

**AGENDA FOR THE CITY COUNCIL BUSINESS MEETING
COUNCIL CHAMBERS
THURSDAY, February 2, 2017
7:00 P.M.**

There will be a pre-meeting of the City Council at 6:30 p.m. in Conference Room A. No Council actions are taken at pre-meetings. Pre-meetings are open to the public.

PRESENTATION AND PUBLIC HEARINGS:

PUBLIC COMMENTS ON ITEM LISTED ON THE AGENDA:

CONSENT AGENDA:

17-019 City Manager (Bureau of City Clerk)

ORDERED, that the minutes of the City Council Meeting held January 19, 2017, submitted by the City Clerk's office be approved.

17-020 Mayor and Council

ORDERED, that Abigail Silsby be awarded the 2016 Edwards Dam Scholarship in the amount of \$500.00 per the recommendations of the 2016 Edwards Dam Scholarship Committee.

17-021 Mayor

ORDERED, that Gerald Bumford be reappointed to the Historic Preservation Commission, said term to expire May 21, 2019.

17-022 Mayor

ORDERED, that Phyllis von Herrlich be reappointed to the Historic Preservation Commission, said term to expire March 18, 2020.

17-023 Mayor

ORDERED, that Daniel Stevens be reappointed to the Historic Preservation Commission, said term to expire February 20, 2020.

17-024 Mayor

ORDERED, that Peter J. Pare be reappointed to the Planning Board, said term to expire February 19, 2020.

OLD BUSINESS AND TABLED MATTERS

SECOND READING (Ordinances)

16-188 Mayor Rollins and Councilors Blodgett, Conti, Munson, Paradis
Tabled from 11/17/2016

WHEREAS, the City Council finds that the current definition of “Religious Activities and Associated Uses” is outdated and does not provide adequate clarity for religious organizations or citizens regarding accessory activities conducted in relation to such uses ; and

WHEREAS, the City Council finds that clarity of interpretation is critical to creating certainty for residents and others; and

WHEREAS, the City Council finds that the faith community is a critical part of the fabric of the community, but as the nature of worship changes, certain activities conducted by religious organizations, like their secular counterparts, could have an impact on the health, safety, and general welfare of the neighborhoods where they are located;

WHEREAS, the City’s Planning Board reviewed this issue and the proposed amendments at two public hearings, at which residents and business owners voiced concern over the impact of social services, traffic and parking on residential neighborhoods and business districts, and religious entities discussed how activities such as community suppers, clothing drives and educational activities are components of their religious practice;

WHEREAS, the City Council respects the needs of all property owners and is interested in limiting traffic, noise, parking, and other impacts of uses in keeping with the nature of the district in which they are located; and

WHEREAS, in keeping with the Comprehensive Plan, the City Council intends to regulate accessory uses conducted by religious entities only to the extent they are significant in scope and, due to their potential impacts, would not otherwise be allowed as primary uses in the district in which they are located;

NOW THEREFORE be it ORDAINED, by the City Council of the City of Augusta, that the Code of Ordinances, Land Use, be amended to repeal the current term and definition of a “Religious Activities and Associated Uses” in Section 300-202 and replace it with the following term and definition:

PLACE OF WORSHIP: Any building used for nonprofit purposes by an established religious organization holding either tax exempt status under Section 501(c)(3) of the Internal Revenue Code or under the state property tax law, where such building is primarily intended to be used as a place of worship, or for ceremonies, rituals, education, and related social events. The term includes, but is not necessarily limited to, church, temple, synagogue, and mosque. Any new or expanded use conducted on the premises of a Place of Worship shall be considered a separate principal use if it is operated for more than 16 hours a week, for a total of four or more weeks per year.

and that Religious Activities and Associated Uses in the Table of Uses (300 Attachment 4) shall be changed to the new use “Place of Worship”; and

that "Place of Worship" shall be allowed in the same districts, and with the same designations, as Religious Activities and Associated Uses were in the Table of Uses (300 Attachment 4); and

that, additionally, Places of Worship shall be allowed as a permitted use (designated with an X) in the following districts in the Table of Uses (300 Attachment 4): RPDS, RV.

NEW BUSINESS

PART 1

17-025

BE IT ORDERED, that the City Manager is authorized to accept grant funding in an amount not to exceed \$20,000 from the Maine Bureau of Highway Safety for the 2017 Speed Enforcement & Equipment (Municipal & County) Grant. Grant funding will be utilized to provide directed speed enforcement and to purchase a new radar unit. Funds are to be expended from February 1, 2017 to September 15, 2017. There is no monetary match.

17-026

BE IT ORDERED, that the City Manager is authorized to accept grant funding in the amount not to exceed \$6,000.00 from Inland Fisheries & Wildlife for the 2017 ATV Enforcement Grant. Grant funding will be utilized to provide directed ATV Enforcement.

