

# CITY OF LEWISTON

CITY COUNCIL

FEBRUARY 16, 2010

## REGULAR MEETING HELD IN THE COUNCIL ROOM AT 7:00 P.M.

THE HONORABLE LAURENT F. GILBERT, SR., MAYOR, PRESIDING.

PRESENT: Mayor Gilbert, Councilors Butler, Bernier, Poulin, Jean, Cayer and Morgan, City Administrator Edward Barrett, and City Clerk Kathleen Montejo. Absent/Excused: Councilor O'Connell

Prior to the beginning of the regular meeting, the Council meet in workshop session to discuss the proposed Sewer Claims appeal process. During the workshop, Councilor Morgan inquired about the status of the demolition of the Bates Mill 5 building. After the workshop session, the Council entered into an Executive Session.

### EXECUTIVE SESSION

#### **VOTE (56-2010)**

Motion by Councilor Jean, seconded by Councilor Poulin:

To enter into an Executive Session pursuant to MRSA Title 1, section 405 (6) (E) to discuss a legal matter with the City Attorney. Passed - Vote 6-0

Executive Session began at 6:55pm and ended at 7:15pm.

At this point, the Mayor began the regular meeting.

Pledge of Allegiance to the Flag.  
Moment of Silence.

### **PROCLAMATION HONORING FINANCE DIRECTOR RICHARD METIVIER**

The Mayor read a Proclamation honoring and recognizing Finance Director Richard T. Metivier on his forty years of service to the City in the Finance Department and also on his retirement which begins on Friday. The Mayor thanked Mr. Metivier for his work and dedication over the years, noting the City has received many finance related awards and honors under his leadership.

#### **VOTE (57-2010)**

Motion by Councilor Cayer, seconded by Councilor Jean:

To dispense with the reading of the minutes of the meeting of February 2, 2010 and to accept and place them on file as prepared by the City Clerk. Passed - Vote 6-0

### **PUBLIC COMMENT PERIOD**

Mr. Clements of First Street addressed the Council and asked them to use their microphones when they are speaking during the meetings. He noted it is extremely difficult to follow the conversations on television when Councilors do not use their microphones.

**ANNUAL AUTHORIZATION FOR THE PUBLIC WORKS DEPARTMENT TO POST CERTAIN ROADS, FROM MARCH 1 TO MAY 1, PROHIBITING VEHICLES HAVING A GROSS VEHICLE WEIGHT OF OVER 23,000 POUNDS**

**VOTE (58-2010)**

Motion by Councilor Jean, seconded by Councilor Morgan:

To authorize the Public Works Department to post the following roads prohibiting vehicles having a gross vehicle weight of over 23,000 pounds:

From March 1, 2010 to May 1, 2010:

- Ferry Road - From Apple Road to River Road
- River Road - From Ferry Road to Solid Waste Facility
- Dyer Road - From Lisbon Road to Ferry Road
- Pinewoods Road - From Ferry Road to Town Line
- Gayton Road - From Lisbon Road to Town Line
- Webster Road - From Old Lisbon Road to Crowley Road
- Merrill Road - From College Road to Main Street
- Sleeper Road - From Merrill Road to Town Line
- Randall Road - From Sunrise Lane to Grove Street
- Grove Street - From Randall Road to Town Line
- Old Greene Road - From North Temple Street to Town Line
- No Name Pond Road - From Old Greene Road to Town Line
- Pond Road - From Cherrywood Drive to No Name Pond Road

Passed - Vote 6-0

**REQUEST FROM THE COMMUNITY CREDIT UNION TO WAIVE LANDFILL TIPPING FEES FOR THE DEMOLITION PROJECT AT 70 HOWE STREET**

Deputy City Administrator Phil Nadeau reported the City was notified by the Executive Director of the Community Credit Union this afternoon that the credit union will no longer be purchasing this property and therefore asked to have this item removed from the agenda.

**AUTHORIZATION TO USE FEDERAL HOME FUNDS TOWARD THE DEVELOPMENT OF SENIOR HOUSING UNITS TO BE CREATED AT 81 ASH STREET**

**VOTE (59-2010)**

Motion by Councilor Jean, seconded by Councilor Morgan:

To authorize the use of up to \$300,000 of Housing and Urban Development HOME Funds allocated to the City of Lewiston for use towards the development of the 81 Ash Street Intown

Manor Affordable Housing project and to further authorize City staff to take necessary and appropriate steps to provide these funds to the project. Passed - Vote 6-0

**PUBLIC HEARING ON A RENEWAL APPLICATION FOR A SPECIAL AMUSEMENT PERMIT FOR THE CAGE, 97-99 ASH STREET**

Mayor Gilbert opened the public hearing to receive citizen input and comment. Business owner Randy Collins stated he was present to address any questions the Council may have. The Mayor informed him of the new senior citizen housing units that will be developed at 81 Ash Street and suggested Mr. Collins will want to make sure his business and patrons are mindful of this for noise and other related issues. Mr. Collins said he lives in the area and already monitors this activity. Mayor Gilbert then closed the hearing.

