

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL FOURNIER (A/L)
ROBERTO RODRÍGUEZ (A/L)



ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

SPECIAL CITY COUNCIL MEETING - SEPTEMBER 4, 2024 AT 5:00PM

The Portland City Council will hold a City Council Meeting in Council Chambers. The Honorable Mark Dion, Mayor, will preside.

To submit written public comment on an agenda item, email publiccomment@portlandmaine.gov. Submissions must be received by 12:00 pm the day before the Council meeting to guarantee their inclusion in the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the order number (see below).

The City Council will conduct this meeting from Council Chambers, located on the second floor of City Hall.

To watch the meeting remotely, please visit <https://portlandme.portal.civicclerk.com/event/7306/media>

PLEDGE OF ALLEGIANCE:

ROLL CALL:

5:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

ANNOUNCEMENTS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Special City Council Meeting-August 19, 2024-4:00PM

Special City Council Meeting-August 19, 2024-5:30PM

PROCLAMATIONS:

Proclamation 4-24/25 Honoring the Portland 11/12 Year Old All Stars Baseball Team - Sponsored by Regina Phillips, City Councilor

Proclamation 5-24/25 Recognizing September 13 to September 22, 2024 as Welcoming Week - Sponsored by Mark Dion, Mayor

Proclamation 6-24/25 Recognizing September 2024 as African Immigrant Heritage Month - Sponsored by Mark Dion, Mayor

Proclamation 7-24/25 Honoring the 111th Anniversary of Thomas Park - Sponsored by Mark Dion, Mayor

RESOLUTIONS:

Resolve 1-24/25 Calling for the Divestment of Funds from Entities Complicit in the Humanitarian Crisis in Gaza - Sponsored by April Fournier, City Councilor

The City of Portland recognizes the ongoing humanitarian crisis in Gaza and seeks to avoid economically supporting this crisis through the City's financial investment.

Five affirmative votes are required for passage after public comment.

UNFINISHED BUSINESS:

Order 11-24/25 Approving and Authorizing City Manager to Execute the Amended and Restated Lease Agreement With DBH Portland, LLC, for use of Hadlock Stadium for the Portland Seadogs - Sponsored by the Housing and Economic Development Committee, Pious Ali, Chair

This item was reviewed by the Housing and Economic Development Committee at its May 7, 2024, meeting, at which time it voted 4-0 to forward this to the City Council with a recommendation for approval in substantially the form as being presented.

This Amended and Restated Lease Agreement is the result of negotiations with Diamond Baseball Holdings (DBH), the ownership team behind the Portland Sea Dogs, with guidance from the Council's Housing and Economic Development Committee, for continued operations at Hadlock Stadium and Field through September 30, 2038, with DBH to have an option to extend the term for an additional five (5) years thereafter. The current lease expires September 30, 2028. This extended lease would allow for DBH to invest up to \$10 Million in improvements to the stadium to address requirements of Major League Baseball for affiliated teams.

Please see the Financial Impact section, with this Amended and Restated Lease, which increases the annual revenue to the City from \$200,000 to an anticipated \$400,000 to \$475,000 annually.

This item was postponed from the meeting on July 15 and the meeting on August 19 to allow additional time to finalize lease provisions requested by Major League Baseball. Five affirmative votes are required for passage after public comment. To make this item effective immediately, staff is requesting that this item be passed as an emergency. Seven affirmative votes are required for passage as an emergency after public comment.

Order 41-24/25 Approving Three-Party Partnership Agreements Between the City of Portland, the Maine Department of Transportation, and the Portland Area Comprehensive Transportation System RE: Improvements to Riverside Street and Washington Avenue - Sponsored by Danielle P. West, City Manager

These agreements, between MaineDOT and the City of Portland (2-party agreement), as well as between MaineDOT, the City of Portland, and PACTS (3-party agreement), obligates MaineDOT to mill and fill Riverside Street and Washington Avenue Ext., update and/or install new pedestrian curb ramps to meet ADA requirements, and all appurtenances to complete paving on these roads. The agreements obligate the City to pay MaineDOT for a portion of the work as its municipal share. The original agreements were approved and signed in April 2024. MaineDOT subsequently updated their estimates and modified the agreements to account for increased unit pricing. The City also asked for additional PACTS money to help cover these increased costs but there was still a shortfall which required an increase to the municipal share. The estimated updated amount of municipal share and the difference from the original estimate for each project are as follows:

Riverside Street - \$177,750 original estimate, \$265,024 updated estimate – increase of

\$87,274. The project is now a 30/70 municipal/PACTS split.

Ocean Avenue - \$133,000 as the 25% municipal share; this street was accurately estimated originally, and the estimate was not modified; the project remains a 25/75 municipal/PACTS split

Washington Avenue Ext. - \$81,000 original estimate, \$210,685 updated estimate – increase of \$129,685. The project is now a 43/57 municipal/PACTS split

The updated estimated City share for all three streets is \$608,709; \$470,000 will come from a FY25 CIP account requested for these projects. The remaining \$138,709 will come from a paving rehab account approved in FY25.

This item must be read on two separate days. It received its first reading on August 19. Five affirmative votes are required for passage after public comment.

Order 42-24/25 Accepting and Appropriating a \$90,000 Donation and a \$30,000 Grant for the Lincoln Park Fence Project - Sponsored by Danielle P. West, Manager

On May 1, 2024 the City of Portland was awarded a Certified Local Government (CLG) grant by the Maine Historic Preservation Commission (MHPC) in the amount of \$30,000 to support Phase 2 of restoration of the Lincoln Park Fence along Pearl Street.

The Friends of Lincoln Park (The Friends) intend to gift the City of Portland \$30,000 to provide the necessary matching funds required by the grant. Parks and Recreation will provide the remaining \$7,569 of the project cost from existing funds dedicated to restoration of the Lincoln Park Fence.

In July of 2024, The Friends announced that they had been able to raise an additional \$60,000 to go towards the cost of Phase III of restoration of the Lincoln Park Fence along Pearl Street. Parks and Recreation will provide the remaining \$767 of the project cost. This combination of grant, gifts, and Parks funds will complete restoration of the Lincoln Park Fence along Pearl Street.

This item must be read on two separate days. It received its first reading on August 19. Five affirmative votes are required for passage after public comment.

Order 43-24/25 Amendment to the Portland City Code Chapter 6 RE: National Electric Code - Sponsored by Danielle P. West, City Manager

Effective July 1, 2024, the Electrician's Examining Board adopted the 2023 edition of the National Electrical Code ("NEC"), as well as a revised Chapter 120 of the Board rules which sets the amendments and exclusions to the 2023 NEC. Section 6-98 of the City Code has adopted the 2020 edition of the NEC, and the proposed change updates the version of the NEC adopted by the City to conform to State requirements.

This item must be read on two separate days. It received its first reading on August 19. Five affirmative votes are required for passage after public comment.

ORDERS:

**Order 44-24/25 Approving Assignment of the Lease Agreement and the Agreement
RE: Parking at the Spring Street Garage Held by Portland Hockey LLC to
Powerplay LLC - Sponsored by Danielle P. West, City Manager**

This item would authorize the assignment of the Lease Agreement and the Agreement
Re: Parking at Spring Street Garage from Portland Hockey, LLC, to Powerplay, LLC
under the same terms and conditions of the original agreements.

The City entered into these Agreements with Portland Hockey, LLC, on April 1, 2018,
and, with the impending purchase of Portland Hockey, LLC, by Powerplay, LLC, it is
being recommended that these Agreements be assigned to Powerplay, LLC, under the
same terms and conditions of the original Agreements as follows:

Lease Agreement Highlights: The term is up to fifteen years, with rental starting at \$2.00
per square foot, or \$4,830 annually, and ending at \$8.00 per square foot in years 12 to 15,
or \$19,320 annually.

Agreement Re: Parking at Spring Street Garage Highlights:

- The term is up to fifteen years to match the space Lease and Maine Mariners
Lease with the Cross Insurance Arena.
- The game night parking rate was \$8.00 per car for the 2018/2019 hockey season,
which may be adjusted thereafter by mutual agreement.
- Revenue Share: For the first seven (7) years, the team to receive game day
revenue minus security and City staff expenses. Starting year eight (8), game day
revenue will be the lessor of the average Revenue Share for the sixth and seventh
year or all parking garage revenue minus security and City staff expenses. This
approach is designed to increase the City's share starting in year eight if game
attendance increases from previous years six and seven.
- Game Use of Garage: Team players, coaches, and staff will receive
complimentary parking passes for hockey related activities.
- Season Tickets: Maine Mariners to provide the City four season tickets at no
cost.

Five affirmative votes are required for passage after public comment.

**Order 45-24/25 Appropriating \$1,080,000 from the Jill C. Duson Housing Trust
Fund to YFO Resource Hub LP RE: 337 Cumberland Avenue - Sponsored by the
Housing and Economic Development Committee, Councilor Pious Ali, Chair**

The Housing and Economic Development Committee met on August 20, 2024 and voted
(3-0, Phillips absent) to forward this item to the City Council with a recommendation for
passage.

Youth and Family Outreach (YFO), through YFO Resource Hub LP, a non-profit entity
to be created, is proposing to construct a new 60-unit rental housing development which
will include child care space. The site currently contains a vacant former restaurant and
the chapel building that currently houses the YFO child care program, both of which will
be removed to facilitate construction of the new building. The project will include 60-
units, 29 of which will be affordable to households at or below 50% of the area median
income (\$51,000 for a two-person household), 19 of which will be affordable to

households at or below 60% of the area median income (\$61,200 for a two-person household) and 12 market rate units (including 4 studios, 24 1-bedroom, 22 2-bedroom and 10 3-bedroom).

YFO has requested assistance from the City in the form of a loan in the amount of \$1,080,000 from the Jill C. Duson Housing Trust Fund with a term of 30 years at 0% interest with repayment of 10% of cashflow above MaineHousing's required \$500/unit (as confirmed by MaineHousing underwriting), in the first five years of operations, followed by 30% of cashflow until fully retired.

An Affordable Housing Tax Increment Financing District was previously approved on this site (August 3, 2020, Order 19-20/21 and Order 20-20/21) and received a Certificate of Approval from MaineHousing on September 17, 2020. Amendments to the District, District Program and Credit Enhancement Agreement will be considered under separate Orders.

This item must be read on two separate days. This is its first reading.

Order 46-24/25 Approving an Amendment to the 337 Cumberland Avenue Affordable Housing Development and Tax Increment Financing District RE: 337 Cumberland Avenue - Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair

The Housing and Economic Development Committee met on August 20, 2024, and voted (3-0, Phillips absent) to forward this item to the City Council with a recommendation for passage.

Youth and Family Outreach (YFO), through YFO Resource Hub LP, a non-profit entity to be created, has proposed construction of a new 60-unit rental housing development which will include child care space. The site currently contains a vacant former restaurant and the chapel building that currently houses the YFO child care program, both of which will be removed to facilitate construction of the new building.

An Affordable Housing Tax Increment Financing District was previously approved on this site. The 337 Cumberland Avenue Affordable Housing Development Tax Increment Financing District was approved by the Portland City Council on August 3, 2020 (Order 19-20/21 and Order 20-20/21) and received a Certificate of Approval from MaineHousing on September 17, 2020. The current approved development district includes a slightly different unit mix (36 units at or below 50% of the area median income, 12 units at or below 60% of the area median income and 12 units at market rate) and will need to be amended to reflect the proposed new development program. The new development program will include 60-units, 29 of which will be affordable to households at or below 50% of the area median income (\$51,000 for a two-person household), 19 of which will be affordable to households at or below 60% of the area median income (\$61,200 for a two-person household) and 12 market rate units (including 4 studios, 24 1-bedroom, 22 2-bedroom and 10 3-bedroom). The end date of the development district is March 31, 2050.

This is a companion order to the order above.

This item must be read on two separate days. This is its first reading.

Order 47-24/25 Approving an Amended Credit Enhancement Agreement the 337 Cumberland Avenue Affordable Housing Tax Increment Financing District RE: 337 Cumberland Avenue - Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair.

The Housing and Economic Development Committee met on August 20, 2024, and voted (3-0, Phillips absent) to forward this item to the City Council with a recommendation for passage.

This is a companion order to the two orders above.

This item must be read on two separate days. This is its first reading.

Order 48-24/24 Accepting and Appropriating a \$372,000 United States Department of Justice Assistance Grant for the Police Department Hazardous Devices Unit - Sponsored by Danielle P. West, City Manager

The Police Department has been awarded \$372,000 from the Bureau of Justice Assistance (BJA). The Police Department was invited to apply for the Byrne Discretionary Community Project Grants/Byrne Discretionary Grants Program for FY24/25 to purchase replacement equipment for the Hazardous Devices Unit (bomb squad).

This item must be read on two separate days. This is its first reading.

AMENDMENTS:

EXECUTIVE SESSION:

ADJOURNMENT:

SPECIAL MEETING:

ZOOM INFORMATION:

The City Council will conduct this meeting from Council Chambers, located on the second floor of City Hall.

To watch the meeting remotely, please visit <https://portlandme.portal.civicclerk.com/event/6491/media>

PLEDGE OF ALLEGIANCE:

Mayor Dion led all those present in the Pledge of Allegiance.

ROLL CALL:

Mayor Dion called the meeting to order at 4:00pm.

City Councilors Present: Councilor Rodriguez, Councilor Sykes, Councilor Ali, Councilor Bullett, Councilor Phillips, Mayor Dion

Councilors Absent: Councilor Fournier, Councilor Trevorrow, Councilor Pelletier

*Councilor Trevorrow joined at 4:15pm

4:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

Mayor Dion opened the floor for public comment. The following individuals spoke:

Zack Barowitz (Huntress Street), George Rheault (Hanover Street)

ANNOUNCEMENTS:

Mayor Dion opened the floor for Council announcements. No one spoke.

APPROVAL OF MINUTES OF PREVIOUS MEETING:

City Council Meeting-4:00pm, July 15, 2024

Special City Council Meeting-5:30pm, July 15, 2024

Motion was made by Councilor Ali and seconded by Councilor Rodriguez for passage.

Passage 6-0 (Councilor Fournier, Trevorrow & Pelletier Absent)

Mayor Dion opened the floor for public comment. No one spoke.

CONSENT ITEMS:

Order 29-24/25 Granting Municipal Officers' Approval of TIQA, LLC, dba TIQA. Application for Class XI Restaurant/Lounge with Outdoor Dining on Private Property at 327 Commercial Street - Sponsored by Danielle P. West, City Manager

Orders 29-24/25 through 33-24/25 were all read and passed as consent items. Public comment was taken on all orders together.

Motion was made by Councilor Ali and seconded by Councilor Rodriguez for passage.

Passage 6-0 (Councilor Fournier, Trevorrow & Pelletier absent)

Mayor Dion opened the floor for public comment. No one spoke.

Order 30-24/25 Granting Municipal Officers' Approval of Belleflower Brewing LLC, dba Belleflower Brewing. Application for Class A Lounge with Combined Entertainment and Outdoor Dining on Private Property at 66 Cove Street - Sponsored by Danielle P. West, City Manager

Orders 29-24/25 through 33-24/25 were all read and passed as consent items. Public comment was taken on all orders together.

Motion was made by Councilor Ali and seconded by Councilor Rodriguez for passage.

Passage 6-0 (Councilor Fournier, Trevorrow & Pelletier absent)
Mayor Dion opened the floor for public comment. No one spoke.

Order 31-24/25 Granting Municipal Officers' Approval of Olive Cafe LLC, dba Olive Cafe. Application for Class I FSE at 127 Commercial Street - Sponsored by Danielle P. West, City Manager

Orders 29-24/25 through 33-24/25 were all read and passed as consent items. Public comment was taken on all orders together.
Motion was made by Councilor Ali and seconded by Councilor Rodriguez for passage.
Passage 6-0 (Councilor Fournier, Trevorrow & Pelletier absent)
Mayor Dion opened the floor for public comment. No one spoke.

Order 32-24/25 Granting Municipal Officers' Approval of Sissle and Daughters LLC, dba Sissle and Daughters. Application for Class III & IV FSE at 634 Forest Avenue - Sponsored by Danielle P. West, City Manager

Orders 29-24/25 through 33-24/25 were all read and passed as consent items. Public comment was taken on all orders together.
Motion was made by Councilor Ali and seconded by Councilor Rodriguez for passage.
Passage 6-0 (Councilor Fournier, Trevorrow & Pelletier absent)
Mayor Dion opened the floor for public comment. No one spoke.

Order 33-24/25 Granting Municipal Officers' Approval of Allagash Brewing Company, dba Allagash Brewing Company. Application for Class A Lounge with Combined Entertainment and Outdoor Dining on Private Property at 50 Industrial Way - Sponsored by Danielle P. West, City Manager

Orders 29-24/25 through 33-24/25 were all read and passed as consent items. Public comment was taken on all orders together.
Motion was made by Councilor Ali and seconded by Councilor Rodriguez for passage.
Passage 6-0 (Councilor Fournier, Trevorrow & Pelletier absent)
Mayor Dion opened the floor for public comment. No one spoke.

Order 34-24/25 Granting Municipal Officers' Approval of First Tracks Investments LLC, dba Oddfellahs. Application for Class A Restaurant/Lounge at 55 Market Street - Sponsored by Danielle P. West, City Manager

Motion was made by Councilor Sykes and seconded by Councilor Bullett to refer the item to the Health and Human Services committee.
Mayor Dion opened the floor for discussion on the motion to refer to HHS committee.
The following Councilors spoke:
Councilor Sykes, Councilor Rodriguez, Councilor Ali, Mayor Dion, Councilor Phillips 1-6 (Councilor Rodriguez, Ali, Bullett, Trevorrow, Phillips, Mayor Dion-No)(Councilor Fournier & Pelletier absent)
*Motion to refer to committee failed

Motion was made by Councilor Ali and seconded by Councilor Rodriguez for passage.
Passage 6-1 (Sykes-No) (Councilor Fournier & Pelletier absent)
Mayor Dion opened the floor for public comment. The following individuals spoke:
Stephen Scharff (Brackett Street), Jared Sawyer

UNFINISHED BUSINESS:

Order 11-24/25 Approving and Authorizing City Manager to Execute the Amended and Restated Lease Agreement With DBH Portland, LLC, for use of Hadlock Stadium for the Portland Seadogs - Sponsored by the Housing and Economic Development Committee, Pious Ali, Chair

Motion was made by Councilor Ali and seconded by Councilor Trevorrow to postpone item until September 4, 2024. Passage 7-0 (Councilor Fournier & Pelletier absent)
Item postponed until September 4, 2024

Order 19-24/25 Amending the Downtown Transit Oriented Development and Omnibus Tax Increment Financing District to Make 70 East Oxford Street an Affordable Housing Tax Increment Financing District - Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair

*Order 19-24/25 through 22-24/25 were all read into the record together and public comment was taken on all four orders at the same time.

Motion was made by Councilor Ali and seconded by Councilor Rodriguez for passage as an emergency. Passage 7-0 (Councilor Fournier & Pelletier absent)

Mayor Dion opened the floor for public comment. The following individuals spoke: Gary Vogel (Portland Housing Authority Attorney), Brian Frost (Portland Housing Authority), George Rheault (West Bayside), Jay Waterman (Portland Housing Authority), Councilor Sykes, Councilor Bullett. Councilor Ali

Order 20-24/25 Designating and Adopting the Municipal Development Program for the 70 East Oxford Street Affordable Housing Development and Tax Increment Financing District - Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair

*Order 19-24/25 through 22-24/25 were all read into the record together and public comment was taken on all four orders at the same time.

Motion was made by Councilor Bullett and seconded by Councilor Phillips to amend Order 20-24/25 to extend the term of the district from 20 to 30 years. Passage 7-0 (Councilor Fournier & Pelletier absent)

Mayor Dion opened the floor for Council discussion on the amendment. The following individuals spoke: Councilor Bullett, Councilor Sykes

Motion was made by Councilor Ali and seconded by Councilor Rodriguez for passage as an emergency, as amended. Passage 7-0 (Councilor Fournier & Pelletier absent)

Mayor Dion opened the floor for public comment. The following individuals spoke: Gary Vogel (Portland Housing Authority Attorney), Brian Frost (Portland Housing Authority), George Rheault (West Bayside), Jay Waterman (Portland Housing Authority), Councilor Sykes

*Order passed as an emergency, as amended

Order 21-24/25 Approving the COMB Block Affordable Housing Credit Enhancement Agreement with COMB Block Phase One, LP for the 70 East Oxford Street Affordable Housing Development and Tax Increment Financing District - Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair

*Order 19-24/25 through 22-24/25 were all read into the record together and public comment was taken on all four orders at the same time.

Motion was made by Councilor Bullett and seconded by Councilor Phillips to amend Order 21-24/25 to extend the term of the district from 20 to 30 years. Passage 7-0 (Councilor Fournier & Pelletier absent)

Mayor Dion opened the floor for Council discussion on the amendment. The following individuals spoke: Councilor Bullett, Councilor Sykes

Motion was made by Councilor Bullett and seconded by Councilor Phillips for passage as an emergency, as amended. Passage 7-0 (Councilor Fournier & Pelletier absent)

Mayor Dion opened the floor for public comment. The following individuals spoke: Gary Vogel (Portland Housing Authority Attorney), Brian Frost (Portland Housing Authority), George Rheault (West Bayside), Jay Waterman (Portland Housing Authority), Councilor Sykes

*Order passed as an emergency, as an emergency

Order 22-24/25 Appropriating \$650,000 from the Jill C. Duson Housing Trust Fund to Portland Housing Development Corporation, COMB Block Phase One, LP RE: 70 East Oxford Street - Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair

*Order 19-24/25 through 22-24/25 were all read into the record together and public comment was taken on all four orders at the same time.

Motion was made by Councilor Bullett and seconded by Councilor Rodriguez to amend Order 22-24/25 to reduce the interest rate to 0%. Passage 7-0 (Councilor Fournier & Pelletier absent)

Mayor Dion opened the floor for Council discussion on the amendment. The following individuals spoke: Councilor Bullett

Motion was made by Councilor Ali and seconded by Councilor Bullett for passage as an emergency, as amended. Passage 7-0 (Councilor Fournier & Pelletier absent)

Mayor Dion opened the floor for public comment. The following individuals spoke: Gary Vogel (Portland Housing Authority Attorney), Brian Frost (Portland Housing Authority), George Rheault (West Bayside), Jay Waterman (Portland Housing Authority), Councilor Sykes

*Order passed as an emergency, as amended

Order 24-24/25 Amendment to Portland City Code Chapter 9 RE: Peaks Island Council; Nomination and Appointment of Members; Procedural Requirements for Meetings - Sponsored by Danielle P. West, City Manager

Motion was made by Councilor Ali and seconded by Councilor Trevorrow for passage.
Passage 7-0 (Councilor Fournier & Pelletier Absent)
Mayor Dion opened the floor for public comment. The following individuals spoke:
Councilor Phillips, Councilor Rodriguez, Councilor Bullett, Mayor Dion

Order 28-24/25 Amendment to Portland City Code Chapter 6 RE: Short Term Rental Unit Registration Requirements - Sponsored by Housing and Economic Development Committee, Councilor Pious Ali, Chair

Order 28-24/25 & 23-24/25 were all read into the record together and public comment was taken on all four orders at the same time.

Motion was made by Councilor Ali and seconded by Councilor Sykes for passage, as amended. Passage 7-0 (Councilor Fournier & Pelletier absent)
Mayor Dion opened the floor for public comment. The following individuals spoke:
Gill Helmic (Munjoy Hill), Paul (North Street), Kevin Brecky (North Deering), Ian (Munjoy Hill), Betty Caton (Holly Street), Julie (Munjoy Hill), Simon (West End), George Rheault (Hanover Street), Maggie Wheeler (Smith Street), Wes Pelletier (Crescent Street) Beth Ingal, Councilor Rodriguez

Motion was made by Councilor Sykes and seconded by Councilor Ali to amend Order 28. Passage 7-0
Amendment titled "Skyes Amendment 1" in the backup material. Passage 7-0 (Councilor Fournier & Pelletier Absent)
Mayor Dion opened the floor for Council discussion on the amendment. The following individuals spoke: Councilor Sykes, Michael Goldman (Corporation Counsel)

Motion was made by Councilor Rodriguez and seconded by Councilor Ali to amend Order 28 to raise the limitation on the number of non-owner occupied mainland short-term rental units from 1.5% to 2%.
The following individuals commented on the amendment: Councilor Rodriguez, Councilor Ali, Councilor Phillips, Jessica Hanscomb (Director of Permitting and Inspections). Vote 2-5 (Sykes, Ali, Bullett, Trevorrow, Phillips-No)
Motion to amend failed.

Order 23-24/25 Setting an Election Date on an Amendment to the Portland City Code RE: an Act to Amend Portland's Short Term Rental Unit Registration Requirements - Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair

Order 28-24/25 & 23-24/25 were all read into the record together and public comment was taken on all four orders at the same time.

Motion was made by Councilor Sykes and seconded by Councilor Ali for passage.
Passage 7-0 (Councilor Fournier & Pelletier absent)
Mayor Dion opened the floor for public comment. The following individuals spoke:
Gill Helmic (Munjoy Hill), Paul (North Street), Kevin Brecky (North Deering), Ian (Munjoy Hill), Betty Caton (Holly Street), Julie (Munjoy Hill), Simon (West End), George Rheault (Hanover Street), Maggie Wheeler (Smith Street), Wes Pelletier

(Crescent Street) Beth Ingal

Motion was made by Councilor Sykes and seconded by Councilor Ali to amend Order 23. Vote:4-3, Motion failed. (Councilor Ali, Bullett, Mayor Dion-No) (Councilor Fournier & Pelletier Absent)

Amendment titled "Skyes Amendment 2" in the backup material.

Mayor Dion opened the floor for Council discussion on the amendment. The following individuals spoke: Councilor Sykes, Mayor Dion, Jessica Hanscomb (Director of Permitting and Inspection), Councilor Bullett, Danielle West (City Manager), Councilor Rodriguez, Michael Goldman (Corporation Counsel), Councilor Trevorow

Order 25-24/25 Setting Election Date on an Amendment to Chapter 33 of the Portland City Code RE: an Act to Increase Portland's Minimum Wage - Sponsored by Councilor Regina Phillips, Councilor Anna Trevorow, Councilor Kate Sykes

Order 25-24/25 & 26-24/25 were all read into the record together and public comment was taken on both orders at the same time.

Mayor Dion opened the floor for public comment. The following individuals spoke: Joshua Chaison (President of Restaurant Workers of America), Millie Norton (Server at Beckys Diner), Sydney (Server at Gritty McDuffs), Sarah Webster (Server at Shipyard Brewing), Kylie Shay (Server in Portland), Grace Garrett (District 5/Brunos Server), Tim Hill on behalf of Jessica Falero (District 3), Bruno Napolitano (Brunos Restaurant), Mark Riley (Portland Worker), Daniel Napolitano (Brunos Restaurant), Brandon Williams (Scales), Patty Sterrat (North Deering), Karen McDonald (Port Resources), Becky Rand (Beckys Diner), Sean Mccarthy (Dock Fore), Madison Raymond (Parkside), Wes Pelletier (Crescent Street), Amber (Portland Server), Bradley Davis (Sawyer Street), Moses Sabina (Hot Suppa), Mike Fraser (East End), Jill (Three Dollar Deweys), Jared Sawyer (District 2), Innes Jenningshoff (West End), Damien (Bolton Street), Eammon Dundon (Portland Regional Chamber), David Turrin (Davids Restaurant), Nate Clutier (Hospitality Maine), Hamas (Park Street), Susie Geary (Brunos), Paul Napalitano (Brunos), Steve Demillo (Demillos on the Water), Jeff (Director of Operations for Davids),

Council Discussion: Councilor Sykes, Councilor Trevorow, Councilor Rodriguez, Councilor Bullett, Mayor Dion, Councilor Phillips, Councilor Ali

Motion was made by Councilor Phillips and seconded by Councilor Sykes to refer item to Housing and Economic Development Committee. Passed 5-2 (Sykes & Trevorow-No) (Fournier & Pelletier absent)

Item referred to HEDC Committee.

Order 26-24/25 Setting Election Date on an Amendment to Chapter 33 of the Portland City Code RE: an Act to Eliminate Portland's Sub-Minimum Wage for Service Employees - Sponsored by Councilor Victoria Pelletier, Councilor Anna Trevorow, Councilor Kate Sykes

Order 25-24/25 & 26-24/25 were all read into the record together and public comment was taken on both orders at the same time.

Mayor Dion opened the floor for public comment. The following individuals spoke: Joshua Chaison (President of Restaurant Workers of America), Millie Norton (Server at Beckys Diner), Sydney (Server at Gritty McDuffs), Sarah Webster (Server at Shipyard Brewing), Kylie Shay (Server in Portland), Grace Garrett (District 5/Brunos Server), Tim Hill on behalf of Jessica Falero (District 3), Bruno Napolitano (Brunos Restaurant), Mark Riley (Portland Worker), Daniel Napolitano (Brunos Restaurant), Brandon Williams (Scales), Patty Sterrat (North Deering), Karen McDonald (Port Resources), Becky Rand (Beckys Diner), Sean McCarthy (Dock Fore), Madison Raymond (Parkside), Wes Pelletier (Crescent Street), Amber (Portland Server), Bradley Davis (Sawyer Street), Moses Sabina (Hot Suppa), Mike Fraser (East End), Jill (Three Dollar Deweys), Jared Sawyer (District 2), Innes Jenninghoff (West End), Damien (Bolton Street), Eammon Dundon (Portland Regional Chamber), David Turrin (Davids Restaurant), Nate Clutier (Hospitality Maine), Hamas (Park Street), Susie Geary (Brunos), Paul Napolitano (Brunos), Steve Demillo (Demillos on the Water), Jeff (Director of Operations for Davids),

Council Discussion: Councilor Sykes, Councilor Trevorrow, Councilor Rodriguez, Councilor Bullett, Mayor Dion, Councilor Phillips, Councilor Ali

Motion was made by Councilor Rodriguez and seconded by Councilor Ali to refer item to Housing and Economic Development Committee. Passed 5-2 (Sykes & Trevorrow-No) (Fournier & Pelletier absent)

Item referred to HEDC Committee.

Order 27-24/25 Amendment to Portland City Code Chapter 17 RE: Repeal of Section 17-5 - Sponsored by Health and Human Services and Public Safety Committee, April Fournier, Chair

Motion was made by Councilor Trevorrow and seconded by Councilor Rodriguez for passage. Passage 6-1 (Rodriguez-No), (Councilor Fournier & Pelletier Absent)

Mayor Dion opened the floor for public comment. The following individuals spoke: Stephen Scharff (Brackett Street), George Rheault (West Bayside), Councilor Phillips, Councilor Bullett, Councilor Ali, Mayor Dion, Councilor Trevorrow

ORDERS:

Order 35-24/25 Setting Election Date on a Citizen Initiative Amendment to the Portland City Code RE: An Act to Amend the City of Portland's Emergency Wage Provision - Sponsored by Ashley Rand, City Clerk

Motion was made by Councilor Trevorrow and seconded by Councilor Rodriguez for passage. Passage 7-0 (Councilor Fournier & Pelletier Absent)

Mayor Dion opened the floor for public comment. No one spoke.

AMENDMENTS:

EXECUTIVE SESSION:

ADJOURNMENT:

Motion was made by Councilor Bullett and seconded by Councilor Trevorrow to adjourn. Passage 7-0
(Councilors Fournier & Pelletier absent) at 9:02pm.
A TRUE RECORD

Ashley Rand, City Clerk

ZOOM INFORMATION:

The City Council will conduct this meeting from Council Chambers, located on the second floor of City Hall.

To watch the meeting remotely, please visit <https://portlandme.portal.civicclerk.com/event/7274/media>

PLEDGE OF ALLEGIANCE:

Mayor Dion led all Councilors present in the Pledge of Allegiance.

ROLL CALL:

Mayor Dion called the meeting to order at 9:12pm.

City Councilors Present: Councilor Rodriguez, Councilor Sykes, Councilor Ali, Councilor Bullett, Councilor Trevorrow, Councilor Phillips, Mayor Dion

Councilors Absent: Councilor Fournier, Councilor Pelletier

5:30 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

Mayor Dion opened the floor for public comment. The following individuals spoke:

George Rheault (Hanover Street), Stephen Scharff (Brackett Street)

ANNOUNCEMENTS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

APPOINTMENTS:

Order 36-24/25 Appointing Councilor Pious Ali to the Maine Municipal Association Executive Committee - Sponsored by Danielle P. West, City Manager

Motion was made by Councilor Rodriguez and seconded by Councilor Phillips for passage. Passage 7-0 (Councilor Fournier & Pelletier Absent)

Mayor Dion opened the floor for public comment. No one spoke.

CONSENT ITEMS:

Order 37-24/25 Declaring September 22, 2024 the Water Lantern Festival - Sponsored by Danielle P. West, City Manager

Motion was made by Councilor Rodriguez and seconded by Councilor Trevorrow for passage. Passage 7-0 (Councilor Fournier & Pelletier Absent)

Mayor Dion opened the floor for public comment. The following individuals spoke: Stephen Scharff (Brackett Street), Councilor Bullett

ORDERS:

Order 38-24/25 Designating 42 Atlantic Street an Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair

Motion was made by Councilor Rodriguez and seconded by Councilor Trevorrow to waive second read. Passage 7-0. (Councilor Fournier & Pelletier Absent)

*Second reading waived.

Motion was made by Councilor Rodriguez and seconded by Councilor Sykes for passage

as an emergency. Passage 7-0 (Councilor Fournier & Pelletier Absent)
Mayor Dion opened the floor for public comment. Comment: George Rheault (West Bayside), Todd Morse (Bayside), (LB Atlantic LLC), Councilor Trevorror, Councilor Phillips, Councilor Bullett

*Item passed as an emergency. Takes effect immediately.

Order 39-24/25 Approving the 42 Atlantic Street Affordable Housing Credit Enhancement Agreement with LB Atlantic LLC - Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair

Motion was made by Councilor Rodriguez and seconded by Councilor Bullett to waive second read. Passage 7-0. (Councilor Fournier & Pelletier Absent)

*Second reading waived.

Motion was made by Councilor Ali and seconded by Councilor Trevorror for passage as an emergency. Passage 7-0 (Councilor Fournier & Pelletier Absent)

Mayor Dion opened the floor for public comment. Comment: George Rheault (West Bayside), Todd Morse (Bayside), Dan Black (LB Atlantic LLC), Councilor Trevorror, Councilor Phillips, Councilor Bullett

*Item passed as an emergency. Takes effect immediately.

Order 40-24/25 Order Accepting and Appropriating \$50,000 in Assistance to Firefighters Grant Funding from the Federal Emergency Management Agency - Sponsored by Danielle P. West, City Manager

Motion was made by Councilor Phillips and seconded by Councilor Bullett to waive second read. Passage 7-0. (Councilor Fournier & Pelletier Absent)

*Second reading waived.

Motion was made by Councilor Ali and seconded by Councilor Rodriguez for passage as an emergency. Passage 7-0 (Councilor Fournier & Pelletier Absent)

Mayor Dion opened the floor for public comment. No one spoke.

*Item passed as an emergency. Takes effect immediately.

Order 41-24/25 Approving Three-Party Partnership Agreements Between the City of Portland, the Maine Department of Transportation, and the Portland Area Comprehensive Transportation System RE: Improvements to Riverside Street and Washington Avenue - Sponsored by Danielle P. West, City Manager

This is first reading.

Order 42-24/25 Accepting and Appropriating a \$90,000 Donation and a \$30,000 Grant for the Lincoln Park Fence Project - Sponsored by Danielle P. West, Manager

This is first reading.

AMENDMENTS:

Order 43-24/25 Amendment to the Portland City Code Chapter 6 RE: National Electric Code - Sponsored by Danielle P. West, City Manager

This is first reading.

EXECUTIVE SESSION:

ADJOURNMENT:

Motion was made by Councilor Ali and seconded by Councilor Bullett to adjourn. Passage 7-0 (Councilors Fournier & Pelletier absent) at 9:40pm.

A TRUE RECORD

Ashley Rand, City Clerk

**CITY OF PORTLAND
IN THE CITY COUNCIL**

P R O C L A M A T I O N

HONORING THE PORTLAND 11/12 YEAR OLD ALL STARS BASEBALL TEAM

- WHEREAS,** the Portland 11/12 Year Old All Stars Baseball Team has demonstrated exceptional athletic ability, teamwork, and sportsmanship throughout their season, representing the City of Portland with pride and distinction; and
- WHEREAS,** this remarkable team has achieved significant milestones, including being crowned the Maine District 6 Champions with an undefeated record of 3 wins and 0 losses, the Maine State Champions with another undefeated record of 3 wins and 0 losses, and becoming the New England Regional Runner-Up with 2 wins and 1 loss; and
- WHEREAS,** the Portland 11/12 Year Old All Stars are the first team from Portland since 2013 to win the District 6 Championship and only the fifth team from Portland to win the State Championship since Little League Baseball began in Maine in 1951, a feat last accomplished in 2007; and
- WHEREAS,** the team displayed extraordinary skill and determination on the field, achieving a collective batting average of .324, amassing 71 hits including 10 doubles, 3 triples, and a grand slam home run, while scoring 46 runs and allowing only 9; and
- WHEREAS,** the team's pitching staff boasted an impressive ERA of .509, allowing less than one earned run per game, and even threw a no-hitter during the state tournament, alongside a fielding percentage of .969, reflecting their excellence in all aspects of the game; and
- WHEREAS,** the Portland 11/12 Year Old All Stars were proudly represented by talented young athletes from Peaks Island School, Moore Middle School, Lincoln Middle School, Longfellow Elementary School, and St. Brigid School, showcasing the unity and diverse talent within our community; and
- WHEREAS,** the coaches, parents, and volunteers of the Portland Little League have dedicated their time, energy, and resources to supporting these young athletes, fostering a spirit of camaraderie and a love for the game that extends beyond the playing field; and
- WHEREAS,** the City of Portland is proud to recognize the achievements of the Portland 11/12 Year Old All Stars Baseball Team, celebrating their success and the positive values they embody;

NOW, THEREFORE, BE IT RESOLVED, THAT I, Mark Dion, Mayor of the City of Portland, Maine, and members of the Portland City Council, do hereby proclaim do hereby proclaim our heartfelt congratulations and deep appreciation to the Portland 11/12 Year Old All Stars Baseball Team for their outstanding season and contributions to our community.

Signed and sealed this 4th day of September, 2024



**Mark Dion, Mayor
City of Portland**

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D FOURNIER (A/L)
ROBERTO RODRIGUEZ (A/L)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

ANNA TREVORROW (1)
VICTORIA PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

P R O C L A M A T I O N
RECOGNIZING
WELCOME WEEK 2024

WHEREAS, The week of September 13th through September 22nd, 2024 is recognized by organizations and communities across the United States as Welcoming Week; and

WHEREAS, During Welcoming Week and throughout the year, the City of Portland encourages neighbors of all backgrounds to join together, building strong relationships and affirming the importance of welcoming and inclusive places in achieving collective prosperity; and

WHEREAS, For hundreds of years, migrants have added to our community's economic strength and cultural richness; and

WHEREAS, New residents are a vital part of our community, sharing their energy and ideas, starting businesses, providing civic leadership, working in critical industries, and contributing to the vibrant diversity of our city; and

WHEREAS, Hate for and fear of those perceived as different threatens our collective well-being, health, and prosperity. As a welcoming city, we are committed to addressing disparities, countering hate, understanding history, and helping neighbors come together; and

WHEREAS, By fostering a welcoming environment for all we enhance Portland's health, economic prosperity, and well-being for current and future generations; and

NOW, THEREFORE, BE IT RESOLVED, THAT I, Mark Dion, Mayor of the City of Portland, Maine, and members of the Portland City Council, do hereby recognize the week of September 13th through September 22nd, 2024 as Welcoming Week.

Signed and sealed this 4th day of September, 2024



**Mark Dion, Mayor
City of Portland**

P R O C L A M A T I O N

RECOGNIZING

SEPTEMBER 2024 AS AFRICAN IMMIGRANT HERITAGE MONTH

WHEREAS, it has been more than 400 years since the first Africans were involuntarily brought to the shores of the Americas; and

WHEREAS, the descendants of enslaved Africans in the United States of America are known as Black Americans, or African Americans, and have for generations called Portland home; and

WHEREAS, over the past several decades many people have migrated from the African continent to settle in Portland and throughout the United States, and the two communities together are known as Africans in Diaspora; and

WHEREAS, immigrant Americans of African heritage in the United States come from all regions in Africa and do not constitute a homogeneous group, including people from different national, linguistic, ethnic, racial, cultural, and social backgrounds; and

WHEREAS, the month of September is recognized as African Heritage Month in many parts of the United States; and

WHEREAS, members of the African Diaspora in Portland enrich the social fabric of our community and contribute significantly to the education, economy, and social vitality of this city; and

WHEREAS, African Heritage Month is an opportunity to support and celebrate the culture and heritage of the African Diaspora by increasing the visibility of this vibrant community in Portland; and

NOW, THEREFORE, BE IT RESOLVED, THAT I, Mark Dion, Mayor of the City of Portland, Maine, and members of the Portland City Council, do hereby recognize September 2024 as African Immigrant Heritage Month and encourage the residents of Portland to appreciate and engage with our neighbors in the African Diaspora this month and every month.

Signed and sealed this 4th day of September, 2024



Mark Dion, Mayor
City of Portland

P R O C L A M A T I O N

RECOGNIZING THE 111TH ANNIVERSARY OF THOMAS PARK

WHEREAS, Thomas Park, a public city park connecting the Libbytown neighborhood, businesses, religious entities will celebrate its 111th Anniversary on Sunday, September 15, 2024, having been established by the City of Portland in 1913; and

WHEREAS, Thomas Park strives to be an equal access green space for any member of the public to gather for celebrations, recreation, revitalization, play, and exploration, providing people from all walks of life access to nature; and

WHEREAS, Thomas Park amenities, including linden trees, electrical access, and architectural lighting in the tree canopy create an attractive gateway to the City of Portland, and expand opportunities for connections between people and the outdoors; and

WHEREAS, The Friends of Thomas Park, in cooperation with the Libbytown Neighborhood Association, University Neighborhood Organization, and Portland Parks, Recreation, and Facilities, share the vision to care for and activate Thomas Park, helping to enhance the role of the park in the lives of Portland residents; and

WHEREAS, Friends of Thomas Park, the Libbytown Neighborhood Association and the University Neighborhood Organization, organized this historic event to help residents celebrate the 111th anniversary of the Park and learn about its history from Herb Adams, Portland Historian; Regina Phillips, City Councilor; and Elias Thomas III and Heather Beaupre, direct descendants of the Elias Thomas Family, who generously gave this triangle shaped land between Lowell, Burnham and Congress Street to the city of Portland for \$1.00; and

NOW, THEREFORE, BE IT RESOLVED, THAT I, Mark Dion, Mayor of the City of Portland, Maine, and members of the Portland City Council, do hereby recognize Thomas Park on the 111th Anniversary of its inception, and express my appreciation for the Friends of Thomas Park, Libbytown Neighborhood Association and the University Neighborhood Organization's outstanding community service work and dedicated stewardship of this treasured public resource.

Signed and sealed this 4th day of September, 2024



**Mark Dion, Mayor
City of Portland**

MEMORANDUM
City Council Agenda Item

FROM:

DATE: August 7, 2024

SUBJECT: Resolve 1-24/25 Calling for the Divestment of Funds from Entities Complicit in the Humanitarian Crisis in Gaza - Sponsored by April Fournier, City Councilor

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

**Final
Action**

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: No

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

The City of Portland recognizes the ongoing humanitarian crisis in Gaza and seeks to avoid economically supporting this crisis through the City's financial investment.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Resolve - Calling for the City of Portland to Divest Any and All Public Monies from Entities Complicit in the Current and Ongoing Humanitarian Crisis
2. 09.04.24 Public Comment - Resolve 1

Prepared by:

Date: 08/07/2024

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

**RESOLUTION CALLING FOR THE CITY OF PORTLAND TO DIVEST ANY
AND ALL PUBLIC MONIES FROM ENTITIES COMPLICIT IN THE
CURRENT AND ONGOING HUMANITARIAN CRISIS IN GAZA, INCLUDING
ALL ENTITIES ASSISTING ISRAEL IN THE OPPRESSION OF THE
PALESTINIAN PEOPLE**

WHEREAS, the Mayor and the City Council of the City of Portland Maine recognize the importance of peace and security for all communities and nations around the world regardless of national, ethnic or religious affiliations, and advocate for the safety, dignity, freedom, and equality of all people; and

WHEREAS, the Mayor and the City Council of the City of Portland recognize that all human life is precious; and

WHEREAS, since October 7, 2023, over 37,000 Palestinians, including 14,000 children, have been killed by Israeli attacks on Gaza, with thousands estimated to be buried under the wreckage or missing; and

WHEREAS, 1.1 million Palestinians in Gaza face imminent famine, with the region's Integrated Food Security Phase Classification (IPC) now designated as "Catastrophic"— the most severe level of food insecurity possible; and

WHEREAS, over 79,000 Palestinians in Gaza have been wounded, while less than a fourth of Gaza's hospitals remain and are only partially functional; and

WHEREAS, on January 3, 2024, by Resolve 7-23/24, the Mayor and the City Council of the City of Portland called for an immediate ceasefire in Gaza and Israel; and

WHEREAS, the entities on the attached Divestment List are complicit in Israel's violation of international law as these corporations, as investigated by the United Nations and multiple humanitarian aid organizations, are known to a) provide Israel with weapons and other military equipment used in Gaza, b) operate in and contribute to the expansion of Israel's illegal settlements, c) enable or profit from the ongoing Israeli occupation and oppression of the Palestinian people when it is feasible and carries no financial penalty to the City; and

WHEREAS, the City of Portland recognizes the ongoing humanitarian crisis in Gaza and seeks to avoid economically supporting this crisis through the City's financial investments; and

WHEREAS, the Mayor and City Council of the City of Portland advocate for the city's finances to align with residents' values.

NOW, THEREFORE, BE IT RESOLVED, that the City Council urges that the City Manager divest the City of Portland from all entities complicit in the current and ongoing humanitarian crisis in Gaza and occupation of Palestine, including, without limitation, all entities on the Divestment List when it is feasible and carries no financial penalty to the City; and

BE IT FURTHER RESOLVED, regardless of current investments, that the City Council urges the City Manager to not make any future directly held general fund investment in any entities complicit in the humanitarian crisis in Gaza and occupation of Palestine, including, without limitation, the entities on the Divestment List or make any investments in the Israeli military in the form of Israel Bonds; and

BE IT FURTHER RESOLVED, that this resolve will remain in effect as long as the occupation of the Palestinian Territories and the violations of human rights and international law, such as those described above, continue.

Divestment List

[Alony-Hetz Properties & Investments Ltd](#)

[Alstom SA](#)

[Altice Europe NV](#)

[Amir Marketing & Investments In Agriculture Ltd](#)

[Ashtrom Group Ltd](#)

[B Communications Ltd](#)

[BAE Systems PLC](#)

[Bank Hapoalim BM](#)

[Bank Leumi Le-Israel BM](#)

[Bank of Jerusalem Ltd](#)

[Barclay's](#)

[Bezeq The Israeli Telecommunication Corp Ltd](#)

[Boeing Co](#)

[C Mer Industries Ltd](#)

[Cadre Holdings Inc](#)

[CAF](#)

[Caterpillar Inc](#)

[Cellcom Israel Ltd](#)
[Cemex SAB de CV](#)
[Chevron Corp](#)
[Colt CZ Group SE](#)
[Danya Cebus Ltd](#)
[Delek Group Ltd](#)
[Dor Alon Energy In Israel](#)
[Elbit Systems Ltd](#)
[Elco Ltd](#)
[Electra Ltd](#)
[Energix-Renewable Energies Ltd](#)
[Export Investment Corp Ltd](#)
[F I B I Holding Ltd](#)
[First International Bank of Israel Ltd](#)
[Formula Systems \(1985\) Ltd](#)
[Fosun International Ltd](#)
[G1 Secure Solutions Ltd](#)
[Genasys Inc](#)
[General Dynamics Corp](#)
[General Electric Co](#)
[Genie Energy Ltd](#)
[Heidelberg Materials AG](#)
[HD HYUNDAI](#)
[HIK VISION](#)
[Intel](#)
[Internet Gold-Golden Lines Ltd](#)
[Israel Aerospace Industries Ltd](#)
[Israel Bonds](#)
[Israel Discount Bank Ltd](#)
[JCB](#)
[Kardan NV](#)
[L3Harris Technologies Inc](#)
[Lapidoth Capital Ltd](#)
[Lesico Ltd](#)
[Lockheed Martin Corp](#)
[Matrix IT Ltd](#)
[Mega Or Holdings Ltd](#)
[Mivne Real Estate \(K.D\) Ltd](#)
[Mizrahi Tefahot Bank Ltd](#)
[Mordechai Aviv Taasiot Beniyah \(1973\) Ltd](#)
[Motorola Solutions Inc](#)
[Municipal Bank Ltd](#)

[Northrop Grumman Corp](#)
[Oron Group Investments & Holdings Ltd](#)
[Palantir Technologies Inc](#)
[Partner Communications Co Ltd](#)
[Paz Oil Co Ltd](#)
[Primo Water Corporation](#)
[Rami Levi Chain Stores Hashikma Marketing 2006 Ltd](#)
[RENK Group AG](#)
[Rolls-Royce Holdings plc](#)
[Rotshtein Real Estate Ltd](#)
[RTX Corp](#)
[Salomon A. Angel Ltd](#)
[Senstar Technologies Corp](#)
[Shapir Engineering and Industry Ltd](#)
[Shikun & Binui Ltd](#)
[Shufersal Ltd](#)
[Shunfeng International Clean Energy Ltd](#)
[Sturm Ruger & Company Inc](#)
[Textron Inc](#)
[Themis GREN Ltd](#)
[Thyssenkrupp AG](#)
[Tigbur- Temporary Professional Personnel Ltd](#)
[TKH SECURITY](#)
[Valero Energy Corp](#)
[Volvo](#)
[Z M H Hammerman Ltd](#)

Support for Portland divesting funds from entities complicit in the genocide in Gaza

'Yusuf Ebrahim' via City Manager
Sun, Sep 1, 11:49 AM

City Manager Danielle West,

Hello,

My name is Yusuf Ebrahim. I am an Iraqi-American resident of Portland Maine for the past 3 years. I am writing to voice my absolute support for the upcoming resolution to divest funds from all entities complicit in the ongoing horrific genocide in Gaza and the West Bank. I deeply love Portland and Maine and feel so lucky to be a part of this community, it is home for me and my wife, and full of such wonderful, diverse, and welcoming people, nature, and culture. I am so grateful and proud of my city and the council unanimously passing the ceasefire resolution this spring of 2024.

The next step to take for peace & justice is to put words into material action, and pass this vote to divest funds from entities complicit with the ongoing genocide in Palestine. This includes any entities linked directly or indirectly with the state of Israel and especially any entities that provide arms to it. So far, over 40,000 Palestinians have been killed in the genocide by the state of Israel, mostly women and children, including over 2% of all children in Palestine. Over 1 million people have been displaced. Most hospitals in Gaza have been either destroyed or rendered inoperable by bombing and hundreds of healthcare workers and journalists have been killed. This genocide has largely been funded by the U.S. government and would not have been possible without the constant supplies of arms, including hundreds of air deliveries of weapons that have included thousands of large bombs. I live in constant horror at these ongoing daily atrocities, as a physician who works in Portland and as a human being.

Voting "Yes" to divest our funds from this horrific genocide is a message that Portland does not stand for genocide of any people from any background, but rather will stand for justice, peace, and human rights. It also makes it clear that Portland is a welcoming place for new Mainers of any background. I have the utmost faith and pride in our wonderful city and am very grateful for your consideration of this important resolution.

Sincerely,
Yusuf Ebrahim

Yusuf Ebrahim
yusufmte@gmail.com
395 Saint John Street Apt #2 Apt #2
Portland, Maine 04102

Divest from Israel

'Eva Fury' via City Manager
Sun, Sep 1, 12:26 PM

City Manager Danielle West,

As an American Jew, I'm horrified by the genocide Israel is carrying out against Palestine. I don't want my tax dollars funding genocide and mindless violence. Please pass the resolution to divest from Israel and help Portland stand on the right side of history.

Eva Fury
lawtonfury@gmail.com
172 Falmouth Street
Portland , Maine 04102

Resolve 1-24/25

'James Parker Foley' via City Manager
Sun, Sep 1, 12:30 PM

City Manager Danielle West,

I'm a Portland resident and I am deeply upset by what has been happening in Gaza and I don't want any of my money now or in the future to support the violence happening in Palestine. Thank you.

James Parker Foley
jamesparkerfoley@gmail.com
48 Morning St.
Portland, Maine 04101

Divest from Israel

'Soraia Matari' via City Manager
Sun, Sep 1, 12:36 PM

City Manager Danielle West,

Hello to all City Counselor and Manager,

As a Palestinian / American I have watched in horror the Genocide happening in Gaza in the past 11 months. Israel has killed thousands of civilians, and worse yet, half of them were innocent children. I ask with a broken heart, and with urgency that our tax dollars not get invested towards more ammunition for the Israeli army to continue killing the innocent. Let's use our tax dollars to get the homeless off the streets of Portland, to offer health care to the ones that can no longer afford it. Let's DIVEST from Israel!!! Let's help our neighbors here in our great city of Portland.

Thanking you in advance,

Soraia Matari
Owner of SS LeMax, LLC
Portland, Maine

Soraia Matari
soraiafmatari@gmail.com
471-473 Cumberland Ave
Portland, Maine 04101

End genocide in Palestine

'Rebekah Giacomantonio' via City Manager
Sun, Sep 1, 12:40 PM

City Manager Danielle West,

Hi there,

I am horrified by what is happening in Palestine and do not want my money now or in the future to support Israel's unjust and inhumane actions in Palestine. I ask you to vote with Palestinians and constituents like me in mind. Vote for justice. Defund Israel. Thank you.

Rebekah Giacomantonio
bekah.giaco@gmail.com
40 Webb Street
Portland, Maine 04102

Yes to divest

'John Mahon' via City Manager
Sun, Sep 1, 12:58 PM

City Manager Danielle West,

I live in Portland, and I support the movement to divest from Israeli companies.

John Mahon
jafamahon@gmail.com
40 Webb Street
Portland, Maine 04102

In support of divesting from genocide

'Julian Rowand' via City Manager
Sun, Sep 1, 1:11 PM

City Manager Danielle West,

Dear Councilors:

I write as someone who works and organizes in Portland. For many of the community leaders I'm connected with through my work, there is no more urgent issue at this moment than to stop the genocide in Gaza (and the West Bank). We were absolutely supportive of the Council's adoption of the ceasefire resolution this spring. We stand with you in support of Resolve 1-24/25 Calling for the Divestment of Funds from Entities Complicit in the Humanitarian Crisis in Gaza. Thank you. Respectfully submitted, Julian Rowand

Julian Rowand
julian.rowand@gmail.com
57 Exchange Street
Portland, Maine 04101

Divest!

'Abigail Fuller' via City Manager
Sun, Sep 1, 1:31 PM

City Manager Danielle West,

Dear Councilors,

I am a Portland resident and will very much appreciate your vote to pass the policy divesting from companies that are complicit in the Israeli massacre and destruction in Gaza. Thank you!

Abby Fuller

57 Deering Run Dr.

Abigail Fuller

fullerwollman@gmail.com

57 Deering Run Dr.

Portland, Maine 04103

Support BDS

'Laura Robitzek' via City Manager
Sun, Sep 1, 2:00 PM

City Manager Danielle West,

Hello Councilors,

As a resident of Portland, the partner to a Palestinian American and the mother to two Palestinian children, I am beyond proud to see BDS on the agenda for the upcoming council meeting. Please, please, please support the motion to divest from Israel.

It is a moral stain on our country, state and city to be using tax dollars to fund genocide and settlements built on stolen land.

Thank you for working to uphold a standard of humanity, that very few have.

Please divest!

Thank you,
Laura

Laura Robitzek
lrobitzek@gmail.com
2 Spring Ave
Portland - GDI, Maine 04109

Divest

'Colleen Kinsella' via City Manager
Sun, Sep 1, 2:10 PM

City Manager Danielle West,

Dear Portland City Council,

Please take the next step in following through on the Ceasefire resolution you passed and support the resolution to divest from companies complicit in arms sales across the globe and especially in Palestine.

Thank you for your time and consideration,
Colleen Kinsella
65 Preble St
South Portland

Colleen Kinsella
colleenkinsella@yahoo.com
65 preble st
South Portland, Maine 04106

Divest the pensions

'Zach Mueller' via City Manager
Sun, Sep 1, 3:17 PM

City Manager Danielle West,

Please divest whatever funds in Maine are benefiting from Israel. There are plenty of other ways to invest that are not tied to genocide.

Zach Mueller
zacharymichaelmueller@gmail.com
202 Washington ave
Portland, Maine 04101

Divest Now

'Rachel Stella' via City Manager
Sun, Sep 1, 4:27 PM

City Manager Danielle West,

Hello City Councilors, Manager and Mayor,

I am a resident of District 2 in Portland. The time to divest has been delayed but it is never too late to make a stand. That time is now. There is no denying that a genocide is happening and the U.S is breaking American and International laws to enable this genocide. We must do what we can to make our voices heard and to save as many Palestinian lives as we can. This genocide must end. Vote to divest.

-Rachel Stella

Rachel Stella
soulsuite86@gmail.com
84 Carleton Street
Portland, Maine 04102

'Katie Devlin' via City Manager
Sun, Sep 1, 4:43 PM

City Manager Danielle West,

I am horrified by the senseless slaughter of civilians in Gaza and disappointed by the United States government's continued support for the Israel despite multiple reports of war crimes and illegal occupation by the ICJ and ICC. Don't use my tax dollars to support genocide.

Katie Devlin
katherineashbydevlin@gmail.com
111 Sherman Street
Portland, Maine 04101

Divest from Genocide

'Andrea Swiedom' via City Manager
Sun, Sep 1, 11:47 AM

City Manager Danielle West,

Hello Portland City Councilors, Mayor, and City Manager,

Thank you for your continued solidarity in policies demonstrating your constituents demand to end the genocide and all supporting efforts to massacre Palestinian People. I ask that you take another bold move to represent the People of Portland and pass the resolution Calling for the Divestment of Funds from Entities Complicit in the Humanitarian Crisis in Gaza.

This will be a historic vote that I will hold you accountable for in future elections. It is imperative that you represent the will of the people even if it is not in alignment with your own views. Thank you for your support!

- Andrea Swiedom (District 2)

Andrea Swiedom
aswiedom@gmail.com
129 Grant Street, Apt. 18
Portland, Maine 04101

Divest Portland from the Palestinian Genocide

'VIVA L'Ouverture' via City Manager
Sun, Sep 1, 4:44 PM

City Manager Danielle West,

Dear Councilor,

You represent me in this regard, and so I implore you to please vote to name Israel as the aggressor in the ongoing extermination campaign against the Palestinian people and divest Portland from this ongoing outrage.

This violence is unreasonable and unacceptable. Our complicity as a community in this horrific brutality is beyond unacceptable. As individuals, so many of us Americans feel powerless to stop it that many are losing faith in the entire democratic system, but as my representative you can make the decision to change that, to give us hope, and to make a statement for the rest of the country and history to make note of.

Please vote to protect our communities from violence, even and especially our community members outside of Portland who are impacted by us.

Please divest from Israel. Make history as a local government official and restore our faith in our democracy.

Thank you,
Viva

VIVA L'Ouverture
see.viva.sing@gmail.com
790 Congress St, Apt 7
Portland , Maine 04102

Please Support Portland's Divestment from Israel

'Marita Kennedy-Castro' via City Manager
Sun, Sep 1, 5:22 PM

City Manager Danielle West,

Dear Councilor,

I am writing to urge you with all my heart to support the initiative for Portland to divest its financial support of Israel's genocide against the Palestinian people. I am horrified and heartbroken at the incredible injustices being inflicted on the Palestinian people and witnessed around the globe without intervention. It pains me that any of my tax dollars have contributed to genocide. This is one way we can actually make a difference.

Please vote in support of divestment.

Thank you very much for the work you do on behalf of the City of Portland.

With hope,

Marita Kennedy-Castro

Marita Kennedy-Castro
embodyingrhythm@gmail.com
131 Leland St.
Portland , Maine 04103

Divestment resolution

'Clara Porter' via City Manager
Sun, Sep 1, 5:43 PM

City Manager Danielle West,

Dear City Councilors,

I have been proud of how our city has addressed challenging issues. We aren't limited by our size or by what other cities are doing but rather are at our best when we choose to do what we know is right. On Wednesday we face another opportunity in passing the resolution to divest from all companies and entities supporting the war on Gaza.

We take a stand when action is needed. I hope we can count on you to take this stand on behalf of our city.

Clara Porter
claraportermaine@gmail.com
72 Rackleff Street
Portland, Maine 04103

Divest NOW from genocide

'Kate Beever' via City Manager
Sun, Sep 1, 9:13 PM

City Manager Danielle West,

Dear City of Portland:

I work at the children's hospital here in Portland and live right up the street from city hall. I have been witnessing all year videos taken from the ground where Palestinian families are being ripped apart - not just as families, but quite literally, limb from limb - due to bombs that WE are paying for. This is not a war. The response from Israel's government is a *genocide*, not a war, nothing less than genocide. Our tax dollars and Portland city dollars should not be funding the brutal murder of innocent children or their families. I cannot imagine trying to do our job at Barbara Bush Children's Hospital to keep children healthy and safe if we were being bombed every day, if we had no food, no water, no medical supplies.

DIVEST NOW. And make a commitment to remain divested until the Israeli occupation of Palestine is over.

Sincerely,

Kate Beever.

Kate Beever
beevsterk@gmail.com
190 Congress St Number 3
Portland, Maine 04101

Divestment

'Eve Sawyet' via City Manager
Sun, Sep 1, 9:16 PM

City Manager Danielle West,

Please vote Yes on

Resolve 1-24/25 Calling for the Divestment of Funds from Entities Complicit in the Humanitarian Crisis in Gaza.

Sincerely,
Eve Sawyer

Eve Sawyet
neweve53@gmail.com
169 Clinton0
Portland, Maine 04103

Please divest

Michael Wilson michael@mwphotographic.com via portlandmaine.gov
Sun, Sep 1, 10:15 PM

City Manager Danielle West,

I'm writing today as a concerned citizen of Maine and small business owner who works frequently in and for the city of Portland. As a freelance content creator I have work on pieces promoting all aspects of Portland tourism and have gone to great lengths to show the diversity, love, kindness, and acceptance that Portland offers. I urge you to pass Resolve 1-24/25 Calling for the Divestment of Funds from Entities Complicit in the Humanitarian Crisis in Gaza to prove to not only the citizens of Portland but visitors that Portland stands behind the city it promotes itself to be!

Sincerely,
Michael Wilson

Michael Wilson
michael@mwphotographic.com
32 water st
Kennebunk, Maine 04043

Support for Divestment of Funds

Jed Thomas jed@woggleconsulting.com via portlandmaine.gov
Sun, Sep 1, 10:18 PM

City Manager Danielle West,

I'm a local business owner based in Kennebunk who works closely with clients in Portland. Knowing that my clients live and work under a local government that is calling out the genocide happening now and standing against it is deeply important to me. I fully support any efforts to defund any entities complicit in the genocide of Palestine.

Jed Thomas
jed@woggleconsulting.com
32 Water street
Kennebunk, Maine 04043

Divestment from Genocide

'Kit McCann' via City Manager
Sun, Sep 1, 10:18 PM

City Manager Danielle West,

Dear Esteemed Council Members,

My name is Kit McCann, and I am strongly in support of divestment from companies and organizations in Portland that are complicit in the genocide of Palestinians.

I believe that much of Southern Maine looks to Portland as a beacon of what a city can be, do, and accomplish as a community. Though I do not personally live in Portland, I thoroughly believe that smaller towns (such as my own) in the surrounding Southern Maine area would be inspired to follow Portland's lead to take a stand against genocide. Movements must begin somewhere, and are often more successful when they are lead by a collection of steadfast leaders.

I believe those leaders are you, the City Council of Portland. I believe you can light the torch for human rights, and I believe together we can bear it.

Best,
Kit McCann

Kit McCann
mccannk2@gmail.com
32 Water St
Kennebunk, Maine 04043

Please vote to divest

'Lillian Pearlman' via City Manager
Mon, Sep 2, 8:48 AM

City Manager Danielle West,

Hello Councilors,

I'm immensely hopeful and proud of the possibility that Portland could be the first east coast city to vote to divest from companies and accounts that are invested in the state of Israel. This is a clear way in which our local politics gets enmeshed with global issues, and we must be morally clear that apartheid and genocide are unacceptable and we will not be complicit. Thank you for helping Portland residents stand in the values we voted for you with— care, universal humanity, and love.

As a Jewish Mainer who was raised here, I understand first hand that Israel's genocide and apartheid state are not only devastating to the Palestinian people and land, but also do nothing to actually support Jewish safety as they say they do. Antisemitism is real, but confusing its violence as a justification for genocide and apartheid is wrong and dangerous.

Thank you so much for doing the right thing— I appreciate and respect you.

Lillie

Lillian Pearlman
lilpearlman@gmail.com
764 Congress st
Portland, Maine 04102

Please vote YES to divest from genocide!

Sydney Avitia-Jacques sydney@maineworkers.org via portlandmaine.gov
Mon, Sep 2, 11:09 AM

City Manager Danielle West,

Dear City Councilors, Mayor Dion, & Manager West,

Please vote yes on Monday night to the resolution to divest city funds from the human rights abuses happening in Gaza. I'm writing as an individual Portlander, but also as a staffperson and member of the Southern Maine Workers' Center, which represents thousands of healthcare, restaurant, hospitality, education, social services, and other workers in Portland.

SMWC's positions on issues like this are always grounded in human rights, and it's clear according to many sources that Israel is committing a grotesque amount of human rights violations on the people of Palestine. It's also clear that we as an up and coming city in the US have a unique opportunity to back our ceasefire resolution with action; divestment will show our federal elected officials and Israel that there will be international consequences to this ongoing violence. I want to live in a world where human rights abuses have consequences, and I want my beloved city to be part of making that change.

Some will tell you that Portland shouldn't have a role in this situation happening many miles away, but from a Workers' Center perspective, I can say that the frontline care workers in our own city who feed us, clothe us, connect us to services, and educate our children know that we are personally affected by every single dime that we send to Israeli companies instead of investing in our own people and the infrastructure our city needs. It's not lost on workers that while the US government sends billions of dollars to Israel, we continue to be told that people's basic needs for health care, housing, education, and social services in this country are too expensive.

We are, in fact, already playing a role in this war with the investments we have; and the workers of Portland want to change that role, to be on the side of human rights at home and abroad.

With gratitude for your support and work to make this happen,
Sydney Avitia
District 3, Portland

Sydney Avitia-Jacques
sydney@maineworkers.org
103 Highland St, #5
Portland, Maine 04103

Portland Divest from companies who support arm sales to Israel

'Kathy MacVane' via City Manager
Mon, Sep 2, 1:11 PM

City Manager Danielle West,

I implore you to divest Portland's investments from all companies who support arm sales to Israel. We could be a leader on the east coast & show the entire country that our city does not support Israel's indiscriminate bombing of Palestine. Israel has completely destroyed Palestine and the Israeli government is never going to negotiate a peace settlement.

Divestment is a small step but the more cities who participate will send a message to corporations & our government that we do not believe US weapons should be sent to Israel to kill innocent civilians.

This war needs to stop now.

Kathy MacVane
klmacvane@gmail.com
100 Elizabeth Road
Portland , Maine 04102

Ending material support for War in Gaza

'Laura Castro' via City Manager
Mon, Sep 2, 2:03 PM

City Manager Danielle West,

To Whom It May Concern,

I am a summer resident of Portland, and have family and strong roots here. I sincerely hope that the City, with its committed City Council that passed a divestment resolution and a mayor who has met with activists, will choose to divest from genocide and apartheid in Israel-Palestine by divesting from the companies that support or earn profits from it. Many of us of a certain age grew up hoping that we would have done something about the Holocaust, if we had had the chance. Here is a chance for Portland to officially stand against genocide, the crime of crimes. I look forward to hearing what the City government will do.

Sincerely,

Laura Castro

Laura Castro
lcast280@gmail.com
34 Lafayette Street
Portland , Maine 04101

'Sally Bowden-Schaible' via City Manager
Mon, Sep 2, 2:11 PM

City Manager Danielle West,

To Portland City Councilors and Mayor Dion:

I have been involved in human rights advocacy (Maine Voices for Palestinian Rights [MVPR] / Buddhist Alliance for Non-Violence and Human Rights in Israel-Palestine [BANVAHR]) on behalf of the Palestinian people for over 20 years; I have personal connections to people in Gaza, the West Bank, and Israel; and I have visited Israel-Palestine five times, traveling extensively throughout Israel and the West Bank. I have witnessed and experienced first-hand the effects of Israel's apartheid policies-- while traveling with Palestinian friends in the West Bank and while participating in olive harvesting on settler-harrassed Palestinian olive groves.

I communicate daily (as long as there is internet connection) with a young physician friend who is in Gaza. The stories he shares with me as a physician, a husband and father of three young daughters, and as a humanitarian attempting to provide aid to those around him, are horrifying and beyond anything we can remotely imagine. He has needed to uproot his family and move many times over this past nearly 11 months, and he has experienced "near misses" (once acquiring an injury) as marketplaces and mosques and nearby tents were bombed. He has suffered the loss of colleagues and friends. And when he is able, he attempts to work as a physician without adequate medical supplies and under grossly inadequate conditions.

So many efforts have been made from across the world to stop the illegal, inhumane actions of Israel to no avail. The US government continues to send Israel weapons and millions of dollars in military aid. Our tax-dollars are supporting genocide. As citizens of Portland, we ask the city of Portland to take a morally courageous stand by divesting from any companies, organizations, institutions that are complicit in the ongoing slaughter and oppression of Palestinian people-- in Gaza, now spreading into the West Bank. By doing so we also provide leadership and encouragement for other cities across the country to do the same.

I submit this respectfully and with urgency,
Sally Bowden-Schaible

Sally Bowden-Schaible
1sallybs@gmail.com
27 Birchvale Dr
Portland, Maine 04102

Divestment from genocide

'Grace Daphnia' via City Manager

Mon, Sep 2, 3:24 PM

City Manager Danielle West,

My name is Grace and I'm a community organizer and a healthcare worker. The ongoing genocide in Gaza is despicable. Everyday the news reports death tolls rising. the U.S. is supplying weapons to Israel, what that means is EVERY American has blood on their hands and is complicit in genocide using bombs that destroy homes and contaminate the land.

We do not want Portland city dollars being spent on war. That's the public's money and we have a significant public health crisis involving substance and our unhoused neighbors, which is far more important than endless wars.

European nations such as Ireland and the U.K. have already denounced this atrocity and began to pull back monies that would be spent on genocide. Divesting from financially supporting has been proven to work elsewhere. Why not here in Portland?

I've lived and worked in Portland for a long time and I love this city, even if it's being overrun by hotels and it's very expensive. The Palestinian people deserve so much better and it's very sad to think about public money being used to perpetuate their pain and sorrow. Whatever side of the aisle, one cannot ignore what is happening right now and I want each of you to think. Really look at where your morals lie and does it sit right with you?

Thank you to all for reading, I appreciate your service. I hope we come to an understanding regarding this matter

yours,

Grace

Grace Daphnia
denker13@gmail.com
11 Boynton Street
Portland, Maine 04102

Divestment

'Liz Farmer' via City Manager
Mon, Sep 2, 3:29 PM

City Manager Danielle West,

Dear City Councilors,

I am a resident of Portland and recently heard about the resolution Calling for the Divestment of Funds from Entities Complicit in the Humanitarian Crisis in Gaza. I am writing to express my support for this resolution and to urge you to pass it at this Wednesday's meeting. I am heartbroken by the genocide happening in Gaza, and often feel helpless to know how to help those being harmed. Divestment is one tool we have to resist the oppression of Palestinian people. It's time to take action. Thank you for considering this.

Liz Farmer
lizfarner1@gmail.com
74 Melbourne St
Portland , Maine 04101

Portland Divestment from Genocide in Gaze

'Roland Mendiola' via City Manager
Mon, Sep 2, 5:30 PM

City Manager Danielle West,

Greetings Councilors,

I am a resident of Portland, ME for the last 8 years and I write with a heavy and disturbed heart over these many months since last October. I continue to be appalled and horrified by the ongoing genocide and acts of international and humanitarian crimes perpetrated by the Israeli government. I kindly and urgently call on you to divest all Portland funds from aiding any entities that are complicit in this genocide in Gaza - I no longer want my family's tax dollars benefiting war criminals and perpetrators of mass violence and murder. Please act now, we implore you.

Sincerely yours,
Roland Mendiola

Roland Mendiola
13mendiola@gmail.com
32 Fuller Street
Portland, Maine 04103

Writing in Support of Divesting From Genocide

'Willow Cunningham' via City Manager
Mon, Sep 2, 6:50 PM

City Manager Danielle West,

Hello Councilors, Mayor, and City Manager,

I am writing from my student dorm at the University of Maine in Orono as a long time resident of Portland. I grew up enjoying its beautiful skies, sea, and people, and plan to come back when my studies conclude. Like so many others I love the city, and like so many others I cannot stand to see it financially support genocide.

We have all witnessed the atrocities that Israel is inflicting on the people of Palestine daily since October 7, 2023. Back in March, The United Nations stated that there were reasonable grounds that the crime of genocide was being perpetrated in Gaza by Israel. Now just this past week, Israel has begun employing the same genocidal tactics it has been using in Gaza in the West Bank as well. It is clear that Israel will not stop until it is made to.

Corporations complicit in this genocide by manufacturing or transporting its weapons cannot be allowed to continue with the City of Portland's financial support. This is not a complicated question, and I hope to see the City fall on the right side of history this Wednesday.

Sincerely and with hope,
Willow

Willow Cunningham
willow.e.cunningham@gmail.com
5702 Patch Hall Room 312F
Orono, Maine 04469

In support of Resolve 1-24/25

'Sarah Harber' via City Manager
Mon, Sep 2, 6:57 PM

City Manager Danielle West,

Dear esteemed City Counselors, Mayor Dion, and City Manager West,

I am writing to express my firm support of resolution Resolve 1-24/25 Calling for the Divestment of Funds from Entities Complicit in the Humanitarian Crisis in Gaza. This resolution aims to strengthen the city's efforts to uphold and preserve the dignity of human life in Gaza.

I am a Portland resident and serve my community as a mental health provider. I am saddened and horrified daily by the level of human suffering and loss perpetrated by the Israeli government and the destruction that will surely leave as its legacy waves of intergenerational trauma on all sides for decades to come.

I commend our city Council for previously voting for a cease-fire. The destruction perpetrated by the Israeli government and military seems opportunistic and cruel, and is increasingly unsupported by many Israelis. The proposed resolution seems a necessary next step in preventing any complicity we might have in this campaign of terror and making clear our commitment to a more just path forward. Economic divestment is a powerful political tool that we have for voicing our dissent and it is critical we use it now.

Thank you for your efforts and passion in moving this resolution forward.

Sincerely,

Sarah Harber

Sarah Harber
southboundsarah@yahoo.com
110 Pennell Ave
Portland, Maine 04103

Divest from genocide

'Rosa Noreen' via City Manager
Mon, Sep 2, 9:57 PM

City Manager Danielle West,

Dear Councilor,

I am horrified to learn that City tax dollars are supporting the genocide of Palestinians. Please take action and divest. This is an issue that is at the heart of my voting decisions. Thank you very much for your attention.

Rosa Noreen
r.noreen@gmail.com
83 Beckett St #2
Portland, Maine 04101

Support for Divestment Resolution 1-24/25

'Timothy Paradis' via City Manager
Tue, Sep 3, 6:36 AM
City Manager Danielle West,

Dear Councilors,

As a resident of Portland, I write in full support of the resolution to divest from entities complicit in Israel's war crimes and occupation.

Thank you for taking a stand against genocide and oppression. Adopting this resolution will be welcomed by all people of good conscience in the US and around the world and will reflect great credit on our city in the eyes of history.

Your integrity and leadership are deeply appreciated.

Tim Paradis
Portland, ME

Timothy Paradis
timparadis12@gmail.com
85 Market Street, Apt 402
Portland, Maine 04101

Concerned Mainer

'Abigail Swain' via City Manager
Tue, Sep 3, 8:32 AM

City Manager Danielle West,

Hi there,

I grew up in Kennebunk, went to college in Portland, and have spent the last 5 years just 5 minutes over the bridge, in Falmouth, Maine. I've seen my community come together time and time again to stand up for what's right, so I hope you'll be a part of helping our community stand against genocide that our tax dollars are paying for.

Genocide is wrong. Profiting from genocide is wrong.

Will you join the growing global movement to divest from corporations that recklessly — and knowingly — contribute to Israel's genocide of Palestinians? I'm urging Portland City Council to divest from companies that are complicity in Israel's genocide.

Genocide-free investment is also good business: Portfolios without investment in these companies are protected against Israel's cratering economy which is ever-more vulnerable as international accountability mechanisms come to bear.

Please do what's right — we can't go on like this.

Abigail Swain
atowndesign@gmail.com
4 Kelley Road
Falmouth, Maine 04105

Divesting Interest in Genocide

Tue, Sep 3, 10:51 AM
City Manager Danielle West,

Dear Councilors,

I fully support the resolution to divest interest in any corporations who in some way support the genocide currently taking place in Gaza. As a Portland resident, I implore you to support this humanitarian effort and vote to pass this resolution.

Sincerely,
Kyle Manning

kyle manning
kmanning016@gmail.com
93 Newbury St
Portland, Maine 04101

MEMORANDUM
City Council Agenda Item

FROM: Greg Watson, Director

DATE: August 15, 2024

SUBJECT: Order 11-24/25 Approving and Authorizing City Manager to Execute the Amended and Restated Lease Agreement With DBH Portland, LLC, for use of Hadlock Stadium for the Portland Seadogs - Sponsored by the Housing and Economic Development Committee, Pious Ali, Chair

SPONSOR: Councilor Pious Ali, Chair/Housing and Economic Development Committee, meeting held on May 7, 2024, and the vote was 4-0 to forward this to the City Council for approval in substantially in the form as presented.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 8/19/2024

Final Action 8/19/2024

Can action be taken at a later date: No

Does this item involve a new contract with the City: Yes, Corporation Counsel's office has reviewed this amended and restated Lease.

PRESENTATION: Greg Watson, 3 Minutes

I. SUMMARY

The existing Lease is able to cover most typical operating expenses but is not adequate to address all current or future capital expenditures that may be necessary to keep the facility in proper condition. In order to address capital requirements imposed by Major League Baseball for affiliated teams, the Portland Sea Dogs need to invest up to \$10 Million in improvements to the City-owned stadium at Hadlock Field, which necessitates an extension to the Lease term from its current September 30, 2028, termination to September 30, 2038.

II. AGENDA DESCRIPTION

This item was reviewed by the Housing and Economic Development Committee at its May 7, 2024, meeting, at which time it voted 4-0 to forward this to the City Council with a recommendation for approval in substantially the form as being presented.

This Amended and Restated Lease Agreement is the result of negotiations with Diamond Baseball Holdings (DBH), the ownership team behind the Portland Sea Dogs, with guidance from the Council's Housing and Economic Development Committee, for continued operations at Hadlock Stadium and Field through September 30, 2038, with DBH to have an option to extend the term for an additional five (5) years thereafter. The current lease expires September 30, 2028. This extended lease would allow for DBH to invest up to \$10 Million in improvements to the stadium to address requirements of Major League Baseball for affiliated teams.

Please see the Financial Impact section, with this Amended and Restated Lease, which increases the annual revenue to the City from \$200,000 to an anticipated \$400,000 to \$475,000 annually.

This item was postponed from the meeting on July 15 to allow additional time to finalize lease provisions requested by Major League Baseball. Five affirmative votes are required for passage after public comment. To make this item effective immediately, staff is requesting that this item be passed as an emergency. Seven affirmative votes are required for passage as an emergency after public comment.

III. BACKGROUND

The existing lease is able to cover most typical operating expenses, but is not adequate to address capital expenditures that may be necessary to keep the facility in proper condition. The proposed lease terms would provide significantly higher revenue to the City to address anticipated capital expenditures for the foreseeable future. The Sea Dogs are also investing up to \$10 million in improvements to the City-owned stadium to address requirements of Major League Baseball for affiliated teams.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intended result is to have the City Council approve the Amended and Restated Lease so that the Portland Sea Dogs and the City can continue their relationship to provide minor league baseball at Hadlock Field, which in turn provides an economic impact on the greater Portland economy, estimated to be at least \$28 Million per year. In addition, having the MLB franchise in the City has other benefits that extend beyond economics that foster a sense of community and local pride.

V. FINANCIAL IMPACT

Terms of the proposed Amended and Restated Lease Agreement are as follows:

Proposed Term – Fifteen (15) Years. The Term will extend through September 30, 2038, and the Club shall have an option to extend the Term for an additional 5 years thereafter.

Annual Rent - \$260,000 per year fixed for the remainder of the extended term.

Parking - The City will manage parking operations and receive all parking related revenue, estimated at \$65,000 per year.

Ticket Revenue Sharing - The Sea Dogs have agreed to allow the City to share in proceeds from ticket sales through a stadium improvement surcharge phased-in over several years. From 2025 - 2026 the City will receive \$.25 of each ticket sold, and then in 2027 through the term of the lease the City will receive \$.50 of each ticket sold to address future capital improvements necessary to maintain the facility.

Comparison to Previous Lease Terms:

Existing Lease Amount	\$200,000	Proposed Lease Amount	\$260,000
Existing Parking Income	\$0	Proposed Parking Income	\$65,000
Existing Ticket Revenue Sharing	\$0	Proposed Ticket Revenue sharing	
		- based on \$.25/ticket 2025-2026	- \$75,000
		- based on \$.50/ticket 2027 - lease term	- \$150,000
Total	\$200,000	Total	\$400,000 - \$475,000

Proposed Improvements - The Sea Dogs are currently proposing up to \$10 million in improvements to the City-owned stadium to meet the requirements of being an MLB affiliated club. The improvements will be focused on creating new and expanded clubhouse facilities for the Sea Dogs and visiting teams, as well as a number of other improvements that will enhance the performance of the facility and the overall fan experience.

The Sea Dogs have received approval from the Maine Legislature for up to \$2 million in proposed tax credits (L.D. 2258) to help defray some of the costs associated with the required improvements to Hadlock field. The nature of the improvements would extend to this City-owned facility beyond the life of the current and proposed lease terms.

VI. STAFF ANALYSIS AND BACKGROUND

The intended result is to have the City Council approve the Amended and Restated Lease so that the Portland

Sea Dogs and the City can continue their relationship to provide minor league baseball at Hadlock Field, which in turn provides an economic impact on the greater Portland economy, estimated to be at least \$28 Million per year. In addition, having the MLB franchise in the City has other benefits that extend beyond economics that foster a sense of community and local pride.

VII. RECOMMENDATION

This item was reviewed by the Housing and Economic Development Committee at its May 7, 2024, meeting, at which time it voted 4-0 to forward this to the City Council with a recommendation for approval in substantially the form as being presented.

VIII. LIST ATTACHMENTS

1. Order 11 - Authorizing the City Manager to Execute and Amended and Restate Lease Agreement with DBH Portland for Hadlock Stadium and Field
2. 2023 Sea Dogs Charitable Contributions Rpt
3. Sea Dogs Community Programs
4. Sea Dogs Impact - Final

Prepared by:

Greg Watson, Director

Date: 08/15/2024

2023 Portland Sea Dogs Charitable Contributions Report

Summary

The Portland Sea Dogs strive to be much more than just a baseball team, we want to be strong, active, contributing members to the City of Portland and the State of Maine. It is important for us to support those who support us to give back to the diverse and vibrant communities that we call home. As a pillar of the community we feel it is our obligation to step up to bat to help make a difference in our community either through donations, gifts, or actions. In 2023, the Sea Dogs made donations to 870 organizations totaling \$447,409.30.

In Stadium Fundraising	\$ 82,009.00
Monetary Donations	\$ 51,829.30
Gift In Kind	\$ 376,571.00
Total	\$ 510,409.30

In-Stadium Fundraising

In-Stadium Fundraising includes monies raised by charitable groups through in-stadium event and/ or programs including group ticket fundraising and in-game events.

Group Ticket Fundraising	\$ 10,364.00
In-Game Events	\$ 71,645.00
Total	\$ 82,009.00

Breakdown:

Organization	Type	Amount
Academy of Dance	Group Ticket Fundraising	\$271.00
Atlantic Dance Arts	Group Ticket Fundraising	\$165.00
Bath Elementary	Group Ticket Fundraising	\$153.00
Brunswick Cal Ripken	Group Ticket Fundraising	\$264.00
Brunswick High School	Group Ticket Fundraising	\$155.00
Challenger Learning Center	Group Ticket Fundraising	\$40.00
CK Burns School	Group Ticket Fundraising	\$99.00
Donate Life	Group Ticket Fundraising	\$345.00
Firehouse Tumbling and Cheer	Group Ticket Fundraising	\$914.00
Gray New Gloucester High School	Group Ticket Fundraising	\$62.00
Gray New Gloucester Raymond Little League	Group Ticket Fundraising	\$372.00
Italian Heritage Center	Group Ticket Fundraising	\$41.00
JDFR Night	Group Ticket Fundraising	\$136.00

Lisbon Junior Athletics	Group Ticket Fundraising	\$354.00
Lyseth Elementary	Group Ticket Fundraising	\$572.00
Maine Homeschool Sports	Group Ticket Fundraising	\$78.00
Massabesic Little League	Group Ticket Fundraising	\$645.00
Monmouth Memorial	Group Ticket Fundraising	\$654.00
Poland Community School	Group Ticket Fundraising	\$183.00
Pride Portland	Group Ticket Fundraising	\$90.00
RSU 1	Group Ticket Fundraising	\$46.00
Saco Bay Rotary	Group Ticket Fundraising	\$4.00
Sanford High School	Group Ticket Fundraising	\$129.00
Scarborough Little League	Group Ticket Fundraising	\$330.00
Scarborough Primary School	Group Ticket Fundraising	\$120.00
Showtime Athletics	Group Ticket Fundraising	\$420.00
South Portland Little League	Group Ticket Fundraising	\$600.00
Trinity Day at Hadlock	Group Ticket Fundraising	\$400.00
Tri-Town Little League	Group Ticket Fundraising	\$423.00
Walk MS Night	Group Ticket Fundraising	\$32.00
Waynflete School	Group Ticket Fundraising	\$1,015.00
Wells Elementary	Group Ticket Fundraising	\$417.00
Wells-Ogunqit Little League	Group Ticket Fundraising	\$249.00
Windsor Youth Sports	Group Ticket Fundraising	\$15.00
WPS	Group Ticket Fundraising	\$322.00
York Little League	Group Ticket Fundraising	\$249.00
	Total	\$10,364.00

Maine Credit Union Leagues' Campaign to End Hunger	Atlantic FCU Sponsored In-Game Event	\$7,080.00
Animal Refuge League	Evergreen FCU Sponsored In-Game Event	\$435.00
Maine Children's Cancer Program	Strike Out Cancer in Kids	\$63,000
Maine Children's Cancer Program	Season Ticket Exchange Donations	\$1,130.00
	Total	\$71,645.00

Monetary Donations

Apex Youth Connections	Jersey Auction	\$4,184.66
Maine Children's Cancer Program	Jersey Auction	\$5,305.50
Make-A-Wish Maine	Jersey Auction	\$ 7,219.14
Through These Doors	Joe Torre Baseball Auction	\$ 120.00
Barbara Bush Children's Hospital	Golf Tournament	\$ 15,000.00
American Cancer Society	Road Race	\$ 20,000.00
	Total	\$51,829.30

Gift In Kind

The giving of goods and service to charitable or community organizations.

Slugger Community Appearances	172	\$ 11,180.00
Merchandise		\$ 10,125.00
Ticket Donation Requests	2512	\$ 26,908.00
Kids Club	15552	\$ 171,072.00
Community Spotlight	1225 Tickets & 49 Tables	\$ 38,975.00
Building Community Tickets	1250	\$ 13,750.00
Volunteer Appreciation Night	239	\$ 2,629.00
Opening Weekend Pavilion Non-Profits	1170	\$ 15,210.00
Civil Rights Night	570	\$ 6,270.00
Pi Day	2,106	\$ 16,848.00
Teacher, School Staff, & Bus Driver Appreciation	637	\$ 5,096.00
Most Improved Student	3,700	\$ 29,600.00
Pre K Graduation	607	\$ 4,856.00
Slugger Reading Challenge	2,064	\$ 16,512.00
Summer Slugger Reading Challenge	563	\$ 4,504.00
High School Night of Champions	142	\$ 1,136.00
Miscellaneous		\$ 2,080.00
	Total	\$ 376,751.00

Individual Community Involvement

In addition to financial donations and gifts in kind, the Sea Dogs front office staff has devoted their time and efforts to numerous community-based organizations.

Geoff Iacuesssa, President & General Manager

Peoples Choice Credit Union	Board Member
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Chris Cameron, Vice President/ Communications & Fan Experience

STRIVE	Steering Committee Member
University of Southern Maine	School of Business Advisory Board Member
University of Southern Maine	Career & Employment Hub Advisory Board Member
Cumberland/ North Yarmouth Little League	Coach

Dennis Meehan, Assistant General Manager/ Sales

Scarborough Little League	President
Little League District 6	Advisory Board
Portland Regional Chamber of Commerce	Board of Directors
Scarborough Community Chamber	Board Member
Town of Scarborough	Ad-Hoc Community Center Committee
Scarborough Soccer Club	Coach
Scarborough Flag Football Club	Coach
Scarborough Little League	Coach

Madison Spencer, Account Executive/ Ticket Sales

Propel	Member
--------	--------

Justin Kelleher, Account Executive/ Corporate Sales

Propel	Member
--------	--------

Alex Gastonguay, Account Executive/ Ticket Sales

Sanford Mainers	Volunteer/ Marketing Committee
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Jason Cooke, Head Groundskeeper

South Portland High School	Football Coach
South Portland High School	Baseball Coach

Key Programs

Strike Out Cancer in Kids Program

The Strike Out Cancer in Kids Program is the cornerstone of our fundraising efforts benefitting the official charity of the Portland Sea Dogs, the Maine Children's Cancer Program. For every strikeout thrown by a Sea Dogs pitcher, money is raised through generous donations from businesses and individuals. Additionally various fundraising events are held throughout the season. Each season one child is selected to serve as "Slugger's Kid" and be the poster child for the program, where they get to take part in memorable events such as taking a victory lap around the bases prior to a Sea Dogs game. Since the program's inception in 1995, over five million dollars has been raised for the Maine Children's Cancer Program.



Mother's Day 5K

The annual Mother's Day 5K road race benefits Maine breast cancer patients and research through the American Cancer Society. Over 1,500 runners participated in the 22nd running of the event in 2023, which raised \$20,000.

Slugger Open

Over 30 teams along with Slugger and Sea Dogs players hit the links to raise \$15,000 for the Barbara Bush Children's Hospital.

Safe at Home

The Sea Dogs joined MiLB Charities in teaming up with the Joe Torre Safe At Home Foundation to raise awareness of domestic violence and educate fans about the resources available to help those in need. The Dogs worked locally with Through These Doors.

The Nine

"The Nine" is a Black-community focused outreach platform specifically designed to honor and celebrate the historic impact numerous Black baseball pioneers made on the sport, provide new opportunities for youth baseball and softball participation, further diversify the business of baseball and embrace millions of passionate fans throughout Minor League Baseball's 120 communities nationwide. Named for the number Jackie Robinson wore during his only season playing in MiLB with the Triple-A Montreal Royals in 1946, The Nine connects MiLB teams' existing, Black-community focused development efforts with new national programming and future special events in a coordinated and centralized campaign.

Alces de Maine

The cornerstone of Minor League Baseball's Hispanic fan engagement initiative, Copa de la Diversión or "Fun Cup," is a season-long event series specifically designed to embrace the culture and values that resonate most with participating teams' local U.S. Hispanic/Latino communities.

The Sea Dogs are one of more than 95 Minor League Baseball teams across 36 states participating in the initiative in 2023. Each of the participating MiLB teams will transform its on-field brand to a culturally relevant Hispanic persona, representing an extension of the team's and community's identity.

Holiday at Hadlock

A free community event that the Sea Dogs host each December that is highlighted by Santa's arrival from the North Pole via helicopter landing at second base. Kids get to meet with Santa, enjoy arts & crafts, face painting, games, holiday music, costumed characters, and more. The event is also a collection for Toys-for-Tots, where we donate hundreds of toys for families in need.

Pride Night

Celebrating Pride is a campaign that reinforces MiLB's leadership position as a local community champion via an expansion of its culturally relevant initiatives welcoming all fans to MiLB ballparks nationwide.

Food Drive

The annual Sea Dogs food drive in conjunction with Maine's Credit Unions collects hundreds of food items which are donated to the Good Shepherd Food Bank.

Most Improved Students

The Sea Dogs honored over 5,000 students from Maine this spring as they were selected by their teachers at the "Most Improved Student" from their class during the school year. Each student was presented with a certificate, a complimentary ticket to a game, and were honored in a pre-game ceremony.





Portland Sea Dogs Community Programs

When the Portland Sea Dogs were established, the team had a goal of being more than just a baseball team, the organization wanted to become a strong, active, contributing member of the community. Over the years the Sea Dogs have accomplished this in many ways including ticket donations, creating educational programs, speaking at civic organizations, visiting hospitals, and much more. Here is a small sampling of some of our community programs.

Strike Out Cancer in Kids Program

The Strike Out Cancer in Kids Program was founded in 1995 and raises money for the Maine Children's Cancer Program. For every strikeout thrown by a Sea Dogs pitcher money is generously donated by individuals and organizations to the program, along with other fundraising efforts. Each season a child that has defeated cancer is selected to be "Slugger's Kid" and act as the poster child for the program for the season. **The program has raised over FIVE MILLION dollars!**

Heroes at Hadlock

In conjunction with the Maine Children's Cancer Program Strike Out Cancer in Kids, four times a season we host a child currently being treated at MCCC for a special pregame ceremony on the field. The patient, along with their family, get introduced to the crowd and run around the bases with each team lined up along the baselines giving them high fives. The patient then receives a team autographed bat, a bag full of Sea Dog souvenirs, and enjoys the game from a Skybox.

Most Improved Students

The Portland Sea Dogs Most Improved Student program partners with NextGen 529 and the Alford Scholarship Foundation to honor students throughout the state of Maine for being the Most Improved Student in their class for the year either academically, socially, or behaviorally. Every year the Sea Dogs reward approximately 5,000 students with a complimentary ticket to a game, a certificate honoring their achievement, and recognize them in a pregame ceremony on the field.

Community Spotlight Table

At each of the Sea Dogs' 69 home games, we provide an opportunity for a non-profit organization to have a table at the game to promote their organization to our fan base. Along with the table, each organization receives 25 tickets to the game.

