HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE

DATE: August 13, 2014 (Wednesday)
TIME: 5:30-7:30 p.m.
LOCATION: Room 209, Second Floor
Portland City Hall

A G E N D A

1. Review and accept Minutes of previous meeting held on June 25, 2014.

2. **Review and recommendation to staff to move forward with disposition process for tax-acquired property at 16 Fisherman's Cove, Cliff Island.** (**Note:** Pursuant to 1 M.R.S.A. 405 (6)(C), the Committee may go into executive session to give guidance to staff on property disposition.) - See enclosed Memorandum from Greg Mitchell

3. **Review and Vote to Recommend to City Council** action on amendments to the Federated Companies Midtown Project documents, including Somerset Street Cost Share Agreement. (**Note:** Pursuant to 1 M.R.S.A. 405 (6)(C) and (F) and 5 M.R.S.A. 13119-A, the Committee may go into executive session to discuss proprietary information.)

   a. Vote on Amendments to:
      i. Corporate Guaranty Agreement;
      ii. 1st Amendment to Purchase and Sale Agreement; and,
      iii. Parking Garage Contribution and Funding Agreement.
   b. Vote on HUD 108/BEDI Grant Amendments

4. **Review and Discussion to provide guidance to staff** – Continue Discussion of proposed Downtown/Transit-Oriented Development/Arts Tax Increment Financing District – See enclosed Memorandum from Greg Mitchell

5. **Executive Session:** Pursuant to 1 M.R.S.A. 405 (6)(C) and (F) and 5 M.R.S.A. 13119-A, to provide City staff direction, the Committee will go into executive session to discuss:

   a. Ready Seafood Company proposed Lease Amendments;
   b. Shucks Maine Lobster proposed Lease Amendments; and,
   c. Proposed new tenant for use of second floor office space located in Portland Ocean Terminal.

6. **2014 HCDC Work Plan for Review and Discussion** – See enclosed Memorandum from Jeff Levine, Greg Mitchell and Mary Davis

Public Comment will be accepted on action items.   **Councilor Kevin Donoghue, Chair**

Next Meeting Date: August 27, 2014

Housing & Community Development Committee
Minutes of June 25, 2014 Meeting

A meeting of the Portland City Council's Housing and Community Development Committee (HCDC) was held on Wednesday, June 25, 2014 at 5:30 p.m. in Room 209 on the second floor of Portland City Hall. Present from the HCDC was its Chair Councilor Kevin Donoghue, and members Councilors Jon Hinck and Nicholas Mavodones. Committee member Councilor John Coyne could not be present. City staff present included Public Services Director Michael Bobinsky, Housing & Community Development Division Director Mary Davis, Senior Planner Christine Grimando, Public Services Assistant Director Eric Labelle, Planning and Urban Development Director Jeff Levine, Economic Development Director Greg Mitchell, Island/Neighborhood Services Administrator Mike Murray, Senior Executive Assistant Lori Paulette, and Associate Corporation Counsel Lawrence Walden

Item 1: Review and accept Minutes from previous meeting held on May 28, 2014.

On motion made and seconded, the Committee voted unanimously to accept the minutes as published.

Item 2: Review and recommendation to staff to move forward with disposition process for tax-acquired property at 16 Fisherman's Cove, Cliff Island. Note: Pursuant to 1 M.R.S.A. 405(6)(C), the Committee may go into executive session.

Mr. Mitchell said that this item is being brought to the HCDC for a recommendation to staff regarding the disposition process for the property, which the Tax Acquired Property Committee (TAPC) is recommending through the RFP process. Mr. Mitchell said that the City acquired the property through non-payment of taxes beginning with FY08. For this meeting, every Cliff Island property owner was notified, as well as the Department's interested party list.

Mr. Mitchell said TAPC has been doing due diligence, which has included a Department wide City survey to determine if the property is excess to the City's needs or not, a site visit, a conditions assessment, and most recently a Phase I Environmental Site Assessment (ESA).

As a result of this due diligence, the property is not needed for City purposes and the draft RFP has been prepared to sell the property with three stated City goals: (1) that the residence remain year-round affordable island housing; (2) the fuel station remain a running fuel station for the Island; and, (3) as part of the purchase consideration, the City would consider accepting a donation of a minimum of 1 or 2 acres of buildable land. The draft RFP has weighted selection criteria in evaluating proposals received for up to 65 points if the proposal meets the 3 stated City goals, and 35 points for purchase consideration. The first 2 City goals also carry with them a restriction that these uses remain for 20 years, with the City reserving the right to extend the period for the fuel station if that it is in the best interests of the Island community.

Mr. Mitchell closed by saying the staff was contacted by a handful of Cliff Island residents who could not attend the meeting due to the timing of the meeting, as the last ferry that leaves Portland for Cliff Island is at 5:45 p.m.

Chair Donoghue thanked Mr. Mitchell and indicated that there will be no final action taken at today's meeting in order to provide an opportunity for those residents to provide any public comment. Public comment would be taken today, however. He queried the Committee about meeting earlier at its July 23 meeting at 4:15 – rather than starting at 5:30 – and the

Committee members concurred that they could do that. The Chair opened the meeting for public comment.

Cheryl Crowley, President of Sustainable Cliff Island (SCI), said that SCI's mission is to secure year round housing to live affordably on the island, and to support businesses. Therefore, it is very interested in the future of this property.

There being no further public comment, the public comment session was closed.

Councilor Mavodones questioned affordable housing on Cliff Island, and Ms. Davis indicated that the RFP contemplates affordable housing at 120% of area median income, which is now $97K+ for Cumberland County.

Councilor Mavodones asked about the ESA and if the City was going to address issues in advance of sale. Mr. Mitchell said that staff is getting quotes for two items in the report that call for immediate removal of oil and hazardous material waste products throughout the site and immediate stabilization and removal of a possibly leaking kerosene drum in the crawl space. Mr. Mitchell then added that the intent of the RFP is for the purchaser to resolve the remaining issues. The RFP notes that the City is willing to explore partnerships with the successful purchaser to cleanup the site.

Councilor Mavodones asked islanders in attendance what they thought of the 20-year restriction on the fuel station. Mr. Howard indicated that only time will tell, as there may be other sources of fuel. The restriction now is fine, but perhaps there should be a mechanism to be able to lift that restriction, as well as extend as is already noted. Diane Riley also noted that, going forward, the island does not need both of the 2,000 gallon fuel tanks. Mr. Howard continued on that point saying that he thought the Island would need a 500-gallon tank for gas, and a 500 to 750 gallon tank for diesel in the future.

Mr. Mitchell noted the recommended approach is for the successful purchaser to acquire, repair, bring the site up to date with code, and maintain it.

Councilor Hinck asked if there were any underground fuel tanks, and Mr. Howard said that he is not aware of any.

Councilor Hinck asked if the City is now liable for environmental issues, noting the residence may also have hazardous issues, and Mr. Mitchell said that he would confirm with Corporation Counsel on any liability issues for the City and report back. He also said he would contact the environmental consultant to possibly have him present at the July 23 meeting.

Chair Donoghue, noting no further questions/comments, thanked staff and the public for their input, noting that this would be acted upon at the July 23, 4:15 meeting.

Item #3: Review and discussion to give guidance to staff – Downtown/Transit Oriented Development (DT/TOD) Tax Increment Financing (TIF) District

Mr. Mitchell said that a draft outline of the Downtown Redevelopment Plan, a document required by the State for DT TIF Districts, is a part of the packet and will be a policy tool for administration of the DT/TOD TIF District. This includes a new map to increase the borders of the DT/TOD TIF district with some properties on either side of Washington Avenue and State Street.

Mr. Levine added that the goal is for the Downtown Redevelopment Plan to be a clearinghouse for existing planning efforts for that area, and how DT/TOD TIF funding can assist with various projects that are part of those planning efforts.

Mr. Mitchell then referred to the spreadsheets estimating increased assessed value (IAV) for this proposed District. In working with Assessor Rick Blackburn, preliminary estates are that IAV for this DT/TOD TIF District will be $50 Million, which brings in new taxes annually of approximately $1 Million. The spreadsheets are for a 30-year TIF, with annual increases in the mil rate by 2%, and are conservative in keeping the IAV at $50 Million for these 30 years, which also results in tax sheltering savings of approximately $460 Thousand annually. Staff is planning to revisit the conservative $50 Million IAV to allow for further IAV during those 30 years, while also taking into account that there are fluctuations up and down with assessed values.

When asked where the $50 Million IAV is being attributed to, Mr. Mitchell noted that it is attributable to the hotel investments, as well as residential investments.

Chair Donoghue noted the $460 Thousand in tax sheltering savings, for spending above and beyond the $1 Million in new incremental taxes from the IAV.

Councilor Mavodones asked if the $1 Million in new incremental taxes is already accounted for in the FY15 budget, and Mr. Mitchell said that it was.

Chair Donoghue asked which IAV resides in the current Arts TIF District and which are outside. Mr. Mitchell said that the Hyatt Place at Fore and Union Streets and the Courtyard by Marriott at 321 Commercial Street are outside the Arts TIF District; the Press Hotel across from City Hall and the Westin Harbor View Hotel (f/k/a Eastland Hotel) are both in the Arts TIF District.

Councilor Hinck asked about impacts on businesses, including any competitive impact for those in the proposed DT/TOD TIF District and those not in the district. Mr. Mitchell said that there is no impact either way. All businesses would still pay their taxes, and the impact to the City is that it will take portions of those taxes from the IAV and devote those funds to municipal projects which will be in the DT Redevelopment Plan. The only time a TIF would impact a business is through a Credit Enhancement Agreement (CEA), for example the

PowerPay project at the former Public Market has a CEA. There is criteria for CEAs in the City's current TIF policy.

Mr. Mitchell then handed out (copy attached to these Minutes) a listing of projects, he received today, completed in the proposed Bayside and DT/TOD TIF Districts, compiled by the Department of Public Services, from 2009 through 2013, totaling $4.8 Million. A quick review of these projects is that many of these could be paid for by DT/TOD TIF Funds. He will be meeting with the City Manager and Finance Director regarding future capital investments that could be part of the projects contained in the Downtown Redevelopment Plan as eligible for TIF funding.

Chair Donoghue noted that funding for Creative Portland (CP), up to $100,000 annually, would come from the DT/TOD TIF to be included in the budgeting discussions, with others to include transit, and Economic Development staff salaries, for example.

Mr. Mitchell agreed, adding that for the near term for the proposed DT/TOD TIF, the FY15 budget has been approved, and, therefore, staff is sensitive for using FY15 TIF funds for eligible expenses already budgeted for.

Chair Donoghue agreed, noting the funding commitment for CP, as well as other commitments for transit and infrastructure, while also keeping in mind the tax sheltering savings and how those funds could be used strategically.

Mr. Mitchell added that, historically, the Economic Development Department budget has been supported by the UNUM TIF Funds, which TIF District expires FYE15.

Mr. Levine suggested that future TIF funds be targeted for infrastructure improvements at the road corridors of Franklin Arterial, Spring Street, State and High Streets.

Councilor Mavodones said that he would need to understand the impact, perhaps 2 to 4 years out, on the people who live in Districts 3, 4, and 5 – as compared to those in the proposed DT TOD/TIF in Districts 1 and 2, from both an operational and capital expense perspective.

The Committee then discussed the annual tax sheltering savings and how the City could strategically spend that savings that benefits the entire City, noting transit, education, and new initiatives.

Councilor Mavodones commented that a joint HCDC/Finance Committee should be held to look further at the financial impacts 2 to 4 years out to be able to articulate to those not in the proposed DT TOD/TIF district how it benefits them.

Chair Donoghue suggested that TIF funds could be used for expenses that the City would normally incur, i.e., transit expenses/initiatives to be equitable to all districts.

Mr. Mitchell said that he will be working more with Planning and Finance concerning eligible projects and financial impacts, both inside and outside the district.

Chair Donoghue asked about the expansion of the BTIF and if this would be handled in tandem with the DT/TOD TIF discussion or separately, and Mr. Mitchell said that this would be done after DT/TOD TIF, but with a goal to have both finalized by Fall with documents needed. In the meantime, financial analysis impacts and listing proposed projects, with estimates of expenses, that could be funded through TIF revenue rather than General Fund Revenue for the life of the District will be further fleshed out. He noted that once the CIP process is done, this will help with a projects listing for eligible TIF revenue funding.

Councilor Mavodones, noting in the backup other Downtown TIF Districts in Maine, was curious to know why South Portland's TOD TIF (not a DT/TOD TIF) was capturing only 25% of the IAV for 30 years. Mr. Mitchell said that he would look into that.

Chair Donoghue recognized Greg Jordan, Executive Director of Metro and asked about Metro's proposal to increase frequency with the use of TIF Funds.

In follow-up to the last Committee on this subject, Mr. Jordan handed out (copy attached) a document highlighting Metro's 2013 Cost, Revenue, and Services Statistics, as well as Metro's breakdown of revenue sources. As he noted previously, increasing the frequency on the peninsula is the area where Metro would like to invest some of these TIF funds. He then described other metropolitan areas with this frequency, particularly Tempe, AZ where he just visited that supports the 15-minute frequency goal. This kind of connectivity does drive economic development.

Chair Donoghue thanked Mr. Jordan, and asked if there were further questions/ comments. There being none, he thanked Committee and staff for their time and work on this initiative and looked forward to seeing this come to fruition by Fall, anticipating another discussion on this at the July 23 meeting.

Item #4: Executive Session: Pursuant to 1 M.R.S.A. 405(6)(C) and (F) and 5 M.R.S.A. 13119-A, the Committee will go into executive session to provide City staff direction regarding real estate negotiations associated with the Federated Companies midtown Project and their financial contribution toward the cost of Somerset Street reconstruction.

On motion made and seconded, the Committee voted unanimously to go into executive session at approximately 7:00 p.m. pursuant to pursuant to 1 M.R.S.A. 405(6)(C) and (F) and 5 M.R.S.A. 13119-A to provide City staff direction regarding real estate negotiations associated with the Federated Companies midtown Project and their financial contribution toward the cost of Somerset Street reconstruction.

At approximately 7:22 p.m., the Committee came out executive session and the meeting then adjourned.

Respectfully, Lori Paulette

City of Portland, Maine
Projects completed in proposed Bayside and Downtown TIF Districts

District	Year:	Where:	What:	Cost:
D	2013	Bicycle Racks	Bicycle Racks	$2,000.00
D	2013	Chestnut St	Sidewalk rehabilitation	
D	2013	Chestnut St @ Portland HS	Sidewalk rehabilitation	$30,000.00
D	2013	Congress/Preble	ADA Access	$30,000.00
D	2013	Free St at Cross St	Sidewalk rehabilitation	$30,000.00
D	2013	Gray St (Park to Clark)	Paving	$93,000.00
D	2013	Park Ave (Forest Ave to State)	Paving	$143,000.00
D	2013	Parking Kiosks (30)	Parking Meter Kiosks	$255,000.00
D	2013	Washington Ave Sidepath	Shared Use Pathway	$160,000.00
				$743,000.00
B	2012	Chestnut St (Somerset to Lancaster)		
D	2012	Congress St (Chestnut to Myrtle)		
D	2012	Congress St (Park to High)	Sidewalk rehabilitation	$80,000.00
D/B	2012	Curb Ramps (Various)	Curb Ramps	$30,000.00
D	2012	Elm St (Congress to Federal)	Sidewalk rehabilitation	$30,000.00
D	2012	Everett St	Paving	$21,000.00
D	2012	Federal St (Pearl to Franklin)	Paving with Curb and Sidewalk	$149,000.00
D	2012	Franklin St - Congress to Newbury	New Sidewalk	$15,000.00
D	2012	Franklin St (Cumberland to Congress)	Paving	$51,000.00
D	2012	Grant St (State to High)	Sidewalk rehabilitation	$124,000.00
D	2012	High St (Park to Cumberland)		$95,000.00
D	2012	High St (York to Commercial)	Paving	
D	2012	High Street (YMCA) at Sherman St.	Pedestrian Bumpouot Crossing	$20,000.00
D	2012	High Street Ped Crossing @ Sherman	Pedestrian Crossing	$25,000.00
B	2012	Marginal Way at Chestnut	Pedestrian flasher and crosswalk	
D	2012	Mountfort St (Newbury to Fore)		
D	2012	Oak St (Congress to Free)	Paving	$4,800.00
D	2012	Park St (York to Commercial)	Paving	$8,000.00
D	2012	Parking Kiosks (7)	Parking Meter Kiosks	$59,500.00
D	2012	Plowman St (Marginal Way to Anderson)	Paving	$6,200.00
				$718,500.00
D/B	2011	Back Cove Trail Connection	Shared Use Pathway Extension	$180,000.00
D	2011	Cumberland Ave Sidewalk (Washington to Franklin, North Side)	Sidewalk	$260,000.00
D	2011	Downtown Lighting Project (Forest Ave & Congress St)	Street Lighting	
D	2011	Downtown Parking Smart Meters Project	Pilot Project	
D	2011	Exchange St (Congress to Middle)	Paving - DELAYED	
D	2011	Fore St (Franklin to eastern end - collector paving)	Paving	$34,000.00
D	2011	Forest Ave (Congress to Park - Collector paving)	Paving	$42,000.00
D	2011	Forest Ave corridor study	Study	$100,000.00
D	2011	Forest Ave, Congress St, Chestnut St lighting	Planning	
D	2011	Franklin St corridor study phase II	Study - Feasibility	
D/B	2011	Handi-cap ramps, various locations	pedestrian safety	
D/B	2011	I-295 Exit 7 highway improvements	Highway safety improvements	
B	2011	Marginal Way Pedestrian Crossing/ Flashers at Chestnut St	Pedestrian Safety	
D	2011	North Boyd St Trail	Multi-use pathway	

City of Portland, Maine
Projects completed in proposed Bayside and Downtown TIF Districts

District	Year:	Where:	What:	Cost:
				$616,000.00
D/B	2010	Bayside Trail Phase I	Trail	$1,708,000.00
B	2010	Chestnut St (Somerset to Lancaster, both sides)	Sidewalk	$110,000.00
D	2010	Congress/Elm/Federal Sidewalks - Vicinity of Key Bank	Sidewalk	
D	2010	Cumberland Ave Sidewalk (Washington to Franklin, south side)	Sidewalk	$235,000.00
D	2010	Everett St (both sides)	Sidewalk	$115,000.00
D	2010	Madison St and Greenleaf St reconstruction (Fox to Everett)	Street reconstruction	$530,000.00
D	2010	Pepermint Park (Park and playground rehabilitation)	Playground/Park	$190,000.00
D	2010	Portland High School Flasher	Pedestrian Safety	
				$2,888,000.00
B	2009	Cedar St Sidewalk	Sidewalk	$35,000.00
D	2009	Cumberland Ave (Elm to Franklin)	Paving	$147,000.00
D/B	2009	Forest Ave (Park to Marginal)	Paving	$144,900.00
D	2009	Fox/ Washington Pedestrian Crossing	Pedestrian Safety	
D	2009	Middle St Sidewalk (Exchange to Pavillion Building)	Sidewalk	
B	2009	Preble St Sidewalk	Sidewalk	$100,000.00
D	2009	Washington Ave Sidewalk	Sidewalk	$75,000.00
				$501,900.00

D=Downtown
B=Bayside
D/B = Both

Grand Total: **$4,851,400.00**

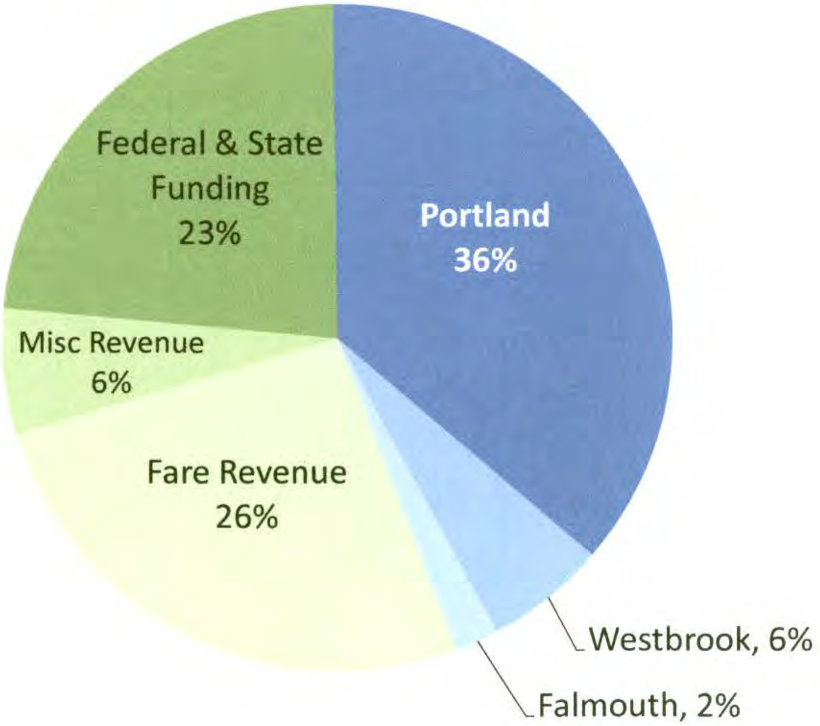
Handout by Metro at HCDC 6/25/2014 Meeting

METRO 2013 COST, REVENUE AND SERVICE STATISTICS

											Performance Statistics		
Line	Cities Served	Corridor	Revenue Miles	%	Gross Cost	%	Boardings	%	Fare Revenue	%	Boardings per Mile	Fare Recovery	Net Cost per Boarding
Line 1	Portland	Congress	86,267	10%	$ 705,991	10%	193,622	13%	$ 238,504	13%	2.2	34%	$2.41
Line 2	Portland-Westbrook	Forest	143,758	17%	$ 1,176,485	17%	226,386	15%	$ 278,862	15%	1.6	24%	$3.97
Line 3	Portland-Falmouth	Stevens	81,837	10%	$ 669,737	10%	106,379	7%	$ 131,038	7%	1.3	20%	$5.06
Line 4	Portland-Westbrook	Brighton	173,580	21%	$ 1,420,542	21%	317,182	22%	$ 390,705	22%	1.8	28%	$3.25
Line 5	Portland-South Portland	Congress-Maine Mall	147,138	18%	$ 1,204,146	18%	292,236	20%	$ 359,976	20%	2.0	30%	$2.89
Line 6	Portland	Washington	88,133	11%	$ 721,262	11%	103,292	7%	$ 127,235	7%	1.2	18%	$5.75
Line 7	Portland-Falmouth	Washington-US Route 1	60,460	7%	$ 494,792	7%	79,220	5%	$ 97,583	5%	1.3	20%	$5.01
Line 8	Portland	Urban Circulator	48,674	6%	$ 398,338	6%	146,326	10%	$ 180,244	10%	3.0	45%	$1.49
Total			829,847	100%	$ 6,791,292	100%	1,464,643	100%	$ 1,804,147	100%	1.8	27%	$3.41

High Performing
Moderately Performing
Low Performing

Breakdown of Metro's Revenue Sources



Portland, Maine — Yes. Life's good here.

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

DATE: August 7, 2014

TO: Chair and Members of the Housing Community Development Committee

FROM: Greg Mitchell, Economic Development Director

RE: Item Tabled from June 25, 2014 HCDC Meeting - Tax-Acquired Property on Cliff Island – 16 Fisherman's Cove, 109B-F-39
- Recommendation and Vote Requested for Property Disposition Process to Issue a Request for Proposals (RFP)

I. SUMMARY OF ISSUE

The Tax-Acquired Property Committee (TAPC) has been doing its diligence to provide a recommendation to this Committee regarding the future use of 16 Fisherman's Cove on Cliff Island, which the City acquired through non-payment of taxes beginning with FY08 taxes.

This due diligence included a City Department wide survey, including District Councilor Donoghue and the Land Bank Commission, site visit, conditions assessment, and obtaining a Phase I Environmental Site Assessment. Regarding the results from the Department survey, this indicated that there is a longstanding interest on Cliff Island to create year round affordable island housing to sustain the community and to keep the fuel station an active fuel station, as there is no other fuel station on the island.

Also, Sustainable Cliff Island (SCI) representatives met with TAPC, and advised that it also would like to see the residence be a year-round affordable residence and the fuel station to continue in operation.

Councilor Donoghue held a Cliff Island meeting on August 6th where this matter was discussed. A summary of this meeting is attached, as well as an email communication received just after that meeting.

II. REASON FOR SUBMISSION

This is being submitted to the Committee for additional discussion at its August 13th meeting. It is anticipated that no Committee action will be taken at the August 13th meeting, and this matter will again be discussed and acted upon at the August 27th meeting to provide staff direction to issue an RFP for the sale of the 16 Fisherman's Cove property.

II. INTENDED RESULT

The intended result is for the residence to remain year round affordable island housing and to keep the fuel station in operation. There is a proposed 20-year Restriction Period for these uses built into the deed, as well as an opportunity for the City to shorten or extend the Restriction Period for the fuel station if this is in the best interests for the Cliff Island community.

In addition, the RFP highlights a goal that the City would consider, as part of the purchase consideration, a donation or trade of property on Cliff Island for use by Public Services for equipment and possible building. The estimated Public Services Department's need is for a minimum of 1 to 2 acres of buildable land. See attached sketch as an example for DPS property use.

Regarding the Phase I Environmental Site Assessment and its recommendations, City staff is making an application to the Portland Development Corporation for a Brownfields Grant to undertake the two immediate actions, i.e.:

a. Immediate removal of oil and hazardous material waste products throughout the Site.

b. Immediate stabilization and removal of possibly leaking kerosene drum in crawl space of the residence.

The RFP also indicates that the City is willing to explore partnerships with buyer(s) to clean up the remainder of the property. In addition, it indicates that the successful proposer(s) would be eligible to apply to the City's Portland Development Corporation for loan funds for a Phase II environmental Site Assessment and/or cleanup/mitigation work.

At the HCDC meeting on June 25, Councilor Hinck asked about the City's liability for environmental issues. Corporation Counsel will address this at your August 27 meeting when a vote on the disposition process is anticipated.

IV. COUNCIL GOAL ADDRESSED

Develop Strategic Housing Investment Policies.

V. FINANCIAL IMPACT

To date, the total of back taxes, interest, and costs owed is $52K+, while the total assessed value of the property is currently $290,740, which should generate $5,643 yearly in property taxes.

VI. STAFF ANALYSIS AND RECOMMENDATION

TAPC's recommendation is to continue discussion to move forward with disposition of the property through the RFP process, under the direction of the HCDC, with the goals as stated in the RFP document – keeping the residential house for year-round affordable island housing, keeping the fuel station in operation, and that the City would consider 1 to 2 acres of buildable land as part of the purchase consideration for Public Services equipment storage.

The RFP document has been further refined with marked revisions from the June 25, 2014 HCDC meeting packet to clarify the City's goals, as well as to indicate in the RFP that the City acknowledges that the fuel station and residence can be sold separately. Inasmuch, the City also acknowledges that there may be partnering proposals for the purchase of each property.

The Evaluation of Proposals section has also been amended to have weighted criteria to meet the City's goals, i.e.:

Year Round Affordable Housing	25 Points
Fuel Station Kept Running	25 Points
DPS Site	25 Points
Total price offered for property	25 Points

Staff is looking to the Committee to reaffirm this criteria or offer other weighted selection criteria.

All property owners on Cliff Island were sent a notice of this meeting, as well as other interested parties.

Attachments:

1. Summary of August 6, 2014 Meeting on Cliff Island
2. Email received from Anne and Reese Fullerton, as a follow-up to meeting on Cliff Island with the City on August 6, 2014.
3. Sketch as an example for DPS property use.
4. Draft RFP Document – with Marked Revisions from the June 25, 2014 HCDC Meeting

16 Fisherman's Cove

Summary of Comments

August 6, 2014

- More parties will bid on the property if the consideration of land as a means of payment is dropped from the RFP

- Separate the Disposition of 16 Fisherman's Cove separate from a request for property for Public Services' use

- Separate the single family home and the fuel business and issue RFP's for both if possible; some bidders may be interested in only one parcel

- Maintaining a fuel facility is more important than establishing sustainable housing

- Sustainable housing can be developed/converted on other properties on the island; this particular property may not be suited for that purpose.

- Overwhelming island sentiment that the current Public Services' arrangement of storing equipment/materials roadside is acceptable to island residents\

- It may be cost prohibitive to renovate the single family home; issues may include asbestos, lead paint, septic/overboard discharge, contaminated well

Lori Paulette - Fwd: Cliff Island issues

From: Jeff Levine
To: Greg Mitchell; Lori Paulette; Mary Davis
Date: 8/7/2014 8:39 AM
Subject: Fwd: Cliff Island issues

This is for the HCDC packet on the Cliff Island item.

>>> REESE ANNE FULLERTON <reeseannefullerton@msn.com> 8/7/2014 7:51 AM >>>
Dear Jeff Levine:

Thank you very much for you and all the other City representatives coming to Cliff Island last night. It was important to have an opportunity to speak and hear others.

I did not speak last night and would like to reaffirm some of the statements which were made.

1. ASPHALT - we completely agree that asphalt has no place on Cliff Island. It is smelly, sticky, ugly and feels like the wrong material for our roads. Gary has kept the roads in basically good shape with materials which feel much more appropriate for the island.

2. LAND SWAP - we definitely agree that the land swap should be an entirely separate discussion. The land initially discussed was completely inappropriate because it was in an area which, during the barge landing development, community members and community groups had committed to keeping natural except for the barge landing -- no trucks and no construction material.

3. DPW MAINTENANCE YARD - Why does the island need a maintenance yard? What has spurred this discussion? What is the most minimal construction and investment that could meet a real need?

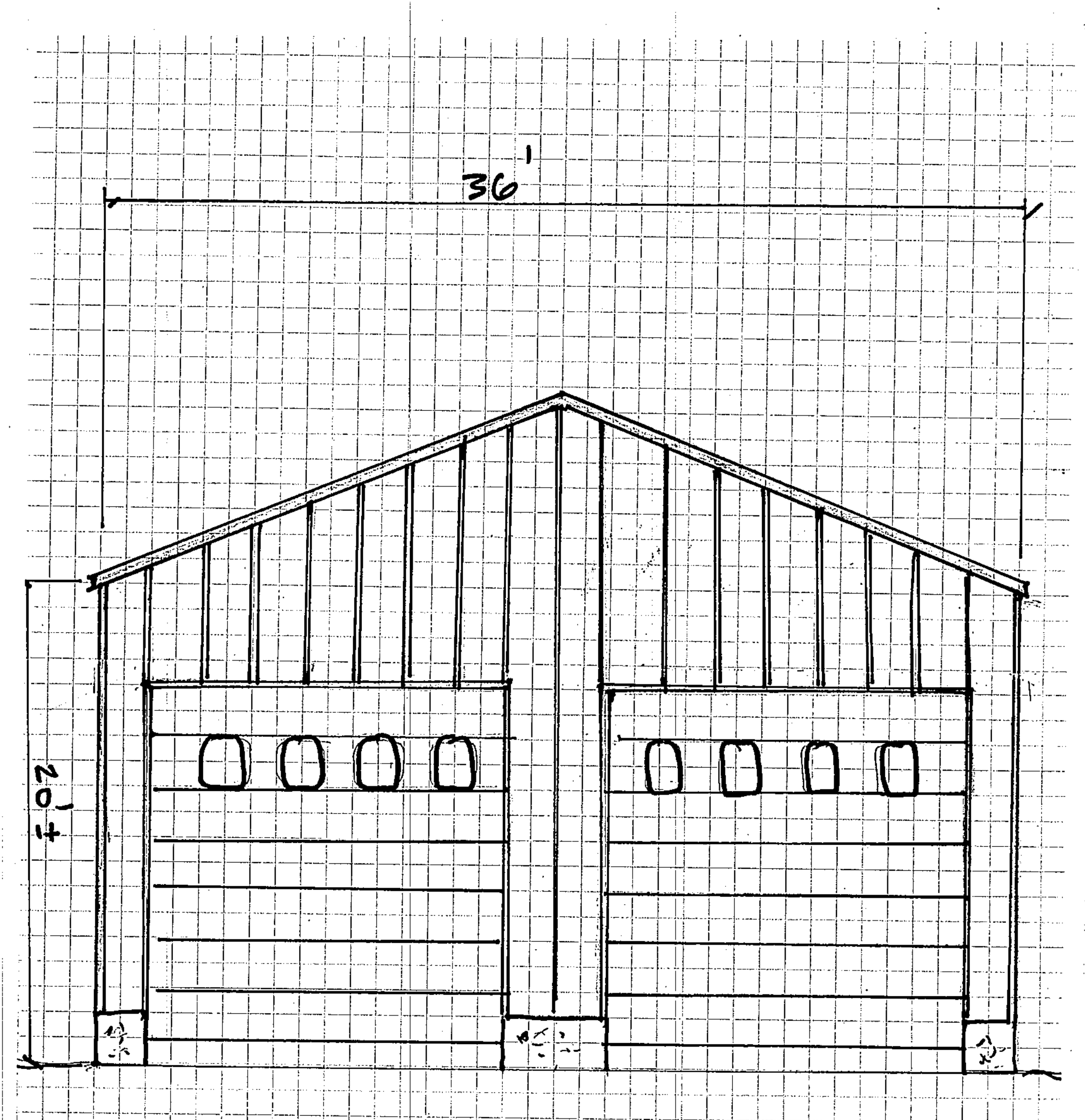
4. FUEL - very important for the island. Since it is possible to separate the fuel from the residence we hope that that will be mentioned in the RFP.

5. AFFORDABLE HOUSING - very important for the island. Anything the City can do to facilitate affordable housing on the island would be appreciated.

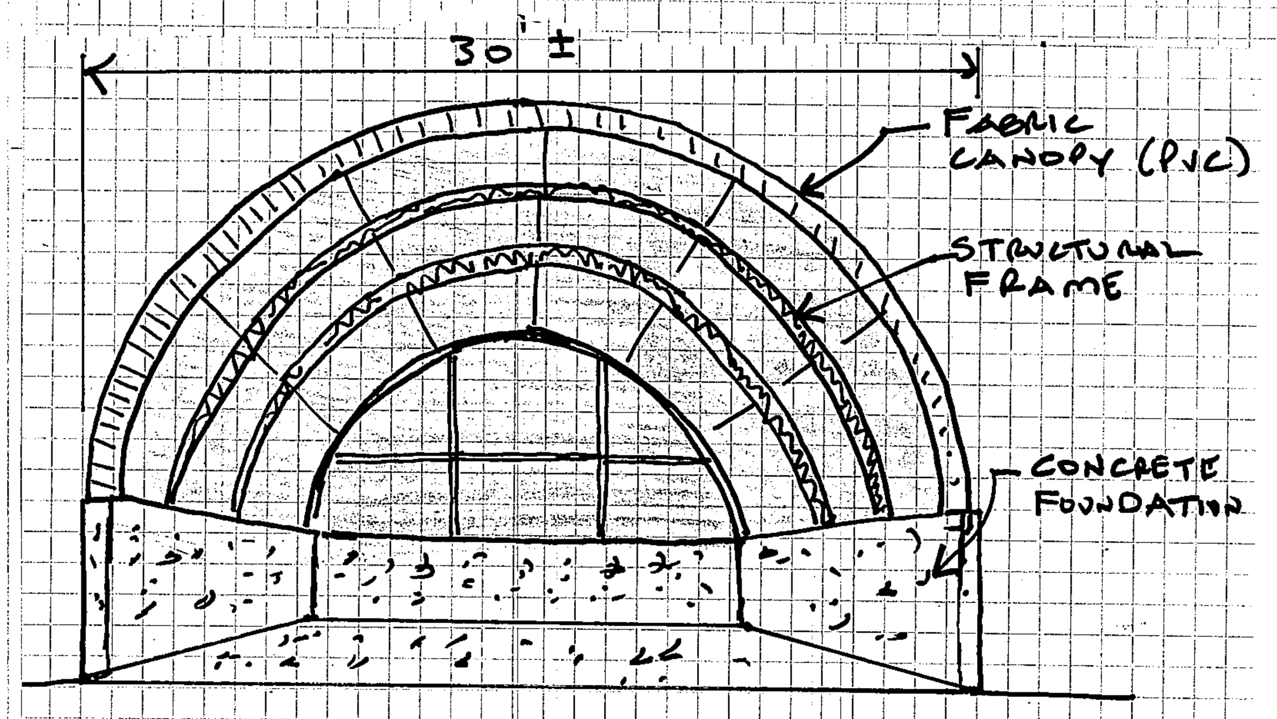
The house at 16 Fisherman's Wharf seems to have many structural issues and may not be livable at this point or may end up not being very affordable.

Thank you for your consideration.

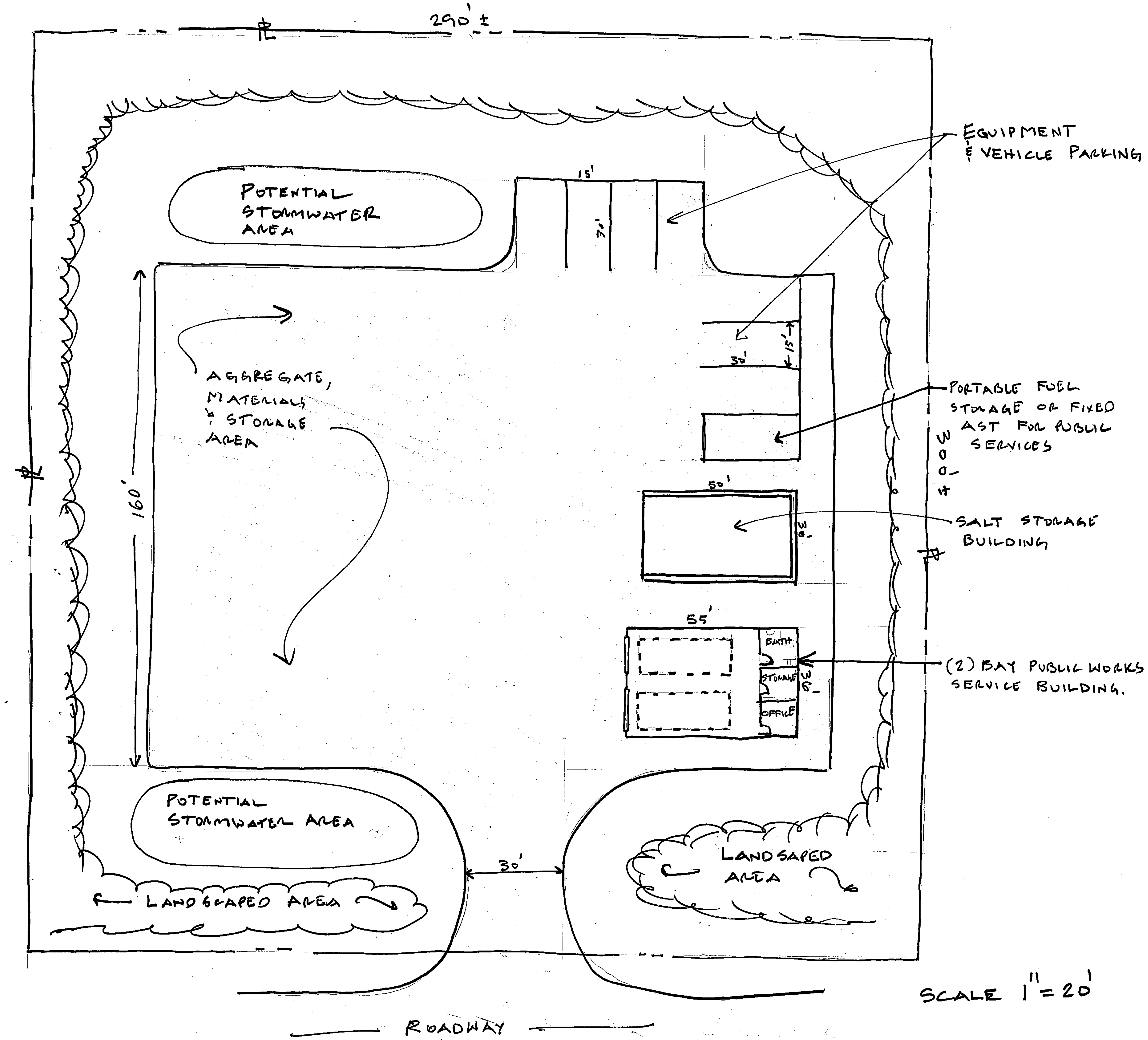
Anne and Reese Fullerton



FRONT ELEVATION - PUBLIC WORKS
NTS



FRONT ELEVATION - SALT SHED
NTS



SCALE 1" = 20'

NOT FOR CONSTRUCTION

PROGRESS PRINT

REV:	BY:	DATE:	STATUS:
A	CAM	7-24-14	CONCEPT PLAN

SEBAGO TECHNICS
WWW.SEBAGOTECHNICS.COM
75 John Roberts Rd. - Suite 1A, South Portland, ME 04106, Tel. 207-200-2100
250 Goddard Rd. - Suite B, Lewiston, ME 04240, Tel. 207-783-5656

PROJECT NO.	FIELD BOOK	DESIGN	CHKD	DRAWN
14275				

CONCEPT PLAN
OF:
CLIFF ISLAND PUBLIC SERVICES
PORTLAND, MAINE
FOR:
CITY OF PORTLAND
55 PORTLAND STREET
PORTLAND, MAINE 04101

DATE	SCALE
07-23-14	

SHEET 1 OF 1

14275TB.dwg, TAB:Model

RFP # XX14

City of Portland, Maine

Finance Department

Request for Proposals for Sale of Tax-Acquired Property
Located at 16 Fisherman's Cove, Cliff Island
CBL: 109B-F-39.

