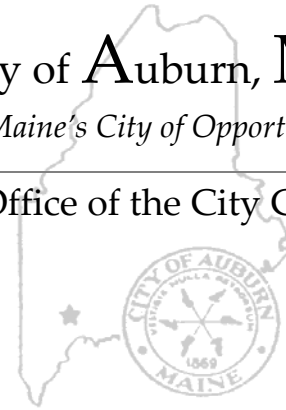


City of Auburn, Maine

"Maine's City of Opportunity"

Office of the City Clerk



Council Meeting Agenda Packet

February 4, 2008

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 February 4, 2008

Agenda

5:00 p.m. Dinner

5:30 p.m. Workshop

Police and Fire Department Goals
Discussion Regarding Joint Services

7:00 p.m. City Council Meeting

Pledge of Allegiance

* **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

*020408-00 Minutes of January 28, 2007 Council Meeting

Reports

- **Mayor**
- **City Councilors**
 - **Michael Farrell:** Water Dist., L/A Jt. City Council Planning, Audit and Procurement
 - **Bob Hayes:** Railroad, Library, Audit and Procurement
 - **Dan Herrick:** MMWAC, Auburn Housing
 - **Bruce Bickford:** A-L Airport, ABDC, L/A Joint City Council Planning, AVCOG
 - **Ray Berube:** LAEGC, Planning Board, L/A Joint City/School
 - **Bob Mennealy:** Sewer District, University of Maine L-A,
 - **Ron Potvin:** School Committee, 9-1-1, LATC, L/A Joint City/School
- **City Manager**

Communications and Recognitions

*020408-00 Communication from Republic Jewelry & Coin Re: Renewal of Pawn License

Open Session – Members of the public are invited to speak to the Council about any issue directly related to City business which is *not* on this agenda

Unfinished Business

New Business

020408-01 Resolve – Authorizing the Acting City Manager to enter into a Lease for Airport Property

020408-02 Resolve – Authorizing the Acting City Manger to Sub-Lease a Parcel of Land (Secured by a lease between the City of Auburn and the Auburn-Lewiston Municipal Airport) to Bisson Transportation

020408-03 Appointments

Joint Services Commission
Board of Assessment Review
Planning Board
Airport Board
Housing Authority
Cable TV Advisory Board

020408-04 Set date for second meeting in February (February 19th)

Open Session - Members of the public are invited to speak to the Council about any issue directly related to City business which is *not* on this agenda

ADJOURNMENT

Executives 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
JANUARY 28, 2008
CITY COUNCIL MEETING**

PRESENT

Mayor John T. Jenkins, Councilors Michael J. Farrell, Robert P. Hayes, Daniel R. Herrick, Bruce A. Bickford, Raymond C. Berube, Ronald W. Potvin and Robert C. Mennealy, Acting City Manager Laurie Smith, Acting Finance Director Denise Brown and City Clerk Mary Lou Magno. There were 15 people in the audience.

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

Sixth grade Auburn students sang the National Anthem under the direction of Brian Gagnon, Music Teacher.

***MINUTES OF JANUARY 17, 2007**

Approved under consent agenda.

REPORTS OF THE MAYOR

Mayor Jenkins read a letter he recently sent to those people who participated in the City Manager interviews; and another letter that he has sent to business owners/operators in the City of Auburn. (Copies of both letters are on file in the City Clerk's Office.)

REPORTS OF CITY COUNCILORS

Councilors reported on their respective Council Committee Assignments.

ADD TO THE AGENDA

Councilor Potvin moved to add to the agenda – Discussion regarding Budget Allocation to the School Department. Seconded by Councilor Bickford. Vote: 7 Yeas.

Councilor Potvin moved to add to the agenda – Discussion regarding proceeds of sale of Mt. Auburn Avenue property. Seconded by Councilor Berube. Vote: 7 Yeas.

REPORTS OF THE CITY MANAGER

Police Chief Phil Crowell reported on the status of the City's contract with the City of Lewiston regarding the Animal Control Officer. He also answered Councilors questions.

COMMUNICATIONS AND RECOGNITIONS

COMMUNICATION FROM KORA SHRINE CIRCUS COMMITTEE RE: TEMPORARY SIGNS

Approved under consent agenda.

UNFINISHED BUSINESS

**1. ORDINANCE – AMENDMENT TO THE ZONING MAP IN THE VICINITY OF
WOODBURY ROAD (2ND READING)**

Councilor Berube moved for acceptance of second reading and final passage. Seconded by Councilor Bickford. Vote: 7 Yeas.

**2. ORDINANCE – AMENDMENT TO CHAPTER 1, ARTICLE 3 – RULES OF
PROCEDURE**

Councilor Bickford moved for acceptance of second reading and final passage. Seconded by Councilor Berube.

Councilor Hayes moved to amend by indicating that the first Open Session would not exceed 45 minutes. Seconded by Councilor Farrell.

