

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL MEETING
Tuesday, October 15, 2013
TOWN HALL CHAMBERS
7:00 p.m.**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, October 15, 2013. Vice Chair Quinn opened the meeting at 7:06 p.m.

The following were in attendance:

**Vice Chair Bob Quinn
Councilor Jay Kelley
Councilor Malorie Pastor
Councilor Joseph Thornton
Councilor Roxanne Frenette
Councilor Kenneth Blow
Town Manager Larry Mead
Assistant Town Manager V. Louise Reid**

Absent: Chair Shawn O'Neill

**Pledge to the Flag
Roll Call**

EMERGENCY ITEM:

VICE CHAIR QUINN: We have a request to add the following Emergency Item , Agenda Item Number 6051 to follow Agenda Item # 6049, pursuant to Charter Section 404.1 - Discussion with Action: Confirm the appointment of Daniel Feeney as Licensed Plumbing Inspector and Electrical Inspector, and confirm the appointment of Rodney Belanger as Deputy Code Enforcement Officer, Deputy Licensed Plumbing Inspector and Deputy Electrical Inspector, both to expire July 1, 2014.

MOTION: Councilor Thornton motioned and Councilor Frenette seconded to Discussion with Action: Confirm the appointment of Daniel Feeney as Licensed Plumbing Inspector and Electrical Inspector, and confirm the appointment of Rodney Belanger as Deputy Code Enforcement Officer, Deputy Licensed Plumbing Inspector and Deputy Electrical Inspector, both to expire July 1, 2014.

VOTE: Unanimous.

PRESENTATION

**Sea Level Rise Adaptation Working Group:
Biddeford-Saco-Old Orchard Beach-Scarborough-SMRPC
Review of the Coastal Hazard Resiliency Tools Project
by Lee Jay Feldman and Peter Slovinsky**

Purpose:

The purpose of the Sea Level Adaptation Working Group (SLAWG) is to review information from the Coastal Hazard Resiliency Tools Project that has analyzed the problem of sea level rise, to create a Vulnerability Assessment for Saco Bay, and to develop and implement an Action Plan of implementation strategies for regional solutions. The SLAWG shall limit its scope to its defined region, which shall consist of any coastal estuaries, marshes and beaches subject to tidal influence and storm surges, whether by fresh or salt water, as well as any associated developed areas, roads, and other infrastructure, within the four member municipalities. At this time, the SLAWG has completed its initial versions of a Vulnerability Assessment and this Action Plan, both of which are intended to be continually refined, as the identified actions are researched, designed, and implemented.

SLAWG is staffed and coordinated by The Southern Maine Regional Planning Commission (Lee Jay Feldman) and the Maine Geological Survey (Peter Slovinsky) SLAWG also has a committee of representatives from all 4 towns and they are:

Lucy LaCasse	Scarborough
Tom Hall	Scarborough
Jay Chace	Scarborough Town Planner
Jeffery Hindliter	Old Orchard Town Planner
Dr. Stephen Zeemen	Biddeford
John Bubier	Biddeford
Greg Tansley	Biddeford Town Planner
Bob Hamblen	Saco Town Planner
Marston Lovell	Saco
Rick Michaud	Saco
Peter Marks	Saco
Ruta Dzenis	State of Maine DACF
Kathleen Leyden	State of Maine DACF
Liz Hertz	State of Maine DACF
V. Louise Reid	Assistant Town Mgr. – Old Orchard Beach

It was noted that the presentation this evening would be put on the Town's web site so that it would be available to all citizens and those of interest. During the discussion it was also noted that a citizen needed to be added from Old Orchard Beach and would be addressed by the Town Manager. John Bird gave an update on the lack of funding involved in the berm constructions to control erosion issues by reducing the rate of surface runoff and that this project should have been continued but the evaporation of funds stopped the project. During the discussion Jerome Begart reminded the presenters of the wealth of information in the minds of old timers in Old Orchard Beach who have lived through many years of addressing these issues. Their knowledge would be invaluable in these discussions.

PLEASE NOTE THE PRESENTATION HAS BEEN PUT ON THE TOWN'S WEB SITE.

ACKNOWLEDGEMENTS:

COUNCILOR THORNTON: He announced information provided by the School Advisor of the Interact Club (community service group) at Old Orchard Beach High School. They are currently competing in a School Spirit Food Drive Challenge with other schools in Maine.

