

City of Belfast

Public Hearing #1

Council Chambers - Belfast City Hall

March 1, 2011

7:00 p.m.

CONTRACT REZONING AMENDMENT – DUBBA, LLC, PROPOSAL

The Belfast City Council, beginning at 7:00 p.m. or as soon as possible thereafter, on Tuesday, March 1, 2011, in the Council Chambers of Belfast City Hall, which is located at 131 Church St, shall conduct a public hearing and the second reading of an amendment to the City Code of Ordinances regarding a proposal by DUBBA, LLC to amend the approved contract rezoning agreement the City Council adopted in September 2005, as amended in May, 2008, regarding Belfast Bridge, LLC's plan to develop the 'Old Belfast Bridge Development Project'. The proposed amendment involves DUBBA, LLC's purchase of the former Stinson Seafoods property located on Front Street, Map 11, Lot 132, and their intent to operate the Front Street Shipyard. The Shipyard plans to repair, refit, build and store marine vessels. The specific amendments, Amendment #3 to the contract rezoning agreement, now being considered involve a proposal to change the location and configuration of the approved marine travel-lift pier and other marine improvements, to allow initial uses of the site, to allow demolition of building #1.

City of Belfast

Public Hearing #2

Council Chambers - Belfast City Hall

March 1, 2011

Immediately following Public Hearing #1

The City of Belfast will hold a Public Hearings on Tuesday, March 1st at 7:00 p.m, prior to its regularly scheduled City Council meeting, at Belfast City Hall Council Chambers, 131 Church Street, Belfast, to discuss the application being submitted to the Community Enterprise Grant Program in the amount of \$150,000, for the purpose of making streetscape improvements in the waterfront-downtown area.

City of Belfast

Public Hearing #3

Council Chambers - Belfast City Hall

March 1, 2011

Immediately following Public Hearing #2

The City of Belfast will hold a Public Hearings on Tuesday, March 1st at 7:00 p.m, prior to its regularly scheduled City Council meeting, at Belfast City Hall Council Chambers, 131 Church Street, Belfast, to discuss the application being submitted to the Economic Development Program (Grants to Municipalities for Direct Business Support) in the amount of \$200,000, for the purpose of assisting Front Street Shipyard in the construction of a winter storage building.

City of Belfast

Public Hearing #4

Council Chambers - Belfast City Hall

March 1, 2011

Immediately following Public Hearing #3

The City of Belfast will hold a Public Hearings on Tuesday, March 1st at 7:00 p.m., prior to its regularly scheduled City Council meeting, at Belfast City Hall Council Chambers, 131 Church Street, Belfast, to discuss the application being submitted to the Economic Development Program (Development Fund Loan) in the amount of \$200,000, for the purpose of assisting Front Street Shipyard in the construction of a winter storage building.

City of Belfast

Public Hearing #5

Council Chambers - Belfast City Hall

March 1, 2011

Immediately following Public Hearing #4

The City of Belfast will hold a Public Hearings on Tuesday, March 1st at 7:00 p.m., prior to its regularly scheduled City Council meeting, at Belfast City Hall Council Chambers, 131 Church Street, Belfast, to discuss the application being submitted to the Housing Assistance Grant Program in the amount of \$300,000, for the purpose of rehabilitating multi(3+)-unit rental properties located in Belfast.

City of Belfast

Public Hearing #6

Council Chambers - Belfast City Hall

March 1, 2011

Immediately following Public Hearing #5

Pursuant to Belfast Victualer License Ordinance a public hearing will be held on March 1, 2011 at 7:00 p.m. or as soon as possible thereafter, in the Council Chambers of Belfast City Hall on an application for a new Victualer License for Gregory Bowen d/b/a Bowen's Tavern LLC in a new location at 181 Waterville Road, (formally Crossroads Bar & Grill) Belfast, Maine license to expire May 31, 2012.

City of Belfast

Public Hearing #7

Council Chambers - Belfast City Hall

March 1, 2011

Immediately following Public Hearing #6

In accordance with Title 28A Section 653 MRSA 1964 a public hearing will be held on March 1, 2011 at 7:00 or as soon as possible thereafter in the Council Chamber of Belfast City Hall to hear an application by Gregory Bowen d/b/a Bowen's Tavern LLC currently located at 132 High Street, Belfast, Maine for a transfer of their Malt, Spirituous and Vinous Restaurant/Lounge (Class XI) liquor license, interior only, to their new location at 181 Waterville Road (formally Crossroads Bar & Grill) Belfast, Maine.

City of Belfast

Public Hearing #8

Council Chambers - Belfast City Hall

March 1, 2011

Immediately following Public Hearing #7

Pursuant to the Special Amusement Ordinance of the City of Belfast and the provisions of Title 28-A Section 1054 MRSA a public hearing will be held in the Council Chambers of Belfast City Hall on March 1, 2011 at 7:00 p.m. or as soon as possible thereafter on an application for a Special Amusement Permit by Gregory Bowen d/b/a Bowen's Tavern LLC for live entertainment, music, vocals - Karaoke, DJ and dancing located at 181 Waterville Road, Belfast, Maine, interior only.

City of Belfast

Public Hearing #9

Council Chambers - Belfast City Hall

March 1, 2011

Immediately following Public Hearing #8

In accordance with Title 28A Section 653 MRSA 1964 a public hearing will be held on March 1, 2011 at 7:00 or as soon as possible thereafter in the Council Chamber of Belfast City Hall to hear an application (new owner) by Maunlad Corporation d/b/a Oriental Cuisine located at 182 Main Street, Belfast, Maine for a new Malt and Vinous restaurant class liquor license, interior only.

Public Hearing #10

Council Chambers - Belfast City Hall

March 1, 2011

Immediately following Public Hearing #9

Pursuant to Belfast Victualer License Ordinance a public hearing will be held on March 1, 2011 at 7:00 p.m. or as soon as possible thereafter, in the Council Chambers of Belfast City Hall on an application (new owner) by Maunlad Corporation d/b/a Oriental Cuisine located at 182 Main Street, Belfast, Maine for a new victualer license to expire May 31, 2012.

City of Belfast

Regular Council Meeting No. 17

Council Chambers - Belfast City Hall

March 1, 2011

Immediately following the Public Hearings

1) Call to order

2) Roll call: Mayor Walter Ash, Jr.; Councilors Marina Delune, Roger Lee, Eric Sanders, Michael Hurley and Nancy Hamilton, City Manager Joseph Slocum, and Assistant Jennika Lundy

3) Pledge of Allegiance

4) Adoption of the agenda

5) Communications

6) Acceptance of the minutes

Regular Council Meeting #15-February 1st, 2011 and Regular Council Meeting # 16-February 15th, 2011.

7) Open to the public

Please state your name and town you are from **when addressing the City Council.**

8) Old Business and Council Committee Reports

9) Permits, Petitions and Licenses - Consent Agenda

A) Request to approve the application for a new victualer license for Gregory Bowen d/b/a Bowen's Tavern LLC to a new location at 181 Waterville Road, (formally Crossroads Bar & Grill) Belfast, Maine license to expire May 31, 2012.

B) Request to approve an application by Gregory Bowen d/b/a Bowen's Tavern LLC currently located at 132 High Street, Belfast, Maine for a transfer of their Malt, Spirituous and Vinous Restaurant/Lounge (Class XI) liquor license, interior only, to their new location at 181 Waterville Road (formally Crossroads Bar & Grill) Belfast, Maine.

C) Request to approve an application for a Special Amusement Permit by Gregory Bowen d/b/a Bowen's Tavern LLC for live entertainment, music, vocals - Karaoke, DJ and dancing located at 181 Waterville Road, Belfast, Maine, interior only.

D) Request to approve an application (new owner) by Maunlad Corporation d/b/a Oriental Cuisine located at 182 Main Street, Belfast, Maine for a new Malt and Vinous restaurant class liquor license, interior only.

E) Request to approve an application (new owner) by Maunlad Corporation d/b/a Oriental Cuisine located at 182 Main Street, Belfast, Maine for a new victualer license to expire May 31, 2012.

10) Business

A) Consent

None

B) Consideration of a request to acquire lots in the Business Park for the development of a new food processing facility.

C) Consideration of the proposed Amendment #3 to the Contract Rezoning Agreement with the owners of the former Stinson Seafood site on Front Street.

D) Discussion and possible adoption of "findings of fact" in support of a decision to approve the proposed Amendment #3 to the Contract Rezoning Agreement with DUBBA, LLC's redevelopment of the former Stinson Seafood property as the Front Street Shipyard.

E) Discussion on creating a business Incubator Without Walls program here in Belfast.

F) Update from Hiking Biking and Pedestrian Committee

G) Discussion and possible approval for a single location for Belfast Elections

H) Consideration of a contract to hire Insight Productions to provide cable programming and media services to the City.

- I)** Consideration and possible reaffirmation of the City's support for an application to the Community Enterprise Grant program in an amount of \$150,000 for the purpose of making streetscape improvements in a waterfront-downtown area.
- J)** Consideration and possible reaffirmation of the City's support for an application to the Economic Development Program for Grants to Municipalities for Direct Business Support award in the amount of \$200,000 for the purposes of assisting the Front Street Shipyard construct a winter storage building.
- K)** Consideration and possible reaffirmation of the City's support for an application to the Economic Development Program, Development Fund Loan for an award in the amount of \$200,000 for the purpose of assisting the Front Street Shipyard construct a winter storage building.
- L)** Consideration and possible reaffirmation of the City's support for an application to the Housing Assistance Grant program in the amount to \$300,000 for the purpose of rehabilitating multi-unit (3 or more) rental properties located in Belfast.
- M)** Update on the weatherization efforts for Belfast City Hall and possible bid award.
- N)** Consideration of a draft letter to be sent by the Council to all members of City Boards Commissions and Committees.
- O)** Request from the City Manager to go into Executive session to discuss personnel matters pursuant to 1 MRSA (6) (A).
- P)** Signing of Council Orders and housekeeping items.

11) Communications

12) Open to the Public

Please state your name and town you are from **when addressing the City Council.**

13) Adjourn

[Link to Manager's Report](#)

Draft Letter From the Council to City Board, Committee and Commission Members

Prepared by JJS 1/31/11

Redrafted at Council Request February 24, 2011

Dear Board, Committee or Commission Member,

The City Council wishes to thank you for your willingness to serve this community.

Communication relationship between the Public, the Council, Committees, Boards, Commissions and City Staff is crucial to the transparency and success of the City. We take this opportunity to identify our

understanding of our respective roles so we can all work together within a collaborative and clear process. Here are some reminders for everyone's benefit.

1. Boards and Committees are public bodies and therefore they must, under state law, post a public notice of their meetings. Belfast City Council adopted a policy for all City Boards, Committee's and Commissions on December 21, 2004. It requires the Committee to provide the City Clerk with both the notice of the meeting as well as the agenda a minimum of 7-days in advance of the meeting. (Copy attached)

2. This policy also requires for the delivery of minutes to the City Clerk within 30 days after the meeting and provides an outline for every set of minutes.

3. The provisions for special or emergency meetings require 6 hours notice to members of the Committee, the City Clerks office and the press.

4. Each Board or Committee should have (elect) a Chairperson. The Chair provides the following functions.

- ü make sure the agenda is sent to the Clerk's Office in a timely fashion

- ü runs the meeting

- ü acts as the spokesperson for the Committee on matters that need to be communicated to City Department Heads, the City Manager or the City Council.

5. Board or Committees speak and make decisions by majority vote. All votes should be reflected in the minutes of the meeting. Boards do not act by individual members.