Vote on the amendment: 7 Yeas.

Vote on acceptance of second reading and final passage as amended: 7 Yeas.

**3. DISCUSSION REGARDING PROCEEDS OF SALE OF MT. AUBURN AVENUE
PROPERTY**

Councilor Potvin moved to allow \$400,000 of renovations to Webster School contingent upon the fact that if the School Department receives a \$200,000 state match, that that money will be returned to the City of Auburn. Seconded by Councilor Berube.

Councilor Potvin withdrew his motion and Councilor Berube withdrew his second.

Councilor Hayes moved to commit \$400,000 from sale of Mt. Auburn Avenue property to renovations to Webster School and if the School Department receives a \$200,000 state match, that that money will be returned to the City of Auburn. Seconded by Councilor Bickford.

Councilor Hayes moved that School Department get three estimates for this project. Seconded by Councilor Mennealy.

Councilor Farrell moved to postpone indefinitely. Vote: 4 Yeas with Councilors Hayes, Bickford and Potvin voting Nay.

**4. DISCUSSION REGARDING BUDGET ALLOCATION TO THE SCHOOL
DEPARTMENT**

Councilor Potvin moved that the City allocate no more than \$15 million dollars to the School Department Budget. Seconded by Councilor Farrell.

Brian Demers, 1085 Riverside Drive, made comments regarding this matter.

Vote: 6 Yeas with Councilor Hayes voting Nay.

OPEN SESSION

The following people made comments during Open Session: Brian Demers, 1085 Riverside Drive; and Francois Bussiere, 9 Winter Street.

OPEN SESSION CLOSED

Councilor Potvin moved to have a discussion regarding Joint Services. No second.

EXECUTIVE SESSION

Councilor Mennealy moved to go into Executive Session to discuss appointments. Seconded by Councilor Hayes. Vote: 4 Yeas with Councilors Herrick, Berube and Potvin voting Nay.

Councilor Bickford moved to go into Executive Session to discuss a personnel issue. Seconded by Councilor Potvin. Vote: 7 Yeas.

Councilor Bickford moved to come out of Executive Session. Seconded by Councilor Herrick. Vote: 7 Yeas.

ADJOURNMENT – 9:10 P.M.

Councilor Berube to adjourn. Seconded by Councilor Bickford. Vote: 7 Yeas.

A TRUE RECORD

ATTEST: _____
CITY CLERK

City Council

Agenda Information Sheet

Council Meeting Date 2/4/2008

Agenda Item No. Consent

SUBJECT:

COMMUNICATION FROM REPUBLIC JEWELRY & COIN RE: RENEWAL OF PAWN LICENSE

INFORMATION:

Republic Jewelry & Coin is requesting renewal of their Pawn License. Three departments (Treasurer, Police and Fire) are required to approve this license prior to issuance.

STAFF COMMENTS/RECOMMENDATION:

Staff recommends approval of this request contingent upon approval of appropriate departments.

REQUESTED ACTION:

Motion to approve request contingent upon approval of appropriate departments.

VOTE:

January 24, 2008

City Council of Auburn
c/o Mary Lou Magno
60 Court Street
Auburn, ME 04210

Dear Mayor and City Council Members,

We would like to request the renewal of our Pawn License for 1998 for our business, Republic Jewelry & Coin Co. Inc. Located at 212 Center Street Auburn, ME. Our company has been in business since 1984, and has been family owned and operated. We buy and sell a wide variety of collectibles such as coins, estate jewelry, baseball cards etc.... We have been located in Auburn for the past fourteen years.

Enclosed is a check for the fee of \$100.00 Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Daniel Cunliffe Sr." The signature is written in a cursive style with a large initial 'D' and 'C'.

Daniel Cunliffe Sr.
Owner/President

City Council

Agenda Information Sheet

Council Meeting Date 2/4/08

Agenda Item No. 1

SUBJECT:

RESOLVE – AUTHROIZING THE ACTING CITY MANAGER TO ENTER INTO A LEASE FOR AIRPORT PROPERTY

INFORMATION:

The City of Auburn has been requested to lease public land to Bisson Transportation to be used as a parking lot for truck tractors and trailers. The land that has been identified is owned by the Auburn-Lewiston Municipal Airport. The parcel is located on the west side of Hotel Road between Tambrands and the railroad tracks. The Airport Board has approved the concept of leasing land for this purpose.

STAFF COMMENTS/RECOMMENDATION:

Staff recommends approval of this resolve.

REQUESTED ACTION:

Motion for passage of the resolve.

VOTE:

City of Auburn

City Council, Auburn, Maine

Date: February 4, 2008

TITLE: RESOLVE – AUTHORIZING THE ACTING CITY MANAGER TO EXECUTE INTO A LEASE FOR AIRPORT PROPERTY

Be It Resolved by the Auburn City Council, That the Acting City Manager is authorized to execute a lease for Airport property. The proposed parcel is located on the west side of Hotel Road between Tambrands and the railroad tracks.

