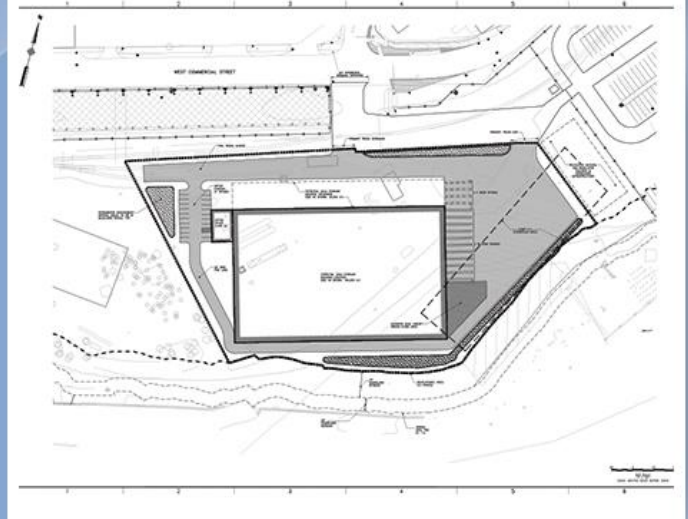


IMT West Cold Storage Facility

REQUEST FOR PROPOSALS

International Marine Terminal (IMT)
460 Commercial Street
Portland, Maine 04101



Request for Proposal Information

RFP Title	IMT West Cold Storage Facility
RFP Issuance	July 15, 2015
RFP Questions/RFIs Due	July 27, 2015
RFI Responses Provided	July 31, 2015
Pre-Proposal Site Tour: (Optional)	An Optional Pre-Proposal Site Tour can be scheduled for July 27, 2015 or July 31, 2015 at the request of the Proposer. Reservations are required for the Pre-Proposal Meeting and Site Tour; please RSVP by Thursday July 23, 2015, by contacting Kim King at kim.king@maine.gov .
RFP Responses Due	August 24, 2015 at 1600 (4:00 PM) Eastern Daylight Time

Request for Proposals Submittal Requirements

Submittal Copies	One (1) original paper (marked as “original”) and three (3) paper copies. One (1) electronic (PDF) copy provided via USB storage device.
Submittal Address	For original paper, paper copies, and electronic copy: Maine Port Authority 16 State House Station Augusta, Maine 04333-0016
Submittal Envelope Requirements	Proposal must be sealed and have the following information clearly marked and visible on the outside of the envelope: “Proposal for IMT West Cold Storage Facility” Name of Proposer’s company and address
Late Submittals	Late responses will not be accepted.

Questions about the Request for Proposals

All questions or RFIs related to this RFP are to be directed, in writing (no phone calls), to **Kim King** at **16 State House Station, Augusta, ME 04333-0016**, or via email to **kim.king@maine.gov**. Information obtained from any other source is not official and should not be relied upon.

Question/RFI Due Date: July 27, 2015 at 1600 (4:00 PM) Eastern Daylight Time
Please submit questions as soon as possible. No questions regarding this RFP will be responded to if received after the above date and time. All pertinent questions will be responded to and answered in writing no later than the RFI response date listed below.
Port Responses to Questions/RFIs: July 31, 2015
All pertinent questions will be responded to via an addendum or addenda that will be emailed to all prospective Proposers. All addenda must be acknowledged on the Acknowledgement and Signature form.

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1. Overview & Background

The Maine Port Authority is a quasi-state agency that works closely with the Maine Department of Transportation (MaineDOT). The Maine Port Authority's mission is "to improve the global competitiveness of Maine businesses, and in concert with public and private organizations, to stimulate commerce by developing marine and rail facilities, and other viable endeavors in a responsible fashion, for the intermodal movement of people and cargo in support of economic development."

The International Marine Terminal (IMT) in Portland, Maine is a 13-acre intermodal container handling facility with an annual throughput of approximately 16,000 twenty-foot equivalent units (TEUs). The IMT has been operated by the Maine Port Authority since 2009. Over the past six years, the Maine Port Authority has attracted significant investment into the IMT to rehabilitate it from a dilapidated, underutilized mixed-use waterfront asset into a dedicated containerized freight terminal. In the spring of 2013, the Icelandic Steamship Company, Eimskip, moved its North American logistical hub to the IMT, and has been running regular liner service to other North Atlantic ports since. Eimskip is a leading carrier of refrigerated cargo, and its "Green Line" service connects Maine to fisheries resources throughout the North Atlantic. The Maine Port Authority has invested in 150 refrigerated container ("reefer") plug positions at the IMT to accommodate this freight, with additional reefer capacity to be finished in the fall of 2015. In addition to these imported resources, Scandinavia and Northern Europe have proven strong markets for Maine's food products: exports to countries in these regions have increased steadily since Eimskip's arrival.

To accommodate increasing freight volumes at the IMT, the Maine Port Authority acquired 23 acres of vacant land adjacent to the terminal in 2014. This land is being developed to add intermodal rail access and increase drop and hook trucking capacity. Rail access will allow for cost-effective connections to be made throughout the U.S. and Canada. These connections will start with the regional railroad PanAm, and then connect with Norfolk Southern, CSX, Canadian Pacific, Canadian National, and a variety of additional short lines that provide regional coverage. The drop and hook operation provides customers with a secure lot and 24-hour access to their freight, which reduces trucking costs by allowing drivers to come when convenient, avoid rush hours, meet their scheduled pickups, and accomplish more runs in a day.

Maine, through its investments in the IMT, is poised to capitalize on a unique opportunity to increase its Food and Beverage (F&B) throughput. Investment in infrastructure helps to lower the transportation and logistics costs for F&B companies. Further, Maine's "brand" is one of sustainable, traceable, and high-quality food products – a fact that supports the growth of the F&B sector in the state.

Maine lacks a state-of-the-art cold storage facility with good transportation options. Most of the food products that originate in Maine are being shipped directly to customers or to cold storage facilities in Massachusetts and Canada. A cold storage and seafood processing facility linked with the transportation assets at the IMT would strategically fill the growing opportunity for a Northern New England refrigerated logistics facility. Accordingly, the Maine Port Authority is seeking a qualified operator to develop and operate a cold storage facility at the IMT.

The Maine Port Authority - working with Eimskip, McAllister Towing and Transportation, and PanAm - is continuing to pursue new trade lanes and connections for freight. Eimskip's Green Line service connects Maine directly to Nova Scotia, Newfoundland, Iceland, Norway, the Netherlands, and the United Kingdom. By transshipping through the ports on Eimskip's route, freight connections can be made with virtually any port in the world. Maine will also benefit from domestic connections: McAllister Towing is working with the Maine Port Authority to establish a freight connection to one or more terminal(s) in the New York/New Jersey area. It is anticipated that there will be a waterborne freight connection between New York and Portland by 2017.

Seven cold storage operators provided responses to the Request for Qualifications published by the Maine Port Authority on 18 June 2015. All of these respondents were found to be qualified respondents, and invited to respond to this Request for Proposals (RFP) for the IMT West Cold Storage Facility project. The purpose of this phase is to select the most qualified respondent to design, build, and operate a cold storage warehouse at the IMT.

2. Purpose & Goals

This RFP is the second phase of a multi-phase competitive process whereby the Maine Port Authority is seeking a pre-qualified entity that intends to design, build, and operate a cold storage facility on state-owned land adjacent to the IMT. The state intends to provide land to the successful Proposer under a lease agreement for a period of time. The term of the lease will be negotiated with the successful Proposer. Following execution of the lease, the successful Proposer will design and construct the cold storage facility, and will then operate the facility to achieve the goals listed below. The Maine Port Authority will act solely as lessor during the operation of the facility and will have no active role in functional or operational decision making. The Maine Port Authority will provide sales and marketing support where appropriate.

The goals that the Maine Port Authority intends to achieve through the development and operation of a cold storage facility at the IMT are summarized below:

1. Provide a state of the art cold storage facility that supports the growth of the Maine Port Authority's throughput volume of domestic, import, and export refrigerated commodities;
2. Attract new refrigerated and frozen cargo customers for the IMT;
3. Maximize revenues from the long-term operation of the cold storage facility;
4. Optimize the use of available rail, trucking, and ocean liner shipping services;
5. Support the development and growth of Maine's F&B industry;
6. Design, develop, and operate the facility in a manner that is protective of human health and the environment and so that it complies with applicable environmental regulations and restrictions;
7. Maximize the direct and indirect economic benefit from the operation of the cold storage facility to the local community and state; and
8. Comply with the policies of the Maine Port Authority and MaineDOT, and support the Maine Port Authority's mission.

3. Description of Property to be Leased

3.1. Physical Description

The cold storage facility development site (the Site) is a section of industrial land located along the Fore River at 40 West Commercial Street in Portland, Maine. The approximate developable area of the Site is 6.3 acres as shown on the attached **Figure 1**.

3.2. Site History

The Site was operated by Portland Gas Light Company (Portland Gas) between 1852 and 1965. During this time, coal was delivered to the Site by ship and rail and then converted into coal gas, which was used for lighting, heating, and cooking purposes. In 1965, Portland Gas ceased operations at the Site, and the manufactured gas plant (MGP) was decommissioned. In 1966, Portland Gas merged with Lewiston Gas Light Company to form Northern Utilities, Inc. (Northern Utilities). Northern Utilities and a tenant (NGL Energy Partners, LP) have operated a natural gas/propane distribution facility on the Inland Parcel of the Site since 1966. The MaineDOT acquired the Site in 2014 and current natural gas/propane distribution operations are expected to cease and move off the premises in the summer of 2016.

3.3. Zoning

The Site is within the Waterfront Port Development Zone (WPD). The full text of this zone's regulations can be found in the Portland City Code of Ordinances, Land Use Code, Division 18.5, Section 14-318 to 14-320.4. The text from the "Purpose" section (14-318) is as follows:

- Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep water channel of the Fore River.
- Waterfront land with direct deep water access shall be restricted to uses which contribute to port activity. This zone exists, therefore, to ensure the continued viability of the Port of Portland. Uses in the port development zone, while governed by the same performance standards as other industrial zones, are limited to those uses which are dependent upon deep water and which contribute to port activity.

Nonmarine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water dependent development. (Ord. No. 168 93, § 2, 1 4 93) According to the City's Zoning Ordinance, Division 18.5 of Chapter 14 of the City Code of Ordinances, a cold storage facility is a permitted use within this zone. Additional zoning and permitting information is included for reference as **Appendix A**.

3.4. Utilities

Power, water, natural gas, and gravity sewer are located along Commercial Street adjacent to the Site. All utilities would enter and exit the property along the main entrance located in the central area of the Site along Commercial Street. Approximate known utility locations are referenced on **Figure 2**.

Power

Three-phase primary power is available. The existing circuit capacity and demand are unknown at this time though the Maine Port Authority is researching available electrical service to the Site.

Wastewater

A 48-inch gravity combined sewer line exists along the property boundary between Commercial Street and the Site for wastewater disposal.

Water Supply

There is 16-inch cast iron water main that runs along West Commercial Street west of the Site. This line is reduced approximately 1,000 feet west of the Site to a 12-inch cast iron line, which continues in the street along the boundary of the Site. A 6-inch tee provides water to the Site. The 6-inch line has a 4-inch tee for domestic water supply and fire.

Natural Gas

There is a 24-inch medium pressure natural gas line along Commercial Street. The Unitil regulator building (proposed to be moved to allow for the development of the Site) currently has several low-pressure lines (6 through 18 inch) distributing natural gas.

3.5. Environmental Conditions

United States Environmental Protection Agency (USEPA) involvement at the Site began in 1987 and consisted of a preliminary site inspection and site ranking, which resulted in the issuance of a no further remedial action planned (NFRAP) letter in 1995. In 1996, the National Oceanic and Atmospheric Administration (NOAA) identified an intermittent oil seep from the southwestern corner of the Site to the Fore River. Following NOAA's investigations, the U.S. Coast Guard, NOAA, USEPA, and the Maine

Department of Environmental Protection (MEDEP) agreed that closure of the Site under the MEDEP Voluntary Response Action Program (VRAP) program would meet closure and cleanup objectives, and that no further federal actions were warranted. In November 1998, Northern Utilities filed a VRAP application with the MEDEP for the Site, and MEDEP accepted and approved the application in early 1999. The VRAP promotes the investigation, remediation, and redevelopment of contaminated properties by offering liability assurances/protections from state enforcement actions for applicants to the program. Site investigations conducted between 1999 and the present were in accordance with the VRAP. Remedial actions and redevelopment activities at the Site going forward will continue to be conducted under MEDEP oversight through the VRAP.

Readily available details concerning previously completed environmental investigations and remediation efforts, remaining environmental conditions that may be expected to be encountered during Site development, and the current regulatory status of the Site are summarized in **Appendix B**.

3.6. Site Preparation

The Site is currently occupied by a natural gas and propane distribution facility as well as materials and equipment associated with the construction of the IMT intermodal rail project. The current phase of the intermodal rail project is expected to be complete by the fall of 2015 and the natural gas and propane distribution facilities are expected to be relocated during the summer of 2016. Buildings, improvements, equipment, and materials are anticipated to be removed by the MaineDOT and/or Maine Port Authority prior to the initiation of IMT West Cold Storage Facility development activities. In addition, existing underground natural gas transmission lines that transect the developable area of the Site will be relocated by the MaineDOT and/or Maine Port Authority in order to accommodate facility construction.

In general, following the execution of the lease, the Site will be delivered to the successful Proposer as a level and clear parcel. However, Proposers should anticipate that approximately 4,660 cubic yards of previously dredged material will need to be incorporated into the development project. This work will be completed by the Maine Port Authority and/or MaineDOT during pre-development Site preparation.

4. Project Opportunities

The following opportunities have been identified by the Maine Port Authority as offering value to the development of the Site and the future operation of the IMT West Cold Storage Facility:

- **Strong Market Demand:** Eimskip's growing container traffic and plans to further expand Maine's food production justify the need for a new cold storage facility. The population and food industry is growing in Southern Maine, especially in Portland, and current cold storage options are limited.
- **Rail Siding:** Intermodal rail connectivity is a major part of the ongoing expansion of the IMT. The development site for the future cold storage warehouse will have rail connectivity to New England and Canadian markets through the regional railroad PanAm. PanAm's rail line connects to Norfolk Southern, CSX, Canadian Pacific, Canadian National, and a variety of other regional lines. PanAm also connects to the St. Lawrence & Atlantic Railroad (SLR), allowing direct access to markets in Montreal and the Midwest via interchanges with CN Rail.
- **Adjacent to Marine Terminal:** The site for the development of the cold storage warehouse will be directly adjacent to the IMT, Maine's largest container terminal. Eimskip calls regularly on the terminal with its Green Line service (currently, there are approximately three vessel calls per month). Eimskip is the premier carrier of refrigerated cargo in the North Atlantic and ships large quantities of seafood products between Northern Europe and Portland. The IMT is also involved in the New England Marine Highway Project, which is anticipated to bring regular liner service the New York/New Jersey area by 2017.

