

**Select Board & Board of Assessors Meeting- Agenda**  
**July 10, 2023 @ 7:00 p.m.**  
**Fire Station Community Room, 86 River Rd.**

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Amendments to the Agenda**
- 4. Minutes of the previous meeting**
  - a. June 26, 2023
- 5. Public Comments on Items Not on the Agenda**
- 6. New Business**
  - a. Review of Select Board Bylaws
  - b. Review and discussion of select board goals from December 2022
- 7. Unfinished Business**
  - a. Town Planner Services Contract
  - b. Developing a Fish Ladder Agreement with Nobleboro
  - c. VHB scope of work and contract for Lynch Road
- 8. Town Manager Report and Communications**
- 9. Fiscal Warrants**
  - a. FY23 End of Year Warrant 1:                 \$38,520.44
  - b. FY24 First Warrant:                         \$ 5,671.81
- 10. Executive Session**
  - 1 M.R.S.A. Section 405 (6) A – Personnel
- 11. Future Agenda Items**
- 12. Adjournment of Meeting**

**Upcoming Events**

July 24 at 7PM — Select Board Meeting, Fire Station Community Room, 86 River Road  
August 7 at 7PM — Select Board Meeting, Fire Station Community Room, 86 River Road

*\*Executive Session 1 M.R.S.A. Section 405 (6) A – Personnel, C – Real Estate, D - Labor Contracts, E – Legal, H – Consultation With CEO Concerning Enforcement Action*

**Manager commentary for July 10<sup>th</sup>, 2023 Agenda packet items.**

**Item: 6A**

Manager Commentary: Attached you'll find a draft of some slight revisions, but also some comments as an outsider looking in and reading this for the first time. While your bylaws don't explicitly say it (yet), I've seen New Business on the agenda as a place to introduce and/or workshop items (as opposed to unfinished business which is typically at the stage of voting). Given that assumption, I am hopeful we can review this, make suggestions for changes, review other ideas or concerns you may bring to the table, and I can bring a final draft to you at the July 24<sup>th</sup> meeting.

No Motion Necessary. New Business Item.

**Item: 6B**

Manager Commentary: I believe the attached document is from a December meeting of the Select Board. I would ask that we review the list, add anything you individually believe to be missing and that we spend a bit of time prioritizing what you'd like to see happen in the weeks and months ahead.

No Motion Necessary. New Business Item.

**Item: 7A**

Manager Commentary: Negotiations for the hiring of this shared planner position with Damariscotta occurred prior to my arrival. However, I have reviewed and discussed the agreement with Damariscotta's Town Manager. The final version of that agreement is attached. While the position will be an employee of Damariscotta, I have met the candidate who has accepted the position and fully support this individual and this approach. From a budgeting perspective, the negotiated amount (\$53k) came in slightly below what was budgeted (\$56k) – so kudos to select board member Tor Glendinning and former member Rob Nelson for their efforts to see this through. Additionally, the Damariscotta Select Board authorized the agreement at their meeting on July 5<sup>th</sup>.

A Possible motion: ***“To Authorize the Town Manager to sign the agreement for Town Planner Services as presented.”***

**Item: 7B**

Manager Commentary: Select Board Chair Karen Paz met with the Nobleboro selectmen at their meeting on July 5<sup>th</sup> to discuss the development of a formal agreement related to the fish ladder for future funding, expenses, and its continued maintenance. Based on that conversation, it would be ideal for a working group made up of representatives from the two towns to draft an agreement for the towns to consider.

A Possible motion: ***“To appoint \_\_\_\_\_ and \_\_\_\_\_ as Newcastle representatives to a joint town working group to develop a fish ladder operations and capital needs agreement for the respective select boards to consider.”***

Item: **7C**

Manager Commentary: In May a severe weather storm compromised the box culvert on Lynch Road. VHB was solicited by the road commissioner to assist with the engineering of a permanent solution to the Lynch Road box culvert/bridge replacement. Attached is the contract and scope of work. I am under the impression the select board is advocating to have this addressed, but we do not currently (nor did we in FY23) have the budget to address it. I can look to overspend in an account line and ask the Select Board to work to allocate some of the unassigned fund balance at the next town meeting (special or otherwise). I will come to the meeting with some available solutions and remaining balances that we might be able to use to cover it.

A Possible motion: ***“To Authorize the Town Manager to sign the VHB contract and begin the process of moving funds to cover this and other emergency expenses related to the May storm.”***

**Select Board & Board of Assessors Meeting- Agenda and Minutes**

**June 26, 2023 @ 7:00 p.m.**

**Fire Station Community Room, 86 River Rd.**

**Present Board Members-Joel Lind, Karen Paz, Tor Glendinning, Thomas Kostenbader, and Rufus Percy.**

**Interim Town Manager- Kevin Sutherland**

**Minutes transcribed by Lauren Allen- Town Clerk**

**1. Meeting called to Order- Joel Lind called the meeting to order at 7:02pm**

**2. Pledge of Allegiance**

**3. Amendments to the Agenda (Pending Approval)- Introduction of the Town of Newcastle's new Interim Town Manager: Kevin Sutherland and the newest Select Board member: Rufus Percy.**

**4. Minutes- Joel requested to combine and approve 4.1 through 4.3. Karen Paz moved to approve all minutes. Motion was seconded by Thomas Kostenbader. Vote 4-0 with Rufus Percy abstaining. Minutes were approved.**

4.1 June 5, 2023, Special Town meeting

4.2 June 10, 2023

4.3 June 22, 2023

**5. Public Comments on Items Not on the Agenda**

- The Board requests that public comments are limited to five (5) minutes per subject.

- **Kathleen Keoughan (5 Cross St) spoke about the gully being filled at her home by Seth Hagar.**
- **Bill Leary (293 North Dyer Neck Road) voiced concerns about the road conditions on North & South Dyer Neck Road. Bill brought a bucket of the road's gravel to show the Select Board what the road material consisted of.**
- **Kathleen Hogan (320 North Newcastle Road) asked questions about the status of the Traffic and Parking Ordinance since the last meeting. Joel Lind said that there were still some legal wording changes needing to be made. They hoped to have a new draft this season.**
- **Steve Ward (231 North Dyer Neck Road) voiced concerns about the condition of North Dyer Neck Road and how he and other residents have had their tires destroyed by the rocks on the road.**
- **Roger Wilcox (28 North Dyer Neck Road) asked why there is still a weight limit on North Newcastle Road. Joel Lind stated that there is no longer a current weight limit on that road. Roger asked if the town would consider an electronic sign to publicly advertise town notices and meetings viewable from the road. Tor Glendinning stated that it had been investigated by Ben Frey in the past and that cost had been an issue previously, but they would investigate it again going forward. Lastly Roger asked when the plowing contract was up for bid again and stated too much salt is being used on the roads. Karen Paz believes it is up a year from now (2024) and they were preparing to research the upcoming year's contract.**

**5. Select Board Future Agenda Items**

**7. New Business**

7.1 Appoint Chair and Vice Chair -**Joel Lind nominated Karen Paz as Chair. Motion was seconded by Tor Glendinning. Vote 4-0 with Karen Paz abstaining. Tor Glendinning nominated Joel Lind as Vice Chair. Motion was seconded by Tor Glendinning. Vote 5-0. Motions passed.**

7.2 Fish Ladder Harvester Compensation proposal -**Jim Brinkler stated the alewives' numbers were disastrously low this year, only harvesting two-thirds the amount of last year's numbers. Mark Becker: Fish Agent of Newcastle and Nobleboro, send a letter with options for future pay distribution. Spoke about the of splitting**

*harvesting dollars, one-third for harvesters and one-third for each town. The Select Board will reach out to Nobleboro and plan to attend Nobleboro Select Board meeting with Jim Brinkler next Wednesday to discuss the pay distribution further.*

7.3 Certificate of Recommitment- *Joel Lind made a motion to sign recommitment. Motion was seconded by Tor Glendinning. Vote 5-0. Motion passed.*

7.4 Mike's Place Car Show- *July 16, 2023, from 10am-4pm. No alcohol will be allowed or consumed on premises. No permits are needed.*

**8. Town Manager Report -Contracts need to be signed by Select Board. The warrant document for payment to the county is budgeted for \$10.00 less than what is needed. The incorrect total was provided to the town. Kevin stated he is currently contracted for 3 days a week consisting of 2 days in the office, 1 day remote. Kevin's office hours will be: In-office Monday & Tuesday 8-4, and remotely Wednesdays 8-4. He is available by phone or email. He plans to get all end of Fiscal Year requirements and contracts in place this week, and next week he hopes to meet with staff and officials. He will also meet with Select Board members and review Town of Newcastle's Bi-Laws and set Select Board goals for the next year.**