NOTICE and SPECIFICATIONS

Sealed proposals for purchasing the Property located at 16 Fisherman's Cove, Cliff Island, as specified herein, will be received by the Purchasing Office, Room 103, City Hall, 389 Congress Street, Portland, Maine 04101, until **3:00 p.m., (give Proposers 3~~6~~0 days to respond)** ______________________________ at which time they will be publicly opened. Proposals shall be submitted with the attached forms, and returned in sealed envelopes plainly marked on the outside "Sale of 16 Fisherman's Cove, Cliff Island." Each proposal must be accompanied by a proposal surety deposit equal to 10% of the consideration being proposed; if part of that consideration is land (see section II[3]), the fair market value of such land should be used in calculating this 10%. This may be in the form of a certified check, bank treasurer's check, bank cashier's check or money order. **Note: all checks must be in one of the above mentioned forms or the proposal will be rejected.**

Late, unsigned proposals or proposals submitted electronically shall not be accepted. All proposals shall be held open to acceptance for sixty days from opening. Proposals from individuals not registered with the Purchasing Office may be rejected; receipt of this document directly from the City of Portland indicates registration. Should a person receive this Request from a source other than the City, please contact 207-874-8654 to ensure that you are listed as a recipient for this proposal.

All questions must be submitted in writing to the Purchasing Office. These may be mailed, hand delivered, faxed to (207) 874-8652 or e-mailed to mff@portlandmaine.gov and be received no later than five (5) business days prior to the opening date. Questions received after this time will not be addressed. Any interpretation, correction, or change of this document will be made only by written addenda. Changes in any other manner will not be binding on the City and proposers should not rely on. Proposers should not have contact with any City staff with regard to this proposal unless to obtain general public information as specified in the document.

A site visit for all parties interested in submitting proposals will be held at the property **on Friday, _________________________, 2014 at 12:15p.m.** Attendance at this site visit of the property is a **mandatory requirement** of those submitting a proposal. If a potential proposer cannot attend this mandatory site visit, that proposer can send a designated representative.

All contact for information regarding the proposal must be addressed to the City of Portland Purchasing Office. Over the course of this proposal process, *proposal related contact* with City staff by a respondent or their agent, may be grounds for disqualification of the Proposer.

The disposal of this real estate shall be on the basis of a negotiated proposal, with the City of Portland reserving the right to refuse any and all proposals. *All proposers are advised that the property will be sold "as-is" and "where is", in its existing condition, with no warranties to be expressed or implied.* The City disclaims any and all responsibility for injury to proposers, their agents or others while examining the property or at any other time. The City will not be responsible for any broker's commission. The property will be conveyed by quitclaim deed (see Attachment #6).

16 Fisherman's Cove, 109B-F-39

I. GENERAL INFORMATION

Site Information:

1) Location: 16 Fisherman's Cove, Cliff Island, as identified in the City of Portland Assessor's records as lot CBL 109B-F-39, in an I-B Zone. (See Attachment 1.)

2) General Dimensions: The lot is approximately 19,568 square feet with a single-family residential structure, fuel station, and ancillary structure.

3) Current Use: Vacant – previously a single-family use and fuel station, both have their own electrical service.- These uses can be separate from each other as they are considered functionally subdivided. Inasmuch, the City acknowledges that there may be partnering proposals for the purchase of each use.

   (a) Regarding the fuel station, to continue this use, the purchaser would need to get the property in compliance with all applicable local, state, and federal regulations, including, but not limited to the Maine Department of Environmental Protection Spill Prevention Control and Countermeasure (SPCC) Program and obtain any permits required by the State Fire Marshall.

      (i) The City has been informed that there currently exists two 2,000 gallon fuel tanks and one 500 gallon fuel tank on the property.

      (ii) Given the proximity to the shoreline, it is recommended that the owner/operator of this facility have an SPCC Plan in place, even if the facility does not meet the thresholds established in the regulations (i.e., required for any facility with more than 1,320 gallons of aboveground oil storage capacity). The costs associated with spill mitigation and potential fines far exceed the cost of spill preparedness.

   (b) The property has an overboard discharge permit, with shared primary treatment for the residence and fuel station. The City has been informed that by March 1, 2015, the property's sewerage disposal system must have secondary treatment.

There currently is an easement allowing an abutter to share in the use of the existing disposal system.

4) Environmental: The City has received a Phase I Environmental Site Assessment, which Executive Summary is Attachment 2 of this RFP. The City is currently taking steps to undertake the two immediate action items in the Executive Summary, that is: "Immediate removal of oil and hazardous material waste products throughout the Site. Immediate stabilization and removal of possibly leaking kerosene drum in crawl space." The City is willing to explore partnerships to further clean up the property. Successful proposer will be expected to indemnify the City for these risks at closing.

   (a) The Purchaser would be eligible to apply to the City's Portland Development Corporation for loan funds for a Phase II Environmental Site Assessment and/or cleanup/mitigation work.

5) The property is in a FEMA Special Hazard Flood Zone. As such, a property owner needs to be aware that Special Hazard flood insurance may need to be purchased on existing buildings.

6) See Attachment 3 for condition of property as assessed by City staff.

7) A draft Purchase and Sale Agreement is attached as Attachment 4, to be entered into with the award recipient. Note that this is a draft Purchase and Sale Agreement that will be further negotiated with the successful proposer.

8) Proposers are urged to investigate water sources and utility connection requirements with the Department of Public Services and street build out requirements with the City's Planning Office, as well as research regulations regarding an operating fuel station as noted in #3 above.

Note: All respondents should investigate legal and zoning requirements for proposed projects prior to submission of proposal. The City's Zoning Administrator can be contacted at (207) 874-8695. The City's Planning Office can be contacted at (207) 874-8719.

II. CITY GOALS

The City's primary goals for the reuse of the property are:

1. Affordable, Year-Round Island Housing for 20 Years

   The reuse of the property for affordable, year round island housing for 20 years – i.e., affordable to a household earning 120% or less of U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland County Maine – which 120% is now $97,760 for a family of four.

a. The proposer may be eligible to apply for City loan funds available for renovation through the Housing and Neighborhood Services Division - (207) 874-8246.

2. Fuel Station Kept Running for 20 Years

Keep the fuel station a running fuel station for Cliff Island for 20 years. The City ~~is contemplating a 20 year minimum term for this use, and~~ reserves the opportunity in the draft Deed attached~~through negotiations pursuant to sale of the property~~ to provide a mechanism for reduction or extension of this use for additional time spans.

3. Department of Public Services (DPS) Site

The City would consider, as part of the purchase consideration, land on Cliff Island for use by Public Services for its equipment and administration – a minimum of 1 to 2 acres of buildable land. (See Attachment 5 – draft concept plan/layout of Department of Public Services' needs.)

III. CONDITION UPON SALE OF PROPERTY

The deed to the purchaser (see Attachment 6~~5~~) will contain the provision substantially as follows:

"The property will be used for (a) an affordable, year round island housing residence as noted in 'City Goals' above, and, (b) a running fuel station for island vehicles at a minimum for a 20-year term. Regarding the fuel station, the City also reserves the opportunity ~~through negotiations~~ to provide a mechanism for reduction or extension of this use for additional time spans."

IV. EVALUATION OF PROPOSALS

The City will apply the following scoring to evaluate proposals received:

A. Year Round Affordable Island Housing **25 Points**

~~Proposed use(s) meet all the City Goals identified above. **65 Points**~~

B. Fuel Station Kept Running **25 Points**

C. DPS Site **25 Points**

D. Total price offered for property. **~~3~~25 Points**

V. SALE INFORMATION

After proposals are opened, City staff will make a recommendation to the City Council's Housing and Community Development Committee (HCDC) on award of proposal, which Committee then makes its recommendation to the City Council. It is anticipated that the HCDC could review this at its meeting on Wednesday, ______________, at 5:30 p.m.

Council Action: Contract for the sale of the property will be executed only after review and final approval of the City Council.

Deed: At closing, the City shall convey the described real estate by quitclaim deed.

VI. OTHER INFORMATION

Confidentiality: Proposals received by the City shall become a matter of public record, subject to public inspection, except to the extent, which an applicant designates in writing, proprietary data to be confidential and submits that data under separate cover, such information may be held from public inspection, as provided in Maine law: 5 MRSA Sections 13119-A and 13119-B.

VII. LEGAL REQUIREMENTS

The contract for the sale of the property will be executed only after review and final approval by the City Council. At closing, the City shall convey the described real estate by quitclaim deed.

VIII. RESERVATION of RIGHTS

The City of Portland reserves the right, at its sole discretion, to award as well as reject any and all proposals for the tax-acquired property, based on the quality and merits of the proposals received, or when it is determined to be in the public interest to do so. Furthermore, the City may extend deadlines and timeframes, as needed.

The City reserves the right to substantiate any proposer's qualifications, capability to perform, availability, past performance records, and to verify that the proposer is current in its financial obligations to the City.

The City of Portland, Maine, reserves the right to waive any informalities in proposals, to accept any proposal or portion thereof, and, to reject any and all proposals, as well as negotiate with the successful proposer(s) should it be in the best in the best interest of the City to do so for a final purchase and sale agreement and ultimate sale of the property.

Pursuant to City procurement policy and ordinance, the City is unable to contract with businesses or individuals who are delinquent in their financial obligations to the City. These obligations may include but are not limited to real estate and personal property taxes and sewer user fees. Proposers who are delinquent in their financial obligations to the City must do one of the following: bring the obligation current, negotiate a payment plan with the City's Treasury office, or agree to an offset which shall be established by the contract which shall be issued to the successful proposer.

___________, 2014

Matthew F. Fitzgerald
Purchasing Manager

Attachments:

#1 City Assessor Information, Map # *CBL* 109B-F-039, and Picture.
#2 Phase I Environmental Site Assessment Executive Summary
#3 Condition Assessment by City staff
#4 Draft Purchase and Sale Agreement
#5 Draft concept plan/layout of Department of Public Services' needs.
#6 Draft Quitclaim Deed

PROPOSAL

THIS PAGE MUST BE INCLUDED

The UNDERSIGNED hereby declares that they have read and understand all conditions as outlined in the invitation for proposals, and that their proposal is made in accordance with same.

The UNDERSIGNED hereby declares that any person(s) employed by the City of Portland, Maine, who has direct or indirect personal or financial interest in this proposal or in any portion of the profits that may be derived therefrom, has been identified and the interest disclosed by separate attachment. (Please include in your disclosure any interest which you know of. An example of a direct interest would be a City employee who would be paid to perform services under this proposal. An example of indirect interest would be a City employee who is related to any officers, employees, principal or shareholders of your firm or to you. If in doubt as to status or interest, please disclose to the extent known).

TOTAL PROPOSAL FOR PROPERTY:
Cash Value: $_________________________ *
Land Fair Market Value for Public Services: $__________________

Enclosed is a proposal surety of $____________________________ equal to 10% of the amount being proposed (cash + land fair market value).

The proposer acknowledges the receipt of Addenda numbered ___________________________
(If Applicable)

COMPANY NAME: ____
(Individual, Partnership, Corporation, Joint Venture)

AUTHORIZED SIGNATURE:______________________________ DATE: _______________
(Officer, Authorized Individual or Owner)

PRINT NAME & TITLE: ____

ADDRESS:____

____

TELEPHONE: ______________________________ FAX: ______________________________

E-MAIL: ___________________________ FEDERAL TAX ID NUMBER: ______________

SALES TAX EXEMPTION NUMBER: ____

NOTE: All proposals must bear the handwritten signature of a duly authorized member or employee of the organization making the proposal. This sheet must be signed and returned with the proposal package.

Interested Parties to received notice of RFP, in addition to Cliff Island property owners:

Maia Additon
Madditon1@maine.rr.com

Brian Joyce
bjoyce@maine.rr.com

Robert Barnes
rbarnes@revdrtv.com

Dave Schroder
djschro@gmail.com

M. Nasir Shir
mnshir@hotmail.com
nshir@portlandmaine.gov

Jay McGranahan
jmcgranahan@hotmail.com

Yvonne Roundtree
valround@hotmail.com

Rita Yarnold
rita@bayrealtyassociates.com

Nancy Laframboise
Nlafram2000@yahoo.com

Jeremy Benn, Joe Flynn Real Estate
Jeremy@joeflynnrealestate.com

Sustainable Cliff Island
c/o Roger Berle
rkberle@msn.com

Aaron Additon
296 Pride Street
Westbrook, ME 04092

David DiPietro
221 Virginia Street
Portland, ME 04103

AMA Real Estate, LLC
Attention: Aaron
PO Box 4806
Portland, Maine 04112-4806

Eddie Ahmed
baysidevariety@gmail.com

Gillian Davis
gillianwd@yahoo.com

Marla Michaels
Marlamichaels1@gmail.com

Steve Wilson
Stevewilson2@earthlink.net

Tim Steigelman
tsteigelman@krz.com

Port Harbor Fuel, Inc.
40 Deakes Wharf
Portland, ME 04101

Mike Cardente
mike@cardente.com

Michelle Theriault
Mtheriault71@gmail.com

Derek Smith
derekrsmith@earthlink.net

Karen Snyder
karsny@yahoo.com

info@eastbayside.org

ATTACHMENT 1

This page contains a detailed description of the Parcel ID you selected. Press the **New Search** button at the bottom of the screen to submit a new query.

Current Owner Information:

CBL	109B F039001
Land Use Type Verify legal use with Inspections Division	RETAIL & PERSONAL SERVICE
Property Location	16 FISHERMAN'S COVE
Owner Information	KESSINGER HOLLY & BRUCE RIETH 12 PREBLE ST # 2 GORHAM ME 04038
Book and Page	21688/148
Legal Description	109B-F-39 FISHERMAN'S COVE 6-18 CLIFF ISLAND 19568 SF
Acres	0.4492

Services

Applications

Doing Business

Maps

Tax Relief

Tax Roll

Q & A

browse city services a-z

browse facts and links a-z

Best viewed at 800x600, with Internet Explorer

Current Assessed Valuation:

TAX ACCT NO.	15698
LAND VALUE	$232,800.00
BUILDING VALUE	$57,940.00
NET TAXABLE - REAL ESTATE	$290,740.00
TAX AMOUNT	$5,643.26

OWNER OF RECORD AS OF APRIL 2013
KESSINGER HOLLY &
BRUCE RIETH
91 TURKEY LN
WEST BUXTON ME 04093

Any information concerning tax payments should be directed to the Treasury office at 874-8490 or e-mailed.

Building Information:

Building 1

Year Built	1950
Style/Structure Type	CONVENIENCE STORE
# Units	1
Building Num/Name	1 - SM STORE
Square Feet	392

View Sketch View Map View Picture

Building 3

Year Built	1910
Style/Structure Type	OLD STYLE
# Stories	1
# Units	1
Bedrooms	2
Full Baths	1
Half Baths	1
Total Rooms	4
Attic	FULL FIN./WH
Basement	FULL
Square Feet	1039

View Sketch View Map View Picture

Exterior/Interior Information:

Building 1

Levels	01/01
Size	392
Use	MULTI-USE SALES
Height	8
Walls	FRAME
Heating	NONE
A/C	NONE

Outbuildings/Yard Improvements:

	Building 1
Year Built	1910
Structure	BOAT DOCK WD
Size	1X450
Units	1
Grade	C
Condition	3

	Building 2
Year Built	1910
Structure	SHED-FRAME
Size	1X180
Units	1
Grade	C
Condition	2

Sales Information:

Sale Date	Type	Price	Book/Page
8/20/2004	LAND + BUILDING	$0.00	21688/148
8/19/1986	LAND + BUILDING	$0.00	7335/253

New Search!

April 1 2012 fy 2013 Tax Map Index; http://www.portlandassessors.com/taxmaps.htm Index Number - M23NE

X = 16 Fisherman's Cove, Cliff Island/ 109B-F-39

Assessor Picture on File for 16 Fisherman's Cove, Cliff Island, 109B-F-39 (3/2014)

EXECUTIVE SUMMARY

Credere Associates, LLC (Credere) has performed a Phase I Environmental Site Assessment (ESA) of the Cliff Island Fueling Station and Residence located at 16 Fisherman's Cove on Cliff Island in the City of Portland, Cumberland County, Maine (the Site). This Phase I ESA was completed in conformance with the ASTM International (ASTM) Standard Practice E 1527-13 for Phase I ESAs, which meets the requirements of the U.S. Environmental Protection Agency (EPA) Standards and Practices for All Appropriate Inquiries (AAI); Final Rule (40 CFR Part 312).

Credere was retained by the City of Portland to prepare this Phase I ESA for the purpose of identifying recognized environmental conditions (RECs) as defined by the ASTM E 1527-13 standard that may impact the Site's environmental condition.

The 0.45-acre Site is located on the southeast side of Cliff Island on the northwest bay of Fisherman's Cove. The Site consists of a 1.5-story 1,039-square foot residence, a dock, and shed, which were constructed in 1910. The Site was used for strictly residential purposes until 1950 when a 392-square foot former convenience store and presumably fueling operations were constructed. The Site operated as a convenience store and fueling station until approximately 2003. The store has been vacant since that time with only biweekly use to supply fuel to islanders. The residence continued seasonal use and upkeep until approximately 2011.

The residence consists of a three-season porch, dining room, sitting room, bathroom, and kitchen on the first floor, and two small bedrooms on the second floor. A crawl space is located beneath the residence, which reveals construction upon exposed bedrock. A 55-gallon drum of kerosene, an oil pan, and a half drum were located within the crawl space. The bedrock appeared significantly discolored or stained; however, it could not be confirmed if it was petroleum staining or just an organic residue.

The docks were intact; however, according to the Code Enforcement Officer who accompanied Credere during the Site reconnaissance, the planks were unstable and at the end of their useful life.

The shed is located northwest of the residence and contained an old stove, an unlabeled rusted 55-gallon drum, several open 5-gallon buckets of oil, a portable compressor, former gas pump hoses, tires, doors, and other materials.

The fueling station has three aboveground storage tanks (ASTs): one 2,000-gallon active gasoline AST, one 2,000-gallon empty AST, and one 500-gallon active diesel AST. The ASTs are single-walled bare steel tanks without secondary containment. The associated single-walled steel piping runs above the ground, unprotected along the southeast side of the convenience store to a fuel dispenser located west of the Site building. Two out-of-service fuel pumps without secondary containment are also present in this location. The area surrounding the pumps contains heavily stained sand, and a moderate petroleum odor can be detected in the area.

The interior of the store contained four 5-gallon cans of methanol, approximately 10 gas cans with varying quantities of gasoline, two open 5-gallon buckets of oil, and several household size containers of solvents, motor oil, cleaners, and other hazardous materials. A strong petroleum odor could be detected in the building and minor staining was observed throughout the floor. A large black stain was observed on a shelf within the shed; however, it was likely a dark wood stain spill as apparent staining of drift wood was taking place in the structure.

In general, the remainder of the Site contained debris including two scrap ASTs, piping, yard waste, and boats. Possible hazardous building materials and conditions conducive to mold growth were observed at the Site.

Based on review of historical sources, environmental databases, interviews, User provided information, Site reconnaissance, and judgment by the Environmental Professional; the following RECs were identified in connection with the Site:

- REC #1 – Use of the Site as an island fueling station with evidence of a release
- REC #2 – Accumulated petroleum and hazardous material products throughout the Site
- REC #3 – Possible release and threat of release from kerosene drum in the crawl space under the residence

The following *de minimis* condition (DMC) was identified as it does not present a threat to human health or the environment and generally would not be the subject of an enforcement action of brought to the attention of appropriate government agencies:

- DMC #1 – Two scrap ASTs at the Site

The following was identified as an environmental finding, which warrants the opinion of the Environmental Professional but does not meet the definition of a REC, historical REC, controlled REC, or DMC.

- Environmental Finding #1 – Suspect hazardous building materials in/on the Site buildings

Based on the RECs, DMC, and environmental finding identified during this Phase I ESA, Credere recommends the following:

- Immediate removal of oil and hazardous material waste products throughout the Site
- Immediate stabilization and removal of possibly leaking kerosene drum in crawl space
- Removal of debris (scrap ASTs, boats, propane tanks, piping, old appliances, etc.) throughout the Site
- A Phase II investigation to assess the potential for petroleum contamination at the Site
- Sampling of the onsite well to assess impacts associated with the long history of Site use as a fueling station
- Inspection and modernization of the fueling system by a Maine Certified Tank Installer, to prevent future release or threat of release of petroleum at the Site
- A Hazardous Building Material Survey (HBMS) to assess for asbestos-containing materials (ACMs), lead-based paint (LBP), and polychlorinated biphenyl (PCB)-containing building materials
- If the residence is planned to be re-occupied, conduct a mold assessment due to the observed water damage and moist crawl space

Received from Chuck Fagone/Building Inspections

Assessment of Tax acquired Property – 16 Fisherman's Cove Road, Cliff Island

Overview: The above stated property, out buildings and dock was assessed for its conditions on Wednesday May 21. 2014. The property consists of a small waterfront home, two outbuildings and a dock located on Cliff Island. The waterfront consists of ledge and rock (no beach). The entire lot size is less than ½ acre in size. The use of the property was a residential home, convenience store and fuel depot. It is currently zoned 1B. There are at least three fuel tanks on site. One of which is still in use.

Building #1: Is one story wood frame structure with a dock built in 1950 that was used as a convenient store. An annex was added sometime after that date. The two buildings combine for approximately 392 square feet. The original building was built on wood supports, directly on the ledge and appears to be close to the end of their life span. The structure itself appears to be in good condition. The shingles on the outside walls are weathered and in need of replacing. The annex consists of wood frame structure and rests on a poured concrete slab foundation. It also appears to be structurally sound. Electrical service is 100 amp breakers.

The dock is a wood structure with supporting piers. The support system appears to be in good shape, although I could only view it from a distance. However, the decking is unsafe to walk on and is missing in many places.

Building #2: Is the main residential building, city records indicate it was built in 1910. It's a wood frame "old style" home and is structurally sound. Internally, the home is dated and in need of work, the three season porch roof leaks and many of the ceilings throughout the home are in bad shape. The first floor consists of an entry way hall, kitchen, dining room, living room and full bath. The second floor consists of two bedrooms, one which has a small dormered space. It's not known if there is any insulation in the walls. The roof shingles are in bad shape and most likely at the end of their life span. The dwelling is supported by wood posts that rest on poured concrete blocks. The basement is accessible by an outside door and would be considered a crawl space. There is considerable amount of ledge under the building. The basement is approximately 6 feet high on one side and as low as 3 feet on the other. Electrical is 100 amp breakers. The outside walls are covered with white vinyl siding and are in good shape.

The water supply is from two wells. One which is dug and the other drilled. The water supply has been off for about five years so it is unknown if the plumbing and wells are still operational. There is a septic system and leach field, but it's unknown if they are still operational and their age is unknown. The dwelling does have overboard discharge.

Building #3: Is a wood frame two story shed type structure that is approximately 180 square feet. It appears to be structurally sound and is supported by concrete piers. The wood clapboards are missing on the rear of the building and will need coverage. There is no electrical or plumbing to the structure.

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT for the purchase and sale of real estate made this ______ day of ______________, 2014 by and between the **CITY OF PORTLAND**, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "**CITY**"), and _________________________, with a mailing address of ___________________________ Portland, Maine, (hereinafter referred to as "**BUYER**").

W I T N E S S E T H:

WHEREAS, **CITY** is the owner of certain land located 16 Fisherman's Cove, on Cliff Island, in Portland, Maine, which described in the quitclaim deed attached hereto as Exhibit A, and incorporated herein (the "Premises"); and

WHEREAS, the **BUYER** desires to purchase the Premises;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the parties, intending to be legally bound, hereby agree as follows:

1. SALE

CITY agrees to sell to **BUYER** the Premises, and **BUYER** agrees to buy the Premises and accept the deed to the same, for the consideration set forth here.

2. CONSIDERATION

The consideration for the Premises shall be _________________ Thousand Dollars ($_________,000.00).

3. TITLE

Title to the Premises shall be conveyed by Quitclaim Deed as shown in Exhibit 1.

4. CONTINGENCIES

This Purchase and Sale Agreement is further subject to only the following contingency:

Approval of this Purchase and Sale Agreement by the Portland City Council.

5. CLOSING

The closing shall be held at City Hall, within thirty (30) days after approval of the Portland City Council, at a time agreeable to the parties.

6. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

7. GOVERNING LAW

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maine.

8. NOTICE

Any notice required or permitted under this Agreement shall be deemed sufficient if mailed with first class postage affixed or delivered in person to:

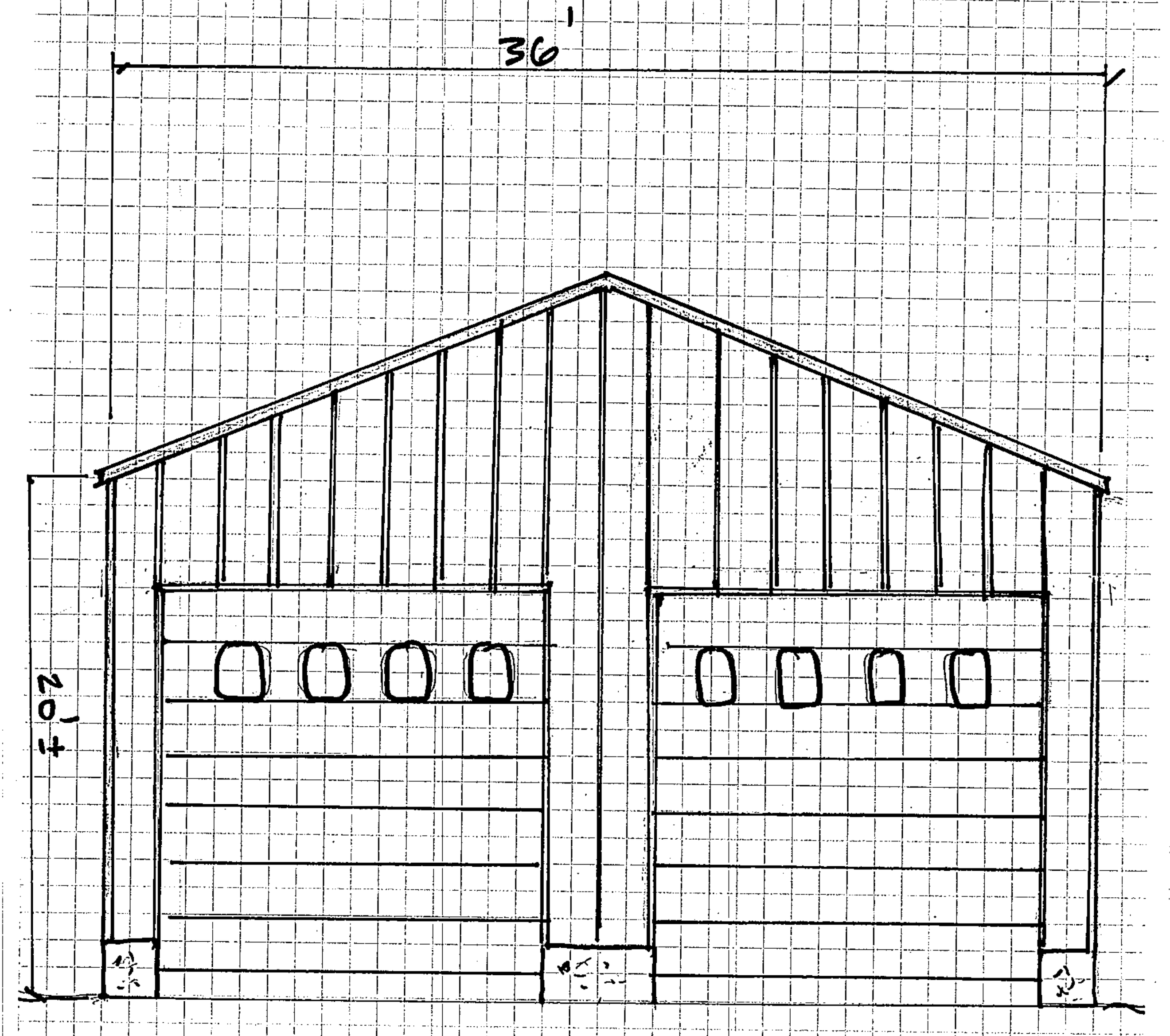
FOR THE CITY:	City of Portland ATTN: CITY MANAGER 389 Congress Street Portland, ME 04101
FOR BUYER:	__________________ ___________________ Portland, Maine 0410_

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

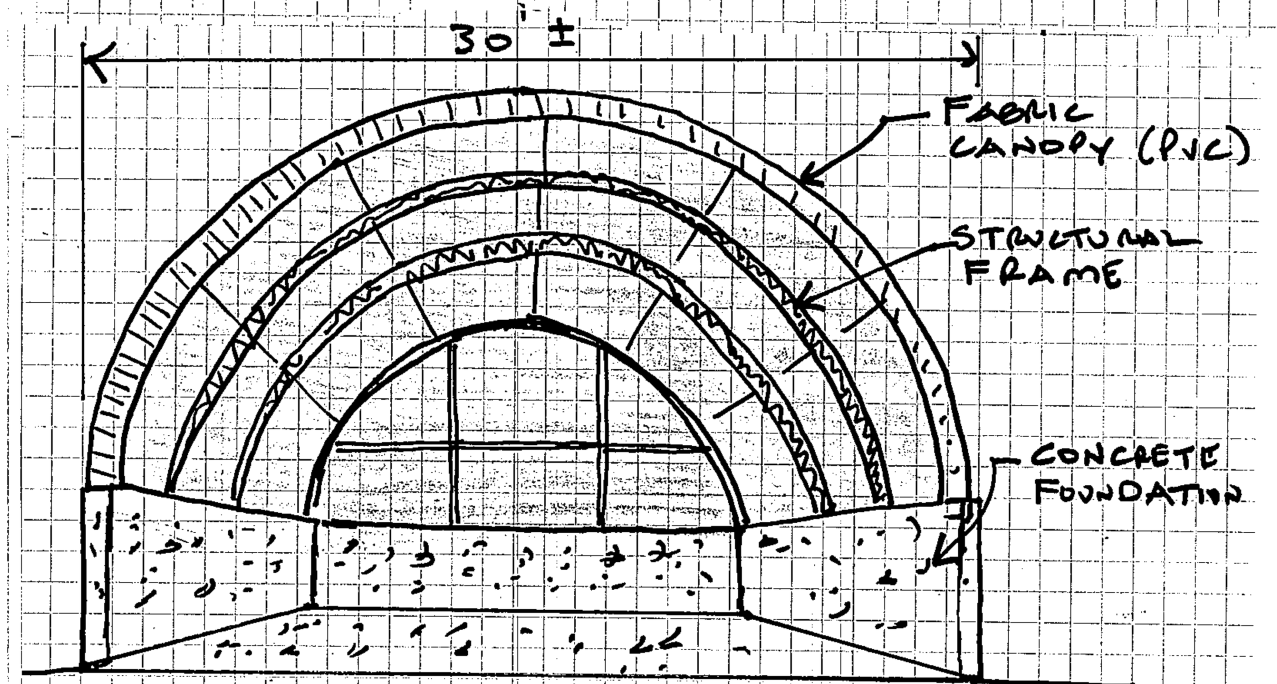
	CITY OF PORTLAND
________________________ WITNESS	______________________________ Mark H. Rees City Manager
________________________ WITNESS	______________________________ *(insert printed name)* **Buyer**
Approved as to Form:	Approved as to Funds:
Corporation Counsel's Office	______________________________ Finance Director

O:\OFFICE\LARRY\TAPC\fishermans cove cliff\PandS for sale of fishermans cove cliff.doc

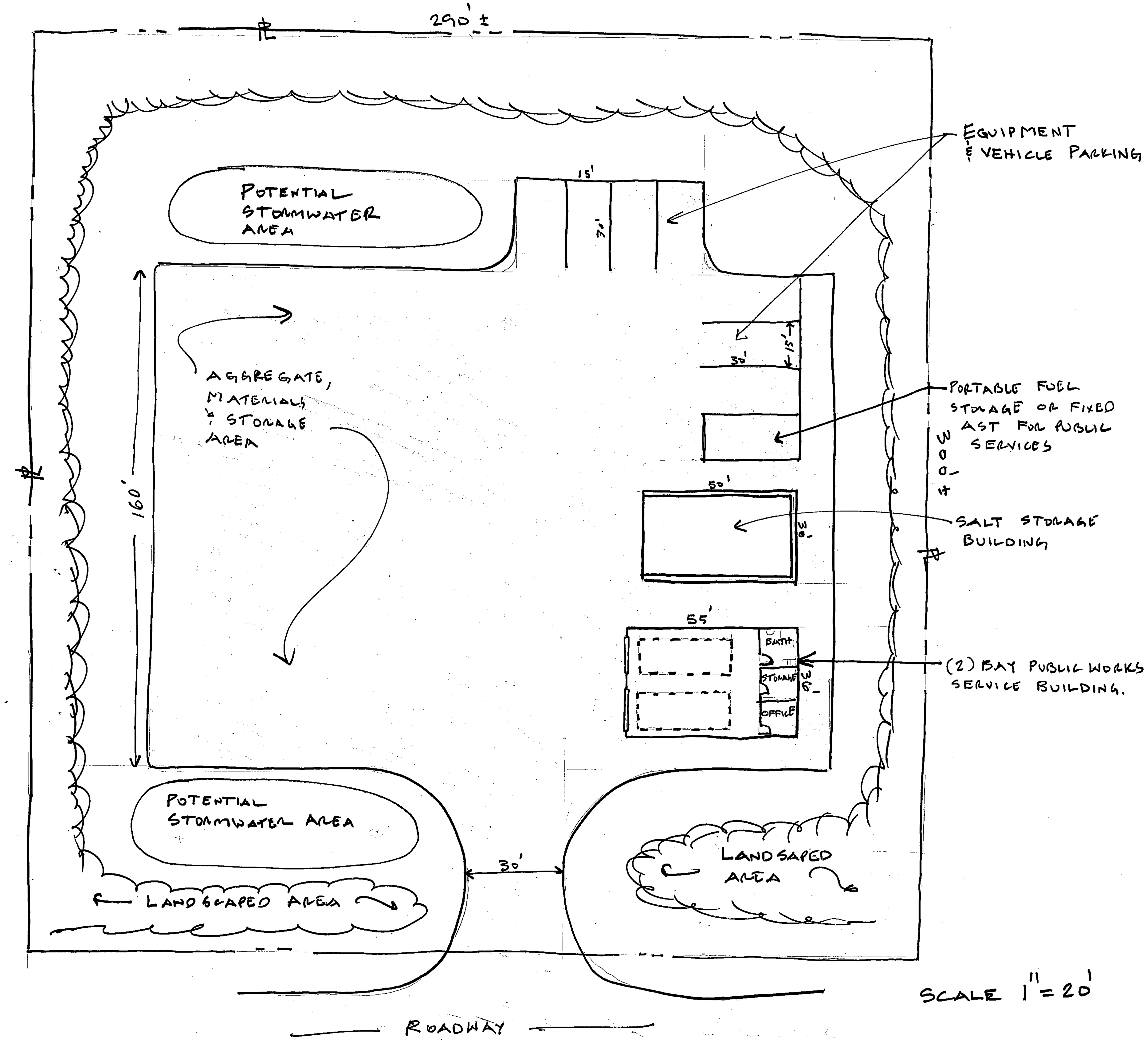
ATTACHMENT #5 TO RFP



FRONT ELEVATION - PUBLIC WORKS
NTS



FRONT ELEVATION - SALT SHED
NTS



SCALE 1" = 20'

NOT FOR CONSTRUCTION

PROGRESS PRINT

REV:	BY:	DATE:	STATUS:
A	CAM	7-24-14	CONCEPT PLAN

THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM SEBAGO TECHNICS, INC. ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO SEBAGO TECHNICS, INC.

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PROJECT NO.	FIELD BOOK	DESIGN	CHKD	DRAWN
14275				

CONCEPT PLAN
OF:
CLIFF ISLAND PUBLIC SERVICES
PORTLAND, MAINE
FOR:
CITY OF PORTLAND
55 PORTLAND STREET
PORTLAND, MAINE 04101

DATE	SCALE
07-23-14	

SHEET 1 OF 1

14275TB.dwg, TAB:Model

MUNICIPAL
QUITCLAIM DEED

KNOW ALL PERSONS BY THESE PRESENTS, THAT **CITY OF PORTLAND**, a municipal corporation with a mailing address of 389 Congress Street, Portland, Maine (the "City") for consideration paid, releases, and quitclaims without covenant, to ________________ __________________________, with a mailing address of ____________________________, Portland, ME 04____, the real property in the City of Portland, County of Cumberland, State of Maine, particularly described in EXHIBIT A attached hereto and hereby made a part hereof.

The property herein conveyed is subject to the terms, restrictions and conditions in Exhibits A, B, C and D attached hereto and hereby made a part hereof.

IN WITNESS WHEREOF, Ellen L. Sanborn, Finance Director of the City of Portland, has hereunto executed this instrument on this __ day of _______________, 2013.

WITNESS **CITY OF PORTLAND**

____

By:______________________
Ellen L. Sanborn, Finance Director

STATE OF MAINE
CUMBERLAND, ss. _______________ ___ 2013

Personally appeared the above-named Ellen L. Sanborn, Finance Director of the City of Portland, Maine, and acknowledged the foregoing, instrument to be her free act and deed and the free act and deed of said City of Portland.

Before me,

____
Notary Public/Attorney-at-Law, Bar #______

____
Print Name

Approved as to form:

____
Corporation Counsel's Office

O:\OFFICE\LARRY\TAPC\fishermans cove cliff\Deed from City.doc

EXHIBIT A

109-F-39
16 Fisherman's Cove, Cliff Island
Liened by the City of Portland in
2008 and every year since then

A certain lot or parcel of land, with buildings thereon situated on the southeasterly side of Cliff Island in Casco Bay, in Portland, Cumberland County, Maine, bound and described as follows:

Beginning at a point in the westerly sideline of land formerly of Hannah C. Small, sixty (60) feet southeasterly from the "City Street", so-called; thence southwesterly parallel with said street, sixty-three (63) feet to land conveyed by Luch A. Small to George E. Nickerson; thence southeasterly along said Nickerson land to the seashore; thence northeasterly along said shore to land formerly of Hannah C. Small; thence northwesterly along the westerly line of land formerly of Hannah C. Small to the point of beginning; together with a right of way from the northwesterly corner of the land hereby conveyed to the "City Street" so-called, over a strip of land now or formerly of Lucy A. Small lying between lands conveyed to George E. Nickerson and Mary E. Hammond.

