

# Addendum

Addendum items *may* be considered by the Selectboard's discretion via majority vote to do so under Other Business or out of order.

## BOS Agenda Dated:

# 11-01-2021

- A. *Versant Power Easement*
- B. *Versant Indemnification Agreement*
- C. *Appointment of Interim Officials*

## EASEMENT

**INHABITANTS OF THE TOWN OF MOUNT DESERT** a municipal corporation in Hancock County, State of Maine, (the "Grantor") being the owner in fee simple of a certain parcel of land located in the Village of Northeast Harbor, Town of Mount Desert, County of Hancock, State of Maine, and described as follows:

Being the same premises conveyed by Gerrish H. Milliken to the Inhabitants of the Town of Mount Desert by deed dated April 6, 1931, and recorded in the Hancock County Registry of Deeds in Book 633, Page 359; and Mabel S. Hayward to the Inhabitants of the Town of Mount Desert by deed dated June 12, 1916 recorded in said Registry of Deeds in Book 529, Page 142;

for consideration given, grant and convey to **VERSANT POWER**, a Maine corporation having a place of business at 970 Illinois Avenue, Bangor, Maine, and **Consolidated Communications of Northern New England Company, LLC (d/b/a Consolidated Communications NNE)**, a Delaware Limited Liability Company, with a place of business at 5 Davis Farm Road, Portland, Maine 04103, their successors and assigns forever, the receipt whereof is hereby acknowledged, the rights, privileges and easements to construct, maintain, operate and upgrade from time to time on said lands, for utility purposes, a line consisting of one pole and wires with the necessary fixtures and supports, its centerline described as follows:

beginning on the southerly bound of Old Firehouse Lane, at the northeasterly corner of said deed recorded in Book 529, Page 142; thence westerly, on said Premises, 80 feet, more or less, to a pole location 5 feet, more or less, south of said southerly bound of Old Firehouse Lane;

With the right to extend lines from the said line, either overhead or underground, to sites on the said premises and to sites northerly of Old Firehouse Lane as customers may request service, with the right to transmit electricity and intelligence over said line, and to clear and dispose of interfering trees and other growth from time to time, with permission to enter upon said lands for the above purposes; further granting to Grantees, their successors and assigns, the power to assign to others, in whole or in part, any or all of the rights, privileges and easements herein set forth.

The Grantor for itself, and its successors and assigns, covenants and agrees to and with the Grantees, their successors and assigns, that it will not erect or permit the erection of any building, trailer, mobile home, swimming pool, or other structure, of any kind or nature, within 10 feet of said centerline, any or all of which in the opinion of the Grantees, their successors and assigns, would endanger or interfere with the exercise of any of the rights, privileges and easements hereby conveyed.

IN WITNESS WHEREOF, the said Inhabitants of the Town of Mount Desert have caused this instrument to be executed by their duly authorized representatives this \_\_\_\_\_ day of November, 2021.

Inhabitants of the Town  
of Mount Desert

\_\_\_\_\_  
John B. Macauley-Chairman

\_\_\_\_\_  
Matthew Hart-Vice Chairman

\_\_\_\_\_  
Wendy Littlefield-Secretary

\_\_\_\_\_  
Martha T. Dudman-Selectperson

\_\_\_\_\_  
James F. Mooers-Selectperson

STATE OF MAINE

County of Hancock, ss:

November \_\_\_\_, 2021.

Personally appeared the above-named John B. Macauley, Matthew Hart, Wendy Littlefield, Martha T. Dudman, and James F. Mooers in their aforesaid capacities and acknowledged the foregoing instrument to be their free act and deed and the free act and deed of said corporation.

Before me,

\_\_\_\_\_  
Notary Public

Print Name of Notary: \_\_\_\_\_

## INDEMNIFICATION AGREEMENT

**This Indemnification Agreement** (“Indemnification Agreement”) dated and made effective October \_\_, 2021, is made by and between **the INHABITANTS OF THE TOWN OF MOUNT DESERT**, a municipal corporation situated in Hancock County, Maine (the “Town”) and **VERSANT POWER**, a Maine corporation having a place of business in Bangor, Maine, (“Versant”), (“Town” and “Versant” each a “Party” and collectively the “Parties”).