**VOTE (60-2010)**

Motion by Councilor Cayer, seconded by Councilor Jean:

To grant a special amusement permit for live entertainment to The Cage, 97-99 Ash Street.  
Passed - Vote 6-0

**PUBLIC HEARING ON THE RENEWAL APPLICATION FOR A SPECIAL AMUSEMENT PERMIT FOR LIVE ENTERTAINMENT FOR BOCCE'S GRILL, 30 LOWELL STREET**

Mayor Gilbert opened the public hearing to receive citizen input and comment. No members of the public spoke for or against this item. Mayor Gilbert then closed the hearing.

**VOTE (61-2010)**

Motion by Councilor Cayer, seconded by Councilor Jean:

To grant a special amusement permit for live entertainment to Bocce's Grill, 30 Lowell Street.  
Passed - Vote 6-0

**PUBLIC HEARING ON THE RENEWAL APPLICATION FOR A SPECIAL AMUSEMENT PERMIT FOR LIVE ENTERTAINMENT FOR BARNIE'S BAR & GRILL, 1065 SABATTUS STREET**

Mayor Gilbert opened the public hearing to receive citizen input and comment. No members of the public spoke for or against this item. Mayor Gilbert then closed the hearing.

**VOTE (62-2010)**

Motion by Councilor Butler, seconded by Councilor Jean:

To grant a special amusement permit for live entertainment to Bernie's Bar & Grill, 1065 Sabattus Street. Passed - Vote 6-0

**PUBLIC HEARING AND FINAL PASSAGE REGARDING THE ELIMINATION OF**

**THE WAIVER OPTION FOR AN OVERTIME PARKING TICKET**

Mayor Gilbert opened the public hearing to receive citizen input and comment. No members of the public spoke for or against this item. Mayor Gilbert then closed the hearing.

**VOTE (63-2010)**

Motion by Councilor Jean, seconded by Councilor Cayer:

That the proposed amendment to the City Code of Ordinances, Chapter 70 “Traffic and Vehicles”, Article IV “Stopping, Standing and Parking”, regarding the elimination of the “forgiveness option” for overtime parking tickets, receive final passage by a roll call vote. Passed - Vote 5-1 (Councilor Bernier opposed)

At this time, the Mayor announced the Council would be taking item ten out of order and addressing it at this time.

**PUBLIC HEARING FOR THE ESTABLISHMENT OF A TAX INCREMENT FINANCING (TIF) DISTRICT AND APPROVAL OF A DEVELOPMENT ASSISTANCE AGREEMENT FOR THE 81 ASH STREET INTOWN MANOR AFFORDABLE HOUSING PROJECT**

Mayor Gilbert opened the public hearing to receive citizen input and comment. No members of the public spoke for or against this item. Mayor Gilbert then closed the hearing. Mark McComas, Acting Director of the Economic and Community Development Department, and James Hatch, the project developer, made a brief presentation to the Council.

**VOTE (64-2010)**

Motion by Councilor Butler, seconded by Councilor Jean:

To authorize the City Administrator to execute the attached Agreement for Development Assistance and Tax Increment Financing between Deep Cove II, LLC and the City of Lewiston, substantially in the form as presented, and to sign any related documents which are deemed necessary for the project, to establish the 81 Ash Street Affordable Housing Development Tax Increment Financing District and to authorize the City Administrator to submit a tax increment financing application to the Maine State Housing Authority, along with other necessary documents in support of this action. Passed - Vote 6-0

**PUBLIC HEARING REGARDING ADOPTION OF BOND RESOLUTION FOR THE LINCOLN STREET PARKING GARAGE PROJECT**

Mayor Gilbert opened the public hearing to receive citizen input and comment. Dennis Mason of 804 Webster Street, stated he uses a parking garage in Portland every day and felt the proposed garage was scaled correctly and is recommended for a good location, noting there are not a lot of options to consider. Mayor Gilbert then closed the hearing. Councilors discussed the location of the garage with Councilor Poulin stating the location would not create an inviting and welcoming site coming over the bridge as would green space and open space. Other Councilors noted the contract obligations regarding the parking spaces. Councilor Morgan asked if the City

has exhausted every other location option and Councilor Bernier stated she agreed with Councilor Poulin regarding the impact on the gateway.