#### **9. Fiscal Warrants**

9.1 Town Warrant- \$225,361.47- *Joel Lind made a motion to approve the warrant. Motion was seconded by Rufus Percy. Vote 5-0. Motion passed.*

**10. Executive Session- \*Executive Session 1 M.R.S.A. Section 405 (6) A – Personnel -Tor Glendinning made a motion to move to executive Session. Motion was seconded by Joel Lind. Vote 5-0. Motion passes. No action was taken after the executive session.**

**11. Adjournment of Meeting- Joel Lind made a motion to adjourn the meeting. Motion was seconded by Thomas Kostenbader. The meeting was adjourned at 8:31pm.**

#### **Upcoming Events**

July 10 at 7PM — Select Board Meeting, Fire Station Community Room, 86 River Road

July 24 at 7PM — Select Board Meeting, Fire Station Community Room, 86 River Road

*\*Executive Session 1 M.R.S.A. Section 405 (6) A – Personnel, C – Real Estate, D - Labor Contracts, E – Legal, H – Consultation With CEO Concerning Enforcement Action*

**BYLAWS AND POLICIES OF  
THE  
SELECT BOARD TOWN OF  
NEWCASTLE, MAINE**

Adopted June 28, 2021  
Amended January 24, 2022

[DRAFT COMMENTS AND AMENDMENTS BY TM 7/10/2023](#)

**Section 1. Purpose and Scope**

The purpose of these bylaws is to establish reasonable rules of procedure for Select Board (Board) meetings and to promote the fair, orderly and efficient conduct of the Board's proceedings and affairs. These bylaws shall govern the Board's practices and procedures and shall not conflict with town ordinances or state or Federal statutes. These rules by necessity shall be reviewed and amended from time to time as the need arises and to meet the needs of future Boards.

**Section 2. Parliamentary Authority**

The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Board in all cases to which they are applicable and in which they are not inconsistent with these bylaws.

**Section 3. Selectman Responsibilities**

In accordance with M.R.S.A., Title 30-A § 2635, "the Select Board as a body shall exercise all administrative and executive powers of the Town except as provided in this sub- chapter." The Board of Selectmen shall deal with administrative services solely through the Town Manager. Further in M.R.S.A., Title 30-A § 2635, it states, "this section does not prevent the Board of Selectmen from appointing committees or commissions of its own members or of citizens to conduct investigations into the conduct of any official or department, or and matter relating to the welfare of the Town."

The Town of Newcastle has a Town Meeting - Select Board - Town Manager form of government which works to set policy and strategic direction in the best interests of the municipality as a whole.

The five-member ~~Select~~ Board ~~are is~~ elected on staggered terms by the voters of Newcastle through the annual town meeting. The ~~Select~~ Board holds the powers and duties afforded to them under Maine law, as well as town ordinances. The powers and duties of the Select Board shall include, but not be limited to:

- ~~Acting~~ as assessors and overseers of the poor;

- The appointment of members of the Planning Board, the Appeals Board, and other boards, agencies and positions as provided by statute, ordinance or other ad-hoc needs as determined by the Select Board;
- ~~P~~~~T~~~~e~~ propose to the Town Meeting the enactment or repeal of ordinances which require approval by a Town Meeting;
- ~~A~~~~T~~~~e~~ adopt, amend or repeal ordinances and regulations which do not require approval by a Town Meeting;
- ~~F~~~~e~~ provide for the granting of licenses and permits for the conduct of any business in accordance with statute for such periods of time and in accordance with such rules and regulations not inconsistent with statute and upon payment by the licenses of such fees as the Select Board may establish;
- ~~R~~~~e~~ recommend a budget to the Annual Town Meeting; and
- ~~O~~~~f~~~~e~~ oversee all activities within the Town government.

Only through actions taken during a meeting, as outlined below, shall the Board operate. No individual member shall direct any employee or contractor, nor does any member possess the ability to negotiate on behalf of the town. Any action which takes place outside of a meeting must be delegated by the Board such as contract negotiation, information gathering, etc.; results of such action will be reported back to the full Board for final approval.

A majority of the Board constitutes a quorum. As a five-member Select Board, the quorum for Board action is three. If a quorum cannot be obtained, the meeting may be adjourned until a time and place certain.

#### **Section 4. Town Manager**

The Town Manager- is the only employee who directly reports to the Select Board. All other employees of the Town of Newcastle report to the Town Manager, who is responsible for the day to day operations of town government. The Town Manager attends meetings of the Select Board and advises the Board on the policy and strategic direction in Newcastle's best interest. The Town Manager serves at the pleasure of the entire Select Board and advances the goals the Board sets forth. The duties of the Town Manager are consistent with Maine's Town Manager Plan statute (M.R.S.A., Title 30-A § 2636).

#### **Section 5. Officers and their Duties**

Officers of the Board shall consist of a Chair and a Vice Chair to be chosen annually at the first Board meeting after the annual town meeting by and from among Board members. The election of Chair shall be by nomination and vote of the current Board and requires no qualification other than being a duly elected and sworn Select Board member. All members of the Select Board are required to vote. The Chair shall preside at all Board meetings and shall have the authority described below.

In the absence of the Chair, the Vice Chair shall preside and shall have the same authority. If the Chair and the Vice Chair are absent the most senior Select Board members, based on uninterrupted years of service, shall preside as Chair pro-tempore. If there is more than one senior member, the Chair shall be selected

by a vote of the Select Board.

### Section 6. Chair Privileges

The Chair may move, second, declare by unanimous consent, subject to the following limitations. If any objection by another Select Board member is heard, the Chair shall hear any question in regular order subject to a motion, a second by a different Select Board member, discussion, and a vote.

**Commented [TM1]:** I assume the second sentence here is the only limitation?

### Section 7. Seating Arrangement

Members shall occupy the respective seats in the Board meeting room closest to the Chair.

**Commented [TM2]:** Can this be clarified? Respective proximity based on seniority after the chair/vc?

### Section 8. Attendance

No Select Board member shall be excused from attendance at a Board meeting without notification to the Chair prior to the meeting. Attendance is expected except when a Board member notifies the Chair prior to the meeting.

When a member is not available for more than four unexcused regular the Select Board member shall be subject to censure.

**Commented [TM3]:** What's the process for this?

### Section 9. Meetings

Regular meetings of the Board shall be held on the Second and Fourth Monday of each month, at 7:00pm at the Clayton V. Huntley Fire Station Community Room.

Notice of all Board meetings shall be given as required by law by the Town Manager or Town Clerk, and all such meetings shall be open to the public except as otherwise provided by law. This notice requirement does not preclude the Board from making a trip i.e. site walk during the meeting if circumstance requires. Whenever possible, this intention should be reflected in the agenda.

No business may be conducted by the Board except at a duly called and noticed meeting or without a quorum consisting of a majority of the Board being in attendance.

### Section 10. Special & Emergency Meetings

All meetings other than regularly scheduled meetings shall be considered a Special Meeting. Every reasonable effort must be made to notify all Select Board members in advance of a Special Meeting. Notice must be made to a newspaper of general circulation in the town and posted at the town office. A Special Meeting may be called by three methods:



1. The Chair may call a Special Meeting at any time.
2. The Chair shall call a Special Meeting if requested by a quorum of Select Board members.
3. A Special Meeting may be called by the Vice Chair if the Chair may not be reached by normal methods.

#### **Section 11. Meetings to Execute Documents**

If logistics require Select Board members to execute a document, approve a warrant or sign an order outside of the time of a regularly scheduled or Special Meeting, another meeting does not have to be called, providing an approved order exists from a properly noticed public proceeding and record of that proceeding reflects the actual execution will occur outside of the meeting.

#### **Section 12. Meeting Length**

All Board meetings, workshops or executive sessions should, except in extraordinary circumstances, adjourn at or before 9:00 p.m.

#### **Section 13. Continued Sessions**

Any session of the Board may be continued or adjourned from day to day or for more than one day, but no adjournment shall be for longer period than until the next regular meeting.

#### **Section 14. Executive Session**

Board members are allowed to go into an executive session to deliberate on the matters authorized by 1 MRS §405 and no others.

The executive session can only be entered after a motion has been made in public session to go into executive session. The motion must carry by at least 3 of the members in attendance.

The nature of the business to be discussed must be a part of that motion, although the wording of the motion, obviously, may not substantially reveal the sensitive information which the law intends to protect by the executive session process.

No topic other than that referred to in the motion shall be discussed during executive session. The Executive session shall be held in such place as to ensure the privacy of the meeting and the Chair shall determine the public and staff allowed to attend in the executive session.

All matters discussed during executive session shall be held in strictest confidence by the Board and shall not be discussed with or divulged to any person other than a fellow Board member or persons in

attendance at the executive session. Any violation of this confidentiality requirement shall be deemed to be malfeasance of office and shall subject the offending Board member to sanction by the Board.

