



**MAY 2, 2016  
7:00 P.M.**

**AGENDA  
REGULAR COUNCIL MEETING  
City Council Chambers, 2<sup>nd</sup> Floor  
265 Main Street-Old Town, Maine**

- I. CALL TO ORDER (Please turn off or silent cell phones)**
- II. FLAG SALUTE**
- III. ROLL CALL**
- IV. Approval of the Minutes of the April 4, 2016 Regular Council Meeting and the April 19, 2016 Special Council Meeting.**
- V. PETITIONS, COMMUNICATIONS AND CITIZENS' REQUESTS**
- VI. REPORTS**
  - A. Council President**
  - B. Standing Committees (Finance, Public, Administrative & Economic Services; Landfill, Legislative, Sewer, Airport & Housing sub-committees)**
  - C. City Councilors**
  - D. City Attorney**
  - E. Special Committees**
  - F. City Manager**
- VII. CONSENT AGENDA (New Business items 1, 2, 3 & 4)**

Suggested motion: Resolved, the Old Town City Council hereby approves the Suggested motions in New Business items 1, 2, 3 & 4 as presented.

(Councilor McLeod)

## **VIII. PUBLIC HEARINGS AND SECOND READING OF ORDINANCES**

### **IX. OLD BUSINESS**

1. The City Council will consider removing an item concerning the Business Loan Program and creation of a new Business Equipment Loan Program from the table. This item was tabled at the April 4, 2016 Regular Council Meeting.

Suggested motion: Resolved, the Old Town City Council hereby removes the Business Loan & Equipment Loan Programs from the table.

(Councilor Peterson)

- 1a. The City Council will consider changes to the existing Business Loan Program and creation of a new Business Equipment Loan Program.

Suggested motion: Resolved, the Old Town City Council hereby approves the amended Business Loan Program and the creation of the Business Equipment Loan Program as recommended by the LLC and presented by the Economic Development Director. The Council further authorizes the City Manager to sign the necessary participation agreements and related documents with local lenders.

(Councilor Roach)

### **X. NEW BUSINESS**

1. The City Council will consider approval of an application from Old Town Boosters for a Major Special Event Permit for Smokey's Greater Shows to be held in the Riverfront Park and to waive the Permit fee.

Suggested motion: Resolved, the Old Town City Council hereby approves an application from Old Town Boosters, for a Major Special Event Permit for Smokey's Greater Shows to be held in the Riverfront Park from June 15, 2015 to June 21, 2015 and to waive the Permit fee.

(Councilor Klitch)

2. The City Council will consider accepting an after deadline redemption on foreclosed property for Tracy Porter & Derek Shepard, located at 156 Taylor Road for payment of 2013 through 2016 Real Estate Taxes in the total amount of \$1,411.27.

Suggested motion: Resolved, the Old Town City Council hereby accepts an after deadline redemption on foreclosed property for Tracy Porter & Derek Shepard, located at 156 Taylor Road for payment of 2013 through 2016 Real Estate taxes in the amount of \$1,011.45 for a total amount of \$1,411.27 which includes interest, lien costs and late redemption fee and further authorize the City Manager to execute a Municipal Quit-Claim Deed.

3. The City Council will consider accepting an after deadline redemption on foreclosed property for Erik S. Morse, located at 26 Bradbury Street for payment of 2013 to present Sewer fees in the total amount of \$1,337.93. This property was formerly owned by Christopher M. Viner and Mr. Morse was the successful bidder at a bank foreclosure sale held by Mr. Viners' mortgage holder, JP Chase Bank.

Suggested motion: Resolved, the Old Town City Council hereby accepts an after deadline redemption on foreclosed property located at 26 Bradbury Street, formerly owned by Christopher M. Viner for payment of 2013 to present Sewer fees in the amount of \$964.42 for a total amount of \$1,337.93 which includes interest, lien costs and late redemption fee. The Council further authorizes the City Manager to execute a Municipal Quit-Claim Deed to Erik S. Morse as successor in interest to Christopher M. Viner.

4. The City Council will consider accepting the 2015 Byrne Jag Grant in the amount of \$2,220.00 for the Police Department. The Police Department plans on using the funds to purchase 14 new LED Stream light Strion Flash Lights.

Suggested motion: Resolved, the Old Town City Council hereby accepts the 2015 Byrne Jag Grant in the amount of \$2,220.00 for the Police Department as recommended by the Finance Committee.

(Councilor McLeod)

5. The City Council will consider amending an Agreement with CES for Professional Engineering and Consulting Services in regards to the proposed Juniper Ridge Landfill Expansion by adding an additional \$39,440 to the Agreement.

