

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

REMOTE JUNE 15, 2020 CITY COUNCIL AGENDA

The Portland City Council will hold a Remote Special City Council Meeting at 5:30 p.m. This meeting will take place remotely using Zoom. The Honorable Kate Snyder, Mayor, will preside.

ZOOM MEETING INFORMATION:

The Portland City Council will hold a remote meeting on Monday June 15, 2020 at 5:30 PM. This meeting will take place remotely using Zoom.

Virtual meetings are allowed using emergency legislation approved by LD 2167; 1 M.R.S. §403-A, that authorizes cities and towns to conduct meetings online.

Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be uploaded to portlandmaine.gov/livestream the next day.

For public comment, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be un-muted by the host when it is time for public comment.

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/86737359759>

Or iPhone one-tap :

US: +13017158592,,86737359759# or +13126266799,,86737359759#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099 or +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833

Webinar ID: 867 3735 9759

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

SPECIAL MEETING:

Special Meeting of the Corporator of the Portland Development Corporation Regarding Amendments to COVID-19 Rapid Response Loan Program, Microenterprise Grant Program, and COVID-19 Business Assistance Grant Re- Hire Program - Sponsored by Kate Snyder, Mayor

Three COVID-19 Portland Development Corporation (PDC) grant and loan programs were launched on May 19, 2020, the day after the City Council approved final funding for the two CDBG funded programs. At staff's request a wide range of partner organizations reached out to various business sectors and communities with program information about the Rapid Response Microloan Program, the Microenterprise Grant Program, and the COVID-19 Business Assistance Program (BAP) Rehire Program. In addition, staff organized and participated in a Zoom webinar that had about 30 attendees. The City's website contains comprehensive information about the three programs, how to apply and, of course, the application.

The PDC set a deadline of June 4th so that the potential beneficiaries of the funding would not be those whose applications came in first, given that numerous applications were anticipated. Fifteen applications were received, eleven seeking a Microenterprise Grant and four seeking a Rapid Response Microloan. Among them, just five of the Microenterprise grant applications and three of the Rapid Response Loan applications were eligible.

There were unanticipated issues that made some businesses ineligible for the COVID-19 Loan and Grant Programs. This was learned via applications received, phone calls, and emails to staff. In order to best assist businesses in need, some of these items issues merit modifications to the Program Guidelines.

Order 194-19/20 Amending the Portland Development Corporation COVID 19 Business Assistance Grant Program for Job Re-Hire, The Microenterprise Grant Program, and the Rapid Response Microloan Program - Sponsored by Kate Snyder, Mayor

The PDC Board met on June 9, 2020, and voted to recommend to the City Council amendments to the PDC COVID-19 Loan and Grant Programs, modifying language in all three guidelines to permit eligibility for businesses that received no more than \$1,000 per employee and \$10,000 in total from Small Business Administration or Finance Authority of Maine COVID-19 Programs; and eligibility for businesses that were in existence by March 15, 2020. Also, the PDC recommended modifying the language of the COVID-19 Microenterprise Grant Guidelines to make home-based businesses eligible.

Five affirmative votes are required for passage after public comment.

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Approval of the June 1, 2020 Draft City Council Minutes

PROCLAMATIONS:

Proclamation 15-2020 Recognizing June 20, 2020 as World Refugee Day

Proclamation 16-2020 Recognizing June 2020 as LGBTQ and Pride Month.

LICENSES:

Order 195-19/20 Granting Municipal Officers' Approval of Amigos Mexican Restaurant Inc. dba Amigos. Application for a Combined Entertainment License at 9 Dana Street - Sponsored by Jon Jennings, City Manager

Amigos Mexican Restaurant Inc dba Amigos. Application for a Combined Entertainment License at 9 Dana Street.

Application was filed on 2/19/2020. Applicant currently holds a Class XI FSE license with Entertainment with Dance. Chapter 4 Sec 4-53 (2) requires a public hearing for all initial applications for a Combined Entertainment License.

Five affirmative votes are required for passage after public comment.

Order 196-19/20 Granting Municipal Officer's Approval of Portland Maine Baseball, Inc. dba Portland Sea Dogs. Application for a Combined Entertainment License at 271 Park Avenue - Sponsored by Jon P. Jennings, City Manager

Portland Maine Baseball, Inc. dba Portland Sea Dogs. Application for a Combined Entertainment License at 271 Park Avenue.

Application was filed on 3/5/2020. Applicant currently holds a Class III & IV FSE license with Entertainment with Dance. Chapter 4 Sec 4-53 (2) requires a public hearing for all initial applications for a Combined Entertainment License.

Five affirmative votes are required for passage after public comment.

Order 197-19/20 Granting Municipal Officer's Approval of J & TL Inc. dba Andy's Old Port Pub. Application for a Class XI FSE with Indoor Entertainment at 94 Commercial Street - Sponsored by Jon P. Jennings, City Manager

J & TL Inc. dba Andy's Old Port Pub. Application for a Class XI FSE with Indoor Entertainment at 94 Commercial Street.

Application was filed on 2/11/2020. New City application. Applicant has a pending Class XI FSE license.

Five affirmative votes are required for passage after public comment.

Order 198-19/20 Granting Municipal Officers' Approval of Abraham Durani & Habibullah Popal dba Crown Fried Chicken. Application for a Food Service Establishment with Preparation at 1100 Brighton Ave for food service until 2:00am - Sponsored by Jon P. Jennings, City Manager.

Abraham Durani & Habibullah Popal dba Crown Fried Chicken. Application for a Food Service Establishment with Preparation at 1100 Brighton Ave for food service until 2:00 a.m.

Application was filed on 5/4/2020. New City application. Location was formerly Little Caesar Pizzeria.

Five affirmative votes are required for passage after public comment.

Order 199-19/20 EAD Entertainment LLC dba Muse Paintbar. Application for a Class III & IV FSE at 245 Commercial Street - Sponsored by Jon P. Jennings, City Manager

EAD Entertainment LLC dba Muse Paintbar. Application for a Class III & IV FSE at 245 Commercial Street.

Application filed on 5/26/2020. Change of ownership of an existing business.

Five affirmative votes are required for passage after public comment.

BUDGET ITEMS:

Fiscal Year 2020-2021 Portland Board of Public Education School Budget

Please see the following for background documents:

https://docs.google.com/document/d/1_a-9BuKdwW84xibBmlHnzA6BteKDoAq_yE02OiHEBro/edit

Order 181-19/20 Approving State/Local EPS Funding Allocation for Public Education from Kindergarten to Grade 12 for Portland Public Schools for Fiscal Year 2021 - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr. Chair

Order 181-19/20 to Order 187-19/20 are orders required by 20-A M.R.S.A. §15690 in order to comply with what is known as LD1, a set of state laws passed to control increases in property taxes.

This order provides \$89,312,286 as the amount determined by state law to be the minimum amount the city must appropriate in order to receive the full amount of state funding under the Essential Programs and Services Funding Act.

This order requires the city to raise \$74,271,401 as the city's contribution to the total cost of funding public education from K-12 as described in the EPS law. The City's Tax levy based on the budget submitted by the Portland Board of Public Education for the total for school budget programs of \$119,862,677 will be \$94,338,744.

This item must be read on two separate days. It was given a first reading on June 1, 2020. Five affirmative votes are required for passage after public comment.

Order 182-19/20 Approving Non-State Funded School Construction Debt Service for Portland Schools for Fiscal Year 2021 - Sponsored by the Finance Committee, Nicholas M. Mavodones, Jr., Chair

Non-state funded debt service is the amount of money needed for the annual payments on the City's long--term debt for major capital school construction projects and portions of school construction projects that are not approved for state funding. The bonding of this long- term debt was previously approved by the voters or the City Council.

This order appropriates \$392,289 for the annual payments on debt service previously approved by the voters or the City Council for non-state (local only) funded school construction projects. The state no longer includes minor capital projects in this calculation.

The \$392,289 is in addition to the funds appropriated as the EPS required local share (amount of the city's contribution to the total cost of funding public education from kindergarten to grade 12).

This item must be read on two separate days. This item was given a first reading on June 1, 2020. Five affirmative votes are required for passage after public comment.

Order 183-19/20 Raising and Appropriating Additional Local Funds for Portland Schools for Fiscal Year 2021 - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr.

This order appropriates \$17,887,494 in additional city funds over and above regional Essential Programs and Services amount and the non--state funded debt service amount.

This exceeds the EPS funding model by \$17,887,494 and is needed to cover the School Department's costs that the state's funding model does not recognize or recognize fully, including costs to maintain class size; Special Education costs; Regular Instruction costs; Facilities Maintenance costs to address deferred maintenance; technology costs; transportation costs; professional development costs; debt service for pension obligation; and debt service capital renovation costs.

This item must be read on two separate days. It was give a first reading on June 1, 2020. Five affirmative votes are required for passage after public comment.

Order 184-19/20 Approving Total School Operating Budget For Portland Schools for Fiscal Year 2021 - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair.

This order is required by 20-A M.R.S.A. §15690(4)(A). It sets the School Budget required by state law. The total amount recommended for that budget is \$113,542,955.

That is the amount based on the budget submitted by the Portland Board of Public Education and would be sent to the voters for approval at a citywide Referendum Election on July 14, 2020. \$92,551,184 of the \$113,542,955 would come from property taxes, \$18,676,771 would come from state subsidy, and \$2,315,000 from other revenues. This order does not provide money unless the other General Fund budget orders are passed.

This item must be read on two separate days. It was given a first reading on June 1, 2020. Five affirmative votes are required for passage after public comment.

Order 185-19/20 Appropriating and Raising Funds for Adult Education for Fiscal Year 2021 as Required by the Maine Revised Statutes, Title 20-A M.R.S. §8603-A(1) - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair

This order appropriates \$2,536,294 for Adult Education for Fiscal Year 2020-2021 and raises the sum of \$1,717,219 as the local share with authorization to expend any additional, incidental, or miscellaneous receipts in the interest and for the well being of the adult education program.

This item must be read on two separate days. It was given a first reading on June 1, 2020. Five affirmative votes are required for passage after public comment.

Order 186-19/20 to Raise and Appropriate Local Funds for Food Service in the Portland Public Schools for Fiscal Year 2021 - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair

This order raises and appropriates \$70,341 for the Food Service Program for Fiscal Year 2020--2021. The Portland School Department is authorized to expend any unexpended balances and additional, incidental or miscellaneous receipts in the interest and for the well being of the food service program.

This item must be read on two separate days. It was given a first reading on June 1, 2020. Five affirmative votes are required for passage after public comment.

Order 187-19/20 Authorizing the Disposition of Any Additional State Subsidy Received for Portland Schools in Fiscal Year 2021 - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair

Disposition of Any Additional State Subsidy Received: In the event that Portland Public Schools receives more state education subsidy than the amount included in its budget, that the City authorizes the Portland Board of Education to use all or part of the additional state subsidy to increase expenditures for school purposes in cost center categories approved by the Portland Board of Education, subject only to approval by the City Council.

This item must be read on two separate days. It was given a first reading on June 1, 2020. Five affirmative votes are required for passage after public comment.

COMMUNICATIONS:

Com 11-19/20 Re: August 10, 2020 Is the New Due Dates for Payment of Excise Taxes, Property Taxes, from Brendan T. O'Connell, Finance Director

Executive Order #53-A from Governor Janet T. Mills requires that "municipal officers of the municipality have given reasonable notice to the public of the start date of the municipality's ability to collect tax and process registrations, the methods by which tax collection and registrations may be processed, and the deadline for compliance by vehicle owners." This communication action provides the required notice per the Executive Order and is supplemental to the notices posted on the City website and via press release.

The City of Portland (via the State website) has continuously offered online vehicle / boat / trailer re-registration during the duration of the COVID-19 health emergency. Appointments for new vehicle / boat / trailer registration are now available online at <http://portlandmaine.gov/Treasury> for in person appointments at City Hall in Room 24 and the Treasury Office. We strongly encourage residents to re-register their vehicles / boats / trailers online but in person appointments can also be utilized for re-registration transactions for customers who are unable to re-register online. The deadline for compliance with Executive Order #53-A is August 10, 2020.

To provide residents with financial relief from the COVID-19 pandemic the City previously announced that the second half property tax payment deadline was delayed until June 1, 2020. Any remaining property tax payments should be made online or via mail. The City will be sending 30-Day Demand Notices for Property Taxes on July 10, 2020 and filing Property Tax Liens on August 10, 2020.

As a communication this item requires no public comment or formal Council action

RESOLUTIONS:

Resolve 13-19/20 A Resolution of Affirming City of Portland's Commitment to Racial Equity in the Wake of COVID-19 and the Devastating Impact on Our Community - Sponsored by Mayor Kate Snyder

This Resolution affirms the City of Portland's commitment to racial equity in the wake of COVID-19 and the devastating impact on our community. The Mayor and the City Council are committed to centering our community's responses to the COVID-19 global pandemic in racial equity. We will dedicate our resources, platforms, political will and authority to identifying and addressing the ways that the novel coronavirus may exacerbate existing inequities in our communities.

Five affirmative votes are required for passage after public comment.

UNFINISHED BUSINESS:

Order 72-19/20 Amendment to the Portland City Code Chapter 17 Re: Facial Recognition Technology Prohibition - Sponsored by Councilor Pious Ali

Concerns about loss of privacy and civil rights matters have arisen with the advent of facial recognition technology around the world. This prohibition, based on others in the United States that have already been adopted, prohibits the use of facial recognition technology by city officials and employees and does not provide any exceptions, including for law enforcement officers.

This item must be read on two separate days. This item was given a first reading on October 21, 2019. Public comment was taken on November 4, 2019, when this item was postponed to November 18, 2019. It was then postponed to January 6, 2020 when it was postponed to June 15, 2020. Public comment is not required at this meeting. Five affirmative votes are required for passage.

Order 190A-19/20 Approving the Consolidation of Voting Districts in the City of Portland to Three Polling Places for the July 14, 2020 State Primary and Municipal Referendum - Sponsored by Katherine L. Jones, City Clerk

The City Clerk is offering an amendment that has been included in the back-up materials and would provide for six (6) consolidated polling places for the July 14, 2020 election.

This order as originally proposed approves the consolidation of voting districts for the July 14, 2020 State Primary Election and Municipal Referendum Questions, into three polling places for the City of Portland.

On the peninsula of Portland, the consolidated polling place would be Cumberland County Civic Center, at 1 Civic Center Square. The following Voting Districts would be consolidated on July 14, 2020 for voting at the Civic Center: 1-1, 1-2, 2-1, 2-2, 3-2.

Off the peninsula of the City of Portland, the consolidated polling place would be First Baptist Church, at 360 Canco Road. The following Voting Districts would be consolidated on July 14, 2020 for voting at the First Baptist Church: 3-1, 4-1, 4-2, 5-1, 5-2.

Peaks Island voting for District 1-3 will remain on Peaks Island, and other island residents would vote as they have in the past.

In order to address City Council and other concerns brought up during public comment at the June 1, 2020 Remote City Council Workshop on the July 14, 2020 election, a staff amendment has been included in the back up material. This amendment proposes some changes to the initial consolidation proposal, and seeks to increase the total number of polling places to six. This would replace the originally proposed three polling places in the original Order.

More specifically, under the amendment, voting districts 1-1 and 1-2 would vote at the East End Community School, 195 North Street; and Voting Districts 2-1 and 2-2 would vote at Reiche School, 166 Bracket Street.

Off the peninsula, voting districts 3-1 and 3-2 would vote at the Italian Heritage Center, 40 Westland Avenue; voting districts 4-1 and 4-2 would vote at First Baptist Church, 360 Canco Road; and voting districts 5-1 and 5-2, would vote at the Grace Baptist Church, 476 Summit Street. Peaks Island would vote at the Kennedy and Carter Family Community Center located at 129 Island Avenue, Peaks Island, as they have in the past.

This item must be read on two separate days. It was give a first reading on June 1, 2020. Five affirmative votes are required for passage after public comment.

Order 191-19/20 Moving the Polling Place at the Portland Exposition Building to the Troubh Ice Arena for the July 14, 2020 Primary and Referendum - Sponsored by Katherine L. Jones, City Clerk

In the event that the City Council does not approve the consolidation of the City polling places as set forth in the order above, this order would be necessary. The Portland Exposition Building is not available for the July 14, 2020 election.

This order was postponed to this meeting to coincide with consideration of Order 190A-19/20, consolidating voting districts will be considered. If Order 190A-19/20 is approved, this item may be postponed indefinitely. If not, five affirmative votes are required for passage after public comment.

Order 192-19/20 Accepting and Appropriating a Grant from the Maine Community Foundation - Sponsored by Jon P. Jennings, City Manager

The Maine Community Foundation (MCF) has awarded a grant of \$8,125 to support the City's Office of Economic Opportunity (OEO) Natural Helpers Program, or for use for general operating support in light of the COVID-19 Pandemic.

During Fiscal Year 2020, OEO launched the inaugural Natural Helpers Program. The Natural Helpers Program is a national best practice designed to make sure no one is excluded from local government and community resources, utilizing natural born community leaders connect community members to all resources needed to achieve a working, sustainable lifestyle in our city.

This funding will assist in continuing the program, or assist with general operating support in light of the COVID-19 pandemic, or some combination of the two.

This item must be read on two separate days. It was given a first reading on June 1, 2020. Five affirmative votes are required for passage after public comment.

Order 193-19/20 Amendment to the Portland City Code Chapter 14 Re: Zoning for B-3 Downtown Business Zone - Sponsored by the Portland Planning Board, Brandon Mazer, Chair

The Planning Board met on May 12, 2020 and voted 7-0 to forward this zoning amendment to the City Council for approval.

Portland Opportunity Fund, LLC seeks a zoning text amendment to facilitate development at 385 Congress Street, which is zoned B-3 downtown business. The proposed text amendment would add congregate care facilities and intermediate care facilities as permitted uses to the B-3 zone, as well as to the B-3b and B-3c zones, which share the same list of permitted uses.

This item must be read on two separate days. It was given a first reading on June 1, 2020. Five affirmative votes are required for passage after public comment.

ORDERS:

Order 200-19/20 Approving Modifications to Agreements between the Maine Department of Transportation and Portland Re: Bayside Trail Improvements - Sponsored by Jon P. Jennings, City Manager

This order approves modifications to two agreements between the Maine Department of Transportation (MaineDOT) and the City of Portland, obligating MaineDOT to reimburse the City for 80% of the project cost for improvements to the Bayside Trail, including but not limited to sidewalk work, junction improvements, landscaping, electrical and lighting improvements, and water fountain installation.

In the modified agreements, the City agrees to pay for 20% of the work as its municipal share, or \$34,400.00 for WIN 18886.00 and \$30,860.00 for WIN 18364.01. This is an increase of \$10,440.00 for both projects from the original agreements due to higher bid prices from the original estimate in 2017. The increased cost will be funded by money already appropriated for this purpose in an account that receives the Bayside Trail Endowment contributions administered by the Maine Community Foundation.

Staff is requesting that this item be passed as an emergency to allow the work to go to bid on June 24, 2020. Seven affirmative votes are required for passage after public comment.

Order 201-19/20 Approving the Donation of Approximately \$50,000 from Maine Medical Center - Sponsored by Jon P. Jennings, City Manager

This Council item would allow the city to accept grant funding from Maine Medical Center's (MMC) Caring Community Grant Program for city-led projects at Andrews Square, Harborview Park, and Dougherty Field/outer Congress Street.

MMC's Neighborhood Advisory Committee has recently approved grant funding through MMC's Caring Community Grant Program for three city-led projects. These funds were requested by neighborhood associations working in concert with staff in the Department of Parks, Recreation, and Facilities and the Department of Public Works. The grant projects include:

1. Andrews Square Improvements (requested by Western Promenade Neighborhood Association): This grant funding (\$20,000) would supplement city CIP funding for improvements to Andrews Square, including the installation of lighting, landscaping, and bollards. This project is being led by the Department of Public Works. Money would be placed in a separate infrastructure account accessible to DPW.
2. Harborview Park (requested by the West End Neighborhood Association): This grant funding (approximately \$10,000) would fund improvements to Harborview Park, including the addition of new park benches, new picnic tables, and invasive species removal. This project is being led by the Parks Department. Money would be placed in the West End Neighborhood Association Other Special Revenue account.
3. Dougherty Field and Congress Street Lighting (requested by the Libbytown Neighborhood Association): This grant funding (\$20,000) would allow for the addition of Big Belly trash cans and park benches at Dougherty Field, as well as 'seed' money for relocating the basketball court closer to the multi-use field and the relocated playground. It would also pay for the addition of lighting at the city parcel of land at Congress and Lowell Streets, which is next to Denny's and across from the 295 off-ramp, a gateway into the city. This project is being led by the Parks Department. Money would be placed in the Libbytown Neighborhood Association Other Special Revenue account.

Five affirmative votes are required for passage after public comment.

Order 202-19/20 Approving and Authorizing Land Exchange Agreement and License Agreement between J.B. Brown & Sons and the City of Portland Re: Emery Street and Quarry Road, and Commencement of Discontinuance of an Undeveloped Portion of Emery Street - Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair

Under direction of the Economic Development Committee, a Land Exchange Agreement has been negotiated to swap an undeveloped portion of Emery Street at the Commercial Street intersection, which must first be discontinued, in exchange for undeveloped industrial property owned by J.B. Brown & Sons located at the end of Quarry Road.

The City needs additional property adjacent to the City Canco Road Complex for outside storage. The J.B. Brown & Sons property proposed for the land exchange includes 20,000+/- square feet. J.B. Brown & Sons has allowed the City to use this property, at no cost, for over two (2) years.

