

LEWISTON CITY COUNCIL WORKSHOP AGENDA

Tuesday, May 13, 2014

City Council Chambers

6:00 p.m. Workshop

Pledge of Allegiance to the Flag.

Moment of Silence.

WORKSESSION

1. Budget Discussion - Senior Coordinator Hours
2. Dumpster Easement - Lewiston House of Pizza
3. Saint Patrick's Church Property Taxes
4. Amendment Number Two - Casella Materials Recovery Facility (MRF) Lease.
5. Update on Discussions with Landlord Representatives.
6. Update on LAEGC Scope of Services.

LEWISTON CITY COUNCIL
WORKSHOP AGENDA
TUESDAY, May 13, 2014
6:00 P.M.

1. Budget Discussion – Senior Coordinator Hours

At last Thursday's budget workshop, representatives of the seniors requested that the Council restore the hours cut from the senior coordinator position. This reduction is currently included in the FY 15 proposed budget, and the Council should provide direction on whether or not they should be restored. It would cost \$1,755 to restore the position to 19.75 hours from 15.

2. Dumpster Easement – Lewiston House of Pizza

The Lewiston House of Pizza has its solid waste dumpster adjacent to the new Simard Payne Gateway now under construction. The City and restaurant agree that this is not an ideal location given the park investment. Unfortunately, there is no other acceptable dumpster location on the property. We have been working with the restaurant's owner to find a location on immediately adjacent vacant property owned by the City. This will require an easement from the City. We would like to review this with you prior to placing it on a regular agenda for approval.

3. Saint Patrick's Church Property Taxes

Andrew Knight, the new owner of St. Patrick's, is in the process of renovating it for new uses. Given the extent of the potential investment required, he has requested that the City consider freezing the taxes on this property at their current level. The property became taxable once it was no longer used for religious purposes. See attached information.

4. Amendment Number Two – Casella Materials Recovery Facility (MRF) Lease

As a result of the City's agreement with Casella Materials Recycling to lease property at our solid waste facility for single-stream recycling processing, the City needs to relocate certain operations from the bailer building, which is to become a part of the MRF. The City is now constructing a vehicle storage facility at our Operations Center. We also need to construct a cover over a portion of the drop off recycling center so that certain waste now temporarily stored in the bailer building can be relocated and protected from the elements. Casella is contracting with Gendron and Gendron for their project, and we and Casella would prefer to have Gendron do this work for the City to avoid conflicts and delays that might result from two separate contractors working in the same area. We recommend amending our lease with Casella to authorize them to perform this work under their contract with Gendron. Please see the attached information.

5. Update on Discussions with Landlord Representatives

Councilors Cayer and Libby and various City staff have been meeting with representatives of the landlords to discuss issues of concern. As a result of those discussions, we are prepared to move forward with a number of initiatives including the multi-unit energy efficiency loan program (see attached); the vacant, abandoned, and distressed property rehabilitation incentive program (see attached); and a voluntary disorderly property program. At the same time, a consensus could not be reached on the City's current system for handling multi-family solid waste. We would like to brief you on these discussions.

6. Update on LAEGC Scope of Services

A working group has been meeting with Jim Damichis, a consultant, to finalize a proposed scope of services for the Growth Council. The final document should be available late this week or early next. I would like to review it with the Council in advance of a joint Lewiston/Auburn Council meeting in the near future.



CITY OF LEWISTON

Department of Planning & Code Enforcement



TO: Honorable Mayor and Members of the City Council
FROM: David Hediger, City Planner
DATE: May 7, 2014
RE: Dumpster Easement – Lewiston House of Pizza

As the Council is aware, the gateway park to Simard Payne Park is under construction. The contractor hopes to have it completed by July 4, 2014. Immediately adjacent to the new park is the dumpster used by the Lewiston House of Pizza at 95 Lincoln Street. City staff and the owner of the House of Pizza, Jimmy Koutsikos would like to see the dumpster relocated away from the park boundary. However, given site constraints at the House of Pizza there is not adequate space on their property. The abutting property at 75-87 Lincoln Street is a vacant lot owned by the City of Lewiston and could easily accommodate a screened dumpster pad. Staff has been working with Mr. Koutsikos and has come to a general agreement on an area that may be provided to him as an easement for the dumpster.

Mr. Koutsikos would be solely responsible for all maintenance within the easement area and would maintain the easement area and all improvements. The easement would also contain language reserving the City's right to terminate said easement (in the event 75-87 Lincoln Street is redeveloped) with the understanding that the City will be responsible for making accommodations to relocate the House of Pizza's dumpster at that time.

Upon review and discussion with the Council, staff is requesting this item be placed on the Council's regular agenda, authorizing the City Administrator to execute an easement deed from the City of Lewiston for the property at 75-87 Lincoln Street to the Lewiston House of Pizza/Jimmy Koutsikos at 95 Lincoln Street for purposes for locating a screened dumpster.