**Commented [TM4]:** What's this process?

No official action shall be finally approved at during an executive session. Upon exiting executive session, the Select Board may take final action should it be deemed necessary.

Since Minutes of an executive session will become public record, they should only be taken when the contents of the meeting are desired to become public.

### Section 15. Workshop Sessions

Workshop sessions may be scheduled by the Chair for the purpose of disseminating information for Board enlightenment and evaluation or for the discussion or refinement of future agenda items. Workshop sessions are considered meetings of the Board.

Members of the public are invited to attend any workshop session but will not be allowed to participate in the workshop. Prior to adjourning any workshop session, the Board will provide time for members of the public to address the session to provide information relevant to the subject being explored or to ask questions, through the Chair, relating to the subject of the workshop session.

No formal vote shall be taken on any matter under discussion nor shall any Board member enter into a commitment with another respecting a vote to be taken subsequently in a public meeting of the Board, but an informal vote on any matter under discussion may be taken.

**Commented [TM5]:** So aside from this, how is a workshop any different from a regular meeting? How often do you have workshops?

### Section 16. Hearings

Public hearings of the Board shall be called as required by law or on such other occasions as a majority of the Board may deem appropriate. Notice of all such hearings shall be given as required by law and shall include the date, time and place of the hearing and a general description of the subject matter.

The Chair shall convene all hearings by describing the purpose of the hearing and the general procedures to be followed. The Board may receive any oral or documentary evidence but shall exclude unduly repetitious evidence, provided, however, that formal rules of evidence shall not apply. The Town Attorney may note that evidence does not appear to meet the Maine Rule of Evidence, but the Board can still consider the evidence.

Every party shall have the right to present its case in the order determined by the Chair and without interruption, provided, however, that the Chair may impose such reasonable time limits as may be necessary to ensure that all parties have an adequate opportunity to be heard. In any adjudicatory proceeding, including proceedings on licenses, permits or other approvals, every party shall also have the right to submit rebuttal evidence and to conduct cross-examination of any other party through the Chair, provided, however, that the Chair may impose such other reasonable limitations as may be necessary to prevent an abuse of process.

### Section 17. Agenda Items

All agenda items shall be, under normal circumstances, submitted by the Board members to the Town Manager seven (7) working days prior to any regular or special meeting by 12:00 noon. The Town Manager will draft the agenda. The Chair or any two Select Board members may add an item to the agenda. In the event that a matter shall arise which was not submitted to the Town Manager within the proper time frame, then that item shall be presented to the Chair as soon as possible. The first draft agenda will normally be available through public posting on the Friday prior to the Select Board meeting.

**Commented [TM6]:** Is the draft agenda developed solely based on what the Board members suggest? Or is the Town Manager allowed to suggest items for the draft agenda for the Chair to review? Is it the chair the finalizes the agenda?

The order of business at regular meetings should include the following:

1. Call to order
2. Amendments to the Agenda
3. Minutes of the previous meeting Approval of the Minutes
4. Public Comment ~~On~~ Items Not ~~On~~ on t The Agenda
5. New ~~business~~ Business
6. Unfinished ~~business~~ Business
7. Town Manager Report and Communications
8. Fiscal Warrants
9. Executive Session(s)
10. Future Agenda Items
11. Adjournment

**Commented [TM7]:** What constitutes New vs. Unfinished?

### Section 18. Board Process

As each item on the agenda for any meeting is brought to the floor for discussion, the sponsor of each item or, if there is no Board sponsor, the Town Manager shall first be allowed to present their initial comments for consideration by the public and other Board members. Following this introduction of the issue, there will be time devoted to any questions of the sponsor or the Town Manager regarding the agenda item which any Board member may have which would help to clarify the question presented by the agenda item. The Chair shall allow questions during this time, and no debate or discussion of collateral issues shall be permitted. Once the agenda item has been explained by its sponsor or the Town Manager and clarified by any questioning as provided above, by a vote of the Board, the Chair shall open public comment.

There will be time devoted for any resident, taxpayer or authorized representative of an organization resident or taxpayer of the Town of Newcastle to address the Board regarding this particular agenda item provided that the public follows the rules of public comment described below.

### Section 19. Public Comment

Rules of Public Comment:

1. The speakers will be required to identify themselves by stating their name, first and last, and residence

address prior to sharing their comments.

2. The speakers will be asked not to be repetitious of comments already made to the Select Board in the interests of the most efficient use of time.
3. Any comment by the public shall be limited to the expression of opinions or concerns regarding the agenda item.
4. All comments shall be directed to the Chair. No public comment shall be allowed which has the effect of embarrassing or attacking the character of any individual or Board member.
5. No complaints or allegations will be allowed in public concerning any staff member or any person connected to the Town of Newcastle.
6. Complaints will be referred to the Town Manager for investigation.
7. If unresolved the issue will be brought to the Select Board.
8. Complaints regarding the Town Manager must be brought to the Chair of the Select Board for investigation and resolution; and to the full Select Board if unresolved by the Chair.

After listening to any input from the public present, the Chair will close public comment on the issue and then provide for debate and vote of the issue by the Board. Any further information requested by the speaker shall be referred to the Town Manager to research the matter and make a recommendation to the Select Board.

If any member of the Public violates the rules of public decorum, the Chairman or a majority of the Board may expel that member of the Public from the meeting. If the member of the Public refuses to leave the meeting, the Chair or a majority of the Board may order the Lincoln County Sherriff to remove the member of the public.

A Board member shall not be permitted to speak as a member of the public during any public comment periods, except on a matter where the Board member has recused himself or herself in order to assert or protect his or her personal interests or property rights. Recusal requires the member to abstain from Board deliberation and voting.

The Chair or a majority of the Select Board may close public comment at any time.

#### **Section 20. Participation and Voting**

Any action of the Board shall require the affirmative vote of a quorum of its membership of not less than three members unless otherwise provided by law.

No member may participate or vote in any matter in which the member has a conflict of interest or other disqualification as defined by law. Members have the responsibility to declare conflicts they may have as quickly prior to the consideration of a given agenda item. Any question of whether a member has such a conflict of interest or other disqualification shall be decided by majority vote of the remaining members. Conflict issues shall follow established State Law.

Abstentions shall be limited to conflicts of interest, which shall be stated prior to the taking of the vote.

Any order may be reconsidered by motion of those voting in the affirmative, with Board approval. All other orders shall require a motion, second and recorded vote.

No member may participate or vote in any adjudicatory proceeding, including proceedings on licenses, permits or other approvals, unless the member was in attendance during all hearings thereon or the Board votes in the affirmative the member has adequately informed themselves on the action in the prior proceedings.

### **Section 21. Minutes**

The Town Clerk shall keep an official record of all meetings, which are public proceedings, and the Town Manager shall designate staff to take the Minutes. The written minutes shall serve as a brief reference, but the verbatim and official record is the DVD recording. The Minutes shall at the minimum reflect the following:

1. Date of meeting
2. Place of meeting
3. Selectmen in attendance
4. Town staff in attendance
5. Members of the public addressing the Selectmen
6. All executive orders and business considered
7. Business to be tabled for future action
8. Announcement of future meetings (special)
9. Time of adjournment
10. Person taking Minutes

Free lending copies of the DVD recorded approved minutes will be available to the public at the Town Office or LCTV and other designated places.

### **Section 22. Discipline**

If a member fails to meet the ethical, legal, or functional responsibilities of the office, the Select Board reserves the right to discipline the member for this breach. If charges of improper conduct are brought to the Board, a hearing shall be held where the charges levied against the member are heard and the member reserves the right to accept or deny statements aimed at their office.

After a fair hearing, the Board may censure the member of the Board for breaching the bounds of their office. Censure may include further disciplinary action including suspension of salary, suspension of voting rights, or public reprimand.

### **Section 23. Conflict with Laws**

Any conflict or inconsistency between these bylaws and any applicable law shall be resolved in favor of the law.

**Section 24. Amendments**

These bylaws may be amended at any time in writing by majority vote of the Board.