17-027 Mayor and Council

ORDERED, that an amount not to exceed \$25,000, be hereby appropriated from the City's Unassigned Fund Balance for the purpose of consultant services regarding blasting in the area of the Grandview neighborhood.

17-028 Mayor and Council

WHEREAS, the City of Augusta seeks to apply for and receive state and federal grants to make substantial improvements to the infrastructure of its downtown district; and

WHEREAS, the eligibility for Community Development Block Grant (CDBG) program funds as established under Maine Revised Statute 30-A, Chapter 205 §5201-5205 requires a declaration of slum and blight from the municipal legislative body; and

WHEREAS, Commercial Street, located in United States Census Tract Number DC10CT C23011 001 #104 has been found to meet the criteria for the slum and blight designation.

NOW THEREFORE BE IT ORDERED, that the City Manager of the City of Augusta is authorized to sign and submit a Declaration of Slum and Blight Area as required by the Maine Department of Economic and Community Development under terms of the Community Development Block Grant program.

NEW BUSINESS

PART 2 –ORDINANCES - FIRST READING

NO VOTE REQUIRED

COMMUNICATIONS

Committee Reports
City Manager's Report

Respectfully submitted,
Roberta L. Fogg, City Clerk
January 30, 2017



January 11, 2017

Our Ref. P16 69579

Mr. William Bridgeo
City Manager, Augusta, Maine
c/o Kristin Collins
Preti Flaherty
45 Memorial Drive
Augusta, Maine 04330

**RE: PROPOSAL
ASSESSMENT OF VIBRATION CRITERIA REGULATIONS FOR QUARRY BLASTING
CITY OF AUGUSTA, MAINE**

Dear Mr. Bridgeo:

In accordance with our recent discussions with Ms. Kristin Collins of Preti Flaherty, Golder Associates Inc. (Golder) submits this proposal for technical services to assess vibration criteria regulations related to quarry blasting for the City of Augusta. Golder understands the City has received a history of complaints from residents located near two quarries off West River Road relating to vibrations caused by quarry blasting. In response to these complaints the City is considering revising, and making more restrictive, its ordinance for acceptable ground vibrations resulting from quarry blasting. Quarry owners are concerned that in order to meet the more restrictive allowable vibration criteria they will need to implement costly blasting procedures that will render their operations financially unfeasible. In November 2016 representatives of Maine Drilling & Blasting (MD&B; on behalf of one of the quarry owners, McGee Construction) made a presentation to the Augusta City Council concerning the relationship between blasting vibrations, structural damage and human perception in the context of proposed changes to the blasting ordinance.

At the request of Ms. Collins, the purpose of Golder's services will be to provide technical guidance to the City regarding revisions to their quarry blasting ordinance. The work is proposed to include an independent technical assessment of relevant information previously presented to the City, a summary of current quarry blasting regulations in effect at other cities and states, site visits to the two quarries, and discussions with the City about the technical provisions of their proposed blasting ordinance revisions.

Golder offers several unique capabilities to assist the City in assessing their blasting ordinance revisions. Golder has over 50 years of experience with blasting and other ground vibration projects including blast design, blast monitoring, and development of blast vibration criteria for rock excavations adjacent to sensitive historic structures, bridge foundations, dams, residential structures, steep soil and rock slopes, and high pressure natural gas pipelines. Additionally, we conduct independent assessments of ground vibrations produced by non-blasting methods, such as pile driving and other heavy construction activity. Golder's Principal Geotechnical Engineer, Mark Peterson, provided technical assistance to the City of Portland in 2003 for the development of their blasting ordinance and issues related to Dragon Products Company, Inc.'s proposal to resume blasting operations at their Ocean Avenue quarry. Senior Engineering Geologist Jay Smerekanicz has extensive experience with blasting design, operations and monitoring for a wide range of commercial, residential, infrastructure, and mining projects, including assessments of ground vibrations from non-blasting sources. A number of other Golder personnel have assisted municipalities and industry throughout the U.S. and Canada in development of blasting procedures and blast vibration limits included in federal, state and municipal ordinances and specifications.

SCOPE OF SERVICES

From our discussions with Ms. Collins we propose to provide services for the following five tasks.



Golder Associates Inc.
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Freeport, ME 04032 USA
Tel: (207) 865-4024 Fax: (207) 865-4026 www.golder.com



Golder Associates: Operations in Africa, Asia, Australasia, Europe, North America and South America

Task 1 – Information Review

We propose to review, assess and summarize the following information:

- The MD&B presentation made to the City on November 10, 2016 (provided by Preti Flaherty to Golder in pdf file format). Our review will include an objective assessment of the information presented concerning: regulatory standards; and, the relationship between blasting induced vibrations (ground and air blast) and blasting operations, structural damage and human perception.
- Current and proposed Augusta blasting regulations compared to other Maine state and selected municipal blasting regulations.
- Available data from City quarries regarding blasting operations, monitored vibrations, correspondence with nearby residents and businesses, and claims.