Also adjacent lot or parcel of land situated on the southeasterly side of Cliff Island, in Casco Bay, in Portland, Cumberland County, Maine, bounded and described as follows:

Beginning at the most northerly corner of the before described lot of land, and at a point sixty (60) feet southeasterly from the "City Street" so-called; thence northeasterly along the line of land conveyed by Hannah C. Small to Mary G. Hammond, fifty-three (53) feet to a point; thence southeasterly parallel with the northeasterly line of the before described lot of land to the seashore; thence southwesterly and southerly along the shore to the before described lot of land; thence northwesterly along the northeasterly sideline of the before described lot of land, to the point of beginning.

Subject to any encroachment that may exist now or may have existed before, caused by a wooden workshop building on the boundary of the property herein conveyed, but only to the extent that such encroachment is valid and enforceable.

Together with the buildings and improvements, including the wharf now situated on said premises, and the shore and flats abutting or appurtenant to the property herein conveyed, including all riparian rights, littoral rights and rights of fishery.

Also subject to the easement conveyed by Suzanne H. Rieth to Muriel S. Anderson by deed dated January 19, 1990 and recorded in the Cumberland County Registry of Deeds in Book 9065, Page 262.

Meaning and intending to convey, and hereby conveying, the same property as described in the tax lien certificate recorded on June 17, 2008, in the Cumberland County Registry of Deeds in Book 26133, Page 234. Title reference is made to the Affidavit of Linda McLeod dated April 11, 2014, recorded in said Registry in Book ________, Page ______.

Title reference is also made to the Personal Representative's Deed of Distribution from Bruce McAfee, Personal Representative of the Estate of Suzanne H. Rieth, (see Cumberland County Probate Docket No. 2003-141 to Holy Kessinger and Bruce Rieth, dated April 20, 2004, and recorded in said Registry in Book 21688, Page 1483.

EXHIBIT B

Residential Restrictions

1. The covenants and restrictions on the Grantee set forth herein are intended to be and shall be considered covenants which run with the real estate described in Exhibit A attached hereto and shall bind all subsequent owners of the real estate described in Exhibit A attached hereto, except to the extent provided herein, but only during the Restriction Period.

2. The covenants of the Grantee set forth herein are enforceable by City as a contract except to the extent provided herein.

3. The covenants of the Grantee set forth herein shall survive a sale, transfer, or other disposition of the Premises by the Grantee, foreclosure or transfer of title in lieu of foreclosure, or the repayment of the loan, except to the extent provided herein.

4. (a) If Premises is sold or transferred, as an owner-occupied Premises, ~~–~~the Premises shall remain affordable, year round island housing – i.e., affordable to a household earning 120% or less of the then U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland County, Maine.

~~3.~~ (b) If Premises is sold or ~~,~~ transferred, as non-owner-occupied Premises, the Premises shall be rented, leased or otherwise in accordance with Section 7(b) below.

~~4.~~5. The term "Restriction Period" as used herein shall mean the period beginning on the date of the deed from the City of Portland to which this Exhibit is attached, and terminating on a date twenty (20) calendar years thereafter.

~~5.~~6. The Grantee agrees to comply with these restrictions throughout the Restriction Period.

~~6.~~7. The Grantee hereby covenants and represents to City as follows:

a. The Premises shall consist of the land described in Exhibit A together with a residential building and structures and facilities functionally related and subordinated thereto; and a commercial building and structures and facilities functionally related and subordinated thereto.

b. If the residential building on the Premises is rented, leased or otherwise used by a non-owner:

i. The total housing costs including rent and utilities of tenants occupying the rent restricted unit~~s~~ in Premises as of the date of these restrictions may not increase for twelve months beginning on the date of these restrictions.

ii. The Grantee shall maintain all of the units included in the Premises rented or available for rental on a continuous basis to members of the general public throughout the Restriction Period; unless they are used by the Grantee. Rentals shall not generally be for less than six months, but with customary rights of termination.

iii. Throughout the Restriction Period, the residential unit on the Premises must be occupied by individuals or families with households at or below 120% of area median income, but subject to the terms conditions stated herein, including (b)(vi) below.

iv. Rent may not exceed 30% of the tenant's adjusted monthly gross income (also refer to Section (b)(iii) above).

~~iv.~~v. Income and area median income shall be as determined by the United States Department of Housing and Urban Premises and income limits shall be adjusted for family size.

~~v.~~vi. At least annually, City shall determine whether the income, based on the current income, of the tenants residing in the Premises exceeds the applicable income limits as described in this Section 6 (the "Determination"). The Grantee shall furnish to City such information as City shall require, including certification of occupancy and tenant income, in order to assure that the covenants set forth herein are being fully satisfied.

~~vi.~~vii. A unit occupied by a tenant who, at the commencement of occupancy, met the applicable income limitations shall continue to be treated as occupied by a qualified tenant until the tenant's income exceeds one hundred fifty percent (150%) of the area median income, adjusted for family size, at the time of the most recent Determination. After such Determination, ~~but before the next Determination, such tenant shall voluntarily or by eviction if necessary depart the Premises~~ once the tenant departs the Premises, Landlord will rent to an income eligible tenant.

~~vii.~~viii. Grantee agrees to furnish to City such information as City may require in form acceptable to City, including without limitation certifications and/or verification of occupancy and tenant income certifications to determine Grantee's compliance with the covenants set forth herein.

~~viii.~~ix. Grantee shall maintain and keep current all records concerning the Premises, including, but not limited to, records related to compliance with the covenants contained in these restrictions, until the expiration of the Restriction Period. Upon reasonable notice, City may audit and examine these records, and may inspect the buildings and grounds at the Premises.

~~ix.~~x. Grantee shall use tenant lease forms acceptable to City, or, if there are no written leases, written and signed certifications by tenants to determine whether tenants meet the applicable income limits. Such leases or certifications shall contain clauses wherein each tenant certifies as to the accuracy of statements made relating to income and agrees that family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, that the tenant will comply with all requests for information with respect thereto from the Grantee or City, and that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of the tenancy.

~~7.~~8. Grantee agrees that it will cause the residential portion of the Premises to be kept in reasonable repair, and shall see that all reasonably necessary repairs are made.

8. Grantee agrees that it shall pay real estate taxes, as assessed by City, on Premises. In the event that ownership of the Premises or a portion thereof becomes tax exempt, either by transfer, conversion or otherwise, an amount shall be paid annually to City, equal to the amount that would have been assessed as real estate taxes had the Premises or a portion thereof remained taxable. Grantee shall notify any party to whom it transfers any of its interest in the Premises of this requirement.

9. Grantee covenants and agrees to take such action as City deems necessary to comply with the covenants herein or to correct or cure any failure of the Grantee to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law. In the event the Grantee fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, City shall be able to maintain an action in law or in equity against the Grantee to require the Grantee (through injunctive relief or specific performance) to comply with the provisions and covenants set forth

herein and to immediately cure any failure to comply with the covenants set forth herein by the Grantee.

10. Grantee shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to attorney's fees and other costs of litigation) which may be incurred by City arising out of or in any way related to the Grantee's breach of any of its obligations under these restrictions as a result of such breach. The obligations survive the termination or expiration of these restrictions as necessary to effect its provisions.

11. Grantee covenants that if a lien for the performance of work or the furnishing of labor or materials is filed against the Property, Grantee shall cause it to be satisfied, discharged or bonded within a period of sixty (60) days after the date of filing of such lien.

12. These restrictions may be amended or modified in whole or in part only by written agreement of Grantee and City clearly expressing the intent to modify these restrictions.

13. The validity of any clause, part or provision of these restrictions shall not effect the validity of the remaining portions of thereof.

14. These restrictions shall be binding upon Grantee's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.

EXHIBIT C

Commercial Restrictions

1. The purpose of these restrictions is to ensure the continued availability of vehicular and marine fuel products, which have been sold from a portion of the Premises for many years, and by doing so, to make life on Cliff Island more easily viable.

2. The covenants and restrictions on the Grantee set forth herein are intended to be and shall be considered covenants which run with the real estate described in Exhibit A attached hereto and shall bind all subsequent owners of the real estate described in Exhibit A attached hereto, except to the extent provided herein, but only during the Restriction Period.

3. The covenants of the Grantee set forth herein are enforceable by City as a contract except to the extent provided herein.

4. The covenants of the Grantee set forth herein shall survive a sale, transfer, or other disposition of the Premises by the Grantee, foreclosure or transfer of title in lieu of foreclosure, or the repayment of the loan, except to the extent provided herein.

5. The term "Restriction Period" as used herein shall mean the period beginning on the date of the deed from the City of Portland to which this Exhibit is attached, and terminating on a date twenty (20) calendar years thereafter. The City reserves the right to shorten or extend this Restriction Period.

6. The Grantee agrees to comply with these restrictions throughout the Restriction Period.

7. The Grantee hereby covenants and represents to City as follows:

   a. The Premises shall consist of the land described in Exhibit A together with a residential building and structures and facilities functionally related and subordinated thereto; and a commercial building and structures and facilities functionally related and subordinated thereto.

   b. The existing commercial portion of the Premises, including the commercial building and structures and facilities functionally related and subordinated thereto, shall continue to be used only for commercial purposes, including but not limited to the sale of petroleum based fuel for vehicles and boats.

8. Grantee shall maintain and keep current all records concerning the Premises, including, but not limited to, records related to compliance with the covenants contained in these

restrictions, until the expiration of the Restriction Period. Upon reasonable notice, City may audit and examine these records, and may inspect the buildings and grounds at the Premises.

9. Grantee agrees that it will cause the commercial portion of the Premises to be kept in reasonable repair, and shall see that all reasonably necessary repairs are made; and that the Premises are brought into compliance with applicable laws and ordinances.

10. Grantee agrees that it shall pay real estate taxes, as assessed by City, on Premises. In the event that ownership of the Premises or a portion thereof becomes tax exempt, either by transfer, conversion or otherwise, an amount shall be paid annually to City, equal to the amount that would have been assessed as real estate taxes had the Premises or a portion thereof remained taxable. Grantee shall notify any party to whom it transfers any of its interest in the Premises of this requirement.

11. Grantee shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to attorney's fees and other costs of litigation) which may be incurred by City arising out of or in any way related to the Grantee's breach of any of its obligations under these restrictions as a result of such breach. The obligations survive the termination or expiration of these restrictions as necessary to effect its provisions.

12. Grantee covenants that if a lien for the performance of work or the furnishing of labor or materials is filed against the Property, Grantee shall cause it to be satisfied, discharged or bonded within a period of sixty (60) days after the date of filing of such lien.

13. The City shall have the right and option to purchase either (its its election) the Property, or the portion of the Property used for commercial purposes, during the later of the last full year of the Restriction Period, or the calendar year 2034. The purchase price shall be the value of of the real property, buildings, improvements and commercial fixtures related thereto, as determined by the assessor for the City of Portland. Additional terms of this option are set out in Exhibit D, attached hereto. The parties hereto hereby agree that this right and option to purchase, and the City's rights in the Property thereby created, are immediately fully vested and are hereby deemed to be fully vested in any event, not contingent, and shall, by agreement, not be subject to the Rule Against Perpetuities, or any statutory enactment thereof, or similar law.

14. These restrictions may be amended or modified in whole or in part only by written agreement of Grantee and City clearly expressing the intent to modify these restrictions.

15. The validity of any clause, part or provision of these restrictions shall not effect the validity of the remaining portions of thereof.

16. These restrictions shall be binding upon Grantee's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.

EXHIBIT D

1. City, its successors or assigns, may exercise this Option only by giving written notice (hereinafter referred to as the Notice) within the Option Period, in any of the following manners: (a) by letter of City addressed and posted in the U.S. Mail by certified or registered mail, return receipt requested, addressed to the then owner of the Property (as indicated in the records of the Assessor for the City of Portland, 16 Fisherman's Cove, Cliff Island 04019, (b) by letter of any attorney-at-law purporting to act for City or for any such assignee addressed to Grantee or its successors or assigns, in the manner aforesaid. Notice shall be effective when posted in accordance with the foregoing sentence. Notice is to be accompanied by a payment to Grantee or its successors or assigns of the Earnest Money in the amount of One Thousand Dollars ($1,000.00). City shall indicate in said Notice the date, time and place for closing, which shall be held not less than ten (10) nor more than sixty (60) days after the giving of such Notice.

2. If City, its attorney, successors or assigns, exercises this Option to purchase the Premises, then in consideration of the terms, covenants and conditions contained herein, the parties mutually agree as follows:

a. Upon the giving of the above-mentioned Notice of election to purchase by City, its successors or assigns, together with the Earnest Money, Grantor shall thereby be bound to sell and City shall thereby be bound to purchase the Premises upon the terms and conditions set forth herein. Grantee or its successors or assigns shall convey the Premises by a good and sufficient warranty deed granting marketable title thereto, free and clear of all encumbrances and defects in title except for utility easements of record servicing the Premises. The closing shall be held at the date, time and place set forth in said Notice, or at such reasonable date thereafter as may be required to clear any encumbrance and defects in title, and Grantee or its successors or assigns shall then and there deliver the deed to City, its successors or assigns, upon tender of the balance of the purchase price by certified check, cashier's check, or cash. The balance to be tendered to Grantee or its successors or assigns shall be the Purchase Price, less all Earnest Money and Option Consideration.

b. If counsel for City, or its successors or assigns, shall be of the opinion, given in good faith, that the title to said Premises is defective or is otherwise not free and clear of all encumbrances or that the title is not marketable, then City, its successors or assigns, shall have the right, provided it or they shall have exercised this Option, to extend the time for conveyance of the Premises, during which time Grantee or its successors or assigns shall make every effort to remove such defects at its own expense, to the satisfaction of counsel of City, its successors or assigns. If record title proves defective and Grantee or its successors or assigns shall fail to remove such defect within a reasonable time after notice from City of the nature of the defect, City may, at its election, (a) cure any such defect and deduct the cost thereof from the Purchase Price at closing, or

(b) elect to close notwithstanding any such defect, or (c) terminate this Option by written notice to Grantee or its successors or assigns, whereupon all Earnest Money and Option Consideration paid by City to Grantee or its successors or assigns shall immediately be returned to City and thereafter the parties shall be relieved of all obligations.

c. If all obligations of this agreement have been performed, excepting that City does not complete the purchase, Grantee or its successors or assigns shall retain the Earnest Money as full liquidated damages, and without recourse to any other remedies.

d. Grantee or its successors or assigns hereby agrees that the description in the warranty deed to be delivered at closing shall, at the option of City, utilize a description determined by City's survey of the Premises.

e. Full possession of the Premises, free of all encumbrances except as aforesaid, is to be delivered to City at closing, with the Premises to be in the reasonably functional condition, reasonable wear and tear excepted.

f. Real estate taxes shall be prorated as of the time of the passing of title. Real estate transfer taxes, if any, arising in connection with the conveyance of the Premises shall be paid by City and/or Grantee or its successors or assigns in accordance with the custom of the locality where the Premises are situated.

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Housing and Community Development Committee

FROM: Greg Mitchell, Economic Development Director

DATE: August 8, 2014

Cc: Mark Rees, City Manager
Michael Bobinsky, Public Services Director
Jeff Levine, Planning and Urban Development Director
Ellen Sanborn, Finance Director

SUBJECT: Amendments to Federated Midtown Project Documents, Including Somerset Street Cost Share Agreement

SUMMARY OF ISSUE

The delay with the Federated Companies Midtown Project, largely due to an active lawsuit, has resulted in the need to amend three Midtown Project partnership documents primarily to address Project timing issues; there is also a need to raise the grade of Somerset Street from Pearl Street to Elm and assign costs for that work.

REASON FOR SUBMISSION

The Federated Companies Midtown Project partnership documents were executed by the parties on October 15, 2012 including the First Amendment to the Purchase and Sale Agreement which was signed on June 23, 2011. (See attached documents.)

Following Planning Board Midtown Project Master Plan and Site Plan approvals on January 14, 2014, a lawsuit challenging this approval was filed and remains active.

Amendments to the following Midtown Project documents are proposed with explanations:

<u>Second Amendment to the Purchase and Sale Agreement</u>

Assignment Change. Assignment change is proposed to a different Federated Companies corporate entity entitled "FEDEQ DV001, LLC".

It is noted that a Corporate Guaranty, with the parent corporation, is in place to cover the amount of the City HUD Program debt service expense if the Midtown Project Phase I municipal taxable value does not generate enough property tax revenue.

Property Acreage. The amount of the City acreage being sold increased from 3.25 acres to 3.44 acres as contemplated in the original Purchase and Sale Agreement.

Property Sale Price. The property per acre sale price, established in the original Purchase and Sale Agreement at $700,000 per acre, applied to the new total acreage amount yields a total sale price of $2,408,000.

Project Timing. Project timing has been adjusted to reflect the end of legal appeals due to the active lawsuit.

Scrap Yard Environmental Cleanup. The assignment of responsibility to manage the cleanup of the New England Metal Recycling property has been changed from Federated Companies to the City to lower the overall site cleanup costs and maintain City involvement in the clean up process under an EPA cleanup plan. There is no change to the City's financial involvement in this work.

Somerset Street Cost Share Agreement. This is a new agreement which recognizes the need to raise the elevation of Somerset Street, from Pearl Street to Elm Street, to support improved pedestrian/ vehicle access to new private development and address flooding issues in the neighborhood.

The scope of the Somerset Street Reconstruction Project is designed to raise the grade of the street between Pearl and Elem Streets and adjust utilities. The overall cost of this Project is estimated to be $4 million. A cost share agreement has been negotiated for the Federated Companies to invest one-third (1/3) of the total costs and for the City to cover two-thirds (2/3). The proposed financial sources include:

Responsibility	**Amount**	**Sources**
Federated	$1.33	Federated
City	$2.67	$1.0 mil. (HUD - $666,667 Loan, $333,333 Grant) $1.0 mil. (Available Bayside TIF reserve) $0.70 mil. (New City Debt)
Total	$4.0	

An explanation of the use of the Bayside HUD 108 Loan and BEDI Grant Program is provided later in this memorandum.

<u>Amendment of the Corporate Guaranty</u>.

Project Definition. This has been added to refer to the Planning Board approvals, including Project Phase 1 to consist of a parking garage containing not less than 700 spaces; not less than one hundred seventy four (174) residential units; and, not less than 37,486 square feet of commercial space.

Guaranty Deadline. An amendment is proposed to clarify that scrap yard environmental cleanup costs, covered by the HUD funds, are not counted toward the $1 million Federated Companies HUD draw down trigger to start the date for two (2) year completion of the parking garage.

Amendment of the Parking Garage Contribution and Funding Agreement.

Timing. This change is needed again due to the active lawsuit to start the clock following the end of appeals.

Again, an amendment is proposed to clarify that scrap yard environmental cleanup costs, covered by the HUD funds, are not counted toward the $1 million Federated Companies HUD draw down trigger to start the date for two (2) year completion of the parking garage.

Bayside HUD 108/BEDI Grant Program Amendments.

It is important to note there is a September 30, 2014 deadline for the City to draw down HUD 108 loan funds for use.

One source of funds to support investment in the Somerset Street Reconstruction Project is $1 million from the Bayside HUD 108/BEDI Grant Program. This source is comprised of $666,666 in HUD loan funds and $333,334 in BEDI Grant funds. The $1 million was originally programmed to support relocation of the one remaining scrap yard in Bayside. Several attempts have been made over a number of years which have not been successful to relocate this scrap yard. Therefore, it is proposed that the $1 million be reprogrammed for investment into the Somerset Street Reconstruction Project. HUD officials advised City staff that an amendment to the Bayside HUD 108/BEDI Grant Program must be approved by the City Council, so this matter is being presented to the HCDC for their recommendation to the City Council.

INTENDED RESULT

HCDC and City Council approval of the proposed Amendments to the Federated Companies Midtown Project documents, including the Somerset Street Reconstruction Project Agreement to support new private sector investment in Bayside.

COUNCIL GOAL ADDRESSED

Provide increased availability in all segments of the housing market while insuring that there is a suitable balance of housing opportunities among those sectors.

Promote Economic Development in the City in a manner that provides for increased property values, diversification across industry sectors, and high paying jobs.

FINANCIAL IMPACT

City staff prepared debt service projections for the additional City debt in the amount of $1.367 million, along with projected property revenue associated with midtown project to demonstrate that there is adequate property tax revenue to retire new City debt associated with the Somerset Street Reconstruction Project. City staff analysis is attached for your information.

RECOMMENDATION

City staff recommends approval of the proposed Federated Companies Midtown Project documents, as presented, including the Somerset Street Reconstruction Agreement.

LIST ATTACHMENTS

1. Second Amendment of Purchase and Sale Agreement and Amendment of Corporate Guaranty and Amendment of Parking Garage Contribution and Funding Agreement

2. Agreement by and between FEDEQ DV001 and City of Portland on Costs for Off-Site Improvements Improving Somerset Street, to be Partially Funded by City of Portland

3. City staff prepared debt services projections for additional City debt.

4. Executed Corporate Guaranty of October 15, 2012.

SECOND AMENDMENT OF PURCHASE AND SALE AGREEMENT
AND
AMENDMENT OF GUARANTY
AND
PARKING GARAGE CONTRIBUTION AND FUNDING AGREEMENT

THIS AGREEMENT dated March ________________, 2014 is made by and between **THE CITY OF PORTLAND, MAINE**, a body politic and corporate with a place of business at 389 Congress Street, Portland, Maine 04101 (the "City" or "Seller"), **LEGACY PARK APARTMENTS, LLC**, a Florida limited liability company with a place of business at 3301 NE 1st Avenue, Suite M-302, Miami, Florida 33137 ("Legacy" or "Buyer"), **THE FEDERATED COMPANIES LLC**, a Florida limited liability company with a principal place of business at 3301 NE 1st Avenue, Suite M-302, Miami, Florida 33137 ("Federated"), and FEDEQ DV001, LLC, a Maine limited liability company with a mailing address of PO BOX 370008 , Miami, Florida 33137 ("FEDEQ").

RECITALS

WHEREAS, The City and Federated entered into a certain Purchase and Sale Agreement dated June 23, 2011, as amended by a First Amendment to Purchase and Sale Agreement dated October 15, 2012 (collectively, the "P&S"), and Federated has assigned its rights as buyer under the P&S to Legacy pursuant to a certain Assignment and Assumption Agreement dated June 27, 2011 (the "Assignment"); and

WHEREAS, Legacy has assigned its right to purchase the Land to a Maine limited liability company known as FEDEQ DV001, LLC by assignment and assumption agreement, a copy of which is attached hereto as Exhibit A (the "FEDEQ Assignment");

WHEREAS, the City, Legacy, and Federated are parties to that certain Corporate Guaranty Agreement dated October 15, 2012 (the "Guaranty Agreement"), and the City and Legacy are parties to a certain Parking Garage Contribution and Funding Agreement dated October 15, 2012 (the "Parking Garage Agreement") and the City and Legacy are parties to a certain Job Creation Agreement dated October 15, 2012 (the "Job Creation Agreement"); and

WHEREAS, the City, Legacy, Federated and FEDEQ now wish to amend certain provisions of the P&S, the Guaranty Agreement and Parking Garage Agreement as set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the P&S, the Guaranty Agreement and the Parking Garage Agreement are hereby amended as follows:

1. The City hereby consents to the FEDEQ Assignment, agrees to convey the Land to FEDEQ at Closing, as nominee of Legacy, and agrees to recognize FEDEQ as Buyer for all purposes under the P&S, the Parking Garage Agreement, the Job Creation Agreement and the Guaranty.

2. The P&S is hereby amended to reflect the following terms and conditions:

   a. The definition of the Land subject to the P&S is hereby amended to read as follows: Certain real property located on Somerset Street, Portland, Maine which contains approximately 3.44 acres and which is known as lots 1, 2, 3, 5, 6, and 7 shown on that certain "Amended Subdivision/Recording Plat on Somerset Street, Portland, Maine" prepared for Fay, Spofford & Thorndike by Owen Haskell, Inc., dated April 10, 2013, last revised December 20, 2013 and approved by the Portland Planning Board on January 14, 2014 (the "Amended Subdivision Plan"), a copy of which is attached hereto as <u>Exhibit B</u>.

   b. The City shall grant to FEDEQ all of the easement rights over lots 4 and 9 (which lots shall be retained by the City) as shown on the Amended Subdivision Plan and over that portion of "Pearl Street Extension" owned by the City as shown on the Amended Subdivision Plan. All easements created by and shown on the prior subdivision plan, entitled "Bayside Railyard Portland, Maine" dated October 30, 2008 and prepared for the Downtown Portland Corporation by SGC Engineering, LLC, recorded in the Cumberland County Registry of Deeds in Plan Book 209, Page 36 (the "Subdivision Plan"), that are not expressly shown on the Amended Subdivision Plan are hereby extinguished, including, without limitation, an easement crossing lot 3, the underpass easement shown on lots 1 and 2, the geothermal easements, and the former location of the trail corridor easement.

   c. The total the acreage of the Land subject to the P&S is 3.44 acres, and the Purchase Price shall be Two Million Four Hundred Eight Thousand **Dollars ($2,408,000.00)**, based on the per acre purchase price set forth in the P&S.

   d. The parties acknowledge that the approvals for the development of the Land obtained by the Buyer and Federated have been appealed to the Maine Superior Court, and that a further appeal may be taken to the Maine Supreme Judicial Court (collectively, the "Appeals"). The definition of the Permit Period in the P&S shall be extended for a period of time necessary to allow all such appeals to be resolved or settled, including any remand to the Portland Planning Board, and any subsequent appeals following such remand. The Permit period shall expire when all appeals have been resolved or settled, and when the time period for filing any further appeals has expired without any further appeals having been filed (the "End of Appeals"). Notwithstanding any language in the P&S to the contrary, Legacy is not required to pay an additional deposit in connection with this extension of the Permit Period.

   e. The City, rather than Legacy, shall undertake the environmental remediation of the Scrapyard and the Railyard, in accordance with the VRAPs. Section 5 of the Agreement is hereby amended to provide that the City will undertake the remediation required by the terms of the VRAPs, during the pendency of the Appeals. Nothing set forth in this Agreement shall alter the financial responsibility of the parties for such remediation expense. The City shall pay the first $50,000 of remediation expense for the Scrapyard, and the City shall be reimbursed for all other reasonable costs of remediation from the

City Grant Funds, provided that the City shall provide Federated with copies of all budgets, invoices and estimates for such work. The amount of City Grant Funds available to FEDEQ as nominee of Legacy under the Parking Garage Agreement shall be reduced by the amount of City Grant Funds incurred by the City for environmental remediation costs that exceed the required expenditure of $50,000 by the City.

f. The City and Legacy and Federated agree to share the costs of the improvements to Somerset Street as required by the City's Planning Board on January 14, 2014 in accordance with the cost estimates and sharing formula set forth on Exhibit C attached hereto.

3. The Guaranty is hereby amended to reflect the following terms and conditions:

a. FEDEQ shall construct Phase I of the Project in accordance with the plans and specifications shown on the plan entitled "Midtown Phase I Plan" last revised November 22, 2013 and prepared for The Federated Companies (the "Phase I Plan") approved by the Portland Planning Board (the "Planning Board") on January 14, 2014 a copy of which is attached hereto as Exhibit D, and in accordance with the terms and conditions of the Level 3 site plan approval for Phase 1 of the Project approved by the Planning Board on January 14, 2014 (the "Level 3 Approval"). The specifications shown on the Phase I Plan and the terms and conditions of the Level 3 Approval shall be deemed to satisfy the design guidelines and specifications required by the terms of the Guaranty. Phase I of the Project shall consist of a parking garage containing not less than 700 spaces, not less than one hundred seventy four (174) residential apartments, and not less than 37,486 sf of retail space.

b. The Guaranty Deadline as set forth in the Guaranty shall be amended to extend for a period of three (3) years after the date on which the Buyer shall have requisitioned a total of $1,000,000 in City Grant Funds, exclusive of funds requisitioned by the City or by the Buyer for environmental remediation costs.

4. The Parking Garage Agreement is hereby amended to reflect the following terms and conditions:

a. The requisition timetable set for in the Parking Garage Agreement and the deadlines for the Buyer's initial requisition, and the City's initial disbursement, of the City Grant Funds are hereby extended until the End of Appeals, and a period of one-year thereafter (the "Amended Initial Drawdown Period"), and Buyer shall file its initial requisition request with the City before the end of the Amended Initial Drawdown Period. The Buyer shall have an additional period of three (3) months following from when it files its initial requisition request to have requisitioned $1,000,000 in the City Grant Funds . The City shall, at the City's option, either (i) obtain and transmit to Buyer evidence of HUD's approval of the extension of the disbursement deadline for the HUD Funds and the City Grant Funds throughout the drawdown by Buyer; or (ii) the City shall draw down and hold the HUD Funds throughout the pendency of the Appeals and shall make the City Grant Funds available for Buyer's future use in accordance with the terms and conditions of the Parking Garage Agreement, throughout the drawdown by Buyer.

b. The Garage shall have reached Start-Up Phase within two (2) years after the Buyer shall have requisitioned $1,000,000 in City Grant Funds for Garage construction. Uses of the City Grant Funds by the City or by the Buyer for environmental remediation costs shall not count towards this $1,000,000 requisition requirement.

5. All terms capitalized but not defined herein shall have the meanings defined in the P&S, the Guaranty and the Parking Garage Agreement.

6. Except as amended hereby, the P&S, the Guaranty, the Parking Garage Agreement and the Job Creation Agreement shall remain in full force an effect and are hereby ratified. In the event of any conflict between the terms of this Agreement and the terms of the P&S, the Guaranty and the Parking Garage Agreement, the terms of this Agreement shall govern and control.

7. This Agreement may be signed in counterparts, which shall be construed together as one document.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and sealed by their respective duly authorized undersigned officers as of the date first mentioned above.

CITY OF PORTLAND

By: ________________________________

Name:

Its:

____

Approved: Ellen Sanborn, Finance Director

____

Approved to Form: Corp. Counsel

LEGACY PARK APARTMENTS LLC

By: ________________________________
Jonathan Cox
Its: Manager

THE FEDERATED COMPANIES LLC

By: ________________________________
Jonathan Cox
Its: Manager

FEDEQ DV001, LLC

By: _________________________________
Jonathan Cox
Its: Manager

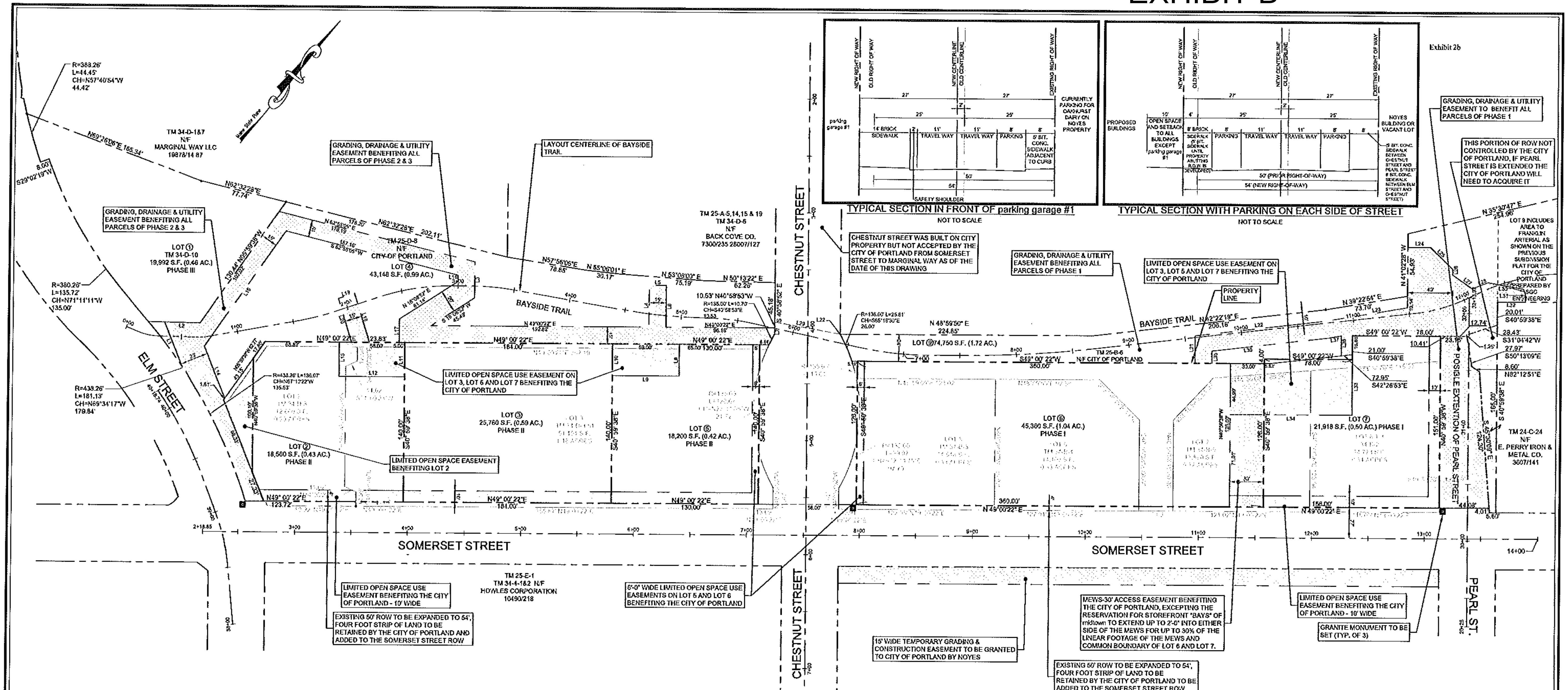
EXHIBIT A

ASSIGNMENT AND ASSUMPTION AGREEMENT TO FEDEQ

EXHIBIT B

Amended Subdivision/Recording Plat by Owen Haskell last revised December 20, 2013

EXHIBIT B



EASEMENT NOTES

1. THE EASEMENTS SHOWN ON THIS AMENDED SUBDIVISION PLAN LOCATED UPON LOT 4 ARE PRELIMINARY AND MAY BE RELOCATED AT THE TIME OF LEVEL III SITE PLAN APPROVAL OF THE DEVELOPMENT OF LOTS 1, 2, 3 OR 5 AS SHOWN ON THE PLAN, AND ANY APPROVED SITE PLAN CONTAINING ANY SUCH REVISED EASEMENT AREAS SHALL BE DEEMED TO AMEND THE EASEMENTS SHOWN ON THIS AMENDED SUBDIVISION PLAN. IF THE EASEMENT CHANGES ARE MADE, A NEW PLAN AND IF NECESSARY, DEED SHALL BE SUBMITTED FOR REVIEW AND APPROVAL.

2. THE FOLLOWING EASEMENTS SET FORTH IN NOTES 2A, 2B, 2C, 2D, 2E, 2F AND 2G ARE NOT SHOWN ON THIS PLAN. THE LOCATION AND TERMS AND CONDITIONS OF SUCH EASEMENTS ARE TO BE FORMULATED AND APPROVED BY THE CITY CORPORATION COUNSEL AND COUNSEL TO THE PURCHASER, AND SHALL BE SET FORTH IN THE DEED CONVEYING THE LOTS FROM THE CITY OF PORTLAND TO THE PURCHASER, OR IN A SEPARATE EASEMENT DEED OR EASEMENT AGREEMENT. IF THE EASEMENT CHANGES ARE MADE, A NEW PLAN AND IF NECESSARY, DEED SHALL BE SUBMITTED FOR REVIEW AND APPROVAL.

2A. AN EASEMENT FOR SNOW REMOVAL ACTIVITIES IN A LOCATION OVER LOT 4 AND 9.

2B. AN EASEMENT FOR SUBSURFACE PILINGS, PILE CAPS AND BUILDING FOUNDATIONS GENERALLY ALONG THE NORTHERLY, EASTERLY AND SOUTHERLY PROPERTY LINES OF LOT 2, 3 & 5 AND BURDENING LOT 4 AND THE CHESTNUT STREET AND SOMERSET STREET RIGHTS OF WAY.

2C. AN EASEMENT FOR SUBSURFACE PILINGS, PILE CAPS, AND BUILDING FOUNDATIONS GENERALLY ALONG THE NORTHWESTERLY AND SOUTHEASTERLY PROPERTY LINES OF THE SOMERSET RIGHT OF WAY AND LOT 6 AND 7 AND BURDENING THE SOMERSET STREET AND LOT 9.

2D. LOTS 4 AND 9 ARE SUBJECT TO EASEMENTS FOR CONSTRUCTION, STAGING, REPAIR AND MAINTENANCE BENEFITING THE OTHER LOTS OF THE SUBDIVISION. THIS EASEMENT REQUIRES THE REPAIR OR REPLACEMENT OF ANY FEATURES IN LOT 4 OR 9 THAT MAY BE DAMAGED BY THE ACTIVITIES ALLOWED AS PART OF THESE EASEMENTS.

2E. AN EASEMENT TO THE OWNERS OF LOTS 2 AND 7 PROVIDING THE RIGHT TO CONSTRUCT STEPS, RAMPS, AND LANDINGS IN THE AREAS OF THE ELM STREET, PEARL STREET EXTENSION, AND SOMERSET STREET RIGHTS OF WAY DEPICTED ON THE SITE PLANS FOR THE MIDTOWN PROJECT PREPARED BY FAY, SPOFFORD& THORNDIKE, INC. AND IDENTIFIED AS SITE PLANS C-2.1, C2.2 AND C2.3 DATED SEPTEMBER 2013.

2F. LICENSES FOR FEDERATED COMPANY, LLC ("FEDERATED") OR ITS DESIGNATED ASSIGNEES TO MAINTAIN STEPS, RAMPS AND THE RELATED ACCESSIBLE LANDINGS AND TO MAINTAIN PLANTERS WITHIN PORTIONS OF THE ELM STREET, CHESTNUT STREET AND SOMERSET STREET RIGHTS OF WAY, AND UPON THE AREA DESIGNATED AS THE POTENTIAL EXTENSION OF PEARL STREET, AS WELL AS THE RIGHTS TO CONSTRUCT AND MAINTAIN PHYSICAL IMPROVEMENTS TO BE ADDED TO THE TRAIL SYSTEM UPON LOTS 4 AND 9.

2G. AN EASEMENT BENEFITING LOTS 1, 2, 3, 5, 6 AND 7 TO CONSTRUCT, OPERATE AND MAINTAIN WATER QUALITY TREATMENT SYSTEMS UPON PORTIONS OF LOTS 4 AND 9.

3. ALL EASEMENTS CREATED BY AND SHOWN ON THE PRIOR APPROVED SUBDIVISION PLAN THAT ARE NOT EXPRESSLY SHOWN OR REFERENCED ON THIS PLAN ARE EXTINGUISHED, INCLUDING, WITHOUT LIMITATION, THE UNDERPASS EASEMENT ON LOT 1 AND 2, GEOTHERMAL EASEMENTS, FORMER LOCATION OF THE TRAIL CORRIDOR EASEMENT AND ALL OTHER EASEMENTS ON LOTS 1, 3, 5, 6, AND 7 CREATED BY AND SHOWN ON THE PRIOR AMENDED SUBDIVISION PLAN.

GENERAL NOTES

1. THIS AMENDED SUBDIVISION PLAN AMENDS AND REPLACES THE SUBDIVISION RECORDING PLAT ENTITLED "SUBDIVISION RECORDING PLAT OF PROPERTY LOCATED ON BAYSIDE RAILYARD, PORTLAND, MAINE PREPARED FOR DOWNTOWN PORTLAND CORPORATION BY SGC ENGINEERING, LLC. DATED DATED OCTOBER 30, 2008 AND RECORDED IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS IN PLAN BOOK 209, PAGE 36 (THE "PRIOR APPROVED SUBDIVISION PLAN") IN ALL RESPECTS AND SUCH PRIOR SUBDIVISION IS HEREBY EXTINGUISHED.

2. THE FEDERATED COMPANIES, LLC OR IT'S DESIGNATED ASSIGNEE ENTITIES ANTICIPATES ACQUISITION OF THE PARCELS NECESSARY TO CONSTRUCT PHASE 1, 2 AND 3 OF PROJECT AS DEPICTED ON YEAR 2013 midtown MASTER PLAN AND midtown SITE PLAN APPLICATIONS. THIS AMENDED SUBDIVISION PLAT ASSUMES PHASE 1 OF THE MIDTOWN PROJECT PROPOSED BY FEDERATED WILL INCLUDE LOTS 6 AND 7. PHASE 2 WILL INCLUDE LOTS 2, 3 AND 5. PHASE 3 WILL INCLUDE LOT 1.