The City property to be exchanged includes an undeveloped portion of Emery Street at the Commercial Street intersection with 11,000+/- square feet, which is proposed for street discontinuance. The final square footage and descriptions for each property will be determined by property surveys. It is noted that the City will retain easements for below, at ground and above ground utilities, including a pedestrian access easement across the portion of Emery Street to be discontinued along with additional easements on J.B. Brown & Sons property. The separate properties, to be swapped, have been determined to be of equivalent value, which is approximately \$49,000.00.

In order to provide J.B. Brown & Sons with access to the Emery Street property as early as possible, the Land Exchange Agreement also includes a semi-permanent License Agreement that will allow J.B. Brown & Sons to close on its construction financing and begin construction of the Veterans Administration Project prior to the completion of the street discontinuance and the closing of the exchange. The License Agreement will terminate upon the completion of the discontinuance, or if J.B. Brown & Sons fails to build the proposed development, fails to rebuild the building in the event that it is destroyed, or if they otherwise fail to comply with the terms of the Agreement.

The process for discontinuing this portion of Emery Street is dictated by state statute.

Staff is requesting that this order be passed as an emergency in order to support project financing. Seven affirmative votes are required for passage as an emergency.

Order 203-19/20 Designating the 104 Grant Street Affordable Housing District and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair

At a meeting held on May 5, 2020, the Economic Development Committee (4-0) voted to forward this item to the City Council with a recommendation for passage.

Under the terms of a Purchase and Sale Agreement between the City of Portland and Tom Watson & Co., LLC, related to the city sale of 82 Hanover Street, the buyer's post-closing obligations required construction of at least 23 units at property located at 104 Grant Street. Watson Renewal Grant LLC (WRG) is a partnership formed to meet that obligation. WRG is proposing to construct 23 condominium units on the 104 Grant Street site and is requesting financial assistance from the City in the form of an Affordable Housing Tax Increment Financing District and Credit Enhancement Agreement to assist with the cost of construction of the project.

The development district will include 23 units of workforce housing. The project will include 1 two-bedroom and 22 one-bedroom condominiums. Fifty-two percent (52%) or a total of twelve of the twenty-three units, will be available for sale as workforce housing affordable to households at 120% of the area median income. The units will have affordability restrictions through the Affordable Housing TIF Program, MaineHousing's Subdivision Grant Program and the City's Inclusionary Zoning Ordinance. The units will range in size from 498 to 760 square feet. The sale price of the units will range from approximately \$203,000 to \$355,000. Twelve units will be priced below \$260,000 with eight of those units priced at \$203,064.

This Project has received City Planning Board approval.

If approved, the Affordable Housing Tax Increment Financing will be provided through a Credit Enhancement Agreement that would return to the developer their actual costs paid on annual Project debt service based upon an annual maximum 75% capture rate for upwards of thirty (30) years with a total captured revenue cumulative "cap" or maximum. The cap would be the total cumulative TIF CEA payment amount equal to the total actual debt service cost. When the cap is reached the TIF CEA expires.

Currently, 75% of the increased taxable value for 30 years is estimated at a 30-year annual average of \$91,649. The new assessed value is estimated at \$4.419 million which will yield \$3.99 million in increased annual assessed property value. The property has a current taxable value of \$419,600. Total development costs are estimated at \$6.5 million. At full build out the development district is projected to pay an annual average of \$122,199 in new taxes, of which an estimated \$30,550 (30-year annual average) will be non-captured general fund revenue. In addition, the city will continue to receive general fund revenues of \$13,472 (30-year annual average) on the original assessed value of the property.

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

Order 204-19/20 Approving and Authorizing the City Manager to Enter Into the Credit Enhancement Agreement with Watson Renewal Grant LLC - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair

At a meeting held on May 5, 2020, the Economic Development Committee (4-0) voted to forward this item to the City Council with a recommendation for passage.

This is a companion order to Order 203-19/20 above.

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

Order 205-19/20 Approving an Agreement between the Maine Department of Transportation and Portland Re: Improvements to Stevens Avenue - Sponsored by Jon P. Jennings, City Manager

This project is part of the Maine Department of Transportation (MaineDOT) Municipal Partnership Agreement Program; the City administers the project and receives 50% funding from the state. By signing the partnership agreement, the City is able to proceed with the project and Maine DOT is obligated to pay for 50% of the estimated project cost, or \$500,000.00.

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

Order 206-19/20 Amendment to Portland City Code Chapter 6 Buildings and Building Regulations Re: Rental Application Fees - Sponsored by the Housing Committee, Councilor Jill Duson, Chair

On May 13, 2020, the Housing Committee voted (2-1) to forward this item to the City Council with a recommendation for passage.

On December 16, 2019 the Rental Housing Advisory Committee (RHAC) voted 5-3 to recommend to the Housing Committee that the City prohibit landlords from charging application fees.

The RHAC is charged with providing the Housing Committee with recommendations or proposals for improvements, modifications, or changes regarding landlord and tenant policy issues and identifying education opportunities, seminars, and materials that would be useful to landlords and tenants.

At the RHAC's first meeting on September 24, 2019, several members expressed concern that rental housing application fees are a significant barrier preventing low and moderate income residents from securing housing in Portland. City staff informed the committee that staff in the Housing and Community Development Division had heard concerns about application fee fraud and abuse and had made the Housing Committee aware of that issue.

The RHAC discussed the fact that there is no state law or city ordinance limiting application fees. There is no requirement that a fee charged be linked to the landlord's cost in running a background check. Tenants are also generally not in a position to know whether they have actually been considered for an apartment for which they have paid an application fee.

At the October 28, 2019 meeting of the RHAC members of committee articulated several areas of concern: landlords who collect application fees with no intention of renting to the applicant; landlords who collect application fees from multiple applicants and do not conduct background checks; and landlord who do not supply copies of reports to applicants who are not selected as tenants. The group discussed the concern that application fees price low and moderate income tenants out of Portland at multiple meetings.

Members of the Committee proposed language banning fees phrased to allow only a security deposit and first month's rent to be charged at the beginning of a tenancy.

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

6:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

EXECUTIVE SESSION:

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER AMENDING THE PORTLAND DEVELOPMENT CORPORATION
COVID-19 BUSINESS ASSISTANCE GRANT PROGRAM FOR JOB RE-HIRE,
THE MICROENTERPRISE GRANT PROGRAM, AND THE RAPID RESPONSE
MICROLOAN PROGRAM**

ORDERED, that the amendments to the Portland Development Corporation COVID-19 Business Assistance Program for Job Re-Hire are hereby approved substantially in the form attached hereto; and

BE IT FURTHER ORDERED, the amendments to the Portland Development Corporation COVID-19 Microenterprise Grant Program are hereby approved substantially in the form attached hereto; and

BE IT FURTHER ORDERED, the amendments to the Portland Development Corporation COVID-19 Rapid Response Microloan Program are hereby approved substantially in the form attached hereto; and

BE IT FURTHER ORDERED, the City Manager or his or her designee is authorized to execute any and all documents necessary to implement this program and otherwise carry out the intent of this Order.



CITY OF PORTLAND
Economic Development
Gregory A. Mitchell, Director

MEMORANDUM

City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Sonia Bean, Nancy English,
Danielle West-Chuhta, Deivy Periana,

FROM: Greg Mitchell, Economic Development Director
Nelle Hanig, Business Programs Manager

DATE: June 10, 2020

SUBJECT: Special Meeting of the Corporation of the Portland Development Corporation to Amend COVID-19 Loan and Grant Guidelines, specifically the Rapid Response Microloan Program, the Microenterprise Grant Program, and the COVID-19 BAP Grant Rehire Program

SPONSOR: Jon P. Jennings, 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 and Final Action: June 15, 2020

Can action be taken at a later date: ____ Yes ____X__ No (If no why not?)

Staff is requesting the Council take action on June 15 in order to amend the COVID-19 Loan and Grant guidelines as soon as possible to allow for more businesses to apply for financial assistance from these programs.

PRESENTATION: (List the presenter(s), type and length of presentation): Julie Viola/Portland Development Corporation Board President/5 Minutes

I. ONE SENTENCE SUMMARY

After the Portland Development Corporation (PDC) launched the COVID-19 Loan and Grant Programs, there were unanticipated issues that arose, making some businesses in need ineligible to apply, therefore, guideline amendments are proposed in order to increase eligibility.

II. AGENDA DESCRIPTION (This is all that will be included in the agenda.)

The three COVID-19 Grant and Loan Programs were launched on May 19, 2020, the day after the City Council approved final funding for the two CDBG funded programs. A wide range of partner organizations reached out to various business sectors and communities with program information about the Rapid Response Microloan Program, the Microenterprise Grant Program, and the COVID-19 BAP Rehire Program. In addition, staff organized and participated in a Zoom webinar that had about 30 attendees. The City's website contains comprehensive information about the three programs, how to apply, the application and staff contacts for any questions.

The PDC set a deadline of June 4th so that the potential beneficiaries of the funding would not be those whose applications came in first, given that numerous applications were anticipated. Fifteen applications were received, eleven seeking a Microenterprise Grant and four seeking a Rapid Response Microloan. Among them, four of the Microenterprise grant applications were eligible and one of the Rapid Response Loan applications.

There were unanticipated issues that made some businesses ineligible for the PDC COVID-19 Loan and Grant Programs. This was learned via applications received, phone calls, and emails to staff. In order to best assist businesses in need, it was felt that some of these items merited modifications to the City Program guidelines.

The PDC Board met on June 9, 2020, and recommended to the City Council amendments to the PDC COVID-19 Loan and Grant Guidelines to modify language in all three guidelines to permit eligibility for a) businesses that received no more than \$1,000 per employee and \$10,000 in total from SBA or FAME COVID-19 programs, and 2) changing the date that the business had to be in existence to no later than March 15, 2020. This date was recommended because the impact of the COVID-19 crisis did not begin in Portland until mid to late March. An additional recommendation from the PDC Board was to amend the Microenterprise Grant program to make home-based businesses eligible, dropping the requirement that the business had to lease commercial space.

III. BACKGROUND

See above.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intended result is that more Portland businesses will be eligible for the PDC COVID-19 Loan and Grant programs.

V. FINANCIAL IMPACT

There is no financial impact from amending the PDC COVID-19 Loan and Grant Program guidelines other than making the available funds available to more Portland businesses.

VI. STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION

After staff for the PDC Board reviewed the applications received, it determined that these amendments would allow for more businesses in need to be eligible to apply for the PDC COVID-19 Loan and Grant Programs.

VII. RECOMMENDATION

The PDC Board met on June 9, 2020, and voted to recommend to the City Council amendments to the PDC COVID-19 Loan and Grant Programs, modifying language in all three guidelines to permit eligibility for businesses that received no more than \$1,000 per employee and \$10,000 in total from SBA or FAME COVID-19 programs; and eligibility for businesses that were in existence by March 15, 2020. Also, the PDC recommended modifying the language of the COVID-19 Microenterprise Grant guidelines to make home-based businesses eligible.

VIII. LIST ATTACHMENTS

- Redlines to the PDC COVID-19 Loan and Grant Programs

PLEASE REMEMBER THAT BACKUP ITEMS HAVE TO BE SINGLE SIDED.

Prepared by:

Date:

COVID-19 Portland Microenterprise Grant Program (MGP)

Program Description

The City of Portland's Microenterprise Grant Program (MGP) ~~provides grants of up to \$2,500 to existing Portland microenterprises*, including home based businesses, that have been impacted by the COVID 19 crisis. is targeted to very small businesses with less than two (2) full-time equivalent (FTE) employees. The MGP provides grants of up to \$2,500 to existing Portland Microenterprises that have been impacted by the COVID 19 crisis.~~

The **definition of a Mmicroenterprise*** for the purposes of this program, ~~is a business owned by a low/moderate income individual** that has no more than 0 to no more than one (1) Full Time Equivalent employee-(which is 1 full-time at least 34 hours/week -or 2 part-time, employees each at least 17 hours/week), as well as plus the business owner(s). who must be a low/moderate income individual.~~ ****** Funding through this Program cannot be combined with any other ~~PDC City of Portland~~ COVID-19 financing ~~Program~~.

This program is not intended to substitute for available COVID-19 Federal and/or State commercial financing if a business is able to access them or has already received such assistance. However, if a business received no more than \$1,000 per employee and no more than \$10,000 in total in COVID-19 Federal or State assistance in assistance, it is eligible to apply for City of Portland COVID-19 financing.

Program Objective

The stabilization of Portland microenterprises ~~that lease commercial space,~~ whether the business is open or temporarily closed.

Funding Source

Community Development Block Grant.

Financing

Maximum grant of \$2,500 per microenterprise.

Program Requirements/Eligibility

- Business is open or temporarily closed; ~~Need for grant funds to keep business open and operating;~~
- ~~Business is temporarily closed: Need for grant funds to maintain business' leased space and reopen business as soon as possible;~~
- Owner(s) must be low/moderate income **;
-
- If the business has employees, at least 51% must be low/moderate income **;
- Business began operating no later than March 15, 2020;
- Business can have no more than 1 FTE employee, as well as plus the owner;
- Business must be located within the City of Portland;
- Owner is unable to finance business expenses on his/her own;
- Other sources of government funding are not available;

- Applicant does not owe outstanding property taxes, fees, or judgments to the City and property must be free of all City liens and encumbrances.

Eligible Funding Activities:

~~Expenses that are needed to keep the business open or maintain the business' leased space if the business is partially or fully closed and to reopen as soon as possible.~~

Rent, utilities, inventory, insurance, payroll (not including owner) and other working capital needs; the portion of a residential mortgage that covers the square footage used by a home based businesses.

Ineligible Activities:

- Wages for business owner(s) and family members of the business owner(s);
- Refinance existing debt;
- Down payment for other financing;
- ~~Wages for business owner(s) and family members of the business owner(s);~~
- Use of grant funds for activities other than those that are noted as eligible.

Application Review Criteria

The Portland Development Corporation (PDC), the City's lending and granting board, will weigh the following criteria, but has the discretion to base its approval on other considerations as well:

- Completeness of application package (all required submittals);
- Business has been substantially impacted by COVID-19 crisis:
 - Demonstrated need for grant funds if business is open;
 - Demonstrated need for grant funds to maintain leased space if business is closed;
- If closed, timing when business will reopen;
- If business had employees, timing when business will hire back furloughed employee(s) or re-create job(s) that existed just before the COVID-19 crisis, on January 31, 2020;
- If business had employees, company profile of employee wages and benefits;
- Health of business just before the COVID-19 crisis, on January 31, 2020
- Personal credit score of at least 600

Required Submittals

- City of Portland Microenterprise Program Application;
- Commercial Lease noting monthly or annual rate, and CAM charges for NNN leases; Personal financial statement - from all owners of the business with 20% ownership or greater;
- 2018 and 2019 (if available) business tax returns;
- If taxes for 2019 are not available, a Balance Sheet and a Profit and Loss for 2019;
- If had employees, payroll showing number of full and part-time employees just before the COVID-19 crisis on January 31, 2020, payroll showing number of full and part-time employees;
- Demonstrated efforts to access Federal and State financial resources that were unsuccessful other than \$1,000 per employee and no more than \$10,000 in total (e.g., SBA Economic Impact Disaster Loan Program, Paycheck Protection Program and FAME

COVID-19 Relief Business Direct Loan Program) or an email acceptable to staff explaining the reasons for not utilizing any of these programs. ~~Maximum grant awards will be capped at the beneficiaries total need amount to prevent duplication of benefits.~~

Application and Approval Process

The City's Economic Development Department is responsible for administration of the COVID-19 Microenterprise Grant Program, with guidance from the Housing and Community Development Division. Applications are submitted to staff for eligibility review and may be analyzed by an underwriter. Eligible applications are presented to the Portland Development Corporation (PDC) for its review and approval. The PDC has the authority to establish application deadlines.

Reporting and Tracking (after grant approval)

If business is still operating, within six months after applicable Stay at Home or other COVID-19 emergency orders have been lifted for the grantee's type of business, the payroll will be at the same capacity it was just before it was impacted by the COVID-19 crisis on January 31, 2020. If business is temporarily closed it will be operating within six months after applicable State at Home or other City COVID-19 emergency orders have been lifted for the grantee's type of business. The six month timeframe can be adjusted based on how the COVID-19 restrictions are lifted.

Sunset Provision

Program has a termination date of December 31, 2020 or when the funds run out, whichever comes first.

Definitions

*For the purposes of this Program, a microenterprise business is defined as a commercial enterprise that has 0 to no more than 1 no more than one Ffull-Ttime Equivalent Eemployee (one full-time at least 34 hours per week) or two part-time employees (each at least 17 hours/week) as well as plus the business owner(s). The owner(s) must be low/moderate income.**

**~~For the purposes of this Program~~, Llow/moderate income is defined by the U.S. Department of Housing and Urban Development as 80% of median household income. A chart showing qualified income levels can be found on the City's website at the following link: <http://www.portlandmaine.gov/DocumentCenter/Home/View/8939>

COVID-19 Portland Business Assistance Program for Job Creation (Rehiring)

Description

The City of Portland's COVID-19 Business Assistance Program for Job Creation (BAP-Rehire) provides \$5,000 in grant funding to small businesses for **rehiring** two or more full-time employees or jobs that were on the payroll ~~as of just before the COVID-19 crisis. January 31, 2020.~~ The jobs, which must be filled by low/moderate income individuals,* could include previous employees or new employees. ~~Funding through this Program cannot be combined with any other City of Portland PDC COVID-19 financing Program.~~

This program is not intended to substitute for available COVID-19 ~~F~~ederal and/or ~~S~~tate commercial financing programs if a business is able to access them or has already received such assistance. ~~Funding through this Program cannot be combined with any other PDC COVID-19 Program.~~ However, if a business received no more than \$1,000 per employee and no more than \$10,000 in total in COVID-19 Federal or State assistance, it is eligible to apply for City of Portland COVID-19 financing.

Program Objectives

- Create (rehire) jobs for two or more low/moderate income individuals;
- Stabilize and strengthen existing businesses impacted by the COVID-19 crisis;
- Stabilize and strengthen the Portland economy.

Funding Source

Community Development Block Grant Funds.

Financing Terms

- Maximum grant of \$5,000 per business;
- Grant is provided on a reimbursement basis for eligible expenses or through direct payment of ~~eligible~~ expenses once two (2) full time equivalent (FTE) jobs are back on the payroll. Half of the grant may be accessed once one (1) FTE is back on the payroll.

Program Requirements/Eligibility

- Create (rehire) at least two (2) full-time equivalent (FTE) jobs. ~~Two part-time jobs can be substituted for One full-time job. FTE = two Part-Time jobs.~~ (See definitions below ~~on required hours~~ for full-time** and part-time***)
- Created (rehired) jobs with the help of the grant are marketed to and filled by low/moderate income individuals;*
- Wages will exceed Portland's minimum wage;
- Business ~~began operating no later than was in existence on January 31, 2020~~ March 15, 2020;
- Demonstrates that other available federal and state emergency assistance is not available to the company other than \$1,000 per employee and up to \$10,000 in total.
- Business must be located within the City of Portland;

- Applicant cannot owe outstanding property taxes, fees, or judgments to the City and property must be free of all City liens and encumbrances.

Eligible Funding Activities

- Working capital expenses (e.g., rent, utilities, payroll, insurance, inventory);
- Business consulting services (e.g., accounting, marketing, software, legal assistance);
- Employee training.

Ineligible Activities

- Refinance existing debt;
- Down payment for other financing;
- If business is closed, funds cannot be used to pay owner;
- Use of grant funds for activities, commenced or completed prior to program funding approval and prior to signing a grant agreement.

Application Review Criteria

- Career Potential
 - Job training in a marketable skill;
 - Potential for job advancement within the company or elsewhere.
- Employer
 - Completeness of application package (all required submittals);
 - Personal credit score of at least 600
 - Demonstrated need for grant funds to create (rehire) jobs, that is, has been substantially impacted by COVID-19 crisis;
 - How quickly will jobs be created again or employees rehired;
 - Number of jobs to be created again exceeds two (2) FTE;
 - Health of business prior to COVID-19 crisis;
- Business Sector: Growing/Trending up in Portland
- Compensation and Benefits: Quality of compensation and benefits package (for example, wages, health, vacation, sick leave);
- Community: Social benefit of business' service(s) and/or product(s) or its level of giving back to the community.

Application and Approval Process

The City's Economic Development Department is responsible for administration of the COVID-19 Business Assistance Program for Job Creation (Rehiring), with guidance from the Housing and Community Development Division. Eligible applications are submitted to staff, analyzed by an underwriter and then presented to the Portland Development Corporation (PDC) for its review and approval. The PDC has the authority to establish application deadlines.

Required Submittals

- City of Portland Program Application;
- Commercial Lease noting monthly or annual rate, including CAM charges for NNN leases.

- Personal financial statement - from all owners of the business with 20% ownership or greater;
- 2018 and 2019 (if available) business tax returns;
- Balance Sheet for 2019;
- Profit and Loss for 2019;
- Business plan if business was established in 2019;
- Payroll ~~from from January 31, 2020~~ just before the COVID-19 crisis -showing number of full and part-time employees;
- Demonstrated efforts to access Federal and State resources that were unsuccessful other than \$1,000 per employee and no more than \$10,000 in total (e.g., SBA Economic Impact Disaster Loan Program, Paycheck Protection Program and FAME COVID-19 Relief Business Direct Loan Program) or an email acceptable to staff explaining the reasons for not utilizing any of these programs. Maximum grant awards will be capped at the beneficiary's total needed amount to prevent duplication of benefits.

Reporting and Tracking Requirements (after grant approval)

Jobs must be created again within nine (9) months of signing a grant agreement (after being approved) or six (6) months after the applicable Stay at Home or other COVID-19 emergency orders have been lifted with respect to grantee's type of business, whichever is sooner. The six month timeframe can be adjusted based on how the COVID-19 restrictions are lifted. Grant awardees will be required to provide quarterly payroll reports until two (2) FTE jobs are back on the payroll and then an annual report one year from rehiring date.