Task 2 – Site Visits

Mr. Peterson and Mr. Smerekanicz will make brief site visits to the two City quarries off West River Road and nearby neighborhoods preferably in the company of City personnel familiar with the history of quarry blasting operations and interactions with nearby residents and businesses. If possible, it is hoped the site visits could include a discussion with the quarry operators concerning the history of quarry blasting progression.

Task 3 – Review National Trends

Publically available information concerning national trends for state and municipal quarry blasting regulations will be assessed in the context of allowable vibration criteria, neighborhood concerns, and quarry operation economic issues analogous to vibrations occurring from City of Augusta quarry operations. The information reviewed is expected to be from selected newspaper articles, conference proceedings, state regulations, technical magazine articles, and correspondence with Golder personnel. An objective of this review is to provide perspective regarding how other municipalities have balanced the vibration perception and structural damage concerns of residents located near active quarry blasting with the business operation concerns of the quarry owners.

Task 4 – Meeting with City

Mr. Peterson and Mr. Smerekanicz will meet with City personnel in Augusta to discuss our observations and conclusions from the work performed for Tasks 1 through 3. The meeting is assumed to be an informal discussion occurring during normal work day hours. If a formal presentation is preferred for the City Council during an evening meeting, our estimated costs for this task would need to be revised.

Task 5 – Correspondence and Report

This task includes preparation of a brief letter report summarizing our findings and conclusions, and labor for our telephone and email correspondence with the City as well as administrative costs for project management.

ESTIMATED COSTS AND SCHEDULE

We propose to perform this work on a time and expense basis in accordance with the attached Fee Schedule (Attachment A). Estimated costs per task are summarized as follows:

Estimated Costs

Task		Estimated Labor and Expenses
1	Information Review	\$7,200
2	Site Visits	\$4,600
3	Review National Trends	\$3,500
4	Meeting with City	\$3,700
5	Correspondence and Letter Report	\$5,800
Total		\$24,800

Golder is prepared to begin work upon execution of a contract agreement with the City and receiving authorization to proceed. Tasks 1 and 3 can be completed within about three weeks. The Task 2 site visit can occur as soon as mutually agreeable schedules can be made with Golder, City personnel and quarry operators. Task 4 should be able to be scheduled about four weeks after receiving notice to proceed, and the Task 5 report submittal could be scheduled after the meeting with the City.

CONDITIONS OF ENGAGEMENT

We propose to perform the services described herein in accordance with the attached Terms and Conditions (Attachment B). If this proposal is acceptable to the City, please sign the attached Acceptance Form (Attachment C) and return the executed form to us for our files. The proposal, Terms and Conditions and Acceptance Form will comprise the Agreement between Golder and the City of Augusta.

Thank you for the opportunity to assist the City of Augusta with this assessment. Please contact Mark Peterson at (207) 865-4024 if you require additional information or have any questions regarding this proposal.

Sincerely,

GOLDER ASSOCIATES INC.



Jay R. Smerekanicz, P.G.
Associate and Senior Consultant



Mark S. Peterson, P.E.
Principal

Attachments:

- A - Fee Schedule
- B - Terms and Conditions
- C - Proposal Acceptance Form



Attachment A



GOLDER ASSOCIATES INC.
NEW ENGLAND OPERATIONS (NH, MA, ME)
PROFESSIONAL RATE SCHEDULE FOR CALENDAR YEAR 2017

Invoices from Golder Associates Inc. include all labor charges, other direct costs, and costs associated with in-house services. Charges include only those services directly attributable to the execution of the work. Time spent when traveling in the interest of the work will be charged in accordance with the hourly rates.

Labor charges are based upon standard hourly billing rates for each category of staff. The billing rates include costs for salary, payroll taxes, insurance associated with employment, benefits (including holiday, sick leave, and vacation), administrative overheads, and profit. Rates by labor category are as follows:

Billing Level	Personnel Category	Hourly Rate (U.S.\$)
C8	Sr.Practice/Program Leader	\$250
C7	Practice/Program Leader	\$220
C6	Senior Consultant	\$190
C5	Senior Engineer/Scientist	\$160
C4	Senior Project Engineer/Scientist	\$130
C3	Project Engineer/Scientist	\$110
C2	Staff Engineer/Scientist	\$100
C1	Engineer/Scientist	\$85
D4	Data Manager	\$100
D3	Senior Draftsperson	\$85
D2	Staff Draftsperson	\$75
D1	Draftsperson	\$70
B3	Senior Admin Support	\$75
B2	Staff Admin Support	\$70
B1	Admin Support	\$65

Other direct costs, including materials, travel, subsistence, and subcontractor costs, will be invoiced at cost plus a minimum general and administrative fee of 10%.

