CITY OF BELFAST

131 Church Street
Belfast, Maine 04915

Joseph J. Slocum
City Manager

E-mail:jslocum@cityofbelfast.org
Tel: (207) 338-3370 ext. 10
Fax: (207) 338-2419

MANAGER'S REPORT
Belfast City Council Meeting
Tuesday, March 1, 2016
7:00 p.m.

TO: Mayor Walter Ash Jr. and Honorable Members of Belfast City Council

FROM: Joseph J. Slocum, City Manager

DATE: Friday, February 26, 2016

Agenda Items:

10-A Presentation from the Ad Hoc Committee for the Outer Harbor and their recommendations for a new Outer Harbor Plan.

There are attachments in your packet. At the start of the meeting there will be a presentation by Joel Musson of the Musson Group on these recommendations. City attorney Kristin Collins will also be available if you have any questions on the proposed changes to the text of the Harbor Ordinance that would need to incorporate these recommendations.

10–B Public Hearing on the proposed Outer Harbor Plan.

The City has published this plan on his website. We have updated the Council a number of times as to the progress of the Ad Hoc Committee. On January 25th we held a public

information meeting at the Hutchinson Center outlining these proposals. This is a time and an opportunity for additional public input.

10-C Discussion and consideration of the recommended Outer Harbor Plan.

We will not be voting to approve the plan at this meeting. At the most, we could approve it as a first reading with a view that it would come back to your March 15th meeting for possible approval. This is an opportunity to see if there any changes to the recommendations that the Council would like to see incorporated into the final plan.

10-D Request from CMP to move telephone poles in conjunction with the Front Street Reconstruction Project.

City Public Works Director Bob Richards has no concerns or issues with this request. City Planner Wayne Marshall will be available at the meeting to address any questions you may have.

10-E Update from the Energy Committee.

Assistant City Planner Sadie Lloyd has a memo in your packet and will provide an additional verbal update at the meeting.

10-F Request from the City Treasurer to put foreclosed properties out to bid.

We have foreclosed on several mobile homes that are in private mobile home parks. We foreclosed on these homes because the owners have not paid their 2013 taxes. We want to put them up for sale by secret bid which would take place at your second Council meeting in July. The former owners of these mobile homes will have the ability to redeem their properties up until the time of the opening of the bids which will occur during the second Council meeting in July. In order to redeem they must pay all their outstanding taxes which will include the 2014 and 2015 taxes. Attached in your packet is a memo from City Treasurer Rickie LeSan along with photographs of these properties. We also foreclosed on two pieces of land but we are not ready to put them up for sale until staff has finished its review on whether or not we want to recommend that the City should keep these properties or indeed place them up for public sale.

10-G Recommendation from the Police Chief to appoint two reserve Police Officers to the Belfast Police Department.

Attached in your packet is a memo from Police Chief Michael McFadden. The first is Frank E. Gormley who currently works part-time for the Winslow Police Department and comes highly recommended from the Chief of that department. The second is Jonathan Guba who has done a lot of work for the Old Orchard Beach Police Department. He also comes with positive recommendations from the Chief of that department.

These gentlemen would fill in wherever needed in the department as schedules and opportunities permit.

10-H Request from a private individual to put up a tent on Steamboat Landing on May 21st for a wedding ceremony.

There is a memo in your packet forwarded on behalf of the Parks and Recreation Commission who would recommend approval of this request with some additional stipulations. One of those stipulations includes the imposition of a fee.

This wedding is to be held in conjunction with the family's rental of the Boathouse for the wedding reception. While we understand that people who want to rent the Boathouse want to expand its activity, we have previously decided over a year ago what the limits would be for those who rent it. We have steadfastly made it very clear to people that Steamboat Landing Park should be kept open and available to all and that we would not create exclusive zones that would prevent the public from using their park.

If the Council considers this request you will have the same request on every single wedding renting the Boathouse. We have stressed repeatedly that the Boathouse is a limited facility with limited seating, parking, and kitchen and bath facilities. People should not try to expand it beyond its capacity. It's a good financial deal for everyone but if they need more capacity they should go elsewhere. Tents, a hundred chairs, tables and trucks will intimidate the public from the open use of the Harbor Walk and the park. We have a lot to do with just managing the Boathouse. We do not need to now manage sections of our parks rented out for private events. There is plenty of room for a wedding behind the Boathouse that is part of the rental of that facility. Moreover we do not stop people from getting married in the park as long as they know that we do not reserve space for them and it must remain open to the public at all times. People can and do get married in the gazebo and in the parks, as long as it is a spontaneous opportunity to use the space when someone else is not using it at that time. We have not reserved it for private events. If minimal(less than 10) chairs are needed to seat the elderly then that is a fairly reasonable thing which can be set up and taken down in minutes.

I would be very concerned about renting our parks out to private interests which effectively excludes our citizens. This is not the Harbor Festival, the Celtic Festival or Cold Comfort Theater.

10-I Request from a road race organizer to use City facilities as part of a 200 mile running relay from Bar Harbor to Portland.

Attached in your packet is a memo from Parks and Recreation Director Norm Poirier for your consideration. He advises me, even though I do not recall this, that we have considered this request in the past. Our Harbor Walk, like our parks, is a special resource for the local community as well as the visiting community. I would strongly suggest that we do not use the Harbor walk as part of any road race for anyone. It wasn't built to promote races. I can understand why they need to use the Armistice Bridge to get safely from the East Side to the West Side of the harbor. After that, I think they should consider using Front Street so that people using the Harbor walk don't have to deal with crowds of runners swarming past them. I would also be concerned about having to re-route unfamiliar runners or other racers with alternate routes due to the Shipyards activity at the time.

10-J Request to enter into an agreement with the Waldo County YMCA for the use of the softball field at Walsh Fields.

Attached in your packet is a memo from Parks and Recreation Director Norm Poirier explaining this proposal.

We have parks to promote among other things, recreational and athletic activity. Waldo County YMCA has a great history of promoting recreational and athletic activity in Belfast. They organize leagues enabling people the opportunities to participate and this proposed agreement would further serve these interests. The YMCA provides softball services that the City itself could provide if it wanted to. Either way it would likely involve a participation fee just as swimming lessons do every summer at City Park. The Parks and Recreation Commission also recommend this agreement.

10-K Request from the Economic Development Director to submit two letters of intent to pursue two Community Development Block Grants under the State's Economic Development Program.

Attached in your packet are two separate memos from City Economic Development Director Thomas Kittredge explaining these two grant applications.

The first is for the Front Street Shipyard who hopes to acquire a waterjet computer router and a used fork lift truck.

The second is for the Cornerspring Montessori School to help pay for the construction and design cost related to the construction of their new school facility.

If awarded, each of these grants must be matched dollar for dollar and create a certain number of new jobs. 51% of the new jobs created as a result of these grants must go to people of low to moderate income as defined by HUD.

10-L Update on the proposal for the City to enter into a 20 year agreement with MRC for the disposal of our solid waste.

We may need a work session to review this far reaching waste disposal proposal. City Attorney William Kelly and I have been pouring through the various agreements. We attach for you initial consideration a review done by another Maine Lawyer on behalf of several other Towns. Attorney Kelly and I believe this analysis will help you to figure this proposal out. It is easier to understand than the actual agreements themselves. We will not expect that you will have read all of this by Tuesday but it is a good explanation of the proposed agreement. I will have an update for you at the meeting. Communities all over the region are reviewing this proposal as well.

10-M Signing of Council Orders

Have a safe enjoyable and fun local shopping weekend.

City of Belfast
Consent Agenda
Tuesday, March 1, 2016
Meeting #17

The following items are proposed as our Consent Agenda. As in the past the items are voted on in one blanket motion to the affirmative. One Councilor makes a motion to approve the items as stated, and then another Councilor will second that motion and the whole Council votes. If a Councilor requests an item be removed from the consent agenda, they do so during the adoption of the agenda. If a member of the public requests that an item be removed from the consent agenda, they can do so in the open to the public section. Suggested motions are listed and supporting material is enclosed.

9) Permits, Petitions and Licenses - Consent Agenda

A. Request to approve the application by Victor Flick Corp d/b/a Colonial Theatre located at 163 High Street, Belfast, Maine for a renewal Malt, and Vinous Restaurant Class III, IV license interior only.

Motion to approve a request of the application by Victor Flick Corp d/b/a Colonial Theatre located at 163 High Street, Belfast, Maine for a renewal Malt, and Vinous Restaurant Class III, IV license interior only.

B. Request to approve the Parade Permit application for the Belfast Has Pride parade on June 11, 2016 at 10:00 a.m. starting at Waterfall Arts and ending at Steamboat Landing.

Motion to approve the Parade Permit application for the Belfast Has Pride parade on June 11, 2016 at 10:00 a.m. starting at Waterfall Arts and ending at Steamboat Landing.

C. Request by the Library Director to appoint Elyzabeth Richards as the new part-time Library Assistant.

Motion to approve the request by the Library Director to appoint Elyzabeth Richards as the new part-time Library Assistant.

9.B

CITY OF BELFAST

131 Church St.
Belfast, Maine 04915

E-mail: cityclerk@cityofbelfast.org
Tel: (207) 338-3370
Fax: (207) 338-6222

Parade Permit

Permit # 2016-2
(office use only)

Date of request: 2/24/16

Name of Organization: Belfast Has Pride

Contact Person : Rachel Epperly Phone: 2073228077

Date of Parade: June 11, 2016

Formation time: 10 a.m.

Where Parade will be forming : Waterfall Arts

Parade Route: Waterfall Arts down High Street to Main Street to Front Street and ending at Steamboat Landing

Applicant Signature: Rachel Epperly

Date Approved by City Council: _____

9.C

BELFAST FREE LIBRARY *www.belfastlibrary.org*
106 HIGH STREET • BELFAST, MAINE 04915 • 207-338-3884 • FAX: 207-338-3895

TO: Joseph Slocum, City Manager
FROM: Steve Norman SN
DATE: February 23, 2016

Elyzabeth Richards has accepted my offer to fill the part-time Library Assistant position that has been open at the library.

Elyzabeth has worked before at the library. She resigned from a Library Assistant position here in 2004 to take a position with a school. During the summers of 2008 and 2011, she filled in admirably at the library when we were short-staffed.

I recommend that the City Council approve the hiring of Elyzabeth at the budgeted Range 4 and at Step 3 within that Range. She was at Step 3 when she resigned in 2004 and has worked at that pay rate when she was hired temporarily in 2008 and 2011.

Thank you.

Rec'd 1/1
Interviewed
2/17/16
Job offered
& accepted
2/22/16

Steve Norman, Director
Belfast Free Library
106 High Street
Belfast, Maine 04914

Dear Steve,

I am writing to apply for the part time Library Assistant position I saw advertised on the City of Belfast Website.

Frankly, I have been looking for a part time job to augment my part time position at Lincolnville Central School. Honestly, I was thrilled to see the position advertised at the Library. I have been watching for an opening there for quite some time.

I have been at the Lincolnville Central School for almost 12 years and there is not an option for full time work. I do love the job and do not plan on leaving. However, I have a lot of flexibility in my position there and I am sure I could work the 20 hours at the library quite easily. I am available one full day per week, all evenings and Saturdays. Especially helpful would be working during the summer and being able to fill in for the other employees who want to take vacations at that time.

I would love to speak to you more fully about the position. I can be reached at my home number, my cell phone number or my school number if you would like to arrange an appointment to meet in person.

I look forward to hearing from you.

Sincerely,

Elyzabeth Michaud Richards

10. A, B + C

THE MUSSON GROUP Planning & Economic Development · Permitting · Project Management

CITY OF BELFAST
OUTER AND COASTAL HARBOR PLANNING PROCESS
SUMMARY SHEET

Over the past several months the Harbor Committee has been developing a plan for managing the outer and coastal harbor areas. Below is an overview of the harbor planning process.

Background

Currently there are 250 moorings in the Outer and Coastal Harbors. These harbors make up the majority of the City's harbor and waterfront. Geography creates natural limitations due to prevailing winds, currents, accessibility of deep water, and access to protected areas. In addition, access to shore side facilities is limited due to historic land side development patterns.

A large portion of the harbor is within a Federal Navigation Project (FNP). Recently, the Army Corp of Engineers notified the City of Belfast that commercial moorings need to be removed from the FNP to be compliant with the rules associated with federally dredged harbor areas. At the time of the notice there were 15 moorings that fell under this category.

Harbor Plan Recommendations

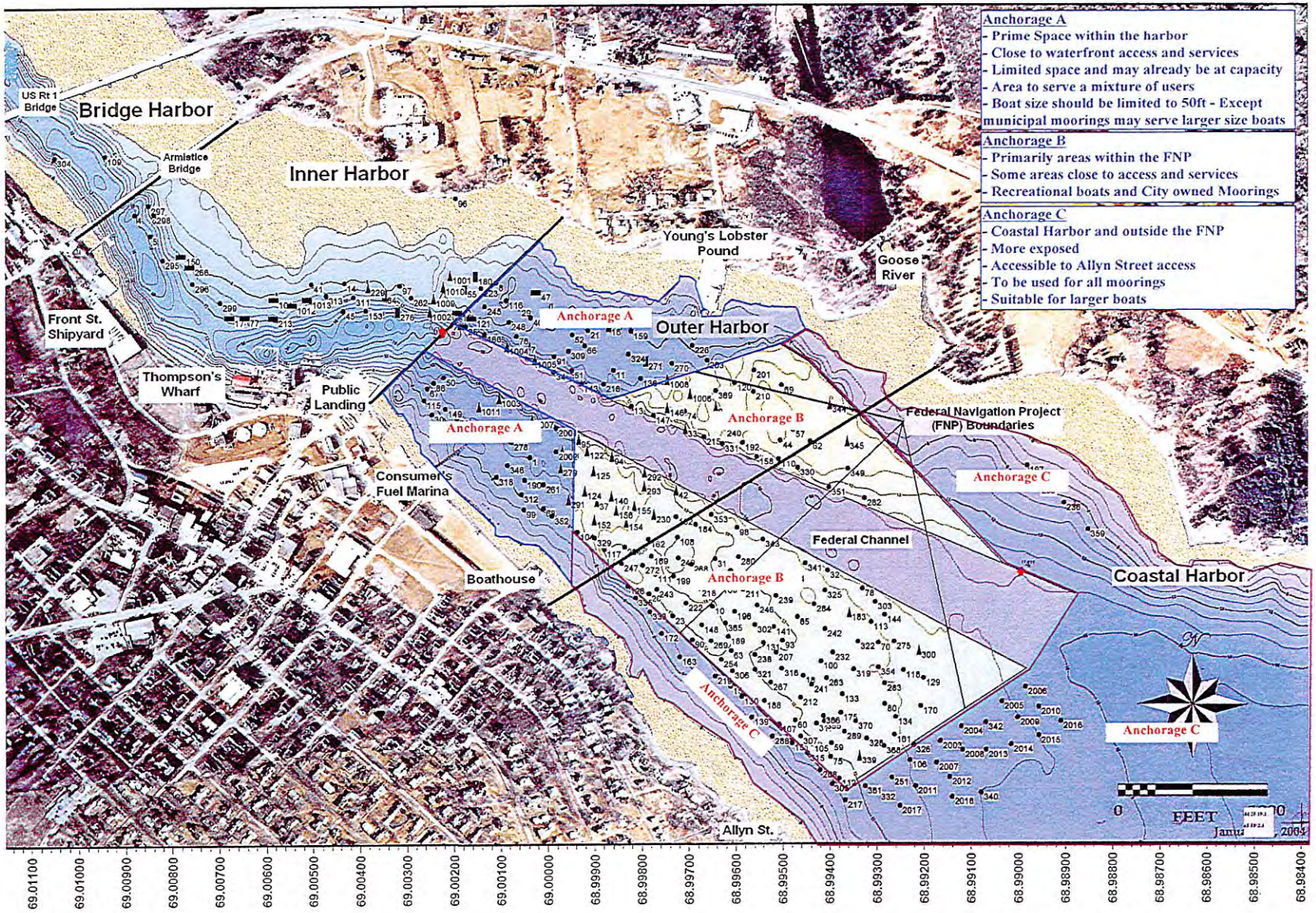
- *Relocate "Non-conforming Moorings"* – As a first step, the committee recommended relocating the "non-conforming" moorings in the FNP to other locations within the harbor. This has been accomplished already which leaves room for some relocation of "conforming" moorings from the relocation list.

- *Anchorage Areas* - The committee recommends dividing the Outer and Coastal Harbors into sub areas which we are calling Anchorages. There are three (3) Anchorage Areas – Anchorage A, B and C. Each anchorage has different characteristics and could serve different mooring users.

  - Anchorage A – Is closest to the municipal facilities, has good depths, and is outside of FNP. This area is important for a wide variety of users.
  - Anchorage B – Covers all the harbor area within the FNP. Portions of this anchorage are in close proximity to municipal facilities and other points of access. Shelter and sea conditions are less desirable. No commercial moorings are allowed.

PO Box 286, Southwest Harbor, ME 04679 • 207.944.3132 • noel@themussongroup.com

Belfast Harbor



Scale: One inch equals 700 feet

Not to be used for navigation

06/09/2015

City of Belfast
Public Hearing on Outer Harbor Management Plan
Council Chambers of Belfast City Hall
Tuesday, March 1, 2016
7:00 p.m.

In accordance with the Belfast City Charter a public hearing will be held to discuss the proposal for an Outer Harbor Management Plan for the City of Belfast Harbor Department. The hearing will be held on Tuesday, March 1, 2016 7:00 p.m. or as soon as possible thereafter in the Council Chambers of Belfast City Hall at 131 Church Street, Belfast, Maine. The hearing will also be broadcast live on Bel-TV, Time Warner cable channel 7.

A copy of the proposal and related Harbor Ordinance amendments may be found on the City of Belfast web site at www.cityofbelfast.org.

All citizens are invited to attend and will have the opportunity to give written and/or oral comments at the hearing. Written comments need to be received prior to the hearing in order to be considered. The Council Chambers - Belfast City Hall is handicap accessible. If there are any questions please feel free to contact the Belfast Harbor Master's office Monday through Fridays 7:00 a.m. to 4:00 p.m. at 338-1142.

Belfast Harbor Ordinance
Summary of Proposed Changes

Section	Page	Change
30-32	4	Provides a general definition of the term "commercial"
30-32	5	"Private noncommercial mooring" defined using ACOE definition
30-32	6	"Seasonal rental mooring" defined as a mooring used to secure a visiting vessel for no more than two months.
30-32	6	"Service mooring" defined as one used for service, support or temporary mooring of vessels served by a resident or non-resident business.
30-32	6	"Transient rental mooring" defined as a mooring used to secure a visiting vessel for no more than two weeks.
30-32	6	Detailed definition of "vessel length" added.
30-94	10	Anchorage areas established within the harbor. Areas are depicted on the attached new exhibit B.
30-126	14	Provisions added to occasional use section to address cruise ships. Exempts cruise ships from the limitation of 12 departures per season. Exempts cruise ships from requiring Belfast home port.
30-127	16	Language added to improve Harbor Master's discretion to manage /remove/relocate tenders.
30-133/4	19	Provisions reworded to clarify existing language noting that commercial/service/rental moorings require ACOE permits.
30-135	20	Prohibits seasonal (2-8 week) moorings in Anchorage A. Transient (<2 week) moorings allowed with permission of Harbor Master and ACOE if: a. Mooring owner has capacity to manage bookings and collection of rental money; b. Mooring owner is a commercial marine enterprise located on Belfast Harbor or with connection to a business located on Belfast Harbor. c. Mooring owner has a designated person responsible for ensuring safe use and timely turnover of rental moorings.

30-154	21	Ordinance previously contained two priority sections; one for Inner Harbor and one for rest of harbor. We have combined this into one section. The only difference between the Inner Harbor and the rest of the harbor is that priority is given to residents over non-residents.
30-156	22	Moorings in Anchorage A are to be assigned from the wait list as space permits. Harbor Master is to assign moorings with the goal of getting as close as possible to a split of 30% commercial / municipal users and 70% non-commercial users.
30-157	22	Second or subsequent noncommercial moorings to be assigned to the same person are to be allowed only if wait list is otherwise empty and space remains. Second or subsequent commercial moorings are assigned based on normal priority list, but entity must show the additional moorings are needed as an operational necessity of the business.
30-159	23	The Harbor Master is concerned about safety in the harbor during the winter months. This new section prohibits anchoring or mooring from December 1 to March 31 without the Harbor Master's advance permission.
30-166	24	Adds Anchorage A to the Inner Harbor as areas where moorings / moored floats must be used at least 50% of the time for three consecutive months during the calendar year, or the mooring will be lost.
30-170	26	Adds a requirement that anything noted in the inspection report must be addressed in a reasonable period of time.
30-171	27	Removes pre-existing section on rental moorings (new language is found at 30-135. This also removes the requirement that the City appoint a booking agent to handle all rental moorings within Belfast Harbor. Instead, 30-135 allows for individual companies to hold and manage rental moorings, as long as they meet the criteria established under that section.

City of Belfast
Harbor Ordinance
~~Jan~~ Feb ~~2015~~2016

Chapter 30 MARINE ACTIVITIES*

*Cross references: Shoreland zoning, ch. 82; waterfront I "B" downtown district, § 102-511 et seq.; waterfront Ii downtown district, § 102-541 et seq.; waterfront Iii eastfront harbor district, § 102-561 et seq.; waterfront Iv eastside bay district, § 102-581 et seq.
State law references: Operation of vessels, 38 M.R.S.A. § 1 et seq.

Article I. In General
Secs. 30-1--30-30. Reserved.

Article II. Harbors

Division 1. Generally
Sec. 30-31. Purpose of article.
Sec. 30-32. Definitions.
Sec. 30-33. Establishment and use of Harbor Usage Fees
Sec. 30-34. Authority to deny access to City Landing or floats
Secs. 30-35 – 30-45 Reserved

Division 2. Harbor Advisory Committee
Sec. 30- 46. Membership.
Sec. 30- 47. Term of members.
Sec. 30- 48. Officers; records and reports.
Sec. 30-.49 Compensation of members.
Sec. 30- 50. Duties.
Sec. 30- 51. Appeals.
Secs. 30-52--30- 70. Reserved.

Division 3. ~~Harbormaster~~Harbor Master
Sec. 30-71. Appointment; qualifications; term.
Sec. 30-72. Powers and duties.
Sec. 30-73. Compensation.
Secs. 30- 74--30- 90 Reserved.

Division 4. Belfast Harbor
Sec. 30- 91 Violations: penalty.
Sec. 30- 92 Harbor limits
Sec. 30- 93 Channel limits
Sec. 30- 94 Commercial mooring area.
Sec. 30- 95 Wharf Lines
Sec. 30- 96 Removal of vessels by ~~harbormaster~~Harbor Master: abandoned vessels
Secs 30-97 – 30-110 Reserved

Division 5. Harbor Rules and Regulations.
Sec. 30-111. Operation of vessels.
Sec. 30-112. Obedience to ~~harbormaster~~Harbor Master.
Sec. 30-113. Anchoring in channel.
Sec. 30-114. Control of anchoring by ~~harbormaster~~Harbor Master
Sec. 30-115. Procedure when passenger of vessel is afflicted with contagious disease.
Sec. 30-116. Mooring to or injuring buoy or beacon.

Sec. 30-117. Depositing matter in water.
Sec. 30-118. Dumping garbage or refuse.
Sec. 30-119. Noise.
Sec. 30-120. Water skiing and related activities
Sec. 30-121. Cleanup requirements.
Sec. 30-122. Leaving personal property on city property.
Sec. 30-123. Parking on public landing.
Sec. 30-124. Removal of boat cradles.
Sec. 30-125. Repair work.
Sec. 30-126. Concessions.
Sec. 30-127. Boats used as tenders.
Sec. 30-128. Tying up to floats or wharf.
Sec. 30-129. Swimming and fishing.
Sec. 30-130. Houseboats and Floating Businesses.
Sec. 30-131. Marine construction permitting process
Sec. 30-132. Harbor Advisory Committee review of shoreland permit applications
Sec. 30-133. ~~Individual~~ Private non-commercial moorings
Sec. 30-134. Commercial or Service moorings
Sec. 30-135. Rental moorings
Sec. 30-136. Shorefront owner
Secs. 30- 137 --30-150. Reserved.

Division . 6. Moorings
Sec. 30-151. Authority of ~~harbormaster~~Harbor Master.
Sec. 30-152. Term of mooring permits; registration fee.
Sec. 30-153. Priority for assignment of moorings.
Sec. 30-154. Dating of applications.
Sec. 30-155. List of applicants.
Sec. 30-156. Application for more than one mooring.
Sec. 30-157. Registration information.
Sec. 30-158. Denial of application.
Sec. 30-159. Assignment of locations.
Sec. 30-160. Log of assignments.
Sec. 30-161. Moving mooring or buoy; transfer of use of mooring.
Sec. 30-162. Change in size of vessel.
Sec. 30-163. Use by non-registered vessel.
Sec. 30-164. Suspension or termination of mooring assignment.
Sec. 30-165. Placing more than one craft at mooring.
Sec. 30-166. Numbering and marking.
Sec. 30-167. Design standards.
Sec. 30-168. Inspections.
Sec. 30-169. Relocation due to dredging.
Sec. 30-170. Removal by city.
Sec. 30-171. Rental Moorings Secs. 30-172--30-190. Reserved.

Division 7. Moored Floats
Sec. 30-191. Maximum size; approval of plans.
Sec. 30-192. Position.
Sec. 30-193. Permits.
Sec. 30-194. Applicability of mooring regulations.
Sec. 30-195. Fees.
Sec. 30-196. Assignment of locations.
Sec. 30-197. Navigational hazards and unsafe floats.
Secs. 30-198--30-220. Reserved.

Division 8. Fees
Sec. 30-221. Establishment; use.
Sec. 30-222. Payment of permit fees.
Sec. 30-223. Harbor Usage Fees. Secs. 30-224--30-250. Reserved.

Article III. Shellfishing (Reserved)

Division I. Aquaculture
Sec. 30-250. Aquaculture sites
Secs. 30-251—30-270 Reserved

APPENDIX

A. Concessions: Overnight Dockage Contract, Touch & Go Contract, Commercial Dockage Fee Schedule
   Sec. 30-126
B. Chart: Channel Limits, Federal Navigation Project, Federal Channel
   Sec. 30-93
C. Registration Information, Mooring Permit Application
   Sec. 30-157
D. Inspections: Mooring inspection/new mooring report
   Sec. 30-168
E. Rental Moorings: Booking Agent Contract
   Sec. 30-171
F. Harbor Usage Fees: Harbor Usage Fee Schedule
   Sec. 30-221

ARTICLE I. IN GENERAL

Secs. 30-1--30-30. Reserved.

ARTICLE II. HARBORS*

*State law references: Harbors, 38 M.R.S.A. § 1 et seq.

DIVISION 1. GENERALLY

Sec. 30-31. Purpose of article.

This article is established in order to regulate marine activities within the city harbor and waters adjacent to the shoreline of the city in order to ensure safety to persons and property, to promote availability and use of valuable public resources, and to create a fair and efficient framework for the administration of such regulations.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 1.1, 7-2-1996)(5-1-2012)(Ord. No 42 3-17-15)

Sec. 30-32. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aquaculture: The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Boat and vessel: Include boats of all sizes powered by: sail, machinery or hand; floats, rafts, scows, dredges, lobster, crab and shellfish cars, and craft of any kind.

Commercial:~~Commercial vessel~~: A vessel or mooring or activity ~~from which the owner~~used in a business, occupation or enterprise from which the owner obtains a substantial portion of his/her income. Rental moorings are not considered a Commercial use for the purposes of this Chapter.

Concessions contract: "Concessions" are defined as all businesses offering for sale to the public goods or services, which advertise or provide information, ticket sales, retail sales, or conduct other such activities within the areas described in subsection [30-126](b) and depicted on appendix A. "Concessions" include, but are not limited to sales of food or goods, motorized or non-motorized watercraft rentals, tours, charters, or sightseeing, overnight or fishing trips. This definition shall not apply to any business which operates exclusively from October 15 through May 15.

Floating business: A building constructed on a raft or hull that is represented as a place of business, including but not limited to waterborne hotels, restaurants, marinas or marina - related businesses.

Houseboat: A building constructed on a raft, barge, or hull that is used primarily for single or multifamily habitation: if used for transportation, this use is secondary.

Inner Harbor Basins: Commercial user areas designated in the Inner Harbor to better utilize harbor space by keeping similar vessels moored together.

Moored float: Any floating structure not attached to or associated with a pier or wharf, anchored or moored, and used normally for a berth, lobster car, or other approved purpose.

Mooring: Any device used by a craft for anchoring purposes and which device is not carried aboard such craft when underway as regular equipment.

~~***Mooring use*** is defined as follows:~~

~~(1) ***Individual noncommercial moorings:*** Moorings placed by a vessel owner for his private use including commercial fishermen moorings.~~

~~(2) ***Commercial/Service moorings:*** Commercial mooring buoys that are not for sale or rent.~~

~~(3) ***Rental moorings:*** Moorings for which any type of fee is charged in exchange for use rights.~~

Non-Resident Commercial Business: A business that provides marine-related services including but not limited to construction, services, storage, or maintenance of vessels, mooring inspections, charters, launch services or other services to boaters such as food or supplies, but does not have its principal place of business within the City of Belfast. In order to receive a mooring permit, a Non-resident Commercial Business shall demonstrate to the satisfaction of the Harbor Master that it requires ~~a~~ such mooring as an operational necessity of its business.

Non-Resident Commercial Fisherman: A person who holds a Marine License issued by the Department of Marine Resources, and who requires use of a moored vessel to earn a substantial portion of his or her income through fishing, but does not occupy a dwelling in the City of Belfast for more than 180 days in a calendar year.

Occasional use contract: Occasional use of the city-owned dock, launch ramp and breakwater is defined as the commercial operation of a vessel(s) for purposes including but not limited to tours, sightseeing, overnight or fishing trips, cruises or charters (educational, scientific, recreational or otherwise), which meets the following criteria:

(1) The vessel shall not make more than twelve departures from the city-owned dock between May 15 and October 15 of a particular year;

(2) The vessel and/or its crew or other employees do not have a concessions contract pursuant to subsection (d) of [section 30-126]; and

(3) The vessel has a home port of Belfast, Maine, meaning that:

a. The vessel makes the majority of its commercial departures during a given year from Belfast Harbor, including trailered and launched vessels;

b. The vessel is documented as a Belfast vessel; or

c. The vessel has a mooring, float or slip in Belfast Harbor or its coastal waters.

This definition shall not apply to any business that operates exclusively from October 15 through May 15.

Private noncommercial mooring: A mooring placed by a vessel owner for his private use including commercial fishermen moorings.

Rental mooring: A mooring for which any type of fee is charged in exchange for use rights.

Resident: A person who occupies a dwelling in the City of Belfast for more than 180 days in a calendar year.

Resident Commercial Business: A business that has its principal place of business within the City of Belfast and that provides marine-related services including but not limited to construction, service, storage, or maintenance of vessels, mooring inspection, charters, launch services, or other services to boaters such as

food or supplies. In order to receive a mooring permit, a Resident Commercial Business shall demonstrate to the satisfaction of the Harbor Master that it requires use of ~~a~~ such mooring as an operational necessity of its business.

Resident Commercial Fisherman: A person who occupies a dwelling in the City of Belfast for more than 180 days in a calendar year, who holds a commercial Marine License issued by the Department of Marine Resources, and who requires use of a moored vessel to earn a substantial portion of his or her income through fishing.

Seasonal Rental Mooring: A mooring used to secure a visiting vessel for no less than two months.

Service Mooring: A mooring assigned to a Resident or Non-resident Commercial Business and used for the service, support, or temporary mooring of vessels served by the business.

Shorefront Owner:

(1) Persons who, prior to January 1, 1987, owned shore rights of at least 100 feet of frontage regardless of the size of lot, in Belfast Harbor or water adjacent to the shoreline of the city, or

(2) An owner of the shore rights of a parcel of land with the larger of the minimal buildable lot size in the municipality or 20,000 square feet and, in either case, including 100 feet of shoreline frontage

Transient Rental Mooring: A mooring used to secure a visiting vessel for no more than two weeks.

Vessel Length: The length of vessel as berthed, measured to include any and all extensions or overhangs from the hull's stem or stern, such as bowsprits, boomkins, rudderposts, booms, davits, outboard motors, swim platforms, or any other extensions from the hull.

Wharf line: A line along the shoreline of Belfast as designated in this chapter and chapter 82, shoreland zoning, that defines the boundary beyond which there shall be no marine construction of a pier, wharf, dock, float or similar structure that is connected to land.

(Ord. No. 55-2003, 6-17-2003; Ord. No. 3-2005, 7-20-2004; Ord. No. 9-2005, § B, 9-6-2005)
Cross reference— Definitions generally, § 1-2
State law reference— Definitions, 38 M.R.S.A. § 11.

Sec. 30-33. Establishment and use of Harbor Usage Fees.

The city council, upon recommendation by the harbor advisory committee, shall set Harbor Usage Fees to be paid by the owner or master of vessels at all municipal facilities. The fees are to be paid to the city for the harbor advisory committee to use to upgrade, maintain and supervise all municipal facilities. In setting the dockage fees, the following criteria will be used: boat length, dockage duration, and overall cost of upgrading, maintaining and supervising all municipal facilities.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 7.4, 7-2-1996)

Sec. 30-34. Authority to deny access to municipal facilities.

The ~~harbormaster~~ Harbor Master may deny access to municipal facilities to a vessel if it is unsafe, or if it emanates obnoxious fumes, fluids, oils and other noxious substances.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 7.5, 7-2-1996)
Secs 30-35 —30-45 Reserved.

DIVISION 2. HARBOR ADVISORY COMMITTEE*

*Cross references: Boards, committees and commissions, § 2-31 et seq.

Sec. 30- 46. Membership.

The harbor advisory committee shall consist of five members and one alternate member, appointed by the city council. Each committee member shall be a resident of the city.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 5.1, 7-2-1996)

Sec. 30-.47 Term of members.

The term of office of a member of the harbor advisory committee shall be two years. The terms shall be overlapping so that in any one year no more than three new members are appointed to the committee.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 5.2(c), 7-2-1996)

Sec. 30- 48. Officers; records and reports.

The harbor advisory committee shall annually choose one of its members as chair and a different member as clerk. The clerk shall keep a record of all proceedings and make a report at the close of each year for inclusion in the annual report.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 5.2(b), 7-2-1996)

Sec. 30- 49. Compensation of members.

The members of the harbor advisory committee shall serve without compensation.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 5.3, 7-2-1996)

Sec. 30- 50. Duties.

The harbor advisory committee, under the general direction of the city council, shall advise the city manager and ~~harbormaster~~ Harbor Master as to the custody, care and management of the harbor and its facilities, not inconsistent with the duties of the ~~harbormaster~~ Harbor Master as set forth in city ordinance or by the Maine Revised Statutes, and shall hear appeals in such instances as provided in this article. The Committee shall review and provide recommendations to the city planning board regarding shoreland permit applications for uses identified in section 82-31.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 5.2(a), 7-2-1996)

Sec. 30-51. - Appeals.