- **Access to Natural Gas:** There is a 24-inch medium pressure natural gas line along Commercial Street adjacent to the Site. There also may be access to several low-pressure lines (6 through 18 inch) for the distribution of natural gas.
- **Adjacent to Fore River Parkway/Veterans Bridge:** The proposed development site for the cold storage warehouse is located 1.3 miles from the Fore River Parkway and Veterans Bridge. The Fore River Parkway and Veterans Bridge both provide on-ramps for I-295, a highway that connects to I-95.
- **Access to Global Markets:** Eimskip's Green Line service connects Maine directly to Nova Scotia, Newfoundland, Iceland, Norway, the Netherlands, and the United Kingdom. By transshipping through the ports on Eimskip's route, freight connections can be made with virtually any port in the world.
- **Truck Capacity:** Maine's General Law currently allows 100,000 pounds on 6 axels including our Federal Interstates.
- **Regulatory Changes:** The U.S. Department of Agriculture (USDA) and U.S. Food and Drug Administration (FDA) are progressively looking for ways to improve food safety and protect public health. In response to regulatory drivers and market demand, access to state of the art refrigeration systems and constant temperature regulation of food products is increasingly being demanded by consumers. A new facility will offer food producers and consumers a high quality facility which modernizes food safety through technological enhancements and in order to handle their temperature-controlled cargoes.

5. Business Incentives

There are a number of applicable incentives available for entities looking to do business in the state of Maine. A current list of incentives can be found at investinmaine.net. A partial list of these incentives can be found attached as **Appendix C**.

6. Preliminary Project Schedule

Based on currently available information and foreseeable circumstances, the following project schedule and milestones have been developed for the IMT West Cold Storage Facility project:

- RFP Issued: July 15, 2015
- RFP Closed: August 24, 2015
- RFP Results Announced: August 31, 2015
- Predevelopment Engineering, Site Preparation, and Permitting: Fall 2015 through Summer 2016
- Final Construction Permitting: September 2016 through November 2016
- IMT West Cold Storage Facility Groundbreaking: December 2016
- Construction Complete: Summer 2017

7. Form of Contract

The Maine Port Authority reserves the right to modify or terminate this RFP at any stage if the Maine Port Authority determines such action to be in its best interest. Maine Port Authority's receipt of a proposal pursuant to this RFP does not create any contract or commitment by the Maine Port Authority. If acceptable lease terms cannot be established with the selected Proposer in a period of time that is satisfactory to the Maine Port Authority, the Maine Port Authority reserves the right to terminate negotiations and select an alternate proposing firm or firms to enter into lease negotiations until a lease that is acceptable to the Maine Port Authority is established.

The form of any contract ultimately entered into by the Maine Port Authority will depend, in part, on the content of the proposals that are submitted in response to this RFP and will likely be in the form of a ground lease of the area of land necessary to construct and operate the the IMT West Cold Storage Facility. Any interested party submitting a proposal thereby agrees that, in the event a contract is entered into, the contract will include (along with other provisions agreed to by the parties) the provisions set forth in Appendix E. While nothing herein precludes the Maine Port Authority from agreeing to changes to the provisions set forth in Appendix E, Proposers should not assume that the Maine Port Authority will agree to such changes.

8. Responsibilities

At the time of the execution of the lease, the successful Proposer must be prepared to take possession and use of the Site in its “as-is, where-is, with all faults” condition, including without limitation, environmental compliance. The successful Proposer will also be solely responsible for the following:

- All capital improvements, including without limitation the construction, financing, and maintenance of all such improvements;
- Obtaining all applicable permits and other entitlements to develop, maintain, and operate such improvements. Any improvements must adhere to the Maine Port Authority’s policy requirements; and
- Maintaining the minimum insurance requirements detailed in Appendix E at all times during the lease term.

The Port and its advisors are not responsible for costs or damages incurred by Proposers, team members, subcontractors or other interested persons in connection with this RFP, including all costs associated with preparing responses to this RFP, undertaking due diligence, and participating in any conferences, meetings, presentations, negotiations or other activities.

9. Submission Requirements

The Port has scheduled pre-proposal meetings on the dates indicated in the table titled “Request for Proposal Information” (on page i of this RFP), to review the submission requirements.

Please respond to the submission requirements in a straightforward and concise manner to satisfy the requirements of the RFP. The Maine Port Authority will use your responses to objectively determine your ranking among the proposals received. Partnerships between firms are permitted. However, a single entity must lead the effort as respondent to this RFP.

All other parties in a partnership must submit a letter with the partnership’s proposal indicating their intent to participate and their role in the project.

9.1. Format

Each proposal shall not be longer than 30 pages (one sided or 15 pages double sided), printed on 8 1/2” x 11” paper and formatted in no smaller than 10 point font. Please label your responses 1 through 8, in the order presented below in Section 9. All submitted material must be bound in the manner of your choosing. Failure of the Proposer to provide any information requested in the RFP may result in rejection for non-responsiveness.

9.2. Content

The proposal must respond to the items detailed in Section 10. Please label the sections in your proposal in accordance with the outline presented in Section 10. Only the responses to items 1 through 8 of Section 10 are subject to the 30 page limit.

9.3. Questions

All questions related to this RFP are to be directed, in writing (no phone calls), to **Kim King** at **16 State House Station, Augusta, ME 04333-0016**, or via email to **kim.king@maine.gov**. Information obtained from any other source is not official and should not be relied upon. Questions must be received by July 27, 2015.

9.4. Closing Date

One (1) complete original hard paper proposal, three (3) complete hard paper copies, and one (1) complete electronic copy of each response must be received before 1600 (4:00 PM) Eastern Daylight Time, on 24 August 2015. Hard copy responses are to be directed to the **Maine Port Authority, 16 State House Station, Augusta, Maine 04333-0016**. Envelopes should be clearly marked with the name and address of the respondent and "**Proposal for IMT West Cold Storage Facility**". Electronic responses are to be emailed to **kim.king@maine.gov**. The electronic copy must be a single assembled PDF file. The PDF file name must identify the Proposer's company and "**Cold Storage Proposal**". Responses must not be sent by facsimile.

9.5. Late Responses

Late responses will not be accepted.

9.6. Proposal Review Committee

The Executive Director of the Maine Port Authority as well as key members of the MaineDOT and the Maine Port Authority Staff and Board will be on the Review Committee.

9.7. Review and Selection

The Proposal Review Committee will check responses against the mandatory submissions criteria (as listed in Section 10). The submissions will further be evaluated against the criteria listed in Section 11. Responses not addressing all mandatory criteria will not be considered for review.

The selection process may include interviews (at the discretion of the evaluation committee) from the top scoring submissions. If interviews are to take place, the Maine Port Authority will notify the top scoring Proposers. Interview details and scoring requirements will be provided to selected top scoring Proposers prior to the interviews. The Maine Port Authority reserves the right to request Best and Final Offers from the top scoring Proposers following the interview process.

9.8. Signed Responses

All responses must be signed by an authorized representative from the company responding to this RFP. This representative must be capable of making decisions regarding the company's participation in the design, development, and operation of the IMT West Cold Storage Facility.

9.9. Acceptance of Responses

The Maine Port Authority reserves the right to terminate the process at any time.

10. Proposal Outline and Submission Requirements

Cover Letter: In addition to text of your choosing, the cover letter must provide the following Proposer information:

- a) Name of your company (including the name of any parent company), business address, email address and phone number for proposal contact, Federal Tax ID number, and company fax number. Also provide a brief statement as to who is authorized to submit the proposal on the behalf of your firm. Please make sure that person signs and dates the statement.
- b) Provide a written statement declaring whether your company has been debarred from providing services to any State or Federal Agency within the last five (5) years. Sign and date your statement. If your firm has been debarred, you will need to provide background information and reason for debarment. Provide the name and contact information for the agency that debarred your firm. The Maine Port Authority must review the reason and duration for the debarment before it can determine if your firm can be considered for this project.

The cover letter must be limited to two pages, which do not count against the 30-page limit.

1. Company Information

Provide the following details:

- a) A description of the Proposer, including a description of each entity team member and the anticipated legal relationship among the team members. Include the location (address) of each team member.
- b) A brief outline of the roles of each team member. At a minimum, each Proposer must identify each and every participant of its team and the team member(s) who will have primary responsibility for development of the facility and its operations, customer relationships, financial matters (including capital improvements), and relations with the Maine Port Authority.
- c) The identity of each individual or company who holds a major or controlling interest in the Proposer and each team member.
- d) The identity of each company and individual who is expected to act as legal, financial, or other advisor for the Proposer.
- e) An organizational chart that illustrates the roles and relationships identified in (b) – (d).

2. Knowledge and Experience

Provide relevant information about your company's knowledge and experience in connection with the development and operation of multi-modal served cold storage warehouse facilities. By providing reference/client information, you authorize the Maine Port Authority to contact such clients.

- a) Provide a list of recent comparable developments and operations in which the Proposer and team member(s) have participated. Proposers should specify how these projects and/or operations relate to the proposed project. Provide a description of each project:
 - i) Brief description
 - ii) Cost to implement, revenue generated, cargo activity growth realized
 - iii) Type of operations
 - iv) Other value-related information that may be pertinent

- b) Provide a list of at least three current Proposer and team member references (at least three each). References may not include other team members. Include names, addresses, and contact information. These references should be able to describe the relevant qualifications and capabilities of the Proposer and team members looking to take a leading role in the development, operation, maintenance, and financing of the project.

3. Financial Capacity

The proposal shall include:

- a) Evidence satisfactory to the Maine Port Authority of the Proposer's financial capacity to carry out and implement every aspect of the project, including, without limitation:
 - i) Development, delivery, operation, and maintenance of any proposed improvements
 - ii) Purchase or acquisition of all necessary equipment and materials
 - iii) Compliance with all environmental or other regulatory requirements that may apply to the proposed use and operation of the premises.
- b) Audited financial statements for the last three years; if audited statements are not available, please provide reviewed or compiled financial statements by a certified public accountant; and if such form of audited statement is not available, provide unaudited statements certified by the Chief Financial Officer (or equivalent) as to the accuracy. A bank reference with contact information may also be used.

4. Economic Impact within the State of Maine

- a) Provide a description of how the proposed project will impact the economy within the State of Maine. Include supporting data and rationale to justify your projections. Please include estimated direct and in-direct employment and local business utilization projections over the term. Also, at a minimum, describe:
 - i) Expected annual gross operating revenue
 - ii) Estimated number of temporary construction jobs
 - iii) Estimated number of permanent jobs
- b) Using the form in **Appendix D**, the Proposer is required to describe the Proposer's recent and anticipated economic impact upon and within the State of Maine. The use of economic impact in making contract award decisions is required in accordance with Executive Order 2012-004, which states that certain service contracts "...advertised for competitive bid shall include scoring criteria evaluating the responding Proposer's economic impact on the Maine economy and State revenues." Attach the form included in Appendix D to the proposal. This form does not count against the proposal page limit.

5. Development and Operations Concept

The Maine Port Authority is seeking to secure business for the purpose of developing and operating a modern multi-modal served cold storage logistics facility for processing refrigerated and frozen commodities. The proposed project must enhance current maritime operations and support the goals listed in Section 2. The proposal must describe in detail:

- a) How the proposed concept will support each goal described in Section 2.
- b) Identify the market to utilize the cold storage facility, including products to be handled and logistics for connecting product to market.

- c) The anticipated volume of containers and rail cars per month, the number of truck trips per month, etc.
- d) Business plan, including potential cargo activity, key customers, and facility operating plan (equipment, staffing, estimated financials, and operational considerations). The business plan should also describe how the Site would be used in relation to the Proposer's other operations.
- e) Reference total future estimated throughput in TEUs imported and exported through Portland, Maine and describe methods that would be used to achieve this projected growth.
- f) Hours of operation.
- g) Specific proposed measures or methods to protect current environmental conditions. Also proposed measure to minimize or avoid emissions of air pollutants, including but not limited to diesel particulate matter and greenhouse gases, and other sustainability measures to enhance environmental performance.

6. Improvements

State what improvements the Proposer proposes developing during the term of the lease, including, without limitation:

- a) A description of the proposed cold storage facility including general construction type, total square footage and dimensions (length, width, height), refrigeration system details, expected utility needs (including capacity/size), and environmental management approach.
- b) Estimated schedule, including pre-construction tasks (design, permitting, etc.), construction period, any development phasing proposed, and initiation of operations for the development or each phase of development, if applicable. Include brief descriptions and milestone dates.
- c) Estimated development costs.
- d) Proposed funding sources.

7. Rent

The proposal must state the proposed rent for all portions of the Site that the Proposer intends to use and occupy during the term of the lease, including without limitation:

- a) Proposed commencement date for payment of rent to the Maine Port Authority.
- b) Proposed amount of base annual rent over the term of the lease, including all operational and General Property Maintenance costs.
- c) Proposed variable rent above base rent (e.g., "participation rent" or "profit sharing").
- d) Proposed rent escalators, including frequency and basis.
- e) Proposed lease term.

For any proposed variable rent based on revenues or other basis, describe in detail how such percentage rent would be calculated and any assumptions included in the calculations.

8. Lease Terms

The Maine Port Authority desires to expeditiously enter into the Lease Agreement with the successful Proposer. Proposers must indicate whether they are willing to enter into the form of Lease provided by the Maine Port Authority in this RFP. If changes are proposed, please briefly summarize the most significant issues.

Required Attachments

Attachment 1: Appendix D: Economic Impact within the State of Maine

Attachment 2: A scaled map or site plan showing anticipated operations, including building square footage, building height(s), estimated maximum annual throughput capacity, number of rail car loading and unloading spots (if applicable), number of truck doors, designated areas for chilled, frozen, and general warehouse activity and square footages for each, freezer cargo storage areas, truck, trailer and chassis parking areas, office space, etc.

11. Evaluation Criteria

The evaluation criteria may include:

- Alignment of project concept and business plans with the stated goals of the Maine Port Authority;
- Demonstrated experience and success in the field of cold storage facility design, development, and operation;
- Demonstrated knowledge of the cold storage market;
- Viability of the proposed project;
- Financial capacity to complete the proposed project;
- Anticipated benefits to the State of Maine, including lease payments and other economic benefits; and
- Experience with development and facility operations at environmentally impacted properties.

12. Proposal Ranking

The following guide will be used during the consideration of received proposals:

1. Company Information - strength and experience of team members and organizational strategy: 10%
2. Knowledge and Experience - success of past projects and relatability to the Maine Port Authority's goals. Also, quality of received references as applicable: 20%
3. Financial Capacity - demonstrated ability to execute the design, development, and operation of the project: 10%
4. Economic Impact within the State of Maine – quantity of new revenue and jobs, and the details in Appendix D: 10%
5. Development and Operations Concept - quality of business plan and opportunity for growth: 20%
6. Site Improvements Plan – assessment of building details, schedule, and costs: 10%
7. Rent – overall value to the State of Maine: 20%

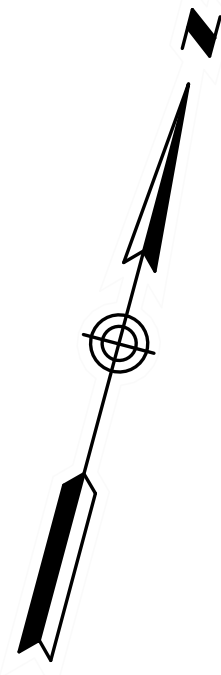
13. Freedom of Access Act

Interested parties are advised that under Maine's Freedom of Access Act, 1 M.R.S.A. § 401, et seq., "public records" (as that term is defined in 1 M.R.S.A. § 402(3)) are available for public inspection and copying.