An Office Service Fee for direct project non-labor office costs including mail, telephone, fax transmissions, personal computers as well as reasonable and customary in-house photocopying will be billed at a rate of 7% of the total labor fees. This Office Service Fee does not include CAD/GIS computers, color photocopies, outsourced photocopies/reproductions or drawing reproduction. These services will be billed at the following rates:

SERVICE	RATE
CAD/GIS Computers	\$20/hour
Color Plotter (D&E size)	\$16/plot

Rates for laboratory services and use of equipment owned by Golder Associates Inc. will be provided upon request.



1. STANDARD OF CARE

Services performed by GOLDER will be conducted in a manner consistent with that level of care and skill ordinarily exercised by other professionals currently practicing under similar conditions in the same locality, subject to the time limits and financial, physical or other constraints applicable to the Services. No warranty, express or implied is made.

2. INVOICES AND PAYMENT TERMS

Unless otherwise specified in any proposal, GOLDER will submit monthly invoices to CLIENT and a final bill upon completion of Services. CLIENT shall notify GOLDER within ten (10) days of receiving an invoice of any dispute with the invoice and the parties shall promptly resolve any disputed items. Full payment is due prior to delivery of GOLDER's final deliverable. Payment on undisputed invoice amounts is due upon receipt of invoice by CLIENT and is past due thirty (30) days from the date of the invoice. CLIENT agrees to pay a finance charge of one and one-half percent (1-1/2%) per month (18% per annum), or the maximum rate allowed by law, on past due accounts. If payment remains past due sixty (60) days from the date of the invoice, then GOLDER shall have the right to suspend or terminate all Services under this Agreement, without prejudice or penalty. CLIENT will pay all reasonable demobilization and other suspension or termination costs. CLIENT agrees to pay attorneys' fees, legal costs and all other collection costs incurred by GOLDER in pursuit of past due payments.

Where the cost estimate for the Services is "not to exceed" a specified sum, GOLDER shall notify CLIENT before each limit is exceeded, and shall not continue to provide Services beyond such limit unless CLIENT authorizes an increase in the amount of the limitation. If a "not to exceed" limitation is broken down into budgets for specific tasks, the task budget may be exceeded without CLIENT authorization as long as the total limitation is not exceeded.

3. CHANGES

CLIENT and GOLDER recognize that it may be necessary to modify the scope of Services, schedule, and/or cost estimate proposed in this Agreement. Such changes shall change the Services, schedule, and/or the cost, as may be equitable under the circumstances. GOLDER shall notify CLIENT in a timely manner when it has reason to believe a change to the Agreement is warranted. GOLDER shall prepare a change order request outlining the changes to the scope, schedule, and/or cost of the project. CLIENT has a duty to promptly consider the change order request and advise GOLDER in a timely manner in writing on how to proceed. If after a good faith effort by GOLDER to negotiate modifications to the scope of Services, schedule, and/or cost estimate, an agreement has not been reached with the CLIENT, then GOLDER shall have the right to terminate this Agreement, without prejudice or penalty, upon written notice to the CLIENT.

4. DELAYS AND FORCE MAJEURE

- A. If site or other conditions prevent or inhibit performance of Services or if unrevealed hazardous materials or conditions are encountered, Services under this Agreement may be delayed. CLIENT shall not hold GOLDER responsible for damages or delays in performance caused by acts or omissions of CLIENT, its subcontractors, governmental authorities, regulatory agencies, civil or labor unrest, acts of God, nature, or terror, disruptions of the Internet, GOLDER's electronic telecommunications or hosting services or any other events that are beyond the reasonable control of GOLDER. In the event of any such delays, the contract completion date shall be extended accordingly and CLIENT shall pay GOLDER for Services performed to the delay commencement date plus reasonable delay charges. Delay charges shall include personnel and equipment rescheduling and/or reassignment adjustments and all other related costs incurred including but not limited to, labor and material escalation, and extended overhead costs, attributable to such delays.

- B. Delays in excess of thirty (30) days within the scope of this Article shall, at the option of either party, make this Agreement subject to termination or to renegotiation.

5. INDEPENDENT JUDGMENTS OF CLIENT

If the Services include the collection of samples and data, then GOLDER's obligation to perform those Services is subject to CLIENT's assumption of all Subsurface Risks (such risks being more fully described in Article 12, Subsurface Risks). GOLDER will not be responsible for the independent conclusions, interpretations, interpolations or decisions of CLIENT, or others, relating to the Services. Under no circumstances do GOLDER's Services include making any recommendation, or giving any advice as to whether CLIENT should or should not proceed with any transaction regarding any site related to the Services. CLIENT assumes all responsibility and risk associated with decisions it makes based on the Services.