1:360

Zoning
M

Zoning
RF

PROPOSED

Existing

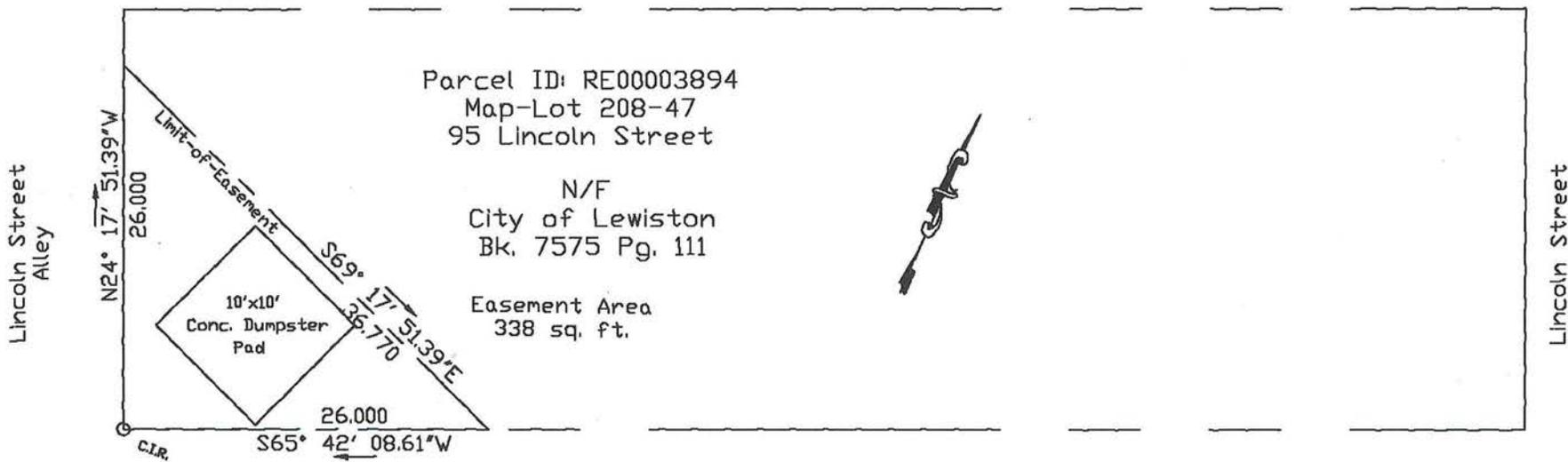
GATEWAY PARK



Suggested Description

95 Lincoln Street/Easement for Dumpster Pad

Beginning at a capped iron rod, said capped iron rod marking the intersection of the southerly most corner of property and the westerly most Right-of-Way of Lincoln Street Alley, said westerly most corner of property now or formerly owned by the City of Lewiston and its inhabitants, herein to be known as Grantor, said property being more closely described in a certain deed and recorded in book 7575, page 111, at the Androscoggin County Registry of Deeds, said westerly most Right-of-Way of said Lincoln Street Alley being more closely described in a certain street description and on file at the City of Lewiston Clerks Office, 2nd. Floor, City Hall, Pine Street, Lewiston, Maine; thence, in a northerly direction along the westerly most Right-of-Way of said Lincoln Street Alley, by a bearing of North twenty-four degrees, seventeen minutes, fifty-one seconds west (N24⁰-17'-51"W), a distance of twenty-six and zero hundredths (26.00) feet to a point, said point marking the point of intersection of the northerly most Limit-of-Easement and the westerly most Right-of-Way of said Lincoln Street Alley; Thence, southerly direction, along the northerly most Limit-of-Easement, by a bearing of south sixty-nine degrees, seventeen minutes, fifty-one seconds east (S69⁰-17'-51"E), a distance of thirty-six and seventy-seven hundredths (36.77) feet to a point, said point marking the intersection of the northerly most Limit-of-Easement and the southerly most property line of said Grantor; Thence, in a southerly direction, along the southerly most property line of said Grantor, by a bearing of south sixty-five degrees, forty-two minutes, nine seconds west (S65⁰-42'-09"W), a distance of twenty-six and zero hundredths (26.00) feet to the point of beginning.



Economic and Community Development

Lincoln Jeffers

Director



To: Honorable Mayor and Members of the City Council
From: Lincoln Jeffers
RE: St. Patrick's Tax Reimbursement Proposal
Date: May 8, 2014

In late 2013, Andrew Knight approached the city's planning and economic development staffs to discuss his vision for buying the former St. Patrick's church and rectory located at 220 Bates Street and 1 Walnut Street and making renovations to the property that would allow it to become a venue for destination weddings and as a small conference center to be known as the Agora Grand Events Center.

He has moved forward with those plans, acquiring the real estate in March of this year. He has received the necessary Planning Board approvals, including a conditional rezoning of the property from Downtown Residential to Centreville, which allows the uses proposed. The City Council approved the conditional rezoning at its March 18th meeting. Renovations have begun.

As has been discussed in executive session, early in Mr. Knight's due diligence on the property he inquired about the possibility of holding the level of taxes paid on the property at current level for five years. Doing so would assist the business during the period of renovations and the earlier years of operation as it ramps up to projected utilization levels. As directed by the Council, staff has worked with the city attorney as to how to best accomplish holding the taxes at current levels.

It has been determined that a TIF district and program are not needed to accomplish this goal. In 1999, a referendum was passed by Maine voters authorizing a local option property tax reimbursement for historic and scenic preservation. In response, in 2000 the legislature passed Sec. 1. 30-A MRSA 5730, which reads in part:

" . . . a municipality may raise or appropriate money to reimburse taxpayers for a portion of taxes paid under Title 36, Part 2 on real property if the property owner agrees to maintain the property in accordance with criteria that are adopted by the governing legislative body of the municipality and that provide for maintaining the historic integrity of important structures or providing a scenic view."

The former St. Patrick's church is a contributing structure within the Kennedy Park Historic District. The city has a Historic Preservation Review Board and *Article XV. Significant Buildings and Districts* of the Code of Ordinances provides guidance on how to ". . .preserve, protect and enhance buildings and areas which represent or reflect distinctive and important elements of the city's architectural, archaeological, cultural, social, economic, ethnic and political history; to safeguard the city's historic and cultural heritage, to provide procedures for local review of changes to significant structures and for new construction, reconstruction, building alteration and demolition within designated historic districts . . ."