This Friday, we will be having a pep rally from 5am-7am in the gym at the high school. We need as many people as possible to attend, since it will be aired live on WGME 13. I was wondering if there was a way for you to contact the members of the Old Orchard Beach community to have them attend our pep rally. We will have coffee and donuts and lots of games to play. If they can attend, we would like them to bring a canned item to help our food drive. The following link is a link showing the other schools we are competing against and their pep rally. We are the smallest school in this challenge, so we need as much community support as possible. <http://www.wgme.com/news/features/spirit/> On the right hand side, you can click on various videos to see the other schools' pep rallies. If you have any questions, please don't hesitate to contact me.

VICE CHAIR QUINN: We offer our condolences to the O'Neill family in the passing of Chair O'Neill's father, Ted O'Neill. His father set a good example of public service for Shawn over the years and will be greatly missed. Let us have a moment of silence in respect for the family and offer our thoughts and prayers this evening. Vice Chair recalled how he had served with Ted O'Neill and that he was a man who was street smart and a good servant of the people.

ACCEPTANCE OF MINUTES:

Special Town Council Meeting Minutes of October 1, 2013; and Town Council Meeting Minutes of October 1, 2013.

MOTION: Councilor Frenette motioned and Councilor Kelley seconded to Accept the Minutes as read.

VOTE: Unanimous.

COUNCILOR BLOW: He requested that Agenda Item Number 6049 be moved and be considered prior to Agenda Item Number 6045.

PUBLIC HEARING AMUSEMENT PERMIT:

VICE CHAIR QUINN: I open this Public Hearing at 7:42 p.m.

HFY Enterprises Inc. dba/Oceanside Grille at the Brunswick (310-6-1), 39 West Grand Avenue, Music Inside: 11:00 a.m. – 1:00 a.m., Outside: 11:00 a.m. to 12:30 a.m.

MOTION: Councilor Pastor motioned and Councilor Frenette seconded to Approve the Amusement Permit as read.

VOTE: Unanimous.

VICE CHAIR QUINN: I close this Public Hearing at 7:45 p.m.

TOWN MANAGER'S REPORT:

The Manager reported that he worked with the DPW, WW, and the DEP to address a potentially damaging situation at Goosefare Brook. Action taken was breaching the sandbar but it appears to be holding. The DPW continues to work on dye testing of waste disposal in Ocean Park homes and about 50 have been done so far with one failure. Code Enforcement Officer has accepted the job officer. Dan Feeney will begin about November 11th. There is forward progress on put the Library project out to bid for construction. The FEMA flood plain

maps are being work on and we are planning for an appeal by the Town on the elevations proposed in preliminary maps. Met with the Town's auditor and Finance Director and the work should be completed on their reconciling of accounts. They have a bit more work on the FY 13 audit but it should be completed by the end of the year. Negotiations for labor agreements are ongoing; first meeting with police union representatives; and first meeting with fire union representatives. Attended with the Human Resource manager a 1/2 day workshop on labor negotiations. Attended meeting of the Design Review Committee and attended meeting of the Fire Department Call Force.

NEW BUSINESS:

6049 Discussion with Action: Approve the Liquor License Renewal for HFY Enterprises Inc. dba/Oceanside Grille at the Brunswick (310-6-1), 39 West Grand Avenue, m-s-v in a Restaurant/Lounge.

MOTION: Councilor Frenette motioned and Councilor Pastor seconded to approve the Liquor License Renewal as read.

VOTE: Unanimous.

6043 Discussion with Action: Approve and Accept the Consent Agreement for Kate's Butter to complete and move to its existing business production operations in Arundel, Maine, on or before February 1, 2014; not renew their Business license after April 30, 2014; and give up the variance on the property to the Town of Old Orchard Beach upon expiration of the business license.

Background:

October 3, 2013

Mr. Dan Patry
Mr. Lucas Patry
133 Saco Avenue and 3 Arbutus Avenue
Old Orchard Beach, Maine 04064

Dear Messrs. Patry:

Re: Agreement – Kate's Butter

In your recent letter of September 25, 2013 you advise as follows:

"Kate's Butter is prepared to forfeit its variance on 3 Arbutus Ave. when the business license expires May 1, 2014. conditionally, Kate's Butter does not feel it should incur any fines related to the business and Kate's will continue to operate under the constraints of the consent agreement. As in the past, Kate's representative, Lucas Patry will make himself available to the town administration to answer any questions pertaining to our transition from Old Orchard Beach to Arundel."

