

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)

CITY COUNCIL MEETING - OCTOBER 7, 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/7362/media>

PLEDGE OF ALLEGIANCE:

ROLL CALL:

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

ANNOUNCEMENTS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

City Council Meeting-September 16, 2024

PROCLAMATIONS:

**Proclamation 13-24/25 Remembrance of the Atrocities of October 7, 2023 -
Sponsored by Mark Dion, Mayor**

**Proclamation 14-24/25 Recognizing October 14, 2024 as Indigenous Peoples' Day -
Sponsored by Mark Dion, Mayor**

**Proclamation 15-24/25 Recognizing October 10, 2024 as Black Brewers Day -
Sponsored by Pious Ali, City Councilor**

CONSENT ITEMS:

Order 58-24/25 Granting Municipal Officers' Approval of Custom House Limited LLC, dba The Downtown Social. Application for Class XI Restaurant/Lounge with Outdoor Dining on Private Property and Combined Entertainment at 128 Free Street - Sponsored by Danielle P. West, City Manager

Application was filed on 8/29/24. Location was previously Dogfish. New City and State applications.

Five affirmative votes are required for passage after public comment.

Order 59-24/25 Granting Municipal Officers' Approval of Miller Project LLC, dba Mash Tun. Application for XI Restaurant/Lounge with Outdoor Dining on Public Property at 29 Wharf Street - Sponsored by Danielle P. West, City Manager

Application was filed on 9/12/24. This is a change of ownership of an existing establishment. New City and State applications.

Five affirmative votes are required for passage after public comment.

Order 60-24/25 Granting Municipal Officers' Approval of Portland Community Squash, dba Portland Community Squash Cafe. Application for Class IV/V Non-Profit Club with Catering with Outdoor Dining on Public Property at 66 Noyes Street - Sponsored by Danielle P. West, City Manager

Application was filed on 9/16/24. This is an existing establishment adding alcohol service. New City and State applications.

Five affirmative votes are required for passage after public comment.

RESOLUTIONS:

Resolve 2-24/25 Return the Two-Way Operation on State and High Streets - Sponsored by the Sustainability and Transportation Committee, Regina Phillips, Chair

The Department of Public Works, following two meetings with the Council's Sustainability and Transportation Committee (S&T – 5/8/24 & 9/11/24), as well as a general public meeting (9/5/24), has been directed by S&T to seek a Resolution from the Council to do the following:

1. Approve a reversion of State and High to their original (pre-1972) two-way operation; and
2. Pursue a Two-Party Agreement to partner with MaineDOT in order to modify and fund additional work in association with MaineDOT WIN 02756.00, the State and High Signal Replacement Project.

The approval for the reversion will provide change in the Traffic Schedule pending a two-way reversion project. In addition, the approval to proceed with a Two-Party Agreement between MaineDOT and the City of Portland will allow the City to work with the Department on providing additional work in its signal project to facilitate two-way traffic flow and improve active transportation facilities. This approval will also provide DPW with the needed support from elected officials to provide any other design support services during project development that may be required.

At this time, the project is at concept stage. It is anticipated that design will proceed in 2025, with the State Right-of-Way (ROW) process being completed in 2026, and construction possibly beginning in 2027.

Five affirmative votes are required for passage after public comment.

Resolve 3-24/25 Approving Eco Maine Revenue Bond Financing - Sponsored by Danielle P. West, City Manager

This resolution is to comply with the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). EcoMaine is a quasi-municipal organization that plans to borrow money to purchase new recycling equipment to replace a 30 year old system that is past the end of its useful life. The recycling facility is in Portland and TEFRA states that a municipal officer, in this case the City Council, needs to sign off that Portland agrees with this project.

Five affirmative votes are required for passage after public comment.

ORDERS:

Order 61-23/24 Approving First Amendment to Stadium Use Agreement for Use and Occupancy of James J. Fitzpatrick Stadium by Hearts of Pine LLC - Sponsored by Danielle P. West, City Manager

The City and Hearts of Pine LLC (the "Club") are parties to a Stadium Use Agreement for a professional soccer team at Fitzpatrick Stadium.

In the months since the Council approved the agreement, the Club has discovered that the existing field does not meet United Soccer Leagues (USL) standards, which exceed those normally applied to recreational fields. If approved, this item would amend the existing agreement to allow the Club, at its own expense, to install a new turf field at Fitzpatrick Stadium.

The Club plans to replace the existing field, which has sewn-in lines, with a plain green field that requires lines to be painted and removed from time to time. Because the periodic painting requires more maintenance than a field with sewn-in lines, the Club will be responsible for the cost of painting and removing lines as needed throughout the initial term of the agreement, which goes through the fall of 2029. The amendment to the agreement includes language to ensure that the painting process does not adversely impact the use of the field by the schools and other Fitzpatrick users. The amendment also replaces the original list of improvements that the Club plans to make with an updated and expanded list. The list is attached as Exhibit A to the agreement and includes \$2,500,000- \$3,000,000 in improvements.

Five affirmative votes are required for passage after public comment.

Order 62-24/25 Appropriating \$936,479.26 in Opioid Settlement Funds to the Department of Health and Human Services for Three Opioid Remediation Programs - Sponsored by Health & Human Services & Public Safety Committee, April Fournier, Chair

On September 10, 2024, the HHS & PS Committee voted unanimously to support this item and recommend it to the Council for approval.

If approved by the City Council, these funds would be combined with \$450,000 in opioid settlement funding accepted by the City Council as part of the FY25 budget process. The total amount of approximately \$1.38 million would be used to fund up to three specific programs, as funds allow. These programs are listed below in priority order and as described in the order itself:

- Syringe Redemption Program

- Day Space
- On-Peninsula Methadone Treatment Program

City staff plan to operate the syringe redemption pilot program at an estimated annual cost of \$52,000. Staff would solicit proposals for the operation of a day space and/or methadone treatment program via an RFP process.

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

Order 63-24/25 Appropriating \$5,630,000 in Funds for the Kiwanis Pool Replacement Project - Sponsored by Danielle P. West, City Manager

This agenda item appropriates \$5.63M of additional funding necessary to complete the Kiwanis Pool Replacement project. The project had stalled after bid prices came in higher than the original estimate. The Finance Committee requested that staff identify funding to close the gap and complete the project. This order appropriates future proceeds from an anticipated \$1M in private donations and \$4.63M of interest income.

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

ADJOURNMENT:

ZOOM INFORMATION:

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

Watch Livestream here: <https://portlandme.portal.civicclerk.com/event/7307/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 5:00pm.

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

Councilors Absent: Councilor Trevorrow & Councilor Pelletier

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

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

(Shana, 60 Mcauley Way), No name or address given, Richard Clap (District 5), Mitchell (District 2), Paula Georges (District 5), Sharon (Stevens Square), Helen Silverstein (Portland Resident), Solange Kellerman (Munjoy Hill), Steve Woods (Commercial Street), Gerg Gould (District 5), Michelle Roberts (North Deering), Joey Brunelle (Parris Street), George Rheault (West Bayside),

ANNOUNCEMENTS:

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

SPECIAL MEETING:

Special Meeting of the Corporator of the Portland Development Corporation

Order 49-24/25 Amending the Portland Development Corporation's Business Assistance Program for Job Creation Guidelines - Sponsored by Mark Dion, Chair of Legislative and Nominating Committee

Motion was made by Councilor Ali and seconded by Councilor Sykes to recess the meeting of the City Council and convene the Special Meeting of the Corporator of the Portland Development Corporation. Passage 7-0 (Councilor Trevorrow and Pelletier absent)

Order 49-24/25

Motion was made by Councilor Ali and seconded by Councilor Rodriguez for passage. Passage 7-0 (Councilor Trevorrow and Pelletier absent)

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

Order 50-24/25 Authorizing Participation in the Maine Funding Network Program Hosted by the Finance Authority of Maine - Sponsored by Mark Dion, Chair of Legislative and Nominating Committee

Motion was made by Councilor Ali and seconded by Councilor Sykes for passage. Passage 7-0 (Councilor Trevorrow and Pelletier absent)

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

Order 51-24/25 Appointing Directors to the Board of the Portland Development Corporation - Sponsored by Mark Dion, Chair of Legislative and Nominating Committee

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

Special Meeting of the Corporator of the Portland Fish Pier Authority (Merged with Fish Exchange)

Motion was made by Councilor Ali and seconded by Councilor Fournier to recess the meeting of the Portland Development Corporation and convene the Special Meeting of the Corporator of the Portland Fish Pier Authority. Passage 7-0 (Councilor Trevorrow and Pelletier absent)

Order 52-24/25 Appointing Directors to the Board of the Portland Fish Pier Authority - Sponsored by Mark Dion, Chair of Legislative and Nominating Committee

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

Motion was made by Councilor Ali and seconded by Councilor Fournier to recess the meeting of the Corporator of the Portland Fish Pier Authority and reconvene the regular meeting of the City Council. Passage 7-0 (Councilor Trevorrow and Pelletier absent)

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Special City Council Meeting- September 4, 2024

Motion was made by Councilor Rodriguez and seconded by Councilor Fournier for passage. Passage 7-0 (Councilor Trevorrow and Pelletier absent)
Mayor Dion opened the floor for public comment. No one spoke.

PROCLAMATIONS:

Proclamation 8-24/25 Celebrating the Portland Symphony Orchestra's 100th Anniversary Season - Sponsored by Mark Dion, Mayor

Mayor Dion read Proclamation 8-24/25 Celebrating the Portland Symphony Orchestra's 100th Anniversary Season into the record.

Proclamation 9-24/25 Recognizing Together Reaching Unity (TruSports) for the Commitment to the Youth of Our Community - Sponsored by Mark Dion, Mayor

Councilor Phillips read Proclamation 9-24/25 Recognizing Together Reaching Unity (TruSports) for the Commitment to the Youth of Our Community into the record.

Proclamation 10-24/25 Recognizing September 15 - October 15, 2024 as Hispanic Heritage Month - Sponsored by Mark Dion, Mayor

Councilor Rodriguez read Proclamation 10-24/25 Recognizing September 15-October 15, 2024 as Hispanic Heritage Month into the Record.

Proclamation 11-24/25 Recognizing September 30 as the National Day of Remembrance for U.S. Indian Boarding Schools - Sponsored by Mark Dion, Mayor

Councilor Fournier read Proclamation 11-24/25 Recognizing September 30 as the National Day of Remembrance for U.S Indian Boarding Schools into the record.

Proclamation 12-24/25 Recognizing September 23-29, 2024 as Diaper Need Awareness Week - Sponsored by Mark Dion, Mayor

Councilor Bullett read Proclamation 12-24/25 Recognizing September 23-29, 2024 as Diaper Need Awareness Week into the record.

APPOINTMENTS:

Order 53-24/25 Order Appointing Members to Various Boards & Committees - Sponsored by Mark Dion, Chair of Legislative and Nominating Committee

Motion was made by Councilor Ali and seconded by Councilor Sykes for passage as an emergency. Passage 7-0, as an emergency (Councilor Trevorow and Pelletier absent) Mayor Dion opened the floor for public comment. The following individuals spoke:
Mayor Dion

*Item goes into effect immediately.

CONSENT ITEMS:

Order 54-24/25 Declaring October 6, 2024 the 33rd Annual Maine Marathon, Half Marathon and Relay Festival - Sponsored by Danielle P. West, City Manager

Orders 54-24/25 through Order 56-24/25 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 Fournier for passage. Passage 7-0 (Councilor Trevorow and Pelletier absent)

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

Order 55-24/25 Granting Municipal Officers' Approval of Blue Portland Maine Inc, dba Blue Portland Maine. Application for Auditorium with Indoor Entertainment at 650 Congress Street - Sponsored by Danielle P. West, City Manager

Orders 54-24/25 through Order 56-24/25 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 Fournier for passage. Passage 7-0 (Councilor Trevorow and Pelletier absent)

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

Order 56-24/25 Granting Municipal Officers' Approval of Roasty's LLC, dba Roasty's. Application for Class III & IV FSE at 642 Congress Street - Sponsored by Danielle P. West, City Manager

Orders 54-24/25 through Order 56-24/25 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 Fournier for passage.

Passage 7-0 (Councilor Trevorrow and Pelletier absent)

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

COMMUNICATIONS:

Communication 2-24/25 Consolidated Annual Performance and Evaluation Report (CAPER) for HUD-funded Programs - Greg Watson, Housing and Economic Development Director

Communication 2-24/25 Consolidated Annual Performance and Evaluation Report (CAPER) for HUD-funded programs was provided by Greg Watson (Director of Housing and Economic Development)

UNFINISHED BUSINESS:

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

Orders 45-24/25 through 47-24/25 were read into the record together. Public comment was taken together.

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

Mayor Dion opened the floor for public comment. The following individuals spoke: Councilor Ali, Mary Davis (Division Director, Housing & Community Development Division), George Rheault (West Bayside), Councilor Rodriguez, Councilor Sykes, Mayor Dion, Councilor Fournier, Councilor Bullett

*Item goes into effect immediately.

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

Orders 45-24/25 through 47-24/25 were read into the record together. Public comment was taken together.

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

Mayor Dion opened the floor for public comment. The following individuals spoke: Councilor Ali, Mary Davis (Division Director, Housing & Community Development Division), George Rheault (West Bayside), Councilor Rodriguez, Councilor Sykes, Mayor Dion, Councilor Fournier, Councilor Bullett

*Item goes into effect immediately.

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.

Orders 45-24/25 through 47-24/25 were read into the record together. Public comment was taken together.

Motion was made by Councilor Ali and seconded by Councilor Fournier for passage as an emergency. Passage 7-0, as an emergency (Councilor Trevorrow and Pelletier absent) Mayor Dion opened the floor for public comment. The following individuals spoke: Councilor Ali, Mary Davis (Division Director, Housing & Community Development Division), George Rheault (West Bayside), Councilor Rodriguez, Councilor Sykes, Mayor Dion, Councilor Fournier, Councilor Bullett

*Item goes into effect immediately.

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

Motion was made by Councilor Ali and seconded by Councilor Bullett for passage. Passage 7-0 (Councilor Trevorrow and Pelletier absent)

Mayor Dion opened the floor for public comment. The following individuals spoke: George Rheault (West Bayside), Councilor Fournier, Mark Dubois (Police Chief)

ORDERS:

Order 57-24/25 Authorizing the Appropriation of \$250,000 as the Local Match for the Reconnecting Communities and Neighborhoods Grant Application for the Design Phase of the Franklin Street Project - Sponsored by Danielle West, City Manager

Motion was made by Councilor Ali and seconded by Councilor Sykes to waive the second reading. Passage 7-0 (Councilor Trevorrow and Pelletier absent)
Second reading waived.

Motion was made by Councilor Ali and seconded by Councilor Sykes for passage. Passage 7-0 (Councilor Trevorrow and Pelletier absent)

Mayor Dion opened the floor for public comment. The following individuals spoke: Wendy Price (Federal Street), Marcos Miller (Atlantic Street), Robert Todd Morse (Hammond Street) George Rheault (West Bayside), Councilor Bullett, Councilor Ali, Councilor Sykes, Kevin Kraft (Planning Director), Mayor Dion

EXECUTIVE SESSION:

ADJOURNMENT:

Motion was made by Councilor Bullett and seconded by Councilor Ali to adjourn. Passage 7-0 (Councilors Trevorrow & Pelletier absent) at 7:08pm.

A TRUE RECORD

Ashley Rand, City Clerk

PROCLAMATION

IN REMEMBRANCE OF THE ATROCITIES OF OCTOBER 7, 2023

- WHEREAS,** on October 7th, 2023, during the sacred days of Shabbat and Simchat Torah, a day meant for celebration and joy, the people of Israel were subjected to a devastating and unprecedented terrorist attack by Hamas, resulting in the brutal massacre of more than 1,200 civilians, including children, women, and the elderly; and
- WHEREAS,** over 4,500 individuals were wounded including 1200 Israeli children, entire families, were kidnapped and forcibly taken into Gaza, facing unknown fates, held as hostages by those intent on inflicting terror and fear; and the murdered and wounded also included Christians, Druze and Bedouins; and
- WHEREAS,** this attack was marked by horrific acts of violence, including the targeting of civilians in their homes, bombings, shootings, and unspeakable acts of cruelty such as the sexual assault and murder of women, and the slaughter of innocent children, with the aim of sowing fear and division; and
- WHEREAS,** Hamas used sexual violence as a weapon of war, subjecting women and girls to unspeakable violations as part of their strategy of terror, further intensifying the suffering and trauma of this heinous attack; and
- WHEREAS,** the violence unleashed on that day caused widespread displacement, forcing thousands of families to flee from their homes and leaving communities shattered in the wake of this atrocity; and
- WHEREAS,** Since October 7th, the region has seen continued death, destruction, and the loss of physical and emotional safety for all who live in Israel, Gaza, and the West Bank. Civilians on all sides—Israeli, Palestinian, and others—have paid the ultimate price for the decisions made by their governments and governing bodies, enduring profound harm and hardship. It is only through a future that guarantees safety, dignity, and sovereignty for all peoples in the region that lasting peace can be achieved; and
- WHEREAS,** the trauma of October 7th has reverberated across the world, with Jewish communities, including here in Portland, mourning the senseless loss of life, the violation of human rights, and the escalation of antisemitism that followed in the aftermath; and
- WHEREAS,** the City of Portland condemns these acts of terror, stands in solidarity with the people of Israel, and reaffirms our commitment to peace, justice, and the protection of human dignity for all people, everywhere;

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 October 7th as a day of solemn remembrance, honoring the memory of those who were lost, the resilience of those who survived, and the strength of all those who continue to seek peace throughout the region in the face of unimaginable suffering. We call upon the residents of Portland to join in rejecting hatred and terrorism in all its forms and to stand united in our shared pursuit of justice, safety, and a future free from violence.

Signed and sealed this 7th day of October, 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)

**PROCLAMATION
RECOGNIZING
OCTOBER 14TH, 2024 AS INDIGENOUS PEOPLES' DAY**

- WHEREAS,** the City Council of the City of Portland recognizes that Portland was founded and is built upon lands first inhabited by the Indigenous People of this Aucocisco (Casco Bay) region, The Maliseet/Wolastoqiyik, Mi'kmaq, Penobscot and Passamaquoddy tribes, known collectively as the Wabanaki Confederacy, or "People of the Dawnland"; and
- WHEREAS,** the City of Portland recognizes that the Indigenous Peoples of the lands that would later become known as the Americas have inhabited these lands since time immemorial; and
- WHEREAS,** the history of this Nation includes the forcible removal of Indigenous Peoples from their ancestral lands, forcing assimilation, and nearly erasing the vibrant cultures of our first environmental stewards; and
- WHEREAS,** the City of Portland recognizes that confronting our past requires strong self-reflection, honesty, and accountability to do better than those who came before us for the benefit of the next seven generations and this work is done in partnership with our sovereign Indigenous Nations; and
- WHEREAS,** the City of Portland is proud to be included in a growing number of cities and towns in the United States to have recognized the second Monday of October as Indigenous Peoples' Day, thereby creating an opportunity to reflect on our past, learn about and celebrate Indigenous Peoples, their resiliency, and their very real modern presence in our community, not just a relic of the past; 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 Monday, October 14, 2023 as Indigenous Peoples' Day, and encourage residents to acknowledge and honor the First Nations members of our community, past and present, without whom the creation of this country would not have been possible..

Signed and sealed this 7th day of October, 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
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PROCLAMATION

RECOGNIZING OCTOBER 10TH, 2024 AS BLACK BREWERS DAY

- WHEREAS,** The rich tapestry of our nation is woven with the vibrant threads of diversity, and the City of Portland, Maine, stands as a shining example of this beautiful mosaic; and
- WHEREAS,** Throughout history, African Americans have made significant contributions to the culture, economy, and social fabric of our state, and have played an integral role in shaping the brewing industry in Portland; and
- WHEREAS,** The craft beer industry has experienced remarkable growth and innovation, and African American brewers have emerged as talented artisans, creating unique and exceptional brews that showcase their passion, creativity, and dedication; and
- WHEREAS,** On October 10, 1970, Theodore A. (Ted) Mack, Sr., and business associates celebrated the purchase of People's Brewing Company in Oshkosh, Wisconsin, with over 2,000 guests, including stockholders, local and state legislators, and notable dignitaries; and
- WHEREAS,** Mr. Mack became the first Black brewery president in the United States, and People's Brewing Company became the first Black-owned brewery in the history of the United States; and
- WHEREAS,** The National Black Brewers Association was formed as a non-profit organization in December 2022 to support, promote, and develop the Black brewing community; and
- WHEREAS,** It is essential to recognize and celebrate the achievements and contributions of Black brewers in Portland, who have overcome challenges and barriers to establish themselves as pillars of the craft beer community, inspiring others, and breaking down barriers of racial inequality; and
- WHEREAS,** The establishment of Black Brewers Day provides an opportunity for Portland to acknowledge, honor, and support the accomplishments of Black brewers, to raise awareness about the diversity within the brewing industry, and to foster a spirit of inclusion and equality; and
- WHEREAS,** Celebrating Black Brewers Day will encourage individuals and communities to discover and appreciate the exceptional craftsmanship and unique flavors that Black brewers bring to the brewing industry; now, therefore, be it

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 October 10, 2024, as Black Brewers Day and encourages residents of Portland to observe this day with appropriate programs, ceremonies, and activities to celebrate and acknowledge the contributions of Black brewers in Portland and the United States.

Signed and sealed this 7th day of October, 2024



**Mark Dion, Mayor
City of Portland**

MEMORANDUM
City Council Agenda Item

FROM:

DATE: September 26, 2024

SUBJECT: Order 58-24/25 Granting Municipal Officers' Approval of Custom House Limited LLC, dba The Downtown Social. Application for Class XI Restaurant/Lounge with Outdoor Dining on Private Property and Combined Entertainment at 128 Free Street - 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: N/A

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

I. SUMMARY

II. AGENDA DESCRIPTION

Application was filed on 8/29/24. Location was previously Dogfish. New City and State applications.

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. 2024.10.07_Downtown Social_Council Order
2. 2024.10.07_Downtown Social_Council Packet

Prepared by:

Date: 09/26/2024

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

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ORDER

GRANTING MUNICIPAL OFFICERS’

APPROVAL OF:

**Custom House Limited LLC, dba The Downtown Social. Application for Class XI
Restaurant/Lounge with Outdoor Dining on Private Property and Combined
Entertainment at 128 Free Street**

Dear city council, Mayor Mark Don -

Looking to Reopen Dogfish as The Downtown
Social
is with liquor & Entertainment

Thank You

Kevin Casey
KC

6336-2024



CITY OF PORTLAND
Permitting and Inspections Department
Application for Food Service Establishment with Alcoholic Beverages License

Business Information			
Establishment Name (d/b/a):	The Downtown Social	Phone:	781-389-6759
Location Address:	128 Free St, Portland, ME	Zip:	04101
If new, what was formerly at this location:			
Mailing Address:	128 Free St, Portland, ME, 04101	Zip:	04101
Contact Person:	Kevin Casey	Phone:	781-389-6759
Contact Person Email:	Kcasey179@gmail.com		
Manager of Establishment:	Samuel Casey	Date of Birth:	6-12-89
		Phone:	781-389-6759
Owner of Premises (Landlord):	MAINE MED INC.		
Address of Premises Owner (Landlord):	128 Free St, Portland, ME	Zip:	04101

Sole Proprietor/Partnership Information (If Corporation, leave blank)

Name of Owner(s)	Date of Birth	Residence Address
Kevin Casey	12/26/65	111 Cushman Hill Ln, Ashburnham, MA
Courtney McIsaac	8/11/74	23 Park St, Portland, ME, 04101

Corporate/LLC/Non-Profit Organization Applicants (If Sole Proprietor or Partnership, leave blank)

Corporate Name		Corporate Mailing Address	
Custom House Limited		20 Custom House Wharf, Portland, ME, 04101	
Contact Person:	Kevin Casey	Phone:	781-389-6759
Principal Officers			
Title	Date of Birth	Residence Address	
Kevin Casey owner	12/26/65	111 Cushman Hill Rd, Ashburnham, MA	
Courtney McIsaac owner	8/11/74	23 Park St, Portland, ME, 04101	
Class of Liquor License:		CLASS XT Page 18	



CITY OF PORTLAND
Permitting and Inspections Department

Type of food served:	Sub 10001		
Please circle all that will be served:	Beer ☒	Wine ☒	Liquor ☒
Projected percentage of sales:	Generated from Food: 55	Generated from Alcohol: 45	
Hours & days of operation:	M-Sun 12-1		
QUESTIONS			
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?			Y/N ☒
If No, please explain:			
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?			Y/N ☒
If yes, give the distance:			
Will you have entertainment on the premises? (If yes, a Supplemental Application for Entertainment is required.)			Y/N ☒
Will you permit dancing after 1:00 a.m.?			Y/N ☒
Will you have outside dining? (If yes, an Outdoor Dining Application is required)			Y/N ☒
If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one).			
Will you have any amusement devices (pinball, video games, juke box)?			Y/N ☒
If yes, please list: # of amusements: 1 # of pool tables: 1			
What is your targeted opening date?			9-15-24
Does the issuance of this license directly or indirectly benefit any City employee(s)?			Y/N ☒
If Yes, list name(s) of employee(s) and department(s):			
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?			Y/N ☒
If Yes, please list business name(s) and location(s):			Pothole Hospitality LLC
Is any principal officer under the age of 21?			Y/N ☒
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?			Y/N ☒
If Yes, please explain:			

I _____ do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

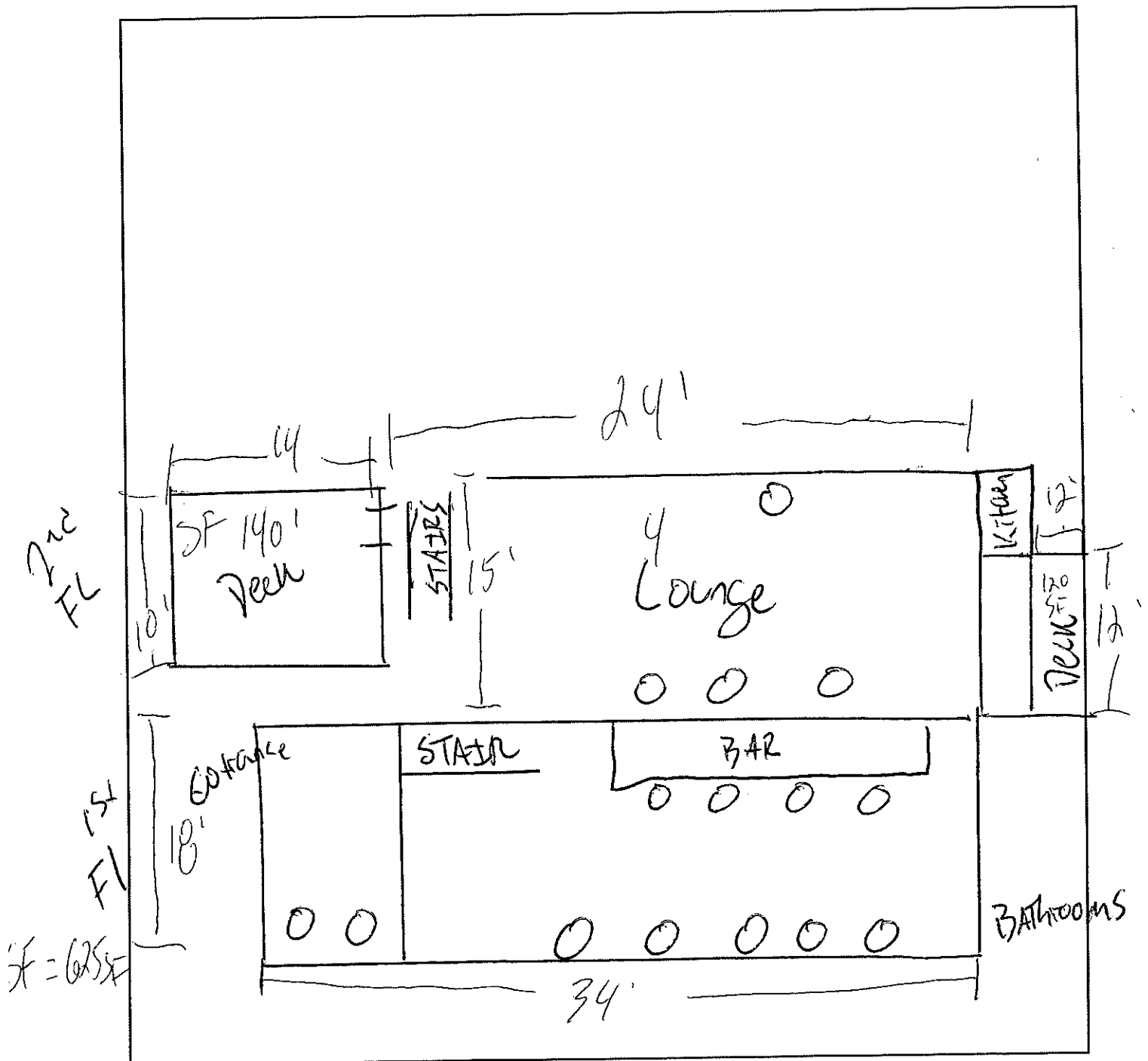
It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto. I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature Title owner Date 8/29/24

Section VI Premises Floor Plan

In an effort to clearly define your license premise and the areas that consumption and storage of liquor authorized by your license type is allowed, the Bureau requires all applications to include a diagram of the premise to be licensed.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the following areas: entrances, office area, coolers, storage areas, display cases, shelves, restroom, point of sale area, area for on-premise consumption, dining rooms, event/function rooms, lounges, outside area/decks or any other areas on the premise that you are requesting approval. Attached an additional page as needed to fully describe the premise.





CITY OF PORTLAND
Permitting and Inspections Department

Outdoor Dining Permit on Private Property
Supplemental Application

License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Liquor License

☒ Outdoor Dining on Private Property \$125.00	☒ Legal Advertisement Deposit \$100.00
---	--

Business Information	
Business Name (d/b/a):	The Downtown Social
Location Address:	128 Free St Portland, ME
Mailing Address:	128 Free St Portland, ME
Contact Person:	Kevin Casey
Contact Person Email:	
Manager of Establishment	SAMUEL Casey
Owner of Premises (Landlord):	MAINE Med INC
Address of Premises Owner:	128 Free St Portland, ME

Owner Information

Corporate Name		Corporate Mailing Address	
Social events LLC		do custom Haze white	
Contact Person:	Kevin Casey	Phone:	781 689-6759
Principal Officers	Title	Date of Birth	Residence Address
Kevin Casey	owner	12/26/65	11 Cabernet Hill Rd, Ashburham MA
Courtney McIsaac	owner	8/11/74	27 Park St, Portland, ME



CITY OF PORTLAND
Permitting and Inspections Department

Class of License:	X1
Type of food served:	Pub Local
Please circle all that will be served:	Beer Wine Liquor
Hours & days of operation:	M - Sun 12-1
Number of Tables	20
Number of Chairs	55

Design and Construction

- If you are building a structure or adding impervious surface for the outdoor dining area please contact the Permitting and Inspections Department for permitting requirements at permitting@portlandmaine.gov or 874-8703.

Maintenance and Operations

- Outdoor dining components must be within the permitted area and allow safe passage of pedestrian traffic. Failure to comply may result in a revocation of the permit.
- No food shall be prepared in the designated outdoor dining area.
- Outdoor dining areas must meet ADA regulations and accessible seating is required.

I/We fully understand that the City of Portland, its agents, officers and employees accept no responsibility and will not be liable for any injury, harm or damage to my/our person or property arising out of the establishment's occupancy of the sidewalk or park space. To the fullest extent permitted by law, I/We do hereby agree to assume all risk of injury, harm or damage to my/our person or property (including but not limited to all risk of injury, harm or damage to my/our property cause by the negligence of the City of Portland, its agents, officers or employees) arising out of the establishment's occupancy of the sidewalk or park space. I/We hereby agree, to the fullest extent permitted by law, to defend, indemnify and hold harmless the City of Portland, its agents, officers and employees, from and against all claims, damages, losses and expenses, just or unjust, including, but not limited to costs of defense and attorney's fees, arising out of the establishment's occupancy of the sidewalk or park space, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use there from, and (2) is caused in whole or in part by any negligent act or omission of the establishment, anyone directly or indirectly employed by it, or anyone for whose act it may be liable.

Signature [Signature] Title Owner Date 8-21-24

For Administrative Use Only

Amount: _____	Request Date /	Approval	Notes: _____
Date Paid: _____	FD: _____	_____	_____
CC _____ CA _____ CK _____	Health: _____	_____	_____
	PD: _____	_____	_____
Amount: _____	PR: _____	_____	_____
Date Paid: _____	Treasury: _____	_____	_____
CC _____ CA _____ CK _____	Zoning: _____	_____	_____



CITY OF PORTLAND
Permitting and Inspections Department

Application for an Entertainment License

☒ Indoor Entertainment \$500.00	☒ Outdoor Entertainment \$700.00	☐ Combined Entertainment \$800.00
☐ Sound Mitigation Fee \$150.00		

Business Information	
Establishment Name (d/b/a):	The Downtown Social Phone: 781 389-6759
Location Address:	1180 Free St Portland, ME Zip: 04101
Owner Name:	Kevin Casey Phone: 781 389-6759
Owner Email:	KCasey179@gmail.com
Contact Person responsible for Entertainment:	John Sabar Phone: 707 712-9247
Contact Person Email:	JohnPSabar@gmail.com
Manager of Establishment:	James Casey Phone: 774 368-0491
Manager Email:	JamesCasey202@gmail.com

About Your Establishment

Describe in detail the type and nature of the business and proposed entertainment:

Food, entertainment, lounge/BAR

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above license and further agrees that any misstatement of material fact may result in refusal of license or revocation, if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

Signature [Signature] Title Owner Date 8-29-24

For more information, refer to the City Code of Ordinance: Chapter 4 Amusements, at www.portlandmaine.gov



The Halo Studio LLC
58 River Road
Windham ME 04062
207.233.1770
9/3/2024

SOUND MITIGATION PLAN
Prepared for:
The Dogfish Bar & Grille and City of Portland

From: Darren Elder, The Halo Studio LLC
To: Jessica Hanscombe, Licensing, City of Portland

Dear Ms. Hanscombe,

On behalf of our clients at The Dogfish Bar & Grille, The Halo Studio is pleased to provide this Sound Mitigation Plan in support of entertainment licensing for their 128 Free Street premises.

For ease of review, we have provided our findings and recommendations in order of the required items as outlined in the Code of Ordinances, Chapter 4, Sec. 4-52, Rev. 7-15-2019 4-10, 2 (a-d) inclusive. 128 Free Street in Portland, Maine, is located in Zone B-3 according to Portland's zoning map. The B-3 zone is typically designated for downtown business uses, which includes commercial, office, and retail establishments. It is a highly developed area intended to support a dense and diverse urban environment.

Rationale

As The Dogfish Bar & Grille seeks to curate ambient background and performance entertainment for their guests in any one of 4 designated locations, we have strategized and coordinated the necessary rationale for them to remain in compliance with all relevant city sound ordinances as well as good standing with their immediate neighbors and community.

We trust that the information and guidance we have provided will meet the city's needs and stand ready to answer any questions you may have as you conduct your review.

Requirements

(a.)

This plan meets the requirement that it be prepared by a professional sound engineer with appropriate experience and training. The Halo Studio brings decades of experience and a track record that is second to none in terms of sophisticated sound engineering, acoustic design, and consulting on complex sound and audio-visual environments.

The team at The Halo Studio is routinely called upon by clients ranging from world-renowned recording artists and mastering studios to private businesses and municipalities to solve their acoustical needs and sound engineering challenges.

Over the last nineteen years we have become beta-testers for multiple cutting edge audio software and treatment companies which allows us to take every measure to maximize the acoustic experience within each designated space while minimizing unwanted frequencies and decibel levels.

Professional references are available upon request, and more information about the specialists at The Halo Studio can be found here:

<http://thehalostudio.com/about-us/who-we-are/>

(b.)

Our Sound Mitigation Plan begins by identifying the surrounding uses to which we aim to minimize, eliminate, and impact where possible; both in terms of overall dbA levels and tonal impulse sounds.

The Dogfish Bar & Grille is designated as a IMB (Industrial Moderate) zone as are the adjacent abutting neighbors. The corresponding distances to these abutting zoned structures are:

South - 48' 7"

East - 165' 5"

West - 72' 2"

North - 94' 9"

Other surrounding contributors to the established noise floor in this area include but are not limited to:

Free Street traffic

Congress Street traffic

Neighborhood business activity.

These surrounding urban area uses are all significant transportation noise sources as well as periodic aircraft noise (particularly on overcast days which tend to retain sound pressure).

Practicality:

As a practical matter, the sound output from The Dogfish Bar & Grille will routinely measure at or below the established and accepted community standard in specific reference to the resulting dbA, tonal, and impulse impacts from the desired entertainment activity of The Dogfish Bar & Grille.

Our Sound Mitigation Plan combines three simple elements which when operated in coordination enable us to create superior sound mitigation that results in negligible impact on neighboring uses.

These are:

1. Underlying sound measurement matrix and mathematical assumptions

2. Disciplined use of professional audio equipment

3. Regular monitoring during events

Items 1 and 2 are discussed in more detail in response to section (c.) below, and item 3 is treated in response to section (d.) below.

(c.)

Events utilize a sound amplification system that is positioned to be operated and compatible with achieving the least amount of negative impact on surrounding uses.

Entertainment Spaces:

1. First Floor Bar- Will serve as the primary music performance and sound generation location. Walls are composed of multi-tiered masonry with a high containment coefficient. Speaker placement will be oriented away from primary egress and front window on Free Street. Speakers should maintain 65° downward orientation for additional sound cancellation.
2. Second Floor Lounge- Will serve as a secondary indoor space with ambient background music. Speakers should maintain 65° downward orientation for additional sound cancellation.
3. Second Floor Front Deck- Will serve as an outdoor space with prerecorded ambient background music. Speakers should maintain 55° downward and inward orientation for additional sound cancellation.
4. Second Floor Back Deck- Will serve as an outdoor space with prerecorded ambient background music. Speakers should maintain 55° downward and inward orientation for additional sound cancellation.

Sound will be measured within 6' of the building as measured by SPL meter (as well as by general observation).

The Halo Studio staff has consulted on the design and installation of the necessary systems and continues to provide oversight as needed. The Dogfish Bar & Grille staff has been advised of all basic operational responsibilities.

Metrics

The following data is intended to present generally anticipated sound pressure levels at various points on and adjacent to The Dogfish Bar & Grille property resulting from amplified entertainment.

