STATE OF MAINE
COUNTY OF YORK
CITY OF SACO

I. CALL TO ORDER – On Monday, August 19, 2013 at 7:03p.m. a Council Meeting was held in the City Hall Auditorium.

II. ROLL CALL OF MEMBERS – Mayor Johnston conducted a roll call of the members and determined that the Councilors present constituted a quorum. Councilors present: David Tripp, Leslie Smith Jr., Marie Doucette, Philip Blood, Arthur Tardif, Eric Cote and Marston Lovell. City Administrator Rick Michaud was also present.

III. PLEDGE OF ALLEGIANCE

IV. GENERAL

DRIVE-IN SEEKS VOTES IN CONTEST

The Saco Drive-In located on Route 1, is one of many drive-ins nationwide vying to win a contest that will allow them to continue to bring a family entertainment favorite of the past into the future. They have entered Honda’s Project Drive-In contest sponsored by Honda Motor Company. Each of the top five drive-ins chosen through the contest will receive a digital projector, which the film industry is now requiring due to digital conversion. If the drive-in does not win the contest, it will be forced out of business unless it can raise $75,000 to buy the equipment. The contest only requires votes for the drive-in to win. To vote for the Saco Drive-In go to http://projectdrivein.com/#vote_7 or text the word VOTE7 to 444999. Individuals are allowed to vote once per day by text and once per day online.

V. AGENDA:

A. STREET LIGHT INSTALLATION POLICY AMENDMENT

The City Council adopted the Street Light Installation Policy on January 6, 1992. Staff members have developed a new policy based upon discussion of the process during Traffic Safety Committee meetings. It includes a process for removal of streetlights as well, and clarifies the responsibilities of staff in evaluating the need for the installation or removal of lights.

The Council discussed this at the Workshop on August 5, 2013.

Councilor Lovell moved, Councilor Tardif seconded “Be it ordered that the City Council approve the following Policy in the document titled, ‘City of Saco Street Light Policy, dated, August 9, 2013’. ” Further move to approve the order. The motion passed with seven (7) yeas.

City of Saco
Street Light Policy
08/09/2013

I. PURPOSE

The purpose of this policy is to establish a consistent and standardized process to be used by the City of Saco to determine street light installation or removal. The policy is intended to provide a procedure for review and approval or denial of street light installation and removal, and to provide an ongoing system of prioritizing the need for future placement of street lights.

Street lights are not designed to light private property, or to provide home security improvements that are the private homeowner’s responsibility. Street lights requested for protection of private property should be made directly to the appropriate utility company and the applicant is responsible for installation, operation, and maintenance costs. Also, residents have the option to install their own outdoor lighting systems for security.
II. STATEMENT OF POLICY

The purpose of street lighting is to improve the safety of vehicular and pedestrian traffic. The City of Saco will determine the placement of street lights according to the following criteria:

1. Initial installation of street lights in new developments is regulated by the Planning Board, and they are to be installed in accordance with the Planning Board approved site plan or sub-division plans.

2. The criteria for street lights requested outside of new developments shall be as follows:

Street lights should be placed along streets and roads where increased lighting is necessary for the safety of motor and pedestrian traffic. In general, locations considered for placing street lights will include:

   i. Intersections
   ii. Dangerous curves or significant changes in the roadway, whether they are horizontal or vertical.
   iii. Dead end streets and cul-de-sacs longer than 300 feet.
   iv. Street locations with a high motor vehicle accident history.
   v. Street locations where potentially hazardous or unsafe road conditions have been identified.
   vi. Other areas where public safety would be improved by the installation of street lights.

III. CRITERIA FOR INSTALLATION

Street lighting is a discretionary action. The City of Saco will consider roadway safety, costs, excess lighting onto nearby homes, and energy consumption when making recommendations and decisions about new street light installations.

IV. POLICY FOR APPROVAL OR ELIMINATION

Requests for street light installation or removal will be evaluated by the Traffic Safety Officer and Traffic Engineer and approved or denied by the Traffic Safety Committee based on the following criteria:

1. Whether the street light is needed to improve the safety of the motoring public as described in section I of this policy;
2. Whether other methods of improving safety such as the use of signs, reflectors and paint provide sufficient warning;
3. Improve safety of pedestrian crossings;
4. Budgetary constraints

V. PROCEDURE FOR EVALUATION OF NEED AND APPROVAL

The process for approval of the installation or removal of a street light or reactivation of an existing street light will begin in one of two ways: Citizen Request, or an ongoing City Review of Need.