Valentine's Day Bandit Blood Drive

To honor Portland's legendary Valentine's Day bandit, Kevin Fahrman, the Sea Dogs in conjunction with the American Red Cross hosted a blood drive at Hadlock Field, where 36 donors selflessly stepped up to the plate to help save a life.

Mother's Day 5K

The Portland Sea Dogs Mother's Day 5K is one of the largest road races in the state of Maine. The race which has become a family tradition for many is led by Slugger and his mom and raises around \$20,000 annually for breast cancer research and patients through the American Cancer Society.

Slugger Open Golf Tournament

The annual Slugger Open golf tournament benefits the Barbara Bush Children's Hospital. Teams of golfers spend the day with together and then cap the day off at Hadlock Field taking in a Sea Dogs baseball game. All money raised benefits the Barbara Bush Children's Hospital. Since its inception, we have raised more than \$200,000 for BBCH.

Maine Strong Night

In response to the Lewiston tragedy, the Sea Dogs will be hosting a Maine Strong night, where the team will be wearing specially designed Lewiston Strong jerseys that depict the original Maine flag. The jerseys will be auctioned off to benefit the victims of the tragedy. An online auction was also held to benefit the victims. The night will honor the victims and the heroes.

Deaf & Hard of Hearing Awareness Night

In addition to the above and in response to the tragic shooting On October 25, 2023, in Lewiston, Maine, where Maine's Deaf community was greatly affected, the Portland Sea Dogs will host Deaf & Hard of Hearing Awareness Night to grieve, honor, and fundraise for those affected on Wednesday, June 19th.

The Sea Dogs will wear specially designed jerseys that replace the traditional Sea Dogs script with American Sign Language (ASL). The jerseys will be auctioned off after the game to benefit the [Pine Tree Camp's Dirigo Experience](#). Each jersey will be autographed. Check back after the game for auction info. To enhance the fan experience and to create an inclusive experience for members of the deaf community, sign language interpreters will be located on top of each dugout throughout the game. Interpreters will also be available at Guest Services to assist fans with any questions or concerns they may have.

Community Nights

The Sea Dogs are happy to provide a special experience for local communities and businesses here at Hadlock Field. Community Nights are a fun and exciting way for community members to come together, while we celebrate the individuals, organizations, and businesses that make that community special.

Star Wars Night with Make-A-Wish Maine

Each year the Sea Dogs host a special Star Wars-themed game. Among the festivities, the players wear specially designed Star Wars jerseys that are auctioned off to benefit Make-A-Wish Maine. Typically, the auction raised between \$5,000-\$7,500 for Make-A-Wish Main.

William Troubh Community Service Award

The William Troubh Community Service Award was established in April of 2014 to honor Mr. Troubh. The award presented annually recognizes a local citizen who is making a positive impact within the city of Portland. It may be a public employee or private citizen who, through their efforts, makes Portland a great city to live and work.

Mr. Troubh was a lifelong resident of the city of Portland, who dedicated his life to making Portland a great place to live and work. He served multiple terms on the Portland City Council and was Mayor of the city in 1974 and 1975 and again in 1983 and 1984. Troubh was instrumental in bringing the Portland Sea Dogs to the city in 1994.

Campaign to End Hunger

In a partnership with Atlantic Federal Credit Union, for every run the Sea Dogs score, \$10 is donated to the Maine Credit Union League's Campaign to End Hunger . Last season the program raised \$7,080.

Food Drive

Every January, the Sea Dogs host a Food Drive to benefit the Good Shepherd Food Bank, where hundreds of food items are donated.

Slugger's Reading Challenge

Slugger and the Sea Dogs realize the value of reading, and encourage students to read by allowing them to earn a FREE ticket to a Sea Dogs' baseball game and FREE day pass to Aquaboggan Water Park!

Slugger's challenge is run through schools to have students read three books above and beyond any school-required reading. Each season the Sea Dogs distribute over 3,000 FREE tickets to students who complete the challenge.

Summer Reading Challenge

Same program as the Slugger's Reading Challenge, but run through town library and summer school library programs to promote kids to keep reading during the summer.

Read Your Way to Opening Day

The Sea Dogs team with the Portland Recreation Department throughout the winter to encourage participants of the after-school program to read. Students who hit age-appropriate benchmarks receive a free ticket to Opening Day and are honored with a parade around the warning track prior to the game. In 2024 we gave 1,079 tickets to students and their families for Opening Day.

Move More Challenge

The Sea Dogs partner with Let's Go 5-2-1-0 to promote healthy living in kids. Kids can earn a free ticket to a Sea Dogs game by completing 1 or more hours of physical activity a day for one week, to help them develop good habits and a healthy lifestyle.

Education Days

Twice a year the Sea Dogs host Education Days at the ballpark, where the game has a special 11:00 AM start allowing school groups to attend. The pregame is filled with special educational presentations from places such as the Gulf of Maine Research Center, EcoMaine, Mad Science, Maine Audubon, and more. Additionally, each student is presented with a workbook that follows the common core standards, that utilizes baseball as a teaching tool, such as how to use math to calculate a player's batting average.

Civil Rights Night

All students in Maine that are involved in a Civil Rights program through their school are recognized at our annual Civil Rights Night at the Ballpark.

Pi Night

With our Pi Night promotion, the Sea Dogs challenge students to try and recite as many places of Pi from memory that they are able to. We encourage teachers to hold the competition on Pi Day, March 14th, and to get as many students involved as possible. The Sea Dogs are partnered with OTTOs pizza for this promotion. Each participant is awarded a free ticket to our Pi Night game in May, and a coupon for a free slice of pizza from OTTOs. Each school winner receives a ticket and a \$15.00 gift card to OTTOs, and the overall winner receives four tickets, a \$250.00 OTTOs gift card, and a Sea Dogs swag bag. For the 2024 season, there were a little over 3,600 tickets given out to students for participating in the challenge.

Pre-K Graduation

The Sea Dogs host a Pre-K Graduation Night every year. With this event, we encourage Pre-K schools and groups to sign their classrooms up to come out and be recognized. The classrooms are invited out to Hadlock in May, and they do a parade around the field and are recognized at home plate as they pass by. After the parades are done, they are welcome to stay for the game and enjoy a fun night of baseball! For the 2024 season, there were around 1,150 tickets given out to Pre-K students to be recognized for graduating and moving on to Kindergarten.

Teacher Appreciation Night & Bus Driver Appreciation Night

The Sea Dogs are proud to be able to recognize our teachers for their hard work and helping shape the minds of our children. With this program, principals all over the state of Maine are encouraged to

nominate their teachers, substitutes, bus drivers, and other school staff members that they believe have gone above and beyond for their students. These teachers are then invited to a game during April vacation and are recognized for all of their efforts. For the 2024 season, there were 1,000 tickets given out to teachers all over the state of Maine.

Nurse Appreciation Night

Each season, during national Nurse Appreciation Week, the Sea Dogs are proud to recognize nurses for their hard work and dedication to care. Nurses in hospitals, private practices, assisted living, home care and schools are invited onto the field for a pregame parade and a recognition behind homeplate. This promotion typically recognizes between 200-300 nurses annually.

Volunteer Appreciation Night

Each season the Sea Dogs work with Maine nonprofits to recognize all volunteers that donate countless hours to help and improve their communities. Organizations nominate their volunteers and each nominee receives 2 free tickets to the game. The Sea Dogs also work with the Maine Commission for Community Service to recognize volunteers on their Roll of Honor. This promotion recognizes 400+ volunteers every season.

Administrative Professionals Night

The Sea Dogs set a game each season to recognize all administrative assistants (professionals) who help their organizations run smoothly. Each admin professional nominated by their organization receives 2 free tickets to the game and is recognized in a special pre-game ceremony on the field. This promotion recognizes 75+ admin professionals every season.

First Responders Night

First Responders Day, a special occasion dedicated to honoring the bravery, dedication, and selfless service of our community's first responders. This event is an opportunity for us to show our appreciation for the heroes who are always there for us in times of need. There is a segment to honor a "Hometown Hero." This is someone from our community who has gone above and beyond in their role as a first responder, making a significant impact on the lives of others through their extraordinary courage and compassion. First Responders Day is more than just an event; it's a demonstration of our collective gratitude for the men and women who put their lives on the line to keep us safe. We come together as a community to show our unwavering support and appreciation for these remarkable individuals.

National Marrow Donor Program/ Be the Match

The National Marrow Donor Registry Program was set up to find donors for bone marrow and cord blood to assist in the treatment of cancer and other blood-borne illnesses. The Sea Dogs have hosted an annual registration drive and awareness campaign at the ballpark, each year highlighting a Mainer in our local communities who is now in remission due to the life saving efforts of the Marrow Donor Program and willing donors while encouraging our fans to enroll in the registry as a potential donor.

Military Appreciation Day

Every season the Sea Dogs pay tribute to our Military members and host a game in their honor. For the last few seasons, we have partnered with The Summit Project Maine to pay tribute to the fallen heroes from Maine that have died during their military service. Additionally, the Sea Dogs Donate 8 Full Season ticket seats (\$4,416.00) to VET TIXX a nonprofit that provides event tickets for veterans in the community.

Play Catch on the Field

Twice a year the Sea Dogs open the ballpark early to allow fans to play catch on the field.

Youth Clinics

The Portland Sea Dogs host several free youth baseball clinics each year, where kids can learn from the pros. The Sea Dog players lead kids of all ages and abilities through various baseball stations and the day ends with an autograph session. The clinic is free and attracts kids from throughout the state.

Kids Run the Bases

Following every Sunday home game the Sea Dogs invite kids 16 and under to run the bases for no additional cost. This is a fan favorite for all our kids.

Play Ball Weekend

One weekend each June is designated as Play Ball Weekend in which the Sea Dogs will take on an initiative to provide baseball opportunities to the youth in the community. Examples of past events include little league takeovers, where we bring the whole Sea Dogs baseball experience to a local little league complete with Slugger, our PA announcer, between inning games, professional grounds crew, music, and more. We've also hosted a free youth clinic at the ballpark and this year we'll be working with the Boys & Girls Club to teach them basic baseball fundamentals.

Kids Take Over the Broadcast

Four kids with an interest in broadcasting are selected to take over the broadcast for a game. Each kid is presented with their own press credential, they interview a player pregame, and get to call an inning live on air.

Pride Night

In June the Sea Dogs use their position as a local community champion to host a Pride Night at the Ballpark to promote inclusivity, acceptance, and equality.

Joe Torre Safe at Home Initiative

For the eighth year, the Sea Dogs and MiLB are teaming up with Joe Torre Safe At Home to raise awareness about domestic violence and educate fans about the local and national resources available to help those in need. As part of the event we auction off an autographed baseball of Hall of Famer Joe

Torre with the proceeds going to a local organization that assists domestic violence victims. Some past recipients include Preble Street Resource Center, Through These Doors, and Safe Voices.

Hope At Bat

Minor League Baseball's annual "Hope At Bat" campaign, in support of the American Cancer Society (ACS), will continue in the 2024 season. The "Hope At Bat" program -- a fundraising and awareness campaign in support of cancer research -- will again be made up of four dates across the MiLB season, where on-field performance by players generated donations to the ACS. The total fundraising goal for four national activation dates will again be \$50,000.

"The Nine"

The Nine" is a Black-community focused outreach platform specifically designed to honor and celebrate the historic impact numerous Black baseball pioneers made on the sport, provide new opportunities for youth baseball and softball participation, further diversify the business of baseball and embrace millions of passionate fans throughout Minor League Baseball's 120 communities nationwide. Named for the number Jackie Robinson wore during his only season playing in MiLB with the Triple-A Montreal Royals in 1946, The Nine connects MiLB teams' existing, Black-community focused development efforts with new national programming and future special events in a coordinated and centralized campaign.

Special Olympics Maine Day

For the last eight seasons we have hosted a discounted picnic for Special Olympics Maine to honor their athletes and coaches at a game each season. We work with partners so the event is at no cost to the athletes and guests and we usually have 400-500 people for the event

Fan Fest

Prior to the season the Sea Dogs host our annual Fan Fest to benefit Make-a-Wish Maine. The event includes dinner, autographs, and a speaking program to introduce the team to our community. All money raised from the event benefits Make-a-Wish Maine.

Holiday at Hadlock

As a thank you to our community, we host a free community event to kick-off the holiday season in December. Holiday at Hadlock is highlighted by Santa's arrival from the North Pole via helicopter as he lands at second base and then greets children. The Sea Dogs also provide free hot chocolate and cookies, make your own s'mores, arts & crafts, face painting, and more. The event is also a Toys-for-Tots collection event, where we are able to donate hundreds of toys to families in need.

Sustainable Maine Night

To recognize local Maine businesses that focus on sustainable business practices that benefit consumers and our climate. Maine has a small percentage of green businesses so this event showcases those making a difference to continue the trend of increasing sustainable efforts within Maine.

Mental Health Awareness Night

The Sea Dogs have partnered with NAMI Maine to host Mental Health Awareness Night at the Park. As part of the night, a portion of ticket sales will be donated back to NAMI Maine to advance mental health support.

Good Neighbor Night

As part of our efforts to be a good neighbor, each year we go out into the community and hand deliver four complimentary tickets to all of our neighbors, both residential and commercial, to simply thank them for being a good neighbor. Through this program we distribute 1,000 tickets to the neighborhood.

Field of Dreams/ Fan Appreciation Day

Since 1997 the Sea Dogs have celebrated our fans at the end of the season with a special pre-game rededication of the cornfield scene from Field of Dreams. We construct a cornfield in centerfield and have our players emerge from that. Following a brief program the players walk through the stands to thank fans for their support. We also have Wish families from Make-a-Wish Maine on the field to meet the players as well.

Read Across America

On Read Across America Day, Sea Dogs staff members and Slugger volunteer to read to students at numerous schools throughout the state.

Internships

The Sea Dogs host 20 local college students studying sport management or a related field as interns each season. This gives the students the key experience they need to pursue a career in their chosen field. Sea Dogs interns have an extremely high track record of success.

Job Shadows

Besides hosting interns each season, the Sea Dogs also host dozens of high school and college students as job shadows throughout the season to introduce students to careers in the sports industry.

Speakers Bureau

The Sea Dogs' Speakers Bureau offers guest speakers to service clubs, civic organizations, schools, and other groups.

Slugger In The Community

Slugger, the first and only minor league sports mascot inducted into the Mascot Hall of Fame, makes over 200 community appearances each season including parades, hospitals, and numerous community events. His in-kind appearances in 2023 totaled \$11,180. Slugger also donates his time in making videos

for fundraising initiatives including: The MaineHealth Radiothon for the Barbara Bush Children's Hospital, Make-A-Wish, Maine Children's Cancer Program, STRIVE, The Red Cross Blood Drive, Maine State Covid Vaccine Initiative, Real Men Wear Pink, Rappel for Rippleffect, American Heart Association, and many more non-profit initiatives.

Donations

The Portland Sea Dogs are committed to being active contributing members of the community. One way that we accomplish this is through our charitable donations. The Portland Sea Dogs make every attempt to fill requests for donations. Any function or group that is holding an event that benefits the community and the people in it is eligible to receive a charitable gift from the Sea Dogs. In 2023, the Sea Dogs granted a total of \$510,409.30 gifts.

Staff in the Community

In addition to financial contributions, the Sea Dogs staff also volunteer their time to numerous community organizations from coaching little leagues to serving on boards and committees.

THE ECONOMIC CONTRIBUTION OF THE PORTLAND SEA DOGS¹

Megan Bailey, Sheldon Green and Todd Gabe²

University of Maine

June 2021

¹ Funding for this project was provided by the Portland Sea Dogs.

² Megan Bailey is a Research Associate in the Margaret Chase Smith Policy Center. Sheldon Green is a Research Assistant in the Margaret Chase Smith Policy Center. Todd Gabe is a Professor in the School of Economics and author of the book *Pursuit of Economic Development: Growing Good Jobs in U.S. Cities and States*.

Executive Summary

The Portland Sea Dogs is a Minor League Baseball team based in Portland, Maine. The team plays in the Double-A Northeast (formerly Eastern) League and serves as the Double-A affiliate of the Boston Red Sox. During the 2019 season, the Portland Sea Dogs hosted 70 games that were attended by over 380,000 fans. The Portland Sea Dogs contribute directly to the Maine economy through both the day-to-day operations of the organization and the spending of fans and visitors who come from outside the area to attend events. These direct effects accounted for \$15.2 million in statewide economic output, 345 full-and-part-time jobs, and over \$5 million in labor income. When considering the multiplier effects, the Sea Dogs contributed \$28 million in total output, 447 full-and part-time jobs and \$9.1 million in labor income.

Highlights of Main Findings

- The Portland Sea Dogs hosted 70 home games in 2019. These games drew over 380,000 fans (see Table 2).
- Using online ticket sales data, it is estimated that 57 percent of the fans in attendance are from the local area and about 16 percent are from outside of Maine (see Table 1, Table 2 and Map 1).
- The economic impact of the Portland Sea Dogs has two main components. First, the Sea Dogs generates an economic impact through its day-to-day operations: e.g., employment, payroll and purchases of goods and services from Maine businesses. Second, Sea Dogs games produce an economic impact through the spending of fans and teams from outside the local area.
- The day-to-day operations of the Portland Sea Dogs has an annual statewide economic contribution, including multiplier effects, of an estimated \$12.8 million in output, 302 full and part-time jobs, and \$4.1 million in labor income (see Table 6).
- Fans and teams that visit from outside the area spend an estimated \$8.4 million annually on travel, lodging and restaurant meals. The total economic impact of this spending,

including multiplier effects, is an estimated \$15.2 million in output, 145 full- and part-time jobs, and \$5.0 million in labor income (see Table 7).

- The overall annual economic contribution of the Portland Sea Dogs - including the organization's day-to-day operations, fan and visiting team expenditures, and their associated multiplier effects - is an estimated \$28.0 million in output, 447 full-and part-time jobs, and \$9.1 million in labor income (see Table 8).

Table of Contents

Background and Introduction	1
Direct Effects	4
Multiplier Effects	5
Overall Impact	6
A Note on the Method	8
Works Cited	10

Background and Introduction

Maine has been home to the Portland Sea Dogs (Double-A affiliate of the Boston Red Sox³) for over 25 years with thousands of attendees from within Maine and across the country each year. In 2019, the year prior to COVID-19, the team hosted 70 home games that were attended by over 380,000 fans - including the team's 10 millionth fan - at Hadlock Field. Notably, the games were attended by at least one person from each state⁴. Table 1, below, lists the top ten attendee home locations.

The organization provides access to athletic events as well as general family friendly entertainment in Maine's largest city - with many of the games throughout the year offering promotional events such as fireworks or a free gift (see Table 2).

Table 1. Top Attendee Home Locations

Portland Sea Dog Fan/Visitor Origin	Percent
Maine	84%
Massachusetts	6%
New Hampshire	4%
New York	0.9%
Connecticut	0.6%
Florida	0.5%
Illinois	0.5%
Vermont	0.3%
International	0.3%
Pennsylvania	0.3%
All Others	3%

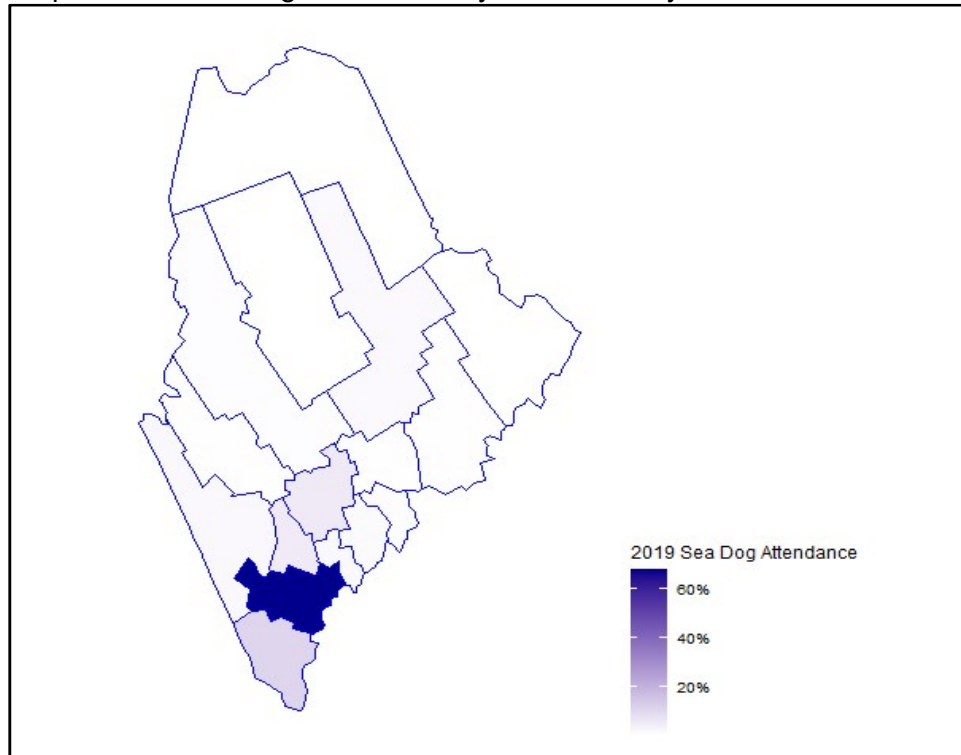
Notes: Visitor origin was identified using online ticket sales data provided by the Portland Sea Dogs.

³ From 1993 to 2002 the team was an affiliate of the Florida Marlins.

⁴ Based on online ticket sales data provided by the Portland Sea Dogs.

While people from across the country attended Sea Dogs games in 2019, 84% of attendees came from within Maine (Table 1). The majority of 2019 Maine-based attendees came from Cumberland County; however, there were attendees from every county across the state (see Map 1, below).

Map 1. 2019 Sea Dog Attendance by Maine County



The purpose of this study is to examine the statewide economic contribution of the Portland Sea Dogs in Maine. Economic contribution is defined as the output (i.e., revenue), employment and labor income (e.g., wages and salaries) that are directly associated with the Portland Sea Dogs - including the organization's day-to-day operations, fan, and visiting team expenditures - as well as the multiplier effects that are supported by the spending of the Sea Dogs organization, its employees, fans, and visiting teams from outside the local area.

Table 2. Summary of Portland Sea Dogs 2019 Season Home Games

Dates	Series	Games Played	Total Series Attendance	Promotional Event
4/4-4/7	Harrisburg Senators	4	22,691	Schedule Magnet
4/8-4/10	Altoona Curve	3	7,015	Sea Dog Team Photo
4/18-4/20	Richmond Flying Squirrels	3	11,169	25th Anniversary Hat
4/22-4/24	Harrisburg Senators	3	7,800	
5/2-5/5	Altoona Curve	4	25,216	
5/7-5/9	Harrisburg Senators	3	9,846	
5/13-5/15	Harrisburg Senators	3	10,028	Joan Benoit Samuelson Bobblehead
5/24-5/27	Altoona Curve	4	28,828	Fireworks
6/4-6/6	Richmond Flying Squirrels	3	14,494	Jackie Bradley JR Bobblehead
6/7-6/9	Bowie Baysox	3	17,945	
6/21-6/23	Harrisburg Senators	3	21,816	Fireworks
6/24-6/26	Harrisburg Senators	3	12,714	Brock Holt Bobblehead
7/1-7/3	Richmond Flying Squirrels	3	17,501	Fireworks
7/11-7/14	Altoona Curve	4	25,556	
7/22-7/24	Harrisburg Senators	3	16,676	
7/25-7/28	Harrisburg Senators	4	24,970	Mookie Betts Bobblehead; Fireworks
8/6-8/8	Erie SeaWolves	3	17,801	
8/9-8/11	Akron RubberDucks	3	20,735	
8/19-8/21	Harrisburg Senators	3	15,764	Andrew Benintendi Bobblehead
8/22-8/25	Richmond Flying Squirrels	4	27,028	Fireworks
8/30-9/02	Harrisburg Senators	4	25,223	Field of Dreams/Fan Appreciation Day

Note: Data provided by the Portland Sea Dogs; Promotional events occurred during only game during the series; fan attendance is only counted once for double header events which take place on the same day.

Direct Effects

Expenses

Total Portland Sea Dogs expenditures during 2019 were approximately \$4.9 million. Direct expenditures are costs associated with the day-to-day operations of the Portland Sea Dogs. The largest expense is payroll (\$2.2 million) but expenditures also include direct purchases for goods and services. The organization directly employed 245 full- and part-time workers in 2019.

Table 3. Portland Sea Dogs Expenditures

Category	Percent
Administrative	18%
Concessions & Souvenirs	16%
Other Facility & Game	23%
Payroll	44%

Notes: Administrative costs include taxes, advertising, front office and insurance costs; Other Facility & Game costs include team, game, and facility costs; data provided by the Portland Sea Dogs

Visitors and fans from outside of the local area (including the traveling teams) spent approximately \$8.4 million on tourism expenditures such as transportation, food, and lodging.⁵

Table 4. 2019 Attendee Trip Type

Hours Drive	Visitor Type	Percentage of Online Ticket Sales
Hours ≤ 0.5	Local	57.1 %
0.5 < Hours ≤ 3	Day Trip	35.1 %
3 < Hours	Overnight	7.8 %

Notes: Percentages are based on online ticket sales data provided by the Portland Sea Dogs; hours' drive was calculated using the R package googleway; percentages are calculated using attendance data from the entire 2019 season; variation in visitor type was noted across the season (see Figure 1, page 9) and this variation was used when estimating the visitor types of "walk-up" ticket sales for whom no origin data was available; travel distances are generally similar to results found in a 2018 report by Digital Research Group.

⁵ This figure is based on fan and traveling team size estimates provided by the Portland Sea Dogs for 70 home events. Tourism expenditures were based on visitor spending data from the Maine Office of Tourism (Annual Report, by Davidson-Peterson Associates), the federal reimbursement rate for Portland, the cost of hotels in the Portland area gathered from various online sources, and the assumption that one meal was had at the ballpark. It is also assumed that overnight guests only spent one night in the Portland area.

Revenue

Total revenues for the organization in 2019 were approximately \$6.7 million. The majority of revenues are derived from ticket sales (34%) and concessions (31%). A quarter of revenues comes from sponsorships and the remainder comes from the sale of souvenirs.

Table 5. Portland Sea Dogs Sources of Revenue

Category	Percent
Ticket Sales	34%
Concessions	31%
Souvenirs	10%
Sponsorships	25%

Note: Data provided by the Portland Sea Dogs.

Multiplier Effects

Every dollar that is spent on local purchases by the Portland Sea Dogs, employees, fans and visitors circulates through Maine's economy and is used by other businesses and organizations to pay their employees, taxes, and purchase more goods and services. This "multiplier effect" is a crucial component to consider when studying the total statewide economic contribution of the Portland Sea Dogs.

Table 6 shows information on the estimated annual statewide economic impact of the Portland Sea Dogs day-to-day operations. According to figures provided by the organization, the direct output of \$6.8 million supports 245 full-and part-time jobs, providing \$2.2 million in labor income. Including multiplier effects, the annual operations of the Sea Dogs would have an annual economic impact of an estimated \$12.8 million in output, 302 full- and part-time jobs, and \$4.1 million in labor income.

Table 6. Annual Statewide Economic Contribution of the Portland Sea Dogs: Operations

	Direct Impact	Multiplier Effects	Total Impacts
Output	\$6,796,490	\$5,991,290	\$12,787,780
Employment	245	57	302
Labor Income	\$2,155,000	\$1,958,166	\$4,113,166

Notes: Direct output (operating revenue), employment and labor income figures were provided by the Portland Sea Dogs. Multiplier effects are estimated using an regional input-output model (IMPLAN) of the Maine economy. Employment impacts in IMPLAN do not distinguish between full- and part-time jobs.

Table 7 shows information on the estimated annual statewide economic impact of fans and visitors (including traveling teams) attending Portland Sea Dogs events. Including multiplier effects, the fans and visitors from outside the local area would have an annual economic impact of an estimated \$15.2 million in output, 145 full- and part-time jobs, and \$4.9 million in labor income.

Table 7. Annual Statewide Economic Contribution of the Portland Sea Dogs: Fan and Visiting Team Expenditures.

	Direct Impact	Multiplier Effects	Total Impacts
Output	\$8,400,890	\$6,845,734	\$15,246,623
Employment	100	45	145
Labor Income	\$2,865,449	\$2,126,141	\$4,991,590

Notes: The direct output (i.e. spending) figure is based on attendance information provided by the Portland Sea Dogs as well as the number of home events and away team travel party size. Information on hotel rates for home events are estimated from various hotel/travel websites and the federal reimbursement rate for Portland. Tourism expenditures are also based on visitor spending data from the Maine Office of Tourism (Annual Report, Davidson-Peterson Associates). Direct employment, direct labor income and all associated multiplier effects are estimated using a regional input-output model (IMPLAN) of the Maine economy. The IMPLAN model generates employment based on the amount of spending in a sector, and the average amount of revenue generated per worker annually. The direct employment impact of 100 full-and-part time jobs can be interpreted to mean that \$8.4 million of spending on lodging, travel, and restaurant meals would support that many jobs annually. Since the fan and visiting team spending takes place on the day of a home event, the actual number of jobs supported is likely higher than 145, but many of them are temporary.

Overall Impact

The *overall* annual economic contribution of the Portland Sea Dogs - including the organization's day-to-day operations, fan and visiting team expenditures, and their associated multiplier effects - is an estimated \$28 million in output, 447 full- and-part-time jobs, and \$9.1 million in labor income.

Table 8. Annual Statewide Economic Contribution of the Portland Sea Dogs: Operations and Fan and Visiting Team Expenditures

	Direct Impact	Multiplier Effects	Total Impacts
Output	\$15,197,380	\$12,837,024	\$28,034,403
Employment	345	102	447
Labor Income	\$5,020,449	\$4,084,307	\$9,104,756

Notes: Impact figures are the sum of the values shown in Tables 6 and 7.

The Portland area and communities around the state benefit from the presence of the Sea Dogs in other ways as well. Literature has shown that mid-market minor league teams are a positive local amenity and increase quality of life outside of the purely economic impacts (Agha and Coates, 2015). For example, local teams may create an atmosphere of excitement and foster civic pride. Additionally, Sea Dogs (the employees, players and the organization as a whole) contribute to Portland and Maine overall through their philanthropic efforts (e.g., the "Strike Out Cancer in Kids" program which raises funds for the Maine Children's Cancer Program). These impacts are not insignificant; however, they were difficult to capture given the parameters of this study. Future work should include a survey of fans, team members, and local residents to better capture these impacts.

A Note on the Method

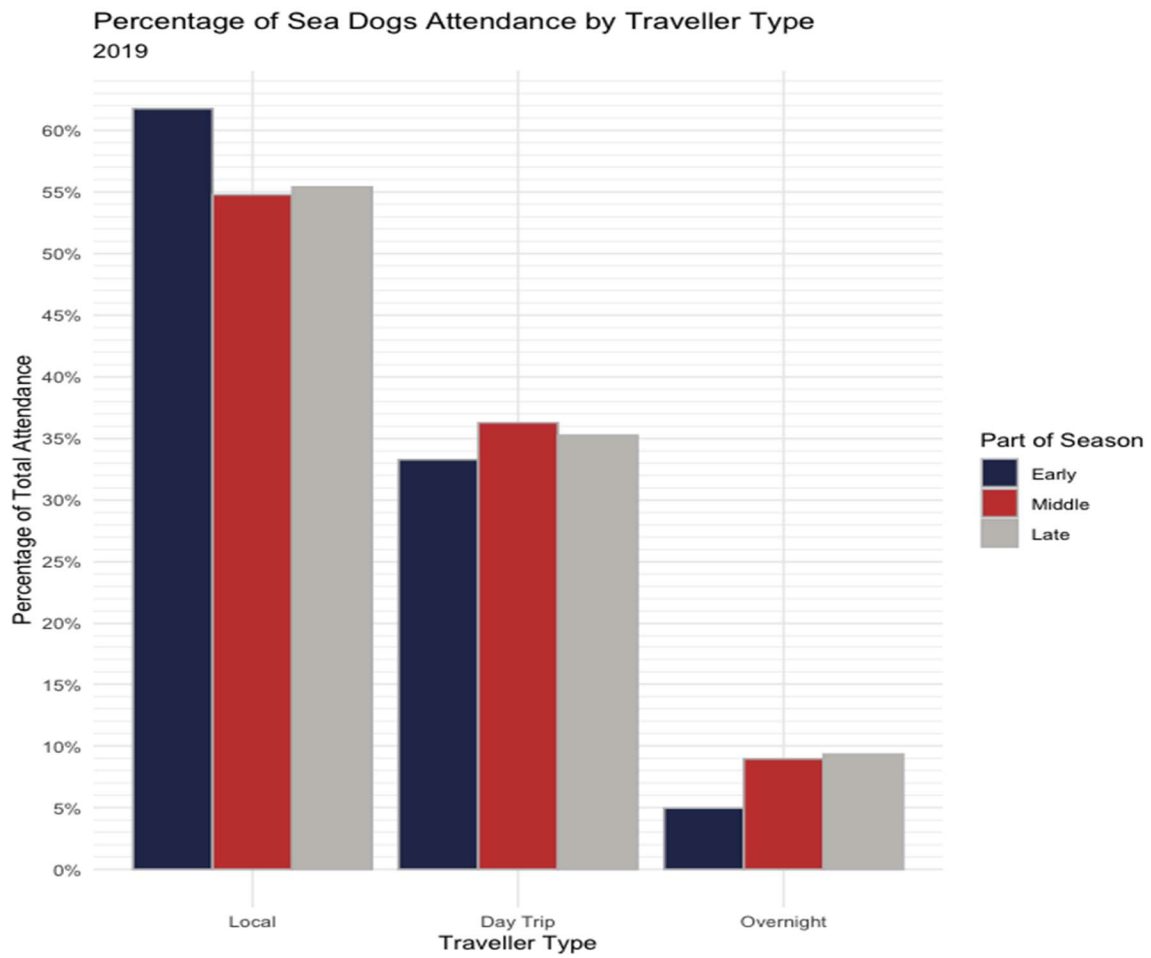
With any economic impact contribution or impact assessment focused on the analysis of an event (or series of events), it is necessary to estimate the number of attendees and expenditures per person and then estimate the event's multiplier effects using a regional economic model. Even when the number of attendees is known, as is the case here, it can be a challenge to estimate per-person expenditure figures - especially without having done a survey.

When looking at the online ticket sales and total attendance data, it was necessary to identify trip types (group visitors into 'local', 'day' and 'overnight' trip categories) to estimate trip expenditures. This estimation had to be done both for the attendees for which addresses (ZIP codes) are known and those who purchased "walk-up" tickets and therefore provided no home address information. For the attendees with known addresses, estimates of trip type were made based on travel (driving) distance from Portland.⁶ An analysis of trends over the 2019 season highlighted variability in attendance patterns (e.g., 'overnight' fans made up a larger proportion of game attendance later in the season - see Figure 1, below). Therefore, walk-up attendees were not binned into trip types based on a season average (of online ticket sales address data), but based on the averages across three parts of the season ("early", "middle", and "late"). This allowed us to designate attendees to various trip types more accurately, accounting for changes in the make-up of the crowds. Since the spending patterns across the three trip types are unique, accounting for this rising share of attendance from the 'overnight' group allows us to more accurately estimate total fan spending.

This study utilized the 2019 IMPLAN regional economic model for Maine to estimate the multipliers and direct employment and labor income figures associated with the fan and visiting team expenditures. The model accounts for over 500 industries to estimate regional and industry-specific economic impact. This includes data on transactions occurring between local businesses, spending patterns for households, and transactions occurring between local businesses and the rest of the world. IMPLAN uses data from County Business Patterns from the U.S. Census Bureau, Regional Economic Information System and the Bureau of Economic Analysis as well as the ES-202 statistics from the Bureau of Labor Statistics.

⁶ Notably, this assumes that billing ZIP codes provided through the online ticket sales portal reflects the attendees' home address.

Figure 1.



Works Cited

Agha, N. & Coates, D. (2015). A compensating differential approach to valuing the social benefit of Minor League Baseball. *Contemporary Economic Policy*, 33(2), 285-299.
DOI:10.1111/coep.12080

George Rheault

Attachments

Sun, Aug 18, 11:32 AM (1 day ago)

to Public, Mark, Pious, April, Roberto, Anna, Victoria, Regina, Anna, Kate, Danielle, Michael

Why is the draft Amended & Restated Lease Agreement the Council is considering for approval not included in the meeting packet? Attached is the lease now in effect.

There should be a redline version as well so that the public can see what has changed between the existing, currently-in-force, lease and the new proposed lease.

The public should be able to judge whether the City has negotiated itself a good deal, or at least a better deal than what was created decades ago. Portland is a huge part of the success of the Sea Dogs and we should be sharing that success directly and not just in "trickle down" ways such as "the fans often go out to dinner in Portland before or after a game..."

REVISED AND RESTATED LEASE
AGREEMENT BETWEEN
THE CITY OF PORTLAND
AND
PORTLAND MAINE BASEBALL, INC.
FOR
PREMISES KNOWN AS
HADLOCK FIELD AND RELATED
FACILITIES LOCATED AT
PARK AVENUE, PORTLAND, MAINE ~~THE~~

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TABLE OF CONTENTS

ARTICLE 1 . DEFINITI ONS	2	ARTICLE 2 .
SUBJECT P PREMISES	7	ARTICLE 3.

MUTUAL REPRESENTATIONS : GUARANTY	9	ARTICLE 4.
TERM	10	ARTICLE 5 . RENT
.	11	ARTICLE 6 . CLUB'S USE OF LEASED
PREMISES	11	ARTICLE 7 . CITY USE OF LEASED
PREMISES	16	ARTICLE 8. CONCESSIONS
.	18	ARTICLE 9 . PARKING
.	21	
ARTICLE 10 . OPERATION , MAINTENANCE AND REPAIR		
OF THE PREMISES	22	
ARTICLE 11 . OPERATING PERSONNEL TO BE SUPPLIED BY CLUB	24	
ARTICLE 12 . UTILITIES	25	ARTICLE 13 .
SCOREBOARDS . SIGNS AND ADVERTISING	26	ARTICLE 14 .
ALTERATIONS BY CLUB	28	ARTICLE 15.
COVENANT AGAINST LIENS	30	ARTICLE 16.
DEFAULT	32	ARTICLE 17. INDEMNIFICATION
.	36	ARTICLE 18 . INSURANCE
.	38	ARTICLE 19 . DAMAGE TO THE PREMISES
.	41	ARTICLE 20 . SUSPENSION OF BASEBALL .
.	43	ARTICLE 21. COMPLIANCE WITH LAWS
.	44	ARTICLE 22 . INSPECTION
.	44	

ii

ARTICLE 23 . ASSIGNMENT AND SUBLETTING	45
ARTICLE 24. NO SURRENDER	46
ARTICLE 25 . WAIVER OF REDEMPTION	46
ARTICLE 26. NOTICES	47

ARTICLE 27. OBLIGATIONS TO MAINTAIN FRANCHISE 48

ARTICLE 29 . NO WAIVER 49

ARTICLE 30 . INTERPRETATION 49

ARTICLE 31. ENTIRE AGREEMENT 50

ARTICLE 32. SUCCESSORS BOUND 50

ARTICLE 33. CAPTIONS 50

ARTICLE 34 . PARTIAL INVALIDITY 50

ARTICLE 35 . NO MERGER 51

ARTICLE 36. APPROVAL OF CITY 51

ARTICLE 37 . MEMORANDUM OF LEASE 51

III

REVISED AND RESTATED LEASE AGREEMENT

BETWEEN

THE CITY OF PORTLAND, MAINE,

AND

PORTLAND MAINE BASEBALL, INC.

This is a Revised and Restated Lease and Use Agreement made as of the
day of _____ between the **CITY OF PORTLAND**, _____ a municipal
corporation, having its offices at Portland City
Hall, 389 Congress Street, Portland, Maine 04101, (hereinafter the **CITY**),
and Portland Maine Baseball, Inc. a Maine corporation and owner of the
Eastern League AA Franchise known as the Portland Seadogs with a
principal office located at Hadlock Field, 271 Park Avenue, Portland, ME,
and with a mailing address of P. O. Box 636, Portland, ME 04104
(hereinafter the "**CLUB**"). **W.I.T.N.E.S.S.E.T.H**

WHEREAS, the **CITY** has developed, constructed, operated and
maintained, in conformity with minor league AA baseball standards, an
outdoor stadium and sports facility on property owned by the **CITY** and
located at 271 Park Avenue within the City of Portland (hereinafter the
"**Premises**") and has made provisions for the necessary financing of said
facility; and

WHEREAS, Daniel B. Burke was awarded a franchise by the Eastern
Baseball League of the Professional Baseball Association to operate a AA
baseball team in said league and assigned said franchise to **CLUB**;

WHEREAS, CLUB agreed to locate and maintain such team in the

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Page 1
CITY;

WHEREAS, the City and the Club entered into a Lease Agreement
dated November 18, 1993, pursuant to which the Club
leased baseball facilities from the City known as Hadlock Field
and located on Park Avenue, and the City and the Club amended and
extended that Lease Agreement by an Amendment #1 to Lease Agreement

dated June 14, 1999;

WHEREAS, the Club has operated successfully at this site for over 13 years and wishes to extend its Lease Agreement with the City, and the City wishes to have such an extension, and the Club and the City wish to revise certain provisions of the Lease in ways that are beneficial to both the Club and the City;

WHEREAS, the Sea Dogs have committed to expending \$1,7000,000 to construct a clubhouse for the CLUB'S exclusive use during the term of this agreement; and

NOW , THEREFORE, the **CITY** hereby leases to **CLUB** and **CLUB** hereby leases from **CITY** the subject outdoor stadium and sports facility (the "**Premises** ") for baseball and related uses upon the terms and conditions of this Revised and Restated Lease Agreement (the "Revised and Restated Lease" or "Lease") as hereinafter set forth.

ARTICLE 1 . DEFINITIONS

The following words and terms, when used in this Lease, shall, whether used in the singular or in plural, have the following meanings.

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Page 2

1.1 Baseball Occupancy Period - The period from the 1st day April of April through September 30 of the year in question, both dates included.

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1.2 Baseball Rules - All rules, regulations, contracts and arrangements, which at the time in question, govern the rights and duties and privileges and obligations of **CLUB** as a member of the Eastern League or the National Association of Professional Baseball Leagues, Inc.

1.3 Charity Game - Any baseball game other than an All Star game,

the net proceeds of which are paid to a not-for-profit organization and which includes **CLUB's Club** as one of the participants and, under the baseball rules, is scheduled or required to be played on the **Premises**.

1.4 Concession -The business of selling, renting or furnishing goods or services of any type or kind, including but not limited to food, drink, merchandise, souvenirs and cushions, but excluding the sale of parking privileges.

1.5 Concession Contract Any written agreement entered into between **CLUB** and any person or entity by which there is granted to such person or entity the whole or any part of the rights of **CLUB** to operate concessions in and about the stadium.

1.6 Concession Facilities The facilities for the preparation and service of food and drink and for the sale or rental of other goods and services, including all equipment and fixtures affixed or attached to any part of the concession space

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Page 3

and all improvements, additions, alterations, equipment, fixtures and installations ~~at~~ constructed, provided or added in or to said space at any time.

1.7 Date Of Readiness - The ~~ie~~ date ~~la~~ designated by **CITY** in a notice served on **CLUB** as the date on which the **Premises** is ready to be used for the purposes of this Lease, which date shall be no later than April 1, 1994; provided, however, that exterior landscaping and similar work which does not materially interfere with beneficial occupancy of the Premises may be completed later. Based upon the availability of asphalt and to the extent reasonable, parking surfaces,

sidewalks and other similar areas of access to the Premises shall be paved upon beneficial occupancy or as soon thereafter as feasible .

1 . 8 **Eastern League** - Any minor league professional baseball League of which **CLUB** is a member **CLUB** any time during the term of this Lease regardless of the name by which such minor league is known or denominated.

1.9 **Eastern League Schedule** The listing which is ☐ officially promulgated by the Eastern League each year setting forth the games to be played by Eastern League teams and the All star game or games for such year, and the dates on which all such games are scheduled to be played.

1.10 **Entity** An individual, partnership, firm, company , association, joint stock association, public or private corporation or other like organization and any unit or branch of

0:\OFFICE\CONTRACT\LEASE\Sea Dogs 6-18-07 FINAL LEASE.doc
Page 4

government or public department, agency or board including but not limited to any department, agency or board of **CITY** .

1 . 11 **Exhibition Game** Any baseball game other than a ☐ regular home game, charity game, playoff ☐ game, interdivisional championship game or inter-league championship game between **CLUB** and any other team which is sanctioned or permitted by the baseball rules and or by the authorities of minor league ☐ baseball having jurisdiction to authorize the playing of such game and which is scheduled to be played in the **Premises** .

1.12 **Force Majeure** (1) act of God, (2) fire, floods, earthquake, blizzard, storm or other casualty, (3) strike, lockout or other labor dispute,

(4) riot , insurrection, civil commotion, sabotage, vandalism or enemy or hostile government action, (5) inability to procure labor, materials or supplies (6) law, statute, ordinance, order, rule or regulation or requirement of any superior governmental authority or any appropriate agency, office or department, board or commission thereof whether now or hereafter in force including, without limitation, rationing restriction in respect of any construction work for the use of labor or materials (7) judicial or other legal restriction or order affecting the performance of any covenant to be performed hereunder, (8) any other condition beyond the reasonable control of a party required to perform hereunder.

1.13 **Home Game** Any regular home game, all star game, exhibition game, charity game, interdivisional championship game,

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Page 5

playoff game or inter-league series game which under the baseball rules , is scheduled, required, or authorized by the CITY, to be played in the Premises .

1 . 14 **Minor  League ** - The Eastern League or its successor as now or hereafter constituted or organized and recognized as a minor league by the baseball rules and any other leagues existing during the term of this Lease which shall be generally known and recognized as minor leagues and the members of which shall be authorized by the baseball rules to play professional baseball and regularly scheduled competition culminating in a world series.

1 . 15 **Night Game** Any home game or event the scheduled starting time of which is 6 : 00 P.M. or later.

1 . 16 **Other User - CITY** or any entity to whom or which CITY has

granted a use authorization.

1.17 **Playoff Game** - Any baseball game which is scheduled to be played between **CLUB** and another Eastern League team at the conclusion of the regular baseball season and which, under the baseball rules is scheduled, required, authorized or permitted to be played in the stadium .

1.18 **Related Activity** An event or activity which is scheduled or arranged by **CLUB** to be held or take place on the day of any home game or immediately following any home game for the purpose of increasing attendance at home games . If any proposed event or activity is of a kind or character not previously

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Page 6

conducted by a minor league team in conjunction with a baseball game , the prior written approval of the **CITY** shall be required.

1. 19 **Road Trip Period** Each period during a baseball
occupancy period when **CLUB** is scheduled to play one or more
successive games anywhere other than in the Premises

1 . 20 **Use Authorization** Any grant by contract, lease,
rental agreement, license, permit or other authorization, not including
this Lease, entered into or issued by **CITY** with any entity whereby a right
is conferred to use the Premises for an event.

ARTICLE 2. SUBJECT PREMISES

2 . 1 . **CITY** grants to **CLUB**, and **CLUB** hereby accepts from **CITY**, the right to use (for the uses described herein) an outdoor stadium and sports facility and related facilities, i.e. the Premises.

2 . 2 The **Premises** include the stadium, Hadlock Baseball field, (including proper batting cage and fielding safety screens), clubhouse

facilities, enclosed picnic area , office space, press box, restrooms, the shell for concession stands and concession storage , indoor area for additional batting cage and/or pitching area , visitor shower and locker facilities in the adjacent Exposition Building (hereinafter the "Expo"), all space and area , enclosed or unenclosed , within or under the stadium structure, all improvements, fixtures and equipment and exterior ticket booths and other installations owned by **CITY** and used in

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Page 7

connection with the operation of the stadium and all permanent additions, alterations, fixtures, equipment and installations constructed, provided or added thereto at any time by **CITY** , **CLUB** or any other entity and such other space or structures as agreed upon and required to meet the League standards and requirements.

Field equipment as described in Exhibit B to this Revised and Restated Lease hereby becomes the property of the Club.



2.3. The Premises shall be available as provided herein for the use of the Club from April 1 through September 30 of each year of this Lease; EXCEPT that the following areas of the Premises shall be available on a year-round basis for the Club's exclusive use:

A) Office space, concession stands, concession storage space and other storage space in the Stadium identified as 'Club space' in the "Master Plann describing the Premises attached to this Revised and Restated Lease as Exhibit C;

B) Sea Dogs clubhouse

C) Private skyboxes; and

D) Private lounge.

2.4 **CITY** has developed and provided the **Premises** in accordance with the minimum mandatory requirements for minor league AA baseball at **CITY's** cost and expense; EXCEPT that **CITY** provided only the shell for concession stands, with utility hookups available, and **CLUB** equipped said stands at its own cost and expense, and **CLUB** shall provide any indoor batting cages . All

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Page 8

indoor facilities shall be located at the stadium, Hadlock Baseball Field, or in the Expo. A copy of the mandatory minimum requirements for minor league AA baseball is attached hereto and incorporated herein as Exhibit A.

ARTICLE 3 . MUTUAL REPRESENTATIONS : GUARANTY 3.1 **CITY** hereby represents and warrants that it has the exclusive ownership of the Premises and that it has full authority to enter into this Lease for the use of said Premises. Notwithstanding the foregoing, **CLUB** understands and agrees that the CITY leases the Expo to the Portland School Department, and that **CLUB's** use of the Expo shall be coordinated with said School Department and the Expo's manager.

3. 2 In the event that ownership of the Franchise should, for any reason, during the term of this Lease be assumed or transferred to any entity other than the **CLUB** , said transfer shall be subject to assumption by such entity of all of the rights and obligations under this Lease . In the event that the Controlling Group, as defined below, shall cease to own in the aggregate, beneficially and of record, at least 51% of the voting equity of (a) the CLUB (before any such transfer), or (b) any entity to which the Franchise or

the Lease has been transferred, the CITY shall have a one year option (beginning on the date on which the Controlling Group ceases to own such 51%) to purchase, or arrange for the local purchase, of the Franchise at its then appraised value, subject to the provisions of Major League

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Page 9

Rule 36. Said appraisal process shall include two appraisals, one selected and paid for by each party, and a review appraisal, the cost of which shall be shared equally, unless **CLUB** and CITY otherwise mutually agree upon another process. The **CLUB** agrees to execute such additional documents as may be necessary to implement the foregoing, said documents to be in a form reasonably satisfactory to **CITY**. Copies of any such documents shall be provided to CITY. In exercising its option, CITY will comply with all provisions of Major League Rule 36. For purposes of this paragraph, the term "Controlling Group" shall mean any combination of (a) any or all of Daniel B. Burke, his wife, his

children, the spouses of such children, and the lineal descendants of any of the foregoing (all of the foregoing defined as "Burke Family Members"); (b) any trusts or trustees of trusts of which the beneficiaries are one or more Burke Family Members; (c) any guardians, conservators, custodians or nominees for anyone or more Burke Family Members; and (d) any individual Retirement Account, S.E.P., Keogh or similar plan or trust benefiting one or more Burke Family Members.

ARTICLE 4. TERM

4.1 The term of this Lease shall commence at 12:01 a.m. October 1, 1993 and expire at midnight on September 30, 2003, unless sooner terminated as hereinafter provided.

4. 2 The term of this lease was extended in Amendment #1, signed June 14, 1999, through September 30, 2008, with an option to renew through September 30, 2013 .

4 . 3. The term of this Lease is hereby extended for an
 additional fifteen (15) years beyond the option provided for in Amendment #1, through and including September 30, 2028, on the terms and conditions provided herein.

ARTICLE 5. RENT

5 .1. Effective April 1, 2007, and each April 1 thereafter through and including April 1, 2008, CLUB shall pay to CITY an annual payment of One Hundred and Fifteen Thousand Dollars (\$115, 000). 5 .2 In acknowledgement of the Sea Dogs commitment to finance and construct a new club house, the City shall credit \$50,000 against the annual rent payment due and owing each April 1 beginning in 2009 through the term of the lease .

5 . 3 Effective April 1, 2009 through and including April 1, 2013, CLUB shall pay to CITY an annual payment based on the following schedule:

- (a) One Hundred and Fifty Thousand Dollars (\$150,000) for every year attendance for the prior season was 325,000 or above;
- (b) One Hundred and Twenty-Five Thousand Dollars (\$125,000) for every year attendance for the prior season was below 325,000 but was 275,000 or above;
- (c) One Hundred Thousand Dollars (\$100,000) for every year

attendance for the prior season was below 275,000.

5.4 Effective April 1, 2014 through and including April 1, 2018,
CLUB shall pay to CITY an annual payment based upon the following
schedule ☐:

(a) One Hundred and Seventy-Five Thousand Dollars (\$175,000) for
every year attendance for the prior season was 325,000 or above;

(b) One Hundred and Fifty Thousand Dollars (\$150,000) for every
year attendance for the prior season was below 325,000 but was 275,000
or above;

(c) One Hundred and Twenty-Five Thousand Dollars (\$125,000) for
every year

attendance for the prior season was below 275,000. 5.5 Effective April
1, 2019 through and including April 1, 2023, CLUB shall pay to CITY an
annual payment based upon the following schedule:

(a) Two Hundred Thousand Dollars (\$200, 000) for every year
attendance for the prior season was 325,000 or above;

(b) One Hundred and Seventy-Five Thousand Dollars (\$175,000) for
every year attendance for the prior season was below 325,000 but was
275,000 or above;

(c) One Hundred and Fifty Thousand Dollars (\$150, 000) for ☐ every
year
attendance for the prior season was below 275,000.

5.6 Effective April 1, 2024 through and including April 1, 2028, CLUB shall pay to CITY an annual payment based upon the following schedule:

(a) Two Hundred and Twenty-Five Thousand (\$225,000) for every year attendance for the prior season was 325,000 or above;

(b) Two Hundred Thousand Dollars (\$200,000) for every year attendance for the prior season was below 325,000 but was 275,000 or above;

(c) One Hundred and Seventy-Five Thousand Dollars (\$175,000) for every year attendance for the prior season was below 275,000.

5 . 7 The forgoing payments shall be made in legal tender, said payments to be made at the offices of CITY'S chief fiscal officer or at such other place as CITY may from time to time designate.

5. 8 When payment is based upon attendance of 325, 000 or above , CITY agrees that Fifty Thousand Dollars (\$50,000) of the foregoing payments shall be set-aside each year by CITY in a separate account designated for Hadlock Stadium maintenance and CITY agrees, through its annual budget process, to match the \$50, 000 set-aside each year. As long as the terms of this Agreement are in force, the \$50,000 paid by the team will not be

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Page 13

diverted for any other purpose by the CITY , regardless of budgetary circumstances .

When payment is based on attendance below 325,000 but at 275,000 or

above, as provided in section 5.3, 5.4, 5.5 and 5.6, the set aside will be reduced to Twenty-Five Thousand Dollars (\$25,000) with a \$25,000 match. When payment is based upon attendance below 275,000, there will not be a set-aside and match, but the CITY and CLUB agree to discuss the issue of ballfield maintenance and the cost-sharing thereof reasonably in advance of the baseball season. "Attendance" as used herein shall be calculated in the same manner as Total Attendance is calculated under the Eastern League Rules and Regulations, as they may be amended from time to time, or under the Rules and Regulations of any other similar successor baseball league of which the CLUB is a member. Attendance for each Baseball Occupancy season shall be reported within sixty (60) days of the close of each season, and shall be the basis for the payment due on the following April.

ARTICLE 6. CLUB'S USE OF LEASED PREMISES

6.1 During each Baseball Occupancy Period, CLUB shall have the exclusive right to use and occupy the Premises (in addition to CLUB's year-round exclusive use space) in connection with the exhibition to the public of home games and for three (3) non- Eastern League baseball events for six (6) hours before the game or the special event time until one (1)

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Page 14

hour after the end of said game or event .

6.2 Within ten (10) days after the official Eastern League Schedule is established for each year, CLUB shall give written notice to CITY or its designee of all home games on said schedule and shall specify not more

than three (3) dates (other than dates of home games reserved by **CLUB**) for non-Eastern League baseball events within the Baseball Occupancy period. A copy of the 1994 Eastern League schedule will be provided to **CITY**. The **CLUB** will make provision during the home game schedule for rescheduling of postponed games or events. If any game or event is rescheduled, **CLUB** shall promptly give notice to **CITY** of such rescheduling. 6.3 During the Baseball Occupancy period, **CLUB** shall have the right to use the playing field for baseball practice, except on days when the Portland or Deering High School Baseball team has scheduled use of the field; provided, however, that such use by the Portland or Deering High School Baseball team shall not interfere with **CLUB's** exclusive use of the field six (6) hours before the start time of a home game.

6.4 **CLUB** shall schedule and play all of its home games at the **Premises**, unless transfer of such games to other locations is necessitated by postponements, the unplayable condition of the playing field or Force Majeure. If **CLUB** is required by the Eastern League schedule to play any baseball game where **CLUB** is designated as the home team elsewhere than in the **Premises**, **CLUB** may do so provided:

0:\OFFICE\CONTRACT\LEASE\Sea Dogs 6-18-07 FINAL LEASE.doc
Page 15

A) no more than five (5) such baseball games are scheduled in any Baseball Occupancy period,

B) no such games shall be played within fifty (50) miles of the Premises, unless approved by the **CITY**, and

C) such arrangement equally affects all baseball teams in the division.

6 . 5 **CLUB** shall have the right to transmit and to license or to authorize others to transmit by any means of communication, including but not limited to radio and television, all or any part of home games and related activities played or conducted in the Premises and any information or data relating thereto, including, without limitation, so called "pre- game" and "post game" shows.

6 . 6. The Club is authorized to postpone home games due to inclement weather, in accordance with Eastern League rules, policies and procedures.

6. 7. The Club is authorized to provide no more than five fireworks displays per season at the Premises, provided the following conditions are met:

A) The Club's use of fireworks conforms to all relevant local, state and federal regulation;

B) The Club arranges for inspection or other oversight by the State Fire Marshal prior to its use of fireworks;

C) The club agrees to defend and indemnify the City .

0 : \OFFICE\CONTRACTS\LEASE\Sca Dogs 6-18-07 FINAL LEASE.doc
Page 16

aga i nst any claims related to the fireworks , carries appropriate ☐
insurance ☐ for the fireworks and names the City as additional
insured on the rel evant insurance policy.

☐

ARTICLE 7 . CITY USE OF LEASED PREMISES

7.1 Except as provided in section 2.3 for **CLUB's** exclusive use storage and office space, **CITY** shall have the right to use, or to permit use of, the Premises without prior notice to or consent by **CLUB** for any date

from October 1 through March 31 of each year of this Lease .

7.2 During the Baseball Occupancy Period, **CITY** shall have the right to use, or to permit use of, the Premises for the regular home game and practice schedule of the Portland or Deering High School Baseball Team, and/or for any amateur baseball Tournament game. Any such uses shall not, however, conflict with the requirement that the premises be available for the use of the **CLUB** at least six (6) hours before any home game or scheduled event .

7.3 **CITY** shall have the right to charge and to retain permit and/or user fees for all use of the Premises by **non- CLUB** entities. **CITY**, or the sponsoring agency, shall further have the right to charge admission fees for such **non- CLUB** events, and all

such fees shall be the property of the **CITY** or the sponsoring agency, as

may be agreed between them. **CITY** , or **CITY** and the

sponsoring agency, as applicable,

LEASE.doc Page 17

shall be responsible for

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parking, security and clean-up during **non-CLUB** events . **CLUB** agrees, upon request ☐ of **CITY** or the sponsoring agency, to provide some or all of its personnel, to the extent that they are

reasonably available, (e . g. ☐ ticket takers, security, ushers, ☐ groundskeepers etc .) to work at such **non-CLUB** events, at a fee and upon terms to be negotiated between the **CLUB** and the **CITY** or sponsoring agency, as applicable .

7.4 **CITY** shall have the exclusive right to authorize, and to receive all revenue from, the placing and operation of public telephone booths in and upon any and all parts of the Premises but no such booths shall be placed in **CLUB** 'S exclusive use year round space without **CLUB** ' S consent .

7.5 CITY shall provide reasonable notice to CLUB of the name of other users of the Premises and the schedule of their use during the Baseball Occupancy period.

7.6. The City is authorized to postpone games scheduled to be played on the Premises by the Portland or Deering High School Baseball Teams, or any other non-Club event, due to inclement weather.

7.7. Subject to the provisions of Article 6 of this Lease concerning the Club's priority for use of the Premises for Eastern League games, the City shall have the right to use certain rest rooms within the US Cellular Pavilion and Hadlock Field Concourse as follows:

A) The City may provide public access to the rest rooms

0:\OFFICE\CONTRACT\LEASE\Sea Dogs 6-18-07 FINAL LEASE.doc
Page 18

within the US Cellular Pavilion in conjunction with any event held ☐ at Fitzpatrick Stadium. The City shall be responsible for

cleaning and maintaining these rest rooms after each such event ☐
at the City's sole cost and expense.

☐ ☐

B) The City may provide public access to the rest rooms within the Hadlock Field Concourse in conjunction with the following events held at Fitzpatrick Stadium or the Expo : any Maine Principals' Association tournament event; any Maine Band Directors' Association tournament event; any NCAA event; the annual Thanksgiving football game between Portland and Deering High Schools; any event at Fitzpatrick Stadium for which the City projects total attendance to exceed 3,000; and any event at the Expo for which the City projects total attendance to exceed 2,500. The City shall be responsible for cleaning and maintaining these rest rooms after each such event at the City's sole cost and expense.

ARTICLE 8. CONCESSIONS

8 . 1 **CLUB** shall have the exclusive r ight to sell, rent or furnish concessions in any part of the Premises during home games or events by means of portable or mobile vending devices, by vendors carrying concessions, or automatic vending machines or at stands or booths. The installation of any such machines, stands or booths in any part of the Premises shall be subject to the prior written approval of **CITY** .

8.2 **CITY** shall not permit any other person or entity to

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Page 19

operate any concession in the Premises during home games without the prior written approval of **CLUB** .

8. 3 All ☐ concessions sold, rented or furnished under the rights granted herein shall conform to Federal, state and local ☐ ☐ laws and regulation, and shall be ☐ appropriate items to be sold at league baseball games .

8 . 4 **CLUB** shall have the right to exercise directly, or through a subcontractor, any and all concession rights granted hereunder, subject to the prior written approval of **CITY** of any subcontractor{s). Any subcontract or any such exercise of rights or performance of duties or obligations by any concessionaire or concessionaires shall not relieve **CLUB** of any of its duties or obligations to **CITY** under this Lease or from any liability to **CITY** for any breach thereof.

8.5 **CLUB** shall be entitled to receive and retain all revenues from the operation of all concessions, except as provided in section 8.8 below.

8 . 6 Concession facilities must b e operated for all home games and related activities, except that not all of t he stands or booths for said facil ities need be operated during a given home game and related activity . Determination of the number and location of those facilities to be operated for such home game and related activity shall be made by **CLUB** on the basis of the

advance sale of admission tickets,
determination of attendance .

0:\OFFICE\CONTRACT\LEASE\Sea Dogs 6-18-07 FINAL
LEASE.doc Page 20
or other reasonable

8 . 7 **CLUB** will operate a minimum of one (1) concession ☐ facility for ☐ all **non-CLUB** events for which a use authorization has been granted by **CITY**. Determination of the number and location of facilities to ☐ be operated for such activity shall be made by **CLUB** on the basis of the advance sale of admission tickets, if any, or on actual attendance at the event.

8 . 8. **CLUB** agrees to pay **CITY** ten percent (10%) of its gross concession receipts for food from all of its food concessions at any **non-CLUB** event. Said payment shall be made within thirty (30) days of the event and shall be in addition to any other payments due to **CITY** hereunder . "Gross concession receipts" for purposes of this section shall mean the total of all amounts received by **CLUB** , or its subcontractors, from the sale or furnishing of food from or on the Premises in connection with a **non-CLUB** event . Gross concession receipts shall not include sales tax paid or payable on such sales, rentals or furnishings. **CLUB** shall transmit a certified statement of the total of said Gross concession receipts for food with its payment to **CITY**. 8 . 9 Every user of the **Premises** shall have the right to print or arrange for the printing of such score cards, programs and other literature at its sole cost and expense.

ARTICLE 9. PARKING

9 . 1. Unless the **CLUB** and **CITY** agree otherwise in writing, **CLUB** shall operate, control and manage all Premises ' public

parking areas and the employee and team reserved parking designated ☐ on ☐ said

parking shall be managed in conformity with standards approved by the **CITY** and any fees for parking shall be charged only with the prior written approval of the **CITY**.

9 . 2 **CLUB** at its own expense shall keep all Premises ' parking areas and improvements thereon clean during all hours of any home game and related activity and shall do debris cleanup after said activity.

9 . 3 **CLUB** shall at its own expense provide all personnel required for the operation of all the Premises' parking areas during or for all home games and related activities. **CLUB** agrees to provide personnel when necessary to assist in enforcing parking regulations in surrounding residential areas during home games and related activities.

9 . 4 CLUB will receive the parking revenue related to Sea Dogs games, minus CITY expenses for staffing the lots. ☐

ARTICLE 10 . OPERATION, MAINTENANCE AND REPAIR OF THE PREMISES

10.1 Unless otherwise expressly set forth in this Lease, **CITY** is responsible for the operation, maintenance, and repair of the Premises at **CITY** cost and expense, other than **CLUB'**s year round exclusive use space, which shall be **CLUB'**s responsibility. **CITY'**s responsibility shall be to maintain the Premises at no less than the minimum standards required for AA minor league

0:\OFFICE\CONTRACT\LEASE\Sea Dogs 6- 18-07 FINAL LEASE.doc

Page 22

baseball.

10 . 2 . Effective January 1, 2008, unless otherwise expressly set forth in this Revised and Restated Lease, the Club is responsible for field operation ☐ and maintenance, including winterizing and repairing the field as necessary due to winter conditions. The Club's responsibility shall be to operate, ☐ maintain and repair the

field at no less than the minimum standards required for AA minor league baseball and required by applicable local, state or federal regulation.

10.3. The City shall have the right, pursuant to Article 22 of this Lease, to enter and inspect the Premises for the purpose of determining whether the Premises are being operated, maintained and repaired in accordance with section 10.1. If the City finds that the Premises are being operated, maintained or repaired in violation of that section, the City may order the Club to correct these violations within a reasonable time, or may perform whatever work is required to correct these violations and charge to the Club the costs of such work.

10.4. If the Premises, or any portion thereof, during the term of this Lease are damaged (otherwise than by causes ordinarily covered by "all-risk" fire and extended coverage insurance and excluding normal wear and tear), by the act, default or negligence of the Club, or of the Club's officers, agents, employees, players, invitees, guests, contractors or subcontractors, or any person admitted to the Premises by the

0:\OFFICE\CONTRACT\LEASE\Sca Dogs 6-18-07 FINAL LEASE.doc
Page 23

Club, the Club will restore the Premises to their present condition at the Club's cost and expense.

10.5. The Club hereby assumes full responsibility for the character, acts and conduct of all persons admitted to the Premises or to any portion of the Premises by the consent of the Club, or by or with the consent of any person acting for or on behalf of the Club, and the Club agrees to provide sufficient security force to maintain order and protect persons and property during and for any club event.

ARTICLE 11. OPERATING PERSONNEL TO BE SUPPLIED BY CLUB 11.0 On the day

of each home game **CLUB** shall at its expense: 11 . 1 Provide adequate police for the Premises to maintain order and protect property therein

11 . 2 Provide such trained personnel as may be necessary for the orderly admission, seating and handling of patrons and for the proper use and occupancy of the Premises, and to insure the adequate flow of traffic in and around the Premises for one (1) hour before and after the game or event; such personnel shall include, but are not limited to, uniformed special police officers, guards, ticket sellers, ticket takers, ushers, attendants, announcers and first aid station personnel;

11 . 3 Provide such trained personnel as may be necessary to operate the electronic scoreboard;

11.4. Provide such other personnel as may be necessary to

0:\OFFICE\CONTRACT\LEASE\Sea Dogs 6-18-07 FINAL LEASE.doc

Page 24

maintain the grounds and facilities within the stadium fence in a reasonably clean ☐ ☐ and neat condition throughout the home game, and to perform litter cleanup in the Premises and the immediate area thereof during and after any home game; and to assist the City groundskeeper ☐ in laying and removing of tarp during rain delays; and

11.5 Provide such trained personnel as are necessary to adequately staff and operate the concessions.

11.6 The Club agrees to provide groundskeepers at ☐ authorized ☐ practices and home games. ☐

11.7. In addition, the CLUB shall provide at the CLUB's cost ☐

and expense such personnel throughout any Portland or Deering ☐

High School Baseball Team game played on the Premises as may be

necessary to maintain the grounds and facilities within the ☐

☐ stadium fence in a reasonably clean and neat condition, to ☐

perform litter cleanup in the Premises and the immediate area

thereof during and after the game, and to lay or remove tarp ☐

during rain delays. The CLUB shall provide these personnel for these purposes throughout any CITY game other than a Portland or

Deering High School Baseball Team game held on the Premises at a rate to be charged to the CITY which is mutually determined by the CLUB and the CITY.

ARTICLE 12. UTILITIES

12.1 CLUB shall pay, or cause to be paid, the costs of all

0:\OFFICE\CONTRACT\LEASE\Sea Dogs 6- 18-07 FINAL LEASE.doc
Page 25

utilities necessary for its operations hereunder, including without limitation all water and sewer charges attributable to its use of the Premises.

12.2 CITY will make a reasonable effort, at its expense, to install meters to measure the consumption of electricity used in connection with the ballfield lighting in order to permit separate billing of any use of the ballfield other than by CLUB.

12.3 The sharing of utility costs arising out of and related to CLUB's use of the Expo shall be mutually agreed upon by CITY, CLUB and the School Department in a separate document.

ARTICLE 13. SCOREBOARDS . SIGNS AND ADVERTISING

13.1 Any sign or other advertising matter may be erected or displayed by CLUB, or any of its contractors or subcontractors, on or in the Premises only in accordance with this Article. 13.2

Advertising shall be permitted on the inside of that outside out-field fence enclosing the playing field, the electronic scoreboard or its programmable message center, the concourse and such other areas as may be designated in writing by CITY. No advertising, other than the CLUB logo, shall be permitted on the team dugouts. CITY shall not be entitled to any part of advertising revenues received by CLUB from the sale of advertising.

13 . 3 **CLUB** shall be responsible for procuring, installing , a n d maintaining said advertising matter for the duration of the Baseball Occupancy period and for its maintenance and storage

0:\OFFICE\CONTRACT\LEASE\Sea Dogs 6-18-07 FINAL LEASE.doc
Page 26

during the off-season period. The content, structural make-up, location ☐ and size of said advertising shall be subject to the prior approval of **CITY**. All on-field advertising shall, at **CLUB**' s option, either be removed ☐ or covered in a manner ☐ acceptable to **CITY** , during the off-season from October 1 through March 30 of each year of the Lease.

13 . 4 The sale of advertising for any period other than a Baseball Occupancy period shall be under the exclusive control of **CITY** to the extent such advertising space is available without removal of any existing advertising. **CLUB** may, subject to **CITY**' s prior written approval, procure and sell such advertising on such terms and conditions as **CITY** and **CLUB** may mutually agree upon. 13 . 5 **CLUB** shall be solely responsible for the operation, maintenance, and use of any electronic scoreboard provided at **CLUB** expense, but shall permit **CITY** and other stadium users to use the same in connection with events sponsored by them . 13.6 **CLUB** and its subcontractors, if any, may display such signs, billboards, price lists and other advertising material as are calculated to inform patrons of the food, drink, articles of merchandise and admission tickets b e ing offered for sale in the stadium, such inside advertising to be in a size and quantity as 1s approved by **CITY**.

13.7 **CLUB** and its subcontractors shall have the right to display advertising on scorecards, program and other p rinted material sold i n any part of the Premises by **CLUB** or its

0 :\OFFICE\CONTRAC\LEASE\Sea Dogs 6- 18-07 FINAL LEASE.doc
Page 27

subcontractors.

13.8 It is the intent of **CITY** and **CLUB** that all advertising must be in keeping with the character and dignity of the Premises and that **CITY** is the final determiner of what is appropriate within those guidelines . All billboards, signs, electronic message boards and other advertising or notices must comply with all applicable local, state or federal law and regulations in regard to same, including without limitation the state and federal "Billboard" laws, and **CLUB** shall be responsible for such compliance.

ARTICLE 14. ALTERATIONS BY CLUB

14 .1 **CLUB** shall not make any alterations of the premises, except upon written approval of **CITY** of the plans and specifications setting forth the proposed alteration. No such consent shall render **CITY** liable with respect to any contract or undertaking by **CLUB** for a ny alteration work which shall be performed at **CLUB 'S** sole expense .

14 . 2 **CITY** shall not unreasonably withhold its consent to any alteration by **CLUB** , at **CLUB' S** expense, of the playing field, the walls or fences enclosing the playing field and any structures in whole or part on or over such walls and fences such as screens and foul poles, or any other alteration to the stadium required by minor league rules and applicable to all stadia where minor league baseball i s regularly p l a y e d .

14.3 **CLUB** may, at its own cost and expense, install an

0:\OFFICE\CONTRACT\LEASE\Sea Dogs 6- 18-07 FINAL LEASE.doc

Page 28

electronic scoreboard and sound system upgraded from that required by the minor league baseball standards in Exhibit A, so long as there is n o cost or expense to **CITY** for such upgrade.

☐ 14.4 To the extent ☐ reasonable, all alterations and work ☐ performed by or on behalf of **CLUB** shall be performed in such a manner and at such time as not to interfere substanti a l l y with the use of the Premises by any other authorized user or by **CITY**.

14 . 5 Materials, fixtures and equipment and other property which are so affixed or annexed to the Premises that they become a part of the real property, other than an upgraded scoreboard and sound system installed at **CLUB'** s sole cost and expense, shall immediately upon the installation thereof, become the property of and title thereto shall vest in **CITY**. Such materials, fixtures, equipment or other property, title to which vests in **CITY** under the preceding sentence, shall not be subject to any agreements of conditional sale, nor to any chattel mortgage, trust receipt, or other form of security transaction in which title is reserved or conveyed to the seller or any other entity . **CLUB** shall have the

right to remove any such materials, fixtures, equipment or other property if it promptly replaces the same with new or other materials, fixtures, equipment or other property of like kind in like or better quality and repairs any damage caused by such removal, in which event **CLUB** shall have the right to dispose of and/or sell the materials, fixtures, equipment and other property so removed and replaced and to retain the proceeds of such

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Page 29

disposition and/or sale. Prior written notice of any such removal shall be given to the **CITY**. **CLUB** shall have the right to remove any upgraded electronic scoreboard and sound system installed by **CLUB** at its sole cost and expense but shall reinstall a scoreboard and sound system required to meet the League minimum standards then in effect and to restore the Premises to their original condition, reasonable wear and tear excepted.

ARTICLE 15 . COVENANT AGAINST LIENS

15.1 If, as a result of **CLUB'** s activities on the Premises, any mechanics' lien or other lien , charge or order for payment of money, shall be filed against **CITY** , or any portion of the premises, **CLUB** shall at its own cost and expense cause the same to be

discharged of record or secure such payment by posting a bond with **CITY** in reasonable form and amount satisfactory to **CITY** within thirty (30) days after written notice to **CLUB** of the filing of such lien, charge or order.

15.2 If at any time any chattel mortgage, conditional sales agreement, trust receipt or other similar instrument shall be filed with respect to any property purchases by **CLUB**, any of its subcontractors or the contractors or subcontractors of any of them, which property by the terms of this Lease becomes or will become the property of **CITY-CLUB** at its expense shall cause the same to be discharged, vacated, cancelled or satisfied within thirty (30) days.

15.3 In default of **CLUB** so doing, **CITY** may after five (5)

0:\OFFICE\CONTRACT\LEASE\Sea Dogs 6-18-07 FINAL LEASE.doc
Page 30

days notice to **CLUB** and without thereby waiving such default of **CLUB**, procure the discharge or satisfaction of any or all said liens, chattel mortgages, conditional bills of sale, trust receipts or other similar instruments by bonding or payment or otherwise and **CLUB** shall defend, indemnify, and save harmless **CITY** against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom.

15.4 In the event **CLUB** shall not cause such lien, mortgage, bill of sale, trust receipt or order to be discharged of record or bonded within said thirty (30) day period, **CITY** may thereafter cause the same to be discharged and the cost and expense thereof, including reasonable counsel fees, shall be immediately paid to **CITY** by **CLUB** as additional rent.

15.5 Except as specifically provided in other articles of this Lease, **CITY** shall not be liable for any work, labor or services rendered for materials or equipment furnished to, or for the account of, **CLUB** upon or in connection with the Premises and no mechanics or

other lien for work, labor or services rendered for or material furnished to or for the account of **CLUB** shall attach to or affect the interests of **CITY**, **CLUB** or any of its subcontractors in and to the Premises or in and to any alterations, repairs, improvements in or about the Premises.

0:\OFFICE\CONTRACT\LEASE\Sea Dogs 6-18-07 FINAL
LEASE.doc Page 31

replacements, or

ARTICLE 16. DEFAULT

16.1 The **CITY**, in addition to any other rights given herein or to which it may be entitled by law or equity, may declare this Agreement terminated in its entirety, subject to and in the manner provided in this Article, upon or after the happening of anyone or more of the following events and may exercise all rights of entry and re-entry, with or without process of law, upon the Premises:

- A. To the extent permitted by law, the filing by **CLUB** of a voluntary petition in bankruptcy or any assignment for benefit of creditors of all or any part of **CLUB's** assets;
- B. To the extent permitted by law, the adjudication of **CLUB** as a bankrupt pursuant to any involuntary bankruptcy proceedings;
- C. To the extent permitted by law, the taking of jurisdiction by a court of competent jurisdiction of **CLUB** or its assets pursuant to proceedings brought under the provisions of any Federal reorganization act;
- D. To the extent permitted by law, the appointment of a receiver or trustee of **CLUB's** assets by a court of competent jurisdiction or a voluntary agreement with **CLUB's** creditors;
- E. The material breach by **CLUB** of any of the terms, conditions, covenants or provisions herein contained and the failure of **CLUB** to remedy such breach as provided below. A

material breach shall include, but not be limited to, the failure of **CLUB** to pay any rental, fee, charge, final judgment or bond

0:\OFFICE\CONTRACT\LEASE\Sea Dogs 6- 18-07 FINAL LEASE.doc
Page 32

when the same is due and payable.

16.2 In addition ☐ to any other rights given to it herein, or to which it may be entitled by law or equity, **CLUB** may cancel

this Agreement and terminate all or any of its obligations hereunder at any time, upon or after the happening of anyone of the following events :

A. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Premises, or of any part thereof, for baseball purposes and the remaining in force of such injunction for a period of at least one hundred and eighty (180) days;

B. Any action of any governmental authority, board, agency or officer having jurisdiction thereof preventing **CLUB** from conducting its operations at the Premises by taking, through the process of eminent domain, in whole or a substantial part, of the leased Premises; and

C. The material breach by **CITY** of any of the terms, conditions, or covenants or provisions herein contained and the failure of **CITY** to remedy such breach as provided below.

16.3 No termination declared by either party under sections 16.1 or 16.2 above shall be effective and the **CITY** shall not take possession of the premises unless and until not less than thirty (30) days have elapsed after notice by the party not in default to the other specifying the date upon which such termination will take effect, and the cause or causes for which this Lease is

0:\OFFICE\CONTRACT\LEASE\Sea Dogs 6- 18-07 FINAL LEASE.doc
Page 33

being terminated. During said thirty (30) days, the defaulting party shall have the right to cure said default, unless such default(s) by its nature cannot be cured within such thirty (30)

day period and if the party in default commences to correct ☐ such ☐ default within said thirty (30) days, and proceeds diligently to correct the same as promptly as reasonably practicable, this Lease shall not terminate.

16.4 Notice of default shall be sent by certified mail, postage prepaid, return receipt requested, or by hand-delivery. 16.5 If the notice provided for in Section 16.4 has been served and the term of this Lease has ended as aforesaid, **CITY** may, without further notice, re-enter and repossess the Premises with or without legal process and remove all persons and property therefrom and **CLUB** hereby waives any further notice provided by law or otherwise to be given in connection therewith. Any and all property belonging to **CLUB** or to anyone claiming by, through, or under **CLUB** which may be found in the Premises by **CITY** upon such reentry may be handled, removed, stored or otherwise disposed of by **CITY** at the risk and expense of **CLUB** and **CITY** shall not be responsible for the preservation or the safekeeping thereof. **CLUB** shall pay to **CITY** upon demand any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in **CITY**'s possession or under **CITY**'s control. If any such property shall not be retaken by **CLUB** within a period of thirty (30) days from and after the

O:\OFFICE\CONTRACTLEASE\Sea Dogs 6- 18-07 FINAL LEASE.doc
Page 34

effective date of any such termination of this Lease, such property ☐ shall conclusively be deemed to have been forever abandoned by **CLUB**. The words "re-enter" and "re-entry" as used

in this Lease are not restricted to their technical legal ☐ meaning.

16.6 In the event of any termination of this Lease by **CITY** and re-entry or repossession of the **Premises**, by summary proceedings or otherwise, **CITY** may relet the **Premises** or any part or parts thereof, either separately or in conjunction with any other space in the Premises, to any other person or entity, and may re-grant to any other person or entity any and all the rights granted to **CLUB** under this Lease, for such term, which may be shorter or longer than the term which would otherwise have constituted the remainder of the term of this Lease, and/or such other terms, covenants and conditions including rent, concessions or free rent, and may make such repairs, alterations, additions, replacements and/or decorations in and to the **Premises** which **CITY**, in its sole discretion, may deem advisable for the purpose of re-letting the **Premises**, all without in any way releasing **CLUB** from liability hereunder. **CLUB** shall upon demand, pay the costs

of all such repairs, alterations, additions, replacements and/or decorations together with **CITY**'s other expenses of such reletting or re-granting, including without limitation reasonable legal expenses and brokers commissions. If the rent or other payments collected by **CITY** upon any such re-letting or re-granting are not

0:\OFFICE\CONTRACT\LEASE\Sea Dogs 6-18-07 FINAL LEASE.doc
Page 35

sufficient to pay monthly the full amount of the rent (determined as hereinafter in this section provided) and all other amounts which **CLUB** would have been obligated to pay under this lease to

CITY during the balance of the term of this Lease, **CLUB** shall pay ☐ ☐ monthly to **CITY** the amount of each monthly deficiency. **CITY** shall not be liable for failure to relet the **Premises** or re-grant the rights granted to **CLUB** by this Lease; or, if the Premises are relet or such rights are re-granted, for reasonable failure to collect the rent and other payments under such re-letting or re-granting ☐.

16.7 Notwithstanding the foregoing, in the event of a breach or a threatened

breach by any party of any of the terms, covenants, conditions, or provisions hereof, the other party shall have the right of injunction to restrain the same and the right to invoke any other remedy allowed by law or equity, including without limitation, the right to specific performance or the right to money damages, as if specific remedies, indemnity or reimbursement were not herein provided for.

16.8 The rights and remedies given to any party in this Lease are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by the other party, shall be deemed to be in exclusion of any others herein or by law or equity provided.

ARTICLE 17 . INDEMNIFICATION

17.1 **CLUB** shall defend, indemnify and hold **CITY**,

0:\OFFICE\CONTRACT\LEASE\Sca Dogs 6-18-07 FINAL
LEASE.doc
Page 36

its

officers, agents and employees, harmless from any and all ☐ claims, suits and judgments, ☐ just or unjust, and all costs and expenses in connection therewith, which arise out of or result from **CLUB 's**

use of the Premises hereunder or which arise out of or ☐ result from the actor omission of **CLUB**, its officers, agents, employees,

players, invitees, its contractors or subcontractors, and their officers, agents, employees or invitees; the officers, agents, employees, invitees, contractors or subcontractors of **CLUB 's** minor league franchise, or anyone for whose act **CLUB** may be legally liable. The liability of **CLUB** under this Article shall not be limited to the insurance amounts specified in Article 18.

17.2 Notwithstanding the foregoing, **CLUB** shall not be liable under this Article with respect to any particular claim, suit or judgment if (a) any settlement of such claim has not been approved in writing by **CLUB**, or (b) in any such suit, **CLUB** has neither been permitted to defend against such suits by counsel selected by **CLUB** or (c) **CITY** on

request fails to execute all assignments and other documents to subrogate **CLUB** or its insurer, insurers or designee to all rights of **CITY** against third parties with respect to any such death, personal injury or property damage and cooperate reasonably in the enforcement of such rights by **CLUB** or its insurer, insurers or designee. Defense by the insurer by its counsel shall be deemed to be defense by **CLUB** by its counsel.

17.3 Nothing herein is intended, nor shall it be deemed to

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Page 37

waive or modify any defense, immunity or limitation of liability which **CITY** may have under the Maine Tort Claims Act or other similar statute.

ARTICLE 18 . INSURANCE

18.1 **CLUB** shall at its own cost and expense obtain and maintain throughout the term of this Lease and, if applicable, cause its subcontractors to obtain and maintain for the life of their subcontracts, insurance as follows:

A) **CLUB** shall insure its property and the personal property of **CITY** which is in **CLUB**'s care, custody and/or control against loss or damage from "all risks" of physical loss or damage, with **CITY** property to be insured at replacement value. Such policy shall name as insureds and provide for payment of proceeds of any loss to **CITY** and **CLUB** as their interests may appear.

B) Comprehensive General Liability, Liquor Liability and Automobile Liability Insurance, naming **CITY** as insured therein and covering the obligation of indemnification hereunder, against claims, suits and judgments against **CITY** and/or **CLUB** for death, bodily injury, personal injuries and property damage arising out of or occurring during the operation, occupancy, maintenance or use of, or resulting from the acts or omissions of **CITY** and/or **CLUB** and/or any officer, employee or agent of either of them and/or any subcontractor of either of them in or with respect to any part of the

Premises. The Comprehensive General Liability insurance coverage must include clauses providing for Fire Legal

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Page 38

Liability and for Blanket Hold Harmless coverages .

C) Insurance commonly known as product liability insurance, naming **CITY** as additional insured therein, for claims, suits and

judgments against **CITY** and/or **CLUB** and/or its subcontractors for ☐ death, bodily injuries and property damage arising out of the sale, handling or other distribution of food, goods or other products by **CLUB** and/or its subcontractors.

18.2 The liability insurances required by section 18.1 (B) and 18.1 (C) shall each provide limits of liability of not less than :

A) One million dollars (\$1,000,000.00) for injuries to or death of one person.

B) Three million dollars (\$3,000,000 . 00) for injuries to or death of more than one person injured or killed in anyone occurrence .

C) One million dollars (\$1, 000, 000. 00) for property damage resulting from anyone occurrence with an aggregate limit of three million dollars (\$3,000,000 .00) per annum for property damage .

18.3 Statutory workers ' compensation and employer ' s liability insurance in the amounts prescribed by law in the State of Maine.

18.4 All insurances required by this Article shall be carried with a financially sound insurance company or companies licensed to do business in the state of Maine to the extent that such insurance is obtainable from such company or companies. The

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Page 39

policy or policies for all required liability insurances shall be on an occurrence basis .

18 . 5 All insurances required under this Lease shall be maintained in the

coverages and amounts specified or the amount required by state law throughout the term of this Lease, whichever is greater .

18.6 Certificates of insurance together with the duplicate originals of every policy of insurance required by any of the foregoing provisions of this Article and any and all renewals, endorsements, additions, modifications and changes thereto shall be deposited with **CITY** as soon as they have been procured. All such policies, duplicates, or certificates shall, prior to such deposit, be marked "premium paid" and shall contain a provision that the same shall not be altered, cancelled or not renewed before **CITY** has received thirty (30) days written notice of the insurance carriers' intent to so alter, cancel or not renew.

18.7 **CLUB** shall faithfully perform and comply with, subject to the provisions of the Lease, all of the terms and conditions of the policies of insurance required by the foregoing provisions of this Article, except those terms and conditions which by the terms of this Lease or the policy in question are required to be performed or complied with by **CITY** , which terms and conditions **CITY** shall perform and comply without limitation of the foregoing, both **CLUB** and **CITY** shall give prompt notice to the insurers and to each other of all claims covered by any of said policies. **CLUB** shall pay or cause to be paid the premiums on all of said policies at the times and in the amounts required to maintain in full force and effect the insurance required to be

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Page 40

maintained hereunder and **CLUB** ☐ shall not be entitled to any reimbursement ☐ by **CITY** ☐ for such premiums .

18.8 All policies and insurance required by this Article 18 to be furnished shall be endorsed or otherwise be in such form that the insurers will have no right of subrogation against any officer, employee, director or stockholder of any party hereto .

18 . 9 "**CITY**" as used in this Article and in Article 17 shall include, without limitation, the officers, agents, employees and contractors of the City of Portland, its boards and commissions, and of the Portland Superintending School Committee .

ARTICLE 19. DAMAGE TO THE PREMISES

19 .1 **CITY** shall, at its own cost and expense, insure or self-insure the Premises against loss or damage from "all risks" of physical loss or damage; said insurance or self-insurance be for the full insurable value of the Premises at replacement cost, and shall contain only the standard exclusions .

19 . 2 If the Premises shall be partially or totally damaged or destroyed by fire or other casualty, **CITY** shall repair the damage so as to restore the same to its condition immediately prior to such fire or other such casualty, EXCEPT that **CITY** shall not be required to repair any such damage unless:

A) The casualty is of a kind covered by the insurance provided by section 19 .1; or

B) **CITY** has a collectible claim for the entire cost of such repair against a third party; or

C) **CLUB** agrees to pay the entire cost of such repair or the difference between such entire cost in the amount of any

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Page 4 1

collectible claim which **CITY** has against a third party. In the event of any such damage as to which neither clause A) nor B) ☐ nor ☐

C) is applicable and the failure to repair such damage interferes significantly with **CLUB'** S use of the Premises in accordance with the terms of this Lease, either party shall have the right to terminate this Lease as of the date of the occurrence of the damage; EXCEPT that if **CITY** elects to repair such damage and so notifies **CLUB** within 30 days after such occurrence, no party shall have the right to terminate. **CITY** shall not be required to repair or replace any property owned by **CLUB** or its subcontractors and **CITY** shall not be liable for any damage to any such property caused by any fire or other casualty.

19.3 In the event of any damage or destruction which **CITY** is required to repair pursuant to section 19. 2 hereof, **CITY** shall proceed promptly with the work of repair and restoration and shall proceed diligently to completion, subject to force majeure .

If **CITY** has not completed the work of repair and restoration within a reasonable time after such fire or other casualty and if the non-completion in question interferes significantly with **CLUB'S** use of the Premises in accordance with the terms of this Lease, **CLUB** shall have the right to terminate this Lease. In determining what constitutes a "reasonable time" for the completion of such restoration ☐ within the meaning of the immediately preceding sentence there shall be taken into consideration the nature, character and extent of damage, and the delays, if any, due to force majeure, provided

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Page 42

however, that in any event **CLUB** shall have the right to terminate this Lease if such restoration has not been completed ☐ sufficiently to permit use of the Premises within fifteen (15) months after the date of such fire or other casualty . 19.4 Any period beginning with the occurrence of any damage or destruction by fire or other casualty which renders any part of the Premises untenable or unusable for the purposes for which the same is designed and intended and ending upon completion of the work or repair and restoration or an earlier termination of this Lease as hereinabove permitted, is called a "Force Majeure Period". During any "Force Majeure Period"

A) **CLUB** shall pay a reasonable rent for any part of the Premises used by **CLUB** during such force majeure period. B) The other obligations of the parties under this Lease shall abate and shall be limited to the extent of the part, if any, of the Premises being used by **CLUB** .

ARTICLE 20 . SUSPENSION OF BASEBALL

20 . 1 During any period of one month or more when by reason of force majeure **CLUB** is unable, exercising due diligence, to exhibit professional baseball games or is prevented with substantially complying with the Eastern League Schedule, (any such

period herein being called a "baseball suspension period"), the rights of the parties hereto shall be as follows :

A) The terms of this Lease shall be suspended and the

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Page 43

rights, obligations, and liabilities of the parties hereunder,

☐ including without limitation, the obligation to pay rent with ☐ respect to such Baseball Suspension Period, shall abate and be suspended. If such Baseball Suspension Period is less than a full baseball occupancy period, the minimum rent shall be pro-rated on a monthly basis by dividing the annual rent by 12 .

B) **CITY** shall have the right to use the Premises or any part thereof for any purpose during any Baseball Suspension Period. All revenues received by **CITY** from such use shall be retained by **CITY** and **CLUB** shall not be entitled to any part thereof.

C) **CLUB** may upon the written consent of **CITY** elect by notice to **CITY** to continue to occupy any or all of the Premises during any Baseball Suspension Period at a fair and reasonable rent to then be determined .

ARTICLE 21. COMPLIANCE WITH LAWS

21.1 **CLUB** shall comply with and observe any and all present and future Federal, State and local Laws and regulations affecting or applicable to **CLUB** and/or any of its contractors or subcontractor 's operations in the Premises, and all regulations, and all departments, the Federal, state or orders, directives and requirements of any bureaus, boards, commissions and agencies of local Governments issued or made pursuant to such laws.

ARTICLE 22. INSPECTION

22.1 **CITY** and its agents and representatives shall, at all

times during which **CLUB** has the right to use and occupy the Premises or any part thereof, have the right to enter into and ☐ upon any and all parts of the Premises for the purpose of examining the same for any legitimate reason; provided, however, ☐ that if such entry is to any part of **CLUB'S** year-round space at any time during the year then it shall be made only after notice in writing (or without notice in the case of an emergency or if the person making such inspection is accompanied by an executive or administrative employee of **CLUB**, or in the case of concession areas, of its subcontractors) served on **CLUB** and setting forth the time and/or times of entry which shall be such reasonable time or times.

22.2 The rights reserved by this Article shall not impose upon **CITY** nor does **CITY** assume by reason hereof, any responsibility, obligation or liability for the care, maintenance, supervision, repair or replacement of the Premises or any part thereof or any duty to comply with any law, ordinance, rule, order or regulation other than those responsibilities, obligations, liabilities and duties assumed by **CITY** pursuant to the provisions of other Articles of this Lease.

ARTICLE 23. ASSIGNMENT AND SUBLETTING

23.1 Except as expressly permitted by any provision of this Lease, **CLUB** shall not, without the written consent of **CITY**: A) assign or mortgage this Lease or in any way transfer or

encumber the rights granted hereby, or B) sublet or grant any permit or license to use the Premises or any part thereof. The terms and conditions of any such assignment, mortgage, transfer, encumbrance, subletting, permit or licensing shall be subject to ☐

the prior written approval of **CITY**. No such consent by **CITY** shall relieve **CLUB** of any of its obligations under this Lease. The granting by **CITY** of consent to anyone of the foregoing in one or more instances shall not dispense with the necessity for the consent of **CITY** to further assignment, mortgage, transfer, encumbrance, sublease, permit or license.