With a local historic board and ordinance in place, the City can utilize the state statute to return a portion of the property taxes paid on the Agora Grand. Attached is a draft of a Joint Development Agreement (JDA) that the council will be asked to approve at the May 20th council meeting. To summarize, the combined Assessed Valuation on 220 Bates and 1 Walnut is \$321,600 as of April 1, 2014, which generates \$8,503 at a .02644 mil rate. The JDA calls for the city to reimburse the developer all taxes paid on an Assessed Valuation that is higher than \$321,600 for city Fiscal Years 2015 – 2019. The city will continue to receive the current level of taxes paid on the property, adjusted by any annual changes in the mil rate, during those 5 years and will receive and retain all taxes paid beginning in FY 2020.

The developer agrees to have a minimum total investment in the Agora Grand renovations and operations of \$400,000 and to complete the project no later than December 31, 2016. This is an outside date to allow for unexpected challenges. The Developer is working to open the Agora Grand to functions in summer 2015.

City staff recommends approval of the JDA. Lewiston is blessed with an abundance of magnificent churches but, when they are no longer used by a congregation, options for repurposing the buildings are limited and challenging. The Agora Grand is a dynamic and bold vision for the reuse of the former St. Patrick's church. This limited request for financial assistance from the city will result in the preservation and reuse of a historic structure and will bring new uses and energy to the downtown.

JOINT DEVELOPMENT AGREEMENT

THIS AGREEMENT is made as of this ____ day of May, 2014 by and between THE CITY OF LEWISTON, a body politic and corporate situated in Androscoggin County, Maine (hereinafter referred to as the “City,” which expression shall include its successors and assigns), and AGORA LLC, a Maine limited liability company, (hereinafter referred to as the “Developer,” which expression shall include its successor and assigns) (the “Developer”).

BACKGROUND

- A. Developer owns real property located at 220 Bates Street and 1 Walnut Street within the City and more fully described in the attached Exhibit A (the “Property”).
- B. For over 100 years, the Property was owned by the Roman Catholic Bishop of Portland, a body politic and corporation sole, for use as a Catholic church known as St. Patrick’s Church (the “Church”).
- C. The Property is designated as “contributing structures” within the Kennedy Park Historic District, as defined in the City’s Zoning and Land Use Code, Appendix A, Article XV (the “Ordinance”).
- D. In 2009, the Church was closed by the Roman Catholic Bishop of Portland.
- E. During the 5 years since the Church’s closure, the Property has not been regularly used or maintained as a house of worship.
- F. The Property is located within the City’s downtown, in close proximity to parks, libraries, residences and businesses, such that vacancy or disrepair of the Property has a deleterious impact on the economic vitality of the City.
- G. In March 2014, the Developer acquired the Property, with the intent of rehabilitating it for commercial use as a venue for such private events as weddings, business meetings, and celebrations.
- H. The Developer’s intended rehabilitation and reuse of the Property will involve the investment of substantial financial resources in the Property by the Developer.
- I. The City Council, as the legislative body of the City, has determined that the Developer’s intended rehabilitation and commercial use of the Property will substantially benefit the City and will:
 - i) preserve an historically significant building;
 - ii) restore the Property to good repair;

- iii) return an empty building to active use;
 - iv) generate increased tax revenue for the City; and
 - v) contribute to the economic revitalization of the City.
- J. The Developer has requested the City's assistance in minimizing its costs of redeveloping the Property, in the form of stable property taxes assessed on the Property during the Developer's period of redevelopment and initial use of the Property for business as a private event center.
- K. The City has agreed to provide this assistance, subject to the terms and conditions of this Agreement.

THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Developer agree as follows.

AGREEMENT

1. DEVELOPER'S OBLIGATIONS

As conditions of the City's undertakings and assistance described in this Agreement, the Developer covenants to perform the obligations set forth in this section (the "Developer's Obligations").

- 1.1. Developer's Obligation to Complete the Project. Not later than December 31, 2016, the Developer will complete the renovations and rehabilitation to the Property described in the attached Exhibit B, which is incorporated into this Agreement by reference "the Project."
- 1.2. Developer's Minimum Investment. Developer's total investment in the Project shall not be less than \$400,000.00, including reasonable compensation to Developer's manager(s) and employee(s) and services by independent contractors, and including investments in the Project that predate this Agreement, but in any event sufficient to complete the Project by December 31, 2016.
- 1.3. Developer to Open for Business. No later than January 1, 2017, the Developer shall open the Property for business as a commercial venue for hosting public or private events that may include such events as weddings and meetings.
- 1.4. Developer to Comply with City Land Use Code and Ordinances. Nothing in this Agreement shall be deemed a waiver of the City's Land Use Code and Ordinances (the "City Code"). The Developer shall at all times abide by these requirements, and shall construct the Project in accordance with the City Code, and shall maintain the Property in accordance with the criteria in the Ordinance and the requirements of the City's Historic Preservation Review Board.

2. CITY'S OBLIGATIONS

In light of the expected contributions of the Project to the City's economic revitalization, the City will undertake the following responsibilities (collectively, the "City's Obligations"), subject to the Developer's ongoing satisfaction of the Developer's Obligations:

2.1. Establishment of Baseline Valuation. The Developer and the City agree that the Property has an existing valuation of \$321,600 as of April 1, 2014. This shall be referred to as the "Baseline Valuation."