3. THE CITY OF PORTLAND SHALL RETAIN A FOUR FOOT WIDE STRIP OF LAND ALONG THE NORTHERLY SIDELINE OF SOMERSET STREET TO BE ADDED TO THE SOMERSET STREET RIGHT OF WAY, IN ORDER TO INCREASE THE WIDTH OF SOMERSET STREET ADJOINING LOTS 2 THROUGH 7 FROM 50 FEET TO 54 FEET.

4. THIS AMENDED SUBDIVISION PLAN AMENDS LOTS 1 THROUGH 8 FROM THE PRIOR APPROVED SUBDIVISION PLAN. THE EASTERLY SIDE OF LOT 9 REMAINS UNCHANGED FROM THE PRIOR APPROVED SUBDIVISION PLAN AND IS SHOWN ON THE PRIOR APPROVED SUBDIVISION PLAN. THERE IS NO LONGER A LOT 8 IN THE SUBDIVISION.

5. THE CITY WILL ISSUE TO FEDERATED AS NEEDED FOR CONSTRUCTION, MAINTENANCE OR REPAIR OF FACILITY WITHIN OR ACCESSIBLE ONLY FROM THE BAYSIDE TRAIL.

GRAPHIC SCALE

0 20' 40' 80'

EASEMENT LINE TABLE

LINE	BEARING	DISTANCE (FEET)
L1	N63°10'10"W	42.17'
L2	N50°11'34"E	31.53'
L3	S40°59'35"E	31.58'
L4	N40°59'38"W	36.58'
L5	N49°00'22"E	15.00'
L6	S40°59'38"E	36.58'
L7	S40°55'55"E	5.53'
L8	S40°59'35"E	28.00'
L9	S49°00'22"W	59.00'
L10	N40°59'38"W	28.00'
L11	S40°59'38"E	30.00'
L12	N49°00'22"E	58.00'
L13	N40°59'38"E	30.00'
L14	S63°10'10"E	49.23'
L15	S05°59'38"E	120.09'
L16	N40°59'38"W	5.72'
L17	N40°59'24"W	20.63'
L18	N58°28'02"W	44.98'
L19	S31°32'00"W	15.00'
L20	N41°00'32"W	24.80'
L21	N42°22'19"E	117.45'
L22	N39°22'54"E	72.27'
L23	N40°59'38"W	10.14'
L24	N49°00'22"E	20.02'
L25	S87°16'35"E	27.70'
L26	S40°59'79"E	5.00'
L27	N84°06'10"E	20.69'
L28	N28°31'06"E	15.21'
L29	N59°22'54"E	31.41'
L30	S61°28'51"E	5.00'
L31	S40°59'35"E	6.82'
L32	S49°00'22"W	24.24'
L33	N40°59'38"W	43.99'
L34	S49°00'22"W	108.00'
L35	S41°00'32"E	10.72'
L36	S42°22'19"W	104.49'
L37	S39°22'54"W	10.66'
L38	N40°59'38"W	17.42'

SUVEYOR WILL STAMP DRAWING UPON APPROVAL OF THE CITY

APPROVAL - CITY OF PORTLAND PLANNING BOARD

DATE

CHAIRPERSON

CERTIFICATE:

OWEN HASKELL, INC. CERTIFIES THAT THIS PLAN IS BASED ON, AND THE RESULT OF, AN ON THE GROUND FIELD SURVEY AND THAT TO THE BEST OF OUR KNOWLEDGE, INFORMATION AND BELIEF, IT CONFORMS TO THE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS CURRENT STANDARDS OF PRACTICE.

DATE

JOHN W. SWAN, PLS NO. 1036

LEGEND

- AREA TO BE CONVEYED TO CHESTNUT STREET ROW
- MEWS - ACCESS EASEMENT BENEFITING THE CITY OF PORTLAND
- PORTION OF ROW NOT CONTROLLED BY CITY OF PORTLAND
- ACCESS, GRADING, DRAINAGE AND UTILITY EASEMENT FOR PHASE 1, PHASE 2 AND PHASE 3 AND LOTS 2 AND 9
- LIMITED OPEN SPACE USE EASEMENT DENEFITING THE CITY OF PORTLAND

12.20.13	REDUCED EASEMENT AREAS & LOT 2, AND EXTINGUISHED UNDERPASS EASEMENT
11.18.13	REVISED EASEMENT DATA
11.11.13	UPDATED PER CITY OF PORTLAND OCT 2013 COMMENTS
09.27.13	REVISED NOTES & EXPANDED EASEMENT FOR CMP WORK
09.10.13	REVISED PROPOSED PROPERTY & EASEMENT LINES

AMENDED SUBDIVISION/RECORDING PLAT
ON
SOMERSET STREET, PORTLAND, MAINE
MADE FOR
FAY, SPOFFORD &THORNDIKE
778 MAIN STREET, SOUTH PORTLAND, MAINE

OWEN HASKELL, INC.
390 U.S. ROUTE ONE, FALMOUTH, ME 04105 (207)774-0424
PROFESSIONAL LAND SURVEYORS

Drwn By	EB	Date	Job No.
Trace By	JLW	APRIL 10, 2013	12012-180 P
Check By	JWS	Scale	Drwg. No.
Book No.	FILE	1" = 40'	C-1.2

R:\0062\Cadd\Farrell Setting 2012-SUBDIVISION Midtown OH.dwg ... 12/20/2013 1:46 PM

EXHIBIT C

Cost Sharing Arrangement for Somerset Street Improvements

Agreement by and between FEDEQ DV001 and City of Portland on Costs For Off-Site Improvements Improving Somerset Street, To be Partially Funded by City of Portland

THIS AGREEMENT dated ___________ ____, 2014 is made by and between THE **CITY OF PORTLAND**, a body politic and corporate with a place of business at 389 Congress Street, Portland, Maine 04101 (the “City” or “Seller”), and **FEDEQ DV001**, **LLC**, a Maine limited liability company with a mailing address of PO BOX 370008, Miami, Florida 33137 (“FEDEQ” or “Buyer”).

RECITALS

WHEREAS, an Agreement for the purchase and sale of real estate (the “P&S Agreement”) has been made between the City and FEDEQ Apartments, LLC, a Florida limited liability company with a place of business at 3301 NE 1st Avenue, Suite M-302, Miami, Florida 33137, assignee of said P&S Agreement from the Federated Companies LLC, a Florida limited liability company with a principal place of business at 3301 NE 1st Avenue, Suite M-302, Miami, Florida 33137 (“Federated”); and FEDEQ Apartments LLC has recently assigned its rights in and to the P&S Agreement to **FEDEQ DV001, LLC**, a Maine limited liability company with a mailing address of PO BOX 370008 , Miami, Florida 33137 (“FEDEQ”);

WHEREAS, related to, and benefiting the development planned by Buyer on the real property which is the subject of the P&S Agreement, and integral thereto, are certain improvements detailed herein to the adjacent public way known as Somerset Street, and more specifically for the portion thereof between Pearl Street and Elm Street (the “Project”), which both the City and Buyer wish to see made;

WHEREAS, the estimated total costs of the Project are $4,000,000; and

WHEREAS, the City and the Buyer are willing to share these costs, as set out herein;

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. **<u>Project and Scope and Cost and Timeline/Schedule</u>:** FEDEQ and the City have jointly agreed to the scope of Project which work is more specifically described in <u>Exhibit A</u> attached hereto with an estimated total project cost of $4,000,000 (the “Total Project Cost”) and on the plans for the Project approved by the City of Portland Planning Board. FEDEQ and the City have jointly agreed to a schedule or timeline for the Project, which is attached hereto as Exhibit B. The term “Total Project Cost” shall mean the actual Project cost as established by FEDEQ and the City following receipt of a guaranteed maximum cost construction contract acceptable to the City and FEDEQ.

2. **<u>Cost Sharing and Conditions Precedent:</u>** Subject to the terms hereof, the City will fund two-thirds (2/3) of the Total Project Cost, and FEDEQ will fund one-third (1/3) of the Total Project Cost.

FEDEQ's agreement to fund said one-third (1/3) of the Total Project Cost is contingent upon: FEDEQ (or assigns) closing on acquisition of the real estate which is subject matter of the P&S Agreement.

In the event FEDEQ (or assigns) fails to close on the acquisition of the real estate which is the subject matter of the P&S Agreement, FEDEQ shall have the right to cancel and terminate this Agreement by giving written notice of such cancellation and termination to the City, and upon the giving of such notice, this Agreement shall be terminated and FEDEQ shall be relieved of all further obligations hereunder.

Prior to the issuance of a Building Permit for the Project, FEDEQ shall provide the City with evidence of its financial resources, in the amount of at least one-third of the Total Project Cost, available and dedicated to the costs of this Project, in a form reasonably acceptable to the City's Director of Finance, which may include a commitment from a commercial lender to fund requisitions for payment of Project costs.

More than likely, the actual total project cost will not be precisely the amount of the Total Project Cost stated above. Therefore, the parties agree:

(a) The contract(s) for the Project will not be 'mixed' with any other work needed by either party. Notwithstanding the foregoing, nothing herein shall prevent FEDEQ from entering into contracts with the same contractor for construction of other portions of the midtown project to be coordinated with the work on the Project, provided, however, that costs must be allocable to the separate construction contracts for the Project and for the midtown project.

(b) In order to address both parties' concerns that the Total Project Costs could exceed the estimate stated above, the City and, FEDEQ will meet early in the development and design of this project to jointly and cooperatively manage said project's design, staging, procurement costs and construction costs; and said parties will continue to meet as reasonably necessary for this same purpose, and will work collaboratively to control procurement and construction costs. And in particular, before FEDEQ executes contracts for the construction of the Project, the parties shall meet and agree on the scope and cost of those contracts, including amounts for project supervision and construction management, general conditions, building permit fees, bonding costs, insurance and including an appropriate construction contingency amount. All such construction contracts shall be in the form of guaranteed maximum cost contracts.

(c) Any changes to the Project cost over and above any established contingency included in the Total Project Cost during construction shall require mutual review and agreement in writing, which shall not be unreasonably withheld or delayed.

3. **Procedures for Making Disbursements (Payments).** With respect to all requisitions for disbursements of the City's share of Total Project Costs, the City and FEDEQ agree as follows:

a. FEDEQ shall deliver to the City a written request for payment (a "Requisition") which shall be in substantially the same form as AIA Forms G702 and G703. The Requisition shall be accompanied by: (i) a summary of all expenses requested, (ii) copies of invoices, bills, receipts and such other information as may be reasonable to document the expenditures described in the Requisition, (iii) mechanics' lien affidavits and/or written lien waivers from such contractors, laborers, subcontractors and materialmen for work done and materials supplied which were paid for pursuant to the immediately preceding Requisition, and (iv) a certified payroll in conformance with the requirements of the Davis-Bacon Act of 1931, as amended, for all contractors and subcontractors on site and for which invoices are included.

b. Requisitions shall be submitted by FEDEQ no more frequently than monthly. Prior to the disbursement by the City of any requested Requisition, City's construction inspector shall certify to City that the work for which a Requisition has been submitted has been completed and the City's Housing and Neighborhood Services staff will verify all workers are being paid the prevailing wage.

c. A copy of the construction schedule will be submitted to the City at the beginning of the project. Updates will be provided by FEDEQ as necessary to remain accurate.

d. City shall make disbursements to FEDEQ only after such certification and verification, and with a certified payroll, all the same must be correct and complete. Each Requisition for disbursement shall be submitted at least five (5) days before the date for which the disbursement is requested, and the City shall make such advancement no later than fifteen (15) days after receipt of each Requisition to make such disbursement.

4. **Project Administration and Supervision:** FEDEQ will be responsible for procuring the construction contracts and for providing for the owner's administration for the Project, consistent with the scope of Project contained in Exhibit A, hereto, and upon the Timeline attached hereto as Exhibit B. All FEDEQ's costs for procurement of construction contracts, administration or the like shall not be shared by the City, nor shall the City be required to share in any other type of internal costs of FEDEQ. Notwithstanding the foregoing, the items described in section 2(b) above shall be payable as part of the Total Project Costs.

The City of Portland will monitor and inspect the work of the Project, including for compliance with City Rules and Ordinances. The City shall have the right to suspend work on the Project as it reasonably deems necessary, to provide for such compliance, and for compliance with the Scope of Work in Exhibit A. The City's monitoring and inspection will be collaborative with FEDEQ.

The Contracts for the work of the Project between FEDEQ and its vendors and contractors shall contain these two provisions:

> Prior to the execution of this Agreement, the **CONTRACTOR** will procure and maintain Automobile Insurance and General Public Liability Insurance coverage and coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and property damage, naming the **CITY OF PORTAND** as an additional insured thereon, and also Workers' Compensation Insurance coverage. With respect to the Liability Insurance, the **CONTRACTOR** will provide the **CITY OF PORTLAND** a certificate of insurance evidencing such coverage, in this way: certificate must say either: A) "the policy has been endorsed to name the City of Portland as an Additional Insured" and a copy of the endorsement must come to the City of Portland with the certificate, or B) "the policy already includes an endorsement, such as the General Liability Extension Endorsement, by which the City of Portland is automatically made an additional insured." A Certificate which merely has a box checked under "Addl Insr," or the like, or which merely states the City of Portland is named as an Additional Insured, will not be acceptable. The **CONTRACTOR** shall furnish the **CITY OF PORTLAND** and thereafter maintain certificates evidencing all such coverages, which certificates shall provide for thirty (30) days' notice to the **CITY OF PORTLAND** of termination of insurance from insurance company or agent.
>
> The **CONTRACTOR** shall furnish to FEDEQ and to the **CITY OF PORTLAND**, upon execution of the Contract, a Contract Performance Bond and a Contract Labor and Materials Payment Bond each for the full amount of the Contract and issued by a surety

company or surety companies authorized to do business in the State of Maine and approved by the **CITY OF PORTLAND**. The Bonds shall remain in effect for one year after final acceptance of the Work, and protect both FEDEQ and **CITY OF PORTLAND** for at least one year of warranty of the Work hereunder, and also shall insure settlement of claims for the payment of all bills for labor, materials and equipment. The bonds described in this section shall be deemed to satisfy the performance guaranty requirements for the Project as required by section 14-501 of the City of Portland Code of Ordinances, and no further performance guaranty shall be required.

5. **Requirements related to Funding Sources.** FEDEQ, its employees, assigns, agents and subcontractors for this project, at all times shall comply with the requirements of the Section 108 Loan Guarantee and Brownfields Economic Development Initiative Grant program and Federal Labor Standards pursuant to Davis Bacon and related Acts, specifically including:

   a. Davis-Bacon Act, as amended.(40 U.S.C 276a - 276a-5.) All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

   b. Contract Work Hours and Safely Standards Act, as amended. (40 U.S.C. 327-333). All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to these acts and with other applicable Federal laws and regulations pertaining to labor standards.

   c. Copeland Anti-Kickback Act, as amended. (18 U.S.C. 874 and 40 U.S.C. 276c). This Act requires that workers be paid at least once a week, and without any deductions or rebates except permissible deductions.

6. **Entire Agreement.** This Agreement (i) constitutes the entire agreement between the parties hereto with respect to the Project and it supersedes all prior discussions, undertakings or agreements between the parties in respect to the Project; (ii) shall not be modified except by a written agreement executed by both parties; (iii) shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns; (iv) may be executed in counterparts; and (v) may be executed by facsimile signatures. This Agreement shall not confer any rights or remedies upon any third-party

other than the parties to this Agreement and their respective successors and permitted assigns.

7. **Notices.** Any notice by either party to the other party shall be in writing and shall be deemed to have been duly given when either delivered personally, or mailed by certified mail, return receipt requested, or sent by nationally recognized overnight courier, or sent by facsimile to the City at Portland City Hall, 389 Congress Street, Portland, Maine 04101, Attn: City Manager facsimile 207-874-8669, with a copy to, the Director of Economic Development, facsimile 207-756-8217, and another copy to Corporation Counsel, at the same address, facsimile 207-874-8497), and to FEDEQ, at the address recited above, with a copy to The Federated Companies, 801 Brickell Avenue, Suite 720, Miami, Florida 33131, Attn: Jonathan Cox, facsimile (800) 523-5931.

8. **Severability**. In the event any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

IN WITNESS WHEREOF, the City and FEDEQ, by their representatives duly authorized, have caused this instrument to be executed as of ___________ ___, 2014.

FEDEQ DV001, LLC

By___________________,
Jonathan Cox
Its: Manager

CITY OF PORTLAND

By___________________
Mark Rees, City Manager

By___________________
Ellen Sanborn, Finance Director

By____________________
Corporation Counsel attorney

O:Bayside Federated Somerset Street Cost Share Agreement Clean Version 7-25-14

Budget Site Construction Cost Estimate Peer Review

Midtown - Somerset Street Improvements

12/5/2013

WOODARD &CURRAN

Description	Total Costs	
	Total	% of Total
Item (a) Basis of Design:		
Site Demolition	$ 28,055	0.8%
Preliminary Site Work	$ 61,241	1.8%
Earthwork	$ 32,447	0.9%
Dewatering	$ 10,000	0.3%
Storm Drainage (See Note 1)	$ 203,730	6.0%
Sanitary Systems	$ 20,596	0.6%
Water Systems	$ 119,318	3.5%
Portland Water District - Water Service Fees	$ 15,000	0.4%
Misc Site Utilities (See Note 2)	$ 416,881	12.2%
Unitil - Gas Utility Fees (Allowance)	$ -	0.0%
Central Maine Power - Phase 1 Electrical Utility Fees	$ 600,000	17.5%
Central Maine Power - Phase 2 Electrical Utility Fees	$ 400,000	11.7%
Time Warner - Communication Utility Fees (Allowance)	$ -	0.0%
Fairpoint - Communication Utiltiy Fees	$ -	0.0%
Roads/Walks (See Note 3)	$ 639,576	18.7%
Site Improvements (See Note 4)	$ 553,021	16.2%
Concrete (See Note 4)	$ 161,666	4.7%
Misc Metals (See Note 4)	$ 40,991	1.2%
Electrical Site (See Note 5)	$ 116,953	3.4%
Item (a) Basis of Design Sub-Total	***$ 3,419,475***	***100%***
Estimate Adjustment and Indirect Costs:		
Cost Estimate Adjustments (See W&C 11/15/2013 Memo	$ 51,900	7.8%
Contractor General Conditions (See Note 6)	$ 273,558	41.0%
Contractor OH&P, Insurance, Bonds (See Note 7)	$ 341,948	51.2%
Estimate Adjustment and Indirect Costs	***$ 667,406***	***100.0%***
Somerset Street Improvements Total (Rounded)	***$ 4,087,000***	

Notes:

1) Cost segregation assumes Site Development Costs include off-site drainage piping/structures required for on-site stormwater treatment system.
   a) Cost to raise existing storm drainange manholes/catch basins is included in the Somerset Street Costs.
2) Cost segregation assumes Site Development Costs will include electrical trenching, backfill and precast concrete light pole bases.
   a) Infrastructure and utility company fees to relocate overhead electrical/communication utilities are shared based on scope of work.
3) Cost segregation assumes Site Development Costs will include new and existing granite curbing along Somerset, Elm, Chestnut and Pearl Streets.
   a) Cost for approximately 1,080 CY of lightwieght concrete fill under new sidewalks is included in the Site Development Costs.
   b) Cost to remove and re-set approximately 1,120 LF of existing granite curb on the southeast side is included in the Somerset Street Costs.
4) Cost segregation assumes Site Development Costs will include all brick pavers, concrete ramps/planters/stairs/rails and trees.
5) Cost segregation assumes Site Development Costs will include all site lighting concrete bases, light poles, luminaires and wiring.
6) Contractor General Conditions (not included in PC estimate) may range in the amount of 8-10% depending on schedule and concurrent activities.
7) Contractor OH&P, Insurance, Bonds and Contingency (not included in PC estimate) may range in the amount of 10-12%.
8) Allowance has been included for electrical utility company fees for relocating existing overhead electrical services to underground.
   a) CMP Phase 1 cost assumes Site Development Costs include (1)-2000 & (1)-500 KVA pad mount transformers, 500 CU cable and junction pole.
   b) CMP Phase 1 cost assumes Somerset Street Costs include (1)-1000 KVA submersible transformer, 500 CU cable and riser poles.
   c) CMP Phase 2 cost assumes Site Development Costs include (3)-2000 & (1)-500 KVA pad mount transformers and 500 CU cable.
   d) CMP Phase 2 cost assumes Somerset Street Costs include 500 CU primary cable at Elm Street.
9) Allowance has been included for water utility company fees for new Site Development fire and domestic water services.
10) No allowances have been included for gas, telephone and cable utility company fees since there should be no charge for this work.
11) No allowances have been included for unsuitable soils or contaminated groundwater treatment/disposal.
12) No allowances have not been included for offsite improvements or traffic control signalization.

EXHIBIT D

"Midtown Phase I Plan" last revised November 22, 2013 and prepared for The Federated Companies

Exhibit 2v

EASEMENT LINE TABLE		
LINE	BEARING	DISTANCE (FEET)
L21	N42°22'19"E	117.46'
L22	N39°22'54"E	72.27'
L23	N40°59'38"W	10.14'
L24	N49°00'22"E	20.02'
L25	S87°16'35"E	27.70'
L26	S40°59'79"E	5.00'
L27	N84°05'10"E	20.69'
L28	N28°31'08"E	15.21'
L29	N59°22'54"E	31.41'
L30	S61°28'51"E	5.00'
L31	S40°59'38"E	6.82'
L32	S49°00'22"W	24.24'
L33	N40°59'38"W	48.99'
L34	S49°00'22"W	108.00'
L35	S41°00'32"E	10.72'
L36	S42°22'19"W	104.49'
L37	S39°22'54"W	10.86'
L38	N40°59'38"W	17.42'

CONSTRUCTION OF SOMERSET STREET BETWEEN AND INCLUDING WORK WESTERLY OF THE WESTERLY CURB LINE OF CHESTNUT STREET WILL INCLUDE THE FOLLOWING WORK:

1. ALL UTILITY RELOCATIONS AND SERVICES INCLUDING STREET LIGHTS (SINCE PARKING WILL BE AVAILABLE) EXCEPT THE POTENTIAL OF GAS SERVICES WHICH CANNOT BE INSTALLED UNTIL THE BUILDINGS ARE CONSTRUCTED.
2. THE CURBING WILL BE INSTALLED WITH RAMPS AT THE LOCATIONS DEPICTED ON THE MIDTOWN DRAWINGS.
3. ALL CHANGES IN ELEVATION INCLUDING PLACEMENT OF THE LIGHTWEIGHT CONCRETE ACROSS THE FULL WIDTH OF THE RIGHT OF WAY.
4. ALL DRAINAGE SYSTEMS INCLUDING LATERALS AND UNDER DRAINS FOR THE WALL DRAIN ALONG THE NOYES BUILDING FACE. THE EXCEPTION WILL BE THE SCUPPERS BEHIND THE RAMPS AND LANDINGS AT THE NORTHEAST CORNER OF THE ELM AND SOMERSET STREET INTERSECTION. THIS WORK WILL INCLUDE ALL WATER QUALITY MEASURES PROPOSED FOR THE MIDTOWN PROJECT ON SOMERSET AND CHESTNUT STREETS.
5. ADA RAMPS AND TACTILE WARNING STRIPS.
6. TREES AND THE GRANITE TREE WELL AND LOAM WILL NOT BE INSTALLED.
7. BINDER PAVEMENT WITH CASTINGS AND VALVE COVERS SET AT BINDER GRADE.
8. A 5 FOOT WIDE BITUMINOUS CONCRETE WALK WILL BE CONSTRUCTED ALONG SOMERSET STREET AT 19.42 TO 24.42 FEET LEFT (I.E. ADJACENT TO THE CURB IN AREAS OF PARKING) BETWEEN ELM AND CHESTNUT STREET. A FIVE FOOT WIDE BITUMINOUS SIDEWALK WILL ALSO BE CONSTRUCTED ALONG THE WESTERLY SIDE OF CHESTNUT STREET NORTH OF SOMERSET STREET TO THE BAYSIDE TRAIL).
9. ALL PROPOSED WORK ON CHESTNUT STREET SOUTH OF SOMERSET STREET.
10. LOAM, SEED, AND ESTABLISHMENT OF GROUND COVER IN UNPAVED AREAS LEFT OF THE CENTERLINE TO THE FACE OF THE FUTURE PHASE 2 BUILDINGS.

LIST OF THE WORK WHICH WILL BE POSTPONED UNTIL THE CONSTRUCTION OF PHASE 2 AND 3 OF MIDTOWN (I.E. WORK THAT WILL NOT BE CONSTRUCTED DURING PHASE 1):

1. THE RAMPS, PLANTERS, STEPS, AND LANDINGS AT THE NORTHEAST CORNER OF SOMERSET AND ELM STREET;
2. THE GRINDING, SHIM AND OVERLAY ON ELM STREET TO MATCH THE NEW SOMERSET STREET PROFILE WITH APPROPRIATE TAPERS;
3. THE FINAL PAVEMENT AND SETTING CASTINGS AND VALVE COVERS AT FINISH PAVEMENT GRADE BETWEEN ELM AND CHESTNUT STREET;
4. REMOVAL OF THE BITUMINOUS SIDEWALKS ON THE NORTH SIDE OF SOMERSET STREET (BETWEEN ELM AND CHESTNUT STREET).
5. REMOVAL OF THE BITUMINOUS SIDEWALK ON THE WESTERLY SIDE OF CHESTNUT STREET FOR SOMERSET STREET TO THE TRAIL.
6. THE BRICK SIDEWALKS, RAISED PLANTER, CURBING, TREES, AND HARDSCAPE IMPROVEMENTS; AND
7. GAS SERVICES TO THE PHASES 2 AND 3 BUILDINGS.

NORTH

GRAPHIC SCALE

40 0 20 40 80

(IN FEET)
1 inch = 40 ft.

NOTES:

1. THIS DRAWING SHOWS THE RESIDENTIAL SUBDIVISION OF LOT 7. REFER TO THE AMENDED SUBDIVISION/RECORDING PLAN ON SOMERSET STREET, PORTLAND, MAINE MADE FOR FAY, SPOFFORD & THORNDIKE BY OWEN HASKELL, INC. LAST REVISED 12.20.2013.
2. ALL WORK DEPICTED ON THE MIDTOWN DRAWINGS WHICH IS NORTH OF THE SOMERSET STREET RIGHT OF WAY AND EAST OF CHESTNUT STREET IS TO BE COMPLETED AS PART OF PHASE 1 INCLUDING LANDSCAPING, HARDSCAPE, BIKE RACKS, AND STREET FURNISHINGS.
3. ALL LANDSCAPING SHOWN ON MP-L1.0 WILL BE INSTALLED AS PART OF PHASE 1. REFER TO THIS DRAWING.
4. WORK WEST OF SOMERSET STREET AND THE CHESTNUT STREET CENTERLINE REPRESENT PARTIAL RAISING AND RECONSTRUCTION OF THE STREET. PHASE 2 AND PHASE 3 OF THE MIDTOWN PROJECT WILL COMPLETE IMPROVEMENTS WITHIN THE RIGHT-OF-WAY OF SOMERSET AND WESTERLY SIDE OF CHESTNUT AND ELM STREET
5. IF THE CITY RECONSTRUCTS AND EXTENDS PEARL STREET IN THE FUTURE THE TURNOUT AT THE ENTRANCE TO MIDTOWNONE SHALL BE ELIMINATED AND A STANDARD CURBSIDE DROP-OFF AREA SHALL BE IMPLEMENTED.
6. ALL UTILITY RELOCATIONS AND SERVICES INCLUDING STREET LIGHTS ALONG SOMERSET STREET AND CHESTNUT STREET WILL BE CONSTRUCTED DURING PHASE 1. THE FUTURE GAS SERVICES CANNOT BE INSTALLED UNTIL THE BUILDINGS ARE CONSTRUCTED.
7. STREET LIGHTS WILL BE INSTALLED IN FRONT OF PHASE II BUILDINGS EVEN IF NOT SHOWN ON MP-L1.0.
8. CONTOURS ARE SHOWN ON SEPARATE DRAWINGS WHICH ACCOMPANY THE MIDTOWN MASTER PLAN AND LEVEL III SITE PLAN DRAWINGS.
9. THE MATERIALS FOR CONSTRUCTION OF THE IMPROVEMENTS IN THE PUBLIC RIGHT OF WAY WILL INCLUDE THE MATERIALS SHOWN ON DRAWING C-7.0 AND WILL MEET THE CITY OF PORTLAND TECHNICAL MANUAL AND MDOT STANDARD SPECIFICATIONS. WHERE A DIFFERING MATERIAL IS SPECIFIED, THE MORE STRINGENT SHALL BE USED.
10. UTILITIES, LOCATIONS, SIZES, AND MATERIALS ARE SPECIFIED ON DRAWINGS C-4.0 TO C-4.4B AND PROFILES C-9.0 TO C-9.3 OF THE ACCOMPANYING LEVEL III SITE PLANS.
11. THE SITE IS NOT IN AN AREA CURRENTLY DESIGNATED AS A FLOOD HAZARD ZONE.
12. STORM DRAIN INFORMATION AND SCHEDULES ARE PROVIDED ON DRAWINGS C-3.0 TO C-3.17 OF THE ACCOMPANYING MIDTOWN MASTER PLAN AND LEVEL III SITE PLANS.

APPROVAL - CITY OF PORTLAND PLANNING BOARD

DATE

CHAIRPERSON

EXHIBIT D

REV	DATE	DESCRIPTION
1	11.22.13	PHASE I ILLUSTRATION

REVISIONS

STATE OF MAINE WILLIAM G. HOFFMAN No. 4105 LICENSED PROFESSIONAL ENGINEER

P.E. WILLIAM G. HOFFMAN
LIC. #38824

PROJECT
midtown
PORTLAND, MAINE

SHEET TITLE
PHASE1: LOT 6 AND 7 SITE PLAN OFFSITE IMPROVEMENTS AND RESIDENTIAL SUBDIVISION OF LOT 7

CLIENT
THE FEDERATED COMPANIES

ENGINEERS FST Since 1914
FAY, SPOFFORD & THORNDIKE, INC.
ENGINEERS · PLANNERS · SCIENTISTS
778 MAIN ST, SUITE 8, SOUTH PORTLAND, ME 04106
FORMERLY DELUCA-HOFFMAN ASSOCIATES, INC.

DRAWN:	KEW	DATE:	NOV. 2013
DESIGNED:	WGH	SCALE:	1" = 40'
CHECKED:	WGH	JOB NO.	3062
FILE NAME:	3062-PHASED BASE		
SHEET	C-1.5A		

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CITY OF PORTLAND, MAINE
MEMORANDUM

TO: Greg Mitchell, Economic Development Director

FROM: Ellen Sanborn, Finance Director

DATE: June 23, 2014

RE: Debt Service Projection for Midtown Project

Attached is an amortization schedule for financing $1.367 million associated with this project. This amount, as I understand it, would include $700,000 in general obligation bonds and $667,000 from the HUD108 loan for the Bayside redevelopment program.

The HUD108 portion will be paid according to the principal payment schedule in our agreement, with interest rate to be determined in the fall when we permanently finance the total loan of $10.2 million. The general obligation portion would be included in our annual bond sale. I have estimated a 4.5% interest rate for both. Note the change in payment amounts in Yr 15 of the schedule, which are due to the term of the HUD108 being shorter than the bond financing.

Midtown Project
Estimated Debt Service Amortization

		Prin	Int	Ttl	Prin Bal
Original amount financed					$ 1,367,000
Annual Payment Amounts	Yr 1	$ 56,348	$ 61,515	$ 117,863	1,310,652
	Yr 2	$ 59,618	58,979	118,597	1,251,034
	Yr 3	$ 62,887	56,297	119,184	1,188,147
	Yr 4	$ 66,157	53,467	119,623	1,121,990
	Yr 5	$ 75,966	50,490	126,455	1,046,025
	Yr 6	$ 79,235	47,071	126,306	966,789
	Yr 7	$ 82,505	43,506	126,010	884,284
	Yr 8	$ 85,775	39,793	125,567	798,510
	Yr 9	$ 85,775	35,933	121,707	712,735
	Yr 10	$ 84,819	32,073	116,892	627,916
	Yr 11	$ 100,392	28,256	128,648	527,524
	Yr 12	$ 103,662	23,739	127,400	423,862
	Yr 13	$ 106,931	19,074	126,005	316,931
	Yr 14	$ 106,931	14,262	121,193	210,000
	Yr 15	$ 35,000	9,450	44,450	175,000
	Yr 16	$ 35,000	7,875	42,875	140,000
	Yr 17	$ 35,000	6,300	41,300	105,000
	Yr 18	$ 35,000	4,725	39,725	70,000
	Yr 19	$ 35,000	3,150	38,150	35,000
	Yr 20	35,000	1,575	36,575	(0)
Total		$ 1,367,000	$ 597,528	$ 1,964,528	

Estimated Repayment Schedule for HUD108 Loan

Federated Portion Only
23-Jul-12

Princ. Due	City FY	Amt Disbursed	Principal Repayment	Outstanding Balance	Act./Est. Interest	Est. HUD Annual Payment	Est Fed Project Tax Pymts*	*Variance between HUD loan and Fed Project Payment*
					3.5%			
8/1/2013	14	$ 8,231,448	$ 165,456	$ 8,065,992	$ -	$ 165,456	277,196	*111,740*
8/1/2014	15		206,820	7,859,171	282,310	489,130	431,550	*(57,580)*
8/1/2015	16		206,820	7,652,351	275,071	481,891	758,934	*277,042*
8/1/2016	17		248,184	7,404,167	267,832	516,017	774,112	*258,096*
8/1/2017	18		289,548	7,114,618	259,146	548,694	789,594	*240,900*
8/1/2018	19		330,912	6,783,706	249,012	579,924	805,386	*225,462*
8/1/2019	20		455,005	6,328,701	237,430	692,434	821,494	*129,060*
8/1/2020	21		496,369	5,832,333	221,505	717,873	837,924	*120,051*
8/1/2021	22		537,733	5,294,600	204,132	741,864	854,682	*112,818*
8/1/2022	23		579,097	4,715,503	185,311	764,408	871,776	*107,368*
8/1/2023	24		579,097	4,136,406	165,043	744,139	889,212	*145,072*
8/1/2024	25		620,461	3,515,945	144,774	765,235	906,996	*141,761*
8/1/2025	26		827,281	2,688,664	123,058	950,339	925,136	*(25,204)*
8/1/2026	27		868,645	1,820,019	94,103	962,749	943,638	*(19,110)*
8/1/2027	28		910,009	910,009	63,701	973,710	962,511	*(11,199)*
8/1/2028	29		910,009	-	31,850	941,860	981,761	*39,902*
Total		**$ 8,231,448**	**$ 8,231,448**		**$ 2,804,276**	**$ 11,035,724**	**$ 12,831,903**	***$ 1,796,179***

* *Phase I value only estimated at $38 million in built-out value with an annual 2% tax rate increase.*

Midtown Project 6/24/2014

Estimated Debt Service Amortization and Cash Flow Analysis

		Debt Service Amortization			Cash Flow Analysis	
		Prin	Int	Ttl		
Additional amount financed					Est. Fed Project Revised Phase 2 Payments	Variance Between Additional City Debt and Phase 2 Payment
Annual Payment Amounts	Yr 1	$ 56,348	$ 61,515	$ 117,863	195,500	$ 77,637
	Yr 2	$ 59,618	58,979	118,597	398,820	$ 280,223
	Yr 3	$ 62,887	56,297	119,184	813,593	$ 694,409
	Yr 4	$ 66,157	53,467	119,623	829,865	$ 710,241
	Yr 5	$ 75,966	50,490	126,455	846,462	$ 720,007
	Yr 6	$ 79,235	47,071	126,306	863,391	$ 737,085
	Yr 7	$ 82,505	43,506	126,010	880,659	$ 754,649
	Yr 8	$ 85,775	39,793	125,567	898,272	$ 772,705
	Yr 9	$ 85,775	35,933	121,707	916,238	$ 794,530
	Yr 10	$ 84,819	32,073	116,892	934,562	$ 817,670
	Yr 11	$ 100,392	28,256	128,648	953,254	$ 824,605
	Yr 12	$ 103,662	23,739	127,400	972,319	$ 844,918
	Yr 13	$ 106,931	19,074	126,005	991,765	$ 865,760
	Yr 14	$ 106,931	14,262	121,193	1,011,600	$ 890,407
	Yr 15	$ 35,000	9,450	44,450	1,031,832	$ 987,382
	Yr 16	$ 35,000	7,875	42,875	1,052,469	$ 1,009,594
	Yr 17	$ 35,000	6,300	41,300	1,073,518	$ 1,032,218
	Yr 18	$ 35,000	4,725	39,725	1,094,989	$ 1,055,264
	Yr 19	$ 35,000	3,150	38,150	1,116,889	$ 1,078,739
	Yr 20	35,000	1,575	36,575	1,139,226	$ 1,102,651
Total		$ 1,367,000	$ 597,528	$ 1,964,528	18,015,223	$ 16,050,695

Assumptions:

Phase 2 Project municipal valuation ($ 39.1 million) at 25% year 1, 50% year 2 and 100% year 3 at mil rate $20/$1000 with an annual 2% tax rate increase.

September 6, 2012 by LCW
O:\Bayside - Federated Companies\Corporate Guaranty\2final redline of CORPORATE GUARANTY AGREEMENT for Execution.docx

CORPORATE GUARANTY AGREEMENT

THIS CORPORATE GUARANTY AGREEMENT, (this "Guaranty"), is made as of the 15th day of Oct., 2012, by **LEGACY PARK APARTMENTS, LLC**, a Florida limited liability company, with a principal place of business at 801 Brickell Avenue, Suite 720, Miami, Florida 33131 ("Guarantor"), and, jointly and severally, by **THE FEDERATED COMPANIES LLC** , a Florida limited liability company, with a principal place of business at 801 Brickell Avenue, Suite 720, Miami, Florida 33131, see below and **THE CITY OF PORTLAND, MAINE**, a body politic and corporate with a place of business at 389 Congress Street, Portland, Maine 04101, ("City").

WHEREAS Guarantor is the assignee, by virtue of an Assignment and Assumption Agreement effective June 27, 2011, ("Assignment"), of a Purchase and Sale Agreement between The City of Portland, Maine, ("City"), effective June 23, 2011, ("Agreement"), as amended, for the purchase of certain blighted and brownfield real property located on Somerset Street, Portland, Maine known as Lots 1, 2, 3, 5, 6, 7,8 and a portion of Lot 9, (collectively, "the Land"), consisting of approximately 3.25 acres formerly known as the "Bayside Railyard";

WHEREAS City, in order to create jobs and economic growth for the Citizens of Portland, Maine, has agreed to make a $9,007,000.00 contribution, ("City Grant Funds"), to Legacy Park Apartments, LLC from funds being provided to the City by the U.S. Department of Housing and Urban Development, ("HUD Funds"), toward the expense of the design, development and construction of a garage, with no fewer than 700 parking spaces on a portion of Lot 5 and all of Lots 6 and 7 and a portion of Lot 9, ("Garage"), pursuant to the terms of a Parking Garage Contribution and Funding Agreement of even or near date hereto between City and Guarantor. ("Parking Garage Agreement").

WHEREAS City, in order to induce Guarantor to enter into this Guaranty and a Job Creation Agreement, hereby agrees to pay the City Grant Funds to Guarantor, Legacy Park Apartments, LLC or its nominee ("Receiving Entity") in accordance with the terms of the Parking Garage Agreement.

WHEREAS Guarantor, contingent on receiving the City Grant Funds, hereby makes the following Guaranty, subject to the conditions contained herein.