(a) Any person aggrieved directly or indirectly by a decision, order, rule or act, or failure to act of the Harbor Master under this article may appeal such decision, order, rule, act or failure to act to the Harbor Advisory Committee. There is no right to appeal an award or failure to award an application and/or request for a concessions or occasional use contract pursuant to Section 30-126. Said decisions of the City Council are final. In deciding an appeal, the Harbor Committee shall hear and approve, or approve with modifications or conditions, or disapprove, the decision, order, rule, act or failure to act of the Harbor Master from which the appeal is taken.

(b) Such appeals shall be made in writing directed to the Chairman of the Harbor Advisory Committee, which shall be received by the City Clerk's Office at City Hall within five business days of the decision, order, rule, act or failure to act of the Harbor Master from which the appeal is taken. It must state with specificity the decision, order, rule, act or failure to act from which the appeal is taken and the reason for the appeal. The appeal shall be considered by the Harbor Advisory Committee within 30 days of notification of appeal.

(c) An appeal may be taken by any party from a decision of the Harbor Advisory Committee to the county superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure. The appeal to superior court from the decision of the Harbor Advisory Committee must be made within 20 days.

(Ord. No. 55-2003, 6-17-2003; Ord. No. 9-2005, § B, 9-6-2005)

Secs. 30- 52--30- 70. Reserved.

DIVISION 3. HARBOR MASTER*

_____*Cross references: Administration, ch. 2.

State law references: Harbor ~~master~~Master, 38 M.R.S.A. § 1.

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Sec. 30- 71. Appointment; qualifications; term.

There shall be appointed by the city council , some suitable person, who should live within 30 minutes of the city landing, to act as ~~harbormaster~~Harbor Master, who shall serve until a successor has been appointed. (Ord. of 3-21-1995; Ord. No. 1-1996, § 4.1, 7-2-1996)

Sec. 30- 72. Powers and duties.

(a) The duties and responsibilities of the Harbor Master ~~harbormaster~~ are prescribed by 38 M.R.S.A. In addition, the Harbor Master~~harbormaster~~, acting under the orders of the city council, shall have full authority in the interpretation and enforcement of all regulations affecting -Belfast Harbor and waters adjacent to the shoreline of the city to the fullest extent permitted by law.

(b) The Harbor Master ~~harbormaster~~ shall be the overseer of the city's moorings, floats, docks, ramps, breakwater, channels and adjacent municipal property and ensure that their proper maintenance shall be provided for by the public grounds maintenance division upon request from the Harbor Master~~harbormaster~~.

(c) The Harbor Master ~~harbormaster~~ shall regularly attend the harbor advisory committee's meetings and inform the committee of his activities, as well as provide such information as may be requested by the committee for the execution of its duties.

(d) The Harbor Master ~~harbormaster~~ may utilize the city hall staff and harbor advisory committee for assistance in the administrative aspects of this position.

(e) A person appointed or reappointed a ~~harbor~~ Harbor ~~master~~ Master or a ~~deputy~~ Deputy ~~harbor~~ Harbor ~~master~~ Master after August 31, 2006 must complete a basic -harbor master training course offered by a statewide harbor masters association within one year after being appointed or reappointed unless that person has previously completed such a course. Sec 1.38 MRSA § 1-A. The ~~harbor~~ Harbor ~~master~~ Master must complete the annual advanced training course of the Harbor Master's Association. The City of Belfast will maintain a membership to the Association.

(Ord. of 3-21-1995; Ord. No. 1-1996, § 4.2, 7-2-1996; 2007)

Sec. 30- 73. Compensation.

The compensation of the harbor master shall be determined by the city council.

(Ord. of 3-21-1995; Ord. No. 1-1996, § 4.3, 7-2-1996)

Secs. 30- 74--30- 90. Reserved.

DIVISION 4. BELFAST HARBOR

Sec. 30-91. Violations; penalty

(a) If the Harbor Master ~~harbormaster~~ has probable cause to believe that any provision of division 4 of this article has or may have been violated, the Harbor Master ~~harbormaster~~ may commence a civil action in the district court by service of a summons in the form of the uniform traffic ticket as provided by 29 M.R.S.A. § 2300. Complaints for filing in the district court may be drawn by the city attorney or by the district attorney's office. For any violations of division 4 of this article, the district court may impose a fine of not less than $25.00 and not more than $200.00 for each violation. Each day such a violation is continued may be considered a separate offense. Unless otherwise prohibited by state law, all fines collected shall be payable to the city.

(b) If the Harbor Master ~~harbormaster~~ shall find provisions other than those in division 4 of this article to be violated, the Harbor Master ~~harbormaster~~ shall notify the person responsible for the violation, either verbally or in writing, indicating the nature of violation and ordering the action necessary to correct it. The Harbor Master ~~harbormaster~~ shall maintain a written record of such notices. If the violation causes or threatens to cause property damage, then notification of the violation shall be by the fastest means possible. In this case, if contact with the mooring or boat owner or corrective action cannot be made within 24 hours, the Harbor Master ~~harbormaster~~ is authorized to take whatever action is necessary, the expense and risk for which shall be borne by the mooring or boat owner. If the mooring or boat owner fails to satisfy all financial obligations arising out of this incident prior to January 1 of the succeeding year, it shall not limit in any way the authority of the Harbor Master ~~harbormaster~~ to act as provided in 38 M.R.S.A. 1.

(c) When the action described in subsection (b) of this section does not result in the correction or abatement of the violation or condition, the city council, upon notice from the Harbor Master ~~harbormaster~~ or the harbor advisory committee, is hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations, that may be appropriate or necessary to enforce the provisions of this article in the name of the city. In any action in which the city prevails, the city shall be awarded reasonable attorneys' fees and court costs in addition to any other relief to which it may be entitled.

(Ord. of 3-21-1995; Ord. No. 1-1996, §§ 9.1--9.3, 7-2-1996)

Sec. 30-92. Harbor limits. (see appendix B)

For the purpose of this article, the harbor limits shall be defined as follows:

1. Coastal Harbor

   The Coastal Harbor of Belfast shall be defined as an area bounded on the south by a line extending from the Northport/Belfast town line (44° 25.573N, 68° 59.994W) to the Searsport/Belfast town line (44° 25.744N, 68° 59.526W) and on the north by a line from point "A" at Steamboat Landing (44° 25.726N, 69° 00.211W) to point "B" near Goose River (44° 25.882N, 68° 59.968W).

2. Outer Harbor

   The Outer Harbor of Belfast shall be defined as an area bounded on the south by a line from point "A" at Steamboat Landing to point "B" ——— at Goose River, and on the north by a line on the north side and parallel to the outer section of the Breakwater, point "C", (44° 25.880N, 69° 00.582W) to point "D" (44° 25.975N, 69° 00.408W) on the eastern shore of the harbor.

3. Inner Harbor

   The Inner Harbor of Belfast shall be defined as an area bounded on the south by a line on the north side of and parallel to the outer section of the Breakwater, point "C", to the eastern shore of the harbor, point "D", and on the north by the Foot Bridge, (44°

26.987N, 69° 02.105W).

3.5 Bridge Harbor

The Bridge Harbor of Belfast shall be defined as an area bounded on the south by the northerly face of the foot bridge, and on the north by the northerly face of the Veteran's Memorial Bridge.

4. River

The River of Belfast shall be defined as an area bounded on the south by the Foot Bridge, and on the north at the Head of Tide.

(Ord. of 3-21-1995; Ord. No. 1-1996, § 2.1, 7-2-1996)

Sec. 30-93. Channel limits (see Appendix B)

The Belfast Harbor channel shall extend westerly of and northwesterly from a point delineated as (44 N 69 W) near Steels Ledge to a point near the US Rt. 1 bridge where the channel does not exceed a distance of 25' either side of the deepest point and extends to the Head of Tide. (44 N 69 W). A 25' buffer area shall be maintained on either side of the channel. A detailed description of the channel location, turning basins, channel buffer, and private aids is attached and can be found in Appendix B.
(Ord. Of 3-21-1995;Ord. No. 1-1996, §2.2, 7-2-1996) (5-1-2012)

Sec. 30-94. Anchorage areas.

Three overlaid anchorage areas (A, B and C) are hereby established within the Outer and Coastal Harbors in order to better manage usage of prime mooring and navigation areas and to ensure opportunity for access by all types of harbor users. These anchorage areas are depicted on the map attached as Appendix B to this chapter, which shall be controlling as to the location of the anchorage areas.

~~**Commercial mooring area.**~~

~~The commercial mooring area is defined on the south by a line parallel to the outer section of the north side of the breakwater, point "C" to the east side of Belfast Harbor, point "D" and on the north by the Footbridge. Mooring sites shall be assigned by the following priority guidelines as space allows:~~

~~(1) Shorefront owner.~~
~~(2) Resident Commercial Fisherman.~~
~~(3) Resident Commercial Business.~~
~~(4) Non Resident Commercial Fisherman.~~
~~Non-Resident Commercial Business.~~
~~Other~~
~~(Ord. of 3-21-1995; Ord. No. 1-1996, § 2.3, 7-2-1996; 2010)(Ord. No.42-2015, 3-17-15)~~

Sec. 30-95. Wharf Lines

A Wharf Line is established in Belfast Harbor beyond which there shall be no marine construction of piers, wharves, docks, floats, or similar structures connected to the land. No construction within these boundaries shall infringe on or encroach upon any channel located in Belfast Harbor. Wharf lines are further described as follows:

1) Coastal Harbor Wharf Line

Any point or location not to exceed 300 feet from the mean high water mark.

2) Outer Harbor Wharf Line

Any point or location not to exceed 200 feet from the mean high water mark.

3) Inner Harbor Wharf Line

Any point or location not to exceed 100 feet from the mean high water mark.

3.5) Bridge Harbor Wharf Line

a. West side of harbor. Any point or location that is a minimum of 25 feet from the designated channel of Belfast Harbor.

b. East side of harbor. Any point or location that is a minimum of 100 feet from the normal high water mark if the structure is connected to the shore. If the structure is connected to the footbridge, any point or location that is a minimum of 25 feet from the designated channel of Belfast Harbor.

4) River Wharf Line

Any point or location not to exceed 100 feet from the mean high water mark.

Sec. 30-96. Removal of vessels by Harbor Master~~harbormaster~~; abandoned vessels.

(a) The Harbor Master ~~harbormaster~~ is hereby authorized to remove or cause to be removed any vessel or boat from any wharf in Belfast Harbor when so requested by the owner of wharf and whenever the Harbor Master ~~harbormaster~~ shall deem it necessary, may remove or cause to be removed any vessel, boat or craft which shall anchor or lie contrary to this article, rule, regulation or state statute. Prior to taking such action the Harbor Master~~harbormaster~~ shall make a good faith effort to attempt to notify the owner or person having care of the vessel, boat or craft and to order the owner or person to remove the vessel, boat or craft forthwith. If actual notice of the order to remove cannot be provided to the owner or person responsible for the boat in an expeditious fashion, the Harbor Master~~harbormaster~~ may remove or cause the removal at the expense of the owner of the vessel. If any person, after having been ordered to comply forthwith, fails to comply, action may be undertaken by the Harbor Master ~~harbormaster~~ as in other cases where violations occur, as provided in section 30-91.

(b) No person shall cause to be abandoned any boat, vessel, cradle or craft within the confines of Belfast Harbor or the waters adjacent to the shoreline of the city. Any such objects left in the confines of the harbor which shall appear to the Harbor Master ~~harbormaster~~ to have been unattended for a period of 30 days shall be deemed abandoned. The Harbor Master~~harbormaster~~, upon determining such abandonment, may order the last owner, if known, to remove such object within ten days. If the last owner is unknown or uncertain, or not reasonably available for notification or determination, the Harbor Master ~~harbormaster~~ shall attach to the abandoned property a notification ordering the object's removal within ten days. If removal as provided in this section and as may be ordered by the Harbor Master ~~harbormaster~~ is not accomplished within the ten-day period, the Harbor Master ~~harbormaster~~ may remove or cause the removal of such object at the expense of the last known owner. If such object or property is not claimed, and removal expenses are not paid by October 10 of each year, the object or property may be sold by the city, and all monies retained from the sale shall inure to the benefit of the City's harbor account.

(c) Any tender or skiff tied to the city floats that is left sunk or awash for a period exceeding seven days shall be deemed abandoned. The tender or skiff may be impounded by the Harbor Master~~harbormaster~~, and may be disposed of in the same manner as noted in subsection (b) of this section. The city shall not be liable for any damages sustained by an impounded tender or skiff.

(Ord. of 3-21-1995; Ord. No. 1-1996, §§ 7.1--7.3, 7-2-1996)

Secs. 30-97—30-110 Reserved.

DIVISION 5. HARBOR RULES AND REGULATIONS

Sec. 30-111. Operation of vessels.

Vessels shall be operated in -Belfast Harbor in a reasonable manner so as not to endanger persons or property or to cause excessive wash. Within the anchorage or mooring areas, headway speed shall not exceed five knots or such speed as may be necessary for maintaining steerage and control.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 6.1, 7-2-1996)

Sec. 30-112. Obedience to Harbor Master~~harbormaster~~.

No person shall refuse to obey a lawful order of the Harbor Master~~harbormaster~~.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 6.2, 7-2-1996)

Sec. 30-113. Anchoring in Channel

No vessel shall anchor in a manner so that any portion of the vessel, anchor or line shall lie, at any time, within the boundaries of the channel or any turning basin.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 6.3, 7-2-1996)(5-1-2012)

Sec. 30-114. Control of anchoring by Harbor Master~~harbormaster~~.

Boats may anchor only in those areas and for the length of time permitted by the Harbor Master~~harbormaster~~.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 6.4, 7-2-1996)

Sec. 30-115. Procedure when passenger of vessel is afflicted with contagious disease.
Whenever a vessel arrives in the Port of Belfast having on board any person afflicted with a contagious disease, the master, commander, or pilot thereof, and the health officer of the city, shall comply with the provisions of the Revised Statutes of Maine.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 6.5, 7-2-1996)

Sec. 30-116. Mooring to or injuring buoy or beacon.

No person shall moor, or cause to be moored, any vessel, boat, scow or raft to any buoy or beacon placed by the city, State of Maine, or a United States government agency in Belfast Harbor, or willfully destroy or injure a buoy or beacon.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 6.6, 7-2-1996)

Sec. 30-117. Depositing matter in water.

No person shall deposit, throw, sweep or cause to be deposited or swept, from any vessel, wharf, dock or other place, into the waters of -Belfast Harbor or into the waters adjacent thereto, any gas or oil, or bilge water containing gas or oil, ashes, dirt, stones, gravel, mud, logs, planks, or other substance tending to obstruct the navigation of the waters adjacent thereto, or to shoal the depth of the harbor or pollute the water thereof.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 6.7, 7-2-1996)

Sec. 30-118. Discharge of waste, garbage, or refuse.
No person, firm, corporation, or other legal entity shall discharge, spill, or permit to be discharged sewage, garbage, or other waste material from a watercraft or houseboat, into waters of Belfast Harbor, or on the ice thereof, or on the banks thereof, in such a manner that the same may fall or be washed into such waters, or in such manner that the drainage therefrom may flow into such waters.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 6.8, 7-2-1996)Cross references: Solid waste, ch. 46.

Sec. 30-119. Noise.

No person shall cause or allow to be caused an unreasonable noise in the Belfast Harbor.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 6.9, 7-2-1996)

Sec. 30-120. Water skiing and related activities.

No water skiing or related activities shall be permitted within the anchorage or mooring area.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 6.10, 7-2-1996)

Sec. 30- 121. Cleanup requirements.

All persons are responsible for promptly cleaning up any spillage or untidiness resulting from their operations.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 6.12, 7-2-1996)

Sec. 30- 122. Leaving personal property on city property.

No person shall leave any personal property on any -municipal property for a period of time in excess of 24 hours without the permission of the Harbor Master~~harbormaster~~.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 6.13, 7-2-1996)

Sec. 30- 123 Parking on public landing.

All persons shall park their cars and trailers when using the public landing in an area set aside and marked by the city in such a manner as to ensure free access to the harbor facilities and boat launch ramp.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 6.14, 7-2-1996)

Sec. 30- 124 Removal of boat cradles.

All boat cradles shall be removed from the public premises when not in actual use unless permitted by Harbor Master~~harbormaster~~.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 6.15, 7-2-1996)

Sec. 30- 125. Repair work.

Permission of the Harbor Master ~~harbormaster~~ is required for any repair work on boats at the city-owned floats, pier or adjacent municipal property before such work is started.
(Ord. of 3-21-1995; Ord. No. 1-1996, § 6.16, 7-2-1996)

Sec. 30-126. Commercial use of city-owned dock, floats, launch ramp and breakwater.

(a) *Statement of purpose.* This section is established in furtherance of the purposes of this article as set forth in section 30-31. More specifically, because the city harbor, city-owned dock, floats, launch ramp and breakwater are valuable and finite public resources, the purpose of this section is to regulate the level of commercial activity both within the harbor and on the city-owned dock, floats and breakwater, so as to minimize user conflicts and maximize the efficient use of both the water space and the city-owned waterfront. This section seeks to provide opportunities for both occasional and daily use of the harbor and city-owned dock, floats, launch ramp and breakwater, so as to best take advantage of their economic benefits to the city. This section authorizes the city council, with the input and advice of the Harbor Master~~harbormaster~~, to maintain and regulate the overall level of activity within these areas so as to prevent overcrowding, clutter, or disorder on the city-owned dock and around the harbor and to promote the safety of the public. The city must balance economic development with sustainable business and therefore limit the number of similar commercial activities making direct use of these areas.

(b) *Applicable area.* The area to which this section applies is as follows:

(1) Bounded on the west by Front Street; the south by Heritage Park; the north by property now or formerly occupied by the Weathervane Restaurant; and bounded on the east by the westerly bound of the channel of Belfast Harbor, as depicted on the map attached in Appendix A to this chapter;
(2) The Thompsons Wharf area;
(3)The Belfast Boathouse area;
(4)Heritage Park area; and
(5)All tidal waterfront property owned by the City of Belfast.

(c) *Contract required.*

(1) *Commercial activities.* No commercial activity meeting the definition of a "concession" or of an "occasional use" under this section may be conducted in the areas described in subsection (b) of this section and depicted on Appendix A, unless the ~~city~~ City ~~council~~ Council has approved a valid concessions contract or occasional use contract. Commercial fishing operations, divers, marine support services (such as for the tending of moorings and the fueling or maintenance of vessels) and any other operations not meeting the definitions of "concessions" or "occasional use" are not subject to the requirements of this section 30-126

(2)*Posting or distribution of materials.* No person shall post or hand out fliers, notices, pamphlets, brochures or other materials on the city-owned dock, floats or breakwater unless the city council has approved a valid concessions contract pursuant to subsection (d) of this section. Such materials may be placed in the Harbor Master's ~~harbormaster's~~ office, if space permits in the Harbor Master's ~~harbormaster's~~ discretion.

(d) *Concessions.*

(1) *Concessions defined.* "Concessions" are defined as all businesses offering for sale to the public goods or services, which advertise or provide information, ticket sales, retail sales, or conduct other such activities within the areas described in subsection (b) and depicted on appendix A. "Concessions" include, but are not limited to sales of food or goods, motorized or non-motorized watercraft rentals, tours, charters, or sightseeing, overnight or fishing trips. This definition shall not apply to any business which operates exclusively from October 15 through May 15.
(2) *Concessions contract.* No concessions of any kind shall be allowed at the city-owned dock unless the operator of such concession has first obtained a concessions contract from the city council, and then only on terms deemed to be in the best interest of the city. In awarding contracts, the city council shall consider the purposes of this section as set forth in subsection (a), above, in order to best promote economic development, provide for the safety of the public, and minimize congestion and clutter. Said contracts may vary in scope and form depending on the type of concession.

a. *Form of applications.* Applications for concessions contracts shall be made on a form prescribed by the city council and available at the city clerk's office or may be obtained from the ~~harbormaster~~Harbor Master. Applications shall be submitted on or before October 30 of the year preceding the contract year.

b. *Applicable fees.* Fees for the concessions application shall be determined by the city council on an annual basis.

c. *Term of contract.* All concessions contracts shall be valid for a term commencing May 15 and terminating October 15 of the year following the submission of the application. Any concession wishing to operate between October 15 and May 15 shall be addressed by the city council on a case-by-case basis. After an owner has been awarded two consecutive annual contracts, the city council may consider a longer term, in the best interests of the City of Belfast.

d. Number of contracts available. The city council, in its discretion and with the input and advice of the ~~harbormaster~~Harbor Master, shall announce on or about October 30 of each year the number of concessions contracts to be available for the following season. In making its determination as to the number of contracts available, the city council shall consider the number of applications received and the amount of activity reasonably anticipated in the harbor and shall determine the appropriate level of concessions activity so as to best promote economic development, promote safety, and limit clutter and congestion. Businesses which have held a concessions contract for the prior season may be given priority over new applicants in order to sustain services which appear to

be safe, reliable, and economically viable.

e. No expectancy. The award of a contract shall not create vested rights or any expectation of a future award of a contract.

(3) *Contract provisions.* All concessions shall be subject to the following provisions, and the failure to comply with these provisions may result in the revocation of the concessions contract:

a. Commercial signage shall be allowed. Signs shall be no larger than three feet by two feet. Only one sign shall be allowed per contract.

b. Information tables are allowed, but must be attended at all times tickets are being sold. Information tables shall be no larger than three feet by three feet and tables shall be placed at the ~~harbormaster's~~ Harbor Master's discretion to avoid clutter.

c. Brochures or other materials marketing the business may be displayed at the concessions table and/or placed in the ~~harbormaster's~~ Harbor Master's office, but may not be affixed to the dock, wharf or breakwater.

d. Concessions must validly maintain all applicable Coast Guard licenses, inspections, and all other contractual requirements.

e. Any vessel operator must obey all applicable city, state and federal regulations at all times.

f. A concessions operator may display one sign on the vessel for the purpose of advertising the vessel.

g. Vessels must be operated safely at all times. For vessels which reapply after an initial award of a concessions contract, said vessels previous year safety record shall be considered by the city council.

(e) *Occasional use.*

(1) *Occasional use defined.* Occasional use of the city-owned dock, launch ramp and breakwater is defined as the commercial operation of a vessel(s) for purposes including but not limited to tours, sightseeing, overnight or fishing trips, cruises or charters (educational, scientific, recreational or otherwise), which meets the following criteria:

a. The vessel shall not make more than 12 departures from the city-owned dock between May 15 and October 15 of a particular year, with the exception of cruise ships;

b. The vessel and/or its crew or other employees do not have a concessions contract pursuant to subsection (d) of this section; and

c. With the exception of cruise ships, ~~T~~the vessel has a home port of Belfast, Maine, meaning that:

1. The vessel makes the majority of its commercial departures during a given year from Belfast Harbor, including trailered and launched vessels;
2. The vessel is documented as a Belfast vessel; or
3. The vessel has a mooring, float or slip in Belfast Harbor or its coastal waters.

d. This definition shall not apply to any business that operates exclusively from October 15 through May 15.

(2) *Occasional use contract*. No occasional use of the city-owned dock shall be made unless the operator of the vessel has first obtained an occasional use contract from the city council. In awarding contracts, the city council shall consider the purposes of this section as set forth in subsection (a), above, in order to best promote economic development, provide for the safety of the public, and minimize congestion and clutter. Said contracts may vary in scope and form depending on the type of occasional use. For vessels which reapply after an initial award of an occasional use contract, said vessels previous year safety record shall be considered by the city council.

(3) *Form of applications*. Applications for occasional use contracts shall be made on a form prescribed by the city council and available at the city clerk's office or may be obtained from the ~~harbormaster~~Harbor Master.

Applications shall be submitted on or before October 30 of the year preceding the contract year.

a. *Applicable fees*. Fees for the occasional use application shall be determined by the city council on an annual basis.

b. *Eligibility criteria*. An occasional use contract may only be granted if the applicant meets the definition of an occasional use as defined herein.

c. *Term of contracts*. All occasional use contracts shall be in effect for a term commencing May 15

and terminating October 15 of the year following the submission of the application.

d. *Number of contracts available*. The city council, in its discretion and with the input and advice of the ~~harbormaster~~Harbor Master, shall set forth on or about October 30 of each year the number of occasional use contracts to be available for the following season. In making its determination as to the number of occasional use contracts available, the city council shall consider information such as the number of applications received and the amount of other activity expected in the harbor and shall determine the appropriate level of occasional use activity so as to best promote economic development, promote safety, and limit clutter and congestion. Vessels which have held an occasional use contract for the prior season may be given priority over new applicants in order to sustain services which appear to be safe, reliable, and economically viable.

e. *No expectancy*. The award of a contract shall not create vested rights or any expectation of a future award of a contract.

f. *Contract provisions*. Vessels operating under occasional use contracts shall be subject to the following provisions, and the failure to comply with these provisions may result in the revocation of the occasional use contract:

1. With the exception of cruise ships, t~~T~~he vessel may make no more than 12 departures from the city-owned dock between May 15 and October 15 of the contract year.

2. The vessel owner or operator is to schedule all departures and arrivals with the ~~harbormaster~~ Harbor Master and the ~~harbormaster~~ Harbor Master shall have sole discretion over the time, place, and manner of the departures and arrivals. Proposed schedules shall be given to the ~~harbormaster~~ Harbor Master before May 15 of each contract year. Scheduling may be amended by the ~~harbormaster~~ Harbor Maseter for emergency situations, the scheduling of cruise ships, yacht clubs, or private reservations. Vessel operators may request schedule changes with sufficient advance notice to the ~~harbormaster~~Harbor Master. Occasional use contractors shall not have priority nor a right to overnight dockage.

3. No signs or other advertising materials shall be placed on the city-owned dock to market the vessel or for any other purpose, nor shall any representative of the business be permitted to use the dock, floats and breakwater for the purposes of advertising, information, ticket sales, or retail sales. Brochures or other materials marketing the business may be placed in the ~~harbormaster's~~ Harbor Master's office if space is available, but may not be affixed to the dock. No sign or other advertising may be placed on the vessel while that vessel is docked.

4. The vessel operation, in the Harbor Master's ~~harbormaster's~~ discretion, shall not directly compete so as to substantially interfere with the economic viability of a vessel then operating under a concessions contract with the City of Belfast.

5. The vessel must validly maintain all applicable Coast Guard licenses and inspections.

6. The vessel operator must obey all city, state and federal regulations at all times.

(Ord. No. 55-2003, 6-17-2003; Ord. No. 9-2005, § A, 9-6-2005)

Sec. 30- 127. Boats used as tenders.

Boats used as tenders, not to exceed twelve feet, under the discretion of the Harbor Master, shall be kept at designated locations only, and shall be properly cared for by the owner. The Harbor Master may order tenders to be relocated or removed in his or her discretion in order to manage space considerations. A tender shall be permitted on the dock only if the vessel served by it is currently located at its mooring. The tender shall display the owner's mooring number in a legible manner. Aluminum tenders will be berthed in a designated area to avoid damage to other tenders.

(Ord. of 3-21-1995; Ord. No. 1-1996, § 6.18, 7-2-1996; 2008)

Sec. 30-128. Tying up to floats or wharf.

(a) Fuel floats. No person shall leave any watercraft tied at the fuel floats of the city for any purpose other than fueling or discharging or loading supplies without the consent of the Harbor Master~~harbormaster~~.

(b) Launching ramp floats. No person shall leave any watercraft tied at the launching ramp floats of the city

for any purpose, including fueling or discharging or loading supplies or passengers, for ~~longer than 15~~any longer than necessary to accomplish the required task. ~~minutes without the consent of the harbormaster.~~

(c) Other floats; city wharf. At all other floats and the wharf, unattended boats are permitted to tie up for up to one hour or may remain for more extended periods with permission of the Harbor Master~~harbormaster~~.

(d) Reserved space for city harbor boat. A space at a float shall be designated and reserved for the- Harbor Master's ~~harbormaster's~~ boat.(Ord. of 3-21-1995; Ord. No. 1-1996, §§ 6.19a--6.19d, 7-2-1996)

Sec. 30- 129. Swimming and fishing.
No swimming or fishing of any type shall be allowed from or around any float, dock, wharf or other municipal facility. Fishing from the floats, docks, wharf or other- municipal facility may be permitted by the Harbor Master~~harbormaster~~ only. (Ord. of 3-21-1995; Ord. No. 1-1996, § 6.20, 7-2-1996)

Sec. 30-130. Houseboats and Floating Businesses.

(a) Policies.

(1) Belfast Harbor considers that placement of houseboats and floating businesses in tidal waters is a low priority use of any coastal water body and is acceptable only in limited numbers and in specific areas. Houseboats and floating businesses are not classified as water-dependent, since it is not their primary purpose to serve as a means of on-water transportation, recreation or commercial fishing.
(2) A house boat or floating business is considered a boat or vessel and must meet all applicable state and Coast Guard standards and regulations.

(b) Prohibitions.

(1) Houseboats and floating businesses are prohibited from mooring or anchoring in all tidal waters of -Belfast Harbor unless within the boundaries of a marina.

(2) Discharge of sanitary sewage into tidal waters from houseboats or floating businesses using marina facilities by devices other than those approved by the Coast Guard is prohibited. Houseboats and floating businesses shall tie into a marina holding tank or pump-out facilities where available.

Sec. 30-131 Marine construction permitting process.
[Ord. No. 55-2003, 6-17-2003]

(a) *Permit approval requirement*. No piers, wharves, bulkheads, breakwaters, marine railways, floats, or other structure shall be installed, constructed, repaired, enlarged or improved except upon approval and issuance of a permit in accordance with section 30-131.

(b) *Procedure for permit.*

(1) Any construction, repair, renovation, or improvement of a pier, wharf, breakwater, or bulkhead shall require a written application to the code enforcement officer of the City of Belfast. Written application shall include the following information:

a. Evidence of submission of application for applicable state licenses, permits, and approvals.

b. Evidence of submission of application for applicable Army Corps of Engineers licenses, permits, and approvals.

c. A scale plan of the proposed project at a scale no smaller than one inch to 20 feet. The plan shall depict, as a minimum, the following:

1. The length and width of the proposed project.

2. Height of the structures in the project above mean high water and above mean low water.

3. The wharf line, mean high water and mean low water.

4. Side property lines as extended from the upland across the shores and flats.

(2) A permit under this section shall not be issued by the City of Belfast until all applicable state licenses, permits, and approvals and federal licenses, permits, and approvals and local approvals under this section have been received.

(3) The code enforcement officer shall review the application for compliance with subsection (1) above and the applicable requirements of the City of Belfast Zoning Ordinance. In the event the code enforcement officer determines the application is complete, then the application, together with related documents, shall be dated and forwarded within five business days to the harbor advisory committee. The harbor advisory committee shall review the application by the next regularly scheduled meeting. The review and comments of the harbor advisory committee shall be in writing, shall state the reasons for the comments, and shall be forwarded to the planning board for their review and action within five business days of their meeting at which the project was reviewed.

(4) Upon receipt of the review and comments of the harbor advisory committee, the planning board (after a public hearing) shall either approve, approve with conditions, or disapprove the proposed project, in accordance with the standards of [division 5] of this chapter.

a. If disapproved, the disapproval shall be in writing and shall include the reasons for disapproval.

b. If approved, the approval shall be in writing and shall not be effective until approval by the planning board under site plan review.

(5) The harbor advisory committee shall also review the project in accordance with the following standards. Generally, the proposed project will not hinder navigation and it will not hinder future development. Specifically, the proposed project will not:

a. Encroach into, interfere with, or pose a hazard to navigational channels. Specifically, no project will extend within 25 feet of the established channels.

b. Interfere with access to and from existing mooring and berthing areas for both commercial and recreational uses.

c. Displace or eliminate existing mooring and berthing areas, both public and private, commercial and recreational.

d. Interfere with public access to and use of the harbor's waters, including public rights-of-way and public and private launching ramps and related facilities.

e. Extend outside of the wharf line, established in section **30-95**.

f. Interfere with, or pose a hazard to navigation, in relation to either obscuring visibility or displaying distracting lights.

(6) Construction of approved projects shall commence within six months from the date of issuance of the permit by the planning board and shall be completed within two years from the date of issuance of said permit.

(7) The decision of the planning board concerning issuance or denial of the permit may be appealed to the Superior Court by the aggrieved party within 30 days of the date of decision and in accordance with Rule 80B of the Maine Rules of Civil Procedure.

(8) Notwithstanding the above provisions of section **30-131**, normal and emergency maintenance and repair of piers and wharves, such as piling, decking, or underpinning replacement, which does not require Department of Environmental Protection and/or U.S. Army Corps of Engineers permits or licenses, shall not require a permit under this chapter. The person causing emergency maintenance or repairs shall take photographs of that maintenance or repair both before and after the completion of work. Such photographs shall be submitted to the Harbor Master ~~harbormaster~~ and retained as a permanent record.

Sec. 30-132. Harbor advisory committee review of shoreland permit applications.

The Belfast harbor advisory committee shall participate in the administrative process for the following shoreland permit applications for uses located in Belfast Harbor:

(1) A pier, dock, wharf, or bridge or other structure and use extending over or below the normal high water line of a river or saltwater body or the upland edge of a coastal wetland

(2) A marina; and

(3) Aquaculture.

The harbor advisory committee's review of such permits shall occur in accordance with city code of ordinances, chapter 82, shoreland, section 82.54, procedure for permits issued by planning board. The committee shall make a recommendation to the planning board regarding a project's compliance with standards identified in chapter 82, shoreland, article V, land use standards, division 3, section 82-204.

Sec. 30-133. ~~Individual~~ Permitting of moorings~~non-commercial moorings~~.

Installation of private, non-commercial moorings is subject to approval by the Harbor Master. Installation of commercial or service moorings is subject to approval of the Harbor Master and the U.S. Army Corps of Engineers.
~~Installation of such moorings is authorized under a general permit if they do not interfere with navigation. Consequently, the local harbormaster has approval authority and no application to the U.S. Army Corps of Engineers is required. These moorings fall under Category I of the ACOE permit definitions and may not be installed or rented without prior approval from the harbormaster and the ACOE.~~

Sec. 30-134. ~~Commercial or~~ Service moorings.

~~Commercial/Service moorings are authorized under a general permit by the U.S. Army Corps of Engineers if they do not interfere with navigation. Temporary moorings used by marine facilities in their commercial operation fall in this category, such as a few moorings used for holding vessels until they are taken out of the water for repairs. These moorings fall under Category II of the ACOE permit definitions and may not be installed or removed without prior approval from the harbormaster and the ACOE.~~ The installation and use of service moorings is subject to the approval of the Harbor Master and the U.S. Army Corps of Engineers. The Harbor Master may allow the temporary use of City-owned moorings as service moorings

during non-peak harbor usage periods, without the need for separate approval. No service mooring shall be occupied by the same vessel for more than two weeks without prior approval by the Harbor Master.

Sec. 30-135. Rental moorings.