As a general matter, information submitted in response to this RFP will be considered to be "public records" available for public inspection and copying. If, however, a Respondent believes that parts of its response fall within one or more of the exceptions to the definition of "public records" set forth in 1 M.R.S.A. § 402(3), that Respondent may submit those parts of its response, with each page marked "Confidential," in a separate envelope marked "Confidential." Included in the envelope should be a non-confidential statement of the basis for Respondent's claim that those parts of its response fall within one or more of the exceptions to the definition of "public records." Designating parts of a response "Confidential" does not by itself ensure that those parts of the response will remain confidential.

In the event that the Maine Port Authority receives a request to inspect or copy those parts of Respondent's response marked confidential, Maine Port Authority will notify Respondent that such a request has been received. Any Respondent claiming documents are confidential shall, within 14 days of receiving Maine Port Authority's notice, send Maine Port Authority a list identifying each document that it claims is confidential. Maine Port Authority will notify the party requesting disclosure that the documents will be withheld. If the party seeking disclosure files a legal action to gain access to the confidential information, then the Respondent must retain counsel and join the legal action to defend its position that the release of information should be denied. Respondent's failure to join the action and defend its position shall constitute a waiver of its claim that the information is confidential. Maine Port Authority will comply with the order issued by the reviewing court.

Figure 1: Existing Conditions



A

B

C

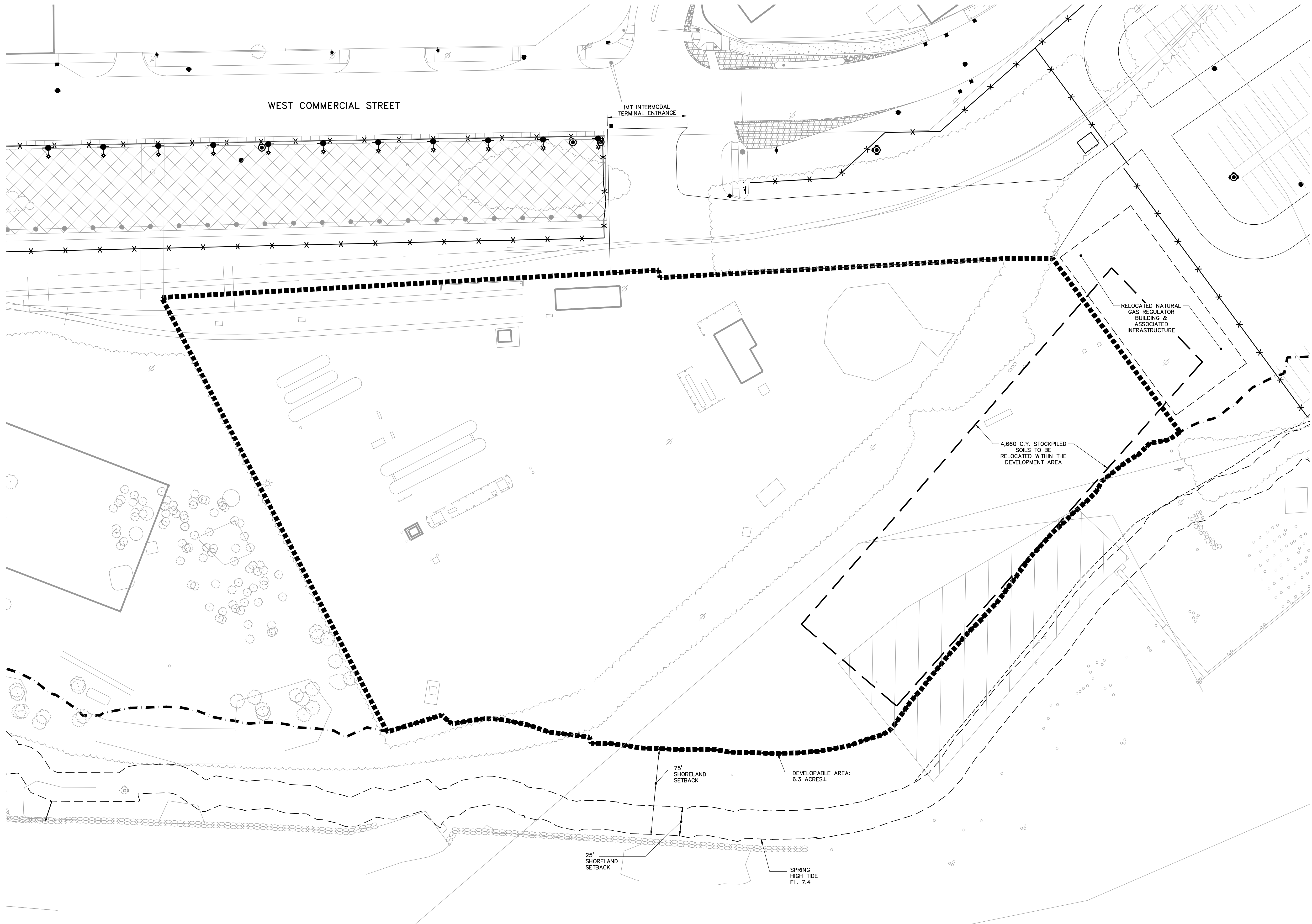
D

A

B

C

D



MAINE PORT AUTHORITY

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REV.	DESCRIPTION	DATE

DESIGNED BY: DAS/ BCM
CHECKED BY: DAS
DRAWN BY: BCM
229064.M001.DWG

EXISTING CONDITIONS

MAINE PORT AUTHORITY

IMT WEST COLD STORAGE FACILITY

JOB NO.: 229064
DATE: JULY 2015
SCALE: 1"=40'
SHEET: 1 OF 2

FIGURE 1

\\locations\Projects\229064 - Maine Port Authority - Cold Storage - Engineering\wp\Drawings\229064_X000.dwg, Jul 15, 2015, 2:39pm

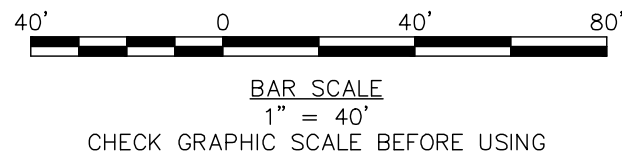
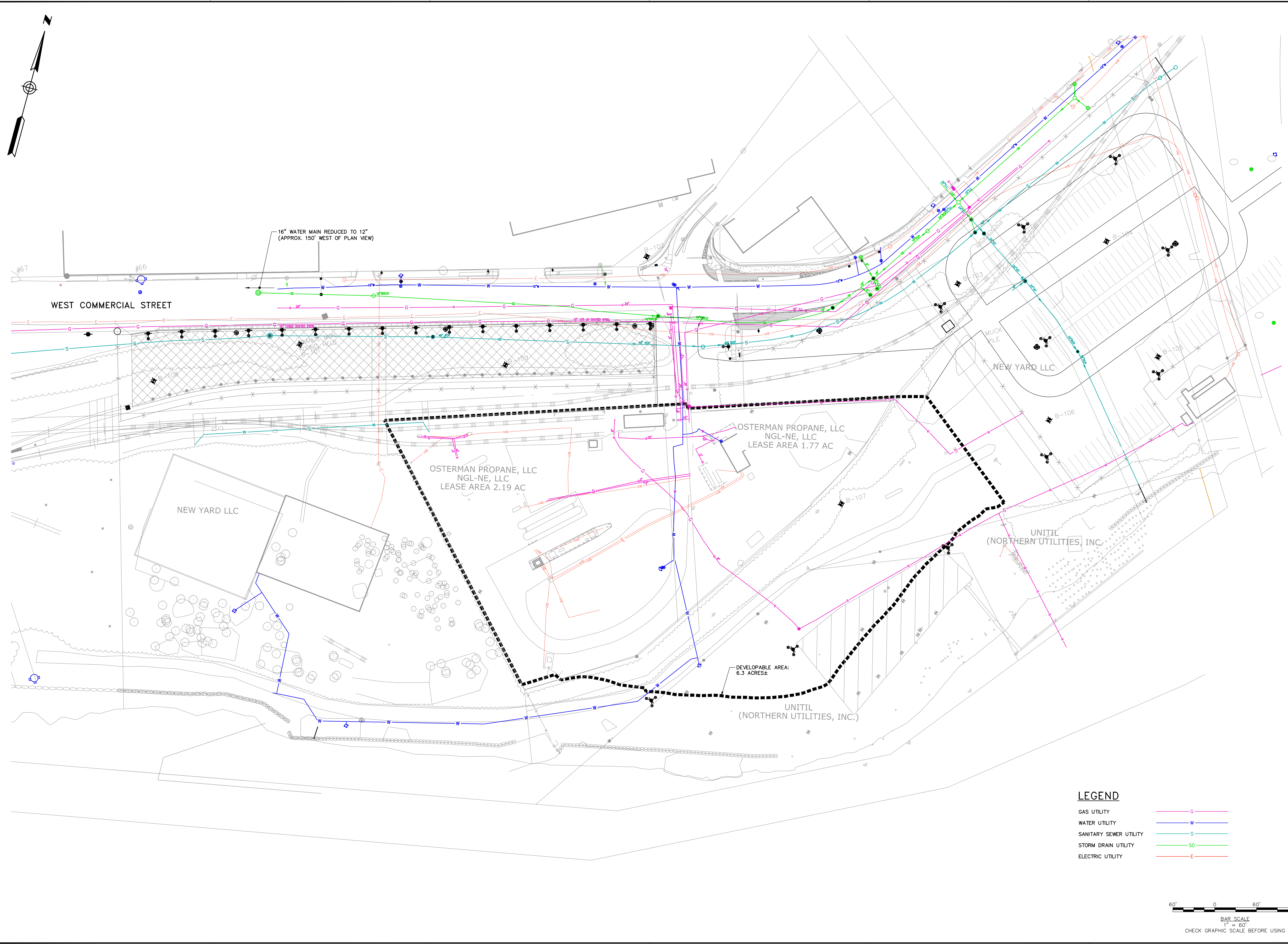


Figure 2: Known Utilities



WEST COMMERCIAL STREET

16" WATER MAIN REDUCED TO 12"
(APPROX. 150' WEST OF PLAN VIEW)

OSTERMAN PROPANE, LLC
NGL-NE, LLC
LEASE AREA 2.19 AC

OSTERMAN PROPANE, LLC
NGL-NE, LLC
LEASE AREA 1.77 AC

NEW YARD LLC

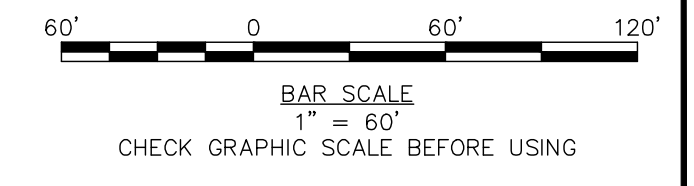
UNITIL
(NORTHERN UTILITIES, INC.)

DEVELOPABLE AREA:
6.3 ACRES±

UNITIL
(NORTHERN UTILITIES, INC.)

LEGEND

- GAS UTILITY — G
- WATER UTILITY — W
- SANITARY SEWER UTILITY — S
- STORM DRAIN UTILITY — SD
- ELECTRIC UTILITY — E



MAINE PORT AUTHORITY

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REV	DESCRIPTION	DATE
DESIGNED BY: DAS / BCM	CHECKED BY: DAS	
DRAWN BY: BCM	Z28847.MDC/MLC	

KNOWN UTILITY LOCATIONS

MAINE PORT AUTHORITY

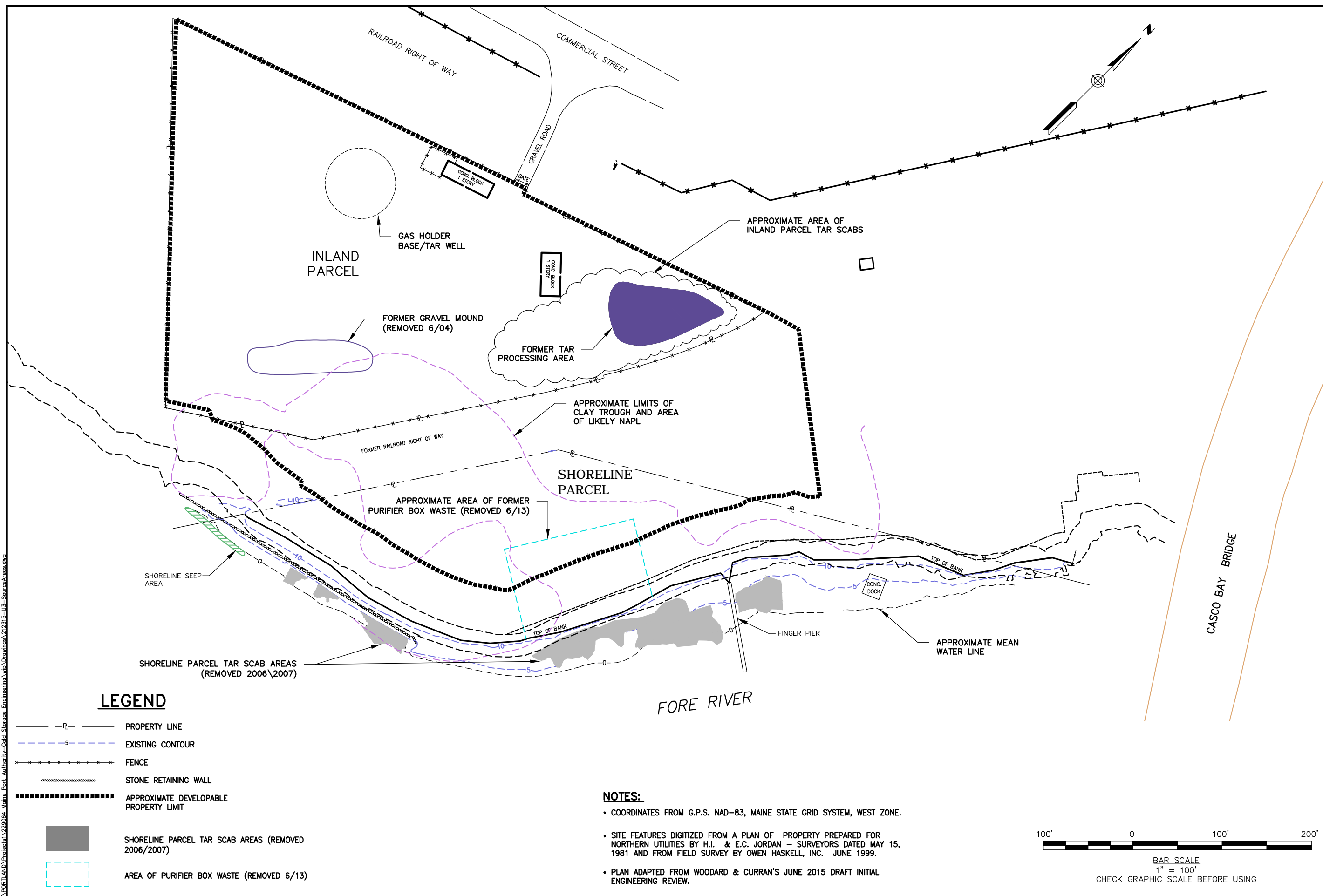
IMT WEST COLD STORAGE FACILITY

JOB NO.: 229064
 DATE: JULY 2015
 SCALE: 1"=60'
 SHEET: 1 OF 1

FIGURE 2

\\PORTLAND\Projects\229064 - Maine Port Authority - Cold Storage Engineering\wp\Drawings\229064_X000.dwg, Jul 15, 2015 - 9:11am

Figure 3: Site Features and Remaining Potential Source Areas

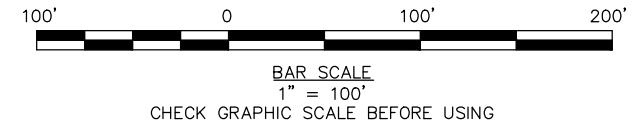


LEGEND

- PROPERTY LINE
- EXISTING CONTOUR
- FENCE
- STONE RETAINING WALL
- APPROXIMATE DEVELOPABLE PROPERTY LIMIT
- SHORELINE PARCEL TAR SCAB AREAS (REMOVED 2006/2007)
- AREA OF PURIFIER BOX WASTE (REMOVED 6/13)

NOTES:

- COORDINATES FROM G.P.S. NAD-83, MAINE STATE GRID SYSTEM, WEST ZONE.
- SITE FEATURES DIGITIZED FROM A PLAN OF PROPERTY PREPARED FOR NORTHERN UTILITIES BY H.I. & E.C. JORDAN - SURVEYORS DATED MAY 15, 1981 AND FROM FIELD SURVEY BY OWEN HASKELL, INC. JUNE 1999.
- PLAN ADAPTED FROM WOODARD & CURRAN'S JUNE 2015 DRAFT INITIAL ENGINEERING REVIEW.



