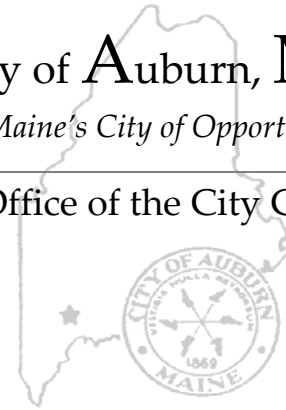


City of Auburn, Maine

"Maine's City of Opportunity"

Office of the City Clerk



Council Meeting Agenda Packet

November 6, 2006

This packet contains the City Council Agenda and supporting documents. The items in this packet are bookmarked in Adobe Acrobat .pdf format. You may need to click on the Bookmark tab on the left to open the Bookmark window. If you do not see a Bookmark tab on the left, you may need to select the Show/Hide Navigation Pane button in your icon toolbar above or update your version of the Adobe Reader. You can download the free Adobe Reader application at www.adobe.com.



City Council Meeting and Workshop November 6, 2006

Agenda

5:30 p.m. Workshop

Auburn Public Library

Business License Appeal

Maine Recycles Week

7:00 p.m. Council Meeting

Consent Items – All items listed with an asterisk (*) are considered as routine and will be approved in one motion. There will be no separate discussion of these items unless a Councilor or citizen so requests. If requested, the item will be removed from the consent agenda and considered in the order it appears on the agenda.

Minutes

*110606-00 Minutes of October 30, 2006 Council Meeting

Reports

- **Mayor**
The National Anthem Project
- **City Councilors**
- **City Manager**
Brownfield Application

Communications and Recognitions

*110606-00 Communication from Auburn Middle School PTO Re: Signs

Open Session - Members of the public are invited to speak to the Council about any issue which does *not* appear on the agenda

Old Business

110606-01 Ordinance – Amendment to Chapter 31 – Adoption of the Updated General Assistance Maximums (2nd Reading)

New Business

110606-02 Resolve – Adoption of Lease with Auburn Public Library and Memorandum of Understanding

ADJOURNMENT

Executive Sessions: On occasion, the City Council discusses matters which are required or allowed by State law to be considered in executive session. Executive sessions are not open to the public. The matters that are discussed in executive session are required to be kept confidential until they become a matter of public discussion. In order to go into executive session, a Councilor must make a motion in public. The motion must be recorded, and 3/5 of the members of the Council must vote to go into executive session. An executive session is not required to be scheduled in advance as an agenda item, although when it is known at the time that the agenda is finalized, it will be listed on the agenda.

The only topics which may be discussed in executive session are those that fall within one of the categories set forth in Title 1 M.R.S.A. Section 405. Those applicable to municipal government are:

1. Discussion of personnel issues
2. Discussion or consideration of the condition, acquisition, or the use of real or personal property or economic development if premature disclosure of the information would prejudice the competitive or bargaining position of the body or agency.
3. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators.
4. Consultations between a body or agency and its attorney
5. Discussion of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute.
6. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes
7. Consultations between municipal officers and a code enforcement officer relating to enforcement matter pending in District Court.

**CITY OF AUBURN
OCTOBER 30, 2006
CITY COUNCIL MEETING**

PRESENT

Mayor Normand W. Guay, Councilors Bethel B. Shields, Robert P. Hayes, Eric G. Samson, Donna L. Rowell, Belinda A. Gerry, Robert C. Mennealy, and M. Kelly Matzen, City Manager Pat Finnigan, Assistant City Manager Laurie Smith, Finance Director Chris Trenholm and City Clerk Mary Lou Magno. There were 38 people in the audience.

Mayor Guay called the meeting to order at 7:00 p.m. in the Council Chambers of Auburn Hall with a salute to the flag.

CONSENT AGENDA

Councilor Shields moved to accept, approve and place on file the following items listed with an asterisk. Seconded by Councilor Mennealy. Vote: 7 Yeas.

***MINUTES OF OCTOBER 16, 2006**

Approved under consent agenda.

REPORTS OF THE MAYOR

Mayor Guay read a citation recognizing Marianne Lachance Berube who will celebrate her 100th birthday on November 3, 2006. Her nephew, Perley Lachance, accepted flowers and the citation on her behalf. Mrs. Berube has been a resident of Lake Auburn Avenue for 71 years.

Mayor Guay thanked Councilor Matzen for representing him at the Employee Recognition Evening.

REPORTS OF CITY COUNCILORS

Councilor Hayes reported on the Park Avenue Corridor Study Meeting that took place on October 26th.

Councilors Mennealy, Rowell, and Matzen all noted the success of the Employee Recognition Evening.

REPORTS OF THE CITY MANAGER

FINANCE REPORT – MONTH OF SEPTEMBER

Councilor Shields moved to accept and place on file the Finance Report for the month of September as prepared and presented by Chris Trenholm, Finance Director. Seconded by Councilor Mennealy. Vote: 7 Yeas.

GENERAL ASSISTANCE QUARTERLY REPORT

Councilor Gerry moved to accept and place on file the General Assistance Quarterly Report as prepared and presented by Dot Meagher, Director of Health and Social Services. Seconded by Councilor Mennealy. Vote: 7 Yeas.

Pat Finnigan, City Manager, noted the ground breaking that took place last week at 600 Turner Street; this will be a site for multiple businesses. She also noted the successful Employee Recognition Evening that took place last week, and thanked Councilors for attending.

Councilor Gerry questioned the City Manager about an ad in the Portland newspaper advertising for a Director of Community Services. Manager Finnigan explained.