Rental moorings ~~must be~~shall not be installed or rented without prior approval from the ~~approved by the~~ U.S. Army Corps of Engineers and the Harbor Master. This includes moorings offered by marinas for transient or seasonal rental and moorings controlled by yacht clubs if the annual membership fee includes a club-controlled mooring. ~~These moorings may not be installed or rented without prior approval from the harbormaster and the ACOE.~~

No seasonal rental moorings shall be permitted in Anchorage A. Seasonal rental moorings to be located elsewhere shall require approval by the U.S. Army Corps of Engineers and the Harbor Master. The number of commercial or rental moorings will be determined and/or limited by the Harbor Master, in consideration of any limitations imposed by this Ordinance as well as navigational and safety considerations.

The Harbor Master shall not permit the maintenance of transient rental moorings unless the applicant can demonstrate the ability to provide adequate services to support the rental use, as follows:

a. The mooring owner shall have the capacity to manage bookings and collection of rental monies.

b. The mooring owner shall be a commercial marine enterprise located in the City of Belfast, or having a contracted relationship with a marine enterprise located in the City of Belfast, which has the capacity to perform maintenance, service and repair of boats, as well as towing, moving and tie-up of vessels.

c. The mooring owner shall have a designated person or person(s) responsible for ensuring the safe use and timely turnover of rental moorings.

~~**Sec. 30-136. Shorefront owner.**~~

~~It is the intent to give priority as required by state laws under 38 M.R.S.A. to shorefront owners with 100 feet of frontage or more. This does not apply to Federal Navigation Project areas in Belfast Harbor. Owners of a parcel of land located in the city with less than 100 feet of frontage bordering on Belfast Harbor or waters adjacent to the shoreline of the city may apply for a temporary mooring assignment adjoining their lot, provided that the location of such mooring would not interfere with a mooring assigned to a shorefront owner defined above. The purpose of this provision is to allow the placement of moorings to lot owners adjoining Belfast Harbor or waters adjacent to the shoreline of the city with less than 100 feet of frontage, so long as these moorings can be accommodated based upon the swing of the boat on the mooring and adjoining moorings. This does not apply to Federal Navigation Project areas in Belfast Harbor.~~

Secs. 30- ~~137~~136--30-150. Reserved.

DIVISION 6. MOORINGS*

*State law references: Mooring sites, 38 M.R.S.A. § 3.

Sec. 30-151. Authority of ~~harbormaster~~Harbor Master.

The ~~harbormaster~~ Harbor Master shall have absolute authority over all moorings and mooring locations in accordance with the terms of this article and the laws of the state.
(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.1, 9-15-1998)

Sec. 30-152. Term of mooring permits; registration fee.

Mooring permits for -Belfast Harbor or the waters adjacent to the shoreline of the city shall be issued for one year at a time and there shall be a yearly registration fee recommended by the harbor advisory committee and approved by the city council. (Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.2, 9-15-1998:

2010)

Sec. 30-153. Shorefront owner.

It is the intent to give priority as required by state laws under 38 M.R.S.A. to shorefront owners with 100 feet of frontage or more. This does not apply to Federal Navigation Project areas in Belfast Harbor. Owners of a parcel of land located in the city with less than 100 feet of frontage bordering on Belfast Harbor or waters adjacent to the shoreline of the city may apply for a temporary mooring assignment adjoining their lot, provided that the location of such mooring would not interfere with a mooring assigned to a shorefront owner defined above. The purpose of this provision is to allow the placement of moorings to lot owners adjoining Belfast Harbor or waters adjacent to the shoreline of the city with less than 100 feet of frontage, so long as these moorings can be accommodated based upon the swing of the boat on the mooring and adjoining moorings.

Sec. 30-~~153~~154. Priority for assignment of moorings.

(a) Priority for ~~enjoying the privilege of maintaining a mooring in~~assignment of mooring locations in Belfast Harbor shall be in accordance with the following priority guidelines, with the exception of moorings located within the Federal Navigation Project and the ~~commercial inner~~ Inner ~~harbor~~Harbor:

Shorefront ~~O~~owners
City-owned mooring
~~Vessel owners who are commercial fishermen~~Commercial Fisherman~~.~~
~~Vessel owners who have other approved commercial uses~~Other Commercial Business~~.~~
All other vessel owners~~.~~
Secondary or subsequent moorings (see Section 30-157)

(b) Mooring sites in the Inner Harbor shall be assigned by the following priority guidelines as space allows:

(1) Shorefront owner
(2) City-owned mooring
(3) Resident Commercial Fisherman
(4) Resident Commercial Business
(5) Non Resident Commercial Fisherman
(6) Non-Resident Commercial Business
(7) Other
(8) Secondary or subsequent moorings (see Section 30-157)

~~(b) The number of commercial or rental moorings will be determined and/or limited by the harbormaster.~~

(c) Moorings located within the Federal Navigation Project shall be treated in accordance with federal regulations as open to all on equal terms.(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.3, 9-15-1998; 2010)

Sec. 30-~~154~~155. Dating of applications.

Applications for moorings shall be dated upon receipt by the city.
(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.4, 9-15-1998)

Sec. 30-~~155~~156. Limit on ~~inner harbor~~ moorings; Waiting lists.

a) Limit on ~~inner~~ Inner ~~harbor~~ Harbor moorings. In recognition of the need to promote safety and convenient passage in the Inner Harbor, the total number of moorings located within the Inner Harbor at any time shall not exceed the number of moorings located within the Inner Harbor as of the date of enactment of

this subsection.

b) Limit on Anchorage A moorings. There will be no separate waiting list for new or relocated moorings in Anchorage A; moorings within Anchorage A will be assigned from the Outer Harbor waiting list according to the priorities established in Sec. 30-153. However, the Harbor Master shall ensure thatselect names from the waiting list to provide, to the closest extent practicable, that 30% of all assigned mooring locations in Anchorage A are occupied by Commercial and municipal users, and that 70% of all assigned mooring locations in Anchorage A are occupied by Non-commercial users.

bc) Waiting list for new moorings. All mooring and moored float sites shall be under the direct control of the Harbor Master harbormaster and assigned by him/her on a first-come-first-served basis to qualified applicants for mooring sites. If the Harbor Master harbormaster receives more applications for mooring sites than there are available mooring spaces, the Harbor Master harbormaster shall establish mooring waiting lists in accordance with the priorities established in Sec. 30-94 154 and consistent with the provisions of Title 38 M.R.S.A. Section 7-A. Separate waiting lists shall be maintained for the Coastal, Outer and Inner Harbors. Applicants shall be identified on the waiting lists by date of receipt of the application. An applicant may elect to refuse a location offered and remain on the waiting list, in which case the next applicant on the list shall be selected. The waiting lists shall be posted at city hall and at the public landing. Payment of an annual fee is required to remain on these lists, which payment must be made by the date shown on the permit renewal application.

Allocation to non-residents: If there are applicants who are non-residents who wish to moor a vessel, the principal use of which is noncommercial, and less than 10 percent of the moorings are currently assigned to persons fitting this description, the next mooring available shall be assigned to the first such person on the list. If there are applicants who are nonresidents who wish to moor a vessel, the principal use of which is commercial, and less than 10 percent of the assigned moorings are currently assigned to persons fitting this description, the next mooring available shall be assigned to the first such person on the list. If both nonresident noncommercial and nonresident commercial assignments are below 10 percent and there are both types of applicants on the waiting list, the available space shall be assigned to an applicant in the category that is the farthest furthest below 10 percent. Payment of an annual fee is required to remain on these lists, which payment must be made by the date shown on the permit renewal application.

c) Relocation requests. The harbormaster shall maintain a separate written list of all owners of permitted moorings who wish to change mooring locations. The list shall be maintained, updated and posted at city hall and at the public landing. Payment of an annual fee is required to remain on this list. Applicants from this waiting list shall be assigned moorings only if no names remain on the waiting list for new moorings.

dc) Assignment of mooring rights to those on waiting lists. The Harbor Master harbormaster shall, in his or her discretion and in accordance with the assignment priorities identified in this ordinance and under state law, assign moorings as they become available to the first person on the waiting list for a new or relocated mooring in that area of the harbor. Residency of the applicant shall not be considered in taking names from the waiting list(s) except as provided above.

(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.5, 9-15-1998; 2008)(5-1-2012)

Sec. 30-156157. Application for more than one mooringSecondary or subsequent moorings.

Applications concerning a second or subsequent moorings of any typemooring to be held by one person, entity or household shall be handled by the Harbor Masterharbormaster, who shall consider each application and limit moorings to the number of boats owned and registered to the owner's name. Second or subsequent moorings shall be assigned only if mooring space is available and there are no remaining names on the relevant waiting list. Second or subsequent commercial moorings shall be assigned in accordance with the priorities established in Section 30-153, but only upon a showing that the number of moorings requested is required as an operational necessity of the business or entity. No such showing shall be required for City-owned moorings.
(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.6, 9-15-1998)

Sec. 30-~~157~~158. Registration information. (see appendix C)

The Harbor Master ~~harbormaster~~ shall register all moorings -with a completed mooring application including the following information: boat name, state or federal registration number, vessel identification and the name and address of the primary boat owner.
(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.7, 9-15-1998)

Sec. 30-159. Winter mooring.

No moorings shall be occupied and no vessels shall be anchored in Belfast Harbor from December 1 to March 31 without advance approval by the Harbor Master.

Sec. 30-~~158~~160. Denial of application.

The Harbor Master ~~harbormaster~~ may deny an application because of insufficient information on the mooring registration application, failure to provide the required registration fee, failure to pay excise tax on the registered or documented vessel, or other reasons as specified by the harbor advisory committee. The Harbor Master ~~harbormaster~~ may defer an application because of insufficient space for the desired mooring location or because of reasons specified by the Harbor Master~~harbormaster~~.
(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.8, 9-15-1998)

Sec. 30-~~159~~161. Assignment of locations.

The Harbor Master ~~harbormaster~~ shall annually assign locations to each mooring with the guidance of the mooring plan and ensure its placement is in the correct location. All moorings not located in the correct location shall be moved by the owner at his expense in accordance with the instruction of the Harbor Master~~harbormaster~~. In the event of the failure of the owner to comply with these instructions, the Harbor Master ~~harbormaster~~ shall move or remove the improperly located moorings, and the cost of this shall be borne by the owner of the mooring.
(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.9, 9-15-1998)

Sec. 30-~~160~~162. Log of assignments.

The Harbor Master ~~harbormaster~~ shall keep a log of the assignment of moorings and submit this log to the harbor advisory committee annually on or before November 1 of each year.
(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.10, 9-15-1998)

Sec. 30-~~161~~163. Moving mooring or buoy; transfer of use of mooring.

No person shall place, alter or shift a mooring or buoy of any type within the boundaries of- Belfast Harbor or the waters adjacent to the shoreline of the city without the written permission of the Harbor Master~~harbormaster~~. The assignment or use of a mooring location shall not be transferable, except that, upon the death of the assignee, that location may be transferred to a member of the assignee's immediate family, only if the mooring assignment was and will be used for commercial fishing purposes (38 M.R.S.A. § 3-A).
(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.11, 9-15-1998)

Sec. 30-~~162~~164. Size of moored vessel.

The Harbor Master~~harbormaster~~ shall be promptly notified by the owner of the mooring of a proposed change in the size of the vessel that is to be registered to a mooring. A change in size of the vessel may require a change of location and/or upgrading of the mooring.

No vessel exceeding 40' in overall length shall be allowed on a single point mooring within the Inner Harbor. Vessels exceeding 40' in overall length shall be placed on moored floats or in slips. No vessels

over 50' in overall length shall be moored within the limits of Anchorage A, except at City-owned moorings.
(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.12, 9-15-1998)(5-1-2012)

Sec 30-~~163~~165. Use by non-registered vessel.

The Harbor Master ~~harbormaster~~ shall be promptly notified if a mooring is to be used for a vessel not registered to it. The Harbor Master may allow incidental use of a mooring, for a period of no more than 14 days per season and provided that the mooring owner receives no fee for the use. A vessel not registered to a specific mooring may not exceed 14 days of use per season on any mooring ~~which is not located in the Inner Harbor~~other than a designated seasonal rental mooring. ~~All moorings that have a U.S. Army Corps of Engineers permit are exempt.~~ Moorings in the Inner Harbor or in Anchorage A shall not be used by any vessel not registered to that mooring unless specifically designated as a ~~commercial or~~ rental or service mooring at the time of application and approved as such by the Harbor Master~~harbormaster~~ and, if necessary, the U.S. Army Corps of Engineers.
(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.13, 9-15-1998; 2008)(5-1-2012)

Sec. 30-~~164~~166. Suspension or termination of mooring assignment.

The Harbor Master ~~harbormaster~~ may suspend or terminate the mooring assignment of any mooring owner for noncompliance with the application rules, construction standards or marking standards, or failure to comply with any order of the Harbor Master ~~harbormaster~~ given according to the provisions of this article.

All mooring and moored float permit holders with sites located in the Inner Harbor and Anchorage A, and whose moorings/moored floats are not used as permitted at least 50 percent of the time for three consecutive months during the calendar year may have their mooring/moored float deemed abandoned and removed by the City. All mooring and moored float permit holders with sites located in the outer and coastal harbors, whose moorings/moored floats are not used as permitted at least every two years, may have their mooring/moored float deemed abandoned and removed by the City. The Harbor Master ~~harbormaster~~ may grant exceptions to this section either upon advance request or on appeal made within 30 days of issuance of the written notice of abandonment. Such requests shall be granted only upon proof of extenuating circumstances such as selling the boat, inability to use the boat, or other reasonable unforeseen situations, and upon a showing of definite intent to use the mooring as provided herein. In the event any exceptions are made to this section, all fees and inspections must remain current
(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.14, 9-15-1998)(5-1-2012)(Ord. No. 41-2015, 3-17-15)

Sec. 30-~~165~~167. Placing more than one craft at mooring.

No person shall permit or place more than one -vessel at a mooring with the exception of boats moored to floats.
(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.15, 9-15-1998; 2007)

Sec. 30-~~166~~168. Numbering and marking.

All moorings shall be numbered as assigned by the harbor master. The numbers shall be of adequate size to read easily. They shall be placed on a floatable, visible, and Coast Guard approved type buoy attached to the mooring. For all new or replacement mooring buoys as of January 1, 2001: To avoid mistaking mooring buoys for aids to navigation or regulatory markers, they shall be colored white with a single blue horizontal band clearly visible above the water line. Pole moorings shall not be permitted for use in the harbor. All winter buoys shall be visible at all times and of adequate size to clearly read required mooring number. All winter buoys are to be replaced by proper mooring buoys no later than June 1.
(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.16, 9-15-1998; Ord. No. 55-2001, 4-3-2001; 2008)

Sec. 30-~~167~~169. Design Standards.

Standards for areas of Belfast Harbor other than the Inner Harbor

1) All moorings shall consist of a granite block, mushroom anchor, or other anchor of sufficient weight to hold the vessel for which they are to be used. Refer to minimum standards. All moorings shall be approved by the Harbor Master~~harbormaster~~. Boat and/or mooring owners may be liable for any damage caused by faulty, inadequate, or improperly placed moorings. Minimum standards below are for fair weather only.

2) Hand-mixed concrete blocks, old engine blocks and other miscellaneous weighted objects are not acceptable as mooring anchors in Belfast Harbor.

3) The moorings shall have heavy steel bottom chain of a minimum as stated in standards.

4) The minimum mooring scope shall be approximately two times the water depth at mean high water. Total scope shall include bottom chain and -lighter gauge top chain with a minimum diameter, as stated in standards, each of which shall consist of approximately one-half of the total length.

5) Each mooring must have at least one swivel at the connection either between the top chain and mooring buoy or between the heavy bottom chain and the top chain. All swivels and shackles must be appropriate size for the chain size.

6) Pennants connecting the mooring buoy to the moored boat shall be fastened to the top chain or top swivel and shall consist of nylon, or other appropriate pendant line equal in length up to one-half the length of the boat. Refer to minimum standards.

7) Despite the dimension standards established in this section, any part of a mooring showing excessive or obvious wear or any mooring which does not meet the Harbor Master~~harbormaster~~'s approval shall not be permitted.

8) Minimum standards:

TABLE INSET:

Length of Vessel (in feet)	Granite or Equiv.	Mushroom	Top Chain	Bottom Chain	Pendant
0--9	500 lb	150 lb	3/8	under 20 feet w/approval	1/2
10--19	1000	200	3/8	7/16	5/8
20--30	1500	300	1/2	5/8	3/4
31--35	2000	350	1/2	5/8	3/4
36--40	2500	450	1/2	3/4	1
41--50	3000	500	1/2	7/8	1
51 and over w/approval					

9) When foul weather is forecast, vessel and mooring owners may take reasonable actions to protect their vessels, including lengthening the pendant beyond the scope provided above. All such actions are subject to direction and modification by the harbor master in the interest of protecting neighboring vessels and property.

Inner Harbor Design Standards

1) All moorings shall consist of a granite block or other anchor of sufficient weight to hold the vessel for which they are to be used. Refer to minimum standards. All moorings shall be approved by the Harbor Master~~harbormaster~~. Boat and/or mooring owners may be liable for any damage caused by faulty, inadequate, or improperly placed moorings.

2) Hand-mixed concrete blocks, old engine blocks and other miscellaneous weighted objects are not acceptable as mooring anchors in Belfast Inner Harbor. Mushroom anchors shall not be used as mooring anchors.

3) The moorings shall have heavy steel bottom chain of a minimum as stated in standards.

4) The minimum mooring scope shall be approximately one and one half times the water depth at mean high water. Total scope shall include bottom chain and lighter gauge top chain with a minimum diameter, as stated in standards, each of which shall consist of approximately one-half of the total length.

5) Each mooring must have at least one swivel at the connection either between the top chain and mooring buoy or between the heavy bottom chain and the top chain. All swivels and shackles must be appropriate size for the chain size.

6) Pennants connecting the mooring buoy to the moored boat shall be fastened to the top chain or top swivel and shall consist of nylon, or other appropriate pendant line equal in length up to one-half the length of the vessel. Refer to minimum standards.

7) Despite the dimension standards established in this section, any part of a mooring showing excessive or obvious wear or any mooring which does not meet the Harbor Master's ~~harbormaster's~~ approval shall not be permitted.

8) Minimum standards for Inner Harbor:

Length of Vessel	Granite or Equiv. (no mushrooms)	Top Chain	Bottom Chain	Pendant
0-9	500	3/8	5/8	1/2
10-19	1000	1/2	5/8	5/8
20-30	2000	1/2	3/4	3/4
31-35	2500	1/2	1"	7/8
36-40	3000	1/2	1"	1

9) When foul weather is forecast, vessel and mooring owners may take reasonable actions to protect their vessels, including lengthening the pendant beyond the scope provided above. All such actions are subject to direction and modification by the harbor master in the interest of protecting neighboring vessels and property.

(Ord. of 3-21-1995; Ord. No. 17-1998, §§ 8.1.17--8.1.23, 9-15-1998; Ord. No. 55-2001, 4-3-2001; 2007, 2008)(5-1-2012)

Sec. 30-~~168~~170. Inspections. (see appendix D)

(a) The ~~harbormaster~~ Harbor Master or ~~-~~an appointed deputy shall inspect and approve or be otherwise satisfied that each mooring is in safe condition before it is placed in the anchorage.

(b) Every two calendar years a mooring shall either be lifted by or at the expense of the owner and inspected at the direction of the Harbor Master ~~harbormaster~~ or an appointed deputy or be inspected at the owner's expense by a diver at the direction of the Harbor Master ~~harbormaster~~ or an appointed deputy. A mooring shall be removed if any maintenance or improvements noted by the inspector are not met to the Harbor Master's satisfaction within a reasonable period of time.

(c) The ~~harbormaster~~ Harbor Master shall maintain a file on each mooring listing the date of the last inspection and the name of the person who last inspected it.

(Ord. of 3-21-1995; Ord. No. 17-1998, §§ 8.1.24--8.1.26, 9-15-1998)

Sec. 30-~~169~~171. Relocation due to dredging.

The moving or relocation of any mooring as a result of -dredging of Belfast Harbor will be completed at the owner's expense.
(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.27, 9-15-1998)

Sec. 30-~~170~~172. Removal by city.

All moorings removed because of nonpayment, or for any other reason, shall be stored in an area south of the breakwater. If not removed within 60 days, they will become the property of the city. If the mooring owner still wants a mooring location, the owner must pay the mooring fee, the late payment fee, and the cost of removal of the mooring and cost of placing the mooring in the new location.
(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.1.28, 9-15-1998)

~~**Sec. 30-171. Rental Moorings (see appendix E)**~~

~~The Harbor Master, with the advice of the Harbor Committee and the approval of the Council shall appoint one or more booking agents qualified to rent said moorings as defined in the Booking Agent Contract between the Booking Agent and the City of Belfast. Appointments will be approved on an annual basis, no later than the end of December. Applications will be reviewed by the Harbor Master and the Harbor Committee with approval being made by the Council. Said appointment(s) shall be the result of a Request For Proposal created by the Harbor Master provided to local harbor business establishments and subject to the qualifications as stated below.~~

~~It will be determined each season which moorings will be rented in a short term or seasonal manner, based on the demand of said use. The Booking Agent(s) will rent all moorings on an open to all, first come, first serve basis in compliance with the City of Belfast Harbor Ordinance and the Corps of Engineers requirement.~~

~~Purpose:~~

- ~~To maintain and provide rental moorings for the increase in transient traffic.~~
- ~~To provide necessary adequate, safe mooring tie-up.~~

~~Benefits:~~

- ~~Accommodating transient traffic to encourage visitors in Belfast Harbor which in turn is good for the downtown Business economy.~~
- ~~To relieve the City of time and costs of maintenance and administration of numerous rental moorings.~~

~~Booking Agent Qualifications:~~

~~1) Be under the direction and control of the Harbor Master at all times.~~
~~2) Function within the confines of this Ordinance and also the Rental Mooring Agreement Contract with the City of Belfast as well as with Army Corps or Engineers requirements.~~
~~3) Be responsible for inspecting and maintaining the mooring gear as required in the City of Belfast Harbor Ordinance mooring inspection standards on a yearly basis.~~
~~4) Maintain a log of all transactions and make these records available to the Harbor Master upon request.~~
~~5) Act as a commercial marine enterprise located within the City of Belfast whose activities primarily include service, maintenance, and storage of boats.~~
~~6) Have a contract with the mooring owner which will make the booking agency responsible for the liability of the operation with a "No subrogation/hold harmless" agreement.~~
~~7) Provide service within the City of Belfast Harbor Ordinance and be accountable to the Harbor Master.~~
~~8) Provide necessary towing, moving and tie up of vessels.~~
~~9) Be responsible for communicating and scheduling with rental requests.~~

~~10) Control any unauthorized use of the moorings~~

~~11) Be responsible for collection and disbursement of rental monies as defined in the Rental Mooring Agreement Contract. The collection of these monies may only be used to cover the cost of these services only:~~

~~a) Maintain mooring gear as required in the Booking Agent Qualifications~~

~~b) Marking mooring buoy(s) with maximum boat size in a legible manner~~

~~c) Maintaining contact and directing vessels by boat or radio five days a week during the summer season.~~

~~d) Maintaining records and a reservation system~~

~~These fees will be determined by the Harbor Advisory Committee and approved by the Council each year no later than the end of December upon annual review of the contract.~~

~~12) Operate a minimum of 5 days a seek, 8am to 4pm, June 1 through September 1 with minimal service after Labor Day.~~

~~13) Be available to contact by phone or VHF radio during operating hours.~~

~~14) Maintain a one million dollar liability insurance policy with the City of Belfast as a named insured.~~

Secs. 30- ~~172~~173--30-190. Reserved.

DIVISION .7. MOORED FLOATS

Sec. 30-191. Maximum size; approval of plans.

The size of a moored float is not to exceed eight (8) feet by thirty (30) feet without approval of the ~~harbormaster~~Harbor Master. Plans for construction of the float are to be submitted and approved by the ~~harbormaster~~Harbor Master.
(Ord. No. 17-1998, § 8.2.1, 9-15-1998)

Sec. 30-192. Position.

A moored float shall be moored or anchored so as to stay in line with the current or in such a manner that would not create a navigational hazard.
(Ord. No. 17-1998, § 8.2.2, 9-15-1998)

Sec. 30-193. Permits.

Moored floats are to have appropriate U.S. Army Corps of Engineers, city, or any other required permits.
(Ord. No. 17-1998, § 8.2.3, 9-15-1998)

Sec. 30-194. Applicability of mooring regulations.

Moored floats, whether commercial, rental, or private, are to be regulated in the same manner as permitted moorings in this article, and by federal or state law.
(Ord. No. 17-1998, § 8.2.4, 9-15-1998)

Sec. 30-195. Fees.

Moored float fees will be established annually by the city council, pursuant to section 30-221(a), on a per-structure basis, regardless of whether the use is for commercial, rental, or private purposes.
(Ord. No. 17-1998, § 8.2.5, 9-15-1998)

Sec. 30-196. Assignment of locations

Moored float locations will be assigned by the ~~harbormaster~~ Harbor Master in accordance with predetermined areas which the ~~harbormaster~~ Harbor Master has identified as appropriate for moored float locations, and, within those areas, to a specific location requested by the applicant, or to the closest such location that is appropriate for the applicant's use and otherwise permissible under this Ordinance. Moored floats in the Inner Harbor shall be placed along the easterly edge of the channel buffer if space is available. No moored floats or structures shall be allowed within the 25' buffer to the channel. Permits will not be granted for floats if the placement of the moored float interferes with navigation of other vessels or interferes with the use of other mooring sites by vessels with permits, or if the placement of such a float is inconsistent with space management of the harbor.
(Ord. of 3-21-1995; Ord. No. 17-1998, § 8.2.6, 9-15-1998)(5-1-2012)

Sec. 30-197. Navigational hazards and unsafe floats.

If a moored float creates a navigational hazard or is considered to have the potential to become a navigational hazard, or is not considered to be a sound or safe berth by structural failure or damage if the float is left in during winter months and ices up, etc., the ~~harbormaster~~ Harbor Master may require the float not to be used or to be immediately removed by the individual the moored float is permitted to. If the float is not removed, the ~~harbormaster~~ Harbor Master may remove it at the owner's expense.
(Ord. No. 17-1998, § 8.2.7, 9-15-1998)
Secs. 30-198--30-220. Reserved.

DIVISION 8. FEES

Sec. 30-221. Establishment; use.

1) The city council, at its last meeting in December of each year, or at such time as the council may designate, shall establish or amend the schedule of user fees for the city facilities and the harbor. The schedule of fees shall include but not be limited to the following:

a) Mooring fees.
b) Dinghy fees.
c) Public float fees, i.e., fees for overnight dockage, water, and electricity.
d) Launching fees.
e) Change of mooring list fees.
f) Miscellaneous service fees.

2) The schedule shall include the billing date and the due date for payment of fees in full. Nonpayment of fees shall result in exclusion of the user who failed to pay the fee from the harbor facilities for which payment was required. All fees paid to the city are to be returned to the harbor account for upgrading and maintaining the harbor facilities.
(Ord. of 3-21-1995; Ord. No. 37-1997, § 13.1, 4-1-1997)

Sec. 30-222. Payment of permit fees.

Statements for mooring permit renewals are to be mailed by April 1 and will be due and payable by May 1 of each year, with no second notices being mailed. . A late payment fee will be charged after May 1. After May 30, loss of privilege will occur.(Ord. of 3-21-1995; Ord. No. 37-1997, § 13.2, 4-1-1997; Ord. No. 17-1998, 9-15-1998)

Sec. 30-223. Harbor Usage Fees (see appendix F).

(Ord. of 3-21-1995; Ord. No. 1-1996, 7-2-1996; Ord. No. 37-1997, 4-1-1997; Ord. No. 9-1998, 7-21-1998; Ord. No. 44-1998, 12-15-1998; 2010)

Secs. 30-224--30-250. Reserved.

ARTICLE III. SHELLFISHING*

Sec. 30-250. Aquaculture Sites

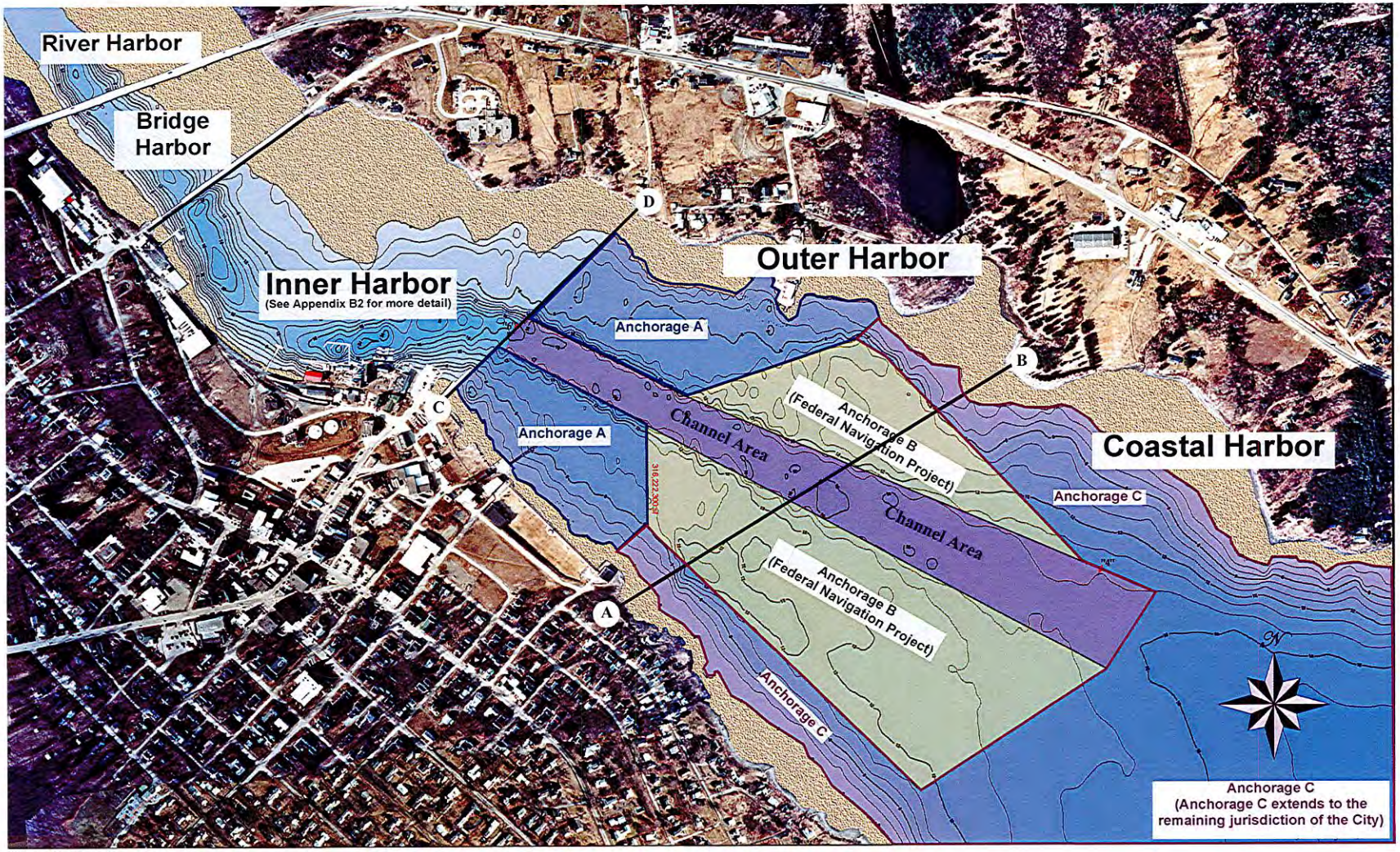
Moorings associated with aquaculture sites within the waters of Belfast Harbor must have Standard mooring permits if in a designated mooring area and a special permit (s) if located in a non-designated area. Further, an aquaculture site may require a shoreland permit from the city planning board; reference city code of ordinances, chapter 82, shoreland.

Secs. 30-251 – 30-270 Reserved

_____*State law references: Shellfish, 12 M.R.S.A. § 6601 et seq.

_____

Chapters 31--33 RESERVED.



This map is not to scale

APPENDIX B1
Harbor, Anchorage and Channel Limits

City of Belfast
Harbor Ordinance

10.D

Central Maine Power
Town Pole Permit
Fax Cover Sheet

Date 02/22/16

To: Town/City of Belfast

Fax: 338-6222

Subject: Town Pole Permit

Town/City: Belfast

Road: Front Street/Water Street

CMP Job # 10300185215

From: Pat Shore, CMP Line Clerk
Fax 207-629-4752
E-mail Lineclerknewservice@cmpco.com

Please sign attached and fax or e-mail back.

If you have any concerns or questions, please call me direct at 1-207-490-3033.

Thank You

Form 4503

Notification: 10300185215

Work Order: 801000080561

LOCATION PERMIT

Upon the Application of Center Maine Power Company and Northern New England Telephone Operations LLC, dated Feb 18, 2016, asking for permission, in accordance with law, to construct and maintain poles, buried cables, conduits, and transformers, together with attached facilities and appurtenances over, under, along or across certain highways and public roads in the location described in said application, permission is hereby given to construct, reconstruct, maintain and relocate in substantially the same location, said facilities and appurtenances in the City / Town of BELFAST, approximately located as follows:.

1. Starting Point: PIERCIE ST
2. Road (State & CMP): FRONT STREET/ WATER STREET
3. Direction: EAST
4. Distance: 1,720 feet
5. Number of Poles: 5

Facilities shall consist of wood poles and appurtenances with a minimum of wire and cable not less than 18 feet over the public highway and/or buried cables or conduit and appurtenances placed a minimum depth of 36 inches under pavement and 30 inches elsewhere, all in a manner conforming to the National Electric Safety Code.

By:_____

By:_____

By:_____

By:_____

By:_____

Municipal Officers

Office of the _____

Received and Recorded in Book_____, Page_____

Attest:_____

Clerk

Form 450 L

Notification: 10300185215

Work Order: 801000080561

CENTRAL MAIN POWER COMPANY
APPLICATION FOR POLE LOCATION OR UNDERGROUND LOCATION

In the City/Town of: BELFAST, Maine

To the: ☒ City

☐ Town

☒ County of: Waldo, Maine

☒ Central Maine Power hereby applies for permission to:

☒ Construct and maintain poles together with attached facilities and appurtenances upon, along or across certain streets and highways in said City/Town as described below.

☐ Construct and maintain buried cables, conduits, manholes and handholes, together with wire and cables, transformers, cutouts, and other equipment therein, under, along, and across certain streets and highways in said City/Town as described below.

☒ Central Maine Power Company and Northern New England Telephone Operations LLC jointly apply for permission to construct and maintain poles together with attached facilities and appurtenances upon, along or across certain streets and highways in said City/Town as described below.

1. Starting Point: PIERCIE ST
2. Road (State & CMP): FRONT STREET/ WATER STREET
3. Direction: EAST
4. Distance: 1,720 feet
5. Number of Poles: 5

☒ Overhead wires shall have a minimum clearance of 18 feet over the public highway and be constructed to conform with the requirements of the National Electric Safety Code.