SITE FEATURES AND REMAINING POTENTIAL SOURCE AREAS

DESIGNED BY: JS
 CHECKED BY: EC
 DRAWN BY: PF
 212315-U3-SourceAreas.dwg

MAINE PORT AUTHORITY
 PORTLAND, ME

IMT WEST COLD
 STORAGE FACILITY

JOB NO: 212315.01
 DATE: JULY 2015
 SCALE: AS NOTED

FIGURE 3

\\PORTLAND\Projects\229064-Maine Port Authority-Cold Storage-Engineering\Drawings\212315-U3-SourceAreas.dwg

Appendix A: Zoning and Permitting Information

City Zoning Standards

The project site is located within the Waterfront Port Development Zone (WPD). According to the City's Zoning Ordinance, Division 18.5 of Chapter 14 of the City Code of Ordinances, a cold storage facility is a permitted use within this zone; the setback requirements are as follows:

- Minimum Lot Size: None.
- Minimum Frontage: None.
- Minimum Yard Dimensions:
 - Front Setback: None.
 - Side Setback: None.
 - Rear Setback: None.
 - Setback from Pier Line: Notwithstanding the above requirements, a minimum setback of five feet from the edge of any pier, wharf, or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of Sections 14-319 and 14-320, but shall not be utilized for off-street parking. The edge of any pier, wharf, or bulkhead shall include any attached apron(s).
- Maximum Lot Coverage: 100%
- Maximum Building Height: 45 feet, except as follows:
 - Facilities for bulk storage of materials delivered to a site by waterborne transportation or awaiting transportation from the site by means of waterborne transportation may be erected up to 65 feet above mean sea level.

The Site is adjacent to the Fore River. The Shoreland Regulations (Division 26 of Chapter 14 of the City Code) apply to all land areas, uses, structures, and land use activities within two hundred fifty (250) feet, horizontal distance, of the normal high water line of any river. No additional setbacks are required for structures within the WPD Zone.

According to the attached FEMA Flood Insurance Rate Map, the Site is located primarily in Zone C, which are areas of minimal flooding. However, portions of the Site are also located within Zone A2, which are areas of 100-year flood; the flood elevation in these areas is 10 feet. The City's Flood Plain Management Regulations (Division 26.5 of Chapter 14 of the City Code of Ordinances) applies to all activities in the special flood hazard areas identified by FEMA. Any non-residential structure located within Zone A2 shall have the lowest floor elevated to at least two feet above the base flood elevation; accessory structures shall be exempt from this criterion.

Maine Department of Environmental Protection (MEDEP) Regulations

According to Chapter 305, the following standards apply to activities within 75 feet of the normal high water line of the Fore River:

- No activity or portion of an activity may be located within the 75-foot setback if there is a practicable alternative location on the parcel that would cause or result in less impact on the environment; and
- A 25-foot setback must be maintained between the normal high water line or upland edge of the protected natural resource and the activity. Areas that have slopes of 3 horizontal feet: 1 vertical foot (approximately 33% slope), or steeper, may not be counted when determining the 25 foot setback. Existing vegetation within the setback may not be disturbed except for cutting activity meeting the exemption requirements in 38 M.R.S.A. Section 480-Q(23).

Anticipated Land-Use Permitting Requirements

Potential local state and federal permitting requirements for the proposed work are as follows:

- The proposed project will require the submission of a City of Portland Level III Site Plan Application and potentially a Subdivision Application based on past, current, and anticipated future land acquisitions, consolidations, or divisions; review for which would occur in parallel with Site Plan review.
- As previously noted, portions of the Site are located within Zone A2, which are areas of 100-year flood. In accordance with the City's Flood Plain Management Regulations (Division 26.5 of Chapter 14 of the City Code of Ordinances), before any development can occur in any areas of special flood hazard, a flood hazard area development permit must be obtained from the building authority.
- A MEDEP Section 2 Permit-by-Rule may be required for any activities within 75-feet of the normal high water line of the Fore River.
- A Notice of Intent to comply with the Maine Construction General Permit will need to be submitted for work disturbing more than one acre.
- Based on our review of previous development submissions for the project site, the proposed project may require amendments to the following existing permits:
 - MEDEP Natural Resources Protection Act Permit;
 - MEDEP Site Location of Development Permit*; and
 - MaineDOT Traffic Movement Permit.

*Maine Department of Transportation has a Memorandum of Agreement (MOA) with the MEDEP that covers responsibilities under Chapter 500, and a General Permit that covers responsibilities under The Site Location of Development Act.

If the proposed work will involve construction within or over the Fore River, the following permits will be required:

- City of Portland Board of Harbor Commissioners Marine Construction Permit;
- A State of Maine Submerged Lands Lease; and
- United States Army Corps of Engineers Permit.

Stormwater Management

In accordance with Section 5 of the City of Portland Technical Manual, a Level III development project is required to submit a stormwater management plan pursuant to the regulations of MEDEP Chapter 500 Stormwater Management Rules, including conformance with the General and Flooding Standards. Previous phases of development at the IMT have proposed a porous crushed stone yard surface to infiltrate stormwater to meet the quality requirements associated with the General Standards. This approach has been permitted in the past, and may continue to be utilized for future phases of development; however, the crushed stone surface is unlikely suitable for continuous turning truck traffic. A waiver from the Flooding Standard has typically been granted, as much of the runoff from the Site discharges to City-owned pipes that convey combined sewer overflows (CSOs) to the Fore River, which is a tidal waterbody, from CSO control structures in Commercial Street. It is anticipated that a similar waiver can be obtained for this project, so long as approval is obtained from the City Department of Public Services for connections to City-owned overflow structures and drainage pipes.

Appendix B: Anticipated Environmental Conditions

Current Regulatory Status

The Site is currently involved in the MEDEP's Voluntary Response Action Program (VRAP). The most recent available MEDEP VRAP program letter is a No Action Assurance Letter (NAAL) that was delivered to the Unitil Service Corp. dated June 1, 2012. This letter, which is included below, addresses conditions on the Inland Parcel and Shoreland Parcel, and outlines the necessary steps that must be taken in order to receive liability protection under the VRAP. Based on a May 25, 2015, conversation with MEDEP VRAP, the conditions and requirements described in the June 1, 2012, NAAL are appropriate for all areas of the Site.

Specific remaining contaminant sources that were identified as requiring additional remedial efforts included the Shoreline Parcel Seep Area, the Purifier Box Waste Area, and the Inland Parcel Tar Scab Area [*please note that the Purifier Box Waste Area was previously remediated though it is unclear if a VRAP Certificate of Completion has been obtained*]. As indicated by the MEDEP VRAP, it is likely that the following conditions will apply to the future development and operation of the Site:

1. The existing soil management plan will be revised and submitted to the MEDEP for review and approval;
2. Any potential soil vapor issues in future on-site structures will either be addressed and characterized with investigation prior to construction or presumptively addressed through installation of vapor collection systems;
3. No potable wells will be installed on the property in the future, and;
4. The property use will remain non-residential use unless other uses are approved by the MEDEP.

The preceding restrictions are required to be recorded in the form of a Declaration of Environmental Covenants drafted pursuant to Maine's Uniform Environmental Covenants Act ("UECA").

Site features, previously remediated areas, and the remaining potential sources of contamination may be referenced in **Figure 3**.

Recommended Environmental Approaches for Site Development

The following is a brief outline of recommended environmental approaches that should be considered during the redevelopment of the Site. Please note that these recommendations were generated during the review of readily accessible previous environmental investigation and remediation reports and should not be considered exhaustive. It is strongly recommended that focused environmental investigation, risk assessment, and due diligence be conducted following the completion of the preliminary building layout and design. The information generated during this future investigation should be used to define construction procedures, material management practices, and building and site designs that will be protective of human health and the environment, will limit the liability of the owner and future operator of the Site, and will comply with all applicable local, state, and federal environmental laws and regulations.

Soil Management

The area of the former Portland Gas Works facility was used for industrial purposes for over 100 years. It is likely that coal ash, debris, and concentrations of polycyclic aromatic hydrocarbons (PAH) and other semivolatile organic compounds (SVOC), volatile organic compounds (VOC), and metals are associated with soil located throughout the Site. The cumulative data set from the Site should be used to define appropriate health and safety, and best management practices to limit risk to human health and environmental receptors both during and following the completion of construction

activities. If there are gaps in the existing data set relative to the specific needs of the proposed redevelopment, additional focused environmental assessment activities may be warranted.

Consistent with MEDEP Chapter 400: Solid Waste Management Rules, it is probable that excess soil that cannot be reused during redevelopment would meet the definition of a “Special Waste” once removed from the Site and would be subject to special handling requirements and disposal restrictions. Further, certain excess soil at the Site may meet the definition of a “Hazardous Waste.”

In accordance with MEDEP VRAP requirements, an updated soil management plan (SMP) should be developed prior to the initiation of redevelopment activities at the Site. This plan should be specifically focused on the redevelopment design and define proper handling, storage, characterization, transport, reuse, and/or off-site disposal of soil that may be disturbed during potential future redevelopment, operation, and/or maintenance of the Site. Potential training requirements that may be applicable to Site construction workers and future operators should also be addressed in the SMP.

Consistent with this SMP, it is recommended that soil that may be disturbed during redevelopment be pre-characterized using new or existing data to determine the applicable disposal requirements. In addition, it is recommended that the redevelopment design for the Site incorporate the reuse of existing materials to the greatest extent possible, limiting the volume of excess soil that may be generated during construction. The consideration of environmental and structural characteristics of Site soils that may be excavated during construction, both of which may impact potential on-site reuse options, will be an important component of the design process.

Finally, potential risk posed by direct contact with Site soils should be assessed as part of the redevelopment design. As necessary, engineered controls (e.g., soil capping or cover systems) should be incorporated into the design plans in order to manage this risk and meet VRAP requirements.

Vapor Mitigation

Limited data is available concerning soil vapor conditions at the Site and how those conditions may impact future buildings construction and use. There are two basic options available to guide decision making relative to the proper management of risk that may be posed by vapor intrusion. These include a focused vapor assessment using multiple lines of evidence (i.e. groundwater data, geologic conditions, potential foundation design options, soil vapor sampling, and attenuation modeling) and presumptive remedies.

Given the timing and sequence of the anticipated redevelopment, current uncertainty in final building and Site design components, sensitivity of the materials that may be stored in the future building structure, and the relatively low cost for the installation of a vapor mitigation system, it is recommended that presumptive remedies be used to address potential vapor intrusion risk.

The design of the vapor mitigation system should be completed by a qualified engineer. However, typical systems include the installation of the following components:

- Permeable layer of crushed stone or engineered products below the building slab;
- Sub-slab depressurization system consisting of vapor collection pipes and vent pipes; and
- Engineered impermeable sub-slab vapor barrier.

It is recommended that the vapor collection pipes and venting system be initially installed to discharge potential soil vapor through the roof of the structure using passive “whirlybird” turbines. However, this system should be pre-wired for active (powered) venting and an assessment of sub-slab soil gas and indoor air conditions should be completed following building construction. If it is later

determined that additional sub-slab depressurization is required active venting of the system may be initiated.

Tar Scab and Non-Aqueous Phase Liquid (NAPL) Management

As discussed further below, it is important that existing tar scab and NAPL¹ conditions are not exacerbated during the construction of Site buildings and improvements or during the future operation of the Site. Specific design considerations, construction techniques, and operational practices should be defined by qualified environmental professionals and engineers and coordinated with the parties responsible for the existing conditions as well as the MEDEP VRAP. Representative examples that may be incorporated into the redevelopment design are presented below.

Continuing Obligations and VRAP Coordination

Based on available information, the Proposers are not responsible for contamination that occurred prior to entering into a lease to develop and operate the Site. However, it is important to maintain protection from liability associated with contaminant conditions at the Site during future development and operations.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, authorizes USEPA to respond to releases, or threatened releases, of hazardous substances that may endanger public health, welfare, or the environment. This law also authorizes USEPA to recover costs associated with their response from responsible parties. In 2002, Congress passed the "Small Business Liability Relief and Brownfields Revitalization Act" (Brownfields Amendments). These amendments created a new landowner liability protection from conservation CERCLA for bona fide prospective purchasers ("BFPP"). In general terms, BFPP status may also be applied to a tenant or lessee if the following provisions are fulfilled:

1. all disposal of hazardous substances at the facility occurred prior to execution of the lease;
2. the tenant conducted environmental due diligence prior to execution of the lease;
3. the tenant provides legally required notices;
4. the tenant takes reasonable steps with respect to hazardous substance releases;
5. the tenant provides cooperation, assistance, and access;
6. the tenant complies with land use restrictions and institutional controls;
7. the tenant complies with information requests and administrative subpoenas;
8. the tenant is not potentially liable for response costs at the facility or "affiliated" with any such person (other than through the lease with the owner; and
9. the tenant does not impede any response action or natural resource restoration.

Consistent with the details presented above, it is recommended that environmental due diligence be completed prior to the transfer of Site ownership or the initiation of a lease associated with the development and operation of the Site. At a minimum, this due diligence should consist of an All Appropriate Inquiries (AAI) compliant Phase I Environmental Site Assessment completed in accordance with American Society of Testing and Materials (ASTM) International standard practice 1527-13 (or the most current version).

In addition, it is recommended that the future Site developer takes "reasonable steps" with regard to existing conditions. These reasonable steps may include, but are not necessarily limited to, not causing additional releases or exacerbating the contamination during the redevelopment and

¹ NAPL is generally described as sub-surface free phase petroleum product that sits atop or below the groundwater table. NAPL that is less dense than water is termed light NAPL or LNAPL. NAPL that is more dense than water is termed dense NAPL or DNAPL.

operation of the Site. In practice, these “reasonable steps” may be fairly comprehensive and will require careful consideration during design, construction, and future operation.