A. Citizen Request:

1. Requests for street light installation or removal may be made by residents, business owners, institutions or other persons whose public safety is impacted.
2. The request will be forwarded to the Traffic Safety Officer for a public safety evaluation of need. The Traffic Safety Officer and Traffic Engineer will conduct an evaluation of the street light application, and prepare a report of the characteristics, motor vehicle accident history, and safety considerations of the location. The evaluation shall be submitted to the Traffic Safety Committee for action.

3. If the request is denied, the Traffic Safety Officer will inform the person making the request.

4. If the request is approved, the Traffic Safety Officer shall coordinate the installation of the street light through the Public Works Department and shall inform the person making the request.

5. The actual date of installation or removal may be affected by funding budgeted annually for street lighting. The Department of Public Works will oversee the installation or removal and arrangements will be made with the appropriate utility company.

B. City Review of Need

1. The Police Department or Department of Public Works may identify potential street light needs at locations identified from routine patrol, and forward those reports to the Traffic Safety Officer.

2. The Traffic Safety Officer and Traffic Engineer will conduct an evaluation of the location, and prepare a report of the characteristics, motor vehicle accident history, and safety considerations of the location. The evaluation shall be submitted to the Traffic Safety Committee for action.

3. If the Traffic Safety Committee approves the addition or removal of a street light at the location, it will direct the Department of Public Works to contact the appropriate utility company for action.

VI. APPLICATION

Any person requesting installation or removal of a street light shall do so by completing the attached application, and mailing it to:

City of Saco Traffic Safety Officer
Saco Police Department
20 Storer Street
Saco, ME 04072

VII. EQUIPMENT

1. The Department of Public Works will determine the type and installation details of new lighting, including luminaire type, wattage, mounting height, light distribution pattern, and any other installation details.

2. The Department of Public Works will coordinate with utility companies on the removal of street lights to determine whether the street light removal necessitates additional work.

3. The Department of Public Works shall consult with the utility company to determine the feasibility of lighting technologies that reduce operating and maintenance costs for new light installations.

4. Existing poles shall be used whenever possible for new street lights. Once a street light has been removed, poles deemed unnecessary shall be removed as well.
B. SACO COMMUNITY CENTER LEASE

The Parks & Recreation Department was approached by David & October Labbe; owner operators of the Winter Harbor Children’s House, to relocate their current preschool in Biddeford Pool to the Saco Community Center.

This is a program area that we have wanted to venture into but the hurdles of becoming a licensed day care with licensed staff have proved difficult to overcome. This opportunity allows for us to receive a new revenue stream while at the same time provides us the option to run companion programming. The preschool will operate from 8:30am – 2:30pm Monday - Friday. From 2:30pm – 5:30 we will offer participants extended care through our current After School program. This program expansion will be another source of new revenue while at the same time introducing new families to what we have to offer.

The lease proposal is for a term of nine months for meeting room 104 on the first floor of the Community Center.

Councilor Smith moved, Councilor Lovell seconded "Be it Ordered that the City Council authorize the City Administrator to execute the document titled, ‘Commercial Lease by and between the City of Saco and October and David Labbe in their individual capacity, and Winter Harbor Children’s House, Inc.” lease agreement with Winter Harbor Children’s House.” Further move to approve the Order. The motion passed with seven (7) yeas.
COMMERCIAL LEASE

THIS LEASE AGREEMENT, entered into this ____________ day of 2013, is by and between the City of Saco, a municipal corporation, having a principle place of business at 300 Main Street, Saco, Maine (hereinafter referred to as “The City” or “Landlord”) and October and David Labbe of 17 Richards Way Saco, ME 04072 in their individual capacity (hereinafter “Guarantors”), and Winter Harbor Children’s House, Inc, a Maine Corporation, (hereinafter referred to as “Tenant”). This Lease shall constitute the entire agreement between the City and the Tenant regarding the parties’ rights and obligations pertaining to the Saco Community Center (“The Community Center” or the “Premises”) at 75 Franklin Street, Saco, Maine.