Motion for acceptance:

Seconded by:

Vote:

Action by the City Council:

Date:

Attest:

City Clerk

LEASE AGREEMENT

This lease agreement (hereinafter called "Lease") made this _____ day of _____, 2008, by and between Auburn-Lewiston Municipal Airport, County of Androscoggin, and State of Maine (hereinafter called "Landlord") and CITY OF AUBURN (hereinafter called "Tenant").

1. DESCRIPTION OF PREMISES: In consideration of the rents, mutual covenants and agreements hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, for a term and upon the conditions hereinafter provided, land described in Schedule "A", attached hereto.

2. LEASE TERM: The term of this Lease shall be for a period of ten (10) years, commencing on the Commencement Date of the Lease between Tenant and Bisson Transportation, Inc. The anticipated commencement date is March 2008, but Tenant shall have the right to perform construction upon the premises prior to such date.

3. RENT: Tenant agrees to pay to Landlord throughout the term of this Lease an annual rent in accordance with the attached yearly lease payments described in Schedule "B".

All payments of rent to Landlord required hereunder shall be made in cash or by check payable to Landlord, and shall be mailed to Auburn/Lewiston Airport, 80 Airport Drive, Auburn, Maine, 04210, or to such other party and place as may be designated by notice in writing from Landlord to Tenant from time to time, the first payment to be made on the commencement date, as set forth in paragraph 2 above, and subsequent payments are due annually on the anniversary of the commencement date.

4. USE: Tenant shall have the right to use the Premises for a parking lot for tractors and trailers used in the trucking industry, as more specifically described in Schedule "C", attached hereto, and no other use shall be allowed without the written consent of Landlord, except as set out in Schedule C, attached hereto.

5. UTILITIES: The Tenant shall timely pay or cause to be paid all charges for utility services to the Premises.

6. FIXTURES AND EQUIPMENT: Subject to Landlord's prior consent, Tenant shall have the right, at its own expense, to install and maintain all equipment and fixtures necessary to the operation of its business on the Premises. Landlord's consent shall not be unreasonably withheld.

All such equipment and fixtures installed by, or at the expense of, the Tenant and susceptible of being removed from the property without substantial injury thereto, shall remain the property of Tenant and Tenant may, but shall not be obliged to, remove the same or any part thereof at any time or times during the term hereof, or within ten (10) days of the expiration of the term hereof, provided Tenant shall repair all damages resulting from such removal.

7. ALTERATIONS AND IMPROVEMENTS: With the Landlords prior permission the Tenant shall have the right, from time to time, and at its own expense, to make such alterations and improvements to the Premises as shall be reasonably necessary or appropriate for the Tenant's conduct thereon of its business, provided that prior to the commencement of any such alterations or improvements Tenant shall have obtained Landlord's consent thereto. Landlord's consent shall not be unreasonably withheld.

Tenant shall keep and maintain in good order, condition and repair, at his own expense, the Premises, reasonable wear and tear and damage by casualty excepted, provided, however, Tenant shall have no obligation to repair or replace the electrical, plumbing, sewer or water systems associated with the Premises.

8. ASSIGNMENT AND SUBLETTING: Landlord expressly consents to the sublet of the Premises, for the uses outlined in Paragraph 4, including the lease to Bisson Transportation, Inc., its successors and assigns. Any others than those listed in paragraph 4 will need written consent of the landlord

9. LANDLORD'S RIGHT OF ACCESS: During the term of this Lease, Landlord may, at such times as will not unreasonably interfere with Tenant's business, enter to view the Premises, or to make necessary repairs to said Premises.

10. SIGNAGE: Tenant agrees that it will not display, place or erect any signs on or about the Premises, except in conformance with the City of Auburn sign ordinance.

11. INSURANCE: Tenant, at his sole expense, shall maintain insurance against liability for bodily injury and property damage in amounts and in forms of insurance policies as may from time to time be reasonably required by the Landlord. All insurances required by this section shall be carried in favor of the Landlord and Tenant. Tenant's obligations hereunder shall be satisfied if Tenant's subtenant maintains insurance policies in effect, covering the premises and the adjoining premises of the City. Upon request, Tenant shall furnish to Landlord a proper certificate evidencing that the Tenant has procured and is maintaining in full force all insurance required to be carried by Tenant, and if Tenant shall fail to do so, the Landlord may obtain all required insurance and Tenant shall pay the cost thereof, upon demand. Tenant will do nothing and permit nothing to be done on the Premises that will contravene any fire and other insurance policy covering the same. If Tenant's use or occupancy of the Premises increases the premium on any fire or other insurance policy, Tenant shall pay such increase as additional rent.