Sunset Provision

This program has a termination date of December 31, 2020 or when funds run out, whichever comes first.

Definitions

* For the purposes of this Program, low/moderate income is defined by the U.S. Department of Housing and Urban Development as 80% of median household income. A chart showing qualified income levels can be found on the City's website at the following link:

<http://www.portlandmaine.gov/DocumentCenter/Home/View/8939>

** Definition of a full-time job, per the Maine Department of Economic and Community Development, is at least 1,750 hours/year.

*** Definition of a part-time job, per the Maine Department of Economic and Community Development, is at least 875 hours per year but less than 1,750 per year.

COVID-19 Portland Rapid Response Micro Loan Program

Description

The City of Portland Rapid Response Micro Loan Program (RRMP) is targeted to small businesses that had two (2) to ~~eight- fifteen~~ (815) employees ~~before the COVID-19 crisis on January 31, 2020~~. The RRMP provides loans up to \$10,000 to Portland businesses most impacted by COVID-19 that are in danger of closing, have laid off workers, or have had to close temporarily. Funding through this Program cannot be combined with any other PDC City of Portland COVID-19 financing Program.

This program is not intended to substitute for available COVID-19 ~~F~~ederal and/or ~~S~~tate commercial financing if a business is able to access them or has already received such assistance. However, if a business received no more than \$1,000 per employee and no more than \$10,000 in total in COVID-19 Federal or State assistance, it is eligible to apply for City of Portland COVID-19 financing.
~~if a business is able to access one or both. Funding through this Program cannot be combined with any other PDC COVID-19 Program.~~

Funding Source

\$400,000 from unrestricted City loan funds, capped at \$250,000 for the first round of the program.

Program Financing Terms

- Loans up to \$10,000 per business with \$5,000 forgivable if meet requirement (see Employee Retention or Rehiring Section below);
- No application fee;
- Commitment fee of 0.5% of loan amount (e.g., \$50 on a \$10,000 loan);
- 0% interest rate with a 2 year term for repayment;
- Loan payments begin 6 months after loan closing.

Program Eligibility

- Business is located in Portland;
- Business had two (2) to ~~eight- fifteen~~ (815) full time equivalent (FTE)* employees on its payroll ~~just before the COVID-19 crisis on January 31, 2020~~. The required number of hours for a full and part-time jobs** is noted below under Definitions.
- Sales < \$1,000,000;
- Business began operating was no later than in-existence March 15, 2020 on January 31, 2020

Demonstrates that other available federal and state emergency loan programs are not available to assist the company: other than \$1,000 per employee and up to \$10,000 in total.

Eligible Use of Funds

Rent, utilities, inventory, payroll and any other expenses needed to maintain business operations or restart business. ~~If business is closed, funds cannot be used to pay owner.~~

Ineligible Use of Funds:

- If business is closed, funds cannot be used to pay owner;
- Refinance existing debt;
- Down payment for other financing;
- Use of grant funds for activities other than those that are noted as eligible.

Employee Retention or Rehiring: \$5,000 of loan is forgivable if at least 50% of full-time equivalent (FTE)* employees or jobs that were on the payroll just before the COVID-19 crisis on January 31, 2020 are back on the payroll or remain on the payroll by the following timeframe:

- Within nine (9) months of signing a loan agreement or six (6) months after the applicable Stay at Home or other COVID-19 emergency orders have been lifted with respect to the borrower's type of business, whichever comes first. The six month timeframe can be adjusted based on how the COVID-19 restrictions are lifted.

Review Criteria

The following criteria will be weighed, but the Portland Development Corporation (PDC), the City's lending board, has the discretion to base its approval on other considerations as well:

- Completeness of application package (all required submittals);
- Business has been substantially impacted by COVID- 19;
- If closed, timing when business will reopen;
- How quickly jobs will be re-created or employees rehired if all employees as that existed just before the COVID-19 crisis of January 31, 2020 have not been retained;
- Quality of employee compensation and benefits package (for example, wages, health, vacation, sick leave);
- Personal credit score of at least 600;
- Health of business prior to COVID-19 crisis;
- Social benefit of business' service(s) and/or product(s) or its level of giving back to the community.

Required Submittals

- City of Portland Rapid Response Micro Loan Program Application;
- Commercial Lease noting monthly or annual rate, including CAM charges for NNN leases.
- Personal financial statement from all owners of the business with 20% ownership or greater;
- 2018 and 2019 (if available) business tax returns;
- Balance Sheet for 2019;
- Profit and Loss for 2019;

- Business plan for those businesses that were established in 2019;
- Payroll from just before the COVID-19 crisis January 31, 2020 showing number of full and part-time employees;
- Demonstrated efforts to access Federal and State resources that were unsuccessful other than \$1,000 per employee and up to \$10,000 in total (e.g., SBA Economic Impact Disaster Loan Program, Paycheck Protection Program and FAME COVID-19 Relief Business Direct Loan Program) or an email acceptable to staff explaining the reasons for not utilizing any of these programs.

Security for Approved Loan

- Unlimited personal guarantees from all with ownership of 20% or greater;
- UCC-1 on all business assets (ABA) regardless of lien position relative to other lien holders, if any.

Application Schedule and Process:

The Portland Development Corporation (PDC) has the authority to establish application deadlines. Expedited loan closings will be provided after completed loan application packages are received by staff and reviewed for eligibility, analyzed by an underwriter and presented to the PDC for review and approval.

Program Sunset

This program has a termination date of December 31, 2020 or when funds run out, whichever comes first.

Definitions

* Full Time Equivalent (FTE): One full-time job equals two part time jobs.

**Per the Maine Department of Economic and Community Development, the definition of a full-time job is at least 1,750 hours/year (34 hours/week) and for a part-time job at least 875 hours per year (17 hours/week) but less than 1,750 per year.

ZOOM MEETING INFORMATION:

The Portland City Council will hold a remote meeting on Monday June 1, 2020 at 5:30 PM. This meeting will take place remotely using Zoom.

Virtual meetings are allowed using emergency legislation approved by LD 2167; 1 M.R.S. §403-A, that authorizes cities and towns to conduct meetings online.

Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be uploaded to portlandmaine.gov/livestream the next day.

For public comment, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be un-muted by the host when it is time for public comment.

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/81469567947>

Or iPhone one-tap :

US: +13017158592,,81469567947# or +13126266799,,81469567947#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099 or +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833

Webinar ID: 814 6956 7947

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Mayor Snyder called the meeting to order at 5:40 P.M. (All Councilors Present).

ANNOUNCEMENTS:

Mayor Snyder announced that she has an additional Proclamation she will be asking the City Council to take up an unagenda item.

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Approval of the Draft May 18, 2020 City Council Minutes.

Motion was made by Councilor Chong and seconded by Councilor Ray to approved the May 18, 2020 draft City Council Minutes. Passage 9-0.

6:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

PROCLAMATIONS:

Motion was made by Councilor Ray and seconded by Councilor Chong to suspend the rules and take up an unagenda item Proclamation 15. Passage 9-0.

Proclamation 12-19/20 In Recognition of the Contribution by Casey Gilbert as Executive Director of Portland Downtown to the City of Portland

Proclamation 13-19/20 - In Celebration of the 102nd Anniversary of the Azerbaijan Democratic Republic - Sponsored by Mayor Kate Snyder

Proclamation 14-2020 Honoring The Yellow Tulip Project's Virtual Hope Day - Sponsored by Mayor Kate Snyder

Proclamation 15-19/20 Condemning Racism and Honoring Ahmaud Arbery, George Floyd and Breonna Taylor

APPOINTMENTS:

Order 179-19/20 Appointing Constables for the Police Department and the Parks, Recreation and Facilities Department - Sponsored by Jon P. Jennings, City Manager

Motion was made by Councilor Ray and seconded by Councilor Chong for passage.
Passage 9-0.

BUDGET ITEMS:

THE CITY COUNCIL WILL HOLD A FIRST READ ON THE FISCAL YEAR 2021 SCHOOL BUDGET AT THIS COUNCIL MEETING. THE SECOND READ AND PUBLIC HEARING ON THE SCHOOL BUDGET WILL BE HELD ON MONDAY, JUNE 15 AT 5:30 P.M. DURING THE REMOTE CITY COUNCIL ZOOM MEETING, WITH INFORMATION TO COME IN THE JUNE 15, 2020 AGENDA. THE SCHOOL BUDGET REFERENDUM ELECTION WILL BE HELD ON TUESDAY, JULY 14, 2020.

https://docs.google.com/document/d/1_a-9BuKdwW84xibBmlHnzA6BteKDoAq_vE02OiHEBro/edit

Order 180-19/20 Setting a Public Hearing on June 15, 2020 on the Portland Board of Public Education's Fiscal Year 2021 Budget - Sponsored by the Finance Committee, Nicholas M. Mavodones, Jr., Chair

Motion was made by Councilor Ray and seconded by Councilor Ali for passage. Passage 9-0.

Order 181-19/20 Approving State/Local EPS Funding Allocation for Public Education from Kindergarten to Grade 12 for Portland Public Schools for Fiscal Year 2021 - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr. Chair

This is a first reading.

Order 182-19/20 Approving NonState Funded School Construction Debt Service for Portland Schools for Fiscal Year 2021 - Sponsored by the Finance Committee, Nicholas M. Mavodones, Jr., Chair

This is a first reading.

Order 183-19/20 Raising and Appropriating Additional Local Funds for Portland Schools for Fiscal Year 2021 - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr.

This is a first reading.

Order 184-19/20 Approving Total School Operating Budget For Portland Schools for Fiscal Year 2021 - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair.

This is a first reading

Order 185-19/20 Appropriating and Raising Funds for Adult Education for Fiscal Year 2021 as Required by the Maine Revised Statutes, Title 20-A M.R.S. §8603-A(1) - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair

This is a first reading.

Order 186-19/20 to Raise and Appropriate Local Funds for Food Service in the Portland Public Schools for Fiscal Year 2021 - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair

This is a first reading.

Order 187-19/20 Authorizing the Disposition of Any Additional State Subsidy Received for Portland Schools in Fiscal Year 2021 - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair

This is a first reading.

UNFINISHED BUSINESS:

Order 178-19/20 Accepting and Appropriating Federal Aviation Administration CARES Act Grant for the Portland International Jetport - Sponsored by Jon P. Jennings, City Manager

Motion was made by Councilor Ray and seconded by Councilor Chong for passage. Passage 9-0.

ORDERS:

Order 188-19/20 Placing 92 Rowe Avenue in the Portland Land Bank - Sponsored by Jon P. Jennings, City Manager

Motion was made by Councilor Ray and seconded by Councilor Ali for passage. Passage 9-0.

Order 189-19/20 Approving Residential Parking Permit Extension Re: Islander Parking - Sponsored by Councilor Belinda Ray

Motion was made by Councilor Ray and seconded by Councilor Chong for passage.
Passage 9-0.

Order 190-19/20 Setting a Public Hearing on Consolidation of Voting Districts for the July 14, 2020 State Primary and Municipal Referendum - Sponsored by Katherine L. Jones, City Clerk

Motion was made by Councilor Ray and seconded by Councilor Chong for passage.
Passage 9-0.

Order 190A-19/20 Approving the Consolidation of Voting Districts in the City of Portland to Three Polling Places for the July 14, 2020 State Primary and Municipal Referendum - Sponsored by Katherine L. Jones, City Clerk

This is a first reading.

Order 191-19/20 Moving the Polling Place at the Portland Exposition Building to the Troubh Ice Arena for the July 14, 2020 Primary and Referendum - Sponsored by Katherine L. Jones, City Clerk

Motion was made by Councilor Duson and seconded by Councilor Chong to postpone Order 191 to the June 15, 2020 City Council Meeting. Passage 9-0.

Order 192-19/20 Accepting and Appropriating a Grant from the Maine Community Foundation - Sponsored by Jon P. Jennings, City Manager

This is a first reading.

AMENDMENTS:

Order 193-19/20 Amendment to the Portland City Code Chapter 14 Re: Zoning for B-3 Downtown Business Zone - Sponsored by the Portland Planning Board, Brandon Mazer, Chair

This is a first reading.

Motion was made by Councilor Ali and seconded by Councilor Chong to adjourn.
Passage 9-0, 7:36 P.M.

A TRUE RECORD

Katherine L. Jones, City Clerk

PROCLAMATION

RECOGNIZING

June 20, 2020 as World Refugee Day

WHEREAS, The World Refugee Day was launched by the United Nations to honor the bravery, strength and determination of refugees fleeing war and persecution; and

WHEREAS, refugees in communities across the welcoming state of Maine resettle in the hope of finding peace and safety for themselves and their families; and

WHEREAS, refugee communities from diverse backgrounds, with a variety of skills, abilities and experiences, have been and continue to be woven in the fabric of Maine's vibrant cultural tapestry for over 40 years; and

WHEREAS, refugee-led organizations in Maine share in the priority of our state to strengthen communities by engaging with and improving the lives of all Mainers; and

WHEREAS, Maine celebrates the refugee communities who have been on the front lines of Maine's response to the Covid-19 pandemic; and

WHEREAS, all of Maine's communities are hoping to stay strong together as we recover from a time of uncertainty, reminiscent of experiences in the diaspora.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Kathleen M. Snyder, Mayor of the City of Portland, and members of the City Council do hereby proclaim June 20, 2020 to be World Refugee Day in Maine and recognize the positive impact and enduring contributions of refugee communities seeking refuge within Maine's borders.

Signed and Sealed on this 15th day of June, 2020.



Kathleen M. Snyder, Mayor

City of Portland, ME

PROCLAMATION

Recognizing June 2020 as LGBTQ+ Pride Month

WHEREAS: the city of Portland Maine is committed to being a safe, welcoming, and equitable community for all people across race, ethnicity, socioeconomic status, age, sexual orientation, gender identification, country of origin, or any other identity; and

WHEREAS: many of the residents, students, city employees, and business owners who contribute to the enrichment of our City are a part of the LGBTQ+ community, which includes people who identify as lesbian, gay, bisexual, transgender, queer/questioning, and more; and

WHEREAS: the Stonewall riots began in New York on June 28, 1969, and are regarded as a catalyst for the LGBTQ+ movement for civil rights in the United States; and

WHEREAS: June 28, 2020 marks the 50th anniversary of the first Gay Pride marches in the history of United States, and June is now celebrated as LGBTQ+ Pride Month nationwide; and

WHEREAS: June 28, 2020 marks the 51st anniversary of the Stonewall uprising, on which occasion the LGBTQ+ community recognizes more than a half-century of the LGBTQ+ movement, celebrates and honors its accomplishments, and raises awareness of its ongoing struggles.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Kathleen Merchant Snyder, Mayor of the City of Portland, Maine and the members of the Portland City Council do hereby declare June as LGBTQ+ Pride Month in the city of Portland, Maine and invite citizens of Portland to honor the history of the fight for equality, celebrate the distance come, and recognize how far there is yet to go.

Signed and sealed this 15th day of June, 2020



Kathleen M. Snyder,

City of Portland, Mayor

MEMORANDUM
City Council Agenda Item

FROM:

DATE: May 20, 2020

SUBJECT: Order 195-19/20 Granting Municipal Officers' Approval of Amigos Mexican Restaurant Inc. dba Amigos. Application for a Combined Entertainment License at 9 Dana Street - Sponsored by Jon Jennings, City Manager

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

Amigos Mexican Restaurant Inc dba Amigos. Application for a Combined Entertainment License at 9 Dana Street.

Application was filed on 2/19/2020. Applicant currently holds a Class XI FSE license with Entertainment with Dance. Chapter 4 Sec 4-53 (2) requires a public hearing for all initial applications for a Combined Entertainment License.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Amigos
2. 20200520131731840

Prepared by:

Date: 5/20/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

Amigos Mexican Restaurant Inc dba Amigos. Application for a Combined Entertainment License at 9 Dana Street.



CITY OF PORTLAND
Permitting and Inspections Department
Renewal Application for an Entertainment License

Must Include:

- ☐ 8 1/2" x 11" diagram showing layout of the premises to include dimensions, locations of dancing, seating, toilet rooms and means of egress.
- ☐ Sound Mitigation Plan (**not required if renewal application for indoor only entertainment)
 - ☐ Prepared and Certified by a Professional Sound Engineer
 - ☐ Details of methods used to minimize the impact on entertainment on the surrounding uses
 - ☐ Speaker Locations and directions
 - ☐ Sound System details and controls
 - ☐ Stage and site layout and direction
 - ☐ Noise cancelling or mitigating measures proposed
 - ☐ Anticipated Sound readings
 - ☐ Indoors Entertainment-8 feet from any outer wall
 - ☐ Outdoor/Combined Entertainment-Property line and closest residence
 - ☐ On-Site monitor when attendees are expected to exceed 250

Business Information			
Business Name (d/b/a):	Amigo's Mexican Restaurant		Phone: 207 772 0772
Location Address:	9 Dana St. Portland Me		Zip: 04101
Owner Name:	Bruce A Mills	Phone: 207	450-4266
Owner Email:	bamills29@yahoo.com		
Contact Person responsible for Entertainment:	Asher Kneaton Shryock	Phone: 207	615-1172
Contact Person Email:	amigosasher@gmail.com		
Manager of Establishment:	Asher Shryock	Phone: 207	615-1172
Manager Email:	amigosasher@gmail.com		

About Your Establishment

Describe in detail the type and nature of the business and proposed entertainment: Restaurant and lounge with outdoor seating with live bands Thurs-Fri-Sat. nights From Memorial Day to Columbus Day

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 Bruce A Mills Title owner Date 2/16/2020

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

389 Congress Street, Room 307 • Portland, Maine 04101 • 207-874-8557

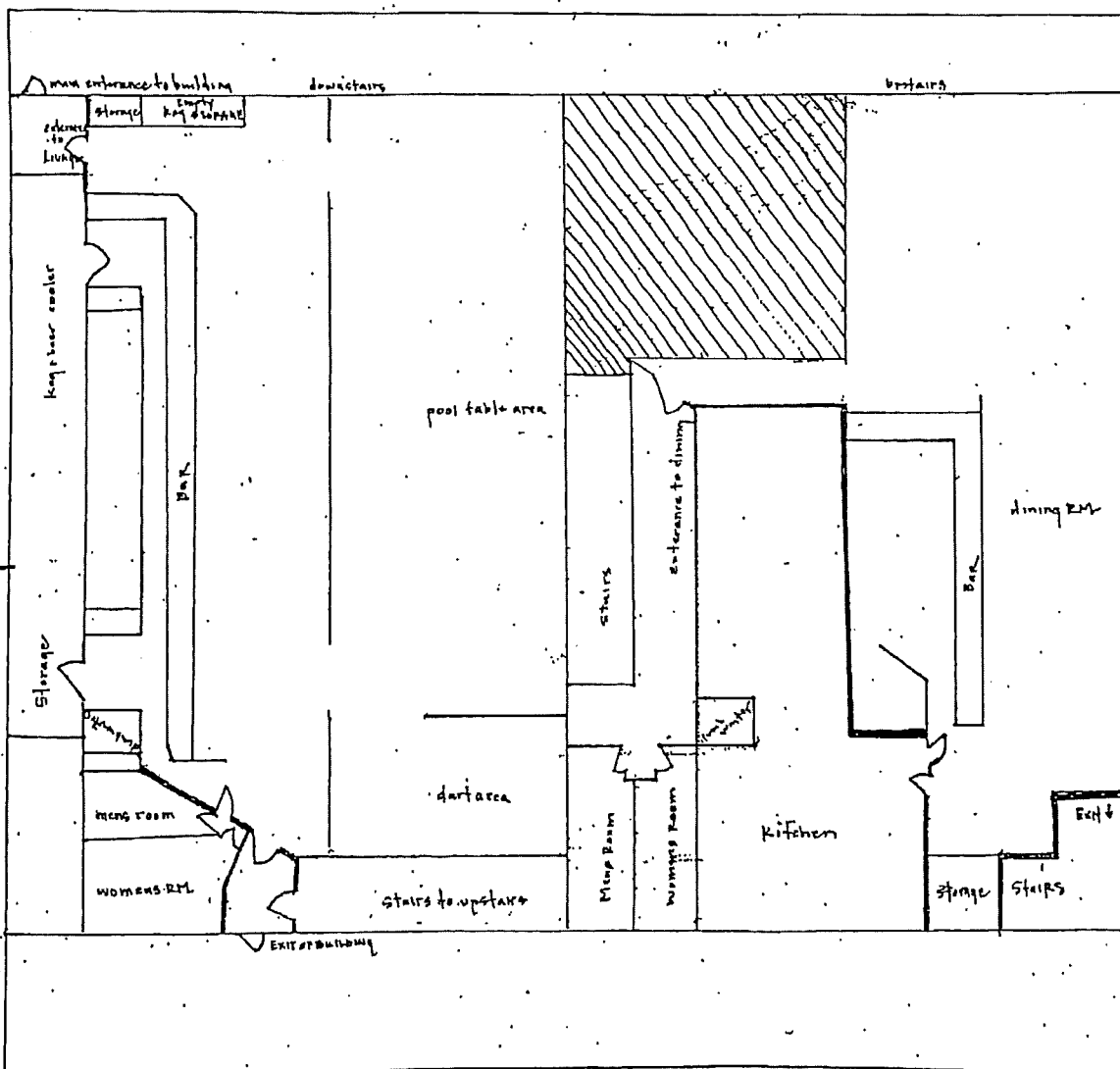
bl@portlandmaine.gov • www.portlandmaine.gov



SUPPLEMENTAL APPLICATION FORM ON-PREMISE DIAGRAM

In an effort to clearly define your licensed premise and the areas that consumption and storage of liquor is allowed, The Bureau of Liquor Enforcement is requiring all applicants to submit a diagram of the premise to be licensed in addition to a completed license application.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your diagram including entrances, office area, kitchen, storage areas, dining rooms, lounges, function rooms, decks and all areas that you are requesting approval from the Bureau for liquor consumption.