WITNESSETH:

1. PREMISES. The City owns a Community Center at 75 Franklin Street, Saco, Maine, which space houses the City’s Parks & Recreation offices and from which it operates numerous program activities and special events, all in accordance with the Parks & Recreation Facility Use and Reservation Policy. A portion of the interior of the Community Center is hereby leased to and for the use of Tenant (“the Leased Premises”), said area identified as set forth below:

a. A description and floor plan of the Leased Premises is affixed hereto as Tab 1. The Tenant leases one meeting room on the first floor designated as Room 104. The Leased Area does not include any other portions inside the building or the outside grounds.

b. This Lease does not include any separate bathroom facilities, but Tenant and Tenant’s invitees may otherwise avail themselves of the public restrooms within the Community Center

c. This Lease does not include any separate recreational facilities; however, Tenant and its invitees may use the outdoor facilities daily as long as such use does not conflict with the City’s use. The City shall always have priority of use as to any space at the Premises except as otherwise set forth herein.

d. ELECTION DAYS AND EMERGENCY EVENTS:

   i. For any election day, the Tenant may open and operate inside premises; however, the City cannot assure parking spaces will be available for any employee, agent or invitee of the Tenant.

   ii. In the event of a local, state, or national emergency, City reserves the right, in its sole and exclusive judgment, to limit Tenant’s access and use of the premises for as long as needs dictate. The City will abate Tenant’s rent for that period of time Tenant is displaced by said emergency.

2. TERM. The Tenant shall have and hold the Leased Premises, unless sooner terminated, for a term of nine (9) months, which term commences September 1, 2013 and shall run until May 31, 2014 with an option to extend into the month of June on a weekly prorated basis. The tenant shall have up to 7 days prior to September 1st and 7 days after May 31st for setup/clean up.
3. RENT. The annual rent is $7,200 per year, divided into nine (9) equal monthly payments of $800.00. Said rent shall be payable on the first day of each month. Payments made more than fourteen (14) days after the due date are subject to a $100.00 late fee, and interest accruing at twelve (12) percent interest. A security deposit of 2 months’ rent is due at signing, and will be returned within 7 days of termination of the Lease provided the Leased Premises is returned broom clean, reasonable wear and tear accepted.

4. STAFFING OF COMMUNITY CENTER. The City shall be responsible for staffing the Community Center and all other space excluding the Leased Premises during its operating hours. The Tenant shall be responsible for staffing the Leased Premises, and at no time shall there be less than one adult at the Premises any time it is open and in operation.

5. HOURS OF OPERATION. The preschool will operate Mondays - Fridays from 8:30 am to 2:30 pm and will follow the RSU #23 School Calendar, or the Saco MSAU School Calendar should the City ever separate from RSU 23. Any deviation of these hours must be approved in writing by the City at least 48 hours in advance. Tenant shall be provided a two (2) keys to Room 104 (the Leased Premises) and one (1) exterior font door key. Tenant covenants not to re-produce or otherwise copy or distribute any keys to its premises to any third party without City consent and pre-approval.

6. SACO PARKS & RECREATION USE OF LEASED PREMISES. Saco Parks & Recreation has the right to use the Leased Premises to run companion programming when the preschool is not in session as well as scheduled and unscheduled school days off.

7. COMMON AREA CLEANING AND SUPPLIES. The City shall be responsible for all care, upkeep, and cleaning of the Community Center, including the Leased Space. The City shall provide supplies for the public restrooms and common areas at the Community Center including but not limited to toilet paper, paper towels and hand soap. The City shall not, however, provide at the Community Center, or to Tenant or the Leased Premises, with diapers, wipes, and facilities for the disposal of diapers.

8. UTILITIES. The City will pay all heat, water, electric, air conditioning and sewer fees related to the entire Community Center, including the Leased Space. The Tenant, however, will pay for all of its own set-up, service, usage fees and/or costs for telephone, cable and internet services or lines that it uses on site.

9. TRASH AND RECYCLING. The Tenant shall participate in the City’s recycling and waste reduction programs, as they are amended from time to time. The City shall provide the Tenant, at no cost, recycling carts for the handling and disposal of all its materials, waste and recyclables. The City shall collect and dispose of the Tenant’s waste and recycling materials for so long as the Tenant participates in the City’s recycling programs.

10. PARKING. The City shall maintain all parking spaces associated with Community Center. The Tenant shall have all of its employee’s park in the employee parking lot on the southerly side of the Community Center (opposite side from the main entrance). All parking shall be public, on a first come, first serve basis.