First, please be advised that the Town Council appreciates your offer regarding the surrendering of the "variance". However, we believe additional clarifications and, going

forward, that additional structure and benchmarks are necessitated regarding the authorizations for Kate's Butter to continue its commercial operations at the 3 Arbutus and 133 Saco Avenue properties.

At this juncture, the Council, following the unanimous recommendation of the Administrative Review Board at its September 18, 2013 meeting, and a unanimous vote by the Town Council of October 1, 2013, have agreed to present to you the following terms. With your signature on this agreement, as agreed by you on Tuesday evening, October 1st at the Town Council Meeting, the Town Council indicated the Council would not initiate the revocation of the business license for Kate's Butter:

1. By February 1, 2014 all dairy manufacturing and related transportation, storage, processing or other related or associated operations formerly or currently taking place at the 3 Arbutus Avenue and 133 Saco Avenue properties will cease.
2. Kate's Butter will from the date of this letter forward, provide to the CEO and Town Manager bi-weekly progress reports of the closing down and moving its dairy operations out of the 3 Arbutus Avenue and 133 Saco Avenue properties.
3. The terms governing trucks and vehicles, the garaging, receiving and shipping operations at the 3 Arbutus Avenue property and otherwise governing the size, hours and number of trucks providing service to or from the operations at Arbutus Ave. will continue to be governed by and in compliance to the terms set forth in the June 13, 2013 Consent Agreement between the Town and Kate's Butter. The terms of the Zoning Board of Appeals Decision of July 7, 2003 concerning the limitations on truck activities taking place at 133 Saco Avenue shall remain in force and effect.
4. By the passing of the date of May 1, 2014, Kate's Butter agrees, warrants and affirms that it, and its principals and/or owners or assignees, have totally and permanently relinquished any vestiges or claims of right, privilege or authority that any one or more of them may have previously acquired from the Town related to the operation of the butter or dairy manufacturing or similar businesses at the 3 Arbutus Avenue or 133 Saco Ave. premises. Kate's Butter or its owners or principals or assigns may hereafter re-apply for any such approvals, licenses or permits as it may wish to secure under current zoning or other regulations of the Town.
5. If not otherwise suspended or revoked, on May 1, 2014 the Business License of Kate's Butter authorizing the manufacture, processing, storage, shipping of dairy products and butter, and all other related activities formerly taking place at the 3 Arbutus Avenue and 133 Saco Avenue properties will expire and will not be renewed.

As indicated by the Town Council, receipt of this signed Agreement within one week will allow this signed Agreement to go on the October 15th Town Council agenda for approval. Acceptance of this Agreement by: Acceptance of this Agreement by:

JEROME BEGERT: He asked if the inscription on the butter would still say "Old Orchard Beach" when they move to Arundel.

LUCAS PATRY: He responded that the equipment is already in the works to note that it say Arundel but he acknowledged that they would also be part of Old Orchard Beach.

DORIS HARRIS: She indicated her disagreement that there had ever been a proper license issued and that there was a variance.

VICE CHAIR QUINN: He indicated that historically this was done as a home occupation. You are considered a home occupation if you do not have a commercial store or office and you are doing any or part of your business activities from your residence and the residence is inside the town's limits. Even if you do not sell a product from your home or do not have any customers come to your home, you are still considered a home occupation business. The Vice Chair was explaining that a variance is separate from the business license. The variance for the home occupation was granted by the ZBA at the inception of the business, and the business license was issued by the Town Council and renewed annually.

MOTION: Councilor Frenette motioned and Councilor Kelley seconded to Approve and Accept the Consent Agreement for Kate's Butter to complete and move to its existing business production operations in Arundel, Maine, on or before February 1, 2014; not renew their Business license after April 30, 2014; and give up the variance on the property to the Town of Old Orchard Beach upon expiration of the business license.

VOTE: Unanimous.