Though the intent of the ordinance is to include all modes of entertainment, including but not limited to live performance as well as pre-recorded music played via speakers, whether indoor or outdoor, as a practical (and perhaps obvious) matter these modes are far less impactful than concert-level amplified music, so, to be as conservative as possible, we have utilized outdoor concert industry metrics to establish our underlying matrix and mathematical models.

For the purposes of modeling impacts, the base line for these calculations is a standard audio event with 85dB (A-weighted) for internal locations and 80dB (A-weighted) for external locations, measured SPL at the Mix Position and corresponding 6' increments concurrently.

The mathematical model used is the Inverse Square Law: $20 \cdot \log(D2/D1) = X$ where "D1" represents distance from Center Stage to Adjacent Seating, "D2" represents distance from center stage to perimeter location and "X" represents the reduction in dBspl from "D1" to "D2".

Using inverse square law calculations and following stated guidance, we would expect the following resulting SPL outcomes in each given location/distance from an amplified entertainment source measuring dBA at the mix position (which is assumed to be located at the standard center reference location in each entertainment space)

Location (dist.) Resulting SPL

South Abutting Structure - 48' 7" - 58.1dBA

East Abutting Structure - 165' 5" - 31.7 dBA

West Abutting Structure - 72' 2" - 44.0 dBA

North Abutting Structure - 94' 9" - 41.3dBA

Further, it is important to note that inward facing directional sound pressure (speaker direction) is essential to focus collective decibel levels directly toward entertainment areas and away from property lines.

Practically, sound levels managed at the mix position could be higher than 85dBA internally and 80 dBA externally and still result in sound levels at the nearest abutting property that do not exceed 64dBA.

As discussed earlier, the surrounding conditions including but not limited to traffic, business, and aircraft routinely create ambient sound that exceeds these levels.

But with respect to entertainment at The Dogfish Bar & Grille, the intent of our analysis has been to demonstrate that, even with an output of 85 dBA internally and 80 dBA externally at the source, it is not mathematically plausible for any sound impact produced onsite to be in excess of 64 dBA at the nearest residential property, and the impact will most certainly be well below this level when sound engineering discipline and "real world" factors such as natural diffusion, structural interference, and directional friction are introduced into the equation.

It is anticipated that dbA 6' from any outer wall of an abutting structure will be no more than 63.3 dbA within the aforementioned context even if there are compounding modal variables or directional winds. Standard post 10:00 pm venue protocol applicable and is expected to yield an additional 10 dBA cut.

Standard Equipment:

Indoor Primary Location

2- JBL EON 715 or equivalent

Indoor Secondary Location

1-JBL EON 710 or equivalent

Outdoor Primary Location

1- Yorkville C120 5" weather resistant or equivalent

Indoor Secondary Location

1- Yorkville C120 5"weather resistant or equivalent

Standard App- Decibel Meter

(d.)

In coordination with The Dogfish Bar & Grille management and under the direction of The Dogfish Bar & Grille staff, we will continue to assist them in maintaining adherence to necessary standards previously mentioned.

The Halo Studio personnel are routinely deployed by our clients to perform sound monitoring with SPL meters on their premises and at selected locations nearby during relevant operational hours for the purpose of verifying and maintaining necessary standards.

Further, The Dogfish Bar & Grille staff is equipped with and trained to use an SPL meter, and is available at any time prior to, during, or after events to respond to outreach from City officials. Owner/Operator John can be contacted at (207) 712-4247

We trust that the foregoing will be sufficient to meet the requirements of the ordinance, and stand ready to answer any questions you may have.

Thank you,



Darren Elder

The Halo Studio LLC

thehalostudio@gmail.com

207.233.1770



Zachary Lenhart <zlenhart@portlandmaine.gov>

Downtown Social - Class XI Rest-Lounge - 128 Free St

Christopher Mitchell <chrism@portlandmaine.gov>

Thu, Sep 19, 2024 at 3:08 PM

To: Treasury Division <treasury@portlandmaine.gov>

Cc: Zachary Lenhart <zlenhart@portlandmaine.gov>, Zachary Finley <zackf@portlandmaine.gov>, Ron Kelton

<rkelton@portlandmaine.gov>, Fire Prevention <fireprevention@portlandmaine.gov>, Laurie Carlson

<lac@portlandmaine.gov>, Katlyn Sawyer <ksawyer@portlandmaine.gov>, Zoning <zoning@portlandmaine.gov>, Eric Cobb

<ecobb@portlandmaine.gov>, "Lynch, Kim" <Kim.Lynch@maine.gov>, Benjamin Pearson <bnp@portlandmaine.gov>, Tom

Williams <tw@portlandmaine.gov>, Jason Grant <jgrant@portlandmaine.gov>, Business Licensing <bl@portlandmaine.gov>,

Christina Stacey <cstacey@portlandmaine.gov>, Kevin Schneck <kschneck@portlandmaine.gov>

PD is all set with this

Lt. Chris Mitchell
Portland Police Department
Patrol Operations

[Quoted text hidden]



Zachary Lenhart <zlenhart@portlandmaine.gov>

Downtown Social - Class XI Rest-Lounge - 128 Free St

Zoning <zoning@portlandmaine.gov>

Fri, Sep 20, 2024 at 2:25 PM

To: Zoning <zoning@portlandmaine.gov>

Cc: Zachary Lenhart <zlenhart@portlandmaine.gov>, Zachary Finley <zackf@portlandmaine.gov>, Ron Kelton <rkelton@portlandmaine.gov>, Fire Prevention <fireprevention@portlandmaine.gov>, Laurie Carlson <lac@portlandmaine.gov>, Katlyn Sawyer <ksawyer@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, "Lynch, Kim" <kim.lynch@maine.gov>, Benjamin Pearson <bnp@portlandmaine.gov>, Tom Williams <tw@portlandmaine.gov>, Jason Grant <jgrant@portlandmaine.gov>, Treasury Division <treasury@portlandmaine.gov>, Business Licensing <bl@portlandmaine.gov>, cstacey <cstacey@portlandmaine.gov>, Kevin Schneck <kschneck@portlandmaine.gov>, Christopher Mitchell <chrism@portlandmaine.gov>

Good Afternoon,

The legal use for 128 Free ST, CBL: 039 B007001, is restaurant. Zoning approves.

Thank you,

Mac

--

Mac Coldwell

City of Portland
Zoning Specialist
Permitting & Inspections Department
389 Congress ST, Room #315
Email: mcoldwell@portlandmaine.gov
he/him

[Quoted text hidden]

City of Portland

Sound Mitigation Review

Date: 10/1/2024

Business The Downtown Social

Applicant Kevin Casey

DESCRIPTION		yes	no
Sound system appropriate for the size venue			Yes
Performance space located in an appropriate location			Yes
Performance space facing in an appropriate direction to control sound			Yes
Surrounding surfaces appropriate to control sound			Yes
Additional sound absorbing features			
additional notes		was an existing venue	
Approved			Yes
DIRECT ALL INQUIRIES TO:			
Kevin Schneck			
(207) 756-8433			
kschneck@portlandmaine.gov			

Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on October 7, 2024 at 5:00 P.M., in City Council Chambers, 389 Congress St. for approval of Custom House Limited LLC, dba The Downtown Social. Application for Class XI Restaurant/Lounge with Outdoor Dining on Private Property and Combined Entertainment at 128 Free Street - Sponsored by Danielle P. West, City Manager

City of Portland | Permitting and Inspections
Zachary Lenhert, Licensing and Housing Safety Manager



October 1, 2024

Custom House Limited LLC
128 Free Street
Portland, Maine 04101

Re: Custom House Limited LLC, dba The Downtown Social. Application for Class XI Restaurant/Lounge with Outdoor Dining on Private Property and Combined Entertainment at 128 Free Street

Dear Custom House Limited LLC:

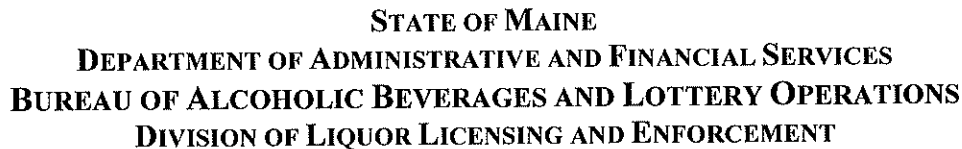
This letter shall serve as a reminder of the public hearing before the Portland City Council on Monday October 7, 2024 at 5:00 p.m., for the review of application for Class XI Restaurant/Lounge with Outdoor Dining on Private Property and Combined Entertainment at 128 Free Street. The meeting will take place in person at Portland City Hall, in City Council Chambers on the 2nd Floor of 389 Congress Street.

You or a representative of the business must be present at this meeting in the event that the city council has questions regarding the license application. If there is no representation and questions arise, the item may be postponed.

Please contact our office directly with questions at (207) 874-8557 or at bl@portlandmaine.gov.

Sincerely,

Zachary J. Lenhert
Licensing and Housing Safety Manager



All Questions Must Be Answered Completely. Please print legibly.

Division Use Only	
License No:	
Class:	By:
Deposit Date:	
Amt. Deposited:	
Payment Type:	
OK with SOS: Yes ☐ No ☐	

Legal Business Entity Applicant Name (corporation, LLC): <i>Custom House Limited LLC</i>	Business Name (D/B/A): <i>The Downtown Social</i>
Individual or Sole Proprietor Applicant Name(s):	Physical Location: <i>128 Free St, Portland, ME, 04101</i>
Individual or Sole Proprietor Applicant Name(s): <i>Kevin Casey</i>	Mailing address, if different: <i>128 Free St, Portland, ME, 04101</i>
Mailing address, if different from DBA address:	Email Address: <i>Kcasey179@gmail.com</i>
Telephone # Fax #:	Business Telephone # Fax #: <i>781-389-6759</i>
Federal Tax Identification Number: <i>99-2753153</i>	Maine Seller Certificate # or Sales Tax #:
Retail Beverage Alcohol Dealers Permit:	Website address: <i>SocialMaine.com</i>

1. New license or renewal of existing license? ☒ New Expected Start date: 9-15-24
☐ Renewal Expiration Date: _____
2. The dollar amount of gross income for the licensure period that will end on the expiration date above:
Food: \$ 150,000 Beer, Wine or Spirits: \$ 120,000 Guest Rooms: 0
3. Please indicate the type of alcoholic beverage to be sold: (check all that apply)
☒ Malt Liquor (beer) ☒ Wine ☒ Spirits

4. Indicate the type of license applying for: (choose only one)

- | | | |
|--|---|---|
| ☐ Restaurant
(Class I, II, III, IV) | ☒ Class A Restaurant/Lounge
(Class XI) | ☐ Class A Lounge
(Class X) |
| ☐ Hotel
(Class I, II, III, IV) | ☐ Hotel – Food Optional
(Class I-A) | ☐ Bed & Breakfast
(Class V) |
| ☐ Golf Course (included optional licenses, please check if apply)
(Class I, II, III, IV) | ☐ Auxiliary | ☐ Mobile Cart |
| ☐ Tavern
(Class IV) | ☐ Other: _____ | |
| ☐ Qualified Caterer | ☐ Self-Sponsored Events (Qualified Caterers Only) | |

Refer to Section V for the License Fee Schedule on page 9

5. Business records are located at the following address:

128 Free St. Portland, ME, 04101

6. Is the licensee/applicant(s) citizens of the United States? ☒ Yes ☐ No

7. Is the licensee/applicant(s) a resident of the State of Maine? ☒ Yes ☐ No

NOTE: Applicants that are not citizens of the United States are required to file for the license as a business entity.

8. Is licensee/applicant(s) a business entity like a corporation or limited liability company?

☒ Yes ☐ No If Yes, complete Section VII at the end of this application

9. For a licensee/applicant who is a business entity as noted in Section I, does any officer, director, member, manager, shareholder or partner have in any way an interest, directly or indirectly, in their capacity in any other business entity which is a holder of a wholesaler license granted by the State of Maine?

☐ Yes ☒ No

☐ Not applicable – licensee/applicant(s) is a sole proprietor

10. Is the licensee or applicant for a license receiving, directly or indirectly, any money, credit, thing of value, endorsement of commercial paper, guarantee of credit or financial assistance of any sort from any person or entity within or without the State, if the person or entity is engaged, directly or indirectly, in the manufacture, distribution, wholesale sale, storage or transportation of liquor.

☐ Yes ☒ No

If yes, please provide details: _____

11. Do you own or have any interest in any another Maine Liquor License? ☒ Yes ☐ No

If yes, please list license number, business name, and complete physical location address: (attach additional pages as needed using the same format)

Name of Business	License Number	Complete Physical Address
Porthole Hospitality LLC		

12. List name, date of birth, place of birth for all applicants including any manager(s) employed by the licensee/applicant. Provide maiden name, if married. (attach additional pages as needed using the same format)

Full Name	DOB	Place of Birth
Kevin Casey	12/26/65	Ashburnham, MA
Courtney MacIsaac	8/11/74	Boston, MA

Residence address on all the above for previous 5 years

Name	Kevin Casey	Address:	10 Cashman Hill Rd Ashburnham, MA
Name	Courtney MacIsaac	Address:	23 Park St. Portland, ME, 04101
Name		Address:	
Name		Address:	

13. Will any law enforcement officer directly benefit financially from this license, if issued?

☐ Yes ☒ No

If Yes, provide name of law enforcement officer and department where employed:

14. Has the licensee/applicant(s) ever been convicted of any violation of the liquor laws in Maine or any State of the United States? ☐ Yes ☒ No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

15. Has the licensee/applicant(s) ever been convicted of any violation of any law, other than minor traffic violations, in Maine or any State of the United States? ☐ Yes ☒ No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

16. Has the licensee/applicant(s) formerly held a Maine liquor license? ☒ Yes ☐ No

17. Does the licensee/applicant(s) own the premises? ☐ Yes ☒ No

If No, please provide the name and address of the owner:

18. If you are applying for a liquor license for a Hotel or Bed & Breakfast, please provide the number of guest rooms available: NA

19. Please describe in detail the area(s) within the premises to be licensed. This description is in addition to the diagram in Section VI. (Use additional pages as needed)

First Floor BAR.
Second Floor lounge
Front & BACK exterior decks

20. What is the distance from the premises to the nearest school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel?

Name: Sacred Heart Catholic Church

Distance: .5 Mile

Section II: Signature of Applicant(s)

By signing this application, the licensee/applicant understands that false statements made on this application are punishable by law. Knowingly supplying false information on this application is a Class D Offense under Maine's Criminal Code, punishable by confinement of up to one year, or by monetary fine of up to \$2,000 or by both.

Please sign and date in blue ink.

Dated: 8-25-24

KG
Signature of Duly Authorized Person

Signature of Duly Authorized Person

Kevin Casey
Printed Name Duly Authorized Person

Printed Name of Duly Authorized Person

Section III: For use by Municipal Officers and County Commissioners only

The undersigned hereby certifies that we have complied with the process outlined in 28-A M.R.S. §653 and approve this on-premises liquor license application.

Dated: _____

Who is approving this application? ☐ Municipal Officers of _____

☐ County Commissioners of _____ County

- ☐ **Please Note:** The Municipal Officers or County Commissioners must confirm that the records of Local Option Votes have been verified that allows this type of establishment to be licensed by the Bureau for the type of alcohol to be sold for the appropriate days of the week. Please check this box to indicate this verification was completed.

Signature of Officials	Printed Name and Title

**This Application will Expire 60 Days from the date of
Municipal or County Approval unless submitted to the Bureau**

Included below is the section of Maine's liquor laws regarding the approval process by the municipalities or the county commissioners. This is provided as a courtesy only and may not reflect the law in effect at the time of application. Please see <http://www.mainelegislature.org/legis/statutes/28-A/title28-Asec653.html>

§653. Hearings; bureau review; appeal

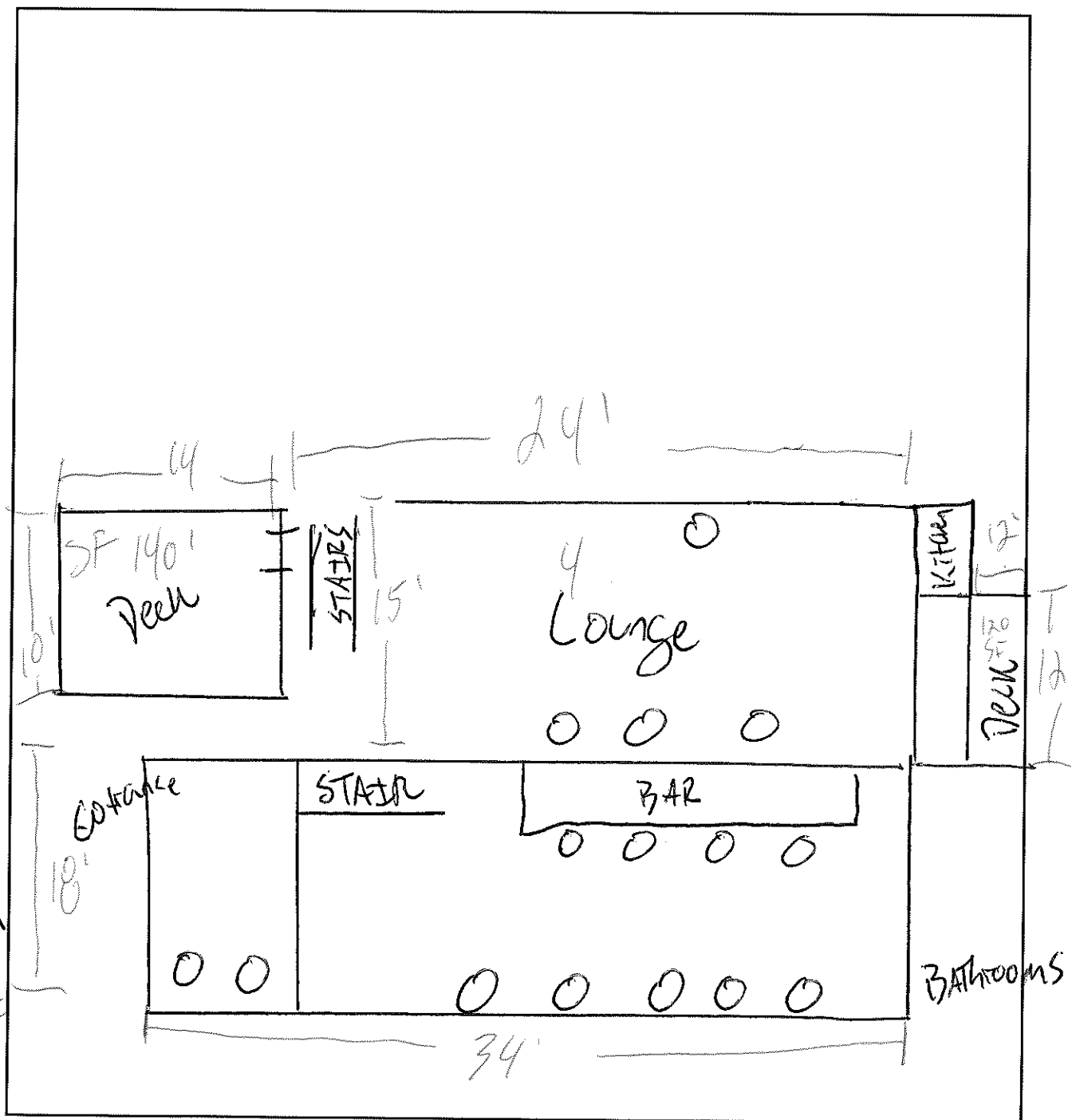
1. Hearings. The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, may hold a public hearing for the consideration of applications for new on-premises licenses and applications for transfer of location of existing on-premises licenses. The municipal officers or county commissioners may hold a public hearing for the consideration of requests for renewal of licenses, except that when an applicant has held a license for the prior 5 years and a complaint has not been filed against the applicant within that time, the applicant may request a waiver of the hearing.

A. The bureau shall prepare and supply application forms.

Section VI Premises Floor Plan

In an effort to clearly define your license premise and the areas that consumption and storage of liquor authorized by your license type is allowed, the Bureau requires all applications to include a diagram of the premise to be licensed.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the following areas: entrances, office area, coolers, storage areas, display cases, shelves, restroom, point of sale area, area for on-premise consumption, dining rooms, event/function rooms, lounges, outside area/decks or any other areas on the premise that you are requesting approval. Attached an additional page as needed to fully describe the premise.



Section VII: Required Additional Information for a Licensee/Applicant for an On-Premises Liquor License Who are Legal Business Entities

Questions 1 to 4 of this part of the application must match information in Section I of the application above and match the information on file with the Maine Secretary of State's office. If you have questions regarding your legal entity name or DBA, please call the Secretary of State's office at (207) 624-7752.

All Questions Must Be Answered Completely. Please print legibly.

1. Exact legal name: Custom House Limited LLC
2. Doing Business As, if any: — / The Downtown Social
3. Date of filing with Secretary of State: 4-29-24 State in which you are formed: ME
4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine:
NA
5. List the name and addresses for previous 5 years, birth dates, titles of officers, directors, managers, members or partners and the percentage ownership any person listed: (attached additional pages as needed)

Name	Address (5 Years)	Date of Birth	Title	Percentage of Ownership
Kevin Casey	179 Cashman Hill Rd Ashburnham, MA, 01430	12/26/65	Owner	51
Courtney MacIsaac	23 Park St Portland ME, 04101	8/11/72	Owner	49

(Ownership in non-publicly traded companies must add up to 100%.)

MEMORANDUM
City Council Agenda Item

FROM:

DATE: September 26, 2024

SUBJECT: Order 59-24/25 Granting Municipal Officers' Approval of Miller Project LLC, dba Mash Tun. Application for XI Restaurant/Lounge with Outdoor Dining on Public Property at 29 Wharf Street - 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: N/A

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

I. SUMMARY

II. AGENDA DESCRIPTION

Application was filed on 9/12/24. This is a change of ownership of an existing establishment. New City and State applications.

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. 2024.10.07_Mash Tun_Council Order
2. 2024.10.07_Mash Tun_Council Packet

Prepared by:

Date: 09/26/2024

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 Y. BULLETT (4)
KATHRYN SYKES (5)

ORDER

GRANTING MUNICIPAL OFFICERS’

APPROVAL OF:

**Miller Project LLC, dba Mash Tun. Application for Class XI Restaurant/Lounge with
Outdoor Dining on Public Property at 29 Wharf Street**

Mash Tun
Connor Montello & Truman H. Leddy
29 Wharf St.
Portland, ME, 04101
09/12/2024

To Mayor Dion & Members of City Council,

I hope this letter finds you well. I am writing on behalf of Miller Project LLC, owned by myself, Connor Montello, and my business partner, Truman Leddy, to express our intent to apply for Mash Tun's liquor license under new ownership. As the prospective owners of Mash Tun, a well-established bar and restaurant located at 29 Wharf Street, we are eager to continue its successful operation while ensuring it aligns with Portland's vibrant hospitality scene and community values.

Mash Tun, which has been a staple of Wharf Street since 2016, is known for its excellent selection of craft beers and welcoming environment. As new owners, we will implement improvements to staffing and training to promote responsible alcohol service and ensure adherence to all regulatory standards.

We are committed to working closely with the City of Portland and its officials to ensure a smooth transition of ownership and to meet all the necessary requirements for our liquor license application. We understand the responsibilities that come with serving alcohol in our community and are dedicated to upholding the high standards set forth by the city. Our business model emphasizes responsible management, staff training in responsible alcohol service, and creating a safe and enjoyable environment for our patrons.

We look forward to further discussing our plans and welcome any feedback or recommendations from your office to ensure that our application process proceeds smoothly. Please feel free to contact me directly with any questions or clarifications you may have regarding this request.

Thank you for your time and consideration. We are excited about the opportunity to contribute to Portland's vibrant hospitality industry and to continue serving our local community.

Sincerely,
Connor Montello & Truman H. Leddy
207-272-3397
207-749-4661
Montelloconnor@gmail.com
Mapsbarportland@gmail.com



CITY OF PORTLAND
Permitting and Inspections Department

Application for Food Service Establishment with Alcoholic Beverages License

Business Information		
Legal Business Entity Applicant Name (corporation, LLC): Miller Project LLC	Business Name (D/B/A): Mash Tun	
Individual or Sole Proprietor Applicant Name(s): Connor Montello & Truman Leddy	Physical Location: 29 Wharf St. Portland, ME 04101	
If applicable, what was formerly at this location: Mash Tun (Under different ownership)	Business Email Address: Mapsbarportland@gmail.com	
Mailing Address: 128 Elm St. South Portland, ME 04106	Contact Person: Connor Montello	
Contact Person Phone: 207-272-3397	Contact Person Email: Montelloconnor@gmail.com	
Manager of Establishment: Connor Montello	Date of Birth: 02/02/1993	Manager Phone: 207-272-3397
Owner of Premises (Landlord): 416 Fore St LLC	Address of Premises Owner (Landlord): 100 Middle St. Portland, ME 04101	

Sole Proprietor/Partnership Information (If Corporation, leave blank)		
Name of Owner(s): Connor Montello	Date of Birth: 02/02/1993	Residence Address: 128 Elm St. South Portland, ME 04106
Name of Owner(s): Truman Leddy	Date of Birth: 04/01/1993	Residence Address: 178 Concord St. Portland, ME 04103

Corporate/LLC/Non-Profit Organization Applicants (If Sole Proprietor or Partnership, leave blank)			
Corporate Name: Miller Project LLC		Corporate Mailing Address: 128 Elm St. South Portland, ME	
Contact Person: Truman Leddy		Contact Phone: 207-749-4661	
Principal Officers	Title	Date of Birth	Residence Address
Connor Montello	Owner	02/02/1993	128 Elm St. South Portland, ME
Truman Leddy	Owner	04/01/1993	178 Concord St. Portland, ME



CITY OF PORTLAND

Permitting and Inspections Department

Class of Liquor License (see fee schedule): Class XI (Class A Restaurant/Lounge)			
Type of food served:	Pub Food (Burgers, Tacos, Fries, Lobster Rolls, etc....)		
Please select all that will be served:	☒ Beer	☒ Wine	☒ Liquor
Projected percentage of sales:	Generated from Food: 45%	Generated from Alcohol: 55%	
Hours & days of operation:	Mon - Thur: 3pm - 12am Fri - Sun: 12pm - 1am		
QUESTIONS			YES NO
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?			☐ ☒
If No, please explain: Our late night food menu will focus on handheld foods like burgers and fries			
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?			☐ ☒
If yes, give the distance: 0.3 Miles			
Will you have entertainment on the premises? (If yes, a Supplemental Application for Entertainment is required.)			☐ ☒
Will you permit dancing after 1:00 a.m.?			☐ ☒
Will you have outside dining? (If yes, an Outdoor Dining Application is required)			☒ ☐
If yes, will the outside dining be on: ☒ PUBLIC property or ☐ PRIVATE property			
Will you have any amusement devices (pinball, video games, juke box)?			☐ ☒
If yes, please list: # of amusements: and # of pool tables:			
What is your targeted opening date? : 10/25/2024			
Does the issuance of this license directly or indirectly benefit any City employee(s)?			☐ ☒
If Yes, list name(s) of employee(s) and department(s):			
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?			☒ ☐
If Yes, please list business name(s) and location(s): Connor and Truman own Maps Bar at 64A Market St.			
Is any principal officer under the age of 21?			☐ ☒
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?			☐ ☒
If Yes, please explain:			

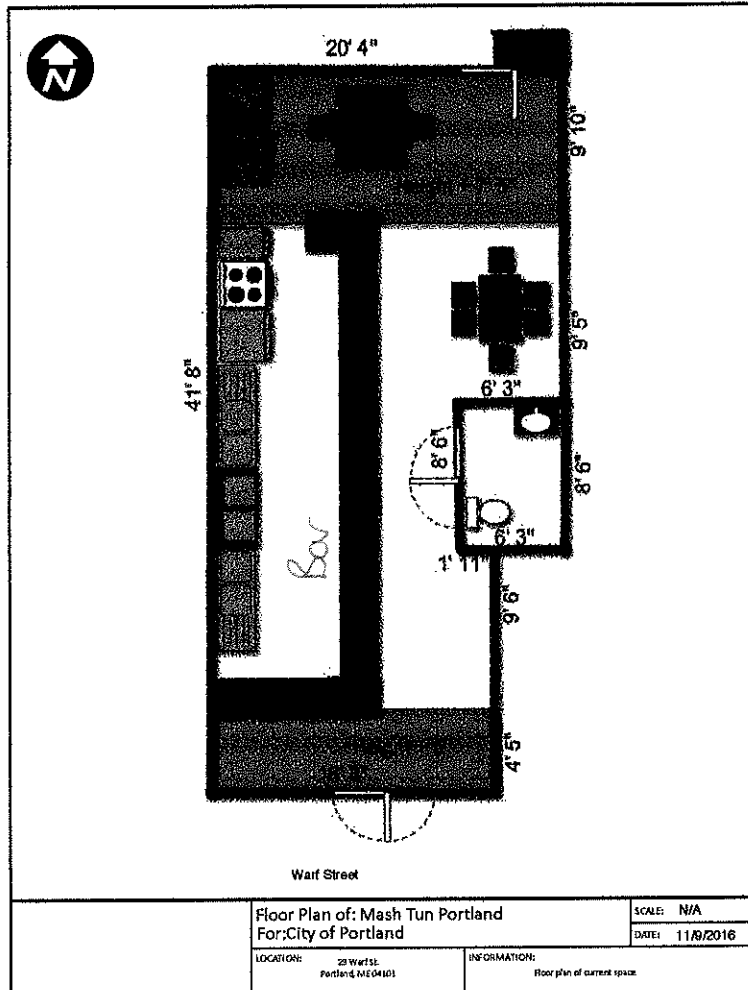
I, Connor Montello do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

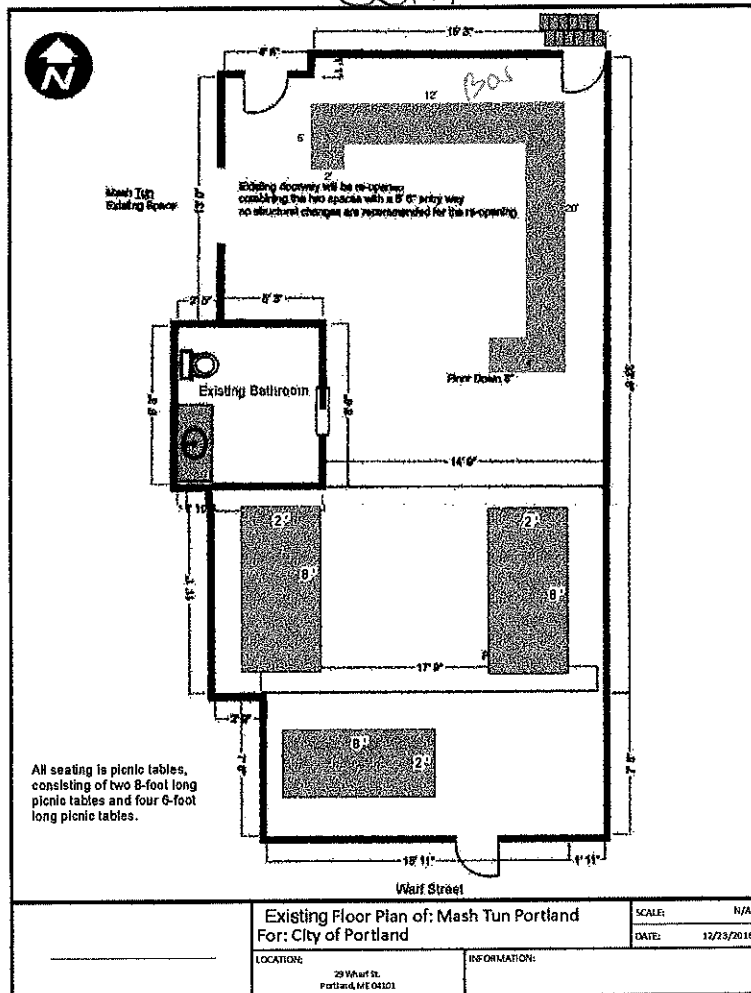
It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto. I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature Connor Montello Title Owner Date 9/12/24

Room 1



Room 2





CITY OF PORTLAND
Permitting and Inspections Department

**Outdoor Dining Permit on Public Property
Supplemental Application**

License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Liquor
License Valid April 1-November 30

- ☐ Legal Advertisement Deposit \$100.00
- ☒ Outdoor Dining on Public Property \$84.00 plus \$2.00 per Square foot $\$2.00 \times 145 \text{ SF} = \290
- ☐ Outdoor Dining on Public Property in a City Park \$84.00 plus \$6.30 per Square foot $\$6.30 \times 145 \text{ SF} = \underline{\hspace{2cm}}$

Business Information	
Establishment Name (d/b/a):	Mash Tun Phone: 207-272-3397
Location Address:	29 Wharf St. 04101 Zip:
Mailing Address:	128 Elm St. South Portland, ME 04106 Zip:
Contact Person:	Connor Montello Phone: 2072723397
Contact Person Email:	montelloconnor@gmail.com
Manager of Establishment:	Connor Montello Date of Birth: 02/02/1993 Phone: 207-272-3397
Owner of Premises (Landlord):	416 Fore St LLC
Address of Premises Owner (Landlord):	100 Middle St. Portland, ME 04101 Zip:

Owner Information

Corporate Name		Corporate Mailing Address	
Miller Project LLC		128 Elm St. South Portland, ME 04106 Zip:	
Contact Person:	Truman Leddy	Phone:	207-749-4661
Principal Officers	Title	Date of Birth	Residence Address
Connor Montello	Owner	02/02/1993	128 Elm St. South Portland, ME 04106
Truman Leddy	Owner	04/01/1993	178 Concord St. Portland, ME 04103

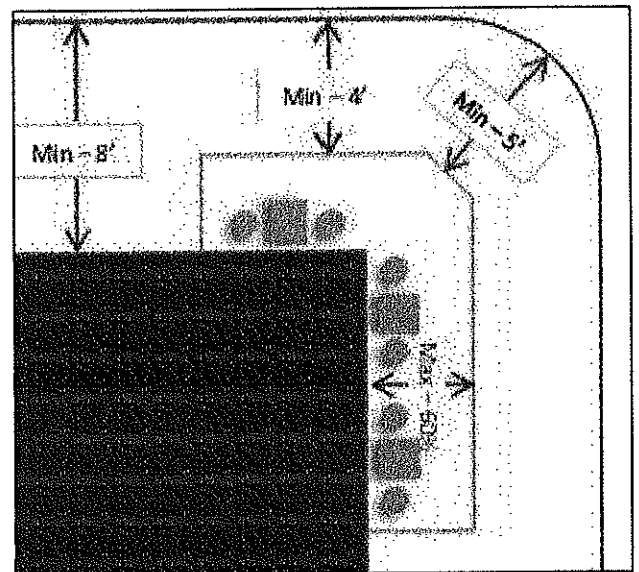


CITY OF PORTLAND
Permitting and Inspections Department

Class of License:	Class XI
Type of food served:	Pub Food (Burgers, Fries, Tacos, Lobster Rolls, Etc...)
Please circle all that will be served:	Beer ☒ Wine ☒ Liquor ☒
Hours & days of operation:	Mon - Thur 3pm - 12am Fri - Sun 12pm - 12am
Number of Tables	4
Number of Chairs	20

Design and Construction

Existing Sidewalk Width (property line to curb)	Sidewalk Dining Allowed?
< 8'0"	No
≥ 8'0"	Yes – up to 60% of
Sidewalk Type	Sidewalk Passage Width
Standard sidewalk	4'0"
Street corner	5'0"

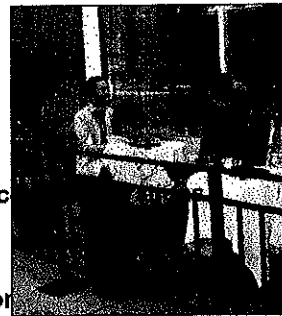
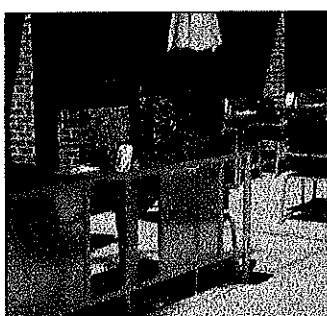


- Outdoor dining area shall not exceed 60% of the sidewalk width.
- A continuous, unobstructed sidewalk passage of 4 feet from the outer boundary of the seating area to the curb must be maintained. If the passage is not straight due to existing obstacles, then additional width may be required. Any changes to existing straight passage is at the discretion of the City.
- Egress must be maintained free of obstruction.
- Permanent fixtures, such as awnings, require a building permit separate from the Outdoor Dining permit and subject to approval by the Building Authority.
- Umbrellas do not require a permit.
- Umbrellas must be secured and maintain the height clearance for sidewalk passage.

Barriers

- If barriers are proposed, they must be free-standing. Physical attachments to a building are not allowed.
- Stanchions and ropes are encouraged. Sectional fencing is allowed with a high degree of visual transparency (at least 50% open). Solid or opaque barriers are not allowed.
- Shall not exceed 42" in height and may not include commercial signage.

Example barrier types that meet regulation





CITY OF PORTLAND

Permitting and Inspections Department

- Outdoor dining components must be within the permitted area and allow safe passage of pedestrian traffic. Failure to comply may result in a revocation of the permit.
- The permit holder is responsible for keeping the outdoor seating area clean.
- No food shall be prepared in the designated outdoor dining area.
- All outdoor dining components shall be removed before snowfall and while any snow or ice exists within four feet of the outdoor dining area. The City will not be responsible for damage to any property that is not removed prior to sidewalk maintenance.
- Outdoor dining areas must meet ADA regulations and accessible seating is required.
- Request for the use of adjacent on street parking space for outdoor dining installations requires Parking Office and Building Authority review and approval.

I/We fully understand that the City of Portland, its agents, officers and employees accept no responsibility and will not be liable for any injury, harm or damage to my/our person or property arising out of the establishment's occupancy of the sidewalk or park space. To the fullest extent permitted by law, I/We do hereby agree to assume all risk of injury, harm or damage to my/our person or property (including but not limited to all risk of injury, harm or damage to my/our property cause by the negligence of the City of Portland, its agents, officers or employees) arising out of the establishment's occupancy of the sidewalk or park space. I/We hereby agree, to the fullest extent permitted by law, to defend, indemnify and hold harmless the City of Portland, its agents, officers and employees, from and against all claims, damages, losses and expenses, just or unjust, including, but not limited to costs of defense and attorney's fees, arising out of the establishment's occupancy of the sidewalk or park space, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use there from, and (2) is caused in whole or in part by any negligent act or omission of the establishment, anyone directly or indirectly employed by it, or anyone for whose act it may be liable.