OTHER NOTE

**Commented [TM8]:** Oxford Comma or not? Both are used in this document.

**Newcastle Projects and Priorities as of August 24, 2022**

<b>Task</b>	<b>Source</b>	<b>Status</b>	<b>Notes</b>
1 Comprehensive Plan Modifications	SB/TM	In Process	State of ME Reviewing. Need implementation committee soon.
2 Personnel Policy Amendments	TM	In Process	
3 Island Road Classification	SB	In Process	
4 Shoreland Zoning Title 1000	PB	In Process	
5 Downtown Traffic Planning	TM/SB	In Process	Work potentially w/ in MEDOT Planning Program
6 Cable Franchise Agreement	TM	In Process	Negotiations ongoing
7 Ordinance and Policy Housekeeping	TM/SB	In Process	Repeal/Replace & Updates
8 MMA Required Trainings for Staff	TM	In Process	
9 Contract for Unserved Broadband Access	TM/SB	In Process	Waiting on 2nd Round of ConnectME Grant Funding
10 Town Property Maintenance Schedule	TM/SB	Not Started	Including Cemeteries/Records
11 Hiring of a Town Planner	TM	In Process	To assist applicants / advise PB etc.
12 Core Zoning Code Updates	PB	Not Started	To be managed by new Town Planner
13 Evaluate Conservation Commission Rsrv	TM/SB	Not Started	
14 Fund Balance Policy	SB/TM	Not Started	Evaluate Management of Fund Balance and Policy W/ Driveways, Roads & Entrances Ord? Load Limits, Winter Parking, etc.
15 Roads/Sidewalks/Parking Ordinance	TM	Not Started	
16 Historic Preservation Ordinance	PB/SB	Not Started	
17 Z6 Development Strategy	PB/SB	Not Started	
18 Town Office Relocation Strategy	SB/TM	Not Started	
19 Initiate a Charter Commission	TM/SB	Not Started	
20 Explore Municipal Solar Options	TM/SB	Not Started	
21 Sand/Salt Shed Locations	TM/SB	Not Started	
22 Fuel RFP	TM/SB	Complete	To begin process again in Sept. Brightness levels may be rolled into upcoming roads ordinance. Maintenance Contract?
23 LED Streetlights	TM	Complete	
24 GIS Map Update	TM/PB	Complete	
25 CEO Position	TM	Complete	
26 Harbor Master Position	TM	Complete	
27 Fire Chief Position	TM	Complete	
28 Fire Protection Ordinance	SB/TM	Complete	
29 Cyanobacteria In Damariscotta Lake	TM	Complete	Waiting on DEP testing
30 Broadband Feasibility Study	TM/SB	Complete	
31 Risk Management Grant Through MMA	TM	Complete	Awarded ~\$1,200 for surge protectors
32 Budget Contingency Line	TM	Complete	
33 LCTV Camera Installation	RES	Complete	
34 Banking RFP	TM	Complete	
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**AGREEMENT BETWEEN THE TOWN OF NEWCASTLE  
AND THE TOWN OF DAMARISCOTTA FOR  
TOWN PLANNER SERVICES**

**THIS AGREEMENT** is made this July 3rd, 2023 between the Town of Newcastle, a municipal corporation organized and existing under the laws of the State of Maine and located in the County of Lincoln, State of Maine and the Town of Damariscotta located in the County of Lincoln, State of Maine and existing under the laws of the State of Maine.

**WHEREAS**, the Town of Newcastle wishes to contract with the Town of Damariscotta for Planner services as described in the attached job description,

**NOW, THEREFORE BE IT RESOLVED** in consideration of the promises and other mutual obligations undertaken herein, the parties hereby agree as follows:

- 1. Employment of a Planner** The Town of Damariscotta shall employ a Planner who shall devote one thousand forty (1040) hours of their time minus accrued earned time and holidays, in each Town performing the duties described in the attached job description. The Planner will submit weekly time sheets showing the hours spent in each town. The Planner is an employee of the Town of Damariscotta for purposes including, qualification, appointment, salary and benefits, workers compensation, insurance, supervision while performing Planner duties in Damariscotta and discipline and termination. The Town of Damariscotta is the sole and exclusive employer of the Planner and nothing herein shall be construed to create a joint employer relationship with the Town of Newcastle, except that while performing assigned duties in Newcastle, the Planner shall be supervised by the Newcastle Town Manager and shall be answerable to Newcastle's Personnel Policy sections titled Public and Employee Relations, Safety, Political Activity, Harassment & Drugs Alcohol & Smoking while working within Newcastle's Town Office. In addition, a vacation request form shall be recorded with the Town of Newcastle when the Planner is using PTO during hours scheduled for the Town of Newcastle.
- 2. Agreement Amount and Reimbursements** The Town of Newcastle shall reimburse to the Town of Damariscotta monthly payments in the amount agreed upon by both Towns for the year beginning July 1, 2023 and ending on June 30, 2024. The Town of Newcastle shall remit payment within thirty (30) days. The Town of Damariscotta shall notify the Town of Newcastle annually by March 1<sup>st</sup> what the proposed contract amount will be. The Town of Newcastle shall be responsible for any mileage reimbursement for the Planner Officer performing duties in the Town of Newcastle.
- 3. Supplies and Equipment.** The Town of Newcastle shall supply office space, supplies and all equipment, computer, camera, tape measure, level etc. that is required in support for the necessary operation and property administration of the office of the Planner in the Town of Newcastle.



4. **Hours.** The hours for the Town of Newcastle shall be one thousand forty minus accrued earned time and holidays the cost of which shall be shared by both Towns equally. These may be changed on a temporary or long-term basis by mutual agreement of the two parties.
5. **Record Retention.** The Town of Newcastle shall maintain and house all records relating to the Planner in the Town of Newcastle. Any documents generated by the Planner in the Town of Newcastle are the sole and exclusive property of the Town of Newcastle.
6. **Termination Rights.** The performance of work under this Agreement may be terminated by both towns, in whole, or in part, whenever for any reason or convenience by giving thirty (30) days advance written notice to the respective Town Manager. The Agreement shall be equitably adjusted to compensate for such termination and modified accordingly.
7. **Changes in the Work.** If any changes are made to increase or decrease work responsibilities such a change shall require an amendment to the contract, signed by both parties.
8. **Sub-Agreements.** No arrangements shall be made by the Town of Damariscotta with any other party for furnishing any of the services herein without the consent and approval of the Town of Newcastle. Any sub-Agreement hereunder entered into subsequent to the execution of this Agreement must be approved and the Agreement modified accordingly.
9. **Notice of Claims.** The parties to this Agreement shall provide immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Towns which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement. Any sub-Agreement hereunder entered into subsequent to the execution of this Agreement must be approved and the Agreement modified accordingly.
10. **Hold Harmless.** The parties agree to indemnify, defend and save each other harmless, their officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities and losses and damages of every kind and description from claims arising out of the performance of this Agreement in their respective Towns.

**IN WITNESS THEREOF**, the parties hereto have executed this Agreement on the day and year first written above.

For the **Town of Newcastle**

\_\_\_\_\_  
Kevin Sutherland, Interim Town Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

For the **Town of Damariscotta**

\_\_\_\_\_  
Andrew Dorr, Town Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

Hello Seth,

Attached is the client authorization for Lynch road culvert preliminary engineering. This project will assist the town with a final recommendation to repair or fully replace the existing damaged culvert.

How did the preliminary discussion go with MEMA? Have they given you a time for funding and or any milestones we need to hit?

Please sign and return this client authorization and we respectfully will request a \$17,000 retainer. I will send this as a separate invoice for submission to the Town.

**Project Progress to Date:**

We have coordinated and scheduled geotechnical explorations to be completed in July.

Our site surveyors are also schedule for July.

I met with and discussed the previous project with Pine Tree Engineering.

We had a conference call with MaineDOT and tracked down some additional background information.

Contacted MEMA and made them aware of the project and desire to seek funding.

Performed emergency on-site inspection services and provided stabilization recommendations.

As the dates get refined for geotechnical services, we will need to coordinate with you further. The road would be ideally shut down for the day to allow the crew safer access.

Let us know if you have any questions.

-Bob



**Robert Blunt, PE**  
Project Manager  
Maine Transp/Structures



P 207.889.3111

M 207.441.6980

[www.vhb.com](http://www.vhb.com)

157 Capitol Street

Ste 2

Augusta ME 04330-6212



207.889.3150  
207.253.5596  
www.vhb.com

Engineers | Scientists | Planners | Designers

157 Capitol Street, Suite 2  
Augusta, ME 04330

# Client Authorization

**New Contract**

**Date** June 9, 2023

**Amendment No.**

**Project No.** 84046.23

**Project Name** Lynch Road, Newcastle

		Cost Estimate	
		Amendment	Contract Total
<b>To:</b>	Town of Newcastle C/O Seth Hagar P.O. Box 386 (4 Pump Street) Newcastle, Maine 04553	Labor	\$77,053
		Expenses	\$1,000
		S.W. Cole	\$14,000
		<b>TOTAL</b>	<b>\$92,053</b>

**E-mail:** roadcommissioner@newcastlemaine.us

**Lump Sum**

**Time & Expenses**

**Cost + Fixed Fee**

**Labor Multiplier**

**Phone No:** (207) 563-3441

**Estimated Date of Completion:**

**2/2024**

## Scope of Services:

### Task 1 – Project Management & Coordination

• **Task 1.1: Project Management & Coordination**

VHB will manage and administer the project, including coordination with Town and preparation of monthly progress reports/invoices. VHB will prepare for and lead a project kick-off meeting and two additional project coordination meetings.