6044 Discussion with Action: Accept the Bid from Weirs Motor Sales, Inc. for a GMC 2013 Model 2500 HD Pickup, $\frac{3}{4}$ ton extended cab with 8 foot bed in the amount of \$29,289 from Account Number 50002-50835 - Public Works Vehicle, with the balance of \$27,500; and a line item transfer of \$1,000 from Account Number 20151-50330 - Equipment Replacement, with a balance of \$1,000; and a line item transfer of \$789 from Account Number 20151-50452 - Operating Equipment Repair, with a balance of \$89,050.98 to Account Number 50002-50835 – CIP-Public Works Vehicle, with a balance of \$27,500.

TOWN MANAGER: Despite sending out the RFP to the list contained below, only one bid was received from the same dealer as before:

WEIRS MOTORS SALES:

\$29,289 – STICKER PRICE - \$37,467 but this includes the trade in amount on the old vehicle.

MOTION: Councilor Frenette motioned and Councilor Blow seconded to Accept the Bid from Weirs Motor Sales, Inc. for a GMC 2013 Model 2500 HD Pickup, $\frac{3}{4}$ ton extended cab with 8 foot bed in the amount of \$29,289 from Account Number 50002-50835 - Public Works Vehicle, with the balance of \$27,500; and a line item transfer of \$1,000 from Account Number 20151-50330 - Equipment Replacement, with a balance of \$1,000; and a line item transfer of \$789 from Account Number 20151-50452 - Operating Equipment Repair, with a balance of \$89,050.98 to Account Number 50002-50835 – CIP-Public Works Vehicle, with a balance of \$27,500.

VOTE: Unanimous.

6045 Discussion with Action: Confirm the Appointment of Daniel J. Feeney as Code Enforcement Officer for the Town of Old Orchard Beach, effective November 11, 2013, with a probationary period ending May 11, 2014, at a salary of \$53,335.

TOWN MANAGER: We are pleased to present for confirmation the appointment of Daniel J. Feeney as Code Enforcement Officer for the Town of Old Orchard Beach. Mr. Feeney has been involved in Code positions for the past twenty years. He has all certifications with the exception of the 80K rule (Court Proceedings). He has previously owned his own construction management and building company. He is currently the Code Enforcement Officer in both Vasalboro and Durham, Maine.

MOTION: Councilor Pastor motioned and Councilor Blow seconded to confirm the Appointment of Daniel J. Feeney as Code Enforcement Officer for the Town of Old Orchard Beach, effective November 11, 2013, with a probationary period ending May 11, 2014, at a salary of \$53,335.

VOTE: Unanimous.

6046 Discussion with Action: Approve pre-Qualification process for contractors to bid on the Edith Belle Memorial Library Building project.

TOWN MANAGER: I have met twice with representatives from the Libby Library and with the architect for the renovation project, Scott Teas, to plan for the bid process and the start of construction in the spring. Based on those conversations I am bringing to you a recommendation to begin the process by conducting a pre-qualification process for the purpose of identifying a group of firms that would then submit sealed bids for the construction itself. The purpose of pre-qualifying firms is to uphold the standard of awarding the contract to the low bidder while also providing assurance that the successful contractor has a record of successful completion of projects of similar size and scope. It is anticipated that there will be enough firms responding to the invitation to pre-qualify that the bid process will be very competitive. The Town will, in conjunction with the architect, solicit the interest of a number of firms that have a record of doing quality work in the region. In addition the Town will advertise the invitation to pre-qualify in the Portland Press Herald, the Kennebec Journal, and the Portsmouth Herald. See attached as part of your Council packet the proposed advertisement to participate. The process will begin immediately. A pre-qualification conference will be held on site at the end of October, applications due in mid-November, and selections announced in mid-December. Committee to determine firms eligible to bid. A committee will review the application forms from firms responding to the invitation to submit qualifications. It is proposed that the committee consist of the following members:

- 2 Town Councilors
- 2 Library representatives
- Town Manager
- Library Director
- Town Finance Director
- Owner's Representative
- Architect representative

Two Councilors have volunteered to serve including Councilors Pastor and Blow.

Owners Representative to be hired The Town will hire an owner's representative (OA) to take the lead in overseeing the construction project on the Town's behalf. The OA will assist in the vetting and selection of the firms to be invited to bid and will oversee the quality of performance of the contractor in adhering to the project plans and specifications through on-site inspections, participation in construction meetings, review of change orders, payment requisitions, and any test reports. The OA to be hired will have extensive

construction experience in projects of similar or larger scope and size. With the Council's permission to expend funds prior to the issuance of bond funds, I will immediately proceed to recruit and hire the owners representative, who will work directly for me, while also reporting regularly to the Building Committee on the construction progress. Attached for your information are the following documents:

The proposed pre-qualification advertisement
A draft invitation to bid for firms selected through pre-qualification
The pre-qualification submittal form
The supplement form for pre-qualification.

