

**TOWN OF ARUNDEL, MAINE
SELECT BOARD MEETING**

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**Monday November 28, 2022
Arundel Municipal Building
7PM
Meeting Room**

- I. Call to Order
- II. Approval of Agenda
- III. Public Forum – Public comment on non-agenda items
- IV. Approve Minutes of November 14, 2022
- V. Committee and Board Reports
- VI. Manager Report
 - Escrow Account for Performance Assurance
- VII. Business
 - Proposal for Fire Station Roof Work
 - Purchasing Policy
 - General Ledger Statement
 - TIF Capture Cost Committee
 - Approval of Payable & Payroll Warrants
- VII. - Other Business /Adjournment

**TOWN OF ARUNDEL
BOARD OF SELECTMEN**

Monday November 14, 2022
Arundel Municipal Building
Meeting Room
7PM Meeting

Members present: Select Board Dan Dubois, Phil Labbe, Tom Danylik, Velma Hayes

Absent: Jason Nedeau

Others: Jack Reetz

Call to Order: Chairman Dubois called meeting to order @ 7PM

Approval of Agenda: *MOTION Hayes second Labbe “approve as amended” passed 4-0.* (RSU Finance Report)

Public Forum: Open

Committee & Board Reports: Selectmen Hayes provided a report on the RSU #21 Finance Committee.

Approval of Minutes: *MOTION Hayes second Danylik “approve minutes of October 24, 2022 as presented and modified” passed 4-0.*

Manager Report

-Escrow Account for Performance Assurance: Arundel Cottages had decided to move the escrow from Connecticut to Maine. Agreement will be modified to reflect this change.

-Release of General Liability: The property owners were sent General Liability Paperwork to sign for their Fence in the Town Right of way to allow it to stay for the winter.

-Crosswalk Route #1 A letter was sent to have an early discussion on the additional modification necessary if seeking approvals for the Food Trucks on Route #1 for next year.

-River Road Rail Road Crossing: Railroad will be making some repairs on November 29-30 and the road will need to be closed. Signs will be erected to notify the travelling public and Public Safety and School will be notified.

-159 Proctor Road: Owners have made no contact to the town for inspection and the town has also been informed of the trash on the grounds around the building.

Business

-Confirmation of Town Clerk: MOTION Hayes second Danylik “approve Rachel Bull as Town Clerk” passed 4-0.

-General Ledger Statement: Board would like additional clarity with regard to any and all financial institutions that has possession of Town Funds. Selectmen Hayes will follow-up with Deputy Treasurer.

-TIF Capture Cost Committee: Have some folks interested in serving. Board wishes for the Budget Committee to be contacted to see if some of the membership would like to participate in this committee as well.

Payable Warrant & Payroll: *MOTION Hayes second Labbe “approve warrants as presented and reviewed” passed 4-0.*

Further Business: Purchasing Policy will be on Agenda for next meeting.

ADJOURNMENT

MOTION Hayes second Labbe “to adjourn” passed 4-0 @ 7:22PM

Respectfully submitted

Keith M. Trefethen
Town Manager

TOWN OF ARUNDEL

468 LIMERICK RD ARUNDEL MAINE 04046 (207) 985-4201 FAX (207) 985-7589

BUSINESS MEETING November 28, 2022

EXECUTIVE SUMMARY

BOS Members: The purpose of this summary presented is to give you some information over and above just the mentioning of the subject matter on the agenda. It is my hope that this information assists you in your decision making.

MANAGERS REPORT

-Escrow Account Performance Assurance: Corrections have been made and recognize a Maine Bank. The Town Attorney has reviewed and sees no issue with the document.

BUSINESS

- Fire Station Roof Proposals: As of this writing I have one that has been submitted. Two other companies have inquired about the project and I meet with one on site today (11-23-22). I hope we get two more before the meeting.
- Purchasing Policy: I have added your Policy developed months ago to see if you are prepared to act on the implementation after the Municipal Charter Passed.
- Ledger Statement: I understand by listening to the tape that further information may be requested. Let's have a conversation so I can insure the information requested is presented in a format you wish to have.
- TIF Capture Committee: Reached out to the Budget Board as was suggested. As of today (11-23-22) have only had two additional inquiries with no commitment.