Suggested motion: Resolved, the Old Town City Council hereby approves amending the Agreement with CES for Professional Engineering and Consulting Services in regards to the proposed Juniper Ridge Landfill Expansion by adding an additional \$39,440 to the Agreement. Funds are to come from the Juniper Ridge Landfill Account #1420-0299.

(Councilor Roach)

6. The City Manager will give an update on the FY 2016/2017 Municipal Budget
7. The City Manager will give an update on Municipal Solid Waste.
8. The City Council will consider going into Executive Session for the purpose of discussing an economic development issue relating to the Expera Mill.

Suggested motion: Resolved, the Old Town City Council hereby approves going into Executive Session pursuant to MRSA Title 405, Section (6)(C) for the purpose of discussing an economic development issue relating to the Expera Mill.

(Councilor May)

## **XI. ADJOURNMENT**



## REGULAR COUNCIL MEETING – APRIL 4, 2016

Council convened April 4, 2016 in the Old Town City Council Chambers at 265 Main Street.

Councilors present: President David Mahan, Carol May, Linda McLeod, John Nuttall and Eric Roach. Stan Peterson arrived at 7:06 p.m...

Administration present: Bill Mayo, Erik Stumpfel, Patty Brochu, Ron Harriman, Steve O'Malley, John Rouleau and David Smith.

Others present: Seventeen citizens in the audience and news media.

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Council President Mahan called the meeting to order at 7:00 p.m.

Councilor Nuttall, seconded by Councilor Klitch, moved to approve the Minutes of the March 7, 2016 Regular Council Meeting. **Approved all in favor, 6-0.**

### **REPORTS**

President Mahan reported there will be a Budget Meeting on April 19<sup>th</sup> with the Finance Committee and there will be a Public Affairs Committee Meeting as well. President Mahan also gave a presentation and the Key to the City lapel pin to Lee Jackson who was named National Crew Person of the Year for McDonald's and his involvement in the community.

Manager Mayo: reported he was working on revenues for the budget and that the Perc & Fiberight discussions were still going on and he will get that information to the Council for the next Finance Committee meeting.

### **CONSENT AGENDA**

Councilor McLeod, seconded by Councilor May, Resolved, the Old Town City Council hereby approves the Suggested motions under New Business items 1, 2, 3, 4, 5 & 6 as presented and as follows:

Item #1: Resolved, the Old Town City Council hereby accepts an after deadline redemption on foreclosed property for George Kisamatakis, located at 14 Heald Street for payment of 2016 RE taxes in the amount of \$704.48 and 2013 to present Sewer fees in the amount of \$872.38 for a total amount of \$1,726.86 which includes interest, lien costs and late redemption fee and further authorize the City Manager to execute a Municipal Quit-Claim Deed.

Item #2: Resolved, the Old Town City Council hereby accepts an after deadline redemption on foreclosed property for Gary & Mary Karam, located at 14 Free Street for payment of 2013 through 2016 RE taxes in the amount of \$7,176.06 which includes interest, lien costs and late redemption fee and further authorize the City Manager to execute a Municipal Quit-Claim Deed.

Item #3: Resolved, the Old Town City Council hereby accepts an after deadline redemption on foreclosed property for Patricia Gotay, located at 104 Veazie Street for payment of 2013 through 2016 RE taxes in the amount of \$8,166.37 and 2013 through 2015 Sewer fees in the amount of \$2,512.99 for a total amount of \$10,679.36 which includes interest, lien costs and late redemption fee and further authorize the City Manager to execute a Municipal Quit-Claim Deed.

Item #4: Resolved, the Old Town City Council hereby approves an application from Fred Nickerson on behalf of Old Town Cub Scout Pack 76 for a Minor Event Permit for Cub Scout Activities to be held at Sewall Park on June 11, 2016 to June 12, 2016 and to allow overnight camping and to waive the \$25.00 fee.

Item #5: Resolved, the Old Town City Council hereby approves a renewal application for a Malt, Vinous and Beverage Cart Liquor License for Joseph Perdue, d/b/a Hidden Meadows Golf Course, 240 W. Old Town Road.

Item #6: Resolved, the Old Town City Council hereby accepts \$2,511.58 in donations collected for the 3rd Annual Old Town Community Food Drive and further authorizes the Finance Director to disperse the funds in equal amounts of \$837.19 to benefit the Holy Family Parish Food Pantry, Crossroads Ministries and the St. Anne's Penobscot Nation Food Pantry.

***Consent Agenda items 1 through 6 unanimously approved, 7-0.***

## **NEW BUSINESS**

The City Council considered changes to the existing Business Loan Program and creation of a new Business Equipment Loan Program.