• **Task 1.2: Background Data Collection**

VHB will obtain and review readily available background data in preparing the PDR for this project. Background data includes: existing plans if available from MaineDOT, historical photographs, bridge inspection records, maintenance records, existing reports, accident history, information from planning studies, traffic studies, flood studies, information from town files, interviews with local residents, and other sources.

### Task 2 – Field Surveys and Assessments

• **Task 2.1: Field Scour and Geomorphic Stream Assessment**

VHB will perform a field assessment of Dyer Creek at the crossing. This field visit will include evaluation of natural channel and floodplain geomorphology, stream bankfull geometry, sediment transport, stream alignment, and tidal conditions. The field assessment will also include an evaluation of existing and potential scour patterns of the streambed and banks at the crossing, including local scour and general channel migration.

• **Task 2.2: Topographic Survey and Wetland Delineation**

VHB will conduct a topographic survey of the existing crossing and surrounding area necessary for design and construction. The limits of the survey will include the Lynch Road right-of-way corridor extending approximately 200-feet north and 200-south of the crossing. The thalweg of the stream will be located approximately 300-feet upstream and 300-feet downstream of the Lynch Road crossing. Four (4) channel

cross-sections for hydraulic modeling will be surveyed two upstream and two downstream. Contours will be depicted at an interval of 1 foot on the base map. Survey will be referenced to the NAD83 horizontal and NAVD88 vertical datums. VHB will coordinate with the Town and identify the resident properties that may be impacted by the proposed work. At this time the impacts will only be based on tax map information provided by the Town.

- **Task 2.3 Geotechnical Investigation (By Subconsultant SW Cole)**

S.W.COLE will perform subsurface exploration program consisting of test borings at the crossing location as needed to support geotechnical engineering evaluation for design of the replacement structure. Up to two borings will be performed, extending to a depth of approximately 35 to 40 feet or to bedrock. S.W.COLE will collect soil samples at the test boring locations for laboratory analysis and to assist evaluation. Following completion of the subsurface explorations, S.W.COLE will prepare a geotechnical report summarizing the results of the geotechnical investigation and provide foundation design recommendations to assist and design selection of the replacement structure.

### **Task 3 – Hydrologic and Hydraulic Analysis**

- **Task 3.1 Hydrologic and Hydraulic Analysis**

VHB will evaluate site hydrology incorporating regression analysis developed by the Maine US Geological Survey (USGS) and tidal patterns from National Oceanic and Atmospheric Administration (NOAA) tide gage data. VHB will analyze the hydraulic performance of the existing crossing and identify preferred structure sizing to minimize flood flow velocities and potential scour. Using the US Army Corps of Engineers (USACE) HEC-RAS hydraulic modeling software, VHB will evaluate up to two alternative proposed designs under combined riverine and tidal flood flows, incorporating terrain geometry from field topographic survey supplemented by USGS LiDAR digital terrain data.

As the crossing is not located within a National Flood Insurance Program (NFIP) Zone AE floodplain or regulatory floodway, this task will not include a “No-Rise” analysis or certification. As the crossing is located within endangered Atlantic Salmon habitat, hydraulic analysis will include recommendations for hydraulic opening span and streambed reconstruction to meet aquatic organism passage and MaineDOT Habitat Connectivity Design (HCD) requirements.

- **Task 3.1 Scour Analysis**

This analysis will also include an evaluation of scour susceptibility following FHWA HEC-18 guidance, including calculations of predicted local abutment and general contraction scour elevations at the crossing for a bridge alternative design. This evaluation will also include scour countermeasure sizing and selection recommendations if the scour evaluation indicates the potential for scour below design structure foundation elevations.

### **Task 4 – Preliminary Design Report (PDR) Development**

- **Task 4.1: Alternatives Evaluation**

Based on the results of the geotechnical investigation, as well as hydrologic and hydraulic analysis and habitat connectivity design, VHB will evaluate 1) a rehabilitation alternative for the existing structure, 2) two replacement alternatives: a large box culvert replacement and a bridge replacement. VHB will evaluate alternatives based on complete closure of the roadway utilizing Dodge Road as a detour. Alternatives evaluations will include comparisons of construction cost, freeboard, hydraulic opening, maintenance of traffic, construction schedules, environmental impacts, load capacity, and future maintenance requirements. The recommended alternative cost evaluation will include an itemized list of costs.

- **Task 4.2: Roadway Approaches and Horizontal/Vertical Alignment**

Significant changes to the existing roadway width, as well as the existing horizontal and vertical alignment are not anticipated. A preliminary review of the existing roadway did not identify any significant geometric deficiencies. Following completion of survey, VHB will perform an abbreviated horizontal and vertical alignment review to verify that this assumption is valid. This review will include traffic data and roadway geometry from survey data, horizontal/vertical alignment and roadway cross-sections, sight distances and potential roadside safety concerns. VHB will prepare draft vertical and horizontal alignments and preliminary cross sections for the PDR.

- **Task 4.3: Preliminary Design Report (PDR)**

VHB will develop a PDR that follows the guidelines in Chapter 2 of the Maine Bridge Design Guide. The report will also include the preliminary plans for the project and appendices that contain various supporting data, including a supplemental technical memorandum summarizing hydrologic, hydraulic, and scour analysis.

### **Project Deliverables**

1. Draft Topographic Survey and Wetland Mapping
2. Draft PDR Report Submission Package
3. Final PDR Report Submission Package

### **Project Schedule**

The following estimated schedule is based on receipt of a fully-executed contract and notice to proceed in May 2022. The actual design schedule will be developed with the Town at the Project Kickoff Meeting.

June 2023	Notice to Proceed
July 2023	Survey - Stream Assessment
August 2023	Geotechnical Investigation
September 2023	Structural Inspection
November 2023	Draft PDR
January 2024	Final PDR

### **Assumptions and Limitations:**

1. This proposal includes PDR services only.
2. No attendance at or preparation for public meetings is included in this scope.
3. Town of Newcastle will provide information and review comments in a timely manner and in accordance with the mutually agreed upon team schedule.
4. PDR services will be limited to culvert design and will not include highway design. VHB will only perform a preliminary traffic safety evaluation to identify potential highway alignment deficiencies or hazards. No significant roadway horizontal or vertical profile re-alignment will be required for this project. Approach work will be limited to the extent possible at each end of the bridge and the finish roadway grade will be similar (within 0.5 feet) to the existing grade.
5. The Town will also be responsible for preliminary utility coordination
6. The project will be designed and plans will be developed in English (Imperial) units. Sheet size and layout will be 22-inch x 34-inch, based on current MaineDOT standards.
7. VHB has assumed no additional field work beyond the initial assessment/survey will be performed.
8. VHB has assumed that no retaining walls or roadway embankment reconstruction beyond the bridge structure will be required for this project.
9. This scope is based on VHB's attendance at one field review in Newcastle and up to two project team meetings in Augusta or through Teams.
10. The Town of Newcastle will be responsible for utility coordination. The proposed location of utilities to be relocated or replaced will be the responsibility of the utility companies. VHB is aware that overhead utilities exist throughout the project limits.
11. Final Design & Construction support services are not included.
12. Topographic survey will be limited to the immediate crossing location.



Prepared By: **Robert S. Blunt, P.E.**

Department Approval: **Timothy Bryant, P.E.**

---

Please execute this Client Authorization for VHB to proceed with the above scope of services at the stated estimated costs. No services will be provided until it is signed and returned to VHB.

Subject to attached terms & conditions.

Subject to terms & conditions in our original agreement dated

**Vanasse Hangen Brustlin, Inc. Authorization**

**Client Authorization *(Please sign original and return)***

By \_\_\_\_\_

By \_\_\_\_\_

Print Eric Williams \_\_\_\_\_

Print \_\_\_\_\_

Title Survey Manager - Maine \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_



**PART II STANDARD TERMS AND CONDITIONS.** The engagement of VHB by Client is under the following terms and conditions. These terms and conditions are an integral part of the collective Agreement between Client and VHB.

**SCOPE OF SERVICES.** VHB shall perform the services set forth in the attached Scope of Services. Requests for additional services and any associated fee adjustment must be authorized in writing before additional services can begin.

**PERFORMANCE STANDARDS.** VHB's services require decisions that are not based upon science, but rather upon judgmental considerations. In the performance or furnishing of professional services hereunder, VHB, and those it is responsible for, shall exercise the degree of skill and care ordinarily exercised by similarly practicing professionals performing similar services under similar conditions in the same locality ("Standard of Care"). VHB shall be entitled to rely on the accuracy and completeness of data, reports, surveys, requirements, and other information provided by Client.