ARTICLE 24 . NO SURRENDER

24.1 No act done by **CITY** , or its officers, employees or agents during the term of this Lease shall be deemed an acceptance of a surrender of **CLUB** 's interests hereunder, and no agreement of surrender of said interests shall be valid unless the same shall be duly authorized by the legislative body of **CITY**.

ARTICLE 25 . WAIVER OF REDEMPTION

25.1 **CLUB** for itself and on behalf of any and all persons claiming through or under **CLUB** , including creditors of all kinds, does hereby waive and surrender any and all rights and privileges which they or any of them might have under or by reason of any present or future law or decision (other than a decision in an action or proceeding in which the rights of the parties under

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Page 46

this Lease are adjudicated to redeem its interest under this Lease or to have a continuance of this Lease with the terms hereby granted after being dispossessed , removed or ejected

according to law, or the provisions of this Lease .

ARTICLE 26 . NOTICES

26.1 All notices, consents, approvals, demands and submissions(herein after in this Article collectively called a "Notice") shall be in writing and shall be served by

certified mail (return receipt requested) or hand delivered and addressed to:

City Manager , City of Portland
389 Congress Street
Portland, ME 04101
cc : Superintendent of Recreation
cc : Corporation Counsel

or at such other address as **CITY** may specify at any time or from time to time by Notice to **CLUB** .

26.2 Any Notice to **CLUB** shall be deemed properly given if in writing and served by certified mail (return receipt requested) or hand delivered and addressed to:

Charles Eshbach , President
Portland Sea Dogs
P.O . Box 636
Portland, ME 04104

with a copy to :

William B. Troubh , Esq .
RICHARDSON & TROUBH
465 Congress Street
P.O . Box 9732
Portland, ME 04104-5032

or at such other address as **CLUB** may specify at any time or ☐ from time to time by Notice to **CITY** . **CLUB** shall notify **CITY** of the

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Page 47

name of the individual in charge of the office of **CLUB** at the Premises and Notices may thereafter be delivered to such individual until **CITY** has been notified by the **CLUB** of the name of the different individual in charge such ☐ office and authorized to receive Notices.

ARTICLE 27 . OBLIGATIONS TO MAINTAIN FRANCHISE 27.1 **CLUB** represents that it is at the time of execution of this Lease a member ☐ in good standing of the Eastern League and agrees that through the term of this Lease it will A) maintain its membership and franchise in the Eastern League in good standing, B) hold and maintain its right in

franchise to play minor league professional baseball in the City of Portland in accordance with the baseball rules and not do or suffer to be done anything which will cause such right or franchise to be lost or impaired or diminished in any respect or transferred to any other city or location or modified to permit **CLUB** to play home games in any such other city or location; and C) maintain its team as an Eastern League (or successor comparable league) baseball team of the character and standing required by the baseball rules for the conduct of professional minor league baseball games and use its best efforts within the limits of sound business judgment to insure the maximum receipts therefrom.

ARTICLE 28 . QUIET ENJOYMENT

28.1 **CITY** agrees, covenants, and warrants that as long as

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Page 48

CLUB faithfully performs the agreements, terms covenants, and conditions of this Lease within the grace periods and extended periods for any unavoidable delays, **CLUB**, shall peaceably and

quietly have, hold, and enjoy the use of the Premises upon the ☐

terms and conditions herein granted without molestations or disturbance by or ☐ from **CITY**.

ARTICLE 29. NO WAIVER

29.1 No waiver of any term, provision, covenant, or condition contained in this Lease or of any breach of any such term, provision, covenant or condition shall constitute a waiver of any subsequent breach of such term, provision, covenant or condition by either party, or justify or authorize the nonobservance on any other occasion of the same or any other term, provision, covenant or condition hereof .

ARTICLE 30. INTERPRETATION ☐

30.1 This Lease shall be construed in accordance with the law of the state of Maine. Whenever the contents of any provision shall require it, the singular number shall be held to include the plural number, and vice versa. The neuter gender includes the masculine and the feminine. **CITY** includes its

officers, agents, employees, and contractors or subcontractors, and the Portland Superintending School Committee and its officers, agents, employees and contractors or subcontractors .

CLUB includes its officers, agents,
contractors and subcontractors .

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employees, players,

ARTICLE 31 . ENTIRE AGREEMENT

31.1 This Lease with its attachments contains the entire agreement of the parties hereto with respect to the lease of the Premises described herein and this Lease may not be amended, modified, released, or discharged, in whole or in part, except by an instrument in writing signed by the parties hereto, or their duly authorized respective successors or assigns.

ARTICLE 32. SUCCESSORS BOUND

32.1 Except as otherwise provided in this Lease, all terms, provisions, covenants and conditions of this Lease shall be binding on and inure to the benefit of the parties hereto, their duly authorized respective personal representatives, successors and assigns. No modification or termination of this Lease shall be binding unless evidenced by an agreement in writing signed by **CITY** and **CLUB** .

ARTICLE 33. CAPTIONS

33 . 1 The captions of the Articles of this instrument are solely for convenience and shall not be deemed a part of this instrument for the purpose of construing the meaning thereof, or for any other purpose.

ARTICLE 34. PARTIAL INVALIDITY

34 . 1 If any term, covenant, condition, or provision of this Lease or the application thereof to any person or circumstances

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Page 50

shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or its application to other persons or circumstances, shall not be affected thereby, and each term, covenant, condition, and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

ARTICLE 35 . NO MERGER

35 . 1 The fee title of the Premises and the leasehold estate granted by this Lease shall not merge, but shall always remain separate and distinct notwithstanding the union of said estates in whole or in part in **CLUB** or in a third party by purchase or otherwise.

ARTICLE 36 . APPROVAL OF CITY

36.1 Approval of the **CITY**, wherever used in this Lease, shall mean the approval of the City Manager of the City of Portland, unless another party is specifically designated. "Approval" wherever required herein by either party, shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 37 . MEMORANDUM OF LEASE

37.1 The parties agree to execute a Memorandum of Lease in form appropriate for recording in the Cumberland County Registry of Deeds.

IN WITNESS WHEREOF, the **CITY** and the **CLUB** have caused this Lease Agreement to be duly executed by their duly authorized representatives the day and year first above written.

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Page 51

WITNESS: PORTLAND



Then personally appeared the above named Joseph E. Gray, Jr. as City Manager of the City of Portland and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said City.

PORTLAND MAINE BASEBALL, INC.



Then personally appeared the above named Daniel B. Burke in his capacity as Chairman of Portland Maine Baseball, Inc. and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of the Eastern League AA franchise.



Equipment Transferred to Sea Dogs

Tri-plex Reel Mower 2005



Infield Groomer 1995

Groomer drags 2004

Sod Cutter 2006

AMENDED AND RESTATED LEASE AND USE AGREEMENT

BETWEEN

THE CITY OF PORTLAND, MAINE

AND

DBH PORTLAND, LLC

This Amended and Restated Lease and Use Agreement (the “Lease”) is made as of the ____ day of September 2024 (the “Effective Date”) between the CITY OF PORTLAND, a municipal corporation, having its offices at Portland City Hall, 389 Congress Street, Portland, Maine 04101 (hereinafter the CITY), and DBH Portland, LLC (the “CLUB”), a Delaware limited liability company and owner of the minor league professional baseball club currently known as the Portland Seadogs (the “Team”) with a principal office located at Hadlock Field, 271 Park Avenue, Portland, ME, and with a mailing address of P. O. Box 636, Portland, ME 04104.

WITNESSETH

WHEREAS, the CITY owns an outdoor stadium and sports facility known as Hadlock Field (the “Stadium”) on property owned by the CITY and located at 271 Park Avenue within the City of Portland (as further defined below, the “Premises”); and

WHEREAS, the CITY and CLUB are currently parties to a Revised and Amended Lease and Use Agreement for the Premises dated as of June 18, 2007, which expires on September 30, 2028 (the “Current Lease”);

WHEREAS, CLUB is party to the Portland PDL License Agreement (as defined herein);

WHEREAS, the CLUB and the CITY wish to extend the term of the Current Lease and to revise certain provisions of the Lease in ways that are beneficial to both the CLUB and the CITY; and

WHEREAS, the CLUB has committed to expending amounts anticipated to exceed \$8,000,000 to complete all of the repairs, alterations, additions, and improvements necessary in order to bring the Stadium into compliance with the current iteration of the PDL Facility Standards and all applicable PDL Rules and Regulations (as defined herein); and

WHEREAS, in consideration for the CLUB's commitment to make the PDL Improvements, the parties have agreed to extend the term of the Lease through the 2038 Professional Development League baseball season and to revise the terms and conditions of the Lease in the manner set forth herein;

NOW, THEREFORE, the CITY hereby leases to CLUB and CLUB hereby leases from CITY the Premises for baseball and related uses upon the terms and conditions hereinafter set forth.

ARTICLE 1. DEFINITIONS

The following words and terms, when used in this Lease, shall, whether used in the singular or in plural, have the following meanings.

- 1.1 Baseball Occupancy Period – The period from the date of the first game (whether home or away and including Exhibition Games, if any) scheduled to be played by the Team during each season through the date of the final game (including Postseason Games, if any) played by the Team in the year in question, both dates included.

- 1.2 Charity Game – Any baseball game other than an All-Star game, the net proceeds of which are paid to a nonprofit organization and which includes the Team as one of the participants and, under the PDL Rules and Regulations, is scheduled or required to be played on the Premises.
- 1.3 Commissioner – the Commissioner of Baseball as elected under the Major League Constitution, or, in the absence of a Commissioner, any Person or body succeeding to the powers and duties of the Commissioner pursuant to the Major League Constitution.
- 1.4 Concession – The business of selling, renting, or furnishing goods or services of any type or kind, including, but not limited to food, drink, merchandise, souvenirs and cushions, but excluding the sale of parking privileges.
- 1.5 Concession Contract – Any written agreement entered into between CLUB and any person or entity by which there is granted to such person or entity the whole or any part of the rights of CLUB to operate Concessions in and about the stadium.
- 1.6 Concession Facilities – The facilities for the preparation and service of food and drink and for the sale or rental of other goods and services, including all equipment and fixtures affixed or attached to any part of the concession space and all improvements, additions, alterations, equipment, fixtures, and installations constructed, provided or added in or to said space at any time.
- 1.7 Entity – An individual, partnership, firm, company, association, joint stock association, public or private corporation, limited liability company, or other like organization and any unit or branch of government or public department, agency, or board, including but not limited to any department, agency, or board of CITY.

- 1.8 Exhibition Game – Any baseball game other than a regular season game, Charity Game, Postseason Game, interdivisional championship game or inter-league championship game between CLUB and any other team which is sanctioned or permitted by the PDL Rules and Regulations and which is scheduled to be played in the Premises.
- 1.9 Force Majeure – (1) act of God, (2) fire, floods, earthquake, blizzard, storm or other casualty, (3) strike, lockout, or other labor dispute, (4) riot, insurrection, civil commotion, sabotage, vandalism, or enemy or hostile government action, (5) inability to procure labor, materials, or supplies, (6) law, statute, ordinance, order, rule, or regulation, requirement of any superior governmental authority or any appropriate agency, office, or department, board or commission thereof whether now or hereafter in force, including, without limitation, rationing restriction in respect of any construction work for the use of labor or materials, or requirement of the PDL Rules and Regulations; (7) judicial or other legal restriction or order affecting the performance of any covenant to be performed hereunder, (8) epidemic or pandemic, or (9) any other condition beyond the reasonable control of a party required to perform hereunder.
- 1.10 Home Game – Any baseball game, including regular season game, all-star game, Exhibition Game, Charity game, interdivisional championship game, Postseason Game, or inter-league series game which under the PDL Rules and Regulations is scheduled, required, or permitted to be played in the Premises.

- 1.11 Major League Baseball – any or all of (i) the Office of the Commissioner of Baseball, each other MLB PDL Entity and/or all boards and committees thereof, and/or (ii) the Major League Clubs acting collectively.
- 1.12 Major League Club – any professional baseball club that is entitled to the benefits, and bound by the terms, of the Major League Constitution.
- 1.13 Major League Constitution – the Major League Constitution adopted by the Major League Clubs as the same may be amended, supplemented or otherwise modified from time to time in the manner provided therein and all replacement or successor agreements that may in the future be entered into by the Major League Clubs.
- 1.14 MLB PDL – depending on the context, any or all of (i) MLB Professional Development Leagues, LLC, a Delaware limited liability company, and/or (ii) the boards, committees and subcommittees related thereto.
- 1.15 MLB PDL Entity – each of MLB PDL, the Office of the Commissioner of Baseball, MLB Advanced Media, L.P. and/or any of their respective present or future affiliates, assigns or successors. The term MDL PDL Entity does not include the CLUB.
- 1.16 Night Game – Any Home Game or event the scheduled starting time of which is 6:00 P.M. or later.
- 1.17 Other User – CITY or any entity to whom or which CITY has granted a use authorization.
- 1.18 PDL Approval – any approval, consent or no-objection letter required to be obtained from MLB PDL or any other MLB PDL Entity pursuant to the PDL Rules and Regulations.

- 1.19 PDL Club – a professional baseball club participating in the Professional Development League System pursuant to a player development license agreement between the owner of such club and MLB PDL pursuant to which such owner has been granted the right to participate in the Professional Development League System.
- 1.20 PDL Facility Standards – the facility standards required by MLB PDL with respect to the condition, design, maintenance, operation and upkeep of the Stadium’s physical facilities (including the playing field) as set forth in the PDL Rules and Regulations and as may be modified from time to time.
- 1.21 PDL Governance Agreement – that certain Professional Development Leagues Governance Agreement, effective as of February 12, 2021 by and between MLB PDL and each PDL Club, as may be amended, modified, supplemented or restated from time to time.
- 1.22 PDL Governing Documents – the following documents as in effect from time to time and any amendments, supplements or other modifications thereto and all replacement or successor documents thereto that may in the future be entered into: (i) the Major League Constitution, (ii) the Major League Rules (and all attachments thereto), (iii) the PDL Operating Guidelines, (iv) the PDL Governance Agreement and (v) the PDL License Agreements.
- 1.23 PDL Improvements – all repairs, alterations, additions, and improvements that are necessary in order to bring the Premises into compliance with the current iterations (as of the Effective Date) of the PDL Facility Standards and all applicable PDL Rules and Regulations (as defined herein).

- 1.24 PDL License Agreement – each player development license agreement entered into between a PDL Club and MLB PDL pursuant to which such PDL Club has been granted the right to participate in the Professional Development League System, including, without limitation, the Portland PDL License Agreement.
- 1.25 PDL Rules and Regulations – the PDL Governing Documents, (ii) any present or future agreements or arrangements entered into by, or on behalf of, MLB PDL or any other MLB PDL Entity or the Major League Clubs acting collectively that are specifically related to or generally applicable to the Professional Development League System or the PDL Clubs, including, without limitation, agreements or arrangements entered into pursuant to the PDL Governing Documents, and (iii) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or on behalf of, the Commissioner, MLB PDL or any other MLB PDL Entity as in effect from time to time that are specifically related to or generally applicable to the Professional Development League System or one or more of the PDL Clubs.
- 1.26 Portland PDL License Agreement – that certain player development license agreement entered into between CLUB and MLB PDL pursuant to which the Team has been granted the right to participate in the Professional Development League System.
- 1.27 Postseason Game – Any baseball game which is scheduled to be played between CLUB and another PDL Club at the conclusion of the regular baseball season and which, under the baseball rules is scheduled, required, authorized, or permitted to be played in the Stadium.

- 1.28 Professional Development League System – a system of professional baseball leagues comprised of professional baseball clubs that compete at different levels and serve to assist with the development of players for Major League Baseball.
- 1.29 Related Activity – An event or activity which is scheduled or arranged by CLUB to be held or take place on the date of any Home Game or immediately following any Home Game for the purpose of increasing attendance at Home Games. If any proposed event or activity is of a kind or character that is not similar to events or activities previously conducted by a minor league team in conjunction with a baseball game at the Premises, the prior written approval of the CITY shall be required.
- 1.30 Road Trip Period – Each period during a Baseball Occupancy Period when the Team is scheduled to play one or more successive games anywhere other than in the Premises.
- 1.31 Use Authorization – Any grant by contract, lease, rental agreement, license, permit, or other authorization, not including this Lease, entered into or issued by CITY with any entity whereby a right is conferred to use the Premises.
- 1.32 Untenantability Period – the period, if any, during which MLB PDL determines, in a written directive, declaration or ruling addressed to CLUB (sent in good faith and not at the request of CLUB) and provided to the CITY, that the condition of the Stadium is such that a Home Game cannot reasonably be held at the Stadium in accordance with MLB PDL standards for exhibition of MLB PDL games, as such standards may be determined and applied by MLB PDL from time to time, provided

that such standards are consistently applied without discrimination in application to the Team, CLUB or the Stadium.

ARTICLE 2. SUBJECT PREMISES

2.1 CITY grants to CLUB, and CLUB hereby accepts from City the right to use (for the uses described herein) an outdoor stadium and sports facility and related facilities, i.e., the Premises.

2.2 The Premises include the Stadium, Hadlock Baseball field (including proper batting cage and fielding safety screens), clubhouse facilities, enclosed picnic area, office space, press box, restrooms, the shell for concession stands and concession storage, indoor area for additional batting cage and/or pitching area, the PDL Improvements, all space and area enclosed or unenclosed within or under the stadium structure, all improvements, fixtures and equipment and exterior ticket booths and other installations owned by CITY and used in connection with the operation of the stadium and all permanent additions, alterations, fixtures, equipment and installations constructed, provided or added thereto at any time by CITY, CLUB or any other entity, and, except as otherwise provided below, available space in the adjacent Exposition Building (hereinafter the “Expo), Field equipment as described in Exhibit B to this Lease hereby becomes the property of the CLUB.

2.3 The Premises shall be available as provided herein for the use of the CLUB during the entirety of the Baseball Occupancy Period each year of this Lease, EXCEPT that following the completion of the PDL Improvements (including completion of the renovation of the Home Clubhouse), the Club will only be permitted to use available space in the Expo on days when a Home Game is scheduled and only if CITY’s Director of Parks, Recreation and Facilities, or

their successor or designee, determines that such facilities are available. In addition, the following areas of the Premises shall be available on a year-round basis for the CLUB's exclusive use (collectively, the "Exclusive Use Areas"):

A) Office space, picnic areas, concession stands, concession storage space, and other storage space in the Stadium identified as 'CLUB space' in the diagram depicting the Premises, attached to this Lease as Exhibit C;

B) the current home clubhouse and the new home clubhouse to be included in the PDL Improvements;

C) Private skyboxes; and,

D) Private lounge.

ARTICLE 3. MUTUAL REPRESENTATIONS: GUARANTY

3.1 CITY hereby represents and warrants that it has the exclusive ownership of the Premises and that it has full authority to enter into this lease for the use of said Premises. Notwithstanding the foregoing, CLUB understands and agrees that following the completion of the PDL Improvements (including completion of the renovation of the Home Clubhouse), the CLUB's right to use the Expo shall be subordinate to Portland School Department's use of the Expo.

3.2 In the event that ownership of the Team should, for any reason, during the term of this Lease be assumed or transferred to any entity other than the CLUB, said transfer shall be subject to assumption by such entity of all the rights and obligations under this Lease.

ARTICLE 4. TERM

4.1 The term of this Lease (the “Term”) shall commence at 12:01 a.m. October 1, 1993, and expire at midnight on the last day of the Baseball Occupancy Period during 2038, unless sooner terminated or extended as hereinafter provided.

4.2 The CLUB shall have the option to extend the Term through the last day of the Baseball Occupancy Period during 2043 by providing written notice of its election to so extend the Term on or before the first day of the 2038 Baseball Occupancy Period, provided that the CLUB is not then in material default under the provisions of this Lease.

ARTICLE 5. RENT

5.1 From and after January 1, 2024 and through the expiration of the Term (including, if applicable, the five year extension thereof pursuant to Section 4.2), CLUB shall pay to CITY an annual payment of Two Hundred Sixty Thousand Dollars (\$260,000).

5.2 The foregoing payments shall be made in legal tender, said payments to be made at the offices of the CITY’s Finance Director or at such other place as CITY may from time to time designate.

ARTICLE 6. CLUB’S USE OF PREMISES

6.1 During each Baseball Occupancy Period, CLUB shall have the exclusive right to use and occupy the Premises (in addition to the year-round use of the Exclusive Use Areas) in connection with the exhibition to the public of Home Games and for three (3) non-Professional Development League baseball events, in each case for six (6) hours before the game or the special event time until one (1) hour after the end of said game or event.

6.2 Within ten (10) days after the official schedule for Team games is established for each year, CLUB shall give written notice to CITY or its designee of all Home Games on said schedule and shall specify not more than three (3) dates (other than dates of Home Games reserved by CLUB) for non-Professional Development League baseball events within the Baseball Occupancy Period. The CLUB will make provision during the schedule for rescheduling of postponed games or events. If any game or event is rescheduled, CLUB shall promptly give notice to CITY of such rescheduling.

6.3 During the Baseball Occupancy Period, CLUB shall have the right to use the playing field for baseball practice, except that the CLUB shall not schedule any such practice on non-Home Game days during the months of April, May and June when the Portland or Deering High School Baseball team has scheduled use of the field for regular season and playoff baseball games; provided, however, that on CLUB Home Game dates, such use by the Portland or Deering High School baseball teams may only occur after such Home Games have ended.

6.4 CLUB shall schedule and play all of its Home Games at the Premises, unless transfer of such games to other locations is necessitated by postponements, the unplayable condition of the playing field, Force Majeure, MLB PDL's requiring Postseason Games to be played at a neutral site location, or as otherwise required by the PDL Rules and Regulations (including an Untenantability Period).

6.5 CLUB shall have the right to transmit and to license or to authorize others to transmit by any means of communication, including but not limited to radio and television, all or any part of Home Games and related activities and Special Events (as defined herein) played or conducted by or authorized by the CLUB in the Premises and any information or data relating thereto, including, without limitation, so called "pre-game" and "post-game" shows.

6.6 The CLUB is authorized to postpone Home Games due to inclement weather, in accordance with the PDL Rules and Regulations.

6.7 The CLUB is authorized to provide no more than ten (10) fireworks displays per season at the Premises, provided the following conditions are met:

(A) the CLUB's use of fireworks conforms to all relevant local, state, and federal regulations;

(B) the CLUB arranges for inspection or other oversight by the State Fire Marshall prior to its use of fireworks;

(C) the CLUB agrees to defend, indemnify, and hold the CITY harmless against any claims related to the fireworks, and agrees to carry, or cause its fireworks vendor to carry, appropriate insurance for the fireworks, naming the CITY as an additional insured.

6.8 Subject to the CITY's prior written approval, not to be unreasonably withheld, the CLUB may conduct or authorize third parties to conduct up to twelve (12) non-baseball events at the Stadium each year, in addition to the three (3) permitted non-Professional Development League baseball events permitted pursuant to Section 6.1 (collectively "Special Events"), including, but not limit to, a multi-day holiday event in December (which shall count as a single non-baseball event), and to retain all proceeds thereof. The City Improvement Surcharges (as defined herein) will apply to all tickets sold for admission to such Special Events. The CLUB is solely responsible for obtaining all permits and approvals required for such Special Events at the CLUB's sole expense. The scheduling of Portland and Deering High School regular season and playoff baseball games in the months of April, May, and June will have priority over any Special Events (other than Special Events that have been approved by the CITY prior to the scheduling

of such High School games), and Special Events will have priority over such high school baseball games that are rescheduled after June 30 in any given year.

6.9 In its use of the Premises under this Lease, CLUB shall conduct all its activities in a safe, responsible, and commercially reasonable manner.

ARTICLE 7. CITY USE OF LEASED PREMISES

7.1 Except as provided in Section 2.3 for the Exclusive Use Areas, and the dates of previously scheduled Special Events, CITY shall have the right to use, or to permit use of, the Premises upon reasonable prior notice to, but without the need for consent by, CLUB for any date that falls outside the Baseball Occupancy Period each year of this Lease.

7.2 During April, May, and June of each Baseball Occupancy Period, CITY shall have the right to use, or to permit use of, the Premises for the regular home and playoff games of the Portland or Deering High School Baseball Teams, and/or for any amateur baseball tournament game, except that (i) on the date of any Home Game, such usage may only occur after such game has ended and shall be limited to a single game (i.e., no double-headers); (ii) the CLUB may prohibit such usage of the Premises if such usage is prevented by a Force Majeure event, or the unplayable condition of, or potential substantial damage to, the playing field (as reasonably determined by CLUB); (iii) the CLUB may prohibit such usage if necessary field maintenance has been scheduled prior to the scheduling of any such high school or amateur game or becomes necessary following such scheduling and cannot reasonably be addressed at a different time. Such games may be rescheduled by CITY, following announcement of the schools' regulation regular season schedules, but such rescheduled games may not take place on the date of any previously scheduled Special Event that is scheduled after June 30 of any given year. Pre-game

batting practice will be allowed prior to such high school home games unless field conditions are unsuitable, or if CLUB cannot accommodate such usage due to necessary field maintenance. If unsuitable (as reasonably determined by CLUB) or unavailable, CLUB will notify the City of the field condition and advise the High Schools that they may not conduct batting practice on the field. Under these circumstances, Portland and Deering High School Baseball will be allowed access to indoor batting cages that are located in the Portland Expo building and maintained by the City.

7.3 CITY shall have the right to use the Premises, and to charge and to retain permit and/or user fees for use of the Premises by non-CLUB entities on dates when the Stadium is not in use for CLUB Home Games or CLUB Special Events. CITY, or the sponsoring agency, shall further have the right to charge admission fees for such CITY authorized non-CLUB events, and all such fees shall be the property of the CITY or the sponsoring agency, as may be agreed between them. CITY, or CITY and the sponsoring agency, as applicable, shall be responsible for parking, security, and clean-up during non-CLUB events. CLUB agrees, upon request of CITY or the sponsoring agency, to provide some or all of its personnel, to the extent that they are reasonably available (e.g., ticket takers, security, ushers, groundskeepers, etc.), to work at such non-CLUB events, at a fee and upon terms to be negotiated between the CLUB and the CITY or the sponsoring agency, as applicable. The CLUB may prohibit the usage of the Premises for non-CLUB events described in this paragraph if such usage is prevented by a Force Majeure event, or the unplayable condition of, or potential substantial damage to, the playing field (as reasonably determined by CLUB). The CLUB may also prohibit such usage if necessary field maintenance has been scheduled prior to the scheduling of any such non-CLUB event, or if such maintenance

becomes necessary following such scheduling and cannot reasonably be addressed at a different time.

7.4 [Intentionally Deleted]

7.5 CITY shall provide reasonable notice to CLUB of the name of other users of the Premises and the schedule of their use during the Baseball Occupancy Period.

7.6 [Intentionally Deleted].

7.7 Subject to the provisions of Article 6 of this Lease concerning the Club's priority for use of the Premises for Home Games and Special Events, the CITY shall have the right to allow public use of certain restrooms within the Premises as follows: The CITY may provide public access to the restrooms within the Hadlock Field Concourse in conjunction with any events held at Fitzpatrick Stadium or the Expo provided that there is no Home Game or Special Event taking place in the Stadium. The CITY shall be responsible for cleaning and maintaining these restrooms after each such event at the CITY's sole cost and expense.

ARTICLE 8. CONCESSIONS

8.1 CLUB shall have the exclusive right to sell, rent, or furnish concessions in any part of the Premises during Home Games and Special Events by means of portable or mobile vending devices, by vendors carrying concessions, or automatic vending machines, or at stands or booths. The installation of any such machines, stands, or booths in any part of the Premises shall be subject to the prior written approval of the CITY.

8.2 CITY shall not permit any other person or entity to operate any concession in the Premises during Home Games or Special Events without the prior written approval of the CLUB.

8.3 All concessions sold, rented, or furnished under the rights granted herein shall conform to Federal, State, and local laws and regulations, and shall be appropriate items to be sold at baseball games.

8.4 CLUB shall have the right to exercise directly, or through a subcontractor, any and all concession rights granted hereunder, subject to the prior written approval of CITY of any subcontractor(s), not to be unreasonably withheld. Any subcontract or any such exercise of rights or performance of duties or obligations by any concessionaire or concessionaires shall not relieve CLUB of any of its duties or obligations to CITY under this Lease or from any liability to CITY for any breach thereof.

8.5 CLUB shall be entitled to receive and retain all revenues from the operation of all concessions, except as provided in Section 8.8 below.

8.6 Concession facilities must be operated for all Home Games and related activities, except that not all of the stands or booths for said facilities need be operated during a given Home Game and related activity. Determination of the number location of those facilities to be operated for such Home Game and related activity shall be made by CLUB on the basis of the advance sale of admission tickets, or other reasonable determination of attendance.

8.7 CLUB will operate a minimum of one (1) concession facility for all non-CLUB events for which a use authorization has been granted by CITY. Determination of the number and location of facilities to be operated for such activity shall be made by CLUB on the basis of the advance sale of admission tickets, if any, or on actual attendance at the event.

8.8 CLUB agrees to pay CITY ten percent (10%) of its gross concession receipts from all of its food and beverage concessions at any Special Event. Said payment shall be made within thirty (30) days of the event and shall be in addition to any other payments due to CITY

hereunder. "Gross concession receipts" for purposes of this section shall mean the total of all amounts received by CLUB, or its subcontractors, from the sale or furnishing of food and beverages from or on the Premises in connection with a Special Event. Gross concession receipts shall not include sales tax paid or payable on such sales, rental, or furnishings. CLUB shall transmit a certified statement of the total of said Gross concession receipts for food with its payment to City.

8.9 Every user of the Premises shall have the right to print or arrange for the printing of such score cards, programs, and other literature at its sole cost and expense.

ARTICLE 9. PARKING

9.1 Except as otherwise set forth in this Lease, CITY shall operate, control, and manage, in its reasonable discretion, all of the City-owned parking areas (the City Parking Areas) depicted on the diagram attached hereto as Exhibit D. CITY will charge and retain customary fees for parking in the City Parking Areas by members of the public as determined by the CITY in its reasonable discretion. The CLUB will not be entitled to any portion of the parking revenue received by the CITY in its operation of the City Parking Areas.

9.2 CITY, at its own expense, shall operate and maintain the City Parking Areas and improvements thereon in a commercially reasonable manner during all hours of any Home Game, Special Event, and the two-hour period prior to such games and events. Without limiting the foregoing, the CITY shall cause available City Parking Areas to be open to customers attending the applicable Home Game or Special Event during such period.

9.3 CITY shall, at its own expense, provide all personnel required for the operation of the City Parking Areas during all Home Games and related activities and Special Events and the two-hour period prior to such events, games and related activities.

9.4 Notwithstanding anything to the contrary in this section 9.4, during the Baseball Occupancy Period, the CLUB shall be entitled to use, at no cost, the parking spaces in the “Gated Lot” (identified on Exhibit D) that abut the green fence adjacent to the Stadium for CLUB administrative staff during the CLUB’s normal business hours. Further, during Home Games and Special Events, the CLUB shall have exclusive use, at no expense, of the Gated Lot and the lot identified on Exhibit D as “Hadlock.” The CLUB shall be responsible for operating and maintaining such lots during such games and events in a clean, safe, and commercially reasonable manner.

ARTICLE 10. OPERATION, MAINTENANCE, AND REPAIR OF THE PREMISES

10.1 Unless otherwise expressly set forth in this Lease, until such time as the PDL Improvements are complete, CITY is responsible for the maintenance and repair of the Premises in substantially the same condition that they are in as of the Effective Date at CITY’s cost and expense, other than the Exclusive Use Areas, the maintenance, repair, and cost of which shall be CLUB’s responsibility. After the CLUB completes the PDL Improvements, CITY is responsible for the maintenance and repair of the Premises in substantially the same condition that they are in as of the completion date of such improvements at CITY’s cost and expense, other than the Exclusive Use Areas, the maintenance, repair, and cost of which shall be CLUB’s responsibility. For the avoidance of doubt, any repairs, alterations, additions, or improvements to the Premises (including the PDL Improvements) that are not the City’s responsibility under this lease but are required to comply with the PDL Facility Standards and the PDL Rules and Regulations, will be made by the CLUB at the CLUB’s sole expense.

10.2 (a) CLUB shall, at its sole expense, construct or otherwise make, or cause to be constructed or otherwise made, all PDL Improvements required in order to bring the Stadium into compliance with the PDL Facility Standards and PDL Rules and Regulations in effect as of the Effective Date. Such PDL Improvements shall be completed promptly following the Effective Date, in accordance with the PDL Rules and Regulations.

(b) Unless otherwise expressly set forth in this Revised and Restated Lease, CLUB is responsible for field operation and maintenance, including, without limitation, winterizing and repairing the field as necessary due to winter conditions, and for maintenance and repair of the Exclusive Use Areas, including capital repair and replacement of the new Team clubhouse to be constructed as part of the PDL Improvements. The CLUB's responsibility shall be to operate, maintain, and repair the field and the Exclusive Use Areas at no less than the minimum standards required pursuant to the PDL Rules and Regulations and required by applicable local, State, or Federal regulation.

10.3 The CITY shall have the right, pursuant to Article 22 of this Lease, to enter and inspect the Premises for the purpose of determining whether the Premises are being operated, maintained, and repaired in accordance with Section 10.1. If the CITY finds that the Premises are being operated, maintained, or repaired in violation of that Section, the City may order the CLUB to correct these violations within a reasonable time, or may perform whatever work is required to correct these violations and charge to the CLUB the costs of such work.

10.4 If the Premises, or any portion thereof, during the term of this Lease are damaged (otherwise than by causes ordinarily covered by "all-risk" fire and extended coverage insurance or by normal wear and tear associated with operation of the Premises in the manner contemplated by this Lease), by the act, default, or negligence of the CLUB, or of the CLUB's

officers, agents, employees, invitees, guests, contractors, subcontractors, or any person admitted to the Premises by the CLUB, the CLUB will restore the Premises to their present condition at the CLUB's cost and expense.

10.5 The CLUB hereby assumes full responsibility for the character, acts, and conduct of all persons admitted to the Premises, or to any portion of the Premises by the consent of the CLUB, or by or with the consent of any person action for or on behalf of the CLUB, and the CLUB agreed to provide sufficient security force to maintain order and protect persons and property during and for any CLUB event.

10.6 The CLUB will assess, for the CITY's benefit, a Stadium improvement surcharge on each ticket sold for all Home Games and Special Events in addition to the cost of admission (the "City Improvements Surcharge") in accordance with the following schedule:

- Games and Events taking place in 2025-2026 - \$0.25 (twenty-five cents)
- Games and Events taking place in 2027 through remainder of term - \$0.50 (fifty cents)

The CLUB shall ensure that the City Improvements Surcharge is charged on each ticket purchase and will collect such payment from ticket purchasers. The amounts collected will be remitted by the CLUB to the CITY on a monthly basis, and the CITY shall deposit such amounts into a fund for capital repairs and improvements to the Premises. The CITY will apply such funds to such repairs and improvements that the CITY, in its discretion, determine are reasonably necessary. The CLUB shall also have the right (but not the obligation), in its sole discretion, throughout the Term, to assess an additional ticket surcharge to be applied towards the CLUB's expenditures for maintenance and capital repair and improvements to the Stadium.

ARTICLE 11. OPERATING PERSONNEL TO BE SUPPLIED BY CLUB

11.0 On the day of each Home Game and Special Event, CLUB shall, at its expense:

11.1 Provide adequate Police for the Premises to maintain order and protect property therein.

11.2 Provide such trained personnel as may be necessary for the orderly admission, seating, and handling of patrons, and for the proper use and occupancy of the Premises, and to insure the adequate flow of traffic in and around the Premises for one (1) hour before and after the game or event; such personnel shall include, but are not limited to, uniformed Special Police Officers, guards, ticket sellers, ticket takers, ushers, attendants, announcers, and first aid station personnel.

11.3 Provide such trained personnel as may be necessary to operate the electronic scoreboard.

11.4 Provide such other personnel as may be necessary to maintain the grounds and facilities within the stadium fence in a reasonably clean and neat condition throughout the Home Game or Special Event, and to perform litter cleanup in the Premises and the immediate area thereof during and after any Home Game or Special Event.

11.5 Provide such trained personnel as are necessary to adequately staff and operate the concessions.

11.6 The CLUB agrees to provide groundskeepers at authorized practices and Home Games.

11.7 In addition, the CLUB shall provide at the CLUB's cost and expense such personnel throughout any Portland or Deering High School Baseball Team game played on the Premises as may be necessary to maintain the grounds and facilities within the stadium fence in a

reasonably clean and neat condition, to perform litter cleanup in the Premises and the immediate area thereof during and after the game. The CLUB shall provide these personnel for these purposes through any CITY game other than a Portland or Deering High School Baseball Team game held on the Premises at a rate to be charged to the CITY which is mutually determined by the CLUB and the CITY.

ARTICLE 12. UTILITIES

12.1 CLUB shall pay, or cause to be paid, the costs of all utilities necessary for its operations hereunder, including, without limitation, all water and sewer charges attributable to its use of the premises.

12.2 CITY will make a reasonable effort, at its expense, to install meters to measure the consumption of electricity used in connection with the playing field lighting in order to permit separate billing of any use of the playing field other than by CLUB.

12.3 The sharing of utility costs arising out of and related to CLUB's use of the Expo shall be mutually agreed upon by CITY, CLUB, and the School Department in a separate document.

ARTICLE 13. SCOREBOARDS, SIGNS, ADVERTISING AND NAMING RIGHTS

13.1 Any sign or other advertising matter may be erected or displayed by CLUB, or any of its contractors or subcontractors, on or in the Premises only in accordance with this article.

13.2 CLUB shall be permitted to install and display advertising signage and materials throughout the Stadium, including without limitation on the outfield fence enclosing the playing field, the dugouts, the electronic scoreboard or its programmable message center, in the concourse, seating areas and enclosed spaces and such other areas as may be determined by CLUB. Advertising shall also be permitted on the exterior of the Stadium in accordance with

prevailing industry practices and applicable laws and ordinances. CITY shall not be entitled to any part of advertising revenues received by CLUB from the sale of advertising.

13.3 CLUB shall be responsible for procuring, installing, and maintaining said advertising matter.

13.4 Advertising signage and materials may be displayed throughout the year, as determined by the Club.

13.5 CLUB shall be solely responsible for the operation, maintenance, and use of any electronic scoreboard provided at CLUB expense, but shall permit CITY and other stadium users to use the same in connection with events sponsored by them.

13.6 Without limiting the foregoing, CLUB and its subcontractors, if any, may display such signs, billboards, price lists, and other advertising material as are calculated to inform patrons of the food, drink, articles of merchandise, and admission tickets being offered for sale in the stadium.

13.7 CLUB and subcontractors shall have the right to display advertising on scorecards, programs, and other printed material sold in any part of the Premises by CLUB or its subcontractors.

13.8 It is the intent of the CITY and CLUB that all advertising must be in keeping with the character and dignity of the Premises. All billboards, signs, electronic message boards, and other advertising or notices must comply with all applicable local, State, or Federal laws and regulations in regard to same, and CLUB shall be solely responsible for such compliance.

13.9 Subject to applicable laws, rules, and regulations, CLUB shall have the sole and exclusive right from time to time to (i) designate the name of the Premises and/or the Stadium, (ii) give designations and associations to any portion of the Premises and/or the Stadium or the

operations therefrom, and (iii) grant to one or more third parties the right to include such parties' names, logos and/or corporate identifiers in the name of the Premises and/or the Stadium or portions thereof and to have such names, logos and/or corporate identifiers prominently displayed within and on the Premises, on a year-round basis, including without limitation the interior and exterior of the Stadium (all the foregoing, collectively, the "Naming Rights") and to retain all revenue generated therefrom. The CITY shall use only the then-current designated name of the Premises and/or the Stadium in all of its materials and publications referring thereto, including without limitation in tourism, informational and promotional materials, advertisements, municipal publications, maps and directional, informational and road or transit signage for vehicular and pedestrian wayfinding. The Club agrees to continue to refer to the field as "Hadlock Field."

ARTICLE 14. ALTERATIONS BY CLUB

14.1 CLUB shall not make any alterations of the Premises, except upon written approval of CITY of the plans and specifications setting forth the proposed alteration. No such consent shall render CITY liable with respect to any contract or undertaking by CLUB for any alteration work, which shall be performed at CLUB's sole expense.

14.2 CITY shall not unreasonably withhold its consent to any alteration by CLUB, at CLUB's expense, of the playing field, the walls or fences enclosing the playing field, and any structures in whole or part on or over such walls and fences such as screens and foul poles, or to the PDL Improvements or any other alteration to the Stadium undertaken by the CLUB pursuant to requirements of the PDL Rules and Regulations.

14.3 CLUB may, at its own cost and expense, install an electronic scoreboard and sound system, so long as there is no cost or expense to CITY for such upgrade.

14.4 To the extent reasonable, all alterations and work performed by or on behalf of CLUB shall be performed in such a manner and at such time as not to interfere substantially with the use of the Premises by any other authorized user or by CITY.

14.5 Materials, fixtures, and equipment and other property which are so affixed or annexed to the Premises that they become a part of the real property, other than an upgraded scoreboard and sound system and the PDL Improvements installed at CLUB's sole cost and expense, shall immediately upon the installation thereof, become the property of and title thereon shall vest in CITY. Such materials, fixtures, equipment, or other property, title to which vests in CITY under the preceding sentence, shall not be subject to any agreements of conditional sale, nor to any chattel mortgage, trust receipt, or other form of security transaction in which title is reserved or conveyed to the seller or any other entity. CLUB shall have the right to remove any such materials, fixtures, equipment, or other property if it promptly replaces the same with new or other materials, fixtures, equipment, or other property of like kind in like or better quality and repairs any damage caused by such removal, in which event CLUB shall have the right to dispose of and/or sell the materials, fixtures, equipment, and other property so removed and replaced and to retain the proceeds of such disposition and/or sale. Prior written notice of any such removal shall be given to the CITY. CLUB shall have the right to remove any upgraded electronic scoreboard and sound system installed by CLUB at its sole cost and expense but shall reinstall a scoreboard and sound system required to meet the PDL Facility Standards then in effect and to restore the Premises to their original condition, reasonable wear and tear excepted.

ARTICLE 15. COVENANT AGAINST LIENS

15.1 If, as a result of CLUB's activities on the Premises, any mechanics' lien or other line, charge, or order for payment of money, shall be filed against CITY, or any portion of the

Premises, CLUB shall, at its own cost and expense, cause the same to be discharged of record or secure such payment by posting a bond with CITY in reasonable form and amount satisfactory to CITY within thirty (30) days after written notice to CLUB of the filing of such lien, charge, or order.

15.2 If at any time any chattel mortgage, conditional sales agreement, trust receipt, or other similar instrument shall be filed with respect to any property purchased by CLUB, any of its subcontractors or the contractors or subcontractors of any of them, which property by the term of this Lease becomes or will become the property of CITY, CLUB at its expense shall cause the same to be discharged, vacated, cancelled, or satisfied within thirty (30) days.

15.3 In default of CLUB so doing, CITY may after five (5) days notice to CLUB and without thereby waiving such default of CLUB, procure the discharge or satisfaction of any or all said liens, chattel mortgages, conditional bills of sale, trust receipts, or other similar instruments by bonding or payment or otherwise and CLUB shall defend, indemnify, and save harmless CITY against and from all costs, liabilities, suits, penalties, claims, and demands, including reasonable counsel fees, resulting therefrom.

15.4 In the event CLUB shall not cause such lien, mortgage, bill of sale, trust receipt, or order to be discharged of record or bonded within said thirty (30) day period, CITY may thereafter cause the same to be discharged and the cost and expense thereof, including reasonable counsel fees, shall be immediately paid to CITY by CLUB as additional rent.

15.5 Except as specifically provided in other Articles of this Lease, CITY shall not be liable for any work, labor, or services rendered for materials or equipment furnished to, or for the account of, CLUB upon or in connection with the Premises and no mechanics or other lien for work, labor, or services rendered for or material furnished to or for the account of CLUB shall

attach to or affect the interests of CITY, CLUB or any of its subcontractors in and to the Premises or in and to any alterations, repairs, replacements, or improvements in or about the Premises.

ARTICLE 16. DEFAULT

16.1 The CITY, in addition to any other rights given herein or to which it may be entitled by law or equity, may declare this Lease terminated in its entirety, subject to and in the manner provided in this Article, upon or after the happening of any one or more of the following events and may exercise all right of entry and re-entry, with or without process of law, upon the Premises.

(A) To the extent permitted by law, the filing by CLUB of a voluntary petition in bankruptcy or any assignment for benefit of creditors of all or any part of CLUB's assets;

(B) To the extent permitted by law, the adjudication of CLUB as a bankrupt pursuant to any involuntary bankruptcy proceedings;

(C) To the extent permitted by law, the taking of jurisdiction by a court of competent jurisdiction of CLUB or its assets pursuant to proceedings brought under the provisions of any Federal reorganization act;

(D) To the extent permitted by law, the appointment of a receiver or trustee of CLUB's assets by a court of competent jurisdiction or a voluntary agreement with CLUB's creditors;

(E) The material breach by CLUB of any of the terms, conditions, covenants, or provisions herein contained and the failure of CLUB to remedy such breach as provided below. A material breach shall include, but not be limited to, the failure of CLUB to pay any rent, fee, charge, final judgment, or bond when the same is due and payable.

16.2 In addition to any other rights given to it herein, or to which it may be entitled by law or equity, CLUB may cancel this Lease and terminate all or any of its obligations hereunder at any time, upon or after the happening of any one of the following events:

(A) The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Premises, or of any part thereof, for baseball purposes and the remaining in force of such injunction for a period of at least one hundred and eighty (180) days;

(B) Any action of any governmental authority, board, agency, or officer having jurisdiction thereof preventing CLUB from conducting its operations at the Premises by taking, through the process of eminent domain, in whole or a substantial part, of the leased Premises; and,

(C) The material breach by CITY of any of the terms, conditions, or covenants, or provisions herein contained, and the failure of CITY to remedy such breach as provided below.

16.3 No termination declared by either party under Sections 16.1 or 16.2 above shall be effective and the CITY shall not take possession of the Premises unless and until not less than thirty (30) days have elapsed after notice by the party not in default to the other specifying the date upon which termination will take effect, and the cause or causes for which this Lease is being terminated. During said thirty (30) days, the defaulting party shall have the right to cure said default, unless such default(s) by its nature cannot be cured within such thirty (30) day period and if the party in default commences to correct such default within said thirty (30) days, and proceeds diligently to correct the same as promptly as reasonably practicable, this Lease shall not terminate. Notwithstanding anything to the contrary in this Article, if the CITY notifies CLUB of its intent to terminate this Agreement during any regular season or postseason during

the term of this Lease, the effective date of termination may not occur before the first day of the month following the last day of the Baseball Occupancy Period of the year in question (it being understood that CITY may not terminate or suspend CLUB'S rights under this Lease during any regular season or postseason).

16.4 Notice of default shall be sent by certified mail, postage prepaid, return receipt requested, or by hand-delivery.

16.5 If the notice provided for in Section 16.4 has been served and the term of this lease has ended as aforesaid, CITY may, without further notice, re-enter and repossess the Premises with or without legal process and remove all persons and property therefrom and CLUB hereby waives any further notice provided by law or otherwise to be given in connection therewith. Any and all property belonging to CLUB or to anyone claiming by, through, or under CLUB which may be found in the Premises by CITY upon such re-entry may be handled, removed, stored, or otherwise disposed of by CITY at the risk and expense of CLUB, and CITY shall not be responsible for the preservation or the safekeeping thereof. CLUB shall pay to CITY upon demand any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in CITY's possession or under CITY's control. If any such property shall not be retaken by CLUB within a period of thirty (30) days from and after the effective date of any such termination of this Lease, such property shall conclusively be deemed to have been forever abandoned by CLUB. The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning.

16.6 In the event of any termination of this Lease by CITY and re-entry or repossession of the Premises, by summary proceedings or otherwise, CITY may, subject to Section 21.2, relet the Premises or any part of parts thereof, either separately or in conjunction with any other space

in the Premises, to any other person or entity, and may re-grant to any other person or entity any and all the rights granted to CLUB under this Lease, for such term, which may be shorter or longer than the term which would otherwise have constituted the remainder of the term of this Lease, and/or such other terms, covenants, and conditions including rent, concessions, or free rent, and may make such repairs, alterations, additions, replacements, and/or decorations in and to the Premises which CITY, in its sole discretion, may deem advisable for the purpose of re-letting the Premises, all without in any way releasing CLUB from liability hereunder. CLUB shall upon demand, pay the costs of all such repairs, alterations, additions, replacements, and/or decorations together with CITY's other expenses of such reletting or re-granting, including, without limitation, reasonable legal expenses and brokers' commissions. If the rent or other payments collected by CITY upon any such re-letting or re-granting are not sufficient to pay monthly the full amount of the rent (determined as hereinafter in this Section provided) and all other amounts which CLUB would have been obligated to pay under this Lease to CITY during the balance of the term of this Lease, CLUB shall pay monthly to CITY the amount of each monthly deficiency. CITY shall not be liable for failure to re-let the Premises or re-grant the rights granted to CLUB by this Lease; or, if the Premises are re-let or such rights are re-granted, for reasonable failure to collect the rent and other payments under such re-letting or re-granting.

16.7 Notwithstanding the foregoing, in the event of a breach or a threatened breach by any party of any of the terms, covenants, conditions, or provisions hereof, the other party shall have the right of injunction to restrain the same and the right to invoke any other remedy allowed by law or equity, including, without limitation, the right to specific performance or the right to money damages, as if specific remedies, indemnity, or reimbursement were not herein provided for.

16.8 The rights and remedies given to any party in this Lease are distinct, separate, and cumulative remedies, and no one of them, whether or not exercised by the other party, shall be deemed to exclude any others herein or by law or equity provided.

16.9 Upon the expiration or earlier termination of this Agreement, title to all PDL Improvements that have not previously been transferred to the CITY shall automatically vest in the City without the need for any conveyance instrument or other documents evidencing the transfer of title to the City.

ARTICLE 17. INDEMNIFICATION

17.1 CLUB shall defend, indemnify, and hold the CITY and its officers, agents, and employees, harmless from any and all claims, suits, and judgments, just or unjust, and all costs and expenses in connection therewith (“Claims”), which arise out of or result from the CLUB’s use of the Premises hereunder or which arise out of or result from the act or omission of the CLUB, its officers, agents, employees, players, invitees, its contractors or subcontractors, and their officers, agents, employees, or invitees, or anyone for whose act the CLUB may be legally liable. Notwithstanding anything to the contrary in this Agreement, the CLUB shall not be obligated to indemnify, hold harmless, or defend CITY or any of its officers, agents or employees, against any Claims (whether direct or indirect) to the extent such Claims arise out of or result from the negligence or willful misconduct of CITY or any of its officers, employees, or agents, or CITY’S failure to comply with any of its obligations set forth in this Agreement. The liability of the CLUB under this Article shall not be limited to the insurance amounts specified in

this Lease. The obligations of the CLUB under this Article 17 shall survive expiration or earlier termination of this Lease.

17.2 Notwithstanding the foregoing, the CLUB shall not be liable under this Article with respect to any particular claim, suit, or judgment if:

(A) any settlement of such claim has not been approved by the CLUB, which approval shall not be unreasonably withheld, or,

(B) in any such suit, CLUB has not been permitted to defend against such suits by counsel selected by the CLUB; or,

(C) the CITY on request fails to execute all assignments and other documents to subrogate the CLUB or its insurer, insurers, or designee to all right of the CITY against third parties with respect to any such death, personal injury, or property damage and cooperate reasonably in the enforcement of such rights by the CLUB or its insurer, insurers, or designee.

Defense by the insurer by its counsel shall be deemed to be defense by the CLUB by its counsel.

17.3 Nothing herein is intended, nor shall it be deemed to waive or modify any defense, immunity, or limitation of liability which CITY may have under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the CITY.

ARTICLE 18. INSURANCE

18.1 CLUB shall at its own cost and expense obtain and maintain throughout the term of this Lease and, if applicable, cause its subcontractors to obtain and maintain for the life of their subcontractors, insurance as follows:

(A) CLUB shall insure its property and the personal property of CITY which is in CLUB's care, custody, and/or control against loss or damage from "all risks" of physical loss or damage, with CITY property to be insured at replacement value. Such policy shall name CITY as Loss Payee as its interests may appear.

(B) Commercial General Liability, Liquor Liability (which may be included within the Commercial General Liability policy), Products Liability (which may be included within the Commercial General Liability policy) and Automobile Liability Insurance, naming CITY as an additional insured against claims, suits, and judgments against CITY and/or CLUB for death, bodily injury, personal injuries, and property damage arising out of or occurring during the operation, occupancy, maintenance, or use of, or resulting from the acts or omissions of CITY and/or CLUB and/or any officer, employee, or agent of either of them and/or any subcontractor of either of them in or with respect to any part of the Premises and covering the obligation of indemnification hereunder. The Commercial General Liability insurance coverage must include Fire Legal Liability coverage and must cover third-party property damage resulting from the negligent acts or omissions of CLUB.

18.2 The liability insurance required by Section 18.1(B) shall each provide limits of liability of not less than:

(A) One Million Dollars (\$1,000,000.00) per occurrence.

(B) Two Million Dollars (\$2,000,000.00) in the aggregate.

18.3 Statutory workers' compensation and employer's liability insurance in the amounts prescribed by law in the State of Maine.

18.3 All insurances required by this Lease shall be carried with a financially sound insurance company or companies licensed to do business in the State of Maine to the extent that

such insurance is obtainable from such company or companies. The policy or policies for all required liability insurances shall be on an occurrence basis.

18.4 All insurances required under this Lease shall be maintained in the coverage and amounts specified or the amount required by State Law through the term of this Lease, whichever is greater.

18.5 CLUB shall furnish the CITY and thereafter maintain certificates of insurance evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice to the CITY of termination of insurance from the insurance provider or agent. CLUB shall also provide a copy of any endorsement naming the CITY as additional insured. A certificate that merely has a box checked under "Addl Insr," or the like, or that merely states the City of Portland is named as an Additional Insured, will not be acceptable. CITY's acceptance or lack of acceptance of CLUB's certificate of insurance or other evidence of insurance shall not be construed as a waiver of the CLUB's obligation to obtain and maintain such insurance as required by this Lease. The minimum limits may be satisfied through the use of primary and excess/umbrella policies, provided that the excess/umbrella policies will not be more restrictive than the primary policies.

18.6 CLUB shall faithfully perform and comply with, subject to the provisions of the Lease, all of the terms and conditions of the policies of insurance required by this Lease, except those terms and conditions which by the terms of this Lease or the policy in question are required to be performed or complied with by CITY, which terms and conditions CITY shall perform and comply without limitation of the foregoing, both CLUB and CITY shall give prompt notice to the insurers and to each other of all claims covered by any of said policies. CLUB shall pay or cause to be paid the premiums, deductibles and self-insured retentions on all of said policies at

the times and in the amounts required to maintain in full force and effect the insurance required to be maintained hereunder and CLUB shall not be entitled to any reimbursement by CITY for such premiums.

18.7 All policies and insurance required by this Article 18 to be furnished shall be endorsed or otherwise be in such form that the insurers will have no right of subrogation against any officer, employee, director, or stockholder of any party hereto, and shall be primary and noncontributory.

18.8 “CITY” as used in this Article and in Article 17 shall include, without limitation, the officers, agents, employees, and contractors of the City of Portland, its boards and commissions, and of the Portland Superintending School Committee.

18.9 Where the CITY is required to be named as an additional insured, such insurance shall be for coverage only in those areas where the CITY does not have governmental immunity, including, without limitation, as set forth in 14 M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the CITY under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the CITY.

18.10 The CLUB and the CITY understand and agree the minimum limits and/or the types of insurance herein required may become inadequate during any extended term of this Lease pursuant to Section 4.2. CLUB agrees that upon exercise of such extension, it will increase such insurance by reasonable amounts upon receipt of notice in writing from the City’s Risk Manager, which notice may be provided either at the time of such exercise or following such exercise.

ARTICLE 19. DAMAGE TO THE PREMISES

19.1 Except for property owned by the CLUB, CITY shall, at its own cost and expense, insure the Premises against loss or damage from “all risks” of physical loss or damage for the full insurable value of the Premises at replacement cost, and shall contain only the standard exclusions. Such Property Insurance policy shall contain a Waiver of Subrogation in favor of CLUB. CITY may have a commercially reasonable self-insured retention under any such policy, provided that such retention shall not relieve CITY of its obligation pursuant to Section 19.2, and provided further that the policy shall not include any language prohibiting payments by others, including but not limited to additional insureds or insurers, from satisfying the retention.

19.2 If the Premises shall be partially or totally damaged or destroyed by fire or other casualty, CITY shall repair the damage so as to restore the same to its condition immediately prior to such fire or other such casualty, EXCEPT that CITY shall not be required to repair any such damage unless:

- (A) The casualty is of a kind covered by the insurance provided by Section 19.1; or,
- (B) CITY has a collectible claim for the entire cost of such repair against a third party; or,
- (C) CLUB agrees to pay the entire cost of such repair or the difference between such entire cost in the amount of any collectible claim which CITY has against a third party. In the event of any such damage as to which neither clause (A) or (B) nor (C) is applicable and the failure to repair such damage interferes significantly with CLUB’s use of the Premises in accordance with the terms of this Lease, either party shall have the right to terminate this Lease as of the date of the occurrence of the damage; EXCEPT that if CITY elects to repair such damage and so notifies CLUB within thirty (30) days after such occurrence, no party shall have the right to terminate. CITY shall not be required to repair or replace any property owned by

CLUB or its subcontractors and CITY shall not be liable for any damage to any such property caused by any fire or other casualty.

19.3 In the event of any damage or destruction which CITY is required to repair pursuant to Section 19.2 hereof, CITY shall proceed promptly with the work of repair and restoration and shall proceed diligently to completion, subject to Force Majeure. If CITY has not completed the work of repair and restoration within a reasonable time after such fire or other casualty and if the non-completion in question interferes significantly with CLUB's use of the Premises in accordance with the terms of this Lease, CLUB shall have the right to terminate this Lease. In determining what constitutes a "reasonable time" for the completion of such restoration with the meaning of the immediately preceding sentence, there shall be taken into consideration the nature, character, and extent of damage, and the delay, if any, due to Force Majeure, provided however, that in any event CLUB shall have the right to terminate this Lease if such restoration has not been completed sufficiently to permit use of the Premises within fifteen (15) months after the date of such fire or other casualty.

19.4 Any period beginning with the occurrence of any damage or destruction by fire or other casualty which renders any part of the Premises untenable or unusable for the purposes for which the same is designed and intended and ending upon completion of the work or repair and restoration or an earlier termination of this Lease as hereinabove permitted, is called a "Force Majeure Period". During any Force Majeure Period:

(A) CLUB shall pay a reasonable rent for any part of the Premises used by CLUB during such Force Majeure Period.

(B) The other obligations of the parties under this Lease shall abate and shall be limited to the extent of the part, if any, of the Premises being used by CLUB.

19.5 Notwithstanding anything in this Lease to the contrary, the CITY's obligations pursuant to this Lease are subject to and limited by the defenses, immunities, and limitations of liability or damages available to CITY under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to CITY.

ARTICLE 20. SUSPENSION OF BASEBALL

20.1 During any period of one month or more when by reason of Force Majeure CLUB is unable, exercising due diligence, to exhibit professional baseball games or is prevented with substantially complying with its schedule of Home Games (any such period herein being called a "Baseball Suspension Period"), the right of the parties hereto shall be as follows:

(A) The terms of this Lease shall be suspended and the rights, obligations, and liabilities of the parties hereunder, including, without limitation, the obligation to pay rent with respect to such Baseball Suspension Period, shall abate and be suspended. If such Baseball Suspension Period is less than a full Baseball Occupancy Period, the minimum rent shall be pro-rated on a monthly basis by dividing the annual rent by 12.

(B) City shall have the right to use the Premises or any part thereof for any purpose during any Baseball Suspension Period. All revenues received by CITY from such use shall be retained by CITY and CLUB shall not be entitled to any part thereof.

(C) CLUB may, upon the written consent of CITY, elect by notice to CITY to continue to occupy any or all of the Premises during any Baseball Suspension Period at a fair and reasonable rent to then be determined.

ARTICLE 21. PDL RULES AND REGULATIONS; COMPLIANCE WITH LAWS

21.1 Notwithstanding any other provision of this Lease, this Lease and any rights granted to CITY or CLUB hereunder shall in all respects be subordinate to the PDL Rules and Regulations, as long as CLUB is party to the Portland PDL License Agreement. The issuance, entering into, amendment or implementation of any of the PDL Rules and Regulations shall be at no cost or liability to the CITY or any MLB PDL Entity or to any individual or entity related thereto. The territory within which CITY is granted rights under this Lease is limited to, and nothing herein shall be construed as conferring on the City rights in areas outside of, the Team's Marketing Territory (as defined in the Portland PDL License Agreement), as established and amended from time to time. No rights, exclusivities or obligations involving the internet or any interactive or on-line media (as defined in the applicable PDL Rules and Regulations) are conferred by this Lease, except as are specifically approved in writing by the applicable PDL Entities. CLUB hereby represents and warrants to the City that, as of the Effective Date, the terms of this Lease are not inconsistent with the terms of any PDL Rules and Regulations. For the avoidance of doubt, the subordination provision in this Section 21.1 does not negate or otherwise apply to the rights of the City pursuant to Section 38.8 (Non-Appropriations; City Rights and Obligations) of this Lease.

21.2 If, at any time prior to its expiration, this Lease is terminated by CITY for any reason (and any legal action challenging the right of CITY to terminate this Agreement and seeking specific performance has either been (i) finally adjudicated by a court of competent jurisdiction as evidenced by a final non-appealable order or (ii) settled, withdrawn or otherwise

concluded, in either case solely with respect to the request for specific performance) and the Portland PDL License Agreement has been terminated, CITY agrees to enter into a lease with substantially similar terms to this Lease with any replacement PDL Club identified by MLB PDL to the extent that such PDL Club is reasonably acceptable to CITY. To the extent that such lease is not entered into, CITY agrees to meet promptly with MLB PDL to work together to ascertain whether a replacement PDL Club can be identified, and if such a PDL Club is so identified, CITY shall offer to lease the Premises to such PDL Club. For the avoidance of doubt, this Article 21 shall survive the termination of this Lease.

21.3 As long as CLUB is party to the Portland PDL License Agreement, MLB PDL is an intended third party beneficiary of the provisions of this Article 21 and each other provision in this Lease that prohibits action without first obtaining PDL Approval and, in addition to its rights to waive or enforce the provisions of this Article 21, MLB PDL shall be entitled and have the right to waive or enforce such other provisions that prohibit action without first obtaining PDL Approval directly against any party hereto (or their successors and permitted assigns) to the extent that any such other provision is for the explicit benefit of MLB PDL or any other MLB PDL Entity.

21.4 Neither MLB PDL nor any other MLB PDL Entity shall have any liability whatsoever to any Person for actions taken pursuant to this Article 21 (other than for fraudulent acts or willful misconduct with respect to this Article 21 by MLB PDL), and CITY hereby releases MLB PDL and each other MLB PDL Entity from any and all claims arising out of or in connection with any such actions. Nothing contained in this Lease shall create any duty on behalf of MLB PDL or any other MLB PDL Entity to any other Person.

21.5 The CLUB agrees to comply with all applicable laws, rules, regulations, and City ordinances and policies applicable to the Premises in its operations hereunder, including but not limited to all applicable federal, state and local environmental laws and regulations, including without limitation all laws and regulations governing hazardous substances, with respect to all its activities at the Premises.

ARTICLE 22. INSPECTION

22.1 CITY and its agents and representatives shall, at all times during which CLUB has the right to use and occupy the Premises or any part thereof, have the right to enter into and upon any and all parts of the Premises for the purpose of examining the same for any legitimate reason; provided, however, that if such entry is to any part of CLUB's year-round space at any time during the year, then it shall be made only after notice in writing (or without notice in the case of an emergency or if the person making such inspection is accompanied by an executive or administrative employee of the CLUB, or in the case of concession areas, of its subcontractors) served on CLUB and setting forth the time and/or times of entry which shall be such reasonable time or times.

22.2 The rights reserved by this Article shall not impose upon CITY, nor does CITY assume by reason hereof, any responsibility, obligation, or liability for the care, maintenance, supervision, repair, or replacement of the Premises or any part thereof or any duty to comply with any law, ordinance, rule, order, or regulations other than those responsibilities, obligations, liabilities, and duties assumed by CITY pursuant to the provisions of other Articles of this Lease.

ARTICLE 23. ASSIGNMENT AND SUBLETTING

23.1 Except as expressly permitted by any provision of this Lease, CLUB shall not, without the written consent of CITY:

(A) assign or mortgage this Lease or in any way transfer or encumber the rights granted hereby, or

(B) sublet or grant any permit or license to use the Premises or any part thereof.

The terms and conditions of any such assignment, mortgage, transfer, encumbrance, subletting, permit, or licensing shall be subject to the prior written approval of CITY. No such consent by CITY shall relieve CLUB of any of its obligations under this Lease. The granting by CITY of consent to any one of the foregoing in one or more instances shall not dispense with the necessity for the consent of CITY to further assignment, mortgage, transfer, encumbrance, sublease, permit, or license.

ARTICLE 24. NO SURRENDER

24.1 No act done by CITY, or its officers, employees, or agents during the term of this Lease shall be deemed an acceptance of a surrender of CLUB's interests hereunder, and no agreement of surrender of said interests shall be valid unless the same shall be duly authorized by the legislative body of CITY.

ARTICLE 25. WAIVER OF REDEMPTION

25.1 CLUB, for itself and on behalf of any and all persons claiming through or under CLUB, including creditors of all kinds, does hereby waive and surrender any and all rights and privileges which they or any of them might have under or by reasons of any present or future law or decision (other than a decision in an action or proceeding in which the rights of the parties under this Lease are adjudicated) to redeem its interest under this Lease or to have a continuance of this Lease with the terms hereby granted after being dispossessed, removed, or ejected according to law, or the provisions of this Lease.

ARTICLE 26. NOTICES

26.1 All notices, consents, approvals, demands, and submissions (hereinafter in this Article collectively called a “Notice”), to the CITY, shall be in writing and shall be served by certified mail (return receipt requested) or hand-delivered and addressed to:

City Manager, City of Portland
389 Congress Street
Portland, ME 04101
cc: Director of Parks, Recreation & Facilities
cc: Corporation Counsel
389 Congress Street
Portland, ME 04101

or at such other address as CITY may specify at any time or from time to time by Notice to CLUB.

26.2 Any Notice to CLUB shall be deemed properly given if in writing and served by certified mail (return receipt requested) or hand-delivered and addressed to:

DBH Portland, LLC

or at such other address as CLUB may specify at any time or from time to time by Notice to CITY. CLUB shall notify CITY of the name of the individual in charge of the office of CLUB at the Premises and Notices may thereafter be delivered to such individual until CITY has been notified by the CLUB of the name of the different individual in charge of such office and authorized to receive Notices.

ARTICLE 27. OBLIGATIONS TO MAINTAIN FRANCHISE

27.1 CLUB represents that at the time of execution of this Lease it is a party to the Portland PDL License Agreement and agrees that throughout the Term, it will:

(A) maintain and keep the Portland PDL License Agreement in full force and effect;

(B) not do or authorize to be done anything which will cause CLUB's right to operate the Team pursuant to the Portland PDL License Agreement to be impaired or diminished in any material respect; and,

(C) maintain the Team as a PDL Club (or a professional baseball club in a successor league of comparable character and standing as the MLB PDL's Professional Development League System;

(D) Notwithstanding the foregoing, nothing herein shall be construed to obligate CLUB to undertake capital improvements other than those necessary in order to bring the Stadium into compliance with the PDL Facility Standards in effect as of the Effective Date.

ARTICLE 28. QUIET ENJOYMENT

28.1 CITY agrees, covenant, and warrants that as long as CLUB faithfully performs the agreements, terms, covenants, and conditions of this Lease within the grace periods and applicable extended periods for any unavoidable delays, CLUB shall peaceably and quietly have, hold, and enjoy the use of the Premises upon the terms and conditions herein granted without molestations or disturbance by or from CITY.

ARTICLE 29. NO WAIVER

29.1 No waiver of any term, provision, covenant, or condition contained in this Lease or of any breach of any such term, provision, covenant, or condition shall constitute a waiver of any subsequent breach of such term, provision, covenant, or condition by either party, or justify or authorize the non-observance on any other occasion of the same or any other term, provision, covenant, or condition hereof.

ARTICLE 30. INTERPRETATION

30.1 This Lease shall be construed in accordance with the laws of the State of Maine. Whenever the contents of any provision shall require it, the singular number shall be held to include the plural number, and vice versa. The neuter gender includes the masculine and the feminine. CITY includes its officers, agents, employees, and contractors or subcontractors, and the Portland School Board and its officers, agents, employees, and contractors or subcontractors. CLUB includes its officers, members, managers, agents, employees, players, contractors, and subcontractors.

ARTICLE 31. ENTIRE AGREEMENT

31.1 This Lease, with its attachments, contains the entire agreement of the parties hereto with respect to the Lease of the Premises described herein, and this Lease may not be amended, modified, released, or discharged, in whole or in part, except by an instrument in writing signed by the parties hereto, or their duly authorized respective successor or assigns, subject to the receipt of all necessary PDL Approvals by the CLUB.

ARTICLE 32. SUCCESSORS BOUND

32.1 Except as otherwise provided in this Lease, all terms, provisions, covenants, and conditions of this Lease shall be binding on and inure to the benefit of the parties hereto, their duly authorized respective personal representatives, successors, and assigns. No modification of this Lease shall be binding unless evidenced by an agreement in writing signed by CITY and CLUB and all necessary PDL Approvals have been obtained by the CLUB in advance thereof.

ARTICLE 33. CAPTIONS

33.1 The captions of the Articles of this instrument are solely for convenience and shall not be deemed a part of this instrument for the purpose of construing the meaning thereof, or for any other purpose.

ARTICLE 34. PARTIAL INVALIDITY

34.1 If any term, covenant, condition, or provision of this Lease or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or its application to other persons or circumstances, shall not be affected thereby, and each term, covenant, condition, and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

ARTICLE 35. NO MERGER

35.1 The fee title of the Premises and the leasehold estate granted by this Lease shall not merge, but shall always remain separate and distinct notwithstanding the union of said estates in whole or in part in CLUB or in a third party by purchase or otherwise.

ARTICLE 36. APPROVAL OF CITY

36.1 Approval of the CITY, wherever used in this Lease, shall mean the approval of the City Manager of the City of Portland, unless another party is specifically designated.

“Approval” wherever required herein by either party shall not be unreasonably withheld, conditioned, or delayed.

ARTICLE 37. MEMORANDUM OF LEASE

37.1 The parties agree to execute a Memorandum of Lease in a form appropriate for recording in the Cumberland County Registry of Deeds.

ARTICLE 38. MISCELLANEOUS.

38.1 Damages. Neither party nor its respective officers, directors, agents, employees shall be liable, irrespective of whether such claim of liability is based upon breach of warranty, tort (including negligence, whether of any of the Parties to this Lease or others), strict liability, contract, operation of law or otherwise, to the other party, or its officers, directors, agents, employees, successors or assigns, for punitive, or consequential damages connected with, related to or arising from performance or non-performance of this Lease, or any action or inaction in connection therewith including, without limitation, claims in the nature of lost revenues, income or profits (other than payments expressly required and due under this Lease).

38.2 No Third-Party Beneficiaries. Except as specifically provided herein, including Section 21.1, this Lease is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not.

38.3 Construction of this Agreement; Jurisdiction. This Lease shall be deemed to be made and shall be construed in accordance with the laws of the State of Maine. Unless otherwise resolved by agreement of the parties, CITY and CLUB covenant and agree to submit to the personal jurisdiction of the Cumberland County Superior Court for any dispute, claim, or matter arising out of or related to this Lease.

38.4 Time. Time is of the essence hereof, and every term, covenant and condition shall be deemed to be of the essence hereof, and any breach by the City or the Club shall be deemed to be of the very substance of this Lease.

38.5 No Partnership. Nothing herein contained shall make, or be construed to make, CITY or CLUB a partner of one another nor shall this Lease be construed to create a partnership or joint venture between any of the parties hereto or referred to herein.

38.6 Nondiscrimination. CLUB agrees to comply with all applicable City, state, and federal laws and regulations regarding equal opportunity.

38.7 Transition Provision. Prior to the Effective Date, the rights and obligations of CITY and CLUB are those described in the Current Lease. On the Effective Date, the Current Lease shall be deemed amended and restated so as to contain all of the terms of this Lease, and this Lease as amended and restated shall govern all future rights, obligations, duties and liabilities of the parties.

38.8 Non-Appropriations; City Rights And Obligations.

(a) Subject to the limitations set forth in Section 16.3, and except as specifically set forth in this Agreement, in the event that any repairs, alterations, improvements or other expenditures become necessary in order to permit the CLUB to host Home Games at the Premises during the remainder of the Term (including, without limitation, pursuant to the PDL Facility Standards, the PDL Rules and Regulations, or any other MLB PDL Requirements) that would require the expenditure of funds that have not been appropriated by the CITY's City Council, the CITY and CLUB will engage in good faith discussions in order to identify a commercially reasonable solution, satisfactory to the CITY, that permits CLUB to continue to host Home Games at the Premises through the remainder of the Term. If the parties fail to agree upon such a solution, CLUB shall have the option, at its own expense, to perform such repairs, alterations or improvements, or incur such other expenditures, and if CLUB does not do so, either party shall have the right to terminate this Agreement. In no event will the City be responsible for expending such funds except as specifically set forth in this Agreement.

(b) CITY and CLUB acknowledge that CLUB has entered into the Portland PDL License Agreement and that CLUB is required to comply with such Portland PDL License Agreement

and with the PDL Rules and Regulations in order to operate a PDL Club. Notwithstanding the foregoing and the provisions of Article 21 above, to the extent that the PDL Rules and Regulations or any act or omission of CLUB taken to comply with them materially decreases the rights or materially increases the obligations or liabilities of CITY under this Agreement (an “Adverse Compliance Act”), then, subject to the remaining terms of this subsection (b), either party, upon becoming aware of such Adverse Compliance Act, shall give notice thereof to the other party, and CLUB and CITY agree to work in good faith to modify the terms of this Lease to address any conflict with the Portland PDL License Agreement or the PDL Rules and Regulations in a manner satisfactory to such parties and to MLB PDL. If the parties are not able to reach agreement upon the conclusion of such good faith negotiations, which negotiations shall not exceed a six-month period unless mutually agreed upon by the parties, (i) CLUB may terminate this Lease upon 30 days’ notice to CITY provided such notice is given within thirty (30) days of when such negotiations are concluded, or (ii) if the parties are not able to reach agreement upon the conclusion of such good faith negotiations and to the extent that the CLUB states its intention to proceed with the Adverse Compliance Act, CITY may terminate this Lease upon 30 days’ notice to CLUB.

Signature pages follow.

IN WITNESS WHEREOF, the CITY and the CLUB have caused this Lease Agreement to be duly executed by their duly authorized representatives the day and year first above written.

WITNESS:

CITY OF PORTLAND

Danielle P. West
City Manager

Then personally appeared the above-named Danielle P. West, as City Manager of the City of Portland and acknowledged the foregoing instrument to be her free act and deed in said capacity and the free act and deed of said City.

WITNESS:

DBH PORTLAND, LLC

Print Name:
Its:

Then personally appeared the above-named _____, as _____ of DBH Portland, LLC and acknowledged the foregoing instrument to be their free act and deed in said capacity and the free act and deed of DBH Portland, LLC.

EXHIBIT B:

Equipment Transferred to Sea Dogs

Tri-plex Reel Mower 2005
Infield Groomer 1995
Groomer Drags 2004
Sod Cutter 2006

REVISED AND RESTATED LEASE AGREEMENT
BETWEEN
THE CITY OF PORTLAND
AND
PORTLAND MAINE BASEBALL, INC.
FOR
PREMISES KNOWN AS
HADLOCK FIELD AND RELATED FACILITIES
LOCATED AT
PARK AVENUE, PORTLAND, MAINE

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. DEFINITIONS	2
ARTICLE 2. SUBJECT PREMISES	7
ARTICLE 3. MUTUAL REPRESENTATIONS: GUARANTY	9
ARTICLE 4. TERM	10
ARTICLE 5. RENT	11
ARTICLE 6. CLUB'S USE OF LEASED PREMISES	11
ARTICLE 7. CITY USE OF LEASED PREMISES	16
ARTICLE 8. CONCESSIONS	18
ARTICLE 9. PARKING	21
ARTICLE 10. OPERATION, MAINTENANCE AND REPAIR OF THE PREMISES	22
ARTICLE 11. OPERATING PERSONNEL TO BE SUPPLIED BY CLUB	24
ARTICLE 12. UTILITIES	25
ARTICLE 13. SCOREBOARDS. SIGNS AND ADVERTISING	26
ARTICLE 14. ALTERATIONS BY CLUB	28
ARTICLE 15. COVENANT AGAINST LIENS	30
ARTICLE 16. DEFAULT	32
ARTICLE 17. INDEMNIFICATION	36
ARTICLE 18. INSURANCE	38
ARTICLE 19. DAMAGE TO THE PREMISES	41
ARTICLE 20. SUSPENSION OF BASEBALL	43
ARTICLE 21. COMPLIANCE WITH LAWS	44
ARTICLE 22. INSPECTION	44

ARTICLE 23.	ASSIGNMENT AND SUBLETTING	45
ARTICLE 24.	NO SURRENDER	46
ARTICLE 25.	WAIVER OF REDEMPTION	46
ARTICLE 26.	NOTICES	47
ARTICLE 27.	OBLIGATIONS TO MAINTAIN FRANCHISE	48
ARTICLE 29.	NO WAIVER	49
ARTICLE 30.	INTERPRETATION	49
ARTICLE 31.	ENTIRE AGREEMENT	50
ARTICLE 32.	SUCCESSORS BOUND	50
ARTICLE 33.	CAPTIONS	50
ARTICLE 34.	PARTIAL INVALIDITY	50
ARTICLE 35.	NO MERGER	51
ARTICLE 36.	APPROVAL OF CITY	51
ARTICLE 37.	MEMORANDUM OF LEASE	51

REVISED AND RESTATED LEASE AGREEMENT
BETWEEN
THE CITY OF PORTLAND, MAINE,
AND
PORTLAND MAINE BASEBALL, INC.

This is a Revised and Restated Lease and Use Agreement made as of the 18th day of June 2007 between the **CITY OF PORTLAND**, a municipal corporation, having its offices at Portland City Hall, 389 Congress Street, Portland, Maine 04101, (hereinafter the **CITY**), and Portland Maine Baseball, Inc. a Maine corporation and owner of the Eastern League AA Franchise known as the Portland Seadogs with a principal office located at Hadlock Field, 271 Park Avenue, Portland, ME, and with a mailing address of P.O. Box 636, Portland, ME 04104 (hereinafter the "**CLUB**").

W.I.T.N.E.S.S.E.T.H

WHEREAS, the **CITY** has developed, constructed, operated and maintained, in conformity with minor league AA baseball standards, an outdoor stadium and sports facility on property owned by the **CITY** and located at 271 Park Avenue within the City of Portland (hereinafter the "**Premises**") and has made provisions for the necessary financing of said facility; and

WHEREAS, Daniel B. Burke was awarded a franchise by the Eastern Baseball League of the Professional Baseball Association to operate a AA baseball team in said league and assigned said franchise to **CLUB**;

WHEREAS, **CLUB** agreed to locate and maintain such team in the

CITY;

WHEREAS, the City and the Club entered into a Lease Agreement dated November 18, 1993, pursuant to which the Club leased baseball facilities from the City known as Hadlock Field and located on Park Avenue, and the City and the Club amended and extended that Lease Agreement by an Amendment #1 to Lease Agreement dated June 14, 1999;

WHEREAS, the Club has operated successfully at this site for over 13 years and wishes to extend its Lease Agreement with the City, and the City wishes to have such an extension, and the Club and the City wish to revise certain provisions of the Lease in ways that are beneficial to both the Club and the City;

WHEREAS, the Sea Dogs have committed to expending \$1,7000,000 to construct a clubhouse for the CLUB'S exclusive use during the term of this agreement; and

NOW, THEREFORE, the CITY hereby leases to CLUB and CLUB hereby leases from CITY the subject outdoor stadium and sports facility (the "**Premises**") for baseball and related uses upon the terms and conditions of this Revised and Restated Lease Agreement (the "Revised and Restated Lease" or "Lease") as hereinafter set forth.

ARTICLE 1. DEFINITIONS

The following words and terms, when used in this Lease, shall, whether used in the singular or in plural, have the following meanings.

1.1 **Baseball Occupancy Period** - The period from the 1st day of April through September 30 of the year in question, both dates included.

1.2 **Baseball Rules** - All rules, regulations, contracts and arrangements, which at the time in question, govern the rights and duties and privileges and obligations of **CLUB** as a member of the Eastern League or the National Association of Professional Baseball Leagues, Inc.

1.3 **Charity Game** - Any baseball game other than an All Star game, the net proceeds of which are paid to a not-for-profit organization and which includes **CLUB's Club** as one of the participants and, under the baseball rules, is scheduled or required to be played on the **Premises**.

1.4 **Concession** -The business of selling, renting or furnishing goods or services of any type or kind, including but not limited to food, drink, merchandise, souvenirs and cushions, but excluding the sale of parking privileges.

1.5 **Concession Contract** - Any written agreement entered into between **CLUB** and any person or entity by which there is granted to such person or entity the whole or any part of the rights of **CLUB** to operate concessions in and about the stadium.

1.6 **Concession Facilities** - The facilities for the preparation and service of food and drink and for the sale or rental of other goods and services, including all equipment and fixtures affixed or attached to any part of the concession space

and all improvements, additions, alterations, equipment, fixtures and installations constructed, provided or added in or to said space at any time.

1.7 **Date Of Readiness** - The date designated by **CITY** in a notice served on **CLUB** as the date on which the **Premises** is ready to be used for the purposes of this Lease, which date shall be no later than April 1, 1994; provided, however, that exterior landscaping and similar work which does not materially interfere with beneficial occupancy of the Premises may be completed later. Based upon the availability of asphalt and to the extent reasonable, parking surfaces, sidewalks and other similar areas of access to the Premises shall be paved upon beneficial occupancy or as soon thereafter as feasible.

1.8 **Eastern League** - Any minor league professional baseball League of which **CLUB** is a member **CLUB** any time during the term of this Lease regardless of the name by which such minor league is known or denominated.

1.9 **Eastern League Schedule** - The listing which is officially promulgated by the Eastern League each year setting forth the games to be played by Eastern League teams and the All star game or games for such year, and the dates on which all such games are scheduled to be played.

1.10 **Entity** - An individual, partnership, firm, company, association, joint stock association, public or private corporation or other like organization and any unit or branch of

government or public department, agency or board including but not limited to any department, agency or board of **CITY**.

1.11 **Exhibition Game** - Any baseball game other than a regular home game, charity game, playoff game, interdivisional championship game or inter-league championship game between **CLUB** and any other team which is sanctioned or permitted by the baseball rules and or by the authorities of minor league baseball having jurisdiction to authorize the playing of such game and which is scheduled to be played in the **Premises**.

1.12 **Force Majeure** - (1) act of God, (2) fire, floods, earthquake, blizzard, storm or other casualty, (3) strike, lockout or other labor dispute, (4) riot, insurrection, civil commotion, sabotage, vandalism or enemy or hostile government action, (5) inability to procure labor, materials or supplies (6) law, statute, ordinance, order, rule or regulation or requirement of any superior governmental authority or any appropriate agency, office or department, board or commission thereof whether now or hereafter in force including, without limitation, rationing restriction in respect of any construction work for the use of labor or materials (7) judicial or other legal restriction or order affecting the performance of any covenant to be performed hereunder, (8) any other condition beyond the reasonable control of a party required to perform hereunder.

1.13 **Home Game** - Any regular home game, all star game, exhibition game, charity game, interdivisional championship game,

playoff game or inter-league series game which under the baseball rules, is scheduled, required, or authorized by the CITY, to be played in the Premises.

1.14 Minor League - The Eastern League or its successor as now or hereafter constituted or organized and recognized as a minor league by the baseball rules and any other leagues existing during the term of this Lease which shall be generally known and recognized as minor leagues and the members of which shall be authorized by the baseball rules to play professional baseball and regularly scheduled competition culminating in a world series.

1.15 Night Game - Any home game or event the scheduled starting time of which is 6:00 P.M. or later.

1.16 Other User - CITY or any entity to whom or which CITY has granted a use authorization.

1.17 Playoff Game - Any baseball game which is scheduled to be played between CLUB and another Eastern League team at the conclusion of the regular baseball season and which, under the baseball rules is scheduled, required, authorized or permitted to be played in the stadium.

1.18 Related Activity - An event or activity which is scheduled or arranged by CLUB to be held or take place on the day of any home game or immediately following any home game for the purpose of increasing attendance at home games. If any proposed event or activity is of a kind or character not previously

conducted by a minor league team in conjunction with a baseball game, the prior written approval of the **CITY** shall be required.

1.19 Road Trip Period - Each period during a baseball occupancy period when **CLUB** is scheduled to play one or more successive games anywhere other than in the Premises

1.20 Use Authorization - Any grant by contract, lease, rental agreement, license, permit or other authorization, not including this Lease, entered into or issued by **CITY** with any entity whereby a right is conferred to use the Premises for an event.

ARTICLE 2. SUBJECT PREMISES

2.1. **CITY** grants to **CLUB**, and **CLUB** hereby accepts from **CITY**, the right to use (for the uses described herein) an outdoor stadium and sports facility and related facilities, i.e. the Premises.

2.2 The **Premises** include the stadium, Hadlock Baseball field, (including proper batting cage and fielding safety screens), clubhouse facilities, enclosed picnic area, office space, press box, restrooms, the shell for concession stands and concession storage, indoor area for additional batting cage and/or pitching area, visitor shower and locker facilities in the adjacent Exposition Building (hereinafter the "Expo"), all space and area, enclosed or unenclosed, within or under the stadium structure, all improvements, fixtures and equipment and exterior ticket booths and other installations owned by **CITY** and used in

connection with the operation of the stadium and all permanent additions, alterations, fixtures, equipment and installations constructed, provided or added thereto at any time by **CITY**, **CLUB** or any other entity and such other space or structures as agreed upon and required to meet the League standards and requirements.

Field equipment as described in Exhibit B to this Revised and Restated Lease hereby becomes the property of the Club.

2.3. The Premises shall be available as provided herein for the use of the Club from April 1 through September 30 of each year of this Lease; EXCEPT that the following areas of the Premises shall be available on a year-round basis for the Club's exclusive use:

A) Office space, concession stands, concession storage space and other storage space in the Stadium identified as 'Club space' in the "Master Plan" describing the Premises attached to this Revised and Restated Lease as Exhibit C;

B) Sea Dogs clubhouse

C) Private skyboxes; and

D) Private lounge.

2.4 **CITY** has developed and provided the **Premises** in accordance with the minimum mandatory requirements for minor league AA baseball at **CITY's** cost and expense; EXCEPT that **CITY** provided only the shell for concession stands, with utility hookups available, and **CLUB** equipped said stands at its own cost and expense, and **CLUB** shall provide any indoor batting cages. All

indoor facilities shall be located at the stadium, Hadlock Baseball Field, or in the Expo. A copy of the mandatory minimum requirements for minor league AA baseball is attached hereto and incorporated herein as Exhibit A.

ARTICLE 3. MUTUAL REPRESENTATIONS: GUARANTY

3.1 **CITY** hereby represents and warrants that it has the exclusive ownership of the Premises and that it has full authority to enter into this Lease for the use of said Premises. Notwithstanding the foregoing, **CLUB** understands and agrees that the **CITY** leases the Expo to the Portland School Department, and that **CLUB's** use of the Expo shall be coordinated with said School Department and the Expo's manager.

3.2 In the event that ownership of the Franchise should, for any reason, during the term of this Lease be assumed or transferred to any entity other than the **CLUB**, said transfer shall be subject to assumption by such entity of all of the rights and obligations under this Lease. In the event that the Controlling Group, as defined below, shall cease to own in the aggregate, beneficially and of record, at least 51% of the voting equity of (a) the **CLUB** (before any such transfer), or (b) any entity to which the Franchise or the Lease has been transferred, the **CITY** shall have a one year option (beginning on the date on which the Controlling Group ceases to own such 51%) to purchase, or arrange for the local purchase, of the Franchise at its then appraised value, subject to the provisions of Major League

Rule 36. Said appraisal process shall include two appraisals, one selected and paid for by each party, and a review appraisal, the cost of which shall be shared equally, unless **CLUB** and **CITY** otherwise mutually agree upon another process. The **CLUB** agrees to execute such additional documents as may be necessary to implement the foregoing, said documents to be in a form reasonably satisfactory to **CITY**. Copies of any such documents shall be provided to **CITY**. In exercising its option, **CITY** will comply with all provisions of Major League Rule 36. For purposes of this paragraph, the term "Controlling Group" shall mean any combination of (a) any or all of Daniel B. Burke, his wife, his children, the spouses of such children, and the lineal descendants of any of the foregoing (all of the foregoing defined as "Burke Family Members"); (b) any trusts or trustees of trusts of which the beneficiaries are one or more Burke Family Members; (c) any guardians, conservators, custodians or nominees for anyone or more Burke Family Members; and (d) any individual Retirement Account, S.E.P., Keogh or similar plan or trust benefiting one or more Burke Family Members.

ARTICLE 4. TERM

4.1 The term of this Lease shall commence at 12:01 a.m. October 1, 1993 and expire at midnight on September 30, 2003, unless sooner terminated as hereinafter provided.

4.2 The term of this lease was extended in Amendment #1, signed June 14, 1999, through September 30, 2008, with an option to renew through September 30, 2013.

4.3. The term of this Lease is hereby extended for an additional fifteen (15) years beyond the option provided for in Amendment #1, through and including September 30, 2028, on the terms and conditions provided herein.

ARTICLE 5. RENT

5.1. Effective April 1, 2007, and each April 1 thereafter through and including April 1, 2008, **CLUB** shall pay to **CITY** an annual payment of One Hundred and Fifteen Thousand Dollars (\$115,000). 5.2 In acknowledgement of the Sea Dogs commitment to finance and construct a new club house, the City shall credit \$50,000 against the annual rent payment due and owing each April 1 beginning in 2009 through the term of the lease.

5.3 Effective April 1, 2009 through and including April 1, 2013, CLUB shall pay to CITY an annual payment based on the following schedule:

(a) One Hundred and Fifty Thousand Dollars (\$150,000) for every year attendance for the prior season was 325,000 or above;

(b) One Hundred and Twenty-Five Thousand Dollars (\$125,000) for every year attendance for the prior season was below 325,000 but was 275,000 or above;

(c) One Hundred Thousand Dollars (\$100,000) for every year

attendance for the prior season was below 275,000.

5.4 Effective April 1, 2014 through and including April 1, 2018, CLUB shall pay to CITY an annual payment based upon the following schedule:

(a) One Hundred and Seventy-Five Thousand Dollars (\$175,000) for every year attendance for the prior season was 325,000 or above;

(b) One Hundred and Fifty Thousand Dollars (\$150,000) for every year attendance for the prior season was below 325,000 but was 275,000 or above;

(c) One Hundred and Twenty-Five Thousand Dollars (\$125,000) for every year attendance for the prior season was below 275,000.

5.5 Effective April 1, 2019 through and including April 1, 2023, CLUB shall pay to CITY an annual payment based upon the following schedule:

(a) Two Hundred Thousand Dollars (\$200,000) for every year attendance for the prior season was 325,000 or above;

(b) One Hundred and Seventy-Five Thousand Dollars (\$175,000) for every year attendance for the prior season was below 325,000 but was 275,000 or above;

(c) One Hundred and Fifty Thousand Dollars (\$150,000) for every year attendance for the prior season was below 275,000.

5.6 Effective April 1, 2024 through and including April 1, 2028, CLUB shall pay to CITY an annual payment based upon the following schedule:

(a) Two Hundred and Twenty-Five Thousand (\$225,000) for every year attendance for the prior season was 325,000 or above;

(b) Two Hundred Thousand Dollars (\$200,000) for every year attendance for the prior season was below 325,000 but was 275,000 or above;

(c) One Hundred and Seventy-Five Thousand Dollars (\$175,000) for every year attendance for the prior season was below 275,000.

5.7 The forgoing payments shall be made in legal tender, said payments to be made at the offices of CITY'S chief fiscal officer or at such other place as CITY may from time to time designate.

5.8 When payment is based upon attendance of 325,000 or above, **CITY** agrees that Fifty Thousand Dollars (\$50,000) of the foregoing payments shall be set-aside each year by **CITY** in a separate account designated for Hadlock Stadium maintenance and **CITY** agrees, through its annual budget process, to match the \$50,000 set-aside each year. As long as the terms of this Agreement are in force, the \$50,000 paid by the team will not be

diverted for any other purpose by the **CITY**, regardless of budgetary circumstances.

When payment is based on attendance below 325,000 but at 275,000 or above, as provided in section 5.3, 5.4, 5.5 and 5.6, the set-aside will be reduced to Twenty-Five Thousand Dollars (\$25,000) with a \$25,000 match. When payment is based upon attendance below 275,000, there will not be a set-aside and match, but the CITY and CLUB agree to discuss the issue of ballfield maintenance and the cost-sharing thereof reasonably in advance of the baseball season. "Attendance" as used herein shall be calculated in the same manner as Total Attendance is calculated under the Eastern League Rules and Regulations, as they may be amended from time to time, or under the Rules and Regulations of any other similar successor baseball league of which the CLUB is a member. Attendance for each Baseball Occupancy season shall be reported within sixty (60) days of the close of each season, and shall be the basis for the payment due on the following April.

ARTICLE 6. CLUB'S USE OF LEASED PREMISES

6.1 During each Baseball Occupancy Period, **CLUB** shall have the exclusive right to use and occupy the Premises (in addition to **CLUB's** year-round exclusive use space) in connection with the exhibition to the public of home games and for three (3) non-Eastern League baseball events for six (6) hours before the game or the special event time until one (1)

hour after the end of said game or event.

6.2 Within ten (10) days after the official Eastern League Schedule is established for each year, **CLUB** shall give written notice to **CITY** or its designee of all home games on said schedule and shall specify not more than three (3) dates (other than dates of home games reserved by **CLUB**) for non-Eastern League baseball events within the Baseball Occupancy period. A copy of the 1994 Eastern League schedule will be provided to **CITY**. The **CLUB** will make provision during the home game schedule for rescheduling of postponed games or events. If any game or event is rescheduled, **CLUB** shall promptly give notice to **CITY** of such rescheduling.

6.3 During the Baseball Occupancy period, **CLUB** shall have the right to use the playing field for baseball practice, except on days when the Portland or Deering High School Baseball team has scheduled use of the field; provided, however, that such use by the Portland or Deering High School Baseball team shall not interfere with **CLUB's** exclusive use of the field six (6) hours before the start time of a home game.