2.2. Reimbursement of Taxes.

2.2.1. Provided that the Developer continues to satisfy the requirements for historic preservation stated in 30-A M.R.S. § 5730, and otherwise is not in Default under this Agreement, the City agrees that for the 2015, 2016, 2017, 2018, and 2019 Tax Years, the City will reimburse the Developer for taxes paid on the Property according to the formula described in this Section. The term "Tax Year" means the municipal tax year which begins on July 1st after the preceding April 1 assessment date in that same calendar year, and which ends on the following June 30. For example, the Tax Year beginning July 1, 2014 and ending June 30, 2015 shall be herein referred to as the 2015 Tax Year.

2.2.2. In each Tax Year, the amount to be reimbursed to the developer ("Reimbursement") shall be calculated by multiplying the applicable mill rate that is established by the City Council for all real property subject to taxation within the City in each Tax Year ("Applicable Mill Rate"), by the difference between: the actual assessed valuation of the Property in each Tax Year ("Actual Valuation") and the Baseline Valuation.

Reimbursement = Applicable Mill Rate * (Actual Valuation – Baseline Valuation)

2.2.3. For each Tax Year, the Developer shall continue to pay taxes to the City based upon the Actual Valuation and Applicable Mill rate.

2.2.4. Within 30 days after the Developer pays its taxes in each Tax Year, the City shall pay the Reimbursement to the Developer.

2.3. Termination of Reimbursement. Beginning with the 2020 Tax Year, the Reimbursement will cease.

3. PROJECT CONDITIONS

In addition to the Developer's Obligations and the City's Obligations, if any of the following conditions are not satisfied, this Agreement shall terminate and the parties shall have no further obligations hereunder (each a "Project Condition"):

3.1. Default and Remedies.

- 3.1.1. Events of Default. Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default":
- 3.1.1.1. Abandonment of Project. Developer shall abandon the Project or otherwise fail to complete the Project as described in Exhibit B.
 - 3.1.1.2. Failure to Pay Taxes. Developer shall fail to make full payment of all municipal taxes assessed upon real or personal property of Developer included in the Project when due.
 - 3.1.1.3. Other Failures to Perform. Any other failure by a party, other than a payment failure, to observe and perform in all material respects any covenant, condition, agreement, or provision contained herein on the part of the party to be observed or performed, including the Developer's Obligations and the City's Obligations.
 - 3.1.1.4. Events of Insolvency. An Event of Insolvency shall occur if a decree or order of a court or agency or supervisory authority having jurisdiction in the premises for the appointment of a conservator or receiver or liquidator of any insolvency, readjustment of debt, marshaling of assets and liabilities, or similar proceedings, or for the winding up or liquidation of a party's affairs shall have been entered against the party or the party shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the party or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the party or the failure by the party to have a petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the party.
- 3.1.2. Remedies on Default. Whenever any Event of Default (a) other than a payment failure shall have occurred and be continuing for a period of thirty (30) days after a party's receipt or refusal of written notice of such Event of Default by the party or, (b) in the case of a payment failure, continues beyond any applicable grace period, if any, the other party may, in its discretion, (1) obtain all available remedies for such Default, including but not limited to requiring performance or observance of any obligations, agreements, or covenants of the defaulting party under this Agreement and any documents, instruments, and agreements contemplated hereby; (2) suspend its performance under this Agreement for so long as the Event of Default continues or remains uncured; and/or (3) declare an Event of Default to exist and terminate this Agreement and its obligations under this Agreement. Developer agrees to pay the City's expenses, including reasonable attorneys' and paralegal fees, incurred in connection with enforcing this Agreement or as a result of an Event of Default by Developer.

3.1.3. Remedies Cumulative. No remedy herein conferred upon or reserved to a party is intended to be exclusive of any other available remedy or remedies. Each and every such remedy shall be cumulative and shall be in addition to the remedy given under this Agreement or now or hereafter existing at law, in equity, or by statute. Delay or omission to (a) exercise any right or power accruing upon any Event of Default, (b) insist upon the strict performance of any covenant or agreement herein set forth, or (c) exercise any right or remedy upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the rights to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the other party with all of the covenants and conditions hereof, or of the rights to exercise any such right or remedy, if such Events of Default be continued or repeated.

3.1.4. Indemnification. Developer agrees that it will at all times indemnify and hold harmless the City and each officer or employee of the City against any and all losses, costs, damages, expenses and liabilities of whatever nature including, but not limited to, reasonable attorney's and paralegal fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments, directly or indirectly resulting from, arising out of, or related to one or more Claims (hereinafter defined), but excluding any Claims to the extent arising from the City's negligent acts or omissions. The term "Claims" as used herein shall mean all claims, lawsuits, causes of action, and other legal actions and proceedings of whatever nature against the City relating in any manner to the actions or omissions of Developer in connection with the development of the Project and Developer's performance under this Agreement including, but not limited to, claims, lawsuits, causes of action, and other legal actions and proceedings involving bodily or personal injury or death of any person or damage to any property (including but not limited to persons employed by the City or any other person and all property owned or claimed by the City, Developer, any affiliate of Developer, or any other person).