☐ Buried cable facilities shall be placed at a minimum depth of 36 inches under pavement and 30 inches elsewhere and be constructed to conform with the requirements of the National Electric Safety Code.

Any person, firm, or corporation to be adversely affected by this proposed location shall file a written objection with the State Department of Transportation, City, Town or County stating the cause of said objection within fourteen (14) days after the publication of this notice or ninety (90) days after installation of facilities without publication.

☐ Public Notice of this application has been given by publishing the text of the same

☒ Not Published

In:

On:

CENTRAL MAINE POWER COMPANY

By: RICHARD LEACH Date: Feb 18, 2016

Northern New England Telephone Operations LLC

By: Danielle Gagne Date: 2/22/16

for Jim McLaughlin

ROW Manager - Maine

Form 4502

Notification: 10300185215

Work Order: 801000080561

CENTRAL MAINE POWER COMPANY

SKETCH TO ACCOMPANY APPLICATION FOR POLE OR UNDERGROUND LOCATIONS

Page of

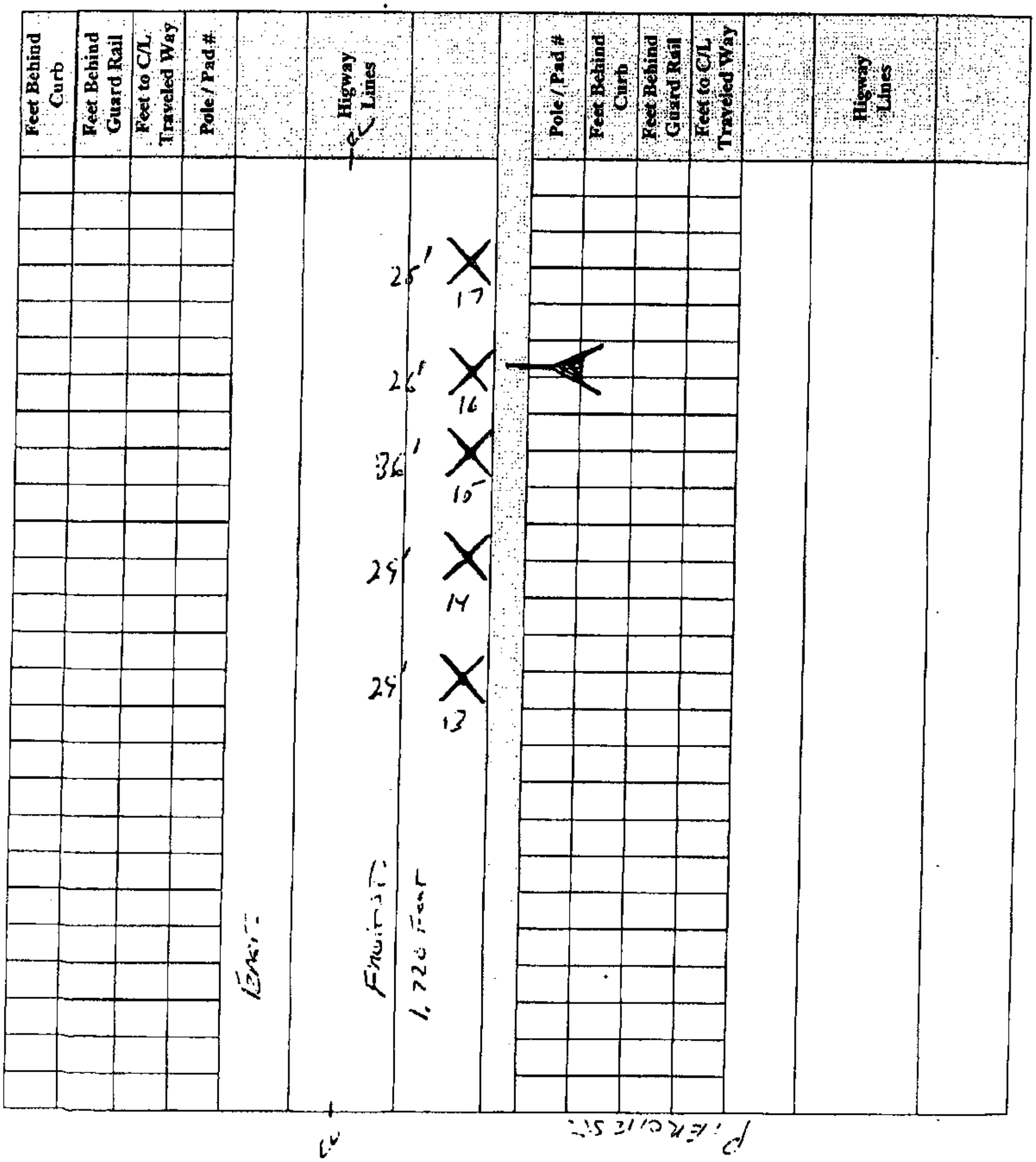
City / Town: BELFAST

Date: Feb 18, 2016

Street: FRONT STREET/ WATER STREET

By: RICHARD LEACH

Facilities to consist of wood poles and appurtenances with a minimum clearance of wire and cables not less than 21 feet over the public highway, and/or underground facilities to consist of buried cables, conduits, transformers and manholes for operation at 7200 volts to ground single phase. Construction to be suitable for future operation at a voltage not to exceed 22KV to ground single phase. Right-of-way limits indicated are based on the best field information available. Poles/ Pads are staked. For further information call: RICHARD LEACH at Central Maine Power Company tel: 629-5613 . Pole/Pad spans shown are approximate.



10.E

MEMORANDUM

TO: CITY COUNCIL

FROM: SADIE LLOYD, ASSISTANT PLANNER

DATE: FEBRUARY 25, 2016

RE: ENERGY COMMITTEE UPDATES

Actions requested.

Authorize the City to spend up to the remaining $1,765 left in the Energy Initiatives Capital Project fund for the Main Street lighting audit.

I will attend your March 1st meeting to provide you with updates on work the Energy Committee is doing. Below is an overview.

Lighting audit to inform a city-wide LED retrofit

In December the City entered into a contract with TRC Solutions to perform a lighting audit on all City-owned buildings. The Council authorized the Committee to spend up to $7,000 from the Energy Initiatives Capital Project budget for lighting audits. This portion of the project cost $4,400.

On Friday, February 19th, TRC provided myself, which I shared with the Energy Committee, the lighting audit for the buildings. The Energy Committee has not yet had time to review the audit in-depth, but it is on our agenda for our March meeting to review and discuss whether the Committee wants to recommend a LED retrofit for City buildings. The Committee is clear that they will need to wait to find out whether Efficiency Maine will re-instate the business lighting program and associated rebates for LEDs. Through discussions with TRC, it looks like Efficiency Maine rebates would possibly cover approximately 30% of the project cost. I expect to know which direction Efficiency Maine is headed sometime in June.

The Committee is recommending that the City expand their contract with TRC Solutions to include an audit of Main Street lighting. From the $7,000 already allocated for lighting audits, $2,600 remains. I anticipate that TRC may require more than that, which is why the Committee is asking for the additional money ($1,765) in the Energy Initiatives Capital Project fund be authorized.

I have attached a summary of the payback for LED lighting retrofits in each building, from the lighting audit we recently received. This is the type of information the Committee uses to help them make their recommendations.

Heating Systems
The Energy Committee has been discussing and investigating heating systems at the Transfer Station, the Treatment Plan, the Library, and the Boathouse. Each of these buildings has unique issues. I'll go over these issues more in depth at your meeting on Tuesday. This past Tuesday, the 23rd, the Energy Committee met with Andy McPartland, who is a heating systems specialist in Houlton. After the meeting myself and Committee member Jonathan Fulford toured the four City buildings listed above so that Andy could review the heating systems and the spaces and consider the issues the Committee was faced with in each individual building. Andy will be providing the Committee with a report and recommendations, which I expect to get within the next two weeks.

In October the Council authorized $10,000 from the undesignated fund for the Energy Committee for consulting services (and an additional $4,000 from the Treatment Plant reserves for work done there). We will use that money to pay for Mr. McPartland's services.

Electric Contract
The City currently has a contract with Constellation Energy Resources for the Supply charge for electricity the City buys for 6 City meters. Councilor Hurley and City Manager Slocum have asked me to meet with Patriot Energy and find out if they can provide us with a better option. I met with Patriot Energy on Wednesday, February 24th and expect to receive a proposal in the near future. I will review the proposal with the Energy Committee and provide their feedback to you and the City Manager.

Solar
I continue to get regular requests for comment for news articles on the solar landfill project, and am regularly contacted by municipalities in Maine interested in following in Belfast's footsteps. The State legislature will soon be reviewing a proposed solar bill that may make solar agreements more favorable for us in the future. I continue to monitor this issue.

Budget
The Energy Committee will be discussing potential budget requests for the FY2017 budget season at their next meeting.

Heating oil
The Committee understands that the current lower cost of oil has allowed the Council to spend less money on heating oil and ultimately produce a financial savings. The Energy Committee has discussed this unique situation and has provided an official statement below, which I will also share at your meeting on Tuesday, about investing that money to help create energy independence and budget security in Belfast:

"The Energy market is highly volatile and we are currently benefiting from lower heating oil prices. The Belfast Energy Committee strongly recommends that the City Council re-invest the savings from the FY 2016 and upcoming FY 2017 budget, realized by unexpectedly low oil costs, into energy conservation projects with the goal of increasing Belfast's energy independence. Interim savings today, well invested into energy conservation, represent a permanent and long-term savings for Belfast's tax payers without an increase to the proposed budget. The lower cost of heating oil is a unique and temporary opportunity, and we urge the council to invest now to improve the City's financial and energy independence in the future."

I can answer any questions at your meeting next week.

1.3 Overall Observations

City employees are very aware of electricity usage and from what we observed and discussed typically turn off lights in unused spaces. Electricity usage at many city buildings is fairly low and in some cases a lighting retrofit may be more attractive from the standpoint of improved lighting quality than energy savings.

TRC reviewed electricity bills associated with the properties. For most properties, TRC received 12 months of electricity usage and one month of cost data from the bills provided. Based on our review of the bills the blended rate for electricity, which includes electricity consumption and demand charges, is $0.13 per kilowatt hour (kWh). This is the rate used throughout the analysis.

1.4 Overall Recommendations

Summary energy savings results from lighting retrofits at Belfast municipal buildings are presented by building in the table below.

Building	Annual kWh Savings	Annual Cost Savings	Installed Cost	Simple Payback Period (Yrs)	IRR%	CO2 Reductions (lbs)
Boat House	4,834	$ 628	$ 11,425	18	-3%	3,084
Harbor Master House	2,557	$ 332	$ 2,086	6	13%	1,631
Public Restrooms	1,108	$ 144	$ 1,756	12	1%	707
Wastewater Treatment Plant	25,876	$ 3,364	$ 19,737	6	15%	16,506
City Hall	17,556	$ 2,282	$ 37,421	16	-2%	11,199
Police Station	6,023	$ 783	$ 10,419	13	0%	3,842
Belfast Fire Department	7,765	$ 1,010	$ 12,429	12	2%	4,954
Grove Cemetery	1,259	$ 164	$ 1,012	6	13%	803
Public Works Buildings	11,201	$ 1,456	$ 14,468	10	5%	7,145
Belfast Municipal Airport	4,487	$ 583	$ 9,417	16	-6%	2,863
Transfer Station	2,128	$ 277	$ 2,474	9	6%	1,358
Pool / Park	2,988	$ 388	$ 9,642	25	-6%	1,906
Trap Shack	594	$ 77	$ 615	8	8%	379

For each building, TRC evaluated existing fixtures and determined a retrofit strategy based on the age and condition of the existing fixtures, the light quality, energy savings potential, and cost-effectiveness. TRC recommends replacing the complete fixture with a new fixture in some instances but will also recommend upgrading the lamps and ballasts (known as *relamp and reballast*) with tube LEDs and drivers in other instances. TRC may also recommend a relamp and reballast with energy efficient T-8 lamps as the most cost-effective option as another option. To facilitate decision making, Appendix A provides example cost and payback periods for fixture replacement vs. relamp and reballast to tube LEDs.

The detailed measure calculations are located in Appendix B. For each measure, replacement is prioritized into 3 categories:

A **Category**: Highest priority. Fixtures in this category have paybacks of 5 years or less.

B Category: Fixtures in this category have paybacks of 13 years or less, which is within the typical operating lifetime of a new fixture

C Category: These fixtures have paybacks longer than 14 years.

CITY OF BELFAST, MAINE
131 Church Street

e-mail: cityhall@cityofbelfast.org

Tel: (207) 338-3370
Fax: (207) 338-6222

10.F

February 26, 2016

Memo to: Joe Slocum, City Manager
Mayor & City Council

From: Rickie LeSan, Treasurer RL

Re: 2013 Real Estate Taxes

On January 25, 2016 the City of Belfast acquired six (6) parcels through the foreclosure process for failure to pay their 2013 Real Estate Taxes. I would like to put four (4) of the parcels out to bid so that we can eventually return them to the tax rolls and have the bids due by 5 p.m. July 19, 2016 . The property owners will be notified and have the ability to redeem their properties at any time before the bid opening on July 29, 2016. The properties are all mobile homes located in different parks.

The list of properties and amounts due are as follows:

	2013	2014	2015	Total Due
Amy Feener	388.96	391.87	394.24	$1,385.74
Jason & April Willard	185.12	192.69	199.36	$754.61
Sunday Turner	54.08	112.58	116.48	$420.80
Ken Brown	137.28	142.89	147.84	$544.25

There will be additional fees due for advertising, Quit Claim Deed and recording fees.

Feener Property
7 Cardinal Circle
Acct. # 4374

Willard Property
19 RW MacLeod Ln.
Acct. # 4063

Turner Property
12 Piper Stream Ln.
Acct. # 3365

Brown Property
23 RW MacLeod Ln.
Acct. # 898

10.G

I am submitting two names for confirmation for the positions of Reserve Police Officer for the Belfast Police Department.

First is Frank E. Gormley, raised in Long Island NY and graduating from Long Island Half Hollow Hills (East) High School. He worked for the NY Dept of Health as an EMT for a number of years. He also worked for several years in a family owned construction business. Physical fitness and competitive sports have always been a part of Mr. Gormley's life. Some years ago Mr. Gormley competed semi professionally as a kick boxer, and even participated in events broadcast by ESPN. Mr. Gormley moved to Maine several years ago and decided to pursue a lifelong interest in becoming a Police Officer. Mr. Gormley put himself through the certification process and became certified in the State of Maine as a Reserve Officer, he's been working on a part time basis for the Town of Winslow. In conversation with Chief O'Leary (Winslow Police Department) I learned that Mr. Gormley has set the bar high for the rest of the department in terms of his interest in community oriented policing. Chf. O'Leary indicated that rarely a day goes by without him receiving a call from a member of his community who has had a positive encounter with Mr. Gormley. Chf. O'Leary told me the only reason Mr. Gormley was available for hire was that he didn't have a full time job to offer him at the moment. Chf. O'Leary told me he was confident that Frank would do an outstanding job for us here in Belfast.

Second is Jonathon T. Guba, Born and raised in Shrewsbury MA, after graduating high school Mr. Guba packed up and came to Waldo County to enroll in the Conservation Law Program at Unity Collage. Mr. Guba was interested in being a Game Warden initially, but after a summer job last summer with the Old Orchard Beach Police Department he decided he liked dealing with humans a bit more than other types of animals. Mr. Guba also put himself through the Maine Law Enforcement certification course and became certified as a Reserve Officer. In conversation with Deputy Chief Timothy Deluca from the Old Orchard Beach Police Department, Mr. Guba was praised for learning fast and dealing with difficult situations as if he had many more years of experience than he actually did. D/C Deluca indicated that his department employs a lot of part time officers each summer. He said the best compliment he could give Mr. Guba was that he would happily accept him back for another summer in OOB.

Currently the Belfast Police Department has one full time opening. There are currently two officers out of work due to injuries. Summer time, with any luck will be here soon, and we anticipate another busy year. We're also aware of the fact that in short order we'll need to be hiring more full time officers to fill openings created by officers who are within months of retirement. Over the next month I'll be back with other names for the City to consider confirmation of. It's our intention to build a reserve staff interested in committing to full time positions here at the Belfast Police Department. The challenge is to keep that type of staffing level as we absorb them into our full time ranks. In order to do that we will periodically be hiring part time Officers. It's become clear that the number of major events and demands on our department require a deeper pool of individuals for me to call upon. The pool of part time Officers is important in keeping up with those demands as we get busier.

Chief Michael McFadden

10.H

MEMORANDUM

February 22, 2016

To: Joseph Slocum, Belfast City Manager
Honorable Mayor Ash and Belfast City Council
From: Norm Poirier, Belfast Parks and Recreation Department
Re: Facility Use Request – Steamboat Landing Park for Wedding Ceremony

The Department has received a Facility Use Request from Anna Marceau for use of Steamboat Landing Park on Saturday, May 21st from 4:00-5:00 p.m. for a wedding ceremony. The Wedding Party would have a tent set-up, approximately 30' x 60', in the morning of May 21st and removed following the event. The set-up would take place in the park closest to the Gazebo in an effort to not interfere with other individuals using the park for personal pleasure.

The wedding party is renting the Boathouse for the reception and use prior to and after the ceremony.

The Parks and Recreation Department would recommend approval of this request with additional stipulations:

1. The tent is removed before the next day
2. The wedding party is responsible for security of the tent while it is set-up in the park
3. The party agrees to use only the area designated by the Parks Department and to pay a user fee for use of this area (fee recommended at $250/day)
4. The remainder of the park and walkway will be open for public use

The Belfast Parks and Recreation Commission recommends approval of this inaugural approved use of the park for a wedding ceremony.

Request to use Facilities that
Belong to the Citizens of the City of Belfast
Updated February 5, 2015

All applications and related documents bring to the Parks and Recreation Office at City Hall. 338-3370 Ext 27. The City Manager's Office will act as a backup.

The City of Belfast owns Streets, sidewalks, parks, land and buildings. It is the policy of the City that property belonging to the citizens of Belfast be available to the public.
Unless specifically approved to the contrary, no public property will be set aside for the exclusive use of any individual or group and the general public will at all reasonable times have access to City property.

This is a planning checklist for your benefit as well as the City's. **If any aspect of the activity you wish to conduct is not specifically listed on this checklist then there will be no permission to conduct that activity. Approvals cannot be given to individuals or groups who are uncertain of their plans.**

Please attach maps, additional sheets, event outlines etc. - that help to explain your request.
If any of the following questions do NOT apply to your event simple write N/A (not applicable) in the space provided. Thank you.

1. State your name, phone number, e-mail address and identify whom you represent?

Anna Marceau (207) 322-9948 annamarceau5@gmail.com

If you are not going to be the primary contact for this event – then who is and please provide their full name, phone number and email address:

2. Describe in detail the nature of this event (What are you planning on?):
Wedding Ceremony. We have rented the Boathouse for the weekend of May 20th-23rd, 2016. We would like permision to use Steam boat landing Park (next to boathouse) for a tent to be set up for a few hours. We understand we will not have exclusive rights to this area.

3. What facilities would you like to use or what permissions are you seeking with respect to City buildings, Parks, Lands, Streets, sidewalks? Please be specific.

We are requesting use of Steamboat landing park (next to boathouse). We would like to stand on the gazebo for the ceremony, and have a tent (approximetly 30'x60') set up for guests in front of the gazebo.

4. What **dates and times** do you wish to have this event?

Saturday May ~~12th~~ 21st, 2016 from 4pm-5pm (event time) with set up time beginning in the morning ~~and~~ take down to follow the event

5. Are you asking to close off any City Streets? (Which ones, what dates, for how long a period of time each day?)

NO

If yes then who will manage these closed off Streets? N/A

6. Are you asking the City for anything other than use of the facilities you have described above?

NO

7. How many people do you expect?

~ 120 people

8. Will you be selling things at this event? What and by who if not you?

NO

9. Will any alcohol be served or consumed at this event? (If yes provide details)

Where? - Attach MAP NO

By Whom: Name and Phone contact number:

N/A

10. Does this event call for any type of open fire - including for cooking purposes? (If so describe
what fire safety measures you plan on employing associated with this potential hazard?

NO open fire

11. Will you be renting spaces to vendors on City Property? Yes_____ No ✓

If yes where do you propose they set up? (MAP Location) N/A

12. Describe what type of vendor and the charges you propose to assess against them.

N/A

13. Will you have insurance in the amount of $1,000,000 that also names the Inhabitants of the City of Belfast as an additional named insured party to hold the City of Belfast harmless from any and all injuries that may occur as the result of any negligence on your part in conducting this event?

14. Who is your insurance agent that will provide proof of this coverage to the City?

15. Noise: What kind of noise do you expect to generate at this event and during which specific periods of time?

Quiet wedding ceremony

16. How do you propose to handle garbage removal?

Carry out our own trash

17. How do you propose to handle parking?

Tell guests to carpool. Use parking associated with the boat house as well as city street parking.

18. How do you propose to handle security?

Security won't be necessary for a small family gathering.

19. How do you propose to handle the need for restrooms?

We have rented the boathouse.

20. What is your plan/need for electricity or water?

We have rented the boat house

21. Have you spoken to the neighbors in the area of this event and discussed traffic, noise, parking etc. with them? No

22. Who will be in charge of the event during the event and what are their home phone numbers, cell phone numbers, and email addresses - where they can be reached before and during this event?

Anna Marceau (207) 322-9948 annamarceau5@gmail.com
Karl Krahn (302) 349-3769 krahnkarl@gmail.com

23. Are you requesting any services from the City? Be specific on the services you are asking for

NO

Department	**Service Requested**
City Manager	N/A
Police	N/A
Fire/ Ambulance	N/A
Parks	permission to use Steam boat landing park next to boat house
Public Works	N/A
Harbor	N/A
Other?	N/A

Remember, <u>If any aspect of the activity you wish to conduct is not specifically listed on this checklist then there will be no permission to conduct that activity.</u>

FACILITY USE APPLICATION CHECKLIST

- Application complete with contact names and contact information
- Specific facility or park requested
- Dates/times of the event and extra set-up time if necessary
- Specific request of City services:
  - electrical needs
  - street closures
  - police assistance
  - trash removal
- Vendor permits (necessary if serving alcohol)
- Parking plan
- Insurance Certificate (need to receive two weeks prior to event)
- Map/diagram of event layout
- Music can not reach a volume level of more than 7 on controls
- Plan for restroom facilities
- Scheduled meeting with City Representative

My signature attests to the review of the checklist and the realistic view of the event provided to the City. <u>Any deviation</u> from the written request is grounds for cancellation of the event by the City of Belfast without notice.

Signature Anna Marceau Date: 1/17/16

Printed Name: Anna Marceau

10.I

MEMORANDUM

February 22, 2016

To: Joseph Slocum, Belfast City Manager
Mayor Ash and Belfast City Council
From: Norm Poirier, Belfast Parks and Recreation Department
Re: Facility Request – Rock Lobster Relay

Cc: Chief McFadden, Belfast Police Department

The City has received a Facility Request application from Erik Boucher, owner of GiddyUp Productions and organizer of the Rock Lobster Relay. The Relay is a 200 mile team running relay from Bar Harbor to Portland starting on June 24, 2016 to Saturday, June 25, 2016.

The organizers of the RL Relay anticipate teams coming through Belfast between 7pm-12:30am Friday night using the Armistice Bridge and Harbor Walk / Heritage Park and on to Northport Avenue continuing to Route 1.

After discussions with Chief McFadden it was decided to require the event to pay for an officer to assist with any traffic issues that may occur as a result of running through Belfast during the evening hours. The organizers in the documentation have indicated they will take every safety precaution possible with reflective running gear, volunteers monitoring the teams and flashing lights on the runners (front/back).

It is the recommendation of the Parks and Recreation Department and Police Department to approve this request with the stipulation the organizers pay for one officer's shift and the City receives payment and insurance certificate at least two weeks prior to the event.

Request to use Facilities that
Belong to the Citizens of the City of Belfast
Updated February 5, 2015

All applications and related documents bring to the Parks and Recreation Office at City Hall. 338-3370 Ext 27. The City Manager's Office will act as a backup.

The City of Belfast owns Streets, sidewalks, parks, land and buildings. It is the policy of the City that property belonging to the citizens of Belfast be available to the public.
Unless specifically approved to the contrary, no public property will be set aside for the exclusive use of any individual or group and the general public will at all reasonable times have access to City property.

This is a planning checklist for your benefit as well as the City's. **If any aspect of the activity you wish to conduct is not specifically listed on this checklist then there will be no permission to conduct that activity. Approvals cannot be given to individuals or groups who are uncertain of their plans.**

Please attach maps, additional sheets, event outlines etc. - that help to explain your request.
If any of the following questions do NOT apply to your event simple write N/A (not applicable) in the space provided. Thank you.

1. State your name, phone number, e-mail address and identify whom you represent?
Erik Boucher, (207) 210-8655, erik@justgiddyup.com

Owner of GiddyUp Productions, LLC

If you are not going to be the primary contact for this event – then who is and please provide their full name, phone number and email address:

I am the contact

2. Describe in detail the nature of this event (What are you planning on?):
The Rock Lobster Relay is a 200 mile running relay race. It is comprised primarily of twelve person teams. There will be some six person and even four person teams. Please see the attached presentation for a complete description with details.

3. What facilities would you like to use or what permissions are you seeking with respect to City buildings, Parks, Lands, Streets, sidewalks? Please be specific.

Belfast footbridge, Harbor Walk Trail and Heritage Park

Runners would arrive in Belfast via the footbridge and then follow the Harbor Walk Trail. We would have a transition area, where runners exchange 'the baton', in Heritage Park.

The attached presentation has complete details and maps.

4. What **dates and times** do you wish to have this event?

Starting on 6/24/16 @ 7:00 pm and ending on 6/25/16 @ 2:10 am

5. Are you asking to close off any City Streets? (Which ones, what dates, for how long a period of time each day?)

No

If yes then who will manage these closed off Streets? N/A

6. Are you asking the City for anything other than use of the facilities you have described above?

We would like access to the public restrooms

7. How many people do you expect?

Maximum of 2,000 but it will probably be fewer for our first year

8. Will you be selling things at this event? What and by who if not you?

No. However, the non-profit group at the transition area in Heritage Park may be selling food concessions to the runners.

9. Will any alcohol be served or consumed at this event? (If yes provide details)

Where? - Attach MAP No

By Whom: Name and Phone contact number:
N/A

10. Does this event call for any type of open fire - including for cooking purposes? (If so describe
what fire safety measures you plan on employing associated with this potential hazard?

No

11. Will you be renting spaces to vendors on City Property? Yes_____ No No

If yes where do you propose they set up? (MAP Location) N/A

12. Describe what type of vendor and the charges you propose to assess against them.

N/A

13. Will you have insurance in the amount of $1,000,000 that also names the Inhabitants of the City of Belfast as an additional named insured party to hold the City of Belfast harmless from any and all injuries that may occur as the result of any negligence on your part in conducting this event?

Yes

14. Who is your insurance agent that will provide proof of this coverage to the City?

TBD. Most likely Cross Insurance

15. Noise: What kind of noise do you expect to generate at this event and during which specific periods of time?

The noise should be minimal. It will only be the runners talking with each other from 7:00 pm

until 2:10 am

16. How do you propose to handle garbage removal?

Participants are required to keep all garbage inside the team vans and dispose of at designated locations outside of Belfast.

17. How do you propose to handle parking?

Volunteers will guide the team vans into and out of the parking lot entrance. Overflow volume will utilize on street parking in town.

18. How do you propose to handle security?

We will hire a Belfast Police Officer

19. How do you propose to handle the need for restrooms?

Participants will use the public restrooms in Heritage Park (see attached maps)

20. What is your plan/need for electricity or water?

No Water needed. Electrical outlet needed near trail in between the two small buildings.

21. Have you spoken to the neighbors in the area of this event and discussed traffic, noise, parking etc. with them?

Not yet, but the impact should be very minimal. The runners will be very spread out.

22. Who will be in charge of the event during the event and what are their home phone numbers, cell phone numbers, and email addresses - where they can be reached before and during this event?

Erik Boucher, (207) 210-8655, erik@justgiddyup.com
Charles Melton, (207) 590-7057, multifeet@gmail.com

23. Are you requesting any services from the City? Be specific on the services you are asking for

One Police Officer

Department	**Service Requested**
City Manager	
Police	
Fire/ Ambulance	
Parks	
Public Works	
Harbor	
Other?	

Remember, <u>If any aspect of the activity you wish to conduct is not specifically listed on this checklist then there will be no permission to conduct that activity.</u>

FACILITY USE APPLICATION CHECKLIST

- o Application complete with contact names and contact information
- o Specific facility or park requested
- o Dates/times of the event and extra set-up time if necessary
- o Specific request of City services:
  - electrical needs
  - street closures
  - police assistance
  - trash removal
- o Vendor permits (necessary if serving alcohol)
- o Parking plan
- o Insurance Certificate (need to receive two weeks prior to event)
- o Map/diagram of event layout
- o Music can not reach a volume level of more than 7 on controls
- o Plan for restroom facilities
- o Scheduled meeting with City Representative

My signature attests to the review of the checklist and the realistic view of the event provided to the City. <u>Any deviation</u> from the written request is grounds for cancellation of the event by the City of Belfast without notice.

Signature_____ Date: 01/14/2016

Printed Name: Erik Boucher

10.J

MEMORANDUM

February 22, 2016

To: Joseph Slocum, Belfast City Manager
Honorable Mayor Ash and Belfast City Council
From: Norm Poirier, Belfast Parks and Recreation Department
Re: Facility Use Request – Walsh Field by Waldo County Y

Background Information
Last year the City and the Waldo Y entered in to a "Field Use Agreement" (see attached) for use of the Walsh Softball Field. Within the agreement was a clause which required the Y to pay a user fee for the facility or in exchange perform certain repair projects to the facility in an effort to reduce the fiscal burden of the City. The idea was to reduce the amount of expenditures by the City for upkeep of the facility and make improvements to the complex. One of the suggestions by the Parks Department was to paint the restroom building with Y staff or volunteers and the Parks Department supplying the materials. This could potentially save the City the labor costs associated with the project.

In 2015 the Y **did not** perform any extra duties with regards to the softball field other than the normal preparations for use of the field (ie: dragging the field, lining the field for play and raking the pitcher's mound). This would mean the Y still owes the City the user fee amount for years 2015 and the upcoming year 2016.

It should be noted the Belfast or Midcoast Cal Ripken League has had a similar agreement with the Parks Department and has followed through on their volunteer services to improve the baseball facility or concession area for the 2015 season.

Recommendation
The Department would recommend approval of the Facility Request, excluding use on Mondays due to a conflict with the High School using the facility, requiring the Waldo Y to make payments as outlined in the agreement. The Parks and Recreation Commission discussed the Facility Request at the February 11 meeting and supports this recommendation.

WALSH FIELD BALL PARK USAGE
Agreement
2015

Statement of Purpose

This document outlines the City of Belfast's expectations regarding the utilization of the softball field located at the complex commonly known as Walsh Field and its sole purpose is to identify possible ways user groups can assist with ongoing maintenance, operation of these fields while reducing the amount expended by the City's Parks and Recreation Department. It is the intent of this agreement that the written provisions below shall constitute the entire agreement by and between the parties.

The City of Belfast and the undersigned do mutually agree as follows:

1. The City of Belfast grants permission to use the Walsh Field softball complex subject to the requirements below.
2. This agreement shall begin with the date of signing and shall continue from April 1, 2015 to November 1, 2015.
3. This agreement entitles the **Waldo County Y** to utilize the **softball** field / storage located upon land within the Walsh Field complex.
4. The **Waldo County** Y may only use the identified facility at such times and on such dates as approved by the City of Belfast. However, no use of the ball field facilities shall be permitted other than between the hours of 7:00 am and dusk each day. See attached schedule
5. This agreement may not be assigned or granted to another party accept in the case of a special event or tournament with written permission from the City.
6. In the event of a scheduling conflict with other groups the City will contact the **Waldo County Y** representative to resolve the conflict agreeable by both parties. A complete regular summer season schedule shall be submitted by **Waldo County Y** to the City by April 15th. Post-season and Fall League to be announced at a later time prior to field use.
7. The City of Belfast makes no claims whatsoever as to the playability of the field due to weather conditions. The City retains the right to restrict use of the facility in extreme weather conditions. Use of the field is at users own risk.
8. The **Waldo County Y** shall be responsible for requiring adult supervision and control of youngsters (participants) during League activities / events. Failure to comply with this request will result in a written notice to **Waldo County Y** Representatives including the name(s) participants, date and time.
9. The **Waldo County Y** shall ensure that no alcoholic beverages, drugs shall not be furnished, served, sold, consumed or any person be permitted on the premises that is intoxicated or under the influence of drugs or alcohol without notifying the proper authorities.

10. The **Waldo County Y** agrees that it shall at all times during the period of this agreement to maintain general liability insurance for bodily injuries, death and property damage in connection with their use of the ball field facilities in coverage amounts satisfactory to the City of Belfast, but in no event less than ONE MILLION DOLLARS (1,000,000) per occurrence, THREE MILLION DOLLARS (3,000,000) aggregate, which the said policy shall name the City of Belfast as an additional insured party and shall require notification to the City of Belfast, not less than 30 days before cancellation or amendment of such policy. The policy shall be issued by companies that carry a minimum of an "A" rating from BESTS. Certificates of insurance evidencing the above shall be submitted to the City of Belfast prior to or upon signing of this agreement.
11. Specific maintenance agreements:
    In exchange for use of these facilities and for the operation of these fields the **Waldo County Y** agrees to the following responsibilities
    a. Trash pick up – collecting and removing any and all trash and debris, which may be left by players, spectators or other guests or persons, present at the field and disposal in the provided containers.
    b. Maintain storage areas in a neat and clean condition.
    c. Pre-season through post-season field preparation and maintenance include:
        - If necessary due to weekday weather conditions, weekend mowing only with the League Representative having access to the City's storage area for equipment
        - Shoot, mark, and pin field foul lines and bases
        - Line the baselines and foul play territory
        - Trim/edge infield and remove vegetative growth from infield.
        - Work and hand rake infield material to a smooth and playable surface prior to games and practices.
        - Install infield mix as needed (City to supply).
        - Reshape pitchers mound and batters box
        - Install other materials as mutually agreed upon by both parties.
12. The **Waldo County Y** will reimburse the City of Belfast a minimum of $750 in volunteer services, labor and projects related to the facility but not included in this agreement (Appendix A). If the minimum amount of labor service is not attained than **Waldo County Y** will pay the City the difference. If an amount in excess of $750 is attained annually, the excess amount will be credited or banked towards the next year. The documentation for services will be recorded and reviewed annually between the Director and the Waldo Y Field Representative.
13. There are no oral agreements between the parties and it is the intent of the parties that written provisions herein contained shall constitute the entire agreement by and between the parties.