12. DEFAULT: If, at any time subsequent to the date of this Lease, any one or more of the following events shall occur: (i) Tenant shall default in the payment of basic rent and such default shall continue for thirty (30) days after written notice to Tenant and any Subtenant from Landlord; or (ii) Tenant shall assign, transfer, encumber, sublet or permit the use of the Premises by others except in a manner permitted in paragraph 8; (iii) tenant shall vacate or abandon the Premises; (iv) there shall be any attachment, execution or other judicial seizure of all or any substantial part of the assets of Tenant or Subtenant which such attachment, execution or seizure is not discharged within sixty (60) days; (v)

Tenant shall default in the performance of or observance of any other covenant herein contained to be performed or observed by it and shall fail to cure such default within thirty (30) days after notice thereof to Landlord or, if such default shall reasonably require longer than thirty (30) days to cure and Tenant shall fail to commence to cure such default within a reasonable time after the date of such notice thereof, and prosecute the curing of same and completion with due diligence, then in any such case, while such default exists, Landlord may, at its option, refrain from terminating Tenant's right of possession and enforce against Tenant the provisions of this Lease for the full term thereof, or give to Tenant a written notice of its intention to terminate this Lease, in which latter event the term hereof shall expire at noon upon the fifth (5th) business day following the day upon which such notice is given as fully and completely as if that day was the date fixed for the expiration of the term, without the necessity of any legal process whatsoever unless the default is cured within such 5 day period. Tenant upon such a termination of this Lease shall thereupon quit and surrender the Premises to Landlord and Landlord, its agents and servants, may, immediately or at any time thereafter, reenter the premises and dispossess the Tenant, and remove any and all persons and any or all property therefrom, either by summary proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to prosecution or damage therefore (and no person claiming through or under Tenant or by virtue of any statute or of any order of any court shall be entitled to possession of the Premises).

Landlord understands that Tenant is subleasing the Premises to Bisson Transportation, Inc. Landlord expressly agrees to provide Bisson Transportation, or any other subtenant, with notice of any default and further agrees to allow Bisson Transportation or other subtenant the right to cure said default.

13. SURRENDER OF PREMISES: Tenant agrees to remove from the Premises within ten (10) days after the expiration or other termination of this Lease, all goods and effects not belonging to Landlord, and to surrender possession of the Premises and all fixtures and furnishings connected therewith in good repair, order and condition in all respects, reasonable wear and use thereof and damage by fire or other unavoidable casualty only excepted.

14. HAZARDOUS WASTE: In the event the existence of any hazardous or toxic substance is discovered or determined at the Demised Premises and which arose subsequent to the date of the delivery of possession of the Premises to Tenant and which was not caused by Landlord, its employees, agents, or invitees, the result of which may require investigative or remedial action pursuant to any law, rule or regulation, Tenant shall notify Landlord thereof and Tenant agrees to assume complete responsibility for any investigative or remedial activity and to indemnify Landlord for all damages (including, interest, penalties, fines and monetary sanctions), losses, liabilities or expenses, (including without limitations, the costs of any and all professional services), that may be incurred by Landlord as a result thereof. Notwithstanding any terms or conditions set forth in this Lease to the contrary or otherwise, in the event that Tenant does not promptly, in good faith and with due diligence remediate any such hazardous or toxic

substance, Landlord may, at its option, elect to remediate same and hold Tenant liable for any and all expenses incurred by Landlord including, but not limited to, reasonable attorneys' fees and expenses and other out of pocket expenses arising from or related to, the remediation of such hazardous or toxic substance.

Tenant or its subtenant, agrees to indemnify and hold harmless Landlord for any claim, suit or notice involving any damages, losses, liabilities or expenses, including, without limitation, the cost of any and all professional services (including, but not limited to reasonable attorneys' fees and expenses) and, investigative or remedial efforts, that may be imposed upon Landlord arising out of or in connection with any hazardous or toxic substance that results from the release of any hazardous or toxic substance that occurs after the date of delivery of possession of the Premises to Tenant, unless such release is caused by Landlord, its employees, agents or invitees.

Landlord agrees to indemnify and hold Tenant harmless from and shall have complete responsibility for any investigative or remedial activity and all damages (including interest, penalties, fines and sanctions), losses, liabilities or expenses (including without limitation, the costs of any and all professional services) which result from the presence of any hazardous or toxic substance on the Premises prior to the Commencement Date or released on the Premises by Landlord after the Commencement Date.

15. CONDEMNATION: If the leased premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this Lease shall terminate as of the date of vesting of title pursuant to any such taking or sale (hereinafter called "Taking").

In the event of a Taking of a substantial part of the Premises which taking prevents the premises from being used for its original purposes, the Landlord may, at its election, terminate this Lease. Any election by Landlord to so terminate shall be made by notice from Landlord to Tenant within thirty (30) days after vesting of title pursuant to the Taking.