The obligations of Developer under this Section shall apply to Claims that arise out of or are related to any event, occurrence, condition, or relationship prior to termination of this Agreement, whether or not such Claims are asserted prior to termination of this Agreement or thereafter. The obligations of Developer under this Section shall not be affected by an assignment or other transfer by the City or Developer of its right, title, or interest under this Agreement and will continue to inure to the benefit of the City and its officers and employees both prior to and after any such assignment or transfer. The City or its officers or employees, as appropriate, shall reimburse Developer for payments made by Developer pursuant to this Section to the extent of any proceeds, net of all expenses of collection, actually received by them from any insurance with respect to Claims. The City and its officers and employees shall have the duty to claim any such insurance proceeds, and the City and its officers and employees, as appropriate, shall assign their respective rights to such proceeds, to the extent of such required reimbursement, to Developer. In case any action shall be brought or, to the knowledge of the City or its officers or employees, is threatened against any of them in respect to which indemnity may be

sought against Developer, the indemnified party shall promptly notify Developer in writing and Developer shall have the right to assume the investigation and defense thereof including the employment of counsel and the payment of all expenses. Developer shall inform the City as to all material developments in the course of such proceedings and shall take no action committing the City to a settlement or resolution without the City's consent. The indemnified party shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof. The fees and expenses of such counsel shall be paid by such indemnified party unless Developer has not elected promptly after receipt of written notice from such indemnified party to provide such representation, in which event such fees and expenses of such counsel shall be paid by Developer, provided that Developer shall have been notified in writing of the employment of such counsel. Developer shall not be liable for any settlement of any such action without its consent, but, if any such action is settled with the consent of Developer or if there be final judgment for the plaintiff in any such action, Developer agrees to indemnify and hold harmless the City and its officers and employees from and against any losses, damages, and costs incurred by reason of such settlement or judgment. Notwithstanding any other provision of this Agreement, this section shall survive any termination of this Agreement. The foregoing indemnification shall not apply to any action brought by Developer to enforce this Agreement or to realize the benefit of this Agreement.

4. MISCELLANEOUS

- 4.1. Invalidity. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 4.2. Integration. Except as otherwise expressly provided herein, this Agreement contains the entire agreement between the parties hereto, and no modification, amendments, change or discharge of any term or provision of this Agreement shall be valid or binding unless the same is in writing, signed by all parties hereto. No waiver of any of the terms of this Agreement shall be valid unless signed by the party against who such waiver is asserted. The parties agree that they will not assert in any action arising under this Agreement that an amendment or waiver of this Agreement has occurred unless made in writing.
- 4.3. Notices. Any notice, demand, offer, or other written instrument required or permitted to be given, made, or sent hereunder shall be in writing, signed by the party giving or making the same, and shall be by hand delivery or sent by certified mail to the other at its respective address stated above. Any party hereto shall have the right to change the place to which any such notice, offer, demand, or writing shall be sent to it by similar notice sent in like manner to the other party. The date of receipt or rejection of any offer, demand, notice, or instrument shall be deemed to be the date of such offer, demand, notice, or instrument and shall be effective from such date.
- 4.4. Choice of Law; Jurisdiction. It is the intention of the parties to this Agreement that this Agreement, the performance under this Agreement, and all suits and special proceedings

under this Agreement be construed in accordance with and under and pursuant to the laws of the State of Maine and that in any action, special proceeding, or other proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Maine shall be applicable and shall govern to the exclusion of law of any other forum. The parties agree to the jurisdiction of the courts of the State of Maine or of the United States of America located in the State of Maine and agree that any action relating to this Agreement shall be brought in either such court.

- 4.5. Effective Date and Term. This Agreement shall remain in full force from the date of execution of this Agreement and shall expire upon the performance by the City and Developer of their respective obligations under this Agreement unless sooner terminated as provided in this Agreement.
- 4.6. Waiver. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
- 4.7. Assignability. Developer shall not have the right to transfer or assign all or any portion of its rights in, to, and under this Agreement at any time unless the City, by its City Administrator, consents to the same, which consent shall not be unreasonably withheld.
- 4.8. Parties in Interest. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person other than the City and Developer any right, remedy, or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and Developer.
- 4.9. No Personal Liability of Officials of the City. No covenant, stipulation, obligation, or agreement of the City contained herein shall be deemed to be a covenant, stipulation, or obligation of any present or future elected or appointed official, officer, agent, servant, or employee of the City in his or her individual capacity, and no such person shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.
- 4.10. Section Headings. The title to the Sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.
- 4.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the said City of Lewiston and the Developer have caused this Agreement to be executed on their behalf by their officials and officers, as set forth below, thereunto duly authorized, as of the day and year first above written.

[SIGNATURE PAGES FOLLOW]

CITY OF LEWISTON

WITNESS

By: Edward A. Barrett
Its: City Administrator

STATE OF MAINE
ANDROSCOGGIN, SS.

April __, 2014

Personally appeared before me the above-named Edward A. Barrett, City Administrator of the City of Lewiston and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said City of Lewiston.

Notary Public/Attorney-at-Law

AGORA LLC

WITNESS

By: Andrew Knight
Its: [Sole Member/Manager]

STATE OF MAINE
ANDROSCOGGIN, SS.

April __, 2014

Personally appeared before me the above-named Andrew Knight, [Sole Member/Manager] of Agora LLC and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of Agora LLC.

Notary Public/Attorney-at-Law

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT B
PROJECT DESCRIPTION

Renovation of Inn (formerly the St. Patrick's Rectory, located at 1 Walnut Street):

The renovation of the Inn will include a variety of projects that include, but are not limited to, an updating of bathrooms, reflooring where appropriate, updating of kitchen, painting where appropriate, plumbing repairs and updates, heating repairs and updates, and general repairs and maintenance.

Renovation and Repurposing of Church/Sanctuary and Chapel (formerly St. Patrick's Church and Chapel, located at 220 Bates Street):

The renovation and repurposing of the church and chapel will include, but are not limited to:

- Making repairs where necessary to reduce weathering by the elements, such as repairing/replacing broken windows, repairing broken gutter downspouts, addressing roof leaks, etc.
- Rehabilitating the flooring or reflooring
- Updating and/or adding bathrooms, where appropriate, to accommodate the expected occupancy load according to the property's use
- Making cosmetic improvements, such as addressing peeling paint, window décor/treatments, etc.
- Installing at least one of a kitchen and a bar area
- Installing at least one of a suite and a living area in the balcony (where not prohibitive due to Maine or local code or regulatory obstacle)
- Installing a sound system

The Project will also include creating a business, including marketing, advertising, showing the property, customer service, and other items necessary for producing revenue.