Architect Scott Teas will be present at the October 15 meeting to address this process.

The Town Manager did make a couple of corrections in the pre-qualification dates.
Completion time – The completion is anticipated in November 2014 to allow sufficient time for the owner to move in and reopen prior to the end of the year. It is anticipated that sealed bid proposals will be requested for the above referenced project on Friday, January 24, 2014.

MOTION: Councilor Pastor motioned and Councilor Blow seconded to Approve the pre-qualification process for contractors to bid on the Edith Belle Memorial Library Building project; and Authorize the Town Manager to recruit and hire an Owner's Representative for the position from Account Number 20118-50350, prior to the issuance of the Library Bond funds.

VOTE: Unanimous.

6047 Discussion with Action: Approve Contract with Ransom Engineering in the amount of \$13,000 from Account Number 20113-50300 – Professional Engineering, with a balance of \$15,000 for Flood Plain Analysis.

TOWN MANAGER: You are asked to approve a contract for services in the amount of \$13,000 with Ransom Consulting Inc. so that Robert Gerber may assist the Town with preparing for a municipal appeal of proposed new elevations on the FEMA flood maps. This expense was anticipated and included in the FY 14 budget. It is anticipated based on preliminary map information that the proposed mapping changes will affect hundreds of properties along the Town's coastline. The increased elevations will result in significant increases in required flood insurance for properties that have mortgages. In addition, the new elevations will significantly affect to what extent and how properties can be renovated, rebuilt, or newly constructed. Recent changes in federal rules mean that, while primary homes will see increases in flood insurance costs, second homes are even more affected. It is no exaggeration to say that Mr. Gerber is the only individual who has both the knowledge and direct experience with FEMA requirements and the methodology used by FEMA to establish elevations, and knowledge of the particular physical and geological conditions in coastal Southern Maine, that can be brought to utility by Old Orchard Beach in a timely manner to effectively contest FEMA's proposed changes. Mr. Gerber has over the past several years worked with Old Orchard Beach and numerous other Coastal Maine communities to hold FEMA accountable for the methodology used in setting elevation levels under the remapping process. Mr. Gerber's work has been effective in bringing forth data and evidence that FEMA had failed to consider in arriving at proposed flood elevations. The federal shutdown has affected FEMA, and postponed what was an anticipated release of the new maps this month. However, once the maps are released municipalities have only 90 days to file an appeal. In

addition any appeal must be based solidly in scientific evidence and analysis in order to have any chance of success. If Mr. Gerber's work can demonstrate that elevations should be lowered by one or two feet in areas of Old Orchard Beach that will have a profound effect on properties in those locations. I recommend that the Council approve the contract with Ransom Consulting, Inc.

AGREEMENT FOR CONSULTING SERVICES BETWEEN
THE TOWN OF OLD ORCHARD BEACH AND
RANSOM CONSULTING, INC.

This contract (hereinafter referred to as "Agreement") is made and entered into on this _____ day of October, 2013, by and between the Inhabitants of the Town of Old Orchard Beach with a mailing address of 1 Portland Avenue, Old Orchard Beach, Maine 04064 (hereinafter referred to as "Town"); and Ransom Consulting, Inc., with a mailing address of 400 Commercial Street, Suite 404, Portland, Maine 04101(hereinafter referred to as "Contractor"). In consideration of the mutual promises contained herein, Contractor agrees to perform the following services for the Town.

WITNESSETH:

In consideration of the mutual covenants and conditions set forth herein, the Town and the Contractor agree as follows:

I. SCOPE OF WORK

The Contractor shall furnish all of the services and materials, and, preparatory to Town's planned appeal of proposed increases in Federal Emergency Management Agency (FEMA) flood map elevations, perform work as outlined in a document from Robert Gerber dated July 9, 2013 and attached hereto as Exhibit A. More specifically Contractor shall complete the analysis of conditions in the geographic locations in Old Orchard Beach identified on page 2 of Exhibit A as Areas 0, 1, 2 and 3; and further identified on the map included in Exhibit A. The Contractor shall be responsible for the professional quality, technical accuracy, and timely completion of all services furnished by the Contractor under this Agreement.