ADJOURNMENT

PERFORMANCE ASSURANCE AGREEMENT
CAPE ARUNDEL COTTAGE PRESERVE
REGARDING OFFSITE HIGHWAY IMPROVEMENTS

Be it known that by this Agreement, the Town of Arundel, Maine, hereafter referred to as the "Town", Arundel-Kennebunkport Cottage Preserve LLC, a Connecticut limited liability company, with a principal address of 1621 State Street, New Haven Connecticut 06511, hereinafter referred to as "Developer", and Biddeford Savings, hereinafter referred to as the "Bank", do agree and bind the following instrument of performance for the Route One Highway improvements to be performed adjacent to the Developer's site, Located at 1976 U.S. Route One, Arundel, pursuant to certain requirements of the Maine Department of Transportation, hereinafter referred to as "MDOT" to benefit the Arundel-Kennebunkport Cottage Preserve Project known as Cape Arundel Cottage Preserve and the Town of Arundel. Said improvements are indicated conceptually in the MDOT Traffic Movement Permit (TMP) issued September 29, 2008, which shall be designed by the Developer's consultants and approved by the MDOT through a Developer-Agreement as specified under MDOT Chapter 305 Rules.

In accordance with the conditions agreed to by the Developer through Steve Lopes, the CFO of the Developer does hereby agree that the sum of One Million and 00/00 Dollars (\$1,000,000.00) shall be segregated in an Escrow Account with the Biddeford Savings in Biddeford, Maine, to serve exclusively as a performance assurance for the approved aforementioned Highway improvements. This amount may be adjusted by a subsequent engineer's estimate or actual contractor price, as approved by the Town and/or MDOT, to reflect the final offsite Highway improvements plans after design and approval by MDOT. The Bank agrees not to release any or all of these funds to the Developer unless and until the work is completed and conforms to the written approval by a representative of the Town of Arundel (and/or a representative to be named from MDOT if required), and as provided in the attached Exhibit A.

Escrow Agent shall not be liable for any action taken or omitted in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Escrow Agreement and it may rely, and shall be protected in acting or refraining from acting in reliance upon an opinion of counsel and upon any directions, instructions, notice, certificate, instrument, request, paper or other documents believed by it to be genuine and to have been made, sent, signed or presented by the proper party or parties. In no event shall Escrow Agent's liability hereunder exceed the aggregate amount of the Escrowed Funds. Escrow Agent shall be under no obligation to take any legal action in connection with the Escrowed Funds, or this Escrow Agreement or to appear in, prosecute or defend any action or legal proceedings which would or might, in its sole opinion, involve it in cost, expense, loss or liability unless, in advance, and as often as reasonably required by it, Escrow Agent shall be furnished with such security and indemnity as it finds reasonably satisfactory against all such costs, expense, loss or liability. Notwithstanding any other provision of this contract, Seller and Buyer agree to jointly indemnify and hold harmless Escrow Agent against any loss, liability or expense incurred without bad faith on its part and arising out of or in connection with its services under the terms of this Escrow Agreement, including the cost and expense of defending itself against any claim of liability.

The Developer agrees to the conditions of the attached Exhibit A, attached hereto and made a part of this Agreement.

Agreed and acknowledged:

Town Manager of Arundel

Steve Lopes, CFO
Arundel-Kennebunkport Cottage Preserve LLC

Biddeford Savings

By _____
Kristina Therrien, Cash Management Officer

By: _____
Terri Cook, Retail Operations Manager

PERFORMANCE ASSURANCE AGREEMENT
CAPE ARUNDEL COTTAGE PRESERVE
REGARDING OFFSITE HIGHWAY IMPROVEMENTS

EXHIBIT A

1. The Developer agrees to keep the Town Manager and the designated representative of MDOT reasonably informed on such work. Partial or full release of the escrow cannot occur until after written approval by a representative of the Town of Arundel and the representative of MDOT at completion of the project construction in accordance with the terms of this Agreement and the Developer Agreement.
2. The Developer will enter into a Developer Agreement with the State of Maine within ninety (90) days of the execution of this agreement (when signed by all parties).
3. Details of the required mitigation and a project estimate, with calculations, shall be provided by the Developer to the MDOT named representative for final approval prior to commencement of construction.
4. An Escrow Account shall be created at the Bank (as hereinbefore described) (with the Town of Arundel as a beneficiary), of at least 150% of the proposed total project costs based on the estimate in Paragraph 3 above, or an MDOT approved contractor's selected bid cost. However, from date of execution, as defined, until the completion of the Developer design and MDOT review process, the escrow amount shall be funded to a minimum of \$1,000,000 as per this Agreement.
5. If the Highway improvements project is not completed by a reasonable timeframe to be established at the completion of the MDOT design review process associated with the Developer Agreement, with a projected final date of October 15, 2023, but which date may be reasonably extended by written agreement of the Developer, the Town and MDOT, as a result of: weather conditions which prevents work from being completed by such date; because of MDOT's failure to respond to an inspection in a timely manner; because of the municipality, State of Maine or Federal government's refusal to permit construction in the Town or on State highways during a pandemic; or, delays resulting from an Act(s) of God, but in any event, by no later than seven (7) months from the projected final date in this Paragraph 5, the Town, through its Manager and at his sole but reasonable discretion, may draw against the Escrow Account by presentation of a letter of withdrawal or draw to the Bank for the total cost and expenses of completing the work or curing any defects in the work, in the event that:
 - a. The Developer has failed to satisfactorily complete the work and Highway improvements in accordance with the Development Agreement after the Developer has received written notice of incomplete work, defects in workmanship or other failure to complete the work in accordance with the Development Agreement and approved plans from either the person named by the Town to conduct such inspections or by the representative named by MDOT to

conduct such inspections, which notice shall provide Developer with thirty (30) days after receipt of such written notice to cure such work or defect(s). In the event the Developer has not cured the work or defects to the satisfaction of the Town and/or MDOT by no later than the expiration of the thirty (30) day cure period, the Town Manager may proceed with its letter of withdrawal. The Town Manager, at his sole discretion, may reasonably extend the 30-day cure period for good cause shown; or

- b. The Developer has failed to notify the Town of Arundel's Manager and the representative designated as the Developer's representative with MDOT for inspection of the completed work and Highway improvements.

When all work associated with the Development Agreement has been completed and inspected to the reasonable satisfaction of the person designated in this Agreement as the inspector for the Town of these proposed improvements and the person designated by MDOT to conduct such inspections, the Town may authorize the Bank, by written certification, to reduce the Escrow Account to 10% of its original amount (150% of the proposed total project costs) as an Irrevocable Defect Guarantee to ensure workmanship and durability of the Highway improvements. The Developer may notify the Town and MDOT for a defect inspection no sooner than one (1) year from the date the bank has reduced the Escrow Account by establishment of the Irrevocable Defect Guarantee. Upon certification by the Town to the Bank that the defect inspection is satisfactory, the Bank shall release the remaining Escrow Account funds to the Developer. In the event it is the Town and/or MDOT Inspector's reasonable opinion that the inspection is unsatisfactory, the Town's representative shall give the Developer written notice within fifteen (15) days of such inspection and the Developer shall then have an additional thirty (30) days to cure any such unsatisfactory item.

The Town, through its Manager and at his sole but reasonable discretion, may draw on the Irrevocable Defect Guarantee in the Escrow Account, by stating one of the following:

- a. The Developer has failed to complete any unfinished Highway improvements within thirty (30) days after receipt of written notice; or
 - b. The Developer has failed to correct any defects in workmanship identified by the Town and/or MDOT within thirty (30) days after receipt of written notice; or
 - c. The Developer has failed to use durable materials that meet the State's standards for the work to be conducted in the construction of the Highway improvements.
6. The TMP mitigation responsibilities cannot be transferred to another party/developer;
 7. Notices required under this Agreement shall be sent via certified mail, receipt requested or overnight delivery service and shall be deemed received upon delivery to:

Developer:

Arundel-Kennebunkport Cottage Preserve LLC
c/o Faith V. Easter
44 Juniper Lane
Framingham, MA 01701

and a copy by regular mail to

Arundel-Kennebunkport Cottage Preserve LLC
1621 State Street
New Haven, CT 06511

Town:

Town Manager
Town of Arundel
257 Limerick Road
Arundel, ME 04046

With a Copy to:

Sandra L. Guay, Esq.
Archipelago Law
1 Dana Street
Portland, ME 04101

MDOT:

Stephen Landry
MDOT Traffic Engineering
16 State House Station
Augusta, Maine 04333

8. Any costs or fees that would otherwise be incurred by the Town under this Agreement, including, but not necessarily limited to, the Bank, MDOT, inspections by an Inspector working on behalf of the Town under the terms of this Agreement, or legal fees and costs incurred in effectuating the terms of this Agreement, are to be paid by the Developer and may be withdrawn by letter presented to the Bank by the Town Manager, from the Escrow Account (or the Irrevocable Defect Guarantee) if not paid by the Developer within thirty (30) days of receipt of invoice.
9. This Agreement shall be interpreted in accordance with the laws of the State of Maine.