Department of Public Works

David A. Jones, P.E.

Director



May 6, 2014

Re: Proposed Amendment to the Lease with Casella Recycling, LLC for their Materials Recycling Facility (MRF)

Honorable Mayor and Members of the City Council,

On February 25, 2013, the City entered into a lease agreement with Casella Recycling, LLC to allow Casella to establish a Materials Processing Facility on a portion of our solid waste facility property. There has been one amendment to the lease dated July 31, 2013 that allowed the relocation of City facilities on the premises at Casella's expense. Construction on the site has begun with the relocation of those City facilities and construction of the MRF is expected to begin soon.

As part of the agreement, the City budgeted and funded the construction of a 60' X 90' cold storage building to store off-season equipment that had previously been stored in the building Casella will lease. The City also needs to construct a roof over a portion of the Drop-Off area to protect solid waste materials dropped at the facility from the elements (rain & snow). The City Council held a Public Hearing and Adoption of the FY2014 Lewiston Capital Improvement Program Bond Issue Order at their meeting on June 4, 2013. Included in the list of projects approved was \$310,000 for "PW Storage & Improvements" which addressed the needs mentioned above.

The off-season equipment storage building was recently awarded to RDB Construction of Auburn, Me and is now under contract with a contract price of \$167,333. With contingency and engineering/administration, the total cost of this portion of the project is expected to be ~\$200,000 leaving \$110,000 available for the Drop-Off area roof and steel portion of the project.

The work in the Drop-Off area is in the same area where Casella's contractor will be working to construct the MRF. Both the City and Casella agreed it would be best not to have two separate contractors working in the same area with likely interference and impacts upon each. The City approached Gendron & Gendron (Casella's contractor for their work) and negotiated a price of \$100,500 to perform all the work needed in the Drop-Off area. Casella agreed to amend the Lease Agreement such that the City would provide a payment of \$100,500 to Casella and they would assume all responsibility for managing the work and ensuring it was coordinated and completed to meet the City needs.

I have included a draft of the proposed Lease Amendment that would make this agreement part of the lease. We will be asking the City Council to authorize the City Administrator to execute this amendment.

Sincerely,

David A. Jones, P.E.
Director

Cc: E. Barrett

SECOND AMENDMENT TO
MATERIALS PROCESSING FACILITY LEASE
BETWEEN THE CITY OF LEWISTON AND CASELLA RECYCLING, LLC

Whereas, on February 25, 2013 the City of Lewiston (hereafter "CITY") and Casella Recycling, LLC (hereafter "CASELLA") entered into a lease agreement (the "Lease") to lease certain property (the "Premises") to allow CASELLA to establish a Materials Processing Facility ("MRF") on the Premises; and

Whereas, both parties have met the obligations of the Lease to date and CASELLA continues to make progress toward establishing the proposed MRF; and

Whereas, as planning for the facility has progressed, the City has to construct a protective roof structure over a portion of the drop-off area to accommodate relocation of operations from the Premises CASELLA will occupy (the "Work"); and

Whereas, because of the proximity of the area to where CASELLA's contractor will be working, it has been determined that the same contractor shall perform the Work; and

Whereas, the City has negotiated the scope and price for the Work as identified in Attachment D (new to the lease);

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to this Second Amendment to the Materials Processing Facility Lease.

1. All capitalized terms not defined herein shall have the same meaning as set forth in the Lease.
2. A new Attachment D to the lease is added. Attachment D is an aerial view identifying the Work area and a scope and proposal from Gendron & Gendron (the "Contractor") in the amount of one hundred thousand five hundred dollars (\$100,500), the ("Payment") to construct a roof structure and add steel plates to reinforce the collection area within the drop-off area.
3. Article 4: Subsection D. Drop-off Area Work is added as shown below:

D. Drop-Off Area Work for City. The City shall pay Casella the Payment for the Work as further described in Attachment D. Casella will have the Contractor perform the Work in coordination with their other work on the MRF project. The

City agrees to reimburse Casella within seven (7) days of receipt by the City of an invoice from Casella for the performance of the Work. This Work shall be completed prior to the City having to vacate the tipping room floor of the former shredder building for the handling of municipal solid waste at the facility. If change orders for additional work are agreed to in advance by the City, related invoices will be paid to Casella within seven (7) days of receipt by the City.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to Lease to be executed in their respective names and on their respective behalves by their duly authorized officers this _____ day of _____, 2014, A.D. at Lewiston, Maine.

LESSOR, CITY OF LEWISTON

BY: _____

LESSEE, CASELLA RECYCLING, LLC

BY: _____

EARTHMOVERS/GENERAL CONTRACTING/DEVELOPERS

GENDRON & GENDRON

President
David Gendron

P. O. Box 1913 - 50 Alfred Plourde Parkway
Lewiston, Maine 04241-1913
TEL. 207-782-7372
FAX. 207-782-7308

Vice President
John Gendron
e-mail
johng@gendroncorp.com

April 9, 2014

David Jones
Director of Public Services
City of Lewiston Public Works
103 Adams Avenue
Lewiston, Maine 04240

Re: Operation Center Recycling Facility Building (**Revised**)

Scope of Work:

- Supply and Install (4) 7'X7'X1' Piers with 3'6" Column Walls
- Excavate and Backfill for new Foundations
- Saw Cut Pavement
- Patch Pavement
- Supply and Install Roofing Plywood
- Supply and Install (1,000 SF) Roof Structure
- Supply and Install (1,000 SF) Fully Adhesive Rubber Roof
- Supply and Install Murox Structure
- Supply a Foundation Design
- Building Permit

Total: \$66,800.00

Steel Plate Work:

- Supply and Install (3/8") Steel Plate (4') High around interior perimeter
- Supply and Install Lag bolts
- Supply and Install welding from plate to lag bolt
- Supply and Install 1500 PSI concrete for back of plate

Total: \$33,700.00

Grand Total: \$100,500.00

Attachment D



Attachment D

Multifamily Energy Efficiency Loan Program (ENERGY)

Program Overview

The City's Multifamily Energy Efficiency Loan Program (ENERGY) is a key strategy to bring energy improvements and financial stability in the downtown rental housing properties. Eligible multifamily property owners will be required to participate in Efficiency Maine's "Custom Path" energy program which requires that the owner select an energy auditor approved by Efficiency Maine (known as Multifamily Efficiency Partner) who will develop an Energy Reduction Plan that will reduce energy consumption by 20% and generate a 10% internal rate of return.

The City's program is being funded through the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) program and administered by the City's Economic and Community Development Department. Funding will be concentrated in downtown Census Tracts 201, 202, 203, and 204, which has the largest concentration of multifamily rental housing units. (See Appendix 1: Map of the Target Area).

The benefits to the property owner through the "Custom Path" program through Efficiency Maine, will be a guarantee that each property will have a full energy audit, a written Energy Reduction Plan with direct/meaningful recommendations and scope of work needed to qualify for a 50% rebate in total project costs from Efficiency Maine. This strategy will maximize the amount of funding available for the property owner with the guarantee of a return on investment.

Program Criteria

Property Eligibility: To be eligible, the property must be a rental property with 5+ units, located in the target area; may be owner occupied or investor owned; in "good standing" with Code Enforcement; and building must be structurally sound. Mixed use commercial properties with rental units may qualify under this program, but needs to meet the parameters of the Efficiency Maine program.

Applicant Eligibility: The applicant must have proof of ownership of the building; must be current on all City assessments for the property itself and any other buildings owned in the City of Lewiston; and may not be an elected or appointed City Official. At least 51% of the rental units in the property must be occupied by low-moderate income residents. (See Appendix 3: Median Family Income Guidelines). As part of the application, the owner must provide Tenant Income Verification Forms filled out and signed by the tenant. (See Appendix 4: Tenant Income Verification Form). Owner must provide releases to the City for all energy consumption for the

past year, a current rent roll and proof of actual rents received, verifiable proof of operating expenses for the past two years which will be included into a rental proforma that will be used to determine financial viability.

Affordability Requirements: At least 51% of the units must be rented to low-moderate income residents for a period of one year. (See Appendix 2: Fair Market Rents). See Boilerplate for detailed description.

City Assessments: Applicants may not be delinquent on property taxes, personal property taxes, trash, water or sewer bills, or have any outstanding or delinquent accounts on any property of which they are a principal owner within the City of Lewiston. Applicants must demonstrate a record of compliance with the City of Lewiston's codes, ordinances and policies and any other local, state, or federal rules and regulations that apply. Isolated violations will not be considered as a failure if addressed in a cooperative manner.

Eligible Expenses: Allowable improvements are identified in the energy audit and delineated in the Custom Path Energy Reduction Plan that has been prepared by a Multifamily Partner. The most common improvements may include: replacement of furnace, conversion of oil to gas, water heaters, insulation, low flow aerators, etc. Other improvements affecting the efficiency of the property may be required and can be included under the total project costs with the Efficiency Maine program. These are: repair/replacement of a roof before insulation is blown into the attic or replacement of knob and tube wiring before insulating the walls; etc.

Program Administration: The rental property owner applies to the City of Lewiston Economic and Community Development Department for the City's ENERGY program. Once pre-qualified for the City program, the owner will choose a Multifamily Partner (MFP) from the Efficiency Maine website. The MFP will begin the energy audit, a fee of \$250/unit will be required from the owner as a commitment to proceed. This fee will be paid to the City in 1/3 increments, with the final payment received prior to the release of the Energy Reduction Plan (ERP). This audit fee will be considered as part of the applicant match. If the owner does not proceed with the Energy Program, the City will keep the audit fee and reimburse the MFP for time spent on the audit. The owner, the MFP and the City will meet to discuss the Energy Reduction Plan (ERP) plan, the MFP will write the specifications and bid the work. The construction management will proceed according to the City's rehabilitation guidelines. Davis Bacon Wage Rates will apply to all projects in excess of 9 units. The City will provide the proper documentation for the bid package. The contractors will be required to obtain the proper permits from the Code Enforcement Department; and provide a copy of insurance, RRP certification if required, and any other required documentation according to the City rehabilitation programs. There will be no self-help allowed by the owner even if they are a contractor, only qualified contractors that have been properly vetted by the City will be allowed to complete the work under this program.

(City requirement not Efficiency Maine). Once all qualified bids are received, the City will prepare the file for the Loan Qualification Committee (LQC) for approval.

Financing Structure: Once approved by the LQC, the total project costs is equivalent to 2x's the size of the expected rebates from Efficiency Maine. From this total project cost, a 20% verifiable match is required from the owner (minus the fee from the energy audit); the City will provide a "bridge" loan to fund the recommended energy improvements or 80% of the total project cost. The owner must agree to have the City act as "Agent for Owner". Once the energy improvements have been made, and verified through an Independent Engineer appointed by Efficiency Maine; the rebates (50% of the total project cost) will be paid directly from Efficiency Maine to the City to repay 50% of the loan back immediately leaving a loan of 30% to be repaid by the Owner to the City over a period of 10 years.

