close-out. Once this verification has been received, the Finance Director shall post the journal to document the appropriate accounts.

22.8 Library Cash-Ups.

(a) *Desk Funds Counted Daily*. Donations are often made to the library in the form of coins, cash or checks – sometimes called "desk funds. " On a daily basis, the desk funds shall be counted and verified.

(b) *Receipts When Possible*. Because donors are often anonymous it may not be possible to provide receipts for the funds donated. However, whenever the donor is known a cash receipt shall be issued.

(c) *Weekly Deposits.* The desk funds shall be verified daily and deposited on a weekly basis. The deposit report shall be given to the Library Committee Treasurer for deposit into the library's cash donation account.

(d) *Copies to the Finance Director*. Copies of the desk funds report and of the deposit shall be forwarded to the Finance Director.

(e) *Bank Statement Copied to Finance Director*. A copy of the bank statement in

which these funds were deposited shall be forwarded monthly to the Finance Director – no later than the 15th of the month.

(f) *Discrepancies.* Any discrepancies in the account shall immediately be relayed to the Finance Director. Discrepancies and investigations shall be handled in the same manner as other discrepancies and investigations as set forth in 13.3 of these Policies & Procedures.

23. ONLINE BANKING

Policy: Personnel in the Finance department regularly use online banking for payroll direct deposit and management of the Town's cash accounts. This method of banking provides efficiencies and other benefits and the Town encourages its use. Online access shall be restricted to the Finance Department, the Town Clerk's office and the Town Manager.

23.1 Limited Access.

The Finance Director shall provide limited online access to the Town Clerk and the Town Clerk's designees for the purposes of making online deposits.

23.2 Monitoring of Online Accounts

The Finance Director shall monitor the Town's cash accounts daily to detect any unusual activity. If unusual activity is detected, the bank shall be contacted immediately, and the Town Manager notified in writing of any breach.

23.3 Other Online Deposits.

(a) *Deposits from Other Entities.* Periodically, funds from other entities such as the State of Maine are deposited directly into the Town's cash accounts.

(b) *Documentation of Deposits.* Once notification of these deposits has been received by the Finance Director and funds have been recorded in the Town's bank account, the Finance Director shall make the appropriate journal entries within seven (7) days of receipt.

(c) *Receipt of Deposit.* A copy of the receipt from *Paymode Payment Processing* shall be affixed to the journal postings.

24. DONATIONS

Policy: Funds donated to the Town, other than those designated for Legacy Rockport, shall be subject to approval by the Select Board.

Procedure:

(a) *Record Donation.* When a donation is received the check shall be given to the

Finance Director to record in an excel spreadsheet that the donation has been received, the date received, the purpose of the check, and the account that it shall be deposited to once Select Board approval has been received.

(b) *Select Board Approval Process*. The Finance Director shall notify the Town Manager's Executive Assistant of the donation and request that the item be placed on the next Select Board Agenda.

(c) *Placement of Check in Secure Location.* The check shall be given to the Town Clerk to secure in a locked money bag in the vault.

(d) *Check Deposit.* Once the donation(s) have been approved by the Select board, the Town Clerk shall deposit the donations the next business day, into the account designated by the Finance Director.

(e) *Receipt of Deposit.* The Town Clerk shall provide the Finance Director with a copy of the receipt for the deposit.

25. GRANTS AND PROJECTS

Policy: Periodically, the Town receives grant funding for various Town projects. Grants help the Town in updating infrastructure improvements with cost sharing that greatly benefits the community. Grants may require Town matching funds, in-kind matching contributions or no contributions whatsoever.

Procedure:

25.1 Effect on Cash Flow.

The Finance Director shall be apprised of any grant the Town seeks in order to assess the potential effect on the Town's ability to fund up-front costs. Informing the Finance Director of potential grants will permit the Finance Director to appropriately plan and manage the grants finances once a grant has been awarded. Upon award of a grant, copies of grant documents shall be immediately forwarded to the Finance Director.

25.2 Terms and Conditions.

The Town Manager, Finance Director and other interested parties shall meet prior to implementation of any grant to ensure that the Town's financial obligations or in-kind contributions can be met.

25.3 Matching Fund Requirements.

Each grant awarded to the Town carries its own standards, methods of accounting and matching fund requirements. The Town Manager, Finance Director, Planner (whenever applicable) and Department Head involved in a particular grant shall work together to

ensure any matching fund requirements of the grant are met.

25.4 Budgeting for Grant Matching Funds.

Whenever possible the Town shall budget matching funds required of grants used to improve the Town's infrastructure or to purchase equipment.

25.5 Reserves Used for Grant Match.

There may be times when established reserve funds can be used toward a match for a grant. To use grant funds as matching funds for a grant the reserve fund's purpose must be that for which the grant has been obtained. Use of any reserve should follow the standards outlined in the Reserve Policy.

26. ACCOUNTS RECEIVABLE PROCESS

Description: Accounts receivable is a claim for payment held by the Town against a resident or customer for goods supplied or services rendered. Generally, the Town issues an invoice for the request of payment for items which the Town provided but did not immediately receive compensation. An invoice is created billing the person or company for the service and an accounts receivable is created, meaning the Town is due the fees created by the invoice.

Procedure:

26.1 Recording Accounts Receivable.

The Town infrequently records invoices as accounts receivable, there are not many receivables generated during the year. Rather, when the Town receives money from invoices generated by the Town, the funds received are directly entered as revenue in the appropriate department. However, at the close of the year, any outstanding invoices do get created as accounts receivable, which recognizes the revenue in the correct year but acknowledges the cash receipt at the time the money is collected.

26.2 When Cash Received is Recorded as Accounts Receivable.

In the first few months of a new fiscal year, rather than recording funds received directly into revenue accounts, money received for a prior year's revenue shall be recorded as an accounts receivable.

26.3 Keep and Aging List.

Because accounts receivable is most frequently utilized during the end and beginning of a fiscal year, the Finance Director shall monitor the accounts receivable general ledger account and reconcile the account as required to make sure that the Town receives all funds that are due and payable to the municipality. This may require the maintenance of an aging accounts receivable list.

26.4 Revenue Written Off.

If it is determined that an item previously recorded as an accounts receivable cannot be collected, the revenue may be written off with the permission of the Town Manager

(excluding all tax accounts).

26.5 Commitment of Taxes are entered as Taxes Receivable.

(a) At the time of commitment, taxes due from residents are entered as taxes receivable.

(b) Payments made by residents are credited to their tax accounts upon receipt of payment.

26.6 Reconciled Monthly.

The Finance Director shall monitor the accounts receivable and reconcile the account monthly.

27. ACCOUNTS PAYABLE PROCESS

Description: The accounts payable process requires the collection of invoices and vendor documentation to pay vendors that are owed money from the Town. The accounts payable process starts with Department Heads who are responsible for providing the finance department with invoices from vendors that provided goods and/or services to the Town.

27.1 Required Proof of Insurance or Verify Independent Contractor.

Maine statutes, at Title 39-A M.R.S.A. § 13-A, distinguish between employment and independent contractor status. Any vendor providing a service(s) to the Town is required to provide proof of workers' compensation insurance or verification from the Maine Workers' Compensation Commission that they have received their independent contractor status. A vendor that provides services to the Town regularly shall be required to update this information annually.

27.2 Require W-9 for All Vendors.

All vendors doing business with the Town are required to provide a completed W-9 with the Town. The Internal Revenue Service (IRS) annually updates the W-9 which can be obtained on the IRS website, or the Town may provide a copy to vendors. The IRS does not require the use of the W-9 form but does require the information to be gathered about vendors as requested on the form; and requests the information be updated annually. Therefore, the Town requires that all vendors doing business with the Town have a completed, valid and updated W-9 form on file.

27.3 Payment Based on Original Invoice.

The Town requires that payments be issued based on an original invoice. Generally, copies of invoices are not used to process payments because it leaves open the possibility of invoices getting paid more than once or being altered. Shipping labels, packing lists and statements alone are not used for verification purposes in determining that the Town

owes a vendor money for services rendered or equipment and/or supplies purchased.

27.4 Department Head Coding.

(a) *Department Head to Review Invoices*. Each Department Head shall review and approve all invoices for their department prior to submitting the invoice to the finance department for payment.

(b) *Coding to Chart of Accounts.* Each Department Head shall properly code each invoice (using the chart of accounts and numbers assigned to specific departments as indicated in the annual municipal budget) noting where the funds are to be taken from.

(c) *Department Head Approval.* Department heads shall initial the invoice as proof that the Department Head has reviewed and approved the expenditure for payment.

(d) *Exceptions for Routine Bills*. Exceptions to this subsection include bills that are regularly paid on a monthly basis, e.g., electricity, water, monthly web hosting, and security alarm fees.

27.5 Finance Director to Review Invoices Submitted for Payment.

Once the Department Head submits an invoice for payment, the Finance Director shall review the invoice to ensure the coding is correct and that the Department Head has signed off on the invoice.

27.6 Pre-Numbered Checks.

To ensure that all checks are properly accounted for, the Town shall purchase and use pre-numbered checks for all checking accounts. When using a check, it shall be recorded in the check record book maintained in the finance office.

27.7 Unused Checks.

All stock checks or unused checks shall either be stored in a locked cabinet under the control of the finance office or in the Town vault.

27.8 Voided Checks.

If for any reason a check needs to be voided, the voided check shall be recorded in the check record book and then shredded, unless it was returned or stopped, at which point it shall be maintained with the journal posting for that check.