OFFICES LOCATED AT: 397 WATER STREET GARDINER, MAINE 03345

(207) 624-8745 (Voice)

(207) 624-4478 (TDD)

(207) 624-8767 (Fax)

Amigos Mexican Restaurant
9 Dana Street Portland, ME 04101

Sound Mitigation Plan

Sound mitigation plan regarding outdoor entertainment for 9 Dana Street:

- Speakers are placed facing the building to ensure the sound will not travel farther outside of the area it is being directed to.
- Built a wooden stage to absorb sound from reverberating from the direction intended to reduce the effects of bass and centralize sound toward the patio and my business.
- Wooden fence and patio cover further ensure and encapsulate sound to keep it to a minimum.
- Design of the fence is such that the slats are staggered on the inside and outside which contributes to the buffering of sound.
- The speakers will not exceed the height of the fence by more than 1 foot to make best use of the buffering of the fence.
- Additionally, speakers are facing the patio overhang connected to the building to further contain sound.
- Ensure volumes are within the standards set by the city and that bands are adhering to this.
- Each band is expected to ensure sound levels and outputs are within city standards and are encouraged to keep bass levels low.
- Bookings are to adhere to guidelines of when to setup and breakdown as to not affect neighboring businesses and residents.
- Noise levels are to be strictly adhered to or bands will be admonished and will not be used again if they fail to do so.
- Each night that we have entertainment either the outside bartender or head of security will have a sound monitor and will check it at regular intervals.
- Each band we have booked has been informed of the changes in the sound ordinance guidelines and will be reminded upon arrival before they set up to play.
- Each band will be required to review this document and sign off before performing.
- Most importantly, listen to the concerns of businesses around me and continue to be a good neighbor.

Wharf Street

Gate

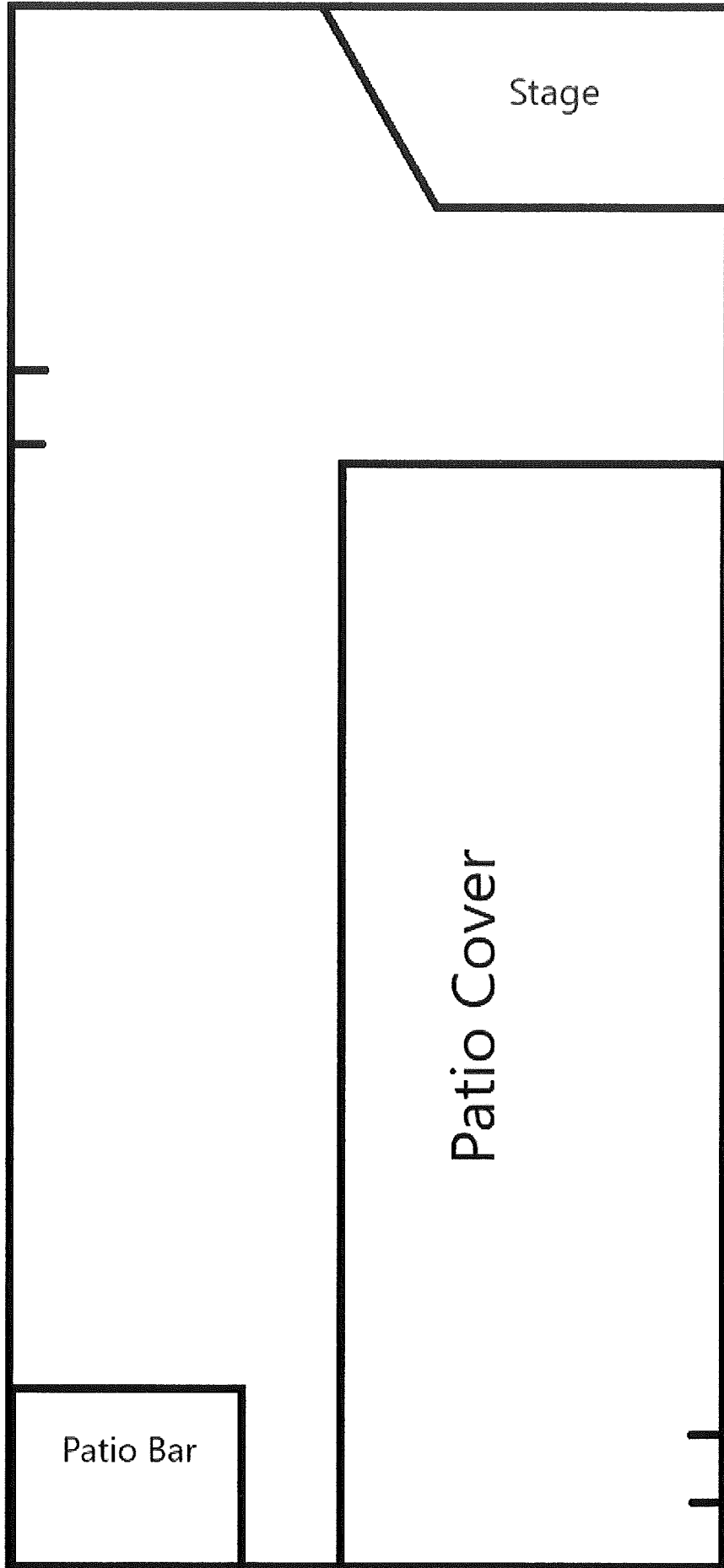
Patio Bar

Patio Cover

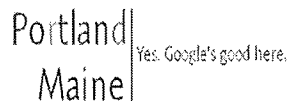
Stage

Gate

9 Dana Street



Staggered Slats Formed by Four



Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Re: Amigos

Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Tue, Feb 25, 2020 at 4:40 PM

To: Jess Work <jhanscombe@portlandmaine.gov>

On Tue, Feb 25, 2020 at 4:34 PM Glen McGary <glenm@portlandmaine.gov> wrote:

Approved Portland PD

Glen

On Mon, Feb 24, 2020 at 5:20 PM Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Good Afternoon

Please see the attached renewal for a Combined Entertainment License. This will go before Council on 3/16/2020. Please advise. Jess

Jessica Blais Hanscombe
Licensing and Housing Safety Manager
389 Congress Street Room 307
Portland, Maine 04101
207-874-8783
jhanscombe@portlandmaine.gov

--

Lieutenant Glen McGary
Portland Police Department
109 Middle Street
Portland, Maine 04101
Office (207) 756-8294
Fax (207) 874-8580

Merrill Auditorium

Sound Mitigation Review

Date: 2/28/2020

Business Amigo's Mexican Restaurant

Applicant Bruce Mills

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		fence	
additional notes			
Approved		Yes	
DIRECT ALL INQUIRIES TO:			
Kevin Schneck			
(207) 756-8433			
kschneck@portlandmaine.gov			



CITY OF PORTLAND
Permitting and Inspections Department

May 20, 2020

Amigos Mexican Restaurant
9 Dana Street
Portland ME 04101

Re: The Amigos Mexican Restaurant Inc dba Amigos. Application for a Combined Entertainment License at 9 Dana Street.

Dear Bruce Mills

This letter shall serve as a reminder of the public hearing before the Portland City Council on **Monday June 15, 2020 at 5:30 p.m.**, for the review of application for a Combined Entertainment License at 9 Dana Street. The meeting will take place virtually on that date. The agenda will include a link to the meeting, which will be posted the Friday prior to the meeting.

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 jhanscombe@portlandmaine.gov.

Sincerely,

Jessica Hanscombe
Licensing and Housing Safety Manager

Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on June 15, 2020 at 5:30 P.M., virtually online, Amigos Mexican Restaurant Inc dba Amigos. Application for a Combined Entertainment License at 9 Dana Street. Sponsored by Jon P. Jennings, City Manager.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: May 20, 2020

SUBJECT: Order 196-19/20 Granting Municipal Officer's Approval of Portland Maine Baseball, Inc. dba Portland Sea Dogs. Application for a Combined Entertainment License at 271 Park Avenue - Sponsored by Jon P. Jennings, City Manager

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

Portland Maine Baseball, Inc. dba Portland Sea Dogs. Application for a Combined Entertainment License at 271 Park Avenue.

Application was filed on 3/5/2020. Applicant currently holds a Class III & IV FSE license with Entertainment with Dance. Chapter 4 Sec 4-53 (2) requires a public hearing for all initial applications for a Combined Entertainment License.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Portland Sea Dogs
2. 20200520114048771

Prepared by:

Date: 5/20/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**Portland Maine Baseball, Inc. dba Portland Sea Dogs. Application for a Combined
Entertainment License at 271 Park Avenue.**



CITY OF PORTLAND
Permitting and Inspections Department
Renewal Application for an Entertainment License

Must Include:

- ☐ 8 1/2" x 11" diagram showing layout of the premises to include dimensions, locations of dancing, seating, toilet rooms and means of egress.
- ☐ Sound Mitigation Plan (**not required if renewal application for indoor only entertainment)
 - o Prepared and Certified by a Professional Sound Engineer
 - o Details of methods used to minimize the impact on entertainment on the surrounding uses
 - o Speaker Locations and directions
 - o Sound System details and controls
 - o Stage and site layout and direction
 - o Noise cancelling or mitigating measures proposed
 - o Anticipated Sound readings
 - Indoors Entertainment-8 feet from any outer wall
 - Outdoor/Combined Entertainment-Property line and closest residence
 - o On-Site monitor when attendees are expected to exceed 250

Business Information			
Business Name (d/b/a):	Portland SEA DOGS	Phone:	207 874-9300
Location Address:	271 Park Ave.	Portland, ME	Zip: 04102
Owner Name:	WILLIAM BUCKE	Phone:	207 874-9300
Owner Email:	bbucke207@gmail.com		
Contact Person responsible for Entertainment:	Geoff Iacovessa	Phone:	207-874-9300
Contact Person Email:	geoff@seadogs.com		
Manager of Establishment:	Geoff Iacovessa	Phone:	207-874-9300
Manager Email:	geoff@seadogs.com		

About Your Establishment

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

Professional Baseball team affiliated with the Boston Red Sox.
 Entertainment includes: Baseball games with Public Address system, pre-game live performance, postgame fireworks

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 President/UM Date 3-2-20

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

389 Congress Street, Room 307 • Portland, Maine 04101 • 207-874-8557

bl@portlandmaine.gov • www.portlandmaine.gov



March 5, 2020

Jim Heffley
Portland Seadogs
Portland, ME 04101

Mr. Heffley

Thank you for allowing Canfield Systems to address your communication needs. Below, find a brief description of the existing, installed sound system at Hadlock Field and an assessment of its capabilities and limitations as regards its potential for impact on the local community.

SYSTEM DESCRIPTION:

The audio system's potential for disturbance of the local community is a function of two factors; its output volume capability and the directivity of that sound output. This system was designed and installed to minimize such disturbance. The sound projected into the stadium originates from (21) modestly sized, transformer-isolated loudspeakers (cut-sheet attached). Each loudspeaker is permanently mounted and directed toward the seating surfaces. Due to their distributed locations, no loudspeaker is required to provide entertainment to a seat located more than 98' distant. This configuration allows for effective audience entertainment with minimal sound egress from the property.

As stated, the loudspeakers are each transformer isolated. This design feature allows each loudspeaker to be adjusted to a prescribed maximum output capability. Each loudspeaker at Hadlock Field is adjusted to accept a maximum of 100 Watts of energy from its associated amplifier. Due to electronic power limiting circuits at the system's controller, output beyond this level is impossible. Troublesome low-frequency program material is filtered (blocked) from amplification. The system will not produce sound pressure peaks levels in excess of 90dBA at the most distant spectator seat. Due to the dynamic range of the program material offered by the Seadogs staff, a measureable average decibel reading is unlikely to exceed 78dBA at these same locations.

The controlled directivity of the loudspeakers, the acoustic absorption coefficient of the spectators and the playing surface and the height of the facility's perimeter structure all serve to contain the acoustic energy within the facility. Even with the combined energy of all the installed loudspeakers, the average, "A" weighted, sound pressure, measured at the property line should not exceed 67dBA and at the nearest residence is unlikely to exceed 59dBA, a level well below that of normal urban traffic noise.

CONCLUSION:

When operated responsibly, as designed, the Hadlock Field public address sound system poses little threat to the public peace and well-being.

Thank you for your interest in the services of Canfield Systems, Inc.

T.W. Loveitt

Tom Loveitt

Design, Sales and Support

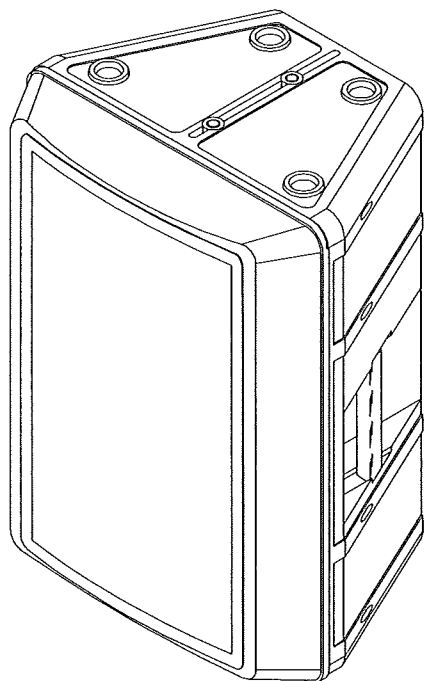
WWW.CANFIELDSYSTEMS.COM

89 Mussey Road/PO Box 898

Scarborough Maine 04070-0898

207-883-4110 fax: 207-883-3932

INTEGRATED COMMUNICATIONS SYSTEMS



Sx 300PI Sx 300PIX 300-Watt Two-Way Weather-Resistant Speaker Systems

- Ring-Mode Decoupling (RMD™) for increased intelligibility
- Lightweight Structural-foam enclosure
- Stand mountable and arrayable
- High efficiency (99 dB, 1 W/1 m)
- High power handling (Sx300PI: 300-watts continuous, 1,200-watts short term)
- Powder-coated, full-face stainless-steel grill with foam backing
- Four molded-in attachment points (metric M8 x 1.25) for secure suspension
- 100-watt transformer option (Sx300PIX)
- Available in white

Description

The Sx300PI and Sx300PIX are continuations of the popular the Sx-series offering the added value of weather-resistant cabinets. The Electro-Voice Sx300PI is a 300-watt, 12-inch, two-way, high-efficiency, constant-directivity speaker system for permanent installation. Through the extensive use of computer-aided design and modeling, Electro-Voice engineers have developed a state-of-the-art professional loudspeaker system for permanent installation where weather resistance is needed. The Sx300PIX is the same as the Sx300PI with the addition of an AT100 transformer.

The high-frequency section of the Sx300PI utilizes a molded-in, 65° x 65° constant-directivity horn. This unique pattern contributes to high intelligibility. Vocals sound natural, yet "cut through" in reverberant, noisy rooms. In addition, the coverage pattern is unusually uniform over its range of operation. Sound quality off axis is very consistent, even at 45° off axis (a 90° total coverage angle), well beyond the rated coverage angle. The horn's unique, Varipath™ throat geometry* helps direct driver output to the corners of the room, points of coverage not described in the usual specifications of horizontal and vertical coverage angles, and parts of the audience that typically do

not receive the strongest coverage.

One of the many other unique features of the Sx300PI is the cabinet. Constructed of high-impact polypropylene structural foam, it provides a stiff and extremely durable enclosure. Molded into the cabinet are an integral carrying handle and a stand socket for mounting on 1 3/8-inch stands such as the Electro-Voice 100BK. Rubber feet attached to the bottom of the cabinet and mating sockets molded into the top provide a means of stacking systems. The trapezoidal-shaped cabinet in combination with the uniform, 65° x 65° directivity characteristics, make the Sx300PI ideal for use alone or in arrays.

The Sx300PI's high-frequency horn is driven by the Electro-Voice DH2010A one-inch-throat, wide bandwidth, titanium-diaphragm driver. The DH2010A uses a unique, convex-drive Time Path™ phasing plug structure (U.S. Patent #4,525,604) for smooth and extended high-frequency performance. The voice coil is coupled to the diaphragm with EV's exclusive Resonant Drive™ technology. This increases and smooths the high-frequency response and reduces the amount of internal equalization required for flat frequency response. Driver output extends to 25,000 Hz. A self-resetting, high-frequency protection circuit, EV's PRO™ circuit, is included with the Sx300PI to prevent accidental overdrive and improve system reliability. If the input power

to the high-frequency driver exceeds the nominal rating, the protection circuit is activated and reduces the power delivered to the driver by 6 dB. The system will remain in this mode of operation until the input power is reduced to a safe level.

The bass section of the Sx300PI is designed using Thiele-Small parameters for efficient performance to below 80 Hz. The woofer is a DL12Sx 12-inch unit featuring beryllium copper lead wires, a low-mass, edge-wound voice coil and high-temperature materials. The part of the magnetic structure adjacent to the coil is insulated using the exclusive EV PROTEF™ process (U.S. Patent #4,547,632). The system combines professional-quality components, arranged in a time-coherent vertical array, with an unusually durable Thiele-Small-aligned vented enclosure. The result is clear and articulate, high-quality sound.

Ring-Mode Decoupling (RMD™)

The Sx300PI controls both acoustical and mechanical ring modes to provide dramatically increased intelligibility, using techniques learned from the development of the Electro-Voice X-array™ concert speakers. There is much less coloration of the sound from resonating sources, leaving only the intended sound to be heard by the audience.

* Patent pending

Sx300PI and Sx300PIX 300-Watt Two-Way Weather-Resistant Speaker Systems

Frequency Response

The combination of a 12-inch woofer, wide bandwidth high-frequency driver and an equalized crossover results in the wide and smooth overall response shown in Figure 1. This response was measured at 10 feet, using a 4-volt input in an anechoic chamber, and was measured using a swept sine-wave input. No external equalization was used. Figure 1 has been averaged and corrected for 1 watt at 1 meter.

Port Covers

The four ports surrounding the woofer may be "sealed" in order to add further weather protection to the system. Optional port covers may be used in situations where increased weather resistance is needed. This will aid in the prevention of any moisture that may protrude through the foam-backed grill under extreme weather conditions to accumulate inside the enclosure. The optional port cover "kit" is supplied along with instructions with each system. However, once the aid of the port covers are installed, a difference of frequency response will change as shown in Figure 2.

Constant-Directivity Speaker System

The crossover frequency and speaker component geometries have been selected so that the directional characteristics of the woofer and constant-directivity horn match at the crossover frequency to create a special system type—the constant-directivity system. Response within the 65° rated coverage angle is uniform, which means dependable audience coverage without "hot spots" or dead zones at certain frequencies. The 65° dispersion characteristic also helps avoid early reflections from nearby floor or side-wall surfaces which could degrade performance. The controlled directivity of the high- and low-frequency transducers also eliminates response irregularities caused by diffraction off nearby enclosure edges and, in combination with an essentially flat on-axis frequency response, produces a total acoustic power output that is uniform with frequency.

Directivity

A unique feature of the Sx300PI is the constant-directivity dispersion provided by the 65° x 65° horn. The polar response of the system at selected one-third-octave band-

widths is shown in Figure 2. These polar responses were measured in an anechoic environment at 10 feet using one-third-octave pink-noise inputs. The frequencies selected are fully representative of the polar response of the system. Beamwidth of the system utilizing the complete one-third-octave polar data is shown in Figure 4. R_q and directivity index (D_i) are plotted in Figure 5.

Suspending Sx300PI Enclosures

WARNING: Suspending any object is potentially dangerous and should only be attempted by individuals who have a thorough knowledge of the techniques and regulations of rigging objects overhead. Electro-Voice strongly recommends that the Sx300PI be suspended taking into account all current national, federal, state and local regulations. It is the responsibility of the installer to ensure the Sx300PI is safely installed in accordance with all such regulations. If the Sx300PI is suspended, Electro-Voice strongly recommends that the system be inspected at least once a year. If any sign of weakness or damage is detected, remedial action should be taken immediately.

When mounting the Sx300PI in a location where a weather-resistant system is required, a minimum of a five-degree down angle is recommended. (See Figure 9.) This will aid in the prevention of any moisture protruding through the foam-backed grille. A manual entitled *Suspending System 200™ Loudspeakers* is included with every Sx300PI system. It gives a summary of the suspension kits available and an idea of how each kit is used. A brief overview, which illustrates some approaches for single and multiple suspension, is given here for the benefit of the system designer. Please refer to individual suspension kit engineering data sheets for full details and safety information.

The first approach is to suspend an **individual** Sx300PI enclosure. The four metric M8 x 1.25 inserts (see Figure 6) which are built into the enclosure allow the system to be suspended using eyebolts (Mb100 Accessory Kit). Typically it will be necessary to attach two cables to the top eyebolt and "pull up" on the rear. The Mb200 bracket (see Figure 8) encompasses the top and bottom of the enclosure and has additional features to make suspending the Sx300PI easier and more flexible. Electro-Voice recommends the use of the Mb200 in all but the

simplest situations. The Mb200 has supplementary holes to allow the Sx300PI to be attached to a wall or ceiling and aimed at an audience.

The Mb200 Installation Kit also allows the use of OmniMount® Series 100 mounting hardware by providing three-hole-pattern groups compatible with these support systems. When OmniMount® Series 100 mounting hardware is specified, the Mb200 Installation Kit must first be attached to the speaker enclosure.