In the event this Lease does not terminate after a Taking, Tenant's rent shall be reduced or abated, from the date of vesting of title pursuant to the Taking until the expiration or termination of this Lease, in that proportion which the portion of the Premises taken bears to the Premises.

In the case of any Taking or condemnation, whether or not the term of this Lease shall cease and terminate, the entire award shall be divided between Landlord and Tenant in a fair and equitable manner.

16. QUIET ENJOYMENT: The Tenant, upon the payment of the rent and the performance of all the terms of this Lease, shall at all times during the Lease term peaceably and quietly enjoy the Premises without any disturbances from Landlord.

17. TERMINATION: Landlord agrees, that, except for default, it will not terminate this lease without the written consent of Tenant and Bisson Transportation or other subtenant.

The Tenant agrees not to terminate this lease unless its subtenant defaults on the obligations stipulated in the subtenant lease agreement. If such default occurs the Tenant shall have the right to terminate this agreement with 30 days notice to the Landlord.

18. COMPLIANCE WITH LAWS AND REGULATIONS: The Tenant shall throughout the term of this Lease at its sole expense, promptly comply with all laws, or regulations and ordinances of all federal, state and municipal governments and appropriate departments, commissions, boards and offices thereof.

19. WAIVER: No waiver of any breach of any covenant, condition or agreement herein contained shall operate as a waiver of the covenants, conditions or agreement itself or of any subsequent breach thereof.

20. TERMS, LANDLORD AND TENANT: The terms "Landlord" and "Tenant" wherever used herein shall include, and all other provisions hereof shall bind and inure to the benefit of, the successors and assigns of the respective parties hereto.

21. ENTIRE AGREEMENT: This Lease contains the entire, agreement of the parties in regard to the Premises. There are no oral agreements existing between them.

22. NOTICES AND DEMAND: All notices, demands, requests or other communications required or permitted hereunder shall be deemed to have been duly given or delivered if delivered personally or if mailed in any United States Post Office by certified or registered mail, postage prepaid, addressed by Landlord or Tenant, respectively, at the following addresses or to such other addresses as the parties may designate in writing from time to time:

Landlord: Auburn/Lewiston Airport
80 Airport Dr
Auburn, Maine 04210

Tenant: City of Auburn
60 Court Street
Auburn, Maine 04210

and: Bisson Transportation, Inc.
76 New Meadows Road
West Bath, Maine 04530

23. GOVERNING LAW: This Lease shall be construed and governed by the laws of the State of Maine.

24. CAPTIONS: The captions of this Lease are for convenience only and are not part of this Lease; and do not in any way limit or amplify the terms and provisions of this Lease.

25. SEVERABILITY: If any of the terms, provisions or conditions of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease and the application of such terms, provisions or conditions to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each of the other terms, provisions and conditions of this Lease shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first written above.

ATTACHMENTS

- Schedule A Description of Leased Premises
- Schedule B Rent (Sample attached)
- Schedule C Description of Allowed Uses

Schedule B

The schedule of rent payments will be computed when the land area covered by the lease is finalized. The rent payments are based on the following assumptions:

- 1) The land has a present value of \$0.91/sq.ft.
- 2) The value of the land will appreciate at a rate of 2%/year
- 3) The Airport will realize an 8% return on the land value

Shown are sample rent tables based on estimated land areas.

	2.5 Acres	Rent 8%	3 Acres	Rent 8%
Year #1	\$100,000	\$8,000.00	\$120,000	\$9,600.00
Year #2	\$102,000.00	\$8,160.00	\$122,400.00	\$9,792.00
Year #3	\$104,040.00	\$8,323.20	\$124,848.00	\$9,987.84
Year #4	\$106,120.80	\$8,489.66	\$127,344.96	\$10,187.60
Year #5	\$108,243.22	\$8,659.46	\$129,891.86	\$10,391.35
Year #6	\$110,408.08	\$8,832.65	\$132,489.70	\$10,599.18
Year #7	\$112,616.24	\$9,009.30	\$135,139.49	\$10,811.16
Year #8	\$114,868.57	\$9,189.49	\$137,842.28	\$11,027.38
Year #9	\$117,165.94	\$9,373.28	\$140,599.13	\$11,247.93
Year #10	\$119,509.26	\$9,560.74	\$143,411.11	\$11,472.89

City Council

Agenda Information Sheet

Council Meeting Date 2/4/2008

Agenda Item No. 2

SUBJECT:

RESOLVE – AUTHORIZING THE ACTING CITY MANAGER TO SUB-LEASE A PARCEL OF LAND (SECURED BY A LEASE BETWEEN THE CITY OF AUBURN AND THE AUBURN-LEWISTON MUNICIPAL AIRPORT) TO BISSON TRANSPORTATION

INFORMATION:

Bisson Transportation has requested the City of Auburn to lease publicly held land for the purpose of establishing a parking lot for truck tractors and trailers. The execution of this lease will result in new revenue for the City of Auburn that will be paid in cash or registering rolling stock in the City of Auburn in an amount not less than \$25,000 annually with an escalator for ten years.