**VOTE (65-2010)**

Motion by Councilor Jean, seconded by Councilor Butler:

Be It Ordered that the Bond Resolution of the Municipal Officers of the City of Lewiston, Maine, regarding the authorization to issue bonds in the amount of \$4,965,000 for the Lincoln Street Parking Garage project, and authorizing and approving the bond documents, be adopted:

Ordered, that the Mayor and City Treasurer are authorized to issue bonds in an amount up to \$4,965,000 in order to finance the construction of the Lincoln Street Parking Garage;

Further Ordered, that the City Council instruct the Finance Director to advertise for bids for the Bonds or negotiation the sale of the Bonds with any qualified purchaser; to award the loan; and to employ Edwards Angell Palmer & Dodge LLP to furnish the legal opinion for the same;

Further Ordered, that the bonds shall be signed by the City Treasurer and Mayor;

Further Ordered, that the date, maturities, denominations, interest rate or rates, place or places of payment, form or other details of the bonds and of the provisions for the sale thereof shall be determined by the Finance Director;

Further Ordered, that bonds hereunder may be subject to call for redemption on such terms as may be determined by the Finance Director.

Did Not Pass - Vote 3-2-1 (Councilor Morgan abstained.)

(Note – The City Charter requires a minimum of four affirmative votes for any Council action to be approved.)

**VOTE (66-2010)**

Motion by Councilor Butler, seconded by Councilor Jean:

To reconsider action on the previous motion. Passed - Vote 4-2 (Councilors Bernier and Poulin opposed)

Since the motion to Reconsider was approved, it motion is automatically before the Council for consideration again:

**VOTE (67-2010)**

Be It Ordered that the Bond Resolution of the Municipal Officers of the City of Lewiston, Maine, regarding the authorization to issue bonds in the amount of \$4,965,000 for the Lincoln Street Parking Garage project, and authorizing and approving the bond documents, be adopted:

Ordered, that the Mayor and City Treasurer are authorized to issue bonds in an amount up to \$4,965,000 in order to finance the construction of the Lincoln Street Parking Garage;

Further Ordered, that the City Council instruct the Finance Director to advertise for bids for the Bonds or negotiation the sale of the Bonds with any qualified purchaser; to award the loan; and to employ Edwards Angell Palmer & Dodge LLP to furnish the legal opinion for the same;

Further Ordered, that the bonds shall be signed by the City Treasurer and Mayor;

Further Ordered, that the date, maturities, denominations, interest rate or rates, place or places of payment, form or other details of the bonds and of the provisions for the sale thereof shall be determined by the Finance Director;

Further Ordered, that bonds hereunder may be subject to call for redemption on such terms as may be determined by the Finance Director.

Passed - Vote 4-2 (Councilors Bernier and Poulin opposed).

**APPROVAL OF WAIVER OF BOND ISSUE LIMIT FOR THE LINCOLN STREET  
PARKING GARAGE PROJECT**

Councilor Bernier expressed concern over taking this vote without all members of the Council present and it was suggested to postpone action on this issue until there was full attendance at a meeting.

**VOTE (68-2010)**

Motion by Councilor Poulin, seconded by Councilor Bernier:

To postpone action on this item to the February 23, 2010 special City Council meeting.

Passed - Vote 5 -1 (Councilor Jean opposed)

**ADOPTION OF ORDER TO SUBMIT A REFERENDUM QUESTION TO THE  
VOTERS AT THE JUNE 8, 2010 ELECTION TO SELL THE BATES MILL NUMBER  
FIVE PROPERTY TO GREAT FALLS RECREATION AND REDEVELOPMENT LLC  
FOR THE PURPOSE OF BUILDING A CASINO**

Councilor Bernier asked for clarification on the principals of the LLC that is coordinating this effort. Councilor Morgan inquired if the proposed terms are reflected in the industry and noted no funds are identified for education. Bruce Damon of 22 Buttonwood Lane expressed concern for a lack of a master plan for the riverfront and downtown development, and suggested this be done before selling the land. He also questioned sharing the revenues with area towns. Dennis Mason of 804 Webster Street asked if the ballot question would be binding if approved. Dr. Ron Chicoine, one of the petition organizers, stated the funds for education are included in the allotment designated for the City. Stavros Mendros, lead partner, stated the LLC wants to work with the City for long term success. Walter Hill of 10 Loubier Avenue suggested taking the time with this proposed and not rushing it. Paul Beauparlant recommended letting the voters decide the issue.