COMMUNICATIONS AND RECOGNITIONS

***COMMUNICATION FROM AUBURN SKI ASSOCIATION RE: SIGN ON CITY PROPERTY FOR ANNUAL SKI SALE**

Approved under consent agenda.

COMMUNICATION FROM TWIN CITY TAXI COMPANIES RE: ZONE RATE INCREASES

Councilor Gerry moved to accept the communication, place it on file and that this item be referred to the Transit Committee. Seconded by Councilor Mennealy. Vote: 7 Yeas.

OPEN SESSION

Dan Herrick, 470 Hatch Road;

CLOSED OPEN SESSION

ORDINANCES, ORDERS & RESOLVES

1. RESOLVE – AUTHORIZING THE CITY MANAGER TO EXECUTE THE COLLECTIVE BARGAINING AGREEMENT WITH THE AUBURN FIREFIGHTERS LOCAL 797

Councilor Samson moved for passage of the resolve. Seconded by Councilor Mennealy.

Pat Finnigan, City Manager, and Wayne Werts, Fire Chief, both made comments regarding the above resolve.

Vote: 7 Yeas.

ITEM OUT OF ORDER

Councilor Samson moved that item #4 be taken out of order. Seconded by Councilor Shields. Vote: 7 Yeas.

4. RESOLVE – INDUCEMENT RESOLUTION OF THE CITY OF AUBURN, MAINE DECLARING ITS OFFICIAL INTENT WITH RESPECT TO WORLD HARBORS PROJECT

Councilor Matzen moved for passage of the resolve. Seconded by Councilor Gerry. Roland Miller, Director of Community Development, explained the above resolve and answered Councilors questions.

Vote: 7 Yeas.

2. RESOLVE – AUTHORIZE CITY MANAGER TO EXECUTE DOCUMENTS – TAX INCREMENT FINANCE DISTRICT #14 – AUBURN MALL REVITALIZATION IN MALL AREA AND SUBMIT TO THE STATE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT (PUBLIC HEARING AND ACTION THEREON)

Councilor Samson moved for passage of the resolve. Seconded by Councilor Mennealy.

Mayor Guay opened the public hearing and the following people spoke: Bruce Bickford, 64 Cameron Lane; Brian Demers, 1085 Riverside Drive; Jim Wellehan, 60 Woodlawn Avenue; Lucien Gosselin, President, Lewiston Auburn Economic Growth Council; Kevin Fletcher, 240 Fairway Drive; Ron Potvin, 82 Northern Avenue; Anthony Corrao, 280 Rodman Road; Francoise Bussiere, 9 Winter Street; Dan Herrick, 470 Hatch Road; and Andy Titus, 45 Carson Street. Mayor Guay closed the public hearing.

Roland Miller, Director of Economic Development explained the above project and answered Councilors questions.

Vote: 4 Yeas, with Councilor Rowell, Gerry and Mennealy voting Nay.

3. RESOLVE – AUTHORIZING THE CITY MANAGER TO EXECUTE THE BYLAWS OF THE LEWISTON AND AUBURN RAILROAD COMPANY

Councilor Gerry moved for passage of the resolve. Seconded by Councilor Samson. Vote: 7 Yeas.

5. ORDINANCE – AMENDMENT TO CHAPTER 31 – ADOPTION OF THE UPDATED GENERAL ASSISTANCE MAXIMUMS (1ST READING)

Councilor Gerry moved for acceptance of first reading. Seconded by Councilor Samson. Vote: 7 Yeas.

6. ORDER – NAMING OF A PRIVATE ROAD – ORAS LANE

Councilor Mennealy moved for passage of the order. Seconded by Councilor Gerry. Vote: 7 Yeas.

7. RESOLVE – ACCEPTING FORFEITED FUNDS/PROPERTY

Councilor Samson moved for passage of the resolve. Seconded by Councilor Mennealy.

Phil Crowell, Interim Police Chief, answered Councilors questions.

Vote: 7 Yeas.

**8. PUBLIC HEARING AND ACTION ON AUTOMOBILE GRAVEYARD/
JUNKYARD APPLICATIONS FOR: M&P AUTO, INC.; BUCK'S
AUTO; MORRIS AUTO PARTS, INC.; ISADORE T. MILLER CO.;
MAINE METAL RECYCLING, INC.; AND RANDY'S AUTO PARTS,
INC.**

Mayor Guay opened and closed the public hearing with no public comments.

Councilor Gerry moved that the above named businesses be issued licenses.

Seconded by Councilor Rowell. Vote: 7 Yeas.

**9. PUBLIC HEARING AND ACTION ON SPECIAL AMUSEMENT PERMIT
APPLICATIONS FOR: LOST VALLEY, INC. AND MARTINDALE
COUNTRY CLUB**

Mayor Guay opened and closed the public hearing with no public comments.

Councilor Gerry moved that the above named businesses be issued permits.

Seconded by Councilor Samson. Vote: 7 Yeas.

ADJOURNMENT – 10:10 p.m.

Councilor Shields moved to adjourn. Seconded by Councilor Mennealy. Vote: 7 Yeas.