6. INDEMNIFICATION

- A. GOLDER agrees to indemnify, but not defend, CLIENT and its officers, directors, and employees from and against all claims, damages, losses or expenses arising from personal injury, death, or damage to third-party property, and for reimbursement of defense costs, to the extent that all such claims, damages, losses, expenses, or costs are finally determined to result directly from GOLDER's negligence. Such indemnification, as limited by Article 7, Limitation of Liability, shall be CLIENT's sole and exclusive remedy against GOLDER.
- B. CLIENT shall, at all times, defend, indemnify and save harmless GOLDER and its subcontractors, consultants, agents, officers, directors and employees from and against all claims, damages, losses and expenses (including but not limited to reasonable attorneys' fees, and court and arbitration costs), arising out of or resulting from the Services of GOLDER, including but not limited to claims made by third parties, or any claims against GOLDER arising from the acts, errors or omissions of CLIENT, its employees, agents, contractors and subcontractors or others. To the fullest extent permitted by law, such indemnification shall apply regardless of breach of contract or strict liability of GOLDER. Such indemnification shall not apply to the extent that such claims, damages, losses or expenses are finally determined to result directly from GOLDER's negligence.

7. LIMITATION OF LIABILITY

- A. CLIENT shall immediately notify GOLDER in writing of any deficiencies or suspected deficiencies arising directly or indirectly from GOLDER's negligent acts, errors or omissions. Failure by CLIENT to notify GOLDER shall relieve GOLDER of any further responsibility and liability for such deficiencies. To the extent permitted by law, CLIENT and GOLDER agree that all liability arising directly or indirectly from this Agreement or the Services of GOLDER shall expire no later than one (1) year from the date of GOLDER's acts, errors, or omissions or prior to the last date allowed in the applicable statute of limitation, whichever occurs first in time.
- B. CLIENT agrees to limit the liability of GOLDER, its affiliates, and their respective employees, officers, directors, agents, consultants and subcontractors ("GOLDER Group") to CLIENT, its employees, officers, directors, agents, consultants and subcontractors, whether in contract, tort, or otherwise, which arises from GOLDER's acts, negligence, errors or omissions, such that the total aggregate liability of the GOLDER Group to all those named shall not exceed Fifty Thousand Dollars (\$50,000) or GOLDER's total fee for the Services rendered under this Agreement, whichever is greater.
- C. Neither party shall be responsible to the other for lost revenues, lost profits, cost of capital, claims of customers, loss of data or any other special, indirect, consequential or punitive damages.

8. INSURANCE

A. GOLDER maintains insurance coverage with the following limits:

- (i) Workers' Compensation in compliance with statutory limits
- (ii) Automobile Liability
Combined Single Limit \$1,000,000
- (iii) Commercial General Liability:
Each Occurrence \$1,000,000
General Aggregate \$2,000,000
- (iv) Professional Liability Insurance
Any One Claim \$1,000,000
Policy Aggregate \$3,000,000

B. CLIENT shall not require GOLDER to sign any document or perform any Service which in the judgment of GOLDER would risk the availability or increase the cost of its Professional or Commercial General Liability insurance.

9. PROFESSIONAL WORK PRODUCT

A. The Services provided by GOLDER are intended for one time use only. All documents, including but not limited to, reports, plans, designs, boring logs, field data, field notes, laboratory test data, calculations, and estimates and all electronic media prepared by GOLDER are considered its professional work product (the "Documents"). GOLDER retains all rights to the Documents.

B. CLIENT understands and acknowledges that the Documents are not intended or represented by GOLDER to be suitable for reuse by any party, including, but not limited to, the CLIENT, its employees, agents, subcontractors or subsequent owners on any extension of a specific project not covered by this Agreement or on any other project, whether CLIENT's or otherwise, without GOLDER's prior written permission. CLIENT agrees that any reuse unauthorized by GOLDER will be at CLIENT's sole risk and that CLIENT will defend, indemnify and hold GOLDER harmless from any loss or liability resulting from the reuse, misuse or negligent use of the Documents.

10. DATA AND INFORMATION

CLIENT shall provide to GOLDER all reports, data, studies, plans, specifications, documents and other information ("Project Information") which are relevant to the Services. GOLDER shall be entitled to rely upon the Project Information provided by CLIENT or others and GOLDER assumes no responsibility or liability for the accuracy or completeness of such. CLIENT waives any claim against GOLDER, and agrees to defend, indemnify and hold GOLDER harmless from any claim or liability for injury or loss allegedly arising from errors, omissions, or inaccuracies in the Project Information. GOLDER will not be responsible for any interpretations or recommendations generated or made by others, which are based, whole or in part, on GOLDER's data, interpretations or recommendations.

11. RIGHT OF ENTRY

CLIENT will provide for the right of entry for GOLDER, its subcontractors, and all necessary equipment in order to complete the Services under this Agreement. If CLIENT does not own the site, CLIENT shall obtain permission and execute any required documents for GOLDER to enter the site and perform Services. It is understood by CLIENT that in the normal course of work some surface damage may occur, the restoration of which is not part of this Agreement.