NOW THEREFORE in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City hereby agrees to pay the City Grant Funds to the Receiving Entity and Guarantor guarantees to City that:

1. Guaranty: Guarantor shall construct and substantially complete Phase I of the Project, as more particularly described in the attached Phase I Site Plan, Design Guidelines, and Specifications Sheet, ("Exhibit 4," parts 1, 2, and 3), within three (3) years after the date of on which a total of $1,000,000.00 in City Grant Funds has been requisitioned by the Receiving Entity and disbursed by the City to the Receiving Entity ("Guaranty Deadline"). The annual penalty for not meeting the Guaranty Deadline shall be limited to Guarantor paying to City, on an annual basis for a maximum term of 17 years, the annual difference between the actual tax revenue realized from Phase I, as constructed, and the Phase I tax revenue the City would have received had Phase I been substantially completed (The "Phase I Projected Value") by the Guaranty Deadline. The Phase I Projected Value shall be the City of Portland Asessor's estimated assessed value of the Phase I property (real and personal), made on the April 1 following the Guaranty Deadline, and based on the

description of Phase I in Exhibit 4, and the related specifications and design guidelines provided by the Guarantor on or about July 1, 2012. Notwithstanding anything in the forgoing, this Guaranty is contingent on the full $9,007,000.00 in City Grant Funds being contributed to Guarantor for the construction of the Garage. Guarantor's aggregate, maximum penalty liability under this Guaranty shall not exceed $9,007,000. Finally, regardless of when substantial completion of all buildings in Phase I is achieved, this Guaranty shall automatically terminate, Guarantor shall have zero financial liability under this Guaranty and City shall provide Guarantor with a release from any financial liability under this Guaranty effective as of the earlier of the date of substantial completion of Phase I or as of the date of the timely and valid exercise of the City's right of repurchase under Section 9 of the Parking Garage Agreement, as amended. For purposes of this Guaranty, "substantial completion" is deemed to mean a structure having received a Certificate of Occupancy from the City of Portland, and the complete 'fit-out' of all commercial portions of Phase I.

The rights and obligations under the Agreement between the parties hereto, and under the Parking Garage Contribution Agreement of near or even date, are cumulative and in addition to the rights described herein.

2. Warranties and Representations: In connection with the foregoing, City and Guarantor hereby make the following warranties and representations:

(a) The financial liability limitations of this Guaranty are intended by the parties to supersede and amend the defense and indemnification obligations of the Buyer/Guarantor to City in regard to the City Grant under Section 11 of the Agreement. Similarly, the provisions of the Job Creation Agreement are intended by the parties to supersede and amend the job creation duties and obligations of the Buyer/Guarantor to City under Section 11 of the Agreement. Accordingly, this Guaranty is contingent upon the City paying the City Grant Funds to Guarantor in accordance with the terms of the Parking Garage Agreement, irrespective of the source of funds utilized by the City for such City Grant Funds.

(b) Apart from the express modifications stated in this Guaranty, the Parking Garage Agreement and Job Creation Agreement, the Agreement for the purchase of the Land, as assigned and amended, remains in full force and effect and has not been otherwise modified, amended or terminated.

(c) Attached as Exhibit 1 to this Guaranty is a true, accurate and complete copy of the Purchase and Sale Agreement and First Amendment thereto.

(d) Attached as Exhibit 2 to this Guaranty is a true, accurate and complete copy of the Assignment.

(e) Attached to Exhibit 3 to this Guaranty is a true, accurate and complete copy of the Parking Garage Agreement.

(f) Attached as Exhibit 4 to this Guaranty is the, Phase I Site Plan, Design Guidelines, and Specifications Sheet.

(g) Attached as Exhibit 5 to this Guaranty is a true, accurate and complete copy of the Job Creation Agreement.

(h) Neither the Guarantor, nor the City is in default of the Agreement.

3. Successors and Assigns and Enforcement: This Guaranty shall be binding upon and inure to the benefit of the Guarantor's respective successors and assigns. Guarantor pledges that:

(a) it will not assign its rights hereunder without the City's consent, and only to a related entity;

(b) it will permit the City's Corporation Counsel, Manager, Director of Economic Development and Finance Director to review balance sheet, to satisfy themselves of the strong solvency and net worth of both the Guarantor and The Federated Companies LLC;

(c) it will not substantially change such strong solvency and net worth without notifying the City of such changes;

(d) it will not alter its corporate structure or transfer substantially all its assets without providing the City a replacement Guaranty from another entity with strong solvency and net worth, or in the alternative, a letter of credit for the obligations hereunder; and

(e) In any legal proceeding with respect to the obligations created by this Guaranty, all parties hereto waive jury trial, agree that the Maine Superior Court shall have exclusive jurisdiction, that the substantive and choice of law used shall be Maine law and that the prevailing party shall be awarded the reasonable attorneys' fees and costs incurred in regard to any legal proceeding arising out of the obligations created by this Guaranty, including, should the City prevail, a reasonable hourly fee for the services of the City's employee attorneys, that is, its Corporation Counsel.

(f) This Agreement and the performance hereof by Guarantor will not contravene any law, judgment, order, injunction, decree or any contractual restriction or arrangement binding on Guarantor, at the time execution hereof. All parties hereto acknowledge that this Agreement is a legally enforceable instrument and the obligations stated herein are likewise legally enforceable, and that at the time of execution hereof they have no reason to believe otherwise.

4. Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5. Amendments: This Guaranty may not be amended in any respect whatsoever except by a further agreement, in writing, fully executed by each of the parties.

(Signature page follows on p. 4.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives under seal as of October 04, 2012.

LEGACY PARK APARTMENTS LLC, a Florida limited liability company

Brett DePetrillo
COMMISSION # DD992811
EXPIRES: MAY 17, 2014
WWW.AARONNOTARY.com

By:____________________________
Jonathan Cox, Manager

CITY OF PORTLAND

By:____________________________
Mark H. Rees
City Manager

JOINDER

THE FEDERATED COMPANIES LLC, a Florida limited liability company, with a principal place of business at 801 Brickell Avenue, Suite 720, Miami, Florida 33131, hereby joins in this Guaranty, agreeing that it is jointly and severally liable for, and hereby makes, the same guaranty and other obligations as described in the paragraphs numbered 1, 2 and 3 above, subject to the terms and conditions stated therein.

THE FEDERATED COMPANIES, LLC, a Florida limited liability company

By:____________________________
Jonathan Cox, Manager

Finance Director
City of Portland, Maine

APPROVED AS TO FORM:

CORPORATION COUNSEL'S OFFICE

<u>EXHIBIT 1</u>

[P&S]

EXHIBIT 2

[Assignment to Legacy Park]

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT, ("Amendment"), is entered into as of Oct. 15, 2012, by and between **THE CITY OF PORTLAND, MAINE**, a body politic and corporate with a place of business at 389 Congress Street, Portland, Maine 04101 ("Seller") and **LEGACY PARK APARTMENTS LLC**, a Florida limited liability company with a place of business at 801 Brickell Avenue, Suite 720, Miami, Florida 33131, or its nominee or assignee ("Buyer"). (Seller and Buyer are also hereinafter referred to individually as "party" or, collectively, "parties").

WHEREAS Buyer is the assignee, by virtue of an Assignment and Assumption Agreement, ("Assignment"), effective June 27, 2011 of a Purchase and Sale Agreement, effective June 23, 2011, between The Federated Companies LLC and Seller ("Agreement"). Assignment and Agreement are attached hereto and incorporated herein by reference, collectively, as Exhibit "A".

WHEREAS Section 11 of the Agreement requires that the Seller and Buyer enter into a formal agreement stipulating to the terms and conditions of the Seller's contribution of HUD Funds during the Inspection Period.

WHEREAS Section 11 of the Agreement provides that the Inspection Date shall be extended until the parties have reached agreement on the use of HUD Funds for the garage.

NOW THEREFORE for good and valuable consideration, including the mutual promises made below, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree that the Agreement is amended as follows:

A. Section 4 of the Agreement is amended by deletion of the original text of Paragraph 2 and insertion of the following text in its place:

"The term "Inspection Date" means midnight on the sixtieth (60th) day following full execution by the parties and HUD approval, if HUD approval is required, of the formal agreement stipulating the terms and conditions of the HUD Funds contribution identified under Section 11 of this Agreement."

B. Section 5 of the Agreement is amended by deletion of the original text and insertion of the following in its place:

C. Section 5. **Use Restrictions and Environmental Matters**. Buyer understands that lots 1, 2, 3, 5 and a portions of lot 6 and a portion of lot 9 were encumbered with deeds restrictions, including but not limited to a restriction on residential uses on a portion of the Property. Pan Am/Guilford, the holder of those restrictions has released these restrictions, and before the start of construction by Buyer the Seller will secure environmental liability insurance on the Railyard to protect Pan

Am/Guilford, which was a condition of its releasing these restrictions.

The Seller, through its consultant and others has undertaken a number of environmental studies which are referenced in Exhibit B to this Amendment. The Maine Department of Environmental Protection (hereinafter "DEP") has issued one or more letter(s) confirming their approval of a Voluntary Response Action Program ("VRAP") Plan for the former rail yard property which is contained within lots 1, 2, 3, 5 and a portion of lot 6 and a portion of lot 9 (hereinafter "Railyard"). The VRAP includes a remediation plan approved on the Railyard property by the DEP. As part of the development plan for the Railyard property, Buyer is responsible for complying with the remediation VRAP Plan for the Property. To the extent required by law, the approval of the U.S. Environmental Protection Agency shall also be obtained for both of these VRAP Plans.

The Seller has commenced review of the environmental conditions for on the portion of Property which is contained within a portion of Lot 6 and Lots 7, 8 and a portion of Lot 9, (hereinafter "Scrapyard"). The Seller will secure a VRAP for the Scrapyard (subject to Buyer's input and approval) and Buyer shall undertake remediation in accordance with the VRAP. The Seller will reimburse Buyer for its first Fifty Thousand Dollars ($50,000.00) of actual expense for such remediation, and all other costs of remediation, which shall fully comply with such VRAP, shall be paid by the Buyer from City Grant Funds received from City. The Seller will work together with the Buyer to ensure the timely remediation in accordance with the Buyer's development plans.

Although Buyer is under no obligation to obtain such environmental liability insurance, should Buyer, at Buyer's sole election, secure environmental liability insurance on the Scrapyard and/or any other portion of the Property, Buyer will use best efforts to secure for the Seller the option to obtain coverage under such insurance policy(ies) as an Additional Insured, by endorsement in any other form; provided, however, that any additional cost for such additional coverage shall be paid by the Seller and shall not relieve Seller of the duty of providing the environmental liability insurance required to provide on the Railyard for the benefit of PanAm/Guilford described above.

D. Section 6 of the Agreement is amended by adding, at the end of the existing first sentence, "including but not limited to Site Plan approval from the City of Portland, Subdivision Approval Amendment(s) from the City of Portland, and any amendments to the Land Use Code of the City of Portland."

E. The first sentence of Section 11 of the Agreement is amended by deleting the existing text, and replacing it with the following:

Contingent on the full disbursement of $9,007,000.00 in City Grant Funds from Seller to Buyer as provided in the Parking Garage Contribution Agreement, and as a condition of this sales transaction, the Buyer will construct, at its expense, a parking garage on (approximately, as the exact location is not yet set), a portion of Lot 5 and all of Lots 6 and 7 and a portion of Lot 9 which shall contain not less than 700 parking spaces, ("Garage").

F. Section 11 of the Agreement is amended by deleting the original text of numbered Paragraph 4 and the insertion of the following text in its place:

"Buyer shall construct the Garage using sustainable and energy efficient construction methods, including, but not limited to, energy efficient lighting."

G. Section 15 of the Agreement is amended by deletion of the original text and insertion of the following in its place:

"Section 15. Rights of Seller to Repurchase Undeveloped Property.

(a) If three years after the substantial completion of the Garage, construction activity has not been commenced and diligently pursued on any other portions of the Property, the Seller shall have a one-time right to notify Buyer in writing of such default under this Section within thirty (30) days of such default and Buyer shall have ninety (90) days thereafter to cure such default. Provided, however, that there shall be no event of default by Buyer if the City is in default of any provision of the Parking Garage Contribution Agreement. If Seller fails to provide Buyer with written notice of default within thirty (30) days of such default, then the provisions of this Section shall be deemed waived by Seller.

(b) If the Garage does not reach substantial completion within three years after the date of closing on the purchase by Buyer of the Property related to the Garage then the Seller shall have a one-time right to notify Buyer in writing of such default under this Section within thirty (30) days of such default and Buyer shall have ninety (90) days thereafter to cure such default. If Seller fails to provide Buyer with written notice of default within thirty (30) days of such default, then the provisions of this Section shall be deemed waived by Seller.

If Buyer fails to cure a default under either 15(a) or 15(b) above, the Seller shall have the right or remedy, but not the obligation, which is described in this paragraph in concept: namely, to repurchase any or all such portions of the undeveloped Property at Buyer's Purchase Price (prorated with respect to the quantity of land, as necessary). Seller may, at the closing of such repurchase, use such consideration (that is, the prorated portion of Buyer's Purchase Price) to pay-off and remove any and all then existing mortgages, liens, assessments or other encumbrances on the undeveloped Property being repurchased. Any amounts by which such then existing mortgages, liens, assessments and other encumbrances exceed such consideration, shall continue to the obligations of Buyer, or its successors or assigns; and Buyer, its successors or assigns, shall indemnify Seller with respect to such excess amounts.

The City acknowledges that Legacy Park will most likely use the entire Property as collateral for a construction loan for the purpose of developing and building all portions of the project. The City therefore agrees to work on documents at the time of such financing, with Buyer and its construction lender, to make it possible for the City to have the remedy described above in concept, and to also permit such construction financing. Buyer agrees that while this right or remedy exists as described in the paragraph above no portion of the Property will not be mortgaged for any purpose other than development and construction of the Project.

It is noted here that the 'Parking Garage Contribution Agreement' contains Seller's remedies with respect re-acquisition of the parking garage portion of the Property, and the Rights created by this Section do not pertain to that property." The rights and obligations under the Corporate Guaranty Agreement and the Parking Garage Contribution Agreement, both of near or even date are cumulative and in addition to the rights described herein.

H. The original description of the Land in the Purchase and Sale Agreement is hereby modified to include this conveyance a portion of Lot 9, and the "Exhibit ~~A~~ C" to the Purchase and Sale Agreement is hereby replaced with the "Exhibit ~~A~~ C to the Purchase and Sale Agreement, [2012]" attached hereto.

Except as amended above, all other terms and conditions of the Agreement remain unaffected by this Amendment, are in full force and effect between the parties and are hereby ratified by the parties.

All terms capitalized herein shall have their original meaning as defined in the Agreement unless otherwise defined herein. In the event of conflicting provisions or language in this Amendment and the Agreement, this Amendment is intended to control.

This Amendment may be signed in counterparts, which shall be construed together as one document.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first written above.

SELLER:	**BUYER:**
CITY OF PORTLAND	THE FEDERATED COMPANIES, LLC
By: [signature]	By: [signature]
Name: Mark H. Rees	Name: Jonathan Cox
Title: City Manager	Title: Manager
Date of Execution: 10-15-12	Date of Execution: 10/15/12

September 6, 2012 by LCW
O:\Bayside - Federated Companies\Purchase and Sale Agreement\2final FIRST AMENDMENT TO PURCHASE AGREEMENT for Execution.doc

Approved: Ellen Sanborn, Finance Director

Approved as to Form: Corp. Counsel

EXHIBIT "A"
TO FIRST AMENDMENT TO
PURCHASE AND SALE AGREEMENT

[insert Assignment AND P&S]

EXHIBIT A

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made as of the 27th day of June, 2011, by and between **THE FEDERATED COMPANIES, LLC**, a Florida limited liability company, with an address of 404 Washington Avenue, Suite PH, Miami Beach, FL 33139 (together, the "Assignor") and **LEGACY PARK APARTMENTS LLC**, a Florida limited liability company, with an address of 404 Washington Avenue, Suite PH, Miami Beach, FL 33139 (the "Assignee").

For and in consideration of the sum of One Dollar ($1.00) and other valuable consideration to it in hand paid by the Assignee to the Assignor and the mutual covenants herein contained, the receipt and sufficiency of the foregoing consideration being hereby acknowledged, the parties hereto agree as follows:

1. **ASSIGNMENT:** The Assignor hereby assigns, transfers, sets over and conveys to the Assignee all of the Assignor's right, title and interest in, to and under that certain Purchase and Sale Agreement by and between The City of Portland, Maine (the "City") and Assignor, with respect to certain real property described therein (the "Purchase Agreement").

2. **ASSUMPTION:** The Assignee does hereby assume and agree to perform all of the Assignor's obligations with respect to the Agreement accruing from and after the date hereof. Assignee acknowledges that Assignor has posted the required deposit under the Purchase Agreement and agrees that such deposit shall be refunded to Assignor upon Assignee's closing on the acquisition under the Purchase Agreement.

3. **WARRANTIES AND REPRESENTATIONS:** In connection with the foregoing assignment and assumption of the Purchase Agreement, the Assignor does hereby make the following warranties and representations:

(a) The Purchase Agreement remains in full force and effect and has not been modified, amended or terminated;

(b) Attached as Exhibit A to this Agreement is a true, accurate and complete copy of the Purchase Agreement; and

(c) Neither the Assignor nor, to the best of Assignor's knowledge without inquiry, the City is in default of the Purchase Agreement.

With the exception of the foregoing warranties, this Assignment is made without recourse or representation or warranty, express, implied or by operation of law, of any kind and nature whatsoever.

4. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon and inure to the benefit of the Assignor and the Assignee and their respective successors and assigns.

5. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6. **AMENDMENTS:** This Agreement may not be amended in any respect whatsoever except by a further agreement, in writing, fully executed by each of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives under seal as of June 27, 2011.

ASSIGNOR:

THE FEDERATED COMPANIES, LLC, a Florida limited liability company

By:________________________
Jonathan Cox, Manager

ASSIGNEE:

LEGACY PARK APARTMENTS LLC, a Florida limited liability company

By:________________________
Jonathan Cox, Manager

Exhibit A

PURCHASE AND SALE AGREEMENT

This Purchase Agreement (this "Agreement"), is entered into as of the Effective Date, as defined below, by and between The City of Portland, Maine a body politic and corporate with a place of business at 389 Congress Street, Portland, Maine 04101 ("Seller") and The Federated Companies LLC, a Florida limited liability company with a place of business at 404 Washington Avenue, Suite PH, Miami Beach, FL 33139 or its nominee or assignee ("Buyer").

WHEREAS, Seller is the Owner of a certain real property located on Somerset Street, Portland, Maine which contains approximately 3.25 acres and which is known as lots 1, 2, 3, 5, 6, 7 and 8, which land is further described in Exhibit A, attached hereto and incorporated herein (collectively "the Land") and

WHEREAS, Seller seeks to sell the Land for development purposes; and

WHEREAS, Buyer desires to acquire the Land from Seller, and Seller seeks to sell the same to Buyer on such terms as are set out herein,

Now Therefore, in consideration of the foregoing and for good and valuable consideration, the parties intend to be legally bound as follows:

Section 1. Property. The Land, all rights and privileges appurtenant to the Land and all improvements located on the land, are referred to collectively as the "Property." The Seller agrees to sell the Property to Buyer on the terms and conditions contained herein. The parties understand and agree that a portion of land representing a trail access from Somerset Street as shown on Exhibit A-1, may need to be adjusted depending on the nature and extent of development on Lots 6 and 7. The trail access adjustment shall be subject to the mutual agreement of the parties on the placement of the lot lines and the trail access

Section 2. Purchase Price and Deposit. The "Purchase Price" for the Property shall be Seven Hundred Thousand Dollars ($700,000) per acre and shall be paid in cash (or by certified or bank check or federal funds wire transfer) at the Closing as defined in Section 8 of this Agreement subject to the adjustments described in this Agreement. The calculation of the acreage of the Property shall be made by the Seller providing, not later than forty-five (45) days after the Effective Date, an ALTA survey, satisfactory to Buyer and Buyer's lender, of the Property, excluding that portion of land utilized for trail access as described above. Within ten (10) business days after the Effective Date of this Agreement, Buyer shall deliver to a nationally-recognized title company ("Escrow Agent") the sum of Twenty Five Thousand Dollars ($25,000) (the "Initial Deposit"), which shall be held in escrow in accordance with the terms of Section 14 of this Agreement. The Initial Deposit, and any other deposits made by Buyer under the terms of this Agreement shall be held by the Escrow Agent, and is referred to collectively as the "Deposit." The Deposit shall be applied toward the Purchase Price at the Closing unless otherwise forfeited by the Buyer pursuant to the terms of this Agreement.

Section 3. Title.

(a) Seller shall convey its interest in the Property to Buyer by a good and sufficient quitclaim deed with covenant (the "Deed"). The Deed shall convey insurable title to the Property and be free of encumbrances except (i) zoning, environmental and subdivision laws, rules, regulations and restrictions and other land use matters; and (ii) any "Defects of Title" (as defined below) accepted or waived by Buyer pursuant to Section 3(b). Buyer acknowledges that: the deed of conveyance shall contain a restriction lasting for 30 years, including the 30th year, starting on the closing date, that, in the event that the property or any portion thereof shall be exempt from real and personal property taxes then a yearly payment by the then-owner of the exempt portion shall be made in lieu of taxes equivalent to the property taxes that would otherwise be paid on the exempt portion of the real and personal property situated on Property, which restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates and the like as are accorded owners of real and personal property in Maine. For purposes of this Agreement, insurable title means title which an insurance company with a rating of B+ or better by Standard & Poor's (or other comparable rating by another rating organization) licensed to do business in Maine is willing to insure upon payment of a premium at customary and filed rates on a standard ALTA Form B Policy (rev. October 17, 1992) with no exceptions listed on Schedule B, Part I thereof, except for the standard exceptions and Defects of Title pursuant to paragraph 3(b) below, with no indemnification or legal opinion to be required from Buyer to issue such policy, and with the creditor's rights exception deleted.

(b) On or before the date that is forty-five (45) days after the Effective Date, Buyer shall notify Seller of any defects in title that would make Seller unable to give title to the Property as herein stipulated or which would otherwise adversely affect Buyer's intended development of the Land (any of which is called herein a "Defect of Title"). Buyer shall be deemed to have waived any objection to any Defect of Title that existed as of the Effective Date if Buyer fails to notify Seller of such Defect of Title on or before the end of such 45-day period. With respect to the existence of any Defect of Title that does not exist on the Effective Date but which arises prior to the Closing Date, Buyer shall notify Seller of any such Defect of Title on or prior to the Closing Date as defined in Section 8 hereof. Seller shall have, at its option, a period of not more than sixty (60) days after receipt of notice(s) of any defect in title within which to remedy or cure any Defect of Title and Seller agrees to use good faith efforts to cure such Defect of Title. If the Closing Date shall fall within the said 60-day period, it shall be extended to the date that is the date that is ten (10) business days after the expiration of such 60-day period or after the date such Defect of Title is cured to Buyer's reasonable satisfaction (but in no event shall the Closing Date be earlier than is otherwise provided herein). Buyer shall have ten (10) business days after receipt of notification by Seller that the Defect of Title has been cured to advise Seller whether it is satisfied with the title defect cure. If such Defects of Title are not corrected or remedied within such 60-day period, then Buyer shall elect by written notice to the Seller on or before the Closing Date, as the same may be extended, either (i) to accept title to the Property subject to the uncured Defects of Title without reduction of the purchase price and without any right to damages and without any other liability on the part of Seller, or (ii) to terminate this Agreement, whereupon the Deposit shall be returned to Buyer and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement. For purposes of this subsection (b), Seller may elect to cure or remedy any Defect of Title by providing Buyer with a binding commitment from a title insurance company licensed to do business in Maine committing to issue an endorsement to Buyer's owner's title insurance policy providing affirmative coverage for such Defect of Title at no additional premium to Buyer beyond any premium required for such title policy without such endorsement; and Buyer agrees to accept such affirmative coverage as a cure or remedy for such Defect of Title provided that the form and content of such affirmative coverage is satisfactory to Buyer and its advisors in their reasonable discretion; or the Seller may cure by other means satisfactory to the Buyer.

Any time taken to cure any defect in title shall extend by the same amount of time the Inspection Date described by section 4 of this Agreement.

(c) Seller represents and warrants to Buyer, effective as of the date of this Agreement and also effective as of the date of Closing, that: (i) Seller holds good and clear, record and marketable title to the Property in fee simple; (ii) there are no uncorrected violations of any laws or codes with respect to the Property, its condition, or use; (iii) no options, rights of first refusal, or other contracts have been granted or entered into which give any other party a right to purchase or acquire any interest in the Property or obligate the Seller in any respect; (iv) there are no leases, licenses, or other occupancy agreements in effect with respect to any part of the Property, other than a deed restriction preventing residential use and other uses as required which Seller shall seek to lift before Closing; (v) Seller has not received written notice of any planned or threatened condemnation or eminent domain proceedings with respect to the Property; (vi) the Property abuts a public way which imposes no access restrictions; (vii) this Agreement has been duly authorized by all requisite action and is not in contravention of any law or organizational documents and this Agreement has been duly executed by a duly authorized officer or official of Seller; (vii) Seller's execution of this Agreement does not violate any other contracts, agreements, or any other arrangements of any nature whatsoever that Seller has with third parties and (ix) the Seller shall seek to obtain, at its sole cost and expense, such environmental insurance as may be agreed upon by Seller and PanAm/Guilford, as a prior titleholder, that is sufficient to get PanAm/Guilford to lift the current deed restrictions on uses. Seller will not cause nor, to the best of Seller's ability, permit any action to be taken which would cause any of Seller's representations or warranties to be false as of Closing, and in any event shall notify Buyer of any change in these representations and warranties. Seller's representations and warranties shall survive the Closing and the delivery of the Deed.

Section 4. Inspection of Property. Buyer, and those parties controlled by Buyer or associated with Buyer, shall have the right to access the Property to inspect its condition, including, without limitation, making surveys, testing the geotechnical quality of soils and whether any Hazardous Materials exist (including sub-surface), and pursuing permits and approvals. Seller shall cooperate with Buyer, without material cost to Seller, in connection with all such inspections and actions by Buyer, including without limitation, by delivering to Buyer within ten (10) days of the effective date of this agreement, copies of any and all surveys, permits, title reports, hazardous waste reports, environmental assessments, geotechnical reports, samplings and investigations, all contracts and leases affecting the Property, any documents relating to the physical condition of the Property (including, without limitation, any improvements located thereon) and the status of the Property's compliance with applicable building code, zoning, land use and environmental laws, rules and regulations, feasibility studies (including financing), building and site plans, floor plans, property inspections, elevation studies, appraisals or other such pertinent information Seller has compiled related to the property and/or the proposed development that is in the Seller's possession or control, and signing any consents or authorizations for permit applications that may be required. If Buyer does not purchase the Property for any reason then Buyer shall promptly repair any damage that it may have caused.

The term "Inspection Date" means midnight on the sixtieth (60^{th}) day following the Effective Date.

If Buyer is not satisfied with the condition of the Property for any reason, or no reason, in its sole discretion, then Buyer may terminate this Agreement by delivering written notice of such termination to Seller no later than five (5) days after the Inspection Date, in which event the Escrow Agent shall immediately return the Initial Deposit to Buyer. However, if Buyer does not so terminate this Agreement, then the parties shall proceed forward in this transaction. Upon Buyer's election to move forward, the Buyer shall deposit, within five (5) days, an additional Twenty Five Thousand Dollars ($25,000) in escrow with the Escrow Agent as Additional Earnest Money ("Additional Deposit"). Both the Deposit and the Additional Deposit shall be deemed non-refundable except in the event that the Seller fails to perform or the Buyer is unable to obtain the permits and approvals. The Deposit and the Additional Deposit shall be credited against the purchase price upon closing unless forfeited as otherwise provided in this Agreement.

Section 5. Covenants of the Seller. The Seller, through its consultant and others have undertaken a number of environmental studies which are referenced in Exhibit B to this agreement. The Maine Department of Environmental Protection (hereinafter "DEP") has issued one or more letter(s) confirming their approval of a Voluntary Response Action Program ("VRAP") Plan for the former rail yard property which is contained within lots 1, 2, 3, 5 and a portion of 6 (hereinafter "Railyard"). The VRAP includes a remediation plan approved on the Railyard property by the DEP. As part of the development plan for the Railyard property, Buyer shall be responsible for complying with the remediation plan for the property.

Buyer understands that lots 1, 2, 3, 5 and a portion of lot 6 are encumbered with deed restrictions, including but not limited to a restriction on residential uses on a portion of the Property. Pan Am/Guilford, a prior owner of the property has the sole discretion and is under no obligation to remove said deed restrictions. Provided that Pan Am/Guilford is in agreement with the insurance coverage provided by the Seller, the Seller will secure environmental liability insurance on the Railyard portion of the Property which will permit Pan Am/Guilford and the Seller to remove the deed restrictions on the property for residential and other uses, as required by Buyer.

The Seller has commenced review of the environmental conditions on the portion of the Property which is contained within a portion of Lot 6 and Lots 7 and 8 (hereinafter "Scrapyard"). The Seller will secure a VRAP for the Scrapyard (subject to Buyer's input and approval) and shall undertake remediation at its sole cost and expense in accordance with the VRAP. The Seller will work together with the Buyer to ensure the timely remediation in accordance with the Buyer's development plans. Buyer understands and agrees that no residential uses shall be approved on Lots 7 and 8 of the Scrapyard, even if such uses are allowed by the VRAP.

Section 6. Permit Period. Buyer shall have an additional One Hundred and Eighty (180) days following the Inspection Date (the "Permit Period") in which to obtain the permits and approvals that are necessary or desirable for Buyer's contemplated development of the Property for a mixed-use project including a parking garage as described in Section 11 of this Purchase Agreement. Buyer shall work with the City on the development of a master plan of all properties. Subject to the mutual agreement of the parties, the master plan may, but is not required to, include the elimination of the accessway from Somerset St to the Bayside Trail between Lots 6 and 7 or the 20ft wide accessway from Somerset St. to the Bayside Trail running through Lot 3, and the purchase of the underlying property in the accessway between Lots 6 and 7 by Buyer. It is the intent of the Buyer to build a mixed-use project which incorporates goals proposed by the City in its "A New Vision for Bayside", including, but not limited to, provide commercial and/or retail space on the first floor to allow for a user friendly neighborhood. If, by the end of the Permit Period, Buyer has not obtained all such permits and approvals, with all appeal periods with respect to such permits and approvals having expired with no appeal having been taken (or if taken, then with such appeal having been resolved to Buyer's satisfaction), then Buyer may terminate this Agreement by delivering written notice of such termination to Seller no later than five (5) business days after the end of the Permits Period, in which event the Deposit shall be returned to Buyer as provided in the Escrow Agreement. However, if Buyer does not so terminate this Agreement then the parties shall proceed forward in this transaction in accordance with the terms of this Agreement and the Deposit shall become non-refundable (except in the event of a Seller default, or because the Closing does not occur due to the failure of a condition precedent or as otherwise provided in this Agreement), but the Deposit shall always remain applicable to the Purchase Price unless otherwise provided by this Agreement.

During the Permit Period, as soon as practicable but no later than the same time as the Buyer presents its formal application for site plan approval, the Seller will present its plan for subdivision amendments to the Land consistent with the needs of the Buyer's site plan approval. The Seller shall be the applicant for the subdivision amendment, whether the review is done administratively or otherwise. Buyer shall provide, at its sole cost and expense, all required surveys in connection with the necessary subdivision amendments.

Notwithstanding anything in the foregoing to the contrary, Buyer shall have the right to extend the Permit Period up to three times, each extension for a period of thirty (30) days, by notifying Seller in writing of such extension within five (5) business days after the end of the then-current Permits Period, and depositing with Escrow Agent an additional deposit of Three Thousand Dollars ($3,000) per extension (the "Permit Extension Deposit"). The Permit Extension Deposit shall be considered part of the Deposit and shall non-refundable (except in the event of a Seller default, or because the Closing does not occur due the failure of a condition precedent or if Buyer/Seller is unable to obtain the permits and approvals or as otherwise provided in this Agreement), but the Deposit shall always remain applicable to the Purchase Price as provided herein. All references in this Agreement to the Permit Period shall mean the Permit Period as the same may be extended in accordance with the terms of this paragraph.

Section 7. Conditions Precedent to Closing. Seller and Buyer's obligation to Close hereunder are conditioned upon the satisfaction of the following conditions:

(a) there shall be no pending or threatened action, suit, litigation, hearing or administrative proceeding relating to Seller, any entity comprising Seller, or to all or any portion of the Property;
(b) the Property shall be free and clear of any leases, licenses, occupancy agreements, and any other parties in possession;
(c) Seller shall have delivered to Buyer such documentary and other evidence as the Buyer's title company may reasonably require evidencing Seller's authority, the absence of mechanic's liens and parties in possession, and any other matters that the title company may reasonable require;
(d) all of Seller's obligations under this Agreement shall have been performed and all its representations and warranties shall be true and correct;
(e) the condition of the Property (including without limitation the condition of the Property with respect to title and survey matters, as well as the presence of fixtures, equipment, and other personal property that is to be transferred at the Closing as elected by Buyer) shall be as required by this Agreement and no changes shall have occurred to such condition of the Property since the date of this Agreement (Buyer shall have the right to re-inspect the Property prior to the Closing to confirm the foregoing);
(e) notwithstanding anything in this Agreement to the contrary, Buyer shall have obtained any and all permits and approvals necessary or desirable for its contemplated development of the Property, with all appeal periods with respect to such permits and approvals having expired with no appeal having been taken (or if taken, then with such appeal having been resolved to Buyer's satisfaction);
(f) any hazardous materials on the property shall be handled in accordance with the requirements of the applicable VRAP agreement and this Agreement;
(g) Seller shall have paid, or will pay at or prior to Closing, all taxes, assessments, charges, fees, levies and impositions, coming due prior to the Closing Date;
(h) if any subdivision or other governmental approval is required in order to convey the Property as a separate parcel or lot then Seller shall have obtained all such subdivisions and/or other governmental approvals and shall have recorded any and all required plans in connection with the same;
(i) from and after the Effective Date, there shall have occurred no material adverse change to the Property (or any material portion thereof) which is continuing at the date and time scheduled for Closing which could have an adverse impact on Buyer's intended use of the Property; and
(k) Buyer shall have secured all permits, licenses and approvals (not subject to further action) necessary to construct its proposed mixed-use facility and parking garage on the Property.

Section 8. Closing. The Closing shall be held and completed at 10:00 A.M. or at such other time as may be agreeable to the parties at the office of the Buyer's lender's counsel in Portland, Maine, or through electronic communication or by mail by agreement of the parties, on the date that is thirty (30) days (or such shorter period of time as Buyer may elect upon five (5) days written notice to Seller) following the end of the Permit Period, time being of the essence. Notwithstanding the foregoing, in no event shall Buyer be obligated to close sooner than the fifth (5th) day following the satisfaction of the conditions precedent set forth in this Agreement. At the Closing, Seller shall cause the release of the Property from all loans and other monetary encumbrances secured by the Property, including, without limitation, municipal liens and utility fees of all kinds, and Seller shall pay all prepayment penalties or fees assessed by the holders of such loans and encumbrances, if any.

Seller is exempt from real estate transfer tax pursuant to 36 M.R.S.A. § 651. Seller shall pay the brokerage commission due to the brokers(s) described below, and all of its costs incurred.

Buyer shall pay its share of the real estate transfer tax and for all recording costs, Buyer shall be responsible for all of its own costs incurred, including, without limitation, the cost of studies or inspections desired by Buyer. The real estate taxes and other customary items of proration and adjustment shall be computed as of the date of Closing and added to or deducted from the net proceeds as the case may be. In the event accurate prorations or other adjustments cannot be made at Closing because of the lack of necessary information, the parties shall prorate and adjust based on the best available information, subject to prompt modification upon the receipt of the necessary information. At the Closing, Seller shall deliver to Buyer: (i) a Quitclaim Deed with covenant (ii) releases of any real estate liens or other instruments or agreements to be cancelled pursuant to the terms of this Agreement, in form appropriate for recording; (iii) an updated certification of the warranties and representations contained herein; (iv) an assignment of permits and warranties; (v) a Bill of Sale (if applicable), in form and substance satisfactory to Buyer, transferring to Buyer, without additional charge, all fixtures, equipment, and other personal property located at the Property (except for any fixtures, equipment and other personal property that Buyer has directed Seller in writing to remove on or before the date of the Closing, which Seller shall so remove, without causing damage to the Property); (vi) an assignment, transferring ownership of all the permits, plans and approvals which are part of the Property and (vii) such other documents required under the terms of this Agreement or customarily delivered at closings in the State of Maine. On or before Closing, Seller shall terminate any contracts relating to the Property that Buyer has not agreed to assume and shall pay all costs associated with such contracts. On or before Closing, Seller will do, make, execute and deliver all such additional and further acts, instruments and documents as may be consistent with this Agreement and customarily and reasonably required by Buyer and/or the Buyer's title company to complete the transactions described in this Agreement.

Section 9. Condemnation and Casualty. If, prior to Closing, all or any part of the Property or access to the Property shall become subject to condemnation through eminent domain by governmental or other lawful authority, or should be subject to damage or destruction by fire or other casualty, then Buyer shall have the option of either (a) completing the purchase, in which event all condemnation proceeds or claims thereof (or, in the event of a fire or other casualty, all casualty insurance proceeds, together with a credit against the Purchase Price for the amount of any insurance deductible) shall be assigned to Buyer, or (b) terminating this Agreement, in which event, notwithstanding any provision herein to the contrary, the Deposit shall be returned to the Buyer, and this Agreement shall have no further force or effect. Seller shall bear the risk of loss to the Property due to condemnation or casualty until the Closing and the recording of the Deed. Seller shall keep the Property insured at its presently insured levels from the date of this Agreement until the Closing and the recording of the Deed.

Section 10. Broker. At the Closing, Seller shall pay any and all fees or other commissions due and payable to CBRE| The Boulos Company (the "Broker"), pursuant to separate agreement. Except for the Broker, Seller and Buyer represent and warrant to each other that neither has dealt with any other real estate broker, agent, or salesperson. Seller agrees to defend, indemnify, and hold Buyer harmless from any claims, costs, judgments, or liabilities of any kind advanced by persons claiming real estate brokerage fees through Seller. Buyer agrees to defend, indemnify and hold Seller harmless from any claims, costs, judgments, or liabilities of any kind advanced by persons (other than the Broker) claiming real estate brokerage fees through Buyer. The indemnities set forth in this Section shall survive Closing.

Section 11. Conditions Which Survive Closing As a condition of this sales transaction, the Buyer will construct, at its expense, a parking garage on a portion of Lot 6 and all of Lots 7 and 8 which shall contain not fewer than 500 parking spaces. The Seller shall make a contribution to the cost of construction from the funds being provided to the Seller from the U.S. Department of Housing and Development (the "HUD Funds") in accordance with and to the extent allowed by federal law and regulations, including HUD's regulations. During the inspection period described in Section 4 above, the Seller and the Buyer shall enter into a formal agreement stipulating the terms of this contribution and the conditions of the contribution, which are expected to include the following:

1. The garage shall be open during reasonable hours 7 days per week subject to modification from time to time by buyer based on historical and projected volume of usage of the garage.

2. The garage shall have shared use with residents 7 days a week, 24 hours per day.

3. During snow bans, garage shall be available for snow ban parking and the overnight snow ban parking rate shall not exceed 50% of the then current daily maximum rate charged for parking at the garage.

4. The garage shall be made available for special event parking during off hours.

5. The garage shall provide turnover parking for the general public.

6. Rates shall be based upon market conditions.

7. The garage shall participate in the Park & Shop program.

8. The garage must accept both cash and credit card payments.

9. The garage must remain as a public parking facility for a minimum of 30 years.

The agreement referred to in this section shall further provide that Buyer shall comply with all the terms and conditions related to the use of HUD funds including, but not limited to, providing documentation of job creation. The Inspection Date shall be extended until the parties have reached agreement on these issues.

The agreement shall further provide that HUD has to approve the use of its funds for the garage and that if such approval is obtained, Buyer or any nominees, assigns or successors in interest shall be responsible for complying with any conditions required by HUD in addition to the conditions listed above and shall defend and indemnify Seller against any actions brought by HUD to enforce any HUD conditions and any sanction or fines resulting from an enforcement action.

In return for the use of HUD funds, the garage and any attached structures or units in it designed for non garage use shall comply with and be certified by the U.S. Green Building Counsel's (USGBC) Leadership in Energy and Environmental Design (LEED) Silver Standard, and shall achieve the minimum LEED optimize energy performance points necessary to meet the targets of the 2030 challenge as published by Architecture 2030, pursuant to the City of Portland's City Code, Section 6, Article VII.