A TRUE RECORD

ATTEST: _____

City Clerk

` **City of Auburn**
PROCLAMATION

The National Anthem Project: Restoring America's Voice

RECOGNIZING that The National Association for Music Education (MENC) and other organizations nationwide are renewing national awareness of the patriotic and musical traditions of the United States, and

ACKNOWLEDGING that school music programs play an important role in upholding our nation's heritage; and

SALUTING the contributions made by the study of music to young people's development thorough heightened skills in listening, reading, self-expression, and creativity; and

AVOWING that music education helps students acquire skills in knowledge and performance of "The Star-Spangled Banner" and other patriotic songs, as well as an understanding of our nation's history and culture; and

COMMENDING the Maine Music Educators Association and the Auburn Music Educators for their concern for and efforts to enhance the patriotism and musical knowledge of children in Auburn schools; and

ENDORISING the stated objective of public school to prepare children for a productive role in our society; and

SUPPORTING the fact that our future is enhanced by the quality of the patriotic knowledge and awareness provided to children of all ages today; and that high quality music education represents a worthy commitment to our children and our nation's future; and

AFFIRMING that the Maine Music Educator's Association and the Auburn Music Educators are committed to ensuring that every child in every music class knows the words and is able to perform our National Anthem, regardless of his or her socioeconomic or other circumstances.

NOW, THEREFORE, BE IT RESOLVED, I, Normand Guay, Mayor of the City of Auburn and the Auburn City Council hereby proclaim the month of March as National Anthem Project Month, and endorse the observance of National Anthem Project Month as an opportunity to support the patriotic purposes and practices of music education.

FUTHERMORE, the Mayor and Council encourage teachers, students, and all citizens to participate in singing the National Anthem in public and private assemblies in Auburn throughout this month and encourages teachers, parents, students, and all citizens to participate.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of November, in the year of our Lord two thousand six.

Normand W. Guay, Mayor

Memorandum

To: Patricia Finnigan

From: Gail Phoenix and Maureen Aube

Date: 11/2/2006

Re: Brownfield Application

On December 8, the City will submit two applications to the Environmental Protection Agency (EPA) for Brownfield Assessment Grants (a community wide hazardous substance assessment grant, and a community wide petroleum assessment grant).

The assessment applications are the first steps. Each grant is \$200,000 and will allow us to review the history of a variety of potentially contaminated sites, meet with owners of those site, and create a plan for their clean up and reuse. The City will then have the opportunity to apply for additional funds to clean up those sites in preparation for economic development reuse.

At the November 6 City Council workshop, Glen Daukas, of Campbell Environmental Group will join the Council to explain the EPA Brownfield Program. This session will provide information to the Council, and the public on EPA funding opportunities to identify, clean-up, and reuse sites which cannot currently be reused because of environmental contaminants. We have also invited potential Brownfield Partners to attend that meeting or watch on local cable before committing to their participation in the Partnership. There is no Council action required at this time, but the session provides an opportunity to inform Councilors and the public of this activity.

October 25, 2006

City Council Members
City of Auburn
60 Court Street
Auburn, ME 04210

Dear Mayor Guay and City Council members:

Auburn Middle School PTO is sponsoring our annual Craft Fair November 18, 2006. This helps raise funds for student field trips and items needed for the various school academic teams. In order to have a successful fund raising event we need to advertise heavily around the city.

We are requesting permission to place signs similar to the candidacy signs out now at several major intersections to advertise this event. We would like to place signs at the NW corner of Mt. Auburn and Center Street (street level at the Mall) and the NW corner of Turner and Mt. Auburn roads (street level at the Starbucks corner). We will ask permission for other intersections not owned by the City of Auburn.

Thank you for your consideration,

Amanda Barton Co-Chair
Auburn Middle School PTO

City Council

Agenda Information Sheet

Council Meeting Date: October 30, 2006 **Agenda Item No. 1**
Nov. 6, 2006

SUBJECT:

**ORDINANCE – Amendment to Chapter 31 – General Assistance Ordinance
(Update the General Assistance Maximums)**

INFORMATION:

By State law, municipalities are required to administer a General Assistance program which is intended to assist low income people with basic necessities such as food, fuel, and rent. Municipalities are required to regularly update the amount of assistance that people who are eligible for General Assistance receive. The proposed levels of assistance take into consideration federal and state cost guidelines and the local market costs for these goods.

STAFF COMMENTS/RECOMMENDATION:

Staff recommends approval of the ordinance.

REQUESTED ACTION

Motion for acceptance of first reading.
Motion for acceptance of second reading and final passage.

VOTE:

CITY OF AUBURN

CITY COUNCIL, AUBURN, MAINE

DATE October 30, 2006

**TITLE: ORDINANCE – AMENDMENT TO CHAPTER 31 – ADOPTION OF
THE UPDATED GENERAL ASSISTANCE
MAXIMUMS**

Be It Ordained by the Auburn City Council, That Chapter 31, General Assistance Ordinance, be amended by adopting Appendixes A, B, and C as explained in the attached agenda information form. A copy of the appendixes are attached to this ordinance.

Motion for acceptance of first reading: Belinda Gerry **Seconded by:** Eric Samson
Vote: 7 Yeas

Motion for acceptance of second reading and final passage.
Seconded by:
Vote:

Action by Council:

Date:

ATTEST:

CITY CLERK

GA Overall Maximums

Metropolitan Areas

Persons in Household

COUNTY	1	2	3	4	5*
Bangor HMFA: Bangor, Brewer, Eddington, Glenburn, Hampden, Hermon, Holden, Kenduskeag, Milford, Old Town, Orono, Orrington, Penobscot Indian Island Reservation, Veazie	520	607	774	985	1111
Penobscot County HMFA: Alton, Argyle UT, Bradford, Bradley, Burlington, Carmel, Carroll plantation, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Drew plantation, East Central Penobscot UT, East Millinocket, Edinburg, Enfield, Etna, Exeter, Garland, Greenbush, Howland, Hudson, Kingman UT, Lagrange, Lakeville, Lee, Levant, Lincoln, Lowell town, Mattawamkeag, Maxfield, Medway, Millinocket, Mount Chase, Newburgh Newport, North Penobscot UT, Passadumkeag, Patten, Plymouth, Prentiss UT, Seboeis plantation, Springfield, Stacyville, Stetson, Twombly UT, Webster plantation, Whitney UT, Winn, Woodville	529	530	637	796	977
Lewiston/Auburn MSA: Auburn, Durham, Greene, Leeds, Lewiston, Lisbon, Livermore, Livermore Falls, Mechanic Falls, Minot, Poland, Sabattus, Turner, Wales	428	537	657	831	927
Portland HMFA: Cape Elizabeth, Casco, Cumberland, Falmouth, Freeport, Frye Island, Gorham, Gray, North Yarmouth, Portland, Raymond, Scarborough, South Portland, Standish, Westbrook, Windham, Yarmouth; Buxton, Hollis, Limington, Old Orchard Beach	702	833	1079	1360	1456
York/Kittery/S.Berwick HMFA: Berwick, Eliot, Kittery, South Berwick, York	908	913	1095	1594	1737
Cumberland County HMFA: Baldwin, Bridgton, Harpswell, Harrison, Naples, New Gloucester, Pownal, Sebago	603	660	850	1015	1301
Brunswick	606	722	934	1184	1420

Food Maximums

Please Note: The maximum amounts allowed for food are established in accordance with the U.S.D.A. Thrifty Food Plan. Through October 1, 2007, those amounts are:

Number in Household	Weekly Maximum	Monthly Maximum
1	36.05	155
2	66.05	284
3	94.88	408
4	120.47	518
5	143.02	615
6	171.63	738
7	189.77	816
8	216.74	932

Note: For each additional person add \$117 per month.

Non-Metropolitan FMR Areas

<u>Waldo County</u>		<u>Unheated</u>		<u>Heated</u>	
Bedrooms		Weekly	Monthly	Weekly	Monthly
0		100	429	111	479
1		102	437	117	504
2		120	517	140	602
3		145	622	172	738
4		146	630	178	766

<u>Washington County</u>		<u>Unheated</u>		<u>Heated</u>	
Bedrooms		Weekly	Monthly	Weekly	Monthly
0		80	346	93	401
1		82	351	98	422
2		92	397	116	497
3		115	493	143	617
4		118	507	152	655

Metropolitan FMR Areas

<u>Bangor HMFA</u>		<u>Unheated</u>		<u>Heated</u>	
Bedrooms		Weekly	Monthly	Weekly	Monthly
0		81	350	96	413
1		92	394	110	475
2		114	492	140	604
3		146	629	180	773
4		153	656	201	863

<u>Penobscot County HMFA</u>		<u>Unheated</u>		<u>Heated</u>	
Bedrooms		Weekly	Monthly	Weekly	Monthly
0		83	358	98	421
1		83	358	98	421
2		85	367	111	479
3		107	458	140	602
4		128	552	173	742

<u>Lewiston/Auburn MSA</u>		<u>Unheated</u>		<u>Heated</u>	
Bedrooms		Weekly	Monthly	Weekly	Monthly
0		67	287	79	338
1		83	359	99	424
2		99	426	119	513
3		126	543	152	653
4		135	580	165	709

City Council

Agenda Information Sheet

Council Meeting Date November 6, 2006 **Agenda Item No. 2**

SUBJECT: RESOLVE - Adoption of Lease with Auburn Public Library and Memorandum of Understanding

INFORMATION: From 1904 to the present, the Auburn Public Library has operated a public library in a building owned by the City of Auburn. The City of Auburn made a pledge to continue to fund the operational budget of the Library when it accepted the Carnegie grant to construct the building back in the early 1900's. In recent history the City has funded approximately 90% of the Library's operating budget, with fundraising and fees making up the additional 10%. Recently the City Council and Library Board of Trustees agreed to share the cost of constructing a new library, with the City bonding \$3.5 million and the Board raising approximately \$3.5 million.

Although the two entities have had a longstanding working relationship there has never been any documents to formalize the relationship. The lease document and Memorandum of Understanding attempt to give a brief historical background and detail the necessary terms. Both documents have been reviewed by the City's and Library's attorney.

STAFF COMMENTS/RECOMMENDATION:

Staff recommends approval of Lease and Memorandum of Understanding.

REQUESTED ACTION:

Motion for adoption of the lease and memorandum.

VOTE:

CITY OF AUBURN

CITY COUNCIL, AUBURN, MAINE

DATE: November 6, 2006

**TITLE: RESOLVE – ADOPTION OF LEASE WITH AUBURN
PUBLIC LIBRARY AND MEMORANDUM
OF UNDERSTANDING**

Be It Resolved by the Auburn City council that the attached Lease with the Auburn Public Library and Memorandum of Understanding is hereby adopted and the City Manager is hereby authorized to execute documents.

Motion for passage:

Seconded by:

Vote:

ACTION BY COUNCIL:

DATE:

ATTEST:

CITY CLERK

**Memorandum of Understanding
Between
City of Auburn, Maine
and
Auburn Public Library**

Whereas, the City of Auburn, Maine (hereinafter the “**City**”) is a municipal corporation with all the powers necessary to conduct its municipal affairs pursuant to its Charter and the Constitution and laws of the State of Maine; and

Whereas, the Auburn Public Library (hereinafter the “**Library**”) is a Maine nonprofit corporation having its principal place of business in Auburn, Maine with the principal purpose of providing public library services in the City; and

Whereas, the City and Library have entered into a long-term lease dated as of November 1, 2006 (hereinafter the “**Lease**”) providing the terms for the Library shall to improve, maintain and operate a library building (hereinafter the “**Library Building**”) on City owned land at the corner of Court Street and Spring Street; and

Whereas, in order to receive a grant from the Carnegie Foundation in 1904 for the original library building, the City agreed to financially support the operations of the Library; and

Whereas, the City annually has contributed operating monies to the Library to support the public services provided by the Library; and

Whereas, the City and the Library have each recently paid for approximately one-half the construction cost to expand and improve the Library Building; and

Whereas, the Library owns assets including an endowment fund, collection and other personal property, and raises additional funds from non-City sources to support its public library services; and

Whereas, the City and the Library wish to record and clarify certain of their respective traditions, obligations, authorities and responsibilities.