6. Each Board or Committee should appoint amongst its members a secretary who will:

- ü prepare the minutes of every meeting and

- ü take responsibility, after they are approved by majority vote, to get them to the City Clerk's office for distribution and permanent recording.

7. While many City employees work regularly with City Boards and Committees, such as the Harbormaster, City Planner, Code Enforcement Officer, Parks and Recreation Director, Airport Manager, City Manager etc-- no Board or Committee -or any of their individual members -should direct the activities of full-time staff. If there is a problem with staff support then that matter should be referred to the City Manager.

Under the Charter the City Manager is responsible for the administration of all city departments and their employees.

8. Committee and boards support is generally available. If there is a Department Head that works

regularly with the committee then that person should be contacted first. As a backup the City Clerk should be contacted for assistance. The Council is always available for Committee or Board concerns.

9: Boards and Committees generally are advisory to the City Manager and City Council unless otherwise indicated. Here is a general summary of responsibility:

Ø Zoning Board of Appeals: a quasi-judicial Board of review that hears appeals stemming from decisions made on city zoning matters (Charter Sec 9).

Ø Comprehensive Planning and Review Committee (defined by State Law 30-A MRSA 4324 as written in City Charter) - and help develop and maintain a comprehensive plan and work on an implementation program to which it is assigned or otherwise directed by the City Council (Charter Sec 9).

Ø Planning Board- decision making authority over certain land use matters and make recommendations to the City Council (Charter Section 9 and Land Use Code Sections 66 to 102).

Ø Harbor Advisory Committee – in accordance with State law 38 MRSA 1-3 for the management of the Harbor and they can serve as the Harbor Master when they are unavailable. In general the Harbor Committee focuses on the Harbor and its facilities but does not act inconsistent with the duties of the Harbor Master. The Committee makes recommendations to the Harbor Master, City Manager and City Council. (Charter Section 9 and Chapter 30 in the Code).

Ø Board of Assessment and Review - to hear appeals on assessments per State law (Charter Section 9)

Ø Library Board of Trustees- Management and control of the library and grounds. They employ the librarian and other employees and direct the expenditure and investment of library funds (26-59).

Ø Parks and Recreation Commission: care and supervision of the public parks and range ways. Subject to the approval of the City Council, they can direct the expenditure of all money appropriated or available for the improvement of Parks and range ways. (38.41) Since this description of duties was put in the Code the City hired a Parks Director who is under the supervision of the City Manager and the City Manager and Parks Director can freely use appropriated funds to operate and serve the parks on a daily basis.

Ø Design Review Committee- Review construction design proposals in limited areas of the City under City Ordinance (80-2).

Ø Cemetery Trustees Committee- General supervision of all City Cemeteries (Code Chapter 18).

The City Charter specifically authorizes the Council to establish such other boards commissions and committees as the Council may determine to be needed from time to time. Here are some of them:

Ø Airport Advisory Committee- to advise the City on the airport and airport related issues.

Ø Energy and Climate Committee- recommend steps to Council to reduce green house and air pollution emissions (Created 2/21/07).

Ø Hiking, Biking and Pedestrian Committee- Recommends improvements and connectivity to hiking, biking and pedestrian assets or potential assets in the City of Belfast.

Ø Recycling Committee- recommends recycling improvements to the Council.

Ø Trail and Rail Committee- new Committee to advise the Council on all matters relating to the proposed new trail and the adjoining rail along the Passagasawaukeag River out to the Waldo Town line.

Ø Belfast Area Youth Council- to provide connectivity between the City and its younger citizens through meetings, recommendations and actions.

The Council encourages the Boards and Committees to bring updates on their plans and proposals to Council meetings to both inform the Council and also the general public. If you have any concerns about this letter please let us know.

Once again, thank you for all you do for Belfast,

Belfast City Council

AGENDA TOPIC 10.D.

TO: BELFAST CITY COUNCIL

FROM: WAYNE MARSHALL, CITY PLANNER

DATE: FEBRUARY 25, 2011

RE: FINDINGS OF FACT FOR AMENDMENT # 3 TO CONTRACT REZONING AGREEMENTFOR FRONT STREET SHIPYARD PROJECT

ACTIONS REQUESTED OF COUNCIL

Requested Action. The Council should review Documents 2.1, 2.2 and 2.3. Document 2.3 is a draft of the Findings of Fact that I recommend the Council adopt to describe why you may choose to approve

Amendment #3 to the Contract Rezoning Agreement. If you are comfortable with this recommendation, I suggest that the Council adopt the following motion:

"The City Council, at its meeting of March 1, 2011, hereby adopts Findings of Fact that describe why it approved Amendment #3 to the Contract Rezoning Agreement for the Front Street Shipyard project proposed by DUBBA, LLC. The Council, in adopting this motion, acknowledged the Findings of Fact prepared by the Belfast Planning Board and Harbor Committee, both of which recommended that the City Council approve Amendment #3.."

OVERVIEW OF DOCUMENTS FOR ACTION

ON CONTRACT REZONING AGREEMENT

Document 2.3 The Council will need to review and act on document 2.3, City Council Findings of Fact, to describe why you choose to approve Amendment #3 to the Contract Rezoning Agreement. The Council should adopt Findings as part of the decision making process. Such Findings could become critical requirements of the decision-making process if a party chooses to appeal the City's and Council's decision on the Contract to Superior Court. Also, Findings are not enforceable parts of the Contract Rezoning Agreement. I note that this is the first time I have presented document 2.3 to you; it was not part of the information that I presented to you at the First Reading.

Document 2.1 This packet also includes Document 2.1, Findings of Fact adopted by the Planning Board. I presented you a copy of the Board's February 9th Findings at the First Reading. That document, however, has since been revised to reflect actions of the Planning Board that occurred at their meeting of February 23, 2011. I am presenting this document to you because it is one of the critical requirements of the decision making process on a contract rezoning agreement that is identified in and referenced in your Findings of Fact. In essence, the Council is partly relying on the Planning Board's findings to describe why you made your decision.

Document 2.2 This packet also includes Document 2.2, Findings of Fact adopted by the Harbor Committee. I presented you a copy of the Committee's February 3rd Findings at the First Reading. That document, however, has since been revised to reflect actions of the Harbor Committee that occurred at their meeting of February 23, 2011. I am presenting this document to you because it is one of the critical requirements of the decision making process on a contract rezoning agreement that is identified and referenced in your Findings of Fact. Similar to the Findings of the Planning Board, the Council is partly relying on the Harbor Committee's findings to describe why you made your decision.

I will be available to answer any questions at the Council meeting.

SECTION 2. This section includes 2 documents which the City Council will need to reference in adopting its Findings of Fact that describe why the Council finds that this project satisfies requirements of the City Code of Ordinances. In essence, the Council, when it adopts Findings of Fact at its meeting of March 1st, will be endorsing the respective Findings of the Harbor Committee and Planning Board. To date, I have not prepared draft Findings of Fact for the Council, and I will need to prepare such for your meeting of

March 1st. I also note that Findings of Fact are not enforceable provisions of a contract rezoning agreement. Findings, however, are required by state law and City Ordinance. Findings describe why a respective Board made their decision. If an appeal of a City decision is filed, the Superior Court will review the Findings to determine if the City had an adequate basis for reaching their conclusions and making their decision.

- Document 2.1 Findings of Fact adopted by the Belfast Planning Board for Amendment #3 at the conclusion of their meeting on February 9, 2011.
- Document 2.2 Findings of Fact adopted by the Belfast Harbor Committee for Amendment #3 at the conclusion of their meeting of February 3, 2011.

DOCUMENT 1.1

NOTE to COUNCIL from CITY PLANNER:

This is a document which the Council will need to review and adopt as part of the contract rezoning agreement between DUBBA, LLC and the City. I note that I have made revisions to the draft of Document 1.1 that you reviewed at your meeting of February 15th (First Reading) to reflect comments made by City Attorney Kelly, which I outlined to you at the First Reading, and to reflect actions of the Harbor Committee and Planning Board which occurred at their meetings of February 23. I also note that City Attorney Kelly has reviewed and approved the revised language, and that such language has been presented to the Applicant, but to date, no requests for changes have been received.

The main purpose of this document is to identify the action of the Council to approve the contract rezoning agreement pursuant to the contract rezoning ordinance process. This document, which is essentially the cover section to the contract, incorporates the Conditions of Approval recommended by the Belfast Planning Board, Attachment A, and the Conditions of Approval recommended by the Harbor Committee, Attachment B. DUBBA, LLC will need to satisfy the requirements of Attachment A and Attachment B in constructing the project. The Conditions are the enforceable provisions of a contract.

Also, this is the Second Reading draft of the contract rezoning agreement. The Council also has the authority to change any term of this document, however, any significant amendments could require an additional Second Reading and public hearing. Amendments to this document may also require amendments to terms of Attachment A recommended by the Planning Board and Attachment B recommended by the Harbor Committee.

AMENDMENT #3 to CONTRACT REZONING AGREEMENT

CITY of BELFAST CODE of ORDINANCES

BELFAST CITY COUNCIL

ADOPTION of AMENDMENT #3 &

TERMS OF CONTRACT REZONING AGREEMENT

DUBBA, LLC (APPLICANT)

FRONT STREET SHIPYARD PROJECT

MAP 11, LOT 132

1) Parties to Agreement:

Applicant: DUBBA, LLC (hereinafter 'Applicant')

c/o JB Turner

--- Address ---

City: City of Belfast (hereinafter 'City')

131 Church Street

Belfast, Maine 04915

2) Description of Property & Applicant Request: The Applicant owns a property identified by the City of Belfast as Map 11, Lot 132, located at 101 Front Street, the former Stinson Seafoods property.

3) Introduction to and Purpose of Amendment # 3.

The Belfast City Council, on September, 20 2005, approved terms of a Contract Rezoning Agreement between Belfast Bridge, LLC (Applicant) and the City to allow development of the Old Belfast Bridge project. The City Council, on May 20, 2008, approved terms of Amendment #2, to the 2005 Agreement. The 2005 Agreement and the subsequent Amendment #2 (2008) included Attachment A, Conditions of Approval recommended by the Belfast Planning Board which the City Council adopted as requirements of the Contract Rezoning Agreement, and included Attachments B, Conditions of Approval recommended by the Belfast Harbor Committee, and Attachment B.1, Harbor Committee Recommendations, Construction of Commercial Fishermen's Dock, recommended by the Belfast Harbor Committee which the Council adopted as requirements of the Contract Rezoning Agreement.

DUBBA, LLC, on January 14, 2011, purchased the former Stinson Seafoods property. DUBBA, LLC and the City, on January 11, 2011, entered a Memorandum of Agreement that established certain agreements and covenants that apply to the sale and use of the property. Clause 2.c and clause 3.a. of the Agreement assign terms of the above referenced Contract Rezoning Agreement (including Attachment A, Attachment B and Attachment B.1) between Belfast Bridge, LLC and the City to DUBBA, LLC.

The purpose of Amendment #3 to the Contract Rezoning Agreement is to stipulate conditions that will apply to DUBBA, LLC's use of this property and their proposal to develop such as the Front Street Shipyard project. The terms of Amendment #3 adopted on March 1, 2011 by the City Council, including those identified in Attachment A, Planning Board recommended Conditions of Approval, and Attachment B, Harbor Committee recommended Conditions of Approval replace all inconsistent terms identified in the original 2005 contract rezoning agreement, as such was amended in 2008 (Amendment #2).