Signature [Signature] Title owner Date 09/30/24

For Administrative Use Only

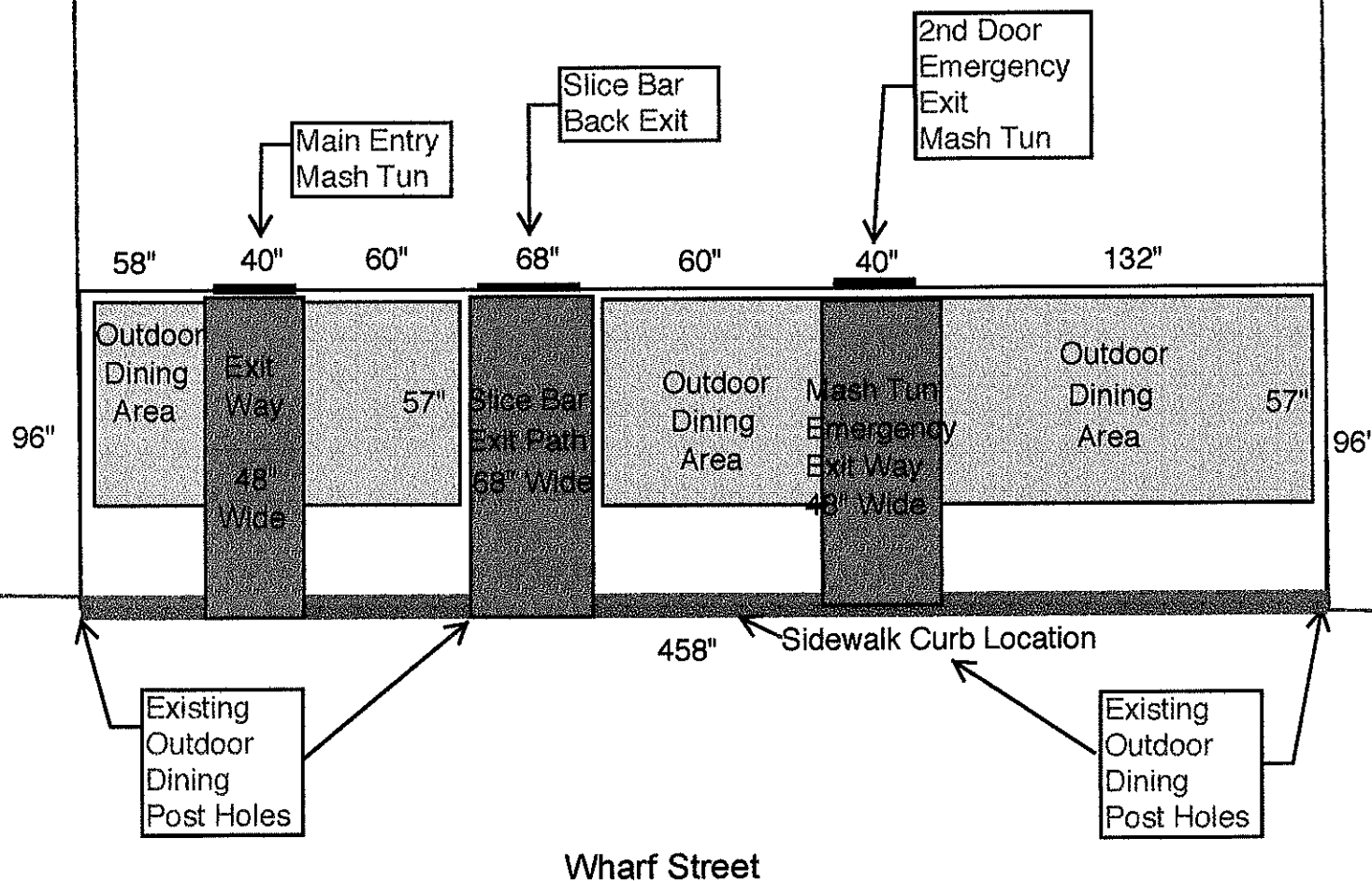
Amount: _____	Request Date / Approval	Notes: _____
Date Paid: _____	FD: _____	_____
CC _____ CA _____ CK _____	Health: _____	_____
	PD: _____	_____
Amount: _____	Treasury: _____	_____
Date Paid: _____	Zoning: _____	_____
CC _____ CA _____ CK _____		



Map 32
Lot N10
Building Fills entire Lot
Except for Sidewalk Area

Total Square
footage of
Outdoor Dining
Area: 145 Sq. Ft.

Area to be Roped
Off Using Existing
Post Holes With
Some Maint.
Needed



Proposed Outdoor Dining of Portland Mash Tun
For: City of Portland

SCALE:

DATE: 3/1/2017

LOCATION:

29 Wharf St.
Portland, ME 04101

INFORMATION:

Figure 2

Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on October 7, 2024 at 5:00 P.M., in City Council Chambers, 389 Congress St. for approval of Miller Project LLC, dba Mash Tun. Application for Class XI Restaurant/Lounge with Outdoor Dining on Public Property at 29 Wharf Street - Sponsored by Danielle P. West, City Manager

City of Portland | Permitting and Inspections
Zachary Lenhert, Licensing and Housing Safety Manager



October 1, 2024

Miller Project LLC
128 Elm Street
South Portland, Maine 04106

Re: Miller Project LLC, dba Mash Tun. Application for Class XI Restaurant/Lounge with Outdoor Dining on Public Property at 29 Wharf Street

Dear Miller Project LLC:

This letter shall serve as a reminder of the public hearing before the Portland City Council on Monday October 7, 2024 at 5:00 p.m., for the review of application for Class XI Restaurant/Lounge with Outdoor Dining on Public Property at 29 Wharf Street. The meeting will take place in person at Portland City Hall, in City Council Chambers on the 2nd Floor of 389 Congress Street.

You or a representative of the business must be present at this meeting in the event that the city council has questions regarding the license application. If there is no representation and questions arise, the item may be postponed.

Please contact our office directly with questions at (207) 874-8557 or at bl@portlandmaine.gov.

Sincerely,

Zachary J. Lenhert
Licensing and Housing Safety Manager



Zachary Lenhert <zlenhert@portlandmaine.gov>

Mash Tun_Class XI Rest-Lounge_29 Wharf St

Zoning <zoning@portlandmaine.gov>

Fri, Sep 20, 2024 at 2:15 PM

To: Zoning <zoning@portlandmaine.gov>

Cc: Treasury Division <treasury@portlandmaine.gov>, Zachary Finley <zackf@portlandmaine.gov>, Ron Kelton <rkelton@portlandmaine.gov>, Fire Prevention <fireprevention@portlandmaine.gov>, Laurie Carlson <lac@portlandmaine.gov>, Katlyn Sawyer <ksawyer@portlandmaine.gov>, Zoning <zoning@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, "Lynch, Kim" <kim.lynch@maine.gov>, Benjamin Pearson <bnp@portlandmaine.gov>, Tom Williams <tw@portlandmaine.gov>, Jason Grant <jgrant@portlandmaine.gov>, Business Licensing <bl@portlandmaine.gov>, cstacey <cstacey@portlandmaine.gov>, Zachary Lenhert <zlenhert@portlandmaine.gov>

Good Afternoon,

The legal use for the ground floor of 29 Wharf ST, CBL: 032 V001001, is restaurant. Zoning approves.

Thank you,

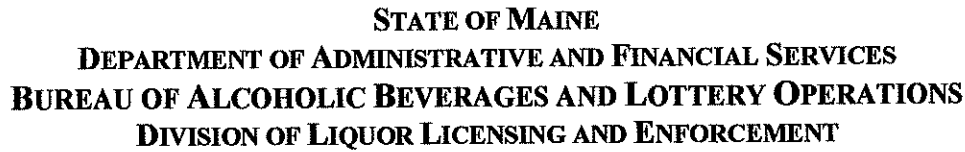
Mac

--

Mac Coldwell

City of Portland
Zoning Specialist
Permitting & Inspections Department
389 Congress ST, Room #315
Email: mcoldwell@portlandmaine.gov
he/him

[Quoted text hidden]



All Questions Must Be Answered Completely. Please print legibly.

Division Use Only	
License No:	
Class:	By:
Deposit Date:	
Amt. Deposited:	
Payment Type:	
OK with SOS: Yes ☐ No ☐	

Section I: Licensee/Applicant(s) Information; Type of License and Status

Legal Business Entity Applicant Name (corporation, LLC): Miller Project LLC	Business Name (D/B/A): Mash Tun
Individual or Sole Proprietor Applicant Name(s): Connor Montello	Physical Location: 29 Wharf St. Portland, ME 04101
Individual or Sole Proprietor Applicant Name(s): Truman Leddy	Mailing address, if different:
Mailing address, if different from DBA address: 128 Elm St. South Portland, ME 04101	Email Address: Mapsbarportland@gmail.com
Telephone # Fax #: 207-272-3397	Business Telephone # Fax #:
Federal Tax Identification Number: 99-4532732	Maine Seller Certificate # or Sales Tax #:
Retail Beverage Alcohol Dealers Permit:	Website address:

1. New license or renewal of existing license? ☒ New Expected Start date: 10/25/2024
☐ Renewal Expiration Date: _____
2. The dollar amount of gross income for the licensure period that will end on the expiration date above:
Food: _____ Beer, Wine or Spirits: _____ Guest Rooms: _____
3. Please indicate the type of alcoholic beverage to be sold: (check all that apply)
☒ Malt Liquor (beer) ☒ Wine ☒ Spirits

4. Indicate the type of license applying for: (choose only one)

- | | | |
|--|---|---|
| ☐ Restaurant
(Class I, II, III, IV) | ☒ Class A Restaurant/Lounge
(Class XI) | ☐ Class A Lounge
(Class X) |
| ☐ Hotel
(Class I, II, III, IV) | ☐ Hotel – Food Optional
(Class I-A) | ☐ Bed & Breakfast
(Class V) |
| ☐ Golf Course (included optional licenses, please check if apply)
(Class I, II, III, IV) | ☐ Auxiliary | ☐ Mobile Cart |
| ☐ Tavern
(Class IV) | ☐ Other: _____ | |
| ☐ Qualified Caterer | ☐ Self-Sponsored Events (Qualified Caterers Only) | |

Refer to Section V for the License Fee Schedule on page 9

5. Business records are located at the following address:

128 Elm St. South Portland, ME 04106

6. Is the licensee/applicant(s) citizens of the United States? ☒ Yes ☐ No

7. Is the licensee/applicant(s) a resident of the State of Maine? ☒ Yes ☐ No

NOTE: Applicants that are not citizens of the United States are required to file for the license as a business entity.

8. Is licensee/applicant(s) a business entity like a corporation or limited liability company?

☒ Yes ☐ No If Yes, complete Section VII at the end of this application

9. For a licensee/applicant who is a business entity as noted in Section I, does any officer, director, member, manager, shareholder or partner have in any way an interest, directly or indirectly, in their capacity in any other business entity which is a holder of a wholesaler license granted by the State of Maine?

☐ Yes ☒ No

☐ Not applicable – licensee/applicant(s) is a sole proprietor

10. Is the licensee or applicant for a license receiving, directly or indirectly, any money, credit, thing of value, endorsement of commercial paper, guarantee of credit or financial assistance of any sort from any person or entity within or without the State, if the person or entity is engaged, directly or indirectly, in the manufacture, distribution, wholesale sale, storage or transportation of liquor.

☐ Yes ☒ No

If yes, please provide details: _____

11. Do you own or have any interest in any another Maine Liquor License? ☒ Yes ☐ No

If yes, please list license number, business name, and complete physical location address: (attach additional pages as needed using the same format)

Name of Business	License Number	Complete Physical Address
Maps Bar	CAL-2019-12095	64A Market St. Portland, ME 04101

12. List name, date of birth, place of birth for all applicants including any manager(s) employed by the licensee/applicant. Provide maiden name, if married. (attach additional pages as needed using the same format)

Full Name	DOB	Place of Birth
Connor Montello	02/02/1993	Portland, ME
Truman Leddy	04/01/1993	Portland, ME
Residence address on all the above for previous 5 years		
Name Connor Montello	Address: 128 Elm St. South Portland 04106	
Name Connor Montello	Address: 36 Tyng St. Portland, ME 04102	
Name Truman Leddy	Address: 178 Concord St. Portland, ME 04103	
Name Truman Leddy	Address: 103 Riverside Dr. Auburn, ME 04210	

13. Will any law enforcement officer directly benefit financially from this license, if issued?

☐ Yes ☒ No

If Yes, provide name of law enforcement officer and department where employed:

14. Has the licensee/applicant(s) ever been convicted of any violation of the liquor laws in Maine or any State of the United States? ☐ Yes ☒ No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

15. Has the licensee/applicant(s) ever been convicted of any violation of any law, other than minor traffic violations, in Maine or any State of the United States? ☐ Yes ☒ No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

16. Has the licensee/applicant(s) formerly held a Maine liquor license? ☒ Yes ☐ No

17. Does the licensee/applicant(s) own the premises? ☐ Yes ☒ No

If No, please provide the name and address of the owner:

18. If you are applying for a liquor license for a Hotel or Bed & Breakfast, please provide the number of guest rooms available: NA

19. Please describe in detail the area(s) within the premises to be licensed. This description is in addition to the diagram in Section VI. (Use additional pages as needed)

There are two rooms in the space. The entrance brings you to room one with the main bar, which has around 20 seats and 2 tables. Room 2 has the secondary bar, which has around 10 seats and 3 picnic tables.

20. What is the distance from the premises to the **nearest** school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel?

Name: First Parish in Portland, Unitarian Universalist

Distance: 0.3 Miles

Section II: Signature of Applicant(s)

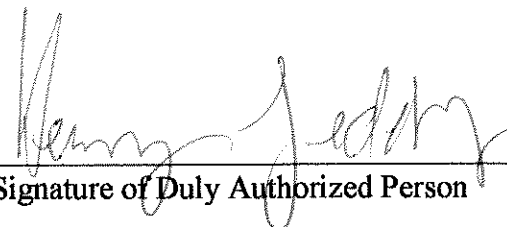
By signing this application, the licensee/applicant understands that false statements made on this application are punishable by law. Knowingly supplying false information on this application is a Class D Offense under Maine's Criminal Code, punishable by confinement of up to one year, or by monetary fine of up to \$2,000 or by both.

Please sign and date in blue ink.

Dated: 9/12/24


Signature of Duly Authorized Person

Connor Montello
Printed Name Duly Authorized Person


Signature of Duly Authorized Person

Henry Ledy
Printed Name of Duly Authorized Person

Section III: For use by Municipal Officers and County Commissioners only

The undersigned hereby certifies that we have complied with the process outlined in 28-A M.R.S. §653 and approve this on-premises liquor license application.

Dated: _____

Who is approving this application? ☐ Municipal Officers of _____

☐ County Commissioners of _____ County

- ☐ **Please Note:** The Municipal Officers or County Commissioners must confirm that the records of Local Option Votes have been verified that allows this type of establishment to be licensed by the Bureau for the type of alcohol to be sold for the appropriate days of the week. Please check this box to indicate this verification was completed.

Signature of Officials	Printed Name and Title

**This Application will Expire 60 Days from the date of
Municipal or County Approval unless submitted to the Bureau**

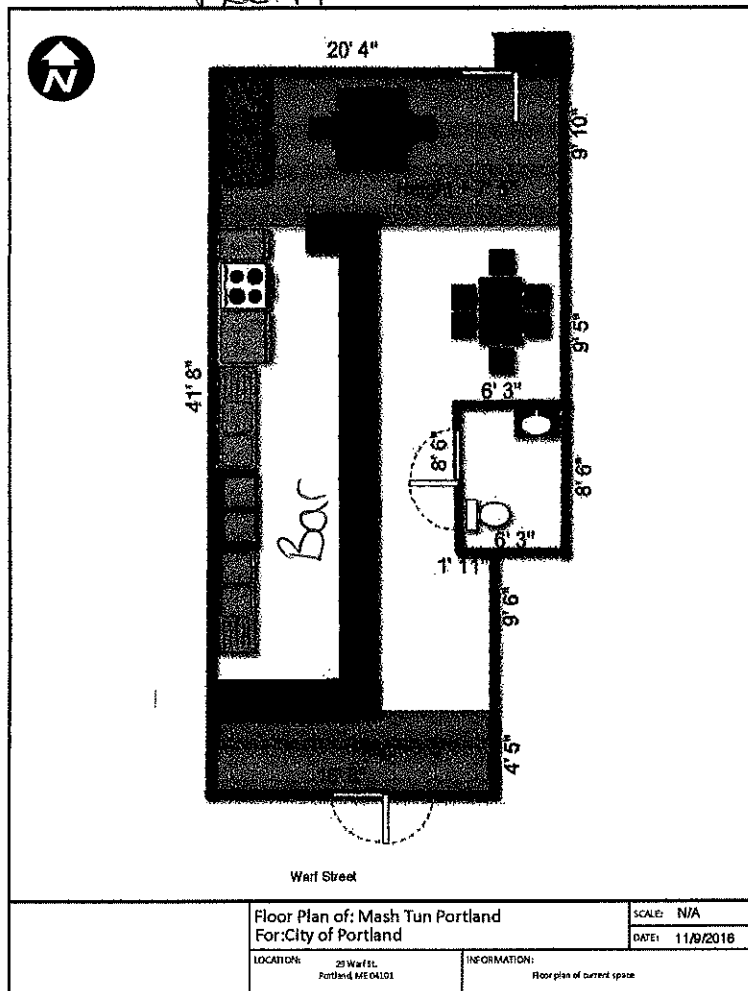
Included below is the section of Maine's liquor laws regarding the approval process by the municipalities or the county commissioners. This is provided as a courtesy only and may not reflect the law in effect at the time of application. Please see <http://www.mainelegislature.org/legis/statutes/28-A/title28-Asec653.html>

§653. Hearings; bureau review; appeal

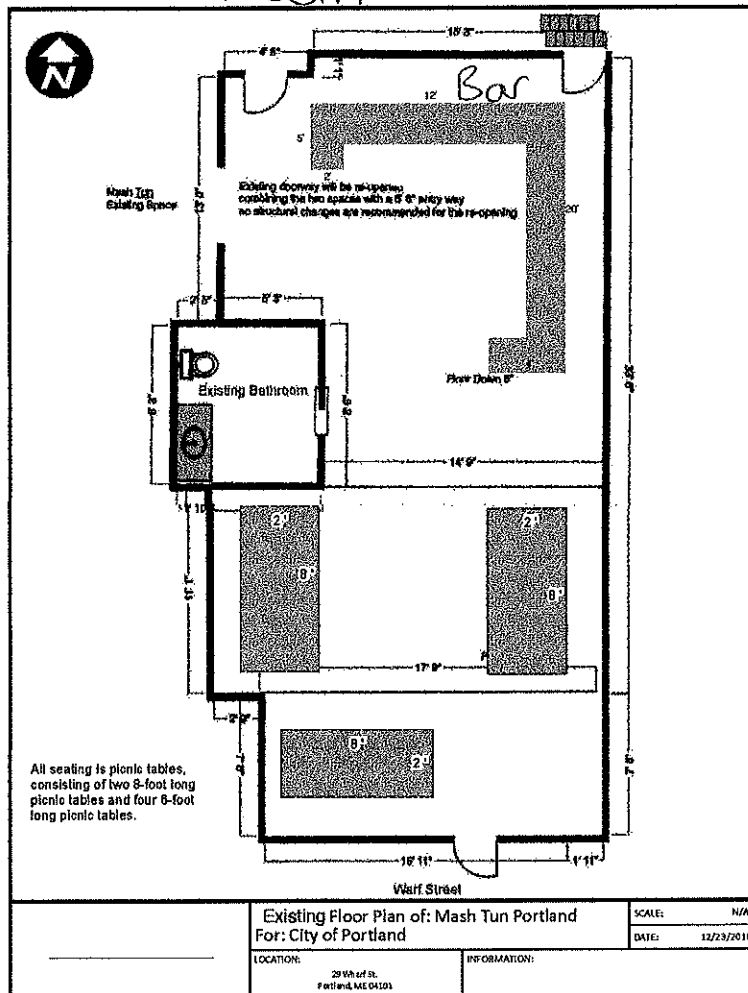
1. Hearings. The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, may hold a public hearing for the consideration of applications for new on-premises licenses and applications for transfer of location of existing on-premises licenses. The municipal officers or county commissioners may hold a public hearing for the consideration of requests for renewal of licenses, except that when an applicant has held a license for the prior 5 years and a complaint has not been filed against the applicant within that time, the applicant may request a waiver of the hearing.

A. The bureau shall prepare and supply application forms.

Room 1



Room 2



Section VII: Required Additional Information for a Licensee/Applicant for an On-Premises Liquor License Who are Legal Business Entities

Questions 1 to 4 of this part of the application must match information in Section I of the application above and match the information on file with the Maine Secretary of State's office. If you have questions regarding your legal entity name or DBA, please call the Secretary of State's office at (207) 624-7752.

All Questions Must Be Answered Completely. Please print legibly.

1. Exact legal name: Miller Project LLC
2. Doing Business As, if any: Mash Tun
3. Date of filing with Secretary of State: 07/24/2024 State in which you are formed: Maine
4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine:

5. List the name and addresses for previous 5 years, birth dates, titles of officers, directors, managers, members or partners and the percentage ownership any person listed: (attached additional pages as needed)

Name	Address (5 Years)	Date of Birth	Title	Percentage of Ownership
Connor Montello	128 Elm St. South Portland, ME	02/02/1993	Owner	50.0000
Truman Leddy	178 Concord St. Portland, ME	04/01/1993	Owner	50.0000

(Ownership in non-publicly traded companies must add up to 100%.)

Section VI Premises Floor Plan

In an effort to clearly define your license premise and the areas that consumption and storage of liquor authorized by your license type is allowed, the Bureau requires all applications to include a diagram of the premise to be licensed.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the following areas: entrances, office area, coolers, storage areas, display cases, shelves, restroom, point of sale area, area for on-premise consumption, dining rooms, event/function rooms, lounges, outside area/decks or any other areas on the premise that you are requesting approval. Attached an additional page as needed to fully describe the premise.

See 2 previous pages
for floor plan.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: September 26, 2024

SUBJECT: Order 60-24/25 Granting Municipal Officers' Approval of Portland Community Squash, dba Portland Community Squash Cafe. Application for Class IV/V Non-Profit Club with Catering with Outdoor Dining on Public Property at 66 Noyes Street - 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: N/A

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

I. SUMMARY

II. AGENDA DESCRIPTION

Application was filed on 9/16/24. This is an existing establishment adding alcohol service. New City and State applications.

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. 2024.10.07_Portland Squash_Council Order

2. 2024.10.07_Portland Squash_Council Packet

Prepared by:

Date: 09/26/2024

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 Y. BULLETT (4)
KATHRYN SYKES (5)

ORDER

GRANTING MUNICIPAL OFFICERS’

APPROVAL OF:

**Portland Community Squash, dba Portland Community Squash Cafe. Application for
Class IV/V Non-Profit Club with Catering with Outdoor Dining on Public Property at 66
Noyes Street**



PORTLAND
COMMUNITY
SQUASH

September 11, 2024

Portland Community Squash
66 Noyes Street
Portland, ME, 04103

Mayor Dion
Members of the Portland City Council
City of Portland
389 Congress Street
Portland, ME 04101

Dear Mayor Dion and Members of the City Council,

I am writing on behalf of Portland Community Squash (PCS) to express our intent to apply for a liquor license to serve beer and wine at our newly expanded facility, located at 66 Noyes St. As we near the completion of our renovation, which will double the size of our footprint, we are excited to enhance our offerings to the community.

With the completion of this project, our facility will feature a new kitchen and café. The kitchen will serve affordable meals to our community, in addition to catering PCS events. One of the highlights of our programming will be a free brunch offered to families every Saturday morning.

As part of our commitment to creating a vibrant space for our community, we intend to apply for a liquor license to serve beer and wine to adults in the afternoons and evenings.

We appreciate your consideration of our application and look forward to continuing our work in partnership with the City of Portland to build a stronger, more connected community. Please feel free to contact me at (860) 818-1211 or lucas@pcsquash.com if you have any questions or require further information.

Sincerely,
Lucas Bruns

Café Manager
Portland Community Squash



CITY OF PORTLAND
Permitting and Inspections Department

Application for Food Service Establishment with Alcoholic Beverages License

Business Information		
Legal Business Entity Applicant Name (corporation, LLC): Portland Community Squash		Business Name (D/B/A): Portland Community Squash Cafe
Individual or Sole Proprietor Applicant Name(s):		Physical Location: 66 Noyes St, Portland, ME 04103
If applicable, what was formerly at this location:		Business Email Address: lucas@pcsquash.com
Mailing Address: 66 Noyes St, Portland, ME 04103		Contact Person: Lucas Bruns
Contact Person Phone: (860) 818-1211		Contact Person Email: lucas@pcsquash.com
Manager of Establishment: Lucas Bruns	Date of Birth: 07/14/1994	Manager Phone: (860) 818-1211
Owner of Premises (Landlord): Portland Community Squash		Address of Premises Owner (Landlord):

Sole Proprietor/Partnership Information (If Corporation, leave blank)		
Name of Owner(s):	Date of Birth:	Residence Address:
Name of Owner(s):	Date of Birth:	Residence Address:

Corporate/LLC/Non-Profit Organization Applicants (If Sole Proprietor or Partnership, leave blank)			
Corporate Name: Portland Community Squash		Corporate Mailing Address: 66 Noyes St, Portland, ME 04103	
Contact Person: Lucas Bruns		Contact Phone: 860-818-1211	
Principal Officers	Title	Date of Birth	Residence Address
Hawley Strait	Board Chair	07/01/1977	54 Hickory Lane, Yarmouth, ME 04096
Barrett Takesian	Executive Director	02/22/1990	59 Orland St, Portland, ME 04103



CITY OF PORTLAND
Permitting and Inspections Department

Class of Liquor License (see fee schedule): Class IV (Nonprofit club with catering)		
Type of food served:	Smoothies, Sandwiches, Salads, Bowls, etc.	
Please select all that will be served:	☒ Beer ☒ Wine ☐ Liquor	
Projected percentage of sales:	Generated from Food: 80%	Generated from Alcohol: 20%
Hours & days of operation:	Saturday through Wednesday 8am - 9pm	
QUESTIONS	YES	NO
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?	☒	☐
If No, please explain:		
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?	☐	☒
If yes, give the distance:		
Will you have entertainment on the premises? (If yes, a Supplemental Application for Entertainment is required.)	☐	☒
Will you permit dancing after 1:00 a.m.?	☐	☒
Will you have outside dining? (If yes, an Outdoor Dining Application is required)	☐	☒
If yes, will the outside dining be on: ☐ PUBLIC property or ☐ PRIVATE property		
Will you have any amusement devices (pinball, video games, juke box)?	☐	☒
If yes, please list: # of amusements: and # of pool tables:		
What is your targeted opening date? : December 10, 2024		
Does the Issuance of this license directly or indirectly benefit any City employee(s)?	☐	☒
If Yes, list name(s) of employee(s) and department(s):		
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?	☒	☐
If Yes, please list business name(s) and location(s): Portland Community Squash, 66 Noyes St, Portland, ME 04103		
Is any principal officer under the age of 21?	☐	☒
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?	☐	☒
If Yes, please explain:		

I, LUCAS BRUNS do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto. I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature *Lucas Bruns* Title Cafe Manager Date 9/11/24



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
BUREAU OF ALCOHOLIC BEVERAGES AND LOTTERY OPERATIONS
DIVISION OF LIQUOR LICENSING AND ENFORCEMENT

TELEPHONE: (207) 624-7220
FAX: (207) 287-3434
EMAIL INQUIRIES: maineliquor@maine.gov

Thank you for your interest in becoming a licensed establishment to sell and serve alcoholic beverages in Maine. To avoid any delay in the processing of your application and the subsequent issuance of your liquor license, please use the following checklist to assist you in completing the application. If you are renewing your license, this checklist is useful as well.

- ☐ Your application has been completed in its entirety and is legible. For a renewal, please submit your application 30 days prior to the expiration date of your liquor license.
- ☐ Your application is signed and dated by a duly authorized person.
- ☐ The application is signed and approved by the Town or City Municipal Officers or County Commissioners.
- ☐ The license fee submitted is for the correct fee for the license class for which you are applying and includes the \$10.00 filing fee.
 - ☐ The check must be made payable to "Treasurer, State of Maine"; both the license and filing fees can be submitted on one check.
 - ☐ If the licensee/applicant(s) is in an unorganized township, the application must be approved by the County Commissioners and the \$10.00 filing fee must be paid to them. Please be sure to include a copy of the receipt of payment with your application.
- ☐ For a renewal, the dollar amount of your gross income for food, liquor and guest rooms, if applicable must be completed – see Section I.1
- ☐ A diagram of the facility to be licensed must accompany **all** applications whether for a new license or the renewal of an existing license
- ☐ If you are a registered business entity with the Maine Secretary of State's office like a corporation or a limited liability company, you must complete Section VII of the application. This does not need to be completed if you are a sole proprietor.
- ☐ Have you applied for other required licensing from other state and federal agencies? See attached list.

Important – all applications whether for a new license or to renew an existing license for an on-premises liquor license must contact their Municipal Officials or the County Commissioners in unincorporated places to have their application approved and signed prior to submitting it to the Bureau for further consideration.

The address to send your completed application to:

1. Mailing address:

Bureau of Alcoholic Beverages and Lottery Operations
Division of Liquor Licensing and Enforcement
8 State House Station
Augusta, ME 04333-0008

2. Courier/overnight address:

Bureau of Alcoholic Beverages and Lottery Operations
Division of Liquor Licensing and Enforcement
19 Union Street, Suite 301-B
Augusta, ME 04330

Prospective Menu - PCS Cafe

Smoothies

Green New Peel - *Spinach, frozen banana, mint, ginger, lime, and pineapple*

Tropic Drop Shot - *Banana, Mango, Pineapple, and orange*

PB Bomb - *frozen banana, peanut butter, oat milk, coco powder, dates*

Crosscourt Berry - *Mixed berries, kale, oat milk*

Salads

Shredded Kale - *kale, purple cabbage, pecans, cranberries, lemon-tahini dressing - add chicken/tofu*

REP the Greens - *mixed greens, sprouts, tomato, avocado, protein, with cilantro-lime vinaigrette - add chicken/tofu*

Roasted Beet Salad - *spinach, roasted beets, goat cheese, apple, cucumber, spicy almond, creamy balsamic vinaigrette - add chicken/tofu*

Wraps/Bowls

Avocado Toast - *Avocado, chili peppers, cumin, lime, sun dried tomatoes, on sourdough*

Falafel Wrap - *Falafel, pickled beets, tomatoes, cucumbers, lettuce and hummus in a wrap*

The Boast Bowl - *Roasted vegetables, protein, lemon-tahini dressing with shredded lettuce on quinoa*

Soup of the day

Assorted pastries/deserts - Bread & Friends

Fridge - seltzer water, kombucha, juices, gatorade

Beer/Wine

Beer, Wine and food will must be consumed in the community commons (outlined in red)



Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on October 7, 2024 at 5:00 P.M., in City Council Chambers, 389 Congress St. for approval of Portland Community Squash, dba Portland Community Squash Cafe. Application for Class IV/V Non-Profit Club with Catering with Outdoor Dining on Public Property at 66 Noyes Street - Sponsored by Danielle P. West, City Manager

City of Portland | Permitting and Inspections
Zachary Lenhert, Licensing and Housing Safety Manager



October 1, 2024

Portland Community Squash
66 Noyes Street
Portland, Maine 04103

Re: Portland Community Squash, dba Portland Community Squash Cafe. Application for Class IV/V Non-Profit Club with Catering with Outdoor Dining on Public Property at 66 Noyes Street

Dear Portland Community Squash:

This letter shall serve as a reminder of the public hearing before the Portland City Council on Monday October 7, 2024 at 5:00 p.m., for the review of application for Class IV/V Non-Profit Club with Catering with Outdoor Dining on Public Property at 66 Noyes Street. The meeting will take place in person at Portland City Hall, in City Council Chambers on the 2nd Floor of 389 Congress Street.

You or a representative of the business must be present at this meeting in the event that the city council has questions regarding the license application. If there is no representation and questions arise, the item may be postponed.

Please contact our office directly with questions at (207) 874-8557 or at bl@portlandmaine.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Z Lenhert".

Zachary J. Lenhert
Licensing and Housing Safety Manager



Zachary Lenhart <zlenhart@portlandmaine.gov>

Portland Community Squash Cafe - Class IV - 66 Noyes

Zoning <zoning@portlandmaine.gov>

Fri, Sep 20, 2024 at 1:48 PM

To: Zoning <zoning@portlandmaine.gov>

Cc: Zachary Lenhart <zlenhart@portlandmaine.gov>, Zachary Finley <zackf@portlandmaine.gov>, Ron Kelton

<rkelton@portlandmaine.gov>, Fire Prevention <fireprevention@portlandmaine.gov>, Laurie Carlson

<lac@portlandmaine.gov>, Katlyn Sawyer <ksawyer@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, "Lynch,

Kim" <kim.lynch@maine.gov>, Benjamin Pearson <bnp@portlandmaine.gov>, Tom Williams <tw@portlandmaine.gov>, Jason

Grant <jgrant@portlandmaine.gov>, Treasury Division <treasury@portlandmaine.gov>, Business Licensing

<bl@portlandmaine.gov>, cstacey <cstacey@portlandmaine.gov>

Good Afternoon,

The legal use for 66 Noyes ST, CBL: 118 E003000 (master CBL) is Community Hall (Place of Assembly). Zoning approves.

Thank you,

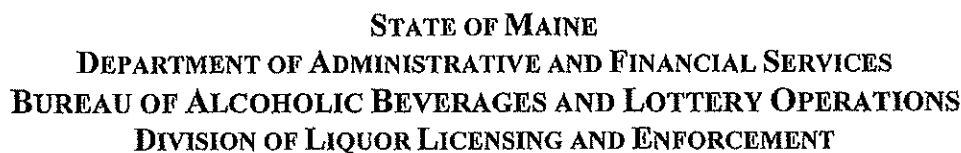
Mac

--

Mac Coldwell

City of Portland
Zoning Specialist
Permitting & Inspections Department
389 Congress ST, Room #315
Email: mcoldwell@portlandmaine.gov
he/him

[Quoted text hidden]



All Questions Must Be Answered Completely. Please print legibly.

Division Use Only	
License No:	
Class:	By:
Deposit Date:	
Amt. Deposited:	
Payment Type:	
OK with SOS:	Yes ☐ No ☐

Legal Business Entity Applicant Name (corporation, LLC); Portland Community Squash	Business Name (D/B/A):
Individual or Sole Proprietor Applicant Name(s):	Physical Location: 66 Noyes Street, Portland, ME 04103
Individual or Sole Proprietor Applicant Name(s):	Mailing address, if different:
Mailing address, if different from DBA address:	Email Address: lucas@pcsquash.com
Telephone # Fax #: (860) 818-1211	Business Telephone # Fax #: (207) 221-6454
Federal Tax Identification Number: 46-2787590	Maine Seller Certificate # or Sales Tax #:
Retail Beverage Alcohol Dealers Permit:	Website address: www.pcsquash.com

1. New license or renewal of existing license? ☒ New Expected Start date: 12/10/2024
☐ Renewal Expiration Date: _____
2. The dollar amount of gross income for the licensure period that will end on the expiration date above:
Food: _____ Beer, Wine or Spirits: _____ Guest Rooms: _____
3. Please indicate the type of alcoholic beverage to be sold: (check all that apply)
☒ Malt Liquor (beer) ☒ Wine ☐ Spirits

4. Indicate the type of license applying for: (choose only one)

- | | | |
|--|--|---|
| ☐ Restaurant
(Class I, II, III, IV) | ☐ Class A Restaurant/Lounge
(Class XI) | ☐ Class A Lounge
(Class X) |
| ☐ Hotel
(Class I, II, III, IV) | ☐ Hotel – Food Optional
(Class I-A) | ☐ Bed & Breakfast
(Class V) |
| ☐ Golf Course (included optional licenses, please check if apply)
(Class I, II, III, IV) | ☐ Auxiliary | ☐ Mobile Cart |
| ☐ Tavern
(Class IV) | ☒ Other: <u>Indoor Racquet Center</u> | |
| ☐ Qualified Caterer | ☐ Self-Sponsored Events (Qualified Caterers Only) | |

Refer to Section V for the License Fee Schedule on page 9

5. Business records are located at the following address:

66 Noyes St, Portland, ME 04103

6. Is the licensee/applicant(s) citizens of the United States? ☒ Yes ☐ No

7. Is the licensee/applicant(s) a resident of the State of Maine? ☒ Yes ☐ No

NOTE: Applicants that are not citizens of the United States are required to file for the license as a business entity.

8. Is licensee/applicant(s) a business entity like a corporation or limited liability company?

☐ Yes ☒ No If Yes, complete Section VII at the end of this application

9. For a licensee/applicant who is a business entity as noted in Section I, does any officer, director, member, manager, shareholder or partner have in any way an interest, directly or indirectly, in their capacity in any other business entity which is a holder of a wholesaler license granted by the State of Maine?

☐ Yes ☒ No

☐ Not applicable – licensee/applicant(s) is a sole proprietor

10. Is the licensee or applicant for a license receiving, directly or indirectly, any money, credit, thing of value, endorsement of commercial paper, guarantee of credit or financial assistance of any sort from any person or entity within or without the State, if the person or entity is engaged, directly or indirectly, in the manufacture, distribution, wholesale sale, storage or transportation of liquor.