II. CONTRACTOR OBLIGATIONS

The Contractor warrants:

A. That it will furnish all vehicles, materials, personnel, tools and equipment, except as otherwise specified herein, and do everything necessary and proper to satisfactorily perform the Services required by this Agreement.

B. That it is financially solvent, is experienced in and competent to perform the Services and is able to furnish the vehicles, materials, personnel, tools and equipment to be furnished by it.

C. That it is familiar with all federal, State and local statutes, laws, rules, regulations, ordinances and orders which may in any way affect the Services.

D. That it has carefully examined this Agreement, and has conducted its own investigation of the nature and location of the Services, the character of equipment and personnel needed to perform the Services, and all conditions which may in any way affect the performance of the Services.

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

III. COMMENCEMENT AND COMPLETION

The Contractor will commence work on or before October 21, 2013 and will complete work on or before December 31, 2013.

IV. COMPENSATION AND PAYMENT TERMS

A. The Town shall pay the Contractor for the performance of Services under this Agreement the sum of \$13,000 (thirteen thousand dollars).

The Town shall make payments to the Contractor upon invoice for services.

V. GUARANTEE

The Contractor represents that, in the performance of its obligations hereunder, it will perform in accordance with applicable standards of conduct for professionals in the related disciplines.

VI. PERMITS AND LICENSES

Permits and licenses necessary for the prosecution of the services shall be secured and paid by the Contractor.

VII. TERMINATION

Either party may terminate this Agreement for cause after giving the other party written notice and a reasonable opportunity to cure. The Town may terminate without cause by giving the Contractor fourteen (14) days notice, and compensating the Contractor equitably to the termination date.

VIII. DISPUTE RESOLUTION

Any controversy or claim arising out of or related to this Agreement, which cannot be resolved between the parties shall be submitted to the Maine Superior Court (York County). This agreement shall be governed by Maine law.

IX. QUALIFICATIONS

The Contractor represents it holds, and will continue to hold during the term hereof any and all qualifications, licenses and certifications required to perform its services in Maine. The contractor shall perform all services in accordance with professional standards.

X. SUBCONTRACTORS

The Contractor shall be fully responsible to the Town for the acts and omissions of any subcontractors, and of persons either directly or indirectly employed by it, and shall hold subcontractors to the same terms and conditions as Contractor is held under this Agreement. No subcontractors shall be retained on this Agreement without the specific prior written approval of the Town.

XI. INSURANCE

Except as otherwise provided by this Agreement, the Contractor and its subcontractors and consultants shall obtain and maintain, throughout the term of this Agreement and for a period of at least two years following the completion of Services under this Agreement, at no expense to the Town, the following insurance coverages:

a. General and professional liability insurance in the amount of not less than Four Hundred Thousand Dollars (\$400,000) or such other amount as is established by the Maine Tort Claims Act (14 M.R.S.A. §8101 et seq.) as amended from time to time, combined single limit, to protect Contractor, any subcontractor performing Services under this Agreement, and Town from claims and damages that may arise from operations under this Agreement, whether such operations be by Contractor or by a subcontractor or by anyone directly or indirectly employed by them.

b. Automobile Liability Insurance in the amount of not less than Four Hundred Thousand Dollars (\$400,000) or such other amount as is established by the Maine Tort Claims Act (14 M.R.S.A. §8101 et seq.) as amended from time to time, combined single limit, to protect Contractor, any subcontractor performing work covered by this Agreement, and Town from claims and damages that may arise from operations under this Agreement, whether such operations be by Contractor or by a subcontractor or by anyone directly or indirectly employed by them.

c. Workers' Compensation Insurance in amounts required by Maine law. In circumstances where any class of employees engaged in work under this Agreement is not protected under the Workers' Compensation Act, Contractor shall, at its own expense, provide for the protection of its employees not otherwise protected.

d. All such insurance policies shall name Town as an additional insured, except that for purposes of workers' compensation insurance, Contractor and its subcontractors instead may provide a written waiver of subrogation rights against Town. Contractor, prior to commencement of Services under this Agreement, and any of its subcontractors, prior to commencement of Services under any subcontract, shall, upon request by the Town, deliver to Town certificates satisfactory to Town evidencing such insurance coverage.