**VOTE (69-2010)**

Motion by Councilor Poulin, seconded by Councilor Butler:

Be It Hereby Ordered by the City Council that the Referendum Question be submitted to the voters at the June 8, 2010 election regarding the sale of the Bates Mill Number Five property to Great Falls Recreation and Redevelopment LLC for the purpose of building a casino on the site:

Do you support the City of Lewiston selling the Bates Mill #5 property to Great Falls Recreation & Redevelopment, LLC at fair market value for the purpose of building a casino that will receive no property tax breaks and pay in excess of 3% of revenue to the City of Lewiston, pending state approval?

#### INTRODUCTORY PARAGRAPHS

- A.** The City of Lewiston (the “City”) is the owner of the contiguous area of land that is bounded on the East by the Upper Canal, on the North by Main Street, on the West by Lincoln Street, and on the South by Cross Canal Number 1 running from the Main Canal to the Mill Street Bridge and the public parking garage to be built on the southwest corner of the Bates Mill No. 5 Surface Parking Lot (Tax Map/Lot parcels 207/153, 207/155, and portions of 207/152; 207/146; and 207/165). Parcels to be conveyed include: Tax Map 207, Lots 138-141, 143, 145, 150, 151, portions of 146 and, and any portion of Lot 165 owned by the City (other than what is required for the parking garage) but not including that land needed for the ROW for the extension of Mill Street from Cross Canal Number 1 to Main Street and other public roads (“Option Property”); and
- B.** Great Falls Recreation & Redevelopment, LLC (“Great Falls”) desires to obtain an option to purchase the Option Property for its redevelopment as a casino (which may be limited to a slot parlor) and related amenities (the “Project”) on the terms set forth below.
- C.** Great Falls on its behalf and on behalf of its assigns and successors in title agrees to not request tax increment financing or similar tax benefits with respect to the Option Property.
- D.** Great Falls has decided to submit its request for the Option to a vote of the voters of the City of Lewiston pursuant to Chapter 32, Article II of the Lewiston Code of Ordinances (the “Initiative”) in June 2010.

#### TERMS OF EXCLUSIVE OPTION TO PURCHASE REAL ESTATE

- 1. Identification of Option Property.** The City grants an option to purchase Option Property identified in Introductory Paragraph A above to Great Falls (the “Option”).
- 2. Option Payment.** Great Falls shall pay to City the following option payments: (a) First Option Payment of Ten Thousand Dollars (\$10,000.00) within thirty (30) days after the voters of the City approve the Initiative; (b) Second Option Payment of Ten Thousand Dollars (\$10,000.00) on or before February 28, 2011; (c) Third Option Payment of Thirty Thousand Dollars (\$30,000.00) on or before July 31, 2011; and (d) Fourth Option Payment of One Hundred Thousand Dollars (\$100,000.00) on or before December 31, 2011. The first three option payments shall not be credited against the Purchase Price for the Option Property. The Fourth Option Payment will be credited toward the Purchase Price. If Great Falls extends the Option term as described in Paragraph 5, the Fourth Option Payment shall be due by December 31, 2012. If Great Falls fails to make any option payment when due, the option agreement shall be automatically terminated.
- 3. Purchase Price.** The purchase price for the Option Property shall be the fair market value of the Option Property at its highest and best use other than as a casino on the date Great Falls notifies the City of its intent to exercise the Option. Upon notice to the City that (i) Great Falls has received approval for the Project in a statewide referendum, (ii) is exercising the

option, and (iii) will close on the real estate within Thirty (30) days from the date on which the Purchase Price is established as provided in this Paragraph; Great Falls shall at its expense, select a qualified real estate appraiser (any appraiser referred to in this paragraph is at a minimum to be licensed in the State of Maine and hold an MAI) to provide a fair market appraisal of the Option Property. . The appraiser shall assume that the Option Property is vacant and free of hazardous waste. After said appraisal is completed it shall be delivered by the Great Falls to the City, which shall have Thirty (30) days to accept or reject the appraisal in writing to the Great Falls. In the event of rejection, the City shall at its expense, select a qualified real estate appraiser to provide a fair market appraisal of the Option Property subject to the same assumptions and shall deliver said appraisal to the Great Falls within Sixty (60) days of its notice of rejection to the Great Falls. If the City and Great Falls cannot agree on the fair market value of the Option Property within fifteen (15) days of the Great Falls having receipt of City's appraisal, the two selected appraisers shall mutually select a third qualified real estate appraiser, whose expense shall be shared equally by City and Great Falls, to provide an independent fair market appraisal of the Option Property. The fair market value established by said third appraiser shall become the fair market value for the calculation of the Purchase Price for the Option Property and be binding upon City and Great Falls.