6.4 **CLUB** shall schedule and play all of its home games at the **Premises**, unless transfer of such games to other locations is necessitated by postponements, the unplayable condition of the playing field or Force Majeure. If **CLUB** is required by the Eastern League schedule to play any baseball game where **CLUB** is designated as the home team elsewhere than in the **Premises**, **CLUB** may do so provided:

A) no more than five (5) such baseball games are scheduled in any Baseball Occupancy period,

B) no such games shall be played within fifty (50) miles of the Premises, unless approved by the **CITY**, and

C) such arrangement equally affects all baseball teams in the division.

6.5 **CLUB** shall have the right to transmit and to license or to authorize others to transmit by any means of communication, including but not limited to radio and television, all or any part of home games and related activities played or conducted in the Premises and any information or data relating thereto, including, without limitation, so called "pre-game" and "post-game" shows.

6.6. The Club is authorized to postpone home games due to inclement weather, in accordance with Eastern League rules, policies and procedures.

6.7. The Club is authorized to provide no more than five fireworks displays per season at the Premises, provided the following conditions are met:

A) The Club's use of fireworks conforms to all relevant local, state and federal regulation;

B) The Club arranges for inspection or other oversight by the State Fire Marshal prior to its use of fireworks;

C) The club agrees to defend and indemnify the City

against any claims related to the fireworks, carries appropriate insurance for the fireworks and names the City as additional insured on the relevant insurance policy.

ARTICLE 7. CITY USE OF LEASED PREMISES

7.1 Except as provided in section 2.3 for **CLUB's** exclusive use storage and office space, **CITY** shall have the right to use, or to permit use of, the Premises without prior notice to or consent by **CLUB** for any date from October 1 through March 31 of each year of this Lease.

7.2 During the Baseball Occupancy Period, **CITY** shall have the right to use, or to permit use of, the Premises for the regular home game and practice schedule of the Portland or Deering High School Baseball Team, and/or for any amateur baseball Tournament game. Any such uses shall not, however, conflict with the requirement that the premises be available for the use of the **CLUB** at least six (6) hours before any home game or scheduled event.

7.3 **CITY** shall have the right to charge and to retain permit and/or user fees for all use of the Premises by non-**CLUB** entities. **CITY**, or the sponsoring agency, shall further have the right to charge admission fees for such non-**CLUB** events, and all such fees shall be the property of the **CITY** or the sponsoring agency, as may be agreed between them. **CITY**, or **CITY** and the sponsoring agency, as applicable, shall be responsible for

parking, security and clean-up during non-**CLUB** events. **CLUB** agrees, upon request of **CITY** or the sponsoring agency, to provide some or all of its personnel, to the extent that they are reasonably available, (e.g. ticket takers, security, ushers, groundskeepers etc.) to work at such non-**CLUB** events, at a fee and upon terms to be negotiated between the **CLUB** and the **CITY** or sponsoring agency, as applicable.

7.4 **CITY** shall have the exclusive right to authorize, and to receive all revenue from, the placing and operation of public telephone booths in and upon any and all parts of the Premises but no such booths shall be placed in **CLUB'S** exclusive use year-round space without **CLUB'S** consent.

7.5 **CITY** shall provide reasonable notice to **CLUB** of the name of other users of the Premises and the schedule of their use during the Baseball Occupancy period.

7.6. The City is authorized to postpone games scheduled to be played on the Premises by the Portland or Deering High School Baseball Teams, or any other non-Club event, due to inclement weather.

7.7. Subject to the provisions of Article 6 of this Lease concerning the Club's priority for use of the Premises for Eastern League games, the City shall have the right to use certain rest rooms within the US Cellular Pavilion and Hadlock Field Concourse as follows:

A) The City may provide public access to the rest rooms

within the US Cellular Pavilion in conjunction with any event held at Fitzpatrick Stadium. The City shall be responsible for cleaning and maintaining these rest rooms after each such event at the City's sole cost and expense.

B) The City may provide public access to the rest rooms within the Hadlock Field Concourse in conjunction with the following events held at Fitzpatrick Stadium or the Expo: any Maine Principals' Association tournament event; any Maine Band Directors' Association tournament event; any NCAA event; the annual Thanksgiving football game between Portland and Deering High Schools; any event at Fitzpatrick Stadium for which the City projects total attendance to exceed 3,000; and any event at the Expo for which the City projects total attendance to exceed 2,500. The City shall be responsible for cleaning and maintaining these rest rooms after each such event at the City's sole cost and expense.

ARTICLE 8. CONCESSIONS

8.1 **CLUB** shall have the exclusive right to sell, rent or furnish concessions in any part of the Premises during home games or events by means of portable or mobile vending devices, by vendors carrying concessions, or automatic vending machines or at stands or booths. The installation of any such machines, stands or booths in any part of the Premises shall be subject to the prior written approval of **CITY**.

8.2 **CITY** shall not permit any other person or entity to

operate any concession in the Premises during home games without the prior written approval of **CLUB**.

8.3 All concessions sold, rented or furnished under the rights granted herein shall conform to Federal, state and local laws and regulation, and shall be appropriate items to be sold at league baseball games.

8.4 **CLUB** shall have the right to exercise directly, or through a subcontractor, any and all concession rights granted hereunder, subject to the prior written approval of **CITY** of any subcontractor(s). Any subcontract or any such exercise of rights or performance of duties or obligations by any concessionaire or concessionaires shall not relieve **CLUB** of any of its duties or obligations to **CITY** under this Lease or from any liability to **CITY** for any breach thereof.

8.5 **CLUB** shall be entitled to receive and retain all revenues from the operation of all concessions, except as provided in section 8.8 below.

8.6 Concession facilities must be operated for all home games and related activities, except that not all of the stands or booths for said facilities need be operated during a given home game and related activity. Determination of the number and location of those facilities to be operated for such home game and related activity shall be made by **CLUB** on the basis of the advance sale of admission tickets, or other reasonable determination of attendance.

8.7 **CLUB** will operate a minimum of one (1) concession facility for all non-**CLUB** events for which a use authorization has been granted by **CITY**. Determination of the number and location of facilities to be operated for such activity shall be made by **CLUB** on the basis of the advance sale of admission tickets, if any, or on actual attendance at the event.

8.8. **CLUB** agrees to pay **CITY** ten percent (10%) of its gross concession receipts for food from all of its food concessions at any non-**CLUB** event. Said payment shall be made within thirty (30) days of the event and shall be in addition to any other payments due to **CITY** hereunder. "Gross concession receipts" for purposes of this section shall mean the total of all amounts received by **CLUB**, or its subcontractors, from the sale or furnishing of food from or on the Premises in connection with a non-**CLUB** event. Gross concession receipts shall not include sales tax paid or payable on such sales, rentals or furnishings. **CLUB** shall transmit a certified statement of the total of said Gross concession receipts for food with its payment to **CITY**.

8.9 Every user of the **Premises** shall have the right to print or arrange for the printing of such score cards, programs and other literature at its sole cost and expense.

ARTICLE 9. PARKING

9.1. Unless the **CLUB** and **CITY** agree otherwise in writing, **CLUB** shall operate, control and manage all Premises' public

parking areas and the employee and team reserved parking designated on said parking shall be managed in conformity with standards approved by the **CITY** and any fees for parking shall be charged only with the prior written approval of the **CITY**.

9.2 **CLUB** at its own expense shall keep all Premises' parking areas and improvements thereon clean during all hours of any home game and related activity and shall do debris cleanup after said activity.

9.3 **CLUB** shall at its own expense provide all personnel required for the operation of all the Premises' parking areas during or for all home games and related activities. **CLUB** agrees to provide personnel when necessary to assist in enforcing parking regulations in surrounding residential areas during home games and related activities.

9.4 **CLUB** will receive the parking revenue related to Sea Dogs games, minus CITY expenses for staffing the lots.

ARTICLE 10. OPERATION, MAINTENANCE AND REPAIR OF THE PREMISES

10.1 Unless otherwise expressly set forth in this Lease, **CITY** is responsible for the operation, maintenance, and repair of the Premises at **CITY** cost and expense, other than **CLUB**'s year-round exclusive use space, which shall be **CLUB**'s responsibility. **CITY**'s responsibility shall be to maintain the Premises at no less than the minimum standards required for AA minor league

baseball.

10.2. Effective January 1, 2008, unless otherwise expressly set forth in this Revised and Restated Lease, the Club is responsible for field operation and maintenance, including winterizing and repairing the field as necessary due to winter conditions. The Club's responsibility shall be to operate, maintain and repair the field at no less than the minimum standards required for AA minor league baseball and required by applicable local, state or federal regulation.

10.3. The City shall have the right, pursuant to Article 22 of this Lease, to enter and inspect the Premises for the purpose of determining whether the Premises are being operated, maintained and repaired in accordance with section 10.1. If the City finds that the Premises are being operated, maintained or repaired in violation of that section, the City may order the Club to correct these violations within a reasonable time, or may perform whatever work is required to correct these violations and charge to the Club the costs of such work.

10.4. If the Premises, or any portion thereof, during the term of this Lease are damaged (otherwise than by causes ordinarily covered by "all-risk" fire and extended coverage insurance and excluding normal wear and tear), by the act, default or negligence of the Club, or of the Club's officers, agents, employees, players, invitees, guests, contractors or subcontractors, or any person admitted to the Premises by the

Club, the Club will restore the Premises to their present condition at the Club's cost and expense.

10.5. The Club hereby assumes full responsibility for the character, acts and conduct of all persons admitted to the Premises or to any portion of the Premises by the consent of the Club, or by or with the consent of any person action for or on behalf of the Club, and the Club agrees to provide sufficient security force to maintain order and protect persons and property during and for any club event.

ARTICLE 11. OPERATING PERSONNEL TO BE SUPPLIED BY CLUB

11.0 On the day of each home game **CLUB** shall at its expense:

11.1 Provide adequate police for the Premises to maintain order and protect property therein

11.2 Provide such trained personnel as may be necessary for the orderly admission, seating and handling of patrons and for the proper use and occupancy of the Premises, and to insure the adequate flow of traffic in and around the Premises for one (1) hour before and after the game or event; such personnel shall include, but are not limited to, uniformed special police officers, guards, ticket sellers, ticket takers, ushers, attendants, announcers and first aid station personnel;

11.3 Provide such trained personnel as may be necessary to operate the electronic scoreboard;

11.4. Provide such other personnel as may be necessary to

maintain the grounds and facilities within the stadium fence in a reasonably clean and neat condition throughout the home game, and to perform litter cleanup in the Premises and the immediate area thereof during and after any home game; and to assist the City groundskeeper in laying and removing of tarp during rain delays; and

11.5 Provide such trained personnel as are necessary to adequately staff and operate the concessions.

11.6 The Club agrees to provide groundskeepers at authorized practices and home games.

11.7. In addition, the CLUB shall provide at the CLUB's cost and expense such personnel throughout any Portland or Deering High School Baseball Team game played on the Premises as may be necessary to maintain the grounds and facilities within the stadium fence in a reasonably clean and neat condition, to perform litter cleanup in the Premises and the immediate area thereof during and after the game, and to lay or remove tarp during rain delays. The CLUB shall provide these personnel for these purposes throughout any CITY game other than a Portland or Deering High School Baseball Team game held on the Premises at a rate to be charged to the CITY which is mutually determined by the CLUB and the CITY.

ARTICLE 12. UTILITIES

12.1 CLUB shall pay, or cause to be paid, the costs of all

utilities necessary for its operations hereunder, including without limitation all water and sewer charges attributable to its use of the Premises.

12.2 **CITY** will make a reasonable effort, at its expense, to install meters to measure the consumption of electricity used in connection with the ballfield lighting in order to permit separate billing of any use of the ballfield other than by **CLUB**.

12.3 The sharing of utility costs arising out of and related to **CLUB**'s use of the Expo shall be mutually agreed upon by **CITY**, **CLUB** and the School Department in a separate document.

ARTICLE 13. SCOREBOARDS. SIGNS AND ADVERTISING

13.1 Any sign or other advertising matter may be erected or displayed by **CLUB**, or any of its contractors or subcontractors, on or in the **Premises** only in accordance with this Article.

13.2 Advertising shall be permitted on the inside of that outside out-field fence enclosing the playing field, the electronic scoreboard or its programmable message center, the concourse and such other areas as may be designated in writing by **CITY**. No advertising, other than the **CLUB** logo, shall be permitted on the team dugouts. **CITY** shall not be entitled to any part of advertising revenues received by **CLUB** from the sale of advertising.

13.3 **CLUB** shall be responsible for procuring, installing, and maintaining said advertising matter for the duration of the Baseball Occupancy period and for its maintenance and storage

during the off-season period. The content, structural make-up, location and size of said advertising shall be subject to the prior approval of **CITY**. All on-field advertising shall, at **CLUB**'s option, either be removed or covered in a manner acceptable to **CITY**, during the off-season from October 1 through March 30 of each year of the Lease.

13.4 The sale of advertising for any period other than a Baseball Occupancy period shall be under the exclusive control of **CITY** to the extent such advertising space is available without removal of any existing advertising. **CLUB** may, subject to **CITY**'s prior written approval, procure and sell such advertising on such terms and conditions as **CITY** and **CLUB** may mutually agree upon.

13.5 **CLUB** shall be solely responsible for the operation, maintenance, and use of any electronic scoreboard provided at **CLUB** expense, but shall permit **CITY** and other stadium users to use the same in connection with events sponsored by them.

13.6 **CLUB** and its subcontractors, if any, may display such signs, billboards, price lists and other advertising material as are calculated to inform patrons of the food, drink, articles of merchandise and admission tickets being offered for sale in the stadium, such inside advertising to be in a size and quantity as is approved by **CITY**.

13.7 **CLUB** and its subcontractors shall have the right to display advertising on scorecards, program and other printed material sold in any part of the Premises by **CLUB** or its

subcontractors.

13.8 It is the intent of **CITY** and **CLUB** that all advertising must be in keeping with the character and dignity of the Premises and that **CITY** is the final determiner of what is appropriate within those guidelines. All billboards, signs, electronic message boards and other advertising or notices must comply with all applicable local, state or federal law and regulations in regard to same, including without limitation the state and federal "Billboard" laws, and **CLUB** shall be responsible for such compliance.

ARTICLE 14. ALTERATIONS BY CLUB

14.1 **CLUB** shall not make any alterations of the premises, except upon written approval of **CITY** of the plans and specifications setting forth the proposed alteration. No such consent shall render **CITY** liable with respect to any contract or undertaking by **CLUB** for any alteration work which shall be performed at **CLUB'S** sole expense.

14.2 **CITY** shall not unreasonably withhold its consent to any alteration by **CLUB**, at **CLUB'S** expense, of the playing field, the walls or fences enclosing the playing field and any structures in whole or part on or over such walls and fences such as screens and foul poles, or any other alteration to the stadium required by minor league rules and applicable to all stadia where minor league baseball is regularly played.

14.3 **CLUB** may, at its own cost and expense, install an

electronic scoreboard and sound system upgraded from that required by the minor league baseball standards in Exhibit A, so long as there is no cost or expense to **CITY** for such upgrade.

14.4 To the extent reasonable, all alterations and work performed by or on behalf of **CLUB** shall be performed in such a manner and at such time as not to interfere substantially with the use of the Premises by any other authorized user or by **CITY**.

14.5 Materials, fixtures and equipment and other property which are so affixed or annexed to the Premises that they become a part of the real property, other than an upgraded scoreboard and sound system installed at **CLUB**'s sole cost and expense, shall immediately upon the installation thereof, become the property of and title thereto shall vest in **CITY**. Such materials, fixtures, equipment or other property, title to which vests in **CITY** under the preceding sentence, shall not be subject to any agreements of conditional sale, nor to any chattel mortgage, trust receipt, or other form of security transaction in which title is reserved or conveyed to the seller or any other entity. **CLUB** shall have the right to remove any such materials, fixtures, equipment or other property if it promptly replaces the same with new or other materials, fixtures, equipment or other property of like kind in like or better quality and repairs any damage caused by such removal, in which event **CLUB** shall have the right to dispose of and/or sell the materials, fixtures, equipment and other property so removed and replaced and to retain the proceeds of such

disposition and/or sale. Prior written notice of any such removal shall be given to the **CITY. CLUB** shall have the right to remove any upgraded electronic scoreboard and sound system installed by **CLUB** at its sole cost and expense but shall reinstall a scoreboard and sound system required to meet the League minimum standards then in effect and to restore the Premises to their original condition, reasonable wear and tear excepted.

ARTICLE 15. COVENANT AGAINST LIENS

15.1 If, as a result of **CLUB's** activities on the Premises, any mechanics' lien or other lien, charge or order for payment of money, shall be filed against **CITY**, or any portion of the premises, **CLUB** shall at its own cost and expense cause the same to be discharged of record or secure such payment by posting a bond with **CITY** in reasonable form and amount satisfactory to **CITY** within thirty (30) days after written notice to **CLUB** of the filing of such lien, charge or order.

15.2 If at any time any chattel mortgage, conditional sales agreement, trust receipt or other similar instrument shall be filed with respect to any property purchases by **CLUB**, any of its subcontractors or the contractors or subcontractors of any of them, which property by the terms of this Lease becomes or will become the property of **CITY~ CLUB** at its expense shall cause the same to be discharged, vacated, cancelled or satisfied within thirty (30) days.

15.3 In default of **CLUB** so doing, **CITY** may after five (5)

days notice to **CLUB** and without thereby waiving such default of **CLUB**, procure the discharge or satisfaction of any or all said liens, chattel mortgages, conditional bills of sale, trust receipts or other similar instruments by bonding or payment or otherwise and **CLUB** shall defend, indemnify, and save harmless **CITY** against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom.

15.4 In the event **CLUB** shall not cause such lien, mortgage, bill of sale, trust receipt or order to be discharged of record or bonded within said thirty (30) day period, **CITY** may thereafter cause the same to be discharged and the cost and expense thereof, including reasonable counsel fees, shall be immediately paid to **CITY** by **CLUB** as additional rent. 15.5 Except as specifically provided in other articles of this Lease, **CITY** shall not be liable for any work, labor or services rendered for materials or equipment furnished to, or for the account of, **CLUB** upon or in connection with the Premises and no mechanics or other lien for work, labor or services rendered for or material furnished to or for the account of **CLUB** shall attach to or affect the interests of **CITY**, **CLUB** or any of its subcontractors in and to the Premises or in and to any alterations, repairs, replacements, or improvements in or about the Premises.

ARTICLE 16. DEFAULT

16.1 The **CITY**, in addition to any other rights given herein or to which it may be entitled by law or equity, may declare this Agreement terminated in its entirety, subject to and in the manner provided in this Article, upon or after the happening of anyone or more of the following events and may exercise all rights of entry and re-entry, with or without process of law, upon the Premises:

A. To the extent permitted by law, the filing by **CLUB** of a voluntary petition in bankruptcy or any assignment for benefit of creditors of all or any part of **CLUB**'s assets;

B. To the extent permitted by law, the adjudication of **CLUB** as a bankrupt pursuant to any involuntary bankruptcy proceedings;

C. To the extent permitted by law, the taking of jurisdiction by a court of competent jurisdiction of **CLUB** or its assets pursuant to proceedings brought under the provisions of any Federal reorganization act;

D. To the extent permitted by law, the appointment of a receiver or trustee of **CLUB**'s assets by a court of competent jurisdiction or a voluntary agreement with **CLUB**'s creditors;

E. The material breach by **CLUB** of any of the terms, conditions, covenants or provisions herein contained and the failure of **CLUB** to remedy such breach as provided below. A material breach shall include, but not be limited to, the failure of **CLUB** to pay any rental, fee, charge, final judgment or bond

when the same is due and payable.

16.2 In addition to any other rights given to it herein, or to which it may be entitled by law or equity, **CLUB** may cancel this Agreement and terminate all or any of its obligations hereunder at any time, upon or after the happening of anyone of the following events:

A. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Premises, or of any part thereof, for baseball purposes and the remaining in force of such injunction for a period of at least one hundred and eighty (180) days;

B. Any action of any governmental authority, board, agency or officer having jurisdiction thereof preventing **CLUB** from conducting its operations at the Premises by taking, through the process of eminent domain, in whole or a substantial part, of the leased Premises; and

C. The material breach by **CITY** of any of the terms, conditions, or covenants or provisions herein contained and the failure of **CITY** to remedy such breach as provided below.

16.3 No termination declared by either party under sections 16.1 or 16.2 above shall be effective and the **CITY** shall not take possession of the premises unless and until not less than thirty (30) days have elapsed after notice by the party not in default to the other specifying the date upon which such termination will take effect, and the cause or causes for which this Lease is

being terminated. During said thirty (30) days, the defaulting party shall have the right to cure said default, unless such default(s) by its nature cannot be cured within such thirty (30) day period and if the party in default commences to correct such default within said thirty (30) days, and proceeds diligently to correct the same as promptly as reasonably practicable, this Lease shall not terminate.

16.4 Notice of default shall be sent by certified mail, postage prepaid, return receipt requested, or by hand-delivery.

16.5 If the notice provided for in Section 16.4 has been served and the term of this Lease has ended as aforesaid, **CITY** may, without further notice, re-enter and repossess the Premises with or without legal process and remove all persons and property therefrom and **CLUB** hereby waives any further notice provided by law or otherwise to be given in connection therewith. Any and all property belonging to **CLUB** or to anyone claiming by, through, or under **CLUB** which may be found in the Premises by **CITY** upon such reentry may be handled, removed, stored or otherwise disposed of by **CITY** at the risk and expense of **CLUB** and **CITY** shall not be responsible for the preservation or the safekeeping thereof. **CLUB** shall pay to **CITY** upon demand any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in **CITY**'s possession or under **CITY**'s control. If any such property shall not be retaken by **CLUB** within a period of thirty (30) days from and after the

effective date of any such termination of this Lease, such property shall conclusively be deemed to have been forever abandoned by **CLUB**. The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning.

16.6 In the event of any termination of this Lease by **CITY** and re-entry or repossession of the **Premises**, by summary proceedings or otherwise, **CITY** may relet the **Premises** or any part or parts thereof, either separately or in conjunction with any other space in the Premises, to any other person or entity, and may re-grant to any other person or entity any and all the rights granted to **CLUB** under this Lease, for such term, which may be shorter or longer than the term which would otherwise have constituted the remainder of the term of this Lease, and/or such other terms, covenants and conditions including rent, concessions or free rent, and may make such repairs, alterations, additions, replacements and/or decorations in and to the **Premises** which **CITY**, in its sole discretion, may deem advisable for the purpose of re-letting the **Premises**, all without in any way releasing **CLUB** from liability hereunder. **CLUB** shall upon demand, pay the costs of all such repairs, alterations, additions, replacements and/or decorations together with **CITY**'s other expenses of such reletting or re-granting, including without limitation reasonable legal expenses and brokers commissions. If the rent or other payments collected by **CITY** upon any such re-letting or re-granting are not

sufficient to pay monthly the full amount of the rent (determined as hereinafter in this section provided) and all other amounts which **CLUB** would have been obligated to pay under this lease to **CITY** during the balance of the term of this Lease, **CLUB** shall pay monthly to **CITY** the amount of each monthly deficiency. **CITY** shall not be liable for failure to re-let the **Premises** or re-grant the rights granted to **CLUB** by this Lease; or, if the Premises are re-let or such rights are re-granted, for reasonable failure to collect the rent and other payments under such re-letting or re-granting.

16.7 Notwithstanding the foregoing, in the event of a breach or a threatened breach by any party of any of the terms, covenants, conditions, or provisions hereof, the other party shall have the right of injunction to restrain the same and the right to invoke any other remedy allowed by law or equity, including without limitation, the right to specific performance or the right to money damages, as if specific remedies, indemnity or reimbursement were not herein provided for.

16.8 The rights and remedies given to any party in this Lease are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by the other party, shall be deemed to be in exclusion of any others herein or by law or equity provided.

ARTICLE 17. INDEMNIFICATION

17.1 **CLUB** shall defend, indemnify and hold **CITY**, its

officers, agents and employees, harmless from any and all claims, suits and judgments, just or unjust, and all costs and expenses in connection therewith, which arise out of or result from **CLUB's** use of the Premises hereunder or which arise out of or result from the actor omission of **CLUB**, its officers, agents, employees, players, invitees, its contractors or subcontractors, and their officers, agents, employees or invitees; the officers, agents, employees, invitees, contractors or subcontractors of **CLUB's** minor league franchise, or anyone for whose act **CLUB** may be legally liable. The liability of **CLUB** under this Article shall not be limited to the insurance amounts specified in Article 18.

17.2 Notwithstanding the foregoing, **CLUB** shall not be liable under this Article with respect to any particular claim, suit or judgment if (a) any settlement of such claim has not been approved in writing by **CLUB**, or (b) in any such suit, **CLUB** has neither been permitted to defend against such suits by counsel selected by **CLUB** or (c) **CITY** on request fails to execute all assignments and other documents to subrogate **CLUB** or its insurer, insurers or designee to all rights of **CITY** against third parties with respect to any such death, personal injury or property damage and cooperate reasonably in the enforcement of such rights by **CLUB** or its insurer, insurers or designee. Defense by the insurer by its counsel shall be deemed to be defense by **CLUB** by its counsel.

17.3 Nothing herein is intended, nor shall it be deemed to

waive or modify any defense, immunity or limitation of liability which **CITY** may have under the Maine Tort Claims Act or other similar statute.

ARTICLE 18. INSURANCE

18.1 **CLUB** shall at its own cost and expense obtain and maintain throughout the term of this Lease and, if applicable, cause its subcontractors to obtain and maintain for the life of their subcontracts, insurance as follows:

A) **CLUB** shall insure its property and the personal property of **CITY** which is in **CLUB**'s care, custody and/ or control against loss or damage from "all risks" of physical loss or damage, with **CITY** property to be insured at replacement value. Such policy shall name as insureds and provide for payment of proceeds of any loss to **CITY** and **CLUB** as their interests may appear.

B) Comprehensive General Liability, Liquor Liability and Automobile Liability Insurance, naming **CITY** as insured therein and covering the obligation of indemnification hereunder, against claims, suits and judgments against **CITY** and/or **CLUB** for death, bodily injury, personal injuries and property damage arising out of or occurring during the operation, occupancy, maintenance or use of, or resulting from the acts or omissions of **CITY** and/or **CLUB** and/or any officer, employee or agent of either of them and/or any subcontractor of either of them in or with respect to any part of the Premises. The Comprehensive General Liability insurance coverage must include clauses providing for Fire Legal

Liability and for Blanket Hold Harmless coverages.

C) Insurance commonly known as product liability insurance, naming **CITY** as additional insured therein, for claims, suits and judgments against **CITY** and/or **CLUB** and/or its subcontractors for death, bodily injuries and property damage arising out of the sale, handling or other distribution of food, goods or other products by **CLUB** and/or its subcontractors.

18.2 The liability insurances required by section 18.1(B) and 18.1(C) shall each provide limits of liability of not less than:

A) One million dollars (\$1,000,000.00) for injuries to or death of one person.

B) Three million dollars (\$3,000,000.00) for injuries to or death of more than one person injured or killed in anyone occurrence.

C) One million dollars (\$1,000,000.00) for property damage resulting from anyone occurrence with an aggregate limit of three million dollars (\$3,000,000.00) per annum for property damage.

18.3 Statutory workers' compensation and employer's liability insurance in the amounts prescribed by law in the State of Maine.

18.4 All insurances required by this Article shall be carried with a financially sound insurance company or companies licensed to do business in the state of Maine to the extent that such insurance is obtainable from such company or companies. The

policy or policies for all required liability insurances shall be on an occurrence basis.

18.5 All insurances required under this Lease shall be maintained in the coverages and amounts specified or the amount required by state law throughout the term of this Lease, whichever is greater.

18.6 Certificates of insurance together with the duplicate originals of every policy of insurance required by any of the foregoing provisions of this Article and any and all renewals, endorsements, additions, modifications and changes thereto shall be deposited with **CITY** as soon as they have been procured. All such policies, duplicates, or certificates shall, prior to such deposit, be marked "premium paid" and shall contain a provision that the same shall not be altered, cancelled or not renewed before **CITY** has received thirty (30) days written notice of the insurance carriers' intent to so alter, cancel or not renew.

18.7 **CLUB** shall faithfully perform and comply with, subject to the provisions of the Lease, all of the terms and conditions of the policies of insurance required by the foregoing provisions of this Article, except those terms and conditions which by the terms of this Lease or the policy in question are required to be performed or complied with by **CITY**, which terms and conditions **CITY** shall perform and comply without limitation of the foregoing, both **CLUB** and **CITY** shall give prompt notice to the insurers and to each other of all claims covered by any of said policies. **CLUB** shall pay or cause to be paid the premiums on all of said policies at the times and in the amounts required to maintain in full force and effect the insurance required to be

maintained hereunder and **CLUB** shall not be entitled to any reimbursement by **CITY** for such premiums.

18.8 All policies and insurance required by this Article 18 to be furnished shall be endorsed or otherwise be in such form that the insurers will have no right of subrogation against any officer, employee, director or stockholder of any party hereto.

18.9 "**CITY**" as used in this Article and in Article 17 shall include, without limitation, the officers, agents, employees and contractors of the City of Portland, its boards and commissions, and of the Portland Superintending School Committee.

ARTICLE 19. DAMAGE TO THE PREMISES

19.1 **CITY** shall, at its own cost and expense, insure or self-insure the Premises against loss or damage from "all risks" of physical loss or damage; said insurance or self-insurance be for the full insurable value of the Premises at replacement cost, and shall contain only the standard exclusions.

19.2 If the Premises shall be partially or totally damaged or destroyed by fire or other casualty, **CITY** shall repair the damage so as to restore the same to its condition immediately prior to such fire or other such casualty, EXCEPT that **CITY** shall not be required to repair any such damage unless:

A) The casualty is of a kind covered by the insurance provided by section 19.1; or

B) **CITY** has a collectible claim for the entire cost of such repair against a third party; or

C) **CLUB** agrees to pay the entire cost of such repair or the difference between such entire cost in the amount of any

collectible claim which **CITY** has against a third party. In the event of any such damage as to which neither clause A) nor B) nor C) is applicable and the failure to repair such damage interferes significantly with **CLUB'S** use of the Premises in accordance with the terms of this Lease, either party shall have the right to terminate this Lease as of the date of the occurrence of the damage; EXCEPT that if **CITY** elects to repair such damage and so notifies **CLUB** within 30 days after such occurrence, no party shall have the right to terminate. **CITY** shall not be required to repair or replace any property owned by **CLUB** or its subcontractors and **CITY** shall not be liable for any damage to any such property caused by any fire or other casualty.

19.3 In the event of any damage or destruction which **CITY** is required to repair pursuant to section 19.2 hereof, **CITY** shall proceed promptly with the work of repair and restoration and shall proceed diligently to completion, subject to force majeure. If **CITY** has not completed the work of repair and restoration within a reasonable time after such fire or other casualty and if the non-completion in question interferes significantly with **CLUB'S** use of the Premises in accordance with the terms of this Lease, **CLUB** shall have the right to terminate this Lease. In determining what constitutes a "reasonable time" for the completion of such restoration within the meaning of the immediately preceding sentence there shall be taken into consideration the nature, character and extent of damage, and the delays, if any, due to force majeure, provided

however, that in any event **CLUB** shall have the right to terminate this Lease if such restoration has not been completed sufficiently to permit use of the Premises within fifteen (15) months after the date of such fire or other casualty.

19.4 Any period beginning with the occurrence of any damage or destruction by fire or other casualty which renders any part of the Premises untenable or unusable for the purposes for which the same is designed and intended and ending upon completion of the work or repair and restoration or an earlier termination of this Lease as hereinabove permitted, is called a "Force Majeure Period". During any "Force Majeure Period"

A) **CLUB** shall pay a reasonable rent for any part of the Premises used by **CLUB** during such force majeure period.

B) The other obligations of the parties under this Lease shall abate and shall be limited to the extent of the part, if any, of the Premises being used by **CLUB**.

ARTICLE 20. SUSPENSION OF BASEBALL

20.1 During any period of one month or more when by reason of force majeure **CLUB** is unable, exercising due diligence, to exhibit professional baseball games or is prevented with substantially complying with the Eastern League Schedule, (any such period herein being called a "baseball suspension period"), the rights of the parties hereto shall be as follows:

A) The terms of this Lease shall be suspended and the

rights, obligations, and liabilities of the parties hereunder, including without limitation, the obligation to pay rent with respect to such Baseball Suspension Period, shall abate and be suspended. If such Baseball Suspension Period is less than a full baseball occupancy period, the minimum rent shall be pro-rated on a monthly basis by dividing the annual rent by 12.

B) **CITY** shall have the right to use the Premises or any part thereof for any purpose during any Baseball Suspension Period. All revenues received by **CITY** from such use shall be retained by **CITY** and **CLUB** shall not be entitled to any part thereof.

C) **CLUB** may upon the written consent of **CITY** elect by notice to **CITY** to continue to occupy any or all of the Premises during any Baseball Suspension Period at a fair and reasonable rent to then be determined.

ARTICLE 21. COMPLIANCE WITH LAWS

21.1 **CLUB** shall comply with and observe any and all present and future Federal, State and local Laws and regulations affecting or applicable to **CLUB** and/or any of its contractors or subcontractor's operations in the Premises, and all regulations, and all departments, the Federal, state or orders, directives and requirements of any bureaus, boards, commissions and agencies of local Governments issued or made pursuant to such laws.

ARTICLE 22. INSPECTION

22.1 **CITY** and its agents and representatives shall, at all

times during which **CLUB** has the right to use and occupy the Premises or any part thereof, have the right to enter into and upon any and all parts of the Premises for the purpose of examining the same for any legitimate reason; provided, however, that if such entry is to any part of **CLUB'S** year-round space at any time during the year then it shall be made only after notice in writing (or without notice in the case of an emergency or if the person making such inspection is accompanied by an executive or administrative employee of **CLUB**, or in the case of concession areas, of its subcontractors) served on **CLUB** and setting forth the time and/or times of entry which shall be such reasonable time or times.

22.2 The rights reserved by this Article shall not impose upon **CITY** nor does **CITY** assume by reason hereof, any responsibility, obligation or liability for the care, maintenance, supervision, repair or replacement of the Premises or any part thereof or any duty to comply with any law, ordinance, rule, order or regulation other than those responsibilities, obligations, liabilities and duties assumed by **CITY** pursuant to the provisions of other Articles of this Lease.

ARTICLE 23. ASSIGNMENT AND SUBLETTING

23.1 Except as expressly permitted by any provision of this Lease, **CLUB** shall not, without the written consent of **CITY**:

A) assign or mortgage this Lease or in any way transfer or

encumber the rights granted hereby, or B) sublet or grant any permit or license to use the Premises or any part thereof. The terms and conditions of any such assignment, mortgage, transfer, encumbrance, subletting, permit or licensing shall be subject to the prior written approval of **CITY**. No such consent by **CITY** shall relieve **CLUB** of any of its obligations under this Lease. The granting by **CITY** of consent to anyone of the foregoing in one or more instances shall not dispense with the necessity for the consent of **CITY** to further assignment, mortgage, transfer, encumbrance, sublease, permit or license.

ARTICLE 24. NO SURRENDER

24.1 No act done by **CITY**, or its officers, employees or agents during the term of this Lease shall be deemed an acceptance of a surrender of **CLUB**'s interests hereunder, and no agreement of surrender of said interests shall be valid unless the same shall be duly authorized by the legislative body of **CITY**.

ARTICLE 25. WAIVER OF REDEMPTION

25.1 **CLUB** for itself and on behalf of any and all persons claiming through or under **CLUB**, including creditors of all kinds, does hereby waive and surrender any and all rights and privileges which they or any of them might have under or by reason of any present or future law or decision (other than a decision in an action or proceeding in which the rights of the parties under

this Lease are adjudicated) to redeem its interest under this Lease or to have a continuance of this Lease with the terms hereby granted after being dispossessed, removed or ejected according to law, or the provisions of this Lease.

ARTICLE 26. NOTICES

26.1 All notices, consents, approvals, demands and submissions(hereinafter in this Article collectively called a "Notice") shall be in writing and shall be served by certified mail (return receipt requested) or hand delivered and addressed to:

City Manager, City of Portland
389 Congress Street
Portland, ME 04101
cc: Superintendent of Recreation
cc: Corporation Counsel

or at such other address as **CITY** may specify at any time or from time to time by Notice to **CLUB**.

26.2 Any Notice to **CLUB** shall be deemed properly given if in writing and served by certified mail (return receipt requested) or hand delivered and addressed to:

Charles Eshbach, President
Portland Sea Dogs
P.O. Box 636
Portland, ME 04104

with a copy to:

William B. Troubh, Esq.
RICHARDSON & TROUBH
465 Congress Street
P.O. Box 9732
Portland, ME 04104-5032

or at such other address as **CLUB** may specify at any time or from time to time by Notice to **CITY**. **CLUB** shall notify **CITY** of the

name of the individual in charge of the office of **CLUB** at the Premises and Notices may thereafter be delivered to such individual until **CITY** has been notified by the **CLUB** of the name of the different individual in charge such office and authorized to receive Notices.

ARTICLE 27. OBLIGATIONS TO MAINTAIN FRANCHISE

27.1 **CLUB** represents that it is at the time of execution of this Lease a member in good standing of the Eastern League and agrees that through the term of this Lease it will A) maintain its membership and franchise in the Eastern League in good standing, B) hold and maintain its right in franchise to play minor league professional baseball in the City of Portland in accordance with the baseball rules and not do or suffer to be done anything which will cause such right or franchise to be lost or impaired or diminished in any respect or transferred to any other city or location or modified to permit **CLUB** to play home games in any such other city or location; and C) maintain its team as an Eastern League (or successor comparable league) baseball team of the character and standing required by the baseball rules for the conduct of professional minor league baseball games and use its best efforts within the limits of sound business judgment to insure the maximum receipts therefrom.

ARTICLE 28. QUIET ENJOYMENT

28.1 **CITY** agrees, covenants, and warrants that as long as

CLUB faithfully performs the agreements, terms covenants, and conditions of this Lease within the grace periods and extended periods for any unavoidable delays, **CLUB**, shall peaceably and quietly have, hold, and enjoy the use of the Premises upon the terms and conditions herein granted without molestations or disturbance by or from **CITY**.

ARTICLE 29. NO WAIVER

29.1 No waiver of any term, provision, covenant, or condition contained in this Lease or of any breach of any such term, provision, covenant or condition shall constitute a waiver of any subsequent breach of such term, provision, covenant or condition by either party, or justify or authorize the nonobservance on any other occasion of the same or any other term, provision, covenant or condition hereof.

ARTICLE 30. INTERPRETATION

30.1 This Lease shall be construed in accordance with the law of the state of Maine. Whenever the contents of any provision shall require it, the singular number shall be held to include the plural number, and vice versa. The neuter gender includes the masculine and the feminine. **CITY** includes its officers, agents, employees, and contractors or subcontractors, and the Portland Superintending School Committee and its officers, agents, employees and contractors or subcontractors. **CLUB** includes its officers, agents, employees, players, contractors and subcontractors.

ARTICLE 31. ENTIRE AGREEMENT

31.1 This Lease with its attachments contains the entire agreement of the parties hereto with respect to the lease of the Premises described herein and this Lease may not be amended, modified, released, or discharged, in whole or in part, except by an instrument in writing signed by the parties hereto, or their duly authorized respective successors or assigns.

ARTICLE 32. SUCCESSORS BOUND

32.1 Except as otherwise provided in this Lease, all terms, provisions, covenants and conditions of this Lease shall be binding on and inure to the benefit of the parties hereto, their duly authorized respective personal representatives, successors and assigns. No modification or termination of this Lease shall be binding unless evidenced by an agreement in writing signed by CITY and CLUB.

ARTICLE 33. CAPTIONS

33.1 The captions of the Articles of this instrument are solely for convenience and shall not be deemed a part of this instrument for the purpose of construing the meaning thereof, or for any other purpose.

ARTICLE 34. PARTIAL INVALIDITY

34.1 If any term, covenant, condition, or provision of this Lease or the application thereof to any person or circumstances

shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or its application to other persons or circumstances, shall not be affected thereby, and each term, covenant, condition, and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

ARTICLE 35. NO MERGER

35.1 The fee title of the Premises and the leasehold estate granted by this Lease shall not merge, but shall always remain separate and distinct notwithstanding the union of said estates in whole or in part in **CLUB** or in a third party by purchase or otherwise.

ARTICLE 36. APPROVAL OF CITY

36.1 Approval of the **CITY**, wherever used in this Lease, shall mean the approval of the City Manager of the City of Portland, unless another party is specifically designated. "Approval" wherever required herein by either party, shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 37. MEMORANDUM OF LEASE

37.1 The parties agree to execute a Memorandum of Lease in form appropriate for recording in the Cumberland County Registry of Deeds.

IN WITNESS WHEREOF, the **CITY** and the **CLUB** have caused this Lease Agreement to be duly executed by their duly authorized representatives the day and year first above written.

WITNESS:

J. Rosen

CITY OF PORTLAND

Joseph E. Gray, Jr.
City Manager

Then personally appeared the above named Joseph E. Gray, Jr. as City Manager of the City of Portland and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said City.

WITNESS:

Anna Castelli

PORTLAND MAINE BASEBALL, INC.

Daniel B. Burke
Daniel B. Burke, Chairman
Portland Maine Baseball, Inc.

Then personally appeared the above named Daniel B. Burke in his capacity as Chairman of Portland Maine Baseball, Inc. and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of the Eastern League AA franchise.

EXHIBIT B:

Equipment Transferred to Sea Dogs

Tri-plex Reel Mower 2005
Infield Groomer 1995
Groomer drags 2004
Sod Cutter 2006

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

**ORDER APPROVING AND AUTHORIZING CITY MANAGER TO EXECUTE THE
AMENDED AND RESTATED LEASE AND USE AGREEMENT WITH DBH
PORTLAND, LLC FOR USE OF HADLOCK STADIUM FOR
THE PORTLAND SEADOGS**

ORDERED, that the attached Amended And Restated Lease And Use Agreement with DBH Portland, LLC for use of Hadlock Stadium for the Portland Seadogs is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager to execute said document in substantially the form attached hereto, and any other related documents necessary or convenient to carry out the intent of said document.

BE IT FURTHER ORDERED, that this Order is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective immediately.

MEMORANDUM
City Council Agenda Item

FROM: Melissa Graffam
DATE: August 23, 2024
SUBJECT: Order 41-24/25 Approving Three-Party Partnership Agreements Between the City of Portland, the Maine Department of Transportation, and the Portland Area Comprehensive Transportation System RE: Improvements to Riverside Street and Washington Avenue - Sponsored by Danielle P. West, City Manager
SPONSOR: Danielle P. West, City Manager
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st Reading 8/19/2024

**Final
Action**

Can action be taken at a later date: No This agreement must be approved by City Council and signed by the City Manager as early as possible to allow Maine Department of Transportation (MaineDOT) to meet its target bid date and target construction start date for this project. This project has already been delayed due to increasing costs.

Does this item involve a new contract with the City: Yes

PRESENTATION: N/A

I. SUMMARY

City Council is being asked to approve the attached updated Two-Party Municipal/State Agreements and updated Three Party Partnership Agreements and authorize the City Manager to sign them, which would allow MaineDOT to move ahead with its plans to pave Riverside Street – Caddie Lane to Washington Avenue and Washington Avenue Extension – Lambert Street to Lester Drive. We are submitting these as one request because the streets are being bid together as one large project.

II. AGENDA DESCRIPTION

These agreements, between MaineDOT and the City of Portland (2-party agreement), as well as between MaineDOT, the City of Portland, and PACTS (3-party agreement), obligates MaineDOT to mill and fill Riverside Street and Washington Avenue Ext., update and/or install new pedestrian curb ramps to meet ADA requirements, and all appurtenances to complete paving on these roads. The agreements obligate the City to pay MaineDOT for a portion of the work as its municipal share. The original agreements were approved and signed in April 2024. MaineDOT subsequently updated their estimates and modified the agreements to account for increased unit pricing. The City also asked for additional PACTS money to help cover these increased costs but there was still a shortfall which required an increase to the municipal share. The estimated updated amount of municipal share and the difference from the original estimate for each project are as follows:

Riverside Street - \$177,750 original estimate, \$265,024 updated estimate – increase of \$87,274. The project is now a 30/70 municipal/PACTS split.

Ocean Avenue - \$133,000 as the 25% municipal share; this street was accurately estimated originally, and the estimate was not modified; the project remains a 25/75 municipal/PACTS split

Washington Avenue Ext. - \$81,000 original estimate, \$210,685 updated estimate – increase of \$129,685. The project is now a 43/57 municipal/PACTS split

The updated estimated City share for all three streets is \$608,709; \$470,000 will come from a FY25 CIP account requested for these projects. The remaining \$138,709 will come from a paving rehab account approved in FY25.

This item must be read on two separate days. It received its first reading on August 19. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

These paving projects are part of MaineDOT's 2023-2025 work plan. The scope of work includes milling and paving with a 1 ½ inch hot mix asphalt overlay, ADA ramp reconstruction, and striping. Construction work on this project was originally scheduled to begin in late Spring 2024 and be completed by October 2024. Due to the updated estimates MaineDOT provided, these projects have been delayed to allow for the signing of these agreements. They are now scheduled to go to bid in Fall 2024 with construction in Spring 2025.

These projects are classified as pavement preservation projects on an urban collector street. As such, PACTS typically pays 75% of the cost of paving as part of its Collector Paving Program. The City will be responsible for 25% of the paving cost and 100% of the cost of making adjustments to its sanitary sewer facilities in the project area. The City is also 100% responsible for any overages over the estimate. Due to the updated estimates and budget constraints the City share will be 30/70, 25/75, and 43/57 splits for these projects.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The Riverside-Ocean-Washington Ext paving project will improve the pavement surface and ride quality on three regionally important major urban collector streets. PACTS funds will pay for 57%-75% of the paving costs.

V. FINANCIAL IMPACT

The City is obligated to pay a portion of the total construction cost and 100% of the cost of adjusting sanitary sewer manhole frames and covers in the project area. The total City cost of this work, estimated to be \$608,709; \$470,000 would be paid from a FY25 CIP account established for these projects, \$138,709 from a paving rehabilitation account, and \$106,200 from a FY25 water resources account requested for this type of work. The water resources portion of the work was approved and signed previously. In addition, the Ocean Avenue agreement was not modified and was previously signed. Please see the attached fiscal impact note for additional information.

VI. STAFF ANALYSIS AND BACKGROUND

Urban collector paving projects such as this one, where MPO pays a majority of the paving costs, are one of the best alternatives for the City in terms of getting the most street paving done for the least expense of City funds. All three locations are important and in need of repair work. Without this work, Riverside Street, Ocean Avenue, and Washington Extension will continue to deteriorate.

VII. RECOMMENDATION

The Department of Public Works recommends approving and signing the subject agreements to allow MaineDOT to pave approximately 1.26 miles on Riverside Street, Ocean Avenue, and Washington Avenue Extension in 2025.

VIII. LIST ATTACHMENTS

1. Order - Approving the Three-Party Agreement betw MDOT and PACTS for Improvements to Riverside Street and Washington Ave
2. Wash_Ave_Extension_MDOT_Collector_Paving (2)

3. Riverside_St_MDOT_Collector_Paving (2)
4. Portland 26005.30 Riverside Municipal-State Agreement
5. WIN 26005 - Riverside_Ocean_WashExt - Updated Fiscal Impact Note
6. Portland 26005.40 WashExt Municipal State Agreement
7. 026005.40 WashExt 3-Party Agreement
8. 026005.30 Riverside 3-Party Agreement

Prepared by:

Melissa Graffam

Date: 08/23/2024

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

**ORDER APPROVING THREE-PARTY PARTNERSHIP AGREEMENTS BETWEEN
THE CITY OF PORTLAND, THE MAINE DEPARTMENT OF TRANSPORTATION
AND THE PORTLAND AREA COMPREHENSIVE TRANSPORTATION SYSTEM
RE: IMPROVEMENTS TO RIVERSIDE STREET AND WASHINGTON AVENUE**

ORDERED, that the City Manager is authorized to enter into three-party partnership agreements between the City of Portland, the Maine Department of Transportation and the Portland Area Comprehensive Transportation System, in substantially in the form attached, for the following City collector paving projects:

- WIN 026005.30, Improvements to Riverside Street
- WIN 026005.40, Improvements to Washington Avenue

BE IT FURTHER ORDERED, that the City Manager is hereby authorized to execute the three-party agreements and any other documents necessary to effect the purpose of the agreements.



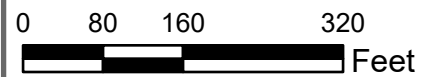
Public
Works

CITY OF PORTLAND, MAINE
DEPT. OF PUBLIC WORKS
212 CANCO RD. PORTLAND, MAINE 04103
PHONE (207) 874-8846 FAX (207) 874-8852

Maine DOT **Collector Paving** **Washington Ave Extension** Lambert St. to Lester Dr.



March 2024





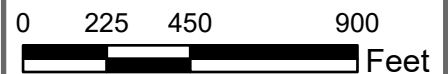
Public
Works

CITY OF PORTLAND, MAINE
DEPT. OF PUBLIC WORKS
212 CANCO RD. PORTLAND, MAINE 04103
PHONE (207) 874-8846 FAX (207) 874-8852

Maine DOT Collector Paving Caddie Ln to Washington Ave



March 2024





MaineDOT use only
AMS Advantage #: _____
CSN #: _____
PROGRAM: _____

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
PROPOSED IMPROVEMENTS TO RIVERSIDE STREET

(MaineDOT Use Only)

Project Location: Portland
State WIN #: 026005.30
Federal Aid Project #: 2600530

Estimated Municipal Share: \$265,024.00
Vendor Customer #: 17A12984
Agreement Begin Date: _____
Agreement End Date: (5 years from the date last signed below)

This Agreement is entered into between the **Maine Department of Transportation** (hereafter **MaineDOT**) and the **Municipality of Portland**, a municipal corporation located in the County of Cumberland (hereafter the “Municipality”) (collectively hereinafter the “Parties”).

RECITALS

- A. The scope of work that is the subject of this Agreement consists of making improvements to Riverside Street, Beginning at Caddie Lane and extending north 0.75 miles to Washington Avenue in Portland, Maine, (hereafter the “Project”).
- B. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.
- C. This Agreement is intended to cover the roles and responsibilities of the Parties during the design, permitting and right-of-way phases of Project development from Project inception through completion of the Project’s Plans, Specifications and Estimate (PS&E). This Agreement is further intended to establish the financial obligations of each Party, including that of full Project development through construction.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing, the Parties agree as follows:

- D. The following checked appendices are hereby incorporated into this Agreement by reference, and any perpetual maintenance appendices shall survive the expiration of this Agreement:
- ☒ Appendix A – Project scope, cost sharing, and payment schedule (*not required for non-monetary agreements.*)
 - ☐ Appendix B – Perpetual Bicycle/Pedestrian Facility Maintenance
 - ☐ Appendix B – Perpetual Drainage Maintenance
 - ☐ Appendix B – Perpetual Landscape Maintenance
 - ☐ Appendix B – Perpetual Operation and Maintenance of Lighting/Flashing Beacon and/or signage with associated light(s)
 - ☐ Appendix B – Perpetual Traffic Signal Operation and Maintenance
 - ☐ Appendix B – Perpetual Traffic Signal Operation and Shared Maintenance

- ☐ Appendix B – Perpetual Bridge Lighting/Approach Lighting Maintenance & Snow Plowing
- ☐ Appendix C – Additional work requested by Municipality

E. Agreement Administration:

1. MaineDOT agrees to procure and administer a contract to construct the Project in accordance with the plans and specifications developed by MaineDOT. This would include any additional plans, specifications and estimates furnished by the Municipality and approved by MaineDOT. When applicable, refer to Appendix A of this Agreement for the outline of the scope, limits of work and cost sharing.
2. MaineDOT shall be the sole administrator of the contract to construct the Project. MaineDOT will pay all Project costs, subject to cost sharing by the Municipality, when applicable, as specified in this Agreement. Neither MaineDOT nor its contractors will be required to pay for inspections and permits from the Municipality.
3. The Municipality agrees that MaineDOT and its contractors are exempt from all local ordinances, including but not limited to the Municipality Noise Ordinance.
4. Upon acceptance of plans, specifications and estimates (PS&E), MaineDOT shall solicit competitive bids for the Project. Upon acceptance of the lowest acceptable responsive, responsible bid to construct the Project and fulfillment of all terms set forth herein, MaineDOT will submit the information to the Municipality, who will have up to five (5) business days to review the information and notify MaineDOT of any questions or concerns. If MaineDOT is not presented with any questions or concerns in the time allotted all decisions pertaining to the acceptance of the bids, the award and administration of the contract and all payments thereunder shall be the sole discretion of MaineDOT.

F. Changes to Project Scope:

5. The Municipality, at its election, may request that changes be made or work added to the Project during the period of construction, provided the Municipality agrees in writing to pay any additional cost plus an amount not to exceed ten (10%) percent of such construction cost to cover all necessary engineering, inspection and administrative costs associated therewith, unless specified otherwise. All such requests shall be subject to MaineDOT approval. In the event that the cost of these changes or work are approved for federal participation, the Municipality's additional cost may be reduced by the amount of the federal contribution.

G. Traffic Control:

6. The Municipality agrees to allow MaineDOT's contractor to control all traffic through the work areas in accordance with the Traffic Control Plan approved by MaineDOT. The development of the Traffic Control Plan will follow the process outlined below:
 - i. MaineDOT's Project Manager (PM) will, when possible, submit the Project for Traffic Analysis and Movement Evaluation (TAME), approximately one year prior to advertisement. Once the results are received, the PM/Regional Traffic Engineer will discuss the proposed Project with the Municipality (scope, limits, day or night work, work window, etc).

- ii. The Municipality will comment on their concerns/issues related to the Traffic Control Plan within two (2) weeks of receipt.
- iii. MaineDOT's PM & Designer will incorporate these comments where practical based on engineering judgment.
- iv. If the Municipality desires, a meeting will be held prior to PS&E to review the Project design, Special Provision 105 – Limitations of Operations, Special Provision 107 - Time, etc.

H. Utilities:

- 7. The Municipality will, at no cost to MaineDOT, assure proper adjustment, relocation, or repair of any portion of a utility service, whether above or below ground, that is located within the limits of the highway right-of-way and connected to any municipal utility, which might become necessary to permit construction of the Project. The Municipality agrees to hold MaineDOT harmless from any claims for damages occurring as a result thereof.
- 8. The Municipality agrees that during and after construction it will apply the requirements of the most recent version of MaineDOT's "Utility Accommodation Rules" as the minimum guidelines not withstanding any municipal rules that are more lenient.
- 9. To the extent that it is statutorily responsible therefore, the Municipality agrees to provide utilities, and to maintain all improvements and fixtures constructed, installed or furnished as a part of the Project in such a manner as necessary to preserve the use and function thereof for the expected period of their normal useful life as determined by accepted engineering and/or industry standards. To the extent any warranty exists for said improvements or fixtures, said warranty shall be first relied on by MaineDOT to address maintenance and/or repairs described in this paragraph.

I. Governing Law:

- 10. The Municipality agrees that except for an emergency, or as allowed in 23 M.R.S.A. § 3351-A, it will prohibit the excavation of the highway within the limits of the Project for a period of at least five (5) years after completion of the Project, and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any municipal government under the provisions of 23 M.R.S.A. § 3351. Thereafter, all future excavations within the right-of-way of the Project shall be regulated and controlled in the manner specified by MaineDOT in its most recent "Utility Accommodation Rules", which is incorporated herein and made a part hereof by reference.
- 11. The Parties agree to: comply with and abide by all applicable State and Federal laws, statutes, rules, regulations, standards and guidelines, including the MUTCD and OSHA standards, and Agreement provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.

J. Municipality's Responsibility:

- 12. When applicable, if the Municipality withdraws its financial support for the Project, leading MaineDOT to terminate the Project, the Municipality shall reimburse MaineDOT fully for all

Project costs incurred in reliance on the Municipality's financial obligations outlined herein, including, but not limited to, reimbursement of all federal and state funds expended up to the time of such termination. If the Municipality fails to reimburse MaineDOT for such costs incurred, after receiving an invoice seeking such reimbursement, MaineDOT may exercise its rights of set-off to recover the requested amount.

13. The Municipality agrees to alter, move, relocate or remove, or cause to be, at no cost to the Project, any municipal property, including all fixtures, facilities or monuments, located on, under or above the ground, as necessary to permit construction of the Project, which has not otherwise been provided for during the development of the Project. Any work necessary to do so during the period of construction shall be coordinated with the contractor for the Project.
14. The Municipality will be responsible to keep new or replaced/rehabilitated pedestrian facilities in usable condition including snow and ice control.
15. The Municipality agrees to keep the right-of-way of the Project inviolate from all encroachments and agrees to remove, or cause to be removed, anything that may encroach thereon.
16. When applicable, the Municipality agrees to regulate all entrances to the highway within the limits of the Project in accordance with the provisions of 23 M.R.S.A. § 704.
17. When applicable, the Municipality agrees to limit all on-street parking to the parking spaces as designed and constructed under the Project.

K. Termination:

18. MaineDOT reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. MaineDOT also reserves the right to terminate all provisions pertaining to work requested by the Municipality at any time prior to the award of a contract to construct the Project due to failure by the Municipality to comply with any of the conditions and stipulations set forth in this Agreement.
19. MaineDOT may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Municipality and in no event shall any such action be deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by MaineDOT or specifically as the result of any failure by the Municipality to perform any of the services required under this Agreement to MaineDOT's satisfaction.

In the event of Project termination, all provisions of this Agreement shall become null and void except for the financial obligations set forth herein, as well as those *provisions that by their very nature are intended to survive*.

L. Miscellaneous Provisions:

20. **Debarment.** The Municipality certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. If the Municipality is unable to certify to this statement, it shall attach an explanation to this Agreement. The Municipality shall promptly notify MaineDOT if it or its principals becomes

debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

21. All provisions of this Agreement, *except those that by their very nature are intended to survive*, shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.
22. **State of Maine's Rights of Set-Off.** MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State of Maine's option to withhold for the purposes of set-off monies due the Municipality under a specific project contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State of Maine for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller. When applicable, MaineDOT reserves the right to withhold or reduce future Local Road Assistance payments to the Municipality for purposes of set-off to recover the amount owed.
23. **Non-Appropriation.** Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees that although the execution of this agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
24. **Assignment.** No assignment of this agreement is contemplated, and in no event shall any assignment be made without the express written permission of MaineDOT.
25. **Notice.** Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and may be sent via email which shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Alternatively, communications can be mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Said communications, requests or notices shall be sent to the other party as follows:

MaineDOT: Maine Department of Transportation
24 Child Street
16 State House Station
Augusta, ME 04333-0016
Attn.: Ryan Hodgman
Email: ryan.hodgman@maine.gov

Municipality: City of Portland
212 Canco Road, Suite B
Portland, ME 04103
Attn.: Lauren Andersen, PE
Email: landersen@portlandmaine.gov

IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT effective on the day and date last signed below.

MUNICIPALITY OF PORTLAND

MAINE DEPARTMENT OF TRANSPORTATION

By: _____
Danielle West, City Manager

By: _____
Jeffrey Folsom, P.E., Asst. Director
Bureau of Project Development

(Date Signed)

(Date Signed)

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.

Original

Y

Modification

N

MOD No.

APPENDIX A

**PROJECT SCOPE AND COST SHARING
MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project**

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO RIVERSIDE STREET

FEDERAL AID PROJECT NO. 2600530

STATE PROJECT IDENTIFICATION NUMBER (WIN) 26005.30

Project Scope:

Mill & Fill on Riverside Street, beginning at Caddie Lane and extending north 0.75 miles to Washington Avenue.

Funding Outline:

The Total Project Estimated Cost is \$ 886,474.00 , and the Parties agree to share costs through all stages of the Project under the terms outlined below.

Work Element	Municipal Share		Project Share				Total Cost
			Federal	Portion	MaineDOT (State) Portion		
	%	\$	%	\$	%	\$	\$
Preliminary Engineering	25.0%	\$ 8,750.00	75.0%	\$ 26,250.00	0.0%	\$ -	\$ 35,000.00
Right of Way	25.0%	\$ -	75.0%	\$ -	0.0%	\$ -	\$ -
Construction	25.0%	\$ 176,400.00	75.0%	\$ 529,200.00	0.0%	\$ -	\$ 705,600.00
Construction	100.0%	\$ 57,874.00	0.0%	\$ -	0.0%	\$ -	\$ 57,874.00
Construction Engineering	25.0%	\$ 22,000.00	75.0%	\$ 66,000.00	0.0%	\$ -	\$ 88,000.00
PROJECT SHARES		\$ 265,024.00		\$ 621,450.00		\$ -	\$ 886,474.00
Total Cost of Additional Work Requested by Municipality (Below)	100.0%						
TOTAL ESTIMATED MUNICIPAL SHARE (Receivable Amount)		\$ 265,024.00					

(Check if applicable)

☐ Additional Work as outlined in Appendix C to this Agreement.

Funding Outline: The Municipality agrees to pay 100% of the costs for the work outlined below.

Additional Work		Cost: 100% Municipal Share	
TYPE OF WORK		\$	-
TYPE OF WORK		\$	-
TYPE OF WORK		\$	-
TOTAL COST OF ADDITIONAL WORK REQUESTED BY MUNICIPALITY		\$	-

Payment:

The Municipality shall submit payment to MaineDOT within 30 days from the invoice date.

1. Prior to award of the contract for Project construction, the Municipality will be invoiced a portion of its share of the cost of the Project.

Invoicing will include the following:

- a. 100% of the local share of the Preliminary Engineering and Right of Way costs; plus
- b. Fifty percent (50%) of the local share of the Construction and Construction Engineering cost based on the total bid price of the Project; plus
- c. 100% of all additional work requested by the Municipality.

2. Final Voucher Payment to the Contractor. A final bill will be created following MaineDOT's final voucher payment to the Contractor, after all quantities are verified, and any required adjustments have been made. The cost of the work for which MaineDOT will bill the Municipality shall be determined by the contract prices and the completed quantities of the work items or, in the event of termination, the local share of Project development cost to the point of termination as stipulated above. The final invoice will include the Municipality's share of any remaining costs.

Invoicing Schedule: The Municipal Payment Schedule shown below includes estimated invoicing dates based upon the estimated schedule and estimated cost of the Project:

Municipality Name	Receivable Amount	Estimated Invoice Date
City of Portland	\$165,824.00	12/1/2024
City of Portland	\$88,200.00	7/1/2025
City of Portland	\$11,000.00	3/1/2026
Total Receivable Amount:	\$265,024.00	

FISCAL IMPACT NOTE New Program Cost Data:	Year 1		Year 2		Year 3	
	City Rate	City / Sch Combined Rate	City Rate	City / Sch Combined Rate	City Rate	City / Sch Combined Rate
Example:						
ADD: NEW ITEM ANNUAL EXPENDITURES		\$0		\$53,618		\$53,618
LESS: TOTAL NEW ITEM ANNUAL REVENUES		\$0		\$0		\$0
=NEW ITEM NET TAX RATE IMPACT PROJECTION	\$0	\$0	\$53,618	\$53,618	\$53,618	\$53,618
New Program Impact to the Mil Rate	\$0.0000	\$0.0000	\$0.0068	\$0.0068	\$0.0068	\$0.0068
New Program % Impact on Mil Rate	0.0000%	0.0000%	0.0599%	0.0302%	0.0599%	0.0302%
Mil Rate Including New Program	\$11.3400	\$22.4800	\$11.3468	\$22.4868	\$11.3468	\$22.4868

Notes: The CIP impact will begin in 2025 and remain for the 20 year life of the bond.



MaineDOT use only

AMS Advantage #: _____
CSN #: _____
PROGRAM: _____

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
PROPOSED IMPROVEMENTS TO WASHINGTON AVENUE

(MaineDOT Use Only)

Project Location: Portland
State WIN #: 26005.40
Federal Aid Project #: 2600540

Estimated Municipal Share: \$210,685.00
Vendor Customer #: 17A12984
Agreement Begin Date: _____
Agreement End Date: (5 years from the date last signed below)

This Agreement is entered into between the **Maine Department of Transportation** (hereafter **MaineDOT**) and the **Municipality of Portland**, a municipal corporation located in the County of Cumberland (hereafter the “Municipality”) (collectively hereinafter the “Parties”).

RECITALS

- A. The scope of work that is the subject of this Agreement consists of making improvements to Washington Avenue, beginning at Lester Drive and extending north 0.16 of a mile and beginning 0.01 of a mile north of Cypress Street and extending north 0.09 of a mile to Chapman Street, in Portland, Maine, (hereafter the “Project”).
- B. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.
- C. This Agreement is intended to cover the roles and responsibilities of the Parties during the design, permitting and right-of-way phases of Project development from Project inception through completion of the Project’s Plans, Specifications and Estimate (PS&E). This Agreement is further intended to establish the financial obligations of each Party, including that of full Project development through construction.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing, the Parties agree as follows:

- D. The following checked appendices are hereby incorporated into this Agreement by reference, and any perpetual maintenance appendices shall survive the expiration of this Agreement:
- ☒ Appendix A – Project scope, cost sharing, and payment schedule (*not required for non-monetary agreements.*)
 - ☐ Appendix B – Perpetual Bicycle/Pedestrian Facility Maintenance
 - ☐ Appendix B – Perpetual Drainage Maintenance
 - ☐ Appendix B – Perpetual Landscape Maintenance
 - ☐ Appendix B – Perpetual Operation and Maintenance of Lighting/Flashing Beacon and/or signage with associated light(s)
 - ☐ Appendix B – Perpetual Traffic Signal Operation and Maintenance

- ☐ Appendix B – Perpetual Traffic Signal Operation and Shared Maintenance
- ☐ Appendix B – Perpetual Bridge Lighting/Approach Lighting Maintenance & Snow Plowing
- ☐ Appendix C – Additional work requested by Municipality

E. Agreement Administration:

1. MaineDOT agrees to procure and administer a contract to construct the Project in accordance with the plans and specifications developed by MaineDOT. This would include any additional plans, specifications and estimates furnished by the Municipality and approved by MaineDOT. When applicable, refer to Appendix A of this Agreement for the outline of the scope, limits of work and cost sharing.
2. MaineDOT shall be the sole administrator of the contract to construct the Project. MaineDOT will pay all Project costs, subject to cost sharing by the Municipality, when applicable, as specified in this Agreement. Neither MaineDOT nor its contractors will be required to pay for inspections and permits from the Municipality.
3. The Municipality agrees that MaineDOT and its contractors are exempt from all local ordinances, including but not limited to the Municipality Noise Ordinance.
4. Upon acceptance of plans, specifications and estimates (PS&E), MaineDOT shall solicit competitive bids for the Project. Upon acceptance of the lowest acceptable responsive, responsible bid to construct the Project and fulfillment of all terms set forth herein, MaineDOT will submit the information to the Municipality, who will have up to five (5) business days to review the information and notify MaineDOT of any questions or concerns. If MaineDOT is not presented with any questions or concerns in the time allotted all decisions pertaining to the acceptance of the bids, the award and administration of the contract and all payments thereunder shall be the sole discretion of MaineDOT.

F. Changes to Project Scope:

5. The Municipality, at its election, may request that changes be made or work added to the Project during the period of construction, provided the Municipality agrees in writing to pay any additional cost plus an amount not to exceed ten (10%) percent of such construction cost to cover all necessary engineering, inspection and administrative costs associated therewith, unless specified otherwise. All such requests shall be subject to MaineDOT approval. In the event that the cost of these changes or work are approved for federal participation, the Municipality's additional cost may be reduced by the amount of the federal contribution.

G. Traffic Control:

6. The Municipality agrees to allow MaineDOT's contractor to control all traffic through the work areas in accordance with the Traffic Control Plan approved by MaineDOT. The development of the Traffic Control Plan will follow the process outlined below:
 - i. MaineDOT's Project Manager (PM) will, when possible, submit the Project for Traffic Analysis and Movement Evaluation (TAME), approximately one year prior to advertisement. Once the results are received, the PM/Regional Traffic Engineer will

discuss the proposed Project with the Municipality (scope, limits, day or night work, work window, etc).

- ii. The Municipality will comment on their concerns/issues related to the Traffic Control Plan within two (2) weeks of receipt.
- iii. MaineDOT's PM & Designer will incorporate these comments where practical based on engineering judgment.
- iv. If the Municipality desires, a meeting will be held prior to PS&E to review the Project design, Special Provision 105 – Limitations of Operations, Special Provision 107 - Time, etc.

H. Utilities:

- 7. The Municipality will, at no cost to MaineDOT, assure proper adjustment, relocation, or repair of any portion of a utility service, whether above or below ground, that is located within the limits of the highway right-of-way and connected to any municipal utility, which might become necessary to permit construction of the Project. The Municipality agrees to hold MaineDOT harmless from any claims for damages occurring as a result thereof.
- 8. The Municipality agrees that during and after construction it will apply the requirements of the most recent version of MaineDOT's "Utility Accommodation Rules" as the minimum guidelines not withstanding any municipal rules that are more lenient.
- 9. To the extent that it is statutorily responsible therefore, the Municipality agrees to provide utilities, and to maintain all improvements and fixtures constructed, installed or furnished as a part of the Project in such a manner as necessary to preserve the use and function thereof for the expected period of their normal useful life as determined by accepted engineering and/or industry standards. To the extent any warranty exists for said improvements or fixtures, said warranty shall be first relied on by MaineDOT to address maintenance and/or repairs described in this paragraph.

I. Governing Law:

- 10. The Municipality agrees that except for an emergency, or as allowed in 23 M.R.S.A. § 3351-A, it will prohibit the excavation of the highway within the limits of the Project for a period of at least five (5) years after completion of the Project, and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any municipal government under the provisions of 23 M.R.S.A. § 3351. Thereafter, all future excavations within the right-of-way of the Project shall be regulated and controlled in the manner specified by MaineDOT in its most recent "Utility Accommodation Rules", which is incorporated herein and made a part hereof by reference.
- 11. The Parties agree to: comply with and abide by all applicable State and Federal laws, statutes, rules, regulations, standards and guidelines, including the MUTCD and OSHA standards, and Agreement provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.

J. Municipality's Responsibility:

12. When applicable, if the Municipality withdraws its financial support for the Project, leading MaineDOT to terminate the Project, the Municipality shall reimburse MaineDOT fully for all Project costs incurred in reliance on the Municipality's financial obligations outlined herein, including, but not limited to, reimbursement of all federal and state funds expended up to the time of such termination. If the Municipality fails to reimburse MaineDOT for such costs incurred, after receiving an invoice seeking such reimbursement, MaineDOT may exercise its rights of set-off to recover the requested amount.
13. The Municipality agrees to alter, move, relocate or remove, or cause to be, at no cost to the Project, any municipal property, including all fixtures, facilities or monuments, located on, under or above the ground, as necessary to permit construction of the Project, which has not otherwise been provided for during the development of the Project. Any work necessary to do so during the period of construction shall be coordinated with the contractor for the Project.
14. The Municipality will be responsible to keep new or replaced/rehabilitated pedestrian facilities in usable condition including snow and ice control.
15. The Municipality agrees to keep the right-of-way of the Project inviolate from all encroachments and agrees to remove, or cause to be removed, anything that may encroach thereon.
16. When applicable, the Municipality agrees to regulate all entrances to the highway within the limits of the Project in accordance with the provisions of 23 M.R.S.A. § 704.
17. When applicable, the Municipality agrees to limit all on-street parking to the parking spaces as designed and constructed under the Project.

K. Termination:

18. MaineDOT reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. MaineDOT also reserves the right to terminate all provisions pertaining to work requested by the Municipality at any time prior to the award of a contract to construct the Project due to failure by the Municipality to comply with any of the conditions and stipulations set forth in this Agreement.
19. MaineDOT may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Municipality and in no event shall any such action be deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by MaineDOT or specifically as the result of any failure by the Municipality to perform any of the services required under this Agreement to MaineDOT's satisfaction.

In the event of Project termination, all provisions of this Agreement shall become null and void except for the financial obligations set forth herein, as well as those *provisions that by their very nature are intended to survive*.

L. Miscellaneous Provisions:

20. **Debarment.** The Municipality certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. If the Municipality is unable to certify to this statement, it shall attach an explanation to this

Agreement. The Municipality shall promptly notify MaineDOT if it or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

21. All provisions of this Agreement, *except those that by their very nature are intended to survive*, shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.
22. **State of Maine's Rights of Set-Off.** MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State of Maine's option to withhold for the purposes of set-off monies due the Municipality under a specific project contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State of Maine for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller. When applicable, MaineDOT reserves the right to withhold or reduce future Local Road Assistance payments to the Municipality for purposes of set-off to recover the amount owed.
23. **Non-Appropriation.** Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees that although the execution of this agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
24. **Assignment.** No assignment of this agreement is contemplated, and in no event shall any assignment be made without the express written permission of MaineDOT.
25. **Notice.** Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and may be sent via email which shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Alternatively, communications can be mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Said communications, requests or notices shall be sent to the other party as follows:

MaineDOT: Maine Department of Transportation
 24 Child Street
 16 State House Station
 Augusta, ME 04333-0016
 Attn.: Ryan Hodgman
 Email: ryan.hodgman@maine.gov

Municipality: City of Portland
212 Canco Road, Suite B
Portland, ME 04103
Attn.: Lauren Andersen, PE
Email: landersen@portlandmaine.gov

IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT effective on the day and date last signed below.

MUNICIPALITY OF PORTLAND

MAINE DEPARTMENT OF TRANSPORTATION

By: _____
Danielle West, City Manager

By: _____
Jeffrey Folsom, P.E., Asst. Director
Bureau of Project Development

(Date Signed)

(Date Signed)

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.

Original

Y

Modification

N

MOD No.

APPENDIX A

**PROJECT SCOPE AND COST SHARING
MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project**

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO WASHINGTON AVENUE

FEDERAL AID PROJECT NO. 2600540

STATE PROJECT IDENTIFICATION NUMBER (WIN) 26005.40

Project Scope:

Mill & Fill on Washington Avenue, beginning at Lester Drive and extending north 0.16 of a mile. Beginning 0.01 of a mile north of Cypress Street and extending north 0.09 of a mile to Chapman Street.

Funding Outline:

The Total Project Estimated Cost is \$ 493,885.00 , and the Parties agree to share costs through all stages of the Project under the terms outlined below.

Work Element	Municipal Share		Project Share				Total Cost
			Federal	Portion	MaineDOT (State) Portion		
	%	\$	%	\$	%	\$	\$
Preliminary Engineering	25.0%	\$ 4,000.00	75.0%	\$ 12,000.00	0.0%	\$ -	\$ 16,000.00
Right of Way	25.0%	\$ -	75.0%	\$ -	0.0%	\$ -	\$ -
Construction	25.0%	\$ 80,400.00	75.0%	\$ 241,200.00	0.0%	\$ -	\$ 321,600.00
Construction	100.0%	\$ 116,285.00	0.0%	\$ -	0.0%	\$ -	\$ 116,285.00
Construction Engineering	25.0%	\$ 10,000.00	75.0%	\$ 30,000.00	0.0%	\$ -	\$ 40,000.00
PROJECT SHARES		\$ 210,685.00		\$ 283,200.00		\$ -	\$ 493,885.00
Total Cost of Additional Work Requested by Municipality (Below)	100.0%						
TOTAL ESTIMATED MUNICIPAL SHARE (Receivable Amount)		\$ 210,685.00					

(Check if applicable)

☐ Additional Work as outlined in Appendix C to this Agreement.

Funding Outline: The Municipality agrees to pay 100% of the costs for the work outlined below.

Additional Work	Cost: 100% Municipal Share		
TYPE OF WORK		\$	-
TYPE OF WORK		\$	-
TYPE OF WORK		\$	-
TOTAL COST OF ADDITIONAL WORK REQUESTED BY MUNICIPALITY		\$	-

Payment:

The Municipality shall submit payment to MaineDOT within 30 days from the invoice date.

1. Prior to award of the contract for Project construction, the Municipality will be invoiced a portion of its share of the cost of the Project.

Invoicing will include the following:

- a. 100% of the local share of the Preliminary Engineering and Right of Way costs; plus
- b. Fifty percent (50%) of the local share of the Construction and Construction Engineering cost based on the total bid price of the Project; plus
- c. 100% of all additional work requested by the Municipality.

2. Final Voucher Payment to the Contractor. A final bill will be created following MaineDOT's final voucher payment to the Contractor, after all quantities are verified, and any required adjustments have been made. The cost of the work for which MaineDOT will bill the Municipality shall be determined by the contract prices and the completed quantities of the work items or, in the event of termination, the local share of Project development cost to the point of termination as stipulated above. The final invoice will include the Municipality's share of any remaining costs.

Invoicing Schedule: The Municipal Payment Schedule shown below includes estimated invoicing dates based upon the estimated schedule and estimated cost of the Project:

Municipality Name	Receivable Amount	Estimated Invoice Date
City of Portland	\$165,485.00	12/1/2024
City of Portland	\$40,200.00	7/1/2025
City of Portland	\$5,000.00	3/1/2026
Total Receivable Amount:	\$210,685.00	



MaineDOT use only

CTM #:
CSN #:
PROGRAM: Bureau of Planning

State of Maine
DEPARTMENT OF TRANSPORTATION
THREE-PARTY PARTNERSHIP AGREEMENT

Proposed Improvements to Washington Avenue
(Non-Monetary)

MaineDOT Use Only

Project Location: <u>Portland</u>	Estimated Project Amount: <u>\$493,885.00</u>
State WIN: <u>026005.40</u>	Agreement Begin Date:
Federal Aid Project #: <u>2600540</u>	Agreement End Date:
PACTS ID#: <u>PACTS</u>	Municipality ID#: <u>PORTLAND</u>

This Cooperative Agreement (the “Agreement”) is entered into by and between the Maine Department of Transportation (MaineDOT), an agency of state government, the City of Portland (the “Municipality”), a municipality in the State of Maine, and the Portland Area Comprehensive Transportation System, the designated Metropolitan Planning Organization for the Portland Urbanized Area (PACTS) (MaineDOT, the Municipality and PACTS are collectively referred to as the “Parties”).

RECITALS

- A.** The work that is the subject of this Agreement consists of making improvements to Washington Avenue beginning at Lester Drive and extending north .25 of a mile to Lambert Street, in Portland, Maine (the “Project”).
- B.** MaineDOT, through its partnership with Maine’s Metropolitan Planning Organizations (MPOs), is charged with managing and dispersing MPO state and federal funds to support capital improvement projects programmed by the MPOs. PACTS is MaineDOT’s MPO partner for the Portland Urbanized Area.
- C.** PACTS has selected the Project for inclusion in the 2024-2025-2026 MaineDOT Work Plan, using Federal and State capital improvement funding allocated by MaineDOT.
- D.** The Municipality has approved the Project and supports the decision by MaineDOT and PACTS to program the Project, and will contribute financially to the Project through its municipal share.

- E. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.
- F. This Agreement is intended to cover the roles and responsibilities of the Parties during the preliminary engineering and right-of-way phases of the Project, and to establish the financial obligations of each Party through all phases of the Project.
- G. If the Parties cooperatively agree to proceed to full Project development, this Agreement will be modified to reflect any increase in Project cost estimates. MaineDOT and the Municipality will then enter into a separate municipal-state agreement to establish responsibilities of MaineDOT and the Municipality through the remaining phases of the Project (the “Municipal-State Agreement”).

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing, the Parties agree as follows:

1. Appendices:

The following appendices are hereby incorporated into this Agreement:

- ☐ Appendix A -
- ☐ Appendix B - Requirements for operation and maintenance of traffic signals
- ☒ Check if no appendices attached

2. Scope of Project:

The Project shall consist of a mill and fill on Washington Avenue beginning at Lester Drive and extending north 0.25 of a mile to Lambert Street (the “Scope of Work”).

The terms of this Agreement apply to the implementation of the preliminary engineering and right-of-way phases of the Project unless this Agreement is otherwise modified to include all phases of Project development, in which case the table set out in Section 3 below shall be adjusted accordingly.

3. Project Cost Sharing and Payment Schedule:

- a. **Financial Obligations:** The total estimated cost of the Project is \$493,885.00 (the “Project Estimate”). The Parties agree to share in all Project costs associated with the Project phases outlined in the table below. Each Party’s share of the Project’s actual costs associated with each phase shall be allocated as follows, unless otherwise negotiated by mutual agreement of the Parties.
 - i. **Federal Share** (provided by MaineDOT through PACTS Federal Allocation) - 75% of eligible Project costs, up to a maximum of \$283,200.00.
 - ii. **State Share** (provided by MaineDOT through PACTS State Allocation) - 0% of eligible Project costs, up to a maximum of \$0.

iii. **Municipality's Share** (provided by the Municipality through the Municipality's obligation of funds) - 25% of eligible Project costs, which is estimated at \$210,685.00, plus 100% of the following:

1. Any costs deemed ineligible for federal and state participation.
2. Any costs associated with additional work requested by the Municipality that is outside the Project scope of work.
3. All Project costs exceeding the Project Estimate after the above referenced Party Shares have been applied, unless otherwise agreed to in writing by the Parties through a written modification to this Agreement.

Work Phase	Estimated PACTS Federal Share		Estimated PACTS State Share		Estimated Municipality's Share		Estimated Total Cost
	%	\$	%	\$	%	\$	\$
Preliminary Engineering	75%	\$ 12,000.00	0%	\$ -	25%	\$ 4,000.00	\$ 16,000.00
Right of Way	75%	\$ -	0%	\$ -	25%	\$ -	\$ -
Construction	75%	\$ 241,200.00	0%	\$ -	25%	\$ 80,400.00	\$ 321,600.00
Construction					100%	\$ 116,285.00	\$ 116,285.00
Construction Engineering	75%	\$ 30,000.00	0%	\$ -	25%	\$ 10,000.00	\$ 40,000.00
TOTALS:		\$ 283,200.00		\$ -		\$ 210,685.00	\$ 493,885.00

b. **Payment Schedule:** The PACTS Share will be disbursed by MaineDOT in accordance with the allocations outlined above. If the Parties elect to move forward with full development of the Project as contemplated in this Agreement, the Municipal Share will be invoiced by MaineDOT in accordance with the payment schedule outlined in the Municipal-State Agreement described herein. If the Parties choose not to proceed to full Project development and no Municipal-State Agreement is executed, the Municipal share, based on the allocations outlined above, will be invoiced as promptly as practicable upon that decision having been made. Upon receipt of such invoice, the Municipality shall submit payment to MaineDOT within thirty (30) days.

4. **Project Milestones:** MaineDOT agrees to share information about the Project with the Municipality and PACTS at the following milestones, as appropriate:

- Project kickoff/initial team meeting/formal public contact;
- Horizontal/Vertical Alignment Complete (HVAC);
- Preliminary public meeting;
- Preliminary Design Report (PDR) complete;
- Formal public meeting(s);
- Plan Impacts Complete (PIC);
- Peer reviews;
- Plans, Specifications and Estimate (PS&E) complete;
- Changes in the Project schedule or Project Estimate.

5. **Project Design:**

- a. The Parties shall hold a project kickoff meeting to go over the scope of work, Project cost, and schedule for the Project before work will begin.
- b. MaineDOT shall prepare, or cause to be prepared, all plans, specifications, engineer's estimates and contract documents as appropriate for the Project using MaineDOT's standard project development process to ensure adherence to federal and state regulations (the "Preliminary Project Development Materials").
- c. As a component of preparing the Preliminary Project Development Materials, MaineDOT shall, at a minimum, be responsible for the following:
 - i. Performing all right-of-way related investigations to determine whether or not there may be a need to acquire temporary and/or permanent rights to develop the Project as well as, if applicable, all title examination, appraisal, appraisal review, negotiation and acquisition/condemnation activities for any property rights that must be acquired to accommodate the Project, and all necessary mapping services reflecting such property acquisitions.
 - ii. Coordinating with affected utilities and railroads to identify existing locations and/or implementing any relocation impacts that may be created by the development of the Project.
 - iii. Performing all necessary National Environmental Policy Act (NEPA) compliance processes for the Project.
 - iv. Performing all necessary permitting activities required in connection with the Project.
- d. MaineDOT shall be the sole administrator of the Project contract(s). MaineDOT will pay up front all Project costs, subject to cost sharing by the Municipality and PACTS as specified in the **Project Cost Sharing and Payment Schedule** set out herein. Neither MaineDOT nor its contractors will be required to pay for inspections and permits from the Municipality.
- e. After completion of the PDR, and a decision to proceed with Project construction has been made, MaineDOT and the Municipality will then execute the Municipal-State Agreement covering their obligations regarding Project advertisement, award, construction and construction engineering. Said Municipal-State Agreement will incorporate financial obligations that are consistent with those reflected in this Agreement, unless such terms are otherwise negotiated by mutual agreement of the Parties.
- f. The Municipality shall ensure that affected, municipally-owned utilities are responsive to Project demands and are completing necessary activities in accordance with the Project schedule as established and coordinated by MaineDOT. Failure to do so may result in MaineDOT delaying implementation of the Municipality's future projects until appropriate utility responsiveness is obtained.

6. **Public Involvement:** MaineDOT shall be responsible for implementing and leading any and all required public involvement activities and any necessary media coordination associated with the any phases of the Project covered by this Agreement. The Parties agree to participate as partners in all such actions.

7. **Changes to Project Scope:**

- a. MaineDOT will consult with PACTS and the Municipality before implementing any adjustments to the Project scope, and PACTS and the Municipality will, likewise, notify MaineDOT of any proposed changes they wish to implement.
- b. The Municipality may, at its election, request that changes be made or work added to the Project during the period of design that benefit the Municipality, provided that the Municipality agrees in writing to pay any additional cost associate therewith. In the event that such changes or work are approved for federal participation in the cost thereof, such additional cost may be reduced to the non-federal share (the “Additional Work Requested by Municipality”).

8. **Termination:**

- a. MaineDOT reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. If MaineDOT’s termination under this clause is not directed by the Municipality and PACTS, MaineDOT shall be responsible for covering all Project costs incurred up to the time of termination.
- b. MaineDOT also reserves the right to terminate all provisions pertaining to any Additional Work Requested by Municipality at any time prior to the award of a contract to construct the Project because of any failure by the Municipality to meet any of the conditions and stipulations set forth in this Agreement.
- c. If the Municipality withdraws its financial support for the Project leading MaineDOT to terminate the Project, the Municipality shall reimburse MaineDOT fully for any and all Project costs incurred in reliance on the Municipality’s financial obligations outlined herein, including, but not limited to, reimbursement of all federal and state funds expended up to the time of such termination.
- d. This Agreement may be terminated at any time by mutual written agreement of all Parties, provided that such written agreement shall address the allocation between the Parties of any costs, expenses, penalties and/or liabilities expended, committed or imposed in connection with the Project and the Project contract as of such date of termination.
- e. In no event shall any such action taken under this subsection be deemed a breach of contract, nor shall it represent any individual Party’s waiver of claims for breach of contract or its right to any other remedy it may have pursuant to this Agreement, or at law or in equity.
- f. In the event of Project termination, all provisions of this Agreement shall become null and void except for the financial obligations set forth herein, as well as those provisions to this Agreement that by their very nature are intended to survive.

9. Miscellaneous Provisions:

- a. Amendment and Modification. This Agreement, and all attachments, may only be modified or amended in writing and signed by duly authorized representatives of the Parties.
- b. Indemnification. To the extent permitted by law, the Municipality and PACTS shall each individually indemnify, defend and hold harmless MaineDOT, its officers, agents and employees from all claims, suits or liabilities arising from the indemnifying Party's own negligent or wrongful acts, errors or omissions or by that Party's officials, employees, agents, consultants or contractors. Nothing herein shall waive any defense immunity or limitation of liability that may be available under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. This provision shall survive the termination or expiration of the Project.
- c. Obligation of State Funds. Anything herein to the contrary notwithstanding, the Municipality and PACTS acknowledge and agree that, although the execution of this Agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and the federal government and, therefore, this Agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
- d. Municipal Authority and Obligation of Municipal Funds. The Municipality represents that it has received all necessary approvals or authorizations by its governing authorities to approve the Project and enter into this Agreement, and that it has obligated the necessary funds to satisfy its Municipal Share of the Project Costs outlined herein.
- e. State of Maine's Rights of Set-Off. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State of Maine's option to withhold for the purposes of set-off monies due the Municipality under a specific project contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State of Maine for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller.
- f. Assignment. No assignment of this agreement is contemplated, and in no event, shall any assignment be made without the express written permission of MaineDOT.
- g. Independent Capacity. The Municipality and PACTS, their respective employees, agents, representatives, consultants and contractors shall not act as officers, employees or agents of MaineDOT.

- h. Governing Law. This Agreement shall be construed under the laws of the State of Maine. Additionally, all activities under this Agreement shall be performed in accordance with applicable federal laws and regulations, including without limitation Title 23 in the U.S. Code (USC) for statutory law, Title 23 in the Code of Federal Regulations (CFR) for administrative law, and Title 2 CFR, Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.”
- i. Binding Effect. The Parties shall be bound by the terms of this Agreement. This provision shall apply to the Agreement’s executors, their successors, administrators and legal representatives.
- j. Notice. Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Alternatively, communication may be sent via email and shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Said communications, requests or notices shall be sent to the other party as follows:

MaineDOT: Maine Department of Transportation
51 Pleasant Hill Road
P.O. Box 358
Scarborough, ME 04070-0358
Attn.: Ryan Hodgman
Email: Ryan.Hodgman@maine.gov

Municipality: City of Portland
Department of Public Works
212 Canco Road, Suite B
Portland, ME 04101
Attn.: Jeremiah Bartlett, PE, PTOE, Transportation Systems
Engineer
Email: jbartlett@portlandmaine.gov

PACTS: Portland Area Comprehensive Transportation System
970 Baxter Boulevard, Suite 201
Portland, ME 04103
Attn.: Elizabeth Roberts, P.E.
Email: eroberts@gpcog.org

Each Party agrees to promptly notify all other Parties of any changes to the above referenced contact information.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective on the day and date last signed.

Date _____
Kristina Egan, Executive Director *
Greater Portland Council of Governments
For Portland Area Comprehensive Transportation System
Duly authorized

Date _____
Danielle West, City Manager *
Municipality of Portland
Duly authorized

Date _____
Jennifer Grant, Director, Bureau of Planning *
Maine Department of Transportation
Duly authorized

** I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.*



MaineDOT use only

CTM #:
CSN #:
PROGRAM: Bureau of Planning

State of Maine
DEPARTMENT OF TRANSPORTATION
THREE-PARTY PARTNERSHIP AGREEMENT

Proposed Improvements to Riverside Street
(Non-Monetary)

MaineDOT Use Only

Project Location: <u>Portland</u>	Estimated Project Amount: <u>\$886,474.00</u>
State WIN: <u>026005.30</u>	Agreement Begin Date:
Federal Aid Project #: <u>2600530</u>	Agreement End Date:
PACTS ID#: <u>PACTS</u>	Municipality ID#: <u>PORTLAND</u>

This Cooperative Agreement (the “Agreement”) is entered into by and between the Maine Department of Transportation (MaineDOT), an agency of state government, the City of Portland (the “Municipality”), a municipality in the State of Maine, and the Portland Area Comprehensive Transportation System, the designated Metropolitan Planning Organization for the Portland Urbanized Area (PACTS) (MaineDOT, the Municipality and PACTS are collectively referred to as the “Parties”).

RECITALS

- A.** The work that is the subject of this Agreement consists of making improvements to Riverside Street beginning at Caddie Lane and extending north 0.75 of a mile to Washington Avenue, in Portland, Maine (the “Project”).
- B.** MaineDOT, through its partnership with Maine’s Metropolitan Planning Organizations (MPOs), is charged with managing and dispersing MPO state and federal funds to support capital improvement projects programmed by the MPOs. PACTS is MaineDOT’s MPO partner for the Portland Urbanized Area.
- C.** PACTS has selected the Project for inclusion in the 2024-2025-2026 MaineDOT Work Plan, using Federal and State capital improvement funding allocated by MaineDOT.
- D.** The Municipality has approved the Project and supports the decision by MaineDOT and PACTS to program the Project, and will contribute financially to the Project through its municipal share.

- E. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.
- F. This Agreement is intended to cover the roles and responsibilities of the Parties during the preliminary engineering and right-of-way phases of the Project, and to establish the financial obligations of each Party through all phases of the Project.
- G. If the Parties cooperatively agree to proceed to full Project development, this Agreement will be modified to reflect any increase in Project cost estimates. MaineDOT and the Municipality will then enter into a separate municipal-state agreement to establish responsibilities of MaineDOT and the Municipality through the remaining phases of the Project (the “Municipal-State Agreement”).

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing, the Parties agree as follows:

1. Appendices:

The following appendices are hereby incorporated into this Agreement:

- ☐ Appendix A -
- ☐ Appendix B - Requirements for operation and maintenance of traffic signals
- ☒ Check if no appendices attached

2. Scope of Project:

The Project shall consist of a mill and fill on Riverside Street beginning at Caddie Lane and extending north 0.75 of a mile to Washington Avenue (the “Scope of Work”).

The terms of this Agreement apply to the implementation of the preliminary engineering and right-of-way phases of the Project unless this Agreement is otherwise modified to include all phases of Project development, in which case the table set out in Section 3 below shall be adjusted accordingly.

3. Project Cost Sharing and Payment Schedule:

- a. **Financial Obligations:** The total estimated cost of the Project is \$886,474.00 (the “Project Estimate”). The Parties agree to share in all Project costs associated with the Project phases outlined in the table below. Each Party’s share of the Project’s actual costs associated with each phase shall be allocated as follows, unless otherwise negotiated by mutual agreement of the Parties.
 - i. **Federal Share** (provided by MaineDOT through PACTS Federal Allocation) - 75% of eligible Project costs, up to a maximum of \$621,450.00.
 - ii. **State Share** (provided by MaineDOT through PACTS State Allocation) - 0% of eligible Project costs, up to a maximum of \$0.

iii. **Municipality's Share** (provided by the Municipality through the Municipality's obligation of funds) - 25% of eligible Project costs, which is estimated at \$265,024.00, plus 100% of the following:

1. Any costs deemed ineligible for federal and state participation.
2. Any costs associated with additional work requested by the Municipality that is outside the Project scope of work.
3. All Project costs exceeding the Project Estimate after the above referenced Party Shares have been applied, unless otherwise agreed to in writing by the Parties through a written modification to this Agreement.