Once the design effort for the Site is initiated, it is recommended that an environmental professional and an environmental attorney be retained to help ensure that continuing obligations are fulfilled and “reasonable steps” are incorporated into design and operational plans. However, the following list of common example practices and construction techniques may be used to anticipate the level of effort that may be required to fulfil these requirements for the Site:

- Stormwater management: Stormwater discharge locations (if any) designed to limit potential migration of contamination and NAPL. Specifically, minimize the introduction of stormwater into areas of contamination or NAPL that may change existing conditions and result in the mobilization of currently stable material.
- Limit infiltration: Additional impervious surfaces will result in reduced subsurface infiltration and will minimize the potential for contaminant mobilization and migration.
- Building foundation design: Structural support systems for the future building or buildings designed to minimize the risk of the aerial or vertical migration of existing contamination, especially LNAPL and DNAPL. Specifically, potential piles, footings, or other infrastructure that span through subsurface stratigraphic layers have the potential to create preferential pathways by which currently stable contaminants may be mobilized and cause significantly greater environmental concerns. Design building support systems to also limit subsurface agitation during installation.
- Distribute loads: Design areas that will be used to store or transport heavy equipment to effectively distribute bearing, reducing pressure on subsurface materials. Load distribution will minimize the risk of the aerial or vertical migration of currently stable contamination.
- Soil cover system: Install permanent buildings, asphalt pavement, concrete or similar materials to prevent direct exposure to contaminated subsurface soil. Alternatively, a engineered soil barrier typically consisting of a demarcation layer of orange snow fencing or orange geotextile fabric, covered by clean soil and stabilized with landscaping, gravel, or similar may be acceptable.
- Presumptive NAPL collection system: Considering available access to the subsurface during construction, install a passive NAPL collection system below building foundation(s). This likely low cost measure could be activated as a corrective action if future conditions and NAPL mobility become an issue.
- Spill control: Future construction and Site operations conducted such that the risk of new releases of oil and/or hazardous substances is limited and plans are in place to effectively address unavoidable releases that may occur.

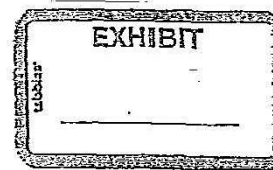
Finally, it is recommended that all future Site development, construction, and future operation be coordinated with the MEDEP VRAP and consistent with the terms of any applicable environmental covenants.

Current Maine DEP VRAP No Action Assurance Letter



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PATRICIA W. AHO
COMMISSIONER

June 1, 2012

Mr. Thomas Murphy
Unitil Service Corp.
6 Liberty Lane West
Hampton, New Hampshire 03842-1720

Re: Former Portland Gas Works, 40 West Commercial Street, Portland, Maine—
Voluntary Response Action Program (VRAP) No Action Assurance Letter

Mr. Murphy:

The Maine Department of Environmental Protection (the "Department") has received and reviewed the May 2, 2012 letter from AMEC Environment & Infrastructure, Inc. ("AMEC") for the former Portland Gas Works property located at 40 West Commercial Street in Portland, Maine. The letter outlines proposed remedial plans to address the remaining contaminant sources on the property, which include the "Shoreline Seep Area", the "Purifier Box Waste Area", and the "Inland Tar Scab Area" as shown on the Figure attached to AMEC's May 2 letter ("Figure"). Previous remedial actions at the property included the remediation of the "Former Gas Holder Base/Tar Well" and the "Former Gravel Mound/Tar Area" as shown on the Figure. The proposed remedial plans are currently conceptual and will be tailored and refined to accommodate the redevelopment of the property for marine-related uses. It is the Department's understanding that final remedial plans will be provided once the redevelopment design is finalized. AMEC's May 2 letter was submitted to the Department as part of Unitil Service Corp's ("Unitil") participation in the Department's Voluntary Response Action Program ("VRAP").

Based on the Department's review of the proposed remedial plan and our knowledge of the site, we concur that the proposed additional actions will meet the Department's objectives for the property. The Department's concurrence is based on the understanding that the current conceptual remedial plan is flexible to accommodate differing redevelopment plans (not yet finalized or approved) and is therefore able to adjust to any previously unidentified issues discovered during the work; that the existing soil management plan will be revised and submitted to the Department for review and approval; that any potential soil vapor issues in future onsite structures will either be addressed and characterized with investigation prior to construction or presumptively addressed through installation of vapor collection systems; that no potable wells will be installed on the property in the future, and; that the property use will remain non-

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7633 FAX: (207) 287-7325
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04679-2094
(207) 764-0477 FAX: (207) 760-3143

residential unless other uses are approved by the Department. Restrictions placed on the property will be in the form of a Declaration of Environmental Covenant drafted pursuant to the state's Uniform Environmental Covenants Act ("UECA"). This "No Action Assurance" letter replaces the existing "No Action Assurance" letter issued by the VRAP on July 21, 2006, and is based on additional data and specific redevelopment plans.

Provided that the additional actions are completed to the satisfaction of the Department, Unittl, as an applicant, and its successors and/or assigns will be granted the liability protection provided by 38 M.R.S.A. §343-E(1)(eff. 1993) for the property located at 40 West Commercial Street in Portland and designated as follows:

Inland Parcel

Portland Assessor's Plan No. 59 as Lot 2 and further described in several instruments filed in the Cumberland County Registry of Deeds (from 1852 through 1936 that together comprise the Inland Parcel) and as shown on a 1999 Survey Plan prepared for Northern Utilities, Inc. by Owen Haskell, Inc.

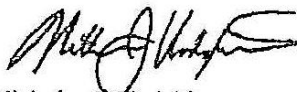
Shoreline Parcel

Portland Assessor's Plan No. 59 as Lots 5, 6, 9, and 10 and further described in several instruments filed in the Cumberland County Registry of Deeds (from 1852 through 1936 that together comprise the Shoreline Parcel) and as shown on a 1999 Survey Plan prepared for Northern Utilities, Inc. by Owen Haskell, Inc.

Once the recommended tasks are completed, a report summarizing the successful implementation of the tasks should be sent to the VRAP. Upon review and approval of the summary report, the VRAP will issue to Unittl a Certificate of Completion for the property.

If you have any questions regarding this letter, please feel free to call me at 207-287-4854.

Sincerely,



Nicholas J. Hodgkins
Voluntary Response Action Program
Division of Remediation

Pc: Peter Thompson, AMEC
Troy Smith, Maine DEP

Appendix C: Economic Incentives and Potential Funding Sources

Employment Tax Increment Financing (ETIF)

Employment Tax Increment Financing (ETIF) assists in the financing of business investment projects that create at least 5 net new, high quality jobs in Maine. An ETIF-approved business may be reimbursed 30, 50 or 75 percent (80% in Pine Tree Zones) of the state income tax withholdings from the net new payroll for up to ten years.

Tax Increment Financing (TIF)

A Tax Increment Financing (TIF) District is an area within a municipality that is designated as a development district to allow the municipality to financially support a business development project. The municipality may disburse the tax increment directly to the investing business to help pay project costs, use it to retire bonds it issues as part of the project, or retain it for allowable economic development purposes.

Technology Tax Credits

Maine has several tax credit programs specifically designed to encourage the growth of technology companies in the state. They are:

- The Research Expense Tax Credit
- The R&D Super Credit
- The High-Technology Investment Tax Credit

Jobs and Investment Tax Credit

The Jobs & Investment Tax Credit is the federal credit amount based on investment in qualified property. Eligible businesses include any business, other than a public utility, that invests at least \$5 million in a taxable year in qualifying types of personal property in Maine and creates 100 new jobs over the ensuing two-year period.

Sales Tax Exemptions

Maine state sales tax exemptions are available for manufacturing, research and development, custom computer programming, fuel and electricity, biotechnology, and clean fuel vehicle sales.

Sales and Use Tax Exemption

This benefit derives from paying no tax on construction materials and equipment purchases.

Sales and Use Tax Reimbursement

The tax reimbursement benefit, effective date of certification, derives from paying no tax on all new tangible property purchases that are to be physically incorporated in, and become a permanent part of, real property of a qualified business and used in its qualified business activity.

Technology and Development

Maine Technology Institute (MTI)

The Maine Technology Institute (MTI) is an industry-led, publicly-funded, non-profit corporation that offers early-stage capital and commercialization assistance. Assistance is in the form of competitive grants, loans and equity investment for the research, development and application of

technologies that create new products, processes and services, generating high-quality jobs across Maine.

MTI offers the following award programs:

- TechStart Grants – Up to \$5,000 per project are awarded twelve times a year to develop new ideas and new products.
- Seed Grants – Up to \$25,000 per project are awarded three times a year for product and business development, business planning, or commercialization.
- Development Loan – Up to \$500,000 per project are awarded three times a year for research and development of new and/or enhanced products, processes, or services leading to commercialization.
- Cluster Initiative Program – Up to \$50,000 for feasibility and planning (on a rolling basis) and up to \$500,000 (twice a year) for collaborative initiatives that boost the strength and scale of Maine's high potential technology intensive clusters.

Since 1999, MTI has funded innovative technologies across the state to help accelerate commercial success in Maine's seven technology sectors: biotechnology, composites and advanced materials, environmental technologies, forest and agriculture products, information technology, marine technology and aquaculture, and precision manufacturing.

Community Development Block Grant Program

This nationally recognized program, administered through the Office of Community Development, assists local governments in various community projects in areas of infrastructure, housing, downtown revitalization, planning, public facilities, and economic development.

Financing Options

Finance Authority of Maine (FAME)

The Finance Authority of Maine (FAME), a quasi-governmental agency, has several financing options available to companies designed to provide commercial grade credits with access to attractive interest rate structures.

The State of Maine offers a variety of direct loans that are intended to help businesses in certain industries or to help further the environmental goals of the state.

Other options are:

- The Secondary Market Tax Exempt Bond Program – This program provides tax-exempt interest rate bond financing for manufacturing borrowers.
- The Secondary Market Taxable Bond Program – This program provides long-term bond financing on loans of for real estate and machinery and equipment acquisitions.
- The Major Business Expansion Bond Program – This program provides long-term, credit-enhanced financing up to \$25,000,000 at taxable bond rates for businesses creating or retaining 50 jobs and long-term, tax-exempt bond rates on bonds of up to \$10,000,000 that are used to finance manufacturing expansions.
- The Maine Seed Capital Tax Credit Program – This program is designed to encourage equity and near-equity investments in eligible Maine businesses, directly and through private venture capital funds. FAME may authorize State income tax credits to investors for up to 60% of the cash equity they provide to eligible Maine businesses. Investments may be used for fixed assets, research, or working capital.

Maine Venture Fund (MVF)

The Maine Venture Fund (MVF) is a professionally-managed venture capital fund that invests exclusively in Maine companies which demonstrate a potential for high growth and public benefit. The Fund has been actively investing in Maine companies since 1997, after its creation by an act of the Maine Legislature in 1995. The fund has received \$13 million in capital contributions from the State of Maine and operates as a revolving, “evergreen” fund.

The mission of the fund is to provide resources to attract, support, and help develop eligible small businesses with the potential for substantial growth and success that will contribute to the prosperity of Maine.

State and Federal New Market Tax Credits

The Federal and State of Maine new markets tax credit programs are designed to bring low-cost, flexible, equity-like capital into businesses located in certain “low-income communities.” The Site is located in a low-income community, and it may qualify for financing under one or both of the Federal and State programs. The financing may provide 10% to 25% of the total project cost. However, qualification for the programs is based on a very competitive process and the amount of financing available is limited, and such financing may not be available. The entities which are capable of providing such financing have expressed a strong desire to reach financial close by the end of Q3 2015.

Appendix D: Economic Impact within the State of Maine

In addition to all other information requested within this RFP, each Proposer must dedicate a section of its proposal to describing the Proposer’s economic impact upon and within the State of Maine. The use of economic impact in making contract award decisions is required in accordance with Executive Order 2012-004, which states that certain service contracts “...advertised for competitive bid shall include scoring criteria evaluating the responding Proposer’s economic impact on the Maine economy and State revenues.”

For the purposes of this RFP, the term “economic impact” shall be defined as the “Economic Impact Factors” listed in the table below. To complete the “economic impact” section of the Proposer’s response, the Proposer shall provide the information requested, describing the Proposer’s recent economic impact with the State of Maine and, separately, the projected annual economic impact with the State of Maine that would specifically result once the IMT West Cold Storage Facility is operational, should the Proposer be selected.

Recent Economic Impact Factors	Factors Expressed in Dollars
Salaries paid to Maine residents in past 12-month period	\$
Payments made to Maine-based subcontractors in past 12-month period	\$
Payments of State and local taxes in Maine within past 12-month period	\$
Total for Recent Economic Impact	\$
Project Future Annual Economic Impact Factors Following Initiation of Facility Operations	Factors Expressed in Dollars
Salaries paid to Maine residents per year	\$
Payments made to Maine-based subcontractors per year	\$
Payments of State and local taxes in Maine per year	\$
Total for Projected Economic Impact	\$

For the tables above, the following definitions are provided:

“Maine resident”: any person whose primary residence is located within the State of Maine.

“Maine-based”: any organization whose primary operations are located within the State of Maine.

“Past 12-month period”: the past calendar year.

For future projections, Proposer may model an annual average over the first five years of operation.

Certification Statement

To the best of my knowledge, all information provided in this form is complete and accurate at the time of submission and I confirm that I am authorized to make such a determination on behalf of my organization.

Name:	Title:
Authorized Signature:	Date:

Appendix E: Example Lease Agreement

APPENDIX E
Provisions of Ground Lease to be Required by Maine Port Authority / Maine DOT

1. ACCEPTANCE OF PREMISES:

Knowledge and Representations. Tenant acknowledges that Tenant is fully familiar with the condition of the Premises and Tenant accepts the Premises in their condition on the Commencement Date, “AS IS, WHERE IS, WITH ALL FAULTS,” including latent and patent defects or conditions. Landlord has made and Landlord expressly makes no representations or warranties as to the fitness of the Premises for any particular purpose, including, without limitation, (a) its soundness for any construction or other building purposes, (b) the availability of any utilities to the Premises, (c) the existing zoning, or (d) the physical condition of the Property. Tenant will obtain all necessary and proper permits and approvals to construct the Development on the Premises and to operate the Development on the Premises following construction, at Tenant’s sole expense. Landlord shall not be required to take any action in connection with such approvals, permits and work, and Tenant assumes sole responsibility for obtaining same (and the sole risk if any such approvals or permits shall not be granted); provided, however, if the fee owner’s joinder in any such application is required as a matter of law, Landlord will join in such application provided Landlord shall not be required to incur any expense in connection therewith.

2. ALTERATIONS AND IMPROVEMENTS:

- a. After Completion of Construction. Tenant covenants and agrees that following Tenant’s construction of the Development, Tenant shall not make any alteration or improvement on the Property that is not consistent with the quality and aesthetic appearance of the original Development. Any such alterations and improvements shall also be subject to all of the construction standards, conditions and requirements specified in Section 7 hereto.
- b. Title to Improvements. During the Term, title to all improvements constructed by Tenant on the Premises shall be and remain in Tenant and Tenant alone shall be entitled to claim depreciation on such improvements for all taxation purposes.