27.9 Review and Approval of Warrants.

The Finance Director, Town Manager and a Select Board designee shall be responsible

for reviewing and approving the warrant and any supporting items. Each shall affix their signature to the warrant once it has been approved.

27.10 Filing Invoices.

Once the warrant has been approved by both the Town Manager and the Select Board designee, the invoices, along with the check stub attached, shall be filed in the finance office and maintained for seven (7) fiscal years.

27.11 1099's

It is the responsibility of the Town to issue 1099s to any business as required by IRS regulations. This shall be completed by the Finance Director no later than January 31st of the year following the year when the payment was made.

28. PAYROLL

Description: Payroll is the process by which employees are compensated for the week previously worked. The standard work week is Friday through Thursday, with the weekly pay date being on Friday. Employees shall be paid on a timely basis in accordance with time worked and benefits provided.

28.1 Weekly Payroll.

Payroll shall be processed on a weekly basis (typically on a Friday) by the finance department.

28.2 Time Sheets.

(a) *Timecards Required.* All hourly employees shall submit a completed timecard showing the hours worked including start time, end time, break times and any time that was taken off. Exempt employees shall complete the "Exempt Timecard" showing any time that was taken off. All timecards shall be completed to the standards issued by the Department of Labor.

(b) *Falsification of Timecards.* Falsification of timecards may result in disciplinary action, including termination.

(c) *Timecard Approval.* Timecards shall be signed by both the employee and the employee's direct supervisor.

(d) *Deadline to Submit Timecards.* All timecards are expected to be in the finance office by 9 a.m. Friday morning.

28.3 Payroll Spreadsheet Preparation.

(a) *Payroll Spreadsheet.* The Finance Payroll Clerk shall review all timecards and complete the payroll spreadsheet for all employees.

(b) *Verify Available Time Off.* The Finance Payroll Clerk shall ensure that the employee has accumulated enough time to fulfill their time off. If not, he/she shall immediately notify the Finance Director, who shall notify the Department Head.

28.4 Time Sheets and Spreadsheets Reviewed by Finance Director.

(a) *Timecards and Spreadsheet to Finance Director.* Once the Finance Payroll Clerk has entered all the applicable information into the payroll spreadsheet, he/she shall submit all timecards and the spreadsheet to the Finance Director for review.

(b) *Timecard and Spreadsheet Sign Off.* The Finance Director shall review the spreadsheet and timecards and sign off on the spreadsheet as approving it. When the Finance Director is out of the office, the Finance Payroll Clerk may carry out the process, however, the Finance Director shall immediately review upon returning to work.

28.5 Process Payroll.

(a) *Processing Payroll.* After the Finance Director has signed off on the payroll spreadsheet, the Finance Payroll Clerk shall process the payroll through the accounting software.

(b) *Deductions Assessed.* All applicable deductions shall be assessed automatically at this time.

28.6 Direct Deposit.

(a) *Direct Deposit Option.* Employees may opt to be paid by direct deposit of their payroll into their personal bank accounts.

(b) *Payment Date.* Any employee who wishes to receive their compensation by direct deposit shall be paid every Thursday instead of Friday.

(c) The Finance Administrative Assistant shall ensure that the bank receives the direct deposit record by Tuesday at 1 p.m. in order for the deposit to be made on Thursday of that week. The direct deposit record shall be approved and signed off by the Finance Director prior to submission.

(d) Any employee that has signed a direct deposit authorization form shall receive a voided check that states their pay was deposited directly to their desired account. These checks will also be pre-numbered and shall follow the same methods for issuance of other checks as set forth in these Policies & Procedures.

28.7 Payroll Warrant.

The Finance Director, Town Manager, and a Select Board designee, shall be responsible for reviewing the payroll warrant and supporting items attached to the warrant, including timecards. Once approved, each shall affix their signature to the warrant.

28.8 Reconcile Payroll Deductions.

(a) *Monthly Reconciliation.* All payroll-related deductions shall be reconciled on a monthly basis (within 15 days of the end of the month).

(b) *Payroll Adjustments.* If there is an employee who either owes money for their benefits, or the Town needs to return money to that employee, it shall be done at this time.

(c) *Employee Notification.* The employee shall receive an explanation with the check detailing the changes made.

(d) *Employee Option.* If the change results in an employee owing money to the Town in an amount more than $10.00, the employee shall be given the option to spread what they owe over a period of more than one pay period.

28.9 Quarterly Tax Reports.

The Finance Director shall submit all federal and state quarterly tax reports by the respective due dates and ensure that all reports are accurately submitted.

28.10 Annually Prepare W-2's.

At the end of each calendar year the Finance Director shall prepare and deliver all necessary W-2s for current or past employees. The Finance Director shall ensure that all reports are submitted to the IRS and Maine Revenue Service by the respective deadlines.

29. PROJECT COST ALLOCATING

Policy: The Town recognizes that at times it might be more cost effective or time efficient to have in house staff perform jobs or task that should be allocated to departments other then the department said employee works for. In this instance the Department Head shall keep track of that time.

Procedure:

29.1 When to Cost Allocate.

(a) When work is being completed by one department for another department that would not be part of their normal tasks. (Example: Public Works putting in Harbor Floats).

(b) When the project is being funded by outside sources, such as Legacy Rockport.

29.2 How to Allocate Costs.

(a) The Department Head shall come up with standard rates for equipment that would be available for use and use this same standard rate against all projects. These rates shall be reviewed annually and provided to the Select Board for review.

(b) The Department Head shall work with the Finance Director to determine applicable wages and benefits charged out while work was being completed the project. This may not be a standard rate as we have employees that received different rates of pay and benefits.

(c) On a monthly basis each department head shall submit the Cost Allocation Form to the Finance Director for appropriate journal entries to be completed. The form shall be submitted to the Finance Director by the 15th of the month following the work being completed.

30. BEST PRACTICE RESOLUTION

Policy: The Town recognizes that the concept of Best Practice is an evolving one and that there may be different variations for a Best Practice. It is the intent of the Town that the Town Manager, Finance Director, and applicable Department Head to which the Best Practice is applied resolve all known conflicts amongst them in a productive, professional and collaborative manner.

Procedure:

30.1 Select Board as Mediator.

If a reasonable solution to a disputed Best Practice cannot be agreed upon by all pertinent parties, the Select Board shall serve as the mediator to determine and establish the Best Practice.

Commented [DH11]: I just changed the formatting here. Made these 32.1 and 32.2 instead of (a) and (b).

30.2 Who May Raise the Issue to the Select Board.

The Town Manager, Finance Director, or Department Head may raise the issue to the Select Board for consideration and determination.

31. IMPLEMENTATION

A copy of these Policies & Procedures shall be made available to Town officials and Department Heads prior to the effective date and other times as may be necessary.

32. EFFECTIVE DATE

The effective date shall be 45 days after the date of Select Board adoption.

33. ADOPTION

Adopted this 28th day of January 2019.

Select Board Members:

_____

Kenneth McKinley, Chair

_____

Debra Hall, Vice-Chair

_____

Douglas Cole, Select Board Member

_____

Mark Kelley, Select Board Member

_____

Jeffrey Hamilton, Select Board Member

VIII. New Business

a. Presentation on the state of the schools from superintendent Maria Libby

Manager's Comments:

Maria Libby, Superintendent of Schools will be on hand to make her annual presentation to the Select Board about the school budget and other topics of interest.

This is an opportunity for the board to ask questions.

b. Possible land transfer to Maine water company

Manager's Comments:

Included in your packet is information relative to the proposed transfer of land from the Town of Rockport to Maine Water, to be included in their conservation easement and "Round the Mountain Trail" initiative. Representatives from Maine Water will be on hand to make a presentation and answer any questions.

This property was acquired by tax lien in 1993 for nonpayment of taxes. The property is over near Grassy Pond and is no value to the town as it without access and remote. It does have some value, when included in the larger conservation easement and is the reason this is before you now.

Also included in your packet is a map depicting just where this property is.

Maine Water has done a lot of work on this with Gartley and Dorsky and with their attorney, all of which has been reviewed by our counsel Phil Saucier to get us to where we are now.

If the board is in general agreement the idea of basically giving this to Maine Water to become part of the conservation easement held by the Coastal Mountains Land Trust, it has to go to the Planning Board and Conservation Commission for their recommendation prior to your final approval as specified in Article 28 of the 2018, Town Warrant. It would then need to come back to the Select Board for a final vote at a later meeting.

Suggested Motion:

I move to approve for consideration at a future meeting, the land transfer to the Maine Water Company, pending recommendations from the Planning board and Conservation Commission, as stated in Article 28 of the Town Warrant.

MUNICIPAL TAX RELEASE DEED

The **TOWN OF ROCKPORT**, a municipal corporation organized and existing under the laws of the State of Maine, whose mailing address is 101 Main Street, Rockport, Maine 04856 (the "Grantor"), for consideration paid, releases to **THE MAINE WATER COMPANY**, a corporation organized and existing under the laws of the State of Maine, whose mailing address is 93 Industrial Park Road, Saco, Maine 04072-1804 (the "Grantee"), the Town's interests in a certain lot or parcel of unimproved land situated in the Town of Rockport, County of Knox, and State of Maine, which property is currently described as Map 037, Lot 030 on the Official Tax Maps for the Town of Rockport, Maine, updated on April 1, 2018 and on file in the Rockport Town Office.

The Town's interest in this property acquired by virtue of a Tax Lien Certificate by the Grantor against the "Dyer Heirs of Walter c/o Margaret L. Dyer", acknowledged August 26, 1993, and recorded in the Knox County Registry of Deeds in Book 1736, Page 154.