The second approach is to suspend **multiple** Sx300PI enclosures. The Sx300PI enclosure is not designed to suspend multiple enclosures from itself. If an "array" is required, then multiple Mb200's must be used. Arrays may be constructed vertically by "daisy chaining" two Mb200's from each other. The Mb300 array bracket allows the easy and secure construction of horizontal arrays, using Mb200's to support the enclosure.

Power-Handling Capacity

To our knowledge, Electro-Voice was the first U.S. manufacturer to develop and publish a power test closely related to real-life conditions. First, we use a random-noise input signal because it contains many frequencies simultaneously, just like real voice or instrument program. Second, our signal contains more energy at extremely high and low frequencies than typical actual program, adding an extra measure of reliability. Third, the test signal includes not only the overall "long term average" or "continuous" level—which our ears interpret as loudness—but also short-duration peaks which are many times higher than the average, just like actual program. The long-term average level stresses the speaker thermally (heat). The instantaneous peaks test mechanical reliability (cone and diaphragm excursion). Note that the sine-wave test signals sometimes used have a much less demanding peak value relative to their average level. In actual use, long-term average levels exist from several seconds on up, but we apply the long-term average for several hours, adding another extra measure of reliability.

Specifically, the Sx300PI is designed to withstand the power test described in the ANSI/EIA RS-426-A 1980. The EIA test spectrum is applied for eight hours. To obtain the spectrum, the output of a white-noise generator (white noise is a particular type

Sx300PI and Sx300PIX 300-Watt Two-Way Weather-Resistant Speaker Systems

of random noise with equal energy per bandwidth in Hz) is fed to a shaping filter with 6-dB-per-octave slopes below 40 Hz and above 318 Hz. When measured with the usual constant-percentage bandwidth analyzer (one-third-octave), this shaping filter produces a spectrum whose 3-dB-down points are at 100 Hz and 1,200 Hz with a 3-dB-per-octave slope above 1,200 Hz. This shaped signal is sent to the power amplifier with the continuous power set at 300 watts into the 7.1-ohm EIA equivalent impedance (46.2 volts true rms). Amplifier clipping sets instantaneous peaks at 6 dB above the continuous power, or 1,200-watts peak (92.5 volts peak). This procedure provides a rigorous test of both thermal and mechanical failure modes.

Amplifier Power Recommendations

As noted in the Power-Handling Capacity section above, the Sx300PI has a random-noise power capacity of 300-watts long term (1,200-watts peak) (nontransformer) per ANSI/EIA RS-426-A 1980. The following guidelines will help relate this number to an appropriate power amplifier output rating.

1. To use the Sx300PI to full capacity, skilled experts in sound system installation and operation will obtain the best results if the power amplifier is 2.0 to 4.0 times the long-term average noise-power rating of the speaker system. For the Sx300PI this is 600 to 1,200 watts (nontransformer).

The caution cannot be made strongly enough, however, that this arrangement is only for experts or for those who can discipline themselves against "pushing" the system for ever-higher sound levels and who can avoid "accidents" such as catastrophic feedback or dropped microphones.

2. A more conservative, "normal" amplifier size, which will produce audible results nearly equal to those of the "expert" recommendation, is 1.0 to 1.4 times the long-term average noise-power rating of the speaker. For the Sx300PI, this is 300 to 420 watts (nontransformer).
3. To be very conservative, one can use an amplifier rated at 0.5 to 0.7 times the long-term average noise-power rating of the loudspeaker. For the Sx300PI this is 150 to 210 watts (nontransformer).

Request P.A. Bible Addition No. Two ("Power Handling Capacity") for more background on these recommendations.

Sx300PI Connections

The Sx300PI is equipped with two Neutrik Speakon® NL4MP connectors.

In continued high-power applications, Electro-Voice recommends the use of the Speakon connector. The Speakon NL4MP will mate to a NL4FC Speakon connector, which is a 4-pin connector. Figure 7 shows typical wiring configurations using banana plugs. Cable connections for the Sx300PI should be made to the 1+ and 1- terminals only. Cable connections for the Sx300PIX should be made as shown in Figure 9, depending on the given input voltage and the desired output wattage. Cables utilizing the Speakon NL4FC are available from your local dealer or from the companies listed below:

Pro Co Sound, Inc.

135 E. Kalamazoo Ave.
Kalamazoo, MI 49007
616/388-9675

Whirlwind Music Distributors, Inc.

P.O. Box 1075
Rochester, NY 14603
716/663-8820

Neutrik USA, Inc.

195-S3 Lehigh Ave.
Lakewood, NJ 08701
908/901-9488

It is recommended that after making the proper connection with the Speakon connector to the input on the enclosure, a bead of sealant should be applied around the connection to assure a watertight seal.

Weather-Resistant Mounting

When mounting the Sx300 PI in a location where a weather-resistant system is required a minimum of a five-degree down angle is recommended. (See figure 9.) This will help prevent any moisture from wicking through the foam and mesh-backed grille and accumulating inside the enclosure under extreme weather conditions.

Architects' and Engineers' Specifications

The loudspeaker shall consist of a 305-mm

(12-inch) low-frequency transducer in a trapezoidal-shaped enclosure; a high-frequency compression driver with a pure titanium diaphragm coupled to a 65° x 65° constant-directivity horn molded into the front baffle of the enclosure; and a passive crossover-equalizer network with protection for the high-frequency driver. The loudspeaker shall meet the following performance criteria: frequency response of 80 to 25,000 Hz, -3 dB; power handling of 300-watts long term and 1,200-watts short term (nontransformer), with a shaped random-noise input per ANSI/EIA RS-426-A 1980; sensitivity of 99 dB SPL at 1 meter with a 1-watt, 300- to 2,000-Hz pink-noise input; 6-dB-down horizontal coverage angle of 65° ± 15° in the 2,000- to 20,000-Hz range; 6-dB-down vertical coverage angle of 65° ± 15° in the 2,000- to 20,000-Hz range; crossover frequency of 1,500 Hz; nominal impedance of 8 ohms and minimum impedance of 6 ohms. Paralleled input and output connectors shall be present, consisting of Neutrik Speakon® NL4MP connectors. The enclosure shall be constructed of polypropylene structural foam and fitted with a full-face, foam-backed, stainless-steel grille, an integral handle, a stand socket for mounting on 1 3/8-inch stands, rubber feet and mating sockets to facilitate stacking. Dimensions shall be 586 mm (23.1 in.) high x 429 mm (16.9 in.) wide x 312 mm (12.3 in.) deep. Net weight shall be 17.7 kg (39 lb) nontransformer; 21.7 kg (48 lb) transformer. The loudspeaker systems shall be the Electro-Voice Sx300PI, Sx300PIX, Sx300PI-W, Sx300PIX-W.

Uniform Limited Warranty

Electro-Voice products are guaranteed against malfunction due to defects in materials or workmanship for a specified period, as noted in the individual product-line statement(s) below, or in the individual product data sheet or owner's manual, beginning with the date of original purchase. If such malfunction occurs during the specified period, the product will be repaired or replaced (at our option) without charge. The product will be returned to the customer prepaid. **Exclusions and Limitations:** The Limited Warranty does not apply to: (a) exterior finish or appearance; (b) certain specific items described in the individual product-line statement(s) below, or in the indi-

Sx300PI and Sx300PIX 300-Watt Two-Way Weather-Resistant Speaker Systems

vidual product data sheet or owner's manual; (c) malfunction resulting from use or operation of the product other than as specified in the product data sheet or owner's manual; (d) malfunction resulting from misuse or abuse of the product; or (e) malfunction occurring at any time after repairs have been made to the product by anyone other than Electro-Voice Service or any of its authorized service representatives. **Obtaining Warranty Service:** To obtain warranty service, a customer must deliver the product, prepaid, to Electro-Voice Service or any of its authorized service representatives together with proof of purchase of the product in the form of a bill of sale or receipted invoice. A list of authorized service representatives is available from Electro-Voice Service at: 1 Telex Drive, Morrilton, AR 72110 (800/685-2606 or at 501/354-0111). **Incidental and Conse-**

quential Damages Excluded: Product repair or replacement and return to the customer are the only remedies provided to the customer. Electro-Voice shall not be liable for any incidental or consequential damages including, without limitation, injury to persons or property or loss of use. Some states do not allow the exclusion or limitation of incidental or consequential damages so the above limitation or exclusion may not apply to you. **Other Rights:** This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

Electro-Voice Speakers and Speaker Systems are guaranteed against malfunction due to defects in materials or workmanship for a period of five (5) years from the date of original purchase. The Limited Warranty

does not apply to burned voice coils or malfunctions such as cone and/or coil damage resulting from improperly designed enclosures. Electro-Voice active electronics associated with the speaker systems are guaranteed for three (3) years from the date of original purchase. Additional details are included in the Uniform Limited Warranty statement.

For warranty repair, service information, or a listing of the repair facilities nearest you, contact the service repair department at: 800/685-2606 or 501/354-0111.

For technical assistance, contact Technical Support at 800/392-3497 (ext. 4656) or 952/736-4656, M-F, 8:00 a.m. to 5:00 p.m., Central Standard time.

Specifications subject to change without notice.

Figure 1 — Sx300PI Frequency Response (1 watt/1 meter, anechoic environment) (open ports)

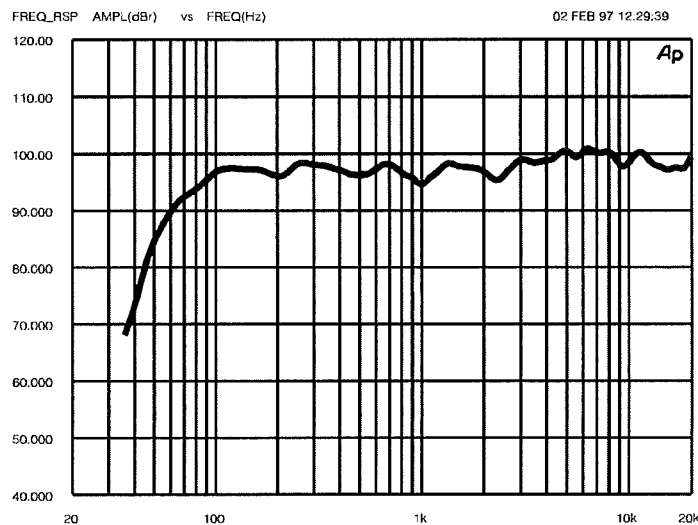
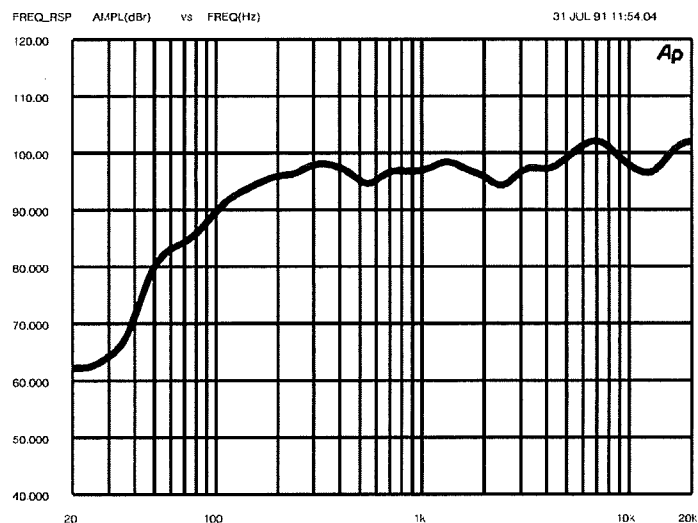
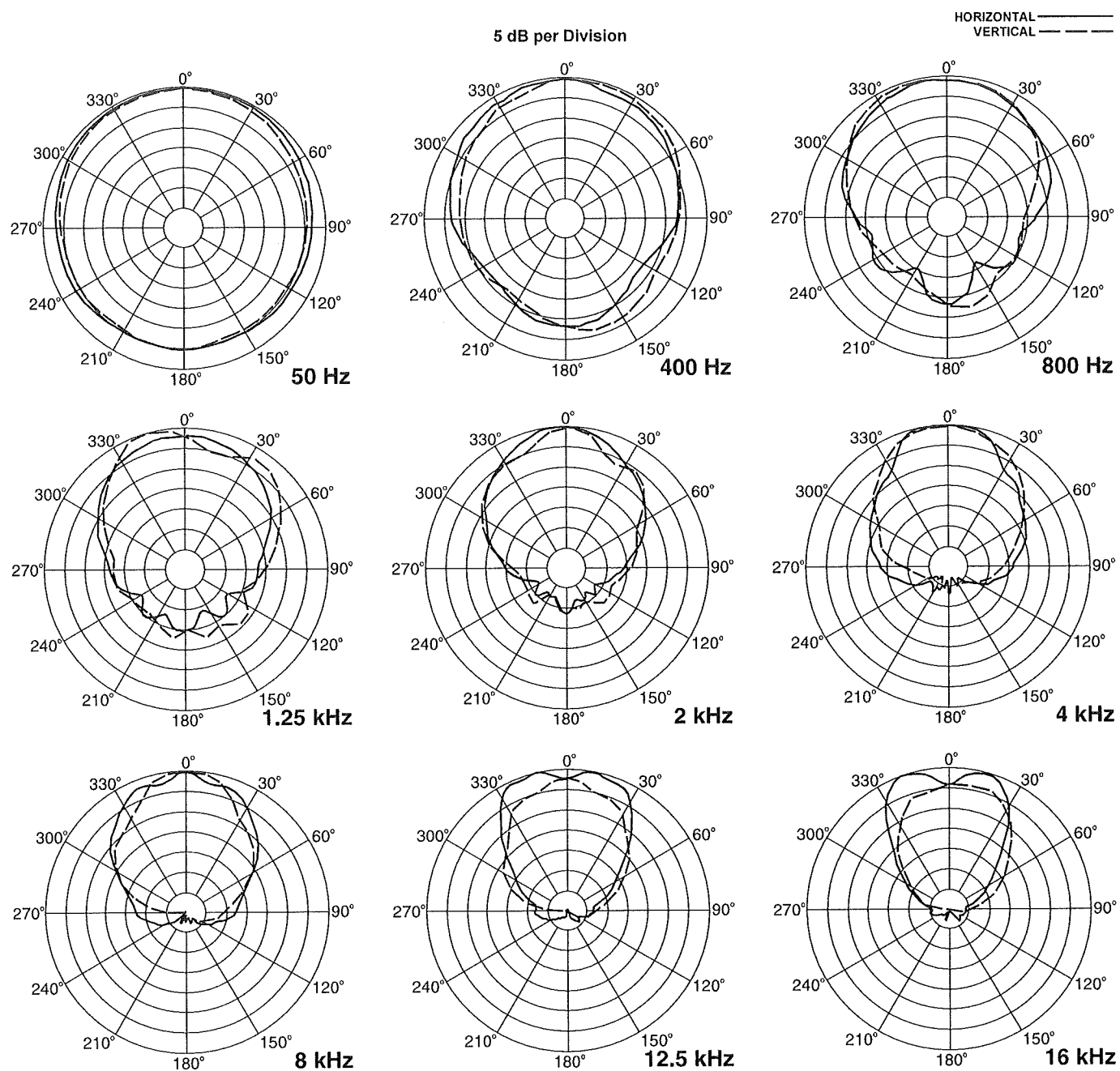


Figure 2 — Sx300PI Frequency Response (1 watt / 1 meter, anechoic environment) (closed ports)



Sx300PI and Sx300PIX 300-Watt Two-Way Weather-Resistant Speaker Systems

Figure 3 — Polar Response (anechoic environment) (open ports)



Sx300PI and Sx300PIX 300-Watt Two-Way Weather-Resistant Speaker Systems

Sx300PI and Sx300PIX 300-Watt Two-Way Weather-Resistant Speaker Systems

Figure 4 — Beamwidth Response
(anechoic environment) (open ports)

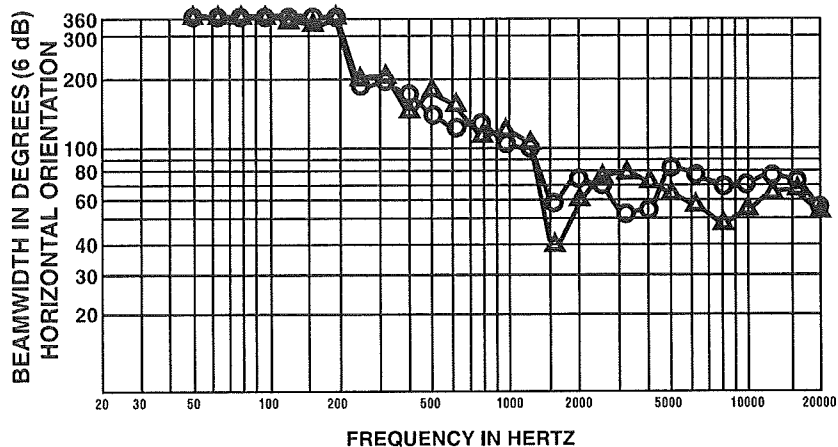


Figure 5 — Directivity Response (anechoic environment) (open ports)

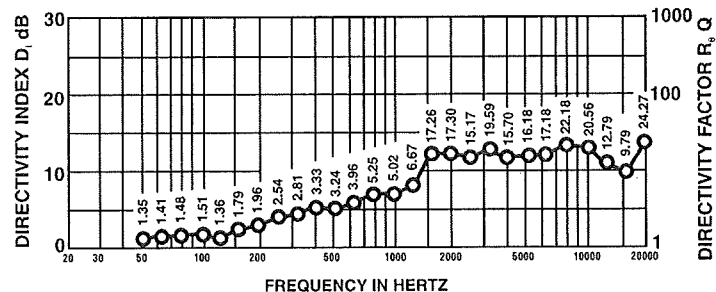
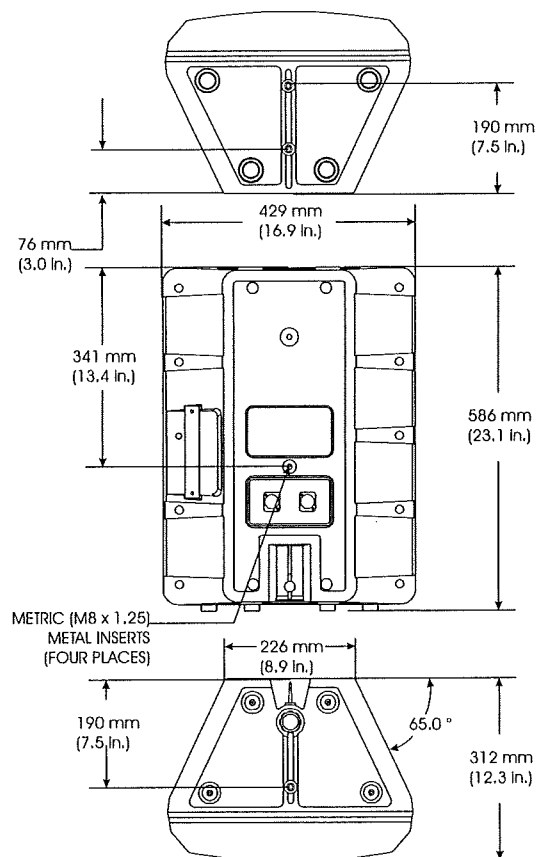
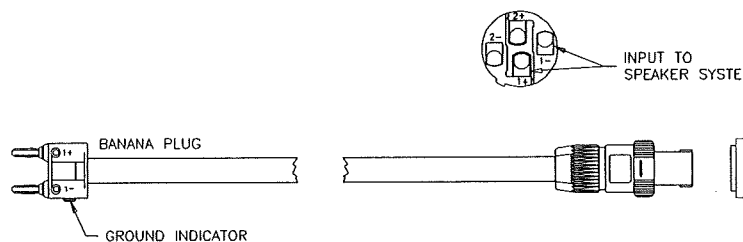


Figure 6 — Sx300PI/ Sx300PIX Dimensions

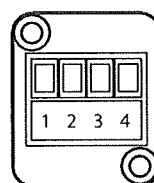


Sx300PI and Sx300PIX 300-Watt Two-Way Weather-Resistant Speaker Systems

Figure 7 — Cable Configurations for Sx300PI and Sx300PIX



Sx300PI Connection



	70.7 VOLT	100 VOLT
PIN 4	50W	100W
PIN 3	70W	140W
PIN 2	100W	200W
PIN 1	COMMON	COMMON

CONNECTIONS TO
TRANSFORMER TAPS

Sx300PIX Connection

Figure 8 — Suspending the Sx300PI Using Mb200 Installation Kit

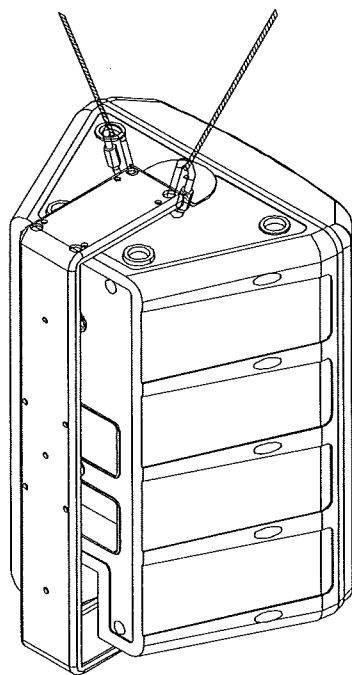
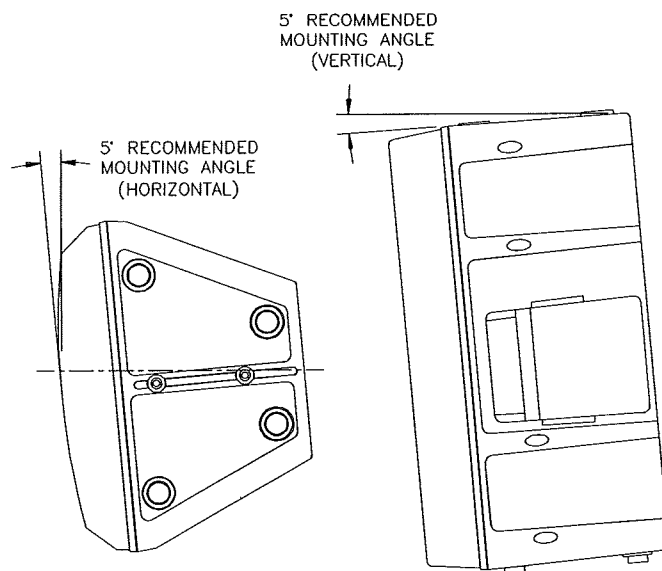