**SCHEDULE.** VHB shall perform its services as set forth in the Scope of Services as expeditiously as consistent with the Standard of Care and the orderly progress of the Work. VHB shall not be responsible for failure to perform or for delays in the services arising out of factors beyond the reasonable control or without the fault or negligence of VHB.

**PAYMENT.** The fee estimate for the proposed Scope of Services is valid for 60 days from the date of Proposal. All schedules set forth in the attached Scope of Services commence upon receipt of a signed Agreement and, if requested, a retainer. Retainers will be applied to the last invoice. A RETAINER OF \$[ ] IS REQUIRED BEFORE SERVICES WILL COMMENCE.

Invoices will be rendered monthly and are due upon receipt. Any invoice unpaid more than 30 days after date of invoice will bear interest at 1-1/2 percent per month.

If Client fails to pay any invoice within 45 days of the date of invoice, VHB may, without waiving any other claim or right against Client or incurring any liability for delay, suspend the services until VHB has been paid in full. Sealed plans, final documents, reports, and attendance at meetings/hearings will not be provided unless payment for services is current.

If VHB is performing services for Client under multiple projects, payments must be current on all projects for services hereunder to continue. Client acknowledges VHB's right to suspend services and withhold plans and documents, as provided above, if any payments are overdue. If services are suspended for 30 days or longer, upon resuming services VHB shall be entitled to expenses incurred in the interruption and resumption of its services. If

services are suspended for 90 days or longer, VHB shall be entitled to expenses incurred in the interruption and resumption of its services and fees for remaining services shall be equitably adjusted.

The parties agree to coordinate invoices to assure timely payment. At minimum, VHB's project manager and Client's representative will confer as often as necessary about any issues involving invoicing and collections. Client's representative will contact VHB's project manager forthwith upon receipt of an invoice about any questions or issues concerning invoiced amounts. If Client's representative and VHB's project manager are unable to resolve any questions or issues, Client's representative will line item any disputed or questionable amount and pay VHB. VHB, at its option, may revise and resubmit disputed amounts at a later date.

Should it become necessary to utilize legal or other resources to collect any or all monies rightfully due for services rendered under this Agreement, VHB shall be entitled to full reimbursement of all such costs, including reasonable attorneys' fees, as part of this Agreement.

**OWNERSHIP OF WORK PRODUCT.** All work products (whether in hard or electronic form) prepared by VHB pursuant to the Agreement are instruments of service with respect to the Project and are not authorized, intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other Project. Any reuse by Client or a third person or entity authorized by Client without written verification or adaptation by VHB for the specific application will be at Client's sole risk and without liability or legal exposure to VHB. Client shall release, defend, indemnify and hold harmless VHB from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting therefrom. Any such verification or adaptation will entitle VHB to additional compensation at rates to be agreed upon by VHB and Client, third person, or entity seeking to reuse said documents.

Client recognizes that information recorded on or transmitted as electronic media, including CADD documents ("Electronic Documents") is subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the Electronic Documents are provided to Client for informational purposes only and are not represented as suitable for any use or purpose.

VHB retains the copyright in all work products produced in connection with this Agreement, unless otherwise agreed to in writing by an authorized VHB representative. VHB licenses to Client on a non-exclusive basis the use of work products produced solely in connection with this Agreement. The license



may be revoked for any failure of Client to perform under this Agreement.

**CERTIFICATIONS.** VHB shall not be required to sign any documents, no matter by whom requested, that would result in VHB having to certify, guarantee or warrant the existence of conditions whose existence VHB cannot wholly ascertain. Any certification provided by VHB shall be so provided based on VHB's knowledge, information, and belief subject to the preceding sentence, and shall reflect no greater certainty than VHB's professional opinion developed through and consistent with the Standard of Care. VHB shall be compensated for any work necessary to assess project compliance with regulatory standards for purposes of such certification.

**INSURANCE.** VHB agrees to carry the following insurance during the term of this Agreement:

- Workmen's Compensation and Employer's Liability Insurance in compliance with statutory limits
- Comprehensive General Liability Insurance including Products Completed, Contractual, Property, and Personal Injury coverage with combined single limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate
- Professional Liability Insurance with a limit of \$1,000,000 per claim and in the aggregate
- Automobile Liability Insurance including non-owned and hired automobiles with a combined single limit of \$1,000,000 per occurrence

Certificates of insurance will be furnished upon request. If Client requires additional insurance coverage, and it is available, Client agrees to reimburse VHB for such additional expense.

**INDEMNITY.** Client and VHB shall at all times indemnify and save harmless each other, their officers, and employees on account of damages, losses, expenses, reasonable counsel fees, and compensation arising out of any claims for damages, personal injuries and/or property losses sustained by any person or entity, to the extent caused by the negligent acts, errors or omissions of the indemnifying party, its employees, or subcontractors in connection with the Project, and/or under this Agreement.

Client agrees to the fullest extent permitted by law, to indemnify and hold harmless VHB, its officers, employees and subconsultants from and against any and all claims, suits, demands, liabilities costs including reasonable attorneys' fees, and defense costs caused by, arising out of, or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products, or material that exist on, about, or adjacent to the job site.

**LIMITATION ON VHB'S RESPONSIBILITY AND JOBSITE**

**SAFETY.** VHB will not be responsible for the acts or omissions of

contractors or others at the Site, except for its own subcontractors and employees. Neither the professional activities of VHB nor the presence of VHB or its employees or subconsultants at a project site shall relieve the other parties on this project of their obligations, duties, and, including, but not limited to, construction means, methods, sequence, techniques, or procedures necessary for performing, superintending, and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. VHB and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. Client agrees that Contractor shall be solely responsible for job site safety and warrants that this intent shall be carried out in Client's contract with Contractor.

**ALLOCATION OF RISK.** In recognition of the relative risks and benefits of the Project to both Client and VHB, the risks have been allocated such that Client agrees that to the fullest extent permitted by law, VHB's total liability in the aggregate to Client and any persons or entities claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project and/or this Agreement from any cause or causes, including, but not limited to, VHB's negligence, errors, omissions, strict liability, statutory liability, indemnity obligation, breach of contract or breach of warranty shall not exceed the higher of \$50,000 (fifty thousand dollars), or ten (10) percent of the compensation actually paid to VHB. Client and VHB may agree to a higher limitation of liability for an increased fee.

**DISPUTE RESOLUTION.** All questions in dispute under this Agreement shall be submitted to non-binding mediation as a condition precedent to the institution of legal proceedings. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representative and shall meet within ten (10) days after the service of the notice. The parties shall then attempt to resolve the dispute within ten (10) days of meeting. Should the parties be unable to agree on a resolution of the dispute, then the parties shall proceed with mediation in accordance with the mediation rules of the American Arbitration Association. The cost of mediation shall be borne equally by both parties. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

**LEGAL SUPPORT.** To the extent VHB is required to respond to any dispute resolution process, including, but not limited to, requests for document production, discovery or a request to appear in any deposition or legal proceeding, which is related to the Scope of Services but does not arise out of VHB's negligent

acts, errors or omissions, Client shall compensate VHB for all costs incurred by VHB, including reasonable attorneys' fees.

**DESCRIPTIVE HEADINGS AND COUNTERPARTS.** The headings contained in this Agreement are for convenience of reference only and shall not constitute a part hereof, or define, limit or in any way affect the meaning of any of the terms or provisions hereof. This Agreement may be executed in two or more counterparts, and any party hereto may execute any such counterpart, which, when executed and delivered, shall be deemed to be an original and all of such counterparts taken together shall be deemed to be one and the same instrument.

**EXCLUSIVE REMEDIES.** In the event that any dispute is not remedied through the alternative dispute resolution procedures set forth herein, all claims, actions, and rights of action arising from or relating in any way to this Agreement or the services performed thereunder, whether in contract, tort, indemnity and all other rights of action whatsoever, shall be filed in a court of competent jurisdiction within three years of the completion of such services, or all such claims, actions and rights of action shall be waived. Recovery under this Agreement shall be limited by the parties' agreement on Allocation of Risk and the remainder of this section.

Notwithstanding any other provision of this Agreement, neither party shall be liable to the other for any liquidated, incidental, special, indirect or other consequential damages incurred, regardless of the nature of the cause or whether caused by Client or VHB, or their employees, subconsultants, or subcontractors. Consequential damages include, without limitation, loss of use, loss of profits, loss of production, or business interruption; however, the same may be caused.

VHB and Client waive all claims against each other arising out of or related to this Agreement or the services to the extent that losses, damages, and liabilities associated with such claims have been compensated by the proceeds of property insurance or any other insurance policy.

VHB makes no warranties or guarantees, express or implied, under this Agreement or any other contract document with respect to its provision of professional services. In entering into this Agreement, Client has relied only upon the representations set forth in this Agreement. No verbal warranties, representations, or statements shall be considered a part of this Agreement or a basis upon which Client relied in entering into this Agreement.