The proposed parcel subject to the lease is located on the west side of Hotel Road between Tambrands and the railroad tracks.

STAFF COMMENTS/RECOMMENDATION:

Staff recommends approval of this resolve.

REQUESTED ACTION:

Motion for passage of the resolve

VOTE:

City of Auburn

City Council, Auburn, Maine

Date: Feb. 4, 2008

TITLE: RESOLVE – AUTHORIZING THE ACTING CITY MANAGER TO SUB-LEASE LAND (SECURED BY A LEASE BETWEEN THE CITY OF AUBURN AND THE AUBURN-LEWISTON MUNICIPAL AIRPORT) TO BISSON TRANSPORTATION

Be It Resolved by the Auburn City Council That the Acting City Manager is authorized to execute a sub-lease of land under the ownership of the Auburn-Lewiston Airport, to Bisson Transportation. The parcel of land is located on the west side of Hotel Road between Tambrands and the railroad tracks.

Motion for acceptance:

Seconded by:

Vote:

Action by the City Council:

Date:

Attest:

City Clerk

LEASE AGREEMENT

This lease agreement (hereinafter called "Lease") made this _____ day of _____, 2008, by and between CITY OF AUBURN, County of Androscoggin, and State of Maine (hereinafter called "Landlord") and Bisson Transportation, Inc. (hereinafter called "Tenant").

1. DESCRIPTION OF PREMISES: In consideration of the rents, mutual covenants and agreements hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, for a term and upon the conditions hereinafter provided, land described in Schedule "A", attached hereto.

2. LEASE TERM: The term of this Lease shall be for a period of ten (10) years, commencing on the Commencement Date of the Lease between Landlord and Tenant (Bisson Transportation, Inc.) The anticipated commencement date is March 2008, but Tenant shall have the right to perform construction upon the premises prior to such date.

3. RENT: Tenant agrees to pay to Landlord throughout the term of this Lease an annual rent in arrears and in accordance with the attached yearly lease payments described in Schedule "B".

All payments of rent to Landlord required hereunder shall be made in cash or by check payable to Landlord (Tenant may satisfy all or a portion of the rent obligation through the payment of excise tax on truck tractors to the City of Auburn. It is recognized that in the first year the Tenant has been registering truck tractors prior to the commencement date with the intent of satisfying the first year rent obligation and these payments will be credited to the establishment of the base line for new revenue to the City of Auburn. Subsequent to the first year, each years rent can be satisfied by having a gross excise tax paid at or above the required rental charge.) mailed to City of Auburn, Auburn Hall, 60 Court Street, Auburn, Maine, 04210, or to such other party and place as may be designated by notice in writing from Landlord to Tenant from time to time. The first payment to be made one year from the commencement date, as set forth in paragraph 2 above, and subsequent payments are due annually on the anniversary of the commencement date.

4. REAL ESTATE AND PERSONAL PROPERTY TAXES: The Tenant will be responsible for the payment of all real estate and personal property taxes.

5. USE: Tenant shall have the right to use the Premises for a parking lot for tractors and trailers used in the trucking industry, as more specifically described in Schedule "C", attached hereto, and no other use shall be allowed without the written consent of Landlord.

6. UTILITIES: The Tenant shall timely pay or cause to be paid all charges for utility services to the Premises.

7. FIXTURES AND EQUIPMENT: Subject to Landlord's prior consent, Tenant shall have the right, at its own expense, to install and maintain all improvements and fixtures necessary to the operation of a parking lot on the Premises. Landlord's consent shall not be unreasonably withheld.

All such improvements and fixtures installed by, or at the expense of, the Tenant shall become the property of the Landlord upon termination of the lease except the Landlord may require the Tenant to remove the same or any part thereof within ten (10) days of the expiration of the term hereof or at anytime that the Tenant defaults in its obligations under this lease. The Tenant shall repair all damages resulting from such removal.

8. ALTERATIONS AND IMPROVEMENTS: With the Landlord's prior permission the Tenant shall have the right, from time to time, and at its own expense, to make such alterations and improvements to the Premises as shall be reasonably necessary or appropriate for the Tenant's conduct thereon of its business, provided that prior to the commencement of any such alterations or improvements Tenant shall have obtained Landlord's consent thereto. Landlord's consent shall not be unreasonably withheld.

Tenant shall keep and maintain in good order, condition and repair, at his own expense, the Premises, reasonable wear and tear and damage by casualty excepted.