XII. INDEMNIFICATION

The Contractor will indemnify and hold harmless the Town, its officers, agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the Agreement by the Contractor, its officials, employees, agents and subcontractors.

XIII. ENTIRE AGREEMENT

This Agreement represents and contains the entire agreement between the parties. Prior discussions or verbal representations by the parties that are not contained in this Agreement are not a part of this Agreement.



400 Commercial Street, Suite 404, Portland, Maine 04101, Tel (207) 772-2891, Fax (207) 772-3248
Byfield, Massachusetts Portsmouth, New Hampshire Hamilton, New Jersey and East Providence, Rhode Island www.ransomenv.com

Date: July 9, 2013

To: James Butler, CEO, Old Orchard Beach

From: Robert Gerber, P.E.

Subject: Suggested work to file municipal appeal to new FEMA coastal flood maps

I have gone over carefully what I think the main issues are that the Town itself should tackle in municipal appeals to FEMA. FEMA refused to answer our questions and challenges that we issued as comments on the Work Maps by basically saying that if we had any issues we should raise them as part of the municipal appeal process. Therefore, you can expect the final maps to look more or less like the Work Maps unless we prepare appeals that are filed by the municipality within the 90-day appeal period. I expect this 90-day appeal period to be roughly the last 3 months of this year, which will also coincide with the appeal periods for Sagadahoc, Lincoln, Knox, and Waldo Counties where I have already committed to do a lot of work. By FEMA delaying the issuance of the Preliminary Maps until September it is putting me in a time bind. Therefore, if you want me to assist you in preparing these appeals I need to get a substantial start as soon as possible and probably not later than early August; otherwise I cannot guarantee I will be available to help later in the fall.

On the attached map I show 6 problem areas (locations 0 through 6). The problems are divided into two types: green or magenta on the map. The green areas are shown as areas of proposed increased inland flood-zone extension into the land from the ocean. Unlike with most of my other client towns, I did not have an opportunity to re-do the FEMA flood maps from 2009 for Old Orchard Beach. I was just starting to do that work for the Town when the municipal appeal period was terminated in the fall of 2010.

Where I did this re-evaluation for my other towns, FEMA's new Work Maps used my calculations and reduced flood zones from their 2009 maps that had been too conservatively set. So, had I followed through and done the work I proposed back in 2010 and delivered the report to FEMA it is likely that flood zones would have been reduced along the green overlay areas on the map. There are 4 FEMA transects that intersect these green areas. I suggest that I recalculate them with the latest available LiDAR to see if the extent of these new proposed zones can be reduced.

The magenta areas are due to FEMA's new policy of carrying open ocean wave setup into the estuaries of Scarborough Marsh and Goosefare Brook. The only way to

challenge these zones is through expensive complex wave and circulation modeling. I have been authorized by the Town of Scarborough to start the modeling work for Scarborough Marsh; however, I would not re-map the flood zones and prepare an appeal for Old Orchard Beach as part of the Scarborough work. For the Goosefare Brook estuary (magenta areas 4 and 5 on my attached map), Saco does not appear interested in participating in modeling that so Old Orchard Beach would have to foot the whole bill for that.

Cost Estimate to do work to appeal proposed increases in flood map elevations in each area (as shown on the attached map):

Areas 0, 1, and 2—These areas would be done by re-evaluating four existing FEMA transects using the most recent LiDAR available. This is standard open ocean transect analysis in which we would do a detailed STWAVE model first, then do standard WHAFIS and RUNUP2 analysis, using the dune erosion assumptions where required. The estimated cost is \$2000 per transect or \$8000 total for the ocean frontage analysis. Based on some very cursory analysis, we believe we might be able to reduce flood elevations on at least some of this frontage by one or two feet, which could make a big difference as to whether a house is in or out of the flood zone on the relatively flat area behind the beach.

Area 3—The modeling for this will be done as part of the Scarborough modeling analysis. We would charge \$5000 to extend the re-mapping into Old Orchard Beach. We think there is a good chance of reducing flood elevations in this area.

Areas 4 and 5—We have not estimated the detailed cost to do the detailed wave setup transmission modeling necessary to appeal these areas because we assume the Town would not want to pursue this. But in round numbers, this would cost about \$20,000 and our gut instinct is that this might not change the flood elevations much in this area.