Now therefore, the City and the Library agree as follows:

1. Library’s Ability to Raise Private Funds.

As a 501(C)3 organization under the Internal Revenue Code, Library has and will continue to conduct fund-raising activities, including annual appeals, in order to help defray the costs of its operation.

2. City's fiscal oversight.

As an independent non-profit corporation, the Library is not a department of the City, and the City Council recognizes that the Library is not subject to departmental review of its budget under Article VII of the City of Auburn's Charter. In order to permit (at City's discretion) City oversight of Library finances, Library specifically agrees that the City Council, in its budget considerations, may review the Library's annual funding request on a "line item basis" and approve or disapprove individual items to the extent that such items reflect municipal appropriation. The Library agrees that effective immediately its line item expenses shall be shown in the Library's budget requests together with any line item changes from year to year. The City does not by this Memorandum accept or obligate itself to any on-going responsibility for the Library's budget, the Library budget's contents or any oversight thereof.

The Library will provide a timely, detailed budget request to the City Council on an annual basis. The City and Library will work cooperatively to ensure that appropriate economies are achieved where ever possible.

3. Library's Annual Audit.

For each fiscal year, the Library shall, at its sole expense, commission and direct an independent audit based on the approximately the same annual timeline as the City conducts its annual audit in order to insure the availability of and timely communication between the auditors of the City and Library and in order that the Library audit be available to the City by no later than November 1st of each year.

4. Library's Annual Appeal.

The City's contribution to operating expenses notwithstanding, the Library shall conduct annual appeals to the public to support its operating expenses. At the sole discretion of the Library, the proceeds from the annual appeals may be used to augment the Library's collection, or used for other Library purposes consistent with the Library's Bylaws. The Library shall annually provide the City with a report of the results of its annual appeal, including the purposes for which said funds are intended.

In Witness Whereof, the parties have executed this Memorandum of Understanding as of the date first above written.

:

CITY OF AUBURN, MAINE

Witness

by: _____
Patricia Finnigan, its City Manager

AUBURN PUBLIC LIBRARY,

by: _____
Richard L. Trafton, its President,

LEASE

Lease dated as of November 1, 2006, by and between the **City of Auburn, Maine**, a municipal corporation ("**Landlord**") and **Auburn Public Library**, a Maine nonprofit corporation ("**Tenant**").

Article I

General

The purpose of this Lease is to memorialize longstanding arrangements between the Landlord and Tenant for the use, operation and development of a public library in the City of Auburn. From 1904 to present, Tenant has operated a public library on land owned by Landlord. During this period, Landlord and Tenant have cooperated to complete a major construction project to expand the library building and grounds to include lands formerly occupied by Landlord's City Building, now demolished. This Lease addresses the relationship between Landlord and Tenant for the expanded public library facility constructed with approximately equal contributions of the parties: Landlord's through municipal bonds and Tenant's through charitable gifts by individuals, corporations and foundations. The parties desire to continue cooperation in order to provide citizens of Auburn with a strong public library to meet public needs in the foreseeable future.

Article II

Premises, Term and Rent

2.1 **Existing Lease Arrangements.** Any and all existing tenancies, leases or other occupancy arrangements between the parties hereto relating to the land and buildings comprising the library are terminated and extinguished as of the date hereof.

2.2 **Premises.** Landlord leases to Tenant and Tenant leases from Landlord the land, buildings and improvements located at 49 Spring Street, Auburn, Maine, which are more particularly described on the attached **Exhibit A** (the "**Premises**"). The Premises are accepted in their "as-is" condition, and Tenant acknowledges that Landlord has made and makes no representations, warranties or promises as to their condition, compliance with laws or codes, suitability for any particular purpose and/or the absence or presence of any environmental hazards or substances thereon.

2.3 **Initial Term.** Tenant shall have and hold the Premises for a period commencing on **January 1, 2006** (the "**Commencement Date**") and continuing for twenty (20) years (the "**Lease Term**") unless sooner terminated as provided in this Lease.

2.4 Options to Renew. Landlord grants to Tenant the right and privilege of renewal of this Lease, at Tenant's option, for four (4) subsequent terms of twenty (20) years each, the renewal terms to commence on the day after the end of the initial term or the then existing renewal term. This Lease shall be automatically extended for each additional term of twenty (20) years each unless Tenant gives Landlord written notice of Tenant's option not to extend this Lease at least nine (9) months prior to the end of the then-current term. Each renewal term shall be subject to the same terms and conditions as the Initial Term (other than renewals, which shall include one fewer renewal right and privilege upon the passing of each exercised 20-year term).

2.5 Base Rent. The base rent to be paid by Tenant to Landlord shall be one dollar (\$1.00) per year, due on July 1 of each year of the Lease Term. Landlord shall not be obligated to provide any services to the Premises or bear any cost or expense in connection with the improvement, use or operation of Premises. Tenant is also liable to pay as additional rent all real estate taxes, betterments, assessments and other charges, costs and impositions of any and all kinds (including without limitation all utility and similar costs) associated with the Premises, if any. It is intended that this be an "absolute net" lease, with Landlord having no responsibility under this Lease for any charges, costs or expenses related to the Premises; however nothing in this Lease shall be construed to prohibit Landlord's voluntarily electing to provide Tenant with services, accepting financial responsibility for Tenant's costs, or assuming other financial responsibilities of Tenant arising from its occupancy and use of the Premises.