**4. Option Term.** The Option shall terminate on December 31, 2011, unless extended as provided herein. If the Statewide Ballot Measure (defined below) passes, the Option shall be automatically extended to ninety (90) days after the Project receives final and unappealable state and local regulatory approvals provided Great Falls commences the project design and works toward state and local regulatory approvals (the "Project Development Work") for the Project within one hundred and twenty (120) days after passage of the Statewide Ballot Measure and pursues the Project Development Work diligently to its completion thereafter. If Great Falls fails to actively and diligently pursue the Project Development Work, the City shall have the option of terminating the Option by thirty (30) days written notice and opportunity to cure to Great Falls. In addition to the other option payments, if Great Falls has not purchased the Option Property by December 31, 2012, commencing on January 1, 2013 and continuing on the first day of each month thereafter until closing, Great Falls shall make Additional Option Payments of Five Thousand Dollars (\$5,000.00) to the City. The payments required under this Paragraph shall not be credited to the purchase price.

**5. Optional Extension of Option Term.** If Great Falls decides to place the proposal on the November 2012 statewide ballot and desires to extend the option term to December 31, 2012, Great Falls may do so by making an option extension payment of Fifty Thousand Dollars (\$50,000.00) to the City no later than March 31, 2011. If Great Falls extends the option term to December 31, 2012, Great Falls' obligation to make the Additional Option Payments described in Paragraph 4 shall commence on January 1, 2014. The extension option payment shall not be credited against the Purchase Price for the Option Property.

**6. The Statewide Ballot Measure.** If Great Falls exercises the Option, it shall redevelop the Option Property as a casino and related amenities. The Option is not exercisable by Great Falls unless the casino proposal is approved by the voters of the State of Maine in either November, 2011, or November, 2012 (the "Statewide Ballot Measure"), and by the voters of the City of Lewiston.

**7. Distribution of Casino Revenue.** For the purposes of this section, "net slot machine income" shall be as defined in 8 M.R.S.A., Subsection 1001 (29-A). Unless otherwise provided by state law, distribution of net slot machine income shall be according to the following schedule: 2.0% of net slot machine income to Lewiston, 0.5% to Lewiston for infrastructure improvements, 1.0% to Auburn, 1.0% to Androscoggin County, 0.5% to be shared equally by

Sabattus, Lisbon and Greene, 3% to cleaning Maine rivers with a strong focus on the Androscoggin, and at least 0.3% to a downtown Lewiston renovation fund and 0.3% to an energy independence fund for businesses or individuals to purchase alternative energy sources (windmills, geothermal, solar, etc.) for Lewiston, with the funds for cleaning Maine Rivers and for the purchase of alternative energy sources to be administered by an organization(s) reasonably acceptable to the City for those purposes.. If the casino is approved and developed with gambling revenues derived from sources other than slot machines, or if such sources are added in the future, the City's share of the total distributions paid from those revenue shall be in the same proportions as the City's share of the total distributions paid from net slot machine income revenues is to total net slot machine distributions as set forth in Maine Statutes. If during the Option period and any extension thereto, the distribution of net slot machine revenues required by state law is less than that outlined above, this Option may be terminated at the sole discretion of the City. The City and Great Falls shall then enter into good faith negotiation toward a new distribution formula that shall include terms and conditions intended to provide City with substantially the same share of revenues from gaming operations conducted on the property as contemplated by this Option, with the other terms and conditions of this Option to be included in any successor option.

**8. Obligations of the City.** If the City demolishes Bates Mill #5 consistent with the vote of the City Council to do so, the City (subject to the City's right to remove the hydro power facility parcel described below) shall clear the Option Property so that it is free of currently existing structures and debris and any hazardous wastes present on the Option Property have been remediated in accordance with a Voluntary Response Action Program approved by the Maine Bureau of Remediation and Waste Management acceptable to the City that will permit the development of the Option Property as a casino. In the event the City is not reasonably able to remediate any hazardous waste that may be present on the Option Property, the City will notify Great Falls and Great Falls may either accept the Option Property as it then is or terminate its option. Nothing in this Paragraph shall be construed to require the City to provide any utilities to the Option Property other than those already present. The City shall make reasonable efforts to acquire and demolish that portion of Bates Mill #5 that houses the hydro power facility currently owned by NextEra Energy, provided however that the City shall not be obligated to do so if negotiations with NextEra are not successfully completed at the time that the Option expires. In that case, the City shall have the right to remove a parcel that encompasses the footprint of the hydro power facility plus sufficient land to satisfy the minimum setbacks required by the land use code from the Option and the Purchase Price shall be reduced pro-rata as set forth in paragraph 9 below. If the City does not build the parking garage planned and designed for the southwest corner of the Bates 5 Surface Parking Lot as defined in Introductory Paragraph A, that land will be included in the real estate to be conveyed with the purchase price to be increased pro-rata.