I want to do this work soon. If we wait until the fall, I will not have time to do it due to other commitments I have. The cost of doing this work in each area is easily what one year of flood premium will be in the near future per house so the economic rationale is pretty straight-forward. The cost per LOMR per house is typically in the range of \$5000 to \$7000 so it is much, much cheaper to do this as an appeal now rather than force individual homeowners to try to do a LOMR later.

Town Council has received a map defining document.

The Town Manager related his confidence in Bob Gerber to make sure that the concerns of the Town Council are addressed in a timely manner.

MOTION: Councilor Pastor motioned and Councilor Frenette seconded to Approve Contract with Ransom Engineering in the amount of \$13,000 from Account Number 20113-50300 – Professional Engineering, with a balance of \$15,000 for Flood Plain Analysis.

VOTE: Unanimous.

6048 Discussion with Action: Accept, with regret, the Resignation of Maria Pastulovic from the Community Animal Watch Committee; and Appoint Karen Brozek as Alternate to the Community Animal Watch, term to expire December 31, 2014.

MOTION: Councilor Kelley motioned and Councilor Frenette seconded to Accept, with regret, the Resignation of Maria Pastulovic from the Community Animal Watch Committee; and Appoint Karen Brozek as Alternate to the Community Animal Watch, term to expire December 31, 2014.

VOTE: Unanimous.

6051 **Discussion with Action:** Confirm the appointment of Daniel Feeney as Licensed Plumbing Inspector and Electrical Inspector, and confirm the appointment of Rodney Belanger as Deputy Code Enforcement Officer, Deputy Licensed Plumbing Inspector and Deputy Electrical Inspector; both to expire July 1, 2014.

MOTION: Councilor Frenette motioned and Councilor Blow seconded to Confirm the appointment of Daniel Feeney as Licensed Plumbing Inspector and Electrical Inspector, and confirm the appointment of Rodney Belanger as Deputy Code Enforcement Officer, Deputy Licensed Plumbing Inspector and Deputy Electrical Inspector; both to expire July 1, 2014.

VOTE: Unanimous.

GOOD AND WELFARE:

JOHN BIRD: He expressed appreciation to the Town Manager for his immediate attention to the issue at the Goosefare Brook and for working directly with the Department of Environmental Protection to get this situation addressed.

6050 **Executive Session: Discuss Labor Contracts:** (Note: This item discusses labor contract issues related to AFSCME Council 93, Local 481-06, Old Orchard Beach Public Works Department Union Contract; Old Orchard Beach Local 2247 International Association of Firefighters AFL-CIO-CLO Union Contract; Old Orchard Beach Patrolmen's Association – Maine Association of Police Union Contract; and labor contract issues related to AFSCME Council 93, Local 481-06, Old Orchard Beach Waste Water Treatment Plant Union Contract, as defined under Title 1 M.R.S.A., Section 405, 6(d), and the Council anticipates that the discussion portion will occur in executive session).

MOTION: Councilor Frenette motioned and Councilor Blow seconded Enter into Executive Session to Discuss Labor contracts: (Note: This item discusses labor contract issues related to AFSCME Council 93, Local 481-06, Old Orchard Beach Public Works Department Union Contract; Old Orchard Beach Local 2247 International Association of Firefighters AFL-CIO-CLO Union Contract; Old Orchard Beach Patrolmen's Association – Maine Association of Police Union Contract; and labor contract issues related to AFSCME Council 93, Local 481-06, Old Orchard Beach Waste Water Treatment Plant Union Contract, as defined under Title 1 M.R.S.A., Section 405, 6(d), and the Council anticipates that the discussion portion will occur in executive session).

VOTE: Unanimous.

MOTION: Councilor Frenette motioned and Councilor Blow seconded to Exit the Executive Session at 9:15 p.m.

VOTE: Unanimous.

ADJOURNMENT:

MOTION: Councilor Pastor motioned and Councilor Blow seconded to Adjourn the Town Council Meeting at 9:15 p.m.

VOTE: Unanimous.

Respectfully Submitted,

**V. Louise Reid
Town Council Secretary**

I, V. Louise Reid, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of fifteen (15) pages is a copy of the original Minutes of the Town Council Meeting of October 15, 2013.

V. Louise Reid