The Town conveying hereunder no other interests; and further excepting and reserving from this conveyance any liens securing payment of property taxes on the premises as are not currently due or payable.

IN WITNESS WHEREOF, the **TOWN OF ROCKPORT** has caused this instrument to be executed by its Select Board, thereunto duly authorized, as of the ____, day of April, 2019.

WITNESS:

_____

_____

_____

_____

_____

THE TOWN OF ROCKPORT

By: _____
Kenneth McKinley, Chair

By: _____
Debra Hall, Vice-Chair

By: _____
Douglas Cole, Board Member

By: _____
Mark Kelley, Board Member

By: _____
Jeffrey Hamilton, Board Member

STATE OF MAINE
COUNTY OF KNOX, ss. April ____, 2019

Then personally appeared the above-named Kenneth McKinley, Chair of the Select Board of the **TOWN OF ROCKPORT,** and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the **TOWN OF ROCKPORT**.

Before me,

_____
Notary Public/Maine Attorney at Law

_____
Print name

My commission expires_____

12RETTD 00

RETTD

MAINE REVENUE SERVICES
REAL ESTATE TRANSFER TAX DECLARATION

36 M.R.S. §§ 4641-4641N

Print

Clear Form

1. County

KNOX

2. Municipality/Township

ROCKPORT

BOOK/PAGE—REGISTRY USE ONLY

3. GRANTEE/ PURCHASER

3a) Name LAST or BUSINESS, FIRST, MI: THE MAINE WATER COMPANY

3b) SSN or Federal ID: 01-003-9520

3c) Name. LAST or BUSINESS. FIRST. MI:

3d) SSN or Federal ID:

3e) Mailing Address after purchase of this property: 93 INDUSTRIAL PARK ROAD

3f) City: SACO

3g) State: ME

3h) ZIP Code: 04072

4. GRANTOR/ SELLER

4a) Name, LAST or BUSINESS, FIRST, MI: TOWN OF ROCKPORT

4b) SSN or Federal ID:

4c) Name. LAST or BUSINESS. FIRST. MI:

4d) SSN or Federal ID:

4e) Mailing Address: 101 MAIN STREET

4f) City: ROCKPORT

4g) State: ME

4h) ZIP Code: 04856

5. PROPERTY

5a) Map: 037 Block: Lot: 030 Sub-Lot:

5b) Type of property—Enter the code number that **best** describes the property being **sold**. (See instructions)—»: 101

Check any that apply:

- ☐ No tax maps exist
- ☐ Multiple parcels
- ☐ Portion of parcel

5c) Physical Location: WEST OF ROUTE 17. NO ADDRESS.

5d) Acreage: 3.33

6. TRANSFER TAX

6a) Purchase Price (If the transfer is a gift, enter "0") 6a: .00

6b) Fair Market Value (enter a value **only** if you entered "0" in 6a) or if 6a) was of nominal value) 6b: .00

6c) Exemption claim – ☑ Check the box if either grantor or grantee is claiming exemption from transfer tax and explain.

Tax Deed. 36 Sec. 4641 - C (5).

7. DATE OF TRANSFER (MM-DD-YYYY)

MONTH DAY YEAR

8. WARNING TO BUYER–If the property is classified as Farmland, Open Space, Tree Growth, or Working Waterfront a substantial financial penalty could be triggered by development, subdivision, partition or change in use.

☐ CLASSIFIED

9. SPECIAL CIRCUMSTANCES—Were there any special circumstances in the transfer which suggest that the price paid was either more or less than its fair market value? If yes, check the box and explain: ☐

10. INCOME TAX WITHHELD– Buyer(s) not required to withhold Maine income tax because:

- ☑ Seller has qualified as a Maine resident
- ☐ A waiver has been received from the State Tax Assessor
- ☑ Consideration for the property is less than $50,000
- ☐ Foreclosure sale

11. OATH

Aware of penalties as set forth by 36 M.R.S. § 4641-K, we hereby swear or affirm that we have each examined this return and to the best of our knowledge and belief, it is true, correct, and complete. Grantee(s) and Grantor(s) or their authorized agent(s) are required to sign below:

Grantee: The Maine Water Company Date: Grantor: Town of Rockport Date:

Grantee: By: Date: Grantor: By: Date:

12. PREPARER

Name of Preparer: Richard A. Shinay Phone Number: 207-772-1941

Mailing Address: Drummond Woodsum, 84 Marginal Way, Suite 600 Email Address: rshinay@dwmlaw.com

Portland, Maine 04101-2480 Fax Number: 207-772-3627

Rev. 12/15

http://www.maine.gov/revenue/propertytax/transfertax/transfertax.htm

Planning Board and the Conservation Commission, except for the purpose of clearing title or of reconveyance of real estate to the original owner or in the case of time-share units, reconveyance back to the original owner or the time-share estates association of unit owners; property to be disposed of by written policy and on terms the Select Board deem advisable.

Article 28 was moved, seconded and passed.

Article 29. To see if the Town will vote to authorize the Select Board, on behalf of the Town to sell and dispose of any real estate acquired by the Town for non-payment of wastewater thereon, on such terms as they deem advisable, and to execute quit claim deeds for the property. The sale or disposal shall be made only after consultation with the Planning Board and the Conservation Commission, except for the purpose of clearing title or of reconveyance of real estate to the original owner. Property to be disposed of by written policy and on terms the Select Board deem advisable.

Article 29 was moved, seconded and passed.

Article 30. To see if the Town will vote to set October 16, 2017 and April 17, 2018 as the tax installment due dates.

Article 30 was moved, seconded and passed.

Article 31. To see if the Town will vote to set October 17, 2017 and April 18, 2018 as the tax delinquency dates and to fix the rate of interest on delinquent taxes at 7.00% interest per year.

Article 31 was moved, seconded and passed.

Article 32. To see if the Town will vote to fix the rate of interest on delinquent wastewater charges at 7.00% interest per year.

Article 32 was moved, seconded and passed.

Article 33. To see if the Town will authorize the Select Board and Treasurer, on behalf of the Town, to accept gifts, real estate, and certain funds, including trust funds, that may be given or left to the Town.

Article 33 was moved, seconded and passed.

Article 34. To see if the Town will vote to authorize the Select Board to accept those conservation easements which the Select Board deem appropriate in the name of the Town of Rockport, provided however, said conservation easements are first considered by the Rockport Conservation Commission and Planning Board.

Article 34 was moved, seconded and passed.

GRASSY POND
A.K.A CRAWFORDS POND

APPARENT HIGH WATERLINE
BASED ON LIDAR DATA PROVIDED
BY THE MAINE OFFICE OF GIS

MAINE WATER
BOOK 1651, PAGE 67
TAX MAP 37B, LOT 20

TIMOTHY WOODWORTH
REBEKAH WOODWORTH
BOOK 3279, PAGE 266
TAX MAP 37B, LOT 90

6"X6" GRANITE MONUMENT,
1' ABOVE WALL
HELD

SEE PLAN REFERENCE #4

BASE OF ½" REBAR

BRUCE FAULKNER
JOY FAULKNER
BOOK 3346, PAGE 59
TAX MAP 37B, LOT 80

739.85'

FALES-MILLER LOT 76

AARON MOSMAN
TO
EBENEZER CLEAVLAND
WRKL BOOK 40, PAGE 182
NOVEMBER 16, 1832
(LOT 77)

MAINE WATER
BOOK 520, PAGE 47
TAX MAP 37B, LOT 20

½" REBAR,
0.3' ABOVE WALL

MAINE WATER
BOOK 400, PAGE 136
TAX MAP 37B, LOT 20

BARBED WIRE FENCE

N55°52'27"E
1022.03'

FENCE WIRE

FALES-MILLER LOT 77

BLAZED TREES

TIMOTHY HALL
GEORGE HALL
TO
EZEKIEL HALL
CALVIN HALL
WRKL BOOK 38, PAGE 505
MAY 5, 1832

LARGE OAK TREE WITH
WIRE TRIPLE BLAZED
ON TWO SIDES
HELD

FALES-MILLER LOT 80

FALES-MILLER LOT 78

JOSEPH PEIRCE
TO
EPHRAIM BOWLEY JR
LRKL BOOK 92, PAGE 7
JANUARY 11, 1819
(LOT 83)

GEORGE LEACH
TO
JOHN FOGLER
BOOK 5, PAGE 589
DECEMBER 28, 1861

MAINE WATER
BOOK 400, PAGE 227
TAX MAP 37B, LOT 20

JOHN FOGLER
TO
LYMAN FOGLER
BOOK 45, PAGE 485
FEBRUARY 12, 1877

STONE PILE

MAINE WATER
BOOK 995, PAGE 104
TAX MAP 37B, LOT 20
(PARCEL 3)

PAINED BLAZED TREES

WIRE FENCE IN STUMPS

S29°10'09"W
137.41'

TOWN OF ROCKPORT
BOOK 1786, PAGE 154
TAX MAP 37B, LOT 30

S29°10'09"W
1295.23'

LINE AGREEMENT
NEEDED

S29°10'09"W
1086.09'

FALES-MILLER LOT 83

FALES-MILLER LOT 82

FALES-MILLER LOT 80

FALES-MILLER LOT 81

FALES-MILLER LOT 79

AARON MOSMAN
TO
SAMUEL BROWN
WRKL BOOK 9, PAGE 308
APRIL 25, 1800
(LOT 79)

MARY CLEVELAND HALL
RELIEF OWEN
TO
EDMUND WILSON
WRKL BOOK 24, PAGE 294
JANUARY 24, 1832

MARK PERRY
TO
EDMUND WILSON
WRKL BOOK 24, PAGE 293
JANUARY 24, 1832

SAMUEL TOLMAN
TO
BENJAMIN HEMENWAY
LRKL BOOK 27, PAGE 273
NOVEMBER 13, 1819

WIRE FENCE IN TREES

MAINE WATER
BOOK 995, PAGE 104
TAX MAP 37B, LOT 20
(PARCEL 2)

½" REBAR,
"LANDMARK CORP"
"PLS 1339/2068",
1' ABOVE GRND.