☐ Yes ☒ No

If yes, please provide details: _____

11. Do you own or have any interest in any another Maine Liquor License? ☐ Yes ☒ No

If yes, please list license number, business name, and complete physical location address: (attach additional pages as needed using the same format)

Name of Business	License Number	Complete Physical Address

12. List name, date of birth, place of birth for all applicants including any manager(s) employed by the licensee/applicant. Provide maiden name, if married. (attach additional pages as needed using the same format)

Full Name	DOB	Place of Birth
Lucas Bruns	07/14/1994	Tokyo, Japan
Barrett Takesian	02/22/1990	Ellsworth, Maine
Residence address on all the above for previous 5 years		
Name Lucas Bruns	Address: 183 Whitney Ave, Portland, ME 04102	
Name Barrett Takesian	Address: 59 Orland St, Portland, ME 04103	
Name	Address:	
Name	Address:	

13. Will any law enforcement officer directly benefit financially from this license, if issued?

☐ Yes ☒ No

If Yes, provide name of law enforcement officer and department where employed:

14. Has the licensee/applicant(s) ever been convicted of any violation of the liquor laws in Maine or any State of the United States? ☐ Yes ☒ No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

15. Has the licensee/applicant(s) ever been convicted of any violation of any law, other than minor traffic violations, in Maine or any State of the United States? ☐ Yes ☒ No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

16. Has the licensee/applicant(s) formerly held a Maine liquor license? ☐ Yes ☒ No

17. Does the licensee/applicant(s) own the premises? ☒ Yes ☐ No

If No, please provide the name and address of the owner:

18. If you are applying for a liquor license for a Hotel or Bed & Breakfast, please provide the number of guest rooms available: _____

19. Please describe in detail the area(s) within the premises to be licensed. This description is in addition to the diagram in Section VI. (Use additional pages as needed)

The premises to be licensed is limited to the community commons area. This is a designated space outlined on the diagram that includes sit-down tables and soft seating. The food service will also be limited to this area.

20. What is the distance from the premises to the **nearest** school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel?

Name: Levy Day School

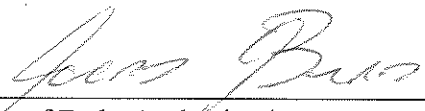
Distance: 528 feet

Section II: Signature of Applicant(s)

By signing this application, the licensee/applicant understands that false statements made on this application are punishable by law. Knowingly supplying false information on this application is a Class D Offense under Maine's Criminal Code, punishable by confinement of up to one year, or by monetary fine of up to \$2,000 or by both.

Please sign and date in blue ink.

Dated: 9/11/2024


Signature of Duly Authorized Person

Signature of Duly Authorized Person

LUCAS BRUNS
Printed Name Duly Authorized Person

Printed Name of Duly Authorized Person

Section III: For use by Municipal Officers and County Commissioners only

The undersigned hereby certifies that we have complied with the process outlined in 28-A M.R.S. §653 and approve this on-premises liquor license application.

Dated: _____

Who is approving this application? ☐ Municipal Officers of _____

☐ County Commissioners of _____ County

- ☐ **Please Note:** The Municipal Officers or County Commissioners must confirm that the records of Local Option Votes have been verified that allows this type of establishment to be licensed by the Bureau for the type of alcohol to be sold for the appropriate days of the week. Please check this box to indicate this verification was completed.

Signature of Officials	Printed Name and Title

**This Application will Expire 60 Days from the date of
Municipal or County Approval unless submitted to the Bureau**

Included below is the section of Maine's liquor laws regarding the approval process by the municipalities or the county commissioners. This is provided as a courtesy only and may not reflect the law in effect at the time of application. Please see <http://www.mainelegislature.org/legis/statutes/28-A/title28-Asec653.html>

§653. Hearings; bureau review; appeal

1. Hearings. The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, may hold a public hearing for the consideration of applications for new on-premises licenses and applications for transfer of location of existing on-premises licenses. The municipal officers or county commissioners may hold a public hearing for the consideration of requests for renewal of licenses, except that when an applicant has held a license for the prior 5 years and a complaint has not been filed against the applicant within that time, the applicant may request a waiver of the hearing.

A. The bureau shall prepare and supply application forms.

B. The municipal officers or the county commissioners, as the case may be, shall provide public notice of any hearing held under this section by causing a notice, at the applicant's prepaid expense, stating the name and place of hearing, to appear on at least 3 consecutive days before the date of hearing in a daily newspaper having general circulation in the municipality where the premises are located or one week before the date of the hearing in a weekly newspaper having general circulation in the municipality where the premises are located.

C. If the municipal officers or the county commissioners, as the case may be, fail to take final action on an application for a new on-premises license or transfer of the location of an existing on-premises license within 60 days of the filing of an application, the application is deemed approved and ready for action by the bureau. For purposes of this paragraph, the date of filing of the application is the date the application is received by the municipal officers or county commissioners. This paragraph applies to all applications pending before municipal officers or county commissioners as of the effective date of this paragraph as well as all applications filed on or after the effective date of this paragraph. This paragraph applies to an existing on-premises license that has been extended pending renewal. The municipal officers or the county commissioners shall take final action on an on-premises license that has been extended pending renewal within 120 days of the filing of the application.

D. If an application is approved by the municipal officers or the county commissioners but the bureau finds, after inspection of the premises and the records of the applicant, that the applicant does not qualify for the class of license applied for, the bureau shall notify the applicant of that fact in writing. The bureau shall give the applicant 30 days to file an amended application for the appropriate class of license, accompanied by any additional license fee, with the municipal officers or county commissioners, as the case may be. If the applicant fails to file an amended application within 30 days, the original application must be denied by the bureau. The bureau shall notify the applicant in writing of its decision to deny the application including the reasons for the denial and the rights of appeal of the applicant.

2. Findings. In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied on one or more of the following grounds:

A. Conviction of the applicant of any Class A, Class B or Class C crime;

B. Noncompliance of the licensed premises or its use with any local zoning ordinance or other land use ordinance not directly related to liquor control;

C. Conditions of record such as waste disposal violations, health or safety violations or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner;

D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises;

D-1. Failure to obtain, or comply with the provisions of, a permit for music, dancing or entertainment required by a municipality or, in the case of an unincorporated place, the county commissioners;

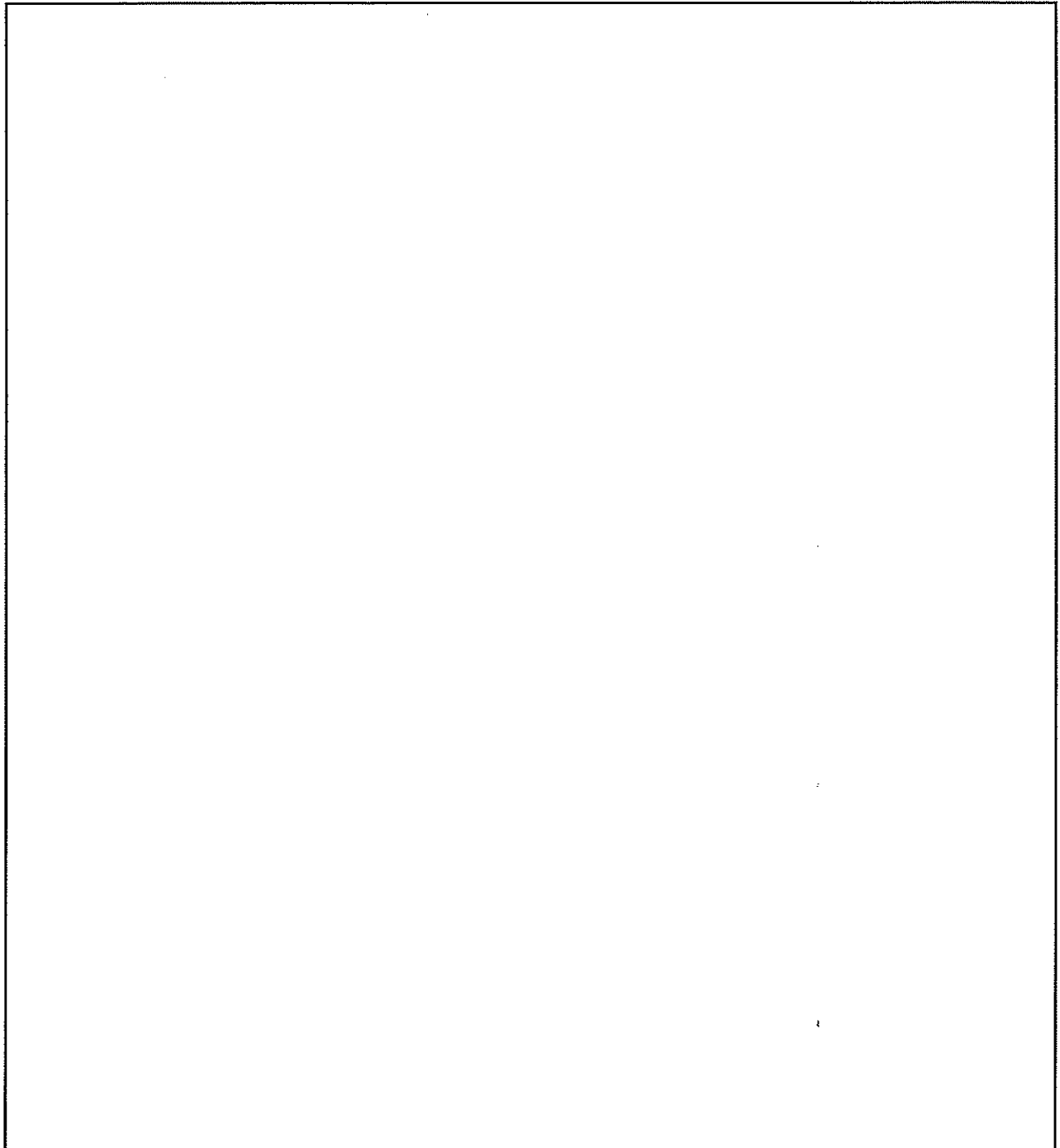
E. A violation of any provision of this Title;

F. A determination by the municipal officers or county commissioners that the purpose of the application is to circumvent the provisions of section 601; and

Section VI Premises Floor Plan → See attached

In an effort to clearly define your license premise and the areas that consumption and storage of liquor authorized by your license type is allowed, the Bureau requires all applications to include a diagram of the premise to be licensed.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the following areas: entrances, office area, coolers, storage areas, display cases, shelves, restroom, point of sale area, area for on-premise consumption, dining rooms, event/function rooms, lounges, outside area/decks or any other areas on the premise that you are requesting approval. Attached an additional page as needed to fully describe the premise.



Section VII: Required Additional Information for a Licensee/Applicant for an On-Premises Liquor License Who are Legal Business Entities

Questions 1 to 4 of this part of the application must match information in Section I of the application above and match the information on file with the Maine Secretary of State's office. If you have questions regarding your legal entity name or DBA, please call the Secretary of State's office at (207) 624-7752.

All Questions Must Be Answered Completely. Please print legibly.

1. Exact legal name: Portland Community Squash
2. Doing Business As, if any: _____
3. Date of filing with Secretary of State: 7/16/2014 State in which you are formed: ME
4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine:

5. List the name and addresses for previous 5 years, birth dates, titles of officers, directors, managers, members or partners and the percentage ownership any person listed: (attached additional pages as needed) N/A

Name	Address (5 Years)	Date of Birth	Title	Percentage of Ownership

(Ownership in non-publicly traded companies must add up to 100%.)

Section VII: Required Additional Information for a Licensee/Applicant for an On-Premises Liquor License Who are Legal Business Entities

Questions 1 to 4 of this part of the application must match information in Section I of the application above and match the information on file with the Maine Secretary of State's office. If you have questions regarding your legal entity name or DBA, please call the Secretary of State's office at (207) 624-7752.

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4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine:

5. List the name and addresses for previous 5 years, birth dates, titles of officers, directors, managers, members or partners and the percentage ownership any person listed: (attached additional pages as needed) N/A

Name	Address (5 Years)	Date of Birth	Title	Percentage of Ownership
Barrett Takesian	59 Orland St, Portland, ME, 05103	02/22/1990	Executive Director	N/A
Hawley Strait	54 Hickory Lane, Yarmouth, ME 04096	07/01/1970	Board Chair	N/A

(Ownership in non-publicly traded companies must add up to 100%.)

MEMORANDUM
City Council Agenda Item

FROM: Melissa Graffam
DATE: September 20, 2024
SUBJECT: Resolve 2-24/25 Return the Two-Way Operation on State and High Streets -
Sponsored by the Sustainability and Transportation Committee, Regina Phillips,
Chair
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 10/7/2024

Final
Action 10/21/2024

Can action be taken at a later date: No This resolution must be approved by City Council and signed by the City Manager as early as possible to allow Maine Department of Transportation (MaineDOT) to resume work on its signal replacement project for State and High Streets (MaineDOT WIN 027506.00). The resolution will allow the City and MaineDOT to complete a Two-Party Agreement for a project with a revised scope of work.

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

PRESENTATION: N/A

I. SUMMARY

City Council is being asked to approve the attached Resolution approving a two-way reversion of State and High Streets, which will also approve entering into discussions with MaineDOT for a Two-Party Agreement for a revised State and High project.

II. AGENDA DESCRIPTION

The Department of Public Works, following two meetings with the Council's Sustainability and Transportation Committee (S&T – 5/8/24 & 9/11/24), as well as a general public meeting (9/5/24), has been directed by S&T to seek a Resolution from the Council to do the following:

1. Approve a reversion of State and High to their original (pre-1972) two-way operation; and
2. Pursue a Two-Party Agreement to partner with MaineDOT in order to modify and fund additional work in association with MaineDOT WIN 02756.00, the State and High Signal Replacement Project.

The approval for the reversion will provide change in the Traffic Schedule pending a two-way reversion project. In addition, the approval to proceed with a Two-Party Agreement between MaineDOT and the City of Portland will allow the City to work with the Department on providing additional work in its signal project to facilitate two-way traffic flow and improve active transportation facilities. This approval will also provide DPW with the needed support from elected officials to provide any other design support services during project development that may be required.

At this time, the project is at concept stage. It is anticipated that design will proceed in 2025, with the State Right-of-Way (ROW) process being completed in 2026, and construction possibly beginning in 2027.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

In 1972, during the City's Urban Renewal era, State and High Streets were made one-way streets with the goal of optimizing fast, efficient traffic flow through the City's center. By 2006, the City Peninsula Study reviewed State and High Streets through Deering Oaks and found the potential for feasibility to make them two-way streets again. A formal feasibility study was completed in 2015, which identified a number of improvements and original cost estimate of \$3,225,000. The effort was set aside following a change in City Management.

Citing renewed public and elected official interest in 2023, the Department of Public Works updated the feasibility study, and found that going back to two-way operation remains feasible, with intersection and signal changes likely to be less costly to implement given the pending MaineDOT signal project for these streets. In addition, more time and discussion were focused around improved active transportation outcomes, especially for bicycles, which have no dedicated facilities on these streets.

City staff presented information and conclusions from the updated feasibility study to S&T, on May 8, 2024 and again on September 11, 2024. In addition, a formal public meeting was held at the Portland Public Library on the evening of September 5, 2024 to gather specific input and questions from constituents and interested parties. Feedback was generally positive, with a number of questions regarding design of bicycle facilities.

Following the second presentation with S&T on September 11, the Committee unanimously approved (2-0) sending the matter to the Council to adopt a two-way resolution.

Additional information on this effort, including meeting notes and presentations to S&T can be found on the project website: <https://www.portlandmaine.gov/647/State-High-Street-Study>

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Facilitating two-way traffic flow on State and High Streets will address a long-standing topic of interest to the City. Based on crash data of these streets, the change will also improve safety for motorists and active transportation persons as well. By entering into an agreement with MaineDOT, this work can leverage other funds for signal improvements already in the State's Transportation Work Plan, saving Portland funds and keeping outcomes on a defined schedule.

V. FINANCIAL IMPACT

Based on discussions with MaineDOT to date, the City will be responsible for the cost of any work beyond the current one-for-one replacement of the existing traffic signals on State and High Streets. Based on initial estimates, subject to significant future refinement, the additional cost for the traffic signals will be between \$1.3 and \$1.7 million, while high-quality bicycle facilities along State Street will be between \$2.0 and \$3.0 million. These are numbers that will be refined during the design process and finalized as part of the Two-Party Agreement, which will at that time come with a fiscal impact note.

Based on current knowledge, it is likely that the capital costs associated with this project would appear as part of the FY27 capital improvement plan (CIP) process.

VI. STAFF ANALYSIS AND BACKGROUND

Two other projects, York Street Sidewalk and Design (MaineDOT WINs 24105.00 and 26280.10) and Forest Avenue, Marginal Way to Park Avenue (MaineDOT WIN 25065.00) are on similar time lines to the MaineDOT signal project, and directly overlap with outcomes from the two-way feasibility study. As such, it

is highly imperative that the Council decide upon the resolution as soon as possible for all projects to proceed through design.

VII. RECOMMENDATION

The Department of Public Works recommends Council adoption of the Resolution endorsing two-way State and High Streets, as well as proceeding to work with MaineDOT on a Two-Party Agreement.

VIII. LIST ATTACHMENTS

1. Resolve - Calling for a Two-Way Reversion on State Street and High Street

Prepared by:

Melissa Graffam

Date: 09/20/2024

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 TO RETURN THE TWO-WAY OPERATION ON
STATE AND HIGH STREETS**

WHEREAS, the City of Portland (hereafter “City”) is a municipal corporation duly organized and existing under the laws of the State of Maine; and

WHEREAS, the City Council is the legislative body of the City; and

WHEREAS, the City desires to revert State Street and High Street to their original two-way operation; and

WHEREAS, the City wishes to enter into a Two-Party Agreement with the Maine Department of Transportation (hereafter “MaineDOT”) to complete the State and High Street traffic signal project with a modification to allow for two-way operation; and

NOW, THEREFORE, BE IT RESOLVED, that the Portland City Council and Mayor hereby support the restoration of two-way traffic flow of State and High Streets between York Street and Forest Avenue; and

BE IT FURHTER RESOLVED, that this resolution shall take effect in association with the completion of the MaineDOT State and High Street project, WIN 207506.00.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: September 25, 2024

SUBJECT: Resolve 3-24/25 Approving Eco Maine Revenue Bond Financing - 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

This resolution is to comply with the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). EcoMaine is a quasi-municipal organization that plans to borrow money to purchase new recycling equipment to replace a 30 year old system that is past the end of its useful life. The recycling facility is in Portland and TEFRA states that a municipal officer, in this case the City Council, needs to sign off that Portland agrees with this project.

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 - EcoMaine Portland TEFRA Resolution

2. EcoMaine 2024 Portland TEFRA Approval Certificate (v2 - clean)(17472763.1)
3. EcoMaine TEFRA Host Requirements - Memo to Municipalities(17470506.1)

Prepared by:

Date: 09/25/2024

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 APPROVING ECO MAINE
REVENUE BOND FINANCING**

WHEREAS, ECO Maine operates a waste to energy facility located at 64 Blueberry Road, Portland, Maine (the “Waste to Energy Facility”) and a recycling materials recovery facility located at 62 Blueberry Road, Portland, Maine (the “Existing MRF”), as well as other facilities in Scarborough and South Portland (the Waste to Energy Facility, the Existing MRF and the other facilities collectively referred to as the “Facilities”); and

WHEREAS, ECO Maine proposes to finance and refinance certain improvements at its Facilities (and to reimburse costs of the Projects, as hereafter defined, previously paid), including, without limitation:

- (1) approximately \$25,200,000 for the planning, design and construction of modifications, repairs and improvements to Eco Maine’s facility located at 90 Blueberry Road (Lot 238 A018), Portland, Maine (the “New MRF”) to replace the Existing MRF, including the installation of a new sortation system in the New MRF to increase the capacity and improve the sortation system process of Eco Maine, and equipment acquisition at the New MRF;
- (2) approximately \$600,000 for the connection of electrical services from the Waste to Energy Facility to the New MRF to provide electrical supply for the New MRF;
- (3) approximately \$5,750,000 for the planning, design and construction of improvements to the Phase 2 East B landfill cell located at 00 Running Hill Road, Scarborough, Maine to provide approximately seven years of additional space to landfill waste, and the planning, design and construction of improvements to the Landfill 10B pump station located at 4 Green Road, Scarborough, Maine, to provide greater capacity to service the existing Landfill and the new flows coming from the Phase 2 East B landfill cell;
- (4) approximately \$1,500,000 for the planning, design and construction related to the replacement of the landfill remote (West) pump station

servicing Eco Maine's Landfill located at 85 Scott Drive, South Portland, Maine, and the Kimberly Clark Landfill;

- (5) approximately \$1,300,000 for resurfacing the tipping hall floor located at the Waste to Energy Facility with a high strength durable material;
- (6) approximately \$600,000 for boiler economizer replacements at the Waste to Energy Facility;
- (7) approximately \$550,000 for the planning, design, installation and construction of ventilation and dust control improvements at the Waste to Energy Facility; and
- (8) paying costs of issuance, similar fees and costs and credit enhancement fees, if any, capitalized interest, if any, with respect to the BANS and the Bonds (the items enumerated in (1) through (8) above shall be referred to herein as the "Projects"); and

WHEREAS, ECO Maine intends to finance the Projects through the issuance of tax-exempt bonds (the "Bonds") and bond anticipation notes (the "Notes") in the aggregate principal amount not to exceed \$35,500,000, under and pursuant to the provisions of Title 38, §1304-B(5) and Title 10, chapter 110, subchapter 4 of the Maine Revised Statutes, as amended; and

WHEREAS, the Bonds and Notes will be obligations of ECO Maine payable solely from payments to be made by ECO Maine to or for the benefit of the holders of the Bonds and Notes; and

WHEREAS, other than with respect to the rights or obligations of a City arising under Title 38, section 1304-B and as provided in that certain Interlocal Solid Waste Agreement dated December 1, 2005 between ECO Maine and the Participating Municipalities identified therein, including the City, as well as the Waste Handling Agreement between ECO Maine and the City dated July 1, 2006, the Bonds and Notes do not constitute any debt or liability of the City; shall not constitute a pledge of the faith and credit of the City; shall be payable solely from the revenues of the Projects for which they are issued; and shall not directly or indirectly or contingently obligate the City to levy or to pledge any form of taxation whatever or to make any appropriation for their payment; and

WHEREAS, the Projects are expected to constitute "solid waste disposal facilities" as defined in Section 142(a)(6) of the Internal Revenue Code of 1986, as amended (the "Code"), and ancillary facilities necessary or convenient in connection therewith; and

WHEREAS, Section 147(f) of the Code requires that ECO Maine obtain a local “host” approval of the Projects and of the Bonds and Notes to be issued for the Projects; and

WHEREAS, ECO Maine has requested that the Portland City Council approve the financing of the Projects and the issuance of the Bonds and Notes in order to satisfy the requirements of Section 147(f) of the Code; and

WHEREAS, ECO Maine has published notice of a public hearing on September 3, 2024, and held a public hearing on September 11, 2024, pursuant to Section 147(f) of the Code, as evidenced by the Certificate Concerning Public Notice and Approval of ECO Maine Solid Waste Recovery System Revenue Bond Anticipation Notes Series 2024 and Revenue Bonds Series 2025, an executed copy of which has been delivered to the City;

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT, the City Council, as the legislative body of the City of Portland, which is the governmental unit having jurisdiction over the area in which a portion of the Projects is located, hereby approves the financing of the Projects and the issuance of the Bonds and Notes by ECO Maine therefore, all in accordance with Section 147(f) of the Code.

APPROVAL OF APPLICABLE ELECTED REPRESENTATIVE

**Regarding the
ECO MAINE SOLID WASTE RESOURCE RECOVERY SYSTEM**

**REVENUE BOND ANTICIPATION NOTES, SERIES 2024
AND
REVENUE BONDS, SERIES 2025**

The undersigned, as of this _____ day of October, 2024, **HEREBY CERTIFIES**
that:

(A) I am the City Manager of the City of Portland, Maine (the “City”); and

(B) The Portland City Council is the elected legislative body of the City; and

(C) Pursuant to Section 147(f)(2) of the Internal Revenue Code of 1986, as amended (the “Code”), on October 7, 2024, the City Council adopted Resolution No. _____ (the “Resolution”, an attested copy of which is attached hereto as Exhibit A), pursuant to which the City Council approved the issuance of ECO Maine’s (the “Issuer”) Solid Waste Resource Recovery System Revenue Bond Anticipation Notes, Series 2024, (the “BANS”) and the Issuer’s Solid Waste Resource Recovery System Revenue Bonds, Series 2025, (the “Bonds”), in an aggregate principal amount not to exceed \$35,500,000, the proceeds of which BANS and Bonds will be used by the Issuer for the purpose of the financing and refinancing of the costs of the Projects as described and defined in the Resolution.

(D) The Chief Executive Officer of the Issuer has delivered a certificate to the City (the “Certificate”) certifying that the Issuer has determined that the Issuer has authorized issuance of the BANS and Bonds, in compliance with Section 147(f)(2) of the Code. The Issuer has also represented to the City that the Projects constitute “solid waste disposal facilities” as defined in Section 142(a)(6) of the Code.

(E) Such approval is based solely upon the representations and certifications of the Issuer, including but not limited to as set forth in the Certificate, and is only for the purposes of complying with the Code. It is not intended nor should it be construed to be any review or approval by the undersigned or the City of the credit of the Issuer or any participating municipality, or any type of guaranty by the undersigned, the City, or any department, agency or instrumentality thereof, of the payment or principal of, or interest, on the BANS or the Bonds.

[Signature Page Follows]

IN WITNESS WHEREOF, I have caused this instrument to be executed and delivered as of the date first written above.

City Manager
City of Portland, Maine

Exhibit A
TEFRA Resolution

MEMORANDUM

TO: City of Portland, City of South Portland, Town of Scarborough
FROM: Updike, Kelly & Spellacy, P.C., Bond Counsel to ECO Maine
RE: ECO Maine Bond Anticipation Notes and Bonds - TEFRA Requirements
DATE: September 23, 2024

This memorandum provides a general outline with respect to the TEFRA approval required by the Internal Revenue Code of 1986 (the “Code”) in regards to the ECO Maine Bond Anticipation Notes (“BANs”) and Bonds, the BANs anticipated to be issued in October of 2024.

ECO Maine is recognized under Maine law as a public waste disposal corporation, which is a quasi-municipal entity that has the authority to issue revenue obligation securities pursuant to Title 10, chapter 110, subchapter 4 of Maine law (the MSAP of FAME). See, 38 M.R.S.A. § 1304-B(5). The BANs and the Bonds are exempt from taxation under Maine law and are qualified private activity bonds exempt for purposes of federal tax law (i.e., an exempt facility bond; solid waste disposal facility). In order to be a qualified private activity bond, ECO Maine must satisfy various provisions of Section 147 of the Code, among other things. In particular, ECO Maine must receive “public approval” under Section 147(f), which includes two requirements. The first requirement is that the BANs and the Bonds are approved by the governmental unit that issues the BANs and the Bonds or on behalf of which the BANs and Bonds were issued. In this instance, ECO Maine is the issuer and its Board has approved the issuance of the Bonds through a resolution adopted in January. The second requirement is that the BANs and the Bonds must be approved by each governmental unit having jurisdiction over the area in which the proceeds of the BANs and the Bonds will be used to finance facilities, following public notice and hearing. ECO Maine already issued public notice and held a public hearing related to this requirement, and a certificate of ECO Maine is hereby provided, on which you may rely. The proceeds of the BANs and the Bonds are being used to finance facilities in Portland, Scarborough and South Portland. As a result, ECO Maine is required to seek the approval of the “applicable elected representative” of each of those municipalities before issuing the BANs and the Bonds. Under the Code, the “applicable elected representative” would be the elected legislative body of each of the City of Portland, the City of South Portland and the Town of Scarborough.

The approval of the ECO Maine BANs and Bonds is not a debt obligation of any of the municipalities. The municipalities respective obligations under the Interlocal Agreement or any Waste Handling Agreements with ECO Maine are not changing.

Therefore, ECO Maine is requesting approval from your respective Councils and authorizing the appropriate official to execute the public approval certificate.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: August 29, 2024

SUBJECT: Order 61-23/24 Approving First Amendment to Stadium Use Agreement for Use and Occupancy of James J. Fitzpatrick Stadium by Hearts of Pine LLC - 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 City and Hearts of Pine LLC (the "Club") are parties to a Stadium Use Agreement for a professional soccer team at Fitzpatrick Stadium.

In the months since the Council approved the agreement, the Club has discovered that the existing field does not meet United Soccer Leagues (USL) standards, which exceed those normally applied to recreational fields. If approved, this item would amend the existing agreement to allow the Club, at its own expense, to install a new turf field at Fitzpatrick Stadium.

The Club plans to replace the existing field, which has sewn-in lines, with a plain green field that requires lines to be painted and removed from time to time. Because the periodic painting requires more maintenance than a field with sewn-in lines, the Club will be responsible for the cost of painting and removing lines as needed throughout the initial term of the agreement, which goes through the fall of 2029. The amendment to the agreement includes language to ensure that the painting process does not adversely impact the use of the field by the schools and other Fitzpatrick users. The amendment also replaces the original list of improvements that the Club plans to make with an updated and expanded list. The list is attached as Exhibit A to the agreement and includes \$2,500,000- \$3,000,000 in improvements.

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 - Amendment to Agreement between COP and Hearts of Pine
2. First Amendment to Stadium Use Agreement Hearts of Pine clean for Council 100424 10.4.24
3. Portland United LLC_Hearts of Pine LLC_Assignment & Assumption_Stadium Use_02.21.2024
4. Portland United, LLC_Fitzpatrick Stadium Use Agreement_12.18.2023

Prepared by:

Date: 08/29/2024

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 FIRST AMENDMENT TO STADIUM USE AGREEMENT FOR
USE AND OCCUPANCY OF JAMES J. FITZPATRICK STADIUM
BY HEARTS OF PINE LLC**

ORDERED, that the First Amendment to Stadium Use Agreement dated December 18, 2023 regarding the use and occupancy of the James J. Fitzpatrick Stadium by Hearts of Pine LLC is hereby approved, substantially in the form attached; and

BE IT FURTHER ORDERED, the City Manager or designee is authorized to execute the First Amendment in substantially the form attached hereto and any and all other contracts and documents necessary to effect the intent and purpose of the amendment.

**FIRST AMENDMENT
TO
STADIUM USE AGREEMENT
FOR USE AND OCCUPANCY OF
JAMES J. FITZPATRICK STADIUM**

This First Amendment to Stadium Use Agreement for Use and Occupancy of James J. Fitzpatrick Stadium (this “Amendment”) is made as of October __, 2024 (the “Amendment Date”), by and between Hearts of Pine LLC, a Maine limited liability company (the “Club”) and The City of Portland, Maine, a body politic and corporate (the “City”). The Club and the City are each a “Party” and collectively the “Parties.” Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Existing Agreement (as defined below).

WHEREAS, Portland United, LLC, a Maine limited liability company (“PU”) and the City entered into that certain Stadium Use Agreement for Use and Occupancy of James J. Fitzpatrick Stadium, dated as of December 18, 2023, a copy of which is attached hereto as Exhibit A (the “Existing Agreement”);

WHEREAS, PU assigned all of its right, title, and interest in the Existing Agreement to the Club under that certain Assignment and Assumption Agreement, by and between PU and the Club, and acknowledged and agreed to by the City, dated as of February 21, 2024, a copy of which is attached hereto as Exhibit B (the “Assignment Agreement”); and

WHEREAS, in the time since the Existing Agreement was signed, the Club discovered that the turf field at the Stadium does not comply with applicable League Rules; and

WHEREAS, the Parties wish to enter into this Amendment to amend the Existing Agreement to allow for the Club to install a new turf field at the Stadium as set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Amendments.

a) Section 1 (Definitions) of the Existing Agreement shall be amended as follows:

The term “Club Line Painting” is added to Section 1 and defined as follows:

““Club Line Painting” shall have the meaning assigned thereto in Section 8(b) of the Agreement.”

The term “Line Modification” is added to Section 1 and defined as follows:

““Line Modification” shall have the meaning assigned thereto in Section 8(b) of the Agreement.”

The term “Standard Line Modification Cap” is added to Section 1 and defined as follows:

““Standard Line Modification Cap” shall have the meaning assigned thereto in Section 8(b) of the Agreement.”

The term “New Playing Surface” is hereby modified to “New Playing Field”.

The term “New Stadium Turf” is added to Section 1 and defined as follows:

““New Stadium Turf” shall have the meaning assigned thereto in Section 3(f) of the Agreement.”

The term “Standard Line Painting” is added to Section 1 and defined as follows:

““Standard Line Painting” shall have the meaning assigned thereto in Section 8(b) of the Agreement.”

b) The following is added to the Agreement as Section 3(f):

(f) New Stadium Turf. Notwithstanding anything to the contrary in this Section 3, the parties acknowledge and agree that between December 1, 2024 and December 31, 2024, weather permitting, the Club shall, at its own expense, install a new plain green artificial turf surface at the stadium (the “New Stadium Turf”). For the avoidance of doubt, the New Stadium Turf will be considered an Improvement as contemplated hereunder, and as generally described in Exhibit A. Upon request by the Club, the dates for such installation may be changed by the City Manager or their designee, provided that the parties acknowledge and agree that the installation shall be completed reasonably far in advance of the Club’s 2025 League season. The New Stadium Turf shall be installed in accordance with all applicable laws, rules, regulations, industry and professional standards, and the League Rules. The New Stadium Turf shall be painted in accordance with the provisions of Section 8(b) below. Because the New Stadium Turf will not include a painted “Bulldog” logo, the Club agrees to (i) maintain the existing Bulldog signage on the Stadium pressbox and scoreboard, and (ii) work together in good faith with the Superintendent of the Portland Public Schools (“PPS”) or their delegate to identify additional ways for the Club to ensure that the Bulldog logo, or other reasonably requested PPS imagery, is visibly displayed on the Stadium Premises.

c) Section 8(b) of the Existing Agreement is hereby deleted in its entirety and replaced with the following:

“(b) Field Painting and Removal; Escrow.

(1) The Club and City anticipate that all lines for soccer, football, lacrosse, and field hockey will need to be painted on the New Stadium Turf at least twice per applicable season (collectively, “Standard Line Painting”). During the Term of this Agreement, the City will be responsible for performing the Standard Line Painting. Solely during the Initial Term, the Club will be responsible for the cost of the Standard Line Painting, which shall be paid by the Club in accordance with subsection (4) below.

(2) In connection with the Club’s use of the Stadium as permitted hereunder, in its reasonable discretion, the Club may, at the Club’s own expense, add and/or remove any painted lines or other markings (including Standard Line Painting) on the playing field at the Stadium in order to comply with League Rules (defined below) or to otherwise conform to the League’s or the US Soccer

Federation's guidelines (collectively, "Club Line Painting") (Standard Line Painting and Club Line Painting are referred to herein collectively as "Line Modifications"). The Club acknowledges and agrees that it will not allow Club Line Painting to interfere with previously scheduled use of the field by other Stadium users. For the avoidance of doubt, in the event that Club Line Painting includes removal of lines needed by other Stadium users, the Club shall repaint those lines in a timely manner such that the repainting will not interfere with previously scheduled use of the field by others.

(3) If, during the Initial Term, the City reasonably determines that Standard Line Painting is reasonably necessary for the use of the field by Stadium users other than the Club, the City will provide reasonable advance notice to the Club (by email or text message designated by the Club's President) of the need for such Standard Line Painting and the date and time by which such painting must be complete and the field ready for use. For the avoidance of doubt, the City will be responsible for coordinating all Standard Line Painting. If, during the Term, the Club reasonably determines that Club Line Painting is reasonably necessary for the use of the field by the Club, the Club will provide reasonable advance notice to the City (by email or text message designated by the City's Director of Parks, Recreation, and Facilities) of the need for such Club Line Painting, and which notice will include either (i) a statement by the Club that it will coordinate such Line Modification itself; or (ii) a request by the Club for the City to coordinate such Club Line Painting at the Club's expense. If the Club elects to coordinate the Club Line Painting itself, it agrees to complete, or cause its contractor to complete, such painting by the date and time reasonably requested by the City, and, in any event, in accordance with subsection (2) above. If the Club requests that the City coordinate the Club Line Painting, such painting will be subject to the payment provisions in subsection (4) below. In any event, all line painting and removal (including Club Line Painting) on the New Stadium Turf, whether performed by the City, the Club, or their contractors, will be done in a good and workmanlike manner in accordance with industry standards. For the avoidance of doubt, the provisions of this Section 8(b) are not intended to, and shall not, interfere in any way with the parties' other rights and obligations under this Agreement, including the Club's right to use and enjoyment of the Stadium as contemplated hereunder, or with the rights of other Stadium users who have previously scheduled use of the field.

(4) For Standard Line Painting made during the Initial Term, the City will submit an invoice to the Club. Subject to the Standard Line Painting Cap (as defined below), during the Initial Term, the Club will pay the City for all undisputed amounts due on the applicable invoice, up to a maximum amount of (i) \$25,000 per calendar year, and (ii) \$125,000 in the aggregate (the "Standard Line Painting Cap"). Each year of the Initial Term, the Parties will evaluate the commercially reasonable quoted pricing for the Standard Line Painting and discuss in good faith whether it is reasonably necessary and equitable to increase the Standard Line Painting Cap; *provided*, however, that in the event that the Parties agree on such an increase, the Standard Line Painting Cap shall not exceed \$30,000 in any calendar year and \$150,000 in the aggregate during the Initial Term. The Club will pay each invoice submitted to it by the City for applicable Line Modification as set forth hereunder within 30 days after the date of the invoice. Any disputed amounts in any such invoice will be subject to the dispute resolution

process set forth in Section 37 of this Agreement. For Club Line Painting made by the City during the Term, the City will submit an invoice to the Club. The Club will pay each invoice within 30 days after the date of the invoice. Any disputed amounts in any such invoice will be subject to the dispute resolution process set forth in Section 37 of this Agreement.

(5) In order to ensure that there is sufficient funding (up to the Standard Line Painting Cap) available for the Standard Line Painting described in this subsection (b), the Club, prior to the first Line Modification, will deposit the sum of \$25,000.00 into a City-held, non-interest bearing escrow account pursuant to an escrow agreement in form and substance reasonably satisfactory to both parties (the “Line Painting Escrow Agreement”). The Line Painting Escrow Agreement will provide that the City may draw upon the escrow account if the Club fails to pay the painting invoices submitted by the City in a timely manner, subject to a reasonable cure period not to exceed ten (10) days. If and to the extent applicable, on or about January 1 of each subsequent year during the Initial Term, the Club shall deposit such additional amounts into the escrow account as are needed to bring the balance of the account to \$25,000.00. At the end of the Initial Term, and after all amounts due and payable to the City under this subsection (b) have been paid, the City will return the remaining balance of the escrow account to the Club.

(6) Notwithstanding anything to the contrary in this subsection (b), but otherwise subject to the terms and conditions of this Agreement, if the term of the Agreement is extended beyond the Initial Term, the City will be responsible for all Standard Line Painting during such extension at the City’s cost and at times that the City reasonably determines such painting is reasonably necessary.

(7) Paint removal. At any time during the Term, if paint removal is included in any Club Line Painting, the Club will be responsible for the cost of any such paint removal, and such paint removal will be subject to the procedures and payment provisions set forth in subsections 3 and 4 above.