9. ASSIGNMENT AND SUBLETTING: Landlord expressly prohibits the sublet of the Premises, for the uses outlined in Paragraph 5. Any uses or users other than those listed in paragraph 5 will need written consent of the Landlord

10. LANDLORD'S RIGHT OF ACCESS: During the term of this Lease, Landlord may, at such times as will not unreasonably interfere with Tenant's business, enter to view the Premises, or to make necessary repairs to said Premises.

11. SIGNAGE: Tenant agrees that it will not display, place or erect any signs on or about the Premises, except in conformance with the City of Auburn sign ordinance.

12. INSURANCE: Tenant, at his sole expense, shall maintain insurance against liability for bodily injury and property damage in amounts and in forms of insurance policies as may from time to time be reasonably required by the Landlord. All insurances required by this section shall be carried in favor of the Landlord and Tenant. Upon request, Tenant shall furnish to Landlord a proper certificate evidencing that the Tenant has procured and is maintaining in full force all insurance required to be carried by Tenant, and if Tenant shall fail to do so, the Landlord may obtain all required insurance and Tenant shall pay the cost thereof, upon demand. Tenant will do nothing and permit nothing to be done on the Premises that will contravene any fire and other insurance policy covering the same. If Tenant's use or occupancy of the Premises increases the premium on any fire or other insurance policy, Tenant shall pay such increase as additional rent.

13. DEFAULT: If, at any time subsequent to the date of this Lease, any one or more of the following events shall occur: (i) Tenant shall default in the payment of rent and such default shall continue for thirty (30) days after written notice to Tenant from Landlord; or (ii) Tenant shall assign, transfer, encumber, sublet or permit the use of the Premises by others except in a manner permitted in paragraph 9; (iii) tenant shall vacate or abandon the Premises; (iv) there shall be any attachment, execution or other judicial seizure of all or any substantial part of the assets of Tenant which such attachment, execution or seizure is not discharged within sixty (60) days; (v) Tenant shall default in the performance of or observance of any other covenant herein contained to be performed or observed by it and shall fail to cure such default within thirty (30) days after notice thereof to Landlord or, if such default shall reasonably require longer than thirty (30) days to cure and Tenant shall fail to commence to cure such default within a reasonable time after the date of such notice thereof, and prosecute the curing of same and completion with due diligence, then in any such case, while such default exists, Landlord may, at its option, refrain from terminating Tenant's right of possession and enforce against Tenant the provisions of this Lease for the full term thereof, or give to Tenant a written notice of its intention to terminate this Lease, in which latter event the term hereof shall expire at noon upon the fifth (5th) business day following the day upon which such notice is given as fully and completely as if that day was the date fixed for the expiration of the term, without the necessity of any legal process whatsoever unless the default is cured within such 5 day period. Tenant upon such a termination of this Lease shall thereupon quit and surrender the Premises to Landlord and Landlord, its agents and servants, may, immediately or at any time thereafter, reenter the premises and dispossess the Tenant, and remove any and all persons and any or all property therefrom, either by summary proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to prosecution or damage therefore (and no person claiming through or under Tenant or by virtue of any statute or of any order of any court shall be entitled to possession of the Premises).

14. SURRENDER OF PREMISES: Tenant agrees to remove from the Premises within ten (10) days after the expiration or other termination of this Lease, all goods and effects not belonging to Landlord, and to surrender possession of the Premises and all fixtures and furnishings connected therewith in good repair, order and condition in all respects, reasonable wear and use thereof and damage by fire or other unavoidable casualty only excepted.

15. HAZARDOUS WASTE: In the event the existence of any hazardous or toxic substance is discovered or determined at the Demised Premises and which arose subsequent to the date of the delivery of possession of the Premises to Tenant and which was not caused by Landlord, its employees, agents, or invitees, the result of which may require investigative or remedial action pursuant to any law, rule or regulation, Tenant shall notify Landlord thereof and Tenant agrees to assume complete responsibility for any investigative or remedial activity and to indemnify Landlord for all damages (including, interest, penalties, fines and monetary sanctions), losses, liabilities or expenses, (including without limitations, the costs of any and all professional services), that may be incurred by Landlord as a result thereof. Notwithstanding any terms or conditions set

forth in this Lease to the contrary or otherwise, in the event that Tenant does not promptly, in good faith and with due diligence remediate any such hazardous or toxic substance, Landlord may, at its option, elect to remediate same and hold Tenant liable for any and all expenses incurred by Landlord including, but not limited to, reasonable attorneys' fees and expenses and other out of pocket expenses arising from or related to, the remediation of such hazardous or toxic substance.

Tenant agrees to indemnify and hold harmless Landlord for any claim, suit or notice involving any damages, losses, liabilities or expenses, including, without limitation, the cost of any and all professional services (including, but not limited to reasonable attorneys' fees and expenses) and, investigative or remedial efforts, that may be imposed upon Landlord arising out of or in connection with any hazardous or toxic substance that results from the release of any hazardous or toxic substance that occurs after the date of delivery of possession of the Premises to Tenant, unless such release is caused by Landlord, its employees, agents or invitees.