Section 12. Default.

(a) Buyer Default. If Buyer defaults and fails to perform its obligations under this Agreement under this Agreement, Seller, at no cost, shall receive the Deposit and all interest thereon, as well as the results and reports of all development studies, testing reports, construction and design documents related to the garage, and surveys of the Property completed by the Buyer. The parties agree that the Deposit and development studies and surveys are a reasonable liquidated measure of Seller's damages and not a penalty and shall be Seller's sole and exclusive remedy at law and in equity because of the difficulty in ascertaining the exact amount of damages sustained by Seller.

(b) Seller's Default. If Seller defaults and fails to perform its obligations under this Agreement, then Buyer may, without limitation of its other rights and remedies, terminate this Agreement upon written notice to Seller, upon which event the Deposit and all interest thereon shall be immediately refunded to Buyer, and/or exercise all of its available remedies at law or in equity, including, but not limited to, the right to seek a judgment compelling the specific performance of this Agreement and/or an action for damages.

(c) Attorney Fees. In the event of litigation, the substantially prevailing party shall be entitled to receive its reasonable legal fees and court costs from the other party. This provision shall survive the Closing and delivery of the Deed.

Section 13. Miscellaneous. This Agreement (i) constitutes the entire agreement between the parties hereto with respect to the transaction contemplated herein and it supersedes all prior discussions, undertakings or agreements between the parties; (ii) shall not be modified except by a written agreement executed by both parties; (iii) shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns; (iv) may be executed in counterparts; and (v) may be executed by facsimile signatures. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maine. Any notice by either party to the other party shall be in writing and shall be deemed to have been duly given when either delivered personally, or mailed by certified mail, return receipt requested, or sent by nationally recognized overnight courier, or sent by facsimile, or sent by e-mail addressed to Seller, at Portland City Hall, 389 Congress Street, Portland, Me 04101, Attn: City Manager facsimile 207-874-8669, email: pfinnigan@portlandmaine.gov , with a copy to , the Director of Economic Development facsimile 207-756-8217, email: gmitchell@portlandmaine.gov, and another copy to Corporation Counsel, at the same address (facsimile 207-874-8497), email: gary@portlandmaine.gov; and to Buyer c/o The Federated Companies, 404 Washington Ave, Floor 8, Miami Beach, FL 33139, Attn: Jonathan Cox, facsimile (800) 523-5931, email: j_cox@federatedcompanies.com with a copy to Marc Shandler, Esq., The Federated Companies, 404 Washington Ave, Floor 8, Miami Beach, FL 33139, facsimile (800) 523-5931, email: m_shandler@federatedcompanies.com .

In the event any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

The term "Effective Date" as used in this Agreement shall mean the first date upon which both Buyer and Seller have executed a final counterpart of this Agreement and delivered the same to the other party.

The term "day" or "days" as it relates to a time or timeline for performance shall mean business days and shall not include weekends or state or federal holidays.

Buyer shall be entitled without Seller's consent to assign all of its right, title and interest in and to this Agreement to any primary lender or to any entity in which Buyer maintains a controlling interest. Buyer shall also be entitled with Seller's consent, which shall not be unreasonably withheld, to assign all or part of its right, title and interest in and to this Agreement to any other entity. Buyer may also take title in the name of a nominee at the closing in which case the nominee shall be subject to all obligations of Buyer under this Agreement, and all rights of Seller. If the end of any time period herein, or if any specified date, falls on a weekend or state or federal holiday, then the end of such time period, or such date, as the case may be, shall be extended to the next business day thereafter. At the request of either party, Buyer and Seller agree to reasonably cooperate with the other and Escrow Agent in structuring and documenting the sale of the Property to effect a tax deferred exchange in accordance with the provisions of Section 1031 of the Internal Revenue Code and its corresponding regulations. Such cooperation shall be at no cost to the other party. In no event shall such cooperation require a delay of the Closing. The Section headings as used in this Agreement are for convenience or reference only and shall not be deemed to vary the content of this Agreement.

Section 14. Escrow Provisions. As an inducement to Escrow Agent to act as escrow agent, Buyer and Seller agree that: (a) Escrow Agent will hold the Deposit in an interest-bearing account at a banking institution with which Escrow Agent has an established banking relationship, and such interest shall follow the disposition of the Deposit in accordance with the terms of this Agreement; (b) the Escrow Agent shall disburse the Deposit (and the interest earned thereon) only in accordance with this Agreement; (c) Escrow Agent will not be liable for any error or judgment, or for any act or omission under this Agreement made in good faith, except for Escrow Agent's own gross negligence or willful misconduct; (d) Buyer and Seller will jointly and severally indemnify and hold harmless Escrow Agent from and against any claim, costs, damages, attorneys' fees, expenses, obligations, or charges made against Escrow Agent by reason of its action or failure to act in connection with any of the transactions contemplated by this Agreement, unless caused by Escrow Agent's gross negligence or willful misconduct; (e) Escrow Agent will have no liability for any claim, costs, damage, attorneys' fees, expenses, obligations, or charges resulting from a delay in the electronic wire transfer of funds, unless such matters arise as a result of Escrow Agent's gross negligence or willful misconduct; and (f) in the event Escrow Agent receives or becomes aware of conflicting instructions, demands, or claims with respect to this Agreement or the Deposit, Escrow Agent may file a suit in interpleader, and upon the filing of such suit in interpleader and placing of the Deposit with a court of competent jurisdiction, Escrow Agent shall be fully released and discharged from all further obligations imposed by this Agreement with respect to the Deposit.

Section 15. Right of Seller to Repurchase the Property. If construction activity is not commenced and diligently pursued on any or all lots within two years of the date of receipt by the Buyer of final site plan approval, the Seller shall have the right, but not the obligation, to repurchase said lots at Buyer's purchase price

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth next to their respective signatures below.

[Signature page to follow]

PURCHASER:

The Federated Companies LLC

By: ___________________________
Jonathan Cox, Manager
Date of Execution: 6/23/11

SELLER:

City of Portland

By: ___________________________
Patricia A. Finnigan
Acting City Manager
Date of Execution: 6.16.2011

JOINDER OF ESCROW AGENT

Escrow Agent joins in the execution of this Agreement to acknowledge its agreement to act as escrow agent hereunder and to handle the Deposit in accordance with the terms and conditions set forth herein.

ESCROW AGENT:

____

By: ___________________________
Name: ___________________________
Title: ___________________________
Date: ___________________________

PURCHASER:

The Federated Companies LLC

By: ______________________
Jonathan Cox, Manager
Date of Execution: 6/23/11

SELLER:

City of Portland

By: Patricia A. Finnigan
Patricia A. Finnigan
Acting City Manager
Date of Execution: 6.16.2011

JOINDER OF ESCROW AGENT

Escrow Agent joins in the execution of this Agreement to acknowledge its agreement to act as escrow agent hereunder and to handle the Deposit in accordance with the terms and conditions set forth herein.

ESCROW AGENT:

Monument Title Company

By: ______________________
Name: Karen L. Pelletier
Title: Managing Director/Exec VP
Date: July 1, 2011

EXHIBITS

A - Description of Land
A-1 Proposed Somerset Street Subdivison plan, showing possible trail access
B – index of environmental studies

EXHIBIT A

Description of Land Being Purchased:

Lots 1,2, 3, 5, 6, 7 and 8 as shown on a subdivision plan entitled "Bayside Railyard Portland, Maine" prepared for the Downtown Portland Corporation by SGC Engineering, LLC as approved by the Portland Planning Board on December 9, 2008 and recorded in the Cumberland County Registry of Deeds on 1/27/09 in Book 209, Page 36.

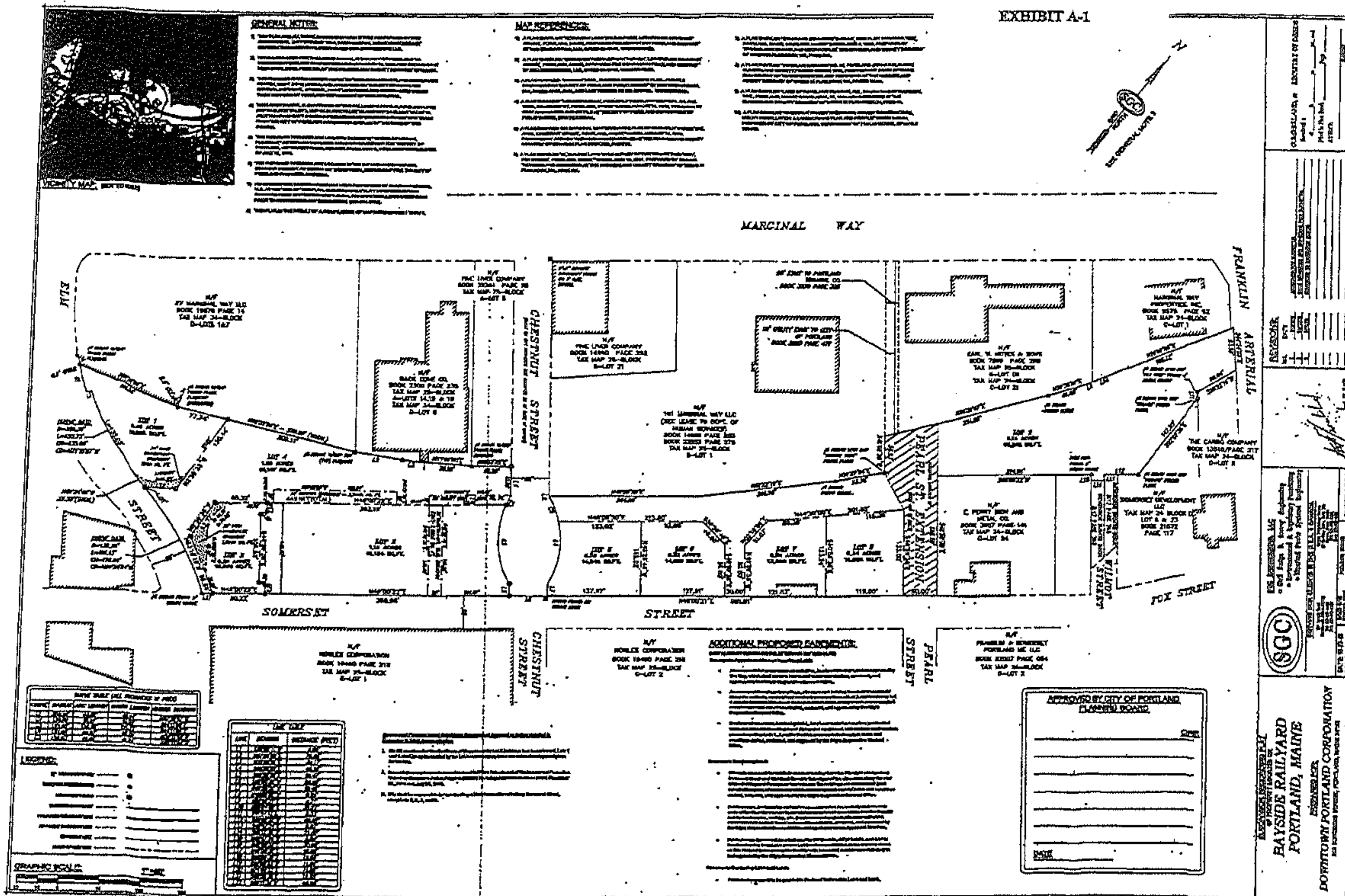
EXHIBIT A-1
GENERAL NOTES:
MAP REFERENCES:
VICINITY MAP
MARGINAL WAY
FRANKLIN ARTERIAL
ELM
STREET
CHESTNUT STREET
SOMERSET STREET
PEARL ST. EXTENSION
PEARL STREET
WILMOT STREET
FOX STREET
ADDITIONAL PROPOSED EASEMENTS:
APPROVED BY CITY OF PORTLAND PLANNING BOARD
LEGEND:
GRAPHIC SCALE:
SGC
BAYSIDE RAILYARD
PORTLAND, MAINE
DOWNTOWN PORTLAND CORPORATION

Exhibit B

List of Bayside Rail Yard Related Environmental Reports

Site Assessment and Environmental Analysis: Phase I of the Portland Brownfields Project, Portland, Maine, Tewhey Associates, April 1999

Environmental Remediation Plan, Phase III of the Portland Brownfields Project, Portland, Maine, Tewhey Associates, Nov. 1998

Phase II Environmental Site Assessment, Union Branch Rail Line Property, Portland, Maine, Haley & Aldrich, Inc. Dec. 2000

Environmental Conditions at the Proposed DHS Building Land annex, Portland, Maine, Tewhey Associates, August 2003

Tewhey Associates Memo from J. Tewhey to M. Adelson of the City of Portland Re: Results of Testing of Excavated Soil at the Former Rail Yard Site in Bayside, Tewhey Associates, December 13, 2003

Subsurface Soil Observations and Testing at Northern End of Proposed Chestnut Street Extension, Tewhey Associates, Jan 2005

Phase I Environmental Site Assessment, Rail Yard Subdivision Lots 1,2,3,4 and 9 Somerset Street, Portland, Maine, Tewhey Associates, Dec. 2008

VRAP Completion Document, Bayside Trail Project, Former Union Branch Rail Line, Portland, Maine, Tewhey Associates, August 2010

Bayside Rail Yard DEP VRAP, July 2001

Bayside Rail yard DEP VRAP, November 2008

Chestnut Street Extension DEP VRAP, May 2005

DHS Annex Property DEP VRAP Certification, April 2004

Soil Remediation Consideration, Tewhey Associates, January 2002

Stockpiled Group 2 Soils at Brownfields Property Site, June 2005

NEMR Concrete Pad Sampling, September 2008

NEMR Phase I Environmental Site Assessment, February 2009

NEMR Phase II Soil Investigation, February 2007

NEMR Phase II Soil Investigation, July 2009

EXHIBIT "B" TO FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

[insert Environmental Studies]

Exhibit B

List of Bayside Rail Yard Related Environmental Reports

Site Assessment and Environmental Analysis: Phase I of the Portland Brownfields Project, Portland, Maine, Tewhey Associates, April 1999

Environmental Remediation Plan, Phase III of the Portland Brownfields Project, Portland, Maine, Tewhey Associates, Nov. 1998

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DHS Annex Property DEP VRAP Certification, April 2004

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NEMR Concrete Pad Sampling, September 2008

NEMR Phase I Environmental Site Assessment, February 2009

NEMR Phase II Soil Investigation, February 2007

NEMR Phase II Soil Investigation, July 2009

September 6, 2012 by LCW
O:\Bayside - Federated Companies\Purchase and Sale Agreement\2final FIRST AMENDMENT TO PURCHASE AGREEMENT for Execution.doc

Amended Exhibit ~~A~~ C to the Purchase and Sale Agreement
[2012]
Description of the Land Being Purchased

Lots 1, 2, 3, 5, 6, 7, 8 and a portion of Lot 9 as shown on a subdivision plan entitled "Bayside Railyard, Portland, Maine" prepared for Downtown Portland Corporation by SGC Engineering, LLC as approved by the Portland Planning Board on December 9, 2008, and recorded in the Cumberland County Registry of Deeds in on January 27, 2009, in Plan Book 209, Page 36; the portion of Lot 9 included is that portion which is within 120 feet of northwesterly sideline of Somerset Street.

EXHIBIT 3

[Parking Garage Agreement]

PARKING GARAGE CONTRIBUTION AND FUNDING AGREEMENT

This Parking Contribution and Funding Agreement (the "Parking Garage Agreement") is made this 5th day of October, 2012, by and between the **CITY OF PORTLAND, MAINE**, a body politic and corporate with a place of business at 389 Congress Street, Portland, Maine (hereinafter "City") and **LEGACY PARK APARTMENTS LLC**, a Florida limited liability company with a place of business at 801 Brickell Avenue, Suite 720, Miami, Florida 33131 (hereinafter "Legacy Park").

WHEREAS Legacy Park is the assignee, by virtue of an Assignment and Assumption Agreement effective June 27, 2011, ("Assignment"), of a Purchase and Sale Agreement between The City of Portland, Maine, ("City"), effective June 23, 2011, ("Agreement"), for the purchase of certain blighted and brownfield real property located on Somerset Street, Portland, Maine known as Lots 1, 2, 3, 5, 6, 7,8 and a portion of Lot 9,(collectively, "the Land"), consisting of approximately 3.25 acres formerly known as the "Bayside Railyard";

WHEREAS City, in order to create jobs and economic growth for the Citizens of Portland, Maine, has agreed to make a $9,007,000.00 contribution, ("City Grant Funds"), to Legacy Park from funds being provided to the City by the U.S. Department of Housing and Urban Development pursuant to the Bayside Redevelopment Project, Maine BEDI Grant and Section 108 Loan Program, ("HUD Funds"), toward the expense of the construction of a garage, with no fewer than 700 parking spaces and at least thirty thousand square feet of retail space on the first floor on a portion of Lot 5 and all of Lots 6 and 7 and a portion of Lot 9, ("Garage");

WHEREAS Section 11 of the Agreement requires City and Legacy Park to enter into a formal Parking Garage Agreement stipulating the terms and conditions of the contribution of the City Grant Funds to Legacy Park for the construction of the Garage.

NOW THEREFORE, in consideration of the foregoing and for good and valuable consideration the parties covenant and agree in this Parking Garage Agreement as follows:

1. Garage Construction. Subject to the terms and conditions of this Parking Garage Agreement and the City contributing City Grant Funds as described below, Legacy Park or its nominee shall construct the Garage in the location depicted on the plan attached hereto and incorporated herein by reference as Exhibit "A". The Garage shall have reached "Start-up Phase" as defined below within two (2) years after the date on which a total of $1,000,000.00 in City Grant Funds has been requisitioned by Legacy Park and disbursed by the City to Legacy Park. Notwithstanding the above, Legacy Park will diligently work to have constructed a sufficient percentage of the Garage so as to permit Legacy Park to requisition the City Grant Funds in full by November 31, 2014, so as to allow full disbursement of the City Grant Funds by December 31, 2014. If Legacy Park informs the City, in good faith, before October 1, 2014 that Legacy Park will not meet this requisition timetable, with evidence and reasons for this, the City will use its best

efforts to obtain an extension of this disbursement deadline for the HUD Funds from HUD, and if it obtains such an extension, it shall immediately transmit to Legacy Park evidence of this extension by HUD, and this timetable shall thereby be correspondingly changed, without further action of the parties hereto being required.

Legacy Park shall construct the Garage and any attached structures or units designed for non-garage use using sustainable and energy efficient construction methods, including, but not limited to, energy efficient lighting.

2. City Grant Funds. The City shall provide a grant to Legacy Park or its nominee of Nine Million Seven Thousand Dollars ($9,007,000.00) in City Grant Funds for use by Legacy Park for the City Grant Funds Uses as defined below. This funding is being provided in part as an incentive to build the Garage which would otherwise not be commercially viable. Accordingly, the City agrees that the first $9,007,000.00 of City Grant Funds Uses, disbursed in accordance with this Parking Garage Agreement, shall be City Grant Funds, but subject to and less the retainage described below. The City Grant Funds may be used for all purposes related to the Garage allowed with such HUD Funds, including but not limited to design, planning, permitting, environmental testing and remediation, and construction ("City Grant Funds Uses").

3. Legacy Park Contribution. Following the disbursement of City Grant Funds, less the retainage, Legacy Park shall provide sufficient additional funds for completion of the construction of the Garage, ("Legacy Park Contribution"). The Legacy Park Contribution shall either come from its own equity or financing from a construction lender. The Legacy Park Contribution, in addition to the City Grant Funds will cover the complete cost of constructing the Garage to completion.

4. Procedures for Making Disbursements (Payments). With respect to all requisitions for disbursements of the City Grant Funds, the City and Legacy Park agree as follows:

   (a) Legacy Park shall deliver to the City a written request for payment (a "Requisition") which shall be in substantially the same form as AIA Forms G702 and G703. The Requisition shall be accompanied by: (i) a summary of all expenses requested, (ii) copies of invoices, bills, receipts and such other information as may be reasonable to document the expenditures described in the Requisition, (iii) mechanics' lien affidavits and/or written lien waivers from such contractors, laborers, subcontractors and materialmen for work done and materials supplied which were paid for pursuant to the immediately preceding Requisition, and (iv) a certified payroll in conformance with the requirements of the Davis-Bacon Act of 1931, as amended, for all contractors and subcontractors on site and for which invoices are included.

(b) Requisitions shall be submitted by Legacy Park no more frequently than monthly. Prior to the disbursement by the City of any requested Requisition, City's construction inspector shall certify to City that the work for which a Requisition has been submitted has been completed and the City's Housing and Neighborhood Services staff will verify all workers are being paid the prevailing wage.

(c) A copy of the construction schedule will be submitted to the City at the beginning of the project. Updates will be provided by Legacy Park as necessary to remain accurate.

(d) City shall make disbursements to Legacy Park only after such certification and verification, and with a certified payroll, all the same must be correct and complete. Each Requisition for disbursement shall be submitted at least five (5) days before the date for which the disbursement is requested, and the City shall make such advancement no later than fifteen (15) days after receipt of each Requisition to make such disbursement. If the City fails to make any disbursement within fifteen (15) calendar days after such requisition with all required and correct and complete paperwork as delineated in this Parking Garage Agreement, such disbursement shall be paid with interest at a rate of one-quarter of one percent per month, from that date until the disbursement is in fact made ("Interest For Late Payment"). If any such Interest For Late Payment is owed then such amount shall be in addition to the City Grant Funds.

(e) City shall retain ten percent (10%) of the City Grant Funds as retainage, which shall be disbursed to Legacy Park upon receipt of the Certificate of Occupancy for the Garage or as mutually agreed upon between the City and Legacy Park.

5. <u>Garage Operations</u>.

(a) Key Card. The Garage shall be equipped with a "key card" system (or its equivalent) whereby weekly, monthly or longer term users shall have 24-hour access to the Garage 7 days a week, it being understood that certain users may only have access at certain hours based on contractual agreements with the owners of Garage. Legacy Park shall make the Garage available for public (hourly access) use during the "Start-Up Phase" at such times as established by Legacy Park during reasonable commercial business hours, which shall at a minimum be from 7 a.m. to 7 p.m., Monday through Saturday, and 10 a.m. to 7 p.m., Sundays and Holidays. The expression "Start-Up Phase" shall mean that period commencing when the Garage receives a Certificate of Occupancy allowing operation of the parking garage portion of the Garage facility and ending the date when the first other building (and not merely the retail portion within the parking garage structure) within the Project is issued a Certificate of Occupancy and that building starts using parking in the Garage. During and after the Start-Up Phase the Garage shall be open during reasonable hours, seven days per week, subject to modification from time to time by Legacy Park based on historical and projected volume of usage.

(b) Additional Requirements:

(i) Hourly and monthly rates for the Garage shall be based upon prevailing market rates, defined as follows: in no event shall rates be greater than 110% of the average market rates charged by City at City-owned and operated garages or the average of the three highest rates charged by garages within the City, excluding any garages that may be owned by Legacy Park or any of its affiliates;

(ii) The Garage shall participate in the Park and Shop Program;

(iii) The Garage shall be available for City snow ban parking, and the overnight (i.e. 5:00 p.m. to 8:00 a.m.) snow ban parking rate per hour shall not exceed three times the then-current maximum hourly rate charged by the Garage;

(iv) Upon written request of the City in each such instance, the Garage shall be available at customary rates for parking for special events held on the Portland Peninsula after 5:30 pm on weekdays and if requested, at requested reasonable times on weekends.

(v) The Garage shall have shared use with the public 7 days a week, 24 hours per day.

(vi) The Garage shall provide a minimum of 200 hourly turnover parking to the general public, and will provide within 2 days upon request data and information, including the number of non-turnover parkers present in the Garage at any given time, in order for the City to verify compliance with this condition.

(vii) The Garage will accept both cash and credit card payments.

(viii) The Garage will be maintained so long as it is a public parking facility, in accordance with the then current edition of the National Parking Association's "Parking Garage Maintenance Manual (now in its Fourth Edition) , and in particular in accordance with the Recommended Maintenance Checklist contained therein.

(c) The Garage will remain a public parking facility for a minimum of thirty (30) years.

These requirements (a) through (c) shall be a covenant contained in the deed to Lots 6 and 7and the covenant shall run with the Land for the stated thirty (30) year period from the date of conveyance of Lots 6 and 7 from the City to Legacy Park and thereafter shall automatically expire.

7. Payments in Lieu of Taxes. In consideration of the City Grant Funds paid to Legacy Park by the City, Legacy Park agrees, for itself and its successors, assigns and lessees for a period of thirty (30) years starting on the closing date of the purchase of the Land, that in the event that any portion of the Land is ever exempt from real or personal property tax, then a yearly payment by the then owner of the exempt portion shall be made in lieu of taxes equivalent to the property taxes that would otherwise be paid on the exempt portion of the real and personal property situated on the property. This requirement shall be a covenant contained in the deed to the Land and the covenant shall run with the land for the stated thirty (30) year period.

8. Compliance with HUD requirements.

(a) Job Creation. HUD regulations require that the City, as the original grantee of the HUD Funds, document all jobs created through the use of HUD Funds disbursed to Legacy Park as City Grant Funds. Legacy Park recognizes that one of the primary goals of City's contribution of the City Grant Funds is the creation of jobs, and Legacy Park agrees to create the required number of jobs necessary for the City's use of the HUD Funds and to provide City with timely and complete documentation of all jobs created or caused to be created as a result of receiving the City Grant Funds, and requirements related to job creation shall be contained in a Job Creation Agreement to be entered into between the parties.

(b) Section 108 Compliance. Legacy Park, its employees, assigns, agents and subcontractors for this project, at all times shall comply with the requirements of the Section 108 Loan Guarantee and Brownfields Economic Development Initiative Grant program and Federal Labor Standards pursuant to Davis Bacon and related Acts, specifically including:

A. Davis-Bacon Act, as amended.(40 U.S.C 276a - 276a-5.) All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

B. Contract Work Hours and Safely Standards Act, as amended. (40 U.S.C. 327-333). All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to these acts and with other applicable Federal laws and regulations pertaining to labor standards.

C. Copeland Anti-Kickback Act, as amended. (18 U.S.C. 874 and 40 U.S.C. 276c). This Act requires that workers be paid at least once a week, and without any deductions or rebates except permissible deductions.

9. Default. In the event that Legacy Park is in default of a material provision on any of the obligations contained in this Parking Garage Agreement, and Legacy Park fails to cure said default within ninety (90) days of receipt of written notice issued by the City, then Legacy Park shall, if requested to do so by the City, convey to the City the Garage and the related real property, on these terms and conditions:

- This conveyance to the City shall be without the requirement of further legal action by the City.
- The cost to the City for this purchase will, in concept, be the sum of the cost of construction of the Garage and all related improvements associated with the Garage, plus the cost to the cost to Legacy Park for the related land upon which the Garage sits (the "Garage Land"), less the amount of the City Grant Funds actually disbursed up to the time of this purchase.
- The City acknowledges that Legacy Park will most likely use the Garage and the Garage Land as collateral for a construction loan for the purpose of finishing the construction of the Garage and other costs and improvements related to the project. The City therefore agrees to work on documents at the time of such financing, with Legacy Park and its construction lender, to make it possible for the City to have the remedy described above in concept, and to also permit such construction financing.

The City agrees that Legacy Park's obligations under this Parking Garage Agreement are "non-recourse" and that any recovery by the City shall be limited to the Garage. None of Legacy Park, its officers, members, employees, attorneys, agents or affiliates (collectively, "Legacy Park Persons") shall be personally liable for the performance of this Parking Garage Agreement, and the City shall not commence or prosecute any action against any Legacy Park Person, for payment or performance of any obligations under this Parking Garage Agreement. The City shall not seek, obtain, or enforce a deficiency judgment against any Legacy Park Person. Notwithstanding this provision, the rights and obligations under the Agreement between the parties and the Corporate Guaranty Agreement of near or even date are cumulative and in addition to the rights described herein.

In the event of an alleged default by the City, Legacy Park, at its sole election, shall have the right to seek specific performance and any and all other relief to be provided by a Court, at law or in equity, including, but not limited to, common law writs. City expressly consents to the jurisdiction of the Maine Courts in the event of an alleged City breach under this Parking Garage Agreement.

10. Assignment. Legacy Park shall be entitled, without the City's consent, to assign all of its right, title, interest and obligations in and to this Parking Garage Agreement to any lender or to any entity in which Legacy Park maintains a majority interest and management control. The City must be notified within thirty (30) days or Legacy Park will be in default of this Parking Garage Agreement as described in Section 9 of this Agreement.

11. Termination. In the event that the Parking Garage Agreement is terminated on account of Legacy Park's default, the obligation of the City to provide the City Grant Funds described herein is terminated.

12. Miscellaneous Provisions. In the event of litigation, the prevailing party shall be entitled to receive its reasonable legal fees and court costs from the other party. This provision shall survive the Closing and delivery of the Deed pursuant to the Agreement.

13. Entire Agreement. This Parking Garage Agreement (i) constitutes the entire agreement between the parties hereto with respect to the construction and operation of the Garage and it supersedes all prior discussions, undertakings or agreements between the parties in respect to the Garage; (ii) shall not be modified except by a written agreement executed by both parties; (iii) shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns; (iv) may be executed in counterparts; and (v) may be executed by facsimile signatures. This Parking Garage Agreement shall not confer any rights or remedies upon any third-party other than the parties to this Parking Garage Agreement and their respective successors and permitted assigns.

14. Notices. Any notice by either party to the other party shall be in writing and shall be deemed to have been duly given when either delivered personally, or mailed by certified mail, return receipt requested, or sent by nationally recognized overnight courier, or sent by facsimile, or sent by e-mail addressed to the City at Portland City Hall, 389 Congress Street, Portland, Maine 04101, Attn: City Manager facsimile 207-874-8669, email: MHR@portlandmaine.gov, with a copy to, the Director of Economic Development, facsimile 207-756-8217, email: gmitchell@portlandmaine.gov, and another copy to Corporation Counsel, at the same address, facsimile 207-874-8497), email: gary@portlandmaine.gov , and to Buyer c/o The Federated Companies, 801 Brickell Avenue, Suite 720, Miami, Florida 33131, Attn: Jonathan Cox, facsimile (800) 523-5931, email: j_cox@federatedcompanies.com

15. Severability. In the event any one or more of the provisions contained in this Parking Garage Agreement shall be for any reason held invalid, illegal or unenforceable in any

respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Parking Garage Agreement, and this Parking Garage Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Parking Garage Agreement.

In Witness Whereof, the parties have hereunto executed this Parking Garage Agreement as of the day and year set forth next to their respective signatures below.

LEGACY PARK APARTMENTS LLC

By: Jonathan Cox
Its: Member
Date of Execution: 10/15/12

CITY OF PORTLAND

Mark W. Rees
By: Mark Rees
Its: City Manager
Date of Execution: 10-15-12

Approved: Ellen Sanborn, Finance Director

Approved as to Form: Corp. Counsel

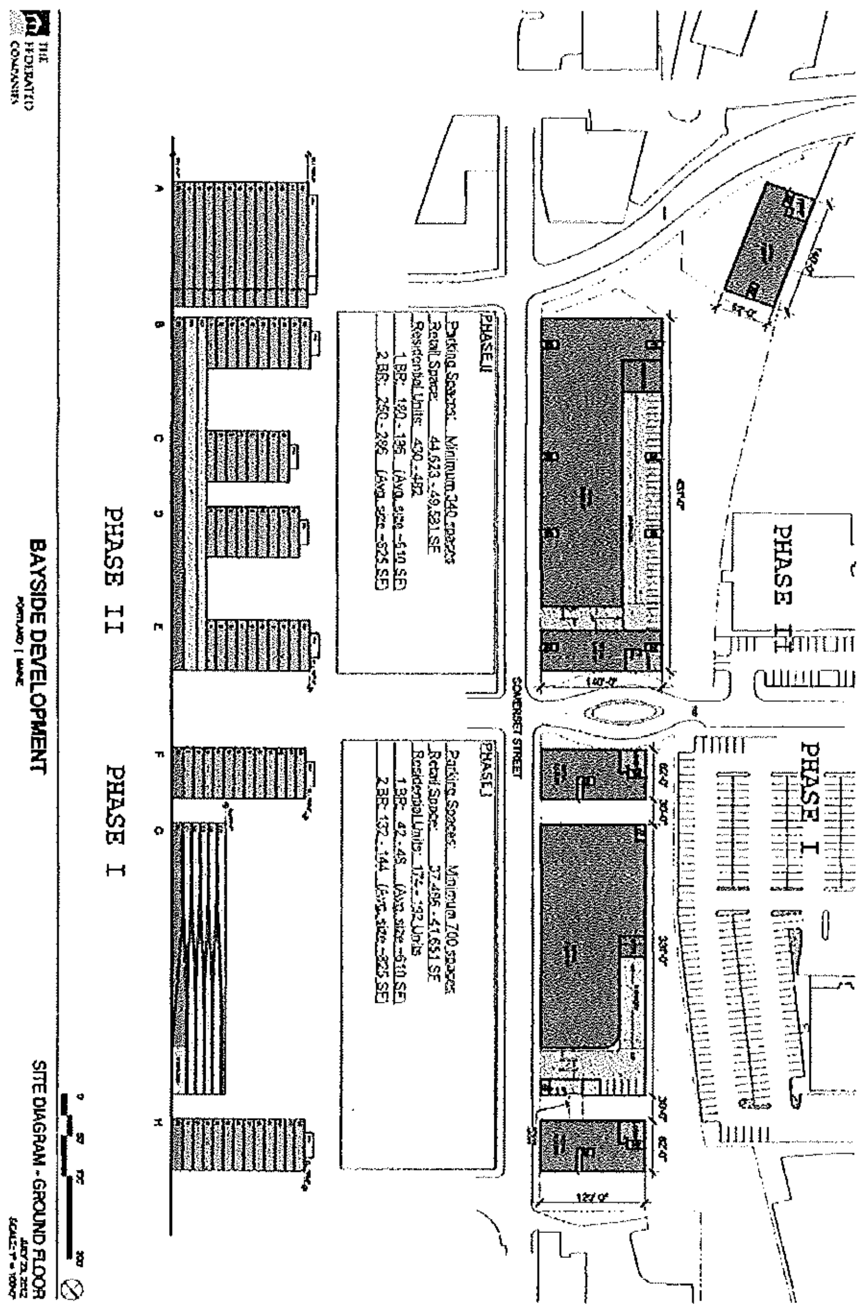
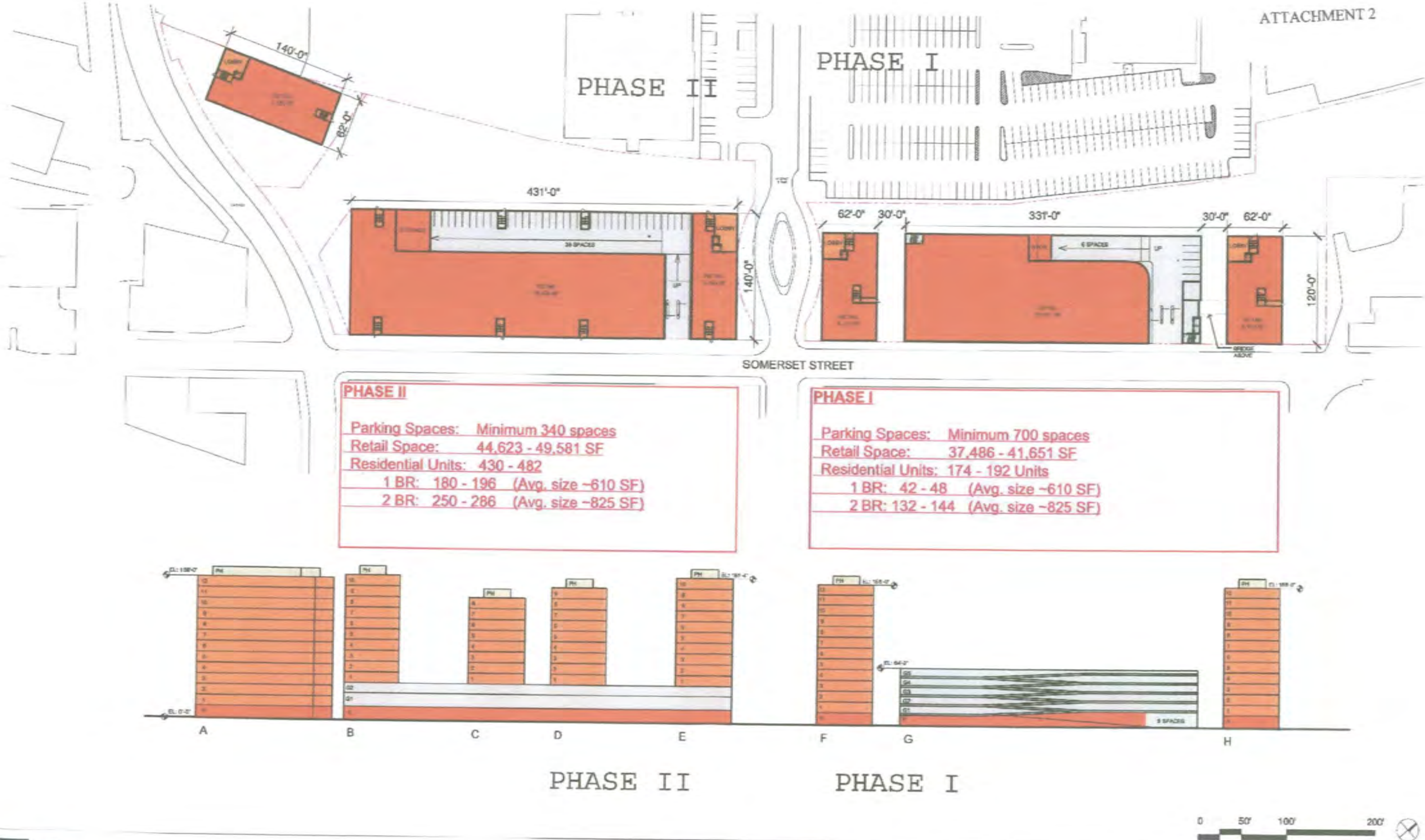

THE FEDERATED COMPANIES
BAYSIDE DEVELOPMENT
PHASE II
PHASE I
SOMERSET STREET
SITE DIAGRAM - GROUND FLOOR

Exhibit A

EXHIBIT 4 (part 1 of 3)

[Phase I Site Plan]

ATTACHMENT 2



THE FEDERATED COMPANIES

BAYSIDE DEVELOPMENT

PORTLAND | MAINE

SITE DIAGRAM - GROUND FLOOR

JULY 23, 2012

SCALE: 1" = 100'-0"

EXHIBIT 4 (part 2 of 3)
[Phase I Design Guidelines]

1. Introduction
The emphasis of the Guidelines is on the public spaces. The goal of the Guidelines is to provide high quality, attractive and active spaces that employ contemporary techniques but connect to the unique history of the site and Portland, ME as a whole. To this end, the Guidelines are focused on the impact of buildings on the public environment. These Guidelines seek to create spaces, not projects. The goal is to create an ever□changing, lively atmosphere with visual appeal throughout (this is not a traditional business or residential district). The focus is on the pedestrian □ to provide a human scale, good way finding, and a comfortable walking environment. The Guidelines are also intended to create visual interest from near and far. Up close, ground level design standards produce comfortable, inviting, and stimulating environments. From afar, a variable skyline of roof edges, vertical shafts, and signage create interest.

2. Use

2.1 Active Ground Floor Uses
Active uses that engage pedestrians shall be located along all street frontages. Ground level land uses shall be established and designed to animate public sidewalks, the wharf and alleys/mews to provide visual appeal. In required active ground floor areas, the following uses are acceptable:

• Commercial uses, such as retail stores, retail service establishments, food and beverage establishments; and/or entertainment facilities, and
• Lobbies for above grade uses such as office, residential, and hotel with an emphasis on high quality design, visual transparency, and where possible, uses that engage the street.

3. Massing
The Guidelines describe the overarching design principles for all future construction in the Project Area. The Guidelines define the intended quality, characteristics and coherence of the urban elements, which regulate how the site shall be used for civic and commercial purposes. The Guidelines define building mass, street wall heights, and façade articulation necessary to create a lively urban waterfront environment.