The City Council, in its review of Amendment #3, and the Applicant, in submitting this project proposal to the Council, recognize and acknowledge that said proposal (Amendment #3) identifies the Applicant's initial plans to construct project improvements, to reuse of existing structures and grounds, and to establish uses on the site. The main purpose of this project proposal (Amendment #3) is to allow the Applicant to make critical improvements so their business can be operational in the summer of 2011. The critical new improvements include but are not necessarily limited to: constructing a marine travel lift pier that can support a 150 ton travel-lift; constructing floats adjacent to the travel-lift pier; reserving an area for construction of the 'commercial fishermen's dock'; constructing a marine wash basin; and establishing the use of the property as a boat repair, boat building, boat refitting and boat storage operation. Both parties recognize and expect that the applicant will submit a subsequent amendment to this plan (Amendment #3) that will better address how the Applicant proposes to more fully develop and use the site. Any subsequent revised plan shall require review as an amendment to the adopted Contract Rezoning Agreement pursuant to the contract rezoning process identified in City Ordinances.

Further, all future amendments to this contract will specifically refer to DUBBA, LLC as project owner and applicant, and the name of the project hereafter will be known as Front Street Shipyard.

4) City Code of Ordinance Requirements.

The Belfast City Council determined that the City has the authority to consider the Applicant proposal to develop this property pursuant to terms of a contract rezoning agreement. The Council considered the provisions of the applicable City Ordinances, and the recommendations of the Belfast Planning Board and Harbor Committee in determining that the Applicant project is an allowed use and that it satisfies applicable Ordinance requirements. The Ordinance's which were considered are as follows:

- a. Chapter 102, Zoning, Article X, Contract Rezoning, Division 4, Waterfront Mixed Use zoning district and Waterfront Development shoreland district. The Council specifically noted that Section 102-1451 requires that the City and Applicant use the contract rezoning process for an application for a Use Permit, Site Plan Permit or Subdivision Permit for the property identified as Map 11, Lot 132, the former Stinson Seafoods property.
- b. Chapter 102, Zoning, Article V, District Regulations, Division 11.5, Waterfront Mixed Use zoning district.
- c. Chapter 82, Shoreland, Article IV, Districts, Section 82-135, Table of Uses for Waterfront Development Shoreland District.

- d. Chapter 82, Shoreland, Article V, Land Use Standards, Section 82-206.5, Contract Rezoning for Piers, Docks, or Other Structures Projecting into or over the Water.
- e. Chapter 30, Marine Activities, Division 4, Belfast Harbor, Section 80-95 Wharf Lines
- f. Chapter 78, Floodplain
- g. Chapter 80, Intown Commercial Design Review
- h. Chapter 90, Site Plan
- i. City of Belfast Subdivision Ordinance (Chapter 94).

5) Description of City Council Action: The Belfast City Council conducted the public hearings and meetings associated with its review of Amendment #3 that are required by Chapter 102, Zoning, Section 102-1452(F). The Council conducted the First Reading and an accompanying public hearing regarding this proposal at its meeting of February 15, 2011, and conducted the Second Reading and an accompanying public hearing at its meeting of March 1, 2011. The Council, at its meeting of March 1, 2011, found that the Applicant satisfied all requirements of Chapter 102, Zoning, Sections 102-1450 through 102-1454, and voted to grant Amendment #3 to Contract Rezoning Agreement to the Applicant for the use of property identified as Map 11, Lot 132. The Council found that the Applicant proposal satisfied all Section 102-1453(A) Mandatory Conditions for a Contract Rezoning Amendment (Agreement) that are stipulated in State Law, all Section 102-1453(B) Discretionary Conditions for a Contract Rezoning Agreement that are stipulated in the City Code of Ordinances, and that the project proposal is consistent with the Goal Statements stipulated in Section 102-1454. The Council completed its review at its meeting of March 1, 2011, at which time it voted to approve terms of Amendment #3 to the Contract Rezoning Agreement. The Council authorized the City of Belfast City Manager to enter into (sign) this Agreement on their behalf.

6) Terms and Conditions of Approval: The Contract Rezoning Agreement is subject to Applicant compliance with the following terms and conditions:

- a. Attachment A, Belfast Planning Board recommended Conditions of Approval, which the Planning Board reviewed and approved at its meeting of February 9, 2011, as such were amended by the Board at its meeting of February 23, 2011. *(Note – this clause may need to identify if the Council chooses to adopt any amendments to the Board’s recommendations).*
- b. Attachment B, Belfast Harbor Committee recommended Conditions of Approval, which the Harbor Committee reviewed and approved at its meeting of February 3, 2011, as such were amended by the Committee at its meeting of February 23, 2011. The Planning Board reviewed and endorsed the Committee’s recommended conditions at its meeting of February 9, 2011, and the Planning Board, at its meeting of February 23, 2011, reviewed and endorsed the revisions to the Committee’s recommendations which the Committee adopted at its meeting of February 23, 2011. *(Note – this clause may need to identify if the Council chooses to adopt any amendments to the Board’s recommendations).*

- c. Site Plan for Front Street Shipyard project prepared by Gartley-Dorsky Engineers dated February 25, 2011. The Planning Board and Harbor Committee reviewed this Site Plan and recommended its approval to the Council. The February 25, 2011 (final date) Plan (Plan approved by Council) listed above is intended to replace the initial versions of the Site Plan that were reviewed by the Planning Board and Harbor Committee.

d) It is specifically noted that all Site Plans, Architectural Drawings, and Phasing Schedules for the Old Belfast Bridge project that were referenced in the September 20, 2005 Contract Rezoning Agreement and Amendment #2 to said Agreement (dated May 20, 2008) between Belfast Bridge, LLC and the City, to the extent inconsistent with terms and conditions described in Amendment #3, and all attachments hereto, to the extent inconsistent with the terms and conditions described in Amendment #3, and all attachments hereto, are hereby declared void and do not apply to Amendment #3. Further, as between the parties to Amendment #3 and consistent with the revocation action of the Belfast Planning Board on February 9, 2011, as such action was amended by the Board at its meeting of February 23, 2011, the subdivision plan for the Old Belfast Bridge project adopted by the Belfast Planning Board on August 17, 2005, that is on file at the Waldo County Registry of Deeds, Plan Book --?--?, Page --?--?, to the extent that it is inconsistent with terms described herein, is hereby declared void and the City Department of Planning and Community Development shall file an Order reflecting the Planning Board's revocation of said subdivision in the Waldo County Registry of Deeds.

7) Integration. This Amendment #3, together with all attachments, represents the set of terms and conditions between the parties. No oral statements, promises or understandings may be relied upon by either party. Unless specifically displaced or revoked by terms and conditions of this Amendment #3, and all attachments hereto, the September 20, 2005 Contract Rezoning Agreement, as amended on May 20, 2008 (Amendment #2), shall remain in full force and effect.

8) Assignment. This Amendment #3, and all attachments hereto, may not be assigned to any other person or entity without the express written consent of both parties hereto; provided however, DUBBA, LLC, hereby reserves the right to assign its rights to any legal entity controlled and majority owned by any combination of the existing members of DUBBA, LLC.

9) Enforcement. The following provisions shall apply to enforcement of the terms of this Contract Rezoning Agreement, Amendment #3:

- a. The parties hereto acknowledge that this Agreement is enacted pursuant to and is an extension of the land use laws of the City of Belfast. The City of Belfast may enforce any violation of the terms and conditions in Amendment #3, and all attachments hereto, and the September 20, 2005 Contract Rezoning Agreement, as amended on May 20, 2008 (Amendment #2) to the extent not displaced hereby, pursuant to the relief, penalties and remedies, including injunctive relief, as contained in Title 30-A M.R.S 4452 and Rule 80K of the Maine Rules of Civil Procedure. Each day of violation shall be considered a separate violation. Provided, however, with the exception of emergency safety issues, no enforcement action shall take place unless DUBBA, LLC

fails to substantially cure violations after receipt of written notice from the City demanding cure within 30 days of receipt of said notice by DUBBA, LLC; and

- b. Unless specifically displaced by the terms and conditions described herein, DUBBA, LLC shall comply with all performance standards, land use ordinances, and public health, safety and welfare ordinances of the City of Belfast, whether existing or to be enacted in the future.

10) Status of Memorandum of Agreement. Unless specifically displaced hereby, the terms and conditions of the Memorandum of Agreement between the parties hereto dated January 11, 2011 shall remain in full force and effect.

11) Performance Guarantee. In lieu of a Performance Bond or Irrevocable Letter of Credit to ensure timely performance of the obligations of DUBBA, LLC for any material or substantial breach of the obligations of DUBBA, LLC, as described herein, after 30 day written notice issued by the City and opportunity to cure, the City shall have the exclusive authority to revoke any and all permits issued by it, and to seek an immediate Court Order to enjoin use and occupation of the property in question, until such time as the breach is fully and finally cured.

12) Effective Date of Agreement. The effective date of Amendment # 3 to this Contract Rezoning Agreement shall be the date of its adoption by the City Council: March 1, 2011.

ON BEHALF OF THE APPLICANT

JB Turner Date

DUBBA, LLC

ON BEHALF OF THE CITY OF BELFAST

Joseph Slocum, City Manager Date

City of Belfast

Adoption of Adoption of Amendment #3 to the Contract Rezoning Agreement and the accompanying Attachments and Plans is a legal land use decision of the City Council of the City of Belfast. Any appeal of

this decision shall be filed directly in the Waldo County Superior Court within 30 days in accordance with provisions of City Code of Ordinances, Chapter 102, Zoning, Section 102-1455.

DOCUMENT 1.2

NOTE to COUNCIL from CITY PLANNER

This is a document which the Council will need to review and adopt as part of the contract rezoning agreement between DUBBA, LLC and the City. Attachment A represents the adopted recommended Conditions of Approval from the Belfast Planning Board for Amendment #3. I specifically note that there have been some changes to the terms of this document from the one that you reviewed at your First Reading (February 15th) to reflect two issues:

- Concerns raised by Attorney Kelly which I explained at the February 15th First Reading and which the Council directed me to incorporate into the Conditions.
- Amendments associated with Planning Board review of these Conditions at its meeting of February 23rd. Most amendments reflect minor changes to the language in the document to address the Harbor Committee's revised recommendations that it made on February 23rd; reference document 1.3. I note that the Planning Board is responsible for the review of Harbor Committee's recommendations and making a recommendation regarding such to the Council.

DUBBA, LLC will need to satisfy the requirements of Attachment A and Attachment B in constructing the project. The Conditions are the enforceable provisions of a contract.

AMENDMENT # 3

ADOPTED ATTACHMENT A

CONDITIONS of APPROVAL

CONTRACT REZONING AGREEMENT

RECOMMENDED by BELFAST PLANNING BOARD

TO BELFAST CITY COUNCIL

ADOPTED ON FEBRUARY 9, 2011 &

AS AMENDED ON FEBRUARY 23, 2011

DUBBA, LLC (APPLICANT)

FRONT STREET SHIPYARD PROJECT

MAP 11, LOT 132

CITY COUNCIL ACTION REGARDING CONDITIONS OF APPROVAL RECOMMENDED BY BELFAST PLANNING BOARD.

(Recommended Language for Council action --- The Belfast City Council, at its meeting of March 1, 2011, voted to approve Amendment #3 to the Contract Rezoning Agreement to allow DUBBA, LLC to construct the Front Street Shipyard project. The Council, in adopting his Agreement, voted to require that the Applicant comply with Conditions of Approval recommended by the Belfast Planning Board, Attachment A, as such were adopted by the Planning Board at its meeting of February 9, 2011, and as amended by the Planning Board at its meeting of February 23, 2011. The following Attachment A, Conditions of Approval, Recommended by the Planning Board, as such were adopted by the Council, are identified in Section 6.a) of the Council's Contract Rezoning Agreement as requirements of the adopted Agreement.

INTRODUCTION TO & PURPOSE OF AMENDMENT #3.