Article III **Use of the Premises**

3.1 Use, Occupancy and Tenant's Maintenance Obligations. Tenant shall use and occupy the Premises only for the purposes of operating and maintaining a public library thereon and Tenant covenants and agrees to do so and to operate and keep open the public library operations to the public during normal operating hours, as determined by Tenant, throughout the term of this Lease, subject only to force majeure. Tenant at its own expense shall repair and maintain and, where necessary, replace the exterior, structure, roof, systems (including without limit HVAC, electrical, plumbing, communications) and all other parts and portions of all buildings, improvements and landscaping located on the Premises in good order and condition, reasonable wear and tear excepted. Landlord shall have no obligations of maintenance, repair or replacement whatsoever under this Lease. The buildings and other leasehold improvements that are a part of the Premises for the purposes of this

Lease, shall have an initial value of three and one-half million dollars (\$3,500,000.00).

3.2 **Compliance with Laws.** In addition to Tenant's maintenance obligations set out more fully above, Tenant shall make all repairs, alterations, additions, or replacements to the Premises, the improvements constructed thereon and all equipment, facilities, signs and fixtures thereon required because of Tenant's use thereof. Tenant shall procure any licenses and permits required for any such use and shall comply with all laws, ordinances, orders and regulations of all governmental authorities having jurisdiction over the Premises and the business activities thereon. Tenant further agrees that it shall comply with all easements, covenants, restrictions, agreements and requirements imposed upon the Premises, or otherwise binding upon the owner and/or occupant of the Premises.

3.3 **Permits and Easements.** At Tenant's request, Landlord, in its capacity as owner/Landlord of the Premises, shall join in applications for permits, variances, licenses, changes in zoning, building or subdivision laws, and other authorizations required in connection with Tenant's permitted use of the Premises.

3.4 **Quiet Enjoyment.** Tenant shall, upon Tenant paying the rent and performing all the covenants and conditions in this Lease on Tenant's part to be paid, observed and performed, peaceably and quietly have, hold and enjoy the Premises for the Lease Term, subject to the provisions of this Lease and all matters of record affecting the Premises.

3.5 **Surrender.** Tenant shall surrender and deliver up the Premises and all existing improvements thereon at the expiration of the Lease Term or sooner termination of this Lease, in broom clean condition, and otherwise in good repair and condition except for ordinary wear and tear, and, if requested by Landlord, free of Tenant's equipment and other personal property.

Article IV **Indemnity and Insurance**

4.1 **Indemnity.** Tenant shall indemnify and hold harmless Landlord from any liability for injury, loss, or damage to any person (including without limit, death and/or bodily harm) and expenses and costs in connection therewith (including without limitation reasonable attorney's fees and costs) (i) arising from or in any way associated or connected with (a) the negligence or other misconduct of Tenant, its agents, assignees, sublet tenants, other occupants of the Premises, permitted or not permitted, employees or independent contractors, or (b) any use, occupation or control made of the Premises by Tenant at any time during the Lease Term

not due to the negligence or other misconduct of Landlord, its agents, employees, or independent contractors, or (ii) resulting from the failure of Tenant to perform its obligations under this Lease.

4.2 Comprehensive Liability Insurance. Tenant shall maintain with a company qualified to do business in Maine and satisfactory to Landlord comprehensive general liability insurance covering the Premises, insuring Landlord as well as Tenant against all claims or demands made by any person or persons whatsoever for injuries in connection with the operation and maintenance of the improvements and buildings located upon the Premises in such amounts and in such form as shall from time to time be satisfactory to Landlord. Tenant shall deposit with Landlord upon request certificates for such insurances.

4.3 Property Risk. During the term of this Lease, Tenant shall keep all buildings and improvements on the Premises insured for the benefit of Landlord and Tenant, as their respective interests may appear, against loss or damage by fire, and those casualties covered by the customary extended coverage endorsements, in a minimum amount necessary to cover the full replacement value of the buildings and improvements on the Premises in such amounts and in such form as shall from time to time be satisfactory to Landlord. All proceeds attributable to the Premises (as opposed to contents and other personal property owned by Tenant) payable at any time and from time to time by any insurance company under such policies shall be payable to Landlord. Tenant shall deposit with Landlord upon request certificates for such insurances. All Tenant's furnishings, fixtures, equipment, and personal property of Tenant and of all persons claiming by, through or under Tenant which may be on the Premises, shall be at the sole risk and hazard of the Tenant. If the whole or any part thereof shall be destroyed or damaged, no part of such loss or damage is to be charged to or borne by Landlord.

Article V **Default**

5.1 Events of Default. (a) if any default by Tenant continues (i) in case of rent described in section 2.5 hereof or of any other monetary payment obligations of Tenant hereunder for more than twenty (20) days after written notice thereof by Landlord to Tenant; or (ii) as to any other Tenant obligation, covenant or agreement hereunder for more than forty (40) days after notice thereof by Landlord to Tenant and such additional time, if any, as is reasonably necessary in the diligent pursuit of cure thereof to cure the default if the default is of such nature that it cannot reasonably be cured in said forty (40) day period, but never to exceed One Hundred and Eighty (180) days; and/or (b) if there is any assignment made of Tenant's property for the benefit of creditors, or if a receiver, guardian,

conservator or trustee in bankruptcy or similar officer shall be appointed by a court of competent jurisdiction to take charge of all or any part of Tenant's property, or if a petition is filed by Tenant under any bankruptcy, insolvency or other debtor relief law, or if such a petition is filed against Tenant and is not dismissed within one hundred twenty (120) days, or if Tenant is adjudicated a bankrupt under any bankruptcy law, , or if this leasehold is taken and sold on execution or other process of law in any action against Tenant (all of which events shall be considered as defaults): then in any case, Landlord may immediately, or at any time while such default continues give notice to Tenant specifying the default and a date on which this Lease shall terminate which shall be at least fifteen (15) days after the giving of such notice, and if such default is not cured by the termination date specified in such notice, then this Lease shall terminate and Tenant will then quit and surrender the Premises.