**9. Notice of Exercise of Option.** Great Falls shall provide City with written notice of Great Falls' election to exercise its option rights and acquire the Option Property within the option term described in Paragraph 4 of this Option (together within any extensions). In the event that any portion of the Option Property is not vacant and any hazardous waste has not been remediated as provided in Paragraph 8, the City shall be entitled to an extension of time to close, not exceeding one year to permit it to complete the remediation work and any deadlines set forth in this Option shall be extended by the number of days that are taken by the City to complete any remediation-. If at the end of said one year period, the City has been unable to complete the remediation, Great Falls shall have the right to exercise the Option with respect to the portions of the Option Property that are vacant and free and clear of any hazardous waste or have been remediated as provided in Paragraph 8 and the Purchase Price shall be reduced pro-rata based on

the square footage to be purchased compared to the square footage of the whole or to accept the Optioned Property as is and purchase it in its entirety at the Purchase Price.

**10. Noncompetition.** The member(s), manager(s), employees, partners, joint venturers and agents of Great Falls and members of their respective families (“families” being defined as spouse and minor children) shall not directly or indirectly invest or take any ownership interest in any other future casino and/or gaming project, casino and/or gaming ballot initiative in the State of Maine until such time as this Option is terminated, expires or is exercised and a casino has been constructed on the Option Property.

**11. Memorandum of Option.** City and Great Falls hereby mutually agree that the parties hereto may further memorialize the terms of this Option pursuant to an executed Option Agreement and cause a memorandum to be recorded in the Androscoggin County Registry of Deeds. Great Falls shall bear the cost of recording of said Memorandum.

**12. Default.** In the event of a default by either party under this Option, the non-defaulting party shall be entitled to injunctive relief. In the event of a default by either party under this Option the non-defaulting party shall give the defaulting party thirty (30) days written notice and opportunity to cure the default. Except as expressly provided in Paragraph 15, neither party shall be liable to the other party for any incidental or consequential damages suffered by the other party or their assigns or any of their respective members, shareholders, managers, officers, or directors.

**13. Assignment.** Great Falls has the right to transfer, assign or otherwise convey this Option, any part hereof, or any of its rights, duties, requirements or obligations hereunder to any other person or entity subject to the City’s written approval which may not be unreasonably withheld, conditioned or delayed.

**14. Notices.** Any notices required pursuant to this Option, or other notices which are deemed appropriate by the parties although not specifically called for herein, shall be forwarded by certified United States mail, return receipt requested or by overnight courier with confirmed receipt of delivery to the following addresses: in the case of the City to:

City Administrator  
City of Lewiston  
27 Pine Street  
Lewiston, Maine 04240

and, in the case of the Great Falls to:

Great Falls Recreation & Redevelopment, LLC  
P. O. Box 641  
135 Hogan Road  
Lewiston, Maine 04243-641

**15. Option Property Due Diligence.** City and Great Falls mutually agree that Great Falls shall be solely responsible, at its sole cost and expense, for any and all examinations, inspections, applications, reviews, testing, permits, municipal site plan approval, zoning compliance and all other matters of due diligence Great Falls deems necessary or appropriate regarding its intended use of the Option Property while this Option remains in effect. City shall provide Great Falls (including its agents and contractors) with access to the Option Property for Great Falls to perform all matters of due diligence on the Option Property deemed either necessary or advisable by Great Falls in its sole discretion. In the event Great Falls performs testing on the Option Property, Great Falls agrees that it shall be responsible at its sole expense to restore the Option Property to as close to its pre-testing condition as practicable. Great Falls agrees to (a) hold the City harmless from and (b) defend and indemnify the City against any claims of any type whatsoever, including, but not limited to, any costs, expenses, and /or attorney’s fees incurred by the City, that arise out of or in connection with any actions taken by

Great Falls, its contractors, employees, consultants or agents pursuant to this Paragraph 15. Before undertaking any such activities, Great Falls shall provide a certificate(s) of insurance evidencing liability insurance coverage with limits of not less than \$1,000,000.00 covering for itself and for each contractor, consultant or agent conducting any activity on the Option Property permitted under this Paragraph 15. Notwithstanding anything to the contrary in this Option, in the event any person claiming under Great Falls asserts a mechanics lien on the Option Property by filing a complaint in the local District or Superior Court and such lien is not discharged within sixty (60) days from the date on which the City notifies Great Falls, the City may, in its discretion,, terminate the Option. In any event, Great Falls shall indemnify and defend the City against such claim with the counsel of City's choice.