- d) Exhibit A to the Existing Agreement is hereby deleted in its entirety and replaced with the following:

EXHIBIT A

DESCRIPTION OF IMPROVEMENTS

Total expected capital expense: \$2,500,000 - \$3,000,000

New Artificial Turf Surface At The Stadium

- Install new plain green artificial turf surface (~10 year expected life)
- Repair subsurface and install safety pad underneath (20+ year expected life)
- Projected expense range: \$650,000 - \$700,000

Site Lighting

- Install and upgrade current MUSCO lighting to meet USL specifications
- Projected expense range: \$325,000 - \$600,000

Press Box

- Make cosmetic and operational improvements to Press Box

- Likely to include infrastructure to improve broadcast and streaming operations
- City will have ability to use on non-gameday
- Projected expense range: \$140,000 - \$170,000

Team Locker Rooms

- Other Stadium users will have ability to use Visitor locker room on non-gamedays if not in use by the Club.
- Projected expense range, including site work and utilities to enable: \$1,150,000 - \$1,300,000

Club Storage Area

- Club to add storage containers
- City to have use of space in containers if available.
- Projected expense range: \$10,000 - \$20,000

Ticketing Entrance

- Club to improve ticketing entrance and Stadium access points, if needed
- City will have ability to use on non-gameday
- Projected expense range, if needed: \$10,000 - \$20,000

Audio System

- Club to improve Speaker and Audio system, if needed
- City will have ability to use on non-gameday
- Projected expense range, if needed: \$40,000 - \$50,000

Miscellaneous

- New Field Goal Posts
- Other Electronics Allowance
- Seating upgrades
- Site Accessories and Landscaping
- Associated design, engineering, utility connection costs
- Additional Operational and Fan Experience Elements
- City will have ability to use on non-gameday
- Projected expense range: \$150,000 - \$300,000.”

2. Other Provisions Remain in Full Force and Effect. This Amendment shall modify and amend the Existing Agreement to the extent, and only to the extent, expressly set forth herein and all of the terms and provisions of the Existing Agreement that are not expressly amended, modified, waived, or replaced hereunder shall be unaltered and shall remain in full force and effect. From and after the Amendment Date, all references in the Existing Agreement to this “Agreement”, “herein”, “hereunder”, and words of like import shall mean and refer to the Existing Agreement as amended by this Amendment. Unless otherwise defined in this Amendment, capitalized terms used in this Amendment have the same meaning that those terms have in the Existing Agreement.
3. Miscellaneous. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement. A signed copy of this Amendment delivered by facsimile, e-mail, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment.

[Signature page to follow.]

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment to Stadium Use Agreement for Use and Occupancy of James J. Fitzpatrick Stadium, to be effective as of the Amendment Date.

THE CITY OF PORTLAND

By: _____
Name: Danielle P. West
Title: City Manager

HEARTS OF PINE LLC,
a Maine limited liability company

By: **Portland United, LLC,**
a Maine limited liability company,
It's Sole Member

By: _____
Name: Gabe Hoffman-Johnson
Title: Manager

Approved as to form:

City Corporation Counsel

Approved as to funds:

City Finance Director

EXHIBIT A

Existing Agreement

[Attached]

EXHIBIT B

Assignment Agreement

[Attached]

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this “**Agreement**”) is made as of February 21, 2024, by and among Portland United, LLC, a Maine limited liability company with a mailing address of 7 Stratton Place, Portland, Maine 04101 (“**Assignor**”), and Hearts of Pine LLC, a Maine limited liability company with a mailing address of 50 Romasco Lane, Portland, Maine 04101 (“**Assignee**”). Capitalized terms not otherwise defined in this Agreement will have the meanings given to them in the Stadium Use Agreement (as defined below).

Recitals

A. Assignor and the City of Portland (the “**City**”) are parties to that certain Stadium Use Agreement for Use and Occupancy of James J. Fitzpatrick Stadium, dated as of December 18, 2023, attached hereto as Exhibit A (the “**Stadium Use Agreement**”).

B. Pursuant to Section 35 of the Stadium Use Agreement, Assignor is required to obtain the City’s written approval in order to assign its interest in the Stadium Use Agreement.

C. Assignor wishes to transfer, assign, and deliver to Assignee all of Assignor’s right, title, and interest in the Stadium Use Agreement, and Assignee wishes to assume all of Assignor’s obligations under the Stadium Use Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Assignor hereby sells, transfers, assigns and delivers to Assignee all of Assignor’s right, title, and interest in and to the Stadium Use Agreement.

2. Assignee hereby assumes and agrees to discharge all of the obligations of Assignor under the Stadium Use Agreement from and after the date of this Agreement.

3. Except for all liabilities and obligations set forth in the Stadium Use Agreement, Assignee is not assuming any liability or obligation of Assignor hereunder.

4. Neither the representations and warranties of Assignor, nor the rights, remedies and obligations of any party, under the Stadium Use Agreement shall be deemed to be enlarged, limited, modified or altered in any way by this Agreement.

5. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns.

6. Commencing June 1, 2024, Assignee’s mailing address for any notices provided under the Stadium Use Agreement will be 1 Union Wharf, Portland, Maine 04101.

7. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A signature in a pdf or electronic document shall be considered the equivalent of an original signature.

IN WITNESS WHEREOF, the parties have caused this Assignment and Assumption Agreement to be duly executed as of the date first written above.

ASSIGNOR:

Portland United, LLC,
a Maine limited liability company

DocuSigned by:
By: Gabe Hoffman-Johnson
F3BA9A8695BE4BB...
Name: Gabe Hoffman-Johnson
Title: Manager

ASSIGNEE:

Hearts of Pine LLC,
a Maine limited liability company

DocuSigned by:
By: Gabe Hoffman-Johnson
F3BA9A8695BE4BB...
Name: Gabe Hoffman-Johnson
Title: Authorized Officer

Acknowledge and Agreed:

The City of Portland

DocuSigned by:
By: Danielle West
A454B612E752416...
Name: Danielle P. West
Title: City Manager

Approved as to form:

DocuSigned by:
Michael Goldman
5BDA6A4DE55B4E1...
City Corporation Counsel

EXHIBIT A

Stadium Use Agreement

[Attached]

STADIUM USE AGREEMENT
FOR USE AND OCCUPANCY
OF
JAMES J. FITZPATRICK STADIUM

between

PORTLAND UNITED, LLC, a Maine limited liability company

and

THE CITY OF PORTLAND, a municipal corporation

DATED: as of December 18, 2023

EXHIBITS

EXHIBIT A

DESCRIPTION OF IMPROVEMENTS

EXHIBIT B

DESCRIPTION OF EXCLUSIVE PREMISES

EXHIBIT C

DEPICTION OF STADIUM PREMISES

EXHIBIT D

DEPICTION OF PARKING FACILITIES

**STADIUM USE AGREEMENT
FOR USE AND OCCUPANCY OF
JAMES J. FITZPATRICK STADIUM**

This Stadium Use Agreement for Use and Occupancy of James J. Fitzpatrick Stadium (this "Agreement") is made and entered into as of December 18, 2023 (the "Effective Date") in Portland, Maine, by and between Portland United, LLC, a Maine limited liability company (the "Club") and The City of Portland, Maine, a body politic and corporate (the "City").

RECITALS

- A. The City owns that certain multipurpose sports stadium on Deering Avenue in Portland, Maine known as James J. Fitzpatrick Stadium (the "Stadium"). The Stadium is used for the exhibition of sport contests and other events including, but not limited to, high school and college soccer, lacrosse and football games.
- B. The Club owns the rights to a professional soccer franchise in that certain professional soccer league known as "USL League One" within the professional soccer organization known as the United Soccer League (the "USL") (together, with all other leagues and affiliate entities within the USL, collectively, the "League"), and the Club anticipates it will begin hosting League soccer games during the 2025 USL League One season.
- C. The City and the Club now propose that the Club construct improvements and additions to the Stadium (collectively, the "Improvements") in accordance with the Approved Plans (as hereinafter defined) and which are generally described or listed on Exhibit A attached hereto and by this reference made a part hereof.
- D. The City and the Club propose that the Club use and occupy the Stadium to host League games and other events throughout the Term (as hereinafter defined).

NOW, THEREFORE, in consideration of the construction of the Improvements, the use of the Stadium, the covenants and conditions set forth herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Club and the City have agreed to enter into this Agreement and set forth herein their mutual agreements and understandings as follows:

- 1. **Definitions.** The terms as defined in this Section 1, shall have the following meanings in this Agreement unless the context otherwise requires:

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether

through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

"Approved Architect" shall have the meaning assigned thereto in Section 3 hereof.

"Approved Construction Schedule" shall have the meaning assigned thereto in Section 3 hereof.

"Approved Facilities Construction Schedule" shall have the meaning assigned thereto in Section 3 hereof.

"Approved Facilities Plans" shall have the meaning assigned thereto in Section 3 hereof.

"Approved Plans" shall have the meaning assigned thereto in Section 3 hereof.

"Architect's Certificate" shall mean a certificate of the Approved Architect, stating that the Improvements have been completed and are ready for use and occupancy by the Club.

"Broadcast" shall mean any and all methods and formats of distributing audio and/or visual content of any Club Event (whether television, radio, digital, or otherwise) in a final usable broadcasted form to be viewed, listened to, otherwise consumed by an end-user, including, without limitation, television, radio, livestream and all other digital distribution of content, telecasts in theaters or other similar venues where multiple people in one location watch, listen, or otherwise consumer content simultaneously (in each case, whether or not any such broadcast requires the end-user to pay an admission charge, subscription fee, or so-called "pay-per-view" fee).

"Broadcast Receipts" shall mean the gross amount received by the Club from or arising out of the broadcast of any Club Event, whether paid directly to the Club or through a revenue sharing arrangement with the League.

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal or State legal holiday or any day on which banking institutions in the State of Maine are authorized or required by law or other governmental action to close.

"CBA" shall mean any Collective Bargaining Agreement between the League (or any Affiliate of the League) and the United Soccer League Players Association (or any Affiliate or designee or successor association thereto).

"Club" shall have the meaning assigned thereto in the preamble hereof.

"Club Event" shall mean Home Games (as defined below) and all other Club-hosted events at the Stadium and/or on the Stadium Premises throughout the Term. All Club Events shall begin between 12:00 p.m. and 8:00 p.m. unless otherwise agreed to in writing by the City.

"Club Operated Parking Facility" shall have the meaning set forth in Section 2(b)(i).

"Club Products" shall mean the Club or any other League club or League programs, year books or similar written and/or photographic material, scarves, soccer balls, posters, pins, clothing,

pennants, caps, collectibles, and any and all other Club, or other League club or League, apparel or other merchandise inclusive of Club, other League club, and/or League logos or other marks.

“Club Storage Area” means two (2) 20’ (length) x 18’ (width) x 8’6” (height) storage containers (i) selected by the Club, in its reasonable discretion, (ii) paid for by the Club, and (iii) placed in a reasonable area designated by the City within the Stadium Premises, which area shall be subject to relocation by the City upon reasonable prior notice to the Club; provided that any such new location shall be reasonable and within the Stadium Premises. For clarity, the Club Storage Area is for the Club’s exclusive use; provided, however, if the Club determines in its sole discretion, there is additional space available, the City will be permitted to utilize such additional space for reasonable storage purposes.

“City” shall have the meaning assigned thereto in the preamble hereof.

“Concessions” shall mean the business of selling, renting and/or furnishing goods and/or services, including, without limitation, food, beverages (including alcoholic and non-alcoholic beverages), souvenirs, novelties, apparel and any other merchandise during Club Events. For the avoidance of doubt, the term Concessions does not include parking.

“Construction Completion Date” shall mean the date on which the Improvements are complete and ready for use and on which a certificate of occupancy has been issued by the City of Portland Permitting & Inspections Department (or appropriate authority as applicable).

“CPI” shall mean the United States Department of Labor - Bureau of Labor Statistics Consumer Price Index for Portland, Maine (All Urban Consumers, All Items) (1982-1984=100). If the CPI formula should be revised, such revised CPI shall be modified, if necessary, by making such adjustments as may be required to produce substantially equivalent financial results to those that would have resulted if the formula had not been revised. If the CPI should be so revised that such adjustment cannot reasonably be made, or if the CM shall be discontinued, there shall be substituted for the CPI a reasonably reliable and comparable index or other information furnished by a government or independent third party source evaluating changes in the cost of living or purchasing power of the consumer dollar in Portland, Maine hereof.

“Damage” shall have the meaning assigned thereto in Section 20 hereof.

“Damage Estimate” shall have the meaning assigned thereto in Section 20 hereof.

“Excluded Games” shall have the meaning assigned thereto in Section 9 hereof.

“Exclusive Premises” shall mean the Club Storage Area and home locker room in each case described in greater detail on Exhibit B attached hereto and by this reference made a part hereof.

“Fixed Signage” shall mean any physical signage (including, without limitation, the sale of advertising space) that is (1) placed and operated within the Stadium Premises by the Club, and (2) remains continuously visible throughout the Term.

"Force Majeure Event" shall mean any of the following events which prevents a party from performing its obligations hereunder: any act of God, strike, lockout, League dissolution, termination or expiration of Club's expansion and/or franchise agreement with the League, or other industrial disturbance; pandemic, epidemic or any other outbreak; act of public enemy, blockade, war, insurrection, or riot; landslide, earthquake, tornado, fire, storm, flood, or washout; title dispute, or other litigation; governmental restraint, either federal or state, civil or military; civil disturbance; or explosion.

"Home Game" shall mean any League Game, Pre-Season Game, or Post-Season Game played by the Club at the Stadium.

"Improvement Completion Date" shall have the meaning assigned thereto in Section 3 hereof.

"Improvements" shall have the meaning assigned thereto in the recitals hereof.

"League" shall have the meaning ascribed to it in the recitals hereof.

"League Game" shall mean any professional soccer game scheduled by the League between the Club and another league member the outcome of which shall be included in determining the participants in the applicable League playoffs.

"Material Change" shall mean (i) any change (which shall include any single change or two or more changes which cumulatively comprise a material change) in (1) the general character, design, color or general aesthetic appearance of the exterior of the Improvements; (2) the size or capacity of the Improvements or the quality of the materials used therein; or (3) the orientation of or access and entrance to the Stadium; and (ii) any other material change, if the cost of such change, as reasonably estimated by the Club, is in excess of Two Hundred Thousand Dollars (\$200,000).

"Net Club Revenue" shall mean, with respect to each Club Event, the sum of the following, whether paid to the Club (or an Affiliate thereof), or to any Person authorized to receive the same on behalf of the Club (or an Affiliate thereof):

- (i) the total of all dollar amounts paid for any ticket or other source of admission to Club Events, including any license fee charged in excess of the ticket charges (if applicable);
- (ii) all Net Concession Revenues;
- (iii) all Net Signage Revenues; *provided, however*, that the City shall be entitled to fifteen percent (15%) of all Net Signage Revenues received by Club from Fixed Signage at the Stadium during the Term (the "City Signage Revenue");
- (iv) all revenues resulting from the sale of Club Products;
- (v) all revenue derived from the sale of audio and/or visual broadcast rights to Home Games or any other Club Event (regardless of the form or medium of broadcast or distribution);

(vi) all revenue derived from commercial sponsorships or any other media activities, subject to (iii) above with respect to Fixed Signage; and

(vii) all other revenues received by the Club (or Affiliate), directly or indirectly, including as a result of a League initiative or requirements.

(viii) Net Club Revenue does not include parking revenue.

"Net Concession Revenue" shall mean all revenue derived from Concessions and catering sales within the Stadium Premises during Club Events less all reasonable fees and expenses paid to or retained by the applicable concessionaire or other vendor in accordance with any concession (or other) agreement with the City or the Club in connection with the operation of Concessions stands/booths or other similar services during Club Events.

"Net Parking Revenue" shall mean all revenue derived from the operation of On-Site Parking Facilities and Off-Site Parking Facilities during Club Events less all documented reasonable fees and expenses paid or otherwise incurred by the City, or, in the case of Club Operated Parking Facilities, the Club, in connection with the operation of the Parking Facilities during Club Events.

"Net Signage Revenue" shall mean all consideration received by the Club in connection with the operation of the scoreboard and all Fixed Signage and Temporary Signage at the Stadium during the Term less the Club's documented expenses incurred in the operation and marketing of such scoreboard and signage.

"New Playing Surface" shall have the meaning set forth in Section 3(a)(vi) hereof.

"Notice" shall have the meaning assigned thereto in Section 30 hereof.

"Off-Site Parking Facilities" shall mean those areas in the general vicinity of the Stadium that are owned or controlled by third parties and are currently available for the parking of motor vehicles, including the areas identified as Maine Med 1, Maine Med 2, and King Middle School on Exhibit D.

"On-Site Parking Facilities" shall mean those areas owned by the City adjacent to or near the Stadium that are currently available for the parking of motor vehicles by persons attending events at the Stadium, including the areas identified as Hadlock, Gated Lot, Trough/Expo, and Fitzpatrick on Exhibit D.

"Parking Facilities" shall mean, collectively, the On-Site Parking Facilities and the Off-Site Parking Facilities.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Post-Season Game" shall mean any game played by the Club at the Stadium following the completion of the scheduled Regular Season as part of the USL League One Playoffs organized by the League, culminating with the USL League One championship game.

"Pre-Season" shall mean the period from the first regularly scheduled Pre-Season Game to the last regularly scheduled Pre-Season Game of the Club in the Stadium.

"Pre-Season Game" shall mean any soccer game played by the Club in the Stadium during the Pre-Season.

"Project Costs" shall mean the following costs to the extent that such costs are incurred or accrued by or for the account of the Club for the construction and development of the Improvements in accordance with the terms of this Agreement, not reimbursed or reimbursable by others, and properly allocable to the Improvements: all architectural and engineering costs, all permit costs, all direct costs for labor, materials and subcontract performance that are incorporated into the Improvements, demolition costs, construction costs, the cost of equipment and other capital improvements installed in the Stadium Premises, site preparation costs, and all other costs which would customarily be considered to be "hard costs" or "architectural or engineering costs" of the Improvements and otherwise satisfy the criteria set forth in this sentence.

"Regular Season" shall mean the period from the first League Game to the last regularly scheduled League Game of the Club in the Stadium as established by the annual schedule of the League, including Post-Season Games.

"Revised Plans" shall have the meaning assigned thereto in Section 3 hereof.

"Stadium" shall have the meaning assigned thereto in the recitals hereof.

"Stadium Premises" shall mean that part of the Stadium within the Stadium's perimeter wall necessary for the proper exhibition of professional soccer according to League rules, standards, and guidelines, including the playing field, seating, locker rooms, medical room, press box, Club Storage Area and ticket sales facilities as set forth on the drawing attached hereto as Exhibit C.

"Temporary Signage" shall mean any signage (including, without limitation, the sale of advertising time or space) that is (1) placed and operated by the Club, whether within the Stadium Premises or otherwise and (2) unless otherwise agreed to by the Parties, is only visible during Club Events.

"USL" shall have the meaning ascribed to it in the recitals hereof.

2. Premises.

(a) Right to Use and Occupancy. The City hereby grants to the Club the right to use and occupy the Stadium and Stadium Premises, but only for the purpose, at the time during each calendar year, for the consideration, and upon the terms and conditions expressed in this Agreement. The City warrants and represents that it has the right and power to grant the rights granted herein. The Club acknowledges and agrees that it has inspected the Stadium and Stadium

Premises and it agrees to accept them and all equipment furnished therewith as is and where is, and Club acknowledges that City has not made any warranties or representations of any kind with respect thereto, except as expressly provided in this Agreement.

(b) Parking.

(i) Spectator Parking. For each Club Event, and for so long as the Parking Facilities are available for the City's use in connection with this Agreement, the City shall have the sole right to operate or cause to be operated the Parking Facilities for parking of spectator motor vehicles for each Club Event. Commencing approximately two (2) hours prior to the scheduled start of each Club Event, the City shall provide staff to operate or cause to be operated the Parking Facilities as set forth in this Section. If the City reasonably determines, however, that the City is not able to sufficiently operate one or more of the Parking Facilities for a Club Event, the City shall provide no less than 48 hours advanced notice to the Club, and the Club will have the right to operate, or engage a third party to operate, such Parking Facility or Facilities (or any portion thereof) for such Club Events (in each case, a "Club Operated Parking Facility").

(ii) Club Parking. For each Club Event, and for so long as the Parking Facilities are available for the City's use in connection with this Agreement, the Club shall have the right at no additional cost to the Club, to use and occupy thirty (30) On-Site Parking Facilities parking spaces for Club players, coaches, staff, and any other Club or League personnel at no cost to the Club. Upon 48 hours prior written notice to the City, the Club may reserve up to twenty (20) additional parking spaces for such personnel for which the Club shall pay the City 80% of the City's standard rate for the spaces. For any additional non-reserved parking spaces used by the Club, the Club will pay to the City the standard rate for the spaces.

(iii) Parking Revenues. Subject to Section 2(b)(iv), for each Club Event, the City shall collect and retain all Net Parking Revenue.

(iv) Parking Revenues for Club Operated Parking Facility. For each Club Event for which the City has determined that it is not able to operate one or more Parking Facilities and the Club (or a third party acting on behalf of the Club) operates a Club Operated Parking Facility, the Club shall collect all Net Parking Revenue from any such Club Operated Parking Facility, and the Club shall promptly remit to the City payment in an amount equal to one hundred percent (100%) of all such Net Parking Revenue. Along with said payment, Club shall provide the City with copies of supporting documentation of all revenues and expenses related to Club Operated Parking Facilities in form and substance reasonably satisfactory to the City.

(v) The Club acknowledges and agrees that the parties that own or control the Off-Site Parking Facilities may no longer allow the City to use such facilities at some point in the future. The City also reserves the right to add to or reduce the number of parking spaces in the On-Site Parking Facilities at any time. The City makes no representations or warranties about the number of available parking spaces in any Parking Facility during the Term of this Agreement.

(c) Exclusive Premises. Notwithstanding anything to the contrary herein, the City hereby grants to the Club the exclusive right to use and occupy the Exclusive Premises throughout each year during the term of this Agreement.

3. Construction of Improvements.

(a) Improvements.

(i) Approval of Program and Estimate. The Club shall deliver to the City a copy of its proposed construction program and estimate for the Improvements on or before February 1, 2024. If the City does not approve of the Club's proposed construction program and estimate for the Improvements, the City shall deliver to the Club written notice of its disapproval within twenty (20) Business Days after its receipt thereof; *provided, however*, subject to any applicable laws, the City's approval shall not be unreasonably withheld. If the City does not provide such notice of its disapproval within the time period set forth above, the City will be deemed to approve the Club's proposed construction program and estimate for the Improvements. If the City disapproves such proposed program and estimate, then the City's disapproval notice shall set forth the City's reasons for such disapproval in reasonable detail. Upon receipt of any such disapproval notice, the Club and the City shall work together in good faith to revise the proposed program and estimate to address the City's reasons for disapproval within fourteen (14) Business Days after the Club's receipt of the disapproval notice; *provided*, that any such revisions must be in compliance with the rules, guidelines, and standards set forth and required by the League and applicable laws, ordinances, regulations, and rules. Each resubmission of the program and estimate shall be subject to the same approval process applicable to the original proposed program and estimate under this Section 3(a)(i). For the purposes of this Agreement, any program and estimate for the Improvements approved by the City in accordance with this Section 3(a)(i) shall be referred to as the "Approved Program and Estimate." The Club shall deliver to the City a description prepared by the Club's chosen architect of any changes, additions, or modifications to the Approved Program and Estimate. Any Material Change to the Approved Program and Estimate is subject to the City's prior written approval, which shall either be granted or denied within ten (10) Business Days after the City's receipt of the modified program and estimate incorporating any such Material Change.

(ii) Approval of Construction Schedule. On or before May 1, 2024, the Club shall deliver to the City a reasonably detailed schedule for the construction of the Improvements. If the City does not approve of the Club's schedule for the construction of the Improvements, the City shall deliver to the Club written notice of its disapproval within twenty (20) Business Days after its receipt thereof; *provided, however*, the City's approval shall not be unreasonably withheld. If the City does not provide such notice of its disapproval within the time period set forth above, the City will be deemed to approve the Club's schedule for the construction of the Improvements. For clarity, the proposed construction schedule shall provide that construction of the Improvements shall (1) commence on or before July 1, 2024, (2) be completed prior to the commencement of the Club's first Pre-Season Game in 2025, and (3) be performed in a manner so as not to prevent or interfere with the playing of any games or unreasonably interfere with the use, occupancy or enjoyment of the Stadium by other Stadium tenants or their patrons. If the City disapproves such proposed schedule, then the City's disapproval notice shall set forth the City's reasons for such disapproval in reasonable detail. Upon receipt of any such disapproval

notice, the Club and the City shall work together in good faith to revise the proposed construction schedule to address the City's reasons for disapproval within fourteen (14) Business Days after the Club's receipt of the disapproval notice; provided, that any such revisions must be in compliance with the rules, guidelines, and standards set forth and required by the League and applicable laws, ordinances, regulations, and rules. Each resubmission of such schedule shall be subject to the same approval process applicable to the original proposed schedule under this Section 3(a)(ii). For the purposes of this Agreement, any construction schedule for the Improvements approved by the Club in accordance with this Section 3(a)(ii) shall be referred to as the "Approved Construction Schedule."

(iii) Approval of Plans. The Club shall submit for City approval a copy of its proposed construction drawings, plans, and specifications for the Improvements as they are from time to time prepared in accordance with the Approved Construction Schedule and Approved Program and Estimate. If the City does not approve of such proposed construction drawings, plans and specifications, the City shall deliver to the Club written notice of its disapproval within twenty (20) Business Days after its receipt thereof. If the City does not provide such notice of its disapproval within the time period set forth above, the City will be deemed to approve the Club's proposed plans and specifications for the Improvements. If the City disapproves such proposed plans and specifications, then the City's disapproval notice shall set forth the City's reasons for such disapproval in reasonable detail. Upon receipt of any such disapproval notice, the Club and the City shall work together in good faith to revise the proposed construction schedule to address the City's reasons for disapproval within fourteen (14) Business Days after the Club's receipt of the disapproval notice; provided, that any such revisions must be in compliance with the rules, guidelines, and standards set forth and required by the League and applicable laws, ordinances, regulations, and rules. Each resubmission of plans and specifications shall be subject to the same approval process applicable to the original proposed plans and specifications under this Section 3(a)(iii). For the purposes of this Agreement, any plans and specifications for the Improvements approved by the Club in accordance with this Section 3(a)(iii) shall be referred to as the "Approved Plans."

(iv) Prosecution of Construction. The Club shall (A) use commercially reasonable efforts to minimize any interference that the construction of the Improvements may have on the other Stadium tenants and their respective patrons' use of the Stadium, and (B) use its commercially reasonable efforts to ensure that the construction is being completed substantially in accordance with the Approved Construction Schedule. In no event will the Club allow its construction or any other activities to prevent any other Stadium tenant or licensee or their patrons from occupying and using the Stadium and the Stadium Premises for an event at the Stadium.

(v) Cost of Construction. The Club shall expend not less than, and shall not be required to spend more than, One Million US Dollars (\$1,000,000) in Project Costs for the construction of the Improvements. In the event that the projected Project Costs based upon the construction bids for the construction of the Improvements and in accordance with the Approved Program and Estimate and Approved Plans exceed One Million US Dollars (\$1,000,000) in Project Costs, then the Club may either, in its reasonable discretion, (1) prepare revisions to the Approved Plans (the "Revised Plans") and submit them to the City for review and approval in accordance with the procedures set forth in section 3(a)(i)-(iii), or (2) terminate this Agreement. Once the

construction of the Improvements has commenced, the Club shall pay for all costs and expenses that arise in connection with such construction (including, without limitation, any cost overruns).

(vi) The Club acknowledges that (i) the City is considering constructing a new synthetic turf field playing surface to be installed at a location approved by the City (the “New Playing Field”), and will not be included as part of the Improvements, but rather will be designed, developed, and constructed by the City, (ii) the Club agrees that the Club will be responsible for a portion of the total cost thereof in the amount of Two Hundred Thousand US Dollars (\$200,000). The Club will provide the City with such payment on the later of (1) December 31, 2026, or (2) the date that the City either (a) includes the New Playing Field in its annual capital improvement program or (b) otherwise secures grant or other financial commitments for funding the remaining costs of the New Playing Field. Such payment is in addition to and is not included in the Project Costs set forth above. The City will be responsible for the remaining portion of the cost of the New Playing Field. All decisions related to the location, design, construction, and construction schedule for the New Playing Field will be made in the City’s sole discretion. If the City does not complete construction of the New Playing Field prior to the termination of this Agreement, the City will return the \$200,000 payment to the Club within thirty days after termination.

(b) Contractors; Subcontractors. Upon reasonable request from the City, the Club shall provide the City with a list of design/build team contractors and subcontractors that the Club, in its reasonable discretion, has selected to work on the Improvements. The Club shall use commercially reasonable efforts to ensure that all contractors and subcontractors comply with all material legal requirements in connection with the performance of all construction work.

(c) Performance of Construction Work. The Club shall, at its own cost and expense construct or cause to be constructed at the Stadium, the Improvements in accordance with the Approved Plans and the Approved Construction Schedule. Any and all construction work shall be done diligently, in conformity with all applicable legal and environmental requirements, including, without limitation, the Americans with Disabilities Act (42 U.S.C. §12101, et. seq.) and the Building and Fire Codes of the City of Portland, Maine, in a good and workmanlike manner, under the supervision of the Approved Architect, and in accordance with all applicable industry and professional standards. Once the Club commences the construction of the Improvements, the Club will diligently prosecute such construction to completion in accordance with the Approved Construction Schedule and the Approved Facilities Construction Schedule, respectively, subject to delays resulting from Force Majeure Events outside of the control of the Club. The Club shall obtain, at its sole expense, all building permits and other approvals necessary for the construction of the Improvements and shall commence construction thereof on or about a date mutually agreed upon by the Parties. The Club shall use its commercially reasonable efforts to complete construction of the Improvements on or before a date mutually agreed upon by the Parties.

(d) City Inspections. The City and its representatives may, from time to time, at the City’s own cost and expense, during reasonable business hours, in a manner which will not unreasonably interfere with construction work in progress, inspect the Improvements and the construction thereof and shall be furnished, upon request, with copies of all plans, shop drawings, and specifications relating to the Improvements to determine whether or not the construction of the Improvements is being or has been done in accordance with the provisions of this Agreement,

the Approved Plans and the Approved Facilities Plans. Prior to making such inspections, the City shall notify the Club's designated contact person which, as of the date of this Agreement, is Gabe Hoffman-Johnson. If the City inspectors determine in their commercially reasonable discretion that any such work is being done contrary to the obligations set forth in Section 3 of this Agreement, including the Approved Plans and the Approved Facilities Plans, the City will provide the Club prompt notice thereof (a "Noncompliance Notice"). Upon the Club's receipt of such Noncompliance Notice, the Club will have a reasonable amount of time to cure any such noncompliance, or otherwise dispute the alleged noncompliance set forth in the Noncompliance Notice in accordance with the dispute resolution process set forth in Section 36 of this Agreement. The Club acknowledges and agrees that any such inspection by the City is for purposes of determining compliance with the provisions of this Agreement, the Approved Plans and the Approved Facilities Plans and that such inspections shall not be deemed to impose any duty or liability upon the City to supervise any aspect of or approve the quality of the Improvements or any construction work.

(e) Permits. The Club shall, at its own expense, obtain all permits, licenses and other governmental approvals and authorizations which are required for the construction, operation or occupancy of the Improvements. Before allowing occupancy or use of the Improvements, the Club, at its own cost and expense, shall obtain and deliver to the City certificates of occupancy for the Improvements.

4. Term; Option to Extend Term.

The term of this Agreement shall begin on February 1, 2024 and, unless earlier terminated in accordance with the terms hereof, shall expire on the last day of the Post-Season during the 2029 calendar year (the "Initial Term"). The Club shall have two (2) consecutive options (each a "Club Extension Option") to extend the term of this Agreement beyond the Initial Term, in each case for a Five (5) year renewal term (each renewal term, together with the Initial Term, collectively, the "Term"); *provided, however*, in order to exercise a Club Extension Option, the Club must provide the City with no less than sixty (60) days' prior written notice thereof, and the Club must not be in material default under the provisions of this Agreement at the end of the then-current Term.

5. Use and Occupancy.

(a) Soccer Games and Other Club Events. Subject to the provisions of subsection 5(b) below, the Club shall have the exclusive right to play professional soccer games (and conduct pregame, half-time and post-game activities) at the Stadium Premises on each Club Scheduled Date on which a Home Game is to be played during the period commencing with the Pre-Season and including the Regular Season and, if Post-Season games are to be played as Home Games, the Club shall have the right to do so during the Post-Season, during each year of the Term covered by this Agreement. The Club shall exercise this exclusive right only on the dates (day or night) regularly scheduled for professional soccer games in accordance with the official League schedule pertaining to professional soccer games to be played and hosted within the Stadium Premises by the Club. For all Club Events, the Club will have access to the Stadium and Stadium Premises in accordance with the terms hereof at least six (6) hours prior the scheduled start of time of the event. The City will work with the Club in good faith to provide the Club additional access to the Stadium (beyond the dates set forth above) for Club practices and other training.

Notwithstanding anything to the contrary in this Agreement, the Club acknowledges and agrees that it may not be able to schedule a Post Season game at the Stadium if another Stadium user is already scheduled to use the Stadium on a given day during the Post Season. In the event of a schedule conflict, the Parties will work together in good faith to achieve a reasonable solution, but under no circumstances will the City be obligated to cancel another Stadium user's scheduled event at the Stadium in order to accommodate the League's Post Season schedule.

(b) Exercise of Club's Selection of Dates. On or before the 1st day of September of each calendar year during the Term, the City shall provide the Club with a list in writing of no less than forty (40) dates (including at least 30 weekend dates and 10 weekday dates) within the reasonably anticipated timeframe of the Regular Season in the following calendar year for the Club to choose from for scheduling of Club Events (the "Offered Dates"). Within 10 business days after the Club's receipt of the Offered Dates, the Club will notify the City in writing of its selection of twenty-five (25) of the Offered Dates, including anticipated Post Season Game dates, and the City will reserve those dates for the Club's use (the "Club Reserved Dates"). Such final selection of Club Reserved Dates shall be binding and not subject to change, except as set forth below or as otherwise agreed to in writing by the Parties. After Club Reserved Dates have been selected, and after the City reasonably determines that other potential Stadium users have had a reasonable opportunity to schedule dates for use of the Stadium, the Club may request additional dates for Club Events by following the City's ordinary scheduling process utilized by other Stadium users. Once the League has confirmed the final schedule for the then-upcoming Regular Season, the Club will provide the City with a copy thereof and, to the extent that the Club determines in its sole discretion that any Club Reserved Dates are not needed for Home Games or scheduled Club Events, those Club Reserved Dates will be "released" back to the City for use through its ordinary scheduling process. All Club Reserved Dates that are not released back to the City and other dates scheduled by the City for the Club after the Club selects the Club Reserved Dates are referred to herein as "Club Scheduled Dates." In the event that the Club does not advance to the League playoffs, the Club will release any Post Season Game Club Scheduled Dates to the City.

(c) Sale of Club Products. The Club shall have the exclusive right during the term of this Agreement, to sell, either directly or through others, Club Products. The City agrees to make available to the Club or its designated licensee(s) during Club Events (i) reasonable, nonexclusive space at the concession stand for the sale of Club Products and (ii) unimproved space in one or more locations reasonably determined by the City, after good faith discussion with the Club, within the Stadium Premises to locate one or more "pop-up" or temporary specialty stores for the sale of Club Products.

(d) Permits and Approvals; Signs. The Club acknowledges and agrees that it is solely responsible for securing all necessary or required permits and approvals for its operation of a professional soccer team and its proposed uses of the Stadium and the Stadium Premises. All signs shall conform to the City of Portland signage standards and Club shall, at its own expense, acquire all necessary permits and approvals to erect said signs. When signs are erected, Club agrees that such signs shall be maintained in good condition at the sole cost and expense of the Club. The City makes no representations or warranties as to the suitability of, or the ability to obtain any regulatory approvals for the Club's use of the Stadium and the Stadium Premises. The Club further acknowledges and agrees that this Agreement only grants permission to use the Stadium and the Stadium Premises in accordance with the terms and conditions set forth herein

and that this Agreement is not a building permit or a license or permit to operate a business or any concession. The Club acknowledges and agrees that the City of Portland is acting as the owner of the Stadium and the Stadium Premises in connection with this Agreement, and not in its regulatory capacity. Accordingly, except as specifically set forth in this Agreement, nothing in this Agreement obligates any City official or employee to grant any permit, license, or other regulatory approval requested by the Club in connection with its use of the Stadium or the Stadium Premises.

(e) Restoration. The Club agrees that at all times during the Term and upon termination of this Agreement, the Club shall restore, repair, and replace all aspects of the Stadium and Stadium Premises that are disturbed or damaged as a result of the Club's presence or use of the Stadium or the Stadium Premises or the presence or use of its employees, players, contractors, subcontractors, invitees, or volunteers, reasonable wear and tear excepted. Any and all such repair, replacement, and restoration work shall be performed to the City's reasonable satisfaction and at the sole expense of Club. The Club acknowledges and agrees that its obligation to repair, replace, and restore all aspects of said property under this paragraph shall survive the termination of this Agreement.

(f) Club acknowledges and agrees that, so long as the City is not in material default under this Agreement, Club shall defend, indemnify, and hold the City harmless at all times from any claims, liability, losses, costs, expenses (including, without limitation, reasonable attorney's fees) fines, damages or judgments (collectively, "Claims"), just or unjust, arising out of or relating to any contracts between the Club and any third parties.

6. Media.

(a) Broadcasts and Exhibitions. Subject to applicable League rules, the Club shall have the right to receive all revenue derived from any broadcast, dissemination or exhibition described in this Section 6(a). Nothing herein is intended to limit the right of the Club to authorize broadcasts or dissemination by radio, television, internet or other digital means, or otherwise of professional soccer games, or any other events in which the Club participates, played or hosted away from the Stadium by the Club. The Club shall have the exclusive right, with respect to radio, television, internet or other digital means, as follows:

(i) to broadcast and disseminate, by radio, television, internet streaming or any other digital means, or any other method of transmission or communication, livestream and/or any audio and video reports or highlights of all and/or any part of all Club Events and any other events in which the Club participates at *any* location during the term of this Agreement; and

(ii) to authorize the exhibition of Home Games by means of any method of Broadcast, in the Club's absolute discretion.