11. PERMITTED USES.

   a. The Tenant shall use the Leased Premises solely for the purpose of operating a Montessori Multiage Preschool Program. It may not use the Leased Premises for any other purposes without the written consent of the City. No trade or occupation shall be conducted in the Leased Premises which will be unlawful, improper, noisy or offensive, or contrary to any state or federal law, regulation, or any municipal by-law or ordinance.
b. It shall be Tenant’s responsibility to assure that any use conducted within the Leased Premises is safe, and conducted or operated pursuant to all applicable local building, plumbing, electrical and Life-Safety Codes (“City Codes”). The failure of the Tenant to correct any such deficiency or to abate the use or operation in contravention of such City Codes shall constitute a breach of this Lease.

c. In no event or circumstances shall the Tenant bring onto the Leased Premises, or store within it any toxic, explosive, special or hazardous materials or waste, nor in any manner or form violate Maine’s Hazardous Waste Acts (38 MRSA, Sections 1301, et. Seq. and 1351 et seq.), and the following Federal Acts: Comprehensive Environmental Response, Compensation and Liability Act of 1990 (“CERCLA”) as Amended; and 42 U.S.C. 6921, et seq. (“Solid Waste Disposal Act”), as Amended.

d. In no event shall the Tenant, or any employee or agent of the Tenant, interfere with the routine and customary operations of the Saco Parks & Recreation Department, its personnel, or of the City and its personnel, agents and contractors.

12. QUIET ENJOYMENT. The Tenant shall peacefully and quietly enjoy the Leased Premises for the intended purposes without disturbance of the City. A reciprocal duty is owed by the Tenant to all others. It shall be a breach of this Lease for Tenant or any employee, agent or guest of the Tenant to cause disturbance, or to threaten, intimidate or interfere with any other tenants or guests at the premises, or the City.

13. MAINTENANCE, REPAIRS, ALTERATIONS, IMPROVEMENTS.

(a) The Tenant agrees to keep the entire interior of the Leased Premises in a reasonably neat, clean and sanitary condition.

(b) The City of Saco agrees to undertake all maintenance and repair responsibilities for the interior and exterior of the Community Center, including the Leased Premises, except in those cases where the repair and/or damage is caused in whole or part by the fault, neglect or negligence of the Tenant. The City shall be responsible for all salting, sanding, plowing and winter care of the facility.

(c) The Tenant shall make no alterations in, or additions or improvements to the Leased Premises, without first obtaining the City’s written consent, to such alterations and improvements.

(d) Any alterations or additions authorized by the City to the Leased Premises shall be performed with reasonable care, and in a workmanlike manner, and shall be at Tenant’s cost unless otherwise agreed in writing.

14. INSURANCE AND INDEMNIFICATION.

(a) The Tenant shall defend, indemnify and hold the City harmless from and against any and all claims, actions, damages, liabilities, judgments, costs, fees, and fines (hereinafter “Claims”) which claims arise from, or relate in any way to, Tenant’s lease of, use, and/or occupancy of the Leased Premises, the Parties expressly intending that this obligation to defend and indemnify be read as broadly as possible.

(b) The Tenant shall provide and maintain, at all times this Lease is in effect, comprehensive general liability insurance, which policy shall name the City of Saco as an additional insured covering the Leased Premises alone. The Tenant shall have no duty to insure other non-leased portions of the Premises.
20. NOTICES. Any notice or communication relating to this Lease shall be deemed duly given if in writing and sent by certified mail, postage addressed as follows:

To Tenant:    Winter Harbor Children’s House, Inc
             D/B/A Saco Bay Montessori School
             75 Franklin Street Saco, ME 04072

To Guarantors:    October and David Labbe
                  17 Richards Way
                  Saco, ME 04072

To Landlord:    City of Saco
                c/o City Administrator
                300 Main Street
                Saco, Maine 04072

21. PARTIAL PAYMENT/NO WAIVER OF RIGHTS. The acceptance of a check or cash by the City for a lesser amount than the full rent with an endorsement or statement thereon, or upon any letter accompanying such check, to the effect that such lesser amount constitutes payment in full shall be given no effect. The City may accept such funds without prejudice to any other rights or remedies which it may have against the Tenant.

22. RECORDING. The Parties agree that this Lease or a memorandum thereof may be recorded.

23. SURRENDER. The Tenant shall at the expiration of this Lease remove all of its goods and effects from the premises within seven (7) business days. The Tenant shall deliver to the City all keys, locks thereto; and other fixtures which the City does not request the Tenant to remove, in the same condition as they were at the commencement of the term, or as they were put in during the term hereof, reasonable wear and tear excepted.