Councilor Roach, seconded by Councilor Klitch, Resolved, the Old Town City Council hereby approves the amended Business Loan Program and the creation of the Business Equipment Loan Program as recommended by the LLC and presented by the Economic Development Director. The Council further authorizes the City Manager to sign the necessary participation agreements and related documents with local lenders.

Economic Development Director Ron Harriman, Brent Folster from Camden National Bank and Tim Folster were on hand to answer questions. Mr. Harriman stated he has been working with Camden National and Penobscot Federal Credit Union on the loan process. Councilors stated they had many questions on the process and wanted this item sent back to the Finance Committee for further discussions.

Councilor Klitch, seconded by Councilor Nuttall, moved to table this item to the May 2<sup>nd</sup> Regular Meeting and to put this item on the next Finance Committee Meeting on April 19<sup>th</sup>. **Motion approved 6-1. Councilor Roach opposed.**

The City Council considered new Sewer rates (5% increase) for the 2016-2017 Fiscal year as recommended by the Citizens Sewer Advisory Board. This increase is necessary to help cover the costs of replacement of three aging pump stations.

Councilor May, seconded by Councilor McLeod, Resolved, the Old Town City Council hereby approves the 5% Sewer rate increase for the 2016-2017 Fiscal Year (Effective July 1, 2016) as recommended by the Citizens Sewer Advisory Board and presented in Attachment #1.

President Mahan commented this was a user fee increase. He asked if the department was using the reserve account now and Manager Mayo said yes. Superintendent David Smith said he will be coming back in the next two years for increases in 5% increments.

Councilor Nuttall, seconded by Councilor Klitch, moved to table this until May or June once they can see where the budget is at. **Motion to table failed, 2-5. Councilors Mahan and Nuttall approved and Councilors Klitch, May, McLeod, Roach and Peterson opposed.**

The City Council considered entering into an Agreement with Stantec for Scope of Work for release and sale of 3 lots of airport property.

Councilor Peterson, seconded by Councilor May, Resolved, the Old Town City Council hereby approves entering into an Agreement with Stantec in the amount of \$27,880.00 for Scope of Work for release and sale of 3 lots of airport property. Funds are to come from Airport Hangar Reserve Account #03560.

Manager Mayo explained there were three lots in the Business Park across from the Public Works garage. They've had difficulties finding businesses to lease the property as they want to purchase the property instead.

**Motion approved all in favor, 7-0.**

The City Council considered authorizing the Public Works Director to move forward and complete paving on more city streets as presented in Attachment #2.

Councilor McLeod, seconded by Councilor Klitch, Resolved, the Old Town City Council hereby authorizes the Public Works Director to move forward and complete paving on city streets as presented in Attachment #2. **Approved all in favor, 7-0.**

The City Council considered authorizing the City Manager to take all necessary actions to purchase land and building from Chellis & Neddine Sanborn located at 2001 Bennoch Road in the total amount of \$140,811.60.

Councilor Nuttall, seconded by Councilor McLeod, Resolved, the Old Town City Council hereby authorizes the City Manager to take all necessary actions to purchase land and building from Chellis & Neddine Sanborn, located at 2001 Bennoch Road in the total amount of \$140,811.60. The Council further authorizes the Finance Director to transfer the funds from Fund Balance Account #03800 to Account #1200-0299 Other Contractual Services to complete the transaction. **Approved all in favor, 7-0.**

The City Council considered going into Executive Session for the purpose of discussing an economic development issue relating to the Expera mill.

Councilor May, seconded by Councilor Roach, Resolved, the Old Town City Council hereby approves going into Executive Session at 8:08 p.m. pursuant to Title 1, M.R.S.A., §405(6)(C) for the purpose of discussing an economic development issue relating to the Expera mill. **Approved all in favor, 7-0.**

Councilor McLeod, seconded Councilor Nuttall, moved to come out of Executive Session at 8:33 p.m. **Approved all in favor, 7-0.**

Councilor Klitch, seconded by Councilor Nuttall, moved to adjourn at 8:34 p.m. **Approved all in favor, 7-0.**

Adjourned,

Patricia A. Brochu, CMC  
City Clerk-Old Town, ME





## SPECIAL COUNCIL MEETING – APRIL 19, 2016

Council convened April 19, 2016 in the Old Town City Council Chambers at 265 Main Street.

Councilors present: President David Mahan, Jan Klitch, Carol May, Linda McLeod, John Nuttall, Eric Roach and Stan Peterson.

Administration present: Bill Mayo, Patty Brochu and Miles Greenacre.

Others present: Four citizens in the audience.

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Council President Mahan called the meeting to order at 7:39 p.m.