Work Phase	Estimated PACTS Federal Share		Estimated PACTS State Share		Estimated Municipality's Share		Estimated Total Cost
	%	\$	%	\$	%	\$	\$
Preliminary Engineering	75%	\$ 26,250.00	0%	\$ -	25%	\$ 8,750.00	\$ 35,000.00
Right of Way	75%	\$ -	0%	\$ -	25%	\$ -	\$ -
Construction	75%	\$ 529,200.00	0%	\$ -	25%	\$ 176,400.00	\$ 705,600.00
Construction					100%	\$ 57,874.00	\$ 57,874.00
Construction Engineering	75%	\$ 66,000.00	0%	\$ -	25%	\$ 22,000.00	\$ 88,000.00
TOTALS:		\$ 621,450.00		\$ -		\$ 265,024.00	\$ 886,474.00

b. **Payment Schedule:** The PACTS Share will be disbursed by MaineDOT in accordance with the allocations outlined above. If the Parties elect to move forward with full development of the Project as contemplated in this Agreement, the Municipal Share will be invoiced by MaineDOT in accordance with the payment schedule outlined in the Municipal-State Agreement described herein. If the Parties choose not to proceed to full Project development and no Municipal-State Agreement is executed, the Municipal share, based on the allocations outlined above, will be invoiced as promptly as practicable upon that decision having been made. Upon receipt of such invoice, the Municipality shall submit payment to MaineDOT within thirty (30) days.

4. **Project Milestones:** MaineDOT agrees to share information about the Project with the Municipality and PACTS at the following milestones, as appropriate:

- Project kickoff/initial team meeting/formal public contact;
- Horizontal/Vertical Alignment Complete (HVAC);
- Preliminary public meeting;
- Preliminary Design Report (PDR) complete;
- Formal public meeting(s);
- Plan Impacts Complete (PIC);
- Peer reviews;
- Plans, Specifications and Estimate (PS&E) complete;
- Changes in the Project schedule or Project Estimate.

5. **Project Design:**

- a. The Parties shall hold a project kickoff meeting to go over the scope of work, Project cost, and schedule for the Project before work will begin.
- b. MaineDOT shall prepare, or cause to be prepared, all plans, specifications, engineer's estimates and contract documents as appropriate for the Project using MaineDOT's standard project development process to ensure adherence to federal and state regulations (the "Preliminary Project Development Materials").
- c. As a component of preparing the Preliminary Project Development Materials, MaineDOT shall, at a minimum, be responsible for the following:
 - i. Performing all right-of-way related investigations to determine whether or not there may be a need to acquire temporary and/or permanent rights to develop the Project as well as, if applicable, all title examination, appraisal, appraisal review, negotiation and acquisition/condemnation activities for any property rights that must be acquired to accommodate the Project, and all necessary mapping services reflecting such property acquisitions.
 - ii. Coordinating with affected utilities and railroads to identify existing locations and/or implementing any relocation impacts that may be created by the development of the Project.
 - iii. Performing all necessary National Environmental Policy Act (NEPA) compliance processes for the Project.
 - iv. Performing all necessary permitting activities required in connection with the Project.
- d. MaineDOT shall be the sole administrator of the Project contract(s). MaineDOT will pay up front all Project costs, subject to cost sharing by the Municipality and PACTS as specified in the **Project Cost Sharing and Payment Schedule** set out herein. Neither MaineDOT nor its contractors will be required to pay for inspections and permits from the Municipality.
- e. After completion of the PDR, and a decision to proceed with Project construction has been made, MaineDOT and the Municipality will then execute the Municipal-State Agreement covering their obligations regarding Project advertisement, award, construction and construction engineering. Said Municipal-State Agreement will incorporate financial obligations that are consistent with those reflected in this Agreement, unless such terms are otherwise negotiated by mutual agreement of the Parties.
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with the any phases of the Project covered by this Agreement. The Parties agree to participate as partners in all such actions.

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- a. MaineDOT will consult with PACTS and the Municipality before implementing any adjustments to the Project scope, and PACTS and the Municipality will, likewise, notify MaineDOT of any proposed changes they wish to implement.
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8. Termination:

- a. MaineDOT reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. If MaineDOT’s termination under this clause is not directed by the Municipality and PACTS, MaineDOT shall be responsible for covering all Project costs incurred up to the time of termination.
- b. MaineDOT also reserves the right to terminate all provisions pertaining to any Additional Work Requested by Municipality at any time prior to the award of a contract to construct the Project because of any failure by the Municipality to meet any of the conditions and stipulations set forth in this Agreement.
- c. If the Municipality withdraws its financial support for the Project leading MaineDOT to terminate the Project, the Municipality shall reimburse MaineDOT fully for any and all Project costs incurred in reliance on the Municipality’s financial obligations outlined herein, including, but not limited to, reimbursement of all federal and state funds expended up to the time of such termination.
- d. This Agreement may be terminated at any time by mutual written agreement of all Parties, provided that such written agreement shall address the allocation between the Parties of any costs, expenses, penalties and/or liabilities expended, committed or imposed in connection with the Project and the Project contract as of such date of termination.
- e. In no event shall any such action taken under this subsection be deemed a breach of contract, nor shall it represent any individual Party’s waiver of claims for breach of contract or its right to any other remedy it may have pursuant to this Agreement, or at law or in equity.
- f. In the event of Project termination, all provisions of this Agreement shall become null and void except for the financial obligations set forth herein, as well as those provisions to this Agreement that by their very nature are intended to survive.

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- c. Obligation of State Funds. Anything herein to the contrary notwithstanding, the Municipality and PACTS acknowledge and agree that, although the execution of this Agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and the federal government and, therefore, this Agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
- d. Municipal Authority and Obligation of Municipal Funds. The Municipality represents that it has received all necessary approvals or authorizations by its governing authorities to approve the Project and enter into this Agreement, and that it has obligated the necessary funds to satisfy its Municipal Share of the Project Costs outlined herein.
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- f. Assignment. No assignment of this agreement is contemplated, and in no event, shall any assignment be made without the express written permission of MaineDOT.
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- h. Governing Law. This Agreement shall be construed under the laws of the State of Maine. Additionally, all activities under this Agreement shall be performed in

accordance with applicable federal laws and regulations, including without limitation Title 23 in the U.S. Code (USC) for statutory law, Title 23 in the Code of Federal Regulations (CFR) for administrative law, and Title 2 CFR, Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.”

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- j. Notice. Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Alternatively, communication may be sent via email and shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Said communications, requests or notices shall be sent to the other party as follows:

MaineDOT: Maine Department of Transportation
51 Pleasant Hill Road
P.O. Box 358
Scarborough, ME 04070-0358
Attn.: Ryan Hodgman
Email: Ryan.Hodgman@maine.gov

Municipality: City of Portland
250 Canco Road
Portland, ME 04101
Attn.: Jeremiah Bartlett, PE, PTOE, Transportation Systems
Engineer
Email: jbartlett@portlandmaine.gov

PACTS: Portland Area Comprehensive Transportation System
970 Baxter Boulevard, Suite 201
Portland, ME 04103
Attn.: Elizabeth Roberts, P.E.
Email: eroberts@gpcog.org

Each Party agrees to promptly notify all other Parties of any changes to the above referenced contact information.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective on the day and date last signed.

Date _____
Kristina Egan, Executive Director *
Greater Portland Council of Governments

For Portland Area Comprehensive Transportation System
Duly authorized

Date _____
Danielle West, City Manager *
Municipality of Portland
Duly authorized

Date _____
Jennifer Grant, Director, Bureau of Planning *
Maine Department of Transportation
Duly authorized

** I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.*

MEMORANDUM
City Council Agenda Item

FROM:

DATE: August 23, 2024

SUBJECT: Order 42-24/25 Accepting and Appropriating a \$90,000 Donation and a \$30,000 Grant for the Lincoln Park Fence Project - Sponsored by Danielle P. West, Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

**Final
Action**

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. **Do NOT** write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: No

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

On May 1, 2024 the City of Portland was awarded a Certified Local Government (CLG) grant by the Maine Historic Preservation Commission (MHPC) in the amount of \$30,000 to support Phase 2 of restoration of the Lincoln Park Fence along Pearl Street.

The Friends of Lincoln Park (The Friends) intend to gift the City of Portland \$30,000 to provide the necessary matching funds required by the grant. Parks and Recreation will provide the remaining \$7,569 of the project cost from existing funds dedicated to restoration of the Lincoln Park Fence.

In July of 2024, The Friends announced that they had been able to raise an additional \$60,000 to go towards the cost of Phase III of restoration of the Lincoln Park Fence along Pearl Street. Parks and Recreation will provide the remaining \$767 of the project cost. This combination of grant, gifts, and Parks funds will complete restoration of the Lincoln Park Fence along Pearl Street.

This item must be read on two separate days. It received its first reading on August 19. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given

fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Order - Accepting and Appropriating Grants for Lincoln Park Fence
2. Att. 1 - Portland 2024 CLG Lincoln Park Service contract
3. Att. 2 - Lincoln Park Fence, Pearl Street Phase 2 CLG Grant Application
4. Att. 3 - LPF - Pearl Street -FoLP MOU

Prepared by:

Date: 08/23/2024

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

**ORDER ACCEPTING AND APPROPRIATING A \$90,000 DONATION AND \$30,000
GRANT FOR THE LINCOLN PARK FENCE PROJECT**

ORDERED, that a \$90,000 donation from the Friends of Lincoln Park is hereby accepted and that amount appropriated for expenses related to the rebuilding of the iron fence on the Pearl Street side of Lincoln Park; and

BE IT FURTHER ORDERED, that the \$30,000 Certified Local Government Grant from the Maine Historic Preservation Commission is hereby accepted and that amount appropriated for expenses related to the rebuilding of the iron fence on the Pearl Street side of Lincoln Park; and

BE IT FURTHER ORDERED, that the City Manager or designee is hereby authorized to execute whatever documents are necessary to effect the intent and purpose of this order.



SERVICE CONTRACT

DATE: 5/17/2024	CONTRACT AMOUNT: \$30,000
ADVANTAGE CONTRACT #: 20240501*3061	
DEPARTMENT AGREEMENT #: ME-24-10011	
START DATE: 4/26/2024	END DATE: 3/15/2026

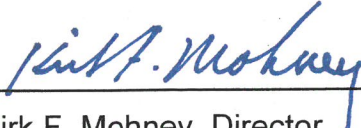
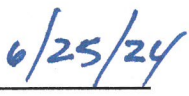
This Contract is between the following State of Maine Department and Provider:

STATE OF MAINE DEPARTMENT		
DEPARTMENT NAME: Maine Historic Preservation Commission		
ADDRESS: 55 Capitol Street		
CITY: Augusta	STATE: Maine	ZIP CODE: 04353
PROVIDER		
PROVIDER NAME: City of Portland		
ADDRESS: 389 Congress Street		
CITY: Portland	STATE: Maine	ZIP CODE: 04101
PROVIDER'S VENDOR CUSTOMER #: VC0000259476		

Each signatory below represents that the person has the requisite authority to enter into this Contract. The parties sign and cause this Contract to be executed.

Department Representative:

Provider Representative:

			
BY: Kirk F. Mohnhey, Director	Date	BY: Signature Name and Title	Date

Upon final approval by the Division of Procurement Services, a case details page will be made part of this contract.

DEPARTMENT AND PROVIDER POINT OF CONTACT

CONTRACT ADMINISTRATOR: The following person is designated as the Contract Administrator on behalf of the Department for this Contract. All financial reports, invoices, correspondence and related submissions from the Provider as outlined in Rider A, Reports, shall be submitted to:

NAME: Christi A. Chapman-Mitchell		
EMAIL: christi.chapman-mitchell@maine.gov	TELEPHONE: 207-287-5434	
ADDRESS: 55 Capitol Street		
CITY: Augusta	STATE: Maine	ZIP CODE: 04333-0065

PROGRAM ADMINISTRATOR: (Program Administrator section is optional.)

The following person is designated as the Program Administrator. This person will be able to respond to routine questions pertaining to the Contract; they will not be able to alter the scope of the Contract.

NAME:		
EMAIL:	TELEPHONE:	
ADDRESS:		
CITY:	STATE:	ZIP CODE:

PROVIDER CONTACT: The following person is designated as the Contact Person on behalf of the Provider for this Contract. All contractual correspondence from the Department shall be submitted to:

NAME: Evan Schueckler		
EMAIL: evans@portlandmaine.gov	TELEPHONE: 207 874 8726	
ADDRESS: 389 Congress Street, 4th Floor		
CITY: Portland	STATE: Maine	ZIP CODE: 04101

RIDERS

The following riders are hereby incorporated into this Contract and made part of it by reference. *(Riders A, B, and G are required. Check all others that apply.)*

☒	Funding Rider
☒	Rider A – Scope of Work
☒	Rider B – Terms and Conditions
☒	Rider C - Exceptions
☒	Rider D – Specifications of Work and Compliance Information
☒	Rider E – Attachments
☒	Rider F – Budget and Detailed Payment instructions
☒	Rider G – Identification of Country in Which Contracted Work will be Performed
☐	Business Associate Agreement – Included at Department's Discretion
☐	Other – Included at Department's Discretion

FUNDING RIDER

Internal Purposes Only

CODING: (Departments - Attach separate sheet as needed for additional coding.)

LINE TOTAL	FUND	DEPT	UNIT	SUB UNIT	OBJ	PROGRAM	PROGRAM PERIOD	APPR FUNDING	FISCAL YEAR
\$ 30,000	013	94p	1655	26	6401	1655G	F2024		

LINE TOTAL	FUND	DEPT	UNIT	SUB UNIT	OBJ	PROGRAM	PROGRAM PERIOD	APPR FUNDING	FISCAL YEAR
\$									

LINE TOTAL	FUND	DEPT	UNIT	SUB UNIT	OBJ	PROGRAM	PROGRAM PERIOD	APPR FUNDING	FISCAL YEAR
\$									

FUNDING TOTAL: \$ 30,0000

The sources of funds and compliance requirements for this Contract follow:

State General Fund \$
Dedicated/Special Revenue \$
Federal Funds \$ 30,000

RIDER A: SCOPE OF WORK

TABLE OF CONTENTS

- I. Acronyms
- II. Introduction/Overview
- III. Deliverables
- IV. Performance Measures
- V. Reports

I. ACRONYMS/DEFINITIONS:

The following terms and acronyms shall have the meaning indicated below as referenced in this Contract:

COMMONLY KNOWN ACRONYMS AND DEPARTMENT ABBREVIATIONS	
Contract	Formal and legal binding agreement
Department	State of Maine Department Entering into this Contract
Provider	Organization providing services under this Contract
State	State of Maine

II. INTRODUCTION/OVERVIEW:

The purpose of this Contract is to provide funds to the City of Portland to repair of the cast iron fence around Lincoln Park, in Portland Maine. This continuing project started last year with analysis of the site conditions and preparatory fence survey. This phase of the project will install 8 of 15 sections of fencing on along Pearl Street.

The funding for this grant originates in the Historic Preservation Fund (HPF), a National Park Service, Department of the Interior grant-in-aid, and is awarded as a sub-grant to Certified Local Governments (CLG). Portland is a CLG.

The Department will pay the Provider as follows:
On a reimbursement basis up to the contract amount with documentation of allowable expenditures made and sufficient Provider match amount per reimbursement request. Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days. See Rider F for additional payment details

SCOPE OF WORK

SCOPE OF WORK

The Provider shall administer the Lincoln Park Fence Restoration, Pearl Street Phase 2 project as described in providers 2024 CLG grant application.

In addition, the Applicant agrees to:

1. Sign a Stewardship Agreement with the Commission for a period of 5 (five) years beginning 5/30/2032, and update the Character Defining Features Photographic Schedule;
2. Complete and submit interim reports and the final report as per the timetable below; and
3. Understand that the stipulated scope of work and products can only be changed by means of prior written approval by the Commission.

III. DELIVERABLES:

The Provider shall perform all services and maintain all standards and requirements for services provided under this Contract in accordance with the below:

1. Interim Reports;
2. Completed final report for the grant;
3. Copies of announcement of grant award and any publicity surrounding the awarding of this grant;
1. Signed Stewardship Agreement and updated Character Defining Features Photographic Schedule;
2. Index to Deliverables (See Rider E); and
3. Photographs as jpgs (if applicable) and completed NPS Photo-Release-Form 09-12-2008.pdf for any person depicted in the photographs.

IV. PERFORMANCE MEASURES: N/A**V. REPORTS:** remove this section if not applicable to this Contract.**A. Required Reports**

The Provider shall track and record all data/information necessary to complete the reports listed in the table below:

	Name of Report	Description or Appendix #:
1.	Interim Reports	Rider D, Program Specific item 18
2.	Final Report	Reporting form provided

B. Reporting Schedule for Above Listed Required Reports

The Provider shall submit all of the reports listed in the table below to the Department in accordance with the deadlines established within the table:

	Name of Report:	Period Captured by Report:	Due Date and/or Frequency:
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STATE OF MAINE | SERVICE CONTRACT

1.	First Interim Report	Quarterly	October 15, 2024
2.	Second Interim Report	Quarterly	January 15, 2025
3.	Third Interim Report	Quarterly	April 15, 2025
4.	Fouth Interim Report	Quarterly	July 15, 2025
5.	Fifth Interim Report	Quarterly	October 15, 2025
6.	Sixth Interim Report	Quarterly	January 15, 2026
7.	Final Report	Grant Period	March 15, 2026

The Interim Reporting schedule can be changed only by prior written approval by the Commission. Interim reporting forms will be provided to grant recipients for their use.

The Provider understands that the reports are due within the timeframes established and that the Department will not make subsequent payment installments under this Contract until such reports are received, reviewed and accepted.

The Provider further agrees to submit such other data and reports as may be requested by the Agreement Administrator. The Provider shall submit all data and reports to the Agreement Administrator listed in section "DEPARTMENT AND PROVIDER POINTS OF CONTACT" of this Agreement.

RIDER B: TERMS AND CONDITIONS

1. INVOICES AND PAYMENT. Department will pay the Provider as follows: Payment terms are net 30 days from the date the State receives an error-free invoice with all necessary and complete supporting documents. Provider shall submit detailed invoices, itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Department and Advantage Contract numbers for this contract.
2. BENEFITS AND DEDUCTIONS. If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.
3. INDEPENDENT CAPACITY. In the performance of this Contract, the parties hereto agree that the Provider, and any agents and employees of the Provider, shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.
4. DEPARTMENT'S REPRESENTATIVE. The Contract Administrator shall be the Department's representative during the period of this Contract. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Contract are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.
5. CHANGES IN THE WORK. The Department may order changes in the work, the Contract Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.
6. SUB-AGREEMENTS. Unless provided for in this Contract, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Contract Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Contract must be annotated "approved" by the Contract Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.
7. SUBLETTING, ASSIGNMENT OR TRANSFER. The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Contract or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Contract Administrator. No subcontracts or transfer of Contract shall in any case release the Provider of its liability under this Contract.

8. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Contract, the Provider agrees as follows:

- a. The Provider shall not discriminate against any employee or applicant for employment relating to this Contract because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

- b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Contract, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.
- c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining Contract, or other Contract or understanding, whereby it is furnished with labor for the performance of this Contract a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.
- e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.
- f. Providers and subcontractors with Contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs, which programs must conform with applicable state and federal laws, rules and regulations.
- g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Contract so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

9. EMPLOYMENT AND PERSONNEL. The Provider shall not engage on a full-time, part-time or other basis during the period of this Contract, any executive employee who participated in any way in the solicitation, award or administration of this Agreement according to MRS Title 5 §18-A.

2 and in harmony with MRS Title 17 §3104. Any contract made in violation of these sections is void.

10. WARRANTY. The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Contract and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Contract. For breach or violation of this warranty, the Department shall have the right to annul this Contract without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
11. ACCESS TO RECORDS. As a condition of accepting an Contract for services under this section, a Provider must agree to treat all records, other than proprietary information, relating to personal services work performed under the Contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the Department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the Provider and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the Contract and information concerning employee and Contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Contract and make such materials available at its offices at all reasonable times during the period of this Contract and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.
12. TERMINATION. (a) The performance of work under the Contract may be terminated by the Department whenever for any reason the Contract Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be affected by delivery to the Provider of a Notice of Termination specifying the date on which such termination becomes effective. Upon such termination, the Department shall pay the Provider for work performed by the Provider prior to the date of Notice of Termination. (b) Either party may terminate this Agreement for cause by providing a written notice of termination stating the reason for the termination. Upon receipt of the notice of termination, the defaulting party shall have fifteen (15) business days to cure the default. If the default is of such a nature that it cannot be cured within fifteen (15) business days, the defaulting party shall have such additional time, as the parties may agree to, to cure the default, provided the defaulting party has taken steps to cure the default with the initial 15 days.
13. GOVERNMENTAL REQUIREMENTS. The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.
14. GOVERNING LAW. This Contract shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Contract shall be brought in State of Maine administrative or

judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

15. STATE HELD HARMLESS. The Provider shall indemnify and hold harmless the Department and its officers, agents, and employees from and against any and all third party claims, liabilities, and costs, including reasonable attorney fees, for any or all injuries to persons or property or claims for money damages, including claims for violation of intellectual property rights, arising from the negligent acts or omissions of the Provider, its employees or agents, officers or Subcontractors in the performance of work under this Agreement; provided, however, the Provider shall not be liable for claims arising out of the negligent acts or omissions of the Department, or for actions taken in reasonable reliance on written instructions of the Department.
16. NOTICE OF CLAIMS. The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed that is related in any way to the Contract or which may affect the performance of duties under the Contract, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Contract or which may affect the performance of duties under the Contract.
17. APPROVAL. This Contract must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.
18. INSURANCE. The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Contract with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991, may continue under that arrangement. Prior to or upon execution of this Contract, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.
19. NON-APPROPRIATION. Notwithstanding any other provision of this Contract, if the State does not receive sufficient funds to fund this Contract and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Contract.
20. SEVERABILITY. The invalidity or unenforceability of any particular provision, or part thereof, of this Contract shall not affect the remainder of said provision or any other provisions, and this Contract shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
21. ORDER OF PRECEDENCE. In the event of a conflict between the documents comprising this Agreement, the Order of Precedence shall be:

- Rider C Exceptions
- Rider B Terms and Conditions
- Rider A Scope of Work
- Funding Rider
- Rider D Included at Department's Discretion
- Rider E Included at Department's Discretion
- Rider F Included at Department's Discretion

Rider G Identification of Country in which contracted work will be performed
Business Associate Agreement included at Department's Discretion
Other Included at Department's Discretion

22. FORCE MAJEURE. The performance of an obligation by either party shall be excused in the event that performance of that obligation is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party.
23. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Contract up to any amounts due and owing to the State with regard to this Contract, any other Contract, any other Contract with any State department or agency, including any Contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.
24. ENTIRE CONTRACT. This document contains the entire Contract of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Contract that any implied waiver occurred between the parties, which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Contract, or to exercise an option or election under the Contract, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Contract shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Contract or at law.
25. AMENDMENT. No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Provider.
26. DEBARMENT, PERFORMANCE, AND NON-COLLUSION CERTIFICATION. By signing this Contract, the Provider certifies to the best of Provider's knowledge and belief that the aforementioned organization, its principals and any subcontractors named in this Contract:
- a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.
 - b. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:
 - i. Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract.

- ii. Violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
 - iv. Have not within a three (3) year period preceding this proposal had one or more federal, state or local government transactions terminated for cause or default.
- c. Have not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above-mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

RIDER C: EXCEPTIONS

The following exceptions to Standard Rider D

1. Add the following to Section 12 "TERMINATION" in Rider B:

The Provider may terminate this Agreement, in whole or in part, for good cause, including but not limited to, loss of personnel or funding to provide the services hereunder, upon no less than thirty (30) days prior written notice to the Department.

2. Add the following to the beginning of the first sentence of Section 15 "STATE HELD HARMLESS" in Rider B:

Subject to and within the defenses, immunities and limitation of liability available to the State and/or to the Provider under the Maine Tort Claims Act, 14 M.R.S.A. Sec. 8101 et. seq. or other applicable law, *[continue with existing Section 14]*

3. Replace Section 18 "INSURANCE" in Rider B with the following:

"Provider is insured for general liability pursuant to the Maine Tort Claims Act through MMA's risk pool, and has provided the Department with a Certificate of Membership demonstrating proof of coverage, which shall satisfy the requirements of this section."

RIDER C: EXCEPTIONS

RIDER D

SPECIFICATIONS OF WORK TO BE PERFORMED and COMPLIANCE INFORMATION

In addition to what is noted on the cover page of this contract, the Maine Historic Preservation Commission is also hereby referred to as the "Commission" or the "Grantee" and the Provider is also hereby referred to as the "Recipient" or "Subrecipient". The Commission and the Provider mutually agree as follows:

The Provider has been awarded a U.S. Department of the Interior Historic Preservation Fund (HPF) grant-in-aid in an amount not to exceed the dollar value shown on the cover page of this contract, for the purpose of sub-granting financial support to the Friends of Lincoln Park in order to install eight sections of cast iron fence along Pearl Street in Portland in accordance with the scope of work, and timetable provided with this contract. These federal funds must be matched by a minimum of \$39,489.

This grant award is made pursuant to, and recipients must adhere to the Department of the Interior Standard Terms and Conditions located at <https://www.doi.gov/grants/doi-standard-terms-and-conditions>.

ARTICLES

1. Department of the Interior Standard Terms and Conditions 2 CFR 200, 2 CFR 1402

Recipients must comply with all applicable federal statutes, regulations, executive orders (EOs), Office of Management and Budget (OMB) circulars. Any inconsistency or conflict in Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions of this Award will be resolved according to the following order of precedence: federal laws, Executive Orders, federal regulations, applicable notices published in the Federal Register, OMB circulars, Treasury's Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions. DOI terms and regulatory requirements are located at:

- <https://www.doi.gov/grants/doi-standard-terms-and-conditions>
- eCFR :: 2 CFR Part 200 -- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- eCFR :: 2 CFR Part 1402 -- Financial Assistance Interior Regulation, Supplementing the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

2. Responsibilities of the Parties

The Recipient agrees to:

- a. Carry out the Statement of Work in accordance with the terms and conditions stated herein. The recipient shall adhere to Federal, state, and local laws, regulations, and codes, as applicable.
- b. Perform work in accordance with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* in the assigned mandatory program areas as defined by the National Historic Preservation Act.
- c. Ensure subrecipients understand they are subject to the requirements of 2 CFR 200.1 "Subaward", 200.101 Applicability, and 200.331 Requirements for pass-through entities.
- d. Record their procurement of qualified consultants and contracts in accordance with 2 CFR 200.317.

3. Cost-Share Requirement

Non-Federal cost-share is required for costs incurred under this Agreement, as identified in the attached project budget.

4. Recipient Cost Share or Match.

Any non-Federal share, whether in cash or in-kind, is expected to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Commission based on sufficient documentation demonstrating previously determined plans for or later commitment of cash or in-kind contributions. In any case, the Recipient must meet their cost share commitment over the life of the award.

5. Prior Approval

STATE OF MAINE | SERVICE CONTRACT

The Recipient shall obtain prior approval for budget and program revisions, in accordance with 2 CFR 200.308.

6. Modification, Remedies For Noncompliance Termination

- a. This Agreement may be modified at any time, prior to the expiration date, only by a written instrument executed by the Commission.
- b. Additional conditions may be imposed by Commission if it is determined that the Recipient is non-compliant to the terms and conditions of this agreement. Remedies for Noncompliance can be found in 2 CFR 200.338.
- c. This Agreement may be terminated consistent with applicable termination provisions for Agreements found in 2 CFR 200.340 through 200.343.

7. Ensuring The Future Is Made In All Of America By All Of America's Workers Per E.O. 14005 (Dated January 25, 2021).

Per Executive Order 14005, entitled "Ensuring the Future is Made in All of America by All of America's Workers" the Recipient shall maximize the use of goods, products and materials produced in, and services offered in, the United States, and whenever possible, procure goods, products, materials, and services from sources that will help American businesses compete in strategic industries and help America's workers thrive.

8. Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. §794 (d))

While the requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), do not apply to financial assistance agreements, the NPS is subject to the Act's requirements that all documents posted on an NPS or NPS-hosted website comply with the accessibility standards of the Act. Accordingly, final deliverable reports prepared under this agreement and submitted in electronic format must be submitted in a format whereby NPS can easily meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. *NOTE: Interim progress reports and financial reports are not considered final deliverables and therefore the following requirements do not apply.*

All electronic documents prepared under this Agreement must meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The Act requires that all electronic products prepared for the Federal Government be accessible to persons with disabilities, including those with vision, hearing, cognitive, and mobility impairments. View Section 508 of the Rehabilitation Act, Standards and Guidelines for detailed information (<https://www.access-board.gov/guidelines-andstandards/communications-and-it/about-the-ict-refresh/final-rule/text-of-the-standards-and-guidelines>).

The following summarizes some of the requirements for preparing NPS reports in conformance with Section 508 for eventual posting by NPS to an NPS-sponsored website. For specific detailed guidance and checklists for creating accessible digital content, please go to <https://section508.gov/create>. All accessible digital content must conform to the requirements and techniques of the Web Content Accessibility Guidelines (WCAG) 2.0 or later (<https://www.w3.org/WAI/standards-guidelines/wcag/>), Level AA Success Criteria.

a. Electronic documents with images

Provide a text equivalent for every non-text element (including photographs, charts and equations) in all publications prepared in electronic format. Use descriptions such as "alt" and "longdesc" for all non-text images or place them in element content. For all documents prepared, vendors must prepare one standard HTML format as described in this statement of work AND one text format that includes descriptions for all non-text images. "Text equivalent" means text sufficient to reasonably describe the image. Images that are merely decorative require only a very brief "text equivalent" description. However, images that convey information that is important to the content of the report require text sufficient to reasonably describe that image and its purpose within the context of the report.

b. Electronic documents with complex charts or data tables

When preparing tables that are heavily designed, prepare adequate alternate information so that assistive technologies can read them out. Identify row and column headers for data tables. Provide the information in a non-linear form. Markups will be used to associate data cells and header cells for data tables that have two or more logical levels of row and column headers.

c. Electronic documents with forms

When electronic forms are designed to be completed on-line, the form will allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

9. Lobbying Prohibition.

18 U.S.C. §1913, Lobbying with Appropriated Moneys, as amended by Public Law 107-273, Nov. 2, 2002 Violations of this section shall constitute violations of section 1352(a) of title 31. In addition, the related restrictions on the use of appropriated funds found in Div. F, § 402 of the Omnibus Appropriations Act of 2008 (P.L. 110-161) also apply.

10. Anti-Deficiency Act.

Pursuant to 31 U.S.C. §1341 nothing contained in this Agreement shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress, for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.

11. Assignment.

No part of this Agreement shall be assigned to any other party without prior written approval of the NPS and the Assignee.

12. Member of Congress.

Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States, or to any benefit to arise thereupon.

13. Agency.

The Recipient is not an agent or representative of the United States, the Department of the Interior, NPS, or the Park, nor will the Recipient represent its self as such to third parties. NPS employees are not agents of the Recipient and will not act on behalf of the Recipient.

14. Non-Exclusive Agreement.

This Agreement in no way restricts the Recipient or NPS from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.

15. Partial Invalidity.

If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

16. No Employment Relationship.

This Agreement is not intended to and shall not be construed to create an employment relationship between NPS and Recipient or its representatives. No representative of Recipient shall perform any function or make any decision properly reserved by law or policy to the Federal government.

17. No Third-Party Rights.

This Agreement creates enforceable obligations between only NPS and Recipient. Except as expressly provided herein, it is not intended nor shall it be construed to create any right of enforcement by or any duties or obligation in favor of persons or entities not a party to this Agreement.

18. Rights in Data.

The Recipient must grant the United States of America a royalty-free, non-exclusive and irrevocable license to publish, reproduce and use, and dispose of in any manner and for any purpose without limitation, and to authorize or ratify publication, reproduction or use by others, of all copyrightable material first produced or composed under this Agreement by the Recipient, its employees or any individual or concern **specifically employed or assigned to originate and prepare such material.**

19. Conflict of Interest

a. Applicability.

1. This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
2. In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.

b. Requirements.

1. Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
 2. In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.
 3. No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.
- c. Notification.
1. Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of interest.
- d. Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.
- e. Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.
- f. Review Procedures. The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it. Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

20. Geospatial Data

Geospatial Data Act of 2018, Pub. L. 115-254, Subtitle F – Geospatial Data, §§ 751-759C, codified at 43 U.S.C. §§2801-2811 – Federal recipient collection of geospatial data through the use of the Department of the Interior financial assistance funds requires a due diligence search at the GeoPlatform.gov list of datasets to discover whether the needed geospatial-related data, products, or services already exist. If the required data set already exists, the recipient must use it. If the required data is not already available, the recipient must produce the proposed geospatial data, products, or services in compliance with applicable proposed guidance and standards established by the Federal Geospatial Data Committee (FGDC) posted at www.fgdc.gov.

21. Patents and Inventions

Recipients of agreements which support experimental, developmental, or research work shall be subject to applicable regulations governing patents and inventions, including the governmentwide regulations issued by the Department of Commerce at 37 CFR 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements. These regulations do not apply to any agreement made primarily for educational purposes.

22. General And Special Provisions

- a. **OMB Circulars and Other Regulations.** The following Federal regulations are incorporated by reference into this Agreement (full text can be found at <http://www.ecfr.gov>):
- i. Administrative Requirements:
2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
 - ii. Determination of Allowable Costs:
2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E; and

- iii. Audit Requirements:
2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart F.
- iv. Code of Federal Regulations/Regulatory Requirements:
 - 2 CFR Part 182 & 1401 “Government-wide Requirements for a Drug-Free Workplace”;
 - 2 CFR Part 180 & 1400, “Non-Procurement Debarment and Suspension”, previously located at 43 CFR Part 42, “Government wide Debarment and Suspension (NonProcurement)”;
 - 43 CFR 18, “New Restrictions on Lobbying”;
 - 2 CFR Part 175, “Trafficking Victims Protection Act of 2000”;
 - FAR Clause 52.203-12, Paragraphs (a) and (b), Limitation on Payments to Influence Certain Federal Transactions;
 - 2 CFR Part 25, System for Award Management (www.SAM.gov) and Data Universal Numbering System (DUNS); and
 - 2 CFR Part 170, “Reporting Subawards and Executive Compensation”.
- b. **Non-Discrimination.** All activities pursuant to this Agreement shall be in compliance with the requirements of Executive Order 11246, as amended; Title VI of the Civil Rights Act of 1964, as amended, (78 Stat. 252; 42 U.S.C. §§2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973, as amended, (87 Stat. 394; 29 U.S.C. §794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§6101 et seq.); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.
- c. **Minority Business Enterprise Development.** Pursuant to Executive Order 12432 it is national policy to award a fair share of contracts to small and minority firms. NPS is strongly committed to the objectives of this policy and encourages all recipients of its Cooperative Agreements to take affirmative steps to ensure such fairness by ensuring procurement procedures are carried out in accordance with the Executive Order.
- d. **Survival.** Any and all provisions which, by themselves or their nature, are reasonably expected to be performed after the expiration or termination of this Agreement shall survive and be enforceable after the expiration or termination of this Agreement. Any and all liabilities, actual or contingent, which have arisen during the term of and in connection with this Agreement shall survive expiration or termination of this Agreement.
- e. **Captions and Headings:** The captions, headings, article numbers and paragraph numbers appearing in this Agreement are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provision of this Agreement nor in any way affecting this Agreement.

PROGRAM SPECIFIC REQUIREMENTS

1. Retention and Access Requirements for Records.

All Recipient financial and programmatic records, supporting documents, statistical records, and other grants-related records shall be maintained and available for access in accordance with 2 CFR Part 200.333-200.337 and the Historic Preservation Fund Grants Manual.

2. NAGPRA Costs Are Unallowable

Cost related to Native American Graves Protection and Repatriation Act (NAGPRA) activities are unallowable under this agreement. Funds for NAGPRA activities are available through the NPS National NAGPRA Program.

3. Allowable and Eligible Costs.

Expenses charged against awards under the Agreement may not be incurred prior to the beginning of the Start Date of the Agreement, and may be incurred only as necessary to carry out the approved objectives, scope of work and budget with prior approval from the Commission. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the expiration date stipulated in the award.

Eligible costs under this award are as described in this Notice, 2 CFR 200, and the Historic Preservation Fund Grants Manual (HPF Manual).

For this program eligible costs also include:

STATE OF MAINE | SERVICE CONTRACT

- a. Projects under the eligible program areas as defined by the National Historic Preservation Act (NHPA): Administration, Local Government Certification, Development/Covenants, National Register, Planning, Review & Compliance, Survey & Inventory, and Tax Incentives;
- b. Administrative costs necessary to complete and administer the grant requirements;
- c. Rehabilitation of properties;
 - i. Eligible properties include historic districts, buildings, sites, structures and objects listed in the National Register of Historic Places or applicable Tribal Register;
 - ii. All work must meet the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation; and
 - iii. All projects receiving repair assistance must enter into a preservation agreement/covenant/easement
- d. Survey and Inventory of historic resources to determine eligibility;
- e. Cost for administering an easement/covenant for the property;
- f. Cost for any required audits or financial requests;
- g. Cost for the production of project signs;
- h. Costs for public notice of grant opportunities;
- i. Costs associated with required training or reporting; and/
- j. Any other costs as determined eligible by the NPS in accordance with the OMB circulars, NPS policies, and the Historic Preservation Fund Grants Manual.

4. Publicity & Press Releases

Press releases about this project must acknowledge the grant assistance provided by the Historic Preservation Fund and the National Park Service, and copies of the press releases must be provided to the NPS. The Recipient must transmit notice of any public ceremonies planned to publicize funded or related projects in a timely enough manner so that the NPS, Department of the Interior, Congressional or other Federal officials can attend if desired. All publicity and press releases related to activities funded with this award should include a statement that funding for the activity was provided (in part or in whole) by the Historic Preservation Fund (HPF) administered by the National Park Service.

5. Requirement for Project Sign & Public Notification

As stipulated in 36 CFR Part 800, public views and comments regarding all Federally-funded undertakings on historic properties must be sought and considered by the authorizing Federal agency. Therefore, the grantee is required to post a public notification regarding the undertaking under this grant in one or more of the major newspapers or news sources that cover the area affected by the project within 30 days of obligating any contracts or subgrants. A copy of the posted release must be submitted to NPS within 30 days of the posting.

HPF funded development projects must create public notification of the project in the form of a project sign, website posting, and proper credit for announcements and publications as appropriate. The sign/notification must be of reasonable and adequate design and construction to withstand weather exposure (if appropriate); be of a size that can be easily read from the public right-of-way; and be accessible to the public throughout the project term as stipulated in this Grant Agreement. At a minimum, all notifications must contain the following statement:

"[Project Name] is being supported in part by the Historic Preservation Fund administered by the National Park Service, Department of the Interior and the Maine Historic Preservation Commission."

STATE OF MAINE | SERVICE CONTRACT

Additional information briefly identifying the historical significance of the property and recognizing other contributors is encouraged and permissible. The NPS arrowhead logo may only be used in conjunction with the HPF approved signage format that can be provided upon request. Any other use of the logo is prohibited.

6. Funding Acknowledgement

The grantee must include acknowledgment of grant support from the Historic Preservation Fund of the National Park Service, Department of Interior, in all deliverables and publications concerning NPS grant supported activities as referenced in the Statement of Work.

All deliverables must contain the following disclaimer and acknowledgement:

"This material was produced with assistance from the Historic Preservation Fund, administered by the National Park Service, Department of the Interior under Grant Number P24AF00394 and Maine Historic Preservation Commission, project ME-24-10011. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the Department of the Interior."

- a. Deliverables/publications include but are not limited to grant project reports; books, pamphlets, brochures or magazines; video or audio files; documentation of events, including programs; invitations and photos; websites; mobile apps; exhibits; and interpretive signs.
- b. All digital copies must follow the file naming convention:

SHPO_2024_ME_City of Portland Lincoln Park_24AF00394_description of file

Refer to the attached guidance document for instructions on creating, naming and submitting digital copies of deliverables/publications.

- c. All consultants hired by the grantee must be informed of this requirement.
- d. Grantees, subgrantees, contractors may not use the NPS Arrowhead in any form without written permission.

7. Consultants & Contractors

The Provider must submit documentation of responses to its competitive selection process, along with its justification and resume(s) for which consultant(s) selected for grant-assisted work, to the Commission for approval. The consultant(s) must have requisite experience and training in historic preservation to oversee any construction work to be performed and to manage this complex project. All consultants must be competitively selected and documentation of this selection must be maintained by the Provider and be made readily available for examination by the Commission. **Maximum hourly rates charged to this grant may not exceed 120% of a Federal Civil Service GS-15, step 10 salary.** Current salary tables can be found on the Office of Personnel and Management website: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>. For calendar year 2024 this amount is \$110.71 in York, Cumberland, Sagadahoc and Androscoggin Counties, and \$107.80 in the remaining Maine counties.

8. Requirement for NEPA Compliance

All HPF funded grants are subject to the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended. This Act requires Federal agencies to consider the reasonably foreseeable environmental consequences of all grant-supported activities. As part of the NPS implementation of NEPA, grantees are required to notify the NPS of any reasonably foreseeable impacts to the environment from grant-supported activities, or to certify that no such impacts will arise upon receipt of a grant award. In addition, the NPS has determined that most HPF grant funds are not expected to individually or cumulatively have a significant impact on the environment, unless the activity involves development (construction) or archeology.

9. Compliance with Section 106

Pursuant to Section 106 of the National Historic Preservation Act (54 USC 306108), the NPS, the Subrecipient, and the Commission must complete the consultation process stipulated in the regulations issued by the Advisory Council on Historic Preservation (ACHP) in 36 CFR 800 **prior** to the commencement of all grant assisted construction or ground disturbance on the property.

10. Compliance with Section 110

Section 110 of The National Historic Preservation Act identifies the responsibility of the federal agency in their treatment of historic properties. Section 110(f) (54 USC 306107) clarifies the responsibility of the agency to protect National Historic Landmarks (NHL) from harm. See this agreement for submission requirements regarding NHL properties. In addition, Section 110(k) (54 USC 306113) prohibits the NPS from funding any grantee or subgrantee that attempts to avoid the requirements of Section 106. Grantees must make every effort to fund preservation projects that do no harm or adverse effects to NHL properties. Should it be discovered a grantee has deliberately damaged a property (e.g., pre-emptive demolition) to avoid requirements, the NPS must be notified to determine, in consultation with the ACHP, if the project can proceed.

11. NPS Review of Planning/Design Documents for National Historic Landmarks Not Applicable

The grantee must submit the following:

- a. a site plan that has the north direction clearly marked;
- b. a city/county map with the site of the property clearly labeled;
- c. set of plans and specifications for the project;
- d. digital images of all exterior elevations of the building or site, with views identified and oriented and keyed to the site plan;
- e. digital images of all interior major rooms and those involved in the project, labeled and keyed to a floor plan;
- f. for NHL Districts include overall views of the district from the project area; and
- g. any additional information that will better enable a technical review of the project to be completed.

The grantee must submit documents for the entire undertaking to the NPS for its review and approval to ensure conformance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*, Historic Preservation Fund Grant Manual, and with the conditions listed in this Grant Agreement, **prior** to the beginning of grant-assisted work. Work that does not comply with these Standards in the judgment of the NPS will not be reimbursed, and may cause the grant to be terminated and funds deobligated.

Plans & specifications for the project must be marked on the cover with this statement:

The {name of property} is designated a National Historic Landmark for its architectural and historic significance. It is considered to have irreplaceable cultural, material, and aesthetic value. The work is funded in part by the Historic Preservation Fund, administered by the National Park Service, Department of the Interior. The funding of which is subject to having all work items meet The Secretary of the Interior's Standards for the Treatment of Historic Properties.

12. GIS Spatial Data Transfer Standards

All GIS data collected with HPF funds shall be in compliance with the NPS Cultural Resource Spatial Data Transfer Standards with complete feature level metadata. Template GeoDatabases and guidelines for creating GIS data in the NPS cultural resource spatial data transfer standards can be found at the NPS Cultural Resource GIS Facility webpage: https://www.nps.gov/crgis/crgis_standards.htm

Technical assistance to meet the NPS Cultural Resource Spatial Data Transfer Standard specifications will be made available if requested. Execution of a Data Sharing Agreement between the NPS and the Recipient shall take place prior to collection of GIS data using HPF funds, as applicable.

13. Commission Review of Planning/Design Documents for Conformance to the Secretary of the Interior's Standards.

If plans or specifications have changed from those submitted with the Subrecipients' application for an CLG/HPF grant, the Subrecipient must submit revised construction documents to the Grantee for its review and approval to ensure conformance with the Secretary of the Interior's *Standards for Historic Preservation and Archeology*, and with the conditions listed in this Grant Agreement, prior to the beginning of grant-assisted repair work on the property. Work that does not comply with these *Standards* in the judgment of the Commission will not be reimbursed, and may cause the grant to be terminated and funds deobligated.

14. Equipment Purchases

Each item of equipment purchased under this award must be approved specifically and in writing by the NPS prior to purchase to confirm the allowability of the costs. Approval of the application is not approval of equipment included within the application. Equipment is defined by 2 CFR 200.1 as tangible personal property (including information technology systems) having a useful life of more than one year and a perunit acquisition cost which equals or exceeds the lesser of the capitalization level established by the nonfederal entity for financial statement purposes, or \$5,000.

Limitations on Administrative and Indirect Costs. Administrative costs charged to the subgrant may not exceed 25 percent of the total grant award. This limitation applies to the sum of the direct costs of administration and any indirect costs charged by the Subrecipients pursuant to a current Federally approved indirect cost rate.

Administrative costs are those costs defined in the HPF Grants Manual, Chapter 6, Section F.1, and in Chapter 7, Exhibit 7-B.Retention and Access Requirements for Records. All Recipient financial and programmatic records, supporting documents, statistical records, and other grants-related records shall be maintained and available for access in accordance with 2 CFR Part 200.333-200.337 and the Historic Preservation Fund Grants Manual.

15. Catalog of Federal Domestic Assistance/Assistance listing Inclusion in Single Audit

Non-Federal entities receiving financial assistance through the Historic Preservation fund must include the appropriate Catalog of Federal Domestic Assistance (CFDA) number in the Schedule of Expenditures of Federal Award in their Single-Audit. The DFDA number applicable to this award is 15.904 – Historic Preservation Fund Grants-in-Aid.

16. Notice of Financial Management Review

As part of government-wide efforts to improve coordination of financial management and increase financial accountability and transparency in the receipt and use of federal funding, the grantee is hereby notified that this award may be subject to higher scrutiny. This may include a requirement to submit additional reporting documentation.

17. Unanticipated Discovery Protocols

At a minimum, unanticipated discovery protocols for subgrants or contracts shall require the sub-grantee or contractor to immediately stop construction in the vicinity of the affected historic resource and take reasonable measures to avoid and minimize harm to the resource until the SHPO or THPO, sub-grantee or contractor, and Indian Tribes, as appropriate, have determined a suitable course of action within 15 calendar days. With the express permission of the SHPO and/or THPO, the sub-grantee or contractor may perform additional measures to secure the jobsite if the sub-grantee or contractor determines that unfinished work in the vicinity of the affected historic property would cause safety or security concerns.

18. Demonstration of Effort – Performance Goals

In order to ensure the timely and successful completion of all HPF grant awards, the NPS requires acceptable demonstration of effort by the grantee on project work supported by all HPF funded grants. Demonstration of effort means acceptable performance by undertaking meaningful progress on grant supported activities and complying with award terms and conditions.

Demonstration of effort will be recorded on Interim Reporting forms as per the schedule in this contract.

19. Funding for Use of Unmanned Aircraft Systems (UAS) (AKA Drones)

HPF funding for unmanned aircraft systems (UAS) usage is eligible only in the contracting of an experienced, licensed contractor of UAS who possesses the appropriate license, certifications, and training to operate UAS. The contractor is required to provide proof of liability insurance in the operation of UAS for commercial use.

If HPF funding is provided to a state, tribal, local, or territorial government, or other non-profit organization for the use of UAS as part of their scope of work, the recipient must have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds.

20. Nonfederal Matching Share. At least \$39,489 in eligible nonfederal matching contributions that are allowable and properly documented in accordance with 43 CFR 12.64 must be used by the Subrecipients during

the grant period to share the costs for this grant. Failure to use the required non-Federal matching share will result in the disallowance of costs reimbursed, and/or the de-obligation of remaining unexpended funds.

21. Easement/Covenant Requirement for development projects

As per Section 54 USC 302902 of the National Historic Preservation Act requires Historic Preservation Fund grantees to assume, after the completion of the project, the total cost of continued maintenance, repair and administration of the grant-assisted property in a manner satisfactory to the Secretary of the Interior.

Accordingly, the City of Portland, as owner of the Lincoln Park must execute a Stewardship Agreement with the Commission. The term of the Agreement must run for five years from the end date of the last executed Preservation or Stewardship Agreement. The character defining features of the site must be documented prior to construction through photographs and this information will be appended to the Agreement. A form will be provided for this documentation.

22. Copyright

Per 2 CFR 200.315(b), the NPS reserves a royalty-free right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so, any materials produced under this grant. All photos included as part of the interim & final reporting and deliverables/publication will be considered released to the NPS for future official use. Photographer, date, and caption should be identified on each photo, so NPS may provide proper credit for use.

A digital copy of all deliverables must be available for public access. Sensitive information may be redacted from the public access copy.

All consultants hired by the Recipient must be informed of this requirement.

23. Compliance with the Americans with Disabilities Act and the Architectural Barriers Act

The use of federal funds to improve public buildings, to finance services or programs contained in public buildings, or alter any building or facility financed in whole or in part with Federal funds (except privately owned residential structures), requires compliance with the 1990 Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, and the Architectural Barriers Act (ABA). Work done to alter the property should be in compliance with all applicable regulations and guidance.

24. Additional Department Requirements

- a. Provide the Commission with copies of all contracts entered into in connection with the project.
- b. Ensure that no member, officer, or employee of the Maine Historic Preservation Commission, including Commission members and staff, will benefit financially from the project, except that such persons may provide technical, consultative, or oversight assistance in a voluntary capacity.

RIDER E

Attachments

The following documents are attached to and made a part of this Agreement:

Publications/Deliverables Submission Guidelines

A. What do I need to submit?

Provide one digital copy of each deliverable/publication. Deliverables/publications include, but are not limited to: grant project reports; books, pamphlets and magazines; video/audio files; event documentation, including programs and photos, websites, mobile apps, exhibits, and interpretive signs.

For development (construction) grants only:

- **Submit photos of all work completed under the grant, including at least three views of the overall structure and all elements of the scope of work.** Refer to "Documenting Historic Places on Film" for more information on photographing a variety of historic environments and buildings: nps.gov/nr/publications/bulletins/photobul/pt3.htm.
- **Ensure that a fully executed, recorded copy of the preservation easement/covenant has been sent to the Commission.**

Include the following disclaimer and acknowledgement with all deliverables/publications: "This material was produced with assistance from the Historic Preservation Fund, administered by the National Park Service, Department of the Interior and the Maine Historic Preservation Commission. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the Department of the Interior."

B. How should I save submissions?

Name each file as follows:

SHPO_2024_ME_City of Portland Lincoln Park_P24AF00394_[Description]

- For "Description," create a short (less than 50 characters) and unique description that would help someone to easily and quickly identify the file.
- Do not use spaces or special characters (#, %, &, ?) in filenames. If files are part of a series, append the number 001, 002, 003, etc. to the end of the description.

Required file formats and resolution:

- Reports and publications: PDFs at 300 pixels per inch, at 100 percent of the size of the original document. When possible, convert original publication files to PDF (for example, from Word or InDesign files). Otherwise, use high-quality scans of printed materials.
- Photos: JPEGs or TIFFs at a minimum resolution of 3000 x 2000 pixels (or 6 megapixels).
- Videos: MP4 files at a resolution of 1280 by 720 pixels. Include a transcript of each video in a Word document.
- Audio files: uncompressed WAV files. Include a transcript of each file in a Word document.
- For more information about other types of deliverables or publications, consult the National Archives' transfer guidance tables (<https://www.archives.gov/records-mgmt/policy/transfer-guidance-tables.html>). Submit all files in formats that either "preferred" or "accepted" by the National Archives.

How do I submit submissions?

Contact the Commission's grant coordinator to discuss options for submitting the digital files

STATE OF MAINE | SERVICE CONTRACT

What information should be included with my submissions?

Include an index for all deliverables/publications as a Word document. Include the following information for each deliverable/publication:

- Grant Number (P24AF00394)
- Subgrant # ME-23-10011
- Title of Product
- Filename
- Creator (give full names and their roles in creating the product/deliverable)
- Date Completed
- Extent (pages, length, number of slides; use when applicable)
- Description (up to 200 words)

Save the index file as a Microsoft Word document using the following naming convention:

SHPO_2024_ME_City of Portland Lincoln Park_P24AF00394_Index.docx

RIDER F: BUDGET AND DETAILED PAYMENT INSTRUCTIONS

Budget

Understand that the budget items and figures above will be adhered to, unless the Commission provides prior written approval of amendments.

PROJECT BUDGET

A Service/Action/Item	B By Whom	C Hours or quantity	D Cost per	E Total Cost (C X D)	Notes
Disassembly of fence sections and fence posts	Consultant	8	\$334	\$2672	
Forklift, trucking to fabricator	Portland Parks & Recreation Staff	32	\$40	\$1280	
Grading, excavating, back-filling around granite	Portland Parks & Recreation Staff	32	\$40	\$1280	
Granite cutting old posts, and drilling	Consultant	8	\$334	\$2672	
Restoration and fabrication of iron elements	Consultant	8	\$1667	\$13,336	
Air abrasive cleaning	Consultant	8	\$800	\$6400	
Painting	Consultant	8	\$1334	\$10,672	
Storage, trucking, and forklift for reinstallation	Portland Parks & Recreation Staff	32	\$40	\$1280	
Reinstallation of granite and iron fence elements	Consultant	8	\$1467	\$11,736	
Paint, fasteners, adhesives, materials, supplies	Consultant	8	\$667	\$5336	
Travel @ ½ rate, mileage, per diem	Consultant	19	\$282	\$5358	
TOC oversight, accounting, reporting, etc	Consultant	1	\$7467	\$7467	
Estimate Phase 2 Total				\$69,489	

PROJECT FUNDING

Service/Action/Item	Donor	Source	Kind (cash match, in-kind match, volunteer match, grant)	Amount	Notes
Portion of cost of Fence Restoration	MHPC	CLG Grant	Grant	\$30,000	43.17%
Portion of cost of Fence Restoration	Friends of Lincoln Park		Cash	\$30,000	43.17%
Portion of cost of Fence Restoration	City of Portland	Portland Parks & Recreation Lincoln Park Fence Funds	Cash	\$5,649	8.13%
In-Kind Assistance	City of Portland	Portland Parks & Recreation Staff	In-Kind	\$3,840	5.53%
TOTAL				\$69,489	

STATE OF MAINE | SERVICE CONTRACT

MATCH SUMMARY

Total in-kind:	\$3,840
Total Donation	\$0
Total Cash	\$35,649
Total Volunteer	\$0
Total Match	\$39,489

GRANT SUMMARY

Total Grant:	\$30,000
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Detailed Payment Instructions

The Department will pay the Provider as follows:

On a reimbursement basis up to the contract amount with documentation of allowable expenditures made and sufficient Provider match amount per reimbursement request. Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

Required documentation for Reimbursement Requests

1. Invoice on Letterhead, containing the following information:
 - a. amount of reimbursement requested;
 - b. the project cost for this request;
 - c. the amount of match expended for this request; and
 - d. the contract number.
2. All expenses, including matching share, must be documented with copies of bills and photocopies of both sides of canceled checks.
3. Time sheets signed by the employee or volunteer and supervisor are required for volunteer and in-kind services, showing the Commission pre-approved rate and total dollar value of the donated or in-kind time.
4. The dollar value of donated equipment and donated space must also be documented for approval as match.
5. All project products must be received and approved by the Commission prior to final reimbursement. For development projects a final project report is required in addition to any technical report which may be a grant product before final reimbursement.
6. See Sample Reimbursement Request Letter, below.

YOUR LETTER HEAD	
INVOICE # _____	Date _____
RE: Contract # _____	
Dear Ms. Chapman-Mitchell:	
On behalf of the _____, I am requesting a (partial) (full) reimbursement of \$ _____ for expenses incurred between _____ and _____, 2025 in conjunction with the CLG funded project _____.	
Project expenses are documented on the following enclosed items:	
<i>Signed Value of Donated Labor Forms for _____</i>	
<i>Signed Timesheet/paystub/journal for _____</i>	
<i>Invoice(s) from _____</i>	
<i>Cancelled check # _____ to _____ (copied front and back)</i>	
<i>Documentation in the form of _____ for in-kind contributions of materials//venues/equipment.</i>	
The total cost reflected in this request is \$ _____, of which \$ _____ is match and \$ _____ is requested as reimbursement.	
Sincerely,	

RIDER G: IDENTIFICATION OF COUNTRY IN WHICH CONTRACTED WORK WILL BE PERFORMED

Please identify the country in which the services purchased through this contract will be performed:

☒ **United States. Please identify state: Maine**

☐ **Other. Please identify country: Enter Country**

Notification of Changes to the Information:

The Provider agrees to notify the Division of Procurement Services of any changes to the information provided above.

:

HISTORIC PRESERVATION GRANT APPLICATION



Eagle Island National Historic Landmark, Harpswell. Photograph by MHPC.

2024

**Development, Education, Planning, Survey, National
Register Listing and Archaeology Projects**

Maine Historic Preservation Commission
55 Capitol Street, 65 State House Station
Augusta, Maine 04333-0065
207-287-2132
www.maine.gov/mhpc/grant

APPLICATIONS DUE MARCH 25, 2024

This material was produced with assistance from the Historic Preservation Fund, administered by the National Park Service, Department of the Interior under Grant Number P23AF00780. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the Department of the Interior.

HISTORIC PRESERVATION Grant Application

DEVELOPMENT, EDUCATION, PLANNING, SURVEY, NATIONAL REGISTER
LISTING AND ARCHAEOLOGY PROJECTS

IMPORTANT APPLICATION INSTRUCTIONS

Applications will be submitted electronically via Dropbox. To submit the application send an email to Christi.chapman-mitchell@maine.gov with the subject line "HPF Grant Application Submission". You will then receive an email with detailed instructions for uploading the complete application into a Dropbox folder.

A COMPLETE APPLICATION CONTAINS EACH OF THE FOLLOWING:

- A. **Application Form, signed and notarized.** Submit as a .docx or .pdf file.
- B. **Assurance and Screening Forms**
 - 1. **Survey (Architectural or Archaeological), Planning, Public Education or National Register projects:** Standard Form 424B (Rev. 7-97), Assurances – Non-Construction Programs. This form must be signed and dated and saved as a PDF.
 - 2. **Development, Pre-development, and Archaeological Stabilization projects**
 - a. Standard Form 424D (Rev.7-97), Assurances – Construction Programs. This form must be signed and dated and saved as a PDF.
 - b. Environmental Screening Worksheet (NEPA). Complete as fully as possible. This form must be signed and dated and saved as a PDF.
- C. **Supplementary documentation, submitted as PDFs**
 - 1. Estimates from contractors, consultants.
 - 2. Resume's for volunteer labor.
 - 3. Resume's for contracted labor (if known).
 - 4. Maps showing location of the project.
 - 5. Copies of completed pre-development plans and specifications, or historic structure reports if appropriate.
- D. **Photographs of the historic property or proposed project area, submitted as individual .jpgs** (do not insert into a document).
- E. **Signed and Completed Application Checklist, submitted as a PDF**

The Complete application must be uploaded to Dropbox by 5:00 p.m., March 25, 2024
Optional draft applications are due March 11, 2024.

APPLICATION FORM

Historic Preservation Grants

**REFER TO THE HISTORIC PRESERVATION FUND GRANT MANUAL
WHEN COMPLETING THIS APPLICATION.**

IF COMPLETING THIS FORM IN MICROSOFT WORD PLACE ANSWERS IN THE GRAY BOXES.

I. APPLICANT OVERVIEW

Project Name: Lincoln Park Fence Restoration, Pearl Street Phase 2

Location: Lincoln Park, Portland, Maine

Applicant Organization: City of Portland, Maine

Contact Person: Evan Schueckler, Historic
Preservation Program
Manager

Mailing Address: 389 Congress Street
Portland, ME 04101

Telephone Number: (207) 874-8726 **E-mail Address** evans@portlandmaine.gov

Owner Information City of Portland, Maine

Mailing Address: Same as above

Telephone Number: Same as above **E-mail Address:** Same as above

II. GRANT TYPE

This application can be used for either a Historic Preservation Fund (HPF) Grant (applicants must be a non-profit entity, state or local government, or state agency) or for Certified Local Government (CLG) Grants. Applicants for CLG grants are limited to the towns of Biddeford, Saco, York, Kennebunk, Portland, Topsham, Lewiston, Gardiner, Augusta, Bangor and Castine.

Please check one box.

☐ **HPF Grant**

☒ **CLG Grant (limited to CLG communities only)**

APPLICATION FORM

Historic Preservation Grants

III. PROJECT TYPE (see grant manual for project descriptions)

- | | | |
|---|--|---|
| ☐ Architectural Survey | ☐ Archaeological Survey | ☐ Administrative Support |
| ☐ National Register Nomination | ☐ Public Education | |
| ☐ Planning | ☐ Archaeological Stabilization | |
| ☐ Pre-development | ☒ Development If yes, have plans and specifications been prepared? ☐ No ☒ Yes (submit copies) | |

Plans and specifications were previously reviewed by MHPC staff as part of Phase 1.

IV. FUNDING REQUEST

Grant Amount Requested (75% maximum)	\$30,000	
Match Amount (25% minimum)	\$37,569	Match Source: Friends of Lincoln Park Donation, Portland Parks and Recreation Funds, & Donated Labor from City of Portland staff
Total Project Cost (100%)	\$67,569	

ATTACH ALL ESTIMATES USED TO CALCULATE PROJECT COST.

V. PROJECT DETAILS

- 1) Is this a continuing project that the Commission has previously funded? ☒ Yes ☐ No
- 2) Is the subject property listed in the National Register of Historic Places? ☒ Yes ☐ No

3) Project Summary:

Provide a project **summary statement** that describes this project. Example: "The 1860 Smith House, owned by the George Historical Society and located in Smith, Maine is requesting support to: repair a roof, insulate the entry and upgrade wall insulation." (**60 words maximum**).

Funding is requested to continue restoration of the Pearl Street frontage of Lincoln Park's perimeter fence. The fence is an original and significant feature the 1866 park consisting of cast iron fence panels and gates set within dressed granite piers. Project to include complete restoration and reinstallation of 8 of 15 sections of the historic fence along Pearl Street.

Historic Preservation Grant Application

APPLICATION FORM

Historic Preservation Grants

4) Focus:

A. What is the focus of the project? (i.e. "historic neighborhood" or "historical museum" or "archaeological site").

Lincoln Park, created in 1866 as a fire break and public amenity following the Great Fire of 1866, is listed on the National Register of Historic Places based on its significance as a historic designed landscape. The park is also a locally designated historic landscape district.

The proposed project represents the next phase of a larger initiative begun in 2021 to restore the ornamental cast iron fence and granite piers that surround the 1866 designed landscape. The fence is perhaps the most prominent site feature of the park, given its scale and highly ornamental nature and the fact that it surrounds the park along all street frontages.

The fence is in a very poor state of repair, having had no significant maintenance or repairs since its original installation. A number of the granite piers are wracked and are no longer centered over their bases. Most of the granite bases supporting intermediate cast iron posts have large pieces missing and the cast iron plates over these bases have deteriorated. The fencing is missing pieces and has rusted due to a lack of regular painting. Connections between the granite piers and fencing have deteriorated.

In 2021, following a condition assessment and development of plans and specifications, a test section of the fence was completed. This section is located on the Congress Street frontage, near the intersection of Franklin Arterial. The work included making new castings of fence details to replace missing or damaged elements, purchasing and installing new granite post bases to match existing (the decision was made to replace all bases given the significant number damaged bases), straightening corner and gate piers, cleaning and recoating all cast iron fencing and cleaning granite piers.

In the summer of 2023, the remainder of the fence along Congress Street was restored; completing restoration of one full frontage of the park.

In 2022, the City was awarded a CLG grant to complete Phase 1 of restoration of the Pearl Street frontage of the fence. Phase 1 included planning, survey and purchase of materials necessary for the restoration of the entire fence along Pearl Street. This grant was successfully complete in late 2023.

The City is now seeking additional funding to begin restoration of 8 of 15 sections of the fence utilizing the materials, plans, and specifications prepared during the previous phase.

As with all recent improvement projects within Lincoln Park, the City has collaborated with the Friends of Lincoln Park (FoLP). FoLP will be providing the majority of the match for the proposed project.

B. Does the project reflect the funding priorities in Chapter 2 of the Grant Manual? Be specific and cite the applicable priority.

Yes. Funding this project will align with SHPO Funding Priority, Development/Predevelopment A. Provide funding for development and pre-development restoration and preservation projects throughout the state. This project will help to restore and preserve a contributing resource within an important Historic Landscape in Portland. The Lincoln Park Fence is a character-defining feature of this National Register and locally designated Historic Landscape.

APPLICATION FORM

Historic Preservation Grants

C. For Survey projects only: estimate number of acres to be surveyed
Not Applicable.

D. For Development projects only: Is there going to be any ground disturbance that will require archaeological testing? Have plans and specifications, or site plans been completed for the project? Have they been reviewed by MHPC staff to determine if they meet the Secretary of the Interior's Standards for the Treatment of Historic Properties?

No significant ground disturbance; only shallow digging for replacement granite bases.

E. For Archaeological Survey projects only: What are the research goals? Utilizing limited testing, how is the project designed to collect sufficient information to identify a resource and to assess its eligibility for listing in the National Register of Historic Places?

Not Applicable.

F. For Archaeological Projects (Development or Stabilization) only: Provide a research design that includes an explicit statement of the problem to be addressed, a summary of previous research, and outline how this project fits into prior or ongoing historical or structural documentation or other treatments. Refer to Appendix H in the Grant Manual for additional guidance.

Not Applicable.

5) Methodology:

A. What is the project methodology. Describe (the "how", the "why", the "when" and the "by whom" of the project. Be specific in terms of the timeline and sequence of activities to be undertaken. For archaeological projects, describe the amount and kinds of information required to address the documentation objectives and the methods to be used to find the information. Be specific regarding proposed field methods.

The project will likely be overseen by Jonathan Taggart, a highly experienced and highly regarded conservator of outdoor sculpture and historic artifacts. Mr. Taggart has worked with the City of Portland's Public Art Program for many years to restore and conserve the City's public art collection. Mr. Taggart has managed the restoration of the Congress Street frontage of the park fence as well as Phase 1 of the Pearl Street frontage restoration, so it is preferred that he continues as lead contractor.

Mr. Taggart has provided the following scope of work for this second phase of the Pearl Street project:

- **Disassembly and removal of 8 sections of fencing including their associated fence posts**
- **Air abrasive cleaning of all existing metal components**
- **Restoration and fabrication of iron elements as needed (some were purchased in Phase 1)**
- **Painting of iron elements with a highly durable industrial coating**
- **Cutting of existing and badly damaged granite bases to below grade**
- **Installation of new granite bases (purchased in Phase 1)**
- **Reinstallation of all restored iron elements**
- **Project administration, oversight, accounting, etc.**

As has been the case in previous phases of the project, the City of Portland, Parks, Recreation and Facilities staff will assist Mr. Taggart with transportation of materials, and excavation and grading as needed.

APPLICATION FORM

Historic Preservation Grants

B. Are any architects, consultants, contractors, archaeologists or tradespeople already under contract for this project? If so, were they competitively selected as part of a bidding or request for proposal process?

Although Jonathan Taggart has been retained for previous phases of the fence restoration, a separate contract would be written for this phase of the project.

C. Which of the Secretary of the Interior's Standards for the Treatment of Historic Properties apply to this project? (Choose all that apply; click on the highlighted text to view the standards.)

- ☒ Standards for [Restoration](#) ☐ Standards for [Identification](#) (survey projects)
☐ Standards for [Preservation](#) ☐ Standards for [Preservation Planning](#)
☐ Standards for [Archaeology Documentation](#)

6) Products

Describe what the project will accomplish. Be specific and provide details. What will be the product of the project? (i.e. "preservation plan" or "repaired siding" or "archaeological survey report"). Will the products be publicly available or visible?

This project will result in total restoration and reinstallation of just over half of the Pearl Street frontage of the historic Lincoln Park Fence.

7) Public Benefit

Describe how the public will benefit from the project funded by this grant.

The public will benefit from the ongoing investment in Lincoln Park. With the restoration of the park's fountain, replacement of its historic concrete sidewalks, installation of period-appropriate benches, and completion of the first phases of fence restoration, a notable increase in visitation has been observed.

8) Project Personnel:

Attach resumes and a description of professional expertise relative to the methodology of the project for all professionals known at the time of the application who would be conducting the project. Professionals must meet the minimum qualifications as set forth in Appendix B. Be aware that a competitive process must be used to select consultants/contractors for the project. Also attach resumés for all persons to be valued for match purposes at more than the federal minimum wage.

The City of Portland's current Historic Preservation Program Manager will manage the project and administer the grant. Resume attached.

Taggart Objects Conservation will manage the project. No resume available at this time. Jonathan Taggart has had a longstanding professional relationship with the City of Portland. He has been retained to conserve pieces within the City's public art collection as well as other artifacts of historic and cultural significance. Mr. Taggart is well respected for his expertise and high standards of conservation and has worked through the United States and Europe on high-profile public and private projects of various scales.

APPLICATION FORM

Historic Preservation Grants

9) Estimated Project Schedule

Provide an estimated project schedule based on one of the two completion dates provided below. Include time for contracting, procurement, project work, billing, and report preparation. All tasks, reporting and billing must be completed, including billing and reporting, by this date. No extensions will be given.

Check one box only: ☐ July 15, 2025 ☒ March 15, 2026

Schedule:

May, 2024: Grant Awarded

June, 2024: Grant contract provided by MHPC, award and contract accepted by City Council, contract signed by City Manager

July-August, 2024: Removal of fence sections

September, 2024-May 2025: Repair and fabrication of fence components

June-July 2025: Repair of granite foundation blocks and reinstallation of fence

10) Administration

a. Will the person administering the grant be the person conducting the project?

Administration of CLG grants is one of the responsibilities of the Historic Preservation Program Manager.

b. Please list up to five prior grant projects administered by this organization and address the following questions for each project: 1. Was it completed on schedule? 2. Was it completed within the approved budget? 3. Provide a reference with email or phone number.

2017 CLG Grant for Lincoln Park foundation base restoration, completed on schedule within approved budget.

Contact Ethan Hipple, Director of Parks and Recreation, ehipple@portlandmaine.gov

2018 CLG Grant for Western Promenade Historic Landscape Master Plan, completed on schedule within approved budget. Contact Ethan Hipple, Director of Parks and Recreation, ehipple@portlandmaine.gov

2021 CLG Grant for Mechanics Hall Roof Repair Project, completed on schedule within approved budget.

Contact Annie Leahy, annieleahy@mainemechanics.org

2022 CLG Grant for Lincoln Park Fence, Pearl Street Phase 1, completed on schedule within approved budget. Contact Ethan Hipple, Director of Parks and Recreation, ehipple@portlandmaine.gov

11) Availability of Match:

Do you already have all the required match for this project? ☒ Yes ☐ No

If the answer is "no" what percentage of the match is already in hand? %

Please describe how any remaining match will be raised.

Not applicable.

12) Budget:

Describe what steps you have taken to determine the project budget and ensure its accuracy. See Chapter 8 in the Grant Manual for more information.

The budget has been prepared based on a treatment proposal and estimate provided by Jonathan Taggart of Taggart Objects Conservation. Taggart has extensive experience in art and architectural conservation. Additionally, Taggart has been previously hired by the City of Portland in the restoration of the Lincoln Park Fence.

APPLICATION FORM

Historic Preservation Grants

V. BUDGET AND FUNDING

Estimated Project Budget:

Grant Request: \$30,000 Total Project Cost: \$69,489

In the table below provide an estimated budget for the project. The budget should include each major work element for the entire project or project phase. Item elements may include personnel, supplies, equipment, travel, printing, administration, support services, donated labor, indirect costs (if applicable), etc. Use separate lines for materials and labor. If the budget includes "contractual services," indicate what the contract will be for in the notes. The estimated budget must be detailed. Each individual involved must be listed by name and function, with hourly rate and total salary. Indicate if the service/action/item is based on an estimate. Add additional rows as necessary.

A Service/Action/Item	B By Whom	C Hours or quantity	D Cost per	E Total Cost (C X D)	Notes
Disassembly of fence sections and fence posts	Consultant	8	\$334	\$2672	
Forklift, trucking to fabricator	Portland Parks & Recreation Staff	32	\$40	\$1280	
Grading, excavating, back-filling around granite	Portland Parks & Recreation Staff	32	\$40	\$1280	
Granite cutting old posts, and drilling	Consultant	8	\$334	\$2672	
Restoration and fabrication of iron elements	Consultant	8	\$1667	\$13,336	
Air abrasive cleaning	Consultant	8	\$800	\$6400	
Painting	Consultant	8	\$1334	\$10,672	
Storage, trucking, and forklift for reinstallation	Portland Parks & Recreation Staff	32	\$40	\$1280	
Reinstallation of granite and iron fence elements	Consultant	8	\$1467	\$11,736	
Paint, fasteners, adhesives, materials, supplies	Consultant	8	\$667	\$5336	
Travel @ 1/2 rate, mileage, per diem	Consultant	19	\$282	\$5358	
TOC oversight, accounting, reporting, etc	Consultant	1	\$7467	\$7467	
Estimate Phase 2 Total				\$69,489	

APPLICATION FORM

Historic Preservation Grants

PROJECT FUNDING

In the table below indicate how the project will be paid for, including both non-federal match, the requested grant funds, and any additional funding. Match must be on a 75/25 basis to the grant request: if the project is estimated at \$20,000 then the grant request would be \$15,000.00 and the match would be at least \$5,000.00. Attach resumes for all persons to be valued for match purposes at more than the federal minimum wage.

A. Service/Action/Item: copy this from the project budget. Items can be combined as needed.

B. Donor: list the names of funding sources for each budget item. For example: "Kennebec University".

b. Source: indicate where the funds are coming from (.e.g., "private donation", "capital funds"). The Commission will review source to ensure that it is eligible for non-federal match.

c. Kind: indicate the kind of funding. Choose from the following: grant, cash, cash match, in-kind, in-kind match, or indirect costs match. Please note that each kind of funding requires a separate breakout.

Service/Action/Item	Donor	Source	Kind (cash match, in-kind match, volunteer match, grant)	Amount	Notes
Portion of cost of Fence Restoration	MHPC	CLG Grant	Grant	\$30,000	43.17%
Portion of cost of Fence Restoration	Friends of Lincoln Park		Cash	\$30,000	43.17%
Portion of cost of Fence Restoration	City of Portland	Portland Parks & Recreation Lincoln Park Fence Funds	Cash	\$5,649	8.13%
In-Kind Assistance	City of Portland	Portland Parks & Recreation Staff	In-Kind	\$3,840	5.53%
TOTAL				\$69,489	

MATCH SUMMARY

In-kind match \$3,840
 Cash match \$35,649
 Other match \$
 Total Match \$39,489

OTHER FUNDING SOURCES

(List names and amounts)

Total Other Sources \$

APPLICATION FORM

Historic Preservation Grants

VI. CERTIFICATION

In making this application for Federal assistance under the provisions of the National Historic Preservation Act of 1966, I hereby acknowledge my familiarity with the requirements listed in the Maine Historic Preservation Commission Grants Manual. I agree that should I receive the Federal assistance herein requested, I will carry out the project according to Federal and State requirements. I certify that I am authorized to submit this application.


Signature
3/21/24
Date

Dena Libner, Assistant City Manager
City of Portland, ME

In Witness Whereof


Notary Public
3/21/24
Date
Cumberland
County
WILLIAM PROUT
Notary Public, State of Maine
My Commission Expires 7/15/2027

Reminder: The signed federal Assurances – Non-construction 424B and Construction Programs 424-D forms must accompany this application when it is e-mailed to the Commission.

CERTIFICATION (if principal personnel are not yet selected [i.e., consultants]):

This is to certify that the applicant understands that, if funded, this project will be directed by personnel meeting the minimum professional credentials for the relevant disciplines stipulated in 36 CFR Part 61.


Signature
3/21/24
Date

APPLICATION CHECKLIST

Historic Preservation Grants

APPLICANT MUST INITIAL EACH BULLET POINT TO ACKNOWLEDGE THAT THEY HAVE READ THESE INSTRUCTIONS OR REMINDERS. RETURN THIS PAGE WITH THE APPLICATION.

1. Project expenses incurred before the execution of a contract between the Applicant and the State are not reimbursable and cannot be used for match. ERS (initials)
2. Consultants or contractors cannot be hired before the grant has been awarded. Once the grant has been awarded by the Commission, the procurement of services form must be filled out for any consultant or contractor. This form requires that three consultants or contractors are invited to submit proposals for a project. If only one party responds, the Applicant must show that they contacted at least two other parties. ERS (initials)
3. All project expenses must be thoroughly accounted for in the application. For example, you must break down the cost estimate into pay per hour for each party involved and outline exactly what tasks they will be doing. If estimates are available from contractors, include copies with the application. Please include administrative time in the grant application. ERS (initials)
4. Check the math. The 1/1 federal/local match must be correct on the applications. For a \$20,000 project, a request for \$15,000 federal share requires a minimum of \$5,000 in local match. ERS (initials)
5. Regarding local match, CDBG funds are the only federal funds which may be used in combination with HPF funds. ERS (initials)
6. Has the applicant signed all signature lines on the grant applications? ERS (initials)
7. The applicant must designate one person to be the point of contact with our office. We require that grant products be sent directly to us from the local point of contact, not from the consultants who prepared them. ERS (initials)
8. If applicable, has the town's historic preservation commission been consulted regarding this grant application?
Yes ☐ No ☒ ERS (initials)
9. Publicity. There is a special paragraph which MUST be used in all authorized publications and other forms of publicity connected with projects that receive federal grants. The paragraph begins: "This publication has been financed in part with Federal funds from the National Park Service...." ERS (initials)
10. Grant Orientation Meeting. For certain grant projects, our office may require a meeting to confirm the budget and the timetable for completion, and discuss procurement requirements and reimbursement procedures. ERS (initials)

ASSURANCES – CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capabilities (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794) which, prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

Standard Form 424D (Rev. 7-97)

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11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a and 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of

wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuming compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (Identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1966 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE Assistant City Manager
APPLICANT ORGANIZATION City of Portland, ME	DATE SUBMITTED 3/21/24

Standard Form 424D (Rev. 7-97) Back

ASSURANCES – NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

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NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capabilities (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794) which, prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a-276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

11. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
12. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
13. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
14. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
15. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
16. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-554, as amended, 7 U.S.C. §§2132 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
17. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) Which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1966 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL Not Applicable	TITLE Not Applicable
APPLICANT ORGANIZATION Not Applicable	DATE SUBMITTED Not Applicable

Standard Form 424B (Rev. 7-97) Back

The National Park Service's
State, Tribal, and Local Plans & Grants
Environmental Screening Worksheet

FOR DEVELOPMENT, PRE-DEVELOPMENT AND ARCHAEOLOGY PROJECTS ONLY

This worksheet should be completed as fully as possible and returned to the Maine Historic Preservation Commission. It will then be signed by the SHPO office funding the project work and forwarded to the National Park Service for final review. The Categorical Exclusion Form (if applicable) will be reviewed and signed by the National Park Service.

A. PROJECT INFORMATION

Project Name: Lincoln Park Fence Restoration, Pearl Street Phase 2

Project Address: Lincoln Park, Portland, ME 04101

Project Originator/Coordinator: Evan Schueckler, City of Portland

Subgrantee/Owner: Not Applicable

National Register Status: Listed

B. PROJECT DESCRIPTION/LOCATION

Describe the project **Funding is requested to continue restoration of the Pearl Street frontage of Lincoln Park's perimeter fence. The fence is an original and significant feature the 1866 park consisting of cast iron fence panels and gates set within dressed granite piers. Project to include complete restoration and reinstallation of 8 of 15 sections of the historic fence along Pearl Street.**

C. AREA OF POTENTIAL EFFECTS

Define your Area of Potential Effects. These are the geographic or spatial limits of the project impacts, including staging areas and adjacent properties that might be affected by a change in viewshed or project noise or vibration, for example. : The APE would be limited to Lincoln Park Itself given that direct effects will be limited to the Historic Fence Itself through its restoration. As no changes to the historic fence are proposed, no indirect effects are expected.

D. RESOURCE EFFECTS TO CONSIDER

Consider the context, duration and intensity of effects on resources.

Are any measurable impacts possible on the following physical, natural or cultural resources?

Yes? No? Data Needed to Determine?

- | | | | |
|--|------------------------------|--|--------------------------------------|
| 1. Geological resources – soils, bedrock, streambeds, etc. | ☐ Yes | ☒ No | ☐ Data Needed |
| 2. Air quality | ☐ Yes | ☒ No | ☐ Data Needed |
| 3. Soundscapes | ☐ Yes | ☒ No | ☐ Data Needed |
| 4. Water quality or quantity | ☐ Yes | ☒ No | ☐ Data Needed |
| 5. Streamflow characteristics | ☐ Yes | ☒ No | ☐ Data Needed |

- | | | | |
|--|------------------------------|--|--------------------------------------|
| 6. Marine or estuarine resources | ☐ Yes | ☒ No | ☐ Data Needed |
| 7. Floodplains or wetlands | ☐ Yes | ☒ No | ☐ Data Needed |
| 8. Land use, including occupancy, income, type of use | ☐ Yes | ☒ No | ☐ Data Needed |
| 9. Rare or unusual vegetation, old growth timber, riparian | ☐ Yes | ☒ No | ☐ Data Needed |
| 10. Species of special concern (plant/animal/state or Federal listed or proposed for listing) or habitat | ☐ Yes | ☒ No | ☐ Data Needed |
| 11. Unique ecosystems, biosphere reserves, World Heritage | ☐ Yes | ☒ No | ☐ Data Needed |
| 12. Unique or important wildlife or wildlife habitat | ☐ Yes | ☒ No | ☐ Data Needed |
| 13. Unique or important fish or fish habitat | ☐ Yes | ☒ No | ☐ Data Needed |
| 14. Introduction/promotion of non-native species | ☐ Yes | ☒ No | ☐ Data Needed |
| 15. Recreation resources, including supply, demand, visitation, activities, etc. | ☐ Yes | ☒ No | ☐ Data Needed |
| 16. Socioeconomics, including employment, occupation, income changes, tax base, infrastructure | ☐ Yes | ☒ No | ☐ Data Needed |
| 17. Minority and low-income populations, ethnography, size, migration patterns, etc. | ☐ Yes | ☒ No | ☐ Data Needed |
| 18. Energy resources | ☐ Yes | ☒ No | ☐ Data Needed |
| 19. Other agency, or tribal, land use plans or policies | ☐ Yes | ☒ No | ☐ Data Needed |
| 20. Resource, including energy, conservation potential | ☐ Yes | ☒ No | ☐ Data Needed |

E. MANDATORY CRITERIA: If implemented, would the proposal?

- | | | | |
|---|------------------------------|--|--------------------------------------|
| 1. Have material adverse effects on public health or safety? | ☐ Yes | ☒ No | ☐ Data Needed |
| 2. Have adverse effects on such unique characteristics as historic or cultural resources; park, recreation, or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands; floodplains; or ecologically significant or critical areas, including those listed on the National Register or Natural Landmarks? | ☐ Yes | ☒ No | ☐ Data Needed |
| 3. Have highly controversial environmental effects? | ☐ Yes | ☒ No | ☐ Data Needed |
| 4. Have highly uncertain and potentially negative environmental effects or involve unique or unknown environmental risks? | ☐ Yes | ☒ No | ☐ Data Needed |
| 5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects? | ☐ Yes | ☒ No | ☐ Data Needed |
| 6. Be directly related to other actions with individually insignificant, but cumulatively significant, environmental effects? | ☐ Yes | ☒ No | ☐ Data Needed |
| 7. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places? | ☐ Yes | ☒ No | ☐ Data Needed |

8. Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species? ☐ Yes ☒ No ☐ Data Needed
9. Violate a federal law, or a state, local, or tribal law or requirement imposed for the protection of the environment? ☐ Yes ☒ No ☐ Data Needed
10. Have a disproportionate, significant adverse effect on low income or minority populations (EO 12898)? ☐ Yes ☒ No ☐ Data Needed
11. Limit access to and ceremonial use of Indian sacred sites by Indian religious practitioners or adversely affect the physical integrity of such sacred sites (EO 130007)? ☐ Yes ☒ No ☐ Data Needed
12. Contribute to the introduction, continued existence, or spread of federally listed noxious weeds (Federal Noxious Weed Control Act). Contribute to the introduction, continued existence, or spread of non-native invasive species or actions that may promote the introduction, growth or expansion of the range of nonnative invasive species (EO 13112)? ☐ Yes ☒ No ☐ Data Needed

*****If you check "YES" to any of the above listed criteria you cannot claim a CE and must complete either an EA or EIS for your project to proceed. Please answer the following question:**

F. SITE VISIT

Is the person preparing this form familiar with the site, and/or has a site visit been conducted?

☒ Yes ☐ No

JONATHAN TAGGART
Taggart Objects Conservation
644 Five Islands Road, Georgetown, Maine 04548
207-522-9435, jtaggart@ghi.net

CLIENT: Evan Schueckler
Historic Preservation Program Manager
City of Portland
389 Congress Street
Portland, ME 04101
(207) 874-8726
evans@portlandmaine.gov

Lincoln Park Fence, Pearl Street

Costs Estimated 3-8-2024

Phases P1, P2, & P3

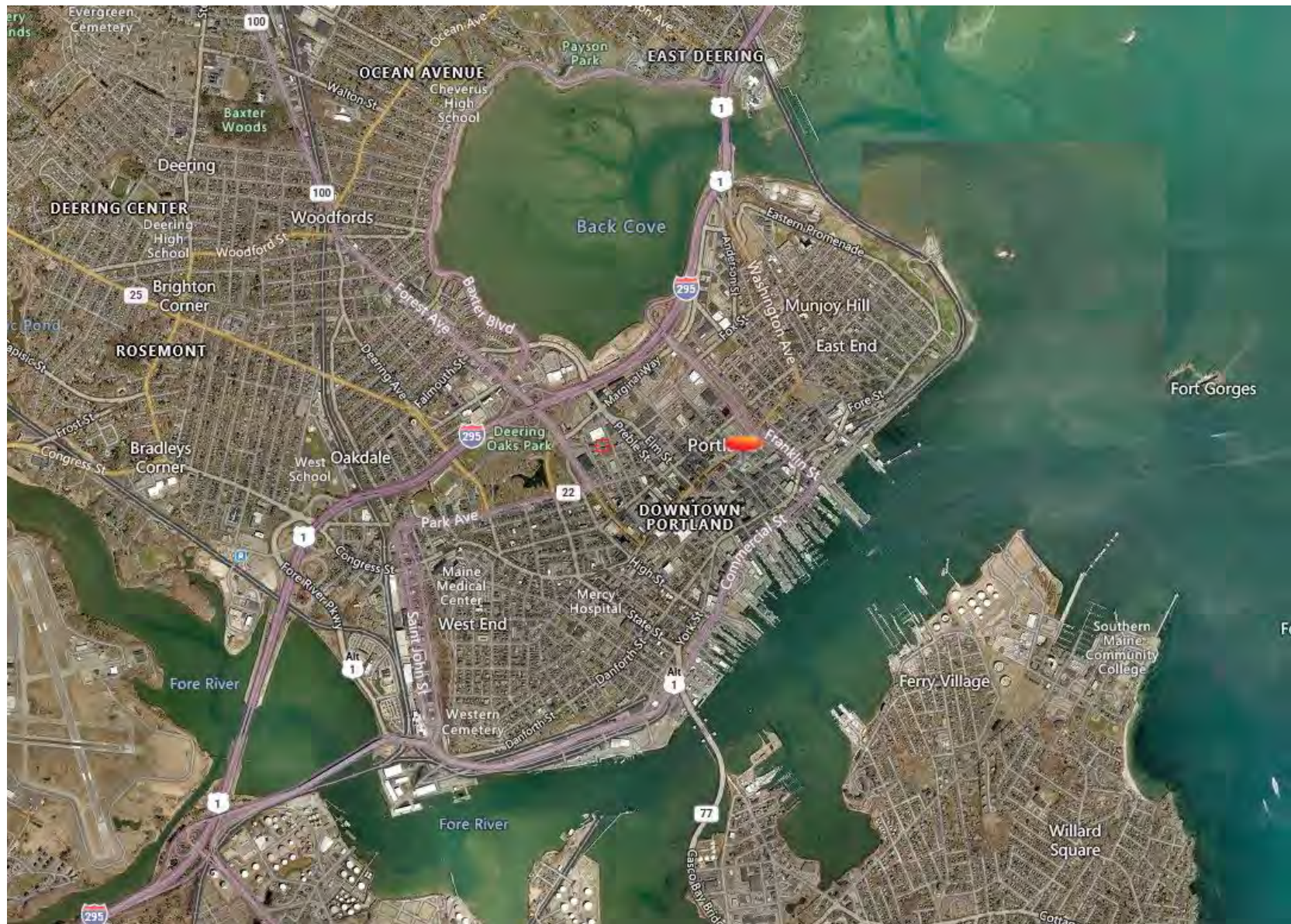
PHASE P1, Material and services purchased by the CLG Grant (Completed September 30, 2023)

Fabrication of 15 granite post bases and 2 graving pieces	\$29,250
Fabrication of all iron castings for 15 fence posts	\$5,750
Transportation of granite and castings to Portland	\$2,000
Survey, modeling, benchmarks, and drafting	\$8,000
Taggart Objects Conservation (TOC) oversight, accounting, etc.	\$5,000
Estimate Phase P1 (Not included in this cost estimate)	\$50,000

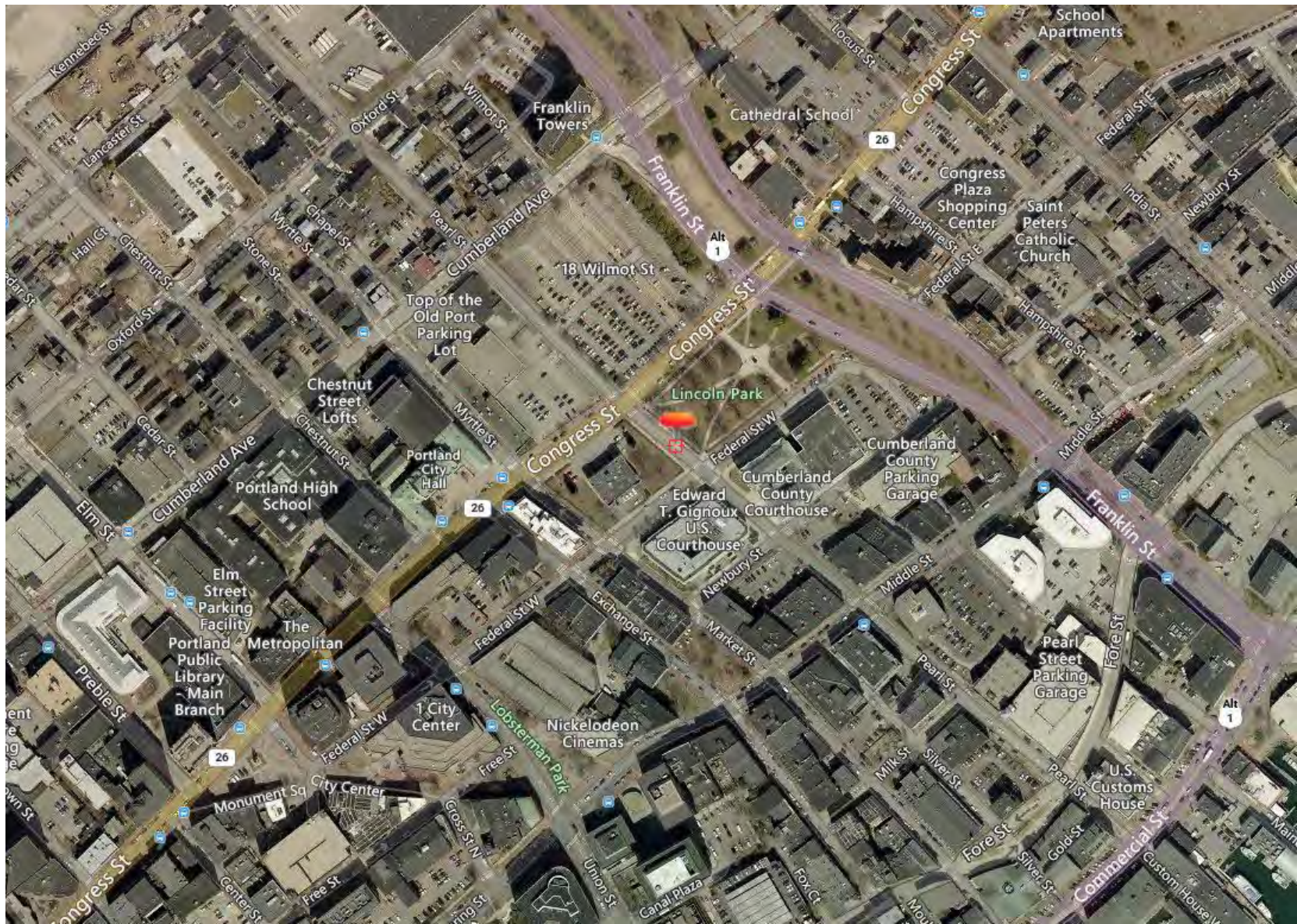
PHASE P2: Restoration 8 Fence Section	Per Section	Quantity	For Phase
Disassembly of fence sections and fence posts	\$334	8	\$2,672
Forklift, trucking to fabricator	By City		
Grading, excavating, back-filling around granite	By City		
Granite cutting old posts, and drilling	\$334	8	\$2,672
Restoration and fabrication of iron elements	\$1,667	8	\$13,336
Air abrasive cleaning	\$800	8	\$6,400
Painting	\$1,334	8	\$10,672
Storage, trucking, and forklift for reinstallation	By City		
Reinstallation of granite and iron fence elements	\$1,467	8	\$11,736
Paint, fasteners, adhesives, materials, supplies	\$667	8	\$5,336
Travel @ ½ rate, mileage, per diem	\$282	19	\$5,358
TOC oversight, accounting, reporting, etc	\$7,467	1	\$7,467
Estimate Phase 2 Total			\$65,649

PHASE P3: Restoration 7 Fence Section	Per Section	Quantity	For Phase
Disassembly of fence sections and fence posts	\$334	7	\$2,338
Forklift, trucking to fabricator	By City		
Grading, excavating, back-filling around granite	By City		
Granite cutting old posts, and drilling	\$334	7	\$2,338
Realignment of tipping pier	\$3,500	1	\$3,500
Restoration and fabrication of iron elements	\$1,667	7	\$11,669
Air abrasive cleaning	\$800	7	\$5,600
Painting	\$1,334	7	\$9,338
Storage, trucking, and forklift for reinstallation	By City		
Reinstallation of granite and iron fence elements	\$1,467	7	\$10,269
Paint, fasteners, adhesives, materials, supplies	\$667	7	\$4,669
Travel @ ½ rate, mileage, per diem	\$282	16	\$4,512
<u>TOC oversight, accounting, reporting, etc</u>	<u>\$6,534</u>	<u>1</u>	<u>\$6,534</u>
Estimate Phase 3 Total			\$60,767
 <u>Total Cost for Phases 2 & 3</u>			 <u>\$126,416</u>

Jonathan Taggart



Lincoln Park, located in Downtown Portland, indicated with a red pin.