(b) Commercial Sponsors. The Club shall have the exclusive right to authorize and receive all revenues derived from the sale of commercial sponsorships of (i) any Broadcast of any Club Event, or any other events in which the Club participates at *any* location during the term of this Agreement, and (ii) any Broadcasts of special Club programs originating from the Stadium prior to any of such Club Events or other events.

(c) Press Facilities. On each day that the Club has scheduled a Club Event and the right to use and occupy the Stadium Premises in accordance with Section 5 hereof, the City shall make the press box available for use by the Club (and journalists and media representatives), without additional cost to the Club.

7. Consideration.

(a) Net Club Revenue. Commencing with the 2025 Pre-Season and thereafter throughout the term of this Agreement, and subject to the City Signage Revenue, the Club shall receive all Net Club Revenue for each Home Game played by the Club at the Stadium Premises, and for all other Club Events that take place within the Stadium Premises.

(b) Payments to the City. For each Home Game played during the Term of this Agreement (as applicable depending on the Club's exercise of the Club Extension Option), the Club shall pay the following, as consideration to the City for and on account of the Club's use and occupancy of the Stadium and Stadium Premises hereunder:

(i) In consideration of the Improvements and the Club's contribution to the New Playing Field, for each of the first ten (10) calendar years during the Term of this Agreement, the Club shall pay no rental fees for the Stadium, but Club shall be responsible for the fees and costs associated with permitted events at the Stadium, including fees and costs for public safety personnel, at the then-current rates, in each case as provided by the City in writing to the Club. Notwithstanding the foregoing, until such time as the Improvements are completed, if the Club uses the Stadium as permitted hereunder to host Club Events, the Club shall pay the City all use and rental fees charged by the City to other Stadium users for the Club's use of the Stadium during such Club Events; and

(ii) In the event that the Club exercises the second Club Extension Option, then, commencing upon the beginning of the second extension and thereafter throughout the Term of this Agreement, the Club shall pay the City all then-current applicable use and rental fees and other fees and charges (as provided by the City in writing to the Club) charged by the City to other Stadium occupants/licensees.

8. Use and Occupancy by the City.

The City reserves, and shall have the exclusive right to, the use and occupancy of the Stadium (other than the Exclusive Premises), and to the possession thereof, at all times during the Term of this Agreement, except during the Club Scheduled Dates and any other dates that such use and occupancy is granted to the Club, as provided hereunder.

City Covenants.

(a) Maintenance of Stadium Premises; Cleaning; Trash Removal. Except as otherwise provided herein, during the Term, the City shall maintain the playing field at the Stadium, the Stadium, and the Stadium Premises in substantially the same condition that they were in at the beginning of the Term. The City will also be responsible for maintaining the Improvements, except for the Exclusive Premises, in good working order, reasonable wear and

tear excepted. Such maintenance will be performed in the City's reasonable discretion. The Club will be solely responsible for all maintenance and repair of the Exclusive Premises.

During the Term, the City shall, at its expense, furnish all labor, material, supplies, and equipment necessary to maintain and clean the Stadium and keep it in an orderly condition, including the prompt removal and disposal of all rubbish, trash and garbage in the Stadium prior to the time the Club is permitted to use the Stadium for each Club Event.

Unless otherwise specified in this Agreement, the City has no other obligations to maintain, repair, or replace any aspect of the playing field, the Stadium, the Stadium Premises, the Parking Facilities, or any other property subject to this Agreement in any manner above and beyond the City's customary practice for maintenance of the same as it relates to the use of the Stadium by other users/licensees.

(b) Field Painting; Restoration. The Club will not paint or remove paint from the playing field at the Stadium without the City's prior written consent, such consent not to be unreasonably withheld, conditioned, or delayed. If the City consents to the Club's painting or removal of paint from the field, the Club will do so at the Club's sole expense, and the Club will repaint the playing field to the City's reasonable satisfaction, and at times specified by the City to ensure that appropriate lines, logos, or other markings are in place for other Stadium users. For clarity, the City acknowledges and agrees that, in order for the Club to host Home Games at the Stadium, the Club may be required to paint and remove paint from playing field at the Stadium in order to comply with applicable requirements for the exhibition of a professional soccer team participating in the League.

(c) Additional Covenants. Notwithstanding anything to the contrary herein, the City covenants and agrees that:

(i) it shall deliver the Stadium Premises to the Club prior to each Club Event in a condition comparable to the condition of the Stadium Premises delivered to other licensees/occupants;

(ii) at the Club's reasonable discretion, visiting soccer clubs shall be permitted to practice on the Stadium Premises' playing field on Club Scheduled Dates during the six (6) hour period prior to the scheduled start of time of the Club Event.

(d) Club acknowledges and agrees that the City has no obligation to incur any cost or expense, provide any services, or perform and maintenance repairs under this Agreement except those specified in this Agreement.

9. Crowd Control-Security Enforcement and Traffic Control

(a) Security. To the extent the Club, in its reasonable discretion, deems it necessary for any Club Events, the Club shall be responsible for non-police officer crowd control and security enforcement within the Stadium and Stadium Premises for each Club Event and shall provide appropriate personnel therefor. In the event that the City reasonably determines that police, fire, and/or paramedic services are necessary for any Club Event, then the Club shall pay for the

wages of required personnel and all other reasonable costs and fees associated with providing such personnel.

(b) Traffic Mitigation. The Club and the City shall work together in good faith to implement a traffic mitigation program as reasonably necessary to control traffic in and out of the Stadium and the Parking Facilities.

10. Intentionally omitted.

11. Operating Costs. For all Club Events, the City will only pay for customary expenses to operate and maintain the Stadium Premises that the City, in its reasonable discretion, determines are identical or substantially similar to those expenses for which it is responsible in connection with other (non-Club Event) events within the Stadium Premises. For clarity, in connection with each Home Game, the Club shall pay for all expenses incurred in connection with all announcers, fan experience and all other game day operations staff, Concessionaires, personnel for home and visitor bench areas, banners and decorations, any other Club promotional activities or activations in connection with such Home Game and in order to ensure compliance with any additional League requirements, and any other reasonably necessary costs that the City is not required to pay for hereunder.

12. Signage

(a) Signage; Scoreboard Arrangement. Subject to the City's approval, not to be unreasonably withheld, the Club shall be permitted to install, maintain and operate, or supply a scoreboard and other signage at the Stadium suitable for professional soccer, in accordance with applicable League guidelines and applicable sign laws, ordinances, rules, and regulations. The Club shall have the right to (1) operate, manage and control all scoreboards and signage at the Stadium at all times during the Term of this Agreement (other than during non-Club Events at the Stadium, at which time the City shall have the right to operate the scoreboards), (2) manage all advertising and promotional programs thereon or otherwise in connection therewith, and (3) subject to the City Signage Revenue, collect all Net Signage Revenues at all times throughout each year during the Term of this Agreement.

(b) The City shall be entitled to place City and school signage at the Stadium and Stadium Premises in areas not then in use by the Club. Club will not remove or relocate any such signage or any other signage existing at the Stadium or Stadium Premises as of the Effective Date without the City's prior written approval.

13. Entry and Inspection

The City reserves, and always shall have the right to enter the Stadium for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Stadium or to inspect the operations conducted therein. The City shall use its best efforts to assure that any such entry or inspection shall be conducted in such a manner so as to minimize any interference with the Club's use of the Stadium. In the event that any such entry or inspection by the City discloses that the Stadium is not in a reasonably safe or satisfactory condition the City shall have the right to cause the Club to correct any such unsafe or unsatisfactory condition created by the Club or by the Club's use or occupancy of the Stadium Premises, except to the extent that the correction of

such condition is within the scope of the City's maintenance, operation, repair or other general obligations hereunder.

14. Utilities and Service

The City shall furnish, without cost to the Club, gas, electric power, water and sewer services, subject to state and federal regulations regarding energy consumption; provided, however, the Club will be responsible for payment of utility costs attributed to the use of the Stadium lights during Club Events and the use of the Exclusive Premises. The City will provide the Club with reasonably satisfactory evidence (statements/invoices from electricity provider) of such costs at the end of each calendar year of the Term, and the Club shall remit payment within sixty (60) days thereafter.

15. Indemnification; Liens.

To the fullest extent permitted by law, Club shall defend, indemnify and hold the City, its officers, agents and employees, harmless at all times from any claims, liability, losses, costs, expenses (including, without limitation, reasonable attorney's fees) fines, damages or judgments (collectively, "Claims"), just or unjust, that arise out of or are caused by any breach of this agreement by the Club, or any act or omission constituting negligence or willful misconduct on the part of the Club, its members, officers, agents, contractors, subcontractors, or employees, which Claims arise out of or result from the activities hereunder, said Claims to include, without being limited to, claims for personal injury, death, or property damage, including injury or damage to City employees or property; and claims based upon violation of any environmental law or regulation governing hazardous substances. Club's obligations under this paragraph shall survive termination of this Agreement to the extent that the underlying act or omission resulting in the Claim occurs during the Term. Notwithstanding anything to the contrary in this Agreement, the Club is not obligated to indemnify, hold harmless, or defend the City or any of its officers, employees, contractors, subcontractors, or agents against any Claim (whether direct or indirect) to the extent such Claim arises out of or results from the negligence or willful misconduct of the City or any of its officers, employees, or agents, or the City's failure to comply with any of its obligations set forth in this Agreement.

Club shall not suffer or permit any mechanic's lien or other lien to be filed against the Stadium, Stadium Premises, Improvements, or any part thereof, by reason of labor, work, services or materials supplied or claimed to have been supplied to Club, and Club shall defend, indemnify and hold the City harmless from and against any claims, costs or liabilities, including any attorney's fees expended thereon, that result from any such lien.

16. Insurance

(a) Club Insurance. Within 30 days after execution of this Agreement, and, in any event prior to any use of or entry into the Stadium, the Club will procure and maintain:

- Occurrence based Commercial General Liability Insurance coverage in amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, death and property damage;

- Workers' Compensation Insurance coverage to the extent required by law, which shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees;

With respect to the Commercial General Liability Insurance, the Club shall name the City as an additional insured for coverage for claims for which the City does not have governmental immunity, including, without limitation, those areas where government immunity has been expressly waived 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. Within 30 days after execution of this Agreement, the Club shall furnish the City and thereafter maintain certificates 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. The Club shall also provide a copy of any endorsement naming the City as additional insured. In no event will the Club be permitted to enter the Stadium Premises under this Agreement until it has provided the above referenced insurance documentation. Upon City's reasonable request, the Club shall provide the City with a complete copy of any of the above-referenced policies. The Club shall be responsible for any and all deductibles and/or self-insured retentions (not to exceed \$10,000.00 without prior written approval of Corporation Counsel). The City's acceptance or lack of acceptance of the 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 agreement.

The Club shall be also responsible for securing insurance coverage with respect to its own equipment, supplies and other personal property ("Club Property") with such property and casualty insurance as it deems necessary in its sole discretion, and the City shall have no responsibility therefor. Club assumes all risk of damage, loss or casualty to Club Property while located at the Stadium or the Stadium Premises. The Club shall defend, indemnify and hold the City harmless from any claim arising out of or relating to any damage, loss or casualty to Club Property. Any casualty insurance obtained by Club for the Club Property shall include a waiver of subrogation against the City. Notwithstanding anything to the contrary in this Agreement, the Club is not obligated to defend, indemnify or hold harmless, the City for any such claim to the extent such claim arises out of or results from the negligence or willful misconduct of the City, or any of its officers, employees, or agents, or the City's failure to comply with any of its obligations set forth in this Agreement.

(a) City Insurance. During the Term, City shall maintain insurance or self-insurance of not less than the statutory liability cap pursuant to the Maine Tort Claims Act, 14 M.R.S.A. §8101 et seq., including for the acts and omissions of its employees occurring within the course and scope of employment, and pursuant to the Maine Worker's Compensation Act of 1992, 39 M.R.S.A. §101 et seq. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the Licensee 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. Within thirty (30) days after execution of this Agreement, the City shall furnish the Club and thereafter maintain certificates evidencing all such coverages.

17. Damage and Destruction

(a) Repairs of Damage and Termination Rights. If all or a part of the Stadium is damaged by fire, earthquake, hurricane, blizzard, or other casualty (any such fire, earthquake, hurricane, blizzard or other casualty is hereinafter referred to as "Damage"), the City shall promptly give the Club notice of the City's reasonable estimate of the time required to repair such Damage (the "Damage Estimate"). If the Damage Estimate contemplates that the Damage can be repaired on or before the first (1st) anniversary of the date on which such Damage occurred, then (i) the City shall repair the Damage, (ii) the Club shall have the right to play its Home Games and host all other Club Events at any other locations of its choice during the construction period, and (iii) this Agreement shall remain in full force and effect. If the Damage Estimate contemplates that the Damage cannot be repaired on or before such first (1st) anniversary date, then the Club may give notice to the City, within thirty (30) calendar days after the Club receives the Damage Estimate, terminating this Agreement as of the date of such Damage. In the event that the Club does not elect to terminate this Agreement pursuant to this Section 17, and the City fails to substantially complete its repair of the Damage within thirty (30) calendar days after the expiration of the time period set forth in the Damage Estimate (which period shall be extended to the extent of any actual delays caused by the Club or any Force Majeure Event), then the Club may terminate this Agreement by delivering written notice thereof to the City. To the extent repair or replacement is required to the Improvements (or any portion thereof) that benefit other users of the Stadium, and such improvements are covered by City insurance, any such repair or replacement of such Improvements at the Stadium as a result of any Damage thereto shall be performed by the City in accordance with plans and specifications reasonably approved by the City. Any such repair or replacement to Improvements (or any portion thereof) that are exclusively used and enjoyed by the Club during the Term, shall be performed by the Club in accordance with plans and specifications reasonably approved by the City.

(b) Damage During Last Year of Term. Notwithstanding anything to the contrary contained in this Section 18, if the Damage Estimate contemplates that the repair of the Damage shall take more than sixty (60) calendar days to complete, and such completion shall occur during the last twelve (12) months of the Term of this Agreement, then the City and the Club shall each have the option to terminate this Agreement as of the date of such Damage by giving written notice to the other, in the case of the City together with the Damage Estimate, or, in the case of the Club, within thirty (30) calendar days after the Club's receipt of the Damage Estimate.

(c) Abatement. During the period the Stadium Premises or any part thereof is rendered unusable due to such Damage and repair, the Club's obligations hereunder to make any payments to the City shall be proportionately reduced based upon the extent to which the Damage and repair thereof prevents the Club from conducting its business at the Stadium in the manner in which such business was conducted prior to such Damage.

18. Alterations and Improvements

The Club will not make any alterations or improvements to the Stadium except in accordance with plans previously approved in writing by the City.

19. Waiver

The waiver by the City of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of consideration hereunder by the City shall not be deemed to be a waiver of any preceding breach by the Club of any term, covenant or condition of this Agreement other than the failure of the Club to make the particular payment so accepted, regardless of the City's knowledge of such preceding breach at the time of acceptance thereof. Except as otherwise provided herein, any failure on the part of the City to require or exact full and complete compliance with any of the covenants or conditions of this Agreement shall not be construed as in any manner changing the terms hereof or to stop the City from enforcing the full provisions hereof, nor shall the terms of this Agreement be changed or altered in any manner whatsoever other than by written agreement of the City and the Club.

20. Remedies.

(a) Club Defaults. Except as otherwise provided herein, in the event that the Club shall (i) default in the performance or fulfillment of any covenant or condition herein contained on its part to be performed or fulfilled and shall fail to cure or to commence and diligently pursue the curing of such default within thirty (30) calendar days following its receipt of a written notice from the City specifying the default complained of and the date on which its rights hereunder will be terminated as hereinafter provided if such default is not cured, or (ii) file a voluntary petition in bankruptcy, or (iii) be adjudicated bankrupt, or (iv) make a general assignment for the benefit of creditors, *then* and in either or any of said events, the City may, at its option, without further notice or demand upon the Club, immediately cancel and terminate this Agreement and terminate all of the rights of the Club in or to the Stadium and Stadium Premises in or to the further possession thereof. The rights and remedies of the City as hereinabove set forth, are cumulative only and shall in no way be deemed to limit any of the other provisions of this Agreement or otherwise to deny to the City any right or remedy at law or in equity which the City may have or assert against the Club under any law in effect at the date hereof or which may hereafter be enacted or become effective, it being the intent hereof that the rights and remedies of the City, as hereinabove set forth, shall be supplemental to or in addition to or in aid of the other provisions of this Agreement and of any right or remedy at law or in equity which the City may have against the Club.

(b) Termination. Any election on the part of the City to terminate this Agreement must be in writing, properly executed by the City and served upon the Club. No termination of this Agreement on account of a default by the Club shall be or become effective by operation of law or otherwise, unless and until the City shall have given such written notice to the Club. Neither any notice to pay any consideration or portion thereof due and payable or notice to deliver up possession of the Stadium Premises given pursuant to any law of the State of Maine, nor any proceeding in the nature of an unlawful detainer taken by the City shall, of itself, and in the absence of such written notice as above provided, operate to terminate this Agreement.

(c) City Defaults. At no time shall the City be deemed to be in default under this Agreement, unless and until the Club shall have given to the City notice in writing, specifying such default and the City shall have failed to cure or to commence and diligently pursue the curing of such default within a period of thirty (30) calendar days after receipt of such written notice. In the event that the City fails to cure or diligently pursue the curing of any default under this Agreement within such thirty (30) calendar day period, then the Club may, at its option, without further notice or demand upon the City or upon any person or persons claiming by, through or under the City, immediately cancel and terminate this Agreement.

(d) Except for Club's obligations under section 15 (Indemnification, Liens), notwithstanding anything to the contrary in this Agreement, the liability of each Party to the other under this Agreement shall be limited to actual, direct damages only and all other damages and remedies are waived. 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 Agreement or others), strict liability, contract, operation of law or otherwise, to the other party, or its officers, directors, agents, employees, successors or assigns, for incidental, delay, indirect, punitive, or consequential damages connected with, related to or arising from performance or non-performance of this Agreement, 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 Agreement).

21. Force Majeure

Except as otherwise provided herein, should either party hereto be reasonably delayed in or prevented, in whole or in part, from performing any obligation or conditions hereunder or from exercising its rights hereunder by reason of or as a result of any Force Majeure Event, such party shall be excused from performing such obligations or conditions while such party is so delayed or prevented.

22. Title to Improvements. Upon the expiration or earlier termination of this Agreement, except for title to the Exclusive Premises, which, for the avoidance of doubt shall be owned outright by the Club, title to the Improvements shall automatically vest in the City without the need for any conveyance instrument or other documents evidencing the transfer of title to the City.

23. Quiet Enjoyment

The City covenants that the Club (upon payment by the Club of any consideration due, and the performance by the Club of the terms, covenants and conditions, in each case as set forth in this Agreement) shall peacefully and quietly have, hold and enjoy (i) the Stadium Premises on the Club Reserved Dates and during the periods otherwise herein provided in which the Club is given the right to the use and occupancy of the Stadium Premises, and (ii) the Exclusive Premises at all time during the Term of this Agreement.

24. Notices.

Any notice, demand, request, consent, approval and any other communications (any of the foregoing, a "Notice" required, permitted, or desired, to be given hereunder shall be in writing sent by registered or certified mail, postage prepaid, return receipt requested or delivered by hand or reputable overnight courier addressed to the Party to be so notified at its address hereinafter set forth or to such other address as such party may hereafter specify in a Notice delivered in accordance with the provisions of this Section 30. Any such Notice shall be deemed to have been received three (3) Business Days after the date such Notice is mailed or on the date of delivery by hand or courier addressed to the parties as follows (provided that neither the City nor the Club shall be deemed to have received any Notice not actually received):

If to the City: City of Portland
 Attn: City Manager
 389 Congress Street
 Portland, Maine 04101

With a copy to: Office of the Corporation Counsel at the same address

If to the Club: Portland United, LLC
 Attn: Gabe Hoffman-Johnson
 7 Stratton Place
 Portland, Maine 04101
 gabe@usltoportland.com

With a copy to: Caleb E. Ginsberg, Esq.
 303 Bartlett Street
 Portsmouth, New Hampshire 03801
 ginsberg.caleb@gmail.com

25. Construction of this Agreement; Jurisdiction.

(a) Maine Law. This Agreement 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, the City and the 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 Agreement.

(b) Section Headings. The section headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular sections hereof to which they refer.

(c) Sole Instrument. This Agreement embodies and constitutes the sole and entire agreement between the parties hereto with respect to the subject matter hereof. There are no terms, obligations, covenants or conditions between the parties hereto, other than as contained herein. No alteration, amendment or modification hereof shall be valid unless executed by an

instrument in writing by the parties with the same formality as this Agreement. Neither this Agreement, nor any term hereof, can be changed, modified or abandoned, in whole or in part, except by such instrument in writing and no subsequent oral agreement shall have any validity whatsoever.

(d) 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 Agreement.

(e) Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the City, and to such successors and assigns of the Club as are permitted to succeed to the Club right upon and subject to the terms hereof.

(f) No Partnership. Nothing herein contained shall make, or be construed to make, the City or the Club a partner of one another nor shall this Agreement be construed to create a partnership or joint venture between any of the parties hereto or referred to herein.

(g) Singular and Plural. Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

26. Nondiscrimination

The Club agrees not to discriminate in any manner against any person or persons on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status in the Club's use or occupancy of the Stadium Premises. Club shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination, including, without limitation, the provision of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment. The Club agrees to comply with all applicable City, state, and federal laws and regulations regarding equal opportunity.

27. Payments

All payments to the City under the terms of this Agreement shall be made payable to the City of Portland and delivered to the Department of Parks, Recreation and Facilities, 212 Canco Road, Portland, Maine 04103, or as otherwise specified in writing from time to time by the City.

28. Club Employees

The Club agrees that its and its Affiliates' members, managers, employees, associates, advisors, agents, players, or contractors shall not be deemed to be employees of the City for any purpose. The City shall have no obligation or responsibility for resolving any labor disputes or grievances which may arise between the Club and its members, managers, employees, associates,

advisors, agents, players, or contractors employed to perform any services relating to this Agreement. The Club agrees to provide sufficient personnel to perform all services required by this Agreement. The Club shall be responsible for all required federal, state, and local reports, records and payments in connection with social security, unemployment insurance, and other charges and taxes that apply to the Club. The City shall have no responsibility for providing any of the above reports, records and payments.

29. Workers' Compensation

By signing this Agreement, the Club hereby certifies that it is aware of the provisions of Maine Revised Statutes, Title 39-A, Part 1, Chapter 1 (the Maine Workers Compensation Act of 1992) and shall comply with such provisions. If reasonably requested by the City, the Club shall provide the City with evidence of compliance with the workers' compensation laws of the State of Maine. The Club shall provide the City with a waiver of subrogation from its insurance carrier when proof of insurance is due.

30. Land and Water Conservation Fund Act. The parties hereto agree to work together in good faith during the Term as reasonably necessary to avoid the Stadium Premises (or any portion thereof) being subject to a required "conversion" under the Land and Water Conservation Fund Act of 1965 (the "**LWCF Act**"). In the event that the parties are unable to prevent such a conversion, the Club will be responsible for all costs associated with the conversion, including, without limitation, the cost of any real estate acquisition required under the LWCF Act as part of such conversion.

31. League Rules. Notwithstanding anything to the contrary in this Agreement, the City acknowledges that the Club, in its operation of a professional soccer franchise in the League, is obligated to comply with applicable League rules and restrictions ("League Rules"). In the event that any such League Rules require alterations or improvements to the Stadium or the Stadium Premises, the Club may request that the City make such alterations or improvements at the Club's expense or allow the Club to do so at the Club's expense. In such event, the City will engage in good faith discussions with the Club in order to identify a commercially reasonable solution, satisfactory to the City, that permits the Club, at its own expense, to continue to host Club Events in the Stadium through the remainder of the Term. In the event that the Club is unable to comply with the League Rules due to the condition of the Stadium or Stadium Premises, the Club may terminate this Agreement upon prior written notice to the City. In no event will the City be responsible for incurring any obligation or expense as a result of the League Rules except as specifically set forth in this Agreement.

32. No property rights. This Agreement is a license only and no provision hereof shall be construed as conveying an easement or other estate in land. The Club will not record this agreement or any portion thereof in the Cumberland County Registry of Deeds.

33. Compliance with laws. The Club and the City agree to comply with all applicable laws, rules, regulations, and City ordinances and policies in its operations hereunder, including but not limited to all applicable federal, state and local environmental law and regulations, including without limitation all laws and regulations governing hazardous substances, with respect

to all its activities in the Stadium and the Stadium Premises, and to conduct all its activities on such property in a safe, responsible, reasonable and business-like manner.

34. No Third-Party Beneficiaries. This Agreement 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.

35. No Assignment. This Agreement is non-transferable and shall not be assigned, pledged, sublet or otherwise transferred to another party except upon the prior written approval of the other Party.

36. Attorney's Fees. Each Party (in such capacity, the “Non-Prevailing Party”) shall pay all reasonable attorney's fees and costs incurred by the other Party (in such capacity, the “Prevailing Party”) if: (i) the Prevailing Party should institute litigation for breach of any material term or condition of this Agreement by the Non-Prevailing Party and ultimately prevail in any such litigation; (ii) if the City is the Prevailing Party in a litigation for an unlawful detainer of the Stadium or Stadium Premises by the Club as Non-Prevailing Party; (iii) the Prevailing Party is made a party to litigation, instituted by a third party related to the Non-Prevailing Party's use of the Stadium or Stadium Premises under this Agreement; or (iv) if the Prevailing Party is required to defend itself, and ultimately prevails, against any action or defense prosecuted by the Non-Prevailing Party or any third party arising out of the Non-Prevailing Party's use or occupancy of the Stadium or Stadium Premises. Fees and costs of defense incurred by the Prevailing Party shall be reimbursed within thirty (30) days of invoice whether the litigation is prosecuted to judgment or not. Amounts advanced by the Prevailing Party not reimbursed within said thirty (30) days, shall bear interest at a rate of one and one-half percent (1½%) per month.

37. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties for no less than sixty (60) days. If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation within sixty (60) days as set forth herein, the parties agree first to try in good faith to settle the dispute by non-binding mediation administered by an attorney selected by agreement of the parties and licensed to practice law in Maine.

38. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a pdf or electronic document shall be considered the equivalent of an original signature.

[Signature page follows]

IN WITNESS WHEREOF, this Stadium Use Agreement for Use and Occupancy of James J. Fitzpatrick Stadium is executed by the parties' duly authorized representatives as of the date first above written.

THE CITY OF PORTLAND

By: *Danielle P. West*

Name: Danielle P. West

Title: City Manager

PORTLAND UNITED, LLC a Maine
limited liability company

By: *Gabe Hoffman-Johnson*

Name: Gabe Hoffman-Johnson

Title: Manager

Approved as to form:

M. J. G.
City Corporation Counsel

Approved as to funds:

Brendan T. O'Connell
City Finance Director

EXHIBIT A
DESCRIPTION OF IMPROVEMENTS¹

Site Lighting

- Install and upgrade current MUSCO lighting to meet USL specifications
-
- Projected expense range: \$485,000 - \$500,000

Press Box

- Make cosmetic and operational improvements to Press Box
- Likely to include infrastructure to improve broadcast and streaming operations
- City will have ability to use on non-gameday
- Projected expense range: \$40,000 - \$60,000

Team Locker Rooms

- Other Stadium users will have ability to use Visitor locker room on non-gamedays if not in use by the Club.
- Projected expense range: \$250,000 - \$300,000

Club Storage Area

- Club to add storage containers
- City to have use of space in containers if available.
- Projected expense range: \$10,000 - \$20,000

Ticketing Entrance

- Club to improve ticketing entrance and Stadium access points
- City will have ability to use on non-gameday
- Projected expense range: \$10,000 - \$20,000

Audio System

- Club to improve Speaker and Audio system
- City will have ability to use on non-gameday
- Projected expense range: \$40,000 - \$50,000

Miscellaneous

- Other Electronics Allowance
- Site Accessories and Landscaping
- Associated utility connection costs

¹ The information below is from the term sheet. Parties to confirm stadium construction plan / Improvements and insert further detail as applicable.

- Additional Operational and Fan Experience Elements
- City will have ability to use on non-gameday
- Projected expense range: \$150,000 - \$300,000

EXHIBIT B

DESCRIPTION OF EXCLUSIVE PREMISES

- Club Storage Area
- Club Home Locker Room

EXHIBIT C

DEPICTION OF STADIUM PREMISES

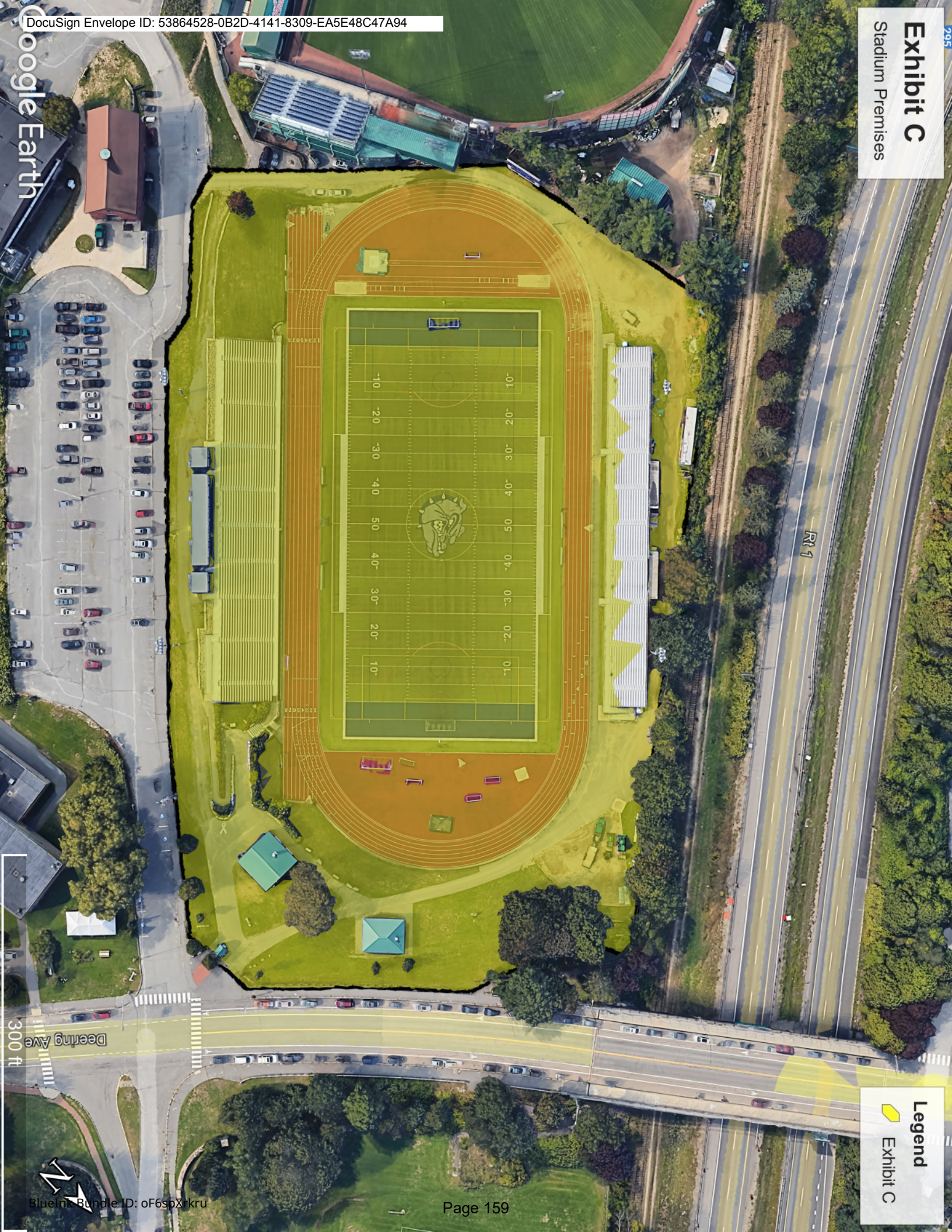


EXHIBIT D

DEPICTION OF PARKING FACILITIES



Total Onsite Parking: 232
Total Offsite Parking: 380

EXHIBIT D

Maine Med 2: 130

Hadlock: 38

Gated Lot: 15

Maine Med 1: 185

Trough/Expo: 38

Fitzpatrick: 141

King: 65

STADIUM USE AGREEMENT
FOR USE AND OCCUPANCY
OF
JAMES J. FITZPATRICK STADIUM

between

PORTLAND UNITED, LLC, a Maine limited liability company

and

THE CITY OF PORTLAND, a municipal corporation

DATED: as of December 18, 2023

EXHIBITS

EXHIBIT A

DESCRIPTION OF IMPROVEMENTS

EXHIBIT B

DESCRIPTION OF EXCLUSIVE PREMISES

EXHIBIT C

DEPICTION OF STADIUM PREMISES

EXHIBIT D

DEPICTION OF PARKING FACILITIES

**STADIUM USE AGREEMENT
FOR USE AND OCCUPANCY OF
JAMES J. FITZPATRICK STADIUM**

This Stadium Use Agreement for Use and Occupancy of James J. Fitzpatrick Stadium (this "Agreement") is made and entered into as of December 18, 2023 (the "Effective Date") in Portland, Maine, by and between Portland United, LLC, a Maine limited liability company (the "Club") and The City of Portland, Maine, a body politic and corporate (the "City").

RECITALS

- A. The City owns that certain multipurpose sports stadium on Deering Avenue in Portland, Maine known as James J. Fitzpatrick Stadium (the "Stadium"). The Stadium is used for the exhibition of sport contests and other events including, but not limited to, high school and college soccer, lacrosse and football games.
- B. The Club owns the rights to a professional soccer franchise in that certain professional soccer league known as "USL League One" within the professional soccer organization known as the United Soccer League (the "USL") (together, with all other leagues and affiliate entities within the USL, collectively, the "League"), and the Club anticipates it will begin hosting League soccer games during the 2025 USL League One season.
- C. The City and the Club now propose that the Club construct improvements and additions to the Stadium (collectively, the "Improvements") in accordance with the Approved Plans (as hereinafter defined) and which are generally described or listed on Exhibit A attached hereto and by this reference made a part hereof.
- D. The City and the Club propose that the Club use and occupy the Stadium to host League games and other events throughout the Term (as hereinafter defined).

NOW, THEREFORE, in consideration of the construction of the Improvements, the use of the Stadium, the covenants and conditions set forth herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Club and the City have agreed to enter into this Agreement and set forth herein their mutual agreements and understandings as follows:

- 1. **Definitions.** The terms as defined in this Section 1, shall have the following meanings in this Agreement unless the context otherwise requires:

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether

through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

"Approved Architect" shall have the meaning assigned thereto in Section 3 hereof.

"Approved Construction Schedule" shall have the meaning assigned thereto in Section 3 hereof.

"Approved Facilities Construction Schedule" shall have the meaning assigned thereto in Section 3 hereof.

"Approved Facilities Plans" shall have the meaning assigned thereto in Section 3 hereof.

"Approved Plans" shall have the meaning assigned thereto in Section 3 hereof.

"Architect's Certificate" shall mean a certificate of the Approved Architect, stating that the Improvements have been completed and are ready for use and occupancy by the Club.

"Broadcast" shall mean any and all methods and formats of distributing audio and/or visual content of any Club Event (whether television, radio, digital, or otherwise) in a final usable broadcasted form to be viewed, listened to, otherwise consumed by an end-user, including, without limitation, television, radio, livestream and all other digital distribution of content, telecasts in theaters or other similar venues where multiple people in one location watch, listen, or otherwise consumer content simultaneously (in each case, whether or not any such broadcast requires the end-user to pay an admission charge, subscription fee, or so-called "pay-per-view" fee).

"Broadcast Receipts" shall mean the gross amount received by the Club from or arising out of the broadcast of any Club Event, whether paid directly to the Club or through a revenue sharing arrangement with the League.

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal or State legal holiday or any day on which banking institutions in the State of Maine are authorized or required by law or other governmental action to close.

"CBA" shall mean any Collective Bargaining Agreement between the League (or any Affiliate of the League) and the United Soccer League Players Association (or any Affiliate or designee or successor association thereto).

"Club" shall have the meaning assigned thereto in the preamble hereof.

"Club Event" shall mean Home Games (as defined below) and all other Club-hosted events at the Stadium and/or on the Stadium Premises throughout the Term. All Club Events shall begin between 12:00 p.m. and 8:00 p.m. unless otherwise agreed to in writing by the City.

"Club Operated Parking Facility" shall have the meaning set forth in Section 2(b)(i).

"Club Products" shall mean the Club or any other League club or League programs, year books or similar written and/or photographic material, scarves, soccer balls, posters, pins, clothing,

pennants, caps, collectibles, and any and all other Club, or other League club or League, apparel or other merchandise inclusive of Club, other League club, and/or League logos or other marks.

"Club Storage Area" means two (2) 20' (length) x 18' (width) x 8'6" (height) storage containers (i) selected by the Club, in its reasonable discretion, (ii) paid for by the Club, and (iii) placed in a reasonable area designated by the City within the Stadium Premises, which area shall be subject to relocation by the City upon reasonable prior notice to the Club; provided that any such new location shall be reasonable and within the Stadium Premises. For clarity, the Club Storage Area is for the Club's exclusive use; provided, however, if the Club determines in its sole discretion, there is additional space available, the City will be permitted to utilize such additional space for reasonable storage purposes.

"City" shall have the meaning assigned thereto in the preamble hereof.

"Concessions" shall mean the business of selling, renting and/or furnishing goods and/or services, including, without limitation, food, beverages (including alcoholic and non-alcoholic beverages), souvenirs, novelties, apparel and any other merchandise during Club Events. For the avoidance of doubt, the term Concessions does not include parking.

"Construction Completion Date" shall mean the date on which the Improvements are complete and ready for use and on which a certificate of occupancy has been issued by the City of Portland Permitting & Inspections Department (or appropriate authority as applicable).

"CPI" shall mean the United States Department of Labor - Bureau of Labor Statistics Consumer Price Index for Portland, Maine (All Urban Consumers, All Items) (1982-1984=100). If the CPI formula should be revised, such revised CPI shall be modified, if necessary, by making such adjustments as may be required to produce substantially equivalent financial results to those that would have resulted if the formula had not been revised. If the CPI should be so revised that such adjustment cannot reasonably be made, or if the CM shall be discontinued, there shall be substituted for the CPI a reasonably reliable and comparable index or other information furnished by a government or independent third party source evaluating changes in the cost of living or purchasing power of the consumer dollar in Portland, Maine hereof.

"Damage" shall have the meaning assigned thereto in Section 20 hereof.

"Damage Estimate" shall have the meaning assigned thereto in Section 20 hereof.