12. SUBSURFACE RISKS

- A. Special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program implemented in accordance with a professional Standard of Care may fail to detect certain conditions. The environmental, geological, geotechnical, geochemical, hydrogeological and other conditions that GOLDER interprets to exist between sampling points may differ from those that actually exist. Furthermore, CLIENT recognizes that, passage of time, natural occurrences, direct or indirect human intervention at or near the site may substantially alter discovered conditions.
- B. Subsurface sampling may result in damage or injury to underground structures or utilities and unavoidable contamination of certain subsurface areas not known to be previously contaminated such as, but not limited to, a geologic formation, the groundwater, or other hydrous body. GOLDER will adhere to the standard of care during the conduct of any subsurface investigation. When the Services include subsurface sampling, CLIENT waives any claim against GOLDER, and agrees to defend, indemnify and hold GOLDER harmless from any claim or liability for injury, loss, or expense (including but not limited to legal fees) which may arise as a result of alleged or actual cross-contamination caused by any subsurface investigation or any damage or injury to underground structure, formation, body, or utilities.

13. DISPOSAL OF SAMPLES, MATERIALS AND CONTAMINATED EQUIPMENT

- A. All samples obtained pursuant to this Agreement remain the property and responsibility of CLIENT. Uncontaminated soil and rock samples or other specimens may be disposed of thirty (30) days after submission of the work product due pursuant to the Proposal. Upon written request, GOLDER will store uncontaminated samples for longer periods of time or transmit the samples to CLIENT for a mutually acceptable charge.
- B. All contaminated samples and materials (containing or potentially containing hazardous constituents), including, but not limited to soil cuttings, contaminated purge water, and/or other environmental wastes obtained pursuant to this Agreement remain the property and responsibility of CLIENT and shall be returned to CLIENT for proper disposal. All laboratory and field equipment that cannot readily and adequately be cleansed of its hazardous contaminants shall become the property and responsibility of CLIENT. All such equipment shall be charged and turned over to CLIENT for proper disposal. Alternate arrangements to assist CLIENT with proper disposal of such equipment, materials and samples may be made at CLIENT's direction and expense. In such event, CLIENT agrees to have a representative available to sign all certifications, manifests, and other documents reasonably required by GOLDER and associated with the transportation, treatment and disposal, or handling of hazardous substances, waste or materials from the project property site, and derived from GOLDER's performance of the Services, including investigation derived wastes. If such CLIENT representative is unavailable and GOLDER is required to execute any such documents on CLIENT's behalf, CLIENT acknowledges that GOLDER shall be acting only as offeror or agent on behalf of CLIENT. It is understood and agreed that GOLDER is not, and has no responsibility as, a handler, generator, operator, treater, storer, arranger, transporter, or disposer of hazardous substances, waste or materials found or identified at or around the project site property. CLIENT agrees to waive any claim against GOLDER and to defend, indemnify and hold GOLDER harmless from and against any claims, losses, damages, expenses (including, but not limited to, legal fees), and liabilities of any type arising out of the discovery and disposal of any alleged or actual hazardous substances, wastes or materials found or identified at or around the project site property.

14. CONTROL OF WORK AND JOB-SITE SAFETY

- A. GOLDER shall be responsible only for its activities and that of its employees and subcontractors. GOLDER's Services under this Agreement are performed for the sole benefit of the CLIENT and no other entity shall have any claim against GOLDER because of this Agreement or the performance or nonperformance of Services hereunder. GOLDER will not direct, supervise or

control the work of other consultants and contractors or their subcontractors. GOLDER does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any other contractor, subcontractor, supplier or other entities furnishing materials or performing any work on the project.

- B. Insofar as job site safety is concerned, GOLDER is responsible only for the health and safety of its employees and subcontractors. Nothing herein shall be construed to relieve CLIENT or any other consultants or contractors from their responsibilities for maintaining a safe job site. GOLDER shall not advise on, issue directions regarding, or assume control over safety conditions and programs for others at the job site. Neither the professional activities of GOLDER, nor the presence of GOLDER or its employees and subcontractors, shall be construed to imply that GOLDER controls the operations of others or has any responsibility for job site safety.

15. PUBLIC RESPONSIBILITY

CLIENT has a duty to comply with applicable codes, standards, regulations and ordinances, with regard to public health and safety. While GOLDER performs the Services it will endeavor to alert CLIENT to any matter of which GOLDER becomes aware and believes requires CLIENT's immediate attention to help protect public health and safety, or which GOLDER believes requires CLIENT to issue a notice or report to certain public officials, or to otherwise comply with applicable codes, standards, regulations or ordinances. If CLIENT decides to disregard GOLDER's recommendations in these respects, (i) GOLDER shall determine in its sole judgment if it has a duty to notify public officials, and (ii) GOLDER has the right immediately to terminate this Agreement upon written notice to the CLIENT and without penalty.