The Belfast City Council, on September, 20 2005, approved terms of a Contract Rezoning Agreement between Belfast Bridge, LLC (Applicant) and the City to allow development of the Old Belfast Bridge project. The City Council, on May 20, 2008, approved terms of Amendment #2, to the 2005 Agreement. The 2005 Agreement and the subsequent Amendment #2 (2008) included terms and Conditions of Approval recommended by the Belfast Planning Board which the City Council adopted as requirements of the Contract Rezoning Agreement; said terms and conditions to the contract entitled Attachment A, Conditions of Approval. The Agreement also included Attachment B, Conditions of Approval Recommended by the Belfast Harbor Committee and Attachment B.1, Harbor Committee Recommendations, Construction of Commercial Fishermen's Dock, which the Belfast Planning Board reviewed and endorsed.

DUBBA, LLC, on January 14, 2011, purchased the former Stinson Seafoods property. DUBBA, LLC and the City, on January 11, 2011, entered a Memorandum of Agreement that established certain agreements and covenants that apply to the sale and use of the property. Clause 2.c and clause 3.a. of the Agreement assign terms of the above referenced Contract Rezoning Agreement (including Attachment A, Attachment B and Attachment B.1) between Belfast Bridge, LLC and the City to DUBBA, LLC.

The purpose of Amendment #3 to the Contract Rezoning Agreement is to stipulate conditions that will apply to DUBBA, LLC's use of this property and their proposal to develop such as the Front Street Shipyard project. With respect to Attachment A, Conditions of Approval Recommended by the Planning Board, the terms and conditions stipulated in Amendment #3 replace all inconsistent terms identified in the original 2005 Contract Rezoning Agreement, as such was amended in 2008 (Amendment #2). Amendment #3, Attachment A, Conditions of Approval, identifies all terms which the Planning Board is

recommending that the City Council adopt as conditions of the Contract Rezoning Agreement for the Front Street Shipyard project. The Board, in recommending its approval of Amendment #3, also endorses the Conditions of Approval recommended by the Belfast Harbor Committee, reference Attachment B.

The Planning Board, in recommending these Conditions of Approval, and the Applicant, in submitting this project proposal (February 9, 2011 Board meeting, and as amended at February 23, 2011 Board meeting), recognize and acknowledge that said proposal (Amendment #3) identifies the Applicant's initial plans to construct project improvements, to reuse existing structures and grounds, and to establish uses on the site. The main purpose of this project proposal (Amendment #3) is to allow the Applicant to make critical improvements so their business can be operational in the summer of 2011. The critical new improvements include but are not limited to include: constructing the marine travel lift pier that can support a 150 ton travel-lift; constructing floats adjacent to the travel-lift pier; reserving an area for construction of the 'commercial fishermen's dock', constructing a marine wash basin, and establishing the use of the property as a boat repair, boat building, boat refitting and boat storage operation. Both parties recognize and expect that the Applicant will submit a subsequent amendment to this Plan (Amendment #3) that will better address how the Applicant proposes to more fully develop and use the site; for example, the location and design of all buildings, the permanent location and design of the 'commercial fishermen's dock', the location of parking, the location of the coastal walkway, and similar concerns. Any subsequent revised plan shall require review as an amendment to the adopted Contract Rezoning Agreement pursuant to the contract rezoning process identified in City Ordinances.

Further, all future amendments to this Contract Rezoning Agreement will specifically refer to DUBBA, LLC as project owner and applicant, and the name of the project hereafter will be known as Front Street Shipyard.

PLANNING BOARD FINDING & ACTION

The Belfast Planning Board, pursuant to requirements of the City Code of Ordinances, Chapter 102, Zoning, Article X, Contract Rezoning, Division 4, Waterfront Mixed Use zoning district and Waterfront Development shoreland district, is responsible for preparing a contract rezoning agreement for presentation to the City Council as a proposed contract rezoning ordinance amendment. Said agreement must define specific terms that the Applicant must satisfy, including but not limited to the uses permitted for the site, permitted structures, required site plan improvements, a schedule for the construction of public and private improvements, and a list of all conditions that apply to this application.

The Belfast Planning Board, pursuant to Step 5 of the contract rezoning process (Article X, Division 4), at its meeting of February 9, 2011, and subsequently at its meeting of February 23, 2011, found that the Front Street Shipyard project proposal (Amendment #3) satisfies the following requirements of the City Code of Ordinances: City Subdivision Ordinance (the Board adopted an order to void the previously approved subdivision plan and found that the current Front Street Shipyard project proposal does not

require approval as a subdivision), Chapter 78, Floodplain, Chapter 80, Intown Design Review (no review required at this time), Chapter 82, Shoreland, Chapter 90, Site Plan, and Chapter 102, Zoning, particularly goal statements and requirements identified in Chapter 102, Zoning, Article X, Contract Rezoning, Division 4, Waterfront Mixed Use zoning district and Waterfront Development shoreland district,

The Planning Board, in making this finding, reviewed recommendations and the accompanying findings of fact adopted by the Belfast Harbor Committee at its meeting of February 3, 2011, and as such were amended by the Harbor Committee at its meeting of February 23, 2011 and concurred with their recommended Conditions of Approval which are described in Attachment B. The Board is recommending that the Council adopt the requirements of Attachment B, Conditions of Approval.

The Planning Board, per requirements of the Chapter 102, Zoning, Article 10, Contract Rezoning, Division 4, at its meeting of February 9, 2011, adopted Conditions of Approval that it is recommending the Belfast City Council adopt; reference Attachment A. The Board, at its meeting of February 23, 2011, adopted amendments to said Conditions of Approval, and the Board is recommending that the Council adopt its Attachment A, Conditions of Approval, as such were amended on February 23, 2011. The Planning Board recommends that the Council require DUBBA, LLC (hereafter applicant) to satisfy the following Conditions of Approval as requirements of Amendment #3 to the existing Contract Rezoning Agreement. It is expected that the Applicant must comply with these Conditions to obtain a building permit and subsequently an occupancy permit for project development. Planning Board review and approval includes its review and approval of a site plan entitled Front Street Shipyard dated February 1, 2011, as amended on February 22, 2011 prepared by Gartley-Dorsky Engineers.

The specific Conditions of Approval that the Planning Board recommends that the Council adopt as requirements of this Contract Rezoning Agreement are stipulated in Conditions 1 – 25, below.

1. CITY PERMIT APPROVAL & VOIDING OF SUBDIVISION PLAN: The Belfast Planning Board, after consideration of recommendations offered by the Belfast Harbor Committee, reference Attachment B to Amendment #3, at its meeting of February 9, 2011, granted approval of its recommended terms and Conditions of Approval to the City Council for Amendment #3 to the adopted Contract Rezoning Agreement to allow the new owner, DUBBA, LLC, (hereinafter Applicant) to construct the Front Street Shipyard project. The Planning Board, at its meeting of February 23, 2011, adopted amendments to the Conditions of Approval it adopted on February 9, 2011, and this action of the Board reflected its review of revised Conditions of Approval, Attachment B, recommended by the Harbor Committee at their meeting of February 23, 2011. The Planning Board's recommended Conditions of Approval, Attachment A shall replace all inconsistent terms identified in Attachment A that were recommended by the Belfast Planning Board and subsequently adopted by the Belfast City Council on September 20, 2005 and as amended on May 20, 2008 (Amendment #2) for the Contract Rezoning Agreement for the Old Belfast Bridge project proposed by Belfast Bridge, LLC. The Planning Board, at its meeting of February 9, 2011, also adopted findings of fact that describe why the Board found that the project complies with

requirements of the City Code of Ordinances, and at its meeting of February 23, 2011, adopted amended Findings of Fact. Planning Board review and approval of this project included its review and approval of the site plan entitled Front Street Shipyard project dated February 1, 2011 as amended on February 22 and 24, 2011 prepared by Gartley-Dorsky Engineers.

The Board considered the project proposed by DUBBA, LLC, and Amendment #3 to the adopted Contract Rezoning Agreement pursuant to Sections 102-1450 through 1456 of the City Code of Ordinances that apply to both the Waterfront Mixed Use zoning district and the Waterfront Development shoreland district. The recommended terms and conditions established through Amendment #3 regulate the uses the Applicant can conduct, and the development and improvements the Applicant can construct, on property identified as Map 11, Lot 132, the former Stinson Seafoods property located on Front Street, and certain City owned lands located adjacent to the project site.

The Planning Board, in its review and approval of the Old Belfast Bridge project proposed by Belfast Bridge, LLC, on August 17, 2005, approved an accompanying subdivision plan submitted by Belfast Bridge, LLC for their project. The Board found that the project proposed by DUBBA, LLC as Amendment #3 does not qualify as and does not require review and approval as a subdivision. The Board noted that the Front Street Shipyard project does not involve the construction of any new buildings, the construction of 3 or more dwelling units, the creation of 3 or more lots, or the establishment of a condominium association. Thus, the Planning Board, at its meeting of February 9 and again at its meeting of February 23, 2011, voted to approve an order to void the subdivision plan approved for Belfast Bridge, LLC, said plan having been recorded at the Waldo County Registry of Deeds, Plan Book -- ??--, Page -??--. The order to void the subdivision plan is contingent on City Council review and approval of Amendment #3 to the adopted Contract Rezoning Agreement. The City Department of Planning and Community Development, on behalf of the Board and upon City Council approval of Amendment #3, shall file an order that identifies the Board's action to void the subdivision plan in the Waldo County Registry of Deeds.

Any proposal to amend the terms of this Contract Rezoning Agreement, as such was approved through Amendment #3, shall require City review and approval through the applicable steps of the City contract rezoning process.

2. CHANGE IN APPLICANT: Amendment #3 to this Contract Rezoning Agreement was granted to DUBBA, LLC (Applicant). Any proposed change in the controlling ownership shall require review and approval by the Planning Board and City Council as an amendment to the approved Contract Rezoning Agreement to ensure that the new owner has the financial and technical ability to perform the responsibilities established by this Agreement. The Conditions of Approval in the Contract Rezoning Agreement shall be binding on the Applicant and any and all future owners of this property.

3. NON-CITY (OTHER) PERMITS: The Applicant shall provide the City Code Enforcement Officer a copy of all permits that may be required and that it obtains from any state or federal (non-City) agencies. If a state or federal permit applies to improvements involved with the issuance of a City building, demolition or similar permit, the Applicant shall obtain said permits prior to the issuance of a City permit.

The Applicant shall abide by terms of all state and federal (non-City) permits that are required for this project. If any conditions or requirements imposed by state or federal agencies differ or conflict with requirements established by the City, the Applicant shall inform the City of these conflicts and shall work with the City to resolve the conflict. This could require an amendment(s) to the City permits, and this Contract Rezoning Agreement.

Also, the Applicant shall inform the City Code Enforcement Officer of orders regarding project construction or compliance that may be issued by other agencies, and describe the action performed by the applicant to comply with the respective order.

4. USE OF BUILDINGS

The buildings identified on the site plan shall only be used for the uses identified below. The Applicant shall work with the City Code Enforcement Officer and appropriate other authorities to ensure that the existing buildings comply with local, state and federal guidelines that may apply to the use of the existing buildings. Any change in these uses shall require review by the Planning Board and City Council as an amendment to the Contract Rezoning Agreement.

Building # 1. The Applicant, pursuant to terms of the Memorandum of Agreement between DUBBA, LLC and the City dated January 11, 2011, shall demolish existing Building #1. The Belfast City Council, at its meeting of January 25, 2011, approved the Applicant proposal to demolish Building #1; reference plan prepared by Gartley-Dorsky Engineers dated January 17, 2011. The City Code Enforcement Officer, on February 7, 2011, issued a demolition permit to allow demolition of Building #1. The Applicant, by May 15, 2011, intends to complete demolition of this Building, the regrading and fill of the remaining slab of the original building, and to construct the retaining wall identified on the demolition plan prepared by Gartley-Dorsky Engineers.