	Waldo County YMCA	
	/ Youth/Adult Sports	4-9-15
League Rep. Signature	Title	Date
	/ Director of Parks & Recreation	4-13-15
City of Belfast Rep	Title	Date

APPENDIX A

List of Projects / Field Improvements Applied Towards Volunteer Service (2015)

1. Labor costs for painting restrooms
2. Labor costs for replacement of trim work around restroom building.
3. City to purchase fence cap for Waldo Y to install on fence rail at softball field
4. Labor and equipment rental for annually rolling of ball field
5. Installation of new bases

List of Future Projects / Field Improvements

The City of Belfast will be responsible for the following annually

1. Mowing of the ball field area on a regular basis as needed
2. Maintaining the ball field fence
3. Provision of trash receptacles and the removal of trash from the containers provided by the restrooms
4. The purchase of field materials to include but not limited to turface, bricks for repairing batters box and infield mix. All budget dependent
5. working with the Waldo County Y to provide the league and the community with an excellent facility for softball and a sense of pride

The Waldo County Y will be responsible for the following annually

1. Providing the City with a schedule of field use including games / practices
2. collection of trash from the bleachers and dugouts and disposal of bags in to designated area
3. Maintain storage area in a neat and clean condition
4. lining and marking of baselines and foul lines
5. Work and hand rake infield, pitchers mound and batters box after each field use – game or practice
6. To remove vegetation as necessary to the infield
7. Installation of infield mix pre and during season
8. working with the City to provide the league and community with an excellent facility for softball and a sense of pride

10.K

Request from the Economic Development Director to submit a Letter of Intent for a Community Development Block Grant Economic Development Program Grant on behalf of Front Street Shipyard.

Previously, the City of Belfast has been successful in securing funds through the Community Development Block Grant Economic Development Program (CDBG EDP) to assist Belfast businesses (including Front Street Shipyard) who are expanding and creating new jobs. Under this program, a business can secure up to $30,000 for each new full-time job that it creates, and a business can secure up to a total of $1,000,000 through this program; a business however must match the grant on a dollar-for-dollar basis. 51% of any new jobs created as a result of the funded activity must be taken by persons of low to moderate income (as defined by the U.S. Department of Housing and Urban Development). These funds can be used for capital and non-capital equipment, land and site improvements, rehabilitation or construction of commercial or industrial buildings, job training, working capital and capital equipment; acquisition is not an allowable activity under this program.

Front Street Shipyard is interested in applying for a CDBG EDP grant in the amount of $433,677.50. If awarded, these funds would be used to help pay for the acquisition of a waterjet computer numerical control (CNC) router and a used forklift truck. As part of this project, Front Street Shipyard would need to create 15 new, full-time positions within 12 months of grant award, with at least 8 of these positions being taken by persons of low to moderate income. Front Street Shipyard would also need to provide matching funds of at least the same amount as the grant award; Front Street Shipyard plans to provide matching funds in the identical amount of $433,677.50.

The Letter of Intent must be submitted to the Maine Office of Community Development by 4:00 PM on Friday, March 4th, 2016. If the Letter of Intent is accepted, the City of Belfast and Front Street Shipyard would be invited to submit a full application, which would be due by 4:00 PM on Friday, May 13th, 2016. City staff would seek approval from the Belfast City Council at a future meeting to submit that application, in addition to holding a required public hearing. A decision on the grant application would be expected to be received approximately 6 weeks after the application deadline.

State of Maine
Community Development Block Grant Program
2016 Economic Development Program
Letter of Intent to Apply
Due the first Friday of each month by 4:00 p.m.*
Letters of Intent may be submitted via email to: ocd.loi@maine.gov
Please enter "EDP LOI" in the subject line.

2016 CDBG Program Funds are not expected to be available before July 1, 2016.

All communities wishing to apply for assistance under the 2016 Economic Development Program must use this Letter of Intent to document compliance with requirements established by Title I of the Housing and Community Development Act of 1974, as amended and the State of Maine CDBG program. Applicants who submit a completed Letter of Intent deemed to be fully compliant will be notified by OCD that they are eligible to submit a final application. Eligibility to submit a final application does not imply final project approval or funding.

EDP PROJECT PARTICIPANTS

Legal Applicant (Community):

Applicant:	City of Belfast	**Phone:**	(207) 338-3370 extension 16
Address:	131 Church Street	**Fax:**	(207) 338-2419
City, ZIP+4:	Belfast, 04915-6561	**E-Mail:**	economicdevelopment@cityofbelfast.org
Contact:	Thomas Kittredge (Economic Development Director, City of Belfast)		
DUNS #:	Applicant DUNS (Dunn & Bradstreet) #: 831895557		
OCD Development Program Manager (Name and Date of Consultation Required):			

Business to be assisted:

Business	FSS Inc., d/b/a Front Street Shipyard	**Phone:**	(207) 930-3740
Address:	101 Front Street, PO Box 558	**Fax:**	(207) 930-3742
City, ZIP:	Belfast, 04915	**E-Mail:**	twoodworth@frontstreetshipyard.com
Contact:	Tuesdi Johnson Woodworth	**Title**	Chief Financial Officer
DUNS #:	Applicant Business DUNS (Dunn & Bradstreet) #: 966930088		
If applicable, is business to be assisted	☐ **Retail**		☐ **Start-up**

***If the first Friday of the month falls on a holiday the EDP Letter of Intent will be due by 4:00pm on the next business day.**

EDP ELIGIBLE ACTIVITY CATEGORIES

	Grants to Municipalities: for acquisition, relocation, demolition, clearance, construction, reconstruction, installation and rehabilitation associated with **public infrastructure** projects such as water and sewer improvements, flood and drainage improvements, publicly-owned commercial and industrial buildings, parking, streets, curbs, gutters, sidewalks, etc. All public infrastructure must be owned by the municipality or public or private utility and be in support of an identified business.	**$1,000,000**
X	**Grants to Municipalities for Direct Business Support:** for capital and non-capital equipment, land and site improvements, rehabilitation or construction of commercial or industrial buildings, job training, working capital and capital equipment and be in support of an identified business. **Acquisition is not an allowable activity under this group.**	**$1,000,000**

Applicants may apply in only one specific* grant *activity group.

ECONOMIC DEVELOPMENT PROGRAM FUNDS CANNOT BE USED TO REFINANCE EXISTING DEBT

PROJECT INFORMATION

Using the space provided please provide a clear, concise description of the proposed development project. Be sure to clearly explain how EDP funds will be utilized, the financing gap that exists in order to do the project and the timeline in which the CDBG-EDP funds will be expended and information relative to jobs being created and/or retained.

The proposed development project is comprised of three components:

1) Front Street Shipyard will purchase a waterjet computer numerical control (CNC) router as part of its plan to begin constructing carbon fiber ferries at its facility in Belfast, Maine; Front Street Shipyard will be the first yard in the United States to construct ferries in this advanced material.

Within the construction process for these ferries, the cutting of the carbon fiber is an extremely difficult task, requiring the use of expensive carbide blades and hours of very slow and very loud cutting. Brodrene Aa, the company that Front Street Shipyard is partnering with on this carbon fiber ferry project, purchased and installed their own waterjet CNC router at their facility in Norway; this resulted in a dramatic increase in productivity by reducing the length of production time, as well as improving conditions for its employees by reduction of noise. The router that has been spec'd (a Flow Mach 4 40130c Waterjet Cutting Machine) has a working bed that measures 13 feet by 43 feet, which will be able to handle the size of the flat, infused carbon fiber panels. This machine will also have the capability to cut in a third dimension; it will be able to cut a bevel on any of the panels, which will also save many hours of time during the production process that would normally be spent on laying out and fitting.

The purchase of a waterjet CNC router of this size would also lend itself well to the current processes and uses at Front Street Shipyard; it could be used to cut large frames and faces for plywood paneling, to cut metal for hull repairs on large yachts, and to cut metal parts for the construction of new boats. Front Street Shipyard will also be able to use this router to generate revenue for itself through doing work on behalf of other area businesses such as large fabrication and machine shops, large composite manufacturers, paper mills, and technology firms. The estimated cost for this router is $817,355.00.

2) Front Street Shipyard will make minor accommodations to Building 5 at its Belfast facility to accommodate the waterjet CNC router. These modifications include the provision of electrical power, water circulation, and a platform for staging/supporting the equipment. The estimated cost for these modifications is $25,000.00.

3) Front Street Shipyard will purchase a used forklift truck to replace its current one that is nearly unusable. This forklift truck would be used in conjunction with the router (such as for moving panels around), in addition to being used on other tasks throughout Front Street Shipyard's Belfast facility. The estimated cost for a used forklift truck in good condition is $25,000.00.

The total estimated cost for the entire project as described above is $867,355.00. Front Street Shipyard is only able to contribute $433,677.50 from its own cash flows and lines of credit; this leaves a financing gap in the amount of $433,677.50 that would hopefully be filled by CDBG EDP funds. CDBG EDP funds, in conjunction with Front Street Shipyard matching funds, will be used to purchase all of the aforementioned equipment and pay for the aforementioned building modifications.

The timeline in which the CDBG EDP funds will be expended is the following:

Item	Purchase Date
Waterjet CNC Router (total cost of $817,355.00)	July 2016 ($242,206.00), October 2016 ($509,413.00), and November 2016 ($90,736.00) (three separate payments)
Building Modifications (total cost of $25,000.00)	October 2016 ($25,000.00) (one payment)
Forklift Truck (total cost of $25,000.00)	July 2016 ($25,000.00) (one payment)

Acquisition of this new equipment will lead Front Street Shipyard to create 15 new full-time equivalent jobs; at least 8 of these positions will be taken by individuals from low-to-moderate income households.

EDP DOLLARS PER JOB CREATED: The maximum CDBG participation per job created with EDP funds is $30,000.

JOB RETENTION INFORMATION **(Fill in job information below)**

Number of Full-Time Equivalent (FTE) Jobs to be Retained: N/A

The applicant must also attach documentation to this Letter of Intent such as public announcement of lay-offs, public announcement of imminent closure, financial records) of impending job loss without CDBG Program assistance. **Completion of Job Retention Assurances and Job Retention Summary Documentation must be completed and submitted to the Office of Community**

Development before applicant will be invited to submit an EDP application. Forms require completion and must be signed by both the municipal and business CEO. Please pay close attention to the definition of permanent, full time and full time equivalent jobs.

JOB CREATION INFORMATION **(Fill in job information below)**

Number of Full-Time Equivalent (FTE) Jobs to be Created within 12 months: 15

Occupation/Job Title	# of Jobs	Work Location	Hire Date	Hourly Salary	Hourly Salary with fringe benefits
Carpenter	1	Belfast	May 2017	$18.00	$20.50
Composites Tech	1	Belfast	November 2016	$18.00	$20.50
Composites Tech	2	Belfast	January 2017	$15.00	$17.50
Composites Tech	2	Belfast	March 2017	$16.00	$18.50
Composites Tech	2	Belfast	July 2017	$16.00	$18.50
Designer	1	Belfast	June 2017	$24.00	$26.50
Fabricator	1	Belfast	May 2017	$17.00	$19.50
Mechanic	1	Belfast	January 2017	$17.00	$19.50
Mechanic	1	Belfast	July 2017	$18.00	$20.50
Modeler/Machine Operator	1	Belfast	June 2017	$20.00	$22.50
Modeler/Machine Operator	1	Belfast	July 2017	$18.00	$20.50
Painter	1	Belfast	March 2017	$15.00	$17.50

In determining CDBG National Objective compliance with job retention only **Permanent** jobs may be counted; temporary jobs may not. Full time jobs require a worker to work at least 1750 hours per year. Part time jobs require a worker to work at least 875 hours but less than 1750 hours per year. Part-time jobs **must** be converted to Full Time Equivalents (FTE). An FTE is defined as two part time jobs. **Seasonal** jobs may count only if the seasonal job lasts long enough and provides sufficient income to be considered the employee's principal occupation. (Contact OCD prior to counting seasonal jobs towards LMI benefit.) **All** permanent jobs created by the project must be counted, regardless of funding source(s). Jobs indirectly created by the project (i.e., remote location, "trickle down" jobs) do not count.

G. COST ESTIMATES & PROJECT FUNDING

Provide the estimated project cost, amount of CDBG funds to be requested and sources, amounts and dates secured for all anticipated cash matching funds.

Applicants for Economic Development Program funds must certify and provide documentation, at time of application, that there is a 100% cash match of the total EDP award. Matching funds must be directly related to the activities undertaken with EDP funding and must be firm commitments from non-CDBG funds and documented by binding commitment letters submitted with the final application. Matching funds cannot be committed or expended prior to the project receiving Environmental Review Clearance from the Office of Community Development. Prior commitments and in-kind contributions are not considered as match. Project must demonstrate that there is a gap between sources and uses and that CDBG funds are needed to fill that gap.

Communities receiving an EDP award may not receive any other EDP award for the same project or business during the same program year **or** for the same or project or business from a prior program year that has not met **final** closeout status.

All construction estimates should be prepared by the Engineer/Architect. Take into account the inflation rate in relation to the anticipated starting date of the project and applicable DAVIS/BACON wage rates as they apply to construction costs. ***Please note projects with a total cost exceeding $3,000,000 are not eligible for EDP assistance. The minimum request for EDP assistance is $100,000*.***

Total Estimated Project Cost:	$867,355.00	**CDBG Request:**	$433,677.50

Funding Source	Amount	Date Secured
CDBG Request	$433,677.50	7/1/16 (estimated)
Front Street Shipyard - line of credit	$383,677.50	5/13/16 (will be secured prior to application, upon application to bank)
Front Street Shipyard - cash on hand	$50,000.00	2/22/16 (already on hand at time of drafting Letter of Intent)
TOTAL:	**$867,355.00**	

EDP PROJECTS IN SUPPORT OF RETAIL BUSINESSES

EDP applications in support of a retail business must attach written documentation to this Letter of Intent for each of the following limited conditions:

1. The retail business represents the provisions of new products and services previously unavailable in the community or is a tourism-related business; and

2. The development or expansion of the retail business represents a net economic gain for the community and the region. Applications supporting a retail business or businesses are required to certify that the development represents a new overall gain for the region economy and not a shift from existing established businesses to a new or expanded one; and

3. The retail business is located in either a downtown district meeting the definition of PL 776 enacted by the 119th legislature; or a designated local growth area contained in an adopted and consistent comprehensive plan; and

4. At least 50% of the jobs created by the retail business must be full time jobs.

***Projects seeking less than $100,000 in CDBG EDP funds must request a waiver from the Office of Community Development (OCD) and have received approval of that wavier from OCD prior to the submission of the EDP Letter of Intent.**

Applicant & Business Certifications

As an authorized official of the applicant community and/or business, I certify under the penalties of perjury that:

1. To the best of my knowledge and belief, all information contained in this Letter of Intent and all attached documentation is true and correct and current as of the date signed below;

2. This Letter of Intent complies with all applicable State and federal laws and regulations;

3. All parties signing this Letter of Intent are cognizant of the requirements that should the intended Job Creation/Retention National Objective of the CDBG program not be met all CDBG funds must be repaid to the State of Maine CDBG program; that DECD may elect to secure such requirement/repayment with assets of the Applicant Business for a term of up to five years should this project be approved for funding; and that DECD may deduct from the amount of any Grant the cost of legal fees associated with the review, underwriting and securing of collateral should this project be approved for funding.

4. There are no actions, suits or proceedings pending or, to the knowledge of the borrower, threatened against or affecting the applicant and/or business at law or in equity before any court or administrative officer or agency which might result in any material adverse change in the business or financial condition of the borrower. The borrower is not in default (a) in the payment of any taxes levied or assessed against it or any of its assets or (b) under an applicable statute, rule, order, decree, writ, injunction or regulation of any governmental body (including any court).

5. With the exception of administrative or personnel costs, verify that no person who is an employee, agent, consultant, officer, or elected official or appointed official of state or local government or of any designated public agencies, or subrecipients which are receiving CDBG funding may obtain a financial interest or benefit, have an interest in or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect to CDBG activities, per 24 CFR Part 570.611.

6. Approval of this Letter of Intent by OCD to submit a final application does not imply final project approval or funding.

Signature of Chief Executive Officer:	Printed or Typed Name: Joseph Slocum
Name of Applicant **Community**: City of Belfast	Date: March 2, 2016
Signature of Chief Executive Officer:	Printed or Typed Name: J.B. Turner
Name of Applicant **Business**: Front Street Shipyard	Date: March 2, 2016

10.K 2

Request from the Economic Development Director to submit a Letter of Intent for a Community Development Block Grant Economic Development Program Grant on behalf of Cornerspring Montessori School.

Previously, the City of Belfast has been successful in securing funds through the Community Development Block Grant Economic Development Program (CDBG EDP) to assist Belfast businesses who are expanding and creating new jobs. Under this program, a business can secure up to $30,000 for each new full-time job that it creates, and a business can secure up to a total of $1,000,000 through this program; a business however must match the grant on a dollar-for-dollar basis. 51% of any new jobs created as a result of the funded activity must be taken by persons of low to moderate income (as defined by the U.S. Department of Housing and Urban Development). These funds can be used for capital and non-capital equipment, land and site improvements, rehabilitation or construction of commercial or industrial buildings, job training, working capital and capital equipment; acquisition is not an allowable activity under this program.

Cornerspring Montessori School is interested in applying for a CDBG EDP grant in the amount of $120,000.00. If awarded, these funds would be used to help pay for construction and design costs related to the construction of their new school facility. As part of this project, Cornerspring would need to create 4 new, full-time positions within 12 months of grant award, with at least 3 of these positions being taken by persons of low to moderate income. Cornerspring would also need to provide matching funds of at least the same amount as the grant award; Cornerspring plans to provide matching funds in the amount of $1,105,000.00, far in excess of the $120,000.00 grant amount.

The Letter of Intent must be submitted to the Maine Office of Community Development by 4:00 PM on Friday, March 4th, 2016. If the Letter of Intent is accepted, the City of Belfast and Cornerspring Montessori School would be invited to submit a full application, which would be due by 4:00 PM on Friday, May 13th, 2016. City staff would seek approval from the Belfast City Council at a future meeting to submit that application, in addition to holding a required public hearing. A decision on the grant application would be expected to be received approximately 6 weeks after the application deadline.

State of Maine
Community Development Block Grant Program
2016 Economic Development Program
Letter of Intent to Apply
Due the first Friday of each month by 4:00 p.m.*
Letters of Intent may be submitted via email to: ocd.loi@maine.gov
Please enter "EDP LOI" in the subject line.

2016 CDBG Program Funds are not expected to be available before July 1, 2016.

All communities wishing to apply for assistance under the 2016 Economic Development Program must use this Letter of Intent to document compliance with requirements established by Title I of the Housing and Community Development Act of 1974, as amended and the State of Maine CDBG program. Applicants who submit a completed Letter of Intent deemed to be fully compliant will be notified by OCD that they are eligible to submit a final application. Eligibility to submit a final application does not imply final project approval or funding.

EDP PROJECT PARTICIPANTS

Legal Applicant (Community):

Applicant:	City of Belfast	**Phone:**	(207) 338-3370 extension 16
Address:	131 Church Street	**Fax:**	(207) 338-2419
City, ZIP+4:	Belfast, 04915-6561	**E-Mail:**	economicdevelopment@cityofbelfast.org
Contact:	Thomas Kittredge (Economic Development Director, City of Belfast)		
DUNS #:	Applicant DUNS (Dunn & Bradstreet) #: 831895557		
OCD Development Program Manager (Name and Date of Consultation Required): Andrea Smith; 2/24/2016			

Business to be assisted:

Business	Cornerspring Montessori School	**Phone:**	(207) 338-5800
Address:	18 Hatley Road	**Fax:**	
City, ZIP:	Belfast, 04915	**E-Mail:**	suebeemer@cornerspringmontessori.com
Contact:	Susan Beemer	**Title**	Head of School
DUNS #:	Applicant Business DUNS (Dunn & Bradstreet) #: 858643500		
If applicable, is business to be assisted ☐ **Retail** ☐ **Start-up**			

***If the first Friday of the month falls on a holiday the EDP Letter of Intent will be due by 4:00pm on the next business day.**

EDP ELIGIBLE ACTIVITY CATEGORIES

	Grants to Municipalities: for acquisition, relocation, demolition, clearance, construction, reconstruction, installation and rehabilitation associated with **public infrastructure** projects such as water and sewer improvements, flood and drainage improvements, publicly-owned commercial and industrial buildings, parking, streets, curbs, gutters, sidewalks, etc. All public infrastructure must be owned by the municipality or public or private utility and be in support of an identified business.	**$1,000,000**
X	**Grants to Municipalities for Direct Business Support:** for capital and non-capital equipment, land and site improvements, rehabilitation or construction of commercial or industrial buildings, job training, working capital and capital equipment and be in support of an identified business. **Acquisition is not an allowable activity under this group.**	**$1,000,000**

Applicants may apply in only one specific* grant *activity group.

ECONOMIC DEVELOPMENT PROGRAM FUNDS CANNOT BE USED TO REFINANCE EXISTING DEBT

PROJECT INFORMATION

Using the space provided please provide a clear, concise description of the proposed development project. Be sure to clearly explain how EDP funds will be utilized, the financing gap that exists in order to do the project and the timeline in which the CDBG-EDP funds will be expended and information relative to jobs being created and/or retained.

Cornerspring Montessori School was founded in 2001 in response to the area's need for a preschool program and for educational options. Cornerspring serves families in Waldo and Knox counties; many of the communities in these areas are quite rural, possessing populations of less than 1,000, with the families residing in these communities having limited access to educational enrichment opportunities for their children.

In 2007, Cornerspring moved to its current location, a leased building on the athenahealth campus in Belfast, Maine. However, it has become apparent that Cornerspring needs a larger facility in order to be able to provide the range of educational services that are desired by the area community; to that end, the school's board of directors established a building search committee with the goal of identifying a larger, permanent home; the committee presented their recommendation that building a 6,100 square foot high-efficiency school was the best option for the future growth and the sustainability of the school. In the fall of 2014, the school purchased 37 acres of land for this new facility, and also commissioned a site plan and preliminary building designs.

The current estimated costs for the construction and the remaining design of this new facility are $1,235,000. Cornerspring recently launched a capital campaign that has raised $396,000, and the school plans to secure a mortgage in the amount of $600,000 as well as a construction loan in the amount of $119,000; this would leave a gap of $120,000 that would hopefully be filled by CDBG EDP funds. CDBG EDP funds would be used for design and construction of the facility.

The school plans to break ground on this facility in September of 2016 and be able to move into it by June of 2017.

The new school building will allow Cornerspring Montessori to maintain its current programs, add a toddler classroom, and grow its elementary and summer programs. The new facility and the addition and expansion of its programs will require that Cornerspring Montessori create four new, full-time teaching positions; at least 3 of these positions will be taken by individuals from low-to-moderate income households.

EDP DOLLARS PER JOB CREATED: The maximum CDBG participation per job created with EDP funds is $30,000.

JOB RETENTION INFORMATION **(Fill in job information below)**

Number of Full-Time Equivalent (FTE) Jobs to be Retained: N/A

The applicant must also attach documentation to this Letter of Intent such as public announcement of lay-offs, public announcement of imminent closure, financial records) of impending job loss without CDBG Program assistance. **Completion of Job Retention Assurances and Job Retention Summary Documentation must be completed and submitted to the Office of Community Development before applicant will be invited to submit an EDP application.** Forms require completion and must be signed by both the municipal and business CEO. Please pay close attention to the definition of permanent, full time and full time equivalent jobs.

JOB CREATION INFORMATION **(Fill in job information below)**

Number of Full-Time Equivalent (FTE) Jobs to be Created within 12 months: 4

Occupation/Job Title	# of Jobs	Work Location	Hire Date	Hourly Salary	Hourly Salary with fringe benefits
Teacher	4	Belfast	6/15/2017	$12.00	$13.80

In determining CDBG National Objective compliance with job retention only **Permanent** jobs may be counted; temporary jobs may not. Full time jobs require a worker to work at least 1750 hours per year. Part time jobs require a worker to work at least 875 hours but less than 1750 hours per year. Part-time jobs **must** be converted to Full Time Equivalents (FTE). An FTE is defined as two part time jobs. **Seasonal** jobs <u>may</u> count only if the seasonal job lasts long enough and provides sufficient income to be considered the employee's principal occupation. (Contact OCD prior to counting seasonal jobs towards LMI benefit.) **All** permanent jobs created by the project must be counted, regardless of funding source(s). Jobs indirectly created by the project (i.e., remote location, "trickle down" jobs) do not count.

G. COST ESTIMATES & PROJECT FUNDING

Provide the estimated project cost, amount of CDBG funds to be requested and sources, amounts and dates secured for all anticipated cash matching funds.

Applicants for Economic Development Program funds must certify and provide documentation, at time of application, that there is a 100% cash match of the total EDP award. Matching funds must be directly related to the activities undertaken with EDP funding and must be firm commitments from non-CDBG funds and documented by binding commitment letters submitted with the final application. Matching funds cannot be committed or expended prior to the project receiving Environmental Review Clearance from the Office of Community Development. Prior commitments and in-kind contributions are not considered as match. Project must demonstrate that there is a gap between sources and uses and that CDBG funds are needed to fill that gap.

Communities receiving an EDP award may not receive any other EDP award for the same project or business during the same program year **or** for the same or project or business from a prior program year that has not met **final** closeout status.

All construction estimates should be prepared by the Engineer/Architect. Take into account the inflation rate in relation to the anticipated starting date of the project and applicable DAVIS/BACON wage rates as they apply to construction costs. ***Please note projects with a total cost exceeding $3,000,000 are not eligible for EDP assistance. The minimum request for EDP assistance is $100,000*.***

Total Estimated Project Cost:	$1,235,000.00	**CDBG Request:**	$120,000.00

Funding Source	Amount	Date Secured
CDBG Request	$120,000.00	7/1/2016 (estimated)
Mortgage	$600,000.00	6/30/16 (estimated)
Capital Campaign	$396,000.00	2/16/2016
Construction Bridge Loan	$119,000.00	6/30/16 (estimated)
TOTAL:	**$1,235,000.00**	

EDP PROJECTS IN SUPPORT OF RETAIL BUSINESSES

EDP applications in support of a retail business must attach written documentation to this Letter of Intent for each of the following limited conditions:

1. The retail business represents the provisions of new products and services previously unavailable in the community or is a tourism-related business; and

2. The development or expansion of the retail business represents a net economic gain for the community and the region. Applications supporting a retail business or businesses are required to certify that the development represents a new overall gain for the region economy and not a shift from existing established businesses to a new or expanded one; and

3. The retail business is located in either a downtown district meeting the definition of PL 776 enacted by the 119th legislature; or a designated local growth area contained in an adopted and consistent comprehensive plan; and

4. At least 50% of the jobs created by the retail business must be full time jobs.

***Projects seeking less than $100,000 in CDBG EDP funds must request a waiver from the Office of Community Development (OCD) and have received approval of that wavier from OCD prior to the submission of the EDP Letter of Intent.**

Applicant & Business Certifications

As an authorized official of the applicant community and/or business, I certify under the penalties of perjury that:

1. To the best of my knowledge and belief, all information contained in this Letter of Intent and all attached documentation is true and correct and current as of the date signed below;

2. This Letter of Intent complies with all applicable State and federal laws and regulations;

3. All parties signing this Letter of Intent are cognizant of the requirements that should the intended Job Creation/Retention National Objective of the CDBG program not be met all CDBG funds must be repaid to the State of Maine CDBG program; that DECD may elect to secure such requirement/repayment with assets of the Applicant Business for a term of up to five years should this project be approved for funding; and that DECD may deduct from the amount of any Grant the cost of legal fees associated with the review, underwriting and securing of collateral should this project be approved for funding.

4. There are no actions, suits or proceedings pending or, to the knowledge of the borrower, threatened against or affecting the applicant and/or business at law or in equity before any court or administrative officer or agency which might result in any material adverse change in the business or financial condition of the borrower. The borrower is not in default (a) in the payment of any taxes levied or assessed against it or any of its assets or (b) under an applicable statute, rule, order, decree, writ, injunction or regulation of any governmental body (including any court).

5. With the exception of administrative or personnel costs, verify that no person who is an employee, agent, consultant, officer, or elected official or appointed official of state or local government or of any designated public agencies, or subrecipients which are receiving CDBG funding may obtain a financial interest or benefit, have an interest in or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect to CDBG activities, per 24 CFR Part 570.611.

6. Approval of this Letter of Intent by OCD to submit a final application does not imply final project approval or funding.

Signature of Chief Executive Officer:	Printed or Typed Name: Joseph Slocum
Name of Applicant **Community**: City of Belfast	Date: March 2, 2016
Signature of Chief Executive Officer:	Printed or Typed Name: Susan Beemer
Name of Applicant **Business**: Cornerspring Montessori School	Date: March 2, 2016

10.L

TO: MRC Member Communities
FR: Greg Lounder
DT: January 28, 2016
RE: Independent Legal Review of the MRC Plan for 2018

You may be aware that a small number of MRC communities, communicating to MRC through Mr. Roger Raymond, Town Manager in Hermon, approached the MRC and requested our cooperation in funding an independent legal review of the contract documents that make up the MRC Plan for 2018. The MRC agreed to fund this request with the understanding that there would no MRC involvement in the independent review process other than to make our legal advisor available to answer questions posed by the independent legal reviewer. The MRC also wanted assurance that the final written independent review report would be made available to all MRC Member Communities.

The independent legal review was completed and the MRC incorporated several of the suggestions before finalizing the contract documents. Mr. Raymond recently contacted the MRC to request that the MRC mail a copy of the final independent legal review report to all MRC Member Communities. To accommodate this request, please find enclosed a copy of the final independent legal review report.

MEMORANDUM

To: Roger Raymond, Town Manager, Town of Hermon

From: Jim Katsiaficas, Esq., Perkins Thompson

Date: January 8, 2016

Re: Legal Review of Documents Prepared by the Municipal Review Committee, Inc. Regarding the Fiberight Municipal Solid Waste Disposal Proposal

I. Executive Summary

We have reviewed the major legal documents for MRC's proposed transactions between each municipality and MRC and between MRC and Fiberight. The result is the detailed memorandum, with tables and a timeline, that follows, summarizing the several related documents that together implement the Fiberight solid waste management Project the: Development Agreement, Joinder Agreement, Master Waste Supply Agreement, Site Lease and Waste Disposal Agreement for Crossroads Landfill. However, an overview that focuses on five major questions officials from the municipalities considering this Project may want to ask may be helpful, and this Executive Summary attempts to answer those five questions. (Two additional concerns raised this week are the need to be sure that the Amended and Restated Articles, and not the Bylaws, contain all Fundamental Matters, including authorization of spending by MRC, and that there be nine members on the Board , not three to nine as the Articles currently provide.)

1. Is the Town/City obligated to send minimum amounts of MSW per year to the Facility/Back-up Facility?

Yes. By signing the Joinder Agreement, the Joining Member municipality agrees to deliver to the Fiberight Facility all Acceptable Waste generated within its borders for which the collection and disposition is under its control, meaning collected and delivered directly by the municipality or by a contract hauler. Although there is no Guaranteed Annual Tonnage, or "GAT," as there now is under the PERC Agreement, each Joining Member still must agree to an Estimated Delivery Amount of municipal solid waste ("MSW") it will provide during each contract year. This is referred to in Section 3.3(b) of the Joinder Agreement as a "commitment" by the Joining Member municipality which is subject to periodic review, and in Section 3.1(ii) of the Master Waste Supply Agreement as an "obligation."

Failure to deliver the Estimated Delivery Amount alone will not result in a penalty unless the Joining Member diverts MSW to another facility for reasons not permitted under the Joinder Agreement, in which case MRC may invoice a Delivery Diversion charge. If Fiberight demands

ONE CANAL PLAZA, PO BOX 426
PORTLAND, ME 04112-0426
207.774.2635
FAX 207.871.8026
www.perkinsthompson.com

a Delivery Sufficiency Payment from MRC, MRC will pay that amount. MRC may then assess a Delivery Diversion Charge on a Joining Member but only in the circumstance where the Joining Member has not delivered all Acceptable Waste under its control to Fiberight. In all other circumstances, MRC would draw funds to pay the Delivery Sufficiency Payment owed Fiberight from the Delivery Sufficiency Reserve Fund, from Non-Charter Municipalities and, in the event those sources are insufficient, from a special assessment of all Joining Members based on tonnage delivered.

2. Under the MRC/Fiberight documents, can our municipality maintain our recycling and MSW diversion programs? Can we expand them?

Yes to the first question, and yes to the second, but with some qualification.

Section 3.2 of the Joinder Agreement recognizes a Joining Member's right, at its sole option, "to establish, continue, expand or discontinue existing or further MSW reduction, reuse or recycling programs" intended to encourage reduction, reuse and recycling of MSW generated within its borders. So long as it complies with the provisions discussed in the next paragraph, the activity will not result in assessment of a Delivery Diversion Charge by MRC.
If a Joining Member wishes to expand its existing MSW recycling, reduction or diversion programs generally, it may do so with 60 days' prior notice to and consultation with MRC, which will advise the Joining Member of any contract compliance impacts of the change(s) on the Joining Member and on all Joining Members. If the proposal is one to initiate new programs or significantly and materially expand existing programs that divert organic waste from MSW for management through other programs or facilities, the Joining Member also must obtain Fiberight's prior consent. Section 3.4(b), however, exempts the continuation of existing organic waste programs substantially as operated on the Effective Date from requiring approval.

3.4(b) also provides that the Joining Member may institute "Pay as you Throw" or other waste reduction programs without MRC's prior approval so long as all (other) MSW generated within its borders and under its control continues to be delivered to the Facility.

3. What happens if one of various situations occurs that affect the Project or the Facility?

What happens if:

a) Fiberight does not construct the Facility?

For a number of reasons, Fiberight could abandon the project. It could: fail to obtain needed permits, approvals and licenses; receive a permit, approval or license with an impossible condition; fail to secure financing; or have insufficient amounts of Joining Members and Acceptable Waste.

The Development Agreement allows MRC or Fiberight to terminate if Fiberight does not have adequate financing in place by January 1, 2017. It also permits termination at any time by the

parties' written mutual agreement. MSW would continue to be delivered to PERC until PERC Agreements expire March 31, 2018.

b) Fiberight constructs the Facility but it does not achieve Commercial Operation:

Development Agreement allows either party to terminate if Commercial Operation is not achieved and if Commercial Operation is not achieved by January 1, 2020; MSW on and after April 1, 2018 is disposed of as "Bridge Waste" at Crossroads Landfill Commercial Operation.

c) MRC unilaterally withdraws development rights or materially breaches the Development Agreement?

Fiberight may terminate and MRC reimburses Fiberight's reasonable development expenses.

d) Fiberight's materially misrepresents under or breaches the Development Agreement?

MRC may terminate and Fiberight reimburses MRC's reasonable development expenses.

e) Fiberight achieves Commercial Operation, but there is insufficient Acceptable Waste, or the process fails or does not function as designed?