Figure 9 — Recommended Mounting of the Sx300PI and Sx300PIX



Sx300PI and Sx300PIX 300-Watt Two-Way Weather-Resistant Speaker Systems

Sx300PI and Sx300PIX 300-Watt Two-Way Weather-Resistant Speaker Systems

Specifications

Versions Available:

Sx300PI—two-way, full-range speaker system (300 watt)

Sx300PIX—two-way, full-range speaker system with 100-watt transformer

Sx300PI-W—two-way, full-range speaker system (300 watt), white

Sx300PIX-W—two-way, full-range speaker system with 100-watt transformer, white

Axial Frequency Response (swept sine-wave input, 4 volts at 10 feet on axis, anechoic environment, normalized for 1 watt/1 meter; see Figure 1):
80-25,000 Hz

(Open Port) Low-Frequency 3-dB-Down Point:
90 Hz

Half-Space Reference Efficiency:
5.9%

Long-Term Average Power-Handling Capacity per ANSI/EIA RS-426-A 1980 (see Power-Handling Capacity section):

300 watts (nontransformer)

200 watts - 100-V line (transformer)

100 watts - 70.7-V line (transformer)

Maximum Woofer Acoustic Output:
17.7 watts

Sensitivity (SPL at 1 meter, 1 watt input, anechoic environment, band-limited pink-noise signal, 300-2,000 Hz):
99 dB

Dispersion Angle Included by 6-dB-Down Points on Polar Responses, Indicated One-Third-Octave Bands of Pink Noise (see Figure),

2,000-20,000 Hz, Horizontal:
65° -15°

2,000-20,000 Hz, Vertical:
65° -15°

Directivity Factor R_q (Q), 800-16,000 Hz Median (see Figure 5):
14.3 (+7.9, -9.3)

Directivity Index D_i , 800-16,000 Hz Median (see Figure 5):
11.1 dB (+2.4 dB, -4.1 dB)

Distortion, 0.1 Full Power Input, Second Harmonic,

100 Hz: 1.2%

1,000 Hz: 1.4%

10,000 Hz: 10%

Third Harmonic,

100 Hz: 0.1%

1,000 Hz: 1.4%

10,000 Hz: 2.5%

Distortion, 0.01 Full Power Input, Second Harmonic,

100 Hz: 0.2%

1,000 Hz: 1.1%

10,000 Hz: 1.0%

Third Harmonic,

100 Hz: 0.1%

1,000 Hz: 0.4%

10,000 Hz: 0.2%

Transducer Complement, High Frequency:
DH2010A driver

Low Frequency:
12-inch EV woofer

Box-Tuning Frequency:
63 Hz

Crossover Frequency:
1,500 Hz

Crossover Slope, Low Pass:
12 dB per octave

High Pass:
12 dB per octave

Impedance, Sx300PI Nominal:
8 ohms

Minimum:
6 ohms

Impedance, Sx300PIX at Highest Wattage Tap, Nominal:
50 ohms

at 1 kHz:
111 ohms

Input Connections, Sx300PI:

Paralleled Neutrik Speakon® NL4MP connectors (allow paralleling of multiple speakers)

Input Connections, Sx300PIX:

Paralleled Phoenix-Style connectors (for wattage selection and paralleling of multiple speakers)

Enclosure Materials and Colors:

Polypropylene structural foam; choice of black or white

Supplied Accessories:

Suspending Sx100/Sx300 Series Loudspeakers instruction manual

Optional Accessories:

100BK mounting stand

Mb100 forged eyebolt attachment kit

Mb200 wall/ceiling mounting bracket

Mb300 horizontal array kit

OmniMount® Series 100 mounting hardware**

VPCSx vinyl case

PDSx padded case

MBS200 Stainless Steel Bracket Kit

Attachment Points:

Four metric inserts (M8 x 1.25) (see Figure 5 and *Suspending Sx300PI Enclosures* section)

Dimensions (see Figure 5),

Height:
586 mm (23.1 in.)

Width:
429 mm (16.9 in.)

Depth:
312 mm (12.3 in.)

Net Weight:

17.7 kg (40 lb) – nontransformer
21.7 kg (49 lb) – transformer

Shipping Weight:

19.1 kg (43 lb) – nontransformer
23.1 kg (52 lb) – transformer

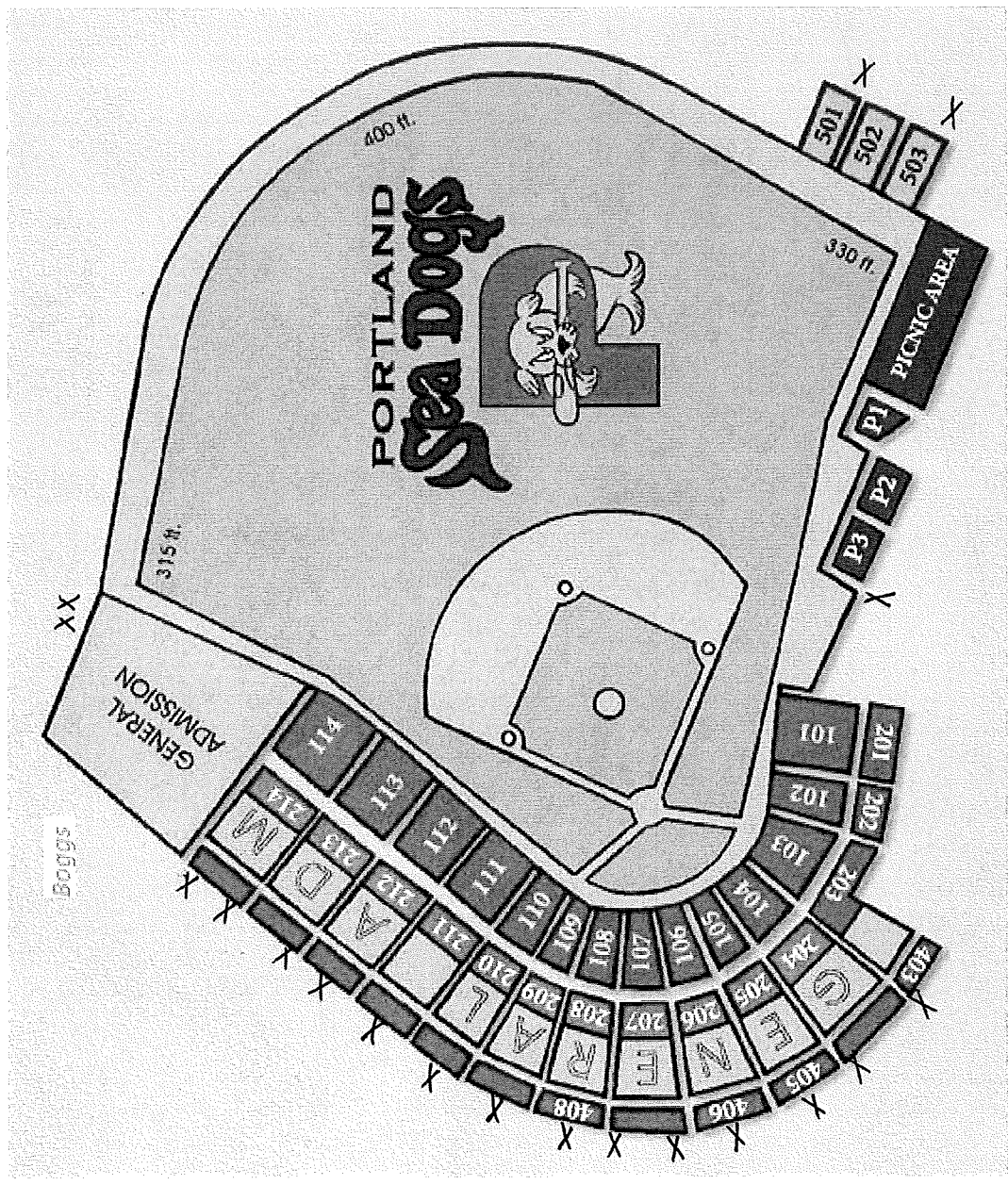
** Available through OmniMount Systems, Inc. OmniMount® is a registered trademark of OmniMount Systems, Inc.

Electro-Voice®

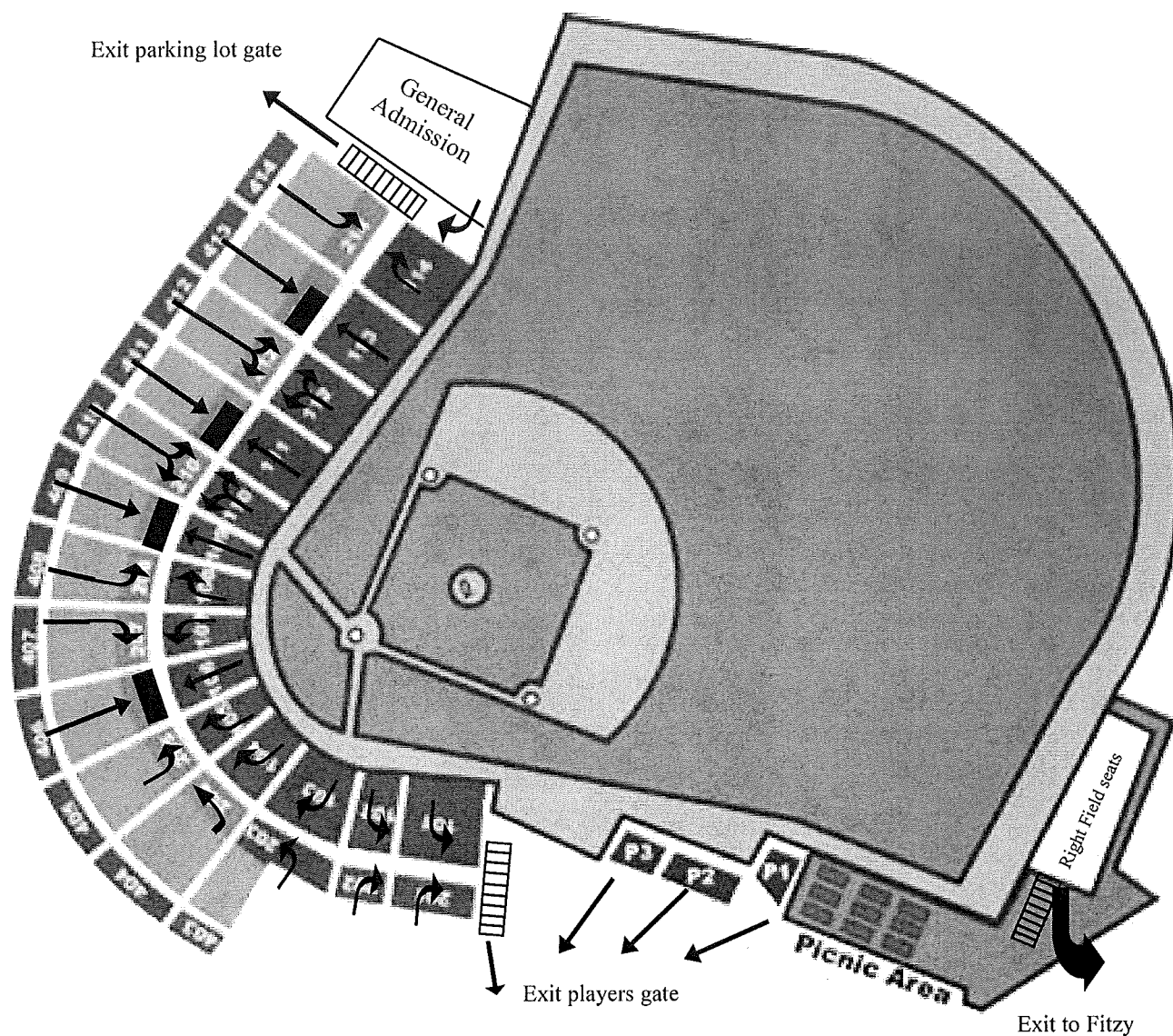
12000 Portland Ave. S., Burnsville, MN 55337

952/884-4051 Phone, 952/884-0043 Fax

Speaker Locations for Public Address
X = Speaker



SEATING EGRESS

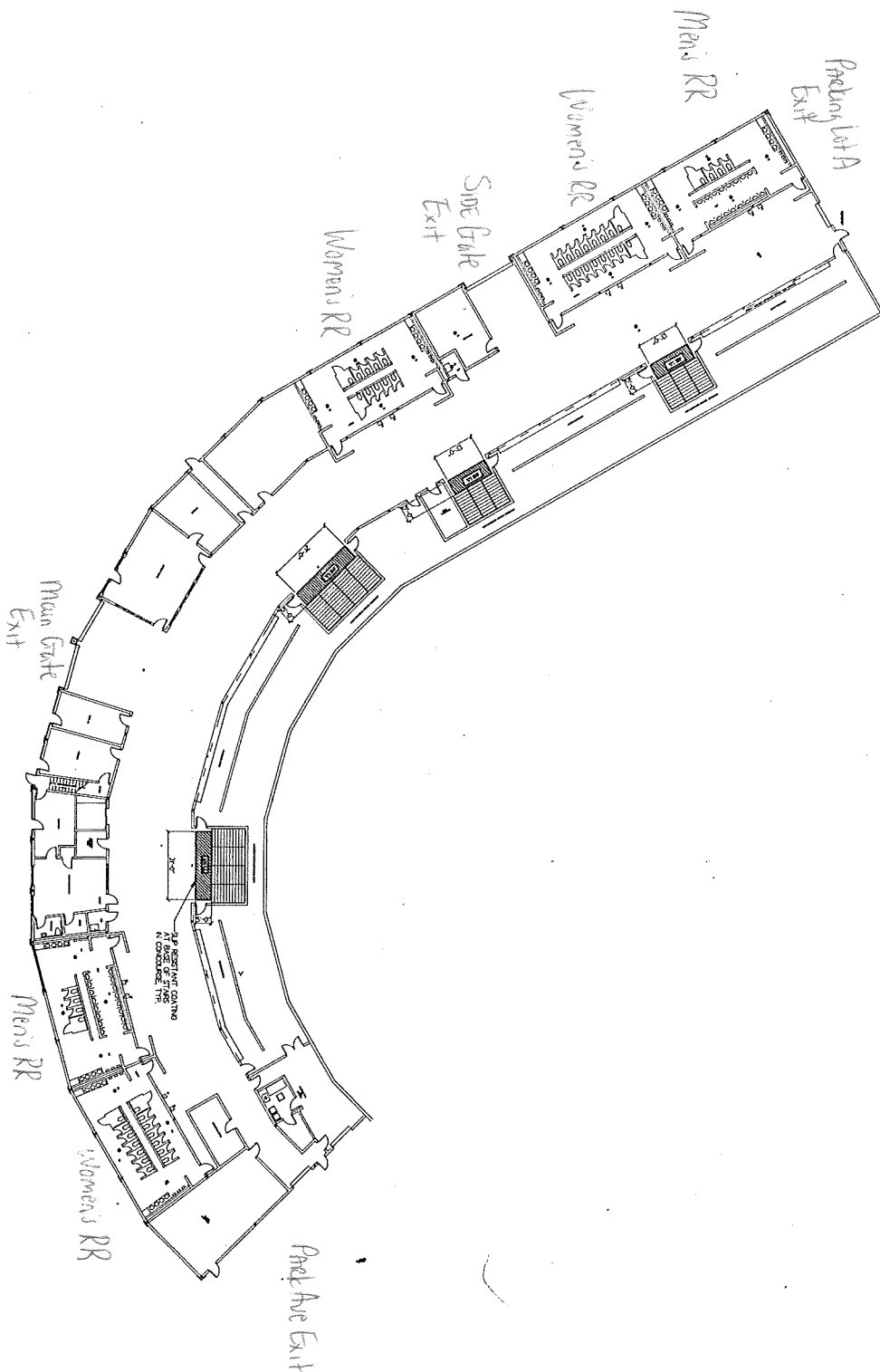


1. Patrons exiting the stadium through the hadlock A parking lot gate will gather in the back of Hadlock A and the medical building parking lot if needed.
2. Patrons exiting out of the smoking gate will will gather in the back of Hadlock A and the medical building parking lot if needed.
3. Patrons exiting out of the main gate will proceed up the sidewalk and gather in the Expo/PIA parking lot.
4. Patrons exiting out of the players gate will proceed around the front of the Expo and gather in Fitzpatrick stadium.
5. Patrons exiting out of the right field seats will gather in Fitzpatrick stadium.

STADIUM LARGE SCALE PLAN - 1/8" = 1'-0"

PLAN AT CONCOURSE LEVEL

SHADES AREA OF
SLIP RESISTANT COATING



HADLOCK FIELD
SUB-GRANDSTAND
SLIP RESISTANT
COATING AREAS
1 SHEET
MIDDLE CLANS, INC.
1999?

NEW CONSTRUCTION FOR
HADLOCK STADIUM
PORTLAND, MAINE
PROJECT
DRAWING
STADIUM SUB-GRANDSTAND
SLIP RESISTANT COATING AREAS

REVISION DATE

FRONT PLAZA LIVE PERFORMANCES

During the baseball season at a limited number of games there will be live acts performing on the Front Plaza at Hadlock Field entertaining fans as they enter the stadium. The Front Plaza is located between Park Avenue and the Main Entrance to Hadlock Field and adjacent to Hadlock Parking Lot A. All live performances end when that day or evenings Sea Dogs game begins, the latest start time for a Sea Dogs game is 7:00 p.m. The equipment used by the live acts include:

- 3 Gemini RS-415 speakers
- 1 Trace Elliot bass speaker

**Picture below of common set-up*

During the performances there is a City of Portland Police Office in close proximity directing vehicle and pedestrian traffic on Park Avenue.

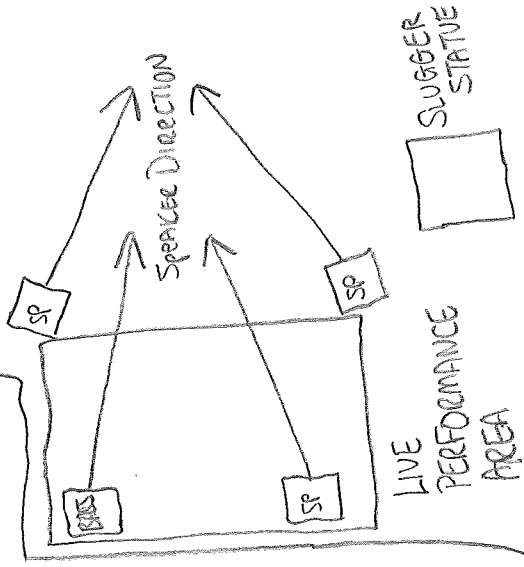


HADLOCK FIELD

HADLOCK
PARKING LOT A

MAIN
ENTRANCE

FRONT PLAZA



PARK AVENUE

FOREST STREET

GILMAN STREET



Jessica Hanscombe <jhanscombe@portlandmaine.gov>

City Council Meeting Cancellation

Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Fri, Mar 13, 2020 at 11:18 AM

To: geoff@seadogs.com

Cc: Business Licensing <bl@portlandmaine.gov>

Bcc: Jess Work <jhanscombe@portlandmaine.gov>

Good Morning

The City of Portland has cancelled all City meetings for the next 30 days. Your application for an Entertainment License with the City of Portland, will be delayed until the City Council begins meetings again. As soon as I get that date, I will reach out to you. You can continue to operate as normal in the meantime. Please advise if you have any questions. Jessica

Jessica Blais Hanscombe
Licensing and Housing Safety Manager
389 Congress Street Room 307
Portland, Maine 04101
207-874-8783
jhanscombe@portlandmaine.gov

Sound Mitigation Review

Applicant **Geoff Iacuesss**

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			NA	
additional notes				
Approved			Yes	
DIRECT ALL INQUIRIES TO:				
Kevin Schneck				
(207) 756-8433				
kschneck@portlandmaine.gov				



CITY OF PORTLAND
Permitting and Inspections Department

May 20, 2020

Portland Maine Baseball Inc
PO Box 636
Portland ME 04104

Re: Portland Maine Baseball, Inc. dba Portland Sea Dogs. Application for a Combined Entertainment License at 271 Park Avenue.

Dear Geoff Lacuessa

This letter shall serve as a reminder of the public hearing before the Portland City Council on **Monday June 15 2020 at 5:30 p.m.**, for the review of application for a Combined Entertainment License at 271 Park Ave. The meeting will take place virtually on that date. The agenda will include a link to the meeting, which will be posted the Friday prior to the meeting.

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 jhanscombe@portlandmaine.gov.

Sincerely,

Jessica Hanscombe
Licensing and Housing Safety Manager

Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on June 15, 2020 at 5:30 P.M., virtually online Portland Maine Baseball, Inc. dba Portland Sea Dogs. Application for a Combined Entertainment License at 271 Park Avenue. Sponsored by Jon P. Jennings, City Manager.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: May 20, 2020

SUBJECT: Order 197-19/20 Granting Municipal Officer's Approval of J & TL Inc. dba Andy's Old Port Pub. Application for a Class XI FSE with Indoor Entertainment at 94 Commercial Street - Sponsored by Jon P. Jennings, City Manager

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

J & TL Inc. dba Andy's Old Port Pub. Application for a Class XI FSE with Indoor Entertainment at 94 Commercial Street.