Detail: Lincoln Park, located in Downtown Portland, indicated with a red pin.

JONATHAN TAGGART
Taggart Objects Conservation
644 Five Islands Road
Georgetown, Maine 04548
207-522-9435 jtaggart@zwi.net

September 12, 2023

Evan Schueckler
Historic Preservation Program Manager
City Of Portland Maine
(207) 874-8726
evans@portlandmaine.gov

CLG GRANT REPORT

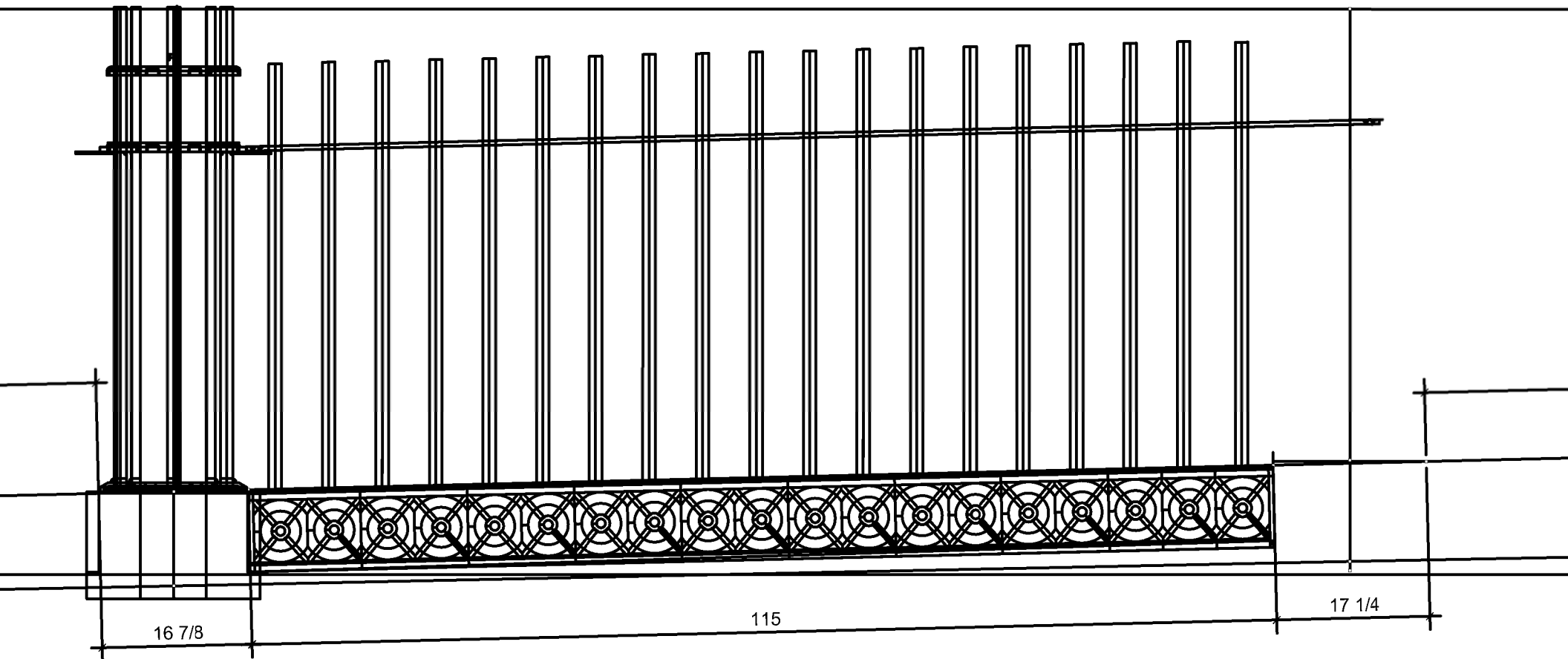
Data was collected on the Pearl Street side of the Lincoln Park fence in Portland, Maine using: a 165 ft. tape measure, tripod mounted rotating self-leveling laser, and a grade rod with remote sensor. All measurements were made to within a 1/16 of an inch. The laser level was accurate to approximately ¼ inch in 100 ft. From the collected data a full scale 3D CAD model was developed. The model was then used to determine the slope of the fence from the Federal Street pier to the Congress Street granite pier, which is 1.4°. The damaged granite fence post bases need to be cut off and replaced with new granite blocks which are 1 ft. in height. The locations of the existing granite fence post bases were then added to the model. The locations where the existing granite bases are to be cut was determined by comparing the height of the existing granite to the ideal location of the new granite bases and subtracting a foot.

The fence sections are 115 in. plus or minus 1/4 of an inch. The width of the Granite blocks inside the mortises is 17 in. There is a little more than 1/8 of an inch of free space between the end of the cast iron fence panels and the new granite blocks.

The purpose of this model is to provide accurate measurements for the reinstallation of the Granite fence post bases. It is intended as a working model to accurately locate the new granite fence post bases, not as finished architectural drawing. Attached are some images from the model.

Jonathan Taggart

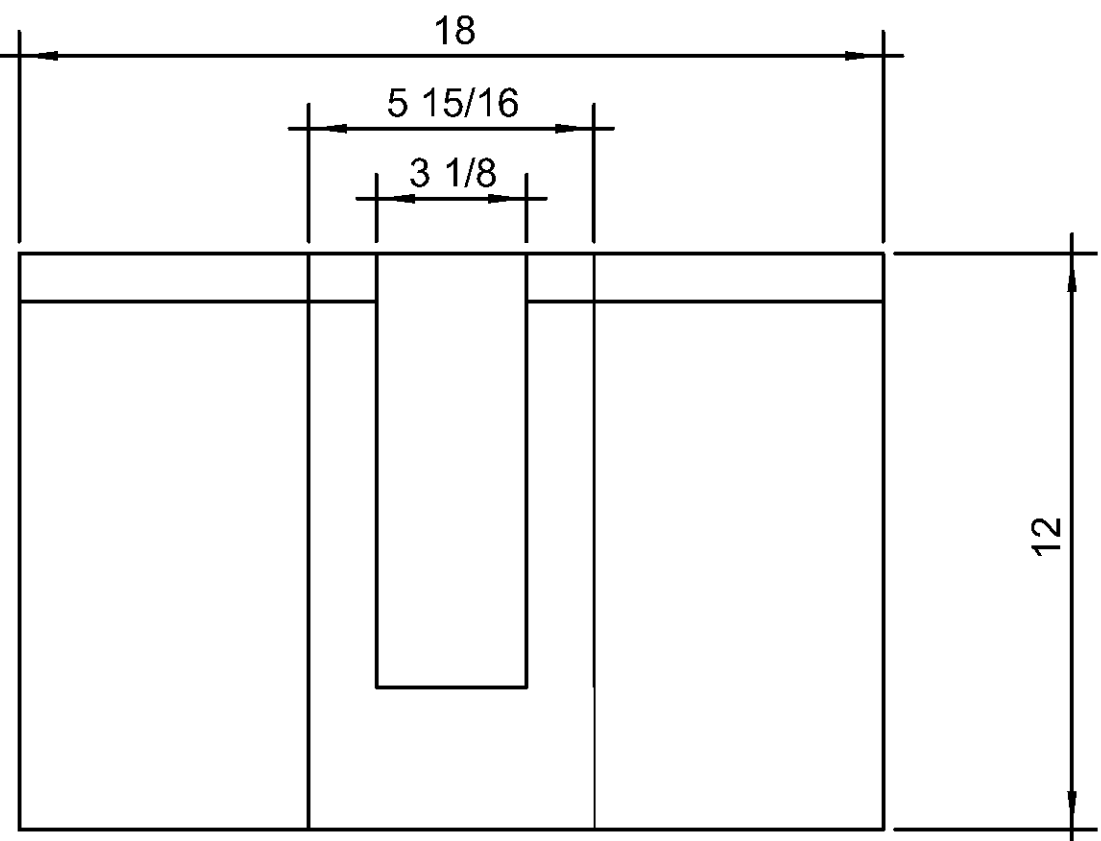
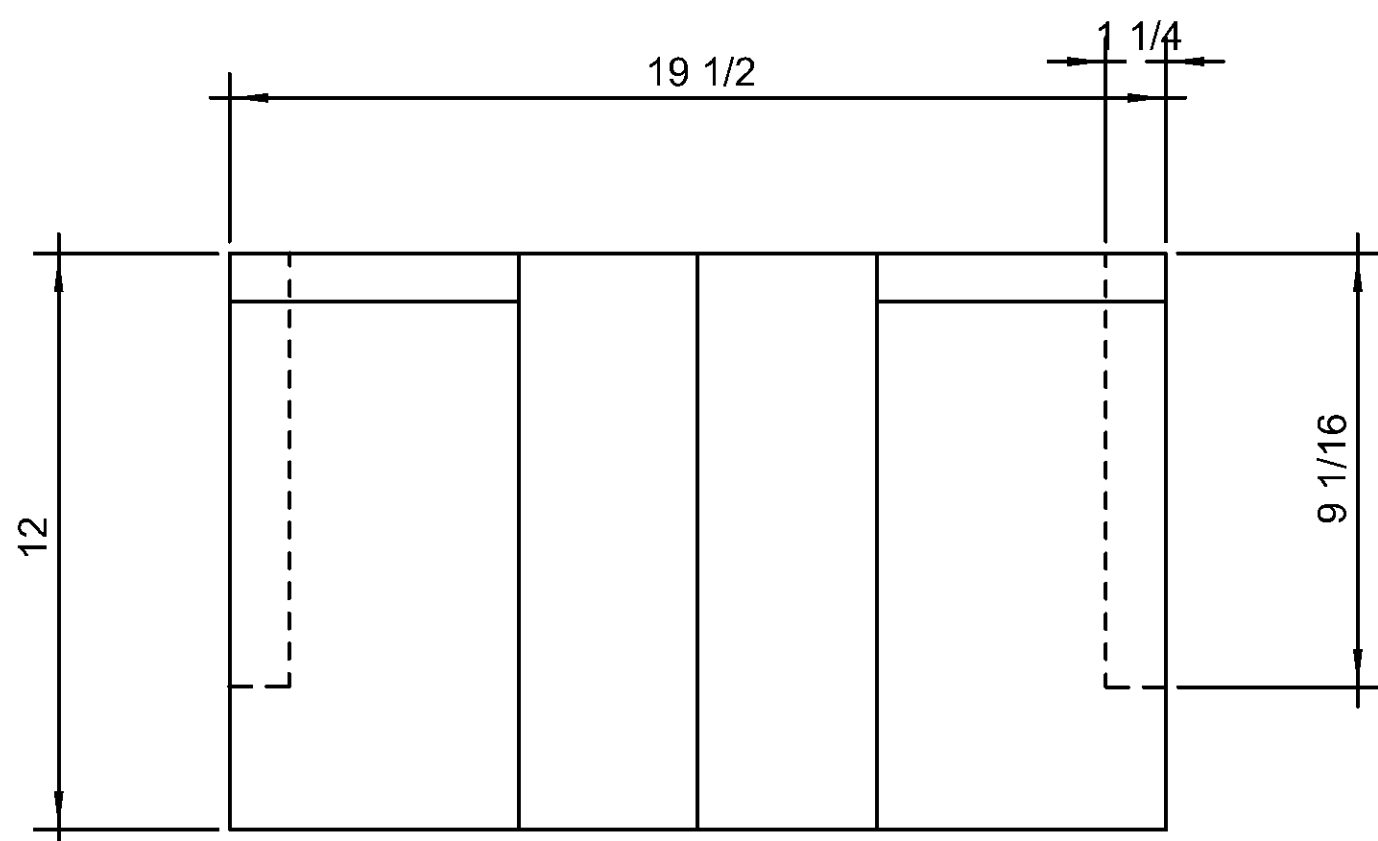
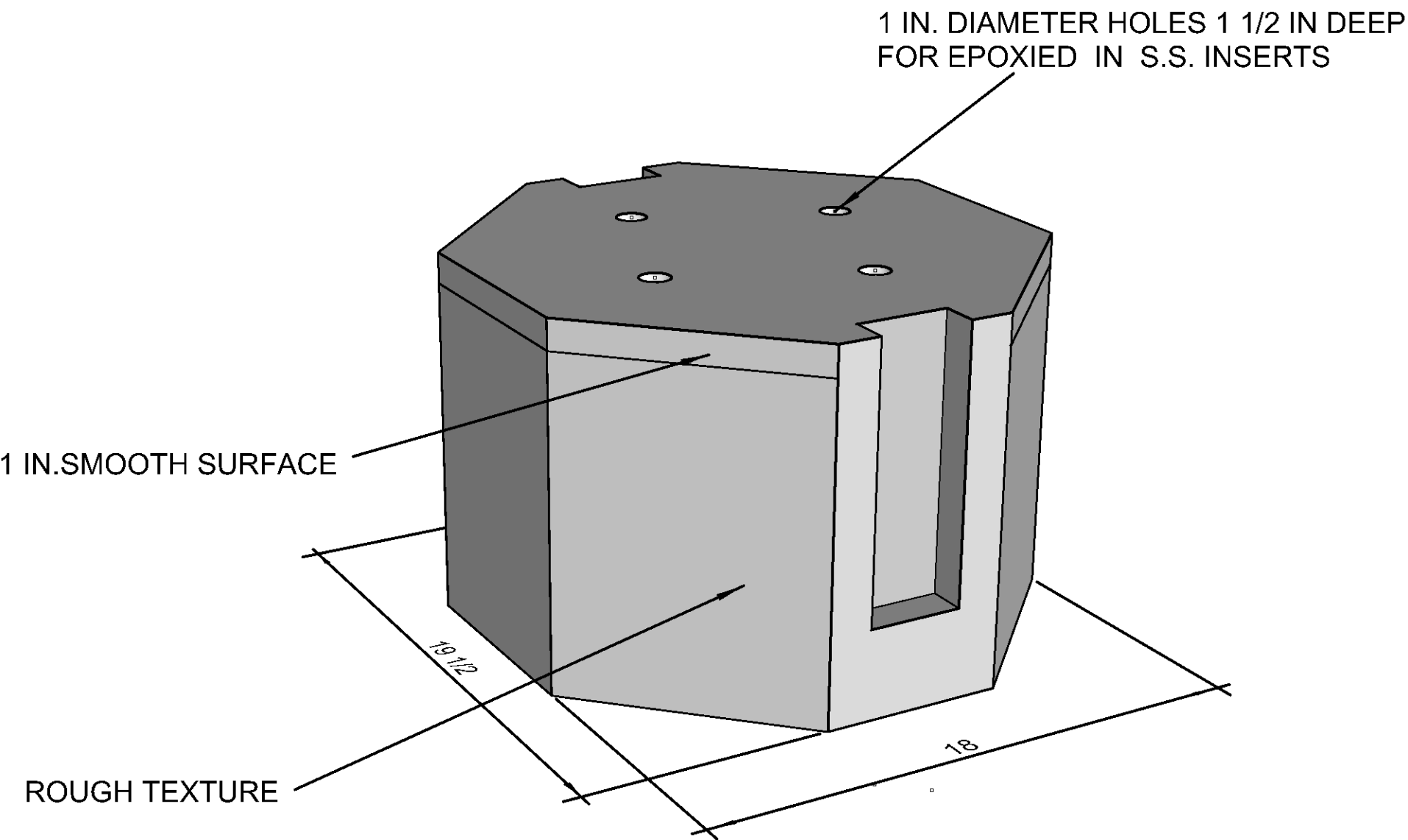
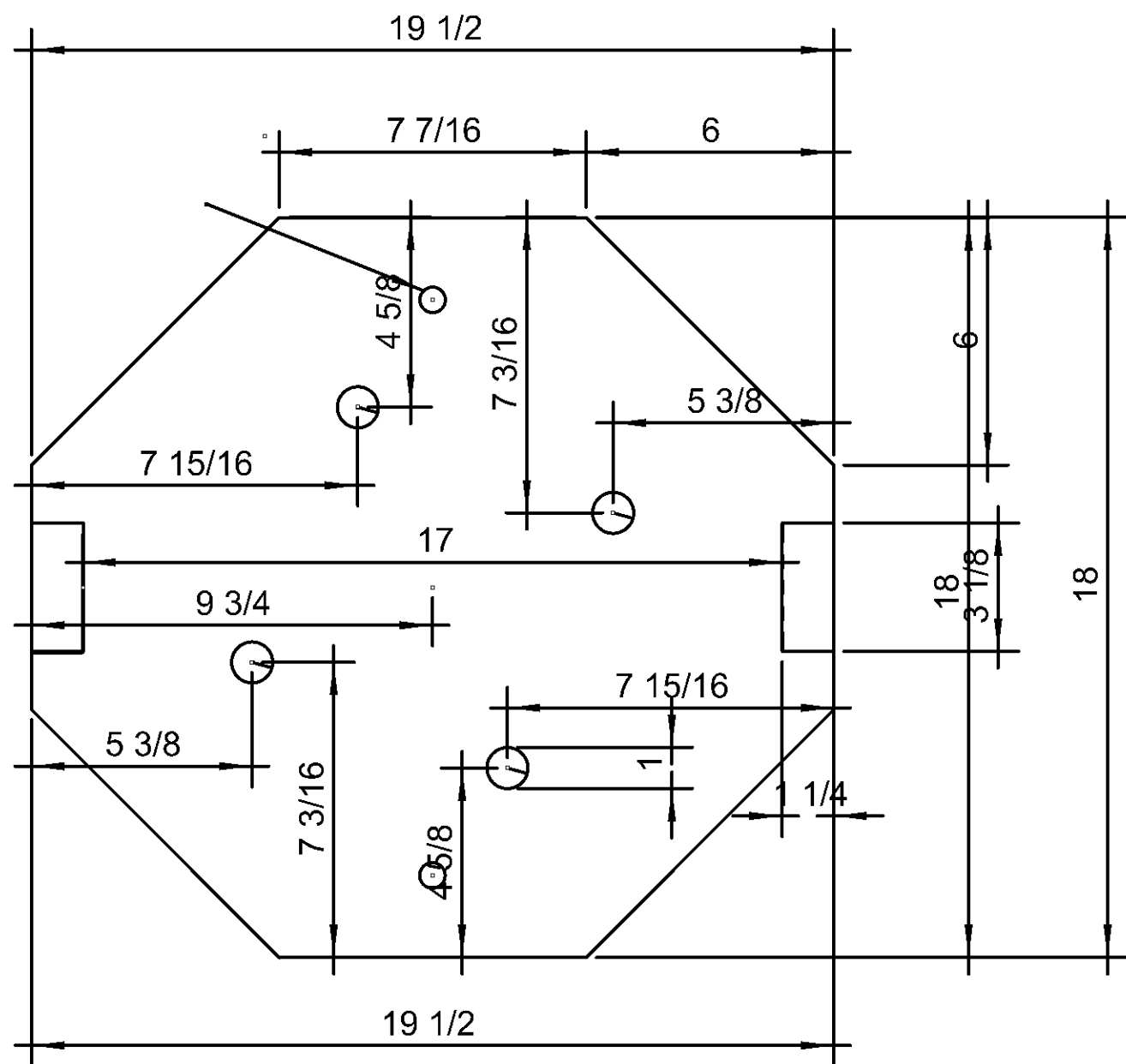
This material was produced with assistance from the Historic Preservation Fund, Administered by the National Park Service, Department of the Interior under Grant Number P22AF00504. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the Department of the Interior.



P6 cut 12"
1.44" below concrete

P8 cut 12.38"
1" below concrete

LINCOLN PARK FENCE POST BASES



APPROX. SCALE 1/4"IN. = 1 IN.



M
PAR
10:30
7:00

P
←

SPEED
LIMIT
25











Memorandum of Understanding Between
City of Portland
and
Friends of Lincoln Park
Project: Lincoln Park Fence Restoration, Pearl Street

WHEREAS, the City of Portland (“City”) is a municipality under the laws of the State of Maine with a principal location at 389 Congress Street, Portland, Maine 04101; and

WHEREAS, the Friends of Lincoln Park (“Friends”) is a non-profit corporation under the laws of the State of Maine with a mailing address of 168 York Street, Portland, Maine 04101; and

WHEREAS, the restoration of Lincoln Park was identified as a priority project by the City and the Friends; and

WHEREAS, the purpose of this Memorandum of Understanding (“MOU”) is to address the City and the Friends’ collaboration to restore the historic Lincoln Park Fence along Pearl Street; and

WHEREAS, the City adopted a Landscape Rehabilitation Plan in 2014 to guide rehabilitation of this significant Historic Landscape; and

WHEREAS, the City was awarded a Certified Local Government (“CLG”) Grant of \$30,000 by the Maine Historic Preservation Commission (“MHPC”) and was gifted \$20,000 by the Friends in 2022 to support Phase 1 of the restoration of the Lincoln Park Fence along Pearl Street; and

WHEREAS, the City successfully completed Phase 1 which included purchase of supplies and development of surveys, models, and design details necessary to restore the Lincoln Park Fence along Pearl Street; and

WHEREAS, the City is currently seeking funds for the cost of Phase 2 of restoration of the Lincoln Park Fence along Pearl Street, which includes complete restoration of the northern half of the fence along Pearl Street. The estimated cost for this work is \$67,569; and

WHEREAS, the City was awarded a CLG Grant of \$30,000 by the MHPC in 2024 to support Phase 2 of the restoration of the Lincoln Park Fence along Pearl Street which is attached hereto as Exhibit A; and

WHEREAS, the CLG Grant requires the City to produce matching funds in the amount of \$37,569; and

WHEREAS, the City has funds in the amount of \$7,569 on hand to satisfy the match required under the CLG Grant agreement; and

WHEREAS, the Friends is willing to give the City funds in the amount of \$30,000 to complete satisfaction of the match required under the CLG Grant agreement; and

WHEREAS, the City is currently seeking funds for the cost of Phase 3 of restoration of the Lincoln Park Fence

along Pearl Street, which includes complete restoration of the southern half of the fence along Pearl Street. The estimated cost for this work is \$60,767; and

WHEREAS, the Friends is willing to give the City additional funds in the amount of \$60,000 towards completing Phase 3 of restoration of the Lincoln Park Fence along Pearl Street; and

WHEREAS, the City has funds in the amount of \$767 to cover the remaining cost of Phase 3 of restoration of the Lincoln Park Fence along Pearl Street;

NOW THEREFORE, in consideration of the following, including the above recitals which are incorporated herein, the City and Friends hereby agree as follows:

1. The City shall commit funds in the amount of \$7,569 to cover the required matching funds of the CLG Grant;
2. The Friends shall provide the City funds in the amount of \$30,000 to cover the remainder of the required matching funds of the CLG Grant immediately upon execution of this MOU;
3. The City shall commit funds in the amount of \$767 to complete Phase 3 of the of restoration of the Lincoln Park Fence along Pearl Street;
4. The Friends shall provide the City additional funds in the amount of \$60,000 to complete Phase 3 of the of restoration of the Lincoln Park Fence along Pearl Street immediately upon execution of this MOU;
5. The City will apply the funds to the cost of the restoration of the Lincoln Park Fence along Pearl Street which will be conducted at the sole discretion of the City in accordance with the City Code and State law requirements including, but not limited to, the City's Site Plan and Historic Preservation Ordinances and in accordance with the Landscape Rehabilitation Plan;
6. The City agrees to pursue additional funding including, but not limited to, capital improvement funds, grants, in-kind services, and/or other financial sources, to continue the restoration of the Lincoln Park Fence along Federal Street, beyond the work covered by the CLG Grant and this MOU;
7. This agreement represents the entire agreement between the Friends and the City with regard to the gift of \$90,000 in funds to be applied toward the complete restoration of the Lincoln Park Fence along Pearl Street and supersedes and replaces all terms and conditions of any prior agreements, arrangement, negotiations and/or representations.
8. This agreement may not be modified except for in writing executed by the Friends and the City.

Seen and Agreed to this ____ day of _____, 2024.

WITNESS

Friends of Lincoln Park

Frank E. Reilly, President, Board of Directors

WITNESS

City of Portland

Danielle P. West, City Manager

Approved by Corporation Counsel

Approved by Finance Director

MEMORANDUM
City Council Agenda Item

FROM:

DATE: August 23, 2024

SUBJECT: Order 43-24/25 Amendment to the Portland City Code Chapter 6 RE: National Electric Code - Sponsored by Danielle P. West, City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

**Final
Action**

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: No

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

Effective July 1, 2024, the Electrician's Examining Board adopted the 2023 edition of the National Electrical Code ("NEC"), as well as a revised Chapter 120 of the Board rules which sets the amendments and exclusions to the 2023 NEC. Section 6-98 of the City Code has adopted the 2020 edition of the NEC, and the proposed change updates the version of the NEC adopted by the City to conform to State requirements.

This item must be read on two separate days. It received its first reading on August 19. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Amendment Ch 6 - Electric Code

Prepared by:

Date: 08/23/2024

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6 RE: NATIONAL ELECTRIC CODE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That the Section 6-98 of the Portland City Code Chapter 6
is hereby amended to read as follows:*

DIVISION 2. - BUILDING STANDARDS

Sec. 6-98. Adoption of standardized codes.

(a) The City hereby adopts the following codes by reference,
pursuant to 30-A M.R.S. § 3003:

1. The Maine Uniform Building and Energy Code ("MUBEC"), as
required by 10 M.R.S. § 9724;
2. The appendix to the Maine Uniform Building and Energy
Code ("MUBEC") containing optional energy conservation
and efficiency requirements, as provided by 10 M.R.S.
§9722, sub-§6, ¶10; and
3. The National Electric Code (2023~~2020~~) ("NEC").

(b) MUBEC and the appendix to MUBEC containing optional energy
conservation and efficiency requirements shall be enforced by the
building authority, which shall be accomplished through
inspections performed by the City building official and code
enforcement officers, pursuant to 25 M.R.S. § 2373.

(c) To the extent that any standard or provision of MUBEC
conflicts with any standard or provisions from the appendix to

MUBEC containing optional energy conservation and efficiency requirements, the standard or provision contained in the appendix shall control and be enforced by the building authority, as provided above.

(d) The NEC shall be enforced by the building authority.

MEMORANDUM
City Council Agenda Item

FROM: Greg Watson, Director
DATE: August 22, 2024
SUBJECT: Order 44-24/25 Approving Assignment of the Lease Agreement and the Agreement
RE: Parking at the Spring Street Garage Held by Portland Hockey LLC to Powerplay
LLC - Sponsored by Danielle P. West, City Manager

SPONSOR: Danielle P. West, City Manager
(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st Reading 9/4/2024

Final Action 9/4/2024

Can action be taken at a later date: No

Does this item involve a new contract with the City: Yes. The Assignment document attached has been reviewed by Corporation Counsel.

PRESENTATION: Greg Watson, 3 Minutes

I. SUMMARY

With the impending purchase of Portland Hockey, LLC, by Powerplay, LLC, this would assign these Agreements to Powerplay, LLC.

II. AGENDA DESCRIPTION

This item would authorize the assignment of the Lease Agreement and the Agreement Re: Parking at Spring Street Garage from Portland Hockey, LLC, to Powerplay, LLC under the same terms and conditions of the original agreements.

The City entered into these Agreements with Portland Hockey, LLC, on April 1, 2018, and, with the impending purchase of Portland Hockey, LLC, by Powerplay, LLC, it is being recommended that these Agreements be assigned to Powerplay, LLC, under the same terms and conditions of the original Agreements as follows:

Lease Agreement Highlights: The term is up to fifteen years, with rental starting at \$2.00 per square foot, or \$4,830 annually, and ending at \$8.00 per square foot in years 12 to 15, or \$19,320 annually.

Agreement Re: Parking at Spring Street Garage Highlights:

- The term is up to fifteen years to match the space Lease and Maine Mariners Lease with the Cross Insurance Arena.
- The game night parking rate was \$8.00 per car for the 2018/2019 hockey season, which may be adjusted thereafter by mutual agreement.
- Revenue Share: For the first seven (7) years, the team to receive game day revenue minus security and City staff expenses. Starting year eight (8), game day revenue will be the lessor of the average Revenue Share for the sixth and seventh year or all parking garage revenue minus security and City staff expenses. This approach is designed to increase the City's share starting in year eight if game attendance increases from previous years six and seven.
- Game Use of Garage: Team players, coaches, and staff will receive complimentary parking passes for hockey related activities.

- Season Tickets: Maine Mariners to provide the City four season tickets at no cost.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

See above.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intended result is to provide continuation of the Agreements at the Spring Street Garage for the Maine Mariners.

V. FINANCIAL IMPACT

There is no financial impact to assign these documents.

VI. STAFF ANALYSIS AND BACKGROUND

Staff finds that this would be beneficial to both parties to assign the agreements for continuous use of both the office and parking space at the Spring Street Garage.

VII. RECOMMENDATION

Staff recommends approval of the assignment of the Agreements at the Spring Street Parking Garage.

VIII. LIST ATTACHMENTS

1. Order - Authorizing Assignment of the Lease, Parking, and Parking Revenue Sharing Agreements from Portland Hockey, LLC to the Maine Mariners, LLC
2. Consent to Assignment for CC 9-4-2024MG
3. Portland Hockey LLC_94 Free St_Lease_04.01.2018
4. Portland Hockey LLC_Parking at Spring Street Garage_04.01.2018

Prepared by:

Greg Watson, Director

Date: 08/22/2024

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

**ORDER APPROVING ASSIGNMENT OF THE LEASE AGREEMENT AND THE
AGREEMENT RE: PARKING AT THE SPRING STREET GARAGE HELD BY
PORTLAND HOCKEY, LLC TO POWERPLAY LLC**

ORDERED, that the City Council hereby consents to the assignment of the Lease Agreement and Agreement Re: Parking at the Spring Street Garage held by Portland Hockey, LLC to Powerplay, LLC in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or designee to execute said document and any other related documents necessary or convenient to carry out the intent of said document.

Danielle P. West, City Manager
City of Portland
389 Congress Street
Portland, ME 04101

September____, 2024

Re: Consent to assignment of (i) that certain Lease Agreement, dated as of April 1, 2018, by and between Portland Hockey, LLC (the "Company") and the City of Portland (the "City") (the "Lease"), and (ii) that certain Agreement re: Parking at Spring Street Garage, dated as of April 1, 2018, by and between the City and the Company (the "Parking Agreement" and together with the Lease, the "Agreements").

Dear Danielle:

The Company and Powerplay LLC (the "Buyer") have entered into an Asset Purchase Agreement dated July 19, 2024 (the "Purchase Agreement") for the sale (the "Sale") of substantially all of the Company's assets (the "Assets"), including, but not limited to, the assets related to the hockey team known as the Maine Mariners (the "Team") and its franchise/membership rights in the ECHL.

In connection with the Sale, we kindly request the City's consent to the assignment of the Agreements by the Company to the Buyer. For the avoidance of doubt, and to extent necessary to permit the assignment of the Agreements by the Company to the Buyer, the Company and the City agree that the Agreements are hereby amended to allow such assignment. Please indicate the City's consent by signing in the space provided below and returning a countersigned copy of this letter by email as soon as possible to: John.Master@comcastspectacor.com.

Upon the Company's receipt of a countersigned copy of this letter, the City hereby consents to the assignment of the Agreements by the Company to the Buyer effective upon the closing of the Sale. The foregoing consent (i) is valid only if the closing of the Sale occurs, (ii) is expressly limited to the assignment to and the assumption by the Buyer of the Agreements in connection with the Sale, and (iii) will not be deemed to be a consent to any further assignment of the Agreements thereafter.

The Company shall promptly notify the City: (i) in the event that the parties to the Sale no longer intend to consummate the Sale, in which case this letter will be null and void and withdrawn as of such notification, or (ii) of the date that the Sale is consummated.

Except as otherwise provided in this letter, nothing in this letter shall be construed as a waiver by either party of any rights under the Agreements, and each party expressly reserves all rights and remedies under the Agreements. This letter shall be binding upon the parties and their respective successors and assigns. Upon the closing of the Sale, the Agreements will continue in full force and effect in accordance with their terms.

By executing this letter agreement below, Buyer hereby acknowledges and agrees that from and after the closing of the Sale, Buyer will be bound by all of the terms and conditions of and will assume all of the Seller's obligations under the Agreements. If you have any questions regarding the foregoing, please do not hesitate to contact us. We ask that you treat the existence of the Sale as confidential and not disclose the Sale to any third parties. Thank you for your prompt attention to this matter.

[Signature page follows]

Sincerely,

PORTLAND HOCKEY, LLC

By: _____

Name: John Master

Title: EVP, Chief Legal and Strategy Officer

Acknowledged and agreed as of the date set forth above:

CITY OF PORTLAND

By: _____

Name: Danielle P. West

Title: City Manager

POWERPLAY LLC

By: _____

Name:

Title:

cc: Parking Manager
City of Portland
389 Congress Street
Portland, ME 04101

Corporation Counsel
City of Portland
389 Congress Street
Portland, ME 04101

LEASE AGREEMENT

This Lease is made as of the 15th day of April, 2018, by and between PORTLAND HOCKEY, LLC, a limited liability company organized and existing under the laws of the State of Delaware, having a place of business at 94 Free Street, Portland Maine (hereinafter referred to as "Tenant"), and CITY OF PORTLAND, a Maine Municipality having its principal place of business at 389 Congress St., Portland, Maine (hereinafter sometimes referred to as "Landlord" and sometimes as "City").

WHEREAS, the Tenant owns an East Coast Hockey League team, which leases use of the Cross Insurance Arena for practices, games and other team-related activities under a Hockey Lease Agreement dated June 13, 2017 ("Hockey Lease") between Tenant and Cross Insurance Arena (A.K.A. Cumberland County Civic Center) of Portland, Maine; and

WHEREAS, Tenant is in need of office space; and

WHEREAS, Landlord owns real property located at 94 Free Street, Portland, Maine, which is a portion of the Spring Street Building/Garage described below (said portion hereinafter referred to as "Premises"), and desires to lease said Premises to Tenant upon certain terms and conditions set forth herein; and

WHEREAS, Landlord has sufficient right, title and interest in and to the real property, together with the facilities, easements, rights, licenses, and privileges hereinafter granted, and has full power and authority to enter into this Agreement in respect thereof;

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein contained, the sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Premises.

Landlord does hereby lease, demise and let unto Tenant certain portions of the City Building/Garage at 94 Free Street in Portland, Maine, namely the 2,415+/- sq. ft. office space on the first floor of said Garage generally depicted on the diagram attached hereto as Exhibit A, incorporated herein by reference, subject to the conditions and covenants hereinafter provided. Tenant agrees to accept the Demised Premises in "as is" condition without representation or warranty by Landlord as to its condition or fitness for a particular purpose.

2. Term.

- a. The term of this Lease shall commence April 1, 2018, (the "Commencement Date") and thereafter shall run concurrent with the term of the Hockey Lease such that, subject to the early termination rights set forth

herein, this Agreement shall expire upon expiration or termination of the Hockey Lease.

- b. Any holding over by Tenant at the expiration or earlier termination of this Lease or any extension thereof shall not constitute a renewal of the Lease, but at Landlord's election such holding over shall result in a tenancy-at-will from month to month at the same rent in effect at the expiration of the Lease.

3. Rent.

- a. For the first three years of the lease, the Tenant shall pay to the Landlord as Annual Rent hereunder the sum of Four Thousand Eight Hundred Thirty Dollars NNN (\$4,830).
- b. If the term of the lease is still in effect, the rent for years 4-15 shall be as set forth in the schedule below:
 - i. Years 4-7: \$12,075 annually;
 - ii. Years 8-11: \$14,490 annually;
 - iii. Years 12-15: \$19,320 annually.
- c. This annual rent shall be paid in advance on or before the 1st of each month in twelve (12) monthly installments, and prorated for the fraction of any month.

4. Parking

No parking is included in this Lease. If Tenant's employees desire to park in the Spring Street Parking Garage, or any other City parking facility, they shall be responsible for paying the applicable market rate for all such parking, subject to any other agreements reached between the parties.

5. Obligations of Landlord.

The Landlord shall provide, at Landlord's expense the following services:

- a. Maintenance and repair of the roof, exterior walls and structure of the building of which the Premises are a part, reasonable wear and tear, damage by fire and other casualty only excepted. Provided, however, that if such maintenance or repair is made necessary by fault or neglect of the Tenant or the employees, contractors, agents or invitees of Tenant, such maintenance or repair shall be at the expense of the Tenant and Tenant shall pay all costs therefor.

- b. Maintenance of any Building common areas and any exterior Building grounds and all walkways, including snow and ice removal from the Municipal Parking Garage.
- c. If, during the term of the Lease, it becomes necessary to replace the HVAC system existing in the Premises at the commencement of this Lease, Tenant may do so in its discretion, and, if Tenant decides to do so, Landlord shall contribute the lesser of (1) 50% of documented expenses for a replacement HVAC system or (2) \$5,000.00.
- d. Except as specifically set forth herein, Landlord shall have no obligation to maintain, repair, or replace any aspect of the Premises.

6. Obligations of Tenant.

The Tenant, at the Tenant's sole expense shall:

- a. Determine all zoning information and secure all necessary or required permits and approvals for its proposed use of the Premises. Landlord makes no representations or warranties as to the suitability of, or the ability to obtain regulatory approval for the Premises for Tenant use.
- b. Subject to Landlord's obligations above, provide all HVAC Mechanical Equipment and Fit-up Improvements and be responsible for the cost of any modifications to existing mechanical equipment to serve the Premises along with any fit-up improvements.
- c. Submit any and all intended modifications to the Premises to Landlord for its approval prior to commencement of work. Tenant agrees that all work shall be completed in compliance with all applicable state and municipal building codes and ordinances.
- d. Maintain and keep in good repair (normal wear and tear and damage by fire and other casualty excepted) all aspects of the Premises, including windows and doors, air conditioning/heating system, plumbing, electrical and communication lines, as well any portions of such utility systems used exclusively for the Premises and located in the Building/Garage but outside the Premises. Casualty damage to windows and doors shall be the responsibility of the Tenant.
- f. Properly bag and remove all trash and garbage.
- g. Provide and be responsible for all cleaning and janitorial services within the Premises (only), including the cleaning of exterior windows for the Premises.

- h. Pay and be responsible for all costs associated with utilities pertaining to the Premises including but not limited to all expenses relating to its use of telephone/communication services, internet, electricity, gas, heat, cooling, water and sewer and any submeters required for those utilities.
- i. Replace rugs and repaint the Premises if and when it chooses in its sole discretion.
- j. Tenant shall make no improvements to Premises without prior written approval of Landlord.

7. Use of Premises.

During the term of this Lease, the Premises may be used by Tenant for office and retail space and for no other purposes. Tenant must at all times comply with all applicable federal, state, and local laws, ordinances, codes, regulations and other requirements in its use of the Premises.

8. Assignment/Subletting.

Tenant shall not be permitted to assign this lease or sublet space without the express written consent of Landlord.

9. Casualty Damage.

- a. If the Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty not caused by the Tenant's use of the Premises, so that the same shall be thereby rendered unfit for use, then, and in such case, the Rent hereinabove stated or a just and proportional part thereof, according to the nature and extent of injuries sustained, shall be suspended or abated, until the Premises shall have been put in proper condition for use by Landlord. Provided, however, in the event that restoration is not reasonably possible within ninety (90) days after the occurrence of such damage or destruction, then either Landlord or Tenant shall have the right to terminate this Lease by giving the other party written notice of such termination within thirty (30) days after such damage or destruction, and upon the giving of such notice, the term of this Lease shall cease and come to an end as of the date of such damage or destruction and any unearned rent shall be returned to Tenant.
- b. Tenant shall be responsible for covering the equipment and supplies with such property and casualty insurance as it deems necessary and Landlord shall have no responsibility therefor. Tenant assumes all risk of damage, loss or casualty to Tenant's property, equipment and/or supplies while located at the Premises, even if the cause of such damage is the result of the negligent act or omission of Landlord, its officers or employees. Tenant

shall defend, indemnify and hold the Landlord harmless from any claim arising out of or relating to any damage, loss or casualty to its property, equipment and/or supplies while at the Premises. Any casualty insurance obtained by Tenant for its property, equipment or supplies at the Premises shall include a waiver of subrogation against the Landlord.

10. Return of Premises; Trade Fixtures.

Tenant, at the expiration of the Lease term or earlier termination of this Lease, shall peaceably yield up to Landlord the Premises including any renovations or leasehold improvements installed by Tenant during the term hereof, in good repair in all respects, reasonable use and wear and damage by fire and all other unavoidable casualties excepted. Tenant shall have the right to remove all trade fixtures, equipment and other personal property installed or placed by it at its expense in, on or about the Premises; provided, however, all damage caused by or as a result of such removal shall be repaired by Tenant.

11. Signage.

Tenant, at its sole expense, shall have the right to erect a sign on the Building provided it obtains all necessary permits and approvals. Final design and location of exterior signs shall be subject to Landlord's written approval, which approval shall not be unreasonably delayed or withheld, and shall be in accordance with all local and state governmental laws, ordinances, codes and regulations.

12. Insurance.

The Tenant will maintain at all times during its use and occupancy of the Premises adequate occurrence-based insurance coverage of not less than Two Million Dollars (\$2,000,000) per occurrence for commercial general liability including personal injury and property damage; workers compensation insurance in the amount required by Maine law, including a waiver of subrogation rights; and occurrence-based fire legal liability insurance in the minimum amount of Two Million Dollars (\$2,000,000). The minimum limit may be satisfied through the use of primary and excess/umbrella policies, provided that the excess/umbrella policies will not be more restrictive than the primary policies.

The Tenant shall furnish the Landlord with certificates of insurance indicating compliance with this paragraph in a form satisfactory to Landlord. The certificates shall provide that the coverage may not be cancelled without thirty (30) days advance notice of cancellation to the Landlord, and the Landlord shall be named as an additional insured on all liability policies, but only to the extent caused by, or resulting from, the negligent acts, operations, or omissions of Tenant, its officers, agents, employees, invitees and/or contractors. Liability insurance coverage shall also extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, to the extent caused by, or resulting from negligent

acts, operations, or omissions of Tenant, its officers, agents, employees, invitees, and/or contractors. Tenant shall be responsible for any and all deductible and self-insured retentions under its policies. Tenant's policies shall be primary and any of Landlord's insurance policies shall be noncontributory.

13. Indemnity.

- a. General. To the fullest extent permitted by law, Tenant shall at its own expense defend, indemnify, and hold harmless the Landlord, its officers, agents, and employees from and against any and all liability, claims, damages, penalties, losses, expenses, or judgments, just or unjust, arising from injury or death to any person, or damage to property sustained by anyone (including but not limited to Landlord employees or property), including but not limited to claims based upon violation of any environmental law or regulation pertaining to hazardous substances, except to the extent that such claims are caused by a negligent act or omission of the Landlord, its officers, agents, servants or employees.

Tenant shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against Landlord or in which Landlord may be impleaded with others upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which Landlord is a party, Landlord shall have the right to participate at its own discretion and expense and no such suit or action shall be settled without prior written consent of Landlord. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to Landlord which would otherwise exist.

Without limiting the foregoing, to the fullest extent permitted by law, Tenant hereby agrees to assume all risk of injury, harm or damage to any person or property (including but not limited to all risk of injury, harm or damage to Tenant's officers, agents, employees, contractors, customers or invitees or to their property) arising out of, during, or in connection with the rental or use of the Premises or any portion thereof and the activities hereunder which injury, harm or damage is alleged to be related to the presence of mold at or in the Premises, and to defend, indemnify and hold the Landlord harmless from any such liability, claims, damages, losses or expenses.

- c. Covenant against liens: Tenant shall not cause or permit any lien against the Landlord's property or any improvements thereto to arise out of or accrue from any action or use thereof by Tenant and shall hold the Landlord harmless therefrom; provided, however, that Tenant may in good faith contest the validity of any alleged lien. Upon request of the Landlord,

Tenant shall post a bond warranting payment of any such lien in the event Tenant contests such lien.

- d. Survival. The Terms of this Section shall expressly survive the expiration or termination of this Agreement.

14. Covenants of Landlord.

Landlord covenants that it is the owner in fee of the Premises and can and will provide quiet enjoyment of the Premises during the original and any extended terms of the Lease, and that the Lease is signed by a duly authorized individual.

15. Default.

- a) The occurrence of any of the following shall be an event of default under this Lease (each, an "Event of Default"):
 - i) Failure of Tenant to pay rent, or any other amount due hereunder, within 10 days after the due date for such payment.
 - ii) Failure of a Party to perform any obligations or comply with any terms or conditions under this Lease (other than a payment default described in subsection (i) above) and such failure continues for a period of fifteen (15) days from such Party's receipt of written notice from the other Party; provided, however, that if such failure to perform a material obligation is not capable of being cured within fifteen (15) days from receipt of written notice, then such period shall be extended, provided that the defaulting Party commences to cure such failure within thirty (30) days and thereafter diligently continues to cure such failure to completion.
 - iii) Either Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect.
- b) Upon a party's default and failure to cure, the other party shall have the right, at its option, and in addition to any other remedies, to terminate this Lease by giving the party in default written notice thereof and upon the giving of such notice, this Lease and the term hereof shall cease.
- c) Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in accordance with the provisions of hereof. If this lease is terminated due to a Tenant uncured default, Tenant shall remain liable to Landlord for all Rent accrued and unpaid up to the date of such termination, as well as all Rent for the remainder of the term as and when it shall come due. Tenant shall pay all reasonable costs, expenses, liabilities, losses, damages, fines, penalties, claims, and

demands, including reasonable attorneys' and consultants' fees, that are incurred by Landlord in enforcing the provisions of this Lease.

16. Notices.

Any notice required to be given under this Lease shall be in writing and shall be hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the parties as stated below or such other address as either party may designate in writing to which its future notices shall be sent.

To Tenant:

Portland Hockey, LLC
94 Free Street
Portland, ME 04101
Attn: General Manager

To Landlord:

City Manager
City of Portland
389 Congress Street
Portland, Maine 04101
cc: Parking Manager, same address
Corporation Counsel, same address.

17. Amendment.

Both parties hereto acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties except such as are expressed herein. The terms of this Lease may be modified or amended by the mutual assent of the parties hereto; provided, however, that no such modification or amendment to this Lease shall be binding until in writing and signed by both parties.

18. Inspection and Entry.

The Landlord and/or its agents, may, with reasonable notice, enter to view, show and make any repairs or inspection of the Premises. The Landlord shall have the right of immediate entry without notice in the event of any emergency or if the Tenant fails to pay rent, commits waste, or otherwise fails to comply with terms and conditions hereof.

19. Entire Agreement.

This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes any and all prior agreements and commitments with respect thereto. There are no oral or written understandings, warranties, terms or conditions, and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

20. Severability.

Any term or provision of this Agreement that is or becomes invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining term and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

21. Successors Bound.

The terms, covenants and agreements herein contained shall be for the benefit of and be obligatory upon the heirs, successors and assigns of the respective parties hereto.

22. Termination For Convenience.

Either party may terminate this Lease on one hundred eighty (180) days' written notice to the other. Upon the effective date of such notice, the Lease shall be terminated with no further obligations hereunder.

23. Governing Law; jurisdiction.

This Lease shall be governed by and construed in accordance with the laws of the State of Maine. All disputes hereunder which are not mutually resolved shall be resolved by trial without a jury in the Courts of Cumberland County, State of Maine.

24. Force Majeure.

Neither Tenant nor Landlord shall be deemed in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, acts of God, war, acts of superior governmental authority or other reason over which it has no control; provided, however, that the suspension of performance shall be no longer than that required by the force majeure and the party prevented from performance has given written notice thereof to the other party.

25. Counterparts.

This Agreement may be signed in any number of counterparts, which, together, shall represent a fully executed original as if signed by both Parties.

26. Non-Waiver.

No waiver of any breach of any one or more of the conditions of this Lease by the Landlord or Tenant shall be deemed to imply or constitute a waiver of any

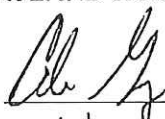
succeeding or other breach hereunder. Nothing in this Agreement constitutes a waiver of any defense, immunity or limitation of liability that may be available to the Landlord, or its officers, agents or employees under the Maine Tort Claims Act (Title 14 M.R.S.A. 8101 et. seq.), and nothing in this Agreement shall constitute a waiver of other privileges or immunities that may be available to the Landlord.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the day and year first above written.

WITNESS:



PORTLAND HOCKEY, LLC

By: 

Name: Adam Goldberg

Its: VP Business Operations

CITY OF PORTLAND



By: 

Jon P. Jennings
Its City Manager

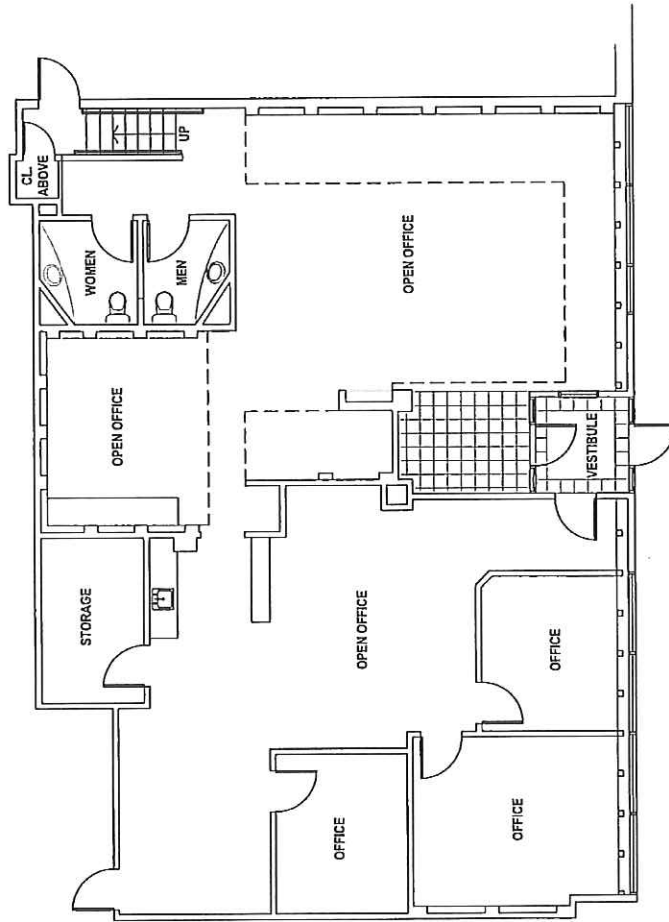
Approved as to form:


City Corporation Counsel's Office

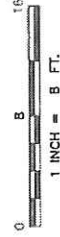
Approved as to funds:


City Finance Director

EXHIBIT A - DIAGRAM OF PREMISES



FREE STREET



02.01.2018

CANAL STUDIO	Scale	Project # 140
	1/8" = 1'-0"	
	CSA Project No.	
	2018	

Date: 02.01.2018
 Project: 140
 Project: 140

EXISTING CONDITIONS
94 FREE STREET - PORTLAND, ME



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
03/05/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Central, Inc. Philadelphia PA Office One Liberty Place 1650 Market Street Suite 1000 Philadelphia PA 19103 USA	CONTACT NAME: <i>Kimberly</i>	
	PHONE (A/C. No. Ext): (215) 255-2000	FAX (A/C. No.): (215) 255-1893
INSURED Comcast Spectacor, LLC Portland Hockey, LLC 3601 South Broad Street Philadelphia PA 19148 USA	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
	INSURER A: Allied World National Assurance Company 10690	
	INSURER B:	
	INSURER C:	
	INSURER D:	
INSURER E:		
INSURER F:		

COVERAGES**CERTIFICATE NUMBER:** 570070372372**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR VWD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)
							MED EXP (Any one person)
							PERSONAL & ADV INJURY
							GENERAL AGGREGATE
							PRODUCTS - COM/OP AGG
	GEN'L AGGREGATE LIMIT APPLIES PER:						
	☐ POLICY ☐ PRO-JECT ☐ LOC						
	OTHER:						
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)
	☐ ANY AUTO						BODILY INJURY (Per person)
	☐ OWNED AUTOS ONLY	☐ SCHEDULED AUTOS					BODILY INJURY (Per accident)
	☐ HIRED AUTOS ONLY	☐ NON-OWNED AUTOS ONLY					PROPERTY DAMAGE (Per accident)
A	☒ UMBRELLA LIAB ☒ EXCESS LIAB	☒ OCCUR ☐ CLAIMS-MADE		03067857	03/30/2017	03/30/2018	EACH OCCURRENCE \$2,000,000
	☐ DED ☒ RETENTION \$10,000						AGGREGATE \$2,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE ☐ OTH-ER ☐
	ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	☐ Y/N ☒ N/A					E.L. EACH ACCIDENT
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE-EA EMPLOYEE
							E.L. DISEASE-POLICY LIMIT

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder is included as an Additional Insured under the policy provisions of the Umbrella Liability Policy.

CERTIFICATE HOLDER**CANCELLATION**

City of Portland 389 Congress St. Portland ME 04101 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Aon Risk Services Central, Inc.</i>

Holder Identifier :

Certificate No : 570070372372



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
03/05/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Central, Inc. Philadelphia PA Office One Liberty Place 1650 Market Street Suite 1000 Philadelphia PA 19103 USA	CONTACT NAME:	
	PHONE (A/C. No. Ext): (215) 255-2000	FAX (A/C. No.): (215) 255-1893
INSURED Comcast Spectacor, LLC Portland Hockey, LLC 3601 South Broad Street Philadelphia PA 19148 USA	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
	INSURER A: The Phoenix Insurance Company 25623	
	INSURER B: The Travelers Indemnity Co. 25658	
	INSURER C:	
	INSURER D:	
	INSURER E:	
INSURER F:		

COVERAGES**CERTIFICATE NUMBER:** 570070372369**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)
							MED EXP (Any one person)
							PERSONAL & ADV INJURY
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE
	☐ POLICY ☐ PROJECT ☐ LOC						PRODUCTS - COM/OP AGG
	OTHER:						
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)
	☐ ANY AUTO						BODILY INJURY (Per person)
	☐ OWNED AUTOS ONLY	☐ SCHEDULED AUTOS					BODILY INJURY (Per accident)
	☐ HIRED AUTOS ONLY	☐ NON-OWNED AUTOS ONLY					PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB	☐ OCCUR					EACH OCCURRENCE
	EXCESS LIAB	☐ CLAIMS-MADE					AGGREGATE
	☐ DED ☐ RETENTION						
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			TC2NUB6E00609117	03/30/2017	03/30/2018	X PER STATUTE ☐ OTH-ER
B	ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	☐ Y ☒ N	N/A	TRKUB6E00610917	03/30/2017	03/30/2018	E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

A Waiver of Subrogation is granted in favor of the Certificate Holder in accordance with the policy provisions of the Workers' Compensation policy.

CERTIFICATE HOLDER**CANCELLATION**

City of Portland 389 Congress St. Portland ME 04101 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Aon Risk Services Central, Inc.</i>

Holder Identifier :

Certificate No : 570070372369



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
01/30/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Aon Risk Services Central, Inc.
Philadelphia PA Office
One Liberty Place
1650 Market Street
Suite 1000
Philadelphia PA 19103 USA

CONTACT
NAME:
PHONE
(AC. No. Exl): (215) 255-2000 FAX (AC. No.): (215) 255-1893
E-MAIL
ADDRESS:

INSURED
Comcast Spectacor, LLC
d.b.a Portland Hockey, LLC
3601 South Broad Street
Philadelphia PA 19148 USA

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Philadelphia Indemnity Insurance Company	18058
INSURER B: The Phoenix Insurance Company	25623
INSURER C: The Travelers Indemnity Co.	25658
INSURER D:	
INSURER E:	
INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 570070103502

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY CLAIMS-MADE ☐ OCCUR ☐ GEN'L AGGREGATE LIMIT APPLIES PER: POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMPIOP AGG
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY			PHPK1631419	03/30/2017	03/30/2018	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB EXCESS LIAB DED RETENTION						EACH OCCURRENCE AGGREGATE
B C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	TC2NU86E00609117 TRKUB6E00610917	03/30/2017 03/30/2017	03/30/2018 03/30/2018	X PER STATUTE E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Portland is included as an Additional Insured under the policy provisions of the Automobile Liability policy solely with respects to the Named Insured operations located at 94 Free Street, Portland, ME. A waiver of Subrogation is granted in favor of the certificate Holder in accordance with the policy provisions of the Workers' Compensation policy.

CERTIFICATE HOLDER

CANCELLATION

City of Portland
389 Congress St.
Portland ME 04101 USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Aon Risk Services Central, Inc.

Holder Identifier :

Certificate No : 570070103502

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ACORD 25 (2016/03)

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Philadelphia Indemnity Insurance Company

Additional Insured Schedule

Policy Number: PHPK1631419

Additional Insured

Blanket Additional Insureds as required
by agreement or lease

X

X

X, PA x-x

CA2001 - Commercial Automobile



**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

ENDORSEMENT WC 00 03 13 (00) -01

POLICY NUMBER: (TC2NUB-6E00609-1-17)

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

SCHEDULE

DESIGNATED PERSON:

DESIGNATED ORGANIZATION:

**ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS
AGREED BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO
FURNISH THIS WAIVER.**

DATE OF ISSUE: 04-25-17

ST ASSIGN:

DATE (MM/DD/YYYY)
2/1/2018

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

CONTACT	Lori Potter
---------	-------------

CONTACT NAME:	Lori Potter	
PHONE (A/C, No, Ext):	603-570-5211	FAX (A/C, No): 855-529-7684
E-MAIL ADDRESS:	lori.potter@safehold.com	

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	NOVA Casualty Company	42552
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

CERTIFICATE NUMBER: 12649215

EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED									
INSR LTR	TYPE OF INSURANCE		ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	☒	COMMERCIAL GENERAL LIABILITY			WSE-CL-0010001-6	03/30/2017	03/30/2018	EACH OCCURRENCE	\$ 1,000,000
	☐	CLAIMS-MADE ☒ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
	☒	Liquor Liability						MED EXP (Any one person)	\$ EXCLUDED
	☐	\$1,000,000 ea. cause/\$2,000,000 Agg						PERSONAL & ADV INJURY	\$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE	\$ NONE
	☐ POLICY	☐ PRO-JECT	☐ LOC					PRODUCTS - COM/OP AGG	\$ 2,000,000
	OTHER:								\$
	AUTOMOBILE LIABILITY							COMBINED SINGLE LIMIT (Ea accident)	\$
	☐	ANY AUTO						BODILY INJURY (Per person)	\$
	☐	OWNED AUTOS ONLY	☐	SCHEDULED AUTOS				BODILY INJURY (Per accident)	\$
	☐	HIRED AUTOS ONLY	☐	NON-OWNED AUTOS ONLY				PROPERTY DAMAGE (Per accident)	\$
	☐		☐						\$
	☐	UMBRELLA LIAB	☐	OCCUR				EACH OCCURRENCE	\$
	☐	EXCESS LIAB	☐	CLAIMS-MADE				AGGREGATE	\$
	☐	DED	☐	RETENTIONS					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY							☐ PER STATUTE	☐ OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?		☐	N/A				E.L. EACH ACCIDENT	\$
	(Mandatory in NH)							E.L. DISEASE - EA EMPLOYEE	\$
	If yes, describe under DESCRIPTION OF OPERATIONS below							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Certificate holder is included as Additional Insured solely as respects their interest in the named insured's lease of property located at 94 Free Street, Portland, ME. Coverage applies as required by written contract and per attached General Liability Extra Endorsement AGL01350408.									
---	--	--	--	--	--	--	--	--	--

City of Portland
389 Congress St.
Portland, ME 04101

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

The ACORD name and logo are registered marks of ACORD © 1988-2015 ACORD CORPORATION. All rights reserved.

ACORD 25 (2016/03)

(This certificate replaces certificate # 12644537 issued on 1/30/2018)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY EXTRA ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

1. EXTENDED PROPERTY DAMAGE

It is agreed that **SECTION I – COVERAGE A.**, paragraph 2. Exclusions a. Expected or Intended is deleted and replaced by the following:

a. Extended Property Damage

"Bodily Injury" or "Property Damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

2. PROPERTY SOLD OR ABANDONED BY YOU

It is agreed that **SECTION I – COVERAGE A.** paragraph 2. Exclusion j.(2) is deleted and replaced by the following:

- (2) Premises you sell, give away, or abandon, if the "property damage" arises out of any part of those premises, and occurred from hazards that were known by you or should have reasonably been known by you, at the time the property was transferred or abandoned.

3. NON OWNED WATERCRAFT

It is agreed that **SECTION I – COVERAGE A.** paragraph 2. Exclusion g.(2) is deleted and replaced by the following:

- (2) A watercraft you do not own that is:

- (a) Less than 52 feet long; and
- (b) Not being used to carry persons or property for a charge;

This provision applies to any person, who with your consent, either uses or is responsible for the use of a watercraft.

This insurance is excess over any other valid and collectible insurance available to the insured whether primary, excess, or contingent.

4. DAMAGE TO PREMISES RENTED TO YOU

- a. It is agreed that **SECTION I – COVERAGE A.** the last paragraph of 2. Exclusions is deleted and replaced by the following:

Exclusions c. through n. does not apply to:

- (1) damage by fire, lightning, explosion, smoke or leaks from automatic fire protective systems; and
- (2) damage caused by a resident;

to premises while rented to you or temporarily occupied by you with the permission of the owner.

- b. It is agreed that paragraph 6. of **SECTION III – LIMITS OF INSURANCE** is deleted and replaced by the following:

6. Subject to 5. above, the Damage to Premises Rented To You Limit is the most we will pay under **COVERAGE A** for damages because of "property damage";

- a. resulting from fire, lightning, explosion, smoke or leaks from automatic fire protective systems, or any combination thereof; and

- b. caused by a resident; to premises, rented to you or temporarily occupied by you with the permission of the owner.

5. BROAD NAMED INSURED

It is agreed that **SECTION II - WHO IS AN INSURED** is amended to include the following:

Any corporation organized under the laws of the United States of America (including any state thereof, its territories or possessions, or Canada (including any province thereof) will qualify as a Named Insured if there is no similar insurance available to that organization, provided that one or more Named Insureds shown in the Declarations has, at the inception of the policy period, an ownership interest in such organization of more than 50%.

6. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

The notification requirements of paragraphs 2.a. and 2.b. of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** apply only when the "occurrence", offense, claim, or "suit" is known to:

- a. You, if you are an individual;
 - b. A partner or member if you are a partnership or joint venture;
 - c. An officer or director if you are an entity other than a partnership, joint venture or limited liability company;
 - d. A member or manager if you are a limited liability company; or
 - e. An insurance manager, risk manager or other "employee" you designate prior to loss to give notice to us.
- Knowledge of an "occurrence," offense, claim, or "suit" by your agent, servant or "employee" shall not in and of itself constitute knowledge to you unless an individual described in items 1. - 5. of this provision G. has actual knowledge.

7. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS OR PRIOR OCCURRENCES

The following is added to Condition 6. **Representations of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

Failure to disclose all hazards or prior "occurrences" or offenses existing as of the inception date of this Coverage Part shall not prejudice the coverage afforded under this Coverage Part, provided such failure to disclose all hazards or prior "occurrences" or offenses is unintentional.

8. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

Condition 8. **Transfer of Rights of Recovery Against Others To Us of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended by adding the following:

We waive any right of recovery we may have against any person or organization when such waiver is required by a written contract that you have agreed to prior to loss.

9. ADDITIONAL INSURED

a. LESSOR OF LEASED EQUIPMENT

- i. **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an insured only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization. A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

- ii. With respect to the insurance afforded these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

b. MANAGERS OR LESSORS OF PREMISES

i. **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person or organization from whom you lease premises when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an insured only with respect to liability arising out of your ownership, maintenance or use of that part of the premises leased to you subject to the following additional exclusions:

ii. With respect to the insurance afforded these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

c. VENDORS

i. **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person or organization (referred to below as vendor) with whom you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

ii. The insurance afforded the vendor does not apply to:

- (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (2) Any express warranty unauthorized by you;
- (3) Any physical or chemical change in the product made intentionally by the vendor;
- (4) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (5) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or.
- (8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (a) The exceptions contained in Sub-paragraphs 4. or 6.; or
 - (b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

iii. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

d. OWNERS, LESSEES OR CONTRACTORS

- i. **SECTION II – WHO IS AN INSURED** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part", by:

- (1) Your acts or omissions; or
 - (2) The acts or omissions of those acting on your behalf;
- in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an insured under this endorsement ends when your operations for that insured are completed.

- ii. With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 - (b) Supervisory, inspection, architectural or engineering activities.
- (2) Bodily injury" or "property damage" occurring after:
 - (a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - (b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

e. **ADDITIONAL INSUREDS – BY CONTRACT, AGREEMENT OR PERMIT**

SECTION II – WHO IS AN INSURED is amended to include as an additional insured:

- (1) Any person or organization is an insured with whom you are required to add as an additional insured to this policy by a written contract, written agreement, or permit that is:
 - (a) currently in effect or becoming effective during the term of this policy; and
 - (b) executed prior to the "bodily injury", "property damage", "personal and advertising injury".
- (2) This insurance provided to the additional insured by this endorsement applies as follows:
 - (a) That person or organization is only an additional insured with respect to liability caused by your negligent acts or omissions at or from:
 - (1) Premises you own, rent, lease or occupy, or
 - (2) Your ongoing operations performed for the additional insured at the job indicated by written contract or written agreement.
 - (b) The limits of insurance applicable to the additional insured are those specified in the written contract or written agreement or in the Declarations of this policy whichever is less. These limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

COMMERCIAL GENERAL LIABILITY

(3) With respect to the insurance afforded these additional insured's, the following additional exclusions apply:

(a) This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (1) all work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
- (2) that portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations on or at the same project.

(b) This insurance does not apply to "bodily injury", "property damage", "personal and advertising injury" caused by the rendering of or failure to render any professional services.

(4) Regardless of whether other insurance is available to an additional insured on a primary basis, this insurance will be primary and noncontributory if a written contract between you and the additional insured specifically requires that this insurance be primary.

10. EXTENDED DEFINITION OF "BODILY INJURY"

The definition of "bodily injury" in **SECTION V – DEFINITIONS** paragraph 3. is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from any of these at any time.

11. EXTENDED DEFINITION OF "PERSONAL AND ADVERTISING INJURY"

The definition of "personal and advertising injury" in **SECTION V – DEFINITIONS** paragraph 14. is amended to include the additional offense of abuse of process.

**AGREEMENT BETWEEN THE
CITY OF PORTLAND
AND
PORTLAND HOCKEY, LLC
RE: PARKING AT SPRING STREET GARAGE**

This **AGREEMENT** is made this 1st day of April, 2018, by and between the **CITY OF PORTLAND**, a body politic and corporate with an address of 389 Congress Street, Portland, Maine 03101 (hereinafter the "**CITY**"), and the **PORTLAND HOCKEY, LLC**, a limited liability company, organized and existing under the laws of the State of Delaware, having a place of business at 94 Free Street, Portland Maine (hereinafter the "**TEAM**").

W I T N E S S E T H:

WHEREAS, the **TEAM** is an East Coast Hockey League team leasing use of the Cross Insurance Arena for practices, games and other **TEAM**-related activities under a Hockey Lease Agreement dated June 13, 2017 ("Hockey Lease") between **TEAM** and Cross Insurance Arena (A.K.A. Cumberland County Civic Center) of Portland, Maine; and

WHEREAS, the **CITY** and **TEAM** are parties to a certain Lease Agreement dated 4/1/18 (the "Lease") for certain space located at 94 Free Street, Portland, Maine, which is a portion of the City's Spring Street Garage (the "Garage"); and

WHEREAS, the City owns and operates the Garage; and

WHEREAS, the **CITY** and **TEAM** desire to enter into an agreement related to parking at the Garage and revenue from Team hockey game attendees during the term of the Lease;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. **Scope:** This Agreement governs the use of the Garage by the **TEAM** and its hockey game attendees during the term of the Lease.
2. **Term and Option to Extend.** The term of this Agreement shall commence on April 1, 2018 (the "Commencement Date") and thereafter shall run concurrent with the term of the Hockey Lease such that this Agreement shall expire upon expiration or termination of the Hockey Lease.
3. **Fees; Revenue Share:** The parking rate for TEAM games shall be \$8.00 per car for the 2018-19 hockey season. Thereafter, such rate may be adjusted subject to the mutual agreement of the **TEAM** and the **CITY**; provided, however, that in the event that the parties do not reach such agreement, the CITY may increase the parking rate in its reasonable discretion after the seventh anniversary of the Commencement Date. During the first seven years of this Agreement, all parking revenue collected at the Garage from TEAM game attendees, net of security expenses and staff expenses incurred by the CITY in operating the Garage during such games, shall be paid to the **TEAM** in arrears on a monthly basis, together with an accounting of such fee (the "Revenue Share"). In the event that this Agreement remains in effect for more than seven years, then, beginning on the seventh anniversary of the Commencement Date of this Agreement, the Revenue Share to be paid to the TEAM for each game will be the lesser of (1) the average of the Revenue Share for the sixth and seventh years of this Agreement on a per game basis (which shall be calculated by dividing the total amount of the Revenue Share for the sixth and seventh years of the Agreement by the total number of home games during the sixth and seventh years of the Agreement), or (2) all parking revenue collected at the Garage from TEAM game attendees, net of security expenses and staff expenses incurred by the CITY in operating the Garage during such games.
4. **Garage Use:**
 - a. People attending the TEAM's regular, pre-season, and playoff games may park at the Spring Street Garage during the term of this Agreement as space allows. Nothing in this Agreement guarantees that any parking spaces will be available in the Garage at any given time for TEAM players, coaches, staff, or the TEAM's game attendees.
 - b. TEAM players, coaches, and staff will receive complimentary parking (hang tags) provided by the TEAM and approved by the CITY's Parking Division for only the following hockey-related activities that the players, coaches, and staff are required to attend:
 - Training camp
 - Team Practices
 - Games

- Physical therapy
- Other team requirements

Players shall not receive complimentary parking for friends, relatives, or any non-hockey uses.

TEAM players, coaches, and staff shall park above Level A in the Garage at all times to provide turn-over parking for garage patrons, as well as customers using the Civic Center Box Office.

Notwithstanding anything to the contrary in this Agreement, except as specifically set forth herein, nothing in this Agreement provides, or is intended to provide, free parking or any parking privileges to the TEAM's employees who work in the TEAM's office space that is the subject of the Lease.

- c. **TEAM's** vehicles may be left in the Garage overnight, but will be retrievable only during the Garage's normal operating hours.
 - d. The TEAM shall create complimentary game day parking hang tags or vouchers for use by TEAM office personnel, the spouses or domestic partners of TEAM players, and others. Such hang tags or vouchers shall be good only on game days from 4 hours before the game until the end of the game. The tags or vouchers shall be subject to approval by the Parking Division. Such tags or vouchers do not guarantee availability of parking spaces, only that if space is available, parking will be complimentary.
 - e. **TEAM** management will reinforce on a regular basis with **TEAM** players and staff that all complimentary parking under this Agreement is a privilege, not a right.
 - f. ALL other parking validated by TEAM including student interns will be billed to the TEAM. The Parking Division will provide the TEAM a validation stamp for this purpose.
5. During the term of this Agreement, the **TEAM** shall provide the equivalent of four season tickets at no charge to **CITY** for promotional use.
 6. **Assignment.** This Agreement and the rights hereunder may not be assigned.
 7. The **CITY** shall be solely responsible for operating the Garage and TEAM shall have no liability for any claims, costs, lawsuits or liabilities arising out of the City's operation of the Garage.

IN WITNESS WHEREOF, the said CITY OF PORTLAND has caused this Agreement to be signed and sealed by Jon P. Jennings, its City Manager, thereunto duly authorized and PORTLAND HOCKEY, LLC has caused this Agreement to be signed and sealed by Adam Goldberg, its VP Business Ops, thereunto duly authorized, the day and date first above written.

WITNESS:



CITY OF PORTLAND

By: 
Jon P. Jennings
Its City Manager

WITNESS:



PORTLAND HOCKEY, LLC

By: 
Adam Goldberg
(Print or type name)
Its: VP Business Operations

Approved as to form:


City Corporation Counsel's Office

Approved as to funds:


City Finance Department

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: August 16, 2024

SUBJECT: Order 45-24/25 Appropriating \$1,080,000 from the Jill C. Duson Housing Trust Fund to YFO Resource Hub LP RE: 337 Cumberland Avenue - Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair

SPONSOR: Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair.

The Housing and Economic Development Committee met on August 20, 2024, and voted (3-0, Phillips absent) to forward this item to the City Council with a recommendation for passage.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/4/2024

Final

Action 9/16/2024

Can action be taken at a later date: No Developer is applying to MaineHousing for Low Income Housing Tax Credits; the application is due on September 19

Does this item involve a new contract with the City: This item will require the city and applicant to enter into financing documents such as a Promissory Note and Mortgage; these documents will be reviewed and approved by Corporation Counsel prior to the construction loan closing.

PRESENTATION: Greg Watson and Mary Davis will be available for any questions

I. SUMMARY

Youth and Family Outreach is requesting \$1,080,000 in funding from the Jill C. Duson Housing Trust Fund for the creation of 60 units of rental housing at 337 Cumberland Avenue.

II. AGENDA DESCRIPTION

The Housing and Economic Development Committee met on August 20, 2024 and voted (3-0, Phillips absent) to forward this item to the City Council with a recommendation for passage.

Youth and Family Outreach (YFO), through YFO Resource Hub LP, a non-profit entity to be created, is proposing to construct a new 60-unit rental housing development which will include child care space. The site currently contains a vacant former restaurant and the chapel building that currently houses the YFO child care program, both of which will be removed to facilitate construction of the new building. The project will include 60-units, 29 of which will be affordable to households at or below 50% of the area median income (\$51,000 for a two-person household), 19 of which will be affordable to households at or below 60% of the area median income (\$61,200 for a two-person household) and 12 market rate units (including 4 studios, 24 1-bedroom, 22 2-bedroom and 10 3-bedroom).

YFO has requested assistance from the City in the form of a loan in the amount of \$1,080,000 from the Jill C. Duson Housing Trust Fund with a term of 30 years at 0% interest with repayment of 10% of cashflow above MaineHousing's required \$500/unit (as confirmed by MaineHousing underwriting), in the first five years of operations, followed by 30% of cashflow until fully retired.

An Affordable Housing Tax Increment Financing District was previously approved on this site (August 3, 2020, Order 19-20/21 and Order 20-20/21) and received a Certificate of Approval from MaineHousing on September 17, 2020. Amendments to the District, District Program and Credit Enhancement Agreement will be considered under separate Orders.

This item must be read on two separate days. This is its first reading.

III. BACKGROUND

Youth and Family Outreach (YFO), through YFO Resource Hub LP, a non-profit entity to be created, is proposing to construct a new 60-unit rental housing development which will include child care space. The site currently contains a vacant former restaurant and the chapel building that currently houses the YFO child care program, both of which will be removed to facilitate construction of the new building. The project will include 60-units, 29 of which will be affordable to households at or below 50% of the area median income (\$51,000 for a two-person household), 19 of which will be affordable to households at or below 60% of the area median income (\$61,200 for a two-person household) and 12 market rate units (including 4 studios, 24 1-bedroom, 22 2-bedroom and 10 3-bedroom).

The building will also include a laundry room, a community room, a fitness area, a lobby, trash room, and bike/stroller storage. The primary building entrance for the childcare facility will be located on Cumberland Avenue, while the primary building entrance for the apartment units will be located on Portland Street. The site will include outside play spaces for the childcare facility that may be used by residents outside the daycare's regular operating hours.

The underwriting recommendation includes a loan in the amount of up to \$1,080,000, at zero interest, over a 30-year term, with repayment of 10% of cashflow above MaineHousing's required \$500/unit (as confirmed by MaineHousing underwriting), in the first 5 years of operations, followed by 30% of cashflow until fully retired. The underwriting memo also notes that the TIF continues to be necessary to keep the debt service coverage ratio within acceptable limits. The recommendation is conditioned on the satisfactory review of the following:

- A current market study supporting the projected rent structure, including an analysis of market rent and vacancy for the retail space;
- Current management financial statements and the most recent YFO audit available at the time of closing;
- Financing commitments for debt and equity prior to closing on terms and conditions acceptable to the City of Portland, including evidence that YFO has funds in hand for the YFO share of building construction and other development expenses, including acquisition and site prep, whether included in the development budget or carried out separately.
- If MaineHousing approves 4% LIHTC, a satisfactory review of the revised budgets with the potential to reduce loan sizing to reflect a division of subsidy between City and State which is consistent with the City approved 9% budgets. (City of Portland's loan is 26.47% of the combined City and State \$4,080,000 of soft debt.)
- Executed commitments to provide services to PBV units.
- An updated business plan for YFO's child care operations in the new facility.
- A written description of YFO's process for budget oversight, including the formulas for sharing costs between the commercial and residential condos;
- Condominium documents;

- All standard construction conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Increased access to rental units that are safe, affordable and accessible for low-income households.

V. FINANCIAL IMPACT

The recommendation of a loan from the Jill C. Duson Housing Trust Fund in the amount of \$1,080,000 \$1,080,000, at zero interest, over a 30-year term, with repayment of 10% of cashflow above MaineHousing's required \$500/unit (as confirmed by MaineHousing underwriting), in the first 5 years of operations, followed by 30% of cashflow until fully retired. When completed, the project's total assessed value is estimated at \$8,740,000 for the housing portion of the development, which would yield \$126,000 in annual assessed property value in year one at the current FY24 millage rate. The total assessed-value of the daycare portion of the project is estimated at \$2,500,000, which would yield \$36,000 in annual assessed property value in year one at the current FY24 millage rate. However, YFO is a 501(c)(3) entity, therefore this portion of the project would be tax-exempt.

VI. STAFF ANALYSIS AND BACKGROUND

The project will include 60-units, 29 of which will be affordable to households at or below 50% of the area median income (\$51,000 for a two-person household), 19 of which will be affordable to households at or below 60% of the area median income (\$61,200 for a two-person household) and 12 market rate units (including 4 studios, 24 1-bedroom, 22 2-bedroom and 10 3-bedroom). In addition, the project will include child care space which will enable YFO to double the number of day care spots currently available through their program (58 spaces to 110 spaces).

VII. RECOMMENDATION

Staff is recommending approval by the City Council of the Housing and Economic Development Committee's recommendation of a loan from the Jill C. Duson Housing Trust Fund in the amount of \$1,080,000 \$1,080,000, at zero interest, over a 30-year term, with repayment of 10% of cashflow above MaineHousing's required \$500/unit (as confirmed by MaineHousing underwriting), in the first 5 years of operations, followed by 30% of cashflow until fully retired.

VIII. LIST ATTACHMENTS

1. Order - Appropriating \$1,080,000 from the Jill C. Duson HTF to YFO re 337 Cumberland Ave
2. HEDC Packet

Prepared by:

Mary Davis, Division Director

Date: 08/16/2024

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

**ORDER APPROPRIATING \$1,080,000 FROM THE JILL C. DUSON HOUSING TRUST
FUND TO YFO RESOURCE HUB LP
RE: 337 CUMBERLAND AVENUE**

ORDERED, that \$1,080,000 from the Jill C. Duson Housing Trust Fund is hereby appropriated for a loan at 0% interest with a 30-year term to YFO Resource Hub LP for development costs for the Youth and Family Outreach project at 337 Cumberland Avenue; and

BE IT FURTHER ORDERED, the City Manager or designee is authorized to execute any and all documents necessary to appropriate the funds, and otherwise carry out the intent of this order.

To: Mary Davis, City of Portland
From: Anne Boynton, Urban Ventures, Inc.
Re: Youth and Family Outreach (with Developers Collaborative as development consultant)
Date: 8/13/24

Youth and Family Outreach (YFO), the non-profit sponsor YFO Resource Hub LP, requests a loan of \$1,080,000 for the proposed new construction 60-unit rental housing development and first floor child care space. The site is currently a vacant former restaurant and the church which YFO currently uses for day care space. The site already has a 75% 30-year Affordable Housing TIF which was approved in 2020 when YFO was partnering with Portland Housing Authority. 2020 was a uniquely difficult year to be moving a development forward -- the project was substantially delayed due to construction cost over runs and had to return their tax credit allocation.

The 60 housing units will serve a mixed income population, including 12 "Market Rate" (up to 100% AMI), 19 units at 60% AMI, and 29 units at 50% AMI. Unit sizes will range from efficiency to 3 bedrooms. As part of the Maine Housing 9% LIHTC competition and financing process, YFO is requesting 10 Project Based Vouchers. This would provide 20% of the LIHTC units with a deep subsidy for households with special housing needs for supportive services.

Developers Collaborative is serving as the fee developer for this housing project, and will not have an ownership stake in the project.

The requested loan is a subsidy of \$18,000 per housing unit, or \$22,500 per unit affordable to households below 60% AMI (12 units will be restricted to under 100% AMI). This is in addition to the previously approved TIF subsidy.

Sources and Uses

Sources:		Uses:	
Maine Housing Must Pay	\$10,608,153	Acquisition	\$0
Maine Housing 0% Deferred	\$3,000,000	Construction hard costs	\$20,805,781
Net Syndication Equity	\$10,199,080	Hard & Soft Contingency	\$1,079,039
AHP Capital Advance	\$850,000	Soft costs	\$2,286,895
IRA Solar Credits	\$104,500	Capitalized Reserves	\$920,018
City of Portland Loan	<u>\$ 1,080,000</u>	Developer Fee	<u>\$750,000</u>
Total Sources:	\$25,841,733	Total Uses:	\$25,841,733

YFO plans to submit an application for 9% LIHTC in September, along with a request for mortgage financing and 10 PBVs from Maine Housing. Evidence that YFO has funds in hand for their share of building construction and other development expenses, including acquisition and site prep, is a recommended condition of loan closing.

While YFO as a corporate entity has no track record with residential real estate development, the fee developer, Developers Collaborative, is a regular successful applicant, including last year in a similar role as development consultant for Equality Community Center. Developers Collaborative has an impressive success rate in 9% applications and has developed over 996 units using LIHTC, including 140 units in Portland. This is the second year Maine Housing has offered PBV's as part of the 9% LIHTC underwriting process, so the underwriting process and competition for these resources is becoming clearer. This site was awarded 9% LIHTC in the 2020 competition, but the project could not move forward at that time due to cost increases related to the pandemic.

A letter of interest is included from syndicator Evernorth, along with separate confirmation that Evernorth understands the ownership structure and significant commercial space. The letter offers a price of \$.85 per LIHTC credit and \$.95 per solar credit which is broadly consistent with Developers Collaborative recent experience.

For analysis of "Uses," see Development Budget.

Development Budget

Construction Costs:

Construction costs are based on a trades break down estimate by Penobscot based on drawings at the Conceptual Design Stage with a run date of 7/3/24. (Trade breakdown is preferable to a cost per square foot estimate.) This estimate includes provision for prevailing wage requirements. The direct costs for the day care center are separately budgeted, including interior finishes, structural elements including floor and elevator, and building skin including windows, doors and siding. However, reasonably allocatable costs such as site improvement and roof are borne entirely by the housing condo. Total housing construction cost divided among the 60 residential units is \$363,747. While this cost per unit would have been considered high prior to COVID, it is not out of line with comparable sized units in the current construction cost environment.

Soft Costs:

Soft costs are moderate and within industry standard. Developer fee (paid to Developers Collaborative) is \$750,000, the Maine Housing cap for funded developer fee. This is on the slim side of a reasonable developer's fee by industry standards, 3.1% of total development costs, excluding reserves and developer fee. However, Developers Collaborative has limited risk associated with this project – YFO is responsible for payment of soft costs in predevelopment, payment of a portion of Developer fee even if the project is terminated, and Developers Collaborative will have no on-going financial stake (and risk) in the project. In addition to direct staffing time, it is these project risks that are what developer fee is understood to cover.

Contingency:

Hard cost contingency is carried primarily in the development budget with the industry standard for new construction of 5%. The Penobscot estimate also includes a 4% contingency. As with each project in this round, it is still vulnerable to continued construction cost inflation due to the relatively early stage of predevelopment, continued high level of economic uncertainty, and persistent inflationary pressures in the construction industry. This level of contingency provides some protection from further delays due to price inflation.

Soft cost contingency is \$60,000, which is 2.62% of soft costs. This is very low, especially for this early stage of project development. This concern is partially mitigated by the YFO's long history and successful fundraising, which demonstrates some capacity to cover unexpected costs.

Acquisition:

The site is owned by YFO, which acquired the 337 Cumberland property adjacent to their existing space in 2019 for \$895,000. The property was appraised at \$955,000 in 2018 which demonstrates the original sales price was consistent with market values. The public has an interest in insuring that publicly funded projects purchase the property for no more than the market value. This review is especially important in cases like this one where the seller plays multiple roles in the transaction, as YFO will in the transfer. The proposed \$0 transfer is clearly below market value.

All acquisition related expenses, including demolition and any needed brownfields work, has been pulled out of the 9% LIHTC budget, and is to be funded prior to transfer of the asset by YFO.

The "off budget" nature of all acquisition costs and day care direct construction costs might change if Maine Housing chooses to allocate 4% credits instead of 9% credits. The budgets supporting a 4% credit scenario have not been presented to the City, but the construction of the day care space would be includable in basis as a community facility. If Maine Housing approves a 4% credit allocation instead of 9% credits, that would be a substantial revision of the budget. Satisfactory review of the budgets in a 4% scenario, with the potential of loan resizing, is a recommended condition of loan approval.

Operating Budget & 20 Year Cashflow Projection

Project Income:

The operating budget anticipates charging the maximum allowable LIHTC rents at each income level, and the 12 "market rate" units capped at the maximum rent affordable to a household at 100% AMI. The budget assumes receipt of 10 Project Based Vouchers (PBV) from Maine Housing, which have a 110% of Fair Market Rent payment standard, substantially above LIHTC capped rents at all unit sizes. This is the second year Maine Housing has offered this option.

	<50% AMI (w PBV)	<50% AMI (no PBV)	<60% AMI	<100% AMI	Total by unit type
efficiency	1	1	2	0	4
1 bedroom	4	8	8	4	24
2 bedroom	3	6	5	8	22
3 bedroom	2	4	4	0	10
Total by income level:	10	19	19	12	60

No market study has been submitted by the developer. While the demand for units affordable at 60% AMI and below is well established, the “market rate” rent in relationship to 100% of AMI needs further documentation. A satisfactory current market study, including evaluation of the market rate rents, is a recommended condition of the loan.

Residential vacancy is budgeted at the industry standard of 5%, which is comfortably above Portland’s recent historic vacancy rates.

The building will also include a single 12,608 sq. feet commercial space for YFO’s child care operations. The anticipated ownership structure of the building is two condo units, one for the housing and one for the child care, with almost all operating costs allocated to the individual condo units including utilities, maintenance, taxes, and most insurance. YFO’s ability to successfully operate the commercial condo is critically important to the stability of the project as a whole. YFO will be approximately doubling the child care slots available, as well as space available for services to small groups of children and families, and will be responsible for programming the community room shared with the residents. YFO has a business expansion plan finalized in 2023 which demonstrates effective demand for their expansion and provides budget projections which show the expanded program operating with a small positive margin (prior to depreciation). These projections take into account the growth in occupancy related expenses (including janitorial & maintenance) which will accompany expansion, but have not been updated for operating conditions (including inflation) in 2024. Satisfactory review of an updated business plan is a recommended condition of closing.

Operating Expense

The Developers Collaborative pro forma (for the residential condo only) reflects a per unit operating cost of \$8,785, which appears high. However, of that, \$2,099 per unit is real estate taxes, leaving \$6,686 for other operating expenses which is reasonable in this cost environment. Grounds expense is an outlier, very high at \$34,200/year for a building without landscaping or parking lot. Developer’s Collaborative points to the need to maintain the playground, which will be available to children in residence in the building outside the hours of the child care center. Functionally, this means 2 of 7 days (29%), and opens the question of how operating expenses will be fairly divided between housing and child care. Prior to loan closing, satisfactory review of the process for dividing costs between the two condos is a recommended condition of this recommendation.

Supportive services are budgeted at a minimal \$390/unit, which is designed to meet the Maine Housing minimum level of services. Deeper services needed for the PBV units serving households with special housing needs will be provided by Catholic Charities and Through These Doors. Commitment letters covering the terms and conditions, including the commitment of the organizations to cover the cost of provided services, are being negotiated for submission with the Maine Housing application in September. Satisfactory review of the commitments to provide services is a recommended condition of this recommendation.

30 Year Cashflow & Debt Service Coverage Ratio (DSCR)

Even with the previously approved 75% TIF, DSCR is extraordinarily thin at 1.05 in year 1. With industry standard 2/3% inflators, DSCR doesn't hit Maine Housing's standard underwriting ratio of 1.15 till year 8. While the PBVs offer some additional assurance of steady operating income, 1.05 provides only the slenderest margin. Maine Housing has expressed a willingness to consider a minimum requirement of \$500 per unit in annual cashflow (and year 1 shows \$515/unit), in the early years, however, this thin margin increases the risk for every stakeholder in the project.

Developer Financials

YFO is a non-profit with a long history of service to Portland families, founded in 1844. Relative to the norms of the child care industry, YFO has exceptional financial strength, with Net Assets of over \$2 million in 2023, including an endowment of over \$1.5 million. However, housing development has put new financial pressures on YFO and long-term ownership of affordable housing will continue to place new financial constraints and asset management responsibilities on YFO. The Board of Directors has a strong mix of professions including lawyer, CPA, engineer, non-profit management, public finance, local business leaders, and advocates for children. What it does not yet include is affordable housing development or affordable housing management experience. YFO's Executive Director, Camelia Babson-Haley, acknowledges the expansion of YFO's core programming into affordable housing and her continued focus on early childhood education and family support as her core skill set. She is actively seeking new members with affordable housing expertise to add to the Board to meet the need for leadership and oversight in the expanded core mission area of affordable housing and asset management.

YFO has submitted audits covering FY 2020 – FY 2023 (and has previously submitted audits covering FY 2016 -- 2019.) Their fiscal year ends 9/30. Over the tumultuous period from 2018-2023, YFO has more than doubled its total assets to \$2,559,547, increased net assets by 87%, and dramatically improved its Quick Ratio to a very impressive 7.85, all this while navigating a pandemic which literally closed the doors for months. Immediately prior to the pandemic, YFO acquired the adjacent property with a \$500,000 loan from Genesis Fund and pursued a comprehensive redevelopment, at a time when real estate development costs were experiencing unprecedented price inflation.

YFO engaged in a capital campaign which raised \$2.1 million (in cash and pledges) by end of 2022. These funds have covered some acquisition related expenses and established an endowed scholarship fund for low income families who need transitional funding before other child care supports kick in. This will add important stability to YFO's income stream while continuing to provide services to low income families. YFO is planning to initiate a next phase in their capital campaign and is in the process of selecting a campaign consultant. Evidence that YFO has funds in hand for their share of building construction and other development expenses, including acquisition and site prep, is a recommended condition of loan closing.

YFO Management's financials for the seven months ending 4/30/24 (as is typical) utilize somewhat different categories for reporting than the audit, so don't provide a direct comparison with prior audits. On the Balance Sheet, the 4/30/24 Quick Ratio was an alarming .5, but this includes the full amount of the Genesis Fund loan as a current liability. The Genesis Fund loan was subsequently extended to 2026. Adjusting out the Genesis Fund loan, the Quick Ratio was a moderate 3.30. The Balance Sheet shows a substantial jump in net assets to \$2,804,218 due to \$800,000 Accounts Receivable. This reflects successful fundraising, committed but not yet received -- commitments of \$515,000 from Senate Earmark and \$250,000 from State of Maine childcare infrastructure grants.

Impact of pandemic: The pandemic was much more disruptive to the child care industry than to subsidized affordable housing. In 2020, YFO was closed for months and after reopening, its operations were severely limited by the precautions necessary to prevent the spread of COVID-19. Class sizes were cut in half and before and after care eliminated, severely reducing program fee income. This was a systemic problem, not in any way a reflection of YFO's management. In fact, YFO's pandemic response reflected best practices for the industry and the level of care reflected in their revised protocols demonstrate the high quality of their services and management. Program Service Fees fell significantly and have only exceeded 2019 levels in 2023. Increases in government grants including PPP loans and ARPA grants helped offset the decline in fee income. Pandemic related supports are no longer available, but YFO continues to receive support from the State of Maine childcare worker wage supplement program, which helps YFO to better attract and retain childcare workers. As described above, despite the extraordinary constraints of the pandemic, YFO was able to exit the pandemic in stronger financial health than before.

YFO has experienced remarkable success in its long lifetime. Doubling program size and adding affordable housing makes this an exciting yet potentially fragile time in the life history of an organization. To continue to thrive in this new context, YFO needs to prioritize developing their Board's capacity for effective oversight of their new affordable housing program.

Recommendations

I recommend a loan in the amount \$1,080,000, at zero interest, to be repaid with 10% of cashflow above MaineHousing's required \$500/unit (as confirmed by MaineHousing

underwriting), in the first 5 years of operations, followed by 30% of cashflow until fully retired, with a 30-year term, with loan closing conditioned upon satisfactory review of the following:

- A current market study supporting the projected rent structure, including an analysis of market rent and vacancy for the retail space;
- Current management financial statements and the most recent YFO audit available at the time of closing;
- Financing commitments for debt and equity prior to closing on terms and conditions acceptable to the City of Portland, including evidence that YFO has funds in hand for the YFO share of building construction and other development expenses, including acquisition and site prep, whether included in development budget or carried separately.
- If MaineHousing approves 4% LIHTC, satisfactory review of the revised budgets with the potential to reduce loan sizing to reflect a division of subsidy between City and State which is consistent with the City approved 9% budgets. (City of Portland's loan is 26.47% of the combined City and State \$4,080,000 of soft debt.)
- Executed commitments to provide services to PBV units.
- An updated business plan for YFOs child care operation in the new facility.
- A written description of YFO's process for budget oversight, including the formulas for sharing costs between the commercial and residential condos;
- Condominium documents;
- All standard construction conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.