### WHEREAS:

- A. The Town owns certain real property located in the Village of Northeast Harbor, Mount Desert, Maine, described as follows and referred to hereinafter as “the Property”:

*Being the same premises conveyed by Gerrish H. Milliken to the Inhabitants of the Town of Mount Desert by deed dated April 6, 1931, and recorded in the Hancock County Registry of Deeds in Book 633, Page 359; and Mabel S. Hayward to the Inhabitants of the Town of Mount Desert by deed dated June 12, 1916 recorded in said Registry of Deeds in Book 529, Page 142*

- B. The Town, pursuant to and to the extent authorized by Warrant Article 65 enacted in March 2007, leased to **GREAT HARBOR MARITIME MUSEUM, A/K/A THE GREAT HARBOR COLLECTION, INC.**, (the “Museum”) that portion of the Property situated underneath (but not surrounding) the building located at 124 Main Street, Northeast Harbor, Maine situated on the Property as authorized by the language of Warrant Article 65, which reads in relevant part as follows:

*“To see if the Inhabitants of the Town of Mount Desert will authorize the Board of Selectmen to negotiate and enter into an agreement with the Great Harbor Maritime Museum for the sale of the building at 124 Main Street, Northeast Harbor, for the price of \$1.00 (one dollar) and for a concurrent lease of the land underneath the aforementioned building.”*

Subsequent to enactment of Warrant Article 65, a memorandum of the lease by and between the Town and the Museum, dated April 5, 2010, was recorded in the Hancock County Registry of Deeds in Book 5402, Page 259, which lease is subject to the limited authority provided by Warrant Article 65.

- C. The Town has requested and contracted with Versant Power to perform certain work on, over, and under portions of the Property not leased to the Museum, including but not limited to replacement of utility poles, utility lines, and related construction, which work is anticipated to commence in November 2021 and be completed within Six (6) months thereafter (hereinafter the “Project”).
- D. The Town hereby represents to Versant Power that the Town owns and has not leased to the Museum or any other party the portion of the Property where the Project is to be situated and constructed, and in furtherance of that representation, desires to provide Versant Power indemnification against any legal action, claims, judgments, costs or expenses of any kind, including any fees, penalties or attorneys’ fees, resulting from any such action or occurrence brought or caused by the Museum, or its agents, against Versant Power, related in any way to the Project.

**NOW, THEREFORE**, in exchange for the mutual consideration and promises and obligations set forth below and the representations made throughout herein, **the Parties hereby agree as follows:**

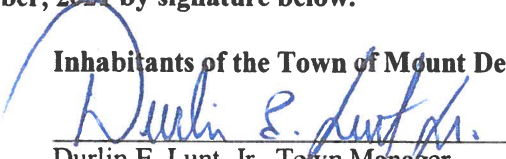
1. **The Town hereby agrees to defend, indemnify, and hold harmless Versant Power**, its officers, directors, shareholders, employees, agents, successors and other representatives, from and against any and all claims, damages (including exemplary or punitive damages), losses, expenses (including legal expenses and attorneys’ fees), liabilities, judgments, executions, awards, demands,

penalties, actions, debts, suits, indemnities, expenditures, or costs related in any way to the Project at the Property, asserted or brought by the Museum, or its agents, successors, or insurers or anyone claiming under or through the Museum, except for intentional or negligent acts by Versant Power, including any of its employees or agents, that result in bodily harm.