The total project costs needed to qualify for the 20% energy savings may exceed the cost of twice the rebates. If this occurs, the owner will be responsible for the additional cost and the owner match may exceed 20%.

10 unit building – total project costs	\$32,000	(2x's rebates of \$16,000)
Owner contribution	\$ 6,400	(20% match including audit fees)
Efficiency Maine (\$1,600/unit	<u>(\$16,000)</u>	Rebates repays 30% of City loan
City of Lewiston loan after rebates received	\$ 9,600	(30% loan)

After construction is completed, it takes 4-6 weeks for Efficiency Maine to pay out the rebates. City of Lewiston as "Agent for owner" receives rebate directly from Efficiency Maine, after an independent Engineering Company determines that the program thresholds have been met and the energy improvements have met the threshold requirements of 20% in energy savings and 10% internal rate of return.

Financing Terms: Terms will be tiered as follows:

- Principal residence of owner inside Lewiston or Auburn, 2% up to 10 years as determined by LQC
- Principal residence outside Lewiston-Auburn, 3% up to 10 years as determined by LQC

Funding Agreement: Applicants must agree to the terms and conditions of the program. All loans will be secured by a Mortgage and require a Personal Guaranty of all owners and partners.

Federal, State and Local Requirements May Apply: Most of the funding available to the City for grants and loans comes from federal or state sources, which means there are some restrictions or requirements that must be met. Additionally local ordinances may apply. Restrictions governing these funds are described in a later section of these guidelines.

Funding Source: Community Development Block Grant (CDBG). Other federal, state, or local funding may also be used based on availability and at the City's discretion.

DRAFT FOR DISCUSSION ONLY

VACANT AND ABANDONED RENTAL PROPERTY REHABILITATION INCENTIVE PROGRAM

Purpose: To provide an incentive for a new owner to purchase, rehabilitate, and bring significantly distressed, vacant and abandoned rental properties (including multi-use buildings where the predominant use (over 50%) is residential) that satisfy the dangerous building definition of MRSA Title 17 Section 2851 into code compliance.

Eligibility: The rental property must be recognized as significantly distressed or vacant and abandoned by Code Enforcement and must be located in the area designated by the City. The new owner must fully rehabilitate the property in a manner acceptable to Code Enforcement and the Fire Department and must invest a minimum of 50% of the after renovation assessed value of the property into improvements.

Application: A new or prospective owner of a vacant and abandoned property may apply for entry into this program prior to commencing any building improvements. The applicant must detail the proposed improvements to be made to the property and the estimated cost of such improvements. Upon application, Fire and Code shall undertake a full inspection of the property to clarify and specify what must be done to bring the property into compliance with city codes and meet the requirements of the program and the applicant must agree to include all required compliance work in the project.

In order to be and remain eligible, the property must:

- Be purchased by a new owner with a record of responsible multi-family unit ownership in Lewiston or other communities;
- Have on file with the Code Enforcement Department and the Fire Department the name and contact information of the individual or individuals responsible for responding at any time to building issues and to ensure that this information is up-to-date and accurate at all times; such individual (s) must be able to respond to the property within 30 minutes, either during the day or night;
- Have active management, defined as an owner living on site, a designated on-site manager, or frequent visits by an off-site manager (minimum 3 times a week), with the manager responsible for insuring that: all hallways and exits are free of trash, debris, or tenant storage; all solid waste is disposed of properly with waste or debris stored in appropriate containers and no waste or debris elsewhere on site or on immediately adjacent city rights-of-way; all porches and exterior stairways free of storage, trash, or other code violations;

- provide appropriate solid waste containers for all residents, either individually or collectively through a common dumpster, and have no more than one solid waste citation involving inappropriate trash storage on the property or in the City's adjacent right of way in any twelve month period, such violation to be remedied immediately upon notice;
- Be inspected annually by Code Enforcement and the Lewiston Fire Department;
- Remain in code compliance at all times or immediately address any code issues that are identified within the time limits prescribed by Code Enforcement or the Fire Department;
- Remain in compliance with the heating provisions of the City's building code unless such violation could not have been reasonably foreseen, in which case immediate actions to rectify the situation shall be undertaken. No more than one instance of running out of oil will be allowed within a twelve month period;
- Not have five (5) or more occurrences of Disorderly Conduct at a Dwelling Unit within that property in any thirty (30) day period, or fifteen (15) or more occurrences of disorderly conduct within the preceding year; if these incidents do occur, the owner or agent must meet with the Chief of Police or designee within seven days of notice from the Department and agree to implement and aggressively pursue a plan of remediation, with failure to do so grounds for loss of program eligibility;
- At the time incentive payments are made, the property owner must be current on all amounts owed the City associated with this property or other property owned in Lewiston. For purposes of this requirement, the incentive payment may be used to bring all accounts current, including any overdue property taxes.

Incentive Payment. Properties meeting the requirements will be eligible for an incentive payment equal to \$500 per unit per year for up to a three year period. Incentive payments will be made on or about October 1st of each year.

Removal from the program: Properties shall be removed from the program for any violation of the eligibility requirements outlined above or upon sale of the property by the original qualifying owner. The Director of Planning and Code Enforcement is the individual authorized to disqualify a property for violation of program eligibility requirements. That disqualification may be appealed to the City Administrator, whose determination shall be final.

Limit on Number of Properties Admitted to Program. The number of properties admitted to the program annually may be capped based on available funding.

This program may also be used in conjunction with other City incentive programs.