24. SUBORDINATION. The Tenant agrees this Lease and its Tenancy shall be subordinate to any Mortgage or Deed of Trust now on the property, and/or any time in the future. The Tenant agrees to execute, at request of any lender, such documents as may be reasonably necessary to effectuate the subordination of this Lease Agreement.

25. EXTERIOR SIGNAGE. The Tenant shall not install any exterior signage.

26. INTERIOR SIGNAGE. The Tenant may install a temporary interior sign within the premises for the purpose of directing it’s patrons to its location but any such signage shall be installed in cooperation, and with the final approval of, the City as to size and location.

27. NO SMOKING POLICY. The Tenant, employees, agents and guests are prohibited from smoking in any part of the building or grounds.

28. GOVERNING LAW. This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of Maine.
29. GUARANTY: October Labbe and David Labbe, knowingly and intentionally, both jointly and severally, unconditionally guarantee and warrant the full performance of all the terms and conditions of this Lease by Winter Harbor Children’s House, Inc, including payment of all rents, regardless of the performance or non-performance of Winter Harbor Children’s House, Inc, it being their intention to assure the City of performance of all obligations without necessity or condition that the City call first upon Winter Harbor Children’s House, Inc., and with or without default of Winter Harbor.

IN WITNESS WHEREOF, the parties hereto have set their hand and seals on and as of the date first set forth above.

WINTER HARBOR CHILDREN’S HOUSE, INC:          CITY OF SACO:

__________________________________________________________
Signature, President                                      Richard Michaud, City Administrator

October Labbe, Guarantor

David Labbe, Guarantor

C. APPROVE THE THORNTON ACADEMY AND CITY OF SACO EDUCATION AGREEMENT

In accordance with State Statute Title 20-A MRSA §1466, the residents of Saco petitioned to begin the process to withdraw from regional school unit 23.

The RSU Withdrawal Committee (Committee) was formed in August 2012. During the last year, the Committee has been working with the RSU #23 School Board to complete a Withdrawal Agreement for submission to the Commissioner of Education and subsequent approval.

According to statute, the Committee shall negotiate a withdrawal agreement with the regional school unit board and shall submit the proposed agreement to the Commissioner within 90 days after the committee is formed. The Commissioner may grant extensions of time upon the request of the withdrawal committee. The required elements of the withdrawal agreement are listed in title 20-A MRSA §1466.

The RSU 23 Board met on August 13, 2013, the Chair explained that the vote is to approve forwarding the Saco Withdrawal agreement to the Department of Education (DOE) for vetting by the Commissioner and his staff to make recommendations, if necessary, or if no changes to the agreement then to schedule two public sessions. The board voted to “approve the forwarding of the Saco Withdrawal Agreement to the DOE and authorize the Chair to sign the withdrawal agreement on behalf of the RSU. After discussion the vote was unanimous. “

One element of the withdrawal agreement is to have drafted a contract for secondary education in the event that the voters approve withdrawal from RSU 23 in November 2013. The authorization to sign the contract with Thornton Academy is the issue being addressed at this time.

Councilor Blood moved, Councilor Lovell seconded “The City Council moves that the Withdrawal Committee forward the August 1, 2013 Withdrawal Agreement onto the Maine Department of Education at the earliest opportunity”. 
Councilor Tardif moved, Councilor Tripp seconded to move the question.

Mayor Johnston turned the gavel over to Deputy Mayor Blood to preside over the meeting, so that he could address the Council regarding the proposed Thornton Academy agreement. After he was done addressing the Council, he took back the gavel and presided over the rest of the meeting.

Some residents asked to address the Council pertaining to the proposed Thornton Academy agreement. It was noted by some Council that there would be a public hearing in the near future where questions could be addressed and comments made at that time.

Mayor Johnston called for a vote on the motion to “move the question”. The motion passed with five (5) yea and two (2) nays – Councilors Smith and Cote.

Mayor Johnston called for a vote on the main motion. The motion passed with five (5) yea and two (2) nays – Councilors Smith and Cote.