Post the demolition and regrading of this area, the Applicant can use the former footprint of Building #1 for outside boat storage and employee and visitor parking. This area can remain a compacted gravel surface. The Applicant cannot construct any new or replacement buildings or structures in this area or use this area for other purposes unless such structures and uses are approved as an amendment to this Contract Rezoning Agreement.

Building # 2. The Applicant may use Building # 2, in its current condition (February 9, 2011), for any use specifically associated with its operation of a boat repair, boat building, boat refitting and boat storage facility. The Applicant does not have the authority to renovate, alter the exterior appearance or increase the size or height of Building # 2 without City review and approval of an amendment to this Contract Rezoning Agreement. The Applicant, however, shall have the authority to repair and replace any pilings associated with the dock on which this Building is constructed, and to perform routine maintenance to the Building.

Building # 3. The Applicant may use Building # 3, in its current condition (February 9, 2011), for any use specifically associated with its operation of a boat repair, boat building, boat refitting and boat storage facility. The Applicant has the authority to make renovations to the interior of the building, but it does

not have the authority to renovate or alter the exterior appearance or increase the size or height of Building # 3 without City review and approval of an amendment to this contract rezoning agreement.

Building # 4. The Applicant may use Building # 4, in its current condition (February 9, 2011), for any use specifically associated with its operation of a boat repair, boat building, boat refitting and boat storage facility. The Applicant has the authority to make renovations to the interior of the building, but it does not have the authority to renovate or alter the exterior appearance or increase the size or height of Building # 4 without City review and approval of an amendment to this Contract Rezoning Agreement. The City also recognizes that there is an existing sublease of this structure that may remain in effect to June 2011.

5. BUILDING DESIGN

The Applicant, pursuant to terms of the Memorandum of Agreement dated January 11, 2011 entered by DUBBA, LLC, and the City, shall demolish Building #1. Any and all approvals granted to Belfast Bridge, LLC regarding the design and height of Building #1, as such was shown on the September 20, 2005 plan, are hereby declared void.

The Applicant has declared that it does not intend to use or construct Building #3 in accordance with the approval granted to Belfast Bridge, LLC. Any and all approvals granted to Belfast Bridge, LLC regarding the design and height of Building #3, as such was shown on the September 20, 2005 plan, are hereby declared void.

To date, the Applicant has not submitted any plans or proposals to alter the exterior appearance, form or materials of Buildings #2, #3 and #4, as such existed on February 9, 2011. Thus, the exterior appearance, design, size and height of said buildings shall remain as such existed on February 9, 2011. Any change in the appearance, form or materials of the respective buildings shall require the review and approval of the Design Review Committee, Planning Board and City Council as an amendment to this Contract Rezoning Agreement. The following terms and conditions listed below apply to each building.

Building # 1. Building #1 shall be demolished. The design of any new or replacement structure(s) proposed by the Applicant for this area shall require review pursuant to the contract rezoning process.

Building # 2. The Applicant intends to retain Building #2. The Applicant may use Building #2 for an approved use. The Applicant cannot increase the size or height of this Building or alter its exterior appearance, as such existed on February 9, 2011, without City review and approval of an amendment to this Contract Rezoning Agreement. The reuse of this building also will require consideration of Floodplain requirements.

Building # 3. The Applicant intends to retain Building #3. The Applicant may use Building #3 for an approved use. The Applicant cannot increase the size or height of this Building or alter its exterior appearance, as such existed on February 9, 2011, without City review and approval of an amendment to this Contract Rezoning Agreement. The reuse of this building also may require consideration of Floodplain requirements.

Building # 4. The Applicant intends to retain Building #4. The Applicant may use Building #4 for an approved use. The Applicant cannot increase the size or height of this Building or alter its exterior appearance, as such existed on February 9, 2011, without City review and approval of an amendment to this Contract Rezoning Agreement. The reuse of this building also may require consideration of Floodplain requirements.

6. SEWER. The Applicant shall ensure that all existing buildings that will use public sewer are properly connected to public sewer. The Applicant shall work with City staff to perform the inspection of each sewer connection.

The Applicant shall present evidence to the City Code Enforcement Officer that the overboard discharge for the former Stinson Seafoods processing plant has been disconnected and that it is no longer operable. Further, the Applicant shall ensure that the existing sewer service to Building #1 has been properly disconnected.

The Applicant is granted approval to construct the proposed marine wash bay in the general location identified on the approved site plan. The Board requires the Applicant to submit a final plan for construction of the marine wash basin to the City Code Enforcement Officer and Superintendent of the Wastewater Treatment Plant for their review and approval. Further, the Applicant shall present evidence to the City that the wash bay complies with all state and federal requirements. The Applicant shall install the sewer line and treatment system that is approved for this improvement. The Board requires that the Applicant monitor wastes from this facility pursuant to requirements identified by the Belfast Wastewater Treatment plant. The applicant will be required to perform at least 2 tests at one month intervals and to report such results to the Wastewater Treatment Plant. The parameters for said tests are on file at the Department of Planning and Community Development (Code Enforcement Officer).

The Applicant shall obtain the required road opening permit from the Department of Public Works for any work that may occur within a City street and provide the accompanying performance guarantee that may be required for such work in the City street.

7. WATER SERVICE. The Applicant shall present evidence to the City Code Enforcement Officer that the Belfast Water District approves of the proposed method to provide public water to the respective buildings and the marine floats prior to issuance of a building permit for the respective improvements. The location of the new water service to the marine floats shall be consistent with the location identified on the approved site plan. The City and Applicant shall work cooperatively to allow the potential extension of the Applicant's water service improvements (reference site plan) to serve the 'commercial fishermen's dock and Thompson's Wharf area. The Applicant also shall present evidence to the City Code Enforcement Officer that the Belfast Water District approves of the final quality of construction of the connection to the public water supply system prior to issuance of an occupancy permit for the respective improvements.

The Applicant shall obtain the required road opening permit from the Department of Public Works and provide the accompanying performance guarantee that may be required for any work involved with the provision of water service that may impact an existing City street.

8. UTILITY SERVICE. The Applicant shall install all utilities in accordance with specifications identified on the approved site plan, and shall complete the installation of such utilities prior to the issuance of an occupancy permit for any respective improvement. Utility service improvements include but are not limited to the provision of power to the marine floats. The Applicant shall coordinate the replacement of the existing overhead utility service on Front Street and the installation of the new underground utilities with the City Department of Public Works. The Applicant shall obtain the required road opening permit from the Department of Public Works and provide the accompanying performance guarantee that may be required for any work involved with the provision of utility services that may occur within an existing City street. Further, the City and Applicant shall work cooperatively to allow the potential extension of the Applicant's electric service improvements (reference site plan) to serve the 'commercial fishermen's dock and Thompson's Wharf area.

9. SOLID WASTE DISPOSAL & LITTER. The Applicant intends to install one or more dumpsters on the site to collect and dispose of solid wastes. The dumpsters shall either be located in an enclosed building or shall be located within a four sided enclosure that consists of a 6 foot high wooden stockade fence. The Planning Board authorizes the Code Enforcement Officer to work with the applicant to identify the location of said dumpsters, and to require the installation of dumpsters prior to the issuance of an occupancy permit for any building. The Applicant shall ensure that all wastes are routinely collected and disposed of in a sanitary manner so that offensive odors are controlled, and so that waste and litter does not become a public nuisance.

The Applicant shall ensure that the site is free of litter, and shall regularly remove litter from the site to comply with this requirement.

10. HAZARDOUS WASTE: The Applicant shall arrange for the collection and disposal of all hazardous waste that may be generated on the site or found on the site during project construction, and shall comply with all state and federal requirements which may govern such collection and disposal.

In particular, the boat repair, boat building, boat refitting and boat storage operation shall comply with all state and federal regulations regarding the proper handling and disposal of hazardous materials and in the Applicant's use of such materials in servicing or constructing boats. The Applicant, if requested by the City, shall provide evidence to the City Code Enforcement Officer that all wastes classified as hazardous that are involved in the boat repair, boat refitting, boat storage and boat building operations are being handled properly.

The Applicant shall ensure that all operations that occur in marine waters comply with all state and federal requirements for the proper handling of any hazardous or special waste.

The Applicant and the City are aware that there may be hazardous wastes on portions of this site, and that project construction in such areas must comply with applicable state and federal requirements. The

City requires that if any development associated with this project results in the discovery of a hazardous waste or condition, that the Applicant must immediately alert the City Code Enforcement Officer and State Department of Environmental Protection of the presence of hazardous materials, and all construction activities in the affected area shall cease until a course of action to correct the problem is identified.

11. STORMWATER MANAGEMENT: The Applicant shall present a final construction plan for the installation of stormwater improvements to the City Code Enforcement Officer and Director of Public Works for review and approval. The final plan shall reflect specific grading and site improvements that are proposed so that stormwater is effectively managed and do not create an adverse impact on City stormwater facilities. The Applicant shall coordinate construction of the stormwater improvements with the City Department of Public Works, and shall obtain a road opening permit and post any performance guarantee in the amount specified by the Superintendent of Public Works that may be required for any work that occurs that may impact Front Street. The Code Enforcement Officer also has the authority to require the applicant to provide a certificate of construction from a licensed civil engineer licensed to practice in the State of Maine certifying that stormwater improvements have been constructed to the specifications identified on the Final Plan.

12. EROSION AND SEDIMENTATION CONTROL. The Applicant shall ensure that project construction and demolition activities do not disrupt water quality or result in sedimentation of the Passagassawaukeag River, and shall use appropriate erosion and sedimentation control measures to prevent such adverse effects. All marine construction activities shall conform to State Department of Environmental Protection and Army Corps of Engineer requirements, including any restrictions that may apply to when construction activities can occur.

13. PARKING. The Applicant shall use existing gravel areas on the site to provide parking for employees and visitors. The main areas that may be used for such parking are the open yard located to the south of Building #4, the gravel yard located to the north of Building #3 and the west of Building #2, and the reclaimed footprint of former Building #1. It is expressly understood by both the Applicant and the City that Applicant use of these parking areas to satisfy City parking requirements is approved as an initial approach regarding where and how to locate and construct acceptable parking facilities. The Applicant shall be responsible for maintaining the parking areas in good working condition, including snow removal, and shall ensure that snow storage occurs on the Applicant's property and does not interfere with the public's use of Front Street. The Applicant also shall provide information to employees informing them of where they should park on the site and shall install informational signage that may be needed to direct visitors regarding where to park.

The Applicant, by June 1, 2012, shall submit an amendment to this Contract Rezoning Agreement that better defines the amount of parking required, the location of such parking, and the construction standard for said parking. Further, it is expected that the Applicant will construct the parking identified in the Plan amendment no later than October 31, 2012.

The Applicant shall reserve an area adjacent to the reserve area for the 'commercial fishermen's dock' that can be used to park a minimum of 4 vehicles. The location of this reserve area is identified on the approved site plan and is required pursuant to Attachment B to Amendment #3 and the Memorandum of Agreement dated January 11, 2011.

The City, in allowing the parking plan approved as part of this amendment, recognizes that the City owns an existing public parking area of about 96 spaces. The City believes this parking lot, in addition to on-site parking that the Applicant will provide, can be used to support visitor parking.