**16. Purchase and Sale Provisions.** In the event Great Falls exercises the Option under paragraph 9 of this Option, City and Great Falls hereby mutually agree to be bound by the following terms and conditions, which shall be construed as a purchase and sale agreement between Great Falls and City.

- (a) **Option Payments.** The option payments paid by Great Falls to City under Paragraph 2, 4 and 5 above, excluding the Fourth Option Payment, shall not be credited against the Purchase Price set forth in Paragraph 3 above.
- (b) **Title.** Title to the Option Property shall be good and marketable in accordance with the title standards adopted by the Maine State Bar Association, clear of all liens and encumbrances, except for utility, road and any other easements of record that do not have a materially negative effect on the Option Property's development as a casino. City shall convey title by good and sufficient municipal deed given at the time of Closing to Great Falls. In the event Great Falls, upon examination to be performed at Great Falls' expense prior to Great Falls' exercise of the Option hereunder, finds that title to the Option Property is not good, marketable or insurable or otherwise not in compliance with this subparagraph 16(b), Great Falls shall provide City with written notice of the particular defects encountered within fifteen (15) days of the date Great Falls is informed of said defects. Upon delivery of such notice, City shall have an additional period of ninety (90) days to remove said objections (or any greater period agreed to in writing and in advance by Great Falls) to furnish good, marketable and insurable title to the Option Property. In the event that the City is unable to convey title as set forth in this paragraph and as otherwise set forth in this Option, Great Falls shall have the following options: (i) to not purchase the Option Property or (ii) purchase the Option Property, subject to the defect, with the Option Property being reappraised as set forth in paragraph 3 of this Option.
- (c) **Closing.** The closing shall take place on a date and at a time selected by the Great Falls within sixty (60) days of the exercise of the Option at the offices of the City in Lewiston, Maine. At the closing, Great Falls will deliver to City the Purchase Price, and City will deliver to Great Falls a good and sufficient municipal deed conveying fee title to the Option Property (or the portion optioned by Great Falls) as set forth above. In addition, provided Great Falls elects to procure title insurance, City shall execute such affidavits as may reasonably be necessary to delete the standard mechanics liens exception from said title policy.
- (d) **Possession.** Possession of the Option Property shall be delivered to Great Falls by City at closing at set forth above and free of all occupants,

tenants, and persons in possession thereof.

**17. Effect of Option.** All of the provisions of this Option shall extend to, inure to the benefit of, and be binding on the respective successors and permitted assigns of City and Great Falls. This Option shall be governed by the laws of the State of Maine.

**18. Disputes.** Unless a party is seeking injunctive relief, any controversy or claim, arising out of or relating to this Option, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Passed - Vote 6-0

**ADOPTION OF RESOLVE CONFIRMING THE APPOINTMENT OF HEATHER A. HUNTER AS FINANCE DIRECTOR/TREASURER FOR THE CITY OF LEWISTON**

**VOTE (70-2010)**

Motion by Councilor Jean, seconded by Councilor Cayer:

To adopt the Resolve confirming the appointment of Heather A. Hunter as the Finance Director/Treasurer for the City of Lewiston:

Whereas, Finance Director/Treasurer Richard Metivier will be retiring from his position effective February 19, 2010; and

Whereas, Heather Hunter, Deputy Finance Director/Auditor, has been employed by the City of Lewiston since 1989; and

Whereas, Ms Hunter is fully familiar with the City and its accounting, finance, and budgeting processes and has shown her skills and abilities in these areas throughout her years of service with the City; and

Whereas, based on her knowledge and past performance, Ms Hunter is fully qualified to assume the duties of Finance Director/Treasurer; and

Whereas, the City Administrator has selected Ms Hunter to assume the position of Finance Director/Treasurer; and

Whereas, in accordance with the Charter of the City of Lewiston, this appointment is subject to confirmation by the City Council;

Now, therefore, be it Resolved by the City Council of the City of Lewiston that City Administrator Edward Barrett's appointment of Heather Hunter as Finance Director/Treasurer for the City of Lewiston effective as of February 22, 2010 is hereby confirmed.