3. ASSIGNMENTS AND SUBLEASES:

- a. Assignments. Tenant shall not have the right at any time to assign this Lease or any estate or interest therein or the operation of the Development or any other business authorized on the Premises, by operation of law or otherwise, or to pledge, hypothecate, mortgage or otherwise encumber Tenant’s interest in this Lease without first obtaining Landlord’s written consent.
- b. Partial Assignments. No partial assignments of Tenant’s interest shall be permitted during the Term, and if any Tenant (or its successors) shall be a

partnership or joint venture or have multiple partners, or components, all of such persons, partners and entities shall designate one person to receive notice(s) and to deal with Landlord at any given time on behalf of Tenant. Such designation shall be made in writing and shall remain in effect until Landlord receives a written notice signed by all persons, entities and parties in interest designating another person to represent the Tenant's interests.

- c. Subleases. Tenant shall not have the right at any time to sublease any portion of the Premises.
- d. Transfers Following Default in Mortgage. Anything in this Lease to the contrary notwithstanding, any transfer of Tenant's interest following a default by Tenant under any Tenant financing and exercise of the lienholder's remedies, whether in foreclosure or execution or by transfer in lieu thereof, shall be deemed to be a transfer which requires Landlord's consent and shall be subject to all of the conditions and limitations of this Section.
- e. No Implied or Continuing Consent. The consent of Landlord to any transfer shall not be deemed a consent to any other or future transfer or license, nor shall such operate to exhaust Landlord's rights under this Section. Landlord's consent to any proposed transfer or license shall not operate to release Tenant (or its guarantor, if any) from any of its obligations under this Lease.
- f. Transfers of Ownership or Control of Tenant. If the person(s), entities, partnership(s) or corporation(s) who owns or own a majority of the voting shares or control of Tenant shall cease to own a majority of such shares or controlling interest (whether such sale or transfer occurs at one time or at intervals so that, in the aggregate, such a transfer shall have occurred), or if Tenant or such parent or owning entity is dissolved, or if this Lease is transferred by merger, consolidation, liquidation, assignment for the benefit of creditors or by operation by law, then in any such event such transfer shall be deemed to be an assignment requiring Landlord's consent, and if such consent is not obtained, the transfer shall be prohibited under the provisions of this Section and Landlord shall have the right to exercise any of its remedies as a result of Tenant's default under this Lease.
- g. Acceptance of Rent Not Consent. The acceptance by Landlord of the payment of rent following any assignment or other transfer prohibited by this Section shall be deemed to be only an acceptance of rent from Tenant and shall not be deemed to be a consent by Landlord to any such assignment or other transfer, nor shall acceptance thereof be deemed to be a waiver of any existing default or of any right or remedy of Landlord hereunder.

4. BANKRUPTCY-INSOLVENCY:

Tenant agrees that if the estate created hereby is taken upon execution, attachment, or any other process of law, or if any receiver or trustee is appointed for Tenant's business and

property, or if Tenant makes any assignment of Tenant's property for the benefit of creditors or any extension agreement with its creditors, or if Tenant is determined to be insolvent, then Landlord may, if it so elects, upon ten (10) days' written notice to Tenant, terminate this Lease, or Landlord, at Landlord's option, shall have the right to pursue such other remedies as may be allowed at law or in equity against Tenant and any and all other parties who may be liable. If Tenant becomes a debtor under any proceeding in bankruptcy, Landlord reserves the right to demand the cure of all pre-petition defaults should the debtor seek to assume this Lease under bankruptcy law. Upon the failure of Tenant to assume this Lease in any bankruptcy proceeding in which Tenant is a debtor, Landlord reserves the right to exercise all remedies available under this Lease to the extent allowed under federal bankruptcy law.

5. CASUALTY DAMAGE, APPLICATION OF PROCEEDS:

- a. Casualty Damage. If, during the Term, the Premises should be damaged by flood, fire, windstorm, or other any other risk or casualty, Tenant shall repair, rebuild and restore the Premises promptly so as to make the improvements at least equal in value to the fair market value of the improvements existing immediately prior to such occurrence and as nearly similar to such prior improvements in character as is practical and reasonable. Tenant's obligation to pay Rent under this Lease shall not be affected in any manner by any such casualty.

6. COMPLIANCE WITH LAWS, ORDERS AND DIRECTIVES:

- a. Use of Premises. Tenant shall use the Premises only for the construction, maintenance, and operation of the Development. Tenant shall not use any portion of the Premises, or permit any portion of the Premises to be used, for any other purpose.
- b. Compliance With Law. Tenant is fully cognizant, and shall remain fully cognizant, of all federal, state, and local statutes, regulations, and ordinances that apply to the construction, maintenance, and operation of the Development, and Tenant shall at all times fully comply with these statutes, regulations, and ordinances. Tenant shall promptly notify Landlord of the receipt of any communication indicating that Tenant has not complied with any such statute, regulation, or ordinance and shall promptly provide Landlord with a copy of any such communication.
- c. Tenant's Obligations with Respect to Environmental Laws.
 - i. Tenant, the Premises, and the Development shall remain in compliance with all applicable laws, ordinances, and regulations (including consent decrees and administrative orders) relating to public health and safety and the protection of the environment, including those statutes, laws, regulations, and ordinances identified in this Section 6, all as amended and modified from time to time (collectively, "environmental laws"). Tenant shall obtain all governmental permits and approvals required by applicable

environmental laws for the construction, maintenance, and operation of the Development, and Tenant shall comply with the terms and conditions contained in these permits and approvals.

- ii. Tenant shall not permit to occur any unlawful release, generation, manufacture, storage, treatment, transportation, or disposal of “hazardous material,” as that term is hereinafter defined, on, in, under, or from the Premises during the term of this Lease. Tenant shall promptly notify Landlord, in writing, if Tenant has or acquires notice or knowledge that any hazardous material has been or is threatened to be released, discharged, disposed of, transported, or stored on, in, under, or from the Premises. If any hazardous material is found on the Premises, Tenant, at its own cost and expense, shall immediately take such action as is necessary to prevent the spread of and remove the hazardous material to the complete satisfaction of Landlord and the appropriate governmental authorities.
- iii. Tenant shall immediately notify Landlord, and provide true and complete copies upon receipt, of all written complaints, claims, citations, demands, inquiries, reports, audits, analyses, and notices relating to the condition of the Premises or compliance or noncompliance with environmental laws. Tenant shall promptly cure and have dismissed with prejudice all such actions and proceedings to the satisfaction of Landlord. Tenant shall keep the Premises free of any lien imposed pursuant to any environmental law.
- iv. Landlord shall have the right at all reasonable times and from time to time to conduct environmental audits of the Premises, and Tenant will cooperate in the conduct of such audits. Such audits shall be conducted by a consultant of Landlord’s choosing, and if any hazardous material is detected or if a violation of any of the warranties, representations, or covenants contained in this Section is discovered, the fees and expenses of such consultant will be borne by Tenant and will be paid as additional rent under this Lease on demand by Landlord.

- v. Notwithstanding anything herein to the contrary, at the expiration or termination of this Lease, the Premises shall be returned to Landlord in conformity and compliance with all applicable laws, regulations, and ordinances; provided, however, if any laws, regulations, or ordinances hereafter enacted shall prescribe more stringent standards for remediation than those in effect at the time remediation of an environmental condition or problem was effected, Tenant shall perform all work required to bring the Premises into compliance with such stricter standards at Tenant's sole cost and expense. If such additional work is required after the expiration or termination of this Lease, Tenant shall commence the work within thirty (30) days of Landlord's notice of the need therefor, and shall complete the work with reasonable diligence thereafter.

- vi. If Tenant fails to comply with any of the foregoing warranties, representations, and covenants, Landlord may cause the removal (or other cleanup acceptable to Landlord) of any hazardous material from the Premises. The costs of hazardous material removal and any other cleanup (including transportation and storage costs) will be additional rent under this Lease, whether or not a court has ordered the cleanup, and those costs will become due and payable on demand by Landlord. Tenant shall give Landlord, its agents, and employees access to the Premises to remove or otherwise clean up any hazardous material. Landlord, however, has no affirmative obligation to remove or otherwise clean up any hazardous material, and this Lease will not be construed as creating any such obligation.

- vii. For purposes of this section, "Indemnitees" is defined in Section 11(a) hereto. Tenant agrees to indemnify, defend (with counsel reasonably acceptable to Indemnitees and at Tenant's sole cost), and hold Indemnitees harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements, or expenses of any kind (including attorneys' and paralegals' and experts' fees and expenses and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against Indemnitees in connection with or arising from or out of:
 - 1. The presence of any hazardous material on, in, under, or affecting all or any portion of the Premises that did not exist prior to the date of this Lease;
 - 2. Any misrepresentation, inaccuracy, or breach of any warranty, covenant, or agreement contained or referred to in this Section 6;

3. Any violation or claim of violation by Tenant of any environmental law; and
4. The imposition of any lien for the recovery of any costs for environmental cleanup or other response costs relating to the release or threatened release of hazardous material.

This indemnification is the personal obligation of Tenant and will survive termination of this Lease. Tenant, its successors, and assigns waive, release, and agree not to make any claim or bring any cost recovery action against Indemnitees under CERCLA, or any law described in this Section 6, or any state equivalent or any similar law now existing or enacted after this date. To the extent that Indemnitee(s) are strictly liable under any such law, regulation, ordinance, or requirement, Tenant's obligation to Indemnitees under this indemnity will also be without regard to fault on the part of Tenant with respect to the violation or condition that results in liability to Indemnitee.

viii. For purposes of this Lease, "hazardous material" means:

1. "Hazardous substances" or "toxic substances" as those terms are defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601, et seq., or the Hazardous Materials Transportation Act, 49 U.S.C. § 1802, both as amended to this date and as amended after this date;
2. "Hazardous wastes" as that term is defined by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6902, et seq., as amended to this date and as amended after this date;
3. Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste substance or material, all as amended to this date or as amended after this date;
4. Crude oil or any fraction of it that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute);
5. Any radioactive material, including any source, special nuclear, or by-product material as defined at 42 U.S.C. § 2011, et seq., as amended to this date or as amended after this date;

6. Asbestos in any form or condition; and
7. Polychlorinated biphenyls (PCB's) or substances or compounds containing PCB's.

7. CONSTRUCTION OF THE DEVELOPMENT:

- a. General Construction Standards. Within _____ (__) days [TO BE NEGOTIATED] after Landlord's execution of this Lease, Tenant shall deliver to Landlord a complete set of the schematic design documents, along with detailed exterior elevation drawings for all proposed improvements and surrounding areas of the Development. In constructing the Development, Tenant shall comply with the following standards:
 - i. All design and construction documents for the proposed improvements shall be prepared, reviewed, sealed and certified by architects licensed to practice in the State of Maine.
 - ii. All plans and specifications for the proposed improvements must fully comply with all applicable laws, regulations and all building, land use and health care codes.
- b. Responsibility for Design and Construction. Anything in this Section to the contrary notwithstanding, and despite any requirements herein for Landlord's review, the parties acknowledge and agree that Tenant shall be solely responsible and liable for the proper design of any and all improvements, alterations, and other work performed on the Premises. Tenant shall also be solely responsible for proper construction of all parts of the Development, and all improvements placed or installed on the Premises during the Term.
- c. Construction Bonds and Security. Prior to commencement of any demolition or construction work on the Premises, Tenant covenants and agrees to obtain performance, completion and payment bonds for the full amount of the cost of demolition of the existing improvements on the Property and construction of the Development (and any expansion, alteration, or replacement thereof and all other permanent improvements placed, installed or constructed on the Premises) from entities reasonably acceptable to Landlord. Such bonds shall name Landlord, in addition to any construction lender, as an obligee thereunder and shall be in form and substance satisfactory to Landlord. All work on the Premises shall be bonded (or, at Tenant's option, and subject to Landlord's consent, alternate security for performance and payment thereof shall be provided to Landlord in form and substance satisfactory to Landlord). The amount of the payment bonds shall be for all amounts required to be paid for the design, construction and completion of the Development (and any expansion, alteration, or replacement thereof and all other permanent improvements placed, installed or constructed on the Premises).

- d. Construction Insurance. Throughout the entire construction of the Development, Tenant shall require all contractors (and their subcontractors) to carry the insurance specified in subsection (c) of Section 12. In addition, Tenant shall require all contractors providing professional design and engineering services (and their subcontractors) to carry Professional Liability Insurance covering errors and omissions in the amount of not less than [TO BE NEGOTIATED].
- e. Cost of Improvements and Compliance with Laws and Codes. Tenant hereby covenants and agrees that the cost of all design, demolition and construction of all improvements and all alterations in connection with the construction of the Development and any expansion, alteration or replacement thereof and all permanent improvements placed, installed or constructed on the Premises that may be desired by Tenant or required by applicable laws, regulations, ordinances and codes, shall be the sole responsibility of Tenant. Tenant also covenants and agrees to advise all contractors and persons supplying design services, labor, material or services in connection with such work of the provisions of Article 8 of this Lease. Tenant further represents and covenants that all improvements of any nature whatsoever placed, installed or constructed on the Premises shall be constructed and maintained in compliance with all applicable laws, codes, rules, regulations and ordinances of all governmental and quasi-governmental boards, agencies, and authorities having jurisdiction over the Premises or such improvements.
- f. Completion of Initial Construction. [TIMELINES TO BE NEGOTIATED] Tenant covenants and agrees that Tenant shall commence construction of the improvements constituting the Development as promptly as possible, but in any event no later than the _____ anniversary [TO BE NEGOTIATED] of the Commencement Date and Tenant shall complete construction of the Development within _____ months after [TO BE NEGOTIATED] such construction commences for purposes of issuance of the site plan and building permits for the Development. Anything herein to the contrary notwithstanding, if Tenant fails to complete construction of the Development on or before the ____ anniversary [TO BE NEGOTIATED] of the Commencement Date, then such failure shall constitute a default under this Lease, and in any such event Landlord shall have the right to cancel and terminate this Lease, to negotiate the Security Deposit more particularly described in Section 23 and to cause the Development to be completed using the performance and payment bond described in Section 7(c), if necessary.

8. CONSTRUCTION LIENS:

- a. Prohibition Against Construction Liens. Landlord's interest in the Premises shall not be subject to liens for services or improvements made by Tenant or anyone claiming by, through or under Tenant. Tenant shall have no power or authority to create any liens or permit any lien to attach to the Premises or to the present

estate, reversion or other estate of Landlord in the Premises or the Development as a result of the improvements made by or for Tenant (or any person or entity claiming by, through or under Tenant) or for any other reason. All such liens are strictly prohibited. All persons supplying design services, materials, labor or any other services with respect to the Premises or any part therein contracting are hereby charged with notice that such liens are expressly prohibited and that they must look solely to Tenant to secure payment for any such work done or materials furnished for or on the Premises and that no such person, firm, corporation, or other entity, shall ever be entitled to a construction lien or any other lien, statutory or at common law, against Landlord's interest in the Premises.

- b. Indemnities. For purposes of this section, "Indemnitees" is defined in Section 11(a) hereto. Tenant shall indemnify, defend and hold Indemnitees harmless against any losses, claims or expenses (including, without limitation, attorneys' fees and costs) incurred as a result of the assertion of any such lien or claim of lien. Tenant covenants and agrees to transfer any claimed or asserted lien to a bond or such other security as may be permitted by law within thirty (30) days of the assertion of any such lien or claim of lien. If Tenant fails to transfer or discharge the claim or lien, then Indemnitees may discharge or transfer the claim or lien to bond or other security and Tenant shall pay Indemnitees all amounts so incurred together with interest at the highest rate then permitted to be charged in contracts between private parties under the laws of Maine. Tenant shall advise all persons furnishing designs, labor, materials or services to the Premises in connection with any improvements of the provisions of this Section.