14. FRONT STREET – PIERCE STREET INTERSECTION (Off-site Improvements)

The City, in granting approval of the September 20, 2005 contract rezoning agreement to Belfast Bridge, LLC, stipulated that Belfast Bridge make certain improvements to the Pierce Street – Front Street intersection prior to the issuance of an occupancy permit for any use in Buildings #1, #2 or #3. The City, at this time, is not requiring the Applicant (DUBBA, LLC) to make any improvements to this intersection. The Applicant and City will consider the desirability and need for improvements to this intersection as an element of the subsequent Plan amendment submitted by the Applicant for this project, and at that time, shall determine the extent of improvements that may be required and who should be responsible for paying for such improvements. The City requires that this Plan amendment be submitted no later than June 1, 2012.

15. MARINE/WATERFRONT CONSTRUCTION. The project includes construction of marine facilities below the normal high water mark of the Passagassawaukeag River. The Applicant, in constructing these improvements, shall comply with requirements established by the Army Corps of Engineers, Department of Environmental Protection, Department of Conservation and the City of Belfast, and the specifications shown on the approved site plan. The Applicant shall provide the City a copy of all permits and contracts associated with the construction of such improvements, and shall notify the City of all construction and operational requirements associated with such permits and contracts.

The Applicant's use of the project's marine facilities shall comply with terms and conditions established by the Belfast Harbor Committee, as such were reviewed and approved by the Planning Board and City Council. These Conditions of Approval are included as Attachment B, Conditions of Approval, to Amendment #3. Any change in the use or construction of the project's marine facilities shall require the review of the Belfast Harbor Committee, Planning Board and City Council as an amendment to this Contract Rezoning Agreement.

16. LANDSCAPING. The City, at this time, is not requiring the Applicant (DUBBA, LLC) to install any specific landscaping for this project. The Applicant, by June 1, 2012, shall submit an amendment to this Contract Rezoning Agreement that identifies the type and amount of landscaping that will be installed and the location of such. Further, it is expected that the Applicant will install the landscaping identified in the Plan amendment no later than October 31, 2012.

17. EXTERIOR LIGHTING. The February 1, 2011 site plan prepared by Gartley-Dorsky Engineers does not identify a specific lighting plan for the project site. The Planning Board recognized that the Applicant

intends to largely rely upon existing exterior lighting. The Board requires the Applicant to work with and obtain the approval of the Belfast Code Enforcement Officer for any new exterior lighting proposed to be installed by the Applicant for the initial project development. It is expected that lighting will be down-directed and shielded with appropriate cut-offs and that any lighting that may be installed will not cause glare on a public street, an adjacent property or adversely impact navigation in Belfast Harbor. The Applicant, by June 1, 2012, shall submit an amendment to this Contract Rezoning Agreement that identifies an overall lighting plan for the project and that identifies when lighting shall be installed.

18. PUBLIC ACCESS & IMPROVEMENTS. The Memorandum of Agreement dated January 11, 2011 between DUBBA, LLC and the City committed the Applicant to comply with requirements of the September 20, 2005, Contract Rezoning Agreement as amended on May 20, 2008, between Belfast Bridge, LLC and the City. A key requirement of this contract involved Belfast Bridge, LLC constructing and maintaining, in good working condition, a pedestrian walkway along the entire length of the main railroad track located on the site. The final specifications for construction of this walkway were to be determined by the City Council and Belfast Bridge, LLC.

DUBBA, LLC and the City acknowledge that a critical element of this project remains the construction of a pedestrian walkway, likely a multi-use path, through the Applicant property. The walkway/path through this site is a key component of the City's plans to design and construct the 'Belfast coastal walkway' that is intended to extend from the Boathouse at Steamboat Landing to the Armistice Bridge and across the River to Footbridge Road. The City is now (February 2011) using architectural and engineering services to design the 'coastal walkway'.

The City, at this time, is not requiring the Applicant (DUBBA, LLC) to make any of the walkway improvements which were contractually obligated through the Contract Rezoning Agreement with Belfast Bridge, LLC. The Applicant and City agree to cooperatively work together to identify potential locations and designs for the coastal walkway and to determine who should be responsible for constructing, maintaining and paying for such improvements. It is anticipated that the specific requirements of the Applicant for the coastal walkway will be determined as a provision of a subsequent amendment to this contract. This Amendment shall be submitted no later than June 1, 2012. Further, it is recognized that the Applicant and the City may need to reconsider terms of the lease/easement agreement entered between Belfast Bridge, LLC and the City for use of the railroad right-of-way, said lease having affirmed the requirement of Belfast Bridge, LLC to construct and maintain a pedestrian walkway.

Also, the City, in granting its approval of Amendment #3, requires that the Applicant allow the public the right to use the existing public right-of-way (railroad tracks) through the Applicant property as a means of public access. Further, the City, as specified in Amendment #2, retains the right to install stone/crusher dust within the confines of the existing right-of-way and adjacent City owned property to provide a better quality, safer and more defined path/walkway for pedestrians to use.

19. PERFORMANCE GUARANTEE. The main performance guarantees associated with Amendment #3 for this project involve conditions requiring the Applicant to comply with specifications identified on the

engineering and site plans for this project, the dates of construction that may be specified for such improvements, and for such compliance to occur to enable issuance of an occupancy permit for the respective improvements the Applicant intends to construct. The Applicant shall comply with the Conditions of Approval identified in Attachment A and Attachment B to obtain any occupancy permits that may be required. Failure to comply with said requirements shall result in the City issuing a notice of violation and providing the Applicant a period of 30 days to cure the violation. If the Applicant fails to substantially cure the violation the City shall have the exclusive authority to revoke any and all permits issued by it (reference clauses 9 and 10 of the Contract Rezoning Agreement).

Also, as noted in several of the specific conditions, the Applicant shall provide an appropriate performance guarantee, as such may be required by the Public Works Director, for any work that occurs in Front Street, most of which would be associated with utility improvements.

In addition, the Planning Board acknowledges that the escrow account established by the Applicant to comply with requirements of the Memorandum of Agreement dated January 11, 2011 between DUBBA, LLC and the City associated with the demolition of Building #1; reference clause 4.a., and the City's use of \$200,000 in funds that it has on deposit through its past decision to call a letter of credit issued by Machias Savings Bank and the City's ability to use said funds to construct the 'commercial fishermen's dock' and similar public improvements on the project site; reference clause 4.b., are in effect performance guarantees to ensure Applicant compliance with requirements of the City Contract Rezoning Agreement associated with this project. Attachment A includes this Memorandum of Agreement.

20. CONDOMINIUM ASSOCIATION. The sole purpose of this Condition is to acknowledge that the Condominium Association established by Belfast Bridge Association for the Old Belfast Bridge (Wakeag Landing) project, reference the Old Belfast Bridge Condominium Declaration, do not apply to this Applicant and that the establishment of this Condominium Association is now considered void for the purposes of this property and the Front Street Shipyard project. This condition also is included because several of the lease agreements between the City and Belfast Bridge, LLC reference this condominium association. The Applicant (DUBBA, LLC), at this time, does not intend to establish a Condominium Association. The Applicant shall cause notice to be filed in the Waldo County Registry of Deeds and if required, with the State, to stipulate that this condominium association no longer applies to this project. The Applicant shall provide the City Department of Planning and Community Development evidence of this filing.

21. EVIDENCE OF PROJECT OWNERSHIP. The Applicant has presented evidence to the City that DUBBA, LLC is now the owner of the former Stinson Seafoods property, reference Map 11, Lot 132. Further, the City acknowledges that certain leases between Belfast Bridge, LLC and the City were transferred to DUBBA, LLC pursuant to terms of the Memorandum of Agreement between DUBBA, LLC and the City, and the Settlement Agreement between Belfast Bridge, LLC and the City, both of which Agreements were executed in January 2011.

22. APPLICANT – CITY USE/LEASE AGREEMENTS. The City Council, at its meetings of July 5 and August 2, 2005, authorized the City to enter a series of agreements with Old Belfast Bridge, LLC. The agreements addressed the following concerns that were made part of the 2005 Contract Rezoning Agreement: Belfast Bridge’s lease and use of City owned or controlled property and improvements; the City’s lease or use of property owned by Belfast Bridge, LLC, or improvements that were to be constructed by Belfast Bridge, LLC; and the resolution of certain property issues of mutual interest. The City and Belfast Bridge formally entered this series of lease agreements in January 2006 to address the concerns identified below.

The Memorandum of Agreement dated January 11, 2011 between DUBBA, LLC and the City, reference clause 2, and the Settlement Agreement dated January 11, 2011 between Belfast Bridge, LLC, and the City, identified that the lease agreements and easements between the Belfast Bridge, LLC and the City were transferred to DUBBA, LLC as part of the sale and requirements of the contract rezoning agreement. Thus, these agreements are now in effect for the purchase of this property by DUBBA, LLC.

DUBBA, LLC and the City both acknowledge that the requirements of all of the leases and agreements referenced below may no longer be applicable to this project or that terms of certain leases may need to be amended. For example, clauses (e), (f), (g) and (i), at a minimum, may no longer be applicable; clause c involves a piece of property for which the City would like to obtain title following demolition of building #1; and clauses such as but not necessarily limited to (k) may warrant revision. Thus, DUBBA, LLC, and the City, mutually agree to reconsider current terms of the lease and easement agreements that applied to the previous (Belfast Bridge, LLC) project to ensure that the agreements are well-suited and appropriate for the Front Street Shipyard project. DUBBA, LLC and the City agree to discuss and consider potential appropriate revisions to the existing lease and easement agreements as part of the subsequent amendment to this contract rezoning agreement that will be submitted by DUBBA, LLC; said amendment to be submitted no later than June 1, 2012.

Agreements identified in the 2005 Contract Rezoning Agreement that are now in effect include:

- a. Agreement on the establishment of the littoral line between Thompson’s Wharf and OBB project, southerly littoral line. The
- b. Agreement on the establishment of the littoral line between Footbridge and OBB project, northerly littoral line.
- c. City acknowledgement of OBB ownership of land on which the public/private restrooms are to be located by virtue of a prescriptive easement.
- d. Mutual agreement that the Pierce Street right-of-way located on the northerly side of Front Street (footbridge side) is 66 feet in width.
- e. City grants OBB the authority to remove existing poles and fencing on City property near the footbridge entrance and to construct a safety fence.
- f. City grants OBB access, if needed, across the City’s Pierce Street right-of-way.

g. City allows construction of a connector road from the main OBB parking lot (adjacent to Building #4) to the City's public parking lot. The final location of the connector shall be determined by the City and may differ from that shown on the approved plan.

h. City lease to OBB for a small corner of land in the Front Street right-of-way on which Building #4 is located.

i. City and OBB acknowledgement of OBB abandonment of ownership of several small pieces of land in the Front Street right-of-way near the proposed Building #3 complex.

j. City grants OBB the authority to remove and replace railroad tracks during construction for OBB utilities and boat haul-out facility.

k. City lease to OBB to use the City railroad corridor through the project site for the purposes of constructing and maintaining a coastal public walk. Walk to be constructed to City specifications.

l. City lease to OBB of two wedges of City owned property, the so called railroad wedge that is about 3,600 square feet in size, and an accompanying wedge that is about 12,000 square feet in size, which OBB can use to construct project parking and access improvements.

m. OBB lease to the City of the "Commercial/Fishermen" dock, trap storage and bait area and improvements.

n. City authority to allow OBB to construct infrastructure improvements on City property, most of which will occur in the Front Street right-of-way.

23. SIGNS. The Applicant shall have the authority to install initial signage on the property, provided the Applicant obtains the appropriate sign permit(s) from the Code Enforcement Officer. The Applicant and City acknowledge that any subsequent amendment to the approved site plan, said amendment to be submitted no later than June 1, 2012, may require Intown Design Review Committee and Planning Board review and approval of an overall signage plan.