Landlord agrees to indemnify and hold Tenant harmless from and shall have complete responsibility for any investigative or remedial activity and all damages (including interest, penalties, fines and sanctions), losses, liabilities or expenses (including without limitation, the costs of any and all professional services) which result from the presence of any hazardous or toxic substance on the Premises prior to the Commencement Date or released on the Premises by Landlord after the Commencement Date.

16. CONDEMNATION: If the leased premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this Lease shall terminate as of the date of vesting of title pursuant to any such taking or sale (hereinafter called "Taking").

In the event of a Taking of a substantial part of the Premises which taking prevents the premises from being used for its original purposes, the Landlord may, at its election, terminate this Lease. Any election by Landlord to so terminate shall be made by notice from Landlord to Tenant within thirty (30) days after vesting of title pursuant to the Taking.

In the event this Lease does not terminate after a Taking, Tenant's rent shall be reduced or abated, from the date of vesting of title pursuant to the Taking until the expiration or termination of this Lease, in that proportion which the portion of the Premises taken bears to the Premises.

In the case of any Taking or condemnation, whether or not the term of this Lease shall cease and terminate, the entire award shall be divided between Landlord and Tenant in a fair and equitable manner.

17. QUIET ENJOYMENT: The Tenant, upon the payment of the rent and the performance of all the terms of this Lease, shall at all times during the Lease term peaceably and quietly enjoy the Premises without any disturbances from Landlord.

18. TERMINATION: Landlord agrees, that, except for default, it will not terminate this lease without the written consent of Tenant.

19. COMPLIANCE WITH LAWS AND REGULATIONS: The Tenant shall throughout the term of this Lease at its sole expense, promptly comply with all laws, or regulations and ordinances of all federal, state and municipal governments and appropriate departments, commissions, boards and offices thereof.

20. WAIVER: No waiver of any breach of any covenant, condition or agreement herein contained shall operate as a waiver of the covenants, conditions or agreement itself or of any subsequent breach thereof.

21. TERMS, LANDLORD AND TENANT: The terms "Landlord" and "Tenant" wherever used herein shall include, and all other provisions hereof shall bind and inure to the benefit of, the successors and assigns of the respective parties hereto.

22. ENTIRE AGREEMENT: This Lease contains the entire, agreement of the parties in regard to the Premises. There are no oral agreements existing between them.

23. NOTICES AND DEMAND: All notices, demands, requests or other communications required or permitted hereunder shall be deemed to have been duly given or delivered if delivered personally or if mailed in any United States Post Office by certified or registered mail, postage prepaid, addressed by Landlord or Tenant, respectively, at the following addresses or to such other addresses as the parties may designate in writing from time to time:

Landlord: Auburn/Lewiston Airport
80 Airport Drive
Auburn, Maine 04210

Tenant: City of Auburn
60 Court Street
Auburn, Maine 04210

and: Bisson Transportation, Inc.
76 New Meadows Road
West Bath, Maine 04530

24. GOVERNING LAW: This Lease shall be construed and governed by the laws of the State of Maine.

25. CAPTIONS: The captions of this Lease are for convenience only and are not part of this Lease; and do not in any way limit or amplify the terms and provisions of this Lease.

26. SEVERABILITY: If any of the terms, provisions or conditions of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease and the application of such terms, provisions or conditions to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each of the other terms, provisions and conditions of this Lease shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first written above.

ATTACHMENTS

Schedule A Description of Leased Premises

Schedule B Rent (Sample attached)

Schedule C Description of Allowed Uses

Schedule B

The schedule of rent payments is as noted below. The lease will escalate at a rate of 3%/year.

	RENT
Year #1	\$25,000.00
Year #2	\$25,750.00
Year #3	\$26,522.50
Year #4	\$27,318.18
Year #5	\$28,137.72
Year #6	\$28,981.85
Year #7	\$29,851.31
Year #8	\$30,746.85
Year #9	\$31,669.25
Year #10	\$32,619.33

MEMO

TO: Mayor Jenkins and City Councilors

FROM: Councilors Hayes and Berube

SUBJ: Appointments

DATE: January 30, 2008

The following appointments will appear on the February 4th City Council agenda:

Joint Services Commission

Curtis Webber – February 2011

Board of Assessment Review

Arnold Leavitt – August 2012

Planning Board

Joseph Maloney – November 2010

Airport Board

Stephen Lunt – January 2011

Housing Authority

Gilda Berube – October 2012

Carlene Hildebrandt – October 2012

Cable TV Advisory Board

Normand Morin – January 2010

Edward Desgrosseilliers – January 2010

Charles Morrison – January 2009

Elizabeth Pettis – June 2010