9. DEFAULT:

- a. Events of Default. The following occurrences are "events of default":
- i. Tenant defaults in the due and punctual payment of rent, and the default continues for five (5) days after written notice from Landlord.
 - ii. Tenant vacates or abandons the Premises.
 - iii. This Lease or the Premises or any part of the Premises is taken upon execution or by other process of law directed against Tenant, or is taken upon or subjected to any attachments by any creditor of Tenant or claimant against Tenant, and the attachment is not discharged within fifteen (15) days after its levy.
 - iv. Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or is dissolved, or makes an assignment for the benefit of creditors.

- v. Involuntary proceedings under any bankruptcy laws or insolvency act or for the dissolution of Tenant are instituted against Tenant, or a receiver or trustee is appointed for all or substantially all of Tenant's property, and the proceeding is not dismissed or the receivership or trusteeship is not vacated within sixty (60) days after institution or appointment.
 - vi. Tenant fails to commence construction of the Development within _____ (__) months [SEE SECTION 7(f)] after the Commencement Date or Tenant fails to complete construction of the Development within _____ (__) months [SEE SECTION 7(f)] after such construction commences.
 - vii. Tenant breaches any of the other agreements, terms, covenants, or conditions that this Lease requires Tenant to perform, and the breach continues for a period of thirty (30) days after written notice by Landlord to Tenant, or if the breach cannot be cured within thirty (30) days and Tenant fails to commence the cure within thirty (30) days, and to complete the cure within a reasonable time (but no later than ninety (90) days after receipt of Landlord's notice of default).
- b. Remedies. In the event of Tenant's default, Landlord shall have the following remedies: (i) Landlord may, at its election, immediately or at any time thereafter cancel this Lease and enter into and upon the Premises and repossess the same and expel the Tenant and those claiming under it and remove its personal property without being taken or deemed to be guilty of any manner of trespass, and thereupon this Lease shall absolutely cease and terminate; or (ii) Landlord may declare all Rent due hereunder to be immediately due and payable (and thereupon all then ascertainable payments due hereunder to the end of the term shall be accelerated); or (iii) Landlord may elect to enter the Premises and re-let the same for Tenant's account, holding Tenant liable in damages for all expenses incurred in any such re-letting and for any difference between the amount of Rent received from such re-letting and all amounts due and payable under the terms of this Lease. In addition to the foregoing, Landlord may also exercise such other remedies as are permitted by this Lease or that may be available in equity or at law. All such remedies shall be cumulative, to the extent permitted by law.
- c. Payments or Performance on Behalf of Tenant. If Tenant fails to pay any taxes, assessments, or any other payments required to be made hereunder (other than amounts payable as annual Guaranteed Minimum Rent or percentage rent) or to perform any of its obligations herein, then, in addition to any other remedies available to Landlord, Landlord may, on behalf of Tenant (without any obligation to do so), make any such payment or payments, or perform such acts on Tenant's behalf, and Tenant covenants thereupon to reimburse and pay Landlord any amount so paid and expended, together with interest thereon at the maximum rate then allowed to be charged by private parties in contracts in the State of Maine. In the proof of any damages that Landlord may claim against Tenant arising out of Tenant's failure to maintain insurance, Landlord will not be limited to the

amount of the unpaid insurance premium, but will also be entitled to recover as damages for the breach, the amount of any uninsured loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), and damages, costs and expenses of suit, including attorneys' fees, arising out of damage to, or destruction of, the Premises occurring during any period for which Tenant has failed to provide the insurance.

- d. No Implied Termination. No notice from Landlord under this Lease will constitute an election by Landlord to terminate this Lease unless the notice specifically says so. Landlord reserves the right following any re-entry or re-letting, or both, to exercise its right to terminate this Lease by giving Tenant written notice, and in that event the Lease will terminate as specified in the notice.
- e. Remedies Cumulative. The remedies stated in this Section shall be cumulative and in addition to any other right or remedy available to Landlord under this Lease or at law or in equity.
- f. No Implied Waiver. No waiver or assent, expressed or implied, to any breach of Tenant's covenants hereunder shall be deemed a waiver of any breach of any other covenants under this Lease or a waiver of any succeeding breach of the same covenants. No waiver shall be deemed to have been given by Landlord's failure to enforce the terms of this Lease strictly unless such waiver shall be in writing and shall state the specific act or failure which Landlord has agreed not to treat as a default.

10. DEMISE:

Demise of Premises. In consideration of the covenants and agreements by Tenant recited in this Lease and the timely performance by Tenant of all of the obligations described in this Lease, Landlord hereby leases the Premises to Tenant and Tenant hereby rents the Premises from Landlord, subject to all of the terms and conditions of this Lease.

11. INDEMNIFICATION:

- a. For purposes of Sections 6, 8, 11 and 12 of this Lease, "Indemnitees" means the State of Maine, the Maine Port Authority, and their respective officials, agents, and employees (together with their respective heirs, successors, and assigns).
- b. For purposes of this this Section 11, "Claims" means any and all claims, actions, proceedings, costs or expenses (including, without limitation, court costs, attorneys' fees and expenses, settlements, judgments, fines, penalties or otherwise) arising directly or indirectly out of or in connection with:
 - i. The construction, maintenance, or operation of the Development (including any failure to construct, maintain, or operate the Development in accordance with this Lease);

- ii. Tenant's use or occupation of the Premises; or
 - iii. Any other activity undertaken pursuant to this Lease.
- c. Tenant shall defend, indemnify, and hold Indemnitees harmless, regardless of any negligence or fault (whether in whole or in part) by any of them, from and against any and all Claims, including (without limitation) Claims for:
 - i. Injury or death to any person whatsoever (including, without limitation, Tenant's employees and employees of the State of Maine and the Maine Port Authority);
 - ii. Damage to or loss (including loss of use) of any property whatsoever (including, without limitation, Tenant's property, property of the State of Maine and the Maine Port Authority, and goods being stored in the Development);
 - iii. Pollution or impairment to the environment (including investigation and clean-up costs); and
 - iv. Breach of, or errors, acts, or omissions relating to, Tenant's obligations under this Lease.
- d. Tenant specifically assumes all liability for all Claims asserted against Indemnitees by Tenant's employees, and Tenant specifically waives any immunity from the enforcement of this indemnification provision that might otherwise be provided by Maine workers' compensation law, by the Federal Longshore and Harbor Workers' Compensation Act ("LHWCA"), or by any other state or federal law.
- e. The obligations imposed by this Section 11 shall not be limited by the existence of, or by any limitations or exclusions contained in, any insurance policy.
- f. In case suit shall at any time be brought against an Indemnitee asserting a liability from and against which Tenant is obligated to defend, indemnify, and hold that Indemnitee harmless, Tenant shall, at its own cost and expense and without any cost or expense whatever to that Indemnitee, defend such suit using counsel acceptable to that Indemnitee and indemnify and save that Indemnitee harmless against all costs and expenses thereof and promptly pay or cause to be paid any final judgment recovered against that Indemnitee; provided, however, that each Indemnitee shall promptly upon the bringing of any such suit against that Indemnitee give notice thereof to Tenant.
- g. The obligations imposed by this Section 11 shall survive the termination of this Lease.

- h. Tenant shall not be liable to Landlord under this Section 11 for any environmental condition on the Premises that existed prior to the date of this Lease.

12. INSURANCE:

- a. Tenant shall procure and maintain at all times during the term of this Lease, at Tenant's expense, the insurance specified in subsection (c) of this Section 12. All insurance shall be placed with insurance carriers licensed to do business in Maine acceptable to Landlord, and, except as otherwise specified, all insurance shall be placed on an occurrence basis. Tenant shall provide Landlord with a certificate of insurance giving evidence of the required coverage prior to Tenant's initial entry onto the Premises. Tenant shall require all contractors (and their subcontractors) to carry the insurance specified in subsection (c) of this Section 12 (provided, however, that Landlord may, in Landlord's discretion, consent to policy limits less than those specified in subsection (c) of this Section 12 for particular contracted or subcontracted work) and to provide Landlord with a certificate of insurance giving evidence of the required coverage prior to commencing any work. All insurance shall provide for no less than ten days' prior written notice by certified mail (return receipt requested) to be given to Landlord in the event coverage is substantially changed, cancelled, or non-renewed. Tenant shall, on request, permit Landlord to examine original insurance policies.
- b. Tenant hereby waives any and every right or cause of action against Indemnitees for any and all loss of, or damage to, any property owned or used by Tenant and any property owned by third parties in the custody or control of Tenant (whether or not such loss or damage is caused by the fault or negligent acts or omissions of an Indemnitee). Written notice of this waiver shall be given to each insurance carrier, and said insurance policies shall be properly endorsed, if necessary, to prevent the invalidation of said insurance coverages by reason of this waiver.
- c. Tenant shall procure and maintain:
 - i. Workers' Compensation and Employers Liability Insurance, as required by Maine law, with a LHWCA endorsement if an exposure exists. Employer's liability coverage under this policy shall have limits of liability not less than [TO BE NEGOTIATED].
 - ii. Commercial General Liability Insurance (ISO form or its equivalent), covering liability imposed on Tenant arising out of any accident, injury (including death), or damage suffered or occurring on or about the Premises (or any appurtenances thereto) or the Development, as well as liability arising out of Tenant's obligations under this Lease (including, without limitation, the indemnification obligations set forth in Section 11 of this Lease). Indemnitees shall be named as additional insureds, and the policy shall contain a waiver of subrogation against Indemnitees.

Coverage under this policy shall have limits of liability not less than [TO BE NEGOTIATED].

- iii. Warehouse Operators Legal Liability Insurance, with Cold Storage Endorsement. Indemnitees shall be named as additional insureds, and the policy shall contain a waiver of subrogation against Indemnitees. Coverage under this policy shall have limits of liability not less than [TO BE NEGOTIATED].
- iv. Pollution Liability Insurance, covering liability imposed on Tenant arising out of any pollution, spill of any kind, or impairment of the environment, including investigation and clean-up costs, caused by Tenant's activities on the Premises. Indemnitees shall be named as additional insureds, and the policy shall contain a waiver of subrogation against Indemnitees. Coverage under this policy shall have limits of liability not less than the commercial general liability insurance required above. Tenant may, at its option, cover this pollution liability exposure in the commercial general liability insurance required above, and if this is done, the certificate of insurance submitted must clearly indicate that these coverages are combined.
- v. Automobile Liability Insurance, issued to and covering Tenant's liability arising out of the use of all owned, non-owned, hired, rented or leased vehicles which bear, or are required to bear, license plates in the jurisdiction in which they are to be operated. Indemnitees shall be named as additional insureds, and the policy shall contain a waiver of subrogation against Indemnitees. Coverage under this policy shall have limits of liability not less than [TO BE NEGOTIATED].
- vi. Property Insurance (ISO Special Cause of Loss form or its equivalent), and such other coverage as may be necessary to insure against losses caused by damage or destruction by flood, fire, windstorm, and all other insurable risks (including earthquake insurance, if available), in the broadest protection form commercially available for Maine properties and in the minimum amount of the replacement value of all buildings and improvements constructed or installed on the Premises. The policy shall contain a waiver of subrogation against Indemnitees.
- vii. Insurance Against All Insurable Risks, for the replacement value of all personal property, equipment, and trade fixtures on the Premises used in connection with Tenant's operation and management of the Development, as well as all property owned by third parties in the custody or control of Tenant. Indemnitees shall be named as additional insureds, and the policy shall contain a waiver of subrogation against Indemnitees.

- viii. Builder's Risk Insurance, for the replacement value of all improvements and materials made or to be incorporated into work on the Premises as a result of damage or destruction by any insurable risks during any construction conducted by Tenant on the Premises, together with all soft costs and rent loss for delays in construction. The policy shall contain a waiver of subrogation against Indemnitees.
 - ix. Equipment Breakdown Insurance, against direct physical loss that causes damage to covered equipment and necessitates its repair or replacement, covering high pressure steam boilers, air conditioning and refrigeration equipment, pressure vessels, motors, or similar apparatus installed in or on the Premises. The policy shall contain a waiver of subrogation against Indemnitees. Coverage under this policy shall have limits of liability not less than [TO BE NEGOTIATED].
 - x. Additional insurance, as may be usual and customary with respect to the Development and activities associated with the Development, and as may be required under any applicable federal or state statute or regulation, any applicable local ordinance, or any applicable federal or state administrative or judicial order.
- d. Landlord may every two years specify higher limits of liability for the insurance specified in subsection (c) of this Section 12, which higher limits of liability shall be procured by Tenant within sixty days after they have been specified by Landlord.
- e. Except as Landlord may otherwise agree in writing:
- i. No deductible under any insurance policy may exceed \$[TO BE NEGOTIATED];
 - ii. No insurance may be maintained through so-called "umbrella policies" [TO BE NEGOTIATED]; and
 - iii. Insurance may not be diluted by including coverage for risks other than those arising out of or relating to the Development.
- f. The term "Indemnitees" when used in this Section 12 has the meaning stated in Section 11 of this Lease.

13. LANDLORD'S LIEN:

All personal property, fixtures, equipment, and improvements of the Tenant upon the Premises during the term of this Lease shall be and are hereby bound for the payment of all Rent and for the fulfillment of all covenants of this Lease, and a lien is hereby created thereon in favor of Landlord for the full and prompt payment of such amounts and

fulfillment of said covenants. The lien hereby created shall be in addition to any statutory Landlord's lien, but Landlord agrees to subordinate its lien to Tenant's initial construction loan or to another first mortgage loan on the Development. In order to confirm the lien created by this Section 13, Tenant hereby grants to Landlord a security interest in all personal property, fixtures, equipment, and improvements installed in, affixed to, or kept on the Premises as security for Tenant's full and complete performance of each and every one of Tenant's obligations hereunder. Tenant agrees to execute and deliver to Landlord such instruments or documents, such as UCC-1 Financing Statements, on the date this Lease is executed, to perfect and continue the perfection of such lien. Tenant further agrees to execute such other forms, security agreements, and documents as Landlord may request to confirm Landlord's lien hereunder. Upon Tenant's default in any obligation hereunder, then in addition to the remedies stated elsewhere in this Lease, Tenant hereby expressly agrees that Landlord may exercise, with respect to such personal property, fixtures, equipment, and improvements, any and all rights Landlord may have at the time of such default as a secured party under the Uniform Commercial Code of the State of Maine.

14. MISCELLANEOUS:

- a. Titles and Caption. The titles of the sections throughout this Lease are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this instrument.
- b. Invalidity of Particular Provision. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law if the deletion of the invalid provision shall not destroy the clear intent and purpose of this Lease.
- c. Governing Law and Venue.
 - i. This Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of Maine (without regard to conflicts-of-laws principles that would require the application of any other law).