In addition to and not in derogation of any and all remedies of Landlord hereunder or at law or in equity, if Tenant shall default in the performance of any agreement, covenant or condition in this Lease contained on its part to be performed or observed, and shall not cure such default within applicable cure periods (or in case of emergency, without regard for such cure periods), Landlord may, at its sole option, without waiving any claim for breach of this Lease or any of Landlord's other remedies, at any time thereafter, undertake such acts or actions necessary to cure such default for the account of Tenant. Tenant agrees to promptly reimburse Landlord for any amount paid by Landlord related to such acts or actions (including without limit reasonable attorneys' fees) as additional rent and save Landlord harmless from any liability incurred thereby.

Article VI

Subleases, Assignments and Leasehold Mortgages.

6.1 **Assignment and Subletting.** Tenant shall not by operation of law or otherwise, assign, mortgage or encumber this Lease, or sublet or permit the Premises or any part thereof to be used by others (other than uses incidental to the operation of the public library, such as offering space for presentations or classes or other activities consistent with such operations), without Landlord's prior express written consent in each instance. In any case where Landlord shall consent to such assignment or subletting, Tenant named herein shall remain fully liable for the obligations of Tenant hereunder, including, without limitation, the obligation to pay the rent and other amounts provided under this Lease.

6.2 **Leasehold Mortgages.** Tenant shall not mortgage or encumber the leasehold interest hereunder, in whole or in part without written consent of the Landlord.

Article VII
Miscellaneous

7.1 **Memorandum of Lease.** Landlord and Tenant agree, at the request of the other, to execute and deliver a Memorandum of Lease in a form suitable for recording, and setting forth any terms of the Lease that the other may reasonably request.

7.2 **Access to Premises.** Landlord or Landlord's agents or designees shall have the right (but not the obligation) to enter upon the Premises at all reasonable times to examine the same and/or to perform any obligations that Tenant is required to perform but is not performing, provided such entry shall not unreasonably interfere with the operations of Tenant being conducted therein.

7.3 **Consents and Approvals.** Landlord agrees that whenever this Lease requires Landlord's consent or approval to any action by Tenant, such consent or approval shall not be unreasonably withheld or delayed. Nothing in this Lease concerning Landlord's cooperation, consent or approval shall be considered to be in lieu of or as a substitute for Landlord's exercise of its authority or powers acting as a municipal body and authority, in its legislative capacity or otherwise, all of which authority and power is expressly reserved.

7.4 **Limitation on Liability.** Anything in this Lease to the contrary notwithstanding, the Tenant, and any mortgagee, assignee, subtenant, licensee or concessionaire of Tenant shall look solely to the estate and property of the Landlord or any successor in ownership to Landlord in the Premises for the satisfaction of any claim for the payment of money against the Landlord arising out of or related to this Lease, and no other property or assets of the Landlord shall be subject to claim, execution or other enforcement procedure for the satisfaction of any claims by such persons arising out of or related to this Lease. In no event shall Landlord ever be liable for indirect or consequential damages. No provision of this Lease shall ever be considered to expand or create liability on the part of the Landlord to any person (including any persons indemnified by Landlord, if any) for claims from which Landlord is released, exempted and/or protected by Maine Law, including without limit, the Maine Tort Claims Act, as it is currently in effect or is in the future from time to time modified or amended.

7.5 **Casualty and Eminent Domain.** Should a substantial portion of the Premises be damaged by fire or other casualty, or be taken by eminent domain, Landlord or Tenant may elect to terminate this Lease; provided, however, that in event of such fire, casualty, or taking there are sufficient insurance proceeds or condemnation proceeds, as the case may be, to

restore and/or reconfigure the Premises to their condition prior to the casualty or eminent domain event (or to a condition mutually satisfactory to both parties), then neither party shall terminate the Lease and Landlord and Tenant shall cooperate on efforts to rebuild and/or reconfigure the improvements on the Premises. Landlord reserves and excepts all rights to damages relating to the Premises and building and the leasehold hereby created, accrued or subsequently accruing by reason of anything lawfully done in pursuance of any public, or other, authority; and by way of confirmation, Tenant grants to Landlord all Tenant's rights to such damages and covenants to execute and deliver such further instruments of assignment thereof as Landlord may from time to time request. In the event the parties cannot within One Hundred and Eighty (180) days of such casualty or taking event agree on a plan for restoration and/or reconfiguration after reasonable efforts to do so, either Landlord or Tenant may thereafter give the other notice of its decision to terminate this Lease within ninety (90) days after the end of such 180-day period. Notwithstanding anything to the contrary contained herein, no party shall be obligated to expend funds on any restoration and/or reconfiguration effort greater than the amount of the proceeds from any insurance policy or policies or of damages which accrue by reason of any taking by a public or other authority, which are actually available for such efforts.