16. NOTIFICATION AND DISCOVERY OF HAZARDOUS MATERIALS

- A. Prior to commencing the Services and as part of Project Information defined in Article 10, Data and Information, CLIENT shall furnish to GOLDER all documents and information known to CLIENT that relate to past or existing conditions of the site and surrounding area, including the identity, location, quantity, nature or characteristics of any hazardous materials or suspected hazardous materials or subterranean utilities. GOLDER may rely on such information and documents. CLIENT hereby warrants that, if it knows or has any reason to assume or suspect that hazardous materials may exist at the project site, it has so informed GOLDER.
- B. CLIENT acknowledges that if unanticipated hazardous materials or suspected hazardous materials are discovered on the project site property or on properties surrounding or adjacent to such site, it is CLIENT's responsibility, and not GOLDER's, to inform the owner of any affected property not owned by CLIENT of such discovery. CLIENT also recognizes that any such discovery may result in a significant reduction of the property's value. CLIENT waives any claim against GOLDER and agrees to defend, indemnify and hold harmless GOLDER from any claim or liability for injury or loss of any type arising from the discovery of hazardous materials or suspected hazardous materials on the project property site or on surrounding property, whether or not owned by CLIENT. CLIENT agrees that discovery of unanticipated hazardous materials shall constitute a changed condition for which GOLDER shall be fairly compensated.

17. TERMINATION

Either party may terminate this Agreement as a result of a material breach of the other party if the other party does not commence and continue to cure the breach within thirty (30) days of receipt of written notice of the breach from the non-breaching party. In the event of termination, GOLDER shall be paid for Services performed to the termination notice date, reasonable termination expenses, and a portion of its anticipated profits not less than the percentage of the contract services performed as of the termination notice date. GOLDER may complete such analyses and records as are necessary to complete its files and may also complete a report on the Services performed to the date of notice of

termination or suspension. The expenses of termination or suspension shall include all direct costs of GOLDER in completing such analyses, records and reports.

18. DISPUTES

- A. All disputes, claims, and causes one party makes against the other, at law or otherwise, including third party or "pass-through" claims for indemnification and/or contribution, which amount to a claim of more than \$50,000 shall be initiated, determined, and resolved by arbitration in accordance with the American Arbitration Association and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, any claims by GOLDER against CLIENT involving failure to make payment pursuant to Article 2, Invoices and Payment Terms, as well as an alleged misappropriation or misuse of GOLDER's Intellectual Property pursuant to article 19, or confidential information may be resolved through any legal or equitable means or any form of alternative dispute resolution.
- B. In the event that one party makes a claim against the other, at law or otherwise, and then fails to prove such claim, then the prevailing party shall be entitled to all costs, including attorneys' fees incurred in defending against the claim.

19. INTELLECTUAL PROPERTY

- A. If the Services require GOLDER to provide CLIENT with the right to use or access proprietary GOLDER software, programs, information management solutions, hosting services, technology, designs, information or data ("GOLDER Products"), GOLDER grants CLIENT during the term of the project a non-exclusive, non-transferable, non-assignable license to use the GOLDER Products for CLIENT's internal purposes, solely in connection with the Services. Except for this limited license, GOLDER expressly reserves all other rights in and to the GOLDER Products.
- B. GOLDER's Right to Use CLIENT Materials - If the Services require CLIENT to provide GOLDER with the right to use or access proprietary CLIENT software, programs, technology, information or data ("CLIENT Products"), CLIENT grants GOLDER a perpetual, non-exclusive, non-transferable, non-assignable, royalty free world-wide license to use and access the CLIENT Product as necessary to provide CLIENT with Services.
- C. Intellectual Property General - GOLDER shall own all Intellectual Property (as hereinafter defined) associated with the Services and the GOLDER Products, together with any modifications, updates or enhancements to said Intellectual Property. GOLDER grants no right or license to such Intellectual Property to CLIENT except as expressly provided in this Agreement. CLIENT conveys to GOLDER any interest in any such Intellectual Property rights that, notwithstanding the foregoing, would otherwise be deemed by law to vest in CLIENT. "Intellectual Property" includes patents, patent applications, trademarks, trademark applications, copyrights, moral rights or other rights of authorship and applications to protect or register the same, trade secrets, industrial rights, know-how, privacy rights and any other similar proprietary rights under the laws of any jurisdiction in the world. GOLDER may use and publish the CLIENT's name and give a general description of the Services rendered by GOLDER for the purpose of informing other clients and potential clients of GOLDER's experience and qualifications.
- D. GOLDER shall use reasonable efforts to provide the Services without infringing on any valid patent or copyright and without the use of any confidential information that is the property of others; provided, however, reasonable efforts of GOLDER shall not include a duty to conduct or prepare a patent or copyright search and/or opinion. If GOLDER performs its Services in a manner consistent with the above, then to the fullest extent permitted by law, CLIENT shall indemnify, defend and hold harmless GOLDER and its officers, directors, agents and employees against all liability, cost, expense, attorneys' fees, claims, loss or damage arising from any alleged or actual patent or copyright infringement resulting from the Services under this Agreement.