BASE OF (2) 1" IRON PIPES,
1' ABOVE GRND.

BASE OF 1" IRON PIPE,
1.8' ABOVE GRND.

N69°23'54"E
420.95'

N59°00'09"E
137.41'

SEE PLAN REFERENCE #3

SAMUEL TOLMAN
TO
[illegible]
MARCH 18, 1828

BOUNDARY LINE AGREEMENT
(BOOK 2394, PAGE 128)

MARK W. MILLER
ANN C. EISELEIN
BOOK 4868, PAGE 289
TAX MAP 37B, LOT 40-1

MARK PERRY
TO
JOHN ACHORN
DANIEL PACKARD
WRKL BOOK 36, PAGE 309
MARCH 9, 1829

SAMUEL TOLMAN
TO
MARK PERRY
WRKL BOOK 27, PAGE 273
NOVEMBER 13, 1819

MAINE WATER
BOOK 258, PAGE 252
TAX MAP 37B, LOT 20

N37°20'23"W
804.54'

SEE PLAN REFERENCE #5

STEPHEN BARROWS
TO
JOSIAH TOLMAN
WRKL BOOK 24, PAGE 107
APRIL 14, 1819

FALES-MILLER LOT 84

FALES-MILLER LOT 85

MAINE WATER
BOOK 358, PAGE 578
TAX MAP 37B, LOT 10

RICHARD WILSON
EDMUND WILSON
TO
BENJAMIN HEMINGWAY
WRKL BOOK 37, PAGE 78
JANUARY 12, 1821

STATE OF MAINE
BOOK 351, PAGE 69
ROUTE 17

6"X6" GRANITE MONUMENT,
MARKED 'H' WITH DRILL HOLE,
2' ABOVE GRND.

JOSEPH YOUNG
TO
RICHARD WILSON
EDMUND WILSON
LRKL BOOK 92, PAGE 373
OCTOBER 12, 1821
(LOT 70)

6"X6" GRANITE MONUMENT,
MARKED 'H' WITH DRILL HOLE,
0.6' ABOVE GRND.

N/F
RICHARD H.
AMES
BOOK 288, PAGE 200

SAMUEL WILSON
TO
BENJAMIN HEMINGWAY
WRKL BOOK 37, PAGE 101
APRIL 4, 1820

6"X6" GRANITE MONUMENT,
MARKED 'H' WITH DRILL HOLE,
0.3' ABOVE GRND.

N45°29'07"E
304.57'
(DEED)

BASE OF 6"X6" GRANITE MONUMENT,
MARKED 'H' WITH DRILL HOLE,
0.6' ABOVE GRND.

STATE OF MAINE
GRADING EASEMENT LIMITS

BOOK 351, PAGE 69 & WITNESS TO BOOK 345, PAGE 183

STATE OF MAINE
ROUTE 17

RICHARD WILSON
EDMUND WILSON
TO
SAMUEL WILSON
WRKL BOOK 36, PAGE 429
JANUARY 12, 1821

SCOTT C. MITCHELL
BOOK 2567, PAGE 262
TAX MAP 37B, LOT 50

MAINE WATER
BOOK 480, PAGE 552
TAX MAP 37B, LOT 10

6"X6" GRANITE MONUMENT,
MARKED 'H' WITH DRILL HOLE,
1' ABOVE GRND.

BOOK 2567, PAGE 262
(PARCEL 7)

AARON MOSMAN
TO
SAMUEL BROWN
LRKL BOOK 9, PAGE 411
APRIL 25, 1800
(LOT 76)

S29°10'09"W
1295.23'

S29°10'09"W
1086.09'

TIMOTHY HALL
GEORGE HALL
TO
EZEKIEL HALL
CALVIN HALL
WRKL BOOK 38, PAGE 506
SEPTEMBER 10, 1833

GEORGE HALL
TIMOTHY HALL
TO
EDMUND WILSON
WRKL BOOK 38, PAGE 8
APRIL 5, 1833
TITLE TO THIS AREA UNCLEAR

FALES-MILLER LOT 75

FALES-MILLER LOT 70

MAINE WATER
BOOK 262, PAGE 367
TAX MAP 37B, LOT 10

STONE PILE

½" REBAR,
2" ABOVE WALL

SEE PLAN REFERENCE #2

MAINE WATER
BOOK 533, PAGE 100
TAX MAP 37B, LOT 10

SEE PLAN REFERENCE #2

STONE PILE
HELD

682.69'

FALES-MILLER LOT 73

FALES-MILLER LOT 74

FALES-MILLER LOT 75

FALES-MILLER LOT 76

BLAZED TREES

BOOK 2567, PAGE 262
(PARCEL 3)

JOHN C. CLEAVLAND
TO
ISAAC CASWELL
WRKL BOOK 55, PAGE 186
JANUARY 10, 1838

SHERMAN V. OLSON
ELAINE L. OLSON
BOOK 754, PAGE 201
TAX MAP 37B, LOT 5

OTIS R. WILSON
TO
JOHN C. CLEAVLAND
WRKL BOOK 54, PAGE 336
JUNE 15, 1830

GEORGE HALL
TO
SAMUEL WILSON
WRKL BOOK 37, PAGE 373
SEPTEMBER 17, 1831

S29°10'09"W
1086.09'

S29°10'09"W
1295.23'

MAINE WATER
BOOK 258, PAGE 252
TAX MAP 37B, LOT 20

N37°20'23"W
804.54'

SEE PLAN REFERENCE #5

STONE PILE

S6°32'12"W
495.92'

S29°10'09"W
1295.23'

SEE PLAN REFERENCE #2

S6°10'25"W
[illegible]'

SEE PLAN REFERENCE #6

BLAZED TREES

N37°20'23"W
15.50'

½" REBAR,
"LANDMARK SURV",
"PLS 1339/2068",
0.2' ABOVE STONES

OTIS R. WILSON
TO
JOHN H. ANDREWS
WRKL BOOK 52, PAGE 416
JUNE 18, 1855

LIV M. LIABRAATEN
BOOK 5243, PAGE 191
BOOK 5215, PAGE 69
TAX MAP 37B, LOT 40

LEGEND

- SURVEYED PROPERTY LINE
- MAINE WATER PROPERTY LINE PER LISTED PLAN REFERENCES
- PROPOSED PROPERTY LINE
- APPROXIMATE PROPERTY LINE
- FORMER/HISTORIC PROPERTY LINE
- STONE WALL ALONG SURVEYED PROPERTY LINE
- OTHER STONE WALL
- IRON ROD FOUND
- IRON PIPE FOUND
- 5/8" REBAR PROPOSED
- WIRE FENCE
- STUMP
- CONIFEROUS TREE
- DECIDUOUS TREE

SURVEYOR'S NOTES:

1) ALL IRON PINS SET ARE 5/8" REBAR MARKED WITH A PLASTIC SURVEYOR'S CAP STAMPED "G4D 2290-2366-2424-2473".

2) ALL DIRECTIONS ARE REFERENCED TO THE MAINE COORDINATE SYSTEM OF 1983 (2011), EAST ZONE, BASED ON AN RTK GPS SURVEY. ALL DISTANCES ARE GRID DISTANCES. THE COMBINED FACTOR IS 0.99991832.

3) THIS PLAN IS THE RESULT OF AN ON THE GROUND FIELD SURVEY PERFORMED IN 2017.

4) OWNER INFORMATION IS TAKEN FROM THE TOWN OF ROCKPORT AND HOPE TAX COMMITMENT DATED 2016.

5) BOOKS AND PAGES REFERRED TO ON THIS PLAN ARE RECORDED IN THE KNOX COUNTY REGISTRY OF DEEDS .

6) THIS SURVEY SHOULD BE USED IN CONJUNCTION WITH A TITLE ABSTRACT AND REVIEW BY LEGAL COUNSEL.

7) REFERENCE IS MADE TO EASEMENT RIGHTS RESERVED IN A DEED CONVEYED TO CENTRAL MAINE POWER COMPANY RECORDED IN BOOK 1403, PAGE 295 AND MODIFIED IN BOOK 3241, PAGE 55.

PLAN REFERENCES:

1) "PRELIMINARY OVERALL EASEMENT MAP, MAINE WATER PROPOSED CONSERVATION EASEMENT" BY GARTLEY & DORSKY ENGINEERING & SURVEYING DATED MARCH 21, 2016.

2) "PLAN VIEW OF LAND PARCEL OWNED BY KENNETH S. MCLEOD" BY THEODORE OVERLOCK DATED NOVEMBER 1971 AND RECORDED IN THE KNOX COUNTY REGISTRY OF DEEDS PLAN BOOK 11, SHEET 31.

3) "STANDARD BOUNDARY SURVEY FOR ALEXANDER KRAUSE" BY LANDMARK SURVEYING AND ENGINEERING DATED JUNE, 1999 AND RECORDED IN THE KNOX COUNTY REGISTRY OF DEEDS CABINET 14, SHEET 13.

4) " SUBDIVISION OF BLUEBERRY HILL ESTATES" BY G. A. THIBODEAU DATED SEPTEMBER 30, 1985 AND RECORDED IN THE KNOX COUNTY REGISTRY OF DEEDS CABINET 6, SHEET 44.