**NO THIRD PARTY BENEFICIARIES.** Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either Client or VHB. In addition, nothing herein shall be construed as creating a contractual relationship between Client and any VHB employee,

representative, or consultant. Client agrees that in the event of a dispute regarding this Agreement or the services rendered by VHB hereunder, Client shall only seek recourse against VHB and waives any right to pursue a claim against VHB's individual directors, officers or employees.

VHB's commitments as set forth in this Agreement are based on the expectation that all of the services described in this Agreement will be provided. In the event Client later elects to reduce VHB's Scope of Services, Client hereby agrees to release, hold harmless, defend, and indemnify VHB from any and all claims, damages, losses or costs associated with or arising out of such reduction in services.

**SEVERABILITY.** The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

**TAXES.** Any taxes or fees, enacted by local, state, or federal government and based on gross receipts or revenues, will be invoiced to and payable by Client as an additional amount due under this Agreement.

**PROJECT SPECIFIC PROVISIONS.** To the extent the Scope of Services involves any of the following services/geographies, the following general provisions apply accordingly:

**AMERICANS WITH DISABILITIES ACT (ADA).** Client understands and agrees that ADA standards are evolving and subject to varying, potentially contradictory interpretations and applications. VHB will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances, and regulations as they apply to the project. VHB cannot and does not warrant or guarantee that Client's Project will comply with all ADA requirements or ADA interpretations or other applicable regulatory interpretations.

**CLIMATE CHANGE/FLOOD ANALYSIS.** Consultant shall not be responsible or liable for any damages, losses, litigation, expenses, counsel fees and compensation arising out of any claims, damages, personal injuries and/or property losses related to flooding conditions whether directly or indirectly due to flood water damage, and Client shall at all times indemnify and hold harmless VHB, its respective officers, agents and employees on account of any related claims, damages, losses, expenses and counsel fees related thereto.

#### **CONSTRUCTION PHASE SERVICES**

**SITE VISITS.** VHB shall make periodic site visits upon the request of Client or as otherwise agreed in writing by Client and VHB for

the limited purpose of determining whether work is in general conformance with VHB's plans and specifications. Such visits are not intended to be an exhaustive check or a detailed inspection of Contractor's work. VHB shall not supervise or have control over Contractor's work nor have any responsibility for construction ways, means, methods, techniques, sequences, or procedures selected by Contractor nor for Contractor's safety precautions or programs in connection with the Work.

**SHOP DRAWINGS.** VHB's review and approval of submittals such as shop drawings, product data, samples, and other data, shall be for the limited purpose of checking for conformance with the design concept and the information in VHB's documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades, or construction safety precautions, all of which are the sole responsibility of Contractor and other unrelated parties. Review of a specific item shall not indicate that VHB has reviewed the entire assembly of which the item is a component. VHB shall not be responsible for any deviations from VHB's documents or other documents that are not brought to the attention of VHB in writing by Contractor. VHB shall not be required to review partial submissions or those for which submission of correlated items have not been received.

**GEOTECHNICAL SERVICES.** Client understands that VHB does not perform geotechnical services directly and, if requested, will retain a geotechnical subconsultant on behalf of Client, and VHB shall rely on the accuracy and completeness of data furnished as if the geotechnical services were contracted directly through Client.

**TANK INSPECTION.** Client will provide VHB with available underground storage tank (UST) documentation as necessary. VHB assumes that the documentation and site plans will be in order, be complete and meet regulatory compliance standards. VHB's inspection services are to fulfill regulatory requirements and do not include invasive testing or equipment calibration and testing. Accordingly, Client expressly agrees that VHB shall have no liability for equipment functioning or malfunctioning, product releases or spills.

**LSP SERVICES – PROJECTS LOCATED IN MASSACHUSETTS.** In accordance with the Massachusetts General Laws Chapter 21E, the performance of the services contained in this Agreement may require the engagement of a Licensed Site Professional (LSP) registered with the Commonwealth of Massachusetts under Massachusetts General Law Chapter 21A and the regulations promulgated by the Massachusetts Department of Environmental Protection (MADEP) thereunder (collectively the LSP Program). These laws and regulations place upon the LSP certain professional obligations owed to the public, including in some

instances a duty to disclose the existence of certain environmental contaminants to the MADEP. In the event that any site for which VHB has provided LSP services is audited by MADEP pursuant to the provisions of the Massachusetts Contingency Plan, VHB shall be entitled to additional compensation to provide such services as may be necessary to assist Client in its response to MADEP.

Client understands and acknowledges that in the event the LSP's obligations under the LSP Program conflict in any way with the terms and conditions of this Agreement or the wishes or intentions of Client, the LSP is bound by law to comply with the requirements of the LSP Program. Accordingly, Client recognizes that the LSP shall be immune for all civil liability resulting from any alleged and/or actual conflict with the LSP Program. Client also agrees to hold VHB and its LSP harmless for any claims, losses, damages, fines, or administrative, civil, or criminal penalties resulting from the LSP's fulfillment of its obligations under the LSP Program.

**PROJECTS LOCATED IN FLORIDA.  
FLORIDA STATUTES SECTION  
558.0035 (2013), AN INDIVIDUAL  
EMPLOYEE OR AGENT MAY NOT BE  
HELD INDIVIDUALLY LIABLE FOR  
ECONOMIC DAMAGES RESULTING  
FROM NEGLIGENCE OCCURRING  
WITHIN THE COURSE AND SCOPE  
OF THIS AGREEMENT.**

Jrnl	Invoice Description	Reference	Proj	Amount	Encumbrance
Description	Account				
Death Cert.	GEN'L GOV. / STATE BIRTH G 1-363-00			19.60	0.00
Marriage Cert.	GEN'L GOV. / STATE DEATH G 1-361-00			16.00	0.00
	GEN'L GOV. / STATE CMARRY				
<b>Vendor Total-</b>				<b>78.00</b>	
<b>00155 USPS - NEWCASTLE</b>					
0622	POSTAGE - Priority		*** PAID ***	Check #	2372
3 Sheets	Priority @ 9.65	E 101-25-05		154.40	0.00
1 Sheet	\$1.00	GEN GOVT - OPERATIONS / POSTAGE/ENV E 101-25-05		10.00	0.00
		GEN GOVT - OPERATIONS / POSTAGE/ENV			
<b>Vendor Total-</b>				<b>164.40</b>	
<b>Prepaid Total-</b>				<b>164.40</b>	
<b>Current Total-</b>				<b>38,356.04</b>	
<b>Warrant Total-</b>				<b>38,520.44</b>	

THIS IS TO CERTIFY THAT THERE IS DUE AND CHARGEABLE TO THE APPROPRIATIONS LISTED ABOVE AND YOU ARE DIRECTED TO PAY UNTO THE PARTIES NAMED IN THIS SCHEDULE.

DATE: 6/30, 2023

JÖEL LIND  
 TOR GLENDINNING  
 RUFUS PERCY  
 KAREN PAZ  
 THOMAS KOSTENBADER

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 \_\_\_\_\_  
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Jrnl	Invoice Description	Reference	Amount	Encumbrance
Description	Account	Proj		
<b>01121 DONALD C. MEANS</b>				
0622	MODERATOR - Elections	June 2023		
	MODERATOR - June 2023	E 101-01-07	150.00	0.00
	GEN GOVT - COMPENSATION / ELECTION WRK			
	Vendor Total-		150.00	
<b>00897 HAGAR ENTERPRISES, INC</b>				
0622	Main St Sidewalk Paving	INV#6854		
	Main St Sidewalk Paving	E 118-98-04	29,500.00	0.00
	RESERVE XFER - TRANSFERS / RDS CAP PROJ			
	Vendor Total-		29,500.00	
<b>00157 MAINE REVENUE SERVICES</b>				
0622	Douglas Fowler Sales Tax	05/18/2023		
	Douglas Fowler Sales Tax	G 1-345-00	247.50	0.00
	GEN'L GOV. / STATE MV FEE			
	Vendor Total-		247.50	
<b>00109 PROPERTY CARE PLUS, INC</b>				
0622	Various Mowings	Inv #152292		
	Various Mowings-Inv152292	E 101-70-02	715.00	0.00
	GEN GOVT - CEMETERIES / MOWING			
	Vendor Total-		715.00	
<b>00102 READY REFRESH/BLUE TRITION BRANDS INC</b>				
0622	TOWN OFFICE WATER	6/28/2023		
	TOWN OFFICE WATER	E 101-25-95	69.95	0.00
	GEN GOVT - OPERATIONS / SUPPLIES			
	Vendor Total-		69.95	
<b>01300 TREASURER, STATE OF MAINE-DEH/DEP</b>				
0622	SURCHARGE- May/June			
	SURCHARGE- (May-June)	G 1-343-00	45.00	0.00
	GEN'L GOV. / PLMBG SURCHG			
	Vendor Total-		45.00	
<b>00022 TREASURER, STATE OF ME-ANIMAL WELF</b>				
0622	Dog License Report	June		
	June Dog License Report	G 1-365-00	6.00	0.00
	GEN'L GOV. / STATE DOG			
	Vendor Total-		6.00	
<b>00023 TREASURER, STATE OF ME-BMV</b>				
0622	Reports 6/9 - 6/29/2023	BMV		
	6/9-6/16 BMV Report	G 1-345-00	1,489.50	0.00
	GEN'L GOV. / STATE MV FEE			
	6/16/-6/23 BMV Report	G 1-345-00	3,884.75	0.00
	GEN'L GOV. / STATE MV FEE			
	6/23-6/29 BMV Report	G 1-345-00	1,722.84	0.00
	GEN'L GOV. / STATE MV FEE			
	Vendor Total-		7,097.09	
<b>00029 TREASURER, STATE OF ME-DHHS/CDC</b>				
0622	Plumbing Reports	May - June		
	Balance Due fr April	G 1-342-00	25.00	0.00
	GEN'L GOV. / STATE PLMB			
	May - June Plumbing	G 1-342-00	422.50	0.00
	GEN'L GOV. / STATE PLMB			
	Vendor Total-		447.50	
<b>01444 TREASURER, STATE OF ME-VITALS</b>				
0622	SEMI-ANNUAL VITALS REPORT	Jan - June 2023		
	Marriage Liscense	G 1-360-00	18.40	0.00
	GEN'L GOV. / STATE MARRYL			
	Birth Cert.	G 1-362-00	24.00	0.00