20. INFORMATION MANAGEMENT

- A. CLIENT acknowledges that electronic media is susceptible to unauthorized modification, deterioration, and incompatibility and therefore CLIENT cannot rely upon the electronic media versions of the Documents. In the event of any discrepancy, GOLDER's hardcopy shall prevail.
- B. Some GOLDER Products may be offered to CLIENT via the Internet and some GOLDER Products may utilize wireless radio communications. Atmospheric, meteorological, topographical and other conditions can affect the performance of any wireless device, software or technology (including, but not limited to information management solutions, hosting services, ftp and extranet services), just as application size, traffic, bottlenecks and other conditions can affect Internet access and upload and download speeds. CLIENT acknowledges that these types of conditions and other similar conditions are beyond the reasonable control of GOLDER and that GOLDER makes no representations or guarantees that CLIENT will be able to access any particular GOLDER Product at any given time without any error or interruption.

21. MISCELLANEOUS

- A. This Agreement supersedes all other agreements, oral or written, and contains the entire agreement of the parties. No cancellation, modification, amendment, deletion, addition, waiver or other change in this Agreement shall have effect unless specifically set forth in writing signed by the party to be bound thereby. Titles in this Agreement are for convenience only.
- B. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns provided that it may not be assigned by either party without consent of the other. It is expressly intended and agreed that no third party beneficiaries are created by this Agreement, and that the rights and remedies provided herein shall inure only to the benefit of the parties to this Agreement.
- C. CLIENT acknowledges and agrees that GOLDER can retain subconsultants, who may be affiliated with GOLDER, to provide Services for the benefit of GOLDER. GOLDER will be responsible to CLIENT for the Services and work done by all of its subconsultants and subcontractors, collectively to the maximum amount stated in Article 7 Limitation of Liability. CLIENT agrees that it will only assert claims against and seek to recover losses, damages or other liabilities from GOLDER and not GOLDER's affiliated companies. To the maximum extent allowed by law, CLIENT acknowledges and agrees it will not have any legal recourse, and waives any expense, loss, claim, demand, or cause of action, against GOLDER's affiliated companies, and their employees, agents, officers and directors.
- D. No waiver of any right or remedy in respect of any occurrence on one occasion shall be deemed a waiver of such right or remedy in respect of such occurrence on any other occasion.
- E. All representations and obligations (including without limitation the obligation of CLIENT to indemnify GOLDER in Article 6 and the Limitation of Liability in Article 7) shall survive indefinitely the termination of the Agreement. CLIENT acknowledges that it may not use GOLDER's name or any reference to the Services in any press release or public document without the express, written consent of GOLDER.
- F. Any provision, to the extent found to be unlawful or unenforceable, shall be stricken without affecting any other provision of the Agreement, so that the Agreement will be deemed to be a valid and binding agreement enforceable in accordance with its terms.
- G. All questions concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be governed by the laws of Georgia unless the law of another jurisdiction must apply for this Agreement to be enforceable.

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- H. All notices required or permitted to be given hereunder, shall be deemed to be properly given if delivered in writing via facsimile machine, e-mail, regular mail, hand delivery or express courier addressed to CLIENT or GOLDER, as the case may be, at the addressee set forth in the Proposal Acceptance Form in regard to the CLIENT, and as listed on the Proposal in regard to GOLDER, with postage thereon fully prepaid if sent by mail or express courier.
- I. CLIENT represents and warrants that the individual signing the Proposal Acceptance Form is an authorized representative of CLIENT and has authority to bind the CLIENT.
- J. CLIENT represents and warrants that the individual signing the Proposal Acceptance Form is an authorized representative of CLIENT and has authority to bind the CLIENT. CLIENT also represents that any "purchase order" type document which CLIENT may issue subsequent to executing this Agreement, shall be for administrative or accounting purposes only, and that this Agreement shall supersede any such terms or conditions attached thereto in governing the performance of the Services



GOLDER ASSOCIATES INC.
PROPOSAL ACCEPTANCE FORM
(Terms and Conditions)

PROPOSAL NUMBER: P16 69579

RE: Assessment of Vibration Criteria Regulations for Quarry Blasting, City of Augusta, Maine

SUBMITTED this 11th day of January, 2017

BY: Mark S. Peterson, for Golder Associates Inc.

The Proposal dated 1/11/17, attached hereto and the Golder Associates Inc. Terms and Conditions (GAIUS F34 RL4, dated 4/2015), comprise the entire Agreement between Golder Associates Inc. and Client.

ACCEPTED this _____ day of _____, 20____.

BY: _____
(Authorized Representative's Signature on Behalf of Client)

NAME: (Print or Type) _____

TITLE: (Print or Type) _____

FOR: Client Name and Address (Print or Type)

Phone: _____ Fax: _____

Please address invoices to:	Please address deliverables and notices to:
	Same as invoices: Yes / No, address to:
ATTN:	ATTN:

BY:
(Authorized Representative's Signature on Behalf of Golder Associates Inc.)

NAME: (Print or Type) Mark S. Peterson

TITLE: (Print or Type) Principal