### PUBLIC HEARINGS

The City Council conducted a Public Hearing on a new application for a Victualer’s License (food establishment) for Donna & David Ketchen, d/b/a The Hub, 277 Main Street.

The City Clerk reported that the Inspectors informed her that not enough work has been done for them to pass inspections and recommends this be approved contingent upon a Certificate of Occupancy being issued.

There being no further comments, the Council President closed the hearing.

The City Council considered approval of a new application for a Victualer’s License for Donna & David Ketchen, d/b/a The Hub, 277 Main Street.

Councilor Klitch, seconded by Councilor McLeod, Resolved, the Old Town City Council hereby approves a new application for a Victualer’s License for Donna & David Ketchen, d/b/a The Hub, 277 Main Street, contingent upon Certificate of Occupancy being issued by Code Enforcement. **Approved all in favor, 7-0.**

### NEW BUSINESS

The City Council considered approval of an application from Tim Caliandro for a Major Special Event Permit to hold a Memorial Day Parade and Veterans Celebration in the Riverfront Park.

Councilor Nuttall, seconded by Councilor McLeod, Resolved, the Old Town City Council hereby approves an application from Tim Caliandro of Birmingham Funeral Home, for a Major Special Event Permit to hold a Memorial Day Parade and Veterans

Celebration in the Riverfront Park on May 30, 2016 and to waive the Permit fee.  
**Approved all in favor, 7-0.**

The City Council considered entering into a User Agreement Governing the Accessible Voting System with the Secretary of State's Office and authorize the City Clerk to execute said agreement. There is no charge to the City for the use of said equipment but the City must provide evidence of insurance.

Councilor May, seconded by Councilor McLeod, Resolved, the Old Town City Council hereby approves entering into a User Agreement Governing the Accessible Voting System with the Secretary of State's Office and authorize the City Clerk to execute said Agreement. **Approved all in favor, 7-0.**

Councilor Klitch, seconded by Councilor Nuttall, moved to adjourn at 7:44 p.m.  
**Approved all in favor, 7-0.**

Adjourned,

Patricia A. Brochu, CMC  
City Clerk-Old Town, ME

**Old Town review of the JRL Application Budget (Draft)**

<b>Staff</b>	<b>Time (hrs)</b>	<b>Bill Rate (\$/hr)</b>	<b>Price per Task</b>
Senior Project Assistant	8	\$75	\$ 600.00
Project Designer/CQA	4	\$115	\$ 460.00
Project Engineer	10	\$115	\$ 1,150.00
Project Engineer	32	\$115	\$ 3,680.00
Senior Project Hydrologist	40	\$135	\$ 5,400.00
Senior Project Scientist	50	\$135	\$ 6,750.00
Project Engineer	120	\$115	\$ 13,800.00
		<b>Subtotal =</b>	<b>\$ 31,840.00</b>
Principal/Project Manager	12	\$150	\$ 1,800.00
	8	\$150	\$ 1,200.00
	16	\$150	\$ 2,400.00
	24	\$150	\$ 3,600.00
		<b>Subtotal =</b>	<b>\$ 9,000.00</b>
Optional:	24	\$115	\$ 2,760.00
Miscellaneous:			\$ 500.00
			\$ 500.00
		<b>Subtotal =</b>	<b>\$ 1,000.00</b>
			<b>\$ 44,100.00</b>

**Supplemental Budget**

**Task: Review of DEP Comments, Applicant Response to Comments, DEP Response**

<b>Staff</b>	<b>Time (hrs)</b>	<b>Bill Rate (\$/hr)</b>	<b>Price per Task</b>
Senior Project Assistant	8	\$75	\$600
Project Engineer	184	\$115	\$21,160
Senior Project Hydrologist	48	\$135	\$6,480
Principal/Project Manager	8	\$150	\$1,200
		<b>Subtotal =</b>	<b>\$29,440</b>
			<b>\$ 73,540.00</b>

## **Task Description**

Geosynthics - Calcs., Specs., CQA Manual  
Drawings, Stormwater, Erosion & Sedimentation Control, Misc.  
Leachate Management Design  
Site Assessment, Hydrogeology, Env. Monitoring  
Volume V - NRPA (Ch. 305 & 310) and Section 404  
Operations Manual, Gas Management, Fines/Soft Layer, Litter, Visual,  
Geotechnical, Traffic, Odor, Overall

Prehearing Conferences (assumes 3 - 2 hour conferences plus travel)  
Mtgs with Old Town (prep)  
Review, hearing prep, testimony prep.  
BEP Hearing, testimony