TOWN OF ARUNDEL SELECTBOARD PURCHASING POLICY

Upon voter approval for the expenditure of municipal funds for the acquisition or leasing of any goods, services or for municipal operations, the Selectboard shall thereafter undertake to implement the expenditure of the approved expenses pursuant to this Policy so as to ensure that such municipal funds are spent through processes, outlined below, that will be most advantageous to the Town.

A. Expenditures that are necessary to carry out normal department operations shall be authorized by the Department Head, subject to review by the Town Manager and final approval by the Board upon its approval of a payable warrant upon which such expenditures are detailed.

B. Expenditures involving an amount anticipated to be less than \$25,000.00 will require an informal bid process wherein the Town, through its Purchasing Agent the Town Manager, will attempt to secure at least three (3) quotations for the goods or services sought to be purchased. The quotes shall be reviewed by the applicable Department Heads and the Town Manager who shall thereafter make a recommendation to the Board. Final approval shall be had by Board approval of the payable warrant upon which such expenditure is detailed.

C. Expenses involving an expenditure anticipated to be \$25,000.00 or more, will require a formal Bid Process wherein a Request for Proposal/Bid Request will be developed by the Board. The Request for Proposal or Bid Request shall be advertised in a newspaper of general circulation and otherwise advertised through any available means. Bid packages may be sent directly to vendors with known expertise, experience, or familiarity with the bid subject. A reasonable time (at least fourteen (14) days) shall be provided for the Proposals/Bids to be returned. All formal bids will be opened at a scheduled meeting of the Selectboard who will review the bids and either award the bid or table the award to allow for review by staff with recommendation prior to award. Bids shall be chosen on the basis of price, quality of merchandise, suitability of merchandise, and service/reputation of vendor and therefore may not necessarily mean that the award

will go to the lowest bid received. A statement to that effect shall be part of any advertisements and/or bid package sent to vendors.

The foregoing purchasing policies may be waived by the Board in the event of an emergency. The Board shall meet and make a finding that an emergency exists and, upon such finding, by affirmative vote of a majority of the Board, proceed with the expenditure of the funds necessary to address the emergency circumstance.

Collective purchases by either the State or County Agencies through their processes and provided to the municipality as a joint purchase will not require the Town to receive bids/proposals either informally or formally as outlined in this Policy.

DATE APPROVED

Arundel Selectboard

Dan Dubois

Jason Nedeau

Phil Labbe

Velma Jones Hayes

Tom Danylik

Town of Arundel Bank Accounts

11/3/2022

<u>Account</u>	<u>Balance</u>
100-00 CASH-ANDROSCOGGIN GENERAL FUND	5,551,099.10
100-06 INFINITY FEDERAL CREDIT UNION	6.61
100-06 TOWN & COUNTRY FCU - SAVINGS	25.14
100-09 ARPA FUNDS - ANDROSCOGGIN ACCT	465,663.68
100-11 ANDROSCOGGIN BANK - CDARS	250,000.00
100-12 ANDROSCOGGIN MONEY MARKET ACCT	250,051.36
100-15 MUNICIPAL BLDG FUND	50,529.14
100-16 PUBLIC WORKS CAPITAL EQUIPMENT	11,192.57
100-17 ADMINSTRATIVE CAPITAL EQUIPMENT	4,899.91
100-18 RECREATION DONATIONS	20,747.76
100-19 VOTING EQUIPMENT	16,676.68
100-20 TRANSFER STATION CAPITAL EQUIP	1,365.22
100-21 FIRE DEPT CAPITAL EQUIPMENT	51,037.18
100-22 MUNICIPAL PARK RESERVE	79,482.21
100-23 CONTINGENCY RESERVE	92,081.55
100-24 ROAD PROJECTS	165,035.35
100-25 SOCIAL SERVICES	44,420.86
100-26 RECREATION BUS RESERVE	3,801.60
100-27 NATURAL DISASTER FUND	54,394.72
100-31 RECREATION SCHOLARSHIP ACCOUNT	15,937.02
110-01 UTILITY SAFETY TIF	123,507.59
110-02 ARUNDL COTTAGES PROJECT ACCT	9.00
110-03 TOWN ARUN COTTAGE PROJ ACCT	520,666.03
300-03 TH MUNICIPAL BLDG FUND	17,842.78
Total Funds	7,790,473.06