5) "MAINE STATE HIGHWAY COMMISSION RIGHT OF WAY MAP STATE HIGHWAY "205" ROCKPORT KNOX COUNTY FEDERAL AID SECONDARY PROJECT NO. S-0205(2)" DATED OCTOBER 1955.

6) "BOUNDARY SURVEY, LIV M. LIABRAATEN & KIRK S. ROUND" BY MARK W. INGRAHAM, III DATED DECEMBER 8, 2017.

CERTIFICATION:

TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, AND IN MY PROFESSIONAL OPINION, THIS SURVEY CONFORMS TO THE STANDARDS OF PRACTICE PROMULGATED BY THE MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS WITH THE FOLLOWING EXCEPTIONS:
NO WRITTEN REPORT PREPARED

GRAPHIC SCALE
200 0 100 200 400 800
(IN FEET)
1 inch = 200 ft.

N
W E
S
NAD 83
ME EAST ZONE
GRID NORTH
MAGNETIC 2017

N
W E
S
NAD 83
ME EAST ZONE
GRID NORTH
MAGNETIC 2016

NO.	REVISIONS	DATE
1	REVISE BOUNDARY ALONG LAND OF SUSAN HALL	1/23/18

SHEET TITLE: BOUNDARY SURVEY
SCALE: 1" = 200'
DRAWN BY: AW
CHECKED BY: JAD
DATE: AUGUST 16, 2017

CLIENT/PROJECT: MAINE WATER
LOCATION: ROUTE 17
TOWN: ROCKPORT
COUNTY: KNOX
STATE: MAINE

THIS PLAN IS PRELIMINARY WITHOUT SIGNATURE

STATE OF MAINE
ADDISON A. WHITWORTH
#2424
REGISTERED PROFESSIONAL LAND SURVEYOR

PROJ. NO. 2016-020

V3

Gartley & Dorsky ENGINEERING, SURVEYING
59 Union Street, Unit 1, P.O. Box 1031, Camden, ME 04843-1031
Ph (207) 236-4365 Fax (207) 236-3055 Toll Free 1-888-282-4365
165 Main Street Suite 2F P.O. Box 1072 Damariscotta, Maine 04543
Ph. (207) 790-5905

c. Discussion of Harbor Committee member changes

Manager's Comments:

Included in your packet is a letter from Sam Temple, Chair of the Harbor Committee, requesting that the seat held by Sadie Samuels be declared vacant, as well as a copy of the Harbor Committee By-laws.

Sadie Samuels was appointed to the Harbor Committee last October and has not attended a single meeting. She did go on a site walk in the fall at the Harbor but has not been to a regular meeting.

We ran into this previously with another member and the bylaws were amended to allow the position to be declared vacant and to allow you to make a new appointment.

Cheryl Liechty has been serving as an alternate member since November 13, 2018and is willing to serve on the harbor committee as a full member.

It is my advice that you formally declare the position vacant followed by a motion to appoint Cheryl Liechty as a full member of the committee for a term to expire June 30, 2021

Suggested Motion:

I move to declare the position previously held by Sadie Samuels on the Harbor committee as vacant in accordance with the Harbor Committee By-laws.

Suggested Motion:

I move to appoint Cheryl Liechty as a full member of the harbor Committee for a term to expire June 30, 2021

On Thu, Mar 14, 2019 at 6:36 PM Samuel Temple <samueltemple@gmail.com> wrote:
Hi Rick,

I'm writing to request that Sadie Samuels be removed from the roles of the Harbor Committee. Sadie was appointed by the Select Board in October and has, since then, attended one workshop and no meetings. She has not be in touch with the committee since the fall. With Sadie off the Committee we could 'promote' a thoughtful and regularly attentive, resident member from auxiliary to full member status.

A note for the Select Board is that the approval process for Sadie was a little unusual. She's a non-resident and as far as I know the Committee wasn't aware of her application until it was approved

Please let me know if and when this can be done and I'll convey the message to Sadie. If Sadie would like to re-apply for the auxiliary spot and voice an intention to attend meetings I would support her.

Thanks and Best Regards, Sam

Sam Temple

– this is what it says in our bylaws

Section 2. Membership

The Committee shall consist of five members. A member of the committee shall serve for a term of three years, and may be reappointed by the Select Board. If a member fails, without being excused by the Chair, to attend three meetings, the Chair will notify the Town Manager of a vacancy on the committee. Three members need to be present in order to form a quorum.

Cheryl Liechty, is currently an Alternate, we would like to move her up as permanent member.

d. Discussion of possible traffic calming issues at some locations in Rockport

Manager's Comments:

Included in your packet is a copy of the e-mail received from Dave Allen where he states that using stop signs to control speed of for "traffic calming" is not ever advised and in the case of Pascal Ave, it will not be permitted. Further in the case of putting stop signs to control speed on Russel could put the town at some risk by "*knowingly do otherwise may jeopardize the safety of the road users and expose the municipality"*.

This is not new information and is a standard that has been used for decades. Stop signs should never be used to control speed. In both of the locations there is not an accident history that demonstrates a need.

In addition, you will find in your packet relative to this question.

It is my recommendation that you not consider pacing stop signs at either of these locations.

From: Allen, David (DOT) <David.Allen@maine.gov>
Sent: Monday, May 06, 2019 3:15 PM
To: Richard C. Bates <RBates@town.rockport.me.us>
Cc: Michael Young <MYoung@town.rockport.me.us>; Brandy Hare <bhare@town.rockport.me.us>
Subject: RE: Stop Signs on Pascal at west street and on Russel at the end of Beauchamp Street

Thank you for your email. As noted Pascal is a state road. As such if the town wishes they can request that we consider placing a stop sign on the road. However, if the reason for the stop sign is to control speed, we would be obligated to deny that request as the Manual on Uniform Traffic Control (MUTCD)specifically states "05 *YIELD or STOP signs should not be used for speed control.*" As you well know the MUTCD establishes the guidelines for all traffic control on ways open to the public in the US and is what the state, towns and even businesses use determine what is or is not appropriate traffic control.

I did take a moment to review the crashes on Pascal over the last 5 years to see if any of the intersection had a crash pattern that would potentially support considering a change in the control of those intersection. None of the crashes along Pascal was reported to be caused by an intersection movement. Therefore the crash history would not support adding a stop sign on Pascal.

Accordingly, while Russel is a municipally owned road, and the state would not have any input in a decision to place stop sign on that road, the municipality should be following the same standards. To knowingly do otherwise may jeopardize the safety of the road users and expose the municipality. A crash review of Russel also showed that none of the crashes where classified as intersection movements.

Thanks again.

David P. Allen, PE
Mid Coast Region 2 Traffic Engineer
Maine Department of Transportation
66 Industrial Drive
98 State House Station
Augusta, ME 04333-0098
Phone (207) 624-8200

From: Randy Gagne <rgagne@camdenmaine.gov>
Sent: Friday, May 03, 2019 3:00 PM
To: Richard C. Bates <RBates@town.rockport.me.us>
Subject: Stops signs

Rick,

I have looked at the issue of placing stop signs in residential areas in both Camden and Rockport over the years. The placement of stops signs as a measure to control speed and reduce volume is highly ineffective studies have shown. It is not recommended by the State and most likely would not be allowed on any streets under the authority of the State. You also risk opening up request from all residential streets requesting stop signs. I would suggest that unless a process of some type is implemented for placement of stop signs we not place any. By that I mean a study of speeds, accidents, visibility etc. and a public hearing after which the Select Board could decide if placements is in the Towns best interest.

Randy

e. Discussion of transition plan to the new town manager

Manager's Comments:

As we all know I am retiring from Full Time employment at the end of June. (Or in 53 days for anyone that is counting)

I will prepare a written document for the Manager and Board as to outstanding topics that need to be worked on going forward.

In addition, while retiring from Full Time employment, I am not going far and I will still be available to answer questions and give support when needed, as I will be available in a consultant role to the town. While in that role, it is specifically to help with the library project and broadband, I would certainly be able to assist the new manager as needed and upon request.

f. Update on the development of an infrastructure bond

Manager's Comments:

Included in your packet are the draft minutes from last night's meeting, memo from the meeting, the road schedule from the meeting.

The committee is meeting again on Wednesday May 22nd.

Town of Rockport, Maine

Finance Department
Town Office Building
101 Main Street
Rockport, Maine 04856

Megan A. Brackett, Finance Director
mbrackett@town.rockport.me.us

Telephone: 207.230.0180 x6

Fax: 207.706.4999

Date: May 8, 2019

To: Richard C. Bates. Town Manager

CC: Rockport Select Board

RE: CIP Meeting Follow-up – Infrastructure Bond Issues

The Capital Improvement Committee met on May 8,2019, to review the list they developed at their April 9, 2019 and meeting and to review the paving and sidewalk information that was provided to them from Mike Young.

I have included a draft version of the minutes for the boards review, as well as the information that was provided to the committee for the road paving and sidewalks.

The Committee will be meeting again on May 22th at 5:15 p.m. at the Town Office to review the objective ranking for paving to be completed by Mike Young. Once they have reviewed these items, they will submit their recommendations to the Select Board for the boards June meeting.

As of now we are still on track for the timeline that I provided on April 1st. Once the board has decided on a final list of projects, I will start working with bond counsel to get a warrant article drafted. We will need to wait to do any final warrant drafting until we have firm cost estimates for the projects to be included in the warrant.