Amanda Wade At BEP Hearing

Mileage  
Misc. expenses

Total Initial with detailed reviews

## **to Response, Meeting with Cassella and BGS**

Review of all engineering and operational related comments, Final memo preparation, Assist Proj Mgr with testir  
Review of Hydrogeology comments and responses  
Review of DEP Comments, Applicant Response to Comments, DEP Response to Response, Meeting with Cassella  
**Supplemental Budget: Review of DEP Comments, Applicant Response to Comments, DEP Response to Respon:**

**Revised Total Budget**

nony preparation, Attendance at Meetings

and BGS

se, **Meeting with Cassella and BGS**

**PROFESSIONAL ENGINEERING AND CONSULTING SERVICES AGREEMENT**

THIS Professional Engineering and Consulting Services Agreement (the "Agreement") is entered into this 9 day of November, 2015, by and between CES, Inc, a ~~sole proprietorship/partnership~~/corporation/limited liability company (choose one) duly organized and existing under the laws of the State of Maine whose mailing address is P.O. Box 129, Brewer, Maine 04412 (the "Contractor") and the City of Old Town, a municipal corporation established under the laws of the State of Maine (the "City"). The foregoing also are referred to herein collectively as the "Parties" or singly as "Party."

**WITNESSETH:**

**WHEREAS**, the City's Request for Proposals for Professional Engineering and Consulting Services for the City of Old Town re: Proposed Juniper Ridge Landfill Expansion dated July 24, 2015 and any Addendum or Addenda thereto (together, the "RFP") requests proposals for the Engineering and Consulting Services (as defined below);

**WHEREAS**, the City has determined that the Contractor has the requisite equipment, labor and knowledge to perform the Engineering and Consulting Services needed by the City;

**WHEREAS**, the Contractor submitted a proposal in response to the RFP;

**WHEREAS**, the City has accepted that proposal, a copy of which is attached as Exhibit B hereto and is hereby incorporated into this Agreement; and

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and conditions set forth herein made by each Party to the other, the Parties agree as follows:

**1. CONTRACTOR'S RESPONSIBILITIES.**

**1.1** In return for payment made as provided in Section 2 of this Agreement, Contractor agrees to furnish Engineering and Consulting Services for the City to provide professional review and written and oral comments and testimony to State and City administrative bodies regarding the proposed expansion of the Juniper Ridge Landfill in Old Town (the "JRL Expansion"), all as described in the Scope of Services contained in Attachment A to the RFP attached as Exhibit A hereto and hereby incorporated into this Agreement (the "Engineering and Consulting Services").

**1.2** The Contractor shall be responsible for performing the Engineering and Consulting Services in accordance with all applicable federal, state and local statutes, laws, rules, regulations, ordinances, and orders which may in any way affect the provision of Engineering and Consulting Services hereunder.

1.3 The **Contractor** shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all analyses, reports, comments, and other Engineering and Consulting Services furnished by the **Contractor** under this Agreement. The **Contractor** shall, without additional compensation, correct or revise any errors or deficiencies in its analysis, reports, and other Engineering and Consulting Services. Deficiencies are defined as willful or negligent acts that distort or falsify the state of the art of the products and Engineering and Consulting Services developed and provided hereunder, or willful or negligent nonassignment of personnel or assignment of unqualified personnel to perform the Engineering and Consulting Services hereunder.

1.4 Approval by the City of analyses, reports, comments, and other Engineering and Consulting Services furnished hereunder shall not in any way relieve the **Contractor** of responsibility for the technical adequacy of the work. Neither the City's review, approval or acceptance of, nor payment for, any of the Engineering and Consulting Services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the **Contractor** shall remain liable in accordance with applicable law for all damages to the City caused by the **Contractor's** willfully negligent performance of any of the Engineering and Consulting Services furnished under this Agreement.

1.5 The **Contractor** warrants:

A. That it shall provide and perform the Engineering and Consulting Services in a timely, professional, and workmanlike manner with the degree of skill, care and diligence observed by reputable national firms performing the same or similar services. **Contractor** shall exercise best efforts in the performance of the Engineering and Consulting Services.

B. That it shall furnish or arrange for all qualified personnel, facilities, equipment, materials, and services as necessary for the performance of the Engineering and Consulting Services. **Contractor** shall provide and maintain competent and adequate supervision of the Engineering and Consulting Services and personnel to ensure that all services it provides conform to the Scope of Services in Exhibit A and this Agreement.

C. That it is financially solvent, is experienced in and competent to perform the Engineering and Consulting Services and is able to furnish or arrange for all qualified personnel, facilities, equipment, materials, and services as necessary for the performance of the Engineering and Consulting Services.