**CONTRACT FOR EDUCATION OF SECONDARY PUPILS BETWEEN THORNTON ACADEMY AND THE CITY OF SACO**

This contract is made this 5th day of August, 2013, for a term beginning August 1, 2014 and ending June 30, 2024, by and between the Trustees of Thornton Academy, a corporation established by Act of the General Court of the Commonwealth of Massachusetts, February 16, 1811, as amended by the Legislature of the State of Maine by Chapter 99 of the Special Laws of 1820-1828 and by Chapter 500 of the Acts and Resolutions of the State of Maine for the year 1885 (hereinafter “The Academy), and the City of Saco, a municipal corporation, 300 Main Street, Saco, Maine (hereinafter “the City” or “Saco”) pursuant to 20-A M.R.S.A. § 1466 who state as follows:

**INTRODUCTION**

The parties intend herein to create a binding Agreement from the moment of execution. This Agreement, however, is subject to the condition subsequent described in Section 15. The City has paid the Academy a sum of $1.00 as additional consideration for this Agreement.

1. **Educational Services.** The Academy agrees to provide secondary education (meaning grades 9 through 12 inclusive) for all secondary students who qualify as legal residents of City of Saco under Maine law, for the ten year period beginning July 1, 2014 and ending June 30, 2024. The City agrees to send all secondary students who qualify as legal residents of the City of Saco under Maine law, for a ten year period beginning July 1, 2014 and ending June 30, 2024; with the exception of any student whose Individual Education Plan (hereinafter “IEP”) or 504 team determines should attend a different school. Such education shall include the courses and programs normally included within the curriculum of the Academy as determined by the Trustees of the Academy, and shall comply with all applicable provisions of Maine law and regulations, as amended from time to time.

Notwithstanding the preceding, and in acknowledgement of Section C and E of the Withdrawal Agreement reached between Saco and Regional School Unit 23 (hereinafter “RSU 23”), the Parties herein agree that as to those Saco residents enrolled in any of the following
RSU 23 Schools (Jameson Elementary School, Loranger Middle School or Old Orchard Beach High School), provided such enrollment is certified by the Superintendents of RSU 23 and the Saco Schools as of October 1, 2014, then those Saco students alone may attend either Thornton Academy or Old Orchard Beach High School. If the parents or guardians of such students choose for the student to attend Thornton Academy, then they shall be counted for tuition purposes under Section 5 below, but if they attend Old Orchard Beach High School, they shall not be counted towards tuition, and such attendance shall not be deemed a breach of this Agreement.

2. **Resident Students.** The City shall make all determinations with respect to the status of any student as to residency, and it shall not be financially responsible for any student unless it has certified to Thornton Academy that student’s residency is in Saco. If there is a dispute over the residency or guardianship status of any student, the parties shall meet to resolve the matter. For purposes of determining the number of residents for whom tuition shall be charged as set forth in additional detail below in Section 5, both Thornton Academy and the City agree that the calculation of students will be based on the average of the October and April state reporting student counts (see line 11 of the EPS formula).

3. **Accreditation.** The Academy agrees that it will maintain itself as an approved school under the provisions of 20-A M.R.S.A. § 2901(l) and (2)(A) and 2951, and will maintain its accreditation by the New England Association of Schools and Colleges, Inc. (NEASC). The Academy shall also meet all applicable legal standards for the operation of a private school under Maine law.

4. **Status as Private School.** The parties understand that the Academy is and will remain a private school. It shall maintain the right to determine its curriculum, its educational and deportment standards, its student body, faculty, staff and operations, provided, however, that all such actions shall be in conformity with the provisions of this contract and applicable Maine law.

5. **Tuition.**
(a) During the period July 1, 2014 through June 30, 2015, the City of Saco shall pay to the Academy a per student regular education tuition of the greater of $9,232 or 100% of Maine Average Tuition for each resident student attending Thornton Academy on October 1, 2014. If the tuition rate of $9,232 exceeds 104% of Maine Average Tuition, then the tuition rate shall be limited to 104% of Maine Average Tuition.

(b) During the period of July 1, 2015 through June 30 2016, the City of Saco shall pay to the Academy a per student regular education tuition of the greater of $9,417 or 100% of Maine Average Tuition for each resident student attending Thornton Academy on October 1, 2015. If the tuition rate of $9,417 exceeds 104% of Maine Average Tuition, then the tuition rate shall be limited to 104% of Maine Average Tuition.

(c) During the period July 1, 2016 through June 30, 2024, the City of Saco shall pay to the Academy a per student regular education tuition rate to be negotiated and subject to the provisions of 20-A M.R.S.A., Section 5806. Tuition negotiated pursuant to this paragraph shall not be less than 100% of Maine Average Tuition for the immediate prior year or greater than 104% of Maine Average Tuition for the same year.