## Warrant 23

Jrnl	Check	Month	Invoice Description	Reference	Amount	Encumbrance
Description	Account	Proj				
<b>01121 DONALD C. MEANS</b>						
0622	2373	06	MODERATOR - Elections	June 2023		
MODERATOR - June 2023	E 101-01-07				150.00	0.00
	GEN GOVT - COMPENSATION / ELECTION WRK					
			<b>Vendor Total-</b>		<b>150.00</b>	
<b>00897 HAGAR ENTERPRISES, INC</b>						
0622	2374	06	Main St Sidewalk Paving	INV#6854		
Main St Sidewalk Paving	E 118-98-04				29,500.00	0.00
	RESERVE XFER - TRANSFERS / RDS CAP PROJ					
			<b>Vendor Total-</b>		<b>29,500.00</b>	
<b>00157 MAINE REVENUE SERVICES</b>						
0622	2375	06	Douglas Fowler Sales Tax	05/18/2023		
Douglas Fowler Sales Tax	G 1-345-00				247.50	0.00
	GEN'L GOV. / STATE MV FEE					
			<b>Vendor Total-</b>		<b>247.50</b>	
<b>00109 PROPERTY CARE PLUS, INC</b>						
0622	2376	06	Various Mowings	Inv #152292		
Various Mowings-Inv152292	E 101-70-02				715.00	0.00
	GEN GOVT - CEMETERIES / MOWING					
			<b>Vendor Total-</b>		<b>715.00</b>	
<b>00102 READY REFRESH/BLUE TRITON BRANDS INC</b>						
0622	2377	06	TOWN OFFICE WATER	6/28/2023		
TOWN OFFICE WATER	E 101-25-95				69.95	0.00
	GEN GOVT - OPERATIONS / SUPPLIES					
			<b>Vendor Total-</b>		<b>69.95</b>	
<b>01300 TREASURER, STATE OF MAINE-DEH/DEP</b>						
0622	2378	06	SURCHARGE- May/June			
SURCHARGE- (May-June)	G 1-343-00				45.00	0.00
	GEN'L GOV. / PLMBG SURCHG					
			<b>Vendor Total-</b>		<b>45.00</b>	
<b>00022 TREASURER, STATE OF ME-ANIMAL WELF</b>						
0622	2379	06	Dog License Report	June		
June Dog License Report	G 1-365-00				6.00	0.00
	GEN'L GOV. / STATE DOG					
			<b>Vendor Total-</b>		<b>6.00</b>	
<b>00023 TREASURER, STATE OF ME-BMV</b>						
0622	2380	06	Reports 6/9 - 6/29/2023	BMV		
6/9-6/16 BMV Report	G 1-345-00				1,489.50	0.00
	GEN'L GOV. / STATE MV FEE					
6/16/-6/23 BMV Report	G 1-345-00				3,884.75	0.00
	GEN'L GOV. / STATE MV FEE					
6/23-6/29 BMV Report	G 1-345-00				1,722.84	0.00
	GEN'L GOV. / STATE MV FEE					
			<b>Vendor Total-</b>		<b>7,097.09</b>	
<b>00029 TREASURER, STATE OF ME-DHHS/CDC</b>						
0622	2381	06	Plumbing Reports	May - June		
Balance Due fr April	G 1-342-00				25.00	0.00
	GEN'L GOV. / STATE PLMB					
May - June Plumbing	G 1-342-00				422.50	0.00
	GEN'L GOV. / STATE PLMB					
			<b>Vendor Total-</b>		<b>447.50</b>	
<b>01444 TREASURER, STATE OF ME-VITALS</b>						

Warrant Preview

Pay Date: 07/10/2023

Jrnl Description	Invoice Description	Reference Account	Proj	Amount	Encumbrance
			Prepaid Total-	0.00	
			Current Total-	5,671.81	
			Warrant Total-	5,671.81	

THIS IS TO CERTIFY THAT THERE IS DUE AND CHARGEABLE TO THE APPROPRIATIONS LISTED ABOVE AND YOU ARE DIRECTED TO PAY UNTO THE PARTIES NAMED IN THIS SCHEDULE.

DATE: 7/10, 2023

JOEL LIND \_\_\_\_\_  
 TOR GLENDINNING \_\_\_\_\_  
 RUFUS PERCY \_\_\_\_\_  
 KAREN PAZ \_\_\_\_\_  
 THOMAS KOSTENBADER \_\_\_\_\_

Jrnl	Invoice Description	Reference	Proj	Amount	Encumbrance
Description	Account				
<b>00348 AT&amp;T MOBILITY</b>					
0007	Hbr Master Phone	July			
	Hbr Master Cell	E 103-25-18		42.69	0.00
	PLANNING - OPERATIONS / CELL PHONE				
	<b>Vendor Total-</b>			<b>42.69</b>	
<b>00033 CENTRAL MAINE POWER CO</b>					
0007	Various Electric Accts				
	35013844770 - STR LIGHTS	E 105-57-02		45.88	0.00
	PUB SAFETY - INFRASTRUCT / ST. LIGHTS				
	35011641467 - F.D.	E 105-66-02		87.85	0.00
	PUB SAFETY - FIRE STA/COM / ELECTRICITY				
	30012720394 - AC HL STR L	E 105-57-02		32.22	0.00
	PUB SAFETY - INFRASTRUCT / ST. LIGHTS				
	<b>Vendor Total-</b>			<b>165.95</b>	
<b>00011 GREAT SALT BAY SANITARY DIST.</b>					
0007	SEWER/WATER	Acct#4022-0			
	(16) HYDRANTS	E 105-57-01		4,110.34	0.00
	PUB SAFETY - INFRASTRUCT / HYDRANTS				
	<b>Vendor Total-</b>			<b>4,110.34</b>	
<b>00121 LOUIS DOE, INC.</b>					
0007	Inv#2306-278826	VT Park - Mulch			
	Inv#2306-278826	E 101-78-01		299.95	0.00
	GEN GOVT - VETERAN PARK / MAINT/PLANT				
	<b>Vendor Total-</b>			<b>299.95</b>	
<b>00822 MAINE MUNICIPAL ASSOC-W.C. FUND</b>					
0007	WORKERS COMP INS	Inv#11510W			
	Inv#11510W	E 101-03-15		594.30	0.00
	GEN GOVT - INSURANCE / WORKERS COMP				
	<b>Vendor Total-</b>			<b>594.30</b>	
<b>00395 SEACOAST SECURITY INC.</b>					
0007	Monitoring - July	Inv#850618			
	Town Office Monitoring	E 101-65-04		123.00	0.00
	GEN GOVT - TOWN OFFICE / MAINT/REPAIR				
	Fire Sta. Monitoring	E 105-66-04		135.00	0.00
	PUB SAFETY - FIRE STA/COM / MAINT/REPAIR				
	<b>Vendor Total-</b>			<b>258.00</b>	
<b>00189 TIDEWATER TELECOM INC</b>					
0007	PHONE LINES	Town Office			
	TOWN OFFICE LINES	E 101-65-05		200.58	0.00
	GEN GOVT - TOWN OFFICE / TELEPHONES				
	<b>Vendor Total-</b>			<b>200.58</b>	