"Excluded Games" shall have the meaning assigned thereto in Section 9 hereof.

"Exclusive Premises" shall mean the Club Storage Area and home locker room in each case described in greater detail on Exhibit B attached hereto and by this reference made a part hereof.

"Fixed Signage" shall mean any physical signage (including, without limitation, the sale of advertising space) that is (1) placed and operated within the Stadium Premises by the Club, and (2) remains continuously visible throughout the Term.

"Force Majeure Event" shall mean any of the following events which prevents a party from performing its obligations hereunder: any act of God, strike, lockout, League dissolution, termination or expiration of Club's expansion and/or franchise agreement with the League, or other industrial disturbance; pandemic, epidemic or any other outbreak; act of public enemy, blockade, war, insurrection, or riot; landslide, earthquake, tornado, fire, storm, flood, or washout; title dispute, or other litigation; governmental restraint, either federal or state, civil or military; civil disturbance; or explosion.

"Home Game" shall mean any League Game, Pre-Season Game, or Post-Season Game played by the Club at the Stadium.

"Improvement Completion Date" shall have the meaning assigned thereto in Section 3 hereof.

"Improvements" shall have the meaning assigned thereto in the recitals hereof.

"League" shall have the meaning ascribed to it in the recitals hereof.

"League Game" shall mean any professional soccer game scheduled by the League between the Club and another league member the outcome of which shall be included in determining the participants in the applicable League playoffs.

"Material Change" shall mean (i) any change (which shall include any single change or two or more changes which cumulatively comprise a material change) in (1) the general character, design, color or general aesthetic appearance of the exterior of the Improvements; (2) the size or capacity of the Improvements or the quality of the materials used therein; or (3) the orientation of or access and entrance to the Stadium; and (ii) any other material change, if the cost of such change, as reasonably estimated by the Club, is in excess of Two Hundred Thousand Dollars (\$200,000).

"Net Club Revenue" shall mean, with respect to each Club Event, the sum of the following, whether paid to the Club (or an Affiliate thereof), or to any Person authorized to receive the same on behalf of the Club (or an Affiliate thereof):

- (i) the total of all dollar amounts paid for any ticket or other source of admission to Club Events, including any license fee charged in excess of the ticket charges (if applicable);
- (ii) all Net Concession Revenues;
- (iii) all Net Signage Revenues; *provided, however*, that the City shall be entitled to fifteen percent (15%) of all Net Signage Revenues received by Club from Fixed Signage at the Stadium during the Term (the "City Signage Revenue");
- (iv) all revenues resulting from the sale of Club Products;
- (v) all revenue derived from the sale of audio and/or visual broadcast rights to Home Games or any other Club Event (regardless of the form or medium of broadcast or distribution);

(vi) all revenue derived from commercial sponsorships or any other media activities, subject to (iii) above with respect to Fixed Signage; and

(vii) all other revenues received by the Club (or Affiliate), directly or indirectly, including as a result of a League initiative or requirements.

(viii) Net Club Revenue does not include parking revenue.

"Net Concession Revenue" shall mean all revenue derived from Concessions and catering sales within the Stadium Premises during Club Events less all reasonable fees and expenses paid to or retained by the applicable concessionaire or other vendor in accordance with any concession (or other) agreement with the City or the Club in connection with the operation of Concessions stands/booths or other similar services during Club Events.

"Net Parking Revenue" shall mean all revenue derived from the operation of On-Site Parking Facilities and Off-Site Parking Facilities during Club Events less all documented reasonable fees and expenses paid or otherwise incurred by the City, or, in the case of Club Operated Parking Facilities, the Club, in connection with the operation of the Parking Facilities during Club Events.

"Net Signage Revenue" shall mean all consideration received by the Club in connection with the operation of the scoreboard and all Fixed Signage and Temporary Signage at the Stadium during the Term less the Club's documented expenses incurred in the operation and marketing of such scoreboard and signage.

"New Playing Surface" shall have the meaning set forth in Section 3(a)(vi) hereof.

"Notice" shall have the meaning assigned thereto in Section 30 hereof.

"Off-Site Parking Facilities" shall mean those areas in the general vicinity of the Stadium that are owned or controlled by third parties and are currently available for the parking of motor vehicles, including the areas identified as Maine Med 1, Maine Med 2, and King Middle School on Exhibit D.

"On-Site Parking Facilities" shall mean those areas owned by the City adjacent to or near the Stadium that are currently available for the parking of motor vehicles by persons attending events at the Stadium, including the areas identified as Hadlock, Gated Lot, Trough/Expo, and Fitzpatrick on Exhibit D.

"Parking Facilities" shall mean, collectively, the On-Site Parking Facilities and the Off-Site Parking Facilities.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Post-Season Game" shall mean any game played by the Club at the Stadium following the completion of the scheduled Regular Season as part of the USL League One Playoffs organized by the League, culminating with the USL League One championship game.

"Pre-Season" shall mean the period from the first regularly scheduled Pre-Season Game to the last regularly scheduled Pre-Season Game of the Club in the Stadium.

"Pre-Season Game" shall mean any soccer game played by the Club in the Stadium during the Pre-Season.

"Project Costs" shall mean the following costs to the extent that such costs are incurred or accrued by or for the account of the Club for the construction and development of the Improvements in accordance with the terms of this Agreement, not reimbursed or reimbursable by others, and properly allocable to the Improvements: all architectural and engineering costs, all permit costs, all direct costs for labor, materials and subcontract performance that are incorporated into the Improvements, demolition costs, construction costs, the cost of equipment and other capital improvements installed in the Stadium Premises, site preparation costs, and all other costs which would customarily be considered to be "hard costs" or "architectural or engineering costs" of the Improvements and otherwise satisfy the criteria set forth in this sentence.

"Regular Season" shall mean the period from the first League Game to the last regularly scheduled League Game of the Club in the Stadium as established by the annual schedule of the League, including Post-Season Games.

"Revised Plans" shall have the meaning assigned thereto in Section 3 hereof.

"Stadium" shall have the meaning assigned thereto in the recitals hereof.

"Stadium Premises" shall mean that part of the Stadium within the Stadium's perimeter wall necessary for the proper exhibition of professional soccer according to League rules, standards, and guidelines, including the playing field, seating, locker rooms, medical room, press box, Club Storage Area and ticket sales facilities as set forth on the drawing attached hereto as Exhibit C.

"Temporary Signage" shall mean any signage (including, without limitation, the sale of advertising time or space) that is (1) placed and operated by the Club, whether within the Stadium Premises or otherwise and (2) unless otherwise agreed to by the Parties, is only visible during Club Events.

"USL" shall have the meaning ascribed to it in the recitals hereof.

2. Premises.

(a) Right to Use and Occupancy. The City hereby grants to the Club the right to use and occupy the Stadium and Stadium Premises, but only for the purpose, at the time during each calendar year, for the consideration, and upon the terms and conditions expressed in this Agreement. The City warrants and represents that it has the right and power to grant the rights granted herein. The Club acknowledges and agrees that it has inspected the Stadium and Stadium

Premises and it agrees to accept them and all equipment furnished therewith as is and where is, and Club acknowledges that City has not made any warranties or representations of any kind with respect thereto, except as expressly provided in this Agreement.

(b) Parking.

(i) Spectator Parking. For each Club Event, and for so long as the Parking Facilities are available for the City's use in connection with this Agreement, the City shall have the sole right to operate or cause to be operated the Parking Facilities for parking of spectator motor vehicles for each Club Event. Commencing approximately two (2) hours prior to the scheduled start of each Club Event, the City shall provide staff to operate or cause to be operated the Parking Facilities as set forth in this Section. If the City reasonably determines, however, that the City is not able to sufficiently operate one or more of the Parking Facilities for a Club Event, the City shall provide no less than 48 hours advanced notice to the Club, and the Club will have the right to operate, or engage a third party to operate, such Parking Facility or Facilities (or any portion thereof) for such Club Events (in each case, a "Club Operated Parking Facility").

(ii) Club Parking. For each Club Event, and for so long as the Parking Facilities are available for the City's use in connection with this Agreement, the Club shall have the right at no additional cost to the Club, to use and occupy thirty (30) On-Site Parking Facilities parking spaces for Club players, coaches, staff, and any other Club or League personnel at no cost to the Club. Upon 48 hours prior written notice to the City, the Club may reserve up to twenty (20) additional parking spaces for such personnel for which the Club shall pay the City 80% of the City's standard rate for the spaces. For any additional non-reserved parking spaces used by the Club, the Club will pay to the City the standard rate for the spaces.

(iii) Parking Revenues. Subject to Section 2(b)(iv), for each Club Event, the City shall collect and retain all Net Parking Revenue.

(iv) Parking Revenues for Club Operated Parking Facility. For each Club Event for which the City has determined that it is not able to operate one or more Parking Facilities and the Club (or a third party acting on behalf of the Club) operates a Club Operated Parking Facility, the Club shall collect all Net Parking Revenue from any such Club Operated Parking Facility, and the Club shall promptly remit to the City payment in an amount equal to one hundred percent (100%) of all such Net Parking Revenue. Along with said payment, Club shall provide the City with copies of supporting documentation of all revenues and expenses related to Club Operated Parking Facilities in form and substance reasonably satisfactory to the City.

(v) The Club acknowledges and agrees that the parties that own or control the Off-Site Parking Facilities may no longer allow the City to use such facilities at some point in the future. The City also reserves the right to add to or reduce the number of parking spaces in the On-Site Parking Facilities at any time. The City makes no representations or warranties about the number of available parking spaces in any Parking Facility during the Term of this Agreement.

(c) Exclusive Premises. Notwithstanding anything to the contrary herein, the City hereby grants to the Club the exclusive right to use and occupy the Exclusive Premises throughout each year during the term of this Agreement.

3. Construction of Improvements.

(a) Improvements.

(i) Approval of Program and Estimate. The Club shall deliver to the City a copy of its proposed construction program and estimate for the Improvements on or before February 1, 2024. If the City does not approve of the Club's proposed construction program and estimate for the Improvements, the City shall deliver to the Club written notice of its disapproval within twenty (20) Business Days after its receipt thereof; *provided, however*, subject to any applicable laws, the City's approval shall not be unreasonably withheld. If the City does not provide such notice of its disapproval within the time period set forth above, the City will be deemed to approve the Club's proposed construction program and estimate for the Improvements. If the City disapproves such proposed program and estimate, then the City's disapproval notice shall set forth the City's reasons for such disapproval in reasonable detail. Upon receipt of any such disapproval notice, the Club and the City shall work together in good faith to revise the proposed program and estimate to address the City's reasons for disapproval within fourteen (14) Business Days after the Club's receipt of the disapproval notice; *provided*, that any such revisions must be in compliance with the rules, guidelines, and standards set forth and required by the League and applicable laws, ordinances, regulations, and rules. Each resubmission of the program and estimate shall be subject to the same approval process applicable to the original proposed program and estimate under this Section 3(a)(i). For the purposes of this Agreement, any program and estimate for the Improvements approved by the City in accordance with this Section 3(a)(i) shall be referred to as the "Approved Program and Estimate." The Club shall deliver to the City a description prepared by the Club's chosen architect of any changes, additions, or modifications to the Approved Program and Estimate. Any Material Change to the Approved Program and Estimate is subject to the City's prior written approval, which shall either be granted or denied within ten (10) Business Days after the City's receipt of the modified program and estimate incorporating any such Material Change.

(ii) Approval of Construction Schedule. On or before May 1, 2024, the Club shall deliver to the City a reasonably detailed schedule for the construction of the Improvements. If the City does not approve of the Club's schedule for the construction of the Improvements, the City shall deliver to the Club written notice of its disapproval within twenty (20) Business Days after its receipt thereof; *provided, however*, the City's approval shall not be unreasonably withheld. If the City does not provide such notice of its disapproval within the time period set forth above, the City will be deemed to approve the Club's schedule for the construction of the Improvements. For clarity, the proposed construction schedule shall provide that construction of the Improvements shall (1) commence on or before July 1, 2024, (2) be completed prior to the commencement of the Club's first Pre-Season Game in 2025, and (3) be performed in a manner so as not to prevent or interfere with the playing of any games or unreasonably interfere with the use, occupancy or enjoyment of the Stadium by other Stadium tenants or their patrons. If the City disapproves such proposed schedule, then the City's disapproval notice shall set forth the City's reasons for such disapproval in reasonable detail. Upon receipt of any such disapproval

notice, the Club and the City shall work together in good faith to revise the proposed construction schedule to address the City's reasons for disapproval within fourteen (14) Business Days after the Club's receipt of the disapproval notice; provided, that any such revisions must be in compliance with the rules, guidelines, and standards set forth and required by the League and applicable laws, ordinances, regulations, and rules. Each resubmission of such schedule shall be subject to the same approval process applicable to the original proposed schedule under this Section 3(a)(ii). For the purposes of this Agreement, any construction schedule for the Improvements approved by the Club in accordance with this Section 3(a)(ii) shall be referred to as the "Approved Construction Schedule."

(iii) Approval of Plans. The Club shall submit for City approval a copy of its proposed construction drawings, plans, and specifications for the Improvements as they are from time to time prepared in accordance with the Approved Construction Schedule and Approved Program and Estimate. If the City does not approve of such proposed construction drawings, plans and specifications, the City shall deliver to the Club written notice of its disapproval within twenty (20) Business Days after its receipt thereof. If the City does not provide such notice of its disapproval within the time period set forth above, the City will be deemed to approve the Club's proposed plans and specifications for the Improvements. If the City disapproves such proposed plans and specifications, then the City's disapproval notice shall set forth the City's reasons for such disapproval in reasonable detail. Upon receipt of any such disapproval notice, the Club and the City shall work together in good faith to revise the proposed construction schedule to address the City's reasons for disapproval within fourteen (14) Business Days after the Club's receipt of the disapproval notice; provided, that any such revisions must be in compliance with the rules, guidelines, and standards set forth and required by the League and applicable laws, ordinances, regulations, and rules. Each resubmission of plans and specifications shall be subject to the same approval process applicable to the original proposed plans and specifications under this Section 3(a)(iii). For the purposes of this Agreement, any plans and specifications for the Improvements approved by the Club in accordance with this Section 3(a)(iii) shall be referred to as the "Approved Plans."

(iv) Prosecution of Construction. The Club shall (A) use commercially reasonable efforts to minimize any interference that the construction of the Improvements may have on the other Stadium tenants and their respective patrons' use of the Stadium, and (B) use its commercially reasonable efforts to ensure that the construction is being completed substantially in accordance with the Approved Construction Schedule. In no event will the Club allow its construction or any other activities to prevent any other Stadium tenant or licensee or their patrons from occupying and using the Stadium and the Stadium Premises for an event at the Stadium.

(v) Cost of Construction. The Club shall expend not less than, and shall not be required to spend more than, One Million US Dollars (\$1,000,000) in Project Costs for the construction of the Improvements. In the event that the projected Project Costs based upon the construction bids for the construction of the Improvements and in accordance with the Approved Program and Estimate and Approved Plans exceed One Million US Dollars (\$1,000,000) in Project Costs, then the Club may either, in its reasonable discretion, (1) prepare revisions to the Approved Plans (the "Revised Plans") and submit them to the City for review and approval in accordance with the procedures set forth in section 3(a)(i)-(iii), or (2) terminate this Agreement. Once the

construction of the Improvements has commenced, the Club shall pay for all costs and expenses that arise in connection with such construction (including, without limitation, any cost overruns).

(vi) The Club acknowledges that (i) the City is considering constructing a new synthetic turf field playing surface to be installed at a location approved by the City (the “New Playing Field”), and will not be included as part of the Improvements, but rather will be designed, developed, and constructed by the City, (ii) the Club agrees that the Club will be responsible for a portion of the total cost thereof in the amount of Two Hundred Thousand US Dollars (\$200,000). The Club will provide the City with such payment on the later of (1) December 31, 2026, or (2) the date that the City either (a) includes the New Playing Field in its annual capital improvement program or (b) otherwise secures grant or other financial commitments for funding the remaining costs of the New Playing Field. Such payment is in addition to and is not included in the Project Costs set forth above. The City will be responsible for the remaining portion of the cost of the New Playing Field. All decisions related to the location, design, construction, and construction schedule for the New Playing Field will be made in the City’s sole discretion. If the City does not complete construction of the New Playing Field prior to the termination of this Agreement, the City will return the \$200,000 payment to the Club within thirty days after termination.

(b) Contractors; Subcontractors. Upon reasonable request from the City, the Club shall provide the City with a list of design/build team contractors and subcontractors that the Club, in its reasonable discretion, has selected to work on the Improvements. The Club shall use commercially reasonable efforts to ensure that all contractors and subcontractors comply with all material legal requirements in connection with the performance of all construction work.

(c) Performance of Construction Work. The Club shall, at its own cost and expense construct or cause to be constructed at the Stadium, the Improvements in accordance with the Approved Plans and the Approved Construction Schedule. Any and all construction work shall be done diligently, in conformity with all applicable legal and environmental requirements, including, without limitation, the Americans with Disabilities Act (42 U.S.C. §12101, et. seq.) and the Building and Fire Codes of the City of Portland, Maine, in a good and workmanlike manner, under the supervision of the Approved Architect, and in accordance with all applicable industry and professional standards. Once the Club commences the construction of the Improvements, the Club will diligently prosecute such construction to completion in accordance with the Approved Construction Schedule and the Approved Facilities Construction Schedule, respectively, subject to delays resulting from Force Majeure Events outside of the control of the Club. The Club shall obtain, at its sole expense, all building permits and other approvals necessary for the construction of the Improvements and shall commence construction thereof on or about a date mutually agreed upon by the Parties. The Club shall use its commercially reasonable efforts to complete construction of the Improvements on or before a date mutually agreed upon by the Parties.

(d) City Inspections. The City and its representatives may, from time to time, at the City’s own cost and expense, during reasonable business hours, in a manner which will not unreasonably interfere with construction work in progress, inspect the Improvements and the construction thereof and shall be furnished, upon request, with copies of all plans, shop drawings, and specifications relating to the Improvements to determine whether or not the construction of the Improvements is being or has been done in accordance with the provisions of this Agreement,

the Approved Plans and the Approved Facilities Plans. Prior to making such inspections, the City shall notify the Club's designated contact person which, as of the date of this Agreement, is Gabe Hoffman-Johnson. If the City inspectors determine in their commercially reasonable discretion that any such work is being done contrary to the obligations set forth in Section 3 of this Agreement, including the Approved Plans and the Approved Facilities Plans, the City will provide the Club prompt notice thereof (a "Noncompliance Notice"). Upon the Club's receipt of such Noncompliance Notice, the Club will have a reasonable amount of time to cure any such noncompliance, or otherwise dispute the alleged noncompliance set forth in the Noncompliance Notice in accordance with the dispute resolution process set forth in Section 36 of this Agreement. The Club acknowledges and agrees that any such inspection by the City is for purposes of determining compliance with the provisions of this Agreement, the Approved Plans and the Approved Facilities Plans and that such inspections shall not be deemed to impose any duty or liability upon the City to supervise any aspect of or approve the quality of the Improvements or any construction work.

(e) Permits. The Club shall, at its own expense, obtain all permits, licenses and other governmental approvals and authorizations which are required for the construction, operation or occupancy of the Improvements. Before allowing occupancy or use of the Improvements, the Club, at its own cost and expense, shall obtain and deliver to the City certificates of occupancy for the Improvements.

4. Term; Option to Extend Term.

The term of this Agreement shall begin on February 1, 2024 and, unless earlier terminated in accordance with the terms hereof, shall expire on the last day of the Post-Season during the 2029 calendar year (the "Initial Term"). The Club shall have two (2) consecutive options (each a "Club Extension Option") to extend the term of this Agreement beyond the Initial Term, in each case for a Five (5) year renewal term (each renewal term, together with the Initial Term, collectively, the "Term"); *provided, however*, in order to exercise a Club Extension Option, the Club must provide the City with no less than sixty (60) days' prior written notice thereof, and the Club must not be in material default under the provisions of this Agreement at the end of the then-current Term.

5. Use and Occupancy.

(a) Soccer Games and Other Club Events. Subject to the provisions of subsection 5(b) below, the Club shall have the exclusive right to play professional soccer games (and conduct pregame, half-time and post-game activities) at the Stadium Premises on each Club Scheduled Date on which a Home Game is to be played during the period commencing with the Pre-Season and including the Regular Season and, if Post-Season games are to be played as Home Games, the Club shall have the right to do so during the Post-Season, during each year of the Term covered by this Agreement. The Club shall exercise this exclusive right only on the dates (day or night) regularly scheduled for professional soccer games in accordance with the official League schedule pertaining to professional soccer games to be played and hosted within the Stadium Premises by the Club. For all Club Events, the Club will have access to the Stadium and Stadium Premises in accordance with the terms hereof at least six (6) hours prior the scheduled start of time of the event. The City will work with the Club in good faith to provide the Club additional access to the Stadium (beyond the dates set forth above) for Club practices and other training.

Notwithstanding anything to the contrary in this Agreement, the Club acknowledges and agrees that it may not be able to schedule a Post Season game at the Stadium if another Stadium user is already scheduled to use the Stadium on a given day during the Post Season. In the event of a schedule conflict, the Parties will work together in good faith to achieve a reasonable solution, but under no circumstances will the City be obligated to cancel another Stadium user's scheduled event at the Stadium in order to accommodate the League's Post Season schedule.

(b) Exercise of Club's Selection of Dates. On or before the 1st day of September of each calendar year during the Term, the City shall provide the Club with a list in writing of no less than forty (40) dates (including at least 30 weekend dates and 10 weekday dates) within the reasonably anticipated timeframe of the Regular Season in the following calendar year for the Club to choose from for scheduling of Club Events (the "Offered Dates"). Within 10 business days after the Club's receipt of the Offered Dates, the Club will notify the City in writing of its selection of twenty-five (25) of the Offered Dates, including anticipated Post Season Game dates, and the City will reserve those dates for the Club's use (the "Club Reserved Dates"). Such final selection of Club Reserved Dates shall be binding and not subject to change, except as set forth below or as otherwise agreed to in writing by the Parties. After Club Reserved Dates have been selected, and after the City reasonably determines that other potential Stadium users have had a reasonable opportunity to schedule dates for use of the Stadium, the Club may request additional dates for Club Events by following the City's ordinary scheduling process utilized by other Stadium users. Once the League has confirmed the final schedule for the then-upcoming Regular Season, the Club will provide the City with a copy thereof and, to the extent that the Club determines in its sole discretion that any Club Reserved Dates are not needed for Home Games or scheduled Club Events, those Club Reserved Dates will be "released" back to the City for use through its ordinary scheduling process. All Club Reserved Dates that are not released back to the City and other dates scheduled by the City for the Club after the Club selects the Club Reserved Dates are referred to herein as "Club Scheduled Dates." In the event that the Club does not advance to the League playoffs, the Club will release any Post Season Game Club Scheduled Dates to the City.

(c) Sale of Club Products. The Club shall have the exclusive right during the term of this Agreement, to sell, either directly or through others, Club Products. The City agrees to make available to the Club or its designated licensee(s) during Club Events (i) reasonable, nonexclusive space at the concession stand for the sale of Club Products and (ii) unimproved space in one or more locations reasonably determined by the City, after good faith discussion with the Club, within the Stadium Premises to locate one or more "pop-up" or temporary specialty stores for the sale of Club Products.

(d) Permits and Approvals; Signs. The Club acknowledges and agrees that it is solely responsible for securing all necessary or required permits and approvals for its operation of a professional soccer team and its proposed uses of the Stadium and the Stadium Premises. All signs shall conform to the City of Portland signage standards and Club shall, at its own expense, acquire all necessary permits and approvals to erect said signs. When signs are erected, Club agrees that such signs shall be maintained in good condition at the sole cost and expense of the Club. The City makes no representations or warranties as to the suitability of, or the ability to obtain any regulatory approvals for the Club's use of the Stadium and the Stadium Premises. The Club further acknowledges and agrees that this Agreement only grants permission to use the Stadium and the Stadium Premises in accordance with the terms and conditions set forth herein

and that this Agreement is not a building permit or a license or permit to operate a business or any concession. The Club acknowledges and agrees that the City of Portland is acting as the owner of the Stadium and the Stadium Premises in connection with this Agreement, and not in its regulatory capacity. Accordingly, except as specifically set forth in this Agreement, nothing in this Agreement obligates any City official or employee to grant any permit, license, or other regulatory approval requested by the Club in connection with its use of the Stadium or the Stadium Premises.

(e) Restoration. The Club agrees that at all times during the Term and upon termination of this Agreement, the Club shall restore, repair, and replace all aspects of the Stadium and Stadium Premises that are disturbed or damaged as a result of the Club's presence or use of the Stadium or the Stadium Premises or the presence or use of its employees, players, contractors, subcontractors, invitees, or volunteers, reasonable wear and tear excepted. Any and all such repair, replacement, and restoration work shall be performed to the City's reasonable satisfaction and at the sole expense of Club. The Club acknowledges and agrees that its obligation to repair, replace, and restore all aspects of said property under this paragraph shall survive the termination of this Agreement.

(f) Club acknowledges and agrees that, so long as the City is not in material default under this Agreement, Club shall defend, indemnify, and hold the City harmless at all times from any claims, liability, losses, costs, expenses (including, without limitation, reasonable attorney's fees) fines, damages or judgments (collectively, "Claims"), just or unjust, arising out of or relating to any contracts between the Club and any third parties.

6. Media.

(a) Broadcasts and Exhibitions. Subject to applicable League rules, the Club shall have the right to receive all revenue derived from any broadcast, dissemination or exhibition described in this Section 6(a). Nothing herein is intended to limit the right of the Club to authorize broadcasts or dissemination by radio, television, internet or other digital means, or otherwise of professional soccer games, or any other events in which the Club participates, played or hosted away from the Stadium by the Club. The Club shall have the exclusive right, with respect to radio, television, internet or other digital means, as follows:

(i) to broadcast and disseminate, by radio, television, internet streaming or any other digital means, or any other method of transmission or communication, livestream and/or any audio and video reports or highlights of all and/or any part of all Club Events and any other events in which the Club participates at *any* location during the term of this Agreement; and

(ii) to authorize the exhibition of Home Games by means of any method of Broadcast, in the Club's absolute discretion.

(b) Commercial Sponsors. The Club shall have the exclusive right to authorize and receive all revenues derived from the sale of commercial sponsorships of (i) any Broadcast of any Club Event, or any other events in which the Club participates at *any* location during the term of this Agreement, and (ii) any Broadcasts of special Club programs originating from the Stadium prior to any of such Club Events or other events.

(c) Press Facilities. On each day that the Club has scheduled a Club Event and the right to use and occupy the Stadium Premises in accordance with Section 5 hereof, the City shall make the press box available for use by the Club (and journalists and media representatives), without additional cost to the Club.

7. Consideration.

(a) Net Club Revenue. Commencing with the 2025 Pre-Season and thereafter throughout the term of this Agreement, and subject to the City Signage Revenue, the Club shall receive all Net Club Revenue for each Home Game played by the Club at the Stadium Premises, and for all other Club Events that take place within the Stadium Premises.

(b) Payments to the City. For each Home Game played during the Term of this Agreement (as applicable depending on the Club's exercise of the Club Extension Option), the Club shall pay the following, as consideration to the City for and on account of the Club's use and occupancy of the Stadium and Stadium Premises hereunder:

(i) In consideration of the Improvements and the Club's contribution to the New Playing Field, for each of the first ten (10) calendar years during the Term of this Agreement, the Club shall pay no rental fees for the Stadium, but Club shall be responsible for the fees and costs associated with permitted events at the Stadium, including fees and costs for public safety personnel, at the then-current rates, in each case as provided by the City in writing to the Club. Notwithstanding the foregoing, until such time as the Improvements are completed, if the Club uses the Stadium as permitted hereunder to host Club Events, the Club shall pay the City all use and rental fees charged by the City to other Stadium users for the Club's use of the Stadium during such Club Events; and

(ii) In the event that the Club exercises the second Club Extension Option, then, commencing upon the beginning of the second extension and thereafter throughout the Term of this Agreement, the Club shall pay the City all then-current applicable use and rental fees and other fees and charges (as provided by the City in writing to the Club) charged by the City to other Stadium occupants/licensees.

8. Use and Occupancy by the City.

The City reserves, and shall have the exclusive right to, the use and occupancy of the Stadium (other than the Exclusive Premises), and to the possession thereof, at all times during the Term of this Agreement, except during the Club Scheduled Dates and any other dates that such use and occupancy is granted to the Club, as provided hereunder.

City Covenants.

(a) Maintenance of Stadium Premises; Cleaning; Trash Removal. Except as otherwise provided herein, during the Term, the City shall maintain the playing field at the Stadium, the Stadium, and the Stadium Premises in substantially the same condition that they were in at the beginning of the Term. The City will also be responsible for maintaining the Improvements, except for the Exclusive Premises, in good working order, reasonable wear and

tear excepted. Such maintenance will be performed in the City's reasonable discretion. The Club will be solely responsible for all maintenance and repair of the Exclusive Premises.

During the Term, the City shall, at its expense, furnish all labor, material, supplies, and equipment necessary to maintain and clean the Stadium and keep it in an orderly condition, including the prompt removal and disposal of all rubbish, trash and garbage in the Stadium prior to the time the Club is permitted to use the Stadium for each Club Event.

Unless otherwise specified in this Agreement, the City has no other obligations to maintain, repair, or replace any aspect of the playing field, the Stadium, the Stadium Premises, the Parking Facilities, or any other property subject to this Agreement in any manner above and beyond the City's customary practice for maintenance of the same as it relates to the use of the Stadium by other users/licensees.

(b) Field Painting; Restoration. The Club will not paint or remove paint from the playing field at the Stadium without the City's prior written consent, such consent not to be unreasonably withheld, conditioned, or delayed. If the City consents to the Club's painting or removal of paint from the field, the Club will do so at the Club's sole expense, and the Club will repaint the playing field to the City's reasonable satisfaction, and at times specified by the City to ensure that appropriate lines, logos, or other markings are in place for other Stadium users. For clarity, the City acknowledges and agrees that, in order for the Club to host Home Games at the Stadium, the Club may be required to paint and remove paint from playing field at the Stadium in order to comply with applicable requirements for the exhibition of a professional soccer team participating in the League.

(c) Additional Covenants. Notwithstanding anything to the contrary herein, the City covenants and agrees that:

(i) it shall deliver the Stadium Premises to the Club prior to each Club Event in a condition comparable to the condition of the Stadium Premises delivered to other licensees/occupants;

(ii) at the Club's reasonable discretion, visiting soccer clubs shall be permitted to practice on the Stadium Premises' playing field on Club Scheduled Dates during the six (6) hour period prior to the scheduled start of time of the Club Event.

(d) Club acknowledges and agrees that the City has no obligation to incur any cost or expense, provide any services, or perform and maintenance repairs under this Agreement except those specified in this Agreement.

9. Crowd Control-Security Enforcement and Traffic Control

(a) Security. To the extent the Club, in its reasonable discretion, deems it necessary for any Club Events, the Club shall be responsible for non-police officer crowd control and security enforcement within the Stadium and Stadium Premises for each Club Event and shall provide appropriate personnel therefor. In the event that the City reasonably determines that police, fire, and/or paramedic services are necessary for any Club Event, then the Club shall pay for the

wages of required personnel and all other reasonable costs and fees associated with providing such personnel.

(b) Traffic Mitigation. The Club and the City shall work together in good faith to implement a traffic mitigation program as reasonably necessary to control traffic in and out of the Stadium and the Parking Facilities.

10. Intentionally omitted.

11. Operating Costs. For all Club Events, the City will only pay for customary expenses to operate and maintain the Stadium Premises that the City, in its reasonable discretion, determines are identical or substantially similar to those expenses for which it is responsible in connection with other (non-Club Event) events within the Stadium Premises. For clarity, in connection with each Home Game, the Club shall pay for all expenses incurred in connection with all announcers, fan experience and all other game day operations staff, Concessionaires, personnel for home and visitor bench areas, banners and decorations, any other Club promotional activities or activations in connection with such Home Game and in order to ensure compliance with any additional League requirements, and any other reasonably necessary costs that the City is not required to pay for hereunder.

12. Signage

(a) Signage; Scoreboard Arrangement. Subject to the City's approval, not to be unreasonably withheld, the Club shall be permitted to install, maintain and operate, or supply a scoreboard and other signage at the Stadium suitable for professional soccer, in accordance with applicable League guidelines and applicable sign laws, ordinances, rules, and regulations. The Club shall have the right to (1) operate, manage and control all scoreboards and signage at the Stadium at all times during the Term of this Agreement (other than during non-Club Events at the Stadium, at which time the City shall have the right to operate the scoreboards), (2) manage all advertising and promotional programs thereon or otherwise in connection therewith, and (3) subject to the City Signage Revenue, collect all Net Signage Revenues at all times throughout each year during the Term of this Agreement.

(b) The City shall be entitled to place City and school signage at the Stadium and Stadium Premises in areas not then in use by the Club. Club will not remove or relocate any such signage or any other signage existing at the Stadium or Stadium Premises as of the Effective Date without the City's prior written approval.

13. Entry and Inspection

The City reserves, and always shall have the right to enter the Stadium for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Stadium or to inspect the operations conducted therein. The City shall use its best efforts to assure that any such entry or inspection shall be conducted in such a manner so as to minimize any interference with the Club's use of the Stadium. In the event that any such entry or inspection by the City discloses that the Stadium is not in a reasonably safe or satisfactory condition the City shall have the right to cause the Club to correct any such unsafe or unsatisfactory condition created by the Club or by the Club's use or occupancy of the Stadium Premises, except to the extent that the correction of

such condition is within the scope of the City's maintenance, operation, repair or other general obligations hereunder.

14. Utilities and Service

The City shall furnish, without cost to the Club, gas, electric power, water and sewer services, subject to state and federal regulations regarding energy consumption; provided, however, the Club will be responsible for payment of utility costs attributed to the use of the Stadium lights during Club Events and the use of the Exclusive Premises. The City will provide the Club with reasonably satisfactory evidence (statements/invoices from electricity provider) of such costs at the end of each calendar year of the Term, and the Club shall remit payment within sixty (60) days thereafter.

15. Indemnification; Liens.

To the fullest extent permitted by law, Club shall defend, indemnify and hold the City, its officers, agents and employees, harmless at all times from any claims, liability, losses, costs, expenses (including, without limitation, reasonable attorney's fees) fines, damages or judgments (collectively, "Claims"), just or unjust, that arise out of or are caused by any breach of this agreement by the Club, or any act or omission constituting negligence or willful misconduct on the part of the Club, its members, officers, agents, contractors, subcontractors, or employees, which Claims arise out of or result from the activities hereunder, said Claims to include, without being limited to, claims for personal injury, death, or property damage, including injury or damage to City employees or property; and claims based upon violation of any environmental law or regulation governing hazardous substances. Club's obligations under this paragraph shall survive termination of this Agreement to the extent that the underlying act or omission resulting in the Claim occurs during the Term. Notwithstanding anything to the contrary in this Agreement, the Club is not obligated to indemnify, hold harmless, or defend the City or any of its officers, employees, contractors, subcontractors, or agents against any Claim (whether direct or indirect) to the extent such Claim arises out of or results from the negligence or willful misconduct of the City or any of its officers, employees, or agents, or the City's failure to comply with any of its obligations set forth in this Agreement.

Club shall not suffer or permit any mechanic's lien or other lien to be filed against the Stadium, Stadium Premises, Improvements, or any part thereof, by reason of labor, work, services or materials supplied or claimed to have been supplied to Club, and Club shall defend, indemnify and hold the City harmless from and against any claims, costs or liabilities, including any attorney's fees expended thereon, that result from any such lien.

16. Insurance

(a) Club Insurance. Within 30 days after execution of this Agreement, and, in any event prior to any use of or entry into the Stadium, the Club will procure and maintain:

- Occurrence based Commercial General Liability Insurance coverage in amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, death and property damage;

- Workers' Compensation Insurance coverage to the extent required by law, which shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees;

With respect to the Commercial General Liability Insurance, the Club shall name the City as an additional insured for coverage for claims for which the City does not have governmental immunity, including, without limitation, those areas where government immunity has been expressly waived 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. Within 30 days after execution of this Agreement, the Club shall furnish the City and thereafter maintain certificates 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. The Club shall also provide a copy of any endorsement naming the City as additional insured. In no event will the Club be permitted to enter the Stadium Premises under this Agreement until it has provided the above referenced insurance documentation. Upon City's reasonable request, the Club shall provide the City with a complete copy of any of the above-referenced policies. The Club shall be responsible for any and all deductibles and/or self-insured retentions (not to exceed \$10,000.00 without prior written approval of Corporation Counsel). The City's acceptance or lack of acceptance of the 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 agreement.

The Club shall be also responsible for securing insurance coverage with respect to its own equipment, supplies and other personal property ("Club Property") with such property and casualty insurance as it deems necessary in its sole discretion, and the City shall have no responsibility therefor. Club assumes all risk of damage, loss or casualty to Club Property while located at the Stadium or the Stadium Premises. The Club shall defend, indemnify and hold the City harmless from any claim arising out of or relating to any damage, loss or casualty to Club Property. Any casualty insurance obtained by Club for the Club Property shall include a waiver of subrogation against the City. Notwithstanding anything to the contrary in this Agreement, the Club is not obligated to defend, indemnify or hold harmless, the City for any such claim to the extent such claim arises out of or results from the negligence or willful misconduct of the City, or any of its officers, employees, or agents, or the City's failure to comply with any of its obligations set forth in this Agreement.

(a) City Insurance. During the Term, City shall maintain insurance or self-insurance of not less than the statutory liability cap pursuant to the Maine Tort Claims Act, 14 M.R.S.A. §8101 et seq., including for the acts and omissions of its employees occurring within the course and scope of employment, and pursuant to the Maine Worker's Compensation Act of 1992, 39 M.R.S.A. §101 et seq. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the Licensee 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. Within thirty (30) days after execution of this Agreement, the City shall furnish the Club and thereafter maintain certificates evidencing all such coverages.