Passed - Vote 6-0

**ADOPTION OF ORDER AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH MAYORS AGAINST**

**ILLEGAL GUNS FOR THE PURPOSE OF COORDINATING REGIONAL EFFORTS  
TO COMBAT GUN VIOLENCE AND VIOLENT CRIME**

**VOTE (71-2010)**

Motion by Councilor Poulin, seconded by Councilor Jean:

To adopt the Order authorizing the City Administrator to execute a Memorandum of Understanding with Mayors Against Illegal Guns for the purpose of coordinating regional efforts to combat gun violence and violent crime:

Whereas, the Mayors Against Illegal Guns Action Fund and United Against Illegal Guns Support Fund have identified Lewiston as one of several cities to receive funding to assist in advancing efforts to combat illegal guns in Lewiston and throughout the state; and

Whereas, this will involve assisting the Mayor and City in developing and implementing policies to combat illegal guns through public awareness campaigns and other efforts to reduce gun violence and reduce violent crime; and

Whereas, it will also involve working with other cities in Maine involved in the Mayors Against Illegal Guns coalition to develop and implement cooperative information sharing efforts, enforcement strategies, and policy initiatives; and

Whereas, all expenses associated with the Coordinator to be hired for these purposes will be paid in full by this grant; and

Whereas, the City will have no obligation to continue funding this position beyond the period covered by the grant; and

Whereas, therefore, this grant will have no fiscal impact on Lewiston; and

Whereas, this one-year grant will be in the amount of \$75,000 and may, without obligation on the part of the City, be extended for a second year in a like amount; and

Now, therefore, be it Ordered by the City Council of the City of Lewiston that City Administrator Edward Barrett is hereby authorized to execute a Memorandum of Understanding with Mayors Against Illegal Guns for a Regional Coordinator Award in the amount of \$75,000 and to take such steps as are necessary to meet the objectives and requirements of this award.

Passed - Vote 6-0

**PRESENTATION OF THE FISCAL YEAR 2011 LEWISTON CAPITAL  
IMPROVEMENT PLAN AND SETTING A PUBLIC HEARING ON THE PLAN FOR  
THE MARCH 2, 2010 CITY COUNCIL MEETING**

**VOTE (72-2010)**

Motion by Councilor Butler, seconded by Councilor Jean:

Be It Ordered by the City Council of the City of Lewiston that receipt of the Fiscal Year 2011 Lewiston Capital Improvement Plan is acknowledged and the City Clerk is directed to schedule

and provide public notice for a hearing on this Plan for the March 2, 2010 City Council meeting.

Whereas, the City Administrator has prepared and presented the FY 2011 Lewiston Capital Improvement Program to the City Council, the Planning Board, and the Finance Committee; and

Whereas, the Finance Committee and the Planning Board have reviewed the proposed plan and recommended its approval to the City Council subject to various comments and concerns raised by these groups during their discussions; and

Whereas, prior to acting on this plan, the Charter of the City requires that a public hearing subsequent to notifying the public of the date and time of such hearing;

Now, therefore, be it Ordered By the City Council of the City of Lewiston that Receipt of the FY2011 Lewiston Capital Improvement Program is hereby acknowledged and the City Clerk is directed to schedule and provide public notice for a hearing on this plan for the March 2, 2010 City Council Meeting.

Passed - Vote 6-0

### **REPORTS AND UPDATES**

It was noted the deadline for federal grant opportunities of arts and cultural projects is March 15. The City Administrator announced that he closed on the purchase of his Lewiston home this afternoon. Councilor Poulin stated the School Committee has begun the search for a new Superintendent due to the upcoming retirement of Leon Levesque.

### **OTHER BUSINESS**

No other business was presented at this time.

### **EXECUTIVE SESSION**

#### **VOTE (73-2010)**

Motion by Councilor Butler, seconded by Councilor Morgan:

To enter into executive session, pursuant to MRSA Title 1, section 405(6)(c), to discuss Real Estate negotiations, of which the premature disclosure of the information would prejudice the competitive bargaining position of the City. Passed - Vote 6-0

Executive Session began at 10:30pm and ended at 10:46pm.

#### **VOTE (74-2010)**

Motion by Councilor Jean, second by Councilor Cayer:

To adjourn at 10:47P.M. Passed - Vote 6-0

A true record, Attest:

Kathleen M. Montejo, MMC  
City Clerk  
Lewiston, Maine