D. That it is familiar with all applicable federal, State and local statutes, laws, rules, regulations, ordinances and orders which may in any way affect the Engineering and Consulting Services. **Contractor** shall, and shall ensure that its personnel and subcontractors, conform to and comply with applicable state, federal, and local laws, ordinances, rules, regulations, and standards in the performance of the Engineering and Consulting Services.

E. That it has carefully examined the RFP and this Agreement and has conducted its own investigation of the nature and location of the Engineering and Consulting Services, the training

and experience of personnel needed to perform the Engineering and Consulting Services and all conditions which may in any way affect the performance of the Engineering and Consulting Services.

F. That any increase in Contractor's costs during the term of this Agreement shall be the sole responsibility of the Contractor.

## 2. TIME FOR PERFORMANCE OF ENGINEERING AND CONSULTING SERVICES, COMPLETION; TERM OF AGREEMENT; PAYMENT.

2.1 **Time for Performance of Engineering and Consulting Services, Completion.** Contractor shall commence to perform Engineering and Consulting Services hereunder on the date of execution of this Agreement by the City.

2.2 **Term of Agreement.** The term of this Agreement shall commence upon the date of execution of this Agreement by the City and, unless sooner terminated as provided in Section 3 of this Agreement, shall continue during the remainder of calendar year 2015 and during calendar years 2016 and 2017 or until City administration review of the JRL Expansion is complete, whichever is later (the "Term"), subject to a satisfactory annual review by the City Council.

2.3 **Payment.** The City shall pay Contractor for the performance of Engineering and Consulting Services for each year of this Agreement on a time and materials basis based upon the hourly rates and anticipated out-of-pocket expenses contained in Contractor's Proposal attached as Exhibit B hereto and hereby incorporated into this Agreement, with the total cost for the Engineering and Consulting Services not to exceed \_\_\_\_\_ Fifty Thousand Dollars (\$ 50,000 ) (the "Not-to-Exceed Limit").

Progress payments will be made monthly on the basis of hours of work satisfactorily completed and out-of-pocket expenses incurred during the previous month in accordance with the Proposal in Exhibit B, payable within 30 days of receipt of an itemized invoice from the Contractor, provided that the total of such monthly progress payments shall not exceed the Not-to-Exceed Limit.

## 3. ADDITIONAL TERMS AND CONDITIONS.

3.1 **Contractor Personnel.** The Parties recognize that the primary value of the Contractor to the City derives directly from the Contractor's Key Personnel assigned in the performance of this Agreement. "Key Personnel" are deemed to be those individuals whose résumés were offered by the Contractor in the Proposal, attached as Exhibit B hereto. Therefore, the Contractor agrees that said Key Personnel shall be assigned in accordance with the Contractor's Proposal, and that no re-deployment or replacement of any Key Personnel may be made without the prior written consent of the City, which consent shall not be unreasonably withheld. Replacement of such personnel, if approved, shall be with personnel of equal or greater abilities and qualifications. The City shall retain the right to reject any of the Contractor's employees whose abilities and qualifications, in the City's judgment, are not appropriate for the performance of this Agreement. In considering the Contractor's employees' abilities and



qualifications, the City shall act reasonably and in good faith. During the course of this Agreement, the City reserves the right to require the Contractor to reassign or otherwise remove any of its employees, agents, or subcontractors found unacceptable by the City. During the course of this Agreement, the City reserves the right to require a background check on any of the Contractor's personnel (employees and subcontractors) that are in any way involved in the performance of this Agreement.

**3.2 Governmental Requirements.** Contractor represents and warrants that it has and will comply with all governmental laws, rules, regulations and ordinances in the performance of this Agreement. Contractor is responsible to obtain and maintain all permits, licenses, and other approvals as may be required under federal, state, or local laws for the performance of any work or services under this Agreement.

**3.3 Intellectual Property.** Contractor certifies that all services, works, deliverables, equipment, software, supplies, and any other products or materials provided under this Agreement do not, and will not, infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any claim by a third party against the City, the City shall promptly notify the Contractor and the Contractor, at its expense, shall defend, indemnify, and hold harmless the City and its Trustees, officers, employees and agents against any loss, cost, expense, or liability arising out of such claim, including without limitation costs and reasonable attorney fees. In the event that any work or material supplied by Contractor is subject to pre-existing intellectual property rights of a third party that may limit the rights of the City to use such work or material, Contractor shall notify the City in advance of using such third-party materials and shall fully disclose the nature of any limitation. Contractor shall secure all such third-party licenses and authorizations as necessary for the City to use the work or materials supplied by Contractor under this Agreement.