Development Budget with Permanent Sources

Date 8/13/2024
Project Name
Project Address 331-337 Cumberland
Developer/Sponsor YFO (w/Developers Collaborative as development consultant)

Total Units 60
Residential Sq Feet 59,829
Total Square Feet 72,437

	August 13 Revised Values			Change	
	Total	Per Unit	Per Sq Ft	Reservation to Commitment	
Sources of Funds					
Permanent Financing - MH 1st Lien 6% I only	\$10,608,153	\$176,803	\$177	\$ 281,806	3%
Permanent Financing - City of Portland	\$1,080,000	\$18,000	\$18	\$ 7,950	1%
Equity (LIHTC/tenant contributions)	\$10,199,080	\$169,985	\$170	\$ 99	0%
AHP Capital Advance	\$850,000	\$14,167	\$14	\$ -	0%
OTHER	\$0	\$0	\$0	\$ (780,000)	-100%
Maine Housings Subsidy	\$3,000,000	\$50,000	\$50	\$ 660,000	28%
IRA Solar Credits	\$104,500	\$1,742	\$2	\$ -	0%
Total Sources of Funds	\$25,841,733	\$430,696	\$432	\$ 169,855	1%
(GAP)/Surplus				\$0	-100%

Uses of Funds

Hard Costs					
Site Improvements	\$1,660,000	\$27,667	\$28	\$ 485,000	41%
Rehabilitation		\$0	\$0		
New Construction	\$16,637,665	\$277,294	\$278	\$ 32,849	0%
Contractor's Profit, Overhead, & Gen. Requirements 10.0%	\$1,729,563	\$28,826	\$29	\$ (40,641)	-2%
Hazardous Materials abatement (if contracted separately)		\$0	\$0		
Demolition Cost (if contracted separately)		\$0	\$0		
Bond Premium	\$353,553	\$5,893	\$6	\$ 4,387	1%
Other -- Solar \$275k, Utility Relocation \$150k	\$425,000	\$7,083	\$7	\$ 425,000	#DIV/0!
Hard Cost Contingency (% of hard costs) 4.9%	\$1,019,039	\$16,984	\$17	\$ 24,080	2%
Total Hard Costs	\$21,824,820	\$363,747	\$365	\$ 930,675	4%

Soft Costs					
Building Permit & Fees	\$303,162	\$5,053	\$5	\$ 5,210	2%
Survey & Engineering	\$80,000	\$1,333	\$1	\$ -	0%
Design & Permitting (% of const exp) 2.3%	\$364,000	\$6,067	\$6	\$ -	0%
Borrower Legal (all closings, excluding syndication legal)	\$45,000	\$750	\$1	\$ -	0%
Title & Recording	\$20,000	\$333	\$0	\$ -	0%
Accounting	\$10,000	\$167	\$0	\$ -	0%
Construction Period Taxes	\$10,000	\$167	\$0	\$ -	0%
Construction Period Insurance	\$55,000	\$917	\$1	\$ -	0%
Other: FF&E, Security	\$14,736	\$246	\$0	\$ (5,264)	-26%
Other		\$0	\$0		
Total Soft Costs	\$901,898	\$15,032	\$15	\$ (54)	0%

Financing Costs					
Construction Loan Origination Fees	\$42,000	\$700	\$1	\$ -	0%
Construction Period Interest	\$902,334	\$15,039	\$15	\$ -	0%
Lender Inspection Fees	\$35,000	\$583	\$1	\$ -	0%
Letter of Credit Fee		\$0	\$0		
Permanent Loan Fee	\$215,163	\$3,586	\$4	\$ 5,636	3%
Construction Lender Legal		\$0	\$0		
Other	\$0	\$0	\$0	\$ -	#DIV/0!
Total Financing Costs	\$1,194,497	\$19,908	\$20	\$ 5,636	0%

Miscellaneous					
Market Survey	\$5,500	\$92	\$0	\$ -	0%
Appraisal	\$7,500	\$125	\$0	\$ -	0%
Environmental Study	\$35,000	\$583	\$1	\$ -	0%
LIHTC Fees -- prepaid monitoring	\$142,500	\$2,375	\$2	\$ -	0%
Other: Commissioning		\$0	\$0		

Relocation Costs		\$0	\$0		
Other		\$0	\$0		
Soft Cost Contingency (% of soft costs excl Dev Fee)	2.62%	\$60,000	\$1,000	\$1	\$ - 0%
Total Miscellaneous:		\$250,500	\$4,175	\$24	\$ - 0%
Acquisition					
Acquisition: Buildings		\$0	\$0	\$0	\$ - #DIV/0!
Acquisition: Land		\$0	\$0	\$0	\$ (350,000) -100%
Acquisition: Legal			\$0	\$0	
Other			\$0	\$0	
Total Acquisition		\$0	\$0	\$0	\$ (350,000) -100%
Reserves and Developer Fee					
Operating Deficit Escrow		\$568,583	\$9,476	\$10	\$ 918 0%
Prefunded Replacement Reserve		\$187,208	\$3,120	\$3	\$ (34) 0%
Taxes & Insurance Escrow		\$90,972	\$1,516	\$2	\$ 7,614 9%
Developer Overhead		\$500,000	\$8,333	\$8	\$ - 0%
Developer Profit		\$250,000	\$4,167	\$4	\$ - 0%
Rent Up Reserve & Marketing		\$48,000	\$800	\$1	\$ - 0%
Other		\$25,255	\$421	\$0	\$ - 0%
Total Reserves and Developer Fee		\$1,670,018	\$27,834	\$28	\$ 8,498 1%
Total Uses of Funds		\$25,841,733	\$430,696	\$452	\$ 594,755 2%

Developer Fee Analysis: Total Fees: \$750,000
(excluding reserves & developer fee) Percent of TDC: 3.10%

Project Operating Pro Forma

Date August 12, 2024
 Project Name
 Project Address 331-337 Cumberland
 Developer/Sponsor YFO (Developer's Collaborative as dev consultant)

Rental Income

Maximum LIHTC Rents

Unit Type	Number of Units	Per Unit Sq Ft	Total Sq Ft	Restriction on % Median Inc.	Per Unit Monthly Gross Rent	Utility Deductions	Rent Subsidy	Per Unit Monthly Net Rent	Total Monthly Net Income	Total Annual Net Rent
0 BR	1		0	50%	\$1,116	\$108		\$1,008	\$1,008	\$12,096
0 BR	1	PBV	0	50%	\$1,450	\$108		\$1,342	\$1,342	\$16,104
0 BR	2		0	60%	\$1,339	\$108		\$1,231	\$2,462	\$29,544
1 BR	8		0	50%	\$1,195	\$137		\$1,058	\$8,464	\$101,568
1 BR	4	PBV	0	50%	\$1,663	\$137		\$1,526	\$6,104	\$73,248
1 BR	8		0	60%	\$1,434	\$137		\$1,297	\$10,376	\$124,512
1 BR	4		0	market	\$2,231	\$0		\$2,231	\$8,924	\$107,088
2 BR	6		0	50%	\$1,435	\$175		\$1,260	\$7,560	\$90,720
2 BR	3	PBV	0	50%	\$2,140	\$175		\$1,965	\$5,895	\$70,740
2 BR	5		0	60%	\$1,722	\$175		\$1,547	\$7,735	\$92,820
2 BR	8		0	market	\$2,550	\$0		\$2,550	\$20,400	\$244,800
3 BR	4		0	50%	\$1,485	\$212		\$1,273	\$5,092	\$61,104
3 BR	2	PBV	0	50%	\$2,659	\$212		\$2,447	\$4,894	\$58,728
3 BR	4		0	60%	\$1,772	\$212		\$1,560	\$6,240	\$74,880
Other			0	50%				\$0	\$0	\$0
Other			0	60%				\$0	\$0	\$0
Total:	60	59829	0						\$96,496	\$1,157,952

T Bedrooms: 90
 average/unit \$73,644
 \$1,227

Operating Expenses

Rent Increase Rate	2.0%
Expenses Increase Rate	3.0%

TIF year 1 75% year 11 75% year 21 75%

Note: Year 1 is the first full year of stabilized operations

	Year 1	Year 1/Unit	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Income											
Sch. Gross Income - Residential	\$1,157,952	\$19,299	\$1,181,111	\$1,204,733	\$1,228,828	\$1,253,404	\$1,278,473	\$1,304,042	\$1,330,123	\$1,356,725	\$1,383,860
Vacancy Loss 5.0%	(\$57,898)	(\$965)	(\$59,056)	(\$60,237)	(\$61,441)	(\$62,670)	(\$63,924)	(\$65,202)	(\$66,506)	(\$67,836)	(\$69,193)
Other income HAP Diff.		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TIF (inflated at 2%) 75%	\$94,457	\$1,574	\$96,346	\$98,273	\$100,239	\$102,244	\$104,288	\$106,374	\$108,502	\$110,672	\$112,885
Effective Gross Income	\$1,194,512	\$19,909	\$1,218,402	\$1,242,770	\$1,267,625	\$1,292,978	\$1,318,837	\$1,345,214	\$1,372,118	\$1,399,561	\$1,427,552
Administrative											
Management Fee 5.7%	\$66,007	\$1,100	\$67,987	\$70,027	\$72,128	\$74,291	\$76,520	\$78,816	\$81,180	\$83,616	\$86,124
Management Charges 5.6%	\$65,000	\$1,083	\$66,950	\$68,959	\$71,027	\$73,158	\$75,353	\$77,613	\$79,942	\$82,340	\$84,810
Marketing Expense	\$1,500	\$25	\$1,545	\$1,591	\$1,639	\$1,688	\$1,739	\$1,791	\$1,845	\$1,900	\$1,957
Legal	\$1,000	\$17	\$1,030	\$1,061	\$1,093	\$1,126	\$1,159	\$1,194	\$1,230	\$1,267	\$1,305
Audit & Accounting	\$10,000	\$167	\$10,300	\$10,609	\$10,927	\$11,255	\$11,593	\$11,941	\$12,299	\$12,668	\$13,048
Admin Other	\$960	\$16	\$989	\$1,018	\$1,049	\$1,080	\$1,113	\$1,146	\$1,181	\$1,216	\$1,253
Total Administrative	\$144,467	\$2,408	\$148,801	\$153,265	\$157,863	\$162,599	\$167,477	\$172,501	\$177,676	\$183,006	\$188,497
Supportive Services	\$23,400	\$390	\$24,102	\$24,825	\$25,570	\$26,337	\$27,127	\$27,941	\$28,779	\$29,642	\$30,532
Utilities											
Fuel Oil		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Natural Gas	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Electric	\$41,094	\$685	\$42,327	\$43,597	\$44,905	\$46,252	\$47,639	\$49,068	\$50,540	\$52,057	\$53,618
Water / Sewer	\$21,600	\$360	\$22,248	\$22,915	\$23,603	\$24,311	\$25,040	\$25,792	\$26,565	\$27,362	\$28,183
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Utilities	\$62,694	\$1,045	\$64,575	\$66,512	\$68,507	\$70,563	\$72,680	\$74,860	\$77,106	\$79,419	\$81,801
Total incl Utility Allowance	\$136,338	\$2,272	\$	2.28							

Maintenance	Year 1	Year 1/Unit	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Grounds	\$34,200	\$570	\$35,226	\$36,283	\$37,371	\$38,492	\$39,647	\$40,837	\$42,062	\$43,324	\$44,623
Janitorial	\$12,000	\$200	\$12,360	\$12,731	\$13,113	\$13,506	\$13,911	\$14,329	\$14,758	\$15,201	\$15,657
Trash Removal	\$10,400	\$173	\$10,712	\$11,033	\$11,364	\$11,705	\$12,056	\$12,418	\$12,791	\$13,174	\$13,570
Security		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Equipment & Supplies	\$14,400	\$240	\$14,832	\$15,277	\$15,735	\$16,207	\$16,694	\$17,194	\$17,710	\$18,241	\$18,789
Maintenance	\$45,600	\$760	\$46,968	\$48,377	\$49,828	\$51,323	\$52,863	\$54,449	\$56,082	\$57,765	\$59,498
Maintenance Contracts		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Maintenance	\$116,600	\$1,943	\$120,098	\$123,701	\$127,412	\$131,234	\$135,171	\$139,226	\$143,403	\$147,705	\$152,137
Taxes & Insurance											
Real Estate Taxes 2%	\$125,943	\$2,099	\$128,462	\$131,031	\$133,652	\$136,325	\$139,051	\$141,832	\$144,669	\$147,562	\$150,514
Payroll Taxes / Fidelity Bond / Workers Comp / Health Ins.		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Insurance (property, liability)	\$24,000	\$400	\$24,720	\$25,462	\$26,225	\$27,012	\$27,823	\$28,657	\$29,517	\$30,402	\$31,315
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Taxes & Insurance	\$149,943	\$2,499	\$153,182	\$156,493	\$159,877	\$163,337	\$166,874	\$170,490	\$174,186	\$177,965	\$181,828
Replacement Reserves	\$30,000	\$500	\$30,900	\$31,827	\$32,782	\$33,765	\$34,778	\$35,822	\$36,896	\$38,003	\$39,143
Operating Reserves		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Expenses	\$527,104	\$8,785	\$541,658	\$556,623	\$572,011	\$587,835	\$604,107	\$620,839	\$638,046	\$655,741	\$673,938
Net Operating Income	\$667,408	\$11,123	\$676,744	\$686,147	\$695,614	\$705,143	\$714,731	\$724,375	\$734,072	\$743,820	\$753,614
Debt Service											
Maine Housing Interest Bearing	\$636,489	\$10,608	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489
Second Lien		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Debt Service (Must Pay)	\$636,489	\$10,608	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489
Cash Flow (after Must Pay Debt)	\$30,919	\$515	\$40,255	\$49,658	\$59,125	\$68,654	\$78,242	\$87,886	\$97,583	\$107,331	\$117,125
Debt Service Coverage Ratio	1.05		1.06	1.08	1.09	1.11	1.12	1.14	1.15	1.17	1.18
Cash Flow Debt Payments											
City of Portland 10% 30.0%	\$3,092	\$155	\$4,026	\$4,966	\$5,913	\$6,865	\$23,472	\$26,366	\$29,275	\$32,199	\$35,138
Developer Fee Loan 0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cash Flow Retained by Project	\$27,827	\$361	\$36,230	\$44,692	\$53,213	\$61,788	\$54,769	\$61,520	\$68,308	\$75,132	\$81,988
Retained Cash Flow % 5%											

	<u>Year 11</u>	<u>Year 12</u>	<u>Year 13</u>	<u>Year 14</u>	<u>Year 15</u>	<u>Year 16</u>	<u>Year 17</u>	<u>Year 18</u>	<u>Year 19</u>	<u>Year 20</u>
Income										
Sch. Gross Income - Residential	\$1,411,537	\$1,439,768	\$1,468,563	\$1,497,934	\$1,527,893	\$1,558,451	\$1,589,620	\$1,621,412	\$1,653,841	\$1,686,917
Vacancy Loss 5.0%	(\$70,577)	(\$71,988)	(\$73,428)	(\$74,897)	(\$76,395)	(\$77,923)	(\$79,481)	(\$81,071)	(\$82,692)	(\$84,346)
Other income (laundry)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TIF 75%	\$115,143	\$117,446	\$119,795	\$122,191	\$124,634	\$127,127	\$129,670	\$132,263	\$134,908	\$137,606
Effective Gross Income	\$1,456,103	\$1,485,225	\$1,514,930	\$1,545,228	\$1,576,133	\$1,607,655	\$1,639,809	\$1,672,605	\$1,706,057	\$1,740,178
Administrative										
Management Fee	\$88,708	\$91,369	\$94,110	\$96,934	\$99,842	\$102,837	\$105,922	\$109,100	\$112,372	\$115,744
Management Charges	\$87,355	\$89,975	\$92,674	\$95,455	\$98,318	\$101,268	\$104,306	\$107,435	\$110,658	\$113,978
Marketing Expense	\$2,016	\$2,076	\$2,139	\$2,203	\$2,269	\$2,337	\$2,407	\$2,479	\$2,554	\$2,630
Legal	\$1,344	\$1,384	\$1,426	\$1,469	\$1,513	\$1,558	\$1,605	\$1,653	\$1,702	\$1,754
Audit & Accounting	\$13,439	\$13,842	\$14,258	\$14,685	\$15,126	\$15,580	\$16,047	\$16,528	\$17,024	\$17,535
Admin Other	\$1,290	\$1,329	\$1,369	\$1,410	\$1,452	\$1,496	\$1,541	\$1,587	\$1,634	\$1,683
Total Administrative	\$194,152	\$199,976	\$205,975	\$212,155	\$218,519	\$225,075	\$231,827	\$238,782	\$245,945	\$253,324
Supportive Services										
	\$31,448	\$32,391	\$33,363	\$34,364	\$35,395	\$36,456	\$37,550	\$38,677	\$39,837	\$41,032
Utilities										
Fuel Oil	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Electric	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Gas	\$55,227	\$56,884	\$58,590	\$60,348	\$62,158	\$64,023	\$65,944	\$67,922	\$69,960	\$72,059
Water / Sewer	\$29,029	\$29,899	\$30,796	\$31,720	\$32,672	\$33,652	\$34,662	\$35,702	\$36,773	\$37,876
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Utilities	\$84,255	\$86,783	\$89,387	\$92,068	\$94,830	\$97,675	\$100,605	\$103,624	\$106,732	\$109,934

Maintenance	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
Janitorial	\$45,962	\$47,341	\$48,761	\$50,224	\$51,731	\$53,282	\$54,881	\$56,527	\$58,223	\$59,970
Exterminating	\$16,127	\$16,611	\$17,109	\$17,622	\$18,151	\$18,696	\$19,256	\$19,834	\$20,429	\$21,042
Trash Removal	\$13,977	\$14,396	\$14,828	\$15,273	\$15,731	\$16,203	\$16,689	\$17,190	\$17,705	\$18,236
Security	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Grounds	\$19,352	\$19,933	\$20,531	\$21,147	\$21,781	\$22,435	\$23,108	\$23,801	\$24,515	\$25,250
Maintenance	\$61,283	\$63,121	\$65,015	\$66,965	\$68,974	\$71,043	\$73,175	\$75,370	\$77,631	\$79,960
Elevator, HVAC, pool contracts	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Maintenance	\$156,701	\$161,402	\$166,244	\$171,231	\$176,368	\$181,659	\$187,109	\$192,722	\$198,504	\$204,459

Taxes & Insurance										
Real Estate Taxes or PILOT	\$153,524	\$156,594	\$159,726	\$162,921	\$166,179	\$169,503	\$172,893	\$176,351	\$179,878	\$183,475
Payroll Taxes / Fidelity Bond / Workers Comp / Health Ins.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Insurance (property, liability)	\$32,254	\$33,222	\$34,218	\$35,245	\$36,302	\$37,391	\$38,513	\$39,668	\$40,858	\$42,084
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Taxes & Insurance	\$185,778	\$189,816	\$193,944	\$198,166	\$202,481	\$206,894	\$211,406	\$216,019	\$220,736	\$225,559

Replacement Reserves	\$40,317	\$41,527	\$42,773	\$44,056	\$45,378	\$46,739	\$48,141	\$49,585	\$51,073	\$52,605
Operating Reserves	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Total Expenses	\$692,651	\$711,895	\$731,686	\$752,039	\$772,971	\$794,498	\$816,638	\$839,409	\$862,827	\$886,913
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Net Operating Income	\$763,452	\$773,330	\$783,244	\$793,189	\$803,162	\$813,157	\$823,170	\$833,196	\$843,229	\$853,265
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Debt Service										
Maine Housing Interest Bearing	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489
Second Lien	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Debt Service (Must Pay)	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489

Cash Flow (after Must Pay Debt)	\$126,963	\$136,841	\$146,755	\$156,700	\$166,673	\$176,668	\$186,681	\$196,707	\$206,740	\$216,776
Debt Service Coverage Ratio	1.20	1.21	1.23	1.25	1.26	1.28	1.29	1.31	1.32	1.34

Cash Flow Debt Payments											Cash Flow D
City of Portland	30.0%	\$38,089	\$41,052	\$44,026	\$47,010	\$50,002	\$53,000	\$56,004	\$59,012	\$62,022	\$65,033
Developer Fee Loan	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cash Flow Retained by Project		\$88,874	\$95,789	\$102,728	\$109,690	\$116,671	\$123,668	\$130,677	\$137,695	\$144,718	\$151,743
Retained Cash Flow %	5%		\$0			\$0					Retained Cas

	<u>Year 21</u>	<u>Year 22</u>	<u>Year 23</u>	<u>Year 24</u>	<u>Year 25</u>	<u>Year 26</u>	<u>Year 27</u>	<u>Year 28</u>	<u>Year 29</u>	<u>Year 30</u>
Income										
Sch. Gross Income - Residential	\$1,720,656	\$1,755,069	\$1,790,170	\$1,825,974	\$1,862,493	\$1,899,743	\$1,937,738	\$1,976,493	\$2,016,022	\$2,056,343
Vacancy Loss 0.0%	(\$86,033)	(\$87,753)	(\$89,509)	(\$91,299)	(\$93,125)	(\$94,987)	(\$96,887)	(\$98,825)	(\$100,801)	(\$102,817)
Other income (laundry)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TIF 75%	\$140,359	\$143,166	\$146,029	\$148,950	\$0	\$0	\$0	\$0	\$0	\$0
Effective Gross Income	\$1,774,981	\$1,810,481	\$1,846,691	\$1,883,625	\$1,769,368	\$1,804,756	\$1,840,851	\$1,877,668	\$1,915,221	\$1,953,526
Administrative										
Management Fee	\$119,216	\$122,792	\$126,476	\$130,271	\$134,179	\$138,204	\$142,350	\$146,621	\$151,019	\$155,550
Management Charges	\$117,397	\$120,919	\$124,547	\$128,283	\$132,132	\$136,096	\$140,178	\$144,384	\$148,715	\$153,177
Marketing Expense	\$2,709	\$2,790	\$2,874	\$2,960	\$3,049	\$3,141	\$3,235	\$3,332	\$3,432	\$3,535
Legal	\$1,806	\$1,860	\$1,916	\$1,974	\$2,033	\$2,094	\$2,157	\$2,221	\$2,288	\$2,357
Audit & Accounting	\$18,061	\$18,603	\$19,161	\$19,736	\$20,328	\$20,938	\$21,566	\$22,213	\$22,879	\$23,566
Admin Other	\$1,734	\$1,786	\$1,839	\$1,895	\$1,951	\$2,010	\$2,070	\$2,132	\$2,196	\$2,262
Total Administrative	\$260,923	\$268,751	\$276,814	\$285,118	\$293,672	\$302,482	\$311,556	\$320,903	\$330,530	\$340,446
Supportive Services	\$42,263	\$43,531	\$44,837	\$46,182	\$47,567	\$48,994	\$50,464	\$51,978	\$53,538	\$55,144
Utilities										
Fuel Oil	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Electric	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Gas	\$74,220	\$76,447	\$78,740	\$81,103	\$83,536	\$86,042	\$88,623	\$91,282	\$94,020	\$96,841
Water / Sewer	\$39,012	\$40,182	\$41,388	\$42,629	\$43,908	\$45,226	\$46,582	\$47,980	\$49,419	\$50,902
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Utilities	\$113,232	\$116,629	\$120,128	\$123,732	\$127,444	\$131,267	\$135,205	\$139,261	\$143,439	\$147,743

Maintenance	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30
Janitorial	\$61,769	\$63,622	\$65,531	\$67,497	\$69,522	\$71,607	\$73,755	\$75,968	\$78,247	\$80,595
Exterminating	\$21,673	\$22,324	\$22,993	\$23,683	\$24,394	\$25,125	\$25,879	\$26,655	\$27,455	\$28,279
Trash Removal	\$18,784	\$19,347	\$19,927	\$20,525	\$21,141	\$21,775	\$22,429	\$23,101	\$23,794	\$24,508
Security	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Grounds	\$26,008	\$26,788	\$27,592	\$28,420	\$29,272	\$30,150	\$31,055	\$31,987	\$32,946	\$33,935
Maintenance	\$82,359	\$84,829	\$87,374	\$89,996	\$92,695	\$95,476	\$98,341	\$101,291	\$104,330	\$107,459
Elevator, HVAC, pool contracts	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Maintenance	\$210,593	\$216,910	\$223,418	\$230,120	\$237,024	\$244,135	\$251,459	\$259,002	\$266,772	\$274,776
Taxes & Insurance										
Real Estate Taxes or PILOT	\$187,145	\$190,888	\$194,705	\$198,599	\$202,571	\$206,623	\$210,755	\$214,970	\$219,270	\$223,655
Payroll Taxes / Fidelity Bond / Workers Comp / Health Ins.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Insurance (property, liability)	\$43,347	\$44,647	\$45,986	\$47,366	\$48,787	\$50,251	\$51,758	\$53,311	\$54,910	\$56,558
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Taxes & Insurance	\$230,491	\$235,535	\$240,692	\$245,966	\$251,358	\$256,874	\$262,513	\$268,281	\$274,180	\$280,213
Replacement Reserves	\$54,183	\$55,809	\$57,483	\$59,208	\$60,984	\$62,813	\$64,698	\$66,639	\$68,638	\$70,697
Operating Reserves	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Expenses	\$911,686	\$937,165	\$963,371	\$990,325	\$1,018,049	\$1,046,565	\$1,075,896	\$1,106,065	\$1,137,097	\$1,169,017
Net Operating Income	\$863,295	\$873,316	\$883,319	\$893,299	\$751,319	\$758,191	\$764,955	\$771,603	\$778,124	\$784,508
Debt Service										
Maine Housing Interest Bearing	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489
Second Lien	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Debt Service (Must Pay)	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489
Cash Flow (after Must Pay Debt)	\$226,806	\$236,827	\$246,830	\$256,810	\$114,830	\$121,702	\$128,466	\$135,114	\$141,635	\$148,019
Debt Service Coverage Ratio	1.36	1.37	1.39	1.40	1.18	1.19	1.20	1.21	1.22	1.23
Debt Payments										
City of Portland	0.0%	\$68,042	\$71,048	\$74,049	\$77,043	\$34,449	\$36,511	\$38,540	\$40,534	\$44,406
Developer Fee Loan	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cash Flow Retained by Project	\$158,764	\$165,779	\$172,781	\$179,767	\$80,381	\$85,191	\$89,926	\$94,580	\$99,145	\$103,614
Debt Flow %	0%									

B. Project Information

Completed by reading.lauraj@gmail.com on 5/14/2024 10:17 AM

Case Id: 30510

Name: Youth and Family Outreach - 2024

Address: 331-337 Cumberland Avenue, Portland, ME

B. Project Information

Please provide the following information.

B.1. Property Address

331-337 Cumberland Avenue Portland, ME 04101

B.2. Project Name

YFO Resource Hub

B.3. Tax chart, block, and lot number

33-K-5,6,7,9,10

B.4. Zoning Designation

B-3

B.5. Is the requested funding type HOME/HTF?

Yes

B.6. Requested amount of Affordable Housing Development Funding

\$1,080,000.00

B.7. Is the requested funding type AHTIF?

No

B.8. Total number of housing units to be constructed:

60

B.9. Total number of housing units to be rehabilitated:

0

B.10. Total Number of market rate units:

0

B.11. Total number of deed restricted units:

60

B.12. Total number of Units at 120% AMI:

0

B.13. Total number of Units at 110% AMI:

0

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B.14. Total number of Units at 100% AMI:

12

B.15. Total number of Units at 80% AMI:

0

B.16. Total number of Units at 60% AMI:

19

B.17. Total number of Units at 50% AMI:

29

B.18. Total number of Units at 40% AMI:

0

B.19. Housing Type

Rental

B.20. Total number of studio/efficiency units:

4

B.21. Total number of one-bedroom units:

24

B.22. Total number of two-bedroom units:

22

B.23. Total number of three-bedroom units

10

B.24. Total number of four-bedroom units

0

B.25. Total number of five-bedroom units

0

B.26. Property Manager

Realty Resources Management

B.27. When is construction expected to begin?

07/15/2025

B.28. Please use the box below to answer the remaining questions and provide a narrative description of the project that includes:

- Description of municipal housing need and how the development addresses that need;

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- Requested amount of Affordable Housing Development Funding;
- Description of how City’s participation is financially necessary in order for the project to proceed;
- Description of allowed uses in the zone;
- Description of residential and non-residential uses in the area;
- Description of accessory uses relating to residential use, if any;
- Indicate if this project requires relocation of existing commercial or residential tenants;
- Description of relocation plan for persons temporarily or permanently displaced by development activities;
- Description of how the development is consistent with the Comprehensive Plan
- Description of how housing and facilities in the development will be operated after completion;
- Description of planned uses of tax increment revenues from the district (AHTIF projects only).

The Youth and Family Outreach (“YFO”) development, located at 331-337 Cumberland Avenue, will provide new construction of sixty units of affordable mixed-income rental housing in addition to an expansion of YFO’s existing childcare facility to serve fifty additional children. Of the sixty proposed units, 80% (48 units) will be restricted to households earning (60% AMI or less) and 20% (12 units) will be restricted to households earning 100% AMI or less. Of those 48 units, 60% (30 units) will be restricted to households earning 50% AMI or less, and there will be a mix of 4 studio units, 20 one-bedroom units, 14 two-bedroom units, and 10 three-bedroom units. Of the 12 units restricted to households earning 100% AMI or less, there will be a mix of 4 one-bedroom units and 8 two-bedroom units. The building will also include a laundry room, community room, fitness area, lobby, trash room, and bike/stroller storage. The primary building entrance for the childcare facility will be located on Cumberland Avenue while the primary building entrance for the apartment units will be located on Portland Street. The site will include outside play spaces for the childcare facility that may be used by residents outside of the daycare’s regular operating hours. Realty Resources Management will be the property management company, who will provide an on-site Resident Services Coordinator free of charge to residents. The project will require the temporary relocation of the existing childcare space during construction and Developers Collaborative will assist YFO in finding a temporary space when the construction start date becomes closer.

YFO is located in the B3 Downtown Business zone, a mixed-use zone that permits multifamily dwellings and preschool facilities and has a stated purpose “to encourage increased housing opportunity downtown for a diverse residential population.” YFO is centrally located near METRO Bus stops and a variety of services including public schools, public library, post office, Portland Food Co-op, and several banks. Immediately adjacent uses include the Portland Public Market parking garage, Preble Street Teen Shelter, Earl Apartments, and Preble Street Resource Center.

Portland’s economy depends upon the availability of a diverse and affordable array of rental housing options. However, Portland has the highest housing costs in the state of Maine, and rising rental housing costs have become increasingly out-of-reach for many lower- and moderate-income citizens. According to MaineHousing, the median 2BR rent in Portland in 2020 was unaffordable to 71.1% of households, or approximately 13,000 households. The YFO development will provide affordable rental rates and restrict units to low-and moderate-income residents.

The YFO development also aligns with Portland’s Comprehensive Plan, which was adopted by City Council on June 5, 2017, and which identified a desire to “increase, preserve, and modify the overall supply of housing City-wide to meet the needs, preferences and financial capabilities of all Portland households.”

The YFO development is requesting \$1,080,000 in Affordable Housing Development Funding. The City’s participation is financially necessary to close a gap between the sources and uses. The feasibility of the project also depends upon receiving a 9% Low-Income Housing Tax Credit (“LIHTC”) or a 4% LIHTC with the State Affordable Housing Tax Credit to be financially feasible. Without this funding from the City, a LIHTC Application would not be financially feasible.



Figure 1: The proposed building as seen from Cumberland Avenue



Fig 5 – Rendering from Cumberland Ave/Preble Street



Fig 6 – Rendering from Portland Street/Preble Street

Project:

337 CUMBERLAND
AVENUE

Portland, Maine

Owner/Client:

Youth and Family Outreach

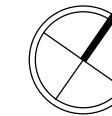
Consultant:

Revisions:

Key Plan:

FIRST FLOOR PLAN

Scale:
As indicated



9 AUGUST, 2024

AREAS					
FIRST FLOOR	10,986 GSF				
SECOND FLOOR	12,519 GSF				
THIRD FLOOR	12,228 GSF				
FOURTH FLOOR	12,555 GSF				
FIFTH FLOOR	12,555 GSF				
SIXTH FLOOR	12,025 GSF +				
TOTAL	72,868 GSF				

UNIT COUNT					
	STUDIO	1-BR	2-BR	3-BR	TOTAL
MARKET RATE:		4	8		12
MAINE HOUSING:	4	20	14	10	48
FIRST FLOOR		1	2	1	4
THIRD FLOOR	1	6	4	3	14
FOURTH FLOOR	1	6	4	3	14
FIFTH FLOOR	1	6	7	1	14
SIXTH FLOOR	1	6	6	1	14
TOTAL	4	24	22	10	60





AREAS					
FIRST FLOOR	10,986 GSF				
SECOND FLOOR	12,519 GSF				
THIRD FLOOR	12,228 GSF				
FOURTH FLOOR	12,555 GSF				
FIFTH FLOOR	12,555 GSF				
SIXTH FLOOR	12,025 GSF +				
TOTAL	72,868 GSF				

UNIT COUNT					
	STUDIO	1-BR	2-BR	3-BR	TOTAL
MARKET RATE:		4	8		12
MAINE HOUSING:	4	20	14	10	48
FIRST FLOOR		1	2	1	4
THIRD FLOOR	1	6	4	3	14
FOURTH FLOOR	1	6	4	3	14
FIFTH FLOOR	1	6	7	1	14
SIXTH FLOOR	1	6	6	1	14
TOTAL	4	24	22	10	60

AREAS					
FIRST FLOOR	10,986 GSF				
SECOND FLOOR	12,519 GSF				
THIRD FLOOR	12,228 GSF				
FOURTH FLOOR	12,555 GSF				
FIFTH FLOOR	12,555 GSF				
SIXTH FLOOR	12,025 GSF +				
TOTAL	72,868 GSF				
UNIT COUNT					
	STUDIO	1-BR	2-BR	3-BR	TOTAL
MARKET RATE:		4	8		12
MAINE HOUSING:	4	20	14	10	48
FIRST FLOOR		1	2	1	4
THIRD FLOOR	1	6	4	3	14
FOURTH FLOOR	1	6	4	3	14
FIFTH FLOOR	1	6	7	1	14
SIXTH FLOOR	1	6	6	1	14
TOTAL	4	24	22	10	60

Project:
337 CUMBERLAND AVENUE
Portland, Maine
Owner/Client:
Youth and Family Outreach
Consultant:



Revisions:

Key Plan:

THIRD FLOOR PLAN
Scale:
As indicated
9 AUGUST, 2024

A1.03



AREAS					
FIRST FLOOR	10,986 GSF				
SECOND FLOOR	12,519 GSF				
THIRD FLOOR	12,228 GSF				
FOURTH FLOOR	12,555 GSF				
FIFTH FLOOR	12,555 GSF				
SIXTH FLOOR	12,025 GSF +				
TOTAL	72,868 GSF				
UNIT COUNT					
	STUDIO	1-BR	2-BR	3-BR	TOTAL
MARKET RATE:		4	8		12
MAINE HOUSING:	4	20	14	10	48
FIRST FLOOR		1	2	1	4
THIRD FLOOR	1	6	4	3	14
FOURTH FLOOR	1	6	4	3	14
FIFTH FLOOR	1	6	7	1	14
SIXTH FLOOR	1	6	6	1	14
TOTAL	4	24	22	10	60



AREAS					
FIRST FLOOR	10,986 GSF				
SECOND FLOOR	12,519 GSF				
THIRD FLOOR	12,228 GSF				
FOURTH FLOOR	12,555 GSF				
FIFTH FLOOR	12,555 GSF				
SIXTH FLOOR	12,025 GSF +				
TOTAL	72,868 GSF				

UNIT COUNT					
	STUDIO	1-BR	2-BR	3-BR	TOTAL
MARKET RATE:		4	8		12
MAINE HOUSING:	4	20	14	10	48
FIRST FLOOR		1	2	1	4
THIRD FLOOR	1	6	4	3	14
FOURTH FLOOR	1	6	4	3	14
FIFTH FLOOR	1	6	7	1	14
SIXTH FLOOR	1	6	6	1	14
TOTAL	4	24	22	10	60



AREAS					
FIRST FLOOR	10,986 GSF				
SECOND FLOOR	12,519 GSF				
THIRD FLOOR	12,228 GSF				
FOURTH FLOOR	12,555 GSF				
FIFTH FLOOR	12,555 GSF				
SIXTH FLOOR	12,025 GSF +				
TOTAL	72,868 GSF				

UNIT COUNT					
	STUDIO	1-BR	2-BR	3-BR	TOTAL
MARKET RATE:		4	8		12
MAINE HOUSING:	4	20	14	10	48
FIRST FLOOR		1	2	1	4
THIRD FLOOR	1	6	4	3	14
FOURTH FLOOR	1	6	4	3	14
FIFTH FLOOR	1	6	7	1	14
SIXTH FLOOR	1	6	6	1	14
TOTAL	4	24	22	10	60

City of Portland - Affordable Housing (AH) TIF Model
 337 Cumberland Avenue, 33-K-5-6-7-9-10-13
[OAV: \\$519,900 ao 3/31/2020](#)
 2% Mil Rate Escalation
 75% Capture to AH TIF Project; 25% to City General Fund

City of Portland- TIF Projection Table for 337 Cumberland Avenue AH TIF										
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	City OAV General Fund Revenues
1	2020	\$0	75.00%	\$0	23.31	\$0	\$0	\$0	\$0	\$12,119
2	2021	\$0	75.00%	\$0	12.99	\$0	\$0	\$0	\$0	\$6,754
3	2022	\$0	75.00%	\$0	13.61	\$0	\$0	\$0	\$0	\$7,076
4	2023	\$0	75.00%	\$0	14.41	\$0	\$0	\$0	\$0	\$7,492
5	2024	\$0	75.00%	\$0	14.70	\$0	\$0	\$0	\$0	\$7,642
6	2025	\$0	75.00%	\$0	14.99	\$0	\$0	\$0	\$0	\$7,794
7	2026	\$8,220,100	75.00%	\$6,165,075	15.29	\$94,276	\$94,276	\$0	\$31,425	\$7,950
8	2027	\$8,220,100	75.00%	\$6,165,075	15.60	\$96,162	\$96,162	\$0	\$32,054	\$8,109
9	2028	\$8,220,100	75.00%	\$6,165,075	15.91	\$98,085	\$98,085	\$0	\$32,695	\$8,272
10	2029	\$8,220,100	75.00%	\$6,165,075	16.23	\$100,047	\$100,047	\$0	\$33,349	\$8,437
11	2030	\$8,220,100	75.00%	\$6,165,075	16.55	\$102,048	\$102,048	\$0	\$34,016	\$8,606
12	2031	\$8,220,100	75.00%	\$6,165,075	16.88	\$104,089	\$104,089	\$0	\$34,696	\$8,778
13	2032	\$8,220,100	75.00%	\$6,165,075	17.22	\$106,171	\$106,171	\$0	\$35,390	\$8,953
14	2033	\$8,220,100	75.00%	\$6,165,075	17.57	\$108,294	\$108,294	\$0	\$36,098	\$9,132
15	2034	\$8,220,100	75.00%	\$6,165,075	17.92	\$110,460	\$110,460	\$0	\$36,820	\$9,315
16	2035	\$8,220,100	75.00%	\$6,165,075	18.28	\$112,669	\$112,669	\$0	\$37,556	\$9,501
17	2036	\$8,220,100	75.00%	\$6,165,075	18.64	\$114,922	\$114,922	\$0	\$38,307	\$9,691
18	2037	\$8,220,100	75.00%	\$6,165,075	19.01	\$117,221	\$117,221	\$0	\$39,074	\$9,885
19	2038	\$8,220,100	75.00%	\$6,165,075	19.39	\$119,565	\$119,565	\$0	\$39,855	\$10,083
20	2039	\$8,220,100	75.00%	\$6,165,075	19.78	\$121,957	\$121,957	\$0	\$40,652	\$10,285
21	2040	\$8,220,100	75.00%	\$6,165,075	20.18	\$124,396	\$124,396	\$0	\$41,465	\$10,490
22	2041	\$8,220,100	75.00%	\$6,165,075	20.58	\$126,884	\$126,884	\$0	\$42,295	\$10,700
23	2042	\$8,220,100	75.00%	\$6,165,075	20.99	\$129,421	\$129,421	\$0	\$43,140	\$10,914
24	2043	\$8,220,100	75.00%	\$6,165,075	21.41	\$132,010	\$132,010	\$0	\$44,003	\$11,132
25	2044	\$8,220,100	75.00%	\$6,165,075	21.84	\$134,650	\$134,650	\$0	\$44,883	\$11,355
26	2045	\$8,220,100	75.00%	\$6,165,075	22.28	\$137,343	\$137,343	\$0	\$45,781	\$11,582
27	2046	\$8,220,100	75.00%	\$6,165,075	22.72	\$140,090	\$140,090	\$0	\$46,697	\$11,814
28	2047	\$8,220,100	75.00%	\$6,165,075	23.18	\$142,892	\$142,892	\$0	\$47,631	\$12,050
29	2048	\$8,220,100	75.00%	\$6,165,075	23.64	\$145,749	\$145,749	\$0	\$48,583	\$12,291
30	2049	\$8,220,100	75.00%	\$6,165,075	24.11	\$148,664	\$148,664	\$0	\$49,555	\$12,537
30 Year TIF Total		\$197,282,400		\$147,961,800		\$2,868,063	\$2,868,063	\$0	\$956,021	\$290,739
30 Year Average				\$4,932,060		\$95,602	\$95,602		\$31,867	\$9,691

Mil Rate Actual Above Line
 Mil Rate Est. FY2025 & On

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland - TIF Model for 337 Cumberland Avenue Affordable Housing TIF							
337 Cumberland Ave TIF Model/75% Sheltered - 30 years - 75% to Developer Project Account - 25% to City General Fund							
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	2020	\$0	\$0	\$0	\$0	\$0	\$0
2	2021	\$0	\$0	\$0	\$0	\$0	\$0
3	2022	\$0	\$0	\$0	\$0	\$0	\$0
4	2023	\$0	\$0	\$0	\$0	\$0	\$0
5	2024	\$0	\$0	\$0	\$0	\$0	\$0
6	2025	\$0	\$0	\$0	\$0	\$0	\$0
7	2026	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
8	2027	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
9	2028	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
10	2029	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
11	2030	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
12	2031	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
13	2032	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
14	2033	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
15	2034	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
16	2035	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
17	2036	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
18	2037	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
19	2038	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
20	2039	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
21	2040	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
22	2041	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
23	2042	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
24	2043	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
25	2044	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
26	2045	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
27	2046	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
28	2047	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
29	2048	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
30	2049	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
30 Year TIF Total		\$197,282,400	\$147,961,800	\$1,225,124	\$110,882	\$81,689	\$1,417,695
30 Year TIF Avg.		\$6,576,080	\$4,932,060	\$40,837	\$3,696	\$2,723	\$47,257

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: August 16, 2024

SUBJECT: Order 46-24/25 Approving an Amendment to the 337 Cumberland Avenue Affordable Housing Development and Tax Increment Financing District RE: 337 Cumberland Avenue - Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair

SPONSOR: Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair.

The Housing and Economic Development Committee met on August 20, 2024, and voted (3-0, Phillips absent) to forward this item to the City Council with a recommendation for passage.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/4/2024

**Final
Action 9/16/2024**

Can action be taken at a later date: No Under the state statute for the Affordable Housing Tax Increment Financing program, a 10-day public notice is required before action can be taken by the City Council. The notice will be published in the Portland Press Herald.

Does this item involve a new contract with the City: No; amended AHTIF documents will be required and will be approved by Corporation Counsel before signed and submitted.

PRESENTATION: Greg Watson and Mary Davis will be available for questions.

I. SUMMARY

Amendment of the existing 337 Cumberland Avenue Affordable Housing Development and Tax Increment Financing District, the District Program and the Credit Enhancement Agreement to include 60-units, 29 of which will be affordable to households at or below 50% of the area median income (\$51,000 for a two-person household), 19 of which will be affordable to households at or below 60% of the area median income (\$61,200 for a two-person household) and 12 market rate units (including 4 studios, 24 1-bedroom, 22 2-bedroom and 10 3-bedroom).

II. AGENDA DESCRIPTION

The Housing and Economic Development Committee met on August 20, 2024, and voted (3-0, Phillips absent) to forward this item to the City Council with a recommendation for passage.

Youth and Family Outreach (YFO), through YFO Resource Hub LP, a non-profit entity to be created, has proposed construction of a new 60-unit rental housing development which will include child care space. The site currently contains a vacant former restaurant and the chapel building that currently houses the YFO child care program, both of which will be removed to facilitate construction of the new building.

An Affordable Housing Tax Increment Financing District was previously approved on this site. The 337 Cumberland Avenue Affordable Housing Development Tax Increment Financing District was approved by the Portland City Council on August 3, 2020 (Order 19-20/21 and Order 20-20/21) and received a Certificate of

Approval from MaineHousing on September 17, 2020. The current approved development district includes a slightly different unit mix (36 units at or below 50% of the area median income, 12 units at or below 60% of the area median income and 12 units at market rate) and will need to be amended to reflect the proposed new development program. The new development program will include 60-units, 29 of which will be affordable to households at or below 50% of the area median income (\$51,000 for a two-person household), 19 of which will be affordable to households at or below 60% of the area median income (\$61,200 for a two-person household) and 12 market rate units (including 4 studios, 24 1-bedroom, 22 2-bedroom and 10 3-bedroom). The end date of the development district is March 31, 2050.

This is a companion order to the order above.

This item must be read on two separate days. This is its first reading.

III. BACKGROUND

Approval of an Amendment to the 337 Cumberland Avenue Affordable Housing Development and Tax Increment Financing District is key to making the project feasible. The City Council must authorize the amendments to the AHTIF District, the District Program and the Credit Enhancement Agreement. The underwriting memo notes that the TIF continues to be necessary to keep the debt service coverage ratio within acceptable limits.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Amending the current Affordable Housing Tax Increment Financing District, which was approved by the Portland City Council on August 3, 2020 (Order 19-20/21 and Order 20-20/21) to support the construction of 60-units of new rental housing, 29 of which will be affordable to households at or below 50% of the area median income (\$51,000 for a two-person household), 19 of which will be affordable to households at or below 60% of the area median income (\$61,200 for a two-person household) and 12 market rate units (including 4 studios, 24 1-bedroom, 22 2-bedroom and 10 3-bedroom).

V. FINANCIAL IMPACT

- When completed, the project's total assessed-value is estimated at \$8,740,000 for the housing portion of the development, which would yield \$126,000 in annual assessed property value in year one at the current FY24 millage rate.
- The total assessed-value of the daycare portion of the project is estimated at \$2,500,000, which would yield \$36,000 in annual assessed property value in year one at the current FY24 millage rate. However, YFO is a 501(c)(3) entity, therefore this portion of the project would be tax exempt.
- The approximate total amount of tax revenue (aka captured valuation) for the housing portion of the project that would be returned to the project/developer is \$2,868,063 in total over the remainder of the 30-year term (or \$95,602 per year averaged over the 30-year term);
- The approximate total amount of tax revenue (aka non-captured valuation) that would be deposited into the general fund is \$1,246,760 in total over the remainder of the 30-year term (or \$41,558 per year averaged over the 30-year term);
- If the project is not completed, the parcels would remain tax exempt.
- With the tax sheltering benefits of TIF Districts, overall savings to the City during the term of the district averages an estimated annual amount of \$47,257+, or \$1,417,695 over the remainder of the life of the district.

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

Staff is requesting the City Council approve the amendment to the 337 Cumberland Avenue Affordable Housing Development Tax Increment Financing District and District Program along with an amendment to the Credit Enhancement Agreement with YFO Resource Hub LP and authorize the City Manager to sign and submit to MaineHousing for approval the documents amending the district in substantially the form(s) as enclosed.

VIII. LIST ATTACHMENTS

1. Order - Approving an amendment to the 337 Cumberland Avenue Affordable Housing Development and TIF District
2. HEDC Packet
3. 337 Cumberland Ave DEV PROG Amended for Council 08282024
4. 337 Cumberland Ave DEC OF COV Amended Council 08282024

Prepared by:

Mary Davis, Division Director

Date: 08/16/2024

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

**ORDER APPROVING AN AMENDMENT TO THE 337 CUMBERLAND AVENUE
AFFORDABLE HOUSING DEVELOPMENT AND
TAX INCREMENT FINANCING DISTRICT
RE: 337 CUMBERLAND AVENUE**

ORDERED, that the amended development program and financial plan entitled “337 Cumberland Avenue Affordable Housing Development District” for affordable housing development is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or designee to execute said document and any other related documents necessary or convenient to carry out the intent of said document and this Order; and

BE IT FURTHER ORDERED, that this Order is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective immediately.

To: Mary Davis, City of Portland
From: Anne Boynton, Urban Ventures, Inc.
Re: Youth and Family Outreach (with Developers Collaborative as development consultant)
Date: 8/13/24

Youth and Family Outreach (YFO), the non-profit sponsor YFO Resource Hub LP, requests a loan of \$1,080,000 for the proposed new construction 60-unit rental housing development and first floor child care space. The site is currently a vacant former restaurant and the church which YFO currently uses for day care space. The site already has a 75% 30-year Affordable Housing TIF which was approved in 2020 when YFO was partnering with Portland Housing Authority. 2020 was a uniquely difficult year to be moving a development forward -- the project was substantially delayed due to construction cost over runs and had to return their tax credit allocation.

The 60 housing units will serve a mixed income population, including 12 "Market Rate" (up to 100% AMI), 19 units at 60% AMI, and 29 units at 50% AMI. Unit sizes will range from efficiency to 3 bedrooms. As part of the Maine Housing 9% LIHTC competition and financing process, YFO is requesting 10 Project Based Vouchers. This would provide 20% of the LIHTC units with a deep subsidy for households with special housing needs for supportive services.

Developers Collaborative is serving as the fee developer for this housing project, and will not have an ownership stake in the project.

The requested loan is a subsidy of \$18,000 per housing unit, or \$22,500 per unit affordable to households below 60% AMI (12 units will be restricted to under 100% AMI). This is in addition to the previously approved TIF subsidy.

Sources and Uses

Sources:		Uses:	
Maine Housing Must Pay	\$10,608,153	Acquisition	\$0
Maine Housing 0% Deferred	\$3,000,000	Construction hard costs	\$20,805,781
Net Syndication Equity	\$10,199,080	Hard & Soft Contingency	\$1,079,039
AHP Capital Advance	\$850,000	Soft costs	\$2,286,895
IRA Solar Credits	\$104,500	Capitalized Reserves	\$920,018
City of Portland Loan	<u>\$ 1,080,000</u>	Developer Fee	<u>\$750,000</u>
Total Sources:	\$25,841,733	Total Uses:	\$25,841,733

YFO plans to submit an application for 9% LIHTC in September, along with a request for mortgage financing and 10 PBVs from Maine Housing. Evidence that YFO has funds in hand for their share of building construction and other development expenses, including acquisition and site prep, is a recommended condition of loan closing.

While YFO as a corporate entity has no track record with residential real estate development, the fee developer, Developers Collaborative, is a regular successful applicant, including last year in a similar role as development consultant for Equality Community Center. Developers Collaborative has an impressive success rate in 9% applications and has developed over 996 units using LIHTC, including 140 units in Portland. This is the second year Maine Housing has offered PBV's as part of the 9% LIHTC underwriting process, so the underwriting process and competition for these resources is becoming clearer. This site was awarded 9% LIHTC in the 2020 competition, but the project could not move forward at that time due to cost increases related to the pandemic.

A letter of interest is included from syndicator Evernorth, along with separate confirmation that Evernorth understands the ownership structure and significant commercial space. The letter offers a price of \$.85 per LIHTC credit and \$.95 per solar credit which is broadly consistent with Developers Collaborative recent experience.

For analysis of "Uses," see Development Budget.

Development Budget

Construction Costs:

Construction costs are based on a trades break down estimate by Penobscot based on drawings at the Conceptual Design Stage with a run date of 7/3/24. (Trade breakdown is preferable to a cost per square foot estimate.) This estimate includes provision for prevailing wage requirements. The direct costs for the day care center are separately budgeted, including interior finishes, structural elements including floor and elevator, and building skin including windows, doors and siding. However, reasonably allocatable costs such as site improvement and roof are borne entirely by the housing condo. Total housing construction cost divided among the 60 residential units is \$363,747. While this cost per unit would have been considered high prior to COVID, it is not out of line with comparable sized units in the current construction cost environment.

Soft Costs:

Soft costs are moderate and within industry standard. Developer fee (paid to Developers Collaborative) is \$750,000, the Maine Housing cap for funded developer fee. This is on the slim side of a reasonable developer's fee by industry standards, 3.1% of total development costs, excluding reserves and developer fee. However, Developers Collaborative has limited risk associated with this project – YFO is responsible for payment of soft costs in predevelopment, payment of a portion of Developer fee even if the project is terminated, and Developers Collaborative will have no on-going financial stake (and risk) in the project. In addition to direct staffing time, it is these project risks that are what developer fee is understood to cover.

Contingency:

Hard cost contingency is carried primarily in the development budget with the industry standard for new construction of 5%. The Penobscot estimate also includes a 4% contingency. As with each project in this round, it is still vulnerable to continued construction cost inflation due to the relatively early stage of predevelopment, continued high level of economic uncertainty, and persistent inflationary pressures in the construction industry. This level of contingency provides some protection from further delays due to price inflation.

Soft cost contingency is \$60,000, which is 2.62% of soft costs. This is very low, especially for this early stage of project development. This concern is partially mitigated by the YFO's long history and successful fundraising, which demonstrates some capacity to cover unexpected costs.

Acquisition:

The site is owned by YFO, which acquired the 337 Cumberland property adjacent to their existing space in 2019 for \$895,000. The property was appraised at \$955,000 in 2018 which demonstrates the original sales price was consistent with market values. The public has an interest in insuring that publicly funded projects purchase the property for no more than the market value. This review is especially important in cases like this one where the seller plays multiple roles in the transaction, as YFO will in the transfer. The proposed \$0 transfer is clearly below market value.

All acquisition related expenses, including demolition and any needed brownfields work, has been pulled out of the 9% LIHTC budget, and is to be funded prior to transfer of the asset by YFO.

The "off budget" nature of all acquisition costs and day care direct construction costs might change if Maine Housing chooses to allocate 4% credits instead of 9% credits. The budgets supporting a 4% credit scenario have not been presented to the City, but the construction of the day care space would be includable in basis as a community facility. If Maine Housing approves a 4% credit allocation instead of 9% credits, that would be a substantial revision of the budget. Satisfactory review of the budgets in a 4% scenario, with the potential of loan resizing, is a recommended condition of loan approval.

Operating Budget & 20 Year Cashflow Projection

Project Income:

The operating budget anticipates charging the maximum allowable LIHTC rents at each income level, and the 12 "market rate" units capped at the maximum rent affordable to a household at 100% AMI. The budget assumes receipt of 10 Project Based Vouchers (PBV) from Maine Housing, which have a 110% of Fair Market Rent payment standard, substantially above LIHTC capped rents at all unit sizes. This is the second year Maine Housing has offered this option.

	<50% AMI (w PBV)	<50% AMI (no PBV)	<60% AMI	<100% AMI	Total by unit type
efficiency	1	1	2	0	4
1 bedroom	4	8	8	4	24
2 bedroom	3	6	5	8	22
3 bedroom	2	4	4	0	10
Total by income level:	10	19	19	12	60

No market study has been submitted by the developer. While the demand for units affordable at 60% AMI and below is well established, the “market rate” rent in relationship to 100% of AMI needs further documentation. A satisfactory current market study, including evaluation of the market rate rents, is a recommended condition of the loan.

Residential vacancy is budgeted at the industry standard of 5%, which is comfortably above Portland’s recent historic vacancy rates.

The building will also include a single 12,608 sq. feet commercial space for YFO’s child care operations. The anticipated ownership structure of the building is two condo units, one for the housing and one for the child care, with almost all operating costs allocated to the individual condo units including utilities, maintenance, taxes, and most insurance. YFO’s ability to successfully operate the commercial condo is critically important to the stability of the project as a whole. YFO will be approximately doubling the child care slots available, as well as space available for services to small groups of children and families, and will be responsible for programming the community room shared with the residents. YFO has a business expansion plan finalized in 2023 which demonstrates effective demand for their expansion and provides budget projections which show the expanded program operating with a small positive margin (prior to depreciation). These projections take into account the growth in occupancy related expenses (including janitorial & maintenance) which will accompany expansion, but have not been updated for operating conditions (including inflation) in 2024. Satisfactory review of an updated business plan is a recommended condition of closing.

Operating Expense

The Developers Collaborative pro forma (for the residential condo only) reflects a per unit operating cost of \$8,785, which appears high. However, of that, \$2,099 per unit is real estate taxes, leaving \$6,686 for other operating expenses which is reasonable in this cost environment. Grounds expense is an outlier, very high at \$34,200/year for a building without landscaping or parking lot. Developer’s Collaborative points to the need to maintain the playground, which will be available to children in residence in the building outside the hours of the child care center. Functionally, this means 2 of 7 days (29%), and opens the question of how operating expenses will be fairly divided between housing and child care. Prior to loan closing, satisfactory review of the process for dividing costs between the two condos is a recommended condition of this recommendation.

Supportive services are budgeted at a minimal \$390/unit, which is designed to meet the Maine Housing minimum level of services. Deeper services needed for the PBV units serving households with special housing needs will be provided by Catholic Charities and Through These Doors. Commitment letters covering the terms and conditions, including the commitment of the organizations to cover the cost of provided services, are being negotiated for submission with the Maine Housing application in September. Satisfactory review of the commitments to provide services is a recommended condition of this recommendation.

30 Year Cashflow & Debt Service Coverage Ratio (DSCR)

Even with the previously approved 75% TIF, DSCR is extraordinarily thin at 1.05 in year 1. With industry standard 2/3% inflators, DSCR doesn't hit Maine Housing's standard underwriting ratio of 1.15 till year 8. While the PBVs offer some additional assurance of steady operating income, 1.05 provides only the slenderest margin. Maine Housing has expressed a willingness to consider a minimum requirement of \$500 per unit in annual cashflow (and year 1 shows \$515/unit), in the early years, however, this thin margin increases the risk for every stakeholder in the project.

Developer Financials

YFO is a non-profit with a long history of service to Portland families, founded in 1844. Relative to the norms of the child care industry, YFO has exceptional financial strength, with Net Assets of over \$2 million in 2023, including an endowment of over \$1.5 million. However, housing development has put new financial pressures on YFO and long-term ownership of affordable housing will continue to place new financial constraints and asset management responsibilities on YFO. The Board of Directors has a strong mix of professions including lawyer, CPA, engineer, non-profit management, public finance, local business leaders, and advocates for children. What it does not yet include is affordable housing development or affordable housing management experience. YFO's Executive Director, Camelia Babson-Haley, acknowledges the expansion of YFO's core programming into affordable housing and her continued focus on early childhood education and family support as her core skill set. She is actively seeking new members with affordable housing expertise to add to the Board to meet the need for leadership and oversight in the expanded core mission area of affordable housing and asset management.

YFO has submitted audits covering FY 2020 – FY 2023 (and has previously submitted audits covering FY 2016 -- 2019.) Their fiscal year ends 9/30. Over the tumultuous period from 2018-2023, YFO has more than doubled its total assets to \$2,559,547, increased net assets by 87%, and dramatically improved its Quick Ratio to a very impressive 7.85, all this while navigating a pandemic which literally closed the doors for months. Immediately prior to the pandemic, YFO acquired the adjacent property with a \$500,000 loan from Genesis Fund and pursued a comprehensive redevelopment, at a time when real estate development costs were experiencing unprecedented price inflation.

YFO engaged in a capital campaign which raised \$2.1 million (in cash and pledges) by end of 2022. These funds have covered some acquisition related expenses and established an endowed scholarship fund for low income families who need transitional funding before other child care supports kick in. This will add important stability to YFO's income stream while continuing to provide services to low income families. YFO is planning to initiate a next phase in their capital campaign and is in the process of selecting a campaign consultant. Evidence that YFO has funds in hand for their share of building construction and other development expenses, including acquisition and site prep, is a recommended condition of loan closing.

YFO Management's financials for the seven months ending 4/30/24 (as is typical) utilize somewhat different categories for reporting than the audit, so don't provide a direct comparison with prior audits. On the Balance Sheet, the 4/30/24 Quick Ratio was an alarming .5, but this includes the full amount of the Genesis Fund loan as a current liability. The Genesis Fund loan was subsequently extended to 2026. Adjusting out the Genesis Fund loan, the Quick Ratio was a moderate 3.30. The Balance Sheet shows a substantial jump in net assets to \$2,804,218 due to \$800,000 Accounts Receivable. This reflects successful fundraising, committed but not yet received -- commitments of \$515,000 from Senate Earmark and \$250,000 from State of Maine childcare infrastructure grants.

Impact of pandemic: The pandemic was much more disruptive to the child care industry than to subsidized affordable housing. In 2020, YFO was closed for months and after reopening, its operations were severely limited by the precautions necessary to prevent the spread of COVID-19. Class sizes were cut in half and before and after care eliminated, severely reducing program fee income. This was a systemic problem, not in any way a reflection of YFO's management. In fact, YFO's pandemic response reflected best practices for the industry and the level of care reflected in their revised protocols demonstrate the high quality of their services and management. Program Service Fees fell significantly and have only exceeded 2019 levels in 2023. Increases in government grants including PPP loans and ARPA grants helped offset the decline in fee income. Pandemic related supports are no longer available, but YFO continues to receive support from the State of Maine childcare worker wage supplement program, which helps YFO to better attract and retain childcare workers. As described above, despite the extraordinary constraints of the pandemic, YFO was able to exit the pandemic in stronger financial health than before.

YFO has experienced remarkable success in its long lifetime. Doubling program size and adding affordable housing makes this an exciting yet potentially fragile time in the life history of an organization. To continue to thrive in this new context, YFO needs to prioritize developing their Board's capacity for effective oversight of their new affordable housing program.

Recommendations

I recommend a loan in the amount \$1,080,000, at zero interest, to be repaid with 10% of cashflow above MaineHousing's required \$500/unit (as confirmed by MaineHousing

underwriting), in the first 5 years of operations, followed by 30% of cashflow until fully retired, with a 30-year term, with loan closing conditioned upon satisfactory review of the following:

- A current market study supporting the projected rent structure, including an analysis of market rent and vacancy for the retail space;
- Current management financial statements and the most recent YFO audit available at the time of closing;
- Financing commitments for debt and equity prior to closing on terms and conditions acceptable to the City of Portland, including evidence that YFO has funds in hand for the YFO share of building construction and other development expenses, including acquisition and site prep, whether included in development budget or carried separately.
- If MaineHousing approves 4% LIHTC, satisfactory review of the revised budgets with the potential to reduce loan sizing to reflect a division of subsidy between City and State which is consistent with the City approved 9% budgets. (City of Portland's loan is 26.47% of the combined City and State \$4,080,000 of soft debt.)
- Executed commitments to provide services to PBV units.
- An updated business plan for YFOs child care operation in the new facility.
- A written description of YFO's process for budget oversight, including the formulas for sharing costs between the commercial and residential condos;
- Condominium documents;
- All standard construction conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.

Development Budget with Permanent Sources

Date 8/13/2024
Project Name
Project Address 331-337 Cumberland
Developer/Sponsor YFO (w/Developers Collaborative as development consultant)

Total Units 60
Residential Sq Feet 59,829
Total Square Feet 72,437

	August 13 Revised Values			Change	
	Total	Per Unit	Per Sq Ft	Reservation to Commitment	
Sources of Funds					
Permanent Financing - MH 1st Lien 6% I only	\$10,608,153	\$176,803	\$177	\$ 281,806	3%
Permanent Financing - City of Portland	\$1,080,000	\$18,000	\$18	\$ 7,950	1%
Equity (LIHTC/tenant contributions)	\$10,199,080	\$169,985	\$170	\$ 99	0%
AHP Capital Advance	\$850,000	\$14,167	\$14	\$ -	0%
OTHER	\$0	\$0	\$0	\$ (780,000)	-100%
Maine Housings Subsidy	\$3,000,000	\$50,000	\$50	\$ 660,000	28%
IRA Solar Credits	\$104,500	\$1,742	\$2	\$ -	0%
Total Sources of Funds	\$25,841,733	\$430,696	\$432	\$ 169,855	1%
(GAP)/Surplus			\$0	\$ (424,900)	-100%

Uses of Funds

Hard Costs					
Site Improvements	\$1,660,000	\$27,667	\$28	\$ 485,000	41%
Rehabilitation		\$0	\$0		
New Construction	\$16,637,665	\$277,294	\$278	\$ 32,849	0%
Contractor's Profit, Overhead, & Gen. Requirements 10.0%	\$1,729,563	\$28,826	\$29	\$ (40,641)	-2%
Hazardous Materials abatement (if contracted separately)		\$0	\$0		
Demolition Cost (if contracted separately)		\$0	\$0		
Bond Premium	\$353,553	\$5,893	\$6	\$ 4,387	1%
Other -- Solar \$275k, Utility Relocation \$150k	\$425,000	\$7,083	\$7	\$ 425,000	#DIV/0!
Hard Cost Contingency (% of hard costs) 4.9%	\$1,019,039	\$16,984	\$17	\$ 24,080	2%
Total Hard Costs	\$21,824,820	\$363,747	\$365	\$ 930,675	4%

Soft Costs					
Building Permit & Fees	\$303,162	\$5,053	\$5	\$ 5,210	2%
Survey & Engineering	\$80,000	\$1,333	\$1	\$ -	0%
Design & Permitting (% of const exp) 2.3%	\$364,000	\$6,067	\$6	\$ -	0%
Borrower Legal (all closings, excluding syndication legal)	\$45,000	\$750	\$1	\$ -	0%
Title & Recording	\$20,000	\$333	\$0	\$ -	0%
Accounting	\$10,000	\$167	\$0	\$ -	0%
Construction Period Taxes	\$10,000	\$167	\$0	\$ -	0%
Construction Period Insurance	\$55,000	\$917	\$1	\$ -	0%
Other: FF&E, Security	\$14,736	\$246	\$0	\$ (5,264)	-26%
Other		\$0	\$0		
Total Soft Costs	\$901,898	\$15,032	\$15	\$ (54)	0%

Financing Costs					
Construction Loan Origination Fees	\$42,000	\$700	\$1	\$ -	0%
Construction Period Interest	\$902,334	\$15,039	\$15	\$ -	0%
Lender Inspection Fees	\$35,000	\$583	\$1	\$ -	0%
Letter of Credit Fee		\$0	\$0		
Permanent Loan Fee	\$215,163	\$3,586	\$4	\$ 5,636	3%
Construction Lender Legal		\$0	\$0		
Other	\$0	\$0	\$0	\$ -	#DIV/0!
Total Financing Costs	\$1,194,497	\$19,908	\$20	\$ 5,636	0%

Miscellaneous					
Market Survey	\$5,500	\$92	\$0	\$ -	0%
Appraisal	\$7,500	\$125	\$0	\$ -	0%
Environmental Study	\$35,000	\$583	\$1	\$ -	0%
LIHTC Fees -- prepaid monitoring	\$142,500	\$2,375	\$2	\$ -	0%
Other: Commissioning		\$0	\$0		

Relocation Costs		\$0	\$0		
Other		\$0	\$0		
Soft Cost Contingency (% of soft costs excl Dev Fee)	2.62%	\$60,000	\$1,000	\$1	\$ - 0%
Total Miscellaneous:		\$250,500	\$4,175	\$24	\$ - 0%
Acquisition					
Acquisition: Buildings		\$0	\$0	\$0	\$ - #DIV/0!
Acquisition: Land		\$0	\$0	\$0	\$ (350,000) -100%
Acquisition: Legal			\$0	\$0	
Other			\$0	\$0	
Total Acquisition		\$0	\$0	\$0	\$ (350,000) -100%
Reserves and Developer Fee					
Operating Deficit Escrow		\$568,583	\$9,476	\$10	\$ 918 0%
Prefunded Replacement Reserve		\$187,208	\$3,120	\$3	\$ (34) 0%
Taxes & Insurance Escrow		\$90,972	\$1,516	\$2	\$ 7,614 9%
Developer Overhead		\$500,000	\$8,333	\$8	\$ - 0%
Developer Profit		\$250,000	\$4,167	\$4	\$ - 0%
Rent Up Reserve & Marketing		\$48,000	\$800	\$1	\$ - 0%
Other		\$25,255	\$421	\$0	\$ - 0%
Total Reserves and Developer Fee		\$1,670,018	\$27,834	\$28	\$ 8,498 1%
Total Uses of Funds		\$25,841,733	\$430,696	\$452	\$ 594,755 2%

Developer Fee Analysis: Total Fees: \$750,000
(excluding reserves & developer fee) Percent of TDC: 3.10%

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Project Operating Pro Forma

Date August 12, 2024
 Project Name
 Project Address 331-337 Cumberland
 Developer/Sponsor YFO (Developer's Collaborative as dev consultant)

Rental Income

Maximum LIHTC Rents

Unit Type	Number of Units	Per Unit Sq Ft	Total Sq Ft	Restriction on % Median Inc.	Per Unit Monthly Gross Rent	Utility Deductions	Rent Subsidy	Per Unit Monthly Net Rent	Total Monthly Net Income	Total Annual Net Rent
0 BR	1		0	50%	\$1,116	\$108		\$1,008	\$1,008	\$12,096
0 BR	1	PBV	0	50%	\$1,450	\$108		\$1,342	\$1,342	\$16,104
0 BR	2		0	60%	\$1,339	\$108		\$1,231	\$2,462	\$29,544
1 BR	8		0	50%	\$1,195	\$137		\$1,058	\$8,464	\$101,568
1 BR	4	PBV	0	50%	\$1,663	\$137		\$1,526	\$6,104	\$73,248
1 BR	8		0	60%	\$1,434	\$137		\$1,297	\$10,376	\$124,512
1 BR	4		0	market	\$2,231	\$0		\$2,231	\$8,924	\$107,088
2 BR	6		0	50%	\$1,435	\$175		\$1,260	\$7,560	\$90,720
2 BR	3	PBV	0	50%	\$2,140	\$175		\$1,965	\$5,895	\$70,740
2 BR	5		0	60%	\$1,722	\$175		\$1,547	\$7,735	\$92,820
2 BR	8		0	market	\$2,550	\$0		\$2,550	\$20,400	\$244,800
3 BR	4		0	50%	\$1,485	\$212		\$1,273	\$5,092	\$61,104
3 BR	2	PBV	0	50%	\$2,659	\$212		\$2,447	\$4,894	\$58,728
3 BR	4		0	60%	\$1,772	\$212		\$1,560	\$6,240	\$74,880
Other			0	50%				\$0	\$0	\$0
Other			0	60%				\$0	\$0	\$0
Total:	60	59829	0						\$96,496	\$1,157,952

T Bedrooms: 90
 average/unit \$1,227

Operating Expenses

Rent Increase Rate	2.0%
Expenses Increase Rate	3.0%

TIF year 1 75% year 11 75% year 21 75%

Note: Year 1 is the first full year of stabilized operations

	Year 1	Year 1/Unit	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Income											
Sch. Gross Income - Residential	\$1,157,952	\$19,299	\$1,181,111	\$1,204,733	\$1,228,828	\$1,253,404	\$1,278,473	\$1,304,042	\$1,330,123	\$1,356,725	\$1,383,860
Vacancy Loss 5.0%	(\$57,898)	(\$965)	(\$59,056)	(\$60,237)	(\$61,441)	(\$62,670)	(\$63,924)	(\$65,202)	(\$66,506)	(\$67,836)	(\$69,193)
Other income HAP Diff.		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TIF (inflated at 2%) 75%	\$94,457	\$1,574	\$96,346	\$98,273	\$100,239	\$102,244	\$104,288	\$106,374	\$108,502	\$110,672	\$112,885
Effective Gross Income	\$1,194,512	\$19,909	\$1,218,402	\$1,242,770	\$1,267,625	\$1,292,978	\$1,318,837	\$1,345,214	\$1,372,118	\$1,399,561	\$1,427,552

Administrative											
Management Fee 5.7%	\$66,007	\$1,100	\$67,987	\$70,027	\$72,128	\$74,291	\$76,520	\$78,816	\$81,180	\$83,616	\$86,124
Management Charges 5.6%	\$65,000	\$1,083	\$66,950	\$68,959	\$71,027	\$73,158	\$75,353	\$77,613	\$79,942	\$82,340	\$84,810
Marketing Expense	\$1,500	\$25	\$1,545	\$1,591	\$1,639	\$1,688	\$1,739	\$1,791	\$1,845	\$1,900	\$1,957
Legal	\$1,000	\$17	\$1,030	\$1,061	\$1,093	\$1,126	\$1,159	\$1,194	\$1,230	\$1,267	\$1,305
Audit & Accounting	\$10,000	\$167	\$10,300	\$10,609	\$10,927	\$11,255	\$11,593	\$11,941	\$12,299	\$12,668	\$13,048
Admin Other	\$960	\$16	\$989	\$1,018	\$1,049	\$1,080	\$1,113	\$1,146	\$1,181	\$1,216	\$1,253
Total Administrative	\$144,467	\$2,408	\$148,801	\$153,265	\$157,863	\$162,599	\$167,477	\$172,501	\$177,676	\$183,006	\$188,497

Supportive Services	\$23,400	\$390	\$24,102	\$24,825	\$25,570	\$26,337	\$27,127	\$27,941	\$28,779	\$29,642	\$30,532
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Utilities											
Fuel Oil		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Natural Gas	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Electric	\$41,094	\$685	\$42,327	\$43,597	\$44,905	\$46,252	\$47,639	\$49,068	\$50,540	\$52,057	\$53,618
Water / Sewer	\$21,600	\$360	\$22,248	\$22,915	\$23,603	\$24,311	\$25,040	\$25,792	\$26,565	\$27,362	\$28,183
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Utilities	\$62,694	\$1,045	\$64,575	\$66,512	\$68,507	\$70,563	\$72,680	\$74,860	\$77,106	\$79,419	\$81,801
Total incl Utility Allowance	\$136,338	\$2,272	\$	2.28							

Maintenance	Year 1	Year 1/Unit	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Grounds	\$34,200	\$570	\$35,226	\$36,283	\$37,371	\$38,492	\$39,647	\$40,837	\$42,062	\$43,324	\$44,623
Janitorial	\$12,000	\$200	\$12,360	\$12,731	\$13,113	\$13,506	\$13,911	\$14,329	\$14,758	\$15,201	\$15,657
Trash Removal	\$10,400	\$173	\$10,712	\$11,033	\$11,364	\$11,705	\$12,056	\$12,418	\$12,791	\$13,174	\$13,570
Security		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Equipment & Supplies	\$14,400	\$240	\$14,832	\$15,277	\$15,735	\$16,207	\$16,694	\$17,194	\$17,710	\$18,241	\$18,789
Maintenance	\$45,600	\$760	\$46,968	\$48,377	\$49,828	\$51,323	\$52,863	\$54,449	\$56,082	\$57,765	\$59,498
Maintenance Contracts		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Maintenance	\$116,600	\$1,943	\$120,098	\$123,701	\$127,412	\$131,234	\$135,171	\$139,226	\$143,403	\$147,705	\$152,137
Taxes & Insurance											
Real Estate Taxes 2%	\$125,943	\$2,099	\$128,462	\$131,031	\$133,652	\$136,325	\$139,051	\$141,832	\$144,669	\$147,562	\$150,514
Payroll Taxes / Fidelity Bond / Workers Comp / Health Ins.		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Insurance (property, liability)	\$24,000	\$400	\$24,720	\$25,462	\$26,225	\$27,012	\$27,823	\$28,657	\$29,517	\$30,402	\$31,315
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Taxes & Insurance	\$149,943	\$2,499	\$153,182	\$156,493	\$159,877	\$163,337	\$166,874	\$170,490	\$174,186	\$177,965	\$181,828
Replacement Reserves	\$30,000	\$500	\$30,900	\$31,827	\$32,782	\$33,765	\$34,778	\$35,822	\$36,896	\$38,003	\$39,143
Operating Reserves		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Expenses	\$527,104	\$8,785	\$541,658	\$556,623	\$572,011	\$587,835	\$604,107	\$620,839	\$638,046	\$655,741	\$673,938
Net Operating Income	\$667,408	\$11,123	\$676,744	\$686,147	\$695,614	\$705,143	\$714,731	\$724,375	\$734,072	\$743,820	\$753,614
Debt Service											
Maine Housing Interest Bearing	\$636,489	\$10,608	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489
Second Lien		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Debt Service (Must Pay)	\$636,489	\$10,608	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489
Cash Flow (after Must Pay Debt)	\$30,919	\$515	\$40,255	\$49,658	\$59,125	\$68,654	\$78,242	\$87,886	\$97,583	\$107,331	\$117,125
Debt Service Coverage Ratio	1.05		1.06	1.08	1.09	1.11	1.12	1.14	1.15	1.17	1.18
Cash Flow Debt Payments											
City of Portland 10%	30.0%	\$3,092	\$155	\$4,026	\$4,966	\$5,913	\$6,865	\$23,472	\$26,366	\$29,275	\$32,199
Developer Fee Loan	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cash Flow Retained by Project		\$27,827	\$361	\$36,230	\$44,692	\$53,213	\$61,788	\$54,769	\$61,520	\$68,308	\$81,988
Retained Cash Flow %	5%										

	<u>Year 11</u>	<u>Year 12</u>	<u>Year 13</u>	<u>Year 14</u>	<u>Year 15</u>	<u>Year 16</u>	<u>Year 17</u>	<u>Year 18</u>	<u>Year 19</u>	<u>Year 20</u>
Income										
Sch. Gross Income - Residential	\$1,411,537	\$1,439,768	\$1,468,563	\$1,497,934	\$1,527,893	\$1,558,451	\$1,589,620	\$1,621,412	\$1,653,841	\$1,686,917
Vacancy Loss 5.0%	(\$70,577)	(\$71,988)	(\$73,428)	(\$74,897)	(\$76,395)	(\$77,923)	(\$79,481)	(\$81,071)	(\$82,692)	(\$84,346)
Other income (laundry)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TIF 75%	\$115,143	\$117,446	\$119,795	\$122,191	\$124,634	\$127,127	\$129,670	\$132,263	\$134,908	\$137,606
Effective Gross Income	\$1,456,103	\$1,485,225	\$1,514,930	\$1,545,228	\$1,576,133	\$1,607,655	\$1,639,809	\$1,672,605	\$1,706,057	\$1,740,178
Administrative										
Management Fee	\$88,708	\$91,369	\$94,110	\$96,934	\$99,842	\$102,837	\$105,922	\$109,100	\$112,372	\$115,744
Management Charges	\$87,355	\$89,975	\$92,674	\$95,455	\$98,318	\$101,268	\$104,306	\$107,435	\$110,658	\$113,978
Marketing Expense	\$2,016	\$2,076	\$2,139	\$2,203	\$2,269	\$2,337	\$2,407	\$2,479	\$2,554	\$2,630
Legal	\$1,344	\$1,384	\$1,426	\$1,469	\$1,513	\$1,558	\$1,605	\$1,653	\$1,702	\$1,754
Audit & Accounting	\$13,439	\$13,842	\$14,258	\$14,685	\$15,126	\$15,580	\$16,047	\$16,528	\$17,024	\$17,535
Admin Other	\$1,290	\$1,329	\$1,369	\$1,410	\$1,452	\$1,496	\$1,541	\$1,587	\$1,634	\$1,683
Total Administrative	\$194,152	\$199,976	\$205,975	\$212,155	\$218,519	\$225,075	\$231,827	\$238,782	\$245,945	\$253,324
Supportive Services										
	\$31,448	\$32,391	\$33,363	\$34,364	\$35,395	\$36,456	\$37,550	\$38,677	\$39,837	\$41,032
Utilities										
Fuel Oil	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Electric	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Gas	\$55,227	\$56,884	\$58,590	\$60,348	\$62,158	\$64,023	\$65,944	\$67,922	\$69,960	\$72,059
Water / Sewer	\$29,029	\$29,899	\$30,796	\$31,720	\$32,672	\$33,652	\$34,662	\$35,702	\$36,773	\$37,876
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Utilities	\$84,255	\$86,783	\$89,387	\$92,068	\$94,830	\$97,675	\$100,605	\$103,624	\$106,732	\$109,934

Maintenance	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
Janitorial	\$45,962	\$47,341	\$48,761	\$50,224	\$51,731	\$53,282	\$54,881	\$56,527	\$58,223	\$59,970
Exterminating	\$16,127	\$16,611	\$17,109	\$17,622	\$18,151	\$18,696	\$19,256	\$19,834	\$20,429	\$21,042
Trash Removal	\$13,977	\$14,396	\$14,828	\$15,273	\$15,731	\$16,203	\$16,689	\$17,190	\$17,705	\$18,236
Security	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Grounds	\$19,352	\$19,933	\$20,531	\$21,147	\$21,781	\$22,435	\$23,108	\$23,801	\$24,515	\$25,250
Maintenance	\$61,283	\$63,121	\$65,015	\$66,965	\$68,974	\$71,043	\$73,175	\$75,370	\$77,631	\$79,960
Elevator, HVAC, pool contracts	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Maintenance	\$156,701	\$161,402	\$166,244	\$171,231	\$176,368	\$181,659	\$187,109	\$192,722	\$198,504	\$204,459

Taxes & Insurance										
Real Estate Taxes or PILOT	\$153,524	\$156,594	\$159,726	\$162,921	\$166,179	\$169,503	\$172,893	\$176,351	\$179,878	\$183,475
Payroll Taxes / Fidelity Bond / Workers Comp / Health Ins.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Insurance (property, liability)	\$32,254	\$33,222	\$34,218	\$35,245	\$36,302	\$37,391	\$38,513	\$39,668	\$40,858	\$42,084
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Taxes & Insurance	\$185,778	\$189,816	\$193,944	\$198,166	\$202,481	\$206,894	\$211,406	\$216,019	\$220,736	\$225,559

Replacement Reserves	\$40,317	\$41,527	\$42,773	\$44,056	\$45,378	\$46,739	\$48,141	\$49,585	\$51,073	\$52,605
Operating Reserves	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Total Expenses	\$692,651	\$711,895	\$731,686	\$752,039	\$772,971	\$794,498	\$816,638	\$839,409	\$862,827	\$886,913
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Net Operating Income	\$763,452	\$773,330	\$783,244	\$793,189	\$803,162	\$813,157	\$823,170	\$833,196	\$843,229	\$853,265
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Debt Service										
Maine Housing Interest Bearing	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489
Second Lien	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Debt Service (Must Pay)	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489

Cash Flow (after Must Pay Debt)	\$126,963	\$136,841	\$146,755	\$156,700	\$166,673	\$176,668	\$186,681	\$196,707	\$206,740	\$216,776
Debt Service Coverage Ratio	1.20	1.21	1.23	1.25	1.26	1.28	1.29	1.31	1.32	1.34

Cash Flow Debt Payments											Cash Flow D
City of Portland	30.0%	\$38,089	\$41,052	\$44,026	\$47,010	\$50,002	\$53,000	\$56,004	\$59,012	\$62,022	\$65,033
Developer Fee Loan	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cash Flow Retained by Project		\$88,874	\$95,789	\$102,728	\$109,690	\$116,671	\$123,668	\$130,677	\$137,695	\$144,718	\$151,743
Retained Cash Flow %	5%		\$0			\$0					Retained Cas

	<u>Year 21</u>	<u>Year 22</u>	<u>Year 23</u>	<u>Year 24</u>	<u>Year 25</u>	<u>Year 26</u>	<u>Year 27</u>	<u>Year 28</u>	<u>Year 29</u>	<u>Year 30</u>
Income										
Sch. Gross Income - Residential	\$1,720,656	\$1,755,069	\$1,790,170	\$1,825,974	\$1,862,493	\$1,899,743	\$1,937,738	\$1,976,493	\$2,016,022	\$2,056,343
Vacancy Loss 0.0%	(\$86,033)	(\$87,753)	(\$89,509)	(\$91,299)	(\$93,125)	(\$94,987)	(\$96,887)	(\$98,825)	(\$100,801)	(\$102,817)
Other income (laundry)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TIF 75%	\$140,359	\$143,166	\$146,029	\$148,950	\$0	\$0	\$0	\$0	\$0	\$0
Effective Gross Income	\$1,774,981	\$1,810,481	\$1,846,691	\$1,883,625	\$1,769,368	\$1,804,756	\$1,840,851	\$1,877,668	\$1,915,221	\$1,953,526
Administrative										
Management Fee	\$119,216	\$122,792	\$126,476	\$130,271	\$134,179	\$138,204	\$142,350	\$146,621	\$151,019	\$155,550
Management Charges	\$117,397	\$120,919	\$124,547	\$128,283	\$132,132	\$136,096	\$140,178	\$144,384	\$148,715	\$153,177
Marketing Expense	\$2,709	\$2,790	\$2,874	\$2,960	\$3,049	\$3,141	\$3,235	\$3,332	\$3,432	\$3,535
Legal	\$1,806	\$1,860	\$1,916	\$1,974	\$2,033	\$2,094	\$2,157	\$2,221	\$2,288	\$2,357
Audit & Accounting	\$18,061	\$18,603	\$19,161	\$19,736	\$20,328	\$20,938	\$21,566	\$22,213	\$22,879	\$23,566
Admin Other	\$1,734	\$1,786	\$1,839	\$1,895	\$1,951	\$2,010	\$2,070	\$2,132	\$2,196	\$2,262
Total Administrative	\$260,923	\$268,751	\$276,814	\$285,118	\$293,672	\$302,482	\$311,556	\$320,903	\$330,530	\$340,446
Supportive Services	\$42,263	\$43,531	\$44,837	\$46,182	\$47,567	\$48,994	\$50,464	\$51,978	\$53,538	\$55,144
Utilities										
Fuel Oil	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Electric	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Gas	\$74,220	\$76,447	\$78,740	\$81,103	\$83,536	\$86,042	\$88,623	\$91,282	\$94,020	\$96,841
Water / Sewer	\$39,012	\$40,182	\$41,388	\$42,629	\$43,908	\$45,226	\$46,582	\$47,980	\$49,419	\$50,902
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Utilities	\$113,232	\$116,629	\$120,128	\$123,732	\$127,444	\$131,267	\$135,205	\$139,261	\$143,439	\$147,743

Maintenance	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30
Janitorial	\$61,769	\$63,622	\$65,531	\$67,497	\$69,522	\$71,607	\$73,755	\$75,968	\$78,247	\$80,595
Exterminating	\$21,673	\$22,324	\$22,993	\$23,683	\$24,394	\$25,125	\$25,879	\$26,655	\$27,455	\$28,279
Trash Removal	\$18,784	\$19,347	\$19,927	\$20,525	\$21,141	\$21,775	\$22,429	\$23,101	\$23,794	\$24,508
Security	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Grounds	\$26,008	\$26,788	\$27,592	\$28,420	\$29,272	\$30,150	\$31,055	\$31,987	\$32,946	\$33,935
Maintenance	\$82,359	\$84,829	\$87,374	\$89,996	\$92,695	\$95,476	\$98,341	\$101,291	\$104,330	\$107,459
Elevator, HVAC, pool contracts	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Maintenance	\$210,593	\$216,910	\$223,418	\$230,120	\$237,024	\$244,135	\$251,459	\$259,002	\$266,772	\$274,776

Taxes & Insurance										
Real Estate Taxes or PILOT	\$187,145	\$190,888	\$194,705	\$198,599	\$202,571	\$206,623	\$210,755	\$214,970	\$219,270	\$223,655
Payroll Taxes / Fidelity Bond / Workers Comp / Health Ins.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Insurance (property, liability)	\$43,347	\$44,647	\$45,986	\$47,366	\$48,787	\$50,251	\$51,758	\$53,311	\$54,910	\$56,558
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Taxes & Insurance	\$230,491	\$235,535	\$240,692	\$245,966	\$251,358	\$256,874	\$262,513	\$268,281	\$274,180	\$280,213

Replacement Reserves	\$54,183	\$55,809	\$57,483	\$59,208	\$60,984	\$62,813	\$64,698	\$66,639	\$68,638	\$70,697
Operating Reserves	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Total Expenses	\$911,686	\$937,165	\$963,371	\$990,325	\$1,018,049	\$1,046,565	\$1,075,896	\$1,106,065	\$1,137,097	\$1,169,017
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Net Operating Income	\$863,295	\$873,316	\$883,319	\$893,299	\$751,319	\$758,191	\$764,955	\$771,603	\$778,124	\$784,508
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Debt Service										
Maine Housing Interest Bearing	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489
Second Lien	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Debt Service (Must Pay)	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489	\$636,489

Cash Flow (after Must Pay Debt)	\$226,806	\$236,827	\$246,830	\$256,810	\$114,830	\$121,702	\$128,466	\$135,114	\$141,635	\$148,019
Debt Service Coverage Ratio	1.36	1.37	1.39	1.40	1.18	1.19	1.20	1.21	1.22	1.23

Debt Payments					\$976,899	\$236,930				
City of Portland	0.0%	\$68,042	\$71,048	\$74,049	\$77,043	\$34,449	\$36,511	\$38,540	\$40,534	\$42,491
Developer Fee Loan	0.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cash Flow Retained by Project		\$158,764	\$165,779	\$172,781	\$179,767	\$80,381	\$85,191	\$89,926	\$94,580	\$99,145

Debt Flow % 0%

B. Project Information

Completed by reading.lauraj@gmail.com on 5/14/2024 10:17 AM

Case Id: 30510

Name: Youth and Family Outreach - 2024

Address: 331-337 Cumberland Avenue, Portland, ME

B. Project Information

Please provide the following information.

B.1. Property Address

331-337 Cumberland Avenue Portland, ME 04101

B.2. Project Name

YFO Resource Hub

B.3. Tax chart, block, and lot number

33-K-5,6,7,9,10

B.4. Zoning Designation

B-3

B.5. Is the requested funding type HOME/HTF?

Yes

B.6. Requested amount of Affordable Housing Development Funding

\$1,080,000.00

B.7. Is the requested funding type AHTIF?

No

B.8. Total number of housing units to be constructed:

60

B.9. Total number of housing units to be rehabilitated:

0

B.10. Total Number of market rate units:

0

B.11. Total number of deed restricted units:

60

B.12. Total number of Units at 120% AMI:

0

B.13. Total number of Units at 110% AMI:

0

Printed By: Victoria Volent on 5/15/2024

B.14. Total number of Units at 100% AMI:

12

B.15. Total number of Units at 80% AMI:

0

B.16. Total number of Units at 60% AMI:

19

B.17. Total number of Units at 50% AMI:

29

B.18. Total number of Units at 40% AMI:

0

B.19. Housing Type

Rental

B.20. Total number of studio/efficiency units:

4

B.21. Total number of one-bedroom units:

24

B.22. Total number of two-bedroom units:

22

B.23. Total number of three-bedroom units

10

B.24. Total number of four-bedroom units

0

B.25. Total number of five-bedroom units

0

B.26. Property Manager

Realty Resources Management

B.27. When is construction expected to begin?

07/15/2025

B.28. Please use the box below to answer the remaining questions and provide a narrative description of the project that includes:

- Description of municipal housing need and how the development addresses that need;

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- Requested amount of Affordable Housing Development Funding;
- Description of how City’s participation is financially necessary in order for the project to proceed;
- Description of allowed uses in the zone;
- Description of residential and non-residential uses in the area;
- Description of accessory uses relating to residential use, if any;
- Indicate if this project requires relocation of existing commercial or residential tenants;
- Description of relocation plan for persons temporarily or permanently displaced by development activities;
- Description of how the development is consistent with the Comprehensive Plan
- Description of how housing and facilities in the development will be operated after completion;
- Description of planned uses of tax increment revenues from the district (AHTIF projects only).

The Youth and Family Outreach (“YFO”) development, located at 331-337 Cumberland Avenue, will provide new construction of sixty units of affordable mixed-income rental housing in addition to an expansion of YFO’s existing childcare facility to serve fifty additional children. Of the sixty proposed units, 80% (48 units) will be restricted to households earning (60% AMI or less) and 20% (12 units) will be restricted to households earning 100% AMI or less. Of those 48 units, 60% (30 units) will be restricted to households earning 50% AMI or less, and there will be a mix of 4 studio units, 20 one-bedroom units, 14 two-bedroom units, and 10 three-bedroom units. Of the 12 units restricted to households earning 100% AMI or less, there will be a mix of 4 one-bedroom units and 8 two-bedroom units. The building will also include a laundry room, community room, fitness area, lobby, trash room, and bike/stroller storage. The primary building entrance for the childcare facility will be located on Cumberland Avenue while the primary building entrance for the apartment units will be located on Portland Street. The site will include outside play spaces for the childcare facility that may be used by residents outside of the daycare’s regular operating hours. Realty Resources Management will be the property management company, who will provide an on-site Resident Services Coordinator free of charge to residents. The project will require the temporary relocation of the existing childcare space during construction and Developers Collaborative will assist YFO in finding a temporary space when the construction start date becomes closer.

YFO is located in the B3 Downtown Business zone, a mixed-use zone that permits multifamily dwellings and preschool facilities and has a stated purpose “to encourage increased housing opportunity downtown for a diverse residential population.” YFO is centrally located near METRO Bus stops and a variety of services including public schools, public library, post office, Portland Food Co-op, and several banks. Immediately adjacent uses include the Portland Public Market parking garage, Preble Street Teen Shelter, Earl Apartments, and Preble Street Resource Center.

Portland’s economy depends upon the availability of a diverse and affordable array of rental housing options. However, Portland has the highest housing costs in the state of Maine, and rising rental housing costs have become increasingly out-of-reach for many lower- and moderate-income citizens. According to MaineHousing, the median 2BR rent in Portland in 2020 was unaffordable to 71.1% of households, or approximately 13,000 households. The YFO development will provide affordable rental rates and restrict units to low-and moderate-income residents.

The YFO development also aligns with Portland’s Comprehensive Plan, which was adopted by City Council on June 5, 2017, and which identified a desire to “increase, preserve, and modify the overall supply of housing City-wide to meet the needs, preferences and financial capabilities of all Portland households.”

The YFO development is requesting \$1,080,000 in Affordable Housing Development Funding. The City’s participation is financially necessary to close a gap between the sources and uses. The feasibility of the project also depends upon receiving a 9% Low-Income Housing Tax Credit (“LIHTC”) or a 4% LIHTC with the State Affordable Housing Tax Credit to be financially feasible. Without this funding from the City, a LIHTC Application would not be financially feasible.