Building setbacks above the lower levels should be employed to help limit the perceived mass of the structure and to insure that buildings maintain a human scale and a consistent street wall throughout. Setbacks for upper stories may vary in accordance with the Master Development Plan.

The buildings will have three basic components: base; middle; and top. The base will be designed in a scale and articulation that is related directly to the pedestrian. The middle portion of the building will provide scale to the buildings both horizontally and vertically. And finally, the top will be designed in a manner to provide unique articulation that visually terminates the top of the building.

3.1 Build□to□Lines
Street walls on public rights□of□way are encouraged to vary in height and express distinguishable facade types to evoke multiple buildings/uses. A minimum of 75% of the lineal length of the mandatory building frontage shall be set at the parcel boundary line or within 10 feet there from. The first two stories of a building are required to be set at this mandatory front parcel line. Variation in street wall facades is encouraged along upper levels and roof lines. In areas where active ground floor uses are required, building entrances should be located at least every 75 feet (preferably every 30□35 feet).

The character and scale of facades forming the street wall may involve the combined use of traditional and innovative materials to express a transition from a historical□era to a more modern□era design vernacular. The character, height and massing of street walls should include:

• Commercial uses, such as retail stores, retail service establishments, food and beverage establishments; and/or entertainment facilities, and
• Define a continuous street and highly articulated building by building wall mass along all build□to lines (i.e., zero front yard setbacks along public rights of way)
• Encourage projections, canopies, signage, lighting, and variation of building size
• Discourage projecting balconies
• Encourage balconies recessed within or integral with the façade wall where balconies are proposed.
• Encourage articulation of the façade that could include changing design treatment and/or materials to reduce the apparent mass of long building facades.

Encroachments on the sidewalk will be designed to encourage pedestrian activity and will be human scale. The encroachment will not impede the visual.

4.0 Circulation & Service.
Streetscapes in the Project Area are meant to be pedestrian friendly environments, featuring a consistent pallet of signage, lighting, paving, and furniture. Streets should be well lit, active, human scaled, and feel safe day and night.

The City's streetscape standards will be used for public sidewalks, streetlights, street furniture, fencing and walls, landscaping and signage in order to create a unified image of the neighborhood.

Street lighting shall comply with the *Technical and Design Standards and Guidelines*.

4.1 Parking
The provision of off□street parking within the Project Area will be as set forth in the approved planned unit development.

Parking structures will be designed to be compatible and integral to adjacent architecture in form, bulk, massing, articulation, and materials; incorporating design elements that provide visual interest on all sides visible from public rights of way.

Parking structures will be designed above grade and in a way to provide natural ventilation.

The entrance to parking structures will minimize impact on the pedestrian realm and be designed to maximize driver and pedestrian safety.

4.2 Refuse Collection
Refuse collection areas and dumpster locations shall be fully enclosed within portions of principal buildings for which they proposed to serve and shall be screened from view so as not to affect other views from around the site.

5. Architectural Features
Design references to Portland's are encouraged. The design of new buildings and structures should be timeless and enduring, seeking inspiration from the rich industrial and architectural precedents of Portland's downtown and waterfront and should seek to uphold its strong history.

5.1 Edges
Special care and design attention along with more decorative treatment and materials are desired for all edges of buildings. These are the most visible part of the urban scene. Edges include roof lines, canopies, cornices, and more prominent window openings and entrances.

5.2 Bases
Buildings should be articulated to respond to individual users. The diversity of storefront articulation will break down the scale of the overall project and street wall. The first level of buildings should be articulated by material change to express a building base and use other elements such as color, design detail, smaller scale, and higher quality materials to provide visual interest. Building ground floor bases, typically 25□40', should emphasize the ground floor activity and provide the highest quality of pedestrian environment.

5.3 Storefront and Retail Facades
See Article 9.

5.4 Corners
Corners are particularly visible and are suggested to be made more noticeable. Changes in orientation, shapes, additional materials, colors, and projections are all favored means of adding special visual appeal to interesting streets, wharf, and public spaces.

5.5 Cornices
A crowning projection, or cornice, shall be encouraged at the top of a building along the street wall (top of the building for those under 60', and at the setback for those over). These elements can be very modest in detail.

5.6 Appurtenances
Canopies, awnings, and marquees are permitted and encouraged as they provide weather protection and provide visual interest and delight to the streetscape environment. These elements are to be decorative and light weight. Variety and non□repetitive design are desired. Canopies can be constructed of a variety of materials including both fabric and metal. Fabric awnings can be retractable.

Lettering and logos are permitted on the valence flap of the awning but lettering is generally discouraged on the main body of the awning. It is desirable for these projecting elements to incorporate outdoor heating systems to lengthen the comfortable use of outdoor spaces.

Backlit awnings and canopies are expressly prohibited. Awnings and canopies may be lit from the exterior.

5.7 Skyline
A goal for the project is to create a varied and highly decorative skyline as seen from afar. The varied rooflines can be achieved by changing heights, also by varying roof types, roof angles, and the addition of vertical elements to contrast with the roofs.

Rooftop terrace structures shall not be enclosed and are not considered an additional building level. Rooftop terraces are encouraged to take advantage of views.

All exposed mechanical equipment and bulkheads shall be mounted on roofs. Equipment should be integrated into the roof design and screened in a method that is integral to the architectural design of the building and adds visual interest to the skyline. All venting of HVAC equipment shall occur on the interior of development parcels. All venting runs for cooking fans shall be fully enclosed and incorporated into the interior of proposed buildings and vented though the highest roof of the building podium.

5.8 Back Sides of Buildings.
The back sides of buildings will be designed with high quality facade materials, transparent windows, operable building entrances, and other design features consistent with the primary facades of the building. Utility meters, exhaust vents, fire escapes etc. will be designed in a manner to be unobtrusive.

6. Materials

6.1 Building Materials and Color

Use of innovative building technologies is encouraged throughout the project and should be contrasted with traditional building materials that reference Portland's history.

Recent innovations in building materials can showcase advancements in environmentally conscious design and provide a sense of excitement for project visitors.

New buildings shall be constructed with materials common throughout the Portland's downtown and waterfront rich architectural history. Use of materials such as brick, stone, steel and wood is required for the first 40 vertical feet of a building's base, especially on pedestrian□oriented street wall facades. The use of these high□quality materials is intended to convey a solid, lasting look. Buildings should employ industrial materials as a way of visually and conceptually evoking the industrial/working heritage of Portland's downtown and waterfront. These include timber, forged and cast metals as well as rough hewn stone and metal cables.

The use of cement fiber shingles, imitation stone, imitation brick, stucco or exterior insulation finish systems will be considered on any building façade above the first 40 vertical feet of the buildings.

Facade coloration shall be achieved by use of the inherent color of building materials rather than the application of color to the surface of materials. Paint should be reserved for trims and accents on metal, wood, cornices, frames and the like. Use of material's inherent color sets a standard of authenticity associated with industrial structures. Examples of this type of façade coloration desired are a variety of earth tones achieved through the use of unglazed brick, wood, concrete and steel.

Masonry facades shall include the use of stone as architectural accents for lintels, sills, copings and keystones. Foundation bases, sills and lintels shall to the greatest extent possible use local (within 500 mile radius) stone or limestone. Masonry finishes are encouraged to be natural rather than highly finished or polished.

6.2 Glass and Fenestration

The base of buildings should feature the use of glass for the first story to emphasize the importance of the ground level active use (only one level of active use is required). Glazing and openings shall promote a flexibility of ground floor uses and the potential for change over time. Proportion of glazing to overall wall area shall be a minimum of 75% on ground level street wall frontages facing public rights□of□way. The first floor windows and storefronts will be transparent with active uses visible behind them. Opaque glass shall not be used at the first floor level. Window openings shall express sills and headers of metal or stone. Storefronts should be integrated into the design and materials of the entire building. The storefront's bulkhead/knee wall should be constructed of a durable and evocative material. Transoms are encouraged for larger window units. In all building facades windows are encouraged to be set back from the wall surface a minimum of six inches from the surface of masonry to the glazing. Tinted or reflective glass will not be utilized.

Window proportions, groupings and rhythms shall be integral elements of the design of each building facade and urban street□wall. Punched windows are desired above the 2nd floor. Curtain walls are discouraged unless used to define a vertical corner or other discreet architectural emphasis. Glazing systems shall be designed to promote area□wide visibility, accessibility and safety during evening hours and during the winter season. Well designed fenestration patterns that evoke historic fenestration are preferred over attempts to replicate historic patterns.

7. Signage

Signage lighting should come from direct shielded light sources and be carefully integrated into the overall design of the building so as to provide visibility and safety but avoid creating glare or light distribution that adversely affects motorists or pedestrians. Backlit signage is generally discouraged.

Neon signs may be allowed so long as they are carefully designed in size, shape and color that complement the architecture of the building and the district.

8. Lighting
The vision for Bayside seeks a maximum amount of light that creates a variety of environments and experiences. Lighting should be used for artistic purposes and carefully integrated with the architecture and buildings, such as to accent edges.

The commercial buildings are intended to be inviting to the public, to encourage visitors to enter the site from the city streets, to shop at the retail stores and eat at the restaurants, and to generally stay longer and take full advantage of the waterfront area. Balanced against an appropriate level of street illumination, there is a need to limit light that is cast up and into upper floors of buildings or the atmosphere. Lighting fixtures should be scaled to the pedestrian and have a distinctive industrial character. Architectural accent lighting should highlight corners and roof edges.

Storefront lighting is one of the best sources of sidewalk lighting in urban areas. It is warm and welcoming, and contributes to a sense of activity and watchfulness. It also generally provides a greater amount of light directly onto the sidewalk than do street□level luminaries. Retail storefronts are an effective way to provide lighting from the buildings.

The first four feet inside any retail or restaurant establishment shall have decorative lighting, preferably with visible point sources. Occupancies on the first floor that do not have active, bright window displays shall be designed to provide visual articulation from lighting at no greater than 25 feet intervals. This can be accomplished in a variety of ways, such as:

- Decorative luminaries mounted to walls, posts, brackets, etc.
- Lighting surfaces, textures and objects such as pilasters, wall features, banners, sculptures, graphics, etc.
- Internally lighted glowing architectural or graphic elements such as glass block, display cases, signage panels, canopies, transparencies, etc.
- Lighting at entryways (especially if they are recessed).
- Lighting property addresses.

9. Retail

9.1 Retail Storefront Requirements
All buildings with retail on the first floor shall incorporate a traditional storefront design with a large display window or windows of clear glass, bulkheads, recessed entries (where appropriate), transom windows, and suitable locations for signs at their ground levels. Blank walls should be minimized and static displays (including photographs) will discouraged in display windows. Modern and creative design solutions may be employed as long as the traditional storefront proportions are referenced. Multiple storefronts within the same building should be visually compatible in terms of scale, alignment, color and materials. The intent is to encourage creativity by individual retailers to add to the character and place making of Bayside.

9.1.1 Storefront Character
Storefronts should be individual expressions of a tenant's identity; however, tenants will be discouraged from using national brand standard storefronts and/or representations of their identity in an effort to create a retail environment that is uniquely Bayside Storefronts should be integral to the building design but should also provide a distinct retail identity at the ground level.

9.1.2 Storefront Entries and Doors
Door placement and design are an integral part of each storefront, as they are the prevalent method of entry into each space. Placement and design should provide a direct "connection" to the sidewalks and streets. Restaurants tenants are encouraged to provide a clear thru□way and a visual connection to exterior seating areas, if any.

9.1.3 Storefront Materials
The design, fit, and finish of all components for each storefront should be of the highest quality. Additional focus should be on window design to create a visual connection between the interior and exterior. Durable materials should be utilized for storefront construction as these are especially critical at street level where pedestrian contact will be considerable. Storefronts should be pre□dominantly glass to provide views into the store, but glass should not be the exclusive material.

9.1.4 Storefront Lighting
Night lighting of retail will help animate Bayside, prolong street life after business hours, and increase pedestrian safety. Storefront facades, recessed doorways, outdoor spaces and passageways should be well lit. Sign lighting, including flat□mounted signs, blade and banner signs, must be lit with concealed lighting or from above with down□lighting. Fixtures should be located and angled to ensure that they spotlight the tenant's merchandise and do not point toward the window or cause distracting reflections. Include "after hour" lighting within the front of stores to contribute to pedestrian lighting and provide for a comfortable night time strolling experience.

9.1.5 Storefront Canopies and Awnings
Design and placement should complement the scale of the store facade design. Collective placement of canopies and/or awnings along a street should maintain overall design integrity and avoid a uniform layout providing weather protection at a minimum of 20 feet at all storefront and building entrances. Canopies shall be constructed of permanent, durable materials, with glass and steel preferred. Awning material should be of a woven fabric or other material that projects the natural appearance of canvas, metal, glass, etc. Retractable or open side awnings are acceptable. Vinyl awnings and internally lit awnings are not allowed.

9.1.6 Storefront Signage
Creativity in signage design is encouraged and adds to the ground level experience at Bayside. Non□descript box signs are discouraged.

10. Sustainability
The project will be designed in accordance with the energy standards of the building codes and using new sustainability construction practices.

EXHIBIT 4 (part 3 of 3)
[Phase I Specifications Sheet]

Standard Features

EXTERIOR FEATURES
▪ Pile / Grade Beam Foundation Construction
▪ Parapet roof design
▪ Multi-ply Insulated Roofing Membrane system
▪ Parking Garage access
▪ Direct access to ground floor retail
▪ Connecting walkways to Bayside trail
▪ Multi material exterior facade; brick, exterior insulated finish systems, glazing and metals

BATHROOMS
▪ 2- Bedroom Units shall have 2 baths; 1- Bedroom Units shall have 1 ½ baths
▪ Polished Brass/Chrome Fixtures & Accessories in Bathrooms
▪ Surface mount brushed nickel/brass vanity lights
▪ Half Baths/Powder rooms Pedestal Sink
▪ Full and ½ baths shall have White Laminate Cabinets and solid surface vanity tops with integral sink
▪ Baths shall have ceramic on floor and walls
▪ Elongated Commodes in all Baths
▪ Handicapped Units equipped per code
▪ Energy Star Rated Bathroom Fans per specification

KITCHEN
▪ Maple Cabinets with 30" – 42" Upper Wall Cabinets
▪ Premium grade Formica Counter Tops with 3 ½" backsplash
▪ Single Bowl Stainless Steel Drop in Sink
▪ Garbage disposal
▪ Single Lever Polished Chrome Faucet with spray
▪ Energy Efficient Appliance Package to include: Dishwasher, Self-Cleaning Oven, Microwave with re-circulating exhaust fan, Side x Side Refrigerator
▪ Appliance Packages to be Profile or Stainless Steel
▪ Surface mount light in Kitchen and Dining areas

ENERGY EFFICIENCY
▪ Energy Star Forced Warm Air High Efficiency Electric Furnace with Central Air Conditioning per unit
▪ Energy Star Rated 45 Gallon Electric Hot Water Heater per unit
▪ Energy Star Rated Efficient Double Glazed Double Hung Vinyl Tilt Windows with Screens and Grilles
▪ Energy Star Rated Insulation in Attic ceiling areas and Interior Walls

FLOORING
▪ Vinyl Flooring in Foyer, Kitchen, Laundry and Baths
▪ Carpeting in Hallways, Bedrooms, Dining Room, Living Room and Closets

INTERIOR FEATURES
▪ Six Panel Masonite Interior Doors with Brushed Nickel/Brass Hardware
▪ All doors, windows and cased openings shall be trimmed with 2 ½" casing. Baseboard shall be 3 ¼"
▪ Walls are painted one prime and one matte flat finish Sherwin Williams Linen White; trim is painted one prime and two coats semi-gloss latex Sherwin Williams White. Ceilings are smooth finish and painted white
▪ Ventilated Shelving in closets
▪ Washer and Electric Dryer per unit
▪ Approximately 8' Ceiling Height on all levels
▪ Cable/Data/Telephone ports in all bedrooms and living areas
▪ Outlets per code

COMMON AREAS

- Vestibules and lobby areas shall have tile and carpet flooring and painted walls
- Common hallways shall have carpeting and painted walls
- Centralized elevator lobby location (pedestrian and service) per building
- Centralized mail center per building
- Fully furnished amenity areas
- Management/Leasing Office on-site
- Private ground floor door entry with security system

CONSTRUCTION FEATURES

- Type I Construction, steel and concrete frame
- Concrete/Metal decking Flooring system
- Panelized exterior wall system; EIFS, glazing, brick
- Concrete/Metal decking Flooring system
- Interior Walls and Ceilings are gypsum wall board per code
- Closed Loop Mechanical System
- 150 Amp Electrical Service per unit
- Hard wired smoke and heat detectors with battery backup and one combination smoke/carbon monoxide detector per code
- Ground Fault Interrupt (GFI) installed per code
- Fire Suppression designed per eode
- STC Rating designed per eode

EXHIBIT 5

[Job Creation Agreement]

JOB CREATION AGREEMENT

THIS JOB CREATION AGREEMENT made this 15th day of October between **LEGACY PARK APARTMENTS LLC**, a Florida limited liability company, with a principal place of business at 801 Brickell Avenue, Suite 720, Miami, Florida 33131, its nominee or assignee, ("Legacy Park"), and **CITY OF PORTLAND, MAINE** a municipal corporation located at 389 Congress Street, Portland, Maine 04101 ("City").

WHEREAS Legacy Park is the assignee, by virtue of an Assignment and Assumption Agreement effective June 27, 2011, ("Assignment"), of a Purchase and Sale Agreement between The City of Portland, Maine, ("City"), effective June 23, 2011, (collectively, "Agreement"), as amended, for the purchase of certain blighted and brownfield real property located on Somerset Street, Portland, Maine known as Lots 1, 2, 3, 5, 6, 7, 8 and a portion of Lot 9, (collectively, "the Land"), consisting of approximately 3.25 acres formerly known as the "Bayside Railyard";

WHEREAS City, in order to create jobs and economic growth for the Citizens of Portland, Maine, has agreed to make a $9,007,000.00 contribution, ("City Grant Funds"), to Legacy Park from funds being provided to the City by the U.S. Department of Housing and Urban Development pursuant to the Bayside Redevelopment Project, Maine BEDI Grant and Section 108 Loan Program, ("HUD Funds"), toward the expense of the construction of a garage, with no fewer than 700 parking spaces and approximately thirty thousand square feet of commercial space on the first floor on a portion of Lot 5 and all of Lots 6 and 7 and a portion of Lot 9, ("Garage");

WHEREAS Section 11 of the Agreement requires Legacy Park to comply with all the terms and conditions related to the use of the HUD Funds contributed by the City as City Grant Funds to Legacy Park for the construction of the Garage related to providing documentation of job creation in accordance with the terms of this Job Creation Agreement.

NOW THEREFORE, in consideration of the foregoing and for good and valuable consideration the parties covenant and agree in this Job Creation Agreement as follows:

1. <u>Job Creation Requirement</u>:

   (a) Legacy Park shall create a minimum of 40 new[1] permanent, full-time or full-time equivalent jobs[2] in the Bayside neighborhood resulting from or related to the disbursement of the City Grant Funds for the construction of the Garage. ("Job Creation Requirement"). For the purpose of this Jobs Creation Agreement, Legacy Park may meet the Job Creation Requirement with jobs related to the operation of the Garage or jobs related to new or existing Bayside neighborhood business activity created or increased by the operation of the Garage. The new jobs may be, but are not required to be, employees of Legacy Park, or its lessees.

[1] In accord with HUD law and regulations, these must be new jobs, and not re-located jobs.

[2] Per currently applicable regulations, full time jobs require a worker to work at least 1750 hours per year. Part time jobs require a worker to work at least 875 hours but less than 1750 hours per year. Part-time jobs **must** be converted to Full Time Equivalents (FTE). An FTE can be defined as two part time jobs. Also or said another way, no more than two part-time jobs can equal one full-time job.

City agrees to assist Legacy Park with information required by Legacy Park to meet the Reporting Requirements of this Job Creation Agreement related to Job Creation Requirement. In particular, when 'countable' new jobs are created by businesses that are not lessees of Legacy Park, the City will use best efforts to assist Legacy Park to obtain the necessary documentation from such employers or otherwise, to 'count' these jobs to, in part, meet this Job Creation Requirement; Legacy Park, however, acknowledges that this Job Creation Requirement (and the related reporting) remains its obligation. The jobs must be created within two (2) years from the issuance of the Certificate of Occupancy for the Garage.

(b) Legacy Park shall be deemed to have met the Job Creation Requirement and this Job Creation Agreement shall terminate upon submission to the City of a Position Summary Quarterly Report identifying the 40^{th} full time or full time equivalent new job created in accordance with the provisions of Section 1(a) of this Job Creation Agreement, and verification and approval of the same by the City.

2. <u>Reporting Requirements</u>:

Legacy Park shall submit a Position Summary Quarterly Report, (Attachment A), for all new jobs created under this Job Creation Agreement on a quarterly basis until the Job Creation Requirement is met:

(a) total number of full time persons employed as a result of the completion of the Garage;

(b) total number of part time persons employed as a result of the completion of the Garage; and

(c) the employee name, job title, and average number of hours worked per week for the previous quarter.

AND EITHER (Choose 1 or 2 to be used for Legacy Park and it's Lessees reporting job creation):

1) Applicant/employer certifications (Attachment B) to be completed by all potential employees and the employer;

OR

2) A copy of the companies' payrolls. A baseline payroll must be submitted prior to the completion of the Garage.

3. <u>Default</u>. Legacy Park shall be deemed to be in default of this Job Creation Agreement if there is a failure to comply with any of the terms, conditions, provisions, or covenants of this Job Creation Agreement, or its obligations hereunder, including its obligation to meet

the Job Creation Requirement set forth herein. Any default will be considered a breach of this Job Creation Agreement and Section 9 of the Parking Garage Contribution Agreement. If Legacy Park informs the City, in good faith, at least 3 months before the deadline for its meeting this Job Creation Requirement that Legacy Park may not meet this deadline, with evidence and reasons for this, the City will use its best efforts to obtain an extension of this deadline from HUD or to otherwise change this requirement, such as a reduction in the number of required new jobs, and if it obtains such an extension or change, it shall immediately transmit to Legacy Park evidence of this extension or change by HUD, and this timetable shall thereby be correspondingly changed, without further action of the parties hereto being required.

4. Records. Legacy Park agrees to maintain a copy of all records related to the creation of jobs as required by this Job Creation Agreement for a period of four years after the creation of the 40th job. Legacy Park will, at any time during normal business hours, and as often as the City may deem necessary, permit the City, HUD or its designee to have full and free access to Legacy Park's records related to the new jobs identified in the Position Summary Quarterly Reports submitted under this Job Creation Agreement and to make copies of same at no cost or expense to the City. This right also extends to verification of the wages paid related to the new jobs. City agrees to review and maintain copies of such employment related records in complete confidentiality and in accordance with all State and Federal laws related to employment information and records.

5. Compliance with Laws and Regulations. Legacy Park, as the recipient City Grant Funds, shall comply with all applicable requirements of Federal laws related to the HUD Funds received by the City including, but not limited to, the applicable provisions of Title 24 Code of Federal Regulations, Section 570, state or local laws, regulations or ordinances and further agrees to abide by Title VIII of the Civil Rights Act of 1968 barring discrimination upon the basis of race, color, religion, familial status, sex or national origin, in the sale, lease, rental, use or occupancy of Legacy Park's property

6. Entire Agreement. This Job Creation Agreement and the Parking Garage Contribution Agreement constitute the entire agreement between the parties arising out of or related to Section 11 of the Agreement, as assigned and amended, and supersedes all prior representations and understandings of the parties. No modifications or amendments of the Job Creation Agreement shall be binding unless executed in writing by all the parties.

7. Waiver. No waiver of any of the provisions of this Job Creation Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

8. Successors. This Job Creation Agreement shall be binding upon and shall inure to the benefit of, the parties, their respective personal representatives, heirs, successors and assigns.

9. Assignment. Legacy Park shall not have the right to assign this Job Creation Agreement, or any rights hereunder, to any person or entity without the express written consent of the City. Such consent by the City shall not be unreasonably withheld.

10. Governing Law. This Job Creation Agreement shall be governed by and construed in accordance with the State of Maine.

11. Notices. Any notice by either party to the other party shall be in writing and shall be deemed to have been duly given when either delivered personally, or mailed by certified mail, return receipt requested, or sent by nationally recognized overnight courier, or sent by facsimile, or sent by e-mail addressed to the City at Portland City Hall, 389 Congress Street, Portland, Maine 04101, Attn: City Manager facsimile 207-874-8669, email: MHR@portlandmaine.gov, with a copy to, the Director of Economic Development, facsimile 207-756-8217, email: gmitchell@portlandmaine.gov, and another copy to Corporation Counsel, at the same address, facsimile 207-874-8497), email: gary@portlandmaine.gov , and to Buyer c/o The Federated Companies, 801 Brickell Avenue, Suite 720, Miami, Florida 33131, Attn: Jonathan Cox, facsimile (800) 523-5931, email: j_cox@federatedcompanies.com.

12. Counterparts. This Job Creation Agreement may be executed in any number of counterparts, which together shall constitute one document.

13. Paragraph Headings. The paragraph headings hereof are for convenience only and shall not form a part of this Job Creation Agreement or be used in the interpretation hereof.

IN WITNESS WHEREOF, the parties have executed this Job Creation Agreement as of the date first written above.

Legacy Park Apartments LLC:

Witness

By: Jonathan Cox
Its: Member

City of Portland, Maine

Witness

By: Mark H. Rees
Its: City Manager

Approved: Ellen Sanborn/Finance Director

Approved as to Form/Corp. Counsel

ATTACHMENT A

POSITION SUMMARY QUARTERLY REPORT

This report summarizes all the *new* employee information you have collected for new positions created since your last report. Please list all new employees hired. *Do not include new employees hired to fill job vacancies caused by an employee who left.* The report should be completed as of the last day of each quarter (March 31, June 30, September 30, and December 31) and submitted to avp@portlandmaine.gov by the 10th of the month following the quarterly period covered. The report is to be submitted by Legacy Park with either: 1) the Applicant/ Employer Certifications (attachment B) or 2) a copy of the company's payroll, including all weeks in the quarter. If you decide to submit the company payrolls you will need to provide a baseline payroll prior to utilizing the garage. If you have any questions, please do not hesitate to call at 207-874-8731.

Date: ____________________________

Company Name: ________________________________

Employee's Name	**Job Title**	**Work Hours per Week**

Number of Full Time Employees at End of Last Quarter ________

Number of Part Time Employees at End of Last Quarter ________

Number of New Full Time Positions Filled in this Quarter ________

Number of New Part Time Positions Filled in this Quarter ________

Total Full Time and Part Time Employees Ending this Quarter ________
(No more than two part time jobs can be added to create one full time equivalent.)

Employer Certification
To the best of my knowledge, I certify that the information contained in this position Summary Report is true and accurate.

____________________ ____________________
Quarter Ending Signature/Title

____________________ ____________________
Date Company

ATTACHMENT B
Applicant/Employer Certification

This employer has received funding from the City of Portland for business expansion that will create new jobs. The funding for this program comes from the U.S. Department of Housing and Urban Development. One of the requirements of this program is that we must report information about potential employees. Please complete the information requested below and return it to the employer. The information will not be used to evaluate you for this position.

Thank you in advance for your cooperation. If you have any questions about completing this form, please feel free to contact us at 207-874-8731.

APPLICANT CERTIFICATION

Name:_____________________________ Address:_____________________________________

Employer:____________________________ Job Applied For: ____________________________

How many persons live in your household? ___
The Head of Household is female ___ or male___

Check all that apply. I am:
_____ Hispanic or Latino
_____ American Indian or Alaskan Native
_____ Asian
_____ Black or African American
_____ Native Hawaiian or Other Pacific Islander
_____ White

Date: _____________ Signature: ___________________________________

EMPLOYER CERTIFICATION

Job Title: ______________________________________

Full Time ______Part Time ______ # of Hours per Week _________

Starting Pay/Hourly Rate $

Date Interviewed: ___/___/___Date Hired: ___/___/

Employer Name____________________________ Signature/Title_________________________

Portland, Maine Yes. Life's good here.

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Chair and Members of the Housing and Community Development Committee

cc. Mark Rees, City Manager
Jeff Levine, Planning Director
Ellen Sanborn, Finance Director

FROM: Greg Mitchell, Economic Development Director

DATE: August 7, 2014

SUBJECT: City Staff Recommended Policy and Strategy Approaches to Establish a New Downtown/Transit/Arts TIF District

This memorandum includes City Staff recommended TIF District policy and strategy approaches to establish a new combined Downtown/Transit/Arts (DT/TOD/Arts) Tax Increment Financing (TIF) District in Portland.

TIF DISTRICT GENERAL POLICY

Establishing general policy direction for this new TIF District will explain its benefits, purpose, investment options, and financial parameters.

Recommended TIF District general policy statements include:

* ***Portland's Downtown is the entire community's Downtown***. A community's downtown is often viewed as a reflection of a community's economic health.

* ***Municipal Role with Public Infrastructure Investments***. Establishing a new DT/TOD/Arts TIF District is planned to support area-wide major downtown public infrastructure investments best handled by the City versus individual developers associated with site specific projects.

* ***Major Public Capital Infrastructure Investments and Long-range Transportation Planning***. Portland's Downtown is in need of continual investment in major transportation capital public infrastructure and transportation planning to support the city's economic health.

* ***New Transit Capital Infrastructure Investment and Services.*** New investment in transit capital infrastructure and operational investment to improve transit connections to Portland's Downtown is critically important to maintain and improve downtown economic vibrancy and health.

* ***Economic Development Programs and Staff***. It is recognized that the City should annually invest TIF revenue in community marketing and promotion programs provided through Creative Portland, along with investment in City staff.

* ***TIF Tax Shelter Benefits***. The TIF Program (for the geography included in a TIF district over its term) enables communities to retain up to one hundred percent of all new property tax dollars to create "savings" or no loss of State aid for education, no loss in municipal revenue sharing, and no increase in the City's share of the Cumberland County budget.

* ***TIF Revenue Financial Restrictions***. It is recognized that property tax revenue generated from Portland's Downtown and Peninsula is a major source of revenue to pay for City-wide General Fund expenses. Therefore, TIF District capture rates are proposed to cover costs for Downtown investments the City is budgeting to support downtown economic health, while balancing the need for the non-captured TIF District revenue funds to be available to support City-wide General Fund expenses.

* ***Credit Enhancement Agreements.*** When deemed in the best interest of the City, this TIF district will allow for the creation of Credit Enhancement Agreements for individual, site specific projects for investment in infrastructure or project financing, all as according to TIF policy passed by the City Council on February 4, 2013 (copy attached).

RECOMMENDED TIF DISTRICT APPROACHES

City staff specific recommendations include:

TIF District Map. See attached.

TIF District Start Date. TIF districts can be established for up to thirty years. The recommended approach is to establish a thirty (30) year TIF District with a start date on April 1, 2015 (i.e. Fiscal Year 2015/2016). This prospective start date, for the proposed TIF District, will align with the City's Fiscal Year 2015/2016 budget. This approach will enable the City Manager and City Council to determine how best to invest TIF property tax revenue in future TIF eligible investments.

TIF District Base Year or Original Assessed Value (OAV) Date. Per State TIF law, a TIF District base year or OAV date must be March 31st of the prior tax year from when the City designates the District. Under the above approach, approval (local and State) of the District is planned to occur during 2014. This approach requires the OAV date to be March 31, 2014 (or tax year April 1, 2013).

TIF District Investment Options. State TIF law requires municipalities to identify all planned investments included in a Municipal TIF District Program. It is recommended that the proposed new TIF District Program include a comprehensive list of eligible TIF investment options. Including a comprehensive list will enable the City Manager and City Council to maintain flexibility for investment choices year to year based upon City Council approved City Capital Improvement Plans (CIP) and future city annual operational funding needs. ***It is recommended that the annual City budget and capital improvements program process establish the specific annual list for uses of TIF revenue.***

Five major recommended investment categories for the proposed new TIF District include:

1. ***Major Public Capital Infrastructure Investments and Transportation Planning***. Specific examples of projects include City local match share for state roads which could include State, High, Spring, and Franklin Streets, Congress Square and plaza intersection improvements, along with City debt service to cover the costs of downtown paving and sidewalk rehabilitation. As way of example, it is noted that the City Council approved FY 2015 CIP includes the following project investments:

   - Franklin Street Paving (Middle to Fox) = $125,000
   - Spring/Temple/Union Street Intersection (PACTS ineligible costs) = $200,000
   - Paving Rehabilitation = $1.75 Million*
   - Sidewalk Rehabilitation = $700,0000 *

   * Footnote: It is estimated that $1 million of the paving and sidewalk investment will be located within the proposed Downtown/Transit/Arts TIF District.

   To support this TIF initiative, the Department of Planning and Urban Development is preparing an inventory of long range and ongoing downtown capital investments. This Downtown Revitalization Investment Plan is intended to be a snapshot of current projects and categories of investment, but meeting the infrastructure needs of Portland's downtown is a dynamic process that will be updated locally on an annual basis or as needed. Though specific projects will change from year to year, categories of investment for the purpose of eligible uses of the Downtown TIF will remain constant. Actual project selections and prioritizations for funding will continue to be made on an annual basis during the budget and CIP process.

   Attached is the updated draft Downtown Revitalization Investment Plan, which is still under development.

2. ***New Transit Services (Cost estimate awaiting completion of the HUB Link Study)***. It is recommended that the HUB Link Study, which is underway, be completed in order to identify the scope and budget for investment in new transit services. Also, it is recognized that the Forefront at Thompson's Point Project has an approved Transit Oriented Development (TOD) TIF District which was established to financially support investment in new transit services to improve transit connections between the Jetport, Portland Transportation Center, Ocean Gateway, Casco Bay Lines and the Downtown.

3. ***City Marketing and Promotion through Creative Portland.*** The City Council approved the Arts TIF District to appropriate up to $100,000 annually to invest in Creative Portland to market the City and strengthen the City's creative economy through a number of programs. It is proposed that the existing Arts TIF District be terminated (with the exception of the Baxter Library Project site), and the new Downtown/TOD TIF District continue this financial commitment.

4. ***City Staff involved in economic development activities.*** It is proposed that a portion of the City Manager and Planning Director's annual salaries be funded through TIF revenue. Additionally, the Economic Development Department budget should be funded from the Downtown TIF District or other existing City Council approved TIF districts.

5. ***Small Public Capital Infrastructure and Equipment***. Additional items to add to the list of possibly investment include smaller capital items. Examples of City Council approved investment include the following:

- Parking meter replacement = $175,000
- DPS Sidewalk Tractor Replacement = $135,000.

TIF District Increased Property Value or Tax Increment. The amount of property tax revenue is calculated from the increased property tax value for the time period between the OAV date and the start date (April 1, 2013 to April 1, 2015) for the TIF District, which is estimated at this time to be $88 million.

TIF District Tax Revenue Capture Rates and Tax Shelter Option. A summary of the City staff recommended TIF capture rates, over the proposed thirty (30) year TIF District term, along with TIF investment options is attached.

It is noted that the proposed TIF capture rate is as follows:

TIF Year	TIF Capture Rate	TIF Capture Amount	TIF Non-Capture Rate to General Fund	City General Fund Amount
1	12%	$211,223	88%	$1,548,970
2 through 30	22%	$517,789/avg. yearly	78%	$1,862,467/avg. yearly

The proposed TIF capture rate was selected to address City Council budgeted expenses. Adjustments to the TIF capture to increase the percent captured can be adjusted by amending the TIF District.

See spreadsheets attached: (1) DT/TOD/Arts TIF Projection Table; and (2) DT/TOD/TIF Arts Tax Shift Table.

SUMMARY AND NEXT STEPS.

City staff recommendations will be presented to the HCDC at its August 13th meeting for discussion and direction. After receiving final direction from the HCDC, staff will prepare the necessary TIF District documents for HCDC and City Council action later this year.

Attachments:

1. City of Portland TIF Policy – pp. 5 to 11
2. TIF District Map – p. 12
3. Draft Downtown Revitalization Investment Plan – pp. 12 to 26
4. City Staff Recommended TIF Capture Rates and Investment Options – p. 27
5. DT/TOD/TIF Arts Projection Table – p. 28
6. DT/TOD/TIF Arts Tax Shift Table – p. 29

PORTLAND TIF POLICY

February 4, 2013

INTRODUCTION

Tax Increment Financing (TIF) is an economic development program authorized under state law to support municipal projects. The TIF program allows municipalities to provide financial assistance to local economic development projects and programs – from infrastructure, municipal economic development programs and staff, to business expansions - by using new property taxes that result from new commercial or residential investment associated with the corresponding increase in property value.

Portland TIF Policy supports investment in municipal economic development programs, infrastructure investment (which is generally through the establishment of area wide or neighborhood TIF districts) and individual project site specific TIF districts to support either infrastructure or individual private project financing needs.

The City is committed to invest in infrastructure located within the public rights-of-way that encourage economic development. Use of TIF investment to invest in infrastructure recognizes the savings which occurs through the TIF Program tax sheltering benefits.

"Infrastructure" is defined, but not limited to: traffic upgrades, public parking facilities, roadway improvements, lighting, sidewalks, water and sewer utilities, storm water management improvements and placing above ground overhead electric and telecommunications lines underground.

STATE TIF LIMITATION

There are acreage and value caps limitations for municipalities to establish TIF along with term limits. Term limits include bonds which may be issued for a maximum of 20 years (anticipation notes for three years). TIF districts may be designated for a maximum of 30 years.

PURPOSE

The primary purposes of the TIF Policy include:

1. To support Portland Economic Development and Housing Plans and Policies;
2. To stimulate expansion of the City's commercial and industrial tax base;
3. To stimulate new affordable and market rate housing investment;
4. To retain and create quality employment;
5. To support Portland's Capital Improvement Plan; and,
6. To establish standards upon which the City Council will authorize TIF.

GENERAL PRINICPLES

The three primary general principles for the City Council to establish TIF districts include:

A. Investment

***Minimum Real Property Investment*.** A minimum of $1 million in new taxable investment property value for commercial and industrial development and $500,000 for affordable housing development is needed to qualify for a TIF. This is the minimum amount which makes practical sense to consider use of the TIF program due to the amount of new municipal property tax revenue generated from new private investment.

B. Jobs Associated with Commercial and Industrial Development

Applicants for TIF participation will be required to provide a plan outlining the number and quality of jobs retained or created associated with each TIF district. While there is not a specific formula for the numbers of jobs associated with the amount of TIF financial assistance, the number and quality of the jobs will be taken into consideration for each TIF district. It is recognized that housing projects do not create many permanent jobs.

C. Maximize Tax Sheltering Benefits

A municipality's total equalized assessed value is used to calculate General Purpose Aid to Education (subsidy), State Revenue Sharing (subsidy) and County taxes (expense). When a municipality's equalized assessed value increases, State Aid for Education decreases, municipal revenue sharing decreases, and the municipality pays a greater portion of County taxes. TIF allows municipalities to "shelter" new value resulting from private investment from the calculation of its State subsidies (education and revenue sharing) and County taxes. In other words, specific municipal shelter benefits, for the term of the TIF, include:

1) No reduction in State aid for education,
2) No reduction in municipal revenue sharing and
3) No increase in County taxes.

Annually, the Council Committee with jurisdiction over housing and community development and City Council will evaluate available TIF district capacity related to State acreage and value limitations to determine whether existing TIF districts need amending and/or new TIF district establishment. Scheduled public infrastructure investments included in the City's Capital Improvement Plan will inform decisions about adjustments to existing TIF districts or establishment of new TIF districts.

APPROACH, POLICY, and TERM REQUIREMENTS

Must meet or exceed the below requirements.

A. Approach

There are three approaches to consider establishing TIF districts. They include:

1) ***Municipal Economic Development Programs funded directly through a pay-as-you-go approach.***

   Examples of municipal economic development programs include paying for economic development staff, annual funding to Creative Portland for city marketing/branding, and other TIF law allowable activities.

2) Area wide TIF districts financed by City Bond/Debt Issuance

   Issuance of municipal general obligation bonds or limited obligation bonds is a mechanism that may be used to fund a TIF district program. Allowable uses are spelled out in state TIF law. Generally, municipalities will issue debt to cover the cost of infrastructure investment.