**3.4 Ownership of Data and Materials.** Contractor shall deliver all work, services, and materials free of all liens and encumbrances. Except as set forth below, all deliverables, data, works and materials created or produced by Contractor for or on behalf of the City under this Agreement are deemed "works made for hire" and shall be owned by the City. To the extent any deliverables, data, works or materials produced or provided under this Agreement are not deemed "works made for hire," Contractor shall, and does hereby, assign all right, title, and interest in such deliverables, data, works and materials to the City, and where such rights are not assignable, Contractor hereby grants an irrevocable, perpetual, fully paid-up, royalty-free, non-exclusive license to the City to use all such deliverables, data, works and materials. The City shall have unlimited rights to use, disclose, duplicate, or publish for any purpose whatsoever all information and data developed, derived, documented, or furnished by the Contractor under this Agreement. The Contractor shall, upon request of the City, furnish all information, data, works and materials prepared by Contractor under this Agreement.

#### **4. TERMINATION.**

**4.1** Without prejudice to any other right or remedy, the City may terminate this Agreement for cause by providing the Contractor with seven (7) days' written notice of termination. For purposes of this Agreement, cause includes, but is not limited to: the

adjudication of the Contractor as a bankrupt; the making of a general assignment by the Contractor for the benefit of its creditors; the appointment of a receiver because of the Contractor's insolvency; the Contractor's persistent or repeated refusal or failure, except for cases in which extension of time is provided, to supply enough properly-skilled workers or proper materials to perform the Engineering and Consulting Services; the Contractor's persistent disregard of federal, state or local statutes, laws, codes, rules, regulations, orders or ordinances; and the Contractor's substantial violation of any provisions of this Agreement. In the event of a termination for cause, the City may take possession of all materials and finish the Engineering and Consulting Services by whatever method it may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Engineering and Consulting Services are finished. If the unpaid balance of the Agreement price shall exceed the expense of finishing the Engineering and Consulting Services, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the City.

4.2 Further, the City may terminate this Agreement for convenience upon thirty (30) days' written notice to the Contractor, in which case the City shall pay the Contractor for all Engineering and Consulting Services satisfactorily performed and materials purchased up to the date of receipt of such notice by the Contractor. "Convenience" includes without limitation the decision by the City Council after its annual review of the Contractor's provision of Engineering and Consulting Services under Section 2.2 of this Agreement to terminate this Agreement for the remaining Term. In the event that the City terminates this Agreement for cause and it subsequently is determined that cause did not exist, such termination shall be deemed to be for convenience.

## 5. INSURANCE AND INDEMNIFICATION.

5.1 **Insurance.** Except as otherwise provided by this Agreement, Contractor shall obtain and maintain, throughout the term of this Agreement and for a period of at least two years following the completion of Engineering and Consulting Services under this Agreement, at no expense to the City, the following insurance coverages:

A. **Commercial General Liability Insurance** in the amount of not less than One Million Dollars (\$1,000,000), per occurrence, to protect the City and its officer, directors, agents and employees from claims and damages that may arise out of, be caused by or result from the performance of Engineering and Consulting Services under this Agreement, whether by Contractor, by a subcontractor or by anyone directly or indirectly employed by them to perform the Engineering and Consulting Services, or by anyone for whose acts any of them may be liable.

B. **Automobile Liability Insurance** in the amount of not less than One Million Dollars (\$1,000,000), combined single limit, to protect the City and its officers, directors, agents and employees from claims and damages that may arise out of, be caused by or result from the performance of Engineering and Consulting Services under this Agreement, whether by Contractor, by a subcontractor or by anyone directly or indirectly employed by them to perform the Engineering and Consulting Services, or by anyone for whose acts any of them may be liable.

**C. Workers' Compensation Insurance** in amounts required by Maine law and **Employer's Liability Insurance**, as necessary, as required by Maine law.

**D. Professional Liability Insurance** in the amount of not less than One Million Dollars (\$1,000,000), per occurrence, to protect the City and its officers, directors, agents and employees from claims and damages that may arise out of, be caused by or result from negligent errors, acts or omissions or intentional misconduct in the performance of Engineering and Consulting Services under this Agreement, whether by Contractor, by a subcontractor, by anyone directly or indirectly employed by them to perform the Engineering and Consulting Services, or by anyone for whose acts any of them may be liable.

**E.** All such insurance policies, except for workers' compensation insurance and Professional Liability Insurance, shall name the City and its officers, directors, agents and employees as additional insureds. Contractor's coverages shall be the primary insurance. Contractor, prior to commencement of Engineering and Consulting Services under this Agreement, shall furnish the City with certificates of insurance satisfactory to the City evidencing such insurance coverages, which certificates shall state that Contractor must provide written notice to the City at least thirty (30) days prior to cancellation, non-renewal, material modification or expiration of any policies, evidenced by return receipt of United States Certified Mail. Replacement certificates shall be delivered to the City prior to the effective date of cancellation, termination, material modification or expiration of any such insurance policy. Contractor shall not commence Engineering and Consulting Services under this Agreement until it has obtained all insurance coverages required under this subparagraph and such insurance policies have been approved by the City. All such insurance policies shall have a retroactive date which is the earlier of the date of this Agreement between the Parties or Contractor's commencement of Engineering and Consulting Services hereunder.