Figure 1: The proposed building as seen from Cumberland Avenue



Fig 5 – Rendering from Cumberland Ave/Preble Street



Fig 6 – Rendering from Portland Street/Preble Street

AREAS	
FIRST FLOOR	10,986 GSF
SECOND FLOOR	12,519 GSF
THIRD FLOOR	12,228 GSF
FOURTH FLOOR	12,555 GSF
FIFTH FLOOR	12,555 GSF
SIXTH FLOOR	12,025 GSF +
TOTAL	72,868 GSF

UNIT COUNT					
	STUDIO	1-BR	2-BR	3-BR	TOTAL
MARKET RATE:		4	8		12
MAINE HOUSING:	4	20	14	10	48
FIRST FLOOR		1	2	1	4
THIRD FLOOR	1	6	4	3	14
FOURTH FLOOR	1	6	4	3	14
FIFTH FLOOR	1	6	7	1	14
SIXTH FLOOR	1	6	6	1	14
TOTAL	4	24	22	10	60

Project:

337 CUMBERLAND
AVENUE

Portland, Maine

Owner/Client:

Youth and Family Outreach

Consultant:

Revisions:

Key Plan:

FIRST FLOOR PLAN

Scale:
As indicated

9 AUGUST, 2024

A1.01





AREAS					
FIRST FLOOR	10,986 GSF				
SECOND FLOOR	12,519 GSF				
THIRD FLOOR	12,228 GSF				
FOURTH FLOOR	12,555 GSF				
FIFTH FLOOR	12,555 GSF				
SIXTH FLOOR	12,025 GSF +				
TOTAL	72,868 GSF				
UNIT COUNT					
	STUDIO	1-BR	2-BR	3-BR	TOTAL
MARKET RATE:		4	8		12
MAINE HOUSING:	4	20	14	10	48
FIRST FLOOR		1	2	1	4
THIRD FLOOR	1	6	4	3	14
FOURTH FLOOR	1	6	4	3	14
FIFTH FLOOR	1	6	7	1	14
SIXTH FLOOR	1	6	6	1	14
TOTAL	4	24	22	10	60



AREAS					
FIRST FLOOR	10,986 GSF				
SECOND FLOOR	12,519 GSF				
THIRD FLOOR	12,228 GSF				
FOURTH FLOOR	12,555 GSF				
FIFTH FLOOR	12,555 GSF				
SIXTH FLOOR	12,025 GSF +				
TOTAL	72,868 GSF				
UNIT COUNT					
	STUDIO	1-BR	2-BR	3-BR	TOTAL
MARKET RATE:		4	8		12
MAINE HOUSING:	4	20	14	10	48
FIRST FLOOR		1	2	1	4
THIRD FLOOR	1	6	4	3	14
FOURTH FLOOR	1	6	4	3	14
FIFTH FLOOR	1	6	7	1	14
SIXTH FLOOR	1	6	6	1	14
TOTAL	4	24	22	10	60



AREAS					
FIRST FLOOR	10,986 GSF				
SECOND FLOOR	12,519 GSF				
THIRD FLOOR	12,228 GSF				
FOURTH FLOOR	12,555 GSF				
FIFTH FLOOR	12,555 GSF				
SIXTH FLOOR	12,025 GSF +				
TOTAL	72,868 GSF				
UNIT COUNT					
	STUDIO	1-BR	2-BR	3-BR	TOTAL
MARKET RATE:		4	8		12
MAINE HOUSING:	4	20	14	10	48
FIRST FLOOR		1	2	1	4
THIRD FLOOR	1	6	4	3	14
FOURTH FLOOR	1	6	4	3	14
FIFTH FLOOR	1	6	7	1	14
SIXTH FLOOR	1	6	6	1	14
TOTAL	4	24	22	10	60



AREAS					
FIRST FLOOR	10,986 GSF				
SECOND FLOOR	12,519 GSF				
THIRD FLOOR	12,228 GSF				
FOURTH FLOOR	12,555 GSF				
FIFTH FLOOR	12,555 GSF				
SIXTH FLOOR	12,025 GSF +				
TOTAL	72,868 GSF				
UNIT COUNT					
	STUDIO	1-BR	2-BR	3-BR	TOTAL
MARKET RATE:		4	8		12
MAINE HOUSING:	4	20	14	10	48
FIRST FLOOR		1	2	1	4
THIRD FLOOR	1	6	4	3	14
FOURTH FLOOR	1	6	4	3	14
FIFTH FLOOR	1	6	7	1	14
SIXTH FLOOR	1	6	6	1	14
TOTAL	4	24	22	10	60



AREAS					
FIRST FLOOR	10,986 GSF				
SECOND FLOOR	12,519 GSF				
THIRD FLOOR	12,228 GSF				
FOURTH FLOOR	12,555 GSF				
FIFTH FLOOR	12,555 GSF				
SIXTH FLOOR	12,025 GSF +				
TOTAL	72,868 GSF				
UNIT COUNT					
	STUDIO	1-BR	2-BR	3-BR	TOTAL
MARKET RATE:		4	8		12
MAINE HOUSING:	4	20	14	10	48
FIRST FLOOR		1	2	1	4
THIRD FLOOR	1	6	4	3	14
FOURTH FLOOR	1	6	4	3	14
FIFTH FLOOR	1	6	7	1	14
SIXTH FLOOR	1	6	6	1	14
TOTAL	4	24	22	10	60

City of Portland - Affordable Housing (AH) TIF Model
 337 Cumberland Avenue, 33-K-5-6-7-9-10-13
[OAV: \\$519,900 ao 3/31/2020](#)
 2% Mil Rate Escalation
 75% Capture to AH TIF Project; 25% to City General Fund

City of Portland- TIF Projection Table for 337 Cumberland Avenue AH TIF										
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	City OAV General Fund Revenues
1	2020	\$0	75.00%	\$0	23.31	\$0	\$0	\$0	\$0	\$12,119
2	2021	\$0	75.00%	\$0	12.99	\$0	\$0	\$0	\$0	\$6,754
3	2022	\$0	75.00%	\$0	13.61	\$0	\$0	\$0	\$0	\$7,076
4	2023	\$0	75.00%	\$0	14.41	\$0	\$0	\$0	\$0	\$7,492
5	2024	\$0	75.00%	\$0	14.70	\$0	\$0	\$0	\$0	\$7,642
6	2025	\$0	75.00%	\$0	14.99	\$0	\$0	\$0	\$0	\$7,794
7	2026	\$8,220,100	75.00%	\$6,165,075	15.29	\$94,276	\$94,276	\$0	\$31,425	\$7,950
8	2027	\$8,220,100	75.00%	\$6,165,075	15.60	\$96,162	\$96,162	\$0	\$32,054	\$8,109
9	2028	\$8,220,100	75.00%	\$6,165,075	15.91	\$98,085	\$98,085	\$0	\$32,695	\$8,272
10	2029	\$8,220,100	75.00%	\$6,165,075	16.23	\$100,047	\$100,047	\$0	\$33,349	\$8,437
11	2030	\$8,220,100	75.00%	\$6,165,075	16.55	\$102,048	\$102,048	\$0	\$34,016	\$8,606
12	2031	\$8,220,100	75.00%	\$6,165,075	16.88	\$104,089	\$104,089	\$0	\$34,696	\$8,778
13	2032	\$8,220,100	75.00%	\$6,165,075	17.22	\$106,171	\$106,171	\$0	\$35,390	\$8,953
14	2033	\$8,220,100	75.00%	\$6,165,075	17.57	\$108,294	\$108,294	\$0	\$36,098	\$9,132
15	2034	\$8,220,100	75.00%	\$6,165,075	17.92	\$110,460	\$110,460	\$0	\$36,820	\$9,315
16	2035	\$8,220,100	75.00%	\$6,165,075	18.28	\$112,669	\$112,669	\$0	\$37,556	\$9,501
17	2036	\$8,220,100	75.00%	\$6,165,075	18.64	\$114,922	\$114,922	\$0	\$38,307	\$9,691
18	2037	\$8,220,100	75.00%	\$6,165,075	19.01	\$117,221	\$117,221	\$0	\$39,074	\$9,885
19	2038	\$8,220,100	75.00%	\$6,165,075	19.39	\$119,565	\$119,565	\$0	\$39,855	\$10,083
20	2039	\$8,220,100	75.00%	\$6,165,075	19.78	\$121,957	\$121,957	\$0	\$40,652	\$10,285
21	2040	\$8,220,100	75.00%	\$6,165,075	20.18	\$124,396	\$124,396	\$0	\$41,465	\$10,490
22	2041	\$8,220,100	75.00%	\$6,165,075	20.58	\$126,884	\$126,884	\$0	\$42,295	\$10,700
23	2042	\$8,220,100	75.00%	\$6,165,075	20.99	\$129,421	\$129,421	\$0	\$43,140	\$10,914
24	2043	\$8,220,100	75.00%	\$6,165,075	21.41	\$132,010	\$132,010	\$0	\$44,003	\$11,132
25	2044	\$8,220,100	75.00%	\$6,165,075	21.84	\$134,650	\$134,650	\$0	\$44,883	\$11,355
26	2045	\$8,220,100	75.00%	\$6,165,075	22.28	\$137,343	\$137,343	\$0	\$45,781	\$11,582
27	2046	\$8,220,100	75.00%	\$6,165,075	22.72	\$140,090	\$140,090	\$0	\$46,697	\$11,814
28	2047	\$8,220,100	75.00%	\$6,165,075	23.18	\$142,892	\$142,892	\$0	\$47,631	\$12,050
29	2048	\$8,220,100	75.00%	\$6,165,075	23.64	\$145,749	\$145,749	\$0	\$48,583	\$12,291
30	2049	\$8,220,100	75.00%	\$6,165,075	24.11	\$148,664	\$148,664	\$0	\$49,555	\$12,537
30 Year TIF Total		\$197,282,400		\$147,961,800		\$2,868,063	\$2,868,063	\$0	\$956,021	\$290,739
30 Year Average				\$4,932,060		\$95,602	\$95,602		\$31,867	\$9,691

Mil Rate Actual Above Line
 Mil Rate Est. FY2025 & On

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland - TIF Model for 337 Cumberland Avenue Affordable Housing TIF							
337 Cumberland Ave TIF Model/75% Sheltered - 30 years - 75% to Developer Project Account - 25% to City General Fund							
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	2020	\$0	\$0	\$0	\$0	\$0	\$0
2	2021	\$0	\$0	\$0	\$0	\$0	\$0
3	2022	\$0	\$0	\$0	\$0	\$0	\$0
4	2023	\$0	\$0	\$0	\$0	\$0	\$0
5	2024	\$0	\$0	\$0	\$0	\$0	\$0
6	2025	\$0	\$0	\$0	\$0	\$0	\$0
7	2026	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
8	2027	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
9	2028	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
10	2029	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
11	2030	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
12	2031	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
13	2032	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
14	2033	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
15	2034	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
16	2035	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
17	2036	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
18	2037	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
19	2038	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
20	2039	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
21	2040	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
22	2041	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
23	2042	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
24	2043	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
25	2044	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
26	2045	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
27	2046	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
28	2047	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
29	2048	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
30	2049	\$8,220,100	\$6,165,075	\$51,047	\$4,620	\$3,404	\$59,071
30 Year TIF Total		\$197,282,400	\$147,961,800	\$1,225,124	\$110,882	\$81,689	\$1,417,695
30 Year TIF Avg.		\$6,576,080	\$4,932,060	\$40,837	\$3,696	\$2,723	\$47,257

CITY OF PORTLAND
337 CUMBERLAND AVENUE
AFFORDABLE HOUSING DEVELOPMENT DISTRICT
DEVELOPMENT PROGRAM
Original Date: August 24, 2020
Amended Date: September , 2024

TABLE OF CONTENTS

337 Cumberland Avenue **Affordable Housing Development District Development Program**

Article I. Introduction and Summary of Benefits

Article II. Development Program Narrative and Designation of the District

- Section 2.01 Statement of Means and Objectives
- Section 2.02 Brief Discussion of Financial Plan
- Section 2.03 Project Cost Descriptions
- Section 2.04 Relocation Plan
- Section 2.05 Environmental Controls
- Section 2.06 District Operation
- Section 2.07 Assurance of Compliance
- Section 2.08 Program Duration
- Section 2.09 Approval Considerations and Characteristics of the District
- Section 2.10 Designation of the District

Article III. Financial Plan

- Section 3.01 Cost Estimates for the Development Program
- Section 3.02 Amount of Indebtedness to be Incurred
- Section 3.03 Sources of Anticipated Revenues
- Section 3.04 Estimated Increased Assessed Value; Portion Applied to Development Program
- Section 3.05 Description of Terms and Conditions of Agreements
- Section 3.06 Calculation of Tax Shifts

Article IV. Municipal Approvals

- Section 4.01 Public Hearing
- Section 4.02 Authorizing Votes

Exhibits

- Exhibit A Estimated Allocation of Tax Increment and Estimated Tax Increment Revenues
- Exhibit B Estimated Development Costs
- Exhibit C Property Description and Configuration of the District
- Exhibit D Certificate of Assessor
- Exhibit E Credit Enhancement Agreement
- Exhibit F Tax Shift Computations
- Exhibit G Notice of Public Hearing
- Exhibit H City Council Orders
- Exhibit I Declaration of Covenants, Conditions and Restrictions
- Exhibit J District Narrative

337 Cumberland Avenue
Amended Affordable Housing Development District Development Program

Article I. Introduction and Summary of Benefits.

A. Affordable Housing Development District. This Development Program provides for the creation of an Affordable Housing Development District located at 337 Cumberland Avenue in Portland Maine. The area includes approximately .452 acres. By providing for the reinvestment of a portion of the new or incremental tax revenues in the District, the District will provide an impetus for affordable housing development within the District and the development of affordable, livable housing and the containment of the costs of unplanned growth in the City.

B. Benefits of the District.

1. Affordable Housing. This Development Program will provide for the development of affordable housing in the City and the containment of the costs of unplanned growth.

2. No City Bonds or Risks. The District will not involve any borrowings by or the issuance bonds of the City to pay for any of the costs of the Development Program and will not affect existing tax revenues in any way.

3. Additional Tax Revenues. Creation of the District and Development Program will result in additional tax revenues for the City.

4. Shelter of New Tax Base Growth. The captured assessed value of the District will be sheltered from the otherwise negative impacts of new development that result in increased county taxes and loss of State aid to education and revenue sharing when new development occurs without the creation of an Affordable Housing Tax Increment Financing District. The sheltered portion of the tax increment revenues will be used to pay Project Costs.

Article II. Development Program Narrative and Designation of the District.

Section 2.01: Statement of Means and Objectives. The City of Portland (“the City”), like many other Maine municipalities, desires to provide affordable housing in the City and to contain costs of unplanned growth by providing the facilities described in this Development Program.

In order to fulfill these goals, certain property has been proposed as the 337 Cumberland Avenue Affordable Housing Development District (the “District”). The Development Program described herein will serve the purpose of administering the District as an Affordable Housing Development District pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended (the “Development Program”). Upon approval by the City of Portland designating the District and adoption of this Development Program by the City, the designation of the District and adoption of the Development Program will become final immediately, subject only to approval by the Director of the Maine State Housing Authority. The Development Program provides for affordable housing similar in some respects to the economic development incentives called municipal tax increment financing (“TIF”) similar to that adopted by a number of other Maine municipalities including the City. An Affordable Housing Development District involves the creation of a geographically defined district in the City and the “capture” or reinvestment of some of the new increased or “incremental” tax revenues generated on the increased assessed value of property in the District to pay certain costs of the development.

The District is designed to stimulate development of affordable housing in the City by allocating certain tax revenues generated on the increased assessed value in the District to Project Costs, consisting of allowable operating costs per 30-A M.R.S.A. §5249 and described in Section 2.03 hereof by its successors and assigns (the “Developer”). Under the Development Program, the City will make portions of the tax increment revenues as set forth in Section 3.04 hereof and under the Credit Enhancement Agreement attached hereto as Exhibit E (the “Credit Enhancement Agreement”) from the District available to the Developer pursuant to the Credit Enhancement Agreement. These revenues will be used either to pay or reimburse the Developer for Project Costs per Section 2.03 directly. All additional Project Costs will be the responsibility of the Developer, its successors or assigns. All tax increment revenues following expiration of the term of the Credit Enhancement Agreement will go directly into the City's general fund.

The District will result in significant new tax revenues for the City.

The Development Program thus will provide significant public benefit to the City by providing for the development of affordable housing in the City and for new tax revenues. The means and objectives of the Development Program are to provide: financial assistance towards Project Costs, and the development of affordable housing in the City.

The City, by adopting this Development Program, finds that the Development Program described herein, including the Capital Project, will provide substantial affordable housing in the City, thereby accomplishing an important public purpose.

Section 2.02: Brief Discussion of Financial Plan. The following is a brief summary of the Financial Plan. The Financial Plan is set forth in greater detail in Article III of this Development Program. As described in Section 3.04 hereof and Exhibit A hereof, the property taxes assessed by the City upon the Increased Assessed Value of property in the District (the “Tax Increment”) resulting from the investments by the Developer will be captured or used by the City under the Development Program to pay Project Costs described in Section 2.03 hereof. The development costs and sources and uses of funds associated with the Development Program within the District are described in Article III. The Project Costs and any continuing investment by Developer will be financed by Developer through equity of and loans to the Developer, its successors or assigns and the tax increment revenues from the District. As part of the Development Program, the City and Developer will enter into a Credit Enhancement Agreement pursuant to which the City will pay to Developer the percentage of Tax Increment Revenues from the Increased Assessed Value with respect to property in the District, described herein as the Tax Increment Revenues (Developer’s Share) for the term of the District to pay Project Costs related thereto. All tax revenues from the District not payable to Developer under the Credit Enhancement Agreement will be paid to the General Fund of the City. Any tax revenues presently generated on existing property in the District will continue to be paid to the General Fund of the City. The Development Program costs will be paid only from the Tax Increment on assessed value produced by new development in the District occurring after the tax year ending on the March 31st prior to adoption of this Development Program.

Section 2.03: Project Costs Descriptions.

A. Project General Description. The Capital Project at 337 Cumberland Avenue involves the construction of approximately .452 acres, into an affordable housing neighborhood. The objective of the project is that 80% of the units in the District will be affordable housing for a household whose income does not exceed 60% of the median income for the area as defined by the United States Department of Housing and Urban Development. This project consists of sixty (60) mixed-income rental units within one six-story mixed-use building. The first floor of the new building will provide expansion space for

Youth and Family Outreach that will allow for an increase in childcare spots from 58 to 110, floors two through five will be residential housing containing four (4) studio units, twenty-four (24) one-bedroom units, twenty-two (22) two-bedroom units, and ten (10) three-bedroom units. Forty-eight (48) units will have income restrictions: twenty-nine (29) will be reserved for households that income qualify at or below 50% AMI and nineteen (19) will be reserved for households that income qualify at or below 60% AMI. The remaining twelve (12) apartments will be unrestricted market rate. The neighboring Chapel building that is currently used by Youth and Family Outreach for childcare will be demolished. The zoning for the project assures that this number of units and this affordability objective will be met.

The 337 Cumberland Avenue project is projected to have a total local increased assessed valuation at build out of approximately \$8,220,100 based upon current real estate values and City assessment practices. Based upon the estimated tax rate upon completion, the project will generate approximately a thirty-year annual average of \$95,602 in tax increment revenues to the Developer at full build out. A portion of this new revenue would be offset by increased county taxes and reduced state revenue sharing and education funding resulting from the increased state valuation, were it not included in a Development District.

“Project Costs” as defined in Title 30-A, Chapter 206, Section 5249 of the Maine Revised Statutes will include operating costs, including but not limited to property management and administration, utilities, routine repairs and maintenance, insurance, real estate taxes and funding of a projects capital reserve account.

B. Need for the Affordable Housing TIF. Over the 30-year TIF, the estimated average annual payment is \$95,602 (as set forth in Exhibit A). Developer’s Share of the Tax Increment Revenue is designated to pay ongoing operating expenses for the project at 337 Cumberland Avenue. The Tax Increment Revenue described in section 3.04 will help pay for operating costs over a period of thirty (30) years. Without the TIF and these other funding sources the project could not go forward.

The Municipal Affordable Housing Development District law enacted by the Maine Legislature in 2003 creates an opportunity to fill this gap in the project financing through the mechanism of the TIF program. The program operates essentially the same way that the traditional commercial TIF program has with a few exceptions. The Affordable Housing TIF program is administered by the Maine State Housing Authority.

Section 2.04: Relocation Plan. The property currently contains an existing restaurant and a neighboring Chapel building currently used by Youth and Family Outreach for childcare. No businesses or persons will be permanently displaced as a result of the development activities proposed in the District. Youth and Family Outreach will temporarily relocate their childcare activities until completion of the new building.

Section 2.05: Environmental Controls. All environmental controls required by law shall apply to development in the District, including any applicable requirements of the City of Portland Zoning Ordinance and all applicable State and Federal environmental laws and regulations.

Section 2.06: District Operation. The day-to-day operations of the District will require no substantial efforts by the City. The Developer, its successor or assigns, will operate the improvements constructed by Developer and pay all maintenance and operational expenses of its facilities. The City, however, will be responsible for maintenance and operation of any part of the District that may become a public road or other public facility

Section 2.07: Assurance of Compliance. The City hereby determines that the District and this Development Program complies with the provisions of 30-A M.R.S.A. § 4349-A (growth management). The proposed development in the District is consistent with the Comprehensive Plan for the City of Portland which includes the City's Comprehensive Plan, which calls for additional affordable housing in the City.

Section 2.08: Program Duration. The duration of the District will be thirty (30) years after the tax year in which this Development Program was approved by the Director of the Maine State Housing Authority. The first Tax Year of the Development Program begins April 1, 2020 and the last Tax Year of the Development Program begins April 1, 2049.

Section 2.09: Approval Considerations and Characteristics of the District.

A. Statutory Considerations for Approval. Before designating the District and before establishing this Development Program, the City has considered any evidence presented at such public hearing and has considered whether the District and Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City. The City hereby determines and finds that the District created hereunder and this Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and that any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants.

B. Statutory Conditions for Approval; Physical Characteristics. The City hereby finds and determines that the District satisfies the conditions imposed under Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, as a prerequisite to designation of the District, including those relating to the physical description of the District and to certain financial and statistical information as follows:

(i) All of the land in the District is suitable for residential uses, is zoned for residential uses, and is in need of rehabilitation or redevelopment and therefore at least 25%, by area, of the real property within the District meets at least one of the following statutory criteria: (1) be suitable for residential use; (2) be a blighted area; or (3) be in need of rehabilitation or redevelopment;

(ii) The total area of the District is approximately .452 acres and thus such area represents less than 2% of the total acreage of the City. At the time of the original approval of the District, the total area of the District and the total area of all development districts, including this proposed district, in the City (which combined total is 694.973 acres) was 5.611% of total acreage in the City. The 694.973 acres, includes 451.01 acres in two exempt districts—a transit oriented district and a downtown/transit oriented district—which, when subtracted from the 694.973 is 243.963, which represents 1.969% of the total acreage of the City and thus does not exceed 5% of the total acreage of the City. The total area of all existing affordable housing development districts in the City and this proposed affordable housing development district, at the time of the original approval of the District, was 9.667 acres, or 0.08% of the total acreage of the City, which did not exceed 5% of the total acreage of the City;

(iii) The Original Assessed Value of the District is as set forth in Exhibit D hereto and the Original Assessed Value of all existing affordable housing development districts and this proposed affordable housing development district within the City is \$2,764,650 and such amount of Original

Assessed Value does not exceed 5% of the total value of taxable property within the City as of the April 1st preceding the date of the designation of the District.

C. Community Housing Need. The City finds that this Capital Program will meet a community housing need identified in the City's Comprehensive Plan. The Credit Enhancement Agreement provides a mechanism to ensure the ongoing affordability for the rental units for the remainder of the 30 year term of the District, which mechanism is the Declaration attached hereto as Exhibit I. The District is primarily a residential development in which 80% of the dwelling units will be affordable housing and that may be designed to be compact and walkable and to include internal open space, other common open space and one or more small-scale nonresidential uses of service to the residents of the development. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable.

Section 2.10: Designation of the District. The City, by adoption of this Development Program, hereby designates the 337 Cumberland Affordable Housing Development District as an Affordable Housing Development District and as an Affordable Housing Tax Increment Financing District. A plan depicting the District is attached hereto as Exhibit C and the District is further described therein.

Article III. Financial Plan.

Section 3.01: Cost Estimates for the Development Program. The estimated expenses of the Project Costs are set forth in Exhibit B.

Section 3.02: Amount of Indebtedness to be Incurred. The City will not incur any indebtedness in connection with the Development Program. The Development Program will be financed through a combination of funds of the Developer, its successors and assigns, various loans and the Tax Increment of the District.

Section 3.03: Sources of Anticipated Revenues. The source of the revenue to be used to pay the Project Costs of this Development Program is a portion of the Tax Increment on the Increased Assessed Value of the District. Tax Increment means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District. Increased Assessed Value means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. Current Assessed Value means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect. Property Taxes means any and all ad valorem property taxes levied, charged or assessed against property by the City or on its behalf.

Original Assessed Value means the assessed value of the District as of the end of the City's Fiscal Year 2020, which was March 31, 2020. Attached hereto as Exhibit D is the anticipated form of certification of Original Assessed Value by the Assessor of the City of Portland in accordance with the requirements of Title 30-A § 5250-A of the Maine Revised Statutes. All Property Tax on the Original Assessed Value shall continue to be deposited in the general fund of the City.

The City will deposit the Tax Increment Revenues (Developer's Share) as described in Section 2.02 and Section 3.04 hereof and in Exhibit A into the Project Cost Account of the Affordable Housing Development Program Fund and pay such Tax Increment (Developer's Share) to Developer in accordance with the terms of the Credit Enhancement Agreement to be entered between the City and the Developer.

Section 3.04: Estimated Increased Assessed Value; Portion Applied to Development Program. The percentage of the Increased Assessed Value of the District to be retained as Captured Assessed Value in each year is 75%. Such Captured Tax Increment Revenues will be returned to the Developer each year in the manner described below.

In the event of a revaluation of taxable property within the City, the Captured Assessed Value of this District may be adjusted in proportion to the change in taxable assessed property valued within the District in the year of the revaluation resulting from such revaluation.

The Tax Increment Revenues (Developer's Share) to be paid to the Developer each year during the term of this Development Program will be an amount which shall be captured and retained to reimburse the Developer for Project Costs pursuant to the Credit Enhancement Agreement, which will be the entire amount of the 75% of captured revenue. The percentage determination of the Tax Increment Revenues (Developer's Share) as determined as described above shall apply regardless whether the actual Tax Increment Revenues are more or less than the estimated or projected Tax Increment Revenues set forth in Exhibit A.

"Tax Shift Formulas" mean the formulas utilized by the State of Maine in calculating: (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. §5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior year's level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

The amount of Tax Increment from the total Increased Assessed Value that is to be paid each year to the Developer under Credit Enhancement Agreement to pay or reimburse Project Costs is hereinafter called the "Tax Increment Revenues (Developer's Share)."

The table attached hereto as Exhibit A also sets forth: (i) the annual estimates of the Increased Assessed Value of the District resulting from implementation of the Development Program; (ii) the estimated annual Tax Increment Revenues per year on the Increased Assessed Value following implementation of the Development Program, stated respectively as (a) a total, and (b) the estimated amount of the Tax Increment Revenues (Developer's Share)

Based on the manner in which Tax Increment Revenues (Developer's Shares) are defined, a share of the incremental property tax revenues derived from the increased valuation will be returned to the Developer to cover the Project Costs as described in Section 2.03 hereof.

To comply with the provisions of the State of Maine, the Credit Enhancement Agreement includes a provision for the recapture of certain amounts relating to any affordable rental housing units that are not maintained as affordable for a period of at least thirty years.

Under this program and the Credit Enhancement Agreement, Captured Assessed Value will be 75% of the Increased Assessed Value. Accordingly, seventy-five percent (75%) of the Tax Increment Revenues for each year during the term of the District shall be paid to the Developer each year pursuant to the Credit Enhancement Agreement.

An Affordable Housing Development Program Fund shall be established by the City consisting of a Project Cost Account. The Project Cost Account will be pledged to and charged with payment of amounts due to Developer under the Credit Enhancement Agreement. Upon receipt of each payment of property tax with respect to property in the District, the City shall deposit into the Project Cost Account according to the terms of the Credit Enhancement Agreement seventy-five percent (75%) of that portion of the payment constituting Tax Increment Revenues. The amounts in the Project Cost Subaccount shall be used and applied solely to fund the payments to Developer under the Credit Enhancement Agreement.

Section 3.05: Description of Terms and Conditions of Agreements. A description of the terms and conditions of the agreements, contracts and obligations to be entered into by the City is set forth in the Credit Enhancement Agreement to be entered into by the City and the Developer which will be substantially in the form attached hereto as Exhibit E. The Credit Enhancement Agreement sets forth the obligations of the City to pay to Developer each year during the term of that Agreement Tax Increment Revenues (Developer's Share) from all Property Tax with respect to all property in the District.

Section 3.06: Calculation of Tax Shifts. In accordance with Maine statutes governing the establishment of affordable housing development districts, Exhibit F identifies the estimated tax shifts which will result during the term of the District from the establishment of the District, using formulas approved by the Director of the Maine State Housing Authority. Exhibit F also contains a summary of the methodology and calculations utilized in calculating such estimated tax shifts.

The 337 Cumberland Avenue project will pay property taxes to the City based upon the local assessed valuation of the project and the City's annual tax rate. Exhibit A shows the estimated property taxes that will be paid by the project over the remainder of the 30 year term based upon the estimated local assessed valuation and the estimated tax rate of \$23.78/\$1,000 for the first year of the District. The amount of property taxes paid by owners of property in the District to City will be the same whether the project is included in a TIF district or not.

If the project is not part of a TIF, some of these new tax revenues will be offset by what are commonly called tax shifts. Since the City's total state valuation will be higher as a result of the project, its share of Cumberland County taxes will increase. The increased valuation and population will change the amount the City receives in State Revenue Sharing. The increased valuation and increased school enrollment will change the amount the City receives in state education aid.

Exhibit F thus shows the estimated amount of these tax shifts compared to what they would be if the new valuation is "sheltered" in a TIF and, therefore, does not get counted in the City's state valuation that is used in calculating county tax, revenue sharing and state education aid.

The actual extent and amount of the tax shifts can vary from this estimate since they are controlled by factors outside the City's control such as the rate of increase in the County budget, the amount of state sales and income tax collected, the amount of funding provided by the state for education aid, and the formula used to distribute that aid. So the extent and value of the shifts could be more or less than estimated.

Article IV. Municipal Approvals.

Section 4.01: Public Hearing. Before designating the amendments to the District, the City legislative body of the City held a public hearing. Notice of the hearing was published on September XX, 2024, a date that was at least 10 days before the hearing, in The Portland Press Herald, a newspaper of general circulation within the City. Attached hereto as Exhibit G is a copy of the Notice of Public Hearing. The Public hearing was held in accordance with the requirements of 30-A M.R.S.A. § 5250 on September 16, 2024. At the public hearing, interested parties were given a reasonable opportunity to present testimony concerning the District and the Development Program.

Section 4.02: Authorizing Votes. Attached as Exhibit H is a copy of the Orders proposed for adoption by the City Council of the City of Portland at a meeting thereof duly called and held on September 16, 2024 designating the District and adopting the Development Plan.

The undersigned, being the City Manager of the City of Portland, certifies that all of the information contained herein is true and correct to the best of my knowledge.

Dated: _____

Danielle West, City Manager,
City of Portland, ME

CITY OF PORTLAND
Declaration of Covenants, Conditions and Restrictions for the 337 Cumberland Avenue
Affordable Housing Tax Increment Financing District

This Declaration of Covenants, Conditions and Restrictions (the “Declaration”) is entered into by and between the **City of Portland**, a public body corporate and politic with its principal place of business at 389 Congress Street, Portland, Maine, 04101 (“City”) and **YFO Resource Hub, LP**, a Maine Limited Partnership with a mailing address of 331 Cumberland Avenue, Portland, Maine 04101 (“Developer”).

W I T N E S S E T H

WHEREAS, the Developer acknowledges that City is providing Affordable Housing Tax Increment Financing to the Developer (the “AHTIF”) for project operating costs associated with the development of sixty (60) units of rental housing located at 337 Cumberland Avenue, Portland, Maine (the “Development”); and

WHEREAS the Developer acknowledges City’s resulting beneficial interest in the Development, and Developer acknowledges that its ownership and operation of the Development are in furtherance of discharge of the public trust; and

WHEREAS, City has provided the AHTIF to Developer in consideration of the Developer’s agreement to abide by the provisions of this Declaration.

NOW THEREFORE, City and the Developer agree as follows:

1. **Term.** The term of this Declaration shall be for the period beginning on date of the approval of the District by the Director of the Maine State Housing Authority (the “Effective Date”) and continuing for thirty (30) years from the Effective Date of this Declaration (the “Qualified Project Period”).

2. **Enforceability of Covenants.** The covenants and restrictions of Developer set forth herein are intended to be and shall be considered covenants that run with the real estate described in Exhibit A attached hereto and made a part hereof and shall bind all subsequent owners and holders of any interest in said real estate, except to the extent herein provided. The City may enforce the covenants set forth herein as a contract beneficiary whether or not Developer is or remains indebted to the City. The covenants of Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by Developer, a foreclosure or transfer of title in lieu of foreclosure, but shall cease to apply to the Development in the event of involuntary noncompliance caused by substantial destruction, seizure, requisition, or change in law or an action of a governmental agency that prevents the City from enforcing the covenants, even though compensated by insurance.
3. **Covenants.** Developer hereby covenants and represents to the City as follows:
 - a. **Development.** The Development shall consist of the land described in Exhibit A attached hereto, together with all improvements, which after completion of the work will contain a total of sixty (60) units of rental housing and related amenities. The units in the Development shall be of comparable quality and have comparable amenities. Developer shall not make any change in the size or number of the units in the Development.
 - b. **Use.** The Developer shall rent or make available for rental all of the units in the Development on a continuous and non-transient basis to members of the general public throughout the Qualified Project Period. Developer covenants and agrees that no change of use shall occur without the express written consent of the City.
 - c. **Low Income Units.** For a period of thirty (30) years at least twenty-nine (29) of the units will be occupied by households with incomes at or below fifty percent (50%) area median income) and nineteen (19) of the units will be occupied by households with incomes at or below sixty percent (60%) area median income (collectively referred to as the “Low Income Units”). The remaining twelve (12) units will be market rate units.
 - i. Income and area median income shall be as determined in accordance with Section 42 of the Internal Revenue Code of 1986 and associated regulations and guidance, all as may be amended from time to time, (“Section 42”) and income limits shall be adjusted for family size.
 - ii. Prior to initial occupancy and at least annually, the Developer shall verify that the income, based on the then current income, of each household occupying a Low Income Unit in the Development does not exceed the Applicable Income Limit (the “Determination”).
 - iii. A Low Income Unit occupied by a household, who at the commencement of occupancy, met the Applicable Income Limit shall continue to be treated as occupied by a qualified resident even though the household’s income may exceed the Applicable Income Limit, adjusted for family size, at the time of the

most recent Determination, if after such Determination, but before the next Determination, any unit in the Development of comparable size is occupied by a new household whose income does not exceed the Applicable Income Limit.

- iv. After initial occupancy but upon again becoming vacant, a Low Income Unit shall be treated as occupied by a household meeting the Applicable Income Limit until occupied (other than occupancy by another resident for a temporary period not to exceed 31 days), at which time the character of the unit shall be re-determined in light of the new resident's income.

- d. **Rent Restrictions.** For the Qualified Project Period, the Low Income Units shall be rent-restricted. A unit is rent-restricted if the gross monthly rent does not exceed one-twelfth (1/12th) of thirty percent (30%) of the imputed income limitation applicable to the unit. The imputed income limitation is the Applicable Income Limit for the unit, except the adjustment for family size shall be based, not on the actual number of occupants, but by assuming the number of occupants as follows:

- i. For a unit without a separate bedroom, one individual.
- ii. For a unit with one or more separate bedrooms, one and one-half individuals for each separate bedroom.

Gross monthly rent shall not include any payment under Section 8 of the United States Housing Act of 1937 and associated regulations and guidance, all as may be amended from time to time ("Section 8") but shall include any utility allowance, where applicable, taking into account such determinations under Section 8.

- e. **Discrimination Prohibited.** Developer shall not segregate or physically isolate the Low Income Units from each other and from other units in the Development and the Developer shall use its best efforts to proportionately distribute the Low Income Units among each unit size in the Development. Developer shall not refuse to rent a unit in the Development to any applicant because the applicant holds a voucher or a certificate of eligibility under Section 8.
- 4. **Compliance.** Developer agrees to furnish to City such information as City may require in a form acceptable to City, including without limitation certifications and/or verifications of occupancy and resident income, to determine Developer's compliance with the covenants set forth herein. Information deemed acceptable by Maine State Housing Authority shall be acceptable to the City.
 - 5. **Income Certifications/Leases.** Developer shall use residential lease forms acceptable to City and obtain written and signed certifications of residents in a form acceptable to City to determine the qualifications of the residents for occupancy of a Low Income Unit. Such leases or certifications shall contain clauses wherein each resident (a) certifies as to the accuracy of statements made relating to the resident's income, (b) agrees that resident income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, (c) agrees to comply all requests for information with respect thereto from Developer or City,

and (d) agrees that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of a substantial obligation of the tenancy. Developer 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 Developer to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law. Lease forms which have been approved by Maine State Housing Authority shall be deemed approved by City.

6. **Real Estate Taxes.** Developer agrees that it shall pay all real estate taxes assessed on the Development during its ownership of the Development. Nothing contained in this section shall be deemed a waiver or limitation on Developer's right to seek abatement of property taxes if Developer believes the Development is over-assessed.
7. **Records.** Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, books and records related to compliance with the covenants contained in this Declaration. Such books, records, documents and plans shall be kept for: (a) a minimum of six (6) years after the expiration of the Qualified Project Period for those books, records, documents and plans pertaining to the rent and occupancy requirements described in Section 3 of this Declaration and the rent roll for all units in the Development; and (b) for a minimum of six (6) years after the end of the fiscal year or calendar year, as applicable, for all other books, records, documents and plans pertaining to the Development. Upon reasonable notice, City may audit and examine these books, records, documents and plans, and may inspect the buildings, grounds, equipment offices of the Development.
8. **Violation.** Developer shall immediately notify the City if Developer anticipates or discovers any noncompliance with any restriction or covenant in this Declaration, including, without limitation, noncompliance with the occupancy restrictions in Section 3 of this Declaration. Developer agrees to take such action as the City deems necessary to prevent noncompliance or to correct or cure any failure to comply with the covenants in this Declaration. In the event the Developer fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, the City shall be entitled to exercise any of its rights under the documents executed in connection with the AHTIF, maintain an action in law or in equity against the Developer to recover damages incurred by the City from such failure, including, without limitation, reasonable attorneys' fees and costs, and to require the Developer (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 Developer.
9. **Indemnification.** Developer 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 reasonable attorney's fees and other costs of litigation) which may be incurred by the City arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration or any action taken by the City to enforce or exercise its rights under this Declaration as a result of such breach, except for claims arising from the gross negligence or

willful acts of the City. The obligations under this section shall survive the termination or expiration of this Declaration as necessary to effectuate its provisions.

10. **Modifications**. This Declaration may be amended or modified, in whole or in part, only by written agreement of Developer and the City clearly expressing the intent to modify this Declaration.
11. **Severability**. The validity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.
12. **Successors and Assigns**. This Declaration shall be binding upon Developer'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.
13. **Governing Law**. This Declaration shall be construed in accordance with and governed by the laws of the State of Maine.
14. **Notices**. Any notice or demand required or provided for in this Declaration shall be in writing and shall be deemed to have been sufficiently given for all purposes when hand-delivered or mailed by certified or registered United States mail, postage prepaid, or sent by overnight United States mail or overnight commercial delivery service to the Developer or the City at their respective addresses set forth herein, or at such other address as either of them may from time to time hereafter designate by notice given to the other as herein provided. The City shall endeavor to provide a copy of any notice to Developer simultaneously to the Limited Partners at, or such other addresses as may from time to time hereafter be designated by notice given to the City as herein provided.
15. **Intercreditor**. This Declaration is subject to the terms and conditions of the Intercreditor and Subordination Agreement by and among Maine State Housing Authority, the City of Portland, _____, and _____ **[construction lender and any other entities providing financing will also be parties]** dated _____, 2024 to be recorded in the Cumberland County Registry of Deeds herewith.

Signature page follows.

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and City as of _____, 2024.

CITY OF PORTLAND, ME

Witness

By: _____
Danielle West
Its City Manager

**State of Maine
Cumberland, ss.**

_____, 2024

Personally appeared the above named Danielle West, City Manager to the City of Portland, and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said City of Portland.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

Signature page follows.

YFO RESOURCE HUB LP
By: YFO GP, INC., its General Partner

Witness

By: _____
Its _____

State of Maine
Cumberland, ss.

_____, 2024

Personally appeared the above named, of YFO GP, INC., General Partner of YFO Resource Hub LP, by an through _____, its _____, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said limited liability company and limited partnership.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

EXHIBIT A

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: August 16, 2024

SUBJECT: Order 47-24/25 Approving an Amended Credit Enhancement Agreement the 337 Cumberland Avenue Affordable Housing Tax Increment Financing District RE: 337 Cumberland Avenue - Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair.

SPONSOR: Sponsored by the Housing and Economic Development Committee, Councilor Pious Ali, Chair.
The Housing and Economic Development Committee met on August 20, 2024 and voted (3-0, Phillips absent) to forward this item to the City Council with a recommendation for passage.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading 9/4/2024

Final

Action 9/16/2024

Can action be taken at a later date: No Under the state statute for the Affordable Housing Tax Increment Financing program, a 10-day public notice is required before action can be taken by the City Council. The notice will be published in the Portland Press Herald.

Does this item involve a new contract with the City: The amended Credit Enhancement Agreement has been reviewed and approved by Corporation Counsel

PRESENTATION: Greg Watson and Mary Davis will be available for questions.

I. SUMMARY

This is a companion order to Order XX 24/25 above.

II. AGENDA DESCRIPTION

The Housing and Economic Development Committee met on August 20, 2024, and voted (3-0, Phillips absent) to forward this item to the City Council with a recommendation for passage.

This is a companion order to the two orders above.

This item must be read on two separate days. This is its first reading.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

VII. RECOMMENDATION

Staff is requesting the City Council approve the amendments to the 337 Cumberland Avenue Affordable Housing Development Tax Increment Financing District, District Program and Credit Enhancement Agreement

with YFO Resource Hub LP and authorize the City Manager to sign and submit to MaineHousing for approval the documents amending the district in substantially the same form as enclosed.

VIII. LIST ATTACHMENTS

1. Order - Approving the Amendment to the CEA for 337 Cumberland Avenue
2. 337 Cumberland Ave CEA Amended for Council 08282024

Prepared by:

Mary Davis, Division Director

Date: 08/16/2024

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

**ORDER APPROVING AN AMENDED CREDIT ENHANCEMENT AGREEMENT FOR
THE 337 CUMBERLAND AVENUE AFFORDABLE HOUSING
TAX INCREMENT FINANCING DISTRICT
RE: 337 CUMBERLAND AVENUE**

ORDERED, that the amended Credit Enhancement Agreement between the City and YFO Resource Hub LP regarding the 337 Cumberland Avenue Affordable Housing Tax Increment Financing District is hereby approved, substantially in the form attached hereto; and

BE IT FURTHER ORDERED, that he City Manager is hereby authorized to execute said agreement and any other documents necessary to affect the intent and purpose of that agreement and this Order; and

BE IT FURTHER ORDERED, that this Order is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective immediately.

CREDIT ENHANCEMENT AGREEMENT

between

THE CITY OF PORTLAND, MAINE

and

YFO RESOURCE HUB LP

DATED: _____, 2024

TABLE OF CONTENTS

ARTICLE I

DEFINITIONS	1
Section 1.1. Definitions.	1
Section 1.2. Interpretation and Construction.	3

ARTICLE II

AFFORDABLE HOUSING DEVELOPMENT PROGRAM FUND AND FUNDING

REQUIREMENTS.....	4
Section 2.1. Creation of Development Program Fund.	4
Section 2.2. Liens.	4
Section 2.3. Captured Assessed Value; Deposits into Development Program Fund.	5
Section 2.4. Use of Monies in Development Program Fund.	5
Section 2.5. Monies Held for Benefit of Developer.	5

ARTICLE III

PAYMENT OBLIGATIONS.....	6
Section 3.1. Developer Payments.	6
Section 3.2. Failure to Make Payment.	6
Section 3.3. Manner of Payments.	6
Section 3.4. Obligations Unconditional.	7
Section 3.5. Limited Obligation.	7

ARTICLE IV

PLEDGE AND SECURITY INTEREST.....	7
Section 4.1. Pledge of and Grant of Security Interest in Project Cost Account.	7
Section 4.2. Perfection of Interest.	8
Section 4.3. Further Instruments.	8
Section 4.4. No Disposition of Project Cost Account.	8
Section 4.5. Access to Books and Records.	8

ARTICLE V

DEFAULTS AND REMEDIES	8
Section 5.1. Events of Default.	8
Section 5.2. Remedies on Default.	9
Section 5.3. Remedies Cumulative.	9

ARTICLE VI

EFFECTIVE DATE, TERM AND TERMINATION	10
Section 6.1. Effective Date and Term.	10
Section 6.2. Cancellation and Expiration of Term.	10

ARTICLE VII

ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST

10

Section 7.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest.. 10

Section 7.2. Transfer.....11

ARTICLE VIII

MISCELLANEOUS 11

Section 8.1. Successors..... 11

Section 8.2. Parties-in-Interest..... 11

Section 8.3. Severability..... 11

Section 8.4. No Personal Liability of Officials of the City.....11

Section 8.5. Counterparts..... 12

Section 8.6. Governing Law..... 12

Section 8.7. Notices..... 12

Section 8.8. Amendments..... 12

Section 8.9. Records..... 13

Section 8.10. Reserved..... 13

Section 8.11. Integration..... 13

Section 8.12. Reserved..... 13

Section 8.13. Dispute Resolution..... 13

Section 8.14. Tax Laws and Valuation Agreement..... 14

EXHIBITS

Exhibit 1 Copy of District Map

THIS CREDIT ENHANCEMENT AGREEMENT dated as of [_____, 2024], between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine (the “City”), and YFO Resource Hub LP (the “Developer”).

WITNESSETH THAT

WHEREAS, the City designated the *337 Cumberland Avenue Municipal Affordable Housing Development and Tax Increment Financing District* (the “District”) pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the City Council at a meeting of the City Council held on August 3, 2020, Order 19-19/20, as amended by further action of the City Council at a meeting held on September 16, 2024, Order ____ - 24/25 (the “Vote”) and pursuant to the same Vote adopted an affordable housing development program, including a financial plan, for the District (the “Development Program”); and

WHEREAS, the City received the approval of the District and the Development Program by Maine State Housing Authority (“MSHA”) on September 17, 2020 and anticipates the approval of the amended District and the Development Program by MSHA; and

WHEREAS, the Development Program contemplates the execution and delivery of a credit enhancement agreement between the City and the Developer, and the City approved the execution and delivery of a credit enhancement agreement as described in the Development Program pursuant to the Vote, and the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the Credit Enhancement Agreement contemplated and described in the Development Program in the name of and on behalf of the City; and

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

“Act” means chapter 206 of Title 30-A of the Maine Revised Statutes and regulations adopted thereunder, as amended from time to time.

“Agreement” shall mean this Credit Enhancement Agreement between the City and the Developer dated as of the date set forth above, as such may be amended from time to time.

“Authority” means the Maine State Housing Authority.

“Captured Assessed Value” means the amount, stated as a percentage, of the Increased Assessed Value of the District that is retained in each Tax Year during the term of the District, as specified in Section 2.3 hereof, to fund Project costs authorized in the Development Program.

“City” shall have the meaning given such term in the first paragraph hereto.

“Current Assessed Value” means the then-current assessed real property value of the District as determined by the City Tax Assessor as of April 1 of each Tax Year that the District remains in effect.

“Development Program” shall have the meaning given such term in the recitals hereto.

“Development Program Fund” means the Affordable Housing Development Program Fund described in the Development Program and established and maintained pursuant to Article II hereof and 30-A M.R.S.A. § 5250-A(3)(A) consisting of the account further described herein.

“Director” means the Director of the Maine State Housing Authority.

“District” shall mean the lot or parcel of land on which the Project is located. A copy of the District map is attached hereto as Exhibit 1 as well as an informational map showing the Project in the District.

“Effective Date of the Development Program” means the start date identified in Section 2.08 of the Development Program.

“Fiscal Year” means July 1 to June 30 each year or such other fiscal year as the City may from time to time establish.

“Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the amount by which the Current Assessed Value for such year exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any given Tax Year, there is no Increased Assessed Value in that year.

“Original Assessed Value” means Five Hundred Nineteen Thousand Nine Hundred Dollars (\$519,900), which is the taxable assessed real property value of the District as of March 31, 2020.

“Project” means the planned sixty (60) unit mixed-income housing project named 337 Cumberland Avenue located in the District.

“Project Cost Account” means the project cost account associated with the Project as described in the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5250-A(3)(A)(1) and Article II hereof.

“Property Taxes” means any and all *ad valorem* property taxes levied, charged or assessed against the Project located in the District by the City, or on its behalf.

“State” means the State of Maine

“Tax Increment Revenues” means that portion of all real property taxes assessed and paid to the City in any Tax Year, in excess of any state, or special district tax, upon the Increased Assessed Value.

“Tax Payment Date” means the later of the date(s) on which property taxes levied by the City are due and payable, in full, from owners of property located within the City, or are actually paid to the City with respect to taxable property located within the District.

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. § 5246(16), as

amended, to wit: April 1 to March 31.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

- (a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of this Agreement.
- (b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.
- (c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.
- (d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.
- (e) All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.
- (f) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.
- (g) If any clause, provision or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof.

ARTICLE II AFFORDABLE HOUSING DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

Within sixty (60) days after the Effective Date of the Development Program, the City shall create and establish a segregated fund in the name of the City designated as the “337 Cumberland Avenue Municipal Affordable Housing Development and Tax Increment Financing District Program Fund” (hereinafter the “Development Program Fund”) pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5250-A (3). The Development Program Fund shall consist of the Project Cost Account, which is pledged to and charged with the payment of Project costs described in the Development Program, as provided in 30-A M.R.S.A. § 5250-A(3)(A)(1). The Project Cost Account is pledged to and charged with the payment of costs in the manner and priority provided in Section 3.1(b) below.

Section 2.2. Liens.

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Project Cost Account described in Section 2.1 hereof or any funds therein, other than the interest in favor of Developer hereunder; provided, however, that nothing herein shall prohibit the creation of property tax, sewer or other liens on property in the District in accordance with and entitled to priority pursuant to Maine law.

Section 2.3. Captured Assessed Value; Deposits into Development Program Fund.

(a) Each Tax Year during the term of this Agreement, commencing with the Tax Year beginning April 1, 2020 and continuing thereafter through the Tax Year beginning April 1, 2049 (collectively the “CEA Years”), the City shall retain in the District seventy-five percent (75%) of the Increased Assessed Value as Captured Assessed Value. The remaining 25% of the Increased Assessed Value is referred to herein as the Non-Captured Increased Assessed Value.

In the event of a revaluation of taxable property within the City, the Captured Assessed Value of this District may be adjusted in proportion to the change in taxable assessed property valued within the District in the year of the revaluation resulting from such revaluation.

(b) For each of the CEA Years, the City shall deposit into the Development Program Fund contemporaneously with each payment of Property Taxes during the term of this Agreement an amount equal to seventy-five percent (75%) of that portion of the payment of Property Taxes constituting Tax Increment Revenues. The City shall deposit such 75% portion into the Project Cost Account. The remaining 25% portion of the payment of Property Taxes constituting Tax Increment Revenues, which arise from Non-Captured Increased Assessed Value, shall be deposited into the City’s general fund.

(c) Notwithstanding anything herein to the contrary, if the District property becomes exempt from the obligation to pay property taxes, after application by the owner of the District property to the City for such exemption, then upon the granting of such exemption, this Agreement shall terminate and no further deposit or payment obligations on the part of the City shall exist.

(d) Any and all revenues resulting from investment earnings on deposits in the Development Program Fund shall be retained in the Development Program Fund and applied for Development Program purposes relating to the Development Program Fund as prescribed by 30-A M.R.S.A Section 5250-A(3).

Section 2.4. Use of Monies in Development Program Fund.

All monies in the Development Program Fund that are allocable to and/or deposited in Project Cost Account shall in all cases be used and applied to fund fully the City's payment obligations to Developer as described in Articles II and III hereof. Developer shall be obligated to use such payments for operating costs of the Project and credit enhancement pursuant to the Development Program and Title 30-A M.R.S.A. § 5249.

Section 2.5. Monies Held for Benefit of Developer.

All monies required to be deposited with or paid into Project Cost Account under the provisions hereof and the provisions of the Development Program, exclusive of any investment earnings thereon, shall be held by the City for the benefit of Developer.

ARTICLE III PAYMENT OBLIGATIONS

Section 3.1. Developer Payments.

(a) On an annual basis, the City agrees to pay Developer, within thirty (30) days of the end of each Fiscal Year, all amounts then on deposit in the Project Cost Account.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real or personal property located in the District remain unpaid, because of a bona fide valuation dispute being pursued by Developer, the property taxes actually paid with respect to such Tax Payment Date shall, first, be applied to taxes due on account of Assessed Value and deposited into the City's general fund; and second, shall constitute payment of Property Taxes with respect to Non-Captured Increased Assessed Value and deposited into the City's general fund; and third, shall constitute payment of Property Taxes with respect to Captured Assessed Value, to be applied to payment of Developer's share of the Tax Increment Revenues for the year concerned and deposited into Project Cost Account.

(c) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real or personal property located in the District remain unpaid, for any reason other than a bona fide valuation dispute, or if any portion of any other fee or charge due to the City by Developer including but not limited to sewer or stormwater fees, ambulance fees, or assessments, remain unpaid, no payment of Developer's share of the Tax Increment Revenues for the year concerned will be deposited into the Project Cost Account until such property taxes assessed against real or personal property located in the District, and other fees, charges, and assessments are paid in full.

(d) Annually, Developer will provide financial statements as back-up documentation of Project Costs for its TIF payments, which documentation will be kept confidential by the City.

(e) Prior to receiving the first payment under this Agreement, Developer shall provide evidence reasonably satisfactory to the City of the Developer's ability to complete the Project in accordance with State law. Reasonably satisfactory evidence shall include documentation that the Developer has closed on complete financing for the Project.

(f) On a bi-weekly basis during the course of construction of the Project, Developer must provide documentation in a form reasonably satisfactory to the City demonstrating that all firms employed in the construction phase of the Project have compensated their employees, at all relevant times, the current wage rates and fringe benefits as required under applicable state prevailing wage law, 26 M.R.S. §1306, or the City's minimum wage requirements set forth in Chapter 33, Sections 1-12 of the Portland City Code, whichever is greater.

(g) Developer must provide evidence reasonably satisfactory to the City demonstrating that the Project was designed, constructed and rehabilitated in accordance with the City's Green Building Code set forth in Chapter 6, Article VII, of the Portland City Code.

Section 3.2. Failure to Make Payment.

In the event the City should fail to, or be unable to, make any of the payments at the time and in the amount required under the foregoing provisions of this Article III including in the event that the amount deposited into Project Cost Account is insufficient to reimburse Developer for the full amount due to Developer under this Agreement, the amount or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. Developer shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to deposit Tax Increment Revenues to Project Cost Account and its obligation to make payment out of Project Cost Account to Developer.

Section 3.3. Manner of Payments.

The payments provided for in this Article III shall be paid directly to Developer at the address specified in Section 8.7 hereof in the manner provided hereinabove by check drawn on the City.

Section 3.4. Obligations Unconditional.

Subject to Developer's compliance with the terms and conditions of this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional, and the City shall not suspend or discontinue any payment hereunder or terminate this Agreement for any cause, other than pursuant to this Agreement or by court order or by reason of a final judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal.

Section 3.5. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Tax Increment Revenues pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of Tax Increment Revenues payable to Developer hereunder, whether or not actually deposited into Project Cost Account in the Development Program Fund. This Agreement shall not directly, indirectly or contingently obligate the City, the State of Maine, or any other City or political subdivision to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the pledge of the Tax Increment Revenues established under this Agreement.

ARTICLE IV PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of and Grant of Security Interest in Project Cost

Account.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge Project Cost Account described in Section 2.1 hereof and all sums of money and other securities and investments therein to Developer.

Section 4.2. Perfection of Interest.

(a) Upon written request by Developer, the City will establish the Project Cost Account described in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by Developer so as to perfect Developer's interest therein. The cost of establishing and monitoring such a fund (including the cost of counsel to the City with respect thereto) shall be borne exclusively by Developer. In the event such a fund is established under the control of a trustee or fiduciary, the City shall cooperate with Developer in causing appropriate financing statements and continuation statements naming Developer, or its designee, as pledgee of all such amounts from time to time on deposit in the fund to be duly filed and recorded in the appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.

(b) In the event Developer requires the establishment of a segregated fund in accordance with this Section 4.2, the City's responsibility shall be expressly limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by Developer. The City shall have no liability for payment over of the funds concerned to Developer by any such escrow agent, trustee or other fiduciary, or for any misappropriation, investment losses or other losses in the hands of such escrow agent, trustee or other fiduciary. Notwithstanding any change in the identity of Developer's designated escrow agent, trustee or other fiduciary, the City shall have no liability for misdelivery of funds if delivered in accordance with Developer's most recent written designation or instructions actually received by the City.

Section 4.3. Further Instruments.

The City shall, upon the reasonable request of Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City; and provided further that the cost of executing and delivering such further instruments (including the reasonable and related costs of counsel to the City with respect thereto) shall be borne exclusively by Developer.

Section 4.4. No Disposition of Project Cost Account.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in Project Cost Account and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

Section 4.5. Access to Books and Records.

All books, records and documents in the possession of either of the parties to this Agreement relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Project Cost Account shall at all reasonable times and upon reasonable notice be open to inspection by both parties to this Agreement, and the agents and employees of the parties to this Agreement.

ARTICLE V DEFAULTS AND REMEDIES

Section 5.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an “Event of Default”:

- (a) Any failure by the City to pay any amounts due to Developer when the same shall become due and payable;
- (b) Any failure by the City to make deposits into Project Cost Account as and when due;
- (c) Any failure by the City or Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or Developer to be observed or performed, which failure is not cured within thirty (30) days following written notice thereof; and
- (d) If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of Developer's affairs shall have been entered against the Developer or the Developer shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Developer or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the Developer or the failure by the Developer to have an involuntary petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the Developer.
- (e) If any secured lender of Developer accelerates the indebtedness owed to it;
- (f) If any written representation or warranty given to the City by Developer is knowingly incorrect or incomplete in any material respect, other than statements made about or in agreements with the City that were later changed by mutual consent;
- (g) If Developer fails to maintain adequate surety bonding during construction at the levels and terms as may be required from time to time by the Developer's secured lenders and/or Developer allows mechanics' liens to encumber the Project for a period of more than sixty (60) days.

(h) Any discontinuance of the District property as “affordable housing,” pursuant to the definition contained in Title 30-A M.R.S.A. Section 5246.

Section 5.2. Remedies on Default.

Subject to the provisions contained in Section 8.13, whenever any Event of Default described in Section 5.1 hereof shall have occurred and be continuing, the nondefaulting party, following the expiration of any applicable cure period, shall have all rights and remedies available to it at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may be necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the nondefaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder. Further, the non-defaulting party may elect to terminate this Agreement upon 30 days’ written notice to the defaulting party.

Section 5.3. Remedies Cumulative.

Subject to the provisions of Section 8.13 below concerning dispute resolution, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

ARTICLE VI EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

Notwithstanding any other provision of this Agreement, this Agreement is conditioned upon receipt of the Director’s unconditional approval of the City’s designation of the District and adoption of the Development Program. Following execution and delivery of this Agreement, the Agreement shall not be or become binding and enforceable until receipt of such unconditional approval. Upon receipt of such approval, this Agreement shall remain in full force from the Effective Date of the Development Program, which is April 1, 2020, and shall expire March 31, 2050 or sooner upon the payment of all amounts due to Developer hereunder and the performance of all obligations on the part of the City hereunder, unless even sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

The City may terminate this Agreement by delivering written notice of such termination to Developer in the event that Developer does not receive a certificate of occupancy for the Project

by June 30, 2023.

Section 6.2. Termination by City.

Notwithstanding anything to the contrary in this Agreement, in the event that the Declaration, as that term is defined below, is terminated by foreclosure of a lien on the Project that has priority over the Declaration, the City shall have the right to terminate this Agreement by providing Developer with 30 days written notice prior to the effective date of termination, except that in the event that the foreclosing lienholder agrees (for itself, its successors, assigns and transferees) to be bound by the terms of this Agreement and that the Declaration (as described in Section 8.15 hereof) shall remain in full force and effect, then this Agreement shall remain in full force and effect and City shall have no right to terminate this Agreement.

Section 6.3. Cancellation and Expiration of Term.

At the acceleration, termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and Developer shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

ARTICLE VII ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST

Section 7.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest.

The City hereby acknowledges that Developer may pledge, assign and grant a security interest in its right, title and interest in, to and under this Agreement as collateral for financing by a bank, financial institution or Maine State Housing Authority to Developer for the Project, although no obligation is hereby imposed on Developer to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of and the grant of a security interest in all Developer's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Developer hereunder, to third parties as collateral or security for indebtedness or otherwise, on one or more occasions during the term hereof. The City agrees upon request to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee or secured party, including without limitation recognition of the pledgee or assignee or secured party as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such pledgee or assignee or secured party the position of such assignee or pledgee or secured party and the irrevocable and binding nature of this Agreement, and provide to the pledgee or assignee such rights and/or remedies as the parties may reasonably deem necessary for establishing, perfection and protection of its interest herein. Developer shall be responsible for the City's necessary and reasonable costs of counsel with respect to any such pledge or assignment.

Section 7.2. Transfer.

Except as specified in Section 7.1 hereof, Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE VIII MISCELLANEOUS

Section 8.1. Successors.

In the event of the dissolution, merger or consolidation of the City or Developer, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 8.2. Parties-in-Interest.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and Developer any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and Developer.

Section 8.3. Severability.

In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.4. No Personal Liability of Officials of the City.

(a) No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity, and neither the City Council nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

(b) No covenant, stipulation, obligation or agreement of Developer contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future officer, agent, servant or employee of Developer in his or her individual capacity, and no official, officer, employee or agent of Developer shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.5. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 8.6. Governing Law.

The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Section 8.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, addressed as follows:

If to the City:

City of Portland
Attn. Housing and Community Development Division
389 Congress Street
Portland, ME 04101

With a copy to:

Corporation Counsel's Office
389 Congress Street
Portland, Maine 04101

If to Developer:

YFO Resource HUB LP
c/o Youth and Family Outreach
331 Cumberland Avenue
Portland, Maine 04101

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 8.8. Amendments.

This Agreement may be amended only with the concurring written consent of both of the parties hereto.

Section 8.9. Records.

The City shall maintain records which are adequate in all respects to make the calculation of Increased Assessed Value and Tax Increment Revenues required to calculate the deposits into the Development Program Fund hereunder, and shall provide to Developer, upon request by Developer, a summary of such calculations.

Section 8.10. Reserved.

Section 8.11. Integration.

This Agreement completely and fully supersedes all other prior or contemporaneous

understandings or agreements, both written and oral, between the City and Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 8.12. Reserved.

Section 8.13. Dispute Resolution.

In the event of a dispute regarding this Agreement or the transactions contemplated by it, the parties hereto will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after one party first brings the dispute to the attention of the other party, then either party may refer the dispute for resolution by one arbitrator mutually agreed to by the parties, and judgment on the award rendered by the arbitrator may be entered in any Maine state court having jurisdiction. Any such arbitration will take place in Portland, Maine or such other location as mutually agreed by the parties. The parties acknowledge that arbitration shall be the sole mechanism for dispute resolution under this Agreement. Provided however, that in the event the parties are unable to agree, within a reasonable period, on the selection of an arbitrator, either party may file suit to resolve the dispute in any court having jurisdiction within the State of Maine. This arbitration clause shall not bar the City's assessment or collection of property taxes in accord with law, including by judicial proceedings, including tax lien thereof.

Section 8.14. Tax Laws and Valuation Agreement.

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by Developer. Without limiting the foregoing, the City and Developer shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on Developer's property. In addition, the Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The City and Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) prejudice the rights of any party or be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to Developer's property for purposes of ad valorem property taxation or (b) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

Section 8.15. Affordability Covenants.

The Developer and the City shall, in order to assure the continued affordability of the rental units as required by the Development Program, Maine State Housing Authority and applicable laws, regulations and ordinances, execute a declaration (the "Declaration") which is substantially in the same form as the Declaration of Covenants, Conditions and Restrictions which is attached to the Development Program as Exhibit I.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers, all as of the date first above written.

WITNESS:

CITY OF PORTLAND, ME

By: _____
Name: Danielle West
Its City Manager, Duly Authorized by the City
Council at its meeting on _____, 2024

WITNESS:

YFO RESOURCE HUB LP
BY: YFO GP, INC., Its General Partner

By: _____,
Name:
Its General Partner

EXHIBIT 1

MEMORANDUM
City Council Agenda Item

FROM:

DATE: August 16, 2024

SUBJECT: Order 48-24/24 Accepting and Appropriating a \$372,000 United States Department of Justice Assistance Grant for the Police Department Hazardous Devices Unit - Sponsored by Danielle P. West, City Manager

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

**Final
Action**

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: No

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

The Police Department has been awarded \$372,000 from the Bureau of Justice Assistance (BJA). The Police Department was invited to apply for the Byrne Discretionary Community Project Grants/Byrne Discretionary Grants Program for FY24/25 to purchase replacement equipment for the Hazardous Devices Unit (bomb squad).

This item must be read on two separate days. This is its first reading.

III. BACKGROUND

The Portland Police Department fields one of just three FBI accredited bomb squads in the State of Maine. The FBI Hazardous Devices school is the only facility in the country that trains and certifies public safety bomb technicians while the National Bomb Squad Commanders Advisory Board establishes standards for accredited bomb squads to include training and equipment requirements.

The standardization of training and equipment is critical to multi-jurisdictional response to large scale events as demonstrated by the Boston Marathon bombing: nearly 50 technicians from local, state, and federal agencies worked together to clear two major scenes which had forced closure of significant portions of the area. This was feasible because the technicians operated from the same playbook and were trained to use the same equipment.

The PPD HDU was accredited in 2005 with much of the required equipment purchased using Homeland Security grant funds in 2004 and 2005. These items This includes the team's F6A robot, a portable xray unit,

and bomb suits. Required for accreditation, these items are critical to the safety of bomb technicians.

The robot offers the technicians an opportunity to approach, examine, x-ray, and, if necessary, render safe, a suspicious package or IED while remaining at a safe distance.

In 2021, the robot vendor (Remotec) advised that it would no longer support or service the F6A robot. Now 18 years old, the robot is due for replacement and failure to do so before the existing robot becomes obsolete, will result in loss of accreditation for the PPD HDU.

Similarly, the team's x-ray machine is now obsolete. The x-ray machine is also critical to team safety and effectiveness as it allows technicians to view the internal components of suspicious items facilitating their ability to declare a device safe or render it safe. It also expedites the process of clearing a device and minimizing disruption within the City. New x-ray machines also provide wireless communication which allows a radiograph to be transmitted to the technician for interpretation rather than requiring the robot to physically carry the radiograph back.

Finally, two of the protective suits used by the technicians are in need of replacement. These, which include helmets and hand wear, were purchased in 2004 and are well past the recommended usable life of Kevlar which is five years. The material begins to degrade after 5 decreasing the efficacy of the suits and increasing the possibility of injury to the technician.

The Portland HDU has deployed nearly 100 times since its inception in 2005. Just over half of those calls were to addresses in Portland while the remainder includes response to towns in Cumberland County ranging from Brunswick to the north, Scarborough to the south, and Windham to the west. The team has also responded to Sagadahoc and York County several times. These calls include reports of suspicious packages, recovery of military or civilian ordinance, or the rendering safe of improvised explosive devices. The team also provides support at large scale public events including the Boston Marathon, Portland's 4th of July celebration and VIP visits to include presidential candidates.

Failure to replace the HDU equipment would force local communities to wait for a response from Bangor or the State Police. A good example of the impact of this is presented by a call to Maine Medical Center last year for a suspicious package left outside the entrance. Upon locating the item, MMC evacuated the front entrance area, closed the hospital to visitors, and diverted ambulances. Portland HDU members were able to respond within minutes and clear the package (a non-explosive device designed to look like a pipe bomb) in less than two hours.

The hospital was able to resume normal operations in less than the time it would have taken for an outside bomb squad to even respond to the scene.

Note that this award will be used in combination with a Homeland Security award through the Cumberland County Emergency Management Agency which has already been accepted by Council. The combined awards will be sufficient to cover the cost of the robot, x-ray machine, and up to four bomb suits.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not

limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Order - Accepting and Appropriating a \$372,000 Grant from the Bureau of Justice Assistance to Purchase Replacement Equipment for the Hazardous Devices
2. HDU CDS Award_Package_FAW-181888

Prepared by:

Date: 08/16/2024

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

**ORDER ACCEPTING AND APPROPRIATING A \$372,000 UNITED STATES
DEPARTMENT OF JUSTICE ASSISTANCE GRANT FOR
THE POLICE DEPARTMENT'S HAZARDOUS DEVICES UNIT**

ORDERED, that a United States Department of Justice Grant in the amount of \$372,000 is hereby accepted and appropriated to the Portland Police Department to purchase replacement equipment for the Hazardous Devices Unit; and

BE IT FURTHER ORDERED, that the City Manager or designee is hereby authorized to execute the Grant Agreement in substantially the form attached hereto and whatever other documents are necessary to affect the intent and purpose of the agreement and this order.



Department of Justice (DOJ)

Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

Name and Address of Recipient:	CITY OF PORTLAND POLICE DEPARTMENT 109 MIDDLE ST
City, State and Zip:	PORTLAND, ME 04101
Recipient UEI:	EJSBN16HRDC5
Project Title: Police Department Equipment	Award Number: 15PBJA-24-GG-00166-BRND
Solicitation Title: BJA FY24 Invited to Apply- Byrne Discretionary Community Project Grants/Byrne Discretionary Grants Program	
Federal Award Amount: \$372,000.00	Federal Award Date: 8/15/24
Awarding Agency:	Office of Justice Programs Bureau of Justice Assistance
Funding Instrument Type:	Grant
Opportunity Category: D Assistance Listing: 16.753 - Congressionally Recommended Awards	
Project Period Start Date: 3/9/24	Project Period End Date: 4/30/27
Budget Period Start Date: 3/9/24	Budget Period End Date: 4/30/27
Project Description: The Portland Police Department is seeking to replace equipment utilized by our FBI-certified Hazardous Devices Unit (HDU). The Portland PD HDU (aka bomb squad) is one of just three FBI certified teams in the State of Maine. Team members are trained and equipped to identify, neutralize, and dispose of explosives other hazardous materials in a manner which minimizes the threat to public safety. The team's existing equipment, which is required to maintain certification was primarily purchased in the 2004 and 2005 and has reached the end of its useful life and is due to be replaced.	

Award Letter

August 15, 2024

Dear Mark Dubois,

On behalf of Attorney General Merrick B. Garland, it is my pleasure to inform you the Office of Justice Programs (OJP) has approved the application submitted by CITY OF PORTLAND POLICE DEPARTMENT for an award under the funding opportunity entitled 2024 BJA FY24 Invited to Apply- Byrne Discretionary Community Project Grants/Byrne Discretionary Grants Program. The approved award amount is \$372,000.

Review the Award Instrument below carefully and familiarize yourself with all conditions and requirements before accepting your award. The Award Instrument includes the Award Offer (Award Information, Project Information, Financial Information, and Award Conditions) and Award Acceptance. For COPS Office and OVW funding the Award Offer also includes any Other Award Documents.

Please note that award requirements include not only the conditions and limitations set forth in the Award Offer, but also compliance with assurances and certifications that relate to conduct during the period of performance for the award. These requirements encompass financial, administrative, and programmatic matters, as well as other important matters (e.g., specific restrictions on use of funds). Therefore, all key staff should receive the award conditions, the assurances and certifications, and the application as approved by OJP, so that they understand the award requirements. Information on all pertinent award requirements also must be provided to any subrecipient of the award.

Should you accept the award and then fail to comply with an award requirement, DOJ will pursue appropriate remedies for non-compliance, which may include termination of the award and/or a requirement to repay award funds.

Prior to accepting the award, your Entity Administrator must assign a Financial Manager, Grant Award Administrator, and Authorized Representative(s) in the Justice Grants System (JustGrants). The Entity Administrator will need to ensure the assigned Authorized Representative(s) is current and has the legal authority to accept awards and bind the entity to the award terms and conditions. To accept the award, the Authorized Representative(s) must accept all parts of the Award Offer in the Justice Grants System (JustGrants), including by executing the required declaration and certification, within 45 days from the award date.

To access your funds, you will need to enroll in the Automated Standard Application for Payments (ASAP) system, if you haven't already completed the enrollment process in ASAP. The Entity Administrator should have already received an email from ASAP to initiate this process.

Congratulations, and we look forward to working with you.

Brent J. Cohen
Acting Assistant Attorney General

Office for Civil Rights Notice for All Recipients

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) enforces federal civil rights laws and other provisions that prohibit discrimination by recipients of federal financial assistance from OJP, the Office of Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW).

Several civil rights laws, including Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, require recipients of federal financial assistance (recipients) to give assurances that they will comply with those laws. Taken together, these and other civil rights laws prohibit recipients from discriminating in the provision of services and employment because of race, color, national origin, religion, disability, and sex or from discriminating in the provision of services on the bases of age.

Some recipients of DOJ financial assistance have additional obligations to comply with other applicable nondiscrimination provisions like the Omnibus Crime Control and Safe Streets Act of 1968, which prohibits

discrimination on the basis of religion in addition to race, color, national origin, and sex. Recipients may also have related requirements regarding the development and implementation of equal employment opportunity programs.

OCR provides technical assistance, training, and other resources to help recipients comply with civil rights obligations. Further, OCR administratively enforces civil rights laws and nondiscrimination provisions by investigating DOJ recipients that are the subject of discrimination complaints. In addition, OCR conducts compliance reviews of DOJ recipients based on regulatory criteria. These investigations and compliance reviews permit OCR to evaluate whether DOJ recipients are providing services to the public and engaging in employment practices in a nondiscriminatory manner.

For more information about OCR, your civil rights and nondiscrimination responsibilities, how to notify your employees or beneficiaries of their civil rights protections and responsibilities and how to file a complaint, as well as technical assistance, training, and other resources, please visit www.ojp.gov/program/civil-rights-office/outreach. If you would like OCR to assist you in fulfilling your civil rights or nondiscrimination responsibilities, please contact us at askOCR@ojp.usdoj.gov or www.ojp.gov/program/civil-rights-office/about#ocr-contacts.

Memorandum Regarding NEPA

NEPA Letter Type

OJP - Categorical Exclusion

NEPA Letter

None of the following activities will be conducted whether under the Office of Justice Programs federal action or a related third party action:

- (1) New construction
- (2) Any renovation or remodeling of a property located in an environmentally or historically sensitive area, including property (a) listed on or eligible for listing on the National Register of Historic Places, or (b) located within a 100-year flood plain, a wetland, or habitat for an endangered species
- (3) A renovation that will change the basic prior use of a facility or significantly change its size
- (4) Research and technology whose anticipated and future application could be expected to have an effect on the environment
- (5) Implementation of a program involving the use of chemicals (including the identification, seizure, or closure of clandestine methamphetamine laboratories)

Additionally, the proposed action is neither a phase nor a segment of a project that when reviewed in its entirety would not meet the criteria for a categorical exclusion.

Consequently, the subject federal action meets the Office of Justice Programs' criteria for a categorical exclusion as contained in paragraph 4(b) of Appendix D to Part 61 of Title 28 of the Code of Federal Regulations.

Questions about this determination may be directed to your grant manager or Orbin Terry, Environmental Coordinator for the Bureau of Justice Assistance.

NEPA Coordinator

First Name

Orbin

Middle Name

Last Name

Terry

Award Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

Recipient Information

Recipient Name
CITY OF PORTLAND POLICE DEPARTMENT

UEI
EJSBN16HRDC5

Street 1
109 MIDDLE ST

Street 2

City
PORTLAND

State/U.S. Territory
Maine

Zip/Postal Code
04101

Country
United States

County/Parish

Province

Award Details

Federal Award Date
8/15/24

Award Type
Initial

Award Number
15PBJA-24-GG-00166-BRND

Supplement Number
00

Federal Award Amount
\$372,000.00

Funding Instrument Type
Grant

Assistance Listing Number	Assistance Listings Program Title
16.753	Congressionally Recommended Awards

Statutory Authority
Department of Justice Appropriations Act, 2024 (Pub. L. No. 118-42, 138 Stat. 25, 146-47)

[]
I have read and understand the information presented in this section of the Federal Award Instrument.

Project Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

Solicitation Title

2024 BJA FY24 Invited to Apply- Byrne Discretionary
Community Project Grants/Byrne Discretionary Grants
Program

Awarding Agency

OJP

Program Office

BJA

Application Number

GRANT14137439

Grant Manager Name

Danielle Whitestone

Phone Number

202-598-0190

E-mail Address

Danielle.Whitestone@usdoj.gov

Project Title

Police Department Equipment

Performance Period Start

Date

03/09/2024

Performance Period End Date

04/30/2027

Budget Period Start Date

03/09/2024

Budget Period End Date

04/30/2027

Project Description

The Portland Police Department is seeking to replace equipment utilized by our FBI-certified Hazardous Devices Unit (HDU). The Portland PD HDU (aka bomb squad) is one of just three FBI certified teams in the State of Maine. Team members are trained and equipped to identify, neutralize, and dispose of explosives other hazardous materials in a manner which minimizes the threat to public safety. The team's existing equipment, which is required to maintain certification was primarily purchased in the 2004 and 2005 and has reached the end of its useful life and is due to be replaced.

[]

I have read and understand the information presented in this section of the Federal Award Instrument.

Financial Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

A financial analysis of budgeted costs has been completed. Costs under this award appear reasonable, allowable, and consistent with existing guidelines. Exceptions / Adjustments are noted below.

Year 1	Total
Personnel	
\$0	\$0

Fringe Benefits	
\$0	\$0
Travel	
\$0	\$0
Equipment	
\$372,000	\$372,000
Supplies	
\$0	\$0
Construction	
\$0	\$0
SubAwards	
\$0	\$0
Procurement Contracts	
\$0	\$0
Other Costs	
\$0	\$0
Total Direct Costs	
\$372,000	\$372,000
Indirect Costs	
\$0	\$0
Total Project Costs	
\$372,000	\$372,000
Spacer	
Federal	
Non-Federal	
Year1	
\$372,000	

\$0

Spacer

\$372,000

\$0

Budget Totals

	Total	Percentage
Total Project Cost	\$372,000	
Federal Funds	\$372,000	100.00~symbolPlaceholder~
Non-Federal Amount	\$0	0.00~symbolPlaceholder~
Match Amount	\$0	0.00~symbolPlaceholder~
Program Income	\$	
	0	

0.00~symbolPlaceholder~

Empty Space

Budget Category

Personnel

Fringe Benefits

Travel

Equipment

Supplies

Construction

SubAwards

Procurement Contracts

Other Costs

Indirect Costs

[]
I have read and understand the information presented in this section of the Federal Award Instrument.

Award Conditions

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

1

Meaningful access requirement for individuals with limited English proficiency

The recipient, and any subrecipient at any tier, must take reasonable steps to ensure that individuals with limited English proficiency (LEP) have meaningful access to their programs and activities to comply with Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the basis of national origin, including discrimination against individuals with LEP. Such steps may require providing language assistance services, such as interpretation or translation services. The Department of Justice guidance on compliance with this requirement may be found at "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (67 Fed. Reg. 41455-41472) (<https://www.federalregister.gov/d/02-15207>) and is incorporated by reference here.

2

Compliance with general appropriations-law restrictions on the use of federal funds (FY 2024)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions that may be set out in applicable appropriations acts are indicated at <https://ojp.gov/funding/Explore/FY24AppropriationsRestrictions.htm>, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

3

Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Limited Exceptions. In certain special circumstances, the U.S. Department of Justice ("DOJ") may determine that it will not enforce, or enforce only in part, one or more requirements otherwise applicable to the award. Any such exceptions regarding enforcement, including any such exceptions made during the period of performance, are (or will be during the period of performance) set out through the Office of Justice Programs ("OJP") webpage entitled "Legal Notices: Special circumstances as to particular award conditions" (ojp.gov/funding/Explore/LegalNotices-AwardReqs.htm), and incorporated by reference into the award.

By signing and accepting this award on behalf of the recipient, the authorized recipient official accepts all material requirements of the award, and specifically adopts, as if personally executed by the authorized recipient official, all assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance.

Failure to comply with one or more award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or an assurance or certification related to conduct during the award period -- may result in OJP taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. DOJ, including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621,

and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.

4

Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

5

Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this award from OJP.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at <https://ojp.gov/funding/Part200UniformRequirements.htm>.

Record retention and access: Records pertinent to the award that the recipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the recipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.334.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

6

Reporting potential fraud, waste, and abuse, and similar misconduct

The recipient, and any subrecipients ("subgrantees") at any tier, must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award-- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at <https://oig.justice.gov/hotline/contact-grants.htm> (select "Submit Report Online"); (2) mail directed to: U.S. Department of Justice, Office of the Inspector General, Investigations Division, ATTN: Grantee Reporting, 950 Pennsylvania Ave., NW, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Investigations Division (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>.

7

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38.

Among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38 also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

Recipients and subrecipients that provide social services under this award must give written notice to beneficiaries and prospective beneficiaries prior to the provision of services (if practicable) which shall include language substantially similar to the language in 28 CFR Part 38, Appendix C, sections (1) through (4). A sample written notice may be found at <https://www.ojp.gov/program/civil-rights-office/partnerships-faith-based-and-other-neighborhood-organizations>.

In certain instances, a faith-based or religious organization may be able to take religion into account when making hiring decisions, provided it satisfies certain requirements. For more information, please see <https://www.ojp.gov/funding/explore/legaloverview2024/civilrightsrequirements>.

8

Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

9

Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

10

Requirement for data on performance and effectiveness under the award

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

11

Compliance with DOJ Grants Financial Guide

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance. The recipient agrees to comply with the DOJ Grants Financial Guide.

12

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

Among other items, 28 C.F.R. § 42.106(d), 28 C.F.R. § 42.405(c), and 28 C.F.R. § 42.505(f) contain notice requirements that covered recipients must follow regarding the dissemination of information regarding federal nondiscrimination requirements.

13

Determination of suitability to interact with participating minors

SCOPE. This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ)(or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the recipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The recipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

14

Requirement to disclose whether recipient is designated "high risk" by a federal grant-making agency outside of DOJ

If the recipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to OJP by email at OJP.ComplianceReporting@ojp.usdoj.gov. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

15

Employment eligibility verification for hiring under the award

1. The recipient (and any subrecipient at any tier) must--

A. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the recipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1).

B. Notify all persons associated with the recipient (or any subrecipient) who are or will be involved in activities under this award of both--

(1) this award requirement for verification of employment eligibility, and

(2) the associated provisions in 8 U.S.C. 1324a(a)(1) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.

C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1).

D. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. Staff involved in the hiring process

For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all recipient (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

B. Employment eligibility confirmation with E-Verify

For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient (or any subrecipient) may choose to participate in, and use, E-Verify (www.e-verify.gov), provided an appropriate person authorized to act on behalf of the recipient (or subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.

C. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

D. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any recipient, any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (<https://www.e-verify.gov/>) or email E-Verify at E-Verify@dhs.gov. E-Verify employer agents can email E-Verify at E-VerifyEmployerAgent@dhs.gov.

Questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

16

Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

17

Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially

reclassified (that is, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

18

Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the recipient--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

19

OJP Training Guiding Principles

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <https://www.ojp.gov/funding/implement/training-guiding-principles-grantees-and-subgrantees>.

20

Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$250,000

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at <https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$250,000)), and are incorporated by reference here.

21

Requirement to report potentially duplicative funding

If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the DOJ awarding agency, must seek a budget-modification or change-of-project-scope Grant Award Modification (GAM) to eliminate any inappropriate duplication of funding.

22

Required training for Grant Award Administrator and Financial Manager

The Grant Award Administrator and all Financial Managers for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after January 1, 2021, will satisfy this condition.

In the event that either the Grant Award Administrator or a Financial Manager for this award changes during the period of performance, the new Grant Award Administrator or Financial Manager must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after the date the Entity Administrator enters updated Grant Award Administrator or Financial Manager information in JustGrants. Successful completion of such a training on or after January 1, 2021, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at <https://onlinegfmt.training.ojp.gov/>. All trainings that satisfy this condition include a session on grant fraud prevention and detection.

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.

23

Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The recipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a

gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

24

Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

25

Potential imposition of additional requirements

The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

26

Requirement to report actual or imminent breach of personally identifiable information (PII)

The recipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient) -- (1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "Personally Identifiable Information (PII)" (2 CFR 200.1) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

27

Requirements related to System for Award Management and Universal Identifier Requirements

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov/>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <https://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated

to any business or non-profit organization that he or she may own or operate in his or her name).

28

Compliance with restrictions on the use of federal funds--prohibited and controlled equipment under OJP awards

Consistent with Executive Order 14074, "Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety," OJP has prohibited the use of federal funds under this award for purchases or transfers of specified equipment by law enforcement agencies. In addition, OJP requires the recipient, and any subrecipient ("subgrantee") at any tier, to put in place specified controls prior to using federal funds under this award to acquire or transfer any property identified on the "controlled equipment" list. The details of the requirement are posted on the OJP web site at <https://www.ojp.gov/funding/explore/prohibited-and-controlled-equipment> (Award condition: Compliance with restrictions on the use of federal funds--prohibited and controlled equipment under OJP awards), and are incorporated by reference here.

29

Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a recipient (or subrecipient) would or might fall within the scope of these prohibitions, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

30

All subawards ("subgrants") must have specific federal authorization

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at <https://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

31

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

Among other items, 28 C.F.R. § 54.140 contains notice requirements that covered recipients must follow regarding the dissemination of information regarding federal nondiscrimination requirements.

32

The recipient understands that, in accepting this award, the Authorized Representative declares and certifies, among other things, that he or she possesses the requisite legal authority to accept the award on behalf of the recipient entity and, in so doing, accepts (or adopts) all material requirements that relate to conduct throughout the period of performance under this award. The recipient further understands, and agrees, that it will not assign anyone to the role of Authorized Representative during the period of performance under the award without first ensuring that the individual has the requisite legal authority.

33

Verification and updating of recipient contact information

The recipient must verify its Grant Award Administrator, Financial Manager, and Authorized Representative contact information in JustGrants, including telephone number and e-mail address. If any information is incorrect or has changed, the award recipient's Entity Administrator must make changes to contact information through DIAMD. Instructions on how to update contact information in JustGrants can be found at <https://justicegrants.usdoj.gov/training/training-entity-management>.

34

FFATA reporting: Subawards and executive compensation

The recipient must comply with applicable requirements to report first-tier subawards ("subgrants") of \$30,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients (first-tier "subgrantees") of award funds. The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the OJP web site at <https://ojp.gov/funding/Explore/FFATA.htm> (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here.

This condition, including its reporting requirement, does not apply to-- (1) an award of less than \$30,000, or (2) an award made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

35

Body-worn cameras, policies and procedures

In accepting this award, the recipient agrees not to use award funds for purchases of body-worn cameras or related expenses for any agency unless that agency has policies and procedures in place that reinforce appropriate agency Use of Force policies and training and address technology usage, evidence acquisition, data storage and retention, as well as privacy issues, accountability and discipline.

36

Body armor - compliance with NIJ standards and other requirements

Ballistic-resistant and stab-resistant body armor purchased with award funds may be purchased at any threat level, make or model, from any distributor or manufacturer, as long as the body armor has been tested and found to comply with applicable National Institute of Justice ballistic or stab standards, and is listed on the NIJ Compliant Body Armor Model List. In addition, ballistic-resistant and stab-resistant body armor purchased must be made in the United States and must be uniquely fitted, as set forth in 34 U.S.C. 10202(c)(1)(A). The latest NIJ standard information and the NIJ Compliant Body Armor List may be found by following the links located on the NIJ Body Armor page: <https://nij.ojp.gov/topics/equipment-and-technology/body-armor>. In addition, if recipient uses funds under this award to purchase body armor, the recipient is strongly encouraged to have a "mandatory wear" policy in effect. There are no requirements regarding the nature of the policy other than it be a mandatory wear policy for all uniformed officers while on duty.

37

The recipient agrees to comply with OJP grant monitoring guidelines, protocols, and procedures, and to cooperate with BJA and OCFO on all grant monitoring requests, including requests related to desk reviews, enhanced programmatic desk reviews, and/or site visits. The recipient agrees to provide to BJA and OCFO all documentation necessary to complete monitoring tasks, including documentation related to any subawards made under this award. Further, the

recipient agrees to abide by reasonable deadlines set by BJA and OCFO for providing the requested documents. Failure to cooperate with BJA's/OCFO's grant monitoring activities may result in sanctions affecting the recipient's DOJ awards, including, but not limited to: withholdings and/or other restrictions on the recipient's access to grant funds; referral to the Office of the Inspector General for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).

38

Any written, visual, or audio publications funded in whole or in part under this award, with the exception of press releases, shall contain the following statements: "This project was supported by Grant No. <AWARD_NUMBER> awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice." The current edition of the DOJ Grants Financial Guide provides guidance on allowable printing and publication activities.

39

Any Web site that is funded in whole or in part under this award must include the following statement on the home page, on all major entry pages (i.e., pages (exclusive of documents) whose primary purpose is to navigate the user to interior content), and on any pages from which a visitor may access or use a Web-based service, including any pages that provide results or outputs from the service: "This Web site is funded in whole or in part through a grant from the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. Neither the U.S. Department of Justice nor any of its components operate, control, are responsible for, or necessarily endorse, this Web site (including, without limitation, its content, technical infrastructure, and policies, and any services or tools provided)." The full text of the foregoing statement must be clearly visible on the home page. On other pages, the statement may be included through a link, entitled "Notice of Federal Funding and Federal Disclaimer," to the full text of the statement.

40

Confidentiality of data

The recipient (and any subrecipient at any tier) must comply with all confidentiality requirements of 34 U.S.C. 10231 and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. The recipient further agrees, as a condition of award approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, 28 C.F.R. 22.23.

41

The recipient agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this project.

42

Protection of human research subjects

The recipient (and any subrecipient at any tier) must comply with the requirements of 28 C.F.R. Part 46 and all OJP policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.

43

Justification of consultant rate

Approval of this award does not indicate approval of any consultant rate in excess of \$650 per day. A detailed justification must be submitted to and approved by the OJP program office prior to obligation or expenditure of such funds.

44

The recipient agrees that no funds under this grant award (including via subcontract or subaward, at any tier) may be used for unmanned aircraft systems (UAS), which includes unmanned aircraft vehicles (UAV), or for any accompanying accessories to support UAS.

45

Compliance with 28 C.F.R. Part 23

With respect to any information technology system funded or supported by funds under this award, the recipient (and any subrecipient at any tier) must comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per the regulation. Should any violation of 28 C.F.R. Part 23 occur, the recipient may be fined as per 34 U.S.C. 10231(c)-(d). The recipient may not satisfy such a fine with federal funds.

46

Justice Information Sharing

Information sharing projects funded under this award must comply with DOJ's Global Justice Information Sharing Initiative (Global) guidelines. The recipient (and any subrecipient at any tier) must conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: https://it.ojp.gov/gsp_grantcondition. The recipient (and any subrecipient at any tier) must document planned approaches to information sharing and describe compliance with the GSP and appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.

47

In accepting this award, the recipient agrees that grant funds cannot be used for Facial Recognition Technology (FRT) unless the recipient has policies and procedures in place to ensure that the FRT will be utilized in an appropriate and responsible manner that promotes public safety, and protects privacy, civil rights, and civil liberties and complies with all applicable provisions of the U.S. Constitution, including the Fourth Amendment's protection against unreasonable searches and seizures and the First Amendment's freedom of association and speech, as well as other laws and regulations. Recipients utilizing funds for FRT must make such policies and procedures available to DOJ upon request.

48

The recipient agrees that it will submit quarterly financial status reports (the SF 425 Federal Financial Report) to OJP in JustGrants, no later than the deadlines set out in the DOJ Financial Guide and the JustGrants guidance (typically 30 days after the end of each calendar quarter). Delinquent reports may lead to funds being frozen and other remedies.

49

The recipient shall submit semiannual performance reports. Performance reports shall be submitted within 30 days after the end of the reporting periods, which are June 30 and December 31, for the life of the award. These reports will be submitted to the Office of Justice Programs, on-line through the Internet at <https://justgrants.usdoj.gov>

50

As of the first day of the period of performance for the award, the recipient may choose to incur project costs using non-federal funds, but any such project costs are incurred at the recipient's risk until, at a minimum, all applicable withholding conditions are removed by OJP (via an Award Condition Modification (ACM)).

Except to the extent (if any) that an award condition expressly precludes reimbursement of project costs incurred "at-risk," if and when the recipient makes a valid acceptance of this award and OJP removes each applicable withholding condition through an Award Condition Modification (ACM), the recipient is authorized to reimburse itself for project costs incurred "at-risk" earlier during the period of performance (such as project costs incurred prior to award acceptance or prior to removal of an applicable withholding condition), provided that those project costs otherwise are allowable costs under the award.

51

Limit on use of grant funds for grantees' employees' salaries

With respect to this award, federal funds may not be used to pay cash compensation (salary plus bonuses) to any employee of the award recipient at a rate that exceeds 110% of the maximum annual salary payable to a member of the federal government's Senior Executive Service (SES) at an agency with a Certified SES Performance Appraisal System for that year. (An award recipient may compensate an employee at a higher rate, provided the amount in excess of this compensation limitation is paid with non-federal funds.)

This limitation on compensation rates allowable under this award may be waived on an individual basis at the discretion of the OJP official indicated in the program announcement under which this award is made.

[]
I have read and understand the information presented in this section of the Federal Award Instrument.

Award Acceptance

Declaration and Certification to the U.S. Department of Justice as to Acceptance

By checking the declaration and certification box below, I--

- A. Declare to the U.S. Department of Justice (DOJ), under penalty of perjury, that I have authority to make this declaration and certification on behalf of the applicant.
- B. Certify to DOJ, under penalty of perjury, on behalf of myself and the applicant, to the best of my knowledge and belief, that the following are true as of the date of this award acceptance: (1) I have conducted or there was conducted (including by applicant's legal counsel as appropriate and made available to me) a diligent review of all terms and conditions of, and all supporting materials submitted in connection with, this award, including any assurances and certifications (including anything submitted in connection therewith by a person on behalf of the applicant before, after, or at the time of the application submission and any materials that accompany this acceptance and certification); and (2) I have the legal authority to accept this award on behalf of the applicant.
- C. Accept this award on behalf of the applicant.
- D. Declare the following to DOJ, under penalty of perjury, on behalf of myself and the applicant: (1) I understand that, in taking (or not taking) any action pursuant to this declaration and certification, DOJ will rely upon this declaration and certification as a material representation; and (2) I understand that any materially false, fictitious, or fraudulent information or statement in this declaration and certification (or concealment or omission of a material fact as to either) may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 34 U.S.C. §§ 10271-10273), and also may subject me and the applicant to civil penalties and administrative remedies under the federal False Claims Act (including under 31 U.S.C. §§ 3729-3730 and/or §§ 3801-3812) or otherwise.

Agency Approval

Title of Approving Official	Name of Approving Official	Signed Date And Time
Acting Assistant Attorney General	Brent J. Cohen	8/9/24 8:36 PM

Authorized Representative

Entity Acceptance

Title of Authorized Entity Official
Police Chief

Signed Date And Time
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