Thank you,

Megan Brackett

2019/2020 Roads to Pave

Name	Length (ft)	Width (ft)	Shim (inches)	Total Ton	Est Cost	Rating 1-5
Beech Hill	825	20	18	201	$66,000	
Rockport Park Center	1790	24	2	591	$42,000	
South St from Porter to Rockville	3200	22	1.5	967	$77,366	
Church St	375	16	2	72	$14,970	
Mt. Pleasant far end	1450	20	2	177	$31,760	
	7640	1.44Miles	Total	$24	$232,096	
Old Rockland St (no sidewalk)	3430	20	1.5	628	$336,000	
Beech Hill from Repair to South St	8965	20	18	2460	$196,800	
South St from Rockville to Beech Hill	4500	20	1.5	824	$99,180	
Park St from Meadow to Brandy Brooke	2750	20	1.5	503	$60,400	
Park St from White Tail to Rt 90	3960	20	1	483	$87,280	
Mt. Pleasant from Keller Dr to New Pavement	3640	20	1	444	$71,040	
Elm St	550	21	1.5	106	$15,420	
Sea St	1200	18	1.5	198	$29,010	
Maple St	223	16	1.5	35	$6,320	
Spear St	1257	19	0.75	115	$27,600	
Birch St	225	16	1.5	92	$16,910	
Amsburry	1132	15	1.5	155	$21,640	
Mechanic St (Including rebuild granite sidewalk)	1472	23	1.5	311	$249,000	
	33304	6.3 Miles	Total:		$1,216,600	
Mt Pleasant- unpaved section	8200	20	2		$450,000	
	8200	1.55 Miles	Total:		$1,666,600	
Acorn Lane	1056	20				3
Alexander Drive	2428	18				4
Annis Lane	1531	19				3-4
Ashley Terrace	1478	20				3-4
Beal Street	844	19				2
Beauchamp Street	1267	20				4
Birch Street	580	14				4
Bonny Street	1689	21				3-4
Brandy Brook Circle	1584	21				1
Bristol Drive	897	18				2
Brook Street	158	23				4
Calderwood Lane	4646	17				3-4

Name	Length (ft)	Width (ft)	Shim (inches)	Total Ton	Est Cost	Rating 1-5
Camden Street	4118	21				4
Camrock Drive	1214	19				3
Chris Road	1742	19				3
Clam Cove Drive	2006	21				4
Cross Street	3273	21				3
Forest Glen Drive	1584	18				3-4
Forest Street West	1636	21				4
Franklin Street	369	15				3
Grove Street	1478	20				4
Gurney Street	4224	22				3-4
Harvey Hill Road	316	19				3
High Street	1848	20				3-4
Homestead Lane	897	18				4
Hope Street	3062	21				4
Huse Street	475	16				4-5
Kathy's Lane	1320	21				4-5
Keller Drive	1795	20				2-3
Kimberly Drive	1795	19				4
Ledgewood Drive	2904	19				4-5
Lexington Lane	1056	18				3
Limerock Street	1953	17				5
Main Street	14203	22				3-4
Meadow Street	8131	22				3-4
Mill Street	8553	21				2-4
Ministerial Drive	897	20				2
Mirror Lake Lane	1214	20				3-4
Mistic Avenue	5174	18				3
Ocean View Lane	950	19				3
Pine Street	264	18				4
Pine Wood Lane	422	21				3
Pleasant Street	1636	18				2
Porter Street	4910	22				2
Reflection Pond Drive	4323	20				3-4
Robinson Drive	1108	19				3-4
Rockport Woods	1531	21				2
Rock Ridge Road	1584	21				4
Rockville Street	10454	21				3
Russell Avenue	4382	24				3-4
School Street	1161	22				2-4
Scott's Road	1531	19				1
Seaport Drive	686	18				3
Ship Street	369	14				3
South Hope Road	2270	20				3-4
Spear Street	1267	18				5
Spring Lane	3115	18				4

Name	Length (ft)	Width (ft)	Shim (inches)	Total Ton	Est Cost	Rating 1-5
Spring Mountain Drive	633	19				2
Spruce Street	1161	15				3
Stoney Hill Road	1425	21				3-4
Summer Street	792	22				1
Terrier Circle	1214	19				3-4
Upham Lane	1161	19				3-4
Vinal Street	10032	18				3-4
Warrenton Street	5966	22				3
Wellington Drive	4752	21				4
West Street Extension	6652	21				1-2
West Wood Road	1108	22				3-4
Whitetail Drive	3590	20				2
Winding Way	2059	20				3-4
Winter Street	633	22				4

Sidewalks

1=Excellent 3=Avg 5=Poor

St Name	From	To	Distance (ft)	Rating	Material	Notes
Limerock			545			
	Union St	Huse St	545	5	Ashphalt	Narrow and Broken up
Union			4640			
	Central St	Huse St	720	3	Concrete	
	Huse St	Arch	3920	3	Ashphalt	
Summer St			530			
	Union St	Main St	530	1	Concrete	New
Main St			665			
	Summer St	Pascal Ave	550	2	Concrete	
	Stairs	Sandy Way	115	2	Concrete	
Central St			885			
	Pascal Ave	Park St	385	4	Concrete	Started measurement at stairs
	Main St	Russel Ave	500	3	Concrete	
Russel Ave			1800			
	Central St	Brook St	415	3	Concrete	
	Beauchamp	End	615	4	Ashphalt	
	Beauchamp	Mechanic St	320	3	Concrete	
	Beauchamp	Mechanic St	325	4	Ashphalt	
	Limerock	Old Library	125	3	Concrete	
Mechanic St			1185			
	Brook st	Winter St	470	4	Ashphalt	
	Winter St.	Spear St.	715	4	Ashphalt	
Spear St			370			
	Mechanic St	End	370	5	Concrete	
Pascal			3200			
	Main St	High St	275	3	Concrete	
	Rt 1	Central St	525	1	Concrete	new
	End of new Walk	West st	815	3	Ashphalt	
	West St	Elm St	275	3	Ashphalt	
	Elm St	Rt 1	1310	3	Concrete	
West St			1725			
	Pascal Ave	RES	900	4	Ashphalt	
	RES	Rt 1	375	1	Ashphalt	New
	Start	Rockland Rd	450	4	Ashphalt	
Warrenton			3200			
	Rt 1	End	550	3	Ashphalt	
East on	Rt 1	Claddagh Motel	300	2	Ashphalt	
East on	#430	Pascal Ave	2350	3	Ashphalt	
Rockland St			1935			
	Park ST	Rollins Auto	670	3	Ashphalt	
	Mt. Pleasant	Rollins Auto	1000	3	Ashphalt	
	West St intersection	End	265	3	Ashphalt	
		Total	20680			

Capital Improvement Committee Meeting

Tuesday – May 7, 2019
5:30 p.m.
Richardson Room
Town Office – 101 Main Street - Rockport

MINUTES

- Call Meeting to Order at 5:32 p.m. by Allen Mitchell.
- Attendance: Mark Kelley, Steven Corson, Steven Dailey, Megan Brackett, Rick Bates, Jeff Hamilton, Allen Mitchell, Jeff Charland, and Joyce Mohr.
- Approval of Minutes
    - The minutes from 04/09/2019 meeting was motioned to be approved by Jeff Charland and seconded by Steven Corson, all approved.
- New Business
    - Megan handed out the roads and sidewalk sheets that Michael Young provided and explained the items in blue are what he plans on paving in the FY 19-20 budget, the items in green are what should be considered for a bond issue, and the item in orange is Mt. Pleasant Street.
    - Allen asked what the bonding limit is, and Megan said the target is 1.5 million-dollars.
    - Mark brought up the streetlights and asked about rolling the purchase of our own streetlights into this bond issue. Megan explained that it would not make sense to do that because we can pay off the streetlights in five years, and if we rolled them into this issue you would be paying more in interest and it would take longer for the Town to realize the benefits of owning their own lights. This practice would also take money away from other capital projects that we should be considering with this bond issue.
    - Jeff C. asked what the paving at the Harbor would accomplish, Megan explained this would be to help with drainage issues. He also stated that the Town Pier is functional and feels both the paving and the Pier could be put off.
    - Jeff C. asked if the numbers for the cost of paving have been updated to reflect estimated market pricing for the upcoming summer, Rick states that these are old numbers.
    - Megan explained that annual paving is grossly underfunded. If we were to repave Town roads on a seven-year replacement schedule, then the annual budget for paving would need to be just over 1.1 million-dollars. If we

went with a ten-year replacement schedule the annual budget would need to just over $788,000.

- Mark asked if it would make sense to do a joint bid with Camden for paving? Allen explained that this probably wouldn't net the Town any real savings because contractors are so busy right now.
- Jeff H. wants to see the objective ranking completed that was discussed at the last CIP Meeting (04/09/2019). He stated we should be using the software that the Town already owns to help accomplish this. Mark asked if Rick should instruct Mike to get the grading done on at least the green items. Jeff H. said he had hoped that we would already be there.
- Allen offered up moving out the Walker Park Seawall as a potential project for this bond issue, as we have not reached out to the homeowner of the abutting property and it might make more sense to put this money to paving. Rick said that he would reach out to the abutting homeowner.
- Joyce agreed with removing the Pier as an item for this bond issue stating that it is not necessarily a safety issue, more or less a convince issue. Rick stated that Prock came and looked at the Pier and they don't feel that it needs to be replaced for another five years at least. Joyce asked if there is a compelling reason to replace the pier on the part of the Town? Rick said no, there is some eroding happening around the wall head, but that problem would not be resolved with replacing the pier.
- Mark stated that we could take some of these projects we are talking about removing from the list and allocating that money to paving and we might be able to do all the items in green on the sheets provided and explained that we still have a lot of roads in the white section. Megan said there are about 42 roads that are rated at a 4 or higher, meaning they are in bad shape.
- Jeff H. said that the Select Board needs to bite the bullet and increase the annual budget.
- Allen recommended to remove the Pier, the Walker Park Seawall and the Public Safety Building exhaust system and put this money towards paving.
- Joyce stated that everyone seems to be in agreement about removing the Pier. Rick stated that Prock's did a report about any safety or possible root issues and Abbie has that report. Jeff H. asked Rick to email this report the CIP Committee for them to review.
- Mark stated that he would like to see the rating completed on the roads so that the recommendations from the CIP Committee can be more educated. Jeff C. said that the items in green even need to be met with more scrutiny, once the objective rankings are done. Allen asked when these objective rankings could be completed? There was no initial response to this

question. Allen also offered up site visits so that the committee could see the roads that are in the green section. Jeff C. would also like to ensure that the cost estimates provided include all costs associated with the paving project, this to include culverts and any other special items needed to repair the road. Jeff H. asked when the rating would be completed by? Allen said two weeks, and then the committee will meet again.