If insufficient Acceptable Waste, MRC can help find more Maine MSW, and may be assessed Delivery Sufficiency Payments. MRC could terminate at end of Initial Term, but must offer to purchase building (without Fiberight equipment and personal property) or sell land to Fiberight, at Fiberight's option.

If problems are due to Fiberight's breach of agreements, either MRC or a Joining Member can enforce its contract rights. Joining Member municipalities can seek damages from Fiberight for the increased cost of solid waste disposal resulting from the failure of the Fiberight Facility to work in whole or in part, assuming a court agrees these are direct, and not "consequential" or indirect, damages. A Joining Member's Acceptable Waste is delivered to Crossroads Landfill if a Bypass situation.

f) Fiberight files bankruptcy or goes into receivership?

First, Fiberight recently has taken on a major investor, Covanta Energy Corp., which operates approximately 40 waste-to-energy facilities worldwide (and in full disclosure, was represented by this Firm several years ago in an unrelated matter), and so this question does not reflect specific concerns about Fiberight, but simply raises the issue as a hypothetical.

In bankruptcy, if the petition is for Chapter 7 liquidation, the agreements likely would be disregarded and the assets sold, regardless of language the parties might have drafted in the agreements. The Joining Members likely would have to make other long-term arrangements for MSW management and in the short-term, use Crossroads Landfill for Bypass. If the petition is for Chapter 11 reorganization, the agreements likely would remain in place to allow the Facility

to remain operating, perhaps with a successor operator. The Bankruptcy Court process could take a year or more to occur. It is unlikely the agreements would be terminated.

Finally, Fiberight, LLC is a Delaware corporation with at least three major ongoing projects in different states. The projects in other states could be a drain on its assets and could affect the proposed Maine project. Therefore, MRC might consider asking Fiberight to form a separate entity for the Maine project, so that all parties and the regulators would know the identity, assets and financial and technical capacity of the Maine Fiberight entity (MRC understands that Fiberight is preparing to take this step).

4. Can a municipality withdraw at any time from these agreements? Is there a penalty for withdrawing from these agreements?

No as to the first question. Under the Joinder Agreement, a Joining Member may only terminate its participation in the MRC/Fiberight venture as permitted by that Agreement. Under Article 2, Joining Members may terminate at the end of the 15-year long Initial Term or at the end of any of the five five-year long Extension Terms. Under Article 10, the Joining Member (or MRC) could terminate the Joinder Agreement because of an event of default by the other party, including: failure to fulfill its obligations under this or any of the other related Agreements following a 60-day cure period; filing of a petition in bankruptcy or appointment of a receiver not dismissed within 60 days; or the corporation dissolving, liquidating or ceasing operation for more than 60 days. Also, the Joinder Agreement, which establishes the Joining Member's obligation to deliver Acceptable Waste to Fiberight through MRC, expires when the Master Waste Supply Agreement, which obligates MRC to secure commitments from the Joining Members to deliver Acceptable Waste to Fiberight, terminates.

There is no specific penalty under the Joinder Agreement for a terminating Joining Member, but it is obligated to pay outstanding pre-termination obligations – Tipping Fees, Delivery Diversion Charges, and other assessments. However, if enough Joining Members decide not to exercise their option to Extension Terms, there could be insufficient Acceptable Waste for Fiberight to operate. MRC might have to terminate and would be required to give Fiberight (under the Site Lease) its option to sell the building (less equipment and personal property) to MRC or to purchase the leased premises from MRC. Presumably, if the Facility were operating and additional MSW could be found, Fiberight would want to buy the land its building is on, but if the Facility were not working or were economically not viable, Fiberight would want to sell the building. The purchase cost would be paid from the Building Reserve, which is $7 million, and is equal to the highest price on the table of depreciated values in Exhibit C to the Site Lease.

5. What happens to amounts paid by Equity Charter Municipalities into MRC reserve accounts managed by PERC, tip fee stabilization account, operating accounts, and debt service accounts?

Exhibit B to the Joinder Agreement lists the assets and funds currently managed by MRC, and explains the new MRC-managed funds to which those assets would be assigned, and how those funds would be distributed upon: the termination of the PERC Agreements, the departure of any current municipal members of MRC and the completion of the MRC/Fiberight operation.

Disposition and Management of Assets

1) Current Assets - five funds:

Reserve Accounts ($26.6 million) →

i) Custody Account, working capital)
ii) Tip Fee Stabilization Fund)

Operating Accounts (< $1 million))

iii) Operating Account

$1 million

iv) Operating Budget Stabilization) → Fund)

New Funds:

Site Capital Costs: up to $5 million, and pay Equity Charter Municipalities that are Departing Municipalities their portion of accounts

Reserve Funds:

Building Reserve - $7 million
Delivery Sufficiency Reserve Fund – $3 million
PERC Closure Reserve Fund - 1.167 million
Bridge Waste Transportation Reserve Fund -

Target Value Reserve Fund

Equity Charter Municipalities that are Departing Municipalities and remainder to MRC administrative costs (fund likely will be depleted by 4-2018)

Monies released from the new MRC-managed Building Reserve, Delivery Sufficiency Reserve Fund, and PERC Closure Reserve Fund will be distributed pro rata to the Equity Charter Municipalities. Any remaining Bridge Waste Transportation Reserve Fund amounts will be transferred to the Target Value Reserve Fund, which is distributed by the MRC Board at a properly noticed meeting.

v) Debt Service Reserve Fund ($1.33 million) to MRC if not used for debt service, then first used to pay costs of release of funds, for dissolution of PERC Partnership and then to Equity Charter Municipalities based on relative tonnage.

PERC Partnership Ltd. Ptnr. shares – continue to 12-31-2018, then PERC manages until Partnership dissolves or municipalities leave.

2) New Charge. Non-Charter Municipalities pay $2.21/ton over Initial Term, and proceeds are placed in Target Value Reserve Fund. (The $2.21 is the amount estimated to be required as a "make-up" payment amortized over the 15-year Initial Term recognizing that existing Charter Municipalities are leaving money they now have in the Project in to fund various reserves as noted above.)

3) Capital and Maintenance Reserve Account (CMRA). Account maintained by PERC, funded by portion of Tipping Fees, and held by bank in custodial account solely for capital or maintenance expenditures. PERC may withdraw funds to pay or reimbursed capital and

maintenance costs. If the PERC Agreement is terminated before March 31, 2018, Charter Municipalities are entitled to pro rata share of CMRA balance, if any, based on municipal and PERC contributions.

II. Discussion

On behalf of the Town of Hermon, Maine ("Town"), Perkins Thompson has reviewed the following documents provided to us by the Municipal Review Committee, Inc. ("MRC") regarding municipal solid waste ("MSW") management and disposal.

- Draft documents prepared by MRC (the "Proposed Documents"):

  1. Development Agreement between MRC and Fiberight, LLC (dated February 4, 2015) ("Development Agreement");

  2. Form Municipal Joinder Agreement between MRC and each member town ("Joinder Agreement") and exhibits (draft dated December 4, 2015);

  3. Master Waste Supply Agreement between MRC and Fiberight, LLC and exhibits (draft dated December 4, 2015);

  4. Site Lease between MRC and Fiberight, LLC (draft dated December 4, 2015) and exhibits;

  5. Amended and Restated Bylaws of Municipal Review Committee, Inc. (To be effective as of April 1, 2018) ("Amended Bylaws") (undated draft: Eaton Peabody version 1);

  6. Restated Articles of Incorporation of MRC (draft dated December 1, 2015); and

  7. Solid Waste Disposal Agreement between MRC and Waste Management Disposal Services of Maine, Inc. (dated August 24, 2015) ("Crossroads Landfill Agreement").

We also have reviewed revisions dated December 30, 2015 to documents numbered 2, 3, 4, 5 and 6 listed above.

- Current solid waste-related documents (the "Existing Documents"):

  1. Second Amended, Restated and Extended Waste Disposal Agreement between Town of Hermon and Penobscot Energy Recovery Company dated May 18, 1998 ("Second Amended and Restated Agreement") (We have not been provided copies of the prior agreements to review.);

  2. Fifth Amended and Restated Agreement of Limited Partnership of Penobscot Energy Recovery Company (dated July 18, 2011);

3. Amended and Restated Bylaws of Municipal Review Committee, Inc. (Revised as of July 23, 2014) ("Bylaws"); and

4. Articles of Amendment of Municipal Review Committee, Inc. (June 22, 1998).

Because the Proposed Documents are drafts, for purposes of our comments as to the legal effect of these documents we are assuming these drafts will become the final executed documents.

Before we address the Proposed Documents, the Existing Documents and your questions, we observe that these documents and this solid waste management proposal do not exist in a vacuum, but instead exist in a dynamic context that includes the following policy and legal considerations:

- Maine law requires each municipality to "provide solid waste disposal services for domestic and commercial solid waste generated within the municipality," and further provides that it "may provide these services for industrial wastes and sewage treatment plant sludge." 38 M.R.S. §1305(1). (Until a 1989 amendment, P.L. 1989, c. 585 E §17, the statute required each municipality to provide a "disposal facility.") However, there is no State funding to assist in this obligation, which most municipalities meet by paying the tipping fee for disposal of domestic solid waste (and by paying for its collection at transfer stations or by curbside pickup, and transportation) from property tax revenues, offset somewhat by proceeds from "Pay as You Throw" programs, such as pay-per-bag, in municipalities that have adopted such programs.

- Many Maine municipalities have elected to fix and control their long-term solid waste disposal costs by owning an equity interest in the solid waste disposal facility, and to use solid waste disposal methods more environmentally responsible than simple landfilling. This is the case with many of the ecomaine, MMWAC and PERC/MRC municipalities that are owners of interests in these waste-to-energy (WTE) facilities constructed some 30 years ago. Therefore, the cost of providing solid waste disposal services for the municipal solid waste (MSW) generated within these municipalities is not just the tipping fee and collection and transportation costs, but also is the capital and operation and maintenance costs of the solid waste disposal facility.

- Municipalities have limited legal authority to direct the MSW for which they are required to provide disposal services to the solid waste disposal facilities they help finance. Some 30 years ago, Maine municipalities enacted solid waste flow control ordinances to require solid waste generated within their boundaries to be disposed of at the facilities which they had pledged their full faith and credit to finance for 25 to 30 year terms in order to meet their State mandates. However, some haulers challenged these ordinances and disposed of the waste at facilities that charged lower tipping fees, keeping the increased profit. The U.S. Supreme Court held in 1994 in *C&A Carbone, Inc. v. Clarkstown*, 511 U.S. 383, that because solid waste is an item in interstate commerce, ordinances directing solid waste to a particular facility over another were discriminatory and violated the dormant commerce clause of the U.S. Constitution. More recently, in *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste,* 550 U.S. 330 (2007), the U.S. Supreme Court held that flow control ordinances can be used, and do not discriminate against interstate commerce, when requiring solid waste to be delivered to **publicly** owned

facilities.

The Proposed Documents require the Joining Member to deliver or cause to be delivered "on an exclusive basis all Acceptable Waste generated within its borders the collection and disposition of which is under its control." At least one provision states that it does not require a Joining Member will not be required to institute flow control ordinances. However, because a private entity – Fiberight – will own the solid waste disposal facility, the MRC Joining Member municipalities most likely would be prevented by the *Clarkstown* decision from enacting and enforcing flow control ordinances. The only solid waste each MRC Joining Member municipality can guarantee to the proposed Fiberight Facility is that which it collects (by curbside collection or transfer station) and delivers, or has collected and delivered, to the solid waste disposal facility itself or by contract hauler. Municipalities generally collect or contract for the collection of residential MSW, leaving private haulers to collect solid waste from industrial and commercial users under private contracts. Waste collected by private haulers is not controlled by the municipality and could be disposed of at any facility where the private hauler pays a lower tipping fee (and could pocket the difference in cost). Landfills often are a less expensive disposal option than waste-to-energy facilities and are likely to be less expensive than the Fiberight option, but landfilling is lowest on the State and U.S. EPA hierarchies of preferred solid waste disposal methods. In sum, the only Acceptable Waste a Joining Member controls and can commit is that which it collects and delivers or has collected and delivered for it.

- The area of solid waste management is subject to change by federal and State government at any time. The Maine and U.S. EPA solid waste hierarchies favor solid waste reduction, reuse and recycling over waste-to-energy, and favor all of these over landfilling. The Maine Legislature has been studying solid waste management for the last several years, and appears poised to promote reduction, reuse and the 50% MSW recycling goal.

For example, while MRC and its members are pursuing a solid waste disposal method that relies in large part on processing the organic waste stream to create useable byproducts, the Maine Legislature is considering a draft bill that may divert needed organic waste. In January 1995, Maine DEP issued its annual "Maine Solid Waste Generation and Disposal Capacity Report" that at page 1 identifies the diversion of organics as "the largest opportunity to reduce the disposal of Maine's solid waste stream in landfills and incinerators." Acting on this, the Environment and Natural Resources Committee of Maine's Legislature has proposed a draft bill for the Second Regular Session that would add a provision to the Maine Waste Management Act to require large quantity commercial food waste generators (generating one ton of food waste or more per week), including food wholesalers and distributors, restaurants, hospitals, schools, supermarkets, resorts, conference centers and others, to either treat it on site or deliver it to a composting facility with available capacity within 20 miles from the generator (although the generator could elect to deliver it to a composting facility more than 20 miles away). This would not be enacted, if at all, until after the Joining Members approve the MRC documents and as proposed, would not become effective until January 1, 2020. It will take the place of L.D. 313, held over from last session, and the Committee will hold a work session on it on January 6, 2016, at 1:00 pm. Thus, State legislation intended to promote diversion of the organic portion of MSW could reduce the amount of organic MSW available to the proposed Fiberight facility—a facility

that would be specifically designed to process this waste in order to help municipalities meet their State mandate to provide MSW disposal services.

With those larger policy and legal considerations in mind, we turn to address the following questions posed by the Town:

1. The Town's obligations and responsibilities under the Proposed Documents.

A. Development Agreement.

This is the framework and timetable for the parties' responsibilities and activities under this business transaction. The Town, as a Joining Member, has no contractual obligations under the Development Agreement, as it is between MRC and Fiberight. However, MRC's obligations under this agreement are on behalf of the Joining Members. The agreement requires MRC to exercise "best efforts" to cause Joining Members to enter into Joinder Agreements. MRC must reimburse Fiberight's "reasonable development expenses" if MRC unilaterally withdraws the exclusive award of development rights to Fiberight or materially breaches its obligations under the Development Agreement. There is no explanation of how this liability would be funded, and there is no dollar cap on MRC's exposure. The agreement further requires MRC to indemnify Fiberight for any "activity related to the Project Site or the Facility undertaken by [MRC]," and for any breach of the agreement by MRC. There is no dollar cap on MRC's financial exposure under the indemnity, although indirect and consequential damages are excluded.

B. Joinder Agreement. (See Table A for Summary and Comments)

This is the critical document between each municipality (Joining Member) and MRC that describes the municipal obligations, and Fiberight, as a third-party beneficiary under it, has enforcement rights.

Initial Term. Notice of Extension. Section 2.1 establishes an Initial Term of at least 15 years, beginning on the Effective Date and continuing until the later of April 1, 2033 or the 15th anniversary of the Commercial Operation Date, and may be extended for up to five consecutive five-year periods at the Joining Member's discretion; Joining Member must give MRC at least 12 months' written notice to exercise the right of extension. However, as to the right to terminate, Joining Members should recognize that elimination of their MSW may have impacts on all parties under the four separate agreements. Section 10.3 provides that the Joinder Agreement automatically terminates upon expiration of the Master Waste Supply Agreement.

Delivery of All Acceptable Waste Generated Within Borders and Under its Control to Facility. Under 3.1, Joining Member agrees to deliver or cause to be delivered to the Fiberight facility ("Facility") "all Acceptable Waste generated within its borders the collection and disposition of which is under its control." Obligation begins on the Commercial Operation Date (defined under the Master Waste Agreement as being the later of (i) the date on which the Performance Test was completed and accepted; and (ii) April 1, 2018). This obligation is exclusive – the Joining Member must deliver or have delivered the Acceptable Waste under its control exclusively to Fiberight, and to no other solid waste disposal facility.

No Diversion of Acceptable Waste to Another Facility. Section 3.2 warns the Joining Member that violation of the Art. 3.1 delivery requirements could have a material adverse effect on the Fiberight Facility's financial performance and on the Joining Members. Each Joining Member agrees not to divert the Acceptable Waste to another facility unless permitted under the Joinder Agreement. Failure to comply results in assessment of a Delivery Diversion Charge equal to: 1) the product of the number of tons of waste diverted and the applicable tipping fee, and 2) the Joining Member's share of any penalty billed by Fiberight to MRC as a result of the diversion under Section 3.3 (c). It also recognizes Joining Member's right, at its sole option, "to establish, continue, expand or discontinue existing or further MSW reduction, reuse or recycling programs," subject to Section 3.4 (below) and that these programs will not result in a Delivery Diversion Charge.

Notice and Consultation before New or Expanded Recycling. Under Section 3.4(a), a Joining Member proposing to change "the scope of its responsibility" to deliver MSW originating within its borders to the Facility must provide MRC with at least 60 days' notice and "shall consult with MRC" regarding that change "prior to any implementation." MRC will advise the Joining Member of any contract compliance impacts of the change(s) on the Joining Member and on all Joining Members.

Also, Fiberight Consent before New or Expanded Organic Waste Diversion. A Joining Member proposing to initiate new programs or significantly and materially expand existing programs that divert organic waste from MSW for management through other programs or facilities also must obtain Fiberight's prior consent. Section 3.4(b), however, exempts the continuation of existing organic waste programs substantially as operated on the Effective Date from requiring approval.

Pay as You Throw Exception. Section 3.4(b) also provides that the Joining Member may institute "Pay as you Throw" or other waste reduction programs without MRC's prior approval so long as all (other) MSW generated within its borders and under its control continues to be delivered to the Facility.

Estimated Delivery Amount. MRC is obligated under the Master Waste Supply Agreement to deliver, through Joining Members under the Joinder Agreements, at least 150,000 TPY of Acceptable Waste to the Facility, or be liable for Delivery Sufficiency Payments. While this is MRC's obligation under the Master Waste Supply Agreement (Sections 3.3(a) and 6.2), each Joining Member in Section 3.3(b) agrees to an estimated amount of its annual delivery of Acceptable Waste. "Estimated Delivery Amount" does not include recyclable materials delivered to Fiberight as part of its Recycling Program (under Section 5.2 of the Master Waste Supply Agreement), or recyclables collected by Joining Members in separate programs.

Estimated Delivery Amount is a Commitment; Review. Although not stated as a guarantee, Section 3.3(b) of the Joinder Agreement sets out the Joining Member's acknowledgement of MRC's commitment to deliver MSW and agreement that the stated Estimated Delivery Amount is a reasonable amount. Therefore, a Joining Member should be careful to include in its Estimated Delivery Amount only that MSW it collects and delivers by

itself or by a hauler, adjusted for any recycling, reduction or reuse projected during the first five years and perhaps for the full 40 years. Section 3.3(b) states that the Joining Member and MRC "shall review the commitment" at specified times (at either party's request, but no more frequently than every five years, and for good cause shown) for appropriate adjustment, indicating that the "Estimated Delivery Amount" is a commitment of the Joining Member. (The Master Waste Supply Agreement, in Section 3.1, requires MRC to "secure commitments" from the Joining Members to deliver MSW to the Facility and calls this an "obligation.")

Delivery Diversion Charge. Although a Joining Member is not automatically penalized simply for failure to deliver Acceptable Waste in the amount of the Estimated Delivery Amount (Section 3.3(d) provides that "the fact that Joining Member has not achieved the Estimated Delivery Amount in and of itself will not justify imposition of a Delivery Diversion Charge"), as noted previously, under Section 3.2(b), a Joining Member's unpermitted diversion results in a Delivery Diversion Charge, which is paid into the Delivery Assessment Reserve Fund to be used when MRC's aggregate Delivery Commitment of at least 150,000 TPY of Acceptable Waste to the Facility is not met. Section 3.3(c).

Delivery Sufficiency Payment Contributions. Under Section 3.3(d), if Fiberight assesses a Delivery Sufficiency Payment against MRC, Joining Members may be required to contribute to that payment as follows:

1) To the extent MRC owes the payment because one or more Joining Members have not delivered all MSW under their control required to be delivered, each such Joining Member is assessed a Delivery Diversion Charge, which is its "ratable share" of the Delivery Sufficiency Payment "as determined by the MRC on the basis of tons of Acceptable Waste delivered," and is applied against Delivery Sufficiency Payment.

2) The remaining Delivery Sufficiency Payment portion allocable to Charter Municipalities is paid from Delivery Assessment Reserve Fund.

3) Non-Charter Municipalities are required to pay an assessment in an amount equal to their allocable share of the amount paid from the Delivery Assessment Reserve Fund to Charter Municipalities multiplied by the percentage deliveries by Non-Charter Municipalities bears to all deliveries by all Joining Members during the appropriate time period.

4) In addition, each Joining Member may be assessed a special assessment on the basis of its ratable share of the remaining Delivery Sufficiency Payment amount after all other payment sources are applied – however, the actual formula for calculating this assessment is not stated. This would be assessed by MRC after notice to Joining Members and opportunity to be heard, and may be collected or offset against any rebates payable to Joining Members.

When Joinder Agreement terminates, any remaining balance in Delivery Sufficiency Reserve Fund, after expenses, returns to Equity Charter Municipalities pro rata as in Exhibit B.

Shall Not Deliver Acceptable Waste, and Must Indemnify MRC and Fiberight for Same. Under Section 3.5, a Joining Member shall not deliver Unacceptable Waste to the

Facility, and shall pay the "full cost for, and shall indemnify and hold harmless" MRC and Fiberight for any liability, claim or damage arising from delivery of Unacceptable Waste to the Facility. This could constitute a waiver of the Joining Member's Maine Tort Claims Act (MRC has made some changes to help) immunities, limits and defenses, in addition to disincentivizing Fiberight from actively screening haulers for Unacceptable Waste, and MRC has incorporated our recommended changes to Section 8.8. Joining Member also agrees to use reasonable efforts to offer local options for household hazardous waste disposal. This indemnity is greater than the municipal obligations under the PERC Agreements – may want to go back to that language.

Hauler Compliance. Under Section 3.5, a Joining Member is responsible for its contract haulers' compliance with the Joinder Agreement's delivery requirements. This means that a Joining Member should ensure that its haulers are adequately insured and that full indemnification provisions are included in its hauler contracts. The Proposed Documents could be revised to require that haulers would be required to sign access agreements with Fiberight, so that Fiberight, and not Joining Members, have responsibility for the acts of haulers. An alternative is for Joining Members to enact licensing ordinances for haulers collecting MSW within their boundaries.

Payment of Tipping Fees. Under Sections 4.1 and 4.2, the Joining Member is obligated to pay tipping fees for Acceptable Waste "and other wastes" (undefined and of unknown type) delivered and credited to its account. The Joining Member will receive an invoice directly from Fiberight on a weekly basis within five calendar days of the end of each calendar week and payments will be due to Fiberight within 30 days of receipt unless MRC challenges the calculation of the tipping fee. If the Joining Member fails to make timely payment of tipping fees, it may be precluded from delivering Acceptable Waste to the Facility or Back-up Facility. The Tipping Fee is $70 per ton, as stated in Section 5.1 of the Master Waste Supply Agreement.

Authorization to Act for Joining Member. Under Sections 5.1 and 5.2, the Joining Member acknowledges it is a member of a group of entities for which MRC administers the relationship with Fiberight; agrees to be a Joining Member and a Member of MRC; authorizes MRC to work on behalf of it and all Joining Members to manage MSW disposal; and agrees to ratify its execution of the Joinder Agreement as required.

Transportation, Bypass and Disposition of Unacceptable Waste. Under Section 6.1, Joining Member and MRC each is obligated to hear each other's proposals for collective transportation of MSW to the Facility and/or for use of MSW-produced transportation fuel. Under Section 6.2, Joining Member acknowledges MRC has entered into an agreement for MSW disposal at the Back-up Facility for Bridge Capacity Waste (Acceptable Waste collected between April 1, 2018, and the Commercial Operation Date) and Bypass Waste (Acceptable Waste collected after the Commercial Operation Date, but the Facility has not yet achieved Commercial operation as of the end of the Excused Delay Period or it is out of service for maintenance, Repair or Force Majeure), and agrees to pay the Tipping Fees for Bypass Waste as if it were Acceptable Waste and for Bridge Capacity Waste. Under Section 6.2(d), Joining Member agrees to comply with Back-up Facility's Acceptable Waste delivery and transporter rules.

Indemnification. The Joinder Agreement provides for reciprocal indemnifications by Joining Member and MRC. Under Section 8.1, Joining Member agrees to defend, indemnify and hold harmless MRC, each other Joining Member and their members, directors, elected officials, officers, agents and employees against claims "resulting directly" from any failure by Joining Member to perform fully its obligations under the Joinder Agreement. MRC has made changes to liability and to recognize the Joining Member's Maine Tort Claims Act immunities, limitations and cap on liability. MRC's reciprocal indemnification in Section 8.2 has been extended to "appointed" as well as to elected officials as we suggested.

Notice of Assertion of Right of Indemnification. Under Section 8.3, a Joining Member asserting a right of indemnification against MRC must provide MRC with written notice of commencement of a legal action or other circumstances giving rise to claim for indemnification within 10 days and 30 days, respectively. Also, the indemnified party is obligated to provide the indemnifying party access to all records and information relating to the claim, facts and circumstances, except privileged; MRC has amended this to ensure attorney work-product or materials confidential by statute or under the Freedom of Access Act are protected.

Dispute Resolution. Under Section 8.5, the parties are obligated to resolve disputes under Section 14.5 (should be Section 11.8, Section 14.5 is the Master Waste Supply Agreement reference), which provides for good faith informal resolution during the 14 days following written notice of dispute, followed by submittal of the dispute to arbitration under the American Arbitration Association's commercial arbitration rules before a single arbitrator, unless they cannot agree to a single arbitrator, in which case there will be a panel of three arbitrators.

Changes to Waiver of Immunity Language. MRC has added language to Section 8.8tas requested by us to make it clear that the Joining Members are not waiving their Maine Tort Claims Act immunities, limitations and cap on liability.

Must Sign Needed Documents. Under Section 11.16, the parties are obligated to sign any reasonable papers and documents necessary to effectuate the Joinder Agreement.

Change in Law. Must notify MRC when become aware of change in law and cooperate to address it.

Additional Payment. Under Exhibit B, Non-Charter Municipalities and rejoining Departing Municipalities will pay an additional $2.21 per ton over the 15-year Initial Term, with proceeds to Target Value Reserve Fund. Rejoining Departing Municipalities pay this amount and must repay amounts received from reserve and operating accounts.

Joining Member Must Follow Ratification Steps in Exhibit C. Exhibit C to the Municipal Joinder Agreements sets out the Components of Ratification, which the Joinder Agreement, Joining Member must follow.

C. Master Waste Supply Agreement

This is an Agreement between MRC and Fiberight under which the Town is a third-party beneficiary and has third-party beneficiary enforcement rights against Fiberight. The Town has no direct obligations under it, but indirectly is obligated by virtue of having to fulfill obligations to MRC, which does have duties under this Agreement.

However, the Master Waste Supply Agreement in Section 4.3 obligates all entities delivering MSW to Facility, including Joining Members and their Haulers, to agree not to deliver Unacceptable Waste to Facility and to indemnify MRC, Fiberight and its subcontractors for costs related to any such deliveries. For Joining Members, this is a Maine Tort Claims Act issue by potentially modifying or waiving its protections, and may require amendment of existing MSW hauler transportation contracts to comply with this and other hauler requirements. **Section 6.8 should be revised consistent with the proposed revision to Section 8.8 of the Joinder Agreement.**

Also, to the extent Section 6.8 purports to impose obligations on third party haulers, these obligations are not effective because the haulers are not parties to the agreement. A better approach would be to require third party haulers to enter into Facility access agreements with Fiberight where they specifically agree to access terms.

Section 5.1 establishes the initial $70 per ton tipping fee, subject to upward (but not downward) CPI adjustment each January 1.

2. MRC's obligations and responsibilities to the Town under the Proposed Documents, whether these differ between "joining" and "member" municipalities, how these differ from MRC's responsibilities under the Existing Documents, and what the ramifications might be for Joining Members.

Classification of Joining Members. To understand MRC's responsibilities to Joining Members, it is necessary to understand the various classes of Joining Members.

A. First, the following are the classes of members as recognized by PERC in the Existing Documents.

Under the MRC Articles of Amendment dated June 22, 1998, there are three categories of MRC members:

1) **Equity Charter Municipalities**, which have entered into the Second Amended and Restated Agreement before September 30, 1998;

2) **Amending Charter Municipalities**, which entered into the Second Amended and Restated Agreement on or after September 30, 1998; and

3) **Original Charter Municipalities** that had entered into the First Amended and Restated Waste Disposal Agreement but not the Second Amended and Restated Agreement.

The Second Amended and Restated Agreement differs slightly and recognizes:

1) **Charter Municipalities** listed in Schedule B;

2) **Amending Charter Municipalities** that are of three categories:

- **Amending Charter Municipalities** that executed the Second Amended and Restated Agreement on or before September 30, 1998 and so had the right to purchase a limited partnership interest in PERC and timely exercised that option ("**Equity Charter Municipalities**");

- **Amending Charter Municipalities** that executed the Second Amended and Restated Agreement after September 30 and before March 31, 2004; and

- **Amending Charter Municipalities** that executed the Second Amended and Restated Agreement after the closing date.

Amending Charter Municipalities in the last two categories did not have the right to receive warrants for Bangor Hydro stock or to purchase limited partnership interests in PERC.

B. The following are the classes of members in the Proposed Documents.

The Amended and Restated Articles provide for two classes of members – **Charter Members** (members as of expiration of the PERC Agreements) and **Non-Charter Members**. The Joinder Agreement is between "**Joining Members**" and MRC. The term "Joining Member" includes municipalities, solid waste disposal districts and other "eligible entities" (not defined). The Joinder Agreement divides municipalities into three categories:

1) **Charter Municipalities** – MRC members currently delivering MSW to PERC under the Second Amended and Restated Agreement – these include:

- **Equity Charter Municipalities** – those Charter Municipalities with Equity Charter Municipality status under the Second Amended and Restated Agreement;

- **New Charter Municipalities** – Charter Municipalities that are not Equity Charter Municipalities (joined after September 30, 1998, and were not entitled to purchase equity interests in PERC);

- **Charter Municipalities** – **not** stated in the MRC Documents, but those Charter Municipalities that had signed the First Amended and Restated Waste Disposal Agreement but **not** the Second Amended and Restated Agreement.

2) **Departing Municipalities** – those Charter Municipalities that either affirmatively elect not to become Joining Members or do not sign a Joinder Agreement by the later of May 1, 2016, or seven days after the date of any town meeting at which approval of the Joinder Agreement is to be scheduled.

3) **Non-Charter Municipalities** – Joining Members that were not Charter Municipalities.

In summary, any municipality or other eligible entity that enters into the Joinder Agreement will be a Joining Member and a Charter Member. Joining Members will include municipalities that are, under the Second Amended and Restated Agreement, Charter Municipalities (including Equity Charter Municipalities and New Charter Municipalities, or "Non-equity Charter Municipalities"), Non-Charter Municipalities, and readmitted Departing Municipalities.

C. Obligations MRC owes to the Town.

1) Under Existing Documents.

MRC has no obligation to the Town under the Second Amended and Restated Agreement, as it is between the Town and PERC.

However, MRC has obligations to the Town and to each MRC member under the MRC Bylaws and under the Amended Articles of Incorporation. These obligations primarily are to act as a liaison between the municipal members and PERC, to oversee PERC's financial performance and reporting, to oversee the Capital and Maintenance Reserve Account, to review and verify the calculation of performance credits, to monitor PERC's compliance with performance standards, to monitor the status of the power purchase agreement, and to receive and direct cash distributions and to act regarding limited partnership interests with regard to the Equity Charter Municipalities. MRC also has the responsibility to identify alternative waste disposal options MRC or a successor organization might implement after PERC agreements terminate, including "any and all actions incident to the development, ownership, financing and/or operation of a new integrated solid waste disposal facility to serve the Charter Municipalities."

2) Under the Proposed Documents.

Under the Joinder Agreement, MRC owes the same general obligations to all Joining Members – to supply an aggregate of at least 150,000 tons per Contract Year of Acceptable Waste delivered by the Joining Members, or on their behalf, to the Facility, and to administer their funds and reserve funds, except that the Joining Members will pay tipping fees directly to the Facility.

Specific MRC obligations to municipalities under Joinder Agreement:

- Provide any notice of termination at least nine months in advance (Section 2.2);
- Consult with Joining Member to establish Estimated Delivery Amount (Section 3.3(b));
- Review Estimated Delivery Amount at Joining Member's request or for good cause shown (Section 3.3(b));
- Set aside and manage Delivery Assessment Reserve Fund from other reserve funds, Joining Member Contributions and other sources to pay any Delivery Sufficiency

Payment Assessment (Section 3.3(c));

- Return remaining balance in Delivery Assessment Reserve Fund to Joining Members as in Exhibit B on termination of Joinder Agreement (Section 3.3(e));

- Consult with Joining Members regarding proposed changes in MSW delivery amounts, including where new or expanded recycling, reuse or diversion programs are proposed (Section 3.4);

- Provide advice and guidance to Joining Members with regard to any Unacceptable Waste claims (Section 3.5);

- Review and accept or dispute Fiberight tipping fee calculations (Section 4.1);

- Manage Rebates from Fiberight payable to Joining Members under the Section 5.3 of the Master Waste Supply Agreement in manner that is in best interests of all Joining Members, and may offset Rebates against Delivery Diversion Charges and other assessments, penalties and costs, and provide quarterly report of all rebate offsets (Section 4.3);

- Make Fiberight quarterly rebate calculations available to all Joining Members (Section 4.3(b));

- Pay remainder of rebates to Joining Members on basis of Acceptable Waste delivered (Section 4.3(c));

- Administer Joinder Agreement, Master Waste Supply Agreement and Site Lease on behalf of Joining Members; serve as advocate for and advisor to Joining Members to ensure availability of long-term reliable, safe and environmentally sound MSW disposal at stable and reasonable cost; work with all Joining Members to manage MSW under Proposed Documents; ensure Fiberight compliance with its obligations; file and prosecute permit applications; prosecute or participate in administrative and judicial proceedings; review, administer, accept, invest, apply and distribute tipping fees, rebates and other payments to MRC and Joining Members; and negotiate and enter into collective MSW transportation, management and disposition contracts (Article 5);

- Cooperate with Joining Members for collective MSW transportation (Section 6.1);

- Provide Bridge Capacity and Bypass Waste Facility (Section 6.2);

- Consult with Joining Members before implementing delivery to Backup Facility (Section 6.2);

- Administer Joining Members' assets under Existing Agreements in accordance with Exhibit B (Section 7.1);

- Distribute Project Site sale assets, net of expenses, in accordance with Exhibit B (Section 7.2);

- Defend, indemnify and hold harmless Joining Member and its elected (should also say "and appointed") officials, officers, agents, and employees **resulting directly** from (could say "to extent resulting from" instead) any willful or negligent act or omission by MRC and any failure by MRC to perform fully its obligations under Joinder Agreement (Section 8.2);

- Provide notice if asserting right to indemnification (Section 8.3);

- Provide notice and opportunity to be heard before exercising right to assign Joinder Agreement to successor entity (Section 9.2);

- Inform Joining Members and provide them with hearing regarding accepting of a Force Majeure Plan and indicate impact of that Plan on future tipping fees and rebates (Section 11.4);

- Inform Joining Members of Event of Default under Master Waste Supply Agreement or Site Lease and of MRC's proposed actions (Section 11.4(a));

- Provide Joining Members notice and hearing regarding proposed amendments to Master Waste Supply Agreement or Site Lease (Section 11.4(b));

- Notify Joining Members promptly of change in law, and use reasonable efforts to cooperate to address it (Section 11.5).