17. Damage and Destruction

(a) Repairs of Damage and Termination Rights. If all or a part of the Stadium is damaged by fire, earthquake, hurricane, blizzard, or other casualty (any such fire, earthquake, hurricane, blizzard or other casualty is hereinafter referred to as "Damage"), the City shall promptly give the Club notice of the City's reasonable estimate of the time required to repair such Damage (the "Damage Estimate"). If the Damage Estimate contemplates that the Damage can be repaired on or before the first (1st) anniversary of the date on which such Damage occurred, then (i) the City shall repair the Damage, (ii) the Club shall have the right to play its Home Games and host all other Club Events at any other locations of its choice during the construction period, and (iii) this Agreement shall remain in full force and effect. If the Damage Estimate contemplates that the Damage cannot be repaired on or before such first (1st) anniversary date, then the Club may give notice to the City, within thirty (30) calendar days after the Club receives the Damage Estimate, terminating this Agreement as of the date of such Damage. In the event that the Club does not elect to terminate this Agreement pursuant to this Section 17, and the City fails to substantially complete its repair of the Damage within thirty (30) calendar days after the expiration of the time period set forth in the Damage Estimate (which period shall be extended to the extent of any actual delays caused by the Club or any Force Majeure Event), then the Club may terminate this Agreement by delivering written notice thereof to the City. To the extent repair or replacement is required to the Improvements (or any portion thereof) that benefit other users of the Stadium, and such improvements are covered by City insurance, any such repair or replacement of such Improvements at the Stadium as a result of any Damage thereto shall be performed by the City in accordance with plans and specifications reasonably approved by the City. Any such repair or replacement to Improvements (or any portion thereof) that are exclusively used and enjoyed by the Club during the Term, shall be performed by the Club in accordance with plans and specifications reasonably approved by the City.

(b) Damage During Last Year of Term. Notwithstanding anything to the contrary contained in this Section 18, if the Damage Estimate contemplates that the repair of the Damage shall take more than sixty (60) calendar days to complete, and such completion shall occur during the last twelve (12) months of the Term of this Agreement, then the City and the Club shall each have the option to terminate this Agreement as of the date of such Damage by giving written notice to the other, in the case of the City together with the Damage Estimate, or, in the case of the Club, within thirty (30) calendar days after the Club's receipt of the Damage Estimate.

(c) Abatement. During the period the Stadium Premises or any part thereof is rendered unusable due to such Damage and repair, the Club's obligations hereunder to make any payments to the City shall be proportionately reduced based upon the extent to which the Damage and repair thereof prevents the Club from conducting its business at the Stadium in the manner in which such business was conducted prior to such Damage.

18. Alterations and Improvements

The Club will not make any alterations or improvements to the Stadium except in accordance with plans previously approved in writing by the City.

19. Waiver

The waiver by the City of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of consideration hereunder by the City shall not be deemed to be a waiver of any preceding breach by the Club of any term, covenant or condition of this Agreement other than the failure of the Club to make the particular payment so accepted, regardless of the City's knowledge of such preceding breach at the time of acceptance thereof. Except as otherwise provided herein, any failure on the part of the City to require or exact full and complete compliance with any of the covenants or conditions of this Agreement shall not be construed as in any manner changing the terms hereof or to stop the City from enforcing the full provisions hereof, nor shall the terms of this Agreement be changed or altered in any manner whatsoever other than by written agreement of the City and the Club.

20. Remedies.

(a) Club Defaults. Except as otherwise provided herein, in the event that the Club shall (i) default in the performance or fulfillment of any covenant or condition herein contained on its part to be performed or fulfilled and shall fail to cure or to commence and diligently pursue the curing of such default within thirty (30) calendar days following its receipt of a written notice from the City specifying the default complained of and the date on which its rights hereunder will be terminated as hereinafter provided if such default is not cured, or (ii) file a voluntary petition in bankruptcy, or (iii) be adjudicated bankrupt, or (iv) make a general assignment for the benefit of creditors, *then* and in either or any of said events, the City may, at its option, without further notice or demand upon the Club, immediately cancel and terminate this Agreement and terminate all of the rights of the Club in or to the Stadium and Stadium Premises in or to the further possession thereof. The rights and remedies of the City as hereinabove set forth, are cumulative only and shall in no way be deemed to limit any of the other provisions of this Agreement or otherwise to deny to the City any right or remedy at law or in equity which the City may have or assert against the Club under any law in effect at the date hereof or which may hereafter be enacted or become effective, it being the intent hereof that the rights and remedies of the City, as hereinabove set forth, shall be supplemental to or in addition to or in aid of the other provisions of this Agreement and of any right or remedy at law or in equity which the City may have against the Club.

(b) Termination. Any election on the part of the City to terminate this Agreement must be in writing, properly executed by the City and served upon the Club. No termination of this Agreement on account of a default by the Club shall be or become effective by operation of law or otherwise, unless and until the City shall have given such written notice to the Club. Neither any notice to pay any consideration or portion thereof due and payable or notice to deliver up possession of the Stadium Premises given pursuant to any law of the State of Maine, nor any proceeding in the nature of an unlawful detainer taken by the City shall, of itself, and in the absence of such written notice as above provided, operate to terminate this Agreement.

(c) City Defaults. At no time shall the City be deemed to be in default under this Agreement, unless and until the Club shall have given to the City notice in writing, specifying such default and the City shall have failed to cure or to commence and diligently pursue the curing of such default within a period of thirty (30) calendar days after receipt of such written notice. In the event that the City fails to cure or diligently pursue the curing of any default under this Agreement within such thirty (30) calendar day period, then the Club may, at its option, without further notice or demand upon the City or upon any person or persons claiming by, through or under the City, immediately cancel and terminate this Agreement.

(d) Except for Club's obligations under section 15 (Indemnification, Liens), notwithstanding anything to the contrary in this Agreement, the liability of each Party to the other under this Agreement shall be limited to actual, direct damages only and all other damages and remedies are waived. 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 Agreement or others), strict liability, contract, operation of law or otherwise, to the other party, or its officers, directors, agents, employees, successors or assigns, for incidental, delay, indirect, punitive, or consequential damages connected with, related to or arising from performance or non-performance of this Agreement, 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 Agreement).

21. Force Majeure

Except as otherwise provided herein, should either party hereto be reasonably delayed in or prevented, in whole or in part, from performing any obligation or conditions hereunder or from exercising its rights hereunder by reason of or as a result of any Force Majeure Event, such party shall be excused from performing such obligations or conditions while such party is so delayed or prevented.

22. Title to Improvements. Upon the expiration or earlier termination of this Agreement, except for title to the Exclusive Premises, which, for the avoidance of doubt shall be owned outright by the Club, title to the Improvements shall automatically vest in the City without the need for any conveyance instrument or other documents evidencing the transfer of title to the City.

23. Quiet Enjoyment

The City covenants that the Club (upon payment by the Club of any consideration due, and the performance by the Club of the terms, covenants and conditions, in each case as set forth in this Agreement) shall peacefully and quietly have, hold and enjoy (i) the Stadium Premises on the Club Reserved Dates and during the periods otherwise herein provided in which the Club is given the right to the use and occupancy of the Stadium Premises, and (ii) the Exclusive Premises at all time during the Term of this Agreement.

24. Notices.

Any notice, demand, request, consent, approval and any other communications (any of the foregoing, a "Notice" required, permitted, or desired, to be given hereunder shall be in writing sent by registered or certified mail, postage prepaid, return receipt requested or delivered by hand or reputable overnight courier addressed to the Party to be so notified at its address hereinafter set forth or to such other address as such party may hereafter specify in a Notice delivered in accordance with the provisions of this Section 30. Any such Notice shall be deemed to have been received three (3) Business Days after the date such Notice is mailed or on the date of delivery by hand or courier addressed to the parties as follows (provided that neither the City nor the Club shall be deemed to have received any Notice not actually received):

If to the City: City of Portland
 Attn: City Manager
 389 Congress Street
 Portland, Maine 04101

With a copy to: Office of the Corporation Counsel at the same address

If to the Club: Portland United, LLC
 Attn: Gabe Hoffman-Johnson
 7 Stratton Place
 Portland, Maine 04101
 gabe@usltoportland.com

With a copy to: Caleb E. Ginsberg, Esq.
 303 Bartlett Street
 Portsmouth, New Hampshire 03801
 ginsberg.caleb@gmail.com

25. Construction of this Agreement; Jurisdiction.

(a) Maine Law. This Agreement 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, the City and the 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 Agreement.

(b) Section Headings. The section headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular sections hereof to which they refer.

(c) Sole Instrument. This Agreement embodies and constitutes the sole and entire agreement between the parties hereto with respect to the subject matter hereof. There are no terms, obligations, covenants or conditions between the parties hereto, other than as contained herein. No alteration, amendment or modification hereof shall be valid unless executed by an

instrument in writing by the parties with the same formality as this Agreement. Neither this Agreement, nor any term hereof, can be changed, modified or abandoned, in whole or in part, except by such instrument in writing and no subsequent oral agreement shall have any validity whatsoever.

(d) 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 Agreement.

(e) Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the City, and to such successors and assigns of the Club as are permitted to succeed to the Club right upon and subject to the terms hereof.

(f) No Partnership. Nothing herein contained shall make, or be construed to make, the City or the Club a partner of one another nor shall this Agreement be construed to create a partnership or joint venture between any of the parties hereto or referred to herein.

(g) Singular and Plural. Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

26. Nondiscrimination

The Club agrees not to discriminate in any manner against any person or persons on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status in the Club's use or occupancy of the Stadium Premises. Club shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination, including, without limitation, the provision of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment. The Club agrees to comply with all applicable City, state, and federal laws and regulations regarding equal opportunity.

27. Payments

All payments to the City under the terms of this Agreement shall be made payable to the City of Portland and delivered to the Department of Parks, Recreation and Facilities, 212 Canco Road, Portland, Maine 04103, or as otherwise specified in writing from time to time by the City.

28. Club Employees

The Club agrees that its and its Affiliates' members, managers, employees, associates, advisors, agents, players, or contractors shall not be deemed to be employees of the City for any purpose. The City shall have no obligation or responsibility for resolving any labor disputes or grievances which may arise between the Club and its members, managers, employees, associates,

advisors, agents, players, or contractors employed to perform any services relating to this Agreement. The Club agrees to provide sufficient personnel to perform all services required by this Agreement. The Club shall be responsible for all required federal, state, and local reports, records and payments in connection with social security, unemployment insurance, and other charges and taxes that apply to the Club. The City shall have no responsibility for providing any of the above reports, records and payments.

29. Workers' Compensation

By signing this Agreement, the Club hereby certifies that it is aware of the provisions of Maine Revised Statutes, Title 39-A, Part 1, Chapter 1 (the Maine Workers Compensation Act of 1992) and shall comply with such provisions. If reasonably requested by the City, the Club shall provide the City with evidence of compliance with the workers' compensation laws of the State of Maine. The Club shall provide the City with a waiver of subrogation from its insurance carrier when proof of insurance is due.

30. Land and Water Conservation Fund Act. The parties hereto agree to work together in good faith during the Term as reasonably necessary to avoid the Stadium Premises (or any portion thereof) being subject to a required "conversion" under the Land and Water Conservation Fund Act of 1965 (the "**LWCF Act**"). In the event that the parties are unable to prevent such a conversion, the Club will be responsible for all costs associated with the conversion, including, without limitation, the cost of any real estate acquisition required under the LWCF Act as part of such conversion.

31. League Rules. Notwithstanding anything to the contrary in this Agreement, the City acknowledges that the Club, in its operation of a professional soccer franchise in the League, is obligated to comply with applicable League rules and restrictions ("League Rules"). In the event that any such League Rules require alterations or improvements to the Stadium or the Stadium Premises, the Club may request that the City make such alterations or improvements at the Club's expense or allow the Club to so at the Club's expense. In such event, the City will engage in good faith discussions with the Club in order to identify a commercially reasonable solution, satisfactory to the City, that permits the Club, at its own expense, to continue to host Club Events in the Stadium through the remainder of the Term. In the event that the Club is unable to comply with the League Rules due to the condition of the Stadium or Stadium Premises, the Club may terminate this Agreement upon prior written notice to the City. In no event will the City be responsible for incurring any obligation or expense as a result of the League Rules except as specifically set forth in this Agreement.

32. No property rights. This Agreement is a license only and no provision hereof shall be construed as conveying an easement or other estate in land. The Club will not record this agreement or any portion thereof in the Cumberland County Registry of Deeds.

33. Compliance with laws. The Club and the City agree to comply with all applicable laws, rules, regulations, and City ordinances and policies in its operations hereunder, including but not limited to all applicable federal, state and local environmental law and regulations, including without limitation all laws and regulations governing hazardous substances, with respect

to all its activities in the Stadium and the Stadium Premises, and to conduct all its activities on such property in a safe, responsible, reasonable and business-like manner.

34. No Third-Party Beneficiaries. This Agreement 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.

35. No Assignment. This Agreement is non-transferable and shall not be assigned, pledged, sublet or otherwise transferred to another party except upon the prior written approval of the other Party.

36. Attorney's Fees. Each Party (in such capacity, the “Non-Prevailing Party”) shall pay all reasonable attorney's fees and costs incurred by the other Party (in such capacity, the “Prevailing Party”) if: (i) the Prevailing Party should institute litigation for breach of any material term or condition of this Agreement by the Non-Prevailing Party and ultimately prevail in any such litigation; (ii) if the City is the Prevailing Party in a litigation for an unlawful detainer of the Stadium or Stadium Premises by the Club as Non-Prevailing Party; (iii) the Prevailing Party is made a party to litigation, instituted by a third party related to the Non-Prevailing Party's use of the Stadium or Stadium Premises under this Agreement; or (iv) if the Prevailing Party is required to defend itself, and ultimately prevails, against any action or defense prosecuted by the Non-Prevailing Party or any third party arising out of the Non-Prevailing Party's use or occupancy of the Stadium or Stadium Premises. Fees and costs of defense incurred by the Prevailing Party shall be reimbursed within thirty (30) days of invoice whether the litigation is prosecuted to judgment or not. Amounts advanced by the Prevailing Party not reimbursed within said thirty (30) days, shall bear interest at a rate of one and one-half percent (1½%) per month.

37. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties for no less than sixty (60) days. If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation within sixty (60) days as set forth herein, the parties agree first to try in good faith to settle the dispute by non-binding mediation administered by an attorney selected by agreement of the parties and licensed to practice law in Maine.

38. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a pdf or electronic document shall be considered the equivalent of an original signature.

[Signature page follows]

IN WITNESS WHEREOF, this Stadium Use Agreement for Use and Occupancy of James J. Fitzpatrick Stadium is executed by the parties' duly authorized representatives as of the date first above written.

THE CITY OF PORTLAND

By: *Danielle P. West*
Name: Danielle P. West
Title: City Manager

PORTLAND UNITED, LLC a Maine
limited liability company

By: *Gabe Hoffman-Johnson*
Name: Gabe Hoffman-Johnson
Title: Manager

Approved as to form:

M. J. G.
City Corporation Counsel

Approved as to funds:

Brendan T. O'Connell
City Finance Director

EXHIBIT A
DESCRIPTION OF IMPROVEMENTS¹

Site Lighting

- Install and upgrade current MUSCO lighting to meet USL specifications
-
- Projected expense range: \$485,000 - \$500,000

Press Box

- Make cosmetic and operational improvements to Press Box
- Likely to include infrastructure to improve broadcast and streaming operations
- City will have ability to use on non-gameday
- Projected expense range: \$40,000 - \$60,000

Team Locker Rooms

- Other Stadium users will have ability to use Visitor locker room on non-gamedays if not in use by the Club.
- Projected expense range: \$250,000 - \$300,000

Club Storage Area

- Club to add storage containers
- City to have use of space in containers if available.
- Projected expense range: \$10,000 - \$20,000

Ticketing Entrance

- Club to improve ticketing entrance and Stadium access points
- City will have ability to use on non-gameday
- Projected expense range: \$10,000 - \$20,000

Audio System

- Club to improve Speaker and Audio system
- City will have ability to use on non-gameday
- Projected expense range: \$40,000 - \$50,000

Miscellaneous

- Other Electronics Allowance
- Site Accessories and Landscaping
- Associated utility connection costs

¹ The information below is from the term sheet. Parties to confirm stadium construction plan / Improvements and insert further detail as applicable.

- Additional Operational and Fan Experience Elements
- City will have ability to use on non-gameday
- Projected expense range: \$150,000 - \$300,000

EXHIBIT B

DESCRIPTION OF EXCLUSIVE PREMISES

- Club Storage Area
- Club Home Locker Room

EXHIBIT C

DEPICTION OF STADIUM PREMISES

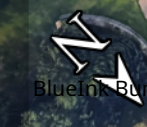
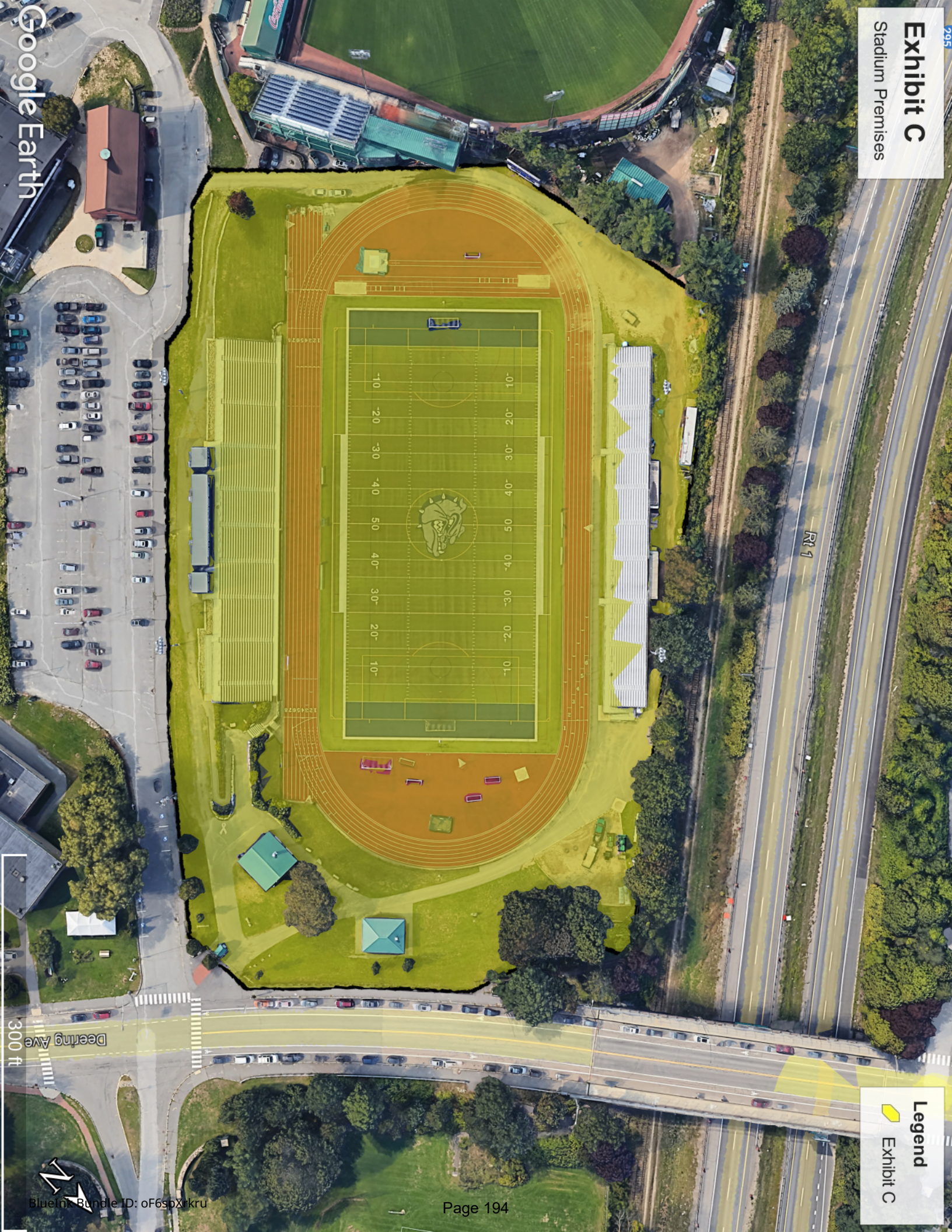


EXHIBIT D

DEPICTION OF PARKING FACILITIES

Total Onsite Parking: 232
Total Offsite Parking: 380

EXHIBIT D



Maine Med 2: 130

Hadlock: 38

Gated Lot: 15

Portland Expo: 38

Maine Med 1: 185

Fitzpatrick: 141

King: 65

MEMORANDUM
City Council Agenda Item

FROM:

DATE: September 26, 2024

SUBJECT: Order 62-24/25 Appropriating \$936,479.26 in Opioid Settlement Funds to the Department of Health and Human Services for Three Opioid Remediation Programs - Sponsored by Health & Human Services & Public Safety Committee, April Fournier, Chair

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 September 10, 2024, the HHS & PS Committee voted unanimously to support this item and recommend it to the Council for approval.

If approved by the City Council, these funds would be combined with \$450,000 in opioid settlement funding accepted by the City Council as part of the FY25 budget process. The total amount of approximately \$1.38 million would be used to fund up to three specific programs, as funds allow. These programs are listed below in priority order and as described in the order itself:

- Syringe Redemption Program
- Day Space
- On-Peninsula Methadone Treatment Program

City staff plan to operate the syringe redemption pilot program at an estimated annual cost of \$52,000. Staff would solicit proposals for the operation of a day space and/or methadone treatment program via an RFP process.

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

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 Opioid Settlement Funds
2. Opioid Settlement Funds Memo (City Council, October 2024)

Prepared by:

Date: 09/26/2024

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 \$936,479.26 IN OPIOID SETTLEMENT FUNDS TO THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR THREE OPIOID
REMEDATION PROGRAMS**

ORDERED, that \$936,479.26 in Opioid Settlement funds are hereby appropriated to the Department of Health and Human Services for a syringe redemption program, a day space, and methadone treatment program to operate either on-peninsula or within a reasonable walking distance from the peninsula, the recommendations of which are outlined in the form attached hereto; and

BE IT FURTHER ORDERED, that the City Manager or their designee is authorized to execute any and all documents necessary to implement these programs and otherwise carry out the intent of this Order.

City of Portland | Executive Department

Danielle P. West, *City Manager*



To: Mark Dion, Mayor, and Members of the Portland City Council

From: Danielle P. West, City Manager

Dena Libner, Assistant City Manager

Date: October 7, 2024

Re: Order 62-24/25 (Opioid Settlement Funds)

This memo is intended to clarify the recommended use of opioid settlement funds, as made by the Health & Human Services and Public Safety Committee at its meeting September 10, 2024.

At that meeting, the Committee voted unanimously to allocate the total amount of opioid settlement funds received as of September 23, 2024 to up to three programs and as funding allows. The programs, in order of priority, are as follows:

1. Syringe redemption program
2. An on-peninsula day space
3. An on-peninsula methadone treatment program

Additional details regarding these programs were presented to the Committee on September 10, 2024, and are also available below (“Background”).

The Committee began its discussion of opioid settlement fund uses in April 2024. Between April and September, the Committee received staff memos/recommendations, input from community service providers, and public comment at a September 10, 2024 public hearing.

The settlement funds the City had received as of September 23, 2024 totalled approximately \$1.38 million. Of that amount, \$450,000 has already been accepted by the City Council as part of the FY25 operating budget, and will be used for the purposes described in Council Order 62, if/when enacted.

If Order 62 is enacted, staff plan to implement the syringe redemption program by the end of the calendar year. An RFP will be issued for the other two programs.

BACKGROUND

Day Space

A low-barrier day space would offer shelter-resistant, unhoused residents access to services similar to those available at the Homeless Services Center. In addition, it would provide respite

from inclement weather, and could offer improved case management and access to services for Portland's most vulnerable residents.

Services offered as part of a day space could include:

- Access to housing navigation services;
- Access to harm reduction services, including safe syringe disposal;
- Access to meals, showers, and laundry;
- Access to health services;
- Access to medication-assisted treatment; and/or
- A robust referral and case management system.

Equal in importance to client-focused services is the day space's accountability to nearby residents and businesses. To help ensure accountability, staff recommend that day space operations include:

- A neighborhood advisory committee;
- A commitment to hosting recurring neighborhood meetings;
- Consistent staff and security presence in the immediate vicinity to prevent and respond to unintended consequences of the facility (e.g. accumulation of trash or waste, loitering, drug use, etc.);

The July 9, 2024 staff memo presented to the Committee outlined the criteria staff used to develop its recommendations: their alignment with one or more of the **eligible uses** (outlined in Exhibit E, attached); the estimated **cost of delivery** in the first year and out-years, if applicable; their **financial sustainability**, given lack of predictability in settlement funds year over year and the discontinuation of funds after FY39; the **scope and immediacy of impact**.

The financial feasibility of a day space depends on identifying an affordable location. Unfortunately, the funds available as part of the opioid settlement funds are not sufficient to lease or purchase a space, and no vacant City-owned facility is available on-peninsula. For that reason, staff would recommend ranking day space proposals submitted by applicants that already have access to a suitable space.

Alternatively, the Portland Housing Authority (PHA) has expressed willingness to consider leasing vacant property for this purpose, at no cost. The property, located at 14 Baxter Boulevard, is zoned appropriately and would require minor interior renovation.

Of the three recommendations included in this memo, operating a day space would likely be the most costly.¹ However, it has the potential to employ multiple abatement strategies (as set forth in Exhibit E of the settlement agreement, attached), as well as to potentially deliver positive outcomes immediately and in the long term. The financial sustainability of this option would be dependent on the details of respondents' proposals; preference would be given to

¹ The exact cost would be determined through a competitive bid process.

operators that were committed to pursuing supplementary or alternative funding sources in the future, as well as those that already had access to an appropriately zoned and accessible location.

On-Peninsula Methadone Treatment

Methadone is one of three medications approved by the Federal Drug Administration (FDA) to reduce opioid use and the negative consequences of such use, including infectious disease transmission and criminal behavior.

There is no methadone treatment program currently located in Portland. The nearest program is located in South Portland, making it difficult for many to access on the consistent basis required for treatment to be effective. (According to the National Institute on Drug Abuse publication [Principles of Drug Addiction Treatment: A Research-Based Guide \(Third Edition\)](#), the length of methadone treatment should be a minimum of 12 months.)

“Medication-assisted treatment (MAT) distribution and other opioid-related treatment” is among the core strategies included in the list of eligible uses of opioid settlement funds (Exhibit E). Other government entities have already used settlement funds for this purpose:

- A nonprofit organization in Livingston County, New York, was awarded funds to build a methadone program within an existing outpatient location;
- The State of Massachusetts has allocated at least \$1.2 million toward methadone treatment programs;
- The City of Philadelphia included the launch of Mobile Methadone as part of its settlement funds spending plan;
- Snohomish County, WA is investing \$600,000 annually toward a mobile treatment van to provide methadone and other medications to patients.

In a [report](#) issued by the Legal Action Center in October 2020, fewer than half of facilities providing addiction treatment offered any medications for opioid use disorder in 2019. Only four percent offered methadone, buprenorphine, and extended-release naltrexone.

The staff recommendation was that opioid settlement funds be made available to seed the development of a methadone treatment program on-peninsula, with preference given to a program that would operate out of a brick-and-mortar location.

Syringe Redemption Pilot Project

During COVID, the State increased the number of syringes that syringe service programs (SSPs) were allowed to distribute, per client. In addition, the exchange requirement was lifted so that clients did not need to provide a used syringe in order to receive a sterile one. In 2022, the Maine CDC issued a permanent rule change that allowed syringe service programs (SSPs) to distribute up to 100 syringes per client.

Since the COVID-era policy change, the number of syringes distributed by the City of Portland's SSP ("The Exchange") has increased anywhere from 10% to 83% each year. While the number of syringes collected each year has also increased, so too have reports of improperly disposed syringes on public and private property.

Some cities² have implemented a syringe redemption program to incentivize clients to return used syringes to the SSP. Portland City staff's program proposal would carry a maximum annual cost of \$52,000 and include a recommended payout of 5 cents per used syringe, resulting in the potential return of over 1 million syringes. Staff's proposal also includes the following caps:

Expense Type	Expense Cap
Daily per client payout	\$10.00 maximum
Weekly per client payout	\$20.00 maximum
Maximum program participants	50
Daily program payout	\$500 maximum
Weekly program payout	\$1,000 maximum

Table 1: Proposed payout structure for syringe buyback program. Based on these figures, the proposed program would cost up to \$52,000 for one year.

This proposal represents a year-long pilot. If this program were approved, staff would develop administrative policies and procedures regarding safety standards of participants and staff, equitable program access, data collection, program evaluation, and reporting.

FISCAL IMPACT

Staff recommend that the FY25 amount allocated toward one or more abatement strategies not exceed the settlement funding that has been received by the City. In that case, there would not be any unanticipated fiscal impact on the City's FY25 budget.

Distribution of settlement funds will occur over 18 years, starting in 2022. As of September 23, 2024, the City of Portland had received \$1.38 million in settlement payments.

The average annual amount projected to be received between FY25 and FY39 is estimated at approximately \$235,000. Due to the different payout periods agreed to in the various settlements, the actual amount will fluctuate significantly year over year.

² New York City's program began in June 2024. Boston's program ended in 2024 after about four years, when settlement funds that had supported the program were diverted toward a different cleanup initiative expected to include employment and workforce development.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: October 2, 2024

SUBJECT: Order 63-24/25 Appropriating \$5,630,000 in Funds for the Kiwanis Pool Replacement Project - 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

This agenda item appropriates \$5.63M of additional funding necessary to complete the Kiwanis Pool Replacement project. The project had stalled after bid prices came in higher than the original estimate. The Finance Committee requested that staff identify funding to close the gap and complete the project. This order appropriates future proceeds from an anticipated \$1M in private donations and \$4.63M of interest income.

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

III. BACKGROUND

At the August 2024 meeting of the Finance Committee, staff was instructed to move forward with closing the funding gap on the Kiwanis Pool Replacement Project, with potential options to include value engineering cost reductions, external fundraising, and identification of internal funding sources. Additionally, staff worked with the low bidder for the project to extend the bid award deadline from October 2024 until November 30, 2024. This allows time for cost savings measures to be fully negotiated, and for the Finance Committee and City Council to consider and take formal action on additional funding sources for the project.

Through negotiation with the low bidder, staff were able to reduce project costs by \$1,290,000. This was accomplished by eliminating winter work and the need to provide heat and snow clearing, adjusting assumptions about hazardous waste soil and reducing the volume of special waste soil disposal, eliminating shade sails, simplifying fencing options, and other cost saving measures.

Staff also met with the Portland Parks Conservancy to discuss outside funding options. The Parks Conservancy Board of Directors voted to support the Kiwanis Pool replacement project and to allocate organizational resources to support a philanthropic capital campaign to raise significant funds for the project.

And finally, City staff and Parks Conservancy staff met with prominent local donors to request their support for the project and advice on fundraising strategies. Those donors have offered to lead a \$1,000,000 philanthropic capital campaign to support the project, in conjunction with the Portland Parks Conservancy.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The result of this additional funding is that the Kiwanis Pool replacement project will proceed as planned and that construction will get underway in early 2025. The resulting pool will be a community amenity that will last for generations, and give Portlanders of all ages and backgrounds a place to come together for recreation, fitness, a place to cool off on increasingly hot summer days, and most importantly, a place for meaningful community connection.

The new pool will be ADA compliant and a welcoming place for people of all abilities. The new pool will be a place where seniors can gather for fitness classes, where children of all backgrounds can gather for water play and swim lessons, where teens can have fun outdoors and perhaps get their first job, where parents can come to gather and create community bonds. Every year we see tragic teen drowning deaths in Portland rivers and waterways, which are disproportionately impacting our New American population. This pool will be a place where people of all backgrounds can learn the important life skill of swimming.

V. FINANCIAL IMPACT

Appropriating the additional \$5.63M of funding made up of philanthropic funds and interest income will have no impact on the tax rate, and requires no new bonding. Although there is no direct fiscal impact from this project in regards to impact on the tax rate, the \$4.63M of the funding could be used for future ARPA or capital improvement projects if not used in this manner. However, the ARPA funding interest income was always intended to be used as companion funds for ARPA projects. Additionally, ARPA projects must be fully obligated by 12/31/24 and expended by 12/31/26. The Kiwanis Pool project is fully shovel ready and the funds are ready to immediately be obligated via a construction contract after this order is effective. If this project were to NOT move forward, it would be difficult to find a replacement project for the ARPA funding obligation prior to 12/31/24 that is shovel ready.

VI. STAFF ANALYSIS AND BACKGROUND

The City has a generational opportunity to leverage significant American Rescue Plan funds to build a facility that only needs to be replaced every 30-50 years. The current level of federal investment into local infrastructure projects is not likely to be repeated on this scale for many years, so the timing is ideal to proceed with this generational project now. Additionally, the community enthusiasm created by a philanthropic capital campaign lends momentum and significant private investment into this public project.

Staff recommends that the Council vote to appropriate an additional \$5.63M in appropriations to complete the Kiwanis Pool project.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Order - Appropriation of \$5.6M of Funding for Kiwanis Pool Replacement Project
2. Kiwanis September 2024 Final Design_Graphics
3. Kiwanis Pool MOU 100424

Prepared by:

Date: 10/02/2024

CITY OF PORTLAND
IN THE CITY COUNCIL

**ORDER APPROPRIATING \$5,630,000 IN FUNDS FOR THE
KIWANIS POOL REPLACEMENT PROJECT**

ORDERED, that \$4,630,000 FY24 of American Rescue Plan Act fund interest income and FY24 general fund interest income is hereby appropriated for the Kiwanis Pool Replacement Project; and

BE IT FURTHER ORDERED, that future proceeds in an amount up to \$1,000,000 in donations from the fundraising effort by the Parks Conservancy is hereby accepted and that amount appropriated for the Kiwanis Pool Replacement Project; and

BE IT FURTHER ORDERED, the City Manager or designee is authorized to execute any and all contracts and documents necessary to accept and appropriate the funds included within this order and to otherwise effect the intent and purpose of this order.



Proposed Kiwanis Aquatic Facility - Aerial View



Proposed Kiwanis Aquatic Facility - View from Douglass St.



Proposed Kiwanis Aquatic Facility - View from Entrance onto Pool Deck



Proposed Kiwanis Aquatic Facility - View from Lawn

Memorandum of Understanding Between
City of Portland
and
Portland Parks Conservancy

Project: Kiwanis Pool

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, Portland Parks Conservancy. (the “Conservancy”) is a non-profit organization with 501c3 status, and with a principal mailing address of 212 Canco Rd, Portland, Maine, 04102 and

WHEREAS, the Conservancy was established for the express purpose of raising philanthropic support and encouraging civic engagement to enhance and sustain the City of Portland’s Parks and its Parks, Recreation & Facilities Programs; and

WHEREAS, the City desires to rebuild the outdoor public pool known as “Kiwanis Pool”

WHEREAS, the Parks Conservancy has the capacity to assist the City with fundraising and grant-writing efforts,

WHEREAS, the purpose of this Memorandum of Understanding (“MOU”) is to memorialize the City and the Conservancy’s collaboration to raise funds for construction of the Kiwanis Pool

NOW THEREFORE, in consideration of the following, the City and the Conservancy hereby agree as follows:

1. The City shall administer all aspects of the project including: permitting, design, bidding, and project administration.
2. The Conservancy will pursue funding for the project including, but not limited to, grants, donations and/or organizational funds for the implementation of the Kiwanis Pool Project and provide those funds to the City for its consideration and acceptance by April 1, 2025. All funds accepted by the City pursuant to this MOU and that certain Memorandum of Understanding between the City and the Conservancy dated June 15, 2018 shall be placed in a dedicated City fund to be used only for the Kiwanis Pool project expenses. The funds that the Conservancy raises and provides to the City shall be used for the following purposes:
 - a. Design, Permitting, and Bidding
 - b. Construction and Contingency
 - c. Materials and Pool Amenities
 - d. Project Management and Oversight
3. The Conservancy may retain up to 2.5% of total funds raised to cover administrative and fundraising expenses.
4. Any naming rights for facilities on public property would need the City’s prior approval.
5. All promotional materials shall recognize the dual partnership between the City and the Conservancy in the project.
6. The Conservancy agrees that any activities undertaken pursuant to this MOU will also be consistent with and comply with that certain Memorandum of Understanding between the City and the Conservancy dated June 15, 2018.

7. The parties understand and agree that employees or volunteers employed or secured by the Conservancy who participate in volunteer events or projects under this MOU shall be considered employees and volunteers of the Conservancy, which shall be solely responsible for any and all compensation for said employees and volunteers. The Conservancy, its employees, agents, and volunteers shall not receive any compensation from the City relating to the activities described in this MOU. The Conservancy, its agents, employees, officers, directors and trustees shall not be considered employees of the City.
8. This MOU may not be modified except for in writing executed by the Conservancy and the City.
9. Either party may terminate this MOU with or without cause upon 30 days' prior written notice. In the event that this MOU is terminated (i) by City without cause or (ii) by the Conservancy for cause, in each case, prior to completion of the project, City shall return all unexpended funds donated or delivered by the Conservancy and City shall have no further interest in or to such funds.
10. Prior to the execution of this MOU, the Conservancy will procure and maintain occurrence-based Commercial General Liability Insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage, naming the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law. With respect to the Commercial General Liability Insurance, the Conservancy shall name the City as an additional insured for coverage only in those areas where government immunity has been expressly waived by 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. Prior to execution of this MOU, the Conservancy shall furnish the City and thereafter maintain certificates 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. The Conservancy 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. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees. Upon City's request, the Conservancy shall provide City with a complete copy of any of the above-referenced policies. The Conservancy shall be responsible for any and all deductibles and/or self-insured retentions. The requirements contained herein shall also apply to any contractor retained by the Conservancy, who shall be responsible for ensuring all such coverage and requirements are met.
11. To the fullest extent permitted by law, the Conservancy shall defend, indemnify and hold harmless the City, its officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and attorney's fees arising out of or resulting from the Conservancy's performance of this MOU, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, and (2) is caused in whole or in part by any willful, fraudulent or negligent act or omission of the Conservancy, anyone directly or indirectly employed by it, or anyone for whose act it may be liable. Such obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City which otherwise exists. The extent of the indemnification provision shall not be limited by the provision for insurance in this MOU. The Conservancy's obligations under this paragraph shall survive termination of this MOU. In no event will either party be liable to the other or to any third party for any loss of use, revenue, or profit or loss of data or for any consequential, incidental, indirect, exemplary, special, or punitive damages whether arising out of breach of contract, tort (including

negligence), or otherwise, regardless of whether such damage was foreseeable and whether or not such party has been advised of the possibility of such damages.

12. Out of concern for the public, City employees, the Conservancy, and all others participating in activities in City of Portland public parks, all work performed by the Conservancy shall be in conformance with pertinent OSHA, local, state and federal government regulations.

13. This MOU may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a pdf or electronic document shall be considered the equivalent of an original signature.

Seen and Agreed to this ____ day of October, 2024

WITNESS

Portland Parks Conservancy

President

WITNESS

CITY OF PORTLAND

Danielle West, City Manager