- ii. Any action brought in connection with this Lease, including (without limitation) any action to enforce Tenant's obligations under this Lease, shall be brought in Maine Superior Court in Augusta, Maine. Tenant irrevocably submits to the exclusive jurisdiction of such court, waives any objection it may now or hereafter have to venue or to convenience of forum, and agrees not to bring any action in any other court.
- d. Calculation of Time. If any deadline set forth herein falls on a Saturday, Sunday or legal holiday, the deadline shall be extended to the next business day.
- e. Time of the Essence. Time is of the essence in the performance of Tenant's obligations under this Lease.
- f. Binding Effect. Except as herein otherwise expressly provided, the terms and provisions hereof shall be binding upon and shall inure to the benefit of the respective successors and assigns of Landlord and Tenant. Each term and each provision of this Lease to be performed by Tenant shall be construed to be both an independent covenant and a condition. The reference to "successors and assigns" of Tenant is not intended to be a consent to any assignment by Landlord, but has reference only to those instances in which Landlord's consent is not required or, in which Landlord may give written consent to a particular assignment, transfer, or encumbrance.
- g. Entire Agreement. This Lease supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter; provided, however, that this Lease shall not affect the independent powers, duties, or jurisdiction of the Maine Department of Transportation or of other agencies or instrumentalities of the State of Maine.
- h. Amendment. This Agreement may not be amended, supplemented, or otherwise modified except by a written instrument executed by the parties.
- i. Non-Waiver.
 - i. No waiver of any term or condition contained in this Lease shall be valid unless in writing and signed by the party to be charged with the waiver.
 - ii. No failure or delay to enforce any right or obligation hereunder shall be deemed a waiver of such right or obligation or of any other right or obligation hereunder.
 - iii. No waiver of any breach of any term or condition contained in this Lease shall be valid unless in writing and signed by the party to be charged with the waiver, and no such waiver shall be deemed a waiver of any preceding

or subsequent breach of the same or any other term or condition contained in this Lease.

iv. Nothing in this Lease shall be construed as a waiver by the Maine Department of Transportation of any immunity to which the Department may be entitled under state or federal law.

j. Survival of Obligations. All obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the Term shall survive the expiration or earlier termination of the Term, including without limitation, all obligations concerning the condition and repair of the Premises.

15. MORTGAGES AND ENCUMBRANCES:

- a. No Subordination. For the avoidance of doubt, the parties intend that Landlord's fee title and reversionary interest in the Property shall not be subject or subordinate in any respect to, or affected in any manner by the foreclosure of (or the exercise of any other remedies under) any Mortgage granted by Tenant on this Lease (and the leasehold created thereunder).
- b. Leasehold Mortgages. Tenant may grant and create a first lien mortgage or encumbrance on its leasehold interest in the Property only upon the condition that no such mortgage, lien or encumbrance on Tenant's estate or interest under this Lease (a "Leasehold Mortgage") shall extend to or encumber the fee title or the reversionary interest or estate of Landlord in and to the Premises.
- c. Transfers Following Default in Mortgage. Anything in this Lease to the contrary notwithstanding, any transfer of Tenant's interest following a default by Tenant under any Tenant financing and exercise of the lienholder's remedies, whether in foreclosure or execution or by transfer in lieu thereof, shall be deemed to be a transfer which requires Landlord's consent and shall be subject to all of the conditions and limitations of this Section.

16. NET LEASE:

Costs and Expenses. The parties acknowledge and agree that Landlord would not enter into this Lease if the Rent described in this Lease were not absolutely net to Landlord or if Landlord were to incur any liability whatsoever, foreseen or unforeseen, as a result of the construction of any improvements on the Premises or Tenant's exercise of any of its rights under this Lease. Accordingly, anything herein to the contrary notwithstanding, Tenant expressly covenants and agrees to pay all expenses, costs, taxes, fees and charges of any nature whatsoever arising in connection with or attributable to the Premises or the Development or this Lease or the grant of the Lease arising in any manner whatsoever as a result of Tenant's exercise of, or Landlord's grant of, the rights described in this Lease, including, by way of example, but not limitation, all consultant fees, intangible personal property taxes, all filing and recording fees to perfect Landlord's rights under this Lease,

attorney's fees and costs following an event of default hereunder, all costs of any financing obtained by Tenant and all other costs and expenses whatsoever incurred by Landlord, as a result of the grant of this Lease or the enforcement or interpretation of any of the Landlord's rights under or arising as a result of this Lease.

17. NOTICES:

- a. Delivery. "Notice" shall mean each and every communication required to be given by one party to the other under this Lease. All Notices, to be effective, shall be in writing and shall be delivered by registered or certified mail, return receipt requested and postage prepaid or by personal delivery or courier service by which the sending party obtains a receipt confirming delivery or inability to deliver the Notice to the party to whom the Notice was addressed. Any Notice required to be given or that may be given under this Lease shall be deemed to be given upon the date of receipt thereof, or if delivery is refused, on the date of first attempted delivery thereof. Notices shall be given to each party at the place hereafter specified.

Notices shall be given to Landlord at the following address:

Notices shall be given to Tenant at the following address:

- b. Change of Address. Any party designated to receive notice may change its address to any other place in the United States of America by notice in writing given to the other party or parties in the manner herein provided.

**18. PAYMENT OF TAXES, UTILITY CHARGES,
LICENSE CHARGES & OTHER SERVICE FEES:**

- a. Real Estate, Property and General Taxes and Assessments. Tenant shall pay and discharge prior to delinquency, as and when the same shall become due and payable, all real estate taxes and assessments, if any, all other duties, taxes, general and special assessments, water rents, sewer rents, impact fees, impositions, charges, and payments, together with all interest and penalties thereon, extraordinary as well as ordinary, whether foreseen or unforeseen, as shall be charged, made, levied, assessed, or imposed upon, or become due and payable during the Term, in connection with the Premises, or any part thereof or any interest therein, or any improvements, appurtenances, fixtures, personal property, equipment or activity thereon, by virtue of any present or future law,

order, statute, rule, regulation, directive, or ordinance of the United States of America, or any city, county, state or local governments having jurisdiction, or of any department, office or bureau thereof, or any other governmental or quasi-governmental agencies having authority to levy or collect the charge or assessment. Nothing herein contained, however, shall require Tenant to pay any income, inheritance, estate, succession, transfer or gift taxes of Landlord, except to the extent that any such taxes shall be assessed in lieu of ad valorem property taxes and assessments.

- b. Other Taxes and Assessments. Tenant shall also pay, when due, any and all other taxes and assessments of any nature whatsoever whether or not now customary or within the contemplation of Landlord, foreseen and unforeseen, and Tenant, that may be due, levied or assessed as a result of this Lease, whether foreseen or unforeseen during the Term, including, by way of example but not limitation:
 - i. All sales, use, excise and other taxes now or hereafter imposed by any lawful authority on all amounts due or required to be paid by Tenant under this Lease and which are taxed by any such authority (which shall be paid by Tenant with each applicable payment of Rent); provided, however, if any rents or payments shall be exempt for any reason, Tenant shall furnish to Landlord within ten (10) days of Landlord's request therefor, all appropriate certificates and documents as may be required to qualify for such exemptions; and
 - ii. All taxes, assessments and charges levied or assessed upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion of the Premises; and
- c. License Charges and Other Impositions. Tenant shall obtain all licenses and permits, and shall pay all fees, charges, taxes and assessments, now or hereafter imposed, foreseen and unforeseen, that may be due, levied or assessed against Tenant or any business affiliated with the Premises during the term of this Lease.
- d. Utilities and Services. Tenant covenants and agrees to pay all fees and charges for all utilities, communication services and all other services of any nature whatsoever furnished to, used on, or connected with the use and occupancy of, the Premises, including, without limitation, all gas, electric, water, sewage, telephone, cable, janitorial and all other charges and fees (and including, without limitation, all installation, tap-in, connection fees and impact fees, when appropriate of any nature whatsoever). Tenant will also procure, or cause to be procured, without cost to Landlord, any and all necessary permits, licenses, or other authorizations required for the lawful and proper installation and maintenance upon the Premises of wire, pipes, conduits, tubes, and other equipment and appliances for use in supplying any services to and upon the Premises.

- e. Tax Receipts. Tenant shall, upon Landlord's written request, furnish to Landlord copies of all paid bills for taxes and assessments no later than twenty (20) days after the date payment was due. Should Tenant fail to pay such taxes and furnish such receipts as required by this Lease, Landlord may, in addition to exercising any other right provided to Landlord because of Tenant's default, pay any such tax or assessment upon fifteen (15) days prior written notice to Tenant of such default, and the amount so paid shall be paid by Tenant to Landlord, on demand as additional rent. All taxes and assessments for the years in which this Lease commences and terminates shall be prorated between Landlord and Tenant as of the Commencement Date and the date of such termination, respectively. The provisions of this Section shall survive the expiration or termination of this Lease.
- f. Tax Contests. If Tenant desires to contest the validity of any taxes or assessments for which Tenant is responsible, Tenant may do so without being in default under its obligation to pay taxes and assessments, provided Tenant not only institutes appropriate legal proceedings to contest the validity of the tax or assessment but also deposits with Landlord or Landlord's designated agent at least thirty (30) days before the contested tax or assessment would become delinquent for non-payment, an amount which is sufficient to pay in full the contested tax or assessment, including, without limitation, all penalties, interest and court costs if the adjudication in such proceedings should be adverse to Tenant. Tenant shall also obtain an injunction to prevent the sale of the Premises or any property subject to the tax lien by reason of non-payment of the tax or assessment being contested in such legal proceedings. If Tenant fails to obtain the injunction, Landlord shall have the right to make any such payment and such right shall also apply at any time following the dissolution of the injunction; provided, however, that in either event, Landlord shall refund to Tenant any portion of the deposit retained by Landlord which shall be determined by the court not to be due to the taxing authorities on account of such taxes, penalties or costs. Upon the termination of those proceedings, Tenant will pay the amount of the tax or part of the tax as finally determined, the payment of which may have been deferred during the prosecution of the proceedings, together with any costs, fees, interest, penalties, or other related liabilities. Landlord will not be required to join in any contest or proceedings unless the provisions of any law or regulations then in effect require that the proceedings be brought by or in the name of Landlord. In that event, Landlord will join in the proceedings or permit them to be brought in its name; however, Landlord will not be subjected to any liability for the payment of any costs or expenses in connection with any contest or proceedings and Tenant will indemnify Landlord against and save Landlord harmless from any of such costs and expenses.

19. RELATIONSHIP OF PARTIES:

Landlord and Tenant. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and

agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties herein, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant. Whenever the singular number is used in this Lease, the same shall include the plural, and the neuter gender shall include the feminine and masculine genders.

20. RENT:

[TO BE NEGOTIATED]

21. REPAIRS AND MAINTENANCE:

- a. Repairs and Replacements. Tenant shall, at its own cost and expense, make all repairs, replacements and restoration to the Development and the Premises and all improvements and replacements thereto and thereon, foreseen and unforeseen, structural or otherwise, capital or non-capital, ordinary or extraordinary, whether or not caused by Tenant's act or omission, that may be necessary to keep and maintain the Development and all improvements constructed on the Premises in first class condition and repair and in compliance with all applicable rules, codes, laws, regulations, orders and ordinances of all governmental and quasi-governmental agencies, boards or authorities having jurisdiction over the Premises or the use thereof during the entire term of this Lease.
- b. Maintenance. Tenant shall maintain all portions of the Premises at Tenant's sole expense. Such obligations shall include, without limitation, the maintenance, repair, striping and replacement, when necessary, of all landscaping, parking and service areas in order to keep such areas in clean, sanitary, good and attractive condition. Tenant's maintenance obligations shall also include the maintenance, repair, restoration and replacement, when necessary, of all buildings and improvements and personal property constructed or placed on the Premises to the extent required to keep the Premises clean, orderly and in first class and attractive repair and condition. Such obligations shall include, without limitation, the repair and replacement, when needed, of all amenities and components, and all plumbing, wiring, heating, ventilating and air conditioning systems, equipment and components. All repairs, restorations, and replacements will be in quality and class equal to or better than the original work or installations.

22. RIGHTS OF ENTRY AND INSPECTION:

- a. Access to Premises. Landlord shall have the right to enter upon and inspect the Premises during normal business hours with 24 hours prior notice of the reason for the inspection to insure that all facilities and operations are within the provisions of this Agreement. Within 72 hours after the inspection, a written report will be submitted to the Tenant noting the findings of the inspection and what, if any, remedial actions are requested.

- b. Emergency Access. Landlord shall be provided with keys for the purpose of granting access to police or other law enforcement officials as necessary to circumvent criminal activity. Reasonable effort will be made to contact Tenant's designated representative by phone prior to anyone accessing the facility outside of normal business hours and he/she will be given the opportunity to be present during said access if at all possible. A full report of such access will be filed in writing with Tenant within 72 hours of such event.

23. SECURITY DEPOSIT/GUARANTEE/LETTER OF CREDIT:
[TO BE NEGOTIATED]

24. SURRENDER OF DEMISED PREMISES:

- a. End of Term. At the expiration or termination of this Lease, the Development and all improvements, modifications and replacements of improvements on the Premises shall remain upon and be surrendered with the Premises as a part thereof and shall become the property of Landlord without the obligation to make any payment therefor, and Tenant will, without notice or demand therefor, surrender the Premises in good order and condition, ordinary wear and tear excepted. At such time, if Tenant is not then in default, Tenant may remove from the Premises any trade fixtures, equipment, and movable furniture placed in the Premises by Tenant; however, Tenant will not remove any trade fixtures or equipment without Landlord's prior written consent if the trade fixtures or equipment are used in the operation of the building or if the removal of the fixtures or equipment will impair the structure of the building. If such consent is granted by Landlord, Landlord may require Tenant, at Tenant's sole expense, to fully repair any damage occasioned by the removal of any trade fixtures or equipment and restore the portion so damaged to a condition suitable for continued leasing of the Premises. Tenant shall leave the Premises clean and free of debris.

At Landlord's option, Landlord may require Tenant, at Tenant's sole expense, to remove any or all improvements, signs, trade fixtures and equipment on or connected with the Development or the Premises and to demolish and remove any improvement and leave the Premises clean and free of debris.

All signs, trade fixtures, equipment, and furniture not removed from the Premises within ____ (____) days of expiration or termination of this Lease, either by choice of Tenant or by order of Landlord, will conclusively be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without notice to Tenant or to any other person and without obligation to account for them. Tenant will pay Landlord all expenses incurred in connection with Landlord's disposition of such property, including without limitation the cost of repairing any damage to the Development or Premises caused by removal of the property. Tenant's obligation to observe and perform this covenant will survive the end of this Lease. Tenant shall also execute and deliver to Landlord all documents or instruments that Landlord may

reasonably request to accomplish the foregoing, including, without limitation, a recorded release of its rights in the property and a written termination of this Lease.

- b. Tenant's obligations under this Section shall survive termination or expiration of this Lease.

25. TERM:

Length of Term. The term of this Lease (the "Term") shall commence on _____, 2015 (the "Commencement Date"). If not sooner terminated under other provisions of this Lease, the Term shall expire exactly _____ (__) years [TO BE NEGOTIATED] following the Commencement Date.

26. USE:

- a. Permitted Use. Following construction of the Development, and during the remainder of the entire Term of the Lease, Tenant covenants and agrees that the Premises shall be used and occupied continuously, consistent with the original Development, subject only to ordinary upgrades and improvements, as well as reconstruction and renovations associated with maintaining the Development in a first class manner, and consistent with the general trends of redevelopment in the neighborhood.
- b. Continuous Operation. Tenant acknowledges that Tenant has a covenant of continuous operation and Tenant covenants and agrees to use and operate the Premises continuously for the Development as described in the preceding paragraphs during the entire Term, subject only to periodic lapses during renovation or reconstruction in the event of a casualty loss or due to changes in tenancies.