MRC also has particular obligations under the Joinder Agreement to certain Joining Members, based upon their status under the Existing Agreements, which are stated in Exhibit B, set out in Table A, and are summarized in the Executive Summary.

3. Are there any exceptions to the MRC's; Town's; and Joining Member, original Charter, Amending Charter and Equity Municipalities' obligations under the Proposed Documents?

Exceptions to these parties' obligations are noted in Tables A, B and C and in this Memorandum. The differences largely are: 1) What these classes of Joining Members are entitled to receive under Exhibit B of the Joinder Agreement and 2) What they are required to pay toward any Delivery Sufficiency Agreement assessed upon MRC.

4. The meaning and effect of the indemnification and insurance and dispute resolution provisions in the Proposed Documents.

A. Joinder Agreement

This agreement contains two indemnification provisions – one regarding delivery of Unacceptable Waste and one for non-performance. There are no insurance provisions or requirements.

1) **Unacceptable Waste. Indemnification.** If a Joining Member or its hauler delivers Unacceptable Waste to the Facility, the Joining Member is responsible to pay the "full cost for" and to indemnify and hold harmless Fiberight, MRC and their respective members, directors, officers and agents, from and against any liability, claim or damages arising out of the delivery (Section 3.5). Therefore, if Unacceptable Waste, such as construction or demolition debris; sludge; hazardous wastes; biological wastes; waste oil; flammable wastes; and others listed in Exhibit A to the Master Waste Supply Agreement were delivered to the Facility, the Joining Member would be liable under this Agreement to pay MRC and Fiberight for the full costs of remediation, whether the Unacceptable Waste is delivered by the Joining Member or by a hauler on its behalf. If contamination were to spread to adjoining property or personal injury were to result, the Joining Member would be liable.

Section 4.3 of the Master Waste Supply Agreement provides that if Fiberight finds Unacceptable Waste after the hauler has left the Facility, Fiberight will dispose of the Unacceptable Waste properly. Fiberight reserves the right to pass along uninsured handling and disposal costs and any environmental cleanup and remediation costs to the hauler, but if it cannot be identified or costs cannot be recovered, may pass these on to the Joining Member, if known. If the Joining Member will not pay, MRC will be billed, and if a Joining Member cannot be identified, costs will be offset against rebate payments. Under the Joinder Agreement, the Town would be obligated to defend MRC and Fiberight and pay any damages awarded to third parties against them or for any environmental enforcement and response actions by a governmental agency, such as DEP. In the case of hazardous wastes, these costs could also include Maine DEP response costs, if necessary, and fines assessed for any violation of Maine environmental laws and regulations.

This is a broader defense and payment obligation than currently exists. Currently, a municipality that sends MSW to PERC has the obligation to either remove hazardous or Unacceptable Waste delivered to the Orrington Facility or to reimburse PERC for all costs it incurs in cleanup (Article IX A and B, Second Amended and Restated Agreement), but the Second Amended and Restated Agreement does not require the municipality to defend, indemnify and hold harmless PERC.

Also, by accepting these obligations, the Town could be waiving the general immunity and liability caps offered by the Maine Tort Claims Act (MTCA); MRC has amended the language of Section 8.8 to prevent possible waiver of the MTCA protections; adding it to Section 6.8 of Master Waste Supply Agreement also may help.

Given the Town's increased potential indemnification liability for Unacceptable Waste under the Proposed Documents, the Town should be careful, in any contract it may enter into with solid waste haulers to collect and/or transport MSW to the Facility, to prohibit the hauler from collecting, transporting and delivering Unacceptable Waste to the Facility; clearly define "Unacceptable Waste" consistent with the Proposed Documents; place the burden on contract haulers to defend, indemnify and hold the Town harmless for any claim, damages or liability of

MRC or Fiberight resulting from delivery of Unacceptable Waste to the Facility and Back-up Facility; and make sure that the contract hauler has sufficient insurance to meet that obligation. In the alternative, the Joining Members could try to place this burden onto Fiberight, which would require haulers to enter into access agreements to use the Facility or to screen more.

2) **Parties' Indemnification.** Under Article 8, each party agrees to defend, indemnify and hold harmless the other (and all other Joining Members) as well as all of their respective members, directors, elected officials, officers, agents and employees) for any claims, liability, claims, causes of action, judgments, damages, losses, costs or expenses, including reasonable attorney's fees, **resulting directly** (this has been amended to read "to the extent resulting from") from any failure by the other party "to perform fully, in any respect, its obligations under this Agreement." (Sections 8.1 and 8.2). Please note that the Town's indemnification obligation not only runs to MRC, which is understandable, but also to the other Joining Members. Indemnification payments are required when the claims payable exceed the *de minimus* limit of $25,000 (Section 8.6).

The Second Amended and Restated Agreement does not contain a cross-indemnification. However, such provisions are common in agreements between private entities, and so private entities often require indemnification clauses in contracts with public entities. Legal counsel for Maine municipal and quasi-municipal bodies – towns, cities, schools, water districts and sewer districts – and for the State and its agencies usually push back against these provisions. This is because of the general immunity and the liability caps on entity and employee liability provided by the MTCA. Most of the Town's obligations under the Joinder Agreement, though, would result in breach of contract claims – not tort claims for property damage or personal injury or harm, and so the MTCA may not provide much protection to the Town for the types of claims that could arise under this Agreement. However, to protect the Town as much as possible, we recommend revising Section 8.8 to clarify that the Town does not waive its MTCA (and other) immunities; and MRC has amended the "No Waiver of Immunities" language at Section 8.8.

Also, the reference in Section 8.5 to the dispute resolution provisions of the Joinder Agreement is incorrect – it is not Section 14.5, but Section 11.8.

4) **Dispute Resolution.** Section 11.8 provides for binding arbitration of disputes under this Agreement if the parties are unable to resolve their disputes informally within 14 days of written notice of dispute (sent by certified mail). Arbitration would be under the rules of the American Arbitration Association and would be before a single arbitrator agreed upon by the parties, or before a panel of three arbitrators if they do not agree. Each party will bear its own costs of arbitration, and will share equally the cost of an arbitrator. (Section 11.8(d) also mentions a "mediator," which none of the rest of the Section mentions; this seems to be a stray reference to an earlier version of the agreement that contemplated mediation of disputes.) We have made suggestions for improvements in the time to make claims and when claim periods begin, and MRC has incorporated these.

Either party could seek a temporary or permanent injunction against the other in the court system, but this would be only for maintaining the status quo, or requiring action or compliance -

- not to obtain money damages for violation of the agreement. Section 10.4 entitled MRC to seek specific performance of a Joining Member under the Joinder Member.

Binding arbitration is the dispute resolution method currently in place under the Second Amended and Restated Agreement (Article XXXII). The use of binding arbitration has increased in the commercial setting because of the cost and length of litigation in the courts. However, some believe that arbitrators are more likely than courts to offer each side something and prefer litigation to binding arbitration.

B. Master Waste Supply Agreement

1) **Indemnification.** Under Section 6.1, Fiberight agrees to defend, indemnify and hold harmless MRC, each Joining Member, and their respective members, directors, elected (should add "and appointed") officials, officers, agents, and employees against any claims, liabilities, damages, costs or expenses resulting directly from any negligent or willful act or omission of Fiberight, from its failure to properly process or dispose of MSW, or from its failure to fully perform its obligations.

2) **Insurance.** No provisions or requirements.

3) **Dispute Resolution.** The parties may submit indemnification disputes to discussion and arbitration under Section 14.5. Otherwise, any dispute under that Agreement is subject to a 14-day informal resolution period, followed by binding arbitration.

C. Site Lease. See Table B, Summary and Comments, for details.

1) **Indemnification**. Under Section 14 of the Lease, the Tenant has the following indemnification obligations:

> The Tenant shall indemnify, defend and hold the Landlord harmless against any and all claims, liability, loss, or damage whatever (including without limitation attorneys' and experts' fees) arising from acts or omissions of the Tenant or its employees, officers, agents, licensees or invitees in, on or about the Leased Premises, or a breach by the Tenant of its obligations or representations and warranties under this Lease, except in either case to the extent arising from the gross negligence or willful misconduct of the Landlord, its agents, or employees.

This provision obligates the Tenant (Fiberight) to indemnify and defend Landlord (MRC) against liabilities arising from acts of the Tenant on or about the Leased Premises or from a breach of the Tenant's obligations or representations and warranties under the Lease. We recommend that it be strengthened to include all acts of Tenant, not just on our about the Leased Premises. The indemnification obligation should apply to a broader class of types of damages for the avoidance of doubt (suits, judgments, expenses and costs). The Joining Members, MRC's Affiliates (if any), and their respective elected and appointed officials, officers, directors, employees, and agents should expressly be included as indemnified parties. The Tenant should indemnify the Landlord for any breach of any provision of the Lease, not only for a breach of Tenant's

"obligations or representations and warranties." The obligation also should be to defend the Landlord in any suit, whether directly against Landlord or in which Landlord is impleaded. Finally, it is important to state that the indemnification obligation applies regardless of any workers' compensation immunity.

We recommend the following revised language for Section 14.1 (which MRC has adopted):

> The Tenant shall indemnify, defend, and hold the Landlord, Affiliates, and the Joining Members and their respective elected and appointed officials, officers, directors, employees, agents, licensees and invitees (the "Indemnified Parties"), harmless from and against any and all claims, liabilities, losses, damages, suits, judgments, and expenses whatsoever (including without limitation attorneys' and experts' fees): (i) arising from Tenant's possession, use, occupation, or control of the Leased Premises, (ii) occurring while on or about the Leased Premises, or (iii) arising from a breach by the Tenant of this Lease, except in any case to the extent arising from the gross negligence or willful misconduct of the Landlord, its agents, or employees. Tenant shall, at its own cost and expense, defend any and all suits or actions (just or unjust) that may be brought against the Indemnified Parties or in which the Indemnified Parties may be impleaded with others upon any such above-mentioned matter. Tenant agrees that the foregoing agreement to defend, hold harmless, and indemnify the Indemnified Parties extends to claims, liabilities, losses, damages, suits, judgments, expenses and costs (including reasonable attorneys' and experts' fees) without regard to any immunity, statutory or otherwise, including any immunity under workers' compensation laws.

We also recommend adding a specific environmental indemnity to Section 23 (Environmental), as follows, which MRC has adopted:

> 23.4. Tenant expressly acknowledges and agrees that it will reimburse, indemnify, defend (with counsel reasonably acceptable to Landlord), and hold the Indemnified Parties harmless from and against any and all liabilities, claims, damages, penalties, suits, proceedings, judgments, expenditures, losses, charges, expenses and costs (including, but not limited to, all costs of investigation, monitoring, legal fees, remedial response, removal, restoration, or permit acquisition) that may now or in the future be undertaken, suffered, paid, awarded, assessed, or otherwise incurred as a result of Tenant's violation of any of the matters referred to in this Section 23.

2) **Insurance**. Section 15 of the Lease obligates the Tenant to keep all improvements insured against loss or damage by fire and the extended coverage hazards for the full replacement value (or actual cash value during any renewal), with loss payable to Landlord and Tenant as their interests appear. The Tenant is also obligated to maintain for the benefit of the Tenant and the Landlord, as a named additional insured, such other insurance coverages as are customary in the industry, including without limitation commercial general liability insurance, including products and completed operations coverage, against any claims for personal injury, death, and property damage; workers' compensation insurance; employer's liability insurance; automobile liability insurance; and environmental impairment insurance. The

Tenant's contractors must also maintain commercial general liability insurance, including products and completed operations coverage, against claims for personal injury, death, and property damage; workers' compensation insurance; employer's liability insurance; automobile liability insurance; and, for subcontractors engaged in work reasonably determined to pose an environmental threat, environmental impairment insurance.

These types of insurance coverage requirements are standard for this type of lease; however, the Lease should also require the Tenant to carry an umbrella liability insurance policy and builder's risk insurance for the construction of the facility and any other construction undertaken on the Leased Premises, which MRC has added. The adequate dollar amount of insurance coverage is beyond the scope of this memorandum and should be determined by the parties, after consulting with their insurers.

3) **Dispute Resolution.** Section 25 of the Lease provides procedures for dispute resolution. If the parties are not able to resolve a dispute informally, either party may submit the dispute to binding arbitration. The time-frame within which to submit a dispute to arbitration is quite short, only one year from the date on which the claim arose. There is no definition of how a claim arises – the Lease does not address whether a claim arises when the act or event giving rise to it occurs or is discovered. We recommend either eliminating the one-year requirement or significantly enlarging it – MRC has increased this to two years. This provision should also address the definition of when a claim is deemed to arise. Each party bears its own costs in connection with any dispute resolution, which is typical.

Parties generally prefer arbitration to litigation because it is quicker and far less costly. Arbitration is not without its risks, however, and some parties prefer the ability to appeal a court's decision.

D. Development Agreement

1) **Indemnification.** MRC and Fiberight each agreed to indemnify and hold the other party harmless from any and all liabilities, losses and damages and costs suffered or incurred by the other "as a consequence of activity undertaken by the Indemnifying Party, its employees or agents, or a breach by the Indemnifying Party of its obligations hereunder. However, neither party is liable to the other "for indirect, special, or consequential damages or for loss of anticipated profits."

2) **Insurance.** Fiberight shall maintain adequate insurance policies (general liability, property and casualty, builders' risk, workers' compensation and other appropriate coverage for Project Site and Facility) with limits not less than customary in the industry. MRC is to be named as an additional named insured on all liability and casualty policies – we recommend also adding "the Joining Members and their respective elected and appointed officials, directors, officers, agents and employees" as named insureds to correspond with Fiberight's indemnification obligation under Section 6.12 of the Master Waste Supply Agreement.

5. How the Proposed Documents and obligations for Joining Members affect the Existing Agreements for MRC and equity municipalities.

The Proposed Documents appear to be designed and intended to establish a clear break between PERC and the Fiberight proposed Facility, so that there should be no conflict between the two operationally for Joining Members. Those Joining Members that are obligated as Charter Municipalities to deliver Acceptable Waste to PERC under the Existing Agreements will do so until those agreements expire on March 31, 2018. If Fiberight requires MSW for start-up tests prior to that date, it will attempt to obtain that MSW elsewhere, and MRC is not required to divert or interfere with Charter Municipalities' MSW deliveries to PERC under the Second Amended and Restated Agreement so long as PERC is accepting those deliveries (Section 3.4 of Master Waste Supply Agreement). The assumed Commercial Operation Date for Fiberight is April 1, 2018, after the PERC obligations have expired.

6. Outline of potential liabilities and options to Joining Member municipalities should MRC's proposed Fiberight project fail or not meet expectations.

There are several ways in which the proposed Fiberight project could fail. Fiberight could fail to obtain financing or fail to secure land use and environmental permits; construction might not occur; MRC could unilaterally withdraw from, or the parties could terminate the Development Agreement; MSW delivery commitments may be insufficient; the technology could fail to operate wholly or in part; there could be bankruptcy or insolvency on the part of Fiberight, or Joining Member terminations could cause a loss of needed MSW deliveries.

If the Fiberight project fails or does not commence, Joining Members shall deliver their MSW to the Crossroads Landfill in Norridgewock during the 10 to 20 year term of the agreement MRC has entered into for disposal of two MSW streams at this "Backup Facility." The two MSW streams described in Section 6.2 are:

- Bridge Capacity Waste – Acceptable Waste generated after the projected April 1, 2018 start date until the Commercial Operation Date; and

- Bypass Waste – Acceptable Waste Collected and delivered to the Facility by the Joining Member, but which cannot be accepted for processing because the Facility has not yet achieved Commercial Operation at the end of the Excused Delay Period or the Facility is out of service for maintenance or repair or because of Force Majeure "or otherwise."

(Please note that the Joinder Agreement does not require MRC to provide, obtain or maintain a Backup Facility for MSW, but Section 6.2 simply requires the Joining Member to acknowledge that MRC has entered into the Crossroads Landfill Agreement.)

Also, please note that the use of Crossroads Landfill if Fiberight fails is not an option – it is required. The Crossroads Landfill Agreement in Section 1 requires MRC to "cause to be delivered to Crossroads Landfill, on an **exclusive basis,**" all MSW designated by a Participating Member of MRC – a Joining Member – as By-Pass or Bridge Capacity. Section 6.2 of the Joinder Agreement requires MRC to consult with Joining Members before implementing delivery of MSW to Crossroads Landfill, but there is no option for the Town to deliver MSW

elsewhere unless it or MRC terminates the Joinder Agreement or Fiberight terminates the Master Waste Supply Agreement and the Crossroads Landfill Agreement expires.

If there is insufficient MSW to permit operation of the Facility at full capacity, Section 3.6 of the Master Waste Supply Agreement requires Fiberight to make reasonable commercial efforts to attract MSW and MRC is obligated to support those efforts.

Otherwise, the Joining Member's option would be to terminate to the extent permitted under the Joinder Agreement (see Question 7).

Site Lease

MRC is required to purchase the property prior to entering into the Lease, which represents a risk. Once the Lease is in effect, there are several ways in which Fiberight may avoid its obligation to perform under the Lease, which exposes the MRC, and ultimately the Joining Members, to the risks of having invested time and money in acquiring the Property and installing the infrastructure while not having the benefit of the Facility. In addition, if an event of Force Majeure prevents Fiberight from performing under the Lease, the Lease specifically contemplates the possibility of passing the costs of addressing such an event through to MRC and/or the Joining Municipalities and does not require Fiberight to shoulder any of such costs.

Prior to the Construction Date, Fiberight is allowed to terminate the Lease with 90 days' prior notice if it determines that construction or operation of the Facility is uneconomic or practically infeasible. This is a subjective standard that gives Fiberight great discretion, which, if exercised, leaves the MRC holding the Property with no facility.

Fiberight is excused from causing the Commercial Operation Date to occur by April 1, 2018, if a permit contains a term that would preclude construction or operation on "commercially reasonable terms." This arguably allows Fiberight to determine in its discretion that a permit condition proves too costly and to abandon the project. Fiberight also is excused if a "Force Majeure" or "Change in Law" occurs that would preclude construction or operation on "commercially reasonable terms." "Uncontrollable Circumstance" is not defined in the Lease and has been removed. "Change in Law" is broadly defined to include any change that is "inconsistent with and more stringent than" previously existing law. Taken together, these provisions provide the Fiberight with significant latitude to avoid performance under the Lease. Fiberight may also be excused from performance if it has not obtained financing. Fiberight is only required to use "diligent efforts" to obtain financing, with no objective financing terms that are deemed sufficient for Tenant to perform (for example, a loan of at least $x, for a term of at least y years, at an interest rate of z%). The ability of Tenant under these provisions to avoid its obligation to perform leaves the Landlord, and therefore the member municipalities, exposed to a fairly significant risk that MRC is left having purchased the real estate and perhaps expended funds on infrastructure with no facility for treatment of the MSW.

In the event the Facility fails because one party is unable to perform due to Force Majeure, the Lease could be terminated. One impact of a Force Majeure event is that the party claiming it must prepare a Force Majeure Plan. The Plan must include "a proposal for costs to be passed

through to the MRC and/or Joining Member Municipalities as part of the proposed response to address the Force Majeure, which might involve one time payments, an increase in the Tip Fee under the Master Waste Supply Agreement and Joinder Agreements, or other changes to payment provisions as well as any impact on the value of the Facility building as set forth in Exhibit C [to the Lease]." This has been reworded. The Lease should also require Fiberight to bear some of the risks associated with the failure of the Facility due to Force Majeure.

7. Provisions in the Proposed Documents that would allow a Joining Member municipality to terminate the agreements before the termination date and if there are none, whether there should be.

If the Joining Municipality exercises its rights to Extension Terms, the full term of the Joinder Agreement is 40 years – a 15-year Initial Term plus five five-year Extension Terms, each requiring at least one year's written notice of extension prior to termination. Section 2.1.

A Joining Municipality could terminate its Joinder Agreement prior to the 40-year maximum term by electing, after the 15-year Initial Term or after any Extension Term, not to extend the Joinder Agreement. Section 2.1. (MRC also may terminate the Joinder Agreement before the maximum 40-year term. Section 2.2 provides that MRC has the right at the end of the Initial Term and of any Extension Term to terminate the Joinder Agreement with nine months' written notice of termination to all Joining Members, even if Joining Members have provided notice of exercise of Extension Term rights.) MRC would have to provide Fiberight with at least 9 months' written notice of termination under the Master Waste Supply Agreement and Site Lease.

However, depending upon how many Joining Members decide not to extend their Joinder Agreements, a termination under the Joinder Agreement could cause problems for MRC and Fiberight and their ability to perform under the Master Waste Supply Agreement, and Site Lease.

A Joining Municipality has no other ability to terminate the Joinder Agreement before the termination of the Initial Term and any Extension Terms. If MRC fails to fulfill its obligations under the Joinder Agreement and does not cure the default within 30 days (or other appropriate cure period) of its receipt of written notice of default from the Joining Member, unless it is not possible to cure the default; or if MRC files or has filed against it a petition in bankruptcy or reorganization, or is adjudicated bankrupt or a receiver is appointed on its behalf, or MRC requests appointment of a receiver or MRC makes a general assignment for the benefit of creditors, or MRC has its bank accounts, property or receivables attached, and these proceedings are dismissed within 60 days, it is an event of default by MRC. MRC has revised the Joinder Agreement to authorize the Joining Member to terminate due to MRC's default except in the context of an assignment of the agreement by MRC in violation of its terms.

Note that Fiberight may terminate after the Initial Term or any Extension Term on 18 months' notice, under the Master Waste Supply Agreement and the Site Lease.

Section 10.3 provides that the Joinder Agreement shall terminate upon expiration of the Master Waste Supply Agreement. These dates should be coterminous if both agreements commence (as they should) on the same Commercial Operation Date, but what if the Joining

Member sooner terminates under Section 2.1? In that case, MRC would have an obligation to try to contract with other municipalities for the lost MSW tonnage and its inability to do so could give rise to Delivery Sufficiency Payments owed to Fiberight.

Also, while MRC and Fiberight may terminate the Development Agreement if Fiberight fails to obtain adequate financing by January 1, 2017, or fails to achieve Commercial Operation by January 1, 2020, neither the Joinder Agreement nor the Master Waste Supply Agreement addresses these potential termination dates.

Site Lease

While the Joining Members do not have any direct rights under the Lease, the MRC's rights as Landlord impact the municipalities.

The Lease does not require the Landlord to begin construction of the access road and electric, water, and sewer lines if (i) Joinder Agreements have not yet been executed with commitments for 150,000 tons of acceptable waste per year; (ii) any permit necessary for construction of the Facility has not yet been issued, or Tenant has determined that there is a provision in a permit that would preclude construction or operation of the Facility on commercially reasonable terms; (iii) an event of Force Majeure has occurred and is ongoing and would preclude construction or operation of the facility on commercially reasonable terms; or (iv) the Tenant has not obtained financing. The Lease does not state it expressly, but as written, if these conditions are never met the Landlord need not construct the access road and install the infrastructure; the project would be abandoned.

The Landlord may terminate the Lease in the event of a default by Tenant. The Lease requires the Landlord to provide the Tenant with written notice of default and a 60-day opportunity to cure for nonpayment defaults. This is an overly long cure period, ands MRC has shortened it to 45 days. There is no notice requirement for payment defaults, but a payment default does not occur until 30 days after a payment is due. This period should be stated as well.

If the Landlord is unable to perform under the Lease due to an event of Force Majeure, the Landlord's obligations under the Lease are suspended during the occurrence of the event. The Landlord would need to provide to the Tenant a Force Majeure Plan that (i) addresses the impacts of the event on the performance of the Facility, (ii) measures required to address the Force Majeure event, and (iii) includes a proposal for costs to be passed through to the MRC and/or Joining Members, as discussed in response to item 6 above. If the parties are unable to agree on a Force Majeure Plan, the dispute is to be resolved by arbitration, and 90 days after receipt of the original Force Majeure Plan, either party may terminate the Lease. If the Landlord is the party terminating the Lease, it must provide the Tenant with offers to purchase the Building and to sell the Property to the Tenant for the prices set forth in Exhibit C to the Lease.

Once the Landlord has begun construction of the access road and the infrastructure, the Landlord has no ability to terminate the Lease until after the Initial Term, other than in the event of default or possibly as a result of a Force Majeure event. Whether the Tenant desires to renew the Lease at the end of the Initial Term or any Extension Term, the Landlord nonetheless has the right to

terminate the Lease if Joining Members have provided termination notices to the MRC such that the sum of the Estimated Delivery Amounts (as defined in the Master Waste Supply Agreement) of the Joining Members that have not provided notices would be less than 150,000 tons. In that case, the Landlord must provide the Tenant with an offer to purchase the building together with and an offer to sell the property to the Tenant, both at the prices set forth in Exhibit C. The worst-case scenario for the Landlord would be if the Landlord desires to terminate the Lease (presumably because the Facility is inoperative), and the Tenant accepts the Landlord's offer to purchase the building. In that case, the Landlord would be forced to pay for the building but would not have an operating Facility.

8. Provisions in the Proposed Documents that would allow a joining or member municipality to increase or decrease the tonnage of MSW it is required to provide if the municipality deems it necessary to do so, and if there are none, whether there should be?

The provisions of concern are those in the Joinder Agreement, and these contemplate adjustments that likely are reductions in MSW tonnage delivered to the Facility. It may be helpful to address increases, to ensure sufficient capacity for the Joining Members' MSW.

Under Section 3.3(b) of the Joinder Agreement, a Joining Member is required to state its Estimated Delivery Amount – the number of tons of Acceptable Waste it agrees to provide per Contract Year – after consulting with MRC and consistent with MRC's guidelines. This Estimated Delivery Amount will not include any MSW the Joining Member is recycling on its own or through the single stream Recycling Program Fiberight will offer.

This provision directs the Joining Member and MRC "to review this commitment" at either party's written request, made no more frequently than every five years, or "for good cause shown" on request made at least 60 days before the end of the current calendar year.

In addition to being able to request an adjustment in the Estimated Delivery Amount up to every five years or for good cause shown, the Joining Member may alter its responsibility to deliver MSW, presumably to decrease the tonnage of MSW it will deliver to support reduction, recycling or reuse of MSW under Section 3.4. Section 3.4(a) requires a Joining Member to provide at least 60 days' notice to MRC of the proposed change of MSW amounts and to consult with MRC before its implementation, which will advise the Joining Member and all other Joining Members of any "contract compliance impacts" from that change. Section 3.4(b) requires not only the 60 days' notice and consultation with MRC as in Section 3.4(a), but also requires the prior consent of Fiberight if the Joining Member proposes new or significant or material expansion of existing programs to divert organic portions of MSW through facilities or programs other than the Facility. Section 3.4(b) of the Joinder Agreement does permit a Joining Member to institute "Pay As You Throw" programs, which do result in MSW reduction without MRC's prior approval so long as all other MSW generated within its borders and under its control is delivered to the Facility. MRC has revised the Joinder Agreement to clarify these exceptions to the delivery commitment

Table A

Perkins Thompson Joinder Agreement Summary and Comments
(December 4, 2015 Draft and December 30, 2015 Revisions)

Capitalized terms have the meanings ascribed to them in the Joinder Agreement or the Master Water Supply Agreement.

Section	*Description*	*PT Comments*
Parties	Signed by the Municipality ("Joining Member") and MRC	
2.0 Term	2.1 Initial Term of 15 years, begins on Effective Date and continues until later of April 1, 2033 or 15th anniversary of Commercial Operation Date, and may be extended for up to five consecutive five-year periods at Joining Member's discretion; with at least 12 months' written notice to MRC to exercise the right of extension. Agreement then is automatically extended unless Joining Member is in default. 2.2 However, even if Joining Member gives timely written notice to extend to MRC, MRC has right to terminate by written notice to Joining Member at least 9 months before expiration of that term, but MRC must simultaneously provide written notice of termination to all Joining Members for termination to be valid.	Joining Member's ability to terminate at end of Initial Term or extension is constrained, since there are four agreements to consider, and if too much MSW tonnage departs, the Project could fail. Section 10.3 provides that the Joinder Agreement terminates when the Master Waste Supply Agreement expires, the Site Lease allows for termination at end of Initial Term or extension if MRC also offers to purchase building or sell Site, and there are waste delivery obligations referenced in the Crossroads Landfill Agreement, which have a different term. MRC can terminate for any reason – no restriction on basis for termination.
3.0 Delivery of Waste	3.1. Delivery. Joining Member agrees to deliver or cause to be delivered to Fiberight "all Acceptable Waste generated within its borders the collection and disposition of which is under its control." Obligation begins on the Commercial Operation Date (defined under the Master Waste Agreement as being the later of (i) the date on which the Performance Test was completed and accepted; and (ii) April 1, 2018). Obligation is exclusive – Joining Member must deliver or have delivered the Acceptable	Contains the most critical municipal obligations under the Joinder Agreement. Fiberight obligated under Section 4.1 of Master Waste Supply Agreement to operate Facility and accept all deliveries of Acceptable Waste beginning on Commercial Operation Date. "Control" has been defined as suggested by us.

Section	*Description*	*PT Comments*
	Waste exclusively to Fiberight, and to no other solid waste disposal facility. 3.2. Diversion of Waste. Joining Member agrees violation of Section 3.1 delivery requirements could have material adverse effect on Fiberight facility's ("Facility") financial performance and on Joining Members. Joining Member is not required to institute flow control. Also recognizes Joining Member's right, at its sole option, "to establish, continue, expand or discontinue" existing or future MSW reduction, reuse or recycling programs, subject to Section 3.4, without being deemed a violation of the Section 3.1 delivery requirements. Second paragraph of Section 3.2 obligates Joining Member to pay a Delivery Diversion Charge "if it diverts Acceptable Waste under its control to facilities other than the Facility" for reasons other than the allowed ones – establish, continue, expand or discontinue existing or future MSW reduction, reuse or recycling programs. Delivery Diversion Charge is in two parts – one calculated as the product of the number of tons of waste diverted and the applicable tipping fee, and other being the Joining Member's share of any penalty billed by Fiberight to MRC as a result of the diversion (also called a "Delivery Diversion Charge" under Section 3.3(d)(i)). 3.3 Aggregate Delivery Requirements. Under Section 3.3(a) and (b), Joining Member acknowledges MRC is obligated under Master Waste Supply Agreement to cause at least 150,000 TPY of Acceptable Waste per Contract Year to be delivered to the Facility by or on behalf of the Joining Member or may be liable for Delivery Sufficiency Payments if MRC minimum delivery requirement is not met. Each Joining Member agrees to an estimated amount of its annual	A solid waste flow control ordinance may be an unconstitutional method to control solid waste anyway under these circumstances as explained in the Memorandum. As a result, a Joining Municipality will only be able to control what it collects curbside or transfer station and delivers, itself or by its contractor, to the Facility or Backup Facility. Similarly, Bridge Waste and Bypass also must be delivered exclusively to Crossroads Landfill during term of Waste management Agreement if Fiberight is unavailable. Delivery Diversion Charges are deposited in Delivery Assessment Reserve Fund that is used to pay any Delivery Sufficiency Payment assessed by Fiberight against MRC under the Master Waste Agreement. Calculated on the basis of share of tons delivered for Contract Year in question. No charge for permitted recycling added as requested Master Waste Supply Agreement defines "Contract Year" to be from the Commercial Operation Date to end of calendar year, and then each calendar year thereafter; therefore, first year's and last year's obligations should be prorated, since MRC and Fiberight project an April 1, 2018 Commercial Operation Date. This was done in in Master Waste Supply Agreement but not Site Lease, and was

Section	*Description*	*PT Comments*
	contribution of Acceptable Waste. This "Estimated Delivery Amount" does not include recyclables, whether recycled under any Single Stream Recycling Program under Section 5.2 of the Master Waste Supply Agreement, or separately recycled. Although, Section 3.3(b) of the Joinder Agreement sets out the Joining Member's agreement that the stated Estimated Delivery Amount is a reasonable "estimate." This Section also states Joining Member and MRC "shall review this commitment" at specified times for appropriate adjustment. Section 3.3(c) MRC sets aside funds in a Delivery Assessment Reserve Fund in event Delivery Commitment is not met in any year. Section 3.3(d). If Fiberight assesses Delivery Sufficiency Payment on MRC because one or more Joining Members have not delivered all MSW under their control required to be delivered, each such Joining Member is assessed a Delivery Diversion Charge, which is its "ratable share" of the Delivery Sufficiency Payment "as determined by the MRC on the basis of tons of Acceptable Waste delivered," and amount assessed is applied against Delivery Sufficiency Payment. (A Delivery Diversion Charge also can be assessed separately under Section 3.2 for unpermitted diversion of MSW to another facility.) If the Delivery Sufficiency Payment remains unsatisfied: 1. The portion allocable to Charter Members (should be "Municipalities") is paid from Delivery Assessment Reserve Fund; 2. Non-Charter Members (should be "Non-Charter	changed as we suggested. The Master Waste Supply Agreement at Article 3 consistently uses "commitment" to refer to MSW delivery obligations of Joining Members. Therefore, a Joining Member should be careful to review its historical MSW deliveries and its historical recycling, to take into account future waste reduction, reuse and recycling programs and governmental requirements and to consider what MSW actually is under its control, since solid waste flow control ordinances cannot be used here, before agreeing to an Estimated Delivery Amount. A consultant with a background in MSW management and knowledge of industry trends may be helpful to Joining Members. While the Estimated Delivery Amount may not be a "Guaranteed Annual Tonnage" as under the PERC arrangement, it nonetheless is a "commitment," and failure to meet it can result in penalties, such as a Delivery Diversion Charge for MSW diversion without permission, and/or a portion of Delivery Sufficiency Payments if assessed by Fiberight against MRC. Language will be added to ensure that if the Charge or payment is made or MRC meets its Delivery Commitment, a Joining Member's failure to meet its Estimated Delivery amount is not a violation the Joinder Agreement.