- Rick asked if the committee had made any decisions on Mt. Pleasant Street. Jeff H. said that he does not feel that this should be its own bond issue now, he asked Rick if he has received any complaints over the past year about the condition of the road? Rick stated that he had only received one complaint in the last year. We currently budget $75,000 a year to put towards Mt. Pleasant Street.
- Mark asked if the CIP Committee has got their by-laws done. Allen said he would get with Diane. Joyce stated that the by-laws were reviewed at one of their prior meetings and everyone felt that they were fine. Allen asked Megan to put the approval on the next meeting agenda.

- The next CIP meeting will be May 22, 2019 at 5:15 p.m. at the Rockport Town Office.
- Adjourn at 6:33 p.m.

g. Quit Claim Deed for Map 6, Lot 71-1

Manager's Comments:

Included in your packet is a Quit Claim Deed for Carl Small, for 2016 Tax Lien, Book 5205, Page 155 and 2017 Tax Lien, Book 5325, Page 62

Suggested Motion:

I move to approve the quit claim deed on the property of Map 6, Lot 71-1 2016 tax liens book 5205, page 155 and 2017 tax lien, book 5325, page 62.

Municipal
QUITCLAIM DEED

(Maine Statutory Short Form)

The Inhabitants of the Municipality of Rockport , a body corporate and politic, located at Knox County, Maine, for consideration paid, release to Carl Small

of 13 Old County Rd
Rockport, ME 04856
Knox County,
the land in Rockport Knox County,

Maine: (here insert Description, and Encumbrances if any)

Being the Premises described as Map 006 Lot 071-001 of the Tax Maps of the Town of Rockport.

The purpose of this deed is to release any interest the Town of Rockport may have acquired by reason of the following liens for unpaid taxes, recorded at the Knox County Registry of Deeds:

2017 Tax Lien, Book 5325 Page 62
2016 Tax Lien, Book 5205 Page 155

The said Inhabitants of the Municipality of Rockport have caused this instrument to be signed in its corporate name by Kenneth McKinley, Debra Hall, Douglas Cole, Mark Kelley and Jeffrey Hamilton , its duly authorized, this 13th. day of May , 2019.

Kenneth McKinley, Chair

Debra Hall, Vice-Chair

Douglas Cole

Mark Kelley

Jeffrey Hamilton

State of Maine

County of Knox ,ss May 13, 2019.

h. Consideration of a contract to construct the new Rockport Public Library

Manager's Comments:

We are still working on the contract. Included in your packet is the draft that our counsel recommends. I expect that there will be agreed on changes to the contract that will be presented in a later attachment.

Suggested Motion:

I move to approve the contract with Phi Builders and Architects to construct the new Rockport Public Library as presented (amended)

DRAFT AIA® Document A101™ – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

« »« »
« »
« »
« »

and the Contractor:
(Name, legal status, address and other information)

« »« »
« »
« »
« »

for the following Project:
(Name, location and detailed description)

« »
« »
« »

The Architect:
(Name, legal status, address and other information)

« »« »
« »
« »
« »

The Owner and Contractor agree as follows.

Commented [AAE1]: Fill in Page 1.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101™–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the Documents set forth in Article 9, including but not limited to the General Conditions, Drawings, Specifications, Addenda issued prior to execution of this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

Deleted: of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to

Deleted: , other documents listed in this Agreement,

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

Commented [AAE2]: Article 3 - To be filled in.

(Check one of the following boxes.)

[« »] The date of this Agreement.

[« »] A date set forth in a notice to proceed issued by the Owner.

[« »] Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

« »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[« »] Not later than « » (« ») calendar days from the date of commencement of the Work.

[« »] By the following date: « »

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
« »	

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

Commented [AAE3]: Article 4 - To be filled in.

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be « » ($ « »), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
« »	

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
« »		

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price
« »	

§ 4.4 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit ($0.00)
« »		

§ 4.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

« »

§ 4.6 Other:
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

« »

ARTICLE 5 PAYMENTS

Commented [AAE4]: Article 5 - To be filled in. See 5.1.2 and 5.1.3.

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the « » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the « » day of the « » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « » (« ») days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

.1 That portion of the Contract Sum properly allocable to completed Work;
.2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;
.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
.5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Ten Percent (10%)

Deleted: « »

§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Not Applicable.

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

Not Applicable.

§ 5.1.7.3 [Reserved.]

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017.

« »
« »

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[«X»] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[« »] Litigation in a court of competent jurisdiction

[« »] Other *(Specify)*

« »

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

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Deleted: Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:¶
(Insert any other conditions for release of retainage upon Substantial Completion.)¶
¶
« »

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¶
« »

Deleted: § 5.3 Interest¶
Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.¶
(Insert rate of interest agreed upon, if any.)¶
¶
« » % « »¶

Deleted: , unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker

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Deleted: *If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*¶
¶
« »¶
« »

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ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows as Contractor's sole remedy at law or equity:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

Payment for Work executed along with reasonable overhead and profit on such Work and all costs and expense incurred by Contractor directly related to the termination.

« »

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

« »
« »
« »
« »
« »
« »

§ 8.3 The Contractor's representative:

(Name, address, email address, and other information)

« »
« »
« »
« »
« »
« »

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 [Reserved.]

§ 8.7 Other provisions:

«Not Applicable.»

Commented [AAE5]: Fill in 8.2 and 8.3.

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Deleted: Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:¶
(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)¶
¶
« »

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ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

.1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor

.2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds

.3 AIA Document A201™–2017, General Conditions of the Contract for Construction

.4 [Reserved.]

.5 Drawings

Number	Title	Date
« »		

.6 Specifications

Section	Title	Date	Pages
« »			

.7 Addenda, if any:

Number	Date	Pages
« »		

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[« »] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

« »

[« »] The Sustainability Plan:

Title	Date	Pages
« »		

[« »] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
« »			

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« »

This Agreement entered into as of the day and year first written above.

Commented [AAE6]: Article 9 - To be filled in. Delete Items that do not apply.

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Deleted: AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:¶
(Insert the date of the E203-2013 incorporated into this Agreement.)¶
¶
« »

« »

OWNER *(Signature)*

« »« »

(Printed name and title)

« »

CONTRACTOR *(Signature)*

« »« »

(Printed name and title)

DRAFT AIA® Document A101™ – 2017 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the « » day of « » in the year « »
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

« »
« »

THE OWNER:
(Name, legal status and address)

« »« »
« »

THE CONTRACTOR:
(Name, legal status and address)

« »« »
« »

TABLE OF ARTICLES

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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Commented [AAE2]: Owner needs to review this with Broker and ensure that all required insurance is in place. Broker should also review and comment on the entire contract, but especially insurance provisions.

§ A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 Causes of Loss. The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss	Sub-Limit
« »	

§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
« »	

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

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The Owner shall purchase and maintain the insurance selected and described below.¶
(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)¶
¶
[« »] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.¶
¶
« »¶
¶
[« »] **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.¶
¶
« »¶
¶
[« »] **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.¶
¶
« »¶
¶
[« »] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.¶
¶
« »¶
¶
[« »] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.¶
¶
« »¶
¶
[« »] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.¶
¶
« »¶
¶
[« »] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.¶
¶
« »¶
¶
§ A.2.5 Other Optional Insurance.¶
The Owner shall purchase and maintain the insurance selected below.¶
(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)¶

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies. Upon the Owner's request, Contractor shall provide a copy of the insurance policy or policies required by Section A.3.1.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor. Contractor shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. To the fullest extent permitted by law, the Contractor shall cause the automobile liability coverage to include the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

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§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

« »

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§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than one million dollars ($ 1,000,000) each occurrence, two million dollars ($ 2,000,000) general aggregate, and two million ($ 2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

.1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
.2 personal injury and advertising injury;
.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
.4 bodily injury or property damage arising out of completed operations; and
.5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

.2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
.3 Claims for bodily injury other than to employees of the insured.
.4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
.8 Claims related to roofing, if the Work involves roofing.
.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
.10 Claims related to earth subsidence or movement, where the Work involves such hazards.
.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than one millions dollars ($ 1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than one million dollars ($ 1,000,000) each accident, one million dollars ($ 1,000,000) each employee, and one million dollars ($ 1,000,000) policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than one million dollars ($ 1,000,000) per claim and two million dollars ($ 2,000,000) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than one million dollars ($ 1,000,000) per claim and two million dollars ($ 2,000,000) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than two million dollars ($ 2,000,000) per claim and two million dollars ($ 2,000,000) in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than one million dollars ($ 1,000,000) per claim and two million dollars ($ 2,000,000) in the aggregate.