2. **In the event the Museum, or its agents, threatens, asserts, or brings any claim or legal action, Versant Power agrees to provide the Town with timely notice**, in writing, of any claims related to the Project on the Property for which Versant Power may rely on or invoke the rights and responsibilities set forth in this Indemnity Agreement, and further agrees to cooperate in good faith with the Town and counsel of the Town's choice in any defense effort. Such notice shall be given in a reasonable and timely manner so as to provide the Town, and its attorneys, reasonable opportunity to defend, negotiate, and mitigate the damages and costs related to any action or claim asserted by the Museum, or its agents.
3. **Each person signing this Indemnity Agreement represents and warrants that he/she has full power and authority to bind the party on whose behalf he or she signs** and that upon execution and delivery of this Indemnity Agreement by each of the parties, this Indemnity Agreement will constitute as against each party a valid and binding obligation and shall be enforceable in accordance with its terms.
4. **Execution of this Indemnity Agreement is the free act and deed of each Party** by and through their duly authorized representatives, and is not the result of any duress, coercion, or undue influence, and each Party expressly acknowledges each has had the opportunity to review and confer with legal counsel of their choice to their satisfaction in relation to this Indemnity Agreement. Accordingly, this Indemnity Agreement shall be considered to have been mutually drafted by the parties and shall not be construed against either party on the grounds that one party was its author.
5. **All content and language in this Indemnity Agreement is contractual and legally binding** and not mere recital(s).
6. **This Indemnity Agreement may be executed in one or more counterparts**, each of which shall be deemed an original and constitute one and the same instrument; photographic copies of such signed counterparts may be used in lieu of an original.

Agreed to on this 30 day of October, 2021 by signature below.

**Inhabitants of the Town of Mount Desert**

  
\_\_\_\_\_  
Durlin E. Lunt, Jr., Town Manager

**Versant Power**

\_\_\_\_\_  
By:

Its:

## Town Clerk

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**From:** Durlin Lunt  
**Sent:** Monday, November 1, 2021 8:30 AM  
**To:** Town Clerk  
**Subject:** FW: Who fills the school board seat

Durlin E. Lunt  
Town Manager  
Mount Desert, Maine  
[manager@mtdesert.org](mailto:manager@mtdesert.org)

(207) 276-5531

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**From:** John Macauley <[jbmacauley3@gmail.com](mailto:jbmacauley3@gmail.com)>  
**Sent:** Saturday, October 30, 2021 11:42 AM  
**To:** Durlin Lunt <[manager@mtdesert.org](mailto:manager@mtdesert.org)>  
**Subject:** Fwd: Who fills the school board seat

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Durlin- I'd like to discuss this at Mondays meeting. Seems like things are a little off the rails here. Could we get some guidance from Andy on this?

----- Forwarded message -----

**From:** Gail Marshall <[gail.marshall@mdirss.org](mailto:gail.marshall@mdirss.org)>  
**Date:** Sat, Oct 30, 2021 at 11:16 AM  
**Subject:** Fwd: Who fills the school board seat  
**To:** John Macauley <[jbmacauley3@gmail.com](mailto:jbmacauley3@gmail.com)>

Hi John,

I am resending this from last week. Not sure if you got it. I am having some mysterious challenges with occasionally sending mail that doesn't seem to appear in my "sent" files. This was one of them.

In any event, here is my follow up about who fills school board vacancies.

We have at least one-possibly two-candidates.

We have an MDES meeting on Wednesday, the 3rd.

If it is we who would fill the vacancy, we *may* be in a position to act then. We also have the option of a special meeting to do it within the thirty days, which began on October 22.

Let me know if there is anything we can do to resolve the matter, and how I might further help.

Thanks!

Gail

One other question: Do you have an e-mail address for select board business you'd prefer me to use? I've switched this over to my school board e-mail.

Hi John,

Here is the state statute in education law that describes how a vacancy should be filled:

[Title 20-A, §2305: Terms; vacancies; restrictions](#)

In part it reads:

3. Vacancy. A vacancy on a school committee shall be declared:

A. When the term of office of a member expires; [PL 1981, c. 693, §§5, 8 (NEW).]

B. When a member changes residency from the municipality or subdistrict from which elected. Evidence that an individual is registered to vote in a municipality is prima facie evidence of that individual's residency; [PL 1981, c. 693, §§5, 8 (NEW).]

C. On the death of a member; [PL 1987, c. 866, §4 (AMD).]

D. When a member resigns; or [PL 1987, c. 866, §4 (AMD).]

E. Except in municipalities having a municipal charter, when a member is absent without excuse from 3 consecutive regular committee meetings, the committee may declare that a vacancy exists. [PL 1987, c. 866, §5 (NEW).]  
[PL 1987, c. 866, §§4, 5 (AMD).]