24. CITY BUILDING PERMITS. The Applicant may request the issuance of a building permit for any work identified on the approved Site Plan, reference Site Plan dated February 22, 2011 (and as such may be amended by the Council) prepared by Gartley-Dorsky Engineers, upon review and approval of this Contract Rezoning Agreement, Amendment #3. The Applicant shall comply with all City, state and federal requirements for all building permits that are issued.

25. AS-BUILTS. The Applicant shall provide the City Code Enforcement Officer an as-built of all site improvements constructed on the Applicant property and City property within 90 days of the issuance of an Occupancy Permit for the respective improvements on the project site. It is critical that the City be provided an as-built of any changes and improvements to City property and facilities.

NOTE to COUNCIL from CITY PLANNER

This is a document which the Council will need to review and adopt as part of the contract rezoning agreement between DUBBA, LLC and the City. Attachment B represents the adopted recommended Conditions of Approval from the Belfast Harbor Committee for Amendment #3.

It is specifically noted that the Harbor Committee, at a special meeting it conducted on February 23, 2011, adopted several significant amendments to the Attachment B, Conditions of Approval that it initially adopted at its meeting of February 3, 2011, and which were presented to the City Council at your First Reading and meeting of February 15, 2011. The revisions mostly affect Clause 3, Temporary Location of the Commercial Fishermen's Dock, and Clause 4, Permanent Location of the Commercial Fishermen's Dock.

The Harbor Committee, at its meeting of February 23, 2011, decided it would be best **NOT** to construct or spend any of the available \$200,000 in City funds (performance guarantee money) on construction of a temporary commercial fishermen's dock for the upcoming 2011 fishing season. The Committee decided it would be best to focus on energies and resources on how to construct the permanent dock, and to reserve all available monies for this purpose. The goal would be to conduct additional planning this spring, to prepare a construction design/engineering this summer and to obtain needed permits, to begin construction during the next available marine construction season (October 15, 2011 – March 15, 2012) and to complete construction of the permanent dock by June 1, 2012. The permanent location of the dock will be the area south of the travel-lift pier. I note that this decision was an outgrowth of the February 17 and 18, 2011 Harbor Committee workshop with the consultants involved with the Downtown – Waterfront Master Plan project (MRLD, Urban Harbors & Apex Engineering) and which was funded through the \$20,000 Shore & Harbor Technical Assistance Grant which the City received. The Harbor Committee met for nearly 8 hours over this 2 day workshop to discuss options for development of the commercial fishermen's dock and redevelopment of the Thompson's Wharf facility.

The Belfast Planning Board, pursuant to the contract rezoning ordinance process, reviewed and approved the Harbor Committee's revisions to this document at its meeting of February 23, 2011, and the Planning Board is recommending that the Council support the terms of Attachment B. DUBBA, LLC will need to satisfy these Conditions in constructing the project. The Conditions are the enforceable provisions of a contract.

AMENDMENT #3

ATTACHMENT B

ADOPTED CONDITIONS of APPROVAL

CONTRACT REZONING AGREEMENT

RECOMMENDED by BELFAST HARBOR COMMITTEE

TO PLANNING BOARD AND BELFAST CITY COUNCIL

ADOPTED ON FEBRUARY 3, 2011 &

AS AMENDED ON FEBRUARY 23, 2011

DUBBA, LLC (APPLICANT)

FRONT STREET SHIPYARD PROJECT

MAP 11, LOT 132

CITY COUNCIL ACTION REGARDING CONDITIONS OF APPROVAL RECOMMENDED BY BELFAST HARBOR COMMITTEE.

(Recommended Language for Council action --- The Belfast City Council, at its meeting of March 1, 2011, voted to approve Amendment #3 to the Contract Rezoning Agreement to allow DUBBA, LLC to construct the Front Street Shipyard project. The Council, in adopting his Agreement, voted to require that the Applicant comply with Conditions of Approval recommended by the Belfast Harbor Committee, Attachment B, as such were adopted by the Harbor Committee at their meeting of February 3, 2011, and as amended by the Harbor Committee at their meeting of February 23, 2011, said Conditions of Approval (Attachment B) having been reviewed and endorsed by the Planning Board at its meeting of February 9, 2011, and the amended Conditions having been reviewed and endorsed by the Planning Board at its meeting of February 23, 2011. The following Attachment B, Conditions of Approval, Recommended by the Harbor Committee, as such were adopted by the City Council, are identified in Section 6.b) of the Council's Contract Rezoning Agreement as requirements of the adopted Agreement.

INTRODUCTION TO & PURPOSE OF AMENDMENT #3.

The Belfast City Council, on September, 20 2005, approved terms of a Contract Rezoning Agreement between Belfast Bridge, LLC (applicant) and the City to allow development of the Old Belfast Bridge project. The City Council, on May 20, 2008, approved terms of Amendment #2, to the 2005 Agreement. The 2005 Agreement and the subsequent Amendment #2 (2008) included terms and conditions recommended by the Belfast Harbor Committee which the City Council adopted as requirements of the Contract Rezoning Agreement; said terms and conditions to the contract entitled Attachment B, Conditions of Approval. Amendment #2 also included Attachment B.1, Harbor Committee Recommendations, Construction of Commercial Fishermen's Dock, adopted by the Harbor Committee.

DUBBA, LLC, on January 14, 2011, purchased the former Stinson Seafoods property. DUBBA, LLC and the City, on January 11, 2011, entered a Memorandum of Agreement that established certain agreements and covenants that apply to the sale and use of the property. Clause 2.c and clause 3.a of the Agreement

assign terms of the above referenced Contract Rezoning Agreement (including Attachment B and B.1) between Belfast Bridge, LLC and the City to DUBBA, LLC.

The purpose of Amendment #3 to the Contract Rezoning Agreement is to stipulate conditions that will apply to DUBBA, LLC's use of this property and their proposal to develop such as the Front Street Shipyard project. With respect to Attachment B, Recommendations by the Harbor Committee, and Attachment B.1., Harbor Committee Recommendations, Construction of Commercial Fishermen's Dock, the terms and conditions stipulated in Amendment #3 replace all inconsistent terms identified in the 2005 Contract Rezoning Agreement, as such was amended in 2008 (Amendment #2). Amendment #3, Attachment B, Conditions of Approval, identifies the terms the Harbor Committee is recommending that the City Council adopt as conditions of the Contract Rezoning Agreement for the Front Street Shipyard project.

Further, all future amendments to this contract will specifically refer to DUBBA, LLC as project owner and applicant, and the name of the project hereafter will be known as Front Street Shipyard.

HARBOR COMMITTEE FINDING & ACTION

The Belfast Harbor Committee, pursuant to Step 4 of the contract rezoning process, reference City Code of Ordinances, Chapter 102, Zoning, Article X, Contract Rezoning, Division 4, Waterfront Mixed Use Zoning District and Waterfront Development Shoreland District, found that the Front Street Shipyard Project satisfies the requirements of Chapter 30, Marine Activities and Chapter 82, Shoreland Zoning, Section 206.5, which are the standards that apply to development of marine structures in the Waterfront Development Shoreland Zoning district, and found that the project is consistent with requirements of Chapter 102, Zoning, Article X, Division 4. The Committee, in making this finding, recommends that DUBBA, LLC (hereafter applicant) be required to satisfy the following Conditions of Approval. It is expected that the applicant must comply with these Conditions to obtain a building permit and subsequently an occupancy permit for the project development.

The Harbor Committee reviewed and adopted these Conditions of Approval at their meeting of February 3, 2011, and at a special meeting of February 23, 2011, adopted amendments to these Conditions. The Belfast Planning Board, pursuant to the contract rezoning process, at its meeting of February 9, 2011 reviewed and chose to recommend to the City Council that the Council approve terms of Attachment B as requirements of Amendment #3. The Planning Board, at its regular meeting of February 23, 2011, reviewed and chose to support the amendments to Attachment B recommended by the Harbor Committee. The Belfast City Council, at its meeting of March 1, 2011, approved the Attachment B, Conditions of Approval. The terms identified in Attachment B, Conditions of Approval, for Amendment #3 replace all inconsistent terms identified in the September 2005 Contract Rezoning Agreement and Amendment #2 (May 2008) to this Agreement that were previously stipulated in Attachment B.

CONDITIONS OF APPROVAL

The Belfast Harbor Committee, at its meeting of February 3, 2011, and in accordance with amendments adopted at its special meeting of February 23, 2011, recommended the following Conditions of Approval for marine improvements for the Front Street Shipyard Project proposed by DUBBA, LLC.

1. **Site Plan Approval:** The applicant shall construct the marine travel-lift pier and accompanying float system in accordance with the project design identified in the 'Front Street Shipyard' site plan (revised Plan dated February 24, 2011) and accompanying engineering plans that have been prepared by Gartley-Dorsky Engineers; said plans having been reviewed by the Harbor Committee and found satisfactory. Further, the applicant shall have the authority to make minor changes to the lay-out of the float system to address conditions that may be encountered during project construction, provided none of the floats intrude into the 25 foot setback area from the City channel or the setback area from the littoral line between the applicant property and the City owned Thompson's Wharf property. The Harbor Committee also approved of construction of the proposed wash bay facility.
2. **Additional Use of Marine Waters:** The applicant, until June 30, 2012, shall have the authority to conduct operations involved with this project in the marine waters associated with this property that are located to the northwest of the travel-lift pier (between the pier and the Armistice Bridge). Said operations may include but are not necessarily limited to: installing and operating temporary/seasonal floats; installing moorings; using existing docks and piers on the property; and using the existing boat launch ramp. Said operations can occur without further review and approval by the Harbor Committee, provided the applicant obtains any and all permits that may be required from the Belfast Harbormaster and appropriate state and federal authorities. The purpose of this condition is to allow the applicant flexibility in using its property to support initial project operations, and to allow such until the applicant submits a more definitive site plan which will be reviewed as an amendment to this contract rezoning agreement. The City requires the applicant to submit a more comprehensive site plan proposal for review as an amendment to the Contract Rezoning Agreement no later than January 1, 2012. Notwithstanding this Condition, if the City approves an amendment to the Contract Rezoning Agreement prior to June 30, 2012 that establishes more defined requirements for this area, the requirements of that amendment shall supersede this condition.
3. **Location and Construction of Commercial Fishermen's Dock:** The following provisions apply to construction of the 'commercial fishermen's dock'

3.1 Location of Dock. The Applicant shall reserve the area located south of the travel-lift pier and to the north of the littoral line between the Applicant property and the City Thompson Wharf property as the area which the City shall use to construct the 'commercial fishermen's dock' identified in clause 4.c of the Memorandum of Agreement dated January 11, 2011 between DUBBA, LLC and the City. Said reserve area is identified on the Front Street Shipyard Site Plan dated February 24, 2011 prepared by Gartley-Dorsky Engineers.