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

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Deleted: **§ A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than « » ($ « ») per claim and « » ($ « ») in the aggregate.¶
¶

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

« »

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.
(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

[« »] **§ A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

« »

§ A.3.4 Performance Bond and Payment Bond
The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows: Payment Bond and Performance Bond with a Penal Sum equal to the Contract Sum.

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

« »

Commented [AAE5]: If Owner doesn't not procure the Builder's All Risk Policy – this require Contractor to do so.

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¶
[« »] **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than « » ($ « ») per claim and « » ($ « ») in the aggregate, for Work within fifty (50) feet of railroad property.¶
¶
[« »] **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than « » ($ « ») per claim and « » ($ « ») in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.¶
¶
[« »] **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.¶
¶
[« »] **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.¶
¶
[« »] **§ A.3.3.2.6 Other Insurance**¶
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)¶
¶
Coverage ...

Commented [AAE6]: Confirm with Owner.

Deleted: *(Specify type and penal sum of bonds.)*¶
¶
Type ...

DRAFT

AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

« »
« »

THE OWNER:
(Name, legal status and address)

« »« »
« »

THE ARCHITECT:
(Name, legal status and address)

« »« »
« »

TABLE OF ARTICLES

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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INDEX
(Topics and numbers in bold are Section headings.)

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement). A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

Deleted: and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor.

Deleted: The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Prior to execution of the Agreement, the Contractor has satisfied itself as to the conditions and limitations under which the work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner shall not be required to make any adjustment in either

the Contract Sum or the Contract Time in connection with any failure by the Contractor or Subcontractor to have complied with the requirements of this Subparagraph 1.2.1.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Section 1.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

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Deleted: The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.¶

Deleted: § 1.8 Building Information Models Use and Reliance¶ Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees

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ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. In such event, the Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due and the Owner does not dispute such concern; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence or dispute such request, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above and Owner does not dispute such assertion, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, as provided in the Contract Documents.

§ 2.2.3 [Reserved.]

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner if necessary for the performance of the Work but shall exercise proper precautions relating to the safe performance of the Work.

Deleted: § 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.¶

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Deleted: After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.[Reserved.]

Deleted: to whom the Contractor has no reasonable objection and

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness if necessary for the performance of the Work. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

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§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

Deleted: Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents expressly require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by

the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor agrees to deliver and assign to the Owner at the time of final completion any and all manufacturer's warranties relating to materials or equipment incorporated into the Work and further agrees to perform the Work in such manner so as to maintain and preserve any and all such warranties.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. To the extent any such taxes are imposed in connection with the Work, Owner shall provide Contractor with a copy of its tax exemption.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work and who shall be available to assist Owner until all punch list work is satisfactorily completed by Contractor and its Subcontractors. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the

limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 Contractor's design professional shall certify that the Work has been performed in accordance with the design criteria, and the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

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§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work and the Agreement, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include without limitation, all fines, penalties, damages, liability, costs, and expenses (including, without limitation, reasonable attorneys' fees) rising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule regulation, code, or requirement of a public authority in the performance of the Work by the Contractor, Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required of Contractor under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and Architect.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

Except as otherwise directed by the Owner, the Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. As it deems appropriate, the Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

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§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review and in any case fewer than 20 days and in a manner that support the construction schedule. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's and Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 Prior to the start of Work or supply of materials by any Subcontractor or supplier, Contractor shall notify all Subcontractors and suppliers in writing that (.1) pursuant to 10 M.R.S.A. § 3252 the Owner shall not be responsible for any labor, materials or services performed or furnished, thereby preventing such Subcontractor and supplier from filing a lien against the Project and (.2) the Owner shall not have responsibility for payments to Subcontractors or suppliers and their sole avenue for payment are the Contractor and the payment bond, if any.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

The Owner may, at its sole option and in its discretion, accept the assignment of a subcontract agreement, and thereby, the Owner assumes the Contractor's rights and obligations under the subcontract; provided, however, that the Owner shall not assume any obligations of the Contractor for matters that arose prior to the assignment including any outstanding obligation to pay for work completed prior to the assignment.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation may be equitably adjusted for increases in cost resulting from the suspension.

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§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors.

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§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

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§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;

.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
.5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Contractor, Subcontractors and suppliers as set forth in Section 9.3.1.3, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Contractor shall provide lien waivers in connection with each Applications for Payment as follows: Contractor shall provide a duly executed lien waiver releasing any and all liens, security interests or encumbrances on behalf of Contractor for the payment or payments received by Contractor in connection with all preceding Applications for Payment, and a duly executed lien waiver from each of its suppliers, Subcontractors, and Sub-subcontractors releasing any and all liens, security interests or encumbrances related to all Work for which Contracto has received payment through all preceding Applications for Payment. Upon request, Contractor will provide Owner with a list of all Subcontractors, suppliers, laborers, or materialmen performing Work in connection with the Project.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
.7 repeated failure to carry out the Work in accordance with the Contract Documents; or
.8 other material breach of the Agreement.

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§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and

litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of warranties, such as manufacturers' warranties or specific Subcontractor warranties, manuals, instructions and similar documents required under the Contract Documents, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
.2 failure of the Work to comply with the requirements of the Contract Documents;
.3 terms of special warranties required by the Contract Documents;
.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
.5 other material breach of the Agreement.

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§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 7 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

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§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract

Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time, if materially impacted, shall be extended appropriately and the Contract Sum, if materially impacted, shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 [Reserved.]

Deleted: To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

Commented [AAE3]: Owner – Send entire Agreement including Exhibit A to Insurance Broker for review and comment.

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Contractor shall require similar written waivers in favor of the individuals and entities identified above from the Subcontractors, and Sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

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§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

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§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the State of Maine, excluding its choice of law rules.

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§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project. The Contractor shall execute all consents reasonably required to facilitate the assignment.

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§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when

and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.6 Maine Tort Claim Act.

Nothing herein shall, nor is intended to, waive any defense, immunity or limitation of liability which may be available to the Owner or their respective officers, agents and employees, under the Maine Tort Claims Act or any other privileges and/or immunities provided by law.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

.3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is in material breach of a provision of the Contract Documents.

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§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 If materially impacted, Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 14 days after occurrence of the event giving rise to such Claim or within 14 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

[Reserved.]

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision

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Deleted: The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes¶

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and¶

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.¶

¶

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. [Reserved.]¶

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shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, shall be conducted as the parties mutually agree. If the parties cannot agree, the mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 [Reserved.]

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§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which shall be conducted as the parties mutually agree. If the parties cannot agree, the arbitration shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

i. Discussion of the charge of the Library Building Committee

Manager's Comments:

Included in your packet is a copy of Library Building Committee charge as approved by the board at a previous meeting.

I have no recommendation to include in the packet.

Rockport Library Building Committee

The Rockport Library Building Committee will represent the Rockport Select Board and the citizens of Rockport by providing oversight for the final design, bidding, and construction phase of the new Rockport Public Library. The Committee will work with the architects, owner's representative, and town administration, and will regularly report to the Select Board on the committee's progress as the project proceeds.

Guiding Principles

1. Work effectively with Stephen G. Smith Architects, the construction manager from Phi Construction and Design and other construction professionals to secure the best project outcome possible.
2. Balance costs, quality and scope to optimize long-term value and efficiency.
3. Make fiscally responsible choices mindful of the potential impact to taxpayers and of the budget set by the Select Board.
4. Maintain an open process throughout the final design and construction phase of the project, including live streaming meetings when feasible and posting all agendas and minutes. The Town Manager will be public spokesperson for the committee.
5. Committee decisions will be made thru consensus and supported by the entire committee once they are made.

Committee Organization

The building committee will be composed of 5 voting members. These members will include 2 Select Board Members and 3 community members from Rockport. In addition, the Town Manager, Library Director and Public Works Director will be included on the committee as non-voting, ex-officio members.

A simple majority of the voting members will constitute a quorum. Motions will be passed by a simple majority of those members present.

Committee Role

Throughout the project, the building committee will serve as a liaison to the community. Options will be presented for the selection of materials for interior and exterior finishes and furniture and fixtures. The cost implications for different options will be evaluated as the final budget is developed.

The committee will make a recommendation to the Select Board at the completion of construction documents to send the project to bid.

Once bids are received, the committee will review the bids and make recommendations to the Select Board about which company to award the construction bid to.

The Building Committee will work with the design team and review bid alternates and make recommendations to the Select Board as to the appropriate bid alternates to be considered to meet the budget.

Change Orders: All contractor proposals for change orders will be reviewed by Stephen Smith Architects. The Architect will then submit a recommendation to the Town Manager and Owner's Representative for action.

All change orders are to be approved by the Architect, Town Manager and Owner's Representative.

Individual change orders in excess of $25,000 will also require approval of the Building Committee.

Individual change orders in excess of $50,000 will also require approval of the Building Committee and Select Board.

j. Vote to close Limerock Street and sidewalk on Russell Avenue in front of the Library during the construction of the New Library

Manager's Comments:

With the start of construction of the new library and the installation of the construction fence on the property surrounding the library and the park property. The road at the south end of Limerock needs to be closed to all pedestrian and car traffic for the duration of the construction.

In addition, because of the proximity of the construction to the sidewalk on Russel1 Ave, the sidewalk there also needs to be closed and fenced off. The parking on Russell need not be closed off entirely but may need to be restricted during the day when construction is in progress.

Suggested Motion:

I move to authorize Limerock Street and the sidewalk on Russel Ave, in front of the library lot as needed during the construction of the library.