Application was filed on 2/11/2020. New City application. Applicant has a pending Class XI FSE license.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. 20200520132451073
2. Andy-Entertainment

Prepared by:

Date: 5/20/2020



CITY OF PORTLAND
Permitting and Inspections Department

Application for an Entertainment License

☒ Indoor Entertainment \$500.00	☐ Outdoor Entertainment \$700.00	☐ Combined Entertainment \$800.00
---	---	--

Business Information			
Business Name (d/b/a):	ANDY'S OLD PORT PUB	Phone:	207-874-2639
Location Address:	94 COMMERCIAL STREET, PORTLAND, ME		Zip: 04101
Owner Name:	JCTL, INC.	Phone:	Same as above
Owner Email:	Same as contact email		
Contact Person responsible for Entertainment:	JOHN LOWELL	Phone:	207-874-2639
Contact Person Email:	JLOWELL@ROADRUNNER.COM		
Manager of Establishment:	JOHN LOWELL	Phone:	207-874-2639
Manager Email:	JLOWELL@ROADRUNNER.COM		

About Your Establishment

Describe in detail the type and nature of the business and proposed entertainment:
 ANDY'S OLD PORT PUB HAS BECOME A MAINSTAY OF THE PORTLAND WATERFRONT OVER THE PAST 12 YEARS. IT IS OUR WISH TO CONTINUE OPERATIONS AS A BRIGHT, CLEAN, RELAXING PUB WITH EXCELLENT PUB FOOD AND PLEASANT MUSIC. 7 NIGHTS/WEEK PLAYED AT A VOLUME THAT CONTINUES TO ALLOW DINNER CONVERSATION. WHILE THE OCCASIONAL PERFORMER IS FROM AWAY, THE MAJORITY OF PERFORMERS ARE LOCAL SINGER/SONGWRITERS.

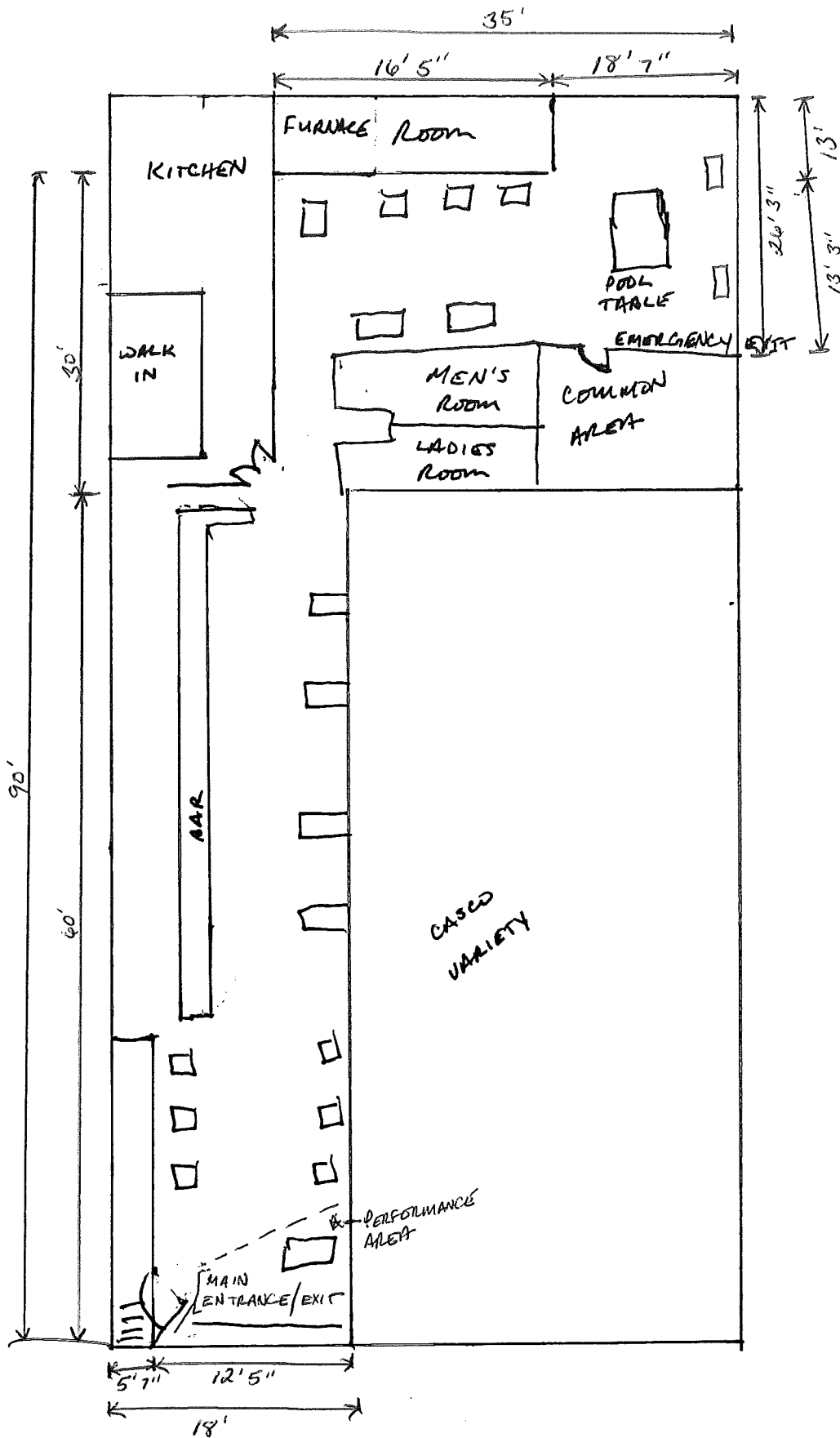
Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above license and further agrees that any misstatement of material fact may result in refusal of license or revocation, if one has been granted. Applicant agrees that all taxes and accounts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

Signature John W Lowell Title President Date 11/21/2019

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

Paid 2-11-20

Gilbert's



COMMERCIAL STREET

RECEIVED
JAN 28 2020
Liquor licensing
& Enforcement

ANDY'S OLDE PORT PUB

BAR

MASTER
CONTROL

8' FROM LEFT WALL

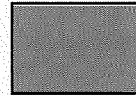


< SPEAKER

10' FROM FRONT WALL



8' FROM RIGHT WALL



SPEAKER >

10' FROM FRONT WALL



DOOR

MIXER AMP

FRONT WINDOW



New England Mobile Audio
15 Elkins Rd
Kingston, NH 03848
www.nemobileaudio.com
603-347-1810 – office

February 2, 2020

John Lowell
Andy's Olde Port Pub
94 Commercial St #4738
Portland, ME 04101

Sound Mitigation Plan

Prepared for Andy's Olde Port Pub

New England Mobile Audio
Is a fully insured Audio Installation Company
Located in
Kingston, NH

Sound System Details

Installation consists of a Yamaha 6 Channel 300 watt Sound System, which will include:

2 Yamaha 15 + Horn 300 watt Speakers with a built in Sound Compressor.]

All Speakers are located 8 – 10 ft from walls, floors and ceiling, with 0 to 10% downward slope for sound control.

The Original Sound System was installed per and authorized by the original tenant's landlord and the Portland City Officials in the year of 2014.

Sound Levels

Sound Levels will be controlled to be under 85 Decibels per the National Institute for Occupational Safety and Health (NIOSH)

For further questions or concerns, please call:

John Sobczak
New England Mobile Audio
603-339-7881 cell
603-347-1810 office
john@nemobileaudio.com

Sound Mitigation Review

[illegible]



Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Re: Andys Old Port Pub

Dan Hondo <danh@portlandmaine.gov>

Thu, Feb 20, 2020 at 11:09 PM

To: Jessica Hanscombe <jhanscombe@portlandmaine.gov>

No issues on PD side

On Fri, Feb 14, 2020 at 1:37 PM Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Good Afternoon

Please see the attached application for an Entertainment License for an Indoor Entertainment License. This will go before council on 3/16/2020. Please advise. Jessica

Jessica Blais Hanscombe
Licensing and Housing Safety Manager
389 Congress Street Room 307
Portland, Maine 04101
207-874-8783
jhanscombe@portlandmaine.gov

--
Lt. Dan Hondo
Portland Maine Police Dept.
Patrol Team B3/B4
(207)874-8513

Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on June 15, 2020 at 5:30 P.M., virtually online, J & TL Inc. dba Andy's Old Port Pub. Application for a Class XI FSE with Indoor Entertainment at 94 Commercial Street. Sponsored by Jon P. Jennings, City Manager.



CITY OF PORTLAND
Permitting and Inspections Department

May 20, 2020

Andys Old Port Pub
94 Commercial Street
Portland ME 04101

Re: J & TL Inc. dba Andy's Old Port Pub. Application for a Class XI FSE with Indoor Entertainment at 94 Commercial Street.

Dear John Lowell

This letter shall serve as a reminder of the public hearing before the Portland City Council on **Monday June 15, 2020 at 5:30 p.m.**, for the review of application for an Indoor Entertainment License at 94 Commercial Street. The meeting will take place virtually on that date. The agenda will include a link to the meeting, which will be posted the Friday prior to the meeting.

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 jhanscombe@portlandmaine.gov.

Sincerely,

Jessica Hanscombe
Licensing and Housing Safety Manager

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**J & TL Inc. dba Andy's Old Port Pub. Application for a Class XI FSE with Indoor
Entertainment at 94 Commercial Street.**

MEMORANDUM
City Council Agenda Item

FROM:

DATE: May 21, 2020

SUBJECT: Order 198-19/20 Granting Municipal Officers' Approval of Abraham Durani & Habibullah Popal dba Crown Fried Chicken. Application for a Food Service Establishment with Preparation at 1100 Brighton Ave for food service until 2:00am - Sponsored by Jon P. Jennings, City Manager.

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

Abraham Durani & Habibullah Popal dba Crown Fried Chicken. Application for a Food Service Establishment with Preparation at 1100 Brighton Ave for food service until 2:00 a.m.

Application was filed on 5/4/2020. New City application. Location was formerly Little Caesar Pizzeria.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Crown Fried Chicken
2. 20200521153853557

Prepared by:

Date: 5/21/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

Abraham Durani & Habibullah Popal dba Crown Fried Chicken. Application for a Food Service Establishment with Preparation at 1100 Brighton Ave for food service until 2:00am.



Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Letter in support of extended hour request - CROWN CHICKEN

Cristina Eugen <cristinaeugen@kw.com>

Mon, May 4, 2020 at 4:17 PM

To: "jhanscombe@portlandmaine.gov" <jhanscombe@portlandmaine.gov>

Good Afternoon,

The following is a letter in support of our extended hours variance request

We love the location of our proposed venue, which we have been carefully studying since February & sincerely hope the Town will take the following factors into consideration when making a determination:

1. Crown Fried Chiken is part of a Franchise and Franchise expectation is that the venue we are applying for, similarly be allowed to remain open until 2 A.M.
2. Our prior location financials indicate allowing the business to stay open until 2 A.M. generates an additional +/- \$5000/week in revenue & with only Mc Donald's open late in the area, that number actually stands to be higher yet at this new location
3. With Rock Row and Market Basket coming soon, we will be providing much needed food services to that increased traffic
4. With another 24/7 business in the same Mall, we would be catering to those Clients working out as well as others who work late in the area, including travelers off the Interstate

Thank you for your consideration of the factors listed above.

We sincerely look forward to a decision being made soon, especially where the Leasing agent recently indicated the business opportunity location is time-sensitive, and we thank you in advance for your consideration

We are so excited at the prospect of bringing a Nationally successful food venue to this growing part of Portland!

Many thanks

--

CRISTINA EUGEN ■ REALTOR

KELLER WILLIAMS REALTY

Cristina Eugen
REALTOR



CITY OF PORTLAND
Permitting and Inspections Department
Application for Food Service Establishment or Commissary Kitchen License
License expires annually on January 31st

- ☐ Application Fee: \$45 ☐ FSE with Preparation or Commissary Kitchen License: \$459
☐ Health Inspection \$150.00 ☐ FSE without Preparation License: \$181 ☐ Beer & Wine Take-Out: \$415

Business Information	
Business Name (d/b/a):	Crown Fried Chicken Phone: 207-245-4503
Location Address:	1100 Brighton Ave Portland, ME Zip: 04102
If new, what was formerly at this location:	Little Caesars Pizzeria
Mailing Address:	1100 Brighton Ave Portland, ME Zip: 04102
Contact Person:	Abraham Durani Phone: 207-245-4503
Contact Person Email:	abraham04038@gmail.com
Manager of Establishment:	Abraham Durani Phone: 207-245-4503
Owner of Premises (Landlord):	Brixmor SPE 4 LP Brixmor Property Group
Address of Premises Owner:	450 Lexington Ave 13 th Floor, New York, NY Zip: 10017

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

Name of Owner(s)	Date of Birth	Residence Address
Abraham Durani	6-25-92	17 Lawn Ave Gorham, ME 04038
Habibollah Popal	11-1-74	817 N Charles St Apt. 2R Baltimore, MD 21201

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

Corporate Name		Corporate Mailing Address	
Contact Person:		Phone:	
Principal Officers			
Title	Date of Birth	Residence Address	



CITY OF PORTLAND
Permitting and Inspections Department

Type of Food Served (include a menu):	Fast Food, Fried Chicken, Middle Eastern		
Hours & Days of Operation:	Sunday-Saturday 10:00am - 2:00am		
Certified Food Protection Manager Certificate number & expiration date: <u>Pending</u>			
If this has not yet been obtained, indicate that it is pending. Please have it ready for your health inspection.			
QUESTION- For Food Service Establishments ONLY:			Yes/No
Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.)			Y/N ☒
Will you permit dancing on the premises?			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).			Y/N ☒
Will you have any amusement devices (pinball, video games, jukebox)?			Y/N ☒
If yes, please list the number of pinball machines: _____ amusements: _____ pool tables: _____			
What is your targeted opening date?			June 2020 / July 2020
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):			
Is any principal officer under the age of 18?			Y/N ☒
For Community Kitchen Operators ONLY:			
It is your responsibility to maintain a schedule of users and assure sufficient time for cleaning and sanitizing between uses.			

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 [Signature] Title Manager Date 4-30-2020
For more information about Food Service Establishments and Community Kitchens, see Portland City Code Chapter 11 at: www.portlandmaine.gov

For Administrative Use Only			
Amount: _____	Request Date /	Approval	Notes: _____
Date Paid: _____	FD: _____	_____	_____
CC _____ CA _____ CK _____	Health: _____	_____	_____
	PD: _____	_____	_____
Amount: _____	PS: _____	_____	_____
Date Paid: _____	Treasury: _____	_____	_____
CC _____ CA _____ CK _____	Zoning: _____	_____	_____

389 Congress Street, Room 307 • Portland, Maine 04101 • 207-874-8557

bl@portlandmaine.gov • www.portlandmaine.gov



CITY OF PORTLAND
Permitting and Inspections Department

Ann Machado, Zoning Administrator

TO: Mayor Snyder, Jon Jennings and the City Council

FROM: Ann Machado, Zoning Administrator

SUBJECT: 1100 Brighton Avenue (Pine Tree Shopping Plaza – Unit 17) – CBL 263A A005

DATE: May 19, 2020

RE: Proposed Hours of Operation for the Restaurant Crown Fired Chicken

Crown Fried Chicken, a fast food restaurant, has leased unit 17 in the Pine Tree Shopping Center at 1100 Brighton Avenue. 1100 Brighton Avenue is located in the B-2 (Community Business) Zone. Section 14-182 Table of Uses allows restaurants as a permitted use with the following exception, "that restaurants shall close for all purposes including the service of alcohol no later than 11:00 p.m. unless authorized by the City Council". Crown Fried Chicken is asking the City Council to allow their business to stay open until 2 a.m. Crown Fried Chicken is part of a franchise and the franchise expectation is that all their restaurants stay open until 2 a.m.

The purpose of the B-2 Community Business Zone is stated in section 14-181.

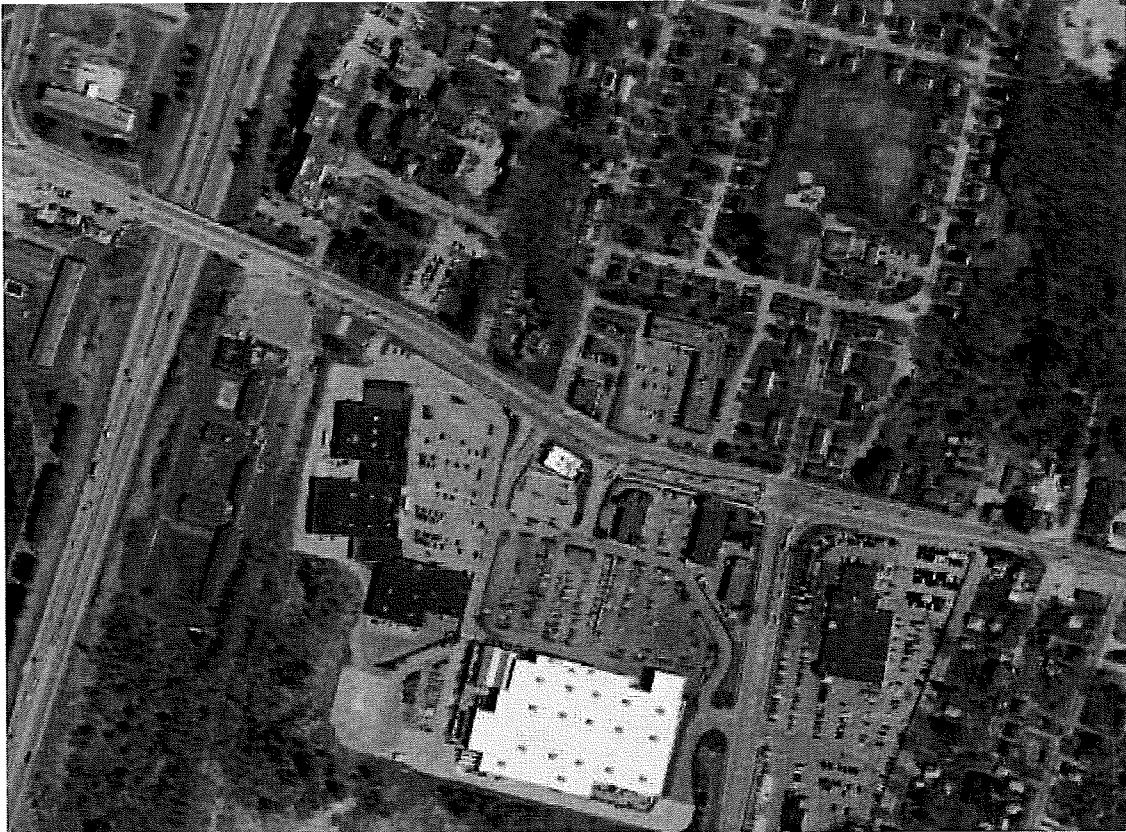
Sec. 14-181. Purpose.

(a) B-2 Community Business Zone

- 1. To provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses, housing and services serving the adjoining neighborhoods and the larger community.*
- 2. The variety, sites and intensity of the permitted commercial uses in the B-2 zone are intended to be greater than those permitted in the B-1 neighborhood business zone.*
- 3. The B-2 zone will provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns.*
- 4. The B-2 and B-2b will provide locations for moderate to high density housing in urban neighborhoods along arterials*

The B-2 zone provides a mixture of commercial and residential uses at a higher intensity than the B-1 Neighborhood Business Zone.

Looking at the location of Fried Crown Chicken in the Pine Tree Shopping Center and the surrounding neighborhood, the uses immediately around the proposed Crown Fried Chicken location are all commercial. The closest residential uses are across Brighton Avenue, and they are both institutional uses. There is a small (less than 16 residents) intermediate care facility approximately 315 feet away from the proposed Crown Fried Chicken location at 1085 Brighton Avenue. The next closest residential/institutional use is the Barron Center located approximately 515 feet away from the proposed Crown Fried Chicken location.



Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on June 15, 2020 at 5:30 P.M., virtually online, Abraham Durani & Habibullah Popal dba Crown Fried Chicken. Application for a Food Service Establishment with Preparation at 1100 Brighton Ave for food service until 2:00am. Sponsored by Jon P. Jennings, City Manager.



CITY OF PORTLAND
Permitting and Inspections Department

May 22, 2020

Crown Fried Chicken
1100 Brighton Ave
Portland ME 04102

Re: Abraham Durani & Habibullah Popal dba Crown Fried Chicken. Application for a Food Service Establishment with Preparation at 1100 Brighton Ave for food service until 2:00am.

Dear Abraham Durani

This letter shall serve as a reminder of the public hearing before the Portland City Council on Monday June 15, 2020 at 5:30 p.m., for the review of application for a Food Service Establishment with Preparation at 1100 Brighton Ave for food service until 2:00am. The meeting will take place virtually on that date. The agenda will include a link to the meeting, which will be posted the Friday prior to the meeting.

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 jhanscombe@portlandmaine.gov.

Sincerely,

Jessica Hanscombe
Licensing and Housing Safety Manager

MEMORANDUM
City Council Agenda Item

FROM:

DATE: May 27, 2020

SUBJECT: Order 199-19/20 EAD Entertainment LLC dba Muse Paintbar. Application for a Class III & IV FSE at 245 Commercial Street - Sponsored by Jon P. Jennings, City Manager

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

EAD Entertainment LLC dba Muse Paintbar. Application for a Class III & IV FSE at 245 Commercial Street.