**5.2. Indemnification.** Contractor agrees to defend, indemnify, and hold harmless the City and its officers, directors, agents and employees harmless from any claim(s), cause(s) of action, liability or expense, including, without limitation, costs and reasonable attorney's fees, for personal injury (including death) and/or property damage caused by, related to, arising out of or resulting from the Contractor's performance of Engineering and Consulting Services under this Agreement by Contractor, its subcontractors, by anyone directly or indirectly employed by them to perform the Engineering and Consulting Services, or by anyone for whose acts any of them may be liable. The foregoing indemnity expressly extends to claims of injury, death, or damage to employees of Contractor or of a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. In claims against any person or entity indemnified under this Section by an employee of Contractor or subcontractor, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. Contractor expressly waives immunity under workers' compensation laws for the purposes of this indemnity provision.

## **6. MISCELLANEOUS PROVISIONS**

**6.1 Notices.** All notices, demands or other communications made pursuant to this Agreement shall be in writing and shall be sent by (i) registered or certified United States mail, postage prepaid, (ii) by overnight courier, or (iii) by facsimile. Such notice shall be deemed effective upon delivery addressed as follows:

To Contractor:

CE3 INC  
465 South Main Street  
PO Box 639  
Brewer, Me. 04412

To City: City of Old Town  
150 Brunswick Street  
Old Town, ME 04468  
Attention: William J. Mayo, City Manager

**6.2 Entire Agreement, Amendment, Modification.** This Agreement and the Exhibits A and B attached hereto and hereby incorporated constitute the entire agreement of the Parties, and neither Party shall be bound by any statement or representation not contained herein. This Agreement cannot be changed, amended or modified, except by another agreement in writing signed by all Parties hereto or by their respective successors in interest.

**6.3 Headings.** The paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or interest of any provisions of this Agreement.

**6.4 Severability.** If any section, term, covenant, or condition of this Agreement or the application thereto to any person or circumstances shall, to any extent be illegal, invalid or unenforceable because of judicial construction, the remaining sections, terms, covenants, and conditions of this Agreement, or the application of such section, term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each section, term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by Law.

**6.5 Governing Law, Remedies.** This Agreement shall be governed by and construed in accordance with the laws of the State of Maine. Except as otherwise agreed by the Parties in writing, all disputes, claims, counterclaims and other matters in question between the City and Contractor arising out of or relating to this Agreement shall be decided by a Maine court of competent jurisdiction.

**6.6 Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably conditioned, delayed or withheld. This Agreement shall benefit and be binding upon the Parties hereto and their respective permitted successors and assigns.

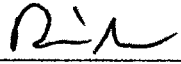
**6.7 Subcontracts.** The Contractor shall not sublet any part of this Agreement without the prior written permission of the City. The Contractor agrees that it is fully responsible to the City for the acts and omissions of its subcontractors and of persons either or by anyone directly or indirectly employed by them to perform the Engineering and Consulting Services, or by anyone for whose acts any of them may be liable, as it is for the acts and omissions of persons directly employed by it.

**6.8 Force Majeure.** Provided such party gives written notice to the other of such event, a party shall not be liable for its failure to perform its respective obligations under this Agreement, if prevented from so doing by any cause beyond the reasonable control of such party such as, but not limited to, strikes, lockouts, or failure of supply or inability by the exercise of reasonable diligence, to obtain supplies, parts, or employees necessary to perform such obligations, or because of war or other emergency. The time within which such obligations shall be performed shall be extended for a period of time equivalent to the delay from such cause.


**6.9 Non-Waiver.** Except as expressly provided in this Agreement, the failure or waiver, or successive failures or waivers on the part of either party hereto, in the enforcement of any paragraph or provision of this Agreement shall not render the same invalid nor impair the right of either party hereto, its successors or permitted assigns, to enforce the same in the event of any subsequent breach thereof.

**IN WITNESS WHEREOF,** the Parties hereto have caused this Professional Engineering and Consulting Services Agreement to be executed by their duly authorized representatives as of the date first set forth above.

**CONTRACTOR**

By:   
Signature  
Denis St. Peter  
Print Name  
Its: President (Title)

**CITY OF OLD TOWN**

By:   
William J. Mayo,  
City Manager