4. Filling a vacancy. A vacancy **may** be filled:

A. By the school committee within 30 days. The term of a member appointed by the school committee to fill a vacancy shall expire at the next annual meeting; or [PL 1983, c. 485, §19 (AMD).]

B. Whenever the remaining members of the school committee fail to appoint a person to fill a vacancy, by election at a town meeting called for the purpose.

The Charter, in relevant part reads:

2 ELECTED OFFICIALS. The offices to be filled by the voters will be: Board, **school board**, and such other offices or officials as may be prescribed by law or ordinance. Except as may be provided by ordinance, no person shall hold more than one such office at the same time.

2.1 ELIGIBILITY. Elected officials shall be registered voters of the Town and shall reside in the Town during their term of office.

2.2 NOMINATION. Except as otherwise provided by law, the number of signatures of voters required to place the name of a candidate for any Town office on the official ballot for any Town election shall not be less than twenty-five nor more than one hundred.

2.3 VACANCY OF OFFICE. The office of an elected official shall become vacant upon death, resignation, non-acceptance, or removal from office in any manner authorized by law or by this charter. The Board **may** fill vacancies in any elected office occurring between annual town meetings; the term of any such appointment shall expire at the next annual town meeting. Vacancies in any elected office shall be filled for the remainder of the unexpired term at the next annual meeting.

2.7, page 8, defines the School Board: 2.7 SCHOOL BOARD. A school board shall be elected as the governing body for administration of the public schools. Unless the Town shall otherwise provide by ordinance, the manner of election, the terms, the powers, and the duties of the school board shall be as provided by state law.

Let's start with that last section, School Board: It says that unless the town otherwise provides by *ordinance*, the manner of election, the terms, etc are as provided by state law. The Charter is not considered and ordinance, is it? Are there any ordinances on this topic?

Then we have the State law that governs the terms of a school board member. In that you find the provision quoted, above, saying the School Board *may* fill a vacancy according to its terms. So, there is a state law that provides this process. And it seems the School Board does have authority to fill a School Board vacancy.

But the Charter has 2.3, a section that also says the Board, which I think is clearly the Selectboard, *may* fill a vacancy of an elected official, which includes a school board member under "Elected Officials". So perhaps the Selectboard also has

the power to fill a School Board vacancy?

I am just offering my personal opinion here, but it seems neither entity is required to act to fill a vacancy. The statute and charter would have said "shall" if either intended that.

It may come down to what is the most sensible practice. It seems that in normal circumstances, the School Board would be far better positioned in terms of it's understanding of the requirements of the job, both in general and in real time, which are quite distinct from the Selectboard's. [Title 20-A, §1001: Duties of school boards](#)

I would suggest that may be why the prior practice has been for the Selectboard to cede whatever authority it may have to the School board for the first thirty days. Then if the vacancy has not been filled, the Selectboard might step in to consider if it wants to exercise it's authority to appoint, because, absent exigent circumstances, I can't imagine the alternative offered in the education statute of a special town meeting would be favored.

That's what I'd ask the Selectboard to consider doing in this case.

One more note: In a back and forth about this in my case, Claire referenced this section of the Statutes in support of an argument the authority rests only in the Selectboard: Title 31-Ach123: **§2601. Appointment and term of officials; generally**

**1. Appointment of officials and employees.** Except where specifically provided by law, charter or ordinance, **the municipal officers shall appoint all municipal officials** and employees required by general law, charter or ordinance and may remove those officials and employees for cause, after notice and hearing

Respectfully, I disagree. First, I think the proper cite is 30-A M.R.S. §2601. Second, without dragging it out or spending a lot of time squinting at it, I think that section, in the chapter regarding Municipal Officers should be read to not include school officials or any other elected officials. Municipal officials in that case would then be, for example, the appointed heads of your Departments.

Let me know how you'd like us to proceed. In the meantime we will look around for a suitable interim member. If you know of anyone you'd like us to consider, please do let me know.

Thanks,

Gail

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John B Macauley, Ph.D. P.O. Box 172 Seal Harbor, Maine 04675