3.2 Funds and Schedule for Construction of Dock. The City, pursuant to clause 4.b of the Memorandum of Agreement dated January 11, 2011 between DUBBA, LLC and the City, shall use funds obtained through calling a \$200,000 letter of credit from Machias Savings Bank to assist in construction of the 'commercial fishermen's dock' in the above referenced reserve area. The City, barring unforeseen circumstances, commits to completing construction of the 'dock' by June 1, 2012. An outline of the City schedule for completing construction of the dock is as follows:

- Prepare concept plan for construction of the 'dock' – July 2011
- Prepare engineering plans and obtain permits for construction of the 'dock' - September 2011
- Solicit bids and award contract for construction of the 'dock' – November 2011
- Construction of 'dock' – November 2011 – May 2012
- Construction completed – June 2012

The intent of this approach and schedule is to allow the City and Applicant time to consider and plan the preferred lay-out of the 'commercial fishermen's dock', and how the construction and operation of this dock may be integrated with the City owned Thompson Wharf facility. Also, one of the agreed upon goals regarding the design and construction of this 'dock' is to eliminate potential conflicts regarding Applicant operations and City use of this area. An additional goal recommended by the Harbor Committee is that the construction of the commercial fishermen's dock should address requirements of clauses 4, 5 and 6 of Attachment B.1 of Amendment #2 (May 2008). The construction standard includes providing adequate electric service and water service to the 'dock', with the Applicant and City agreeing that they shall seek mutually beneficial locations and methods to install said services to their respective facilities. Further, it is recognized by both the Applicant and the City that the specific lay-out of the 'commercial fishermen's dock' shall require an amendment to this Contract Rezoning Agreement.

3.3 Displaced Mooring Owners & Provision of Temporary Facilities. The City specifically acknowledges that the City chose not to require completion of the 'commercial fishermen's dock' until June 30, 2012. As such, the City recognizes that no new facilities may be available or constructed between March 1, 2011 and June 30, 2012 that could be made available to displaced mooring owners; reference Clause 7 of this Agreement. The City Harbormaster is authorized to work with any mooring owner who may have been displaced by the Front Street Shipyard project and to identify alternative mooring locations for their use. Further, for the time period identified above, and consistent with requirements of Clause 4.b. of the Memorandum of Agreement dated February 11, 2011, by which the Applicant is responsible for temporary float space for displaced mooring owners, the Harbormaster can choose to temporarily locate one or all of (displaced) the moorings in the marine waters controlled by the Applicant that are located between the northerly side of the travel-lift pier and accompanying floats and the dock near the Armistice Bridge. The Harbormaster shall work with the Applicant if the Harbormaster proposes to

locate any temporary moorings for the displaced mooring owners in this basin to minimize potential conflicts with Applicant operations.

3.4 Submerged Land Lease. Prior to the City's start of construction of the 'commercial fishermen's dock', the Applicant and the City shall enter into a lease agreement to allow City use of said lands, including any submerged land lease that may be required. Such lease shall amend and replace an existing sublease between the City (as Sublessee) and Belfast Bridge, LLC (as Sublessor) recorded in the Waldo County Registry of Deeds in Book 2913, Page 221, the rights of Sublessor having been assigned by Belfast Bridge, LLC to DUBBA, LLC. The term of the lease shall coincide with the term of the primary submerged lands lease, provided that the Applicant shall use reasonable efforts to renew such submerged land lease at the end of each term, and if such renewal is obtained, the term of the sublease with the City shall be renewed to be co-existent with the term of the submerged land lease. The new lease will remove all references to a Boating Infrastructure Grant Program Project Agreement with the Maine Department of Transportation, and delete all references to a condominium. It will include provision for the City to pay rent, property taxes, provide insurance and maintain the leased premises and include provisions for termination upon default by the City. Notwithstanding current terms of the lease agreement, it is recognized that the parties may reconsider the requirement of the City to pay rent or the amount of rent paid for the permanent facility, as some of the conditions that resulted in the rental fee identified in the lease with Belfast Bridge, LLC regarding the amount of a rental fee no longer exist; particularly the requirements of the Boating Infrastructure Grant Program.

- 1. On-Shore Support Facilities for Commercial Fishermen's Dock.** The Applicant, consistent with requirements of Clause 4.c. of the Memorandum of Agreement dated January 11, 2011 between DUBBA, LLC and the City, and consistent with requirements of the 2005 Contract Rezoning Agreement, as such was amended in 2008 (Amendment #2), shall provide a suitable area for on-shore support operations associated with the 'commercial fishermen's dock'. These facilities shall consist of the following: an area(s) that provides about 700 square feet for temporary gear, trap and bait storage (mostly loading and off-loading), and 4 marked parking spaces (gravel surface acceptable) for person's who use the 'dock'. The Applicant and the City shall identify suitable areas to support these facilities as an element of the plan prepared for construction of the 'commercial fishermen's dock'. The Applicant is not obligated to construct or provide any on-shore support facilities until the 'commercial fishermen's dock is constructed.
- 2. Applicant Temporary Use of Reserve Area for the Commercial Fishermen's Dock.** The Applicant, until the date that the City initiates construction of the 'commercial fishermen's dock', shall be allowed to use the reserve area for said 'dock' identified in clause 3 of this Agreement for Shipyard operations. This use right shall include allowing the Applicant to construct and operate, at their cost, the marine improvements (pilings, floats, gangway and associated improvements) identified in the DEP NRPA Permit dated February --, 2011 that was issued to the Applicant for this project. Said improvements are also identified on the approved Site Plan dated February 24, 2011 prepared by Gartley-Dorsky Engineers. The City and Applicant also acknowledge that some of the facilities and improvements that the Applicant may choose to construct in this area could benefit the 'commercial fishermen's dock'. If the Applicant

constructs improvements that the City deems can support City construction of the 'commercial fishermen's dock', the City will reimburse the Applicant for its costs to construct said improvements. That said, if the Applicant chooses to construct improvements, most likely pilings, that the City deems would interfere with City construction and operation of the 'commercial fishermen's dock', that is approved as an amendment to this Contract Rezoning Agreement, the Applicant shall be responsible for the timely removal of said improvements so the City can construct the 'commercial fishermen's dock'. The City shall provide the Applicant a minimum of 30 days of notice regarding any improvements which must be removed.

3. **City Use of Commercial Fishermen's Dock:** The City of Belfast shall comply with the following conditions with respect to its use and lease of the 'commercial fishermen's dock'.

6.1 The City shall recognize that the construction of this 'commercial fishermen's dock' and its lease to the City shall satisfy any and all responsibilities of the Applicant to relocate or compensate any current (as of March 1, 2011) owner of any mooring or float that may be displaced by this project. The City further agrees that it will use this 'commercial fishermen's dock' area and other areas that may be available to the City to provide alternative locations for the displaced mooring and float owners. The City has determined that the following owners of moorings/floats will be displaced by this project:

- # 266, Paul Woods (Kris Clark partner), float, ACOE general permit. Fisherman with a lobster car on float.
- # 22, Peter Graham, dba Harbor Boat Service, float, ACOE general permit.
- # 161, Peter Graham, dba Harbor Boat Service, float, ACOE general permit.
- # 89, Milton Thorndike, float, fisherman.
- # 103, Holland Boat Shop, mooring, ACOE general permit that also allows mooring to be used for different boats, but not for renting.

6.2 Upon conveyance of the 'commercial fishermen's dock' area to the City, the City shall assume all costs associated with the maintenance and use of this area.

3. The City shall adopt policies to govern its use of the 'commercial fishermen's dock' and shall provide the Applicant a copy of its adopted policies for the use of this area, and any amendments that the City may adopt to these policies. The City, in preparing said policies, agrees to work cooperatively with the Applicant to provide an opportunity for the Applicant's concerns to be considered. That said, the City, shall have the final discretion regarding the policies it chooses to adopt. All such policies shall comply with the terms and conditions of all leases between the City and the Applicant.
1. **Littoral Lines & Construction Limitations:** All project construction shall observe the littoral lines identified on the site plan (Plan dated February 24, 2011), prepared by Gartley-Dorsky Engineers. On the southerly end, all structures shall be setback a minimum of 20 feet from the

littoral line and the navigable area between the Applicant facilities and the City Thompson Wharf facilities shall be a minimum of 40 feet in width. Along the northerly property line (area adjacent to Armistice Bridge) all structures, at a minimum, shall be setback 25 feet from the Applicant's property line. Further, no project infrastructure or construction activities shall endanger the integrity of the City's buried sewer line located on the southerly side of the Armistice Bridge, and project infrastructure shall respect an adequate setback to allow the City to maintain its sewer line. The City, through its Sewer Treatment Plant and Public Works Department shall identify an appropriate amount of setback that all Applicant facilities and operations must respect. In addition, the Applicant will not drop any anchors within 75 feet of the southerly face of the Armistice Bridge, nor grant permission to any person using its facilities to do so.

2. **Channel Setback:** Any and all floats constructed by the Applicant shall be located a minimum of 25 feet from the City's navigable channel, as such channel is defined upon the date of adoption of the Contract Rezoning Agreement, and which is accurately depicted on the Gartley-Dorsky Engineers site plan (Plan dated February 24, 2011). Further, the Applicant shall ensure that no vessels that use any of the Applicant's floats or piers for berthing encroach, at any time, into any portion of the navigable channel. This condition is an obligation of the Applicant; however, the Applicant recognizes that the City Harbor Master, per Chapter 30, Marine Activities, and Title 30-A has the authority to enforce this condition.

9. **Project Lighting:** The Applicant shall ensure that any lighting installed for this project does not adversely impact navigation in the harbor. The Harbor Committee and Planning Board shall be provided an opportunity to review and approve of the Applicant's lighting plan

10. **Recognition of Wharf Line Limit & Future Construction Activities:** The Harbor Committee, in recommending its approval of Amendment #3, explicitly affirms that it will recognize the amended wharf line limit (area more than 100 feet from the normal high water mark) shown on the Gartley-Dorsky site plan (the red line that is drawn 25' from the City channel and that is shown on the Plan dated February 24, 2011) for all present and future development proposed by the Applicant. Notwithstanding this provision, if the Applicant removes and abandons any wharf, float or dock facilities constructed in the marine waters that are located more than 100 feet from shore for a period of no less than 5 years, the Applicant shall forfeit the rights granted by the City to construct said structure beyond the 100 foot wharf line limit. Any new or replacement structure must respect the 100 foot wharf line limit, unless the City chooses to allow a replacement structure as an amendment to this contract rezoning agreement. Said amendment shall require the review of the Harbor Committee and action by the City Council.
11. **Plan Amendments:** Unless explicitly permitted by terms identified in these conditions of approval, any change or amendment to these terms and the approved site plan prepared by Gartley-Dorsky Engineers dated February 24, 2011 that affects the marine waters shall require review and approval by the Harbor Committee as an amendment to the Contract Rezoning Agreement.

12. **Authority of Belfast Harbormaster:** Notwithstanding specific terms of this Agreement, it is recognized that the Belfast Harbormaster, pursuant to authority granted by MRS Title 30-A and the City Code of Ordinances, Chapter 30, Marine Activities, is responsible for all issues related to operations in the marine waters of Belfast Bay and harbor and has the authority to enforce provisions of State law and the City Code of Ordinances.
13. **Cooperative Working Relationship:** The Harbor Committee requests that the Applicant recognize that the Armistice Bridge (footbridge) has long been used and enjoyed by recreational fishermen. The Committee requests that the Applicant work cooperatively with recreational fishermen to ensure their current use of the River for fishing is preserved.

The Harbor Committee also encourages the Applicant to establish a cooperative working relationship with the local fishing fleet and fishermen and to encourage operational policies that could prove mutually beneficial.

14. **Harbor Committee Request to City Council:** The Harbor Committee requests that it has the authority to provide a recommendation regarding the allocation of space at the 'commercial fishermen's dock' facility that the applicant will lease to the City and that commercial fishermen have a priority use of these facilities.
15. **City and DUBBA January 2011 Memorandum of Agreement:** The Conditions of Approval recommended by the Harbor Committee reference the January 2011 Memorandum of Agreement between DUBBA, LLC and the City. Said Agreement is attached to the Harbor Committee's Attachment B, Conditions of Approval to provide readers of this document easy reference to terms of said Agreement.

David Cassida, Chair, Belfast Harbor Committee Dated