(d) In addition to the tuition indicated in previous sections (a) thru (c), the City of Saco shall also pay to the Academy a per student insured value factor ("IVF") subject to the provisions of 20-A M.R.S., Section 5806 (2) and these limitations. For the year 2014-15, Saco shall pay the Academy IVF at the rate of 6% of the Academy’s tuition rate per student. The rate for 2015-16 shall be 7% of the Academy’s tuition rate per student. For all years thereafter, and until the termination of the Agreement, the IVF rate shall be determined pursuant to 20-M.R.S. Section 5806 (2), as amended from time to time. If during any year of the term of this agreement, the payment of IVF should be eliminated or reduced below 7% by the Maine Legislature, Saco must pay additional tuition in an amount that will restore the IVF funding lost by the Academy to the level of 7% of the Academy’s tuition rate per student.


(a) The Academy shall provide all special education services to Saco students required by the IEP prepared by each student’s IEP Team to the extent that the Academy has an appropriate program to meet the terms of the IEP and applicable requirements of Maine law and regulations. Except for short term programming changes of not more than 10 school days, decisions about whether the Academy can implement the terms of the IEP and whether the
Academy has an appropriate program or placement for a student pursuant to the requirements of the IEP shall be made by the Academy after a careful review of the IEP for the student, and in consultation with Saco’s Special Education Director.

(b) The cost of the special education services provided by the Academy to Saco students pursuant to this agreement is not included in the tuition payments set forth in Section 5 above. Accordingly, by March 1st annually a budget for all separate courses, programs and any direct services for students with special needs will be developed by the Academy's Headmaster and Saco’s Superintendent of Schools. Saco shall pay for all separate courses, programs and any direct services provided to Saco special education students. The City agrees that it is legally required to pay for all special education services ordered by the IEP Team for Saco students, in accordance with applicable state special education regulations, currently found at Maine Unified Special Education Regulations, ch. 101, § XVIII.3 (F) (May, 2012).

(c) Saco’s Director of Special Services shall be the City’s representative for special education programming, of the IEP Team process, and shall supervise the student evaluation process for Saco students at the Academy. In the event that the IEP Team is unable to reach consensus on issues that are the responsibility of the Team, Saco's representative at that Team meeting shall make the decisions on those issues, subject to the parent's due process rights in relation thereto. Academy personnel, upon request, will provide Saco's Director of Special Services with the classroom observation and academic testing components of the student evaluation process. Academy personnel will work with RSU 23's Director and/or Assistant Director of Special Services and other staff and, upon request will provide the Director and/or Assistant Director of Special Services with information regarding classroom observations, student performance, academic achievement testing and functional behavior assessment components of the student evaluation process. Additionally, Saco staff will be included in the Academy professional development and staff meetings to maximize collaboration between the parties.

(d) The Academy shall require its special education teachers and coordinator, in addition to all other special education staff, to maintain full state certification required for their job functions.

(e) The Academy shall comply with all of the state and federal special education legal requirements for Saco students enrolled at the Academy. Saco has all of the
responsibilities set forth in applicable state statutes and special education regulations for educating Saco students with disabilities attending the Academy pursuant to this contract. In the event that a program or placement does not currently exist at the Academy to meet the needs of a disabled Saco student, as determined by the IEP Team, the Academy and Saco shall work cooperatively to develop such a program or placement if it is feasible to do so pursuant to Sections 6(a) and 6(b) above.

7. **Rules and Discipline.** The parties understand that the Academy is an independent, private school and that the Academy has the sole right to promulgate, administer and enforce all rules and regulations pertaining to student behavior, discipline, and use of the buildings and grounds of the Academy, subject to this contract and all applicable Maine and Federal laws, rules and regulations. Saco grants to the Trustees of the Academy any authority it may have for expulsion under the provisions of 20-A M.R.S.A. Section 1001 (9). The Trustees may choose to delegate that authority to a subcommittee of the Trustees or to the Headmaster. In the event that the Headmaster chooses to expel a student after giving the student and his or her family an opportunity to respond to the charges, the student and his or her family may appeal that decision to a hearing before a subcommittee of the Trustees. The Academy also agrees that when Academy administrators exercise their authority to suspend Saco students for violations of school rules, they shall provide those students with an opportunity to give an account of the incident subject to the discipline, and shall give due consideration to the accounts so provided.

8. **Transportation.** Throughout the term of this agreement the City shall provide all transportation for Saco students to and from the Academy. Transportation costs for sports and other extra-curricular activities shall be paid by the Academy.