3)Individual Site Specific TIF districts utilizing Credit Enhancement Agreements (CEAs)

   A CEA is a contract between a municipality and developer to assist an individual development project by using a percentage or all of the tax revenue generated by the investment to pay certain authorized project costs which could include site specific infrastructure or private individual project financing needs. Allowable project costs are spelled out in state TIF law.

B. Policy for the Three Approaches

1. **Policy for Municipal Economic Development Programs.**

Requires annual review and City Council financial appropriations.

2. Policy for Area wide TIF District Locations (for City Bond/Debt Issuance)

a) Area wide TIF will be established for infrastructure investment which has applications beyond one individual project.

b) City TIF emphasis will be placed upon the following general “Priority Revitalization Areas” to support commercial development, housing development, redevelopment, or to support buildings in need to redevelopment, address blight or historic preservation:

- Affordable housing projects off peninsula;
- India Street Neighborhood;
- Franklin Street Corridor from I-295 to Commercial Street;
- Riverside Street commercial and industrial zoned areas;
- Forest Avenue corridor from I-295 to Woodfords Corner;
- Washington Avenue corridor from Congress Street to I-295;
- Re-examine the boundary of Bayside TIF District;
- Examine establishing a Downtown TIF district in place of the Arts TIF District;
- Portland Technology Park ;
- Areas in which future significant wastewater and/or stormwater infrastructure investments are planned;
- West Commercial Street vacant property;
- Libbytown;
- St. Johns Street Valley;
- Other areas based upon scheduled public infrastructure investment included in the City's Capital Improvement Plan.

The above list of general priority revitalization areas serve as guides to establish specific boundaries for TIF districts at time of district establishment.

c) Market Rate Housing. Market rate rental housing projects must be located in priority revitalization areas to stimulate housing investment for the purpose of attracting 24/7 pedestrian activity. Pursuant to State Law, TIF for condominium projects are not allowed.

d) Affordable Housing**.** Affordable Housing TIF (AHTIF) may be designated on an area wide or site specific basis.

The relevant City Council Committee will complete an annual assessment of housing needs and priorities. This assessment will include a determination regarding designation of an area wide AHTIF. Site specific AHTIF requests submitted by developers will be considered on a case-by-case basis. Area wide or site specific AHTIF designations must address an identified community need.

State law requires that at least 25% of the district area must be suitable for residential use, development must be primarily residential, and at least 1/3 of the units must be for households at or below 120% of area median income which allows for individual mixed income projects or area wide affordable housing TIF districts.

Allowable uses of AHTIF revenues are defined by State law.

e) City preference is to invest in area wide public infrastructure TIF districts versus establishing individual private site specific TIF districts.

f) Area wide TIF districts also should seek to maximize the benefit of downtown and transit oriented development (TOD) districts which are <u>exempt</u> from State TIF law for acreage and value limitations.

g) Terms for area wide TIF districts will be considered for up to 100% of new tax revenue and upwards of thirty (30) years, the maximum allowed by State law, due to the long-term need to invest in neighborhood infrastrucutre.

<u>NOTE 1</u>: As of this Amended TIF Policy date, there are three existing area wide TIF Districts, i.e., Bayside, Arts, and Waterfront TIF Districts.

<u>NOTE 2</u>: As of this Amended TIF Policy date, there also exists one Transit Oriented Development (TOD) District, namely the Thompson Point TOD TIF District to support new or expanded transit services and improved transit connections between the Portland Transportation Center, Jetport and Downtown.

<u>3. Policy for Individual Site Specific TIF Districts Utilizing Credit Enhancement Agreements (CEAs)</u>

a) CEAs for individual site specific TIF districts will be considered for investment in infrastructure or project financing need and cannot be applied to any agreed upon public infrastructure improvements associated with a City Council approved conditional rezone agreement. Additional provisions related to CEAs include:

i) City Green Building Code

Compliance with the City's Green Building Code is required when TIF assistance is provided to individual private project CEAs.

ii)Affordable Housing

Affordable Housing TIF (AHTIF) may be designated on an area wide or site specific basis. Developments are encouraged to promote economic diversity.

The City Council Committee will complete an annual assessment of housing needs and priorities. This assessment will include a determination regarding designation of an area wide AHTIF. Site specific AHTIF requests submitted by developers will be considered on a case-by-case basis. Area wide or site specific AHTIF designations must address an identified community need.

State law requires that at least 25% of the district area must be suitable for residential use, development must be primarily residential, and at least 1/3 of the units must be for households at or below 120% of area median income which allows for individual mixed income projects or area wide AHTIF districts.

Allowable uses of AHTIF revenues are defined by State law.

b) Applicants for CEA participation must demonstrate and pay the following:

i) Financial Necessity.

The applicant must demonstrate the City's participation is financially necessary in order for the project to proceed.

ii) Financial Capacity**.**

The applicant must demonstrate financial capacity to support their project.

iii) Fees

-- A financial underwriting analysis will be conducted by a third party on all projects requesting CEA participation. Applicants for CEA assistance will be responsible for reimbursing the City for all project third party legal and financial underwriting costs***.***

C. Terms for CEA Projects

1) Maximum Percentages.

A maximum average percentage of 65% for the entire term associated with individual project CEA's.

2) Maximum Number of Years.

Up to twenty (20) years to match individual private sector commercial financing terms. The term of a TIF may start upon agreed trigger event, such as an increased assessed value. This would be included in a CEA on that negotiated triggering event.

3) Use of Maine Services for CEA Projects Encouraged.

TIF APPLICATION AND ADMINISTRATION PROCESS

A. Application Information and Contact.

The Economic Development Department handles all TIF inquires and processes requests for TIF. An applicant must submit a letter to the Economic Development Department outlining the proposed project, including TIF project financial information, along with a plan outlining the number of jobs associated with the proposed project.

B. Approval Process.

There is a two step approval process which includes obtaining a recommendation from the City Council Committee and City Council approval. Two meetings (or readings) by the City Council are needed. The City Council vote on the TIF occurs at the second meeting.

C. Annual Report to City Council.

The Economic Development Department shall provide annual reports to the City Council Committee and City Council regarding TIF district activity.


Tax Increment Financing Districts
DRAFT August 13, 2014
TIF Districts
Thompson Point
409 Cumberland Ave Affordable Housing
ARTS/Baxter L.B.
BAYSIDE, Existing
Bay House
Bayside Proposed Expansion
Downtown TOD/Proposed
Fore India Middle LLC
PEARL PLACE
Power Pay
RIVERWALK
WATERFRONT
Other Layers
Waterfront Capital Improvement
Existing Waterfront Capital Improvement Zone
Proposed Waterfront Capital Improvement Zone Expansion

City of Portland Downtown Revitalization Investment Plan

TABLE OF CONTENTS

INTRODUCTION

The purpose of this Downtown Infrastructure Plan is to provide a synopsis of the myriad policy goals and slated projects targeted towards improving the built environment of Portland's downtown, specifically the area of the peninsula encompassed by the Downtown TIF (Figure 1). As the largest city in the State of Maine, Portland's downtown is vitally important to the city, the region and the state as an economic engine and cultural hub. The City is constantly evolving and adapting to new realities, making every effort to plan for a healthy, sustainable, economically robust and innovative downtown to engage residents and visitors alike.

In any given year Portland is involved in a host of planning and public engagement initiatives focused on its downtown. These initiatives are carried out across multiple departments, including Planning and Urban Development, Economic Development and Public Services, and in conjunction with regional and state agencies. There are consequently many planning documents pertaining to the many facets of Portland's downtown. This document does not seek to replicate or summarize all of those initiatives, but to present the investment strategy to fulfill those goals.

DOWNTOWN INFRASTRUCTURE PLAN GEOGRAPHY

The Downtown TIF, at approximately 410 acres, is bounded to Washington Avenue to the east, State Street to the west, following the edges of the adjacent Bayside and Waterfront Capital Improvement TIF districts to the north and south.

Figure 1, Portland TIF Districts – Downtown TIF in tan.

PLAN PURPOSE

This plan outlines the various infrastructure investments needed to support a successful urban environment, consolidating recommended infrastructure-related investments from the existing Comprehensive Plan, ongoing maintenance, scheduled investments, and current policy initiatives. In the context of downtown redevelopment and this study, the term “infrastructure” is used to mean the services and capital investments required to support a successful urban environment.

This Downtown Revitalization Investment Plan is a snapshot of current projects and categories of investment, but meeting the infrastructure needs of Portland’s downtown is a dynamic process that will be updated locally on an annual basis or as needed. Though the specific projects prioritized and undertaken from year to year will change, categories of investment for the purpose of eligible uses of the Downtown TIF will remain consistent. Actual project selections and prioritizations for funding will continue to be made on an annual basis during the budget and Capital Improvements Plan (CIP) process. The CIP is the document that presents the City's capital needs in the current year and plans for capital needs in future years. As a five year plan that is annually updated, the CIP is a dynamic planning document.

DOWNTOWN INVESTMENT FOCUS AREAS

- Sidewalk & Other Pedestrian Enhancements
- Streetscape
- Lighting
- Street Realignment
- Stormwater Management
- Utilities
- Bicycle Improvements
- Public Transit
- Wayfinding
- Lighting

- **Creative Economy**

  Portland's Arts District is a critical factor in the quality of Portland's downtown urban environment, its community life and its economic life. It seeks to support the continued presence of artists and art institutions and events, and to promote the establishments and growth of creative enterprises that are drawn to Portland's downtown by the City's quality of life and the presence of a lively arts culture. The Arts District is centered on the downtown portion of Congress Street. Maintaining a supportive environment for the Arts District requires ongoing physical and operational investments to keep it a compelling, accessible destination.

  Currently its own TIF District, its needs are being consolidated into the Downtown TIF. In FY14, revenues from the Arts TIF District supported Creative Portland for $100,000, and the Baxter Library Development for $30,700.

CURRENT PLANNING INITIATIVES

Congress Street Bus Priority Corridor
The 2012, the City of Portland with GPCOG and PACTS, carried out a FTA-funded study to consider a portion of Congress Street as a "Bus Priority Corridor." The Congress Street Bus Priority Corridor concept was recommended by the 2009 Peninsula Transit Study, an approved component of the City's Comprehensive Plan. The final recommendations of this report are focused on a set of infrastructure improvements to the Congress Street corridor within the study area, specifically including the following: traffic signal removal and pedestrian crossing enhancements; traffic signal coordination and modification between State and Pearl Streets; Signage improvements, including mast arm installations; consolidated and improved bus stops between State and Franklin Streets with new shelters at key locations; and revised curb lines and pavement markings. The study area extends along Congress Street from Franklin Street to State Street.

Congress Square Redesign
On August 2, 2013, the City of Portland launched a visioning process for the redesign of Congress Square. The goal of this process is to create a shared vision for Congress Square as an urban open space and focuses on the activities and uses that might happen throughout the spaces within the square. Congress Square includes the intersection of High and Congress Streets, Congress Square Plaza, the public spaces in front of the Portland Museum of Art and the H. H. Hay building, and surrounding sidewalks and traffic islands.

India Street Sustainable Neighborhood Plan
The purpose of the India Street Sustainable Neighborhood Plan is to create a policy and infrastructure masterplan to guide land use, capital investments, and strategic initiatives through the next phase of the area's development as a *downtown adjacent* neighborhood. Planning for this area is ongoing, with streetscape, green infrastructure and utility recommendations emerging.

Street - Free Street Area Streetscape Plan
Spring Street is at the center of the Portland Downtown District and acts as a critical transportation and development corridor between Franklin Arterial and High Street – linking the Old Port with the Arts District and the East End with the West End. The connective nature of this area means it is of great importance to the functionality and amicability of Portland. It is also home of the Cumberland County Civic Center, Portland Museum of Art, the University of Maine Health, as well as numerous businesses that supply vibrancy to Portland's Downtown District. The physical characteristics of this stretch of Spring Street are more suitable to suburban arterial roads, and create a streetscape that is out of character with the surrounding city, and that does not function ideally for all users and multiple modes of travel. This project seeks to reintegrate Spring Street into the fabric of the city by transforming it into a complete street that better connects with the districts around it, that enhances the character of the area, and that allows for future development aimed to encourage economic value and livability.

Figure 2, Spring Street-Free Street Study Area

Franklin Street Corridor Feasibility Study

Starting as a citizen-led planning effort, the Reclaiming Franklin Street study developed three concept level plans for transitioning Franklin Street from an Urban Renewal era highway into a multi-modal urban mixed use corridor. The concepts retained the arterial function of the street, but add cross street connectivity, bicycle and pedestrian infrastructure, and improved access to adjacent properties in a less land consumptive right of way. Since these initial efforts, the City has partnered with PACTS and MaineDOT to establish a preferred alternative for design from the concept drawings. This effort is currently underway.

Figure 3, Franklin Street Study Area

Portland Transportation Hub Link Study

The City of Portland, in conjunction with PACTS, METRO, and the GPCOG is seeking to create a phased operational plan for improved transit services linking established Portland transportation hubs. It calls for feasibility analysis of several major route alternatives, each with downtown route and stop implications.

State and High Streets Two Way Conversion Study

This study was funded by the City for the purpose of improving transportation in a portion of the city core. A large proportion of the infrastructure within this area is in need of an upgrade, so before making any financial investment, the study will assess what kind of changes could make the area more functional for all transportation modes – pedestrians, bicycles, transit and other vehicles.

Portland Peninsula Vehicular Wayfinding Plan (2013)

In 2013 the City completed, in conjunction with Portland Area Comprehensive Transportation System (PACTS), a Portland Peninsula Vehicular Wayfinding Plan that has not yet been implemented. The intent of the vehicular wayfinding sign program is to provide a consistent and repetitive information path for the traveling public on-peninsula and toward major destinations off-Peninsula. In addition to wayfinding signage for motorized vehicles, the plan also examines and makes recommendations for bicyclist and pedestrian wayfinding where it benefits the most existing and future users.

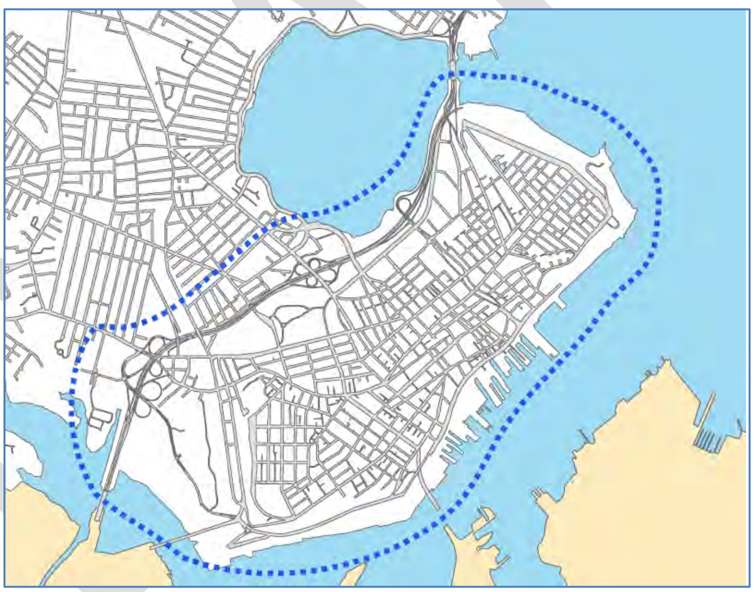


Figure 4, Wayfinding Plan Service Area

Current Planning Projects

	Project Description	Category										Responsible Department(s)
		Sidewalk & Other Ped Enhancements	Streetscape	Lighting	Street Realignment	Stormwater Management	Utilities	Bicycle Improvements	Public Transit	Wayfinding	Lighting	
Congress Street Bus Priority Corridor Report	The final recommendations of this report are focused on a set of infrastructure improvements to the Congress Street corridor within the study area, specifically including the following: traffic signal removal and pedestrian crossing enhancements; traffic signal coordination and modification between State and Pearl Streets; Signage improvements, including mast arm installations; consolidated and improved bus stops between State and Franklin Streets with new shelters at key locations; and revised curb lines and pavement markings. The study area extends along Congress Street from Franklin Street to State Street.	x	x		x				x		x	
Congress Square Redesign	The goal of this process is to create a shared vision for Congress Square as an urban open space, focused on the activities and uses that might happen throughout the spaces within the square. Congress Square includes the intersection of High and Congress Streets, Congress Square Plaza, the public spaces in front of the Portland Museum of Art and the H. H. Hay building, and surrounding sidewalks and traffic islands.	x	x	x	x			x				
India Street Neighborhood Plan	The purpose of the India Street Sustainable Neighborhood Plan is to create a policy and infrastructure masterplan to guide land use, capital investments, and strategic initiatives through the next phase of the area's development as a *downtown adjacent* neighborhood. Planning for this area is ongoing, with streetscape, green infrastructure and utility recommendations emerging.	x	x	x		x	x	x				
Spring Street - Free Street Area Streetscape Plan	The physical characteristics of this stretch of Spring Street are more suitable to suburban arterial roads, and create a streetscape that is out of character with the surrounding city, and that does not function ideally for all users and multiple modes of travel. This project seeks to reintegrate Spring Street into the fabric of the city by transforming it into a complete street that better connects with the districts around it, that enhances the character of the area, and that allows for future development aimed to encourage economic value and livability.	x	x	x	x	x	x	x			x	
Franklin Street Corridor Feasibility Study	The Reclaiming Franklin Street study developed three concept level plans for transitioning Franklin Street from an Urban Renewal era highway into a multi-modal urban mixed use corridor. The concepts retained the arterial function of the street, but add cross street connectivity, bicycle and pedestrian infrastructure, and improved access to adjacent properties. Since these initial efforts, Phase II of this study, to refine a recommended alternative design, is currently underway.	x	x	x	x	x	x	x	x		x	
Portland Transportation Hub Link Study	The City of Portland, in conjunction with PACTS, METRO, and the GPCOG is seeking to create a phased operational plan for improved transit services linking established Portland transportation hubs. It calls for feasibility analysis of several major route alternatives, each with downtown route and stop implications.								x			
State and High Streets Two Way Conversion Study	This study is currently underway, to evaluate the feasibilty of converting State Streets and High Streets back to two-way traffic, with evaluation of the impacts of such a change on local and regional traffic, bicycle traffic, pedestrian traffic, and transit services.	x			x			x				

Portland Peninsula Vehicular Wayfinding Plan	In 2013 the City completed a Portland Peninsula Vehicular Wayfinding Plan that has not yet been implemented. The intent of the vehicular wayfinding sign program is to provide a consistent and repetitive information path for the traveling public on-peninsula and toward major destinations off-Peninsula. In addition to wayfinding signage for motorized vehicles, the plan also examines and makes recommendations for bicyclist and pedestrian wayfinding where it benefits the most existing and future users.									x		
Other Initiatives												
Creative Portland												
Communications Infrastructure							x					
Downtown Lighting	This is a plan for improved pedestrian and street lighting in the Downtown, Old Port, Bayside, India Street, and the Waterfront districts. Based on the original *Downtown Lighting Plan* and ensuing plans for the other districts, this plan informs capital investment implementation project phasing and provides details and specifications for street and sidewalk lighting in each district. Much of Congress Street and the Old Port has been upgraded according to the plan, and private development adds to the system based on the technical manual lighting specifications.											
Ongoing Or Recurring Activities												
Tree Planting												
Parks and Public Space Maintenance												
Paving Rehabilitation												
Sidewalk Rehabilitation												
Stormwater Infrastructure												

ANTICIPATED COSTS

RELATED PLANS AND DOCUMENTS

The following is a listing of policy documents with significant downtown infrastructure implications for some or all of the Focus Areas above. Not included in this list are the many projects underway and anticipated, whether slated capital improvements or ongoing maintenance of the existing public realm. A list of recommended Capital Improvement Plan investments for FY 2015 - 2019 is included as *Appendix 1*, and a list of Transportation Strategic Initiatives for 2014-2019 is included as *Appendix 2*.

Comprehensive Plan Elements

Downtown Vision (1991)
The 1991 Downtown Vision set a framework for downtown, including recommendations for parking, open space, lighting, economic development and the arts. Some of it has been implemented, some superseded by subsequent studies, but it remains broad in its reach for what a thriving downtown requires.

A Plan for Portland's Arts District (1995)
This Plan's goal was to implement art-related portions of the Downtown Vision Plan, to make recommendations on how to best support development of Portland's arts economy, and to guide the planning process for what was then Portland's emerging downtown arts district. It is inseparable from the overall needs of downtown, emphasizing the importance of pedestrian connections, parking and transit strategy, a downtown Arts District designation, and the importance of the economic health of arts institutions and the role of the arts in the downtown economy.

Portland Downtown Traffic & Streetscape Study (1999)
The project study area is focused on Congress Street between State Street and Franklin Street, and makes recommendations regarding on-street parking, crafting a pedestrian-friendly streetscape that includes sidewalks, intersections, public parks and plazas, street trees, street furniture and bicycle parking, among others.

Portland's Comprehensive Plan Volume 1 & 2 (2002 & 2005)
These two volumes are the overarching documents that broadly address policy goals as well as inventory and analysis of existing conditions. They touch on many long term infrastructure needs of the city, including transportation, economic development, population and housing, and other areas critical to planning to accommodate future growth. These two volumes remain valuable, foundational documents that support the more in depth policy documents adopted by reference as part of the Comprehensive Plan.

City of Portland Wayfinding System Study (2008)

The Portland Wayfinding System Plan created a set of criteria and graphic conventions for vehicular and pedestrian wayfinding city-wide. The Plan additionally established wayfinding districts and pedestrian signage for the Old Port, Government, Waterfront and Arts Districts. Pedestrian signage for these districts has been installed. In 2013 the City completed, in conjunction with Portland Area Comprehensive Transportation System (PACTS), a Portland Peninsula Vehicular Wayfinding Plan, including bicycle wayfinding, that has not yet been implemented.

Connecting Libbytown Trail Plan (2009)
The Connecting Libbytown plan envisions improved pedestrian and bicycle linkage between the Fore River Parkway and the Portland Transportation Center to Deering Oaks and the planned extension of the Bayside Trail. In addition to providing quality of life amenities for the Libbytown neighborhood, the plan's implementation will close gaps in completing a circapeninsular trail network. Though Libbytown itself is not in the TIF, the connections this plan identifies overlap with the Downtown TIF boundaries.

Portland Peninsula Transit Study (2008)
The Peninsula Transit Study was approved in 2009 with the expressed goal of reducing the number of single occupancy vehicle trips to and from the Portland Peninsula. Using an integrated approach of policy, land use, and infrastructure innovations, the Transit Study includes an action plan for phased implementation.

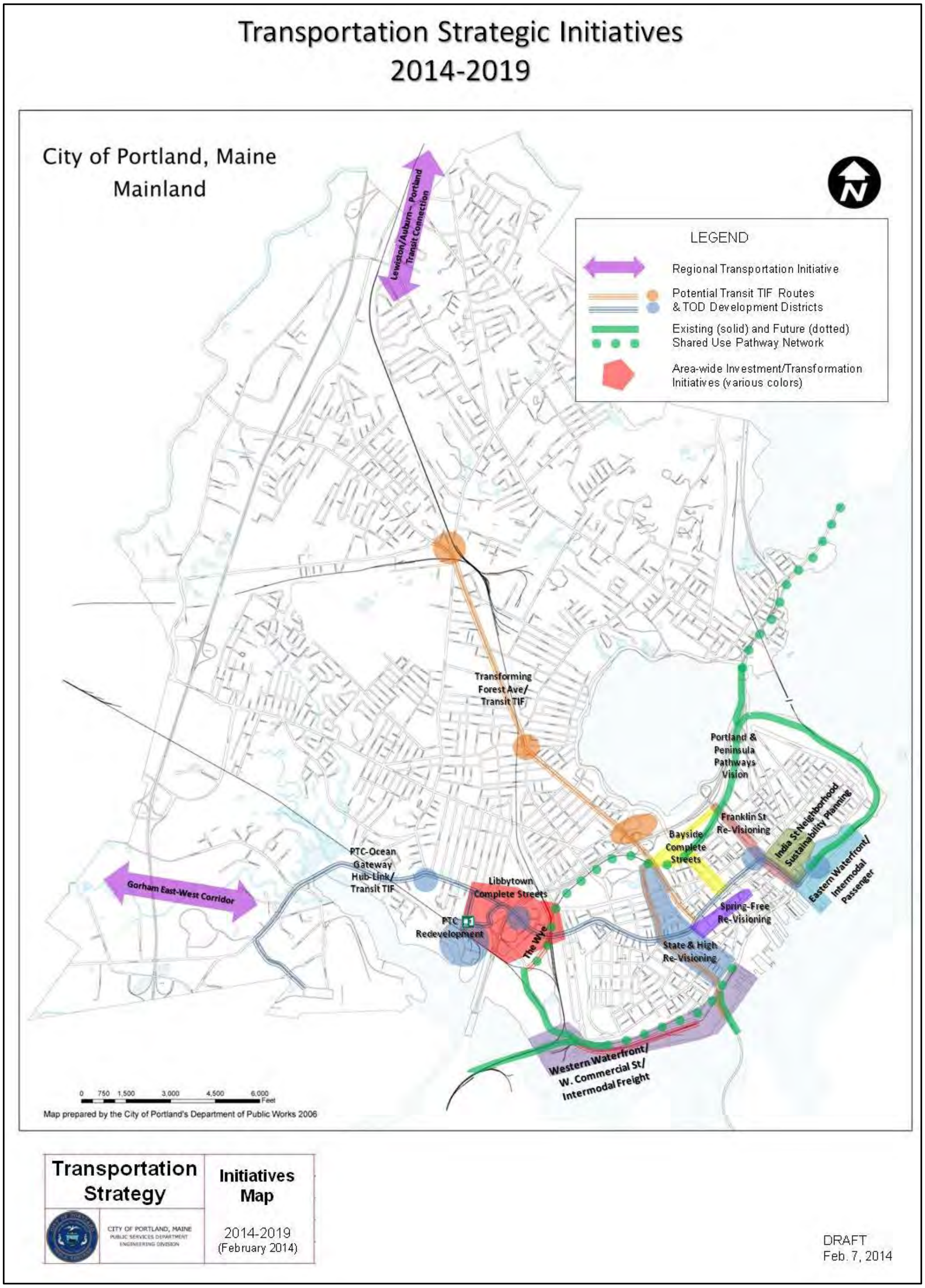
Pedestrian and Bicycle Chapter of the City of Portland Comprehensive Plan (2012)
This most recent addition to Portland's Comprehensive Plan includes a map of planned citywide bike routes, standards for streets and sidewalks, recommended intersection and sidewalk improvements and a prioritized list of infrastructure improvements, in addition to performance standards and bike/ped education and promotion proposals.

CONCLUSION

Appendix 1

CIP FY 2015 – FY 2019 Summary

Appendix 2


Transportation Strategic Initiatives
2014-2019
City of Portland, Maine
Mainland
LEGEND
Regional Transportation Initiative
Potential Transit TIF Routes
& TOD Development Districts
Existing (solid) and Future (dotted)
Shared Use Pathway Network
Area-wide Investment/Transformation
Initiatives (various colors)
Lewiston/Auburn – Portland Transit Connection
Transforming Forest Ave/ Transit TIF
Portland & Peninsula Pathways Vision
Franklin St Re-Visioning
India St Neighborhood Sustainability Planning
Bayside Complete Streets
Eastern Waterfront/ Intermodal Passenger
Spring-Free Re-Visioning
State & High Re-Visioning
PTC-Ocean Gateway Hub-Link/ Transit TIF
Libbytown Complete Streets
PTC Redevelopment
The Wye
Gorham East-West Corridor
Western Waterfront/ W. Commercial St/ Intermodal Freight
0 750 1,500 3,000 4,500 6,000 Feet
Map prepared by the City of Portland's Department of Public Works 2006
Transportation Strategy
Initiatives Map
CITY OF PORTLAND, MAINE
PUBLIC SERVICES DEPARTMENT
ENGINEERING DIVISION
2014-2019
(February 2014)
DRAFT
Feb. 7, 2014

8-7-14 HCDC DT TOD Arts TIF District - TIF Capture Rates and TIF Investment Options Table
First Five Years' Example

OAV as of March 31, 2014 or April 1, 2013 = $959,071,150

TIF District Start Date of April 1, 2015

TIF District Increment between April 1, 2013 and April 1, 2015 = $88 million

TIF Year	Mil rate	TIF Capture Rate	TIF Non-Capture Rate	TIF Capture Amount	TIF Non-Capture Amount	TIF District Investments
FY15-16	**$20.00/$1000**	12	88	$200,000	$1,550,000	$100,000 for City staff (City Manager and Planning Director)
						$100,000 for Creative Portland
FY16-17	**$20.40/$1000**	22	78	$400,000	$1,400,000	$100,000 for City staff (City Manager and Planning Director)
						$100,000 for Creative Portland
						$200,000 for City debt service for road and sidewalk rehabilitiation
						Additional TIF eligible projects not yet budgeted will be selected through the annual City budget and CIP process.
FY17-18	**$20.81/$1000**	22	78	$400,000	$1,400,000	Same as above or adjusted by City Council approval.
FY18-19	**$21.22/$1000**	22	78	$410,000	$1,450,000	Same as above or adjusted by City Council approval.
FY19-20	**$21.65/$1000**	22	78	$420,000	$1,480,000	Same as above or adjusted by City Council approval.

City of Portland - TIF Model
8/6/2014

City of Portland-DT/TOD/Arts TIF Projection Table

12% Sheltered Yr 1; 22% Sheltered Yrs 2 to 30 - to City Development Account

TIF Year	Tax Year-April 1	Increased Assessed Value Real Prop.	% of Value Captured	Captured Valuation	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non-Captured General Fund Revenues
1	2015	$88,000,000	12.00%	$10,560,000	20.00	$211,223	$0	$211,223	$1,548,970
2	2016	$88,000,000	22.00%	$19,360,000	20.40	$394,987	$0	$394,987	$1,400,410
3	2017	$88,000,000	22.00%	$19,360,000	20.81	$402,887	$0	$402,887	$1,428,418
4	2018	$88,000,000	22.00%	$19,360,000	21.23	$410,945	$0	$410,945	$1,456,987
5	2019	$88,000,000	22.00%	$19,360,000	21.65	$419,164	$0	$419,164	$1,486,126
6	2020	$88,000,000	22.00%	$19,360,000	22.08	$427,547	$0	$427,547	$1,515,849
7	2021	$88,000,000	22.00%	$19,360,000	22.53	$436,098	$0	$436,098	$1,546,166
8	2022	$88,000,000	22.00%	$19,360,000	22.98	$444,820	$0	$444,820	$1,577,089
9	2023	$88,000,000	22.00%	$19,360,000	23.44	$453,716	$0	$453,716	$1,608,631
10	2024	$88,000,000	22.00%	$19,360,000	23.90	$462,791	$0	$462,791	$1,640,804
11	2025	$88,000,000	22.00%	$19,360,000	24.38	$472,047	$0	$472,047	$1,673,620
12	2026	$88,000,000	22.00%	$19,360,000	24.87	$481,487	$0	$481,487	$1,707,092
13	2027	$88,000,000	22.00%	$19,360,000	25.37	$491,117	$0	$491,117	$1,741,234
14	2028	$88,000,000	22.00%	$19,360,000	25.87	$500,940	$0	$500,940	$1,776,059
15	2029	$88,000,000	22.00%	$19,360,000	26.39	$510,958	$0	$510,958	$1,811,580
16	2030	$88,000,000	22.00%	$19,360,000	26.92	$521,178	$0	$521,178	$1,847,811
17	2031	$88,000,000	22.00%	$19,360,000	27.46	$531,601	$0	$531,601	$1,884,768
18	2032	$88,000,000	22.00%	$19,360,000	28.01	$542,233	$0	$542,233	$1,922,463
19	2033	$88,000,000	22.00%	$19,360,000	28.57	$553,078	$0	$553,078	$1,960,912
20	2034	$88,000,000	22.00%	$19,360,000	29.14	$564,139	$0	$564,139	$2,000,130
21	2035	$88,000,000	22.00%	$19,360,000	29.72	$575,422	$0	$575,422	$2,040,133
22	2036	$88,000,000	22.00%	$19,360,000	30.32	$586,931	$0	$586,931	$2,080,936
23	2037	$88,000,000	22.00%	$19,360,000	30.92	$598,669	$0	$598,669	$2,122,554
24	2038	$88,000,000	22.00%	$19,360,000	31.54	$610,643	$0	$610,643	$2,165,005
25	2039	$88,000,000	22.00%	$19,360,000	32.17	$622,855	$0	$622,855	$2,208,306
26	2040	$88,000,000	22.00%	$19,360,000	32.82	$635,313	$0	$635,313	$2,252,472
27	2041	$88,000,000	22.00%	$19,360,000	33.47	$648,019	$0	$648,019	$2,297,521
28	2042	$88,000,000	22.00%	$19,360,000	34.14	$660,979	$0	$660,979	$2,343,472
29	2043	$88,000,000	22.00%	$19,360,000	34.82	$674,199	$0	$674,199	$2,390,341
30	2044	$88,000,000	22.00%	$19,360,000	35.52	$687,683	$0	$687,683	$2,438,148
30 Year TIF Total		**$2,640,000,000**		**$572,000,000**		**$15,533,669**	**$0**	**$15,533,669**	**$55,874,005**

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland-DT/TOD/Arts TIF Model

12% Sheltered Yr 1; 22% Sheltered Yrs 2 to 30 - to City Development Account

TIF Year	Tax Year-April 1	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation			
				Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
1	2015	$88,000,000	$10,560,000	$85,536	$6,878	$5,589	$98,003
2	2016	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
3	2017	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
4	2018	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
5	2019	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
6	2020	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
7	2021	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
8	2022	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
9	2023	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
10	2024	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
11	2025	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
12	2026	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
13	2027	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
14	2028	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
15	2029	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
16	2030	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
17	2031	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
18	2032	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
19	2033	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
20	2034	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
21	2035	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
22	2036	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
23	2037	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
24	2038	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
25	2039	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
26	2040	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
27	2041	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
28	2042	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
29	2043	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
30	2044	$88,000,000	$19,360,000	$156,816	$12,610	$10,243	$179,670
30 Year TIF Total		**$2,640,000,000**	**$572,000,000**	**$4,633,200**	**$372,572**	**$302,649**	**$5,308,421**

TO: Councilor Donoghue, Chair
Members of the Housing and Community Development Committee

FROM: Mary Davis, Housing & Community Development Division Director
Jeff Levine, Planning & Urban Development Director
Greg Mitchell, Economic Development Director

DATE: August 8, 2014

SUBJECT: 2014 HCDC Calendar

Attached is a standing communication on your agenda, the updated Committee Calendar.

389 Congress Street / www.portlandmaine.gov / tel, 207•756•8246 / tty, 207•874•8936 / fax, 207•874•8949

DRAFT 2014 Housing & Community Development Committee meeting Calendar

Meetings: 2nd & 4th Wednesday of each month

As of July 25, 2014

January

Jan. 8 Meeting:

2014 Draft HCDC Work Plan for preliminary discussion subject to change after January 13 City Council goal setting workshop.
For Review and Recommendation to Council - Pearl Place TIF district amendments
Wilmot Street – Possible Reacquiring – Executive Session
Tenant Based Rental Assistance Program update
Housing First Pre-Development RFP – Review Draft
Communication: Update on CDBG Workforce Development Program

Jan. 22 Meeting:

Presentation on proposed amendments to parking requirements and the Sustainable Transportation Fund for possible action
Economic Development Vision and Plan – Work Plan Update for 2014-2015

February

February 12, 2014 Meeting:

Possible City lease/acquisition of property for City Department Consolidation/Forward to Council – Public and Executive Session
Start Downtown TOD/TIF Discussion
Update on Housing Plan and Consultant Services RFP/Communication Item

February 26 Meeting:

Housing Program Budget Recommendation to Council
Review City sites for residential development or sale including former Adams School property
Nova Scotia Ferry Service Operator Lease – Executive Session

March

March 12 Meeting:

Continue Downtown TOD/TIF District Discussion
Nova Scotia Ferry Service Operator Lease/Possible Recommendation to City Council
Review & Recommendation: Updated Citizen Participation Plan
Review & Recommendation: 3 year renewal of Cumberland County HOME Consortium, 2015-18

March 26 Meeting:

Presentation on proposed amendments to the B2 zones for possible action
Review and possible approval of Affordable Housing RFP
Creative Portland PACE Project in Bayside for Review/Direction and executive session for possible City-owned Bayside property disposition discussion.
Spring Street Garage Space Leases (Pirates and Adjacent Vacant Space)
Communication: Update on the discussion of city sites for residential development
Communication: CDBG funding recommendations from Committee & City Manager; Annual Action Plan

April **April 9 Meeting:**
Presentation on proposed amendments to R-6/R-7 zones for feedback
Review of draft of possible RFP for city-owned lot on Munjoy Street

April 23 Meeting:
Spring Street Garage Space Leases (Pirates and Adjacent Vacant Space)
Executive Session Tugboat Lease Renewal at Portland Ocean Terminal
Donation of Property to City on Rowe Avenue
Communication: Annual Action Plan, due to HUD May 15
Review of Housing First RFP Responses

May **May 14 Meeting:**
AHTIF Request – 134 Washington Avenue
Executive Session: Real estate negotiations associated with the Federated Companies Midtown Project and their financial contribution toward the cost of Somerset Street reconstruction.

May 28 Meeting:
Downtown TOD/TIF District – Continue Discussion
Executive session/public session for guidance and approval to move forward with disposition process for a tax-acquired property on Cliff Island.
Tugboat Lease Renewal at Portland Ocean Terminal

June **June 11 Meeting (Meeting Canceled):**

June 25 Meeting:
Disposition process recommendation to staff for tax-acquired property on Cliff Island
Downtown TOD/TIF District – Continue Discussion
Executive Session: Real estate negotiations associated with the Federated Companies Midtown Project and their financial contribution toward the cost of Somerset Street reconstruction.

July **July 9 Meeting (Meeting Canceled):**

July 23 Meeting (Meeting Canceled):

August

August 13 Meeting:
Continuation and final policy direction on new Downtown TOD/Arts TIF District.
Disposition process recommendation to staff for tax-acquired property on Cliff Island
Review and vote to recommend to City Council action on Federated Companies Midtown Project documents, including Somerset Street Cost Share Agreement
Executive Session:
- Proposed Ready Seafood Company Lease Amendments;
- Proposed Shucks Maine Lobster Lease Amendments;
- Proposed new tenant and lease terms for use of second floor office space located in Portland Ocean Terminal.

August 27 Meeting
Housing Development RFP – review of proposals received?
For Review and Comment/ Recommendation to Council if necessary: Recommendations for improvement to CDBG process.

For Review and Comment: Consolidated Annual Performance Evaluation Report (CAPER) due to HUD September 30.
Update on City-owned lot on Munjoy Street
65 Hanover Street Property/review draft RFP for development of affordable homeownership units, i.e. workforce housing at 100% to 120% AMI and property disposition of 71 Hanover Street.
Housing Trust Fund Annual Plan
Review of potential development site located at 157 Brackett Street
Reed School Re-Use

September

~~Downtown TOD/TIF District – Continue Discussion and Action~~
Area-wide Affordable Housing TIF District discussion
Inclusionary Zoning
Update on city-owned lot at 98 High Street
Tentative: Shucks Maine Lobster and Ready Seafood Company Lease Amendment vote and recommendation to City Council.

October

Communication: CDBG Application is available/Process Update.
Start discussion related to Riverside Street area wide needed public infrastructure status and improvements.
Recommendation to City Council on award of proposal for tax-acquired property on Cliff Island.
New Downtown TOD/Arts TIF District vote and recommendation to City Council, including:

- Bayside TIF District Amendment vote and recommendation to City Council;
- Riverwalk TIF District Amendment vote and recommendation to City Council;
- Fore/India/Middle Street TIF District termination vote and recommendation to City Council;
- Creative Economy & Arts TIF District – vote and recommendation to City Council to reduce boundary;
- Bay House TIF District termination vote and recommendation to City Council;
- Watertfront TIF District vote and recommendation to City Council to expand geography.

November

Annual City wide TIF District Activity Report/review and recommendation to City Council
HCDC Annual Accomplishment Report/review and recommendation to City Council

December