7.6 Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other part shall be in writing addressed to the other party at the following addresses:

Tenant's Address: 49 Spring Street
Auburn, Maine 04210
ATTN: DIRECTOR
ATTN: PRESIDENT

Landlord's Address: Municipal Building
45 Spring Street
Auburn, Maine 04210
ATTN: CITY MANAGER
ATTN: ASST. CITY MANAGER

or such other address as may have been specified by notifying the other party of the change of address. Notice shall be deemed served on the second business day following the day of mailing if mailed with the United States Postal Service, by certified mail, return receipt requested. All payments required under this Lease shall be deemed sufficiently paid if made by check collected on first presentation.

7.7 **Waiver.** The failure of Landlord to insist upon strict performance of any term condition or covenant of this Lease by Tenant shall not be deemed a waiver of any legal or equitable right of remedy Landlord may have, and shall not be deemed a waiver of any subsequent breach of the same or of any other provisions hereof.

7.8 **Binding on Successors.** This Lease shall be binding upon and inure to the benefit of and be enforceable by the legal representatives, heirs, successors and assigns of the parties hereto.

7.9 **Headings.** The headings in this Lease are for purposes of reference only and shall not affect the meaning hereof.

7.10 **Entire Agreement.** This Lease contains all of the agreements of the parties with respect to the leasing of the Premises and supersedes all prior dealings between them with respect to such subject matter.

7.11 **Construction.** This Lease is to be construed in accordance with and will be governed by the laws of the State of Maine.

In Witness Whereof, the parties have executed this Lease as of the Date first above written.

CITY OF AUBURN, Maine

Witness

by: Patricia A. Finnigan, its City Manager,

AUBURN PUBLIC LIBRARY

Witness

by: Richard L. Trafton, its President

**“EXHIBIT A”
AUBURN PUBLIC LIBRARY
49 SPRING STREET**

A certain parcel of land with the buildings thereon on the westerly side of Spring Street in the City of Auburn, County of Androscoggin, State of Maine, described as follows:

Beginning at the intersection of the westerly line of Spring Street with the southerly line of Library Avenue, formerly known as School Street;

Thence S 13° 47' 21" W, along the westerly line of Spring Street, one hundred sixty three and six hundredths (163.06') feet, to the intersection with the new westerly line of Spring Street as established by the State of Maine, Department of Transportation through a Notice of Layout and Taking, dated August 8, 1997 and recorded at the Androscoggin County Registry of Deeds on September 30, 1997 in Book, 3855, Page 61, said taking being depicted on a Maine Department of Transportation Right of Way Map, File No. 1-232, Sheet 5 of 7, recorded at the Androscoggin County Registry of Deeds in Plan Book42, Page 64;

Thence N 76° 12' 39" W, along the new westerly line of Spring Street, four (4.00') feet, to an angle;

Thence S 13° 47' 21" W, along the new westerly line of Spring Street, fifty five (55.00') feet, to an angle;

Thence S 56° 25' 10" W, along the new westerly line of Spring Street, nine and forty three hundredths (9.43') feet, to the new northerly line of Court Street as established by the State of Maine, Department of Transportation through the above said Notice of Layout and Taking and being depicted on said Maine Department of Transportation Right of Way Map;

Thence N 82° 54' 53" W, along the new northerly line of Court Street, one hundred seven (107.00') feet, to the intersection with the original northerly line of Court Street;

Thence N 82° 13' 57" W, along the original northerly line of Court Street, sixty eight and sixty nine hundredths (68.69') feet, to the southeasterly corner of a certain parcel of land as described in the deed of Terrance Lacrosse to Rexford B. Smith, dated April 6, 1988 and recorded at the Androscoggin County Registry of Deeds in Book 2232, Page 251;

Thence N 09° 11' 07" E, along the land of said Smith, seventy eight and forty two hundredths (78.42') feet to an angle;

Thence N 12° 47' 07" E, continuing along the land of said Smith, forty seven and seventy four hundredths (47.74') feet, to an angle;

Thence N 77° 29' 53" W, continuing along the land of said Smith, sixty three and twenty three hundredths (63.23') feet, to the southeasterly line of the Maine Central Railroad as

depicted on a plan entitled "Right of Way and Track Map, Maine Central Railroad, Section V.2, Sheet 24", a copy of which is on file at the City of Auburn, Engineering Division office;

Thence northeasterly, along the southeasterly line of the Maine Central Railroad, said southeasterly line being a one thousand eight hundred fifty two (1852.00') foot radius curve to the right, an arc length of one hundred twenty two and fifty eight hundredths (122.58') feet to the southerly line of Library Avenue;

Thence S 76° 51' 15" E, along the southerly line of Library Avenue, two hundred twenty one and twenty eight hundredths (221.28') feet, to the point of beginning.

Said parcel being the same premises as conveyed to the City of Auburn by the following deeds: Lewiston Water Power Company to the Inhabitants of School District No. 9, Town of Auburn, dated October 12, 1853 and recorded at the Androscoggin County Registry of Deeds, Book 11, Page 107; Franklin Company to the Inhabitants of School District No. 9, Town of Auburn, dated June 1, 1858 and recorded at the Androscoggin County Registry of Deeds, Book 12, Page 71; Court Street Free Baptist Society of Auburn to the City of Auburn, dated May 5, 1903 and recorded at the Androscoggin County Registry of Deeds, Book 198, Page 82; and Harbor Supply Oil Company to the City of Auburn, dated December 16, 1987 and recorded at the Androscoggin County Registry of Deeds, Book 2191, Page 24.

Said premises are subject to all easements, covenants, agreements and encumbrances of record that affect said premises.

Bearings and distances are from a plan entitled "Standard Boundary and Topographic Survey on Court Street, Auburn, Maine made for Stahl Associates, Architects, 100 Chimney Street, Boston MA." Dated March 23, 1999, by Owen Haskell, Inc.