9. **Compliance with Federal and State Requirements.** The Academy and Saco shall comply with all applicable federal and state statutes and regulations.

10. **Operative Term.** This Agreement shall be operable for a term of ten (10) years, commencing on July 1, 2014 and ending on June 30, 2024. The parties will begin good faith negotiations for a contract renewal not later than September 1, 2023.
11. **Termination.** The Academy may terminate the contract without penalty with two years written notice if there are significant and material changes in funding of public education, with the exclusion of changes to IVF which are addressed above in Section 5d, on the state and/or local level, including but not limited to any action taken by the Maine Legislature, the Saco School Board, the City of Saco or the Saco voters, which, in the reasonable judgment of the Academy, adversely and materially affects the Academy’s ability to maintain both legally required minimum state educational standards and its own standards, quality of program and/or program offerings. If the Academy violates any laws or standards governing the education of students covered herein, the City must immediately inform the Academy of the alleged violation and the Academy will have six (6) months from the date of the notice to cure the violation. If the Academy is unable to or fails to cure the violation, the City may terminate this agreement upon 1 year’s notice following the determination that the Academy has failed or been unable to cure the violation.

12. **Arbitration.** Any dispute between the parties, except for those arising under paragraph 11, arising under or relating to this contract shall be resolved by an arbitration, to be conducted by a single arbitrator selected in accordance with the rules then in effect of the American Arbitration Association or, upon the mutual agreement of the Trustees and Saco of a single arbitrator jointly selected by them. The arbitrator so selected shall promptly conduct an arbitration and render a written decision resolving the dispute, which shall be binding upon the parties. The costs for the services of the arbitrator, including per diem expenses, necessary travel and subsistence expenses, and the cost of a hearing and transcript, if any, shall be shared equally by the Academy and Saco. All other costs, including legal fees if any, will be paid by the party incurring such costs.

13. **Savings Clause.** If any provision hereof is unenforceable or declared invalid, in whole or in part, under the laws of the State of Maine, the remainder of this Agreement and the application of such provisions or part thereof shall not be affected thereby. Modifications, amendment or waiver of any of the provisions herein, to be effective, must be agreed upon in writing by both parties.
14. **Maine Law.** This Agreement shall be governed by the laws of the State of Maine.

15. **Referendum Approval.** This contract shall become binding upon execution but shall only come into effect and operation upon a vote of the Citizens of Saco vote to separate from Regional School Unit 23, and form their own independent municipal school administrative unit, in November 2013. In the event that the ballot question authorizing the withdrawal of Saco from Regional School Unit 23 is not approved by the Saco Citizens, then this Agreement shall thereupon be rendered null and void, and the parties shall have no further obligations thereunder, otherwise to remain in force and effect. The parties recognize that should the ballot question authorizing the City of Saco’s withdrawal from Regional School Unit 23 not be approved and this contract is rendered null and void, if Thornton Academy continues to educate some or all of Saco’s students, Saco’s obligation to pay Thornton Academy would continue pursuant to applicable and existing contract between RSU 23 and Thornton Academy.

16. **Tuition Credit/Deficit for 2013-2014 School Year.** The Parties recognize they are entering an agreement at this time while an existing contract with RSU 23 regarding educational services remains in effect, and which existing contract will run through June 30, 2014. That existing contract anticipates either a credit owed to RSU 23 from Thornton Academy or a deficit in tuition owed by RSU 23 to Thornton Academy as of June 30, 2014. Saco and RSU 23 have agreed as to the disposition of that deficit or credit as part of their withdrawal agreement (See Section D, part 3), and the Academy herein agrees to ratify and adopt the terms of that provision here as the means for resolving the 2013-2014 tuition credit or deficit.

17. **Insurance.** The parties shall maintain sufficient comprehensive general liability and/or errors and omissions coverage to cover claims which may arise in connection with the provision of educational services as required of both parties and as outlined herein. The parties shall provide proof of such coverage to each other each year of the agreement, and such coverage and shall be placed with underwriters rated A or better by the AM Best ratings firm. Maintenance of such coverage for the term of this contract shall be a material condition for both parties.
VI. ADJOURNMENT

Councilor Tripp moved, Councilor Tardif seconded to adjourn the meeting at 7:35 p.m.

Attest: ________________________________
  Michele L. Hughes, City Clerk

THORNTON ACADEMY:
BY:

[Signature]
Authorized Representative

[Signature]
Print Name

CITY OF SACO:
BY:

[Signature]
Rick Michaud, City Administrator