Section	*Description*	*PT Comments*
	Municipality" to be consistent with the definitions) are required to pay an assessment in an amount equal to its allocable share of the amount paid from the Delivery Assessment Reserve Fund to Charter Municipalities multiplied by the percentage deliveries by Non-Charter Municipalities bears to all deliveries by all Joining Members during the appropriate time period; 3. In addition, each Joining Member may be assessed special assessment on the basis of its ratable share of the remaining Delivery Sufficiency Payment amount after all other payment sources are applied – however, the actual formula for calculating this assessment is not stated. When Joinder Agreement terminates, remaining balance in Delivery Assessment Reserve Fund, after expenses, is returned to Joining Member as in Exhibit B. 3.4. Change in Waste Delivery Pattern. Joining Member proposing to alter the scope of its responsibility for "collection, transfer and transportation" (should state "delivery" as used in the rest of the Joinder Agreement) of MSW, as in an increase in reduction, reuse or recycling must provide MRC with at least 60 days' notice of proposed change and consult with MRC prior to any implementation of change. MRC will advise Joining Member of any contract compliance impacts of the change(s) on the Joining Member and on all Joining Members. If proposed change involves new programs or significant and material expansion in existing programs to divert organic waste from MSW from the Facility, Fiberight must provide its prior consent to the change. Section 3.4(b) allows "existing [organic waste diversion] programs substantially as operated as of the Effective Date" to	The Joinder Agreement says failure to meet the Estimated Delivery Amount alone will not justify a Delivery Diversion Charge, but an unpermitted diversion to another facility, or failure to deliver all MSW under its control required to be delivered where MRC owes a delivery Sufficiency Payment to Fiberight under the Master Waste Supply Agreement, will result in such a charge. Need to be sure all waste from Joining Member's borders, even if delivered by a private hauler, is credited to Joining Member. It appeared, but was not explicitly stated in the Joinder Agreement, that: changes in the MSW waste stream discussed with MRC under Section 3.4(a), changes in the organic waste stream made with Fiberight's consent under Section 3.4(b) and MSW reduction by Pay as You Throw programs under Section 3.4(b) all are permitted diversions of

Section	*Description*	*PT Comments*
	continue. Under 3.4(b), Joining Member may institute "Pay as you Throw" or other waste reduction programs without MRC's prior approval "so long as all MSW generated within its borders and under its control continues to be delivered to the Facility." 3.5 Unacceptable Waste. Joining Member shall not deliver Unacceptable Waste shall the Facility and to use reasonable efforts to offer local options for household hazardous waste disposal. Joining Member shall pay its full cost for and indemnify and hold harmless MRC and Fiberight for liability, claims or damage arising from its delivery of Unacceptable Waste to the Facility. 3.6 Requires Joining Member to be responsible for ensuring its independent haulers comply with delivery requirements.	MSW that will not result in a Delivery Diversion Charge under Section 3.2 for diversion or under Section 3.3(d) for partial payment of any Delivery Sufficiency Payment; MRC has made a revision to plainly state this. (Couldn't household hazardous waste disposal be a MRC service?) This indemnity could constitute a waiver of the Joining Member's Maine Tort Claims Act immunities, limits and defenses (MRC has made changes to Section 8.8 to strengthen the municipalities' defenses). This "pay full cost, indemnify and hold harmless" language is more than the obligation under the existing PERC Agreement to remove such waste from the facility or to reimburse PERC's costs incurred in the required clean-up of that waste. Also, under Section 4.3 of Master Waste Supply Agreement, Fiberight claims right to seek handling and disposal expenses and environmental clean-up and remediation costs against Joining Member, or ultimately MRC, if hauler fails to pay or is unidentified. May want Fiberight to take greater role in managing Unacceptable Waste, MRC to take greater advocacy role on behalf of Joining Member and language to be made consistent with current obligations under the PERC Agreements. The Town cannot control third-party haulers. Another solution would be to have Fiberight

Section	*Description*	*PT Comments*
		require each hauler to enter into an access agreement with Fiberight naming MRC and its members as third party beneficiaries. In any case, the Town should ensure that its agreements with its haulers contain strong indemnification and insurance provisions. Towns also can enact waste hauler licensing ordinances.
4.0 Tipping Fees and Rebates	Joining Member agrees to pay tipping fees for Acceptable Waste "and other wastes" (undefined) delivered and credited to its account. MRC reviews and accepts or disputes Fiberight's tipping fee calculations. Joining Member will receive an invoice directly from Fiberight on a weekly basis within five calendar days of the end of each calendar week and payments will be due to Fiberight within 30 days of receipt unless MRC challenges the calculation of the tipping fee. If Joining Member fails to make timely payment of tipping fees, it may be precluded from delivering Acceptable Waste to the Facility or Back-up Facility. Amendment to the Tipping Fee proposed by Fiberight requires Joining Members to authorize MRC to amend it in the Master Waste Supply Agreement by amending the Joinder Agreement; Joining Member agrees to consider in good faith a proposal for amendment that MRC agrees is reasonable and necessary for Fiberight to continue sustainable operation of Facility.)	Latest draft sets out the $70 per ton plus CPI increase Tipping Fee as stated in Section 5.1 of the Master Waste Supply Agreement).
	Joining Member authorizes MRC to manage rebates from Fiberight on its behalf, which MRC may direct to be spent in best interest of all Joining Members, and may offset rebates against specific charges.	Section 4.3(b) and (c) set out Fiberight's obligation to calculate rebates and to pay rebates to MRC, but Fiberight is not a party to this Agreement, and so is not bound by these "obligations."
	Fiberight to make quarterly rebate calculations acceptable to all	Unless MRC Board decides otherwise for good

Section	*Description*	*PT Comments*
	Joining Members, and MRC to review and accept or dispute calculations. MRC to pay rebates based on actual Acceptable Waste delivered to Facility and Exhibit F of Master Waste Supply Agreement. MRC to review and dispute tipping fee calculations made by Fiberight.	cause shown, Non-Charter Municipalities and readmitted Departing Municipalities are not entitled to rebates during the 15-year Initial Term. Language has been added that MRC shall review and consider in good faith any dispute of a calculation brought forward by Joining Members.
5.0 Authorization to Act for Joining Member	Joining Member acknowledges it is a member of a group of entities for which MRC administers the relationship with Fiberight; agrees to be a Joining Member, to ratify the Joinder Agreement and to be a Member of MRC; and authorizes MRC to work on behalf of it and all Joining Members to administer all agreements and Site Lease and to manage MSW disposal, including ensuring Fiberight complies with its obligations.	MRC's discretion to act should be qualified by Joining Members' rights under MRC's articles of incorporation and bylaws, and MRC's board's duties under Maine corporate law; MRC has added this language.
6.0 Transportation, Bypass and Disposition of Unacceptable Waste	Joining Member and MRC each agrees to hear the other's proposals for collective transportation of MSW to the Facility and/or for use of MSW-produced transportation fuel from the Facility. Joining Member acknowledges MRC has entered into agreement for disposal at Back-up Facility (Crossroads Landfill) for: Bridge Capacity Waste and Bypass Waste, and agrees to pay the tipping fees for Bypass Waste as if it were Acceptable Waste delivered to the Facility and for Bridge Capacity Waste as MRC directs. Joining Member agrees to comply with Back-up Facility's delivery procedures and transporter rules for Acceptable Waste delivery.	MRC has entered into separate agreement with Waste Management for disposal of residuals from Fiberight and for MSW disposal at Crossroads Landfill for 10-year term with two 5-year extensions at set tipping fee; Joining Member must deliver or have delivered its Acceptable Waste exclusively to Crossroads Landfill in event of Bridge Capacity or Bypass. Article 6 heading has been changed as suggested – Unacceptable Waste is in Section 3.5.
7.0 Disposition	MRC manages disposition of assets held by MRC for Joining	

Section	*Description*	*PT Comments*
of Assets Administered by MRC	Members that are Charter Municipalities, including Departing Municipalities, after MRC commitments expire, in accordance with Exhibit B (outlined below).	
8.0 Indemnification	Reciprocal indemnifications. Joining Member agrees to defend, indemnify and hold harmless MRC, each other Joining Member and their members, directors, elected officials, officers, agents and employees against claims resulting directly from any failure by Joining Member to perform fully in any respect, its obligations under the Joinder Agreement. MRC agrees to defend, indemnify and hold harmless Joining Member and its elected officials, of heir, agents and employees from claims resulting directly from MRC's willful or negligent act or omission and its failure to perform fully, in any respect, its obligations under the Joinder Agreement. If Joining Member asserts right of indemnification against MRC, must provide MRC with written notice of commencement of legal action or other circumstances giving rise to claim for indemnification within 10 days and 30 days, respectively. Also, indemnified party obligated to provide indemnifying party access to all records and information relating to claim, facts and circumstances, except privileged matters. Section 8.5 requires the parties to resolve disputes under Section 14.5 (should be Section 11.8), which provides for good faith informal resolution during 14 days following written notice of dispute, followed by submittal of the dispute to binding arbitration under the American Arbitration Association's commercial arbitration rules before a single arbitrator, unless they cannot agree, in which case there will be a panel of three arbitrators.	Concern as to limit on such liability -- the provision does not recognize the Joining Member's Maine Tort Claims Act immunities, limitations and cap on liability, and by so agreeing, Joining Member may be waiving its Maine Tort Claims Act protections. MRC has amended Section 8.8 and 11.7 as requested to address concerns. Raised concerns that MRC indemnity also should run to Joining Member's appointed officials. Consider whether an indemnity for claims arising "to the extent of" MRC's willful or negligent acts is more appropriate than one for claims "arising directly" from MRC's willful or negligent acts; MRC has added language to address these concerns. "Other circumstances giving rise to a claim for indemnification" is simply a catch-all. MRC has added language to reflect that there is no exception to requirement to provide access to records and information for attorney work-product, or materials made confidential by statute or by the Freedom of Access Act. Section 8.8 "No Waiver of Immunities" language has been added as requested.

Section	*Description*	*PT Comments*
	Section 8.7 contains a limitation of liability provision that bars a party's recovery of indirect and consequential damages.	Carve-out for third party claims for fraud has been added.
9.0 Assignment.	Assignment by either party is prohibited without the other party's prior written consent, but MRC may, after prior notice to Joining Members and hearing and subject to MRC Bylaws member approval rights, assign Joinder Agreement to a successor entity.	
10.0 Events of Default; Termination.	If either party fails to fulfill its obligations, and the failure is not cured within 30 days of receipt of written notice or other cure period, it is an event of default, as is bankruptcy or receivership. Termination is not a remedy listed under Section 10.4. Section 10.4 entitles MRC to seek specific performance against a Joining Member. The Joinder Agreement "shall terminate upon expiration of the Master Waste Supply Agreement" and the Joining Member remains liable for its pre-termination obligations.	Consider whether a Joining Member's expulsion from MRC or breach of its obligations as a member should specifically be called out as an event of default (see Section 3.3 of the Restated Bylaws); MRC has added this. Termination has been added, and for second breach of Agreement within two years, there is no cure period. Statute of limitations for claims extended from 1 year to 2, and claim arises when discovered or reasonably should have been discovered. Section 10.3 does not mention or coordinate expiration of this Joinder Agreement with termination under other agreements or with Joining Member decision not to extend beyond Initial Term. Development Agreement may be terminated and Master Waste Supply Agreement automatically terminates on January 1, 2020 if Commercial Operation Date, as extended, has not occurred. Master Waste Supply Agreement can be terminated for Force Majeure.
11.16	The parties are obligated to sign any reasonable papers and documents necessary to effectuate the Joinder Agreement.	

Section	*Description*	*PT Comments*
11.19	Although Fiberight is not a party to the Joinder Agreement, this section makes it a third-party beneficiary entitled to directly enforce the Joining Member's obligations.	Consider whether other Joining Members should also be third party beneficiaries of each Joinder Agreement.
Exhibit A	Executed Master Waste Supply Agreement.	
Exhibit B	Management and Disposition of Existing Municipal Assets and Project Assets. Sets out how MRC is to manage Equity Charter Municipalities and other assets held by MRC. A. List of assets held by or for MRC: 1. Two reserve accounts under PERC Agreement with combined balance of $26.6 million at end of 2015: a. Custody Account – working capital account consisting of PERC Partnership payments and proceeds from sale of Bangor Hydro warrants and used to pay distributions to Charter Municipalities; and b. Tip Fee Stabilization fund – consists of Performance Credit Funds, proceeds of sales of Bangor Hydro warrants, net cash flow distributed by PERC Partnership and fund balance earnings that exceed what is needed for distribution to Charter Municipalities. 2. The Operating Accounts managed by PERC Contracts in names of Equity Charter Municipalities, with combined balance less than $1 million. a. Operating Account funded by dues to pay MRC administrative costs; and b. Operating Budget Stabilization Fund – funds from release of reserve fund on PERC financing and one-time payment by	

Section	*Description*	*PT Comments*
	PERC Partnership to Equity Charter Municipalities.	
	3. Debt Service Reserve Fund – reserve account with approximately $1.33 million held in support of PERC Partnership finance during term of obligation by lender, to be paid to MRC in early 2018.	Not really a debt service fund but a form of security for financing.
	4. PERC Partnership limited partnership shares. Equity Charter Municipalities own 25.5214 percent of limited partner share in PERC Partnership, managed by MRC; PERC Partnership will be dissolved by end of 2018.	Unless sooner dissolved, PERC Partnership continues until Dec. 31, 2018.
	B. MRC would allocate assets as follows:	
	1. Projected $25 to $28 million in reserve accounts, Custody Account and Tip Fee Stabilization Fund, to be distributed as follows:	
	a. Site acquisition and infrastructure costs ("Site Capital Costs"), up to $5 million;	
	2. Departing Municipalities that are Equity Charter Municipalities receive a share of both reserve accounts, which will be exclusive of site capital cost-expenditures (which will be allocated to Joining Charter Municipalities) but will be less the administrative costs of payment and the holding of reserves for Departing Municipalities' share of PERC Partnership dissolution liabilities and costs. "Payments shall be made timely," after PERC Partnership dissolution and after MRC Board establishes sufficient reserve from Joining Members' accounts, to Departing Municipalities that have executed Termination Agreements.	

Section	*Description*	*PT Comments*
	3. Funds allocable to Equity Charter Municipalities that are Charter Members will be used to establish several reserve funds: a. Building Reserve – up to $7 million to fund a reserve in event of termination, with amounts released each year under Site Lease and distributed to Equity Charter Municipalities pro rata on basis of contributions as of April 1, 2018. b. Delivery Sufficiency Reserve Fund. $3 million to be used to make Delivery Sufficiency Payments assessed against MRC for all Charter Municipalities that are Joining Members. Unused funds will be allocated among Joining Members that are Equity Charter Municipalities pro rata at end of Joinder Agreement term. c. Reserve Fund - $1.167 million reserve for liabilities and costs related to PERC Partnership dissolution and PERC facility closure. Need for Fund to be assessed by end of 2018 and when/if released, Fund to be allocated among Equity Charter Municipalities that are Joining Members. d. Bridge Waste Transportation Fund – up to $1 million to offset Bridge Waste transportation. e. Target Value Reserve Fund – remaining amounts are to be deposited into Fund for distribution to the Charter Municipalities that become Joining Members. Would be used to supplement Fiberight rebates to Joining Members for 36 months after Commercial Operation Date. Equity Charter Municipalities would receive $5 per ton delivered to the Facility and New Charter Municipalities would receive $3 per ton delivered, to extent funds are available and are needed to	

Section	*Description*	*PT Comments*
	achieve net disposal cost after rebates of $65 per ton and $67 per ton, respectively. Afterwards, MRC Board will distribute Fund at its discretion. 4. Operating Accounts – On Expiration of PERC contract, MRC to pay allowable share of Operating Budget Stabilization Fund to Departing Municipalities, and to retain remainder in both Operating Accounts to support ongoing MRC administrative costs. 5. Debt Service Reserve Fund. Will be used to pay costs for Fund release; to pay Equity Charter Municipalities' and MRC's costs of PERC Partnership dissolution; and to distribute remainder, after any reserve is retained, among Equity Charter Municipalities on basis of waste delivered during term of relevant financing. MRC will make payments of this last amount, if at all, promptly after a review by the end of 2018 of amounts used to pay the first two categories of costs, of amounts held in reserve for anticipated costs and of amounts available for Equity Charter Municipality payments. 6. PERC Partnership Limited Partnership Interest. MRC will administer Equity Charter Municipality Interest until Partnership is dissolved or until Municipality divests itself of limited partners shares. Municipality affirms authorization to MRC to manage shares, determine share value, approve share disposition and determining allocation of share distributions. 7. Non-Charter Municipalities – will pay additional $2.21 per ton over 15-year Initial Term to be placed in Target Value Reserve Fund for Charter Municipalities. Returning Departing Municipalities must repay amounts received from reserve and operating accounts if rejoin; and are treated as Non-Charter	

Section	*Description*	*PT Comments*
	Members for purposes of this provision.	
Exhibit C	Components of Ratification To ratify the Joinder Agreement and participation, Joining Member must: • Execute Joinder Agreement, provide signed original and contact information; show authorization by legislative body (council, town meeting) and provide legal opinion on Agreement's enforceability. • Provide baseline information – value of estimated annual minimum deliveries of MSW in tons per year and geographic area to which value applies; identification of MSW sources if from separate entities, such as school administrative units; description of MSW collection and delivery method; and list of MSW diversion (including organics) and recycling programs by Joining Member as of Effective Date. • State preferences regarding: Regional approach to MSW transfer or hauling to facility; Preferred Bypass transportation – to Facility or Back-up Facility; Delivery of source-separate recyclables, clean wood or brush; Technical assistance with recycling programs; and Regional approach to management of tires, Unacceptable Waste, textiles and Residual Wastes.	

Table B

Perkins Thompson Site Lease Agreement Summary and Comments
(December 4, 2015 Draft and December 30, 2015 Revisions)

Capitalized terms have the meanings ascribed to them in the Site Lease draft dated December 4, 2015.

Section	*Description*	*PT Comments*
First Whereas Clause	States that Landlord owns or will own the Property on or before the Effective Date.	Landlord should not sign the Lease until it owns the Property.
First Whereas Clause		Exhibit A should include a legal description of the Property, or a reference to a recorded deed.
Parties	To be signed by the MRC ("Landlord") and Fiberight, LLC ("Tenant").	
1.0 Definitions	Key terms include "Change in Law" and "Force Majeure." Comments on these definitions appear in the section of this Summary discussing the section of the Lease in which the terms are used.	
2.0 Demise; Description of Leased Premises; Permitted Uses	The Leased Premises: Exhibit A, which has not yet been prepared, is to show the Property and the Project Site. The Project Site is on a portion, but not all, of the Property to be purchased by MRC pursuant to the Option Agreement (which we do not have). The "Leased Premises" are defined as the Project Site together with the appurtenant rights of access, stormwater drainage, and utility access. The Tenant will own the Facility.	Leased Property is only a portion of the Property MRC is acquiring in order to provide substantial buffer around Facility. Section 4 allows Tenant to make reasonable use on the Property outside of the Leased Premises upon prior approval by Landlord. The first line of Section 2.0 has been clarified to state the portion of the Property being leased is depicted on Exhibit A as the "Project Site." Should add book and page reference to recorded

Section	*Description*	*PT Comments*
		deed to Property.
3.0 Term	Initial term begins on the Effective Date (the date the Lease is signed) and runs through the later of April 1, 2033 or the 15th anniversary of the Commercial Operation Date (the date the facility begins operation). Tenant can extend the Agreement five times for five years each, upon 18 months' notice before the end of any term (maximum total term is 40 years). If Tenant elects not to renew at the end of the initial Term or any Extension Term, the Tenant has six months after the end of such term to remove its equipment and personal property, and title to the building passes to the Landlord. Even if Tenant has provided Landlord with 18 months' notice of renewal, Landlord may terminate with eight months' notice prior to the end of the then existing term, if too many Joining Members have terminated, provided that Landlord accompaniers its notice of termination with <u>both</u> (a) an offer to purchase the building, and (b) an offer to sell the Property (not just the project site) to Tenant, each for the pre-determined price set forth in Exhibit C. If Tenant does not accept either offer, then Tenant is deemed to have abandoned the building.	(Drafting needs to be clarified here but this seems to be the intent). Landlord has to provide Tenant with offers to purchase building and to sell Site in order to exercise ability to terminate Site Lease after Initial Term or any Extension Term. The worst-case scenario for Landlord is that after the Initial Term, Landlord desires to terminate because the Facility does not operate and Tenant accepts the Landlord's offer to purchase the building, in which case Landlord owns the property and the building and does not have an operating facility.
4.0 Rent, Access and Services	Tenant pays Rent per Exhibit D. Landlord constructs access road and extends access to electricity, water supply and sewer service. Landlord is responsible for all maintenance of the access road until the road is accepted by the Town of Hampden. Tenant may make reasonable temporary use of the Property outside the Leased Premises upon prior	

Section	*Description*	*PT Comments*
	approval of Landlord, not to be unreasonably withheld. Tenant connects to those enumerated services on the site and arranges all other utilities and services.	
5.0 Quiet Possession; Landlord Right of Entry; Tenant Right of Access	Tenant has right of quiet enjoyment. Tenant will keep tax incentives and environmental attributes that it creates. Tenant accepts the Leased Premises in the condition they are in on the Effective Date and assumes all risks; Landlord makes no representations and warranties, including as to environmental conditions. This section should more strongly state that Tenant has had the opportunity to conduct due diligence and is relying on its own judgment and not any representations by Landlord. Tenant acknowledges that operation of the Facility is subject to laws and regulations and Tenant covenants that it will operate the Facility in accordance with the applicable permits. The Landlord has the right to ensure that the Facility is operated in compliance with applicable permits. Tenant is only required to use "reasonable efforts" to minimize adverse environmental and nuisance impacts on residents of the surrounding areas. Tenant must provide a means for the public to report nuisances and will respond promptly and act diligently to address and make efforts to mitigate impacts that are reasonable under the circumstances. Landlord may enter the Leased Premises upon at least 24 hours' prior notice to inspect and enforce the obligations under the Lease or under applicable law. The Tenant has 24/7 access rights. The Tenant will coordinate with first responders regarding emergencies.	Section 8 specifically states that Tenant shall comply with all applicable laws, rules and regulations. This section should be consistent. Section 23, which requires Tenant to comply with all environmental laws, rules, and regulations, has been amended to state environmental conditions more strongly. Site Lease has been amended by MRC to more strongly state that it has conducted its own due diligence and is relying on its own judgment and assessment of the Leased Premises.

Section	*Description*	*PT Comments*
6.0 Development of the Facility	Tenant is responsible for causing the Construction Date to occur by 1/1/17, including design, permits and approvals, and financing. Landlord responsible for development, permitting, construction, and maintenance of access road and related electrical, water, and wastewater infrastructure. The Tenant will allow the Landlord to provide non-binding comment on permit applications and designs. The Tenant will provide the Landlord with monthly progress reports. Construction Date occurs when Tenant has obtained all permits and financing, and has authorized construction to begin. Tenant to provide notice to Landlord of each "milestone."	
7.0 Facility Construction	Tenant must only use "reasonable efforts" to cause the Commercial Operation Date to occur by April 1, 2018, subject to stated reasons for delay. Tenant is excused from performance if a permit contains a term that would preclude construction or operation on "commercially reasonable terms." Tenant is also excused if an "Uncontrollable Circumstance" or "Change in Law" occurs that would preclude construction or operation on "commercially reasonable terms." Tenant may also be excused form performance if it has not obtained financing; Tenant need only use "diligent efforts" to obtain financing. Any delays in the Commercial Operation Date for any reason "not under the control of Tenant" constitute "Excused Delay Periods" under the Master Waste Supply Agreement. The Landlord must construct the access road and	Arguably allows Tenant to decide in its discretion that a permit condition proves too costly to Tenant and to abandon the project; Landlord is left with the Property. However, MRC and members want to control Facility to obtain another operator. Uncontrollable Circumstance replaced by Force Majeure. Change in Law is broadly defined to include any change that is "inconsistent with and more stringent than" previously existing law. This provides Tenant with a broad ability to excuse its performance.

Section	*Description*	*PT Comments*
	electric, water, and sewer lines. Landlord must use "reasonable efforts" to cause the Construction Access Date and the Infrastructure Completion Date to occur as quickly as feasible. Stated reasons for delay can justify delays in the Commercial Operation Date, including lack of permits or Tenant's determination that a permit contains a condition that would preclude construction or operation of the Facility on commercially reasonable terms, a Force Majeure event, or Tenant's lack of financing. Delays for reasons not under control of Tenant allow for Excused Delay Periods under the Master Waste Supply Agreement. The Tenant and Landlord will keep an updated construction schedule to monitor delays and impacts on the Commercial Operation Date. The Tenant will conduct a Performance Test to demonstrate to the Landlord that it has achieved the Commercial Operation Date. Only requires "substantial compliance" with all permits. Tenant and Landlord to work together to establish protocols for Performance Test.	This is inconsistent with Section 8.2 and has been amended to require operation in compliance with permits.
8.0 Facility operation	The Tenant will operate and maintain the Facility. §8.1 requires Tenant to use **reasonable efforts** to ensure that the Facility meets safety requirements and complies with all permits and laws. §8.2 states that the Tenant **shall** comply with all applicable federal state and local laws. §8.2 also states that Tenant shall work with Landlord to ensure compliance with all directives of governmental authorities related to the Facility and the Leased Premises. It is unclear what the intent of this statement is if it's Tenant's obligation to comply. May create and implication that it's Landlord's obligation as well, and	MRC has amended to consistently state that Tenant is required to cause the Facility to comply with all permits and all applicable laws, rules, and regulations.

Section	*Description*	*PT Comments*
	should be clarified. The Tenant will send residual materials to the landfill per the Residuals Agreement. Both parties to keep and maintain records required for purposes of property administration of the Lease. Both parties have audit rights. Tenant to use reasonable efforts to cooperate with Landlord to maintain good community relations. The Landlord to keep the access road and related utility, sewer, and water lines in good order and repair.	
9.0 Capital Improvements	The Tenant may make Capital Improvements to the Facility subject to conditions. Second sentence of §9.1 does not make sense as written. The Landlord can review and make non-binding comments on the Capital Improvements. Tenant will update Exhibits to Lease as necessary.	
10.0 Assignments; Transfers; Bankruptcy	The Tenant may not assign the Site Lease without consent of the Landlord in Landlord's sole discretion. However, transfer of ownership of Tenant may occur with prior notice to and approval of Landlord, which approval may not be unreasonably withheld. Certain conditions must be met in the event of a transfer of ownership, and Fiberight will continue to have day to day control of the Facility. Tenant may assign the Lease to an Affiliate controlled by Fiberight or to an investor who will own/operate the Facility in connection with financing. *See Section 19.* Bankruptcy is a breach of the Lease (this is also addressed in §18).	If ownership of Fiberight has transferred to another, nonaffiliated party, Fiberight to remain in day-to-day operation to assure operational continuity unless/until MRC otherwise agrees.

Section	*Description*	*PT Comments*
11.0 Notices	Provides for notice.	
12.0 Taxes and Assessments	Tenant responsible for taxes on the Leased Premises and improvements.	
13.0 Liens	Tenant keeps Leased Premises free of liens.	
14.0 Indemnification	Tenant indemnifies Landlord against damages arising from Tenant's acts/omissions on or about the Leased Premises or breach of Lease (except for Landlord's gross negligence or willful misconduct).	MRC has made our requested changes to strengthen this by also including damage claims arising out of Tenant's possession, use, or occupation of the Leased Premises or occurring while on or about the Premises. Should also add that indemnity is without regard to any workers' compensation immunity, and by adding environmental indemnity to Section 23.
15.0 Insurance	States that insurance in adequate amounts must be maintained by Tenant.	MRC has added requirement for Tenant to maintain umbrella policy.
16.0 Right of First Offer	If the Landlord wants to sell, Tenant has first right to buy. Gives Tenant 30 days to respond to Landlord's notice.	Closing must occur now required within 45 days from Tenant's acceptance of offer.
17.0 Force Majeure	Requires the parties to notify one another as soon as a party has knowledge of an action of the government that could lead to condemnation or a Change in Law. MRC and Tenant will work together to monitor Changes in Law and condemnation and avoid adverse actions. Obligations can be suspended for an event of Force Majeure if outside the reasonable control of either party per the definition. The affected party will develop a Force Majeure Plan regarding impacts on obligations and costs for approval by the other. States that such plan will include a proposal for costs to be passed through to the MRC	The definition of Force Majeure is extremely broad; includes any unforeseeable act, event, or condition that has a material adverse effect on the rights or obligations of a party, the Facility, the Property or Infrastructure if the act, event, or condition is beyond the reasonable control of the party. In most ground leases, Force Majeure is limited to delays caused acts of God, war, civil unrest, fire/casualty, labor difficulties, and so forth, and only allows for delays in performance, not termination. This definition is overly favorable to Tenant. An obligation to pay money should be carved out as an

Section	Description	PT Comments
	and/or Joining Municipalities as part of the response to address Force majeure. If the Plan is (ultimately) accepted, it goes into effect. If rejected, and agreement cannot be reached, then either party can terminate. If MRC terminates, then MRC must either (a) buy the building from tenant; or (b) sell the property to Tenant, in either case at the price set forth in Exhibit C. If Tenant terminates, it must leave and vacate the premises within 90 days.	item that is not impacted by a claim of Force Majeure. However, MRC explains that this language has been reviewed by MRC's consultant and is standard in the industry. MRC has made language more clear that if there are costs proposed to be passed through to MRC, these will be stated. This is favorable to the Tenant and prejudicial to the Landlord; but is the business transaction agreed upon by the parties..
18.0 Default and Termination	Landlord may terminate if Tenant is in default: Tenant fails to meet deadlines for Construction Date or Commercial operation Date; Tenant breaches Master Waste Supply Agreement is a default; and other enumerated events of default. Allows Tenant a 60-day cure period for defaults (other than payment defaults). Prior to Construction Date, allows Tenant to terminate with 90 days' prior notice if Tenant reasonably determines that construction or operation of the Facility is uneconomic or practically infeasible. *This provision should be eliminated; makes it too easy for Tenant to terminate if Tenant doesn't like the economics of the deal after Landlord has purchased the Property and constructed the access road and infrastructure.*	This is an extremely long cure period; should be 30 days; MRC has reduced this to 45 days..
19.0 Investor Rights	During an event of default (should add "by Tenant"), any Investor has the right to step in and act for Tenant or to succeed to Tenant's interest in the Lease, with notice to Landlord. To do so, Investor must provide satisfactory evidence to landlord and Maine DEP that it	

Section	*Description*	*PT Comments*
	has financial capacity and technical ability to operate the Facility, and must accept the Terms of the Lease and cure Tenant's defaults.	
20.0 Reserved	The parties each waive subrogation.	
21.0 Waiver of Subrogation		
22.0 Memorandum of Lease		
23.0 Environmental	Tenant covenants not to unlawfully release Hazardous Materials, and shall remediate in the event of such a release.	MRC has added the stronger environmental indemnification provision we suggested.
24.0 Waiver		
25.0 Dispute resolution	Dispute resolution by binding arbitration. Claims are barred after one year from the date the claim arose.	This is a very short time within which to bring a claim; does not define "arose;" is it date of discovery? MRC has changed this to extend the statute of limitations from 1 year to 2 and to make claims begin when discovered or reasonably should have been discovered.
26.0 Miscellaneous	Standard provisions	
Signatures	MRC and Fiberight	

Exhibit A	Property, Leased Premises, and Project Site
Exhibit B	Description of Facility and Description of Tenant's Work
Exhibit C	Building and Property Value over the Operating Term
Exhibit D	Lease Consideration
Exhibit E	Reporting Requirements
Exhibit F	Form of Memorandum of Lease

Section	*Description*	*PT Comments*

Section	*Description*	*PT Comments*

SITE LEASE TIMELINE

	Action	Target Date	Explanation	Issues
1.	Effective Date (Introductory paragraph)	early 2015	Date signed by the parties After Effective Date, Tenant designs the facility, obtains permits, and obtains financing, and Landlord develops access road and utility infrastructure	Landlord must exercise the option prior to entering into the Lease, which exposes Landlord to the risk of holding the property and Tenant not going forward with the project for reasons allowable under the Lease.
2.	Construction Access Date (§7.2)	9/1/16	Date by which Landlord has made sufficient progress in the construction of the access road such that Tenant can have access to Project Site for construction vehicles and equipment	Landlord need not begin construction activities if (i) there are not enough joinder agreements, (ii) a necessary Facility permit has not been issued, or a permit contains a provision that would preclude construction or operation of the Facility on commercially reasonable terms, as determined by Tenant, (iii) Force Majeure, or (iv) Tenant has not yet obtained financing.
3.	Construction Date (§6.5)	1/1/17	Date by which Tenant has (a) acquired all final permits necessary for construction and related access services, and utilities; (b) "closed and/or arranged final terms of access granting to Fiberight construction financing sufficient to authorize commencement of construction;" and (c) authorized commencement of construction activities at the Leased Premises on a continuous basis as evidenced by the Tenant's issuance (*to whom?*) of a notice to proceed to start construction or equivalent.	Tenant need not begin construction if: (i) there is a permit condition that construction and operation of the Facility can't occur on "commercially reasonable terms" despite Tenant's diligent efforts; commercially reasonable is a vague standard which leaves great discretion on Tenant's part; (ii) an "Uncontrollable Circumstance" or "Change in Law has occurred (issues with these definitions are discussed in Section 7 of the Lease Summary); or (iii) Tenant has not yet obtained financing despite "diligent" efforts – this is not a high standard and should be strengthened. There could be objective measures of what constitutes adequate financing, e.g., a loan of at least x% of project costs, at y% interest, for z years.
4.	Infrastructure Completion Date	7/31/17	Date by which Landlord has completed installation of the Infrastructure such that its availability does not delay Tenant's completion of construction and	

Section	Description			PT Comments
	(§7.2)		commencement of operation of the Facility.	
5.	Commercial Operation Date (§7.4(c))	4/1/18	Later of date by which Performance Test has been completed or 4/1/18	Tenant must use "reasonable efforts" to cause this date to occur by 4/1/18.

Table C

Timeline

Date	Event
December 1, 2015	MRC and Fiberight to agree to Master Waste Supply Agreement
May 1, 2016	Date for MRC to procure Delivery Commitments for at least 150,000 TPY Acceptable Waste
Sept. 1, 2016	Construction Access Date
January 1, 2017	Either MRC or Fiberight may terminate Development Agreement if Fiberight has not put adequate financing in place; Construction Date
July 31, 2017	Infrastructure Completion Date
March 31, 2018	Expiration of PERC Second Amended and Restated Agreements
April 1, 2018	Presumed Commercial Operation Date
December 31, 2018	Expiration of PERC Partnership
January 1, 2020	Either MRC or Fiberight may terminate Development Agreement if Commercial Operation has not been achieved; Master Waste Supply Agreement eventually terminates
March 31, 2028	Initial Term expires if MRC-Waste Management Agreement expires without Extension Terms
April 1, 2033	Expiration of Joinder Agreement, Site Lease and Master Waste Supply Agreement Initial Term; potential notices of termination and provision of offers to purchase Facility or sell Site
April 1, 2058	Expiration of Joinder Agreement, Site Lease and Master Waste Supply Agreement Extension Terms