Application filed on 5/26/2020. Change of ownership of an existing business.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Muse
2. 20200527103048127

Prepared by:

Date: 5/27/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**EAD Entertainment LLC dba Muse Paintbar. Application for a Class III & IV FSE at 245
Commercial Street.**

SKENE LAW FIRM, P.C.

A NEW JERSEY PROFESSIONAL CORPORATION

2614 ROUTE 516, 2ND FLOOR • OLD BRIDGE, NEW JERSEY • 08857

PHONE: 732-727-5030 • FAX: 732-727-5028

WWW.SKENELAWFIRM.COM

ROBERT D. SKENE * +

LISA M. MILLER * + ^

RICHARD D. NASCA * +

LINDSEY FARINA * +

JOHN F. VASSALLO, JR., OF COUNSEL

ANNE MARIE VASSALLO, OF COUNSEL

* NEW JERSEY BAR ADMISSION

+ NEW YORK BAR ADMISSION

^ PENNSYLVANIA BAR ADMISSION

May 7, 2020

VIA FEDEX DELIVERY

City of Portland

Office of the Mayor and City Council

389 Congress Street

Portland, ME 04101

Re: Application for Food Service Establishment
With Alcoholic Beverages License
EAD Entertainment, LLC
d/b/a Muse Paintbar, LLC
245 Commercial Street
Portland, ME 04101

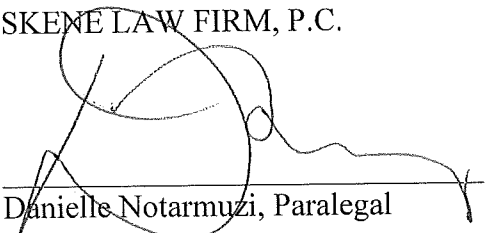
To Whom It May Concern:

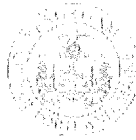
Please be advised that our firm represents EAD Entertainment, LLC in its alcoholic beverage regulatory matters. At this time, our client wishes to apply for a Class III and Class IV liquor license for the above referenced premises. Such premises is currently owned by Muse Paintbar, LLC and our client is purchasing the business. The method of operation of the business will not be changing and there will be no material changes to the layout of the premises.

Upon your review of the foregoing, please do not hesitate to contact our office with any questions or concerns.

Sincerely,

SKENE LAW FIRM, P.C.


Danielle Notarmuzi, Paralegal



CITY OF PORTLAND

Permitting and Inspections Department

Application for Food Service Establishment with Alcoholic Beverages License

Business Information			
Business Name (d/b/a):	Muse Paintbar	Phone:	207-618-9500
Location Address:	245 Commercial St., Portland, ME		Zip: 04101
If new, what was formerly at this location:	N/A - premises remaining the same.		
Mailing Address:	1230 Peachtree St NE, Ste 1750, Atlanta, GA		Zip: 30309
Contact Person:	Danielle Notarmuzi	Phone:	732-727-5030
Contact Person Email:	dnotarmuzia@skelawfirm.com		
Manager of Establishment:	TBD	Date of Birth:	Phone: 207-618-9500
Owner of Premises (Landlord):	MEMIG Casco View Holdings LLC		
Address of Premises Owner:	261 Commercial St., Portland, ME		Zip: 04104 PO BOX 11409 Portland, ME 04101

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

Name of Owner(s)	Date of Birth	Residence Address

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

Corporate Name		Corporate Mailing Address	
EAD Entertainment, LLC		1230 Peachtree St NE, Ste 1750, Atlanta, GA Zip: 30309	
Contact Person:	Danielle Notarmuzi	Phone:	732-727-5030
Principal Officers	Title	Date of Birth	Residence Address
Brian Gerard Reynolds	LLC Mgr	08/23/1956	1301 Peachtree St NE, Atlanta, GA 30309
Class of Liquor License:		Class III - Restaurant Wine Only & Class IV - Restaurant Beer Only	

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CITY OF PORTLAND
Permitting and Inspections Department

Type of food served:	<u>American</u>	
Please circle all that will be served:	☒ Beer ☒ Wine ☐ Liquor	
Projected percentage of sales:	Generated from Food:	Generated from Alcohol:
Hours & days of operation:	<u>M-F: 6PM-10PM ; S-S: 11AM-11PM</u>	
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 ☒ 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 pinball machines: _____ # of amusements: _____ # of pool tables: _____		
What is your targeted opening date? <u>Take over date is TBD.</u>		
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):		
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, Brian G. Reynolds 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 *Brian G Reynolds* Title LLC Manager Date 4/1/20



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

Application for an On-Premises License

All Questions Must Be Answered Completely. Please print legibly.

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

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): EAD Entertainment, LLC	Business Name (D/B/A): Muse Paintbar
Individual or Sole Proprietor Applicant Name(s): N/A	Physical Location: 245 Commercial St., Portland, ME 04101
Individual or Sole Proprietor Applicant Name(s): N/A	Mailing address, if different: 1230 Peachtree St NE, Ste1750, Atlanta, GA 30309
Mailing address, if different from DBA address: 1230 Peachtree St NE, Ste1750, Atlanta, GA 30309	Email Address: dnotarmuzi@skelawfirm.com
Telephone # Fax #: 732-727-5030	Business Telephone # Fax #: (207) 618-9500
Federal Tax Identification Number: 84-4434495	Maine Seller Certificate # or Sales Tax #: pending
Retail Beverage Alcohol Dealers Permit: pending	Website address: www.musepaintbar.com

1. New license or renewal of existing license? ☒ New ☐ Renewal

If a renewal, please provide the following information:

Your current license expiration date: _____

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: _____

2. Please indicate the type of alcoholic beverage to be sold: (check all that apply)

☒ Malt Liquor (beer) ☒ Wine ☐ Spirits

3. 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 with auxiliary and mobile cart options (Class I, II, III, IV) ☐ Tavern (Class IV)
- ☐ Qualified Caterer ☐ Self-Sponsored Events (Qualified Caterers Only)
- ☐ Other: _____

Refer to Section V for the License Fee Schedule

4. If application is for a **new** license or the business is under new ownership, indicate starting date:

Immediately upon license issuance

5. Business records are located at the following address:

245 Commercial St., Portland, ME 04101

6. 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

7. 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
N/A		

8. 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
Brian Gerard Reynolds	08/23/1956	New York, NY

Residence address on all the above for previous 5 years

Name	Address:
Brian G. Reynolds	1301 Peachtree St NE, Atlanta, GA 30309
Name	Address:
Brian G. Reynolds	443 Langley Oaks Dr SE, Marietta, GA 30087
Name	Address:
Name	Address:

9. Is the licensee/applicant(s) citizens of the United States? ☒ Yes ☐ No
10. Is the licensee/applicant(s) a resident of the State of Maine? ☐ Yes ☒ No
11. 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
12. Is the licensee/applicant(s) directly or indirectly giving aid or assistance in the form of money, property, credit, or financial assistance of any sort, to any person or business entity holding a liquor license granted by the State of Maine? ☐ Yes ☒ No
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:

MEMIC - 261 Commercial St, Portland, ME 04101

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)

Restaurant with art studio and painting classes comprising of one main studio as well as a private studio. Premises includes kitchen and bar 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: _____

Distance: _____

Section II: Signature; Fee; Delivery of application

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: 4/1/20



Signature of Duly Authorized Person*

Signature of Duly Authorized Person*

Brian G. Reynolds

Printed Name Duly Authorized Person

Brian G. Reynolds

Printed Name of Duly Authorized Person

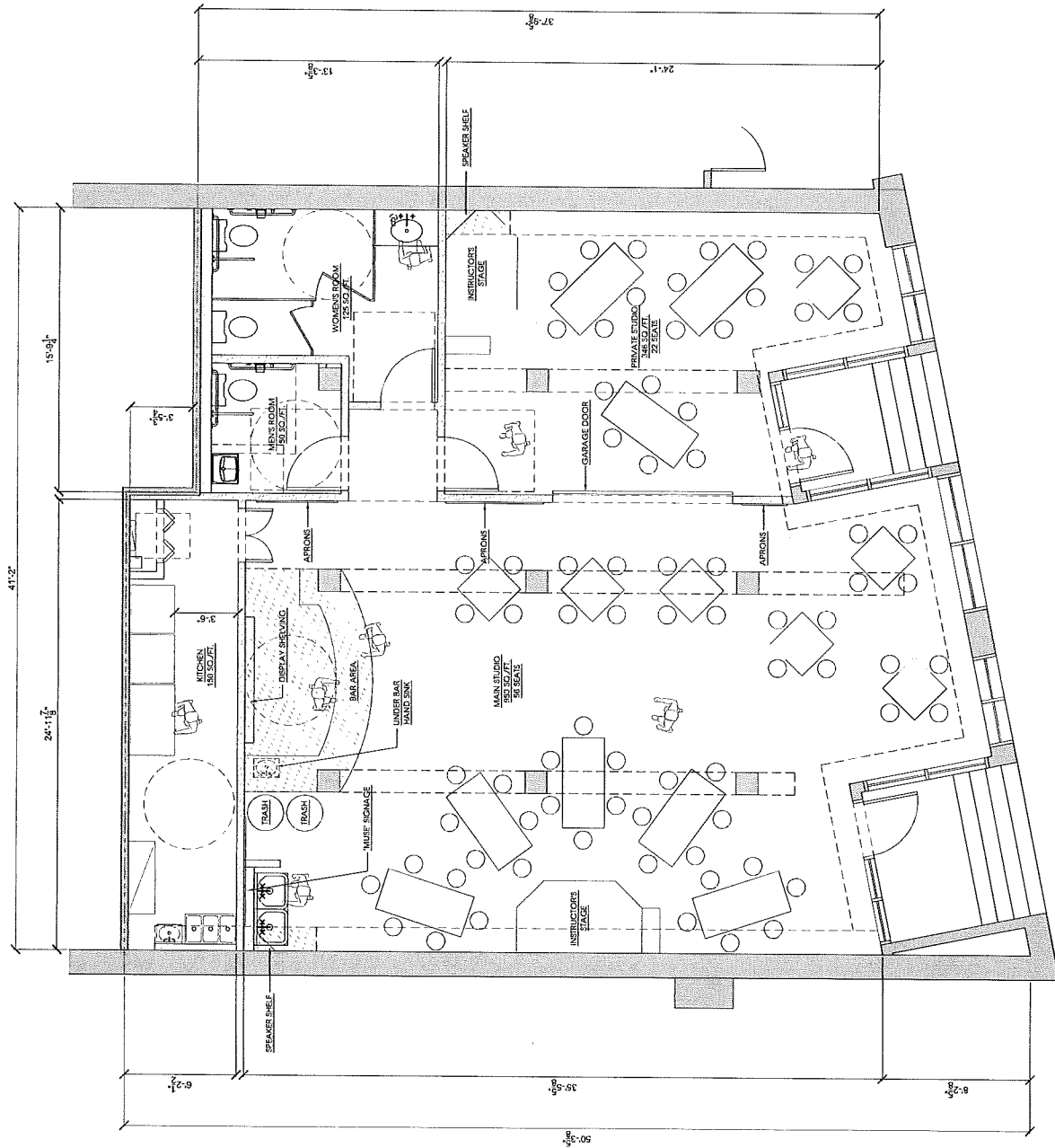
*The person signing this application must appear in Section VII on this application.

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 attached floor plan



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: EAD Entertainment, LLC
2. Doing Business As, if any: Muse Paintbar
3. Date of filing with Secretary of State: 08/28/2019 State in which you are formed: GA
4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine:
3/12/2020
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
Brian Gerard Reynolds	1301 Peachtree St, Atlanta, GA	08/23/1956	LLC Mgr	0.0000
	443 Langley Oaks Dr Marietta, GA			
EAD Holdings, LLC	1230 Peachtree St, Atlanta, GA		Member	100.0000

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



State of Maine
Division of Alcoholic Beverages and
Lottery Operations
Division of Liquor Licensing and Enforcement

**Corporate Information Required for
Business Entities Who Are Licensees**

Questions 1 to 4 must match information on file with the Maine Secretary of State's office. If you have questions regarding this information, please call the Secretary of State's office at (207) 624-7752. Please clearly complete this form in its entirety.

1. Exact legal name: EAD Entertainment, LLC
2. Doing Business As, if any: Muse Paintbar
3. Legal Entity's FEIN #: 84-4434495
4. Date of filing with Secretary of State: 8/26/2019 State in which you are formed: GA
5. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: 3/12/2020
6. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attached additional sheets as needed)

NAME	ADDRESS (5 YEARS)	Date of Birth	TITLE	Ownership %
Brian Reynolds	1301 Peachtree St NE Atlanta, GA 30309	8/23/1956	LLC Manager	0
EAD Holdings, LLC	1230 Peachtree St NE, Ste 1750 Atlanta, GA 30309	N/A	Sole Member	100

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

7. If Co-Op # of members: _____ (list primary officers in the above boxes)

8. Has any principal person involved in the entity ever been convicted of any violation of the law, other than minor traffic violations, in the United States?

Yes ☐ No ☒

9. If Yes to Question 8, please complete the following: (attached additional sheets as needed)

Name: _____

Date of Conviction: _____

Offense: _____

Location of Conviction: _____

Disposition: _____

Signature:

PLEASE SIGN IN BLUE INK

Brian Reynolds
Signature of Owner or Corporate Officer

4/1/2020
Date

Brian Reynolds
Print Name of Owner or Corporate Officer

Submit Completed Forms To:

Bureau of Alcoholic Beverages
Division of Liquor Licensing and Enforcement
8 State House Station, Augusta, Me 04333-0008 (Regular address)
10 Water Street, Hallowell, ME 04347 (Overnight address)
Telephone Inquiries: (207) 624-7220 Fax: (207) 287-3434
Email Inquiries: MaineLiquor@Maine.gov



State of Maine
Division of Alcoholic Beverages and
Lottery Operations
Division of Liquor Licensing and Enforcement

**Corporate Information Required for
Business Entities Who Are Licensees**

Questions 1 to 4 must match information on file with the Maine Secretary of State's office. If you have questions regarding this information, please call the Secretary of State's office at (207) 624-7752. Please clearly complete this form in its entirety.

1. Exact legal name: EAD Holdings, LLC
2. Doing Business As, if any: _____
3. Legal Entity's FEIN #: 84-4411356
4. Date of filing with Secretary of State: 1/22/2020 State in which you are formed: GA
5. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: N/A
6. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attached additional sheets as needed)

NAME	ADDRESS (5 YEARS)	Date of Birth	TITLE	Ownership %
Brian Reynolds	1301 Peachtree St NE Atlanta, GA 30309	8/23/1956	LLC Manager	0
Chatham Credit Holdings, LLC	1230 Peachtree St NE, Ste 1750 Atlanta, GA 30309	N/A	Sole Member	100

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

7. If Co-Op # of members: _____ (list primary officers in the above boxes)

8. Has any principal person involved in the entity ever been convicted of any violation of the law, other than minor traffic violations, in the United States?

Yes ☐ No ☒

9. If Yes to Question 8, please complete the following: (attached additional sheets as needed)

Name: _____

Date of Conviction: _____

Offense: _____

Location of Conviction: _____

Disposition: _____

Signature:

PLEASE SIGN IN BLUE INK

Brian Reynolds
Signature of Owner or Corporate Officer

4/1/2020
Date

Brian Reynolds
Print Name of Owner or Corporate Officer

Submit Completed Forms To:

Bureau of Alcoholic Beverages
Division of Liquor Licensing and Enforcement
8 State House Station, Augusta, Me 04333-0008 (Regular address)
10 Water Street, Hallowell, ME 04347 (Overnight address)
Telephone Inquiries: (207) 624-7220 Fax: (207) 287-3434
Email Inquiries: MaineLiquor@Maine.gov



State of Maine
Division of Alcoholic Beverages and
Lottery Operations
Division of Liquor Licensing and Enforcement

**Corporate Information Required for
Business Entities Who Are Licensees**

Questions 1 to 4 must match information on file with the Maine Secretary of State's office. If you have questions regarding this information, please call the Secretary of State's office at (207) 624-7752. Please clearly complete this form in its entirety.

1. Exact legal name: Chatham Credit Holdings, LLC
2. Doing Business As, if any: _____
3. Legal Entity's FEIN #: 56-2617030
4. Date of filing with Secretary of State: 10/16/2006 State in which you are formed: GA
5. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: N/A
6. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attached additional sheets as needed)

NAME	ADDRESS (5 YEARS)	Date of Birth	TITLE	Ownership %
Brian Reynolds	1301 Peachtree St NE Atlanta, GA 30309	8/23/1956	LLC Manager & Sole Member	100

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

7. If Co-Op # of members: _____ (list primary officers in the above boxes)

8. Has any principal person involved in the entity ever been convicted of any violation of the law, other than minor traffic violations, in the United States?

Yes ☐ No ☒

9. If Yes to Question 8, please complete the following: (attached additional sheets as needed)

Name: _____

Date of Conviction: _____

Offense: _____

Location of Conviction: _____

Disposition: _____

Signature:

PLEASE SIGN IN BLUE INK

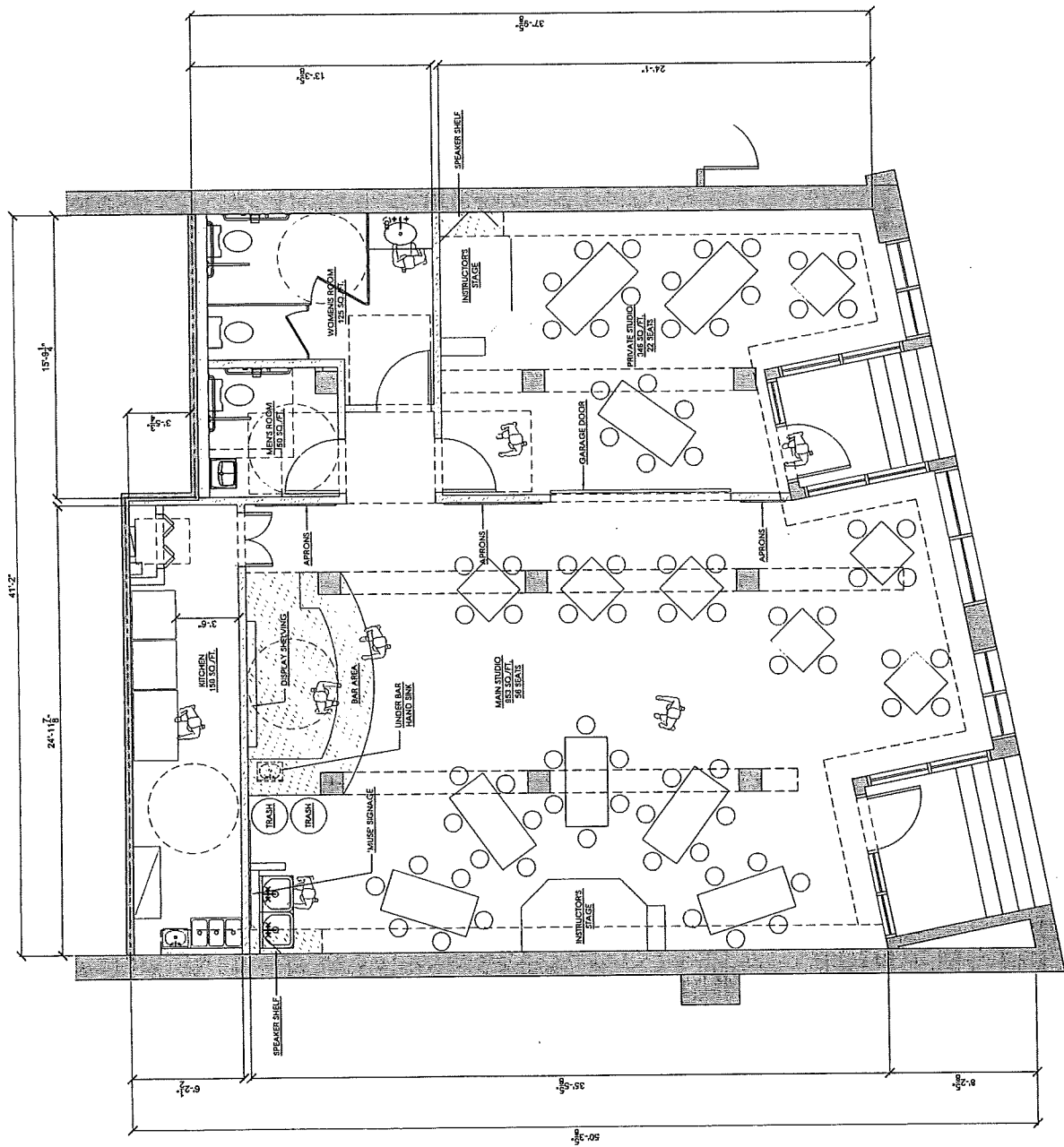
Brian Reynolds
Signature of Owner or Corporate Officer

4/1/2020
Date

Brian Reynolds
Print Name of Owner or Corporate Officer

Submit Completed Forms To:

Bureau of Alcoholic Beverages
Division of Liquor Licensing and Enforcement
8 State House Station, Augusta, Me 04333-0008 (Regular address)
10 Water Street, Hallowell, ME 04347 (Overnight address)
Telephone Inquiries: (207) 624-7220 Fax: (207) 287-3434
Email Inquiries: MaineLiquor@Maine.gov



MUSE

PAINTBAR

DIPS N' THINGS

- HUMMUS PLATTER** v
with warm flatbread & baby carrots
- TRADITIONAL 8
 - AVOCADO 9
- CHIPS & SALSA** v 5
- CHIPS & GUACAMOLE** vglgf 7
add salsa v 9
- BABY CARROTS & RANCH** vlgf 4

FULL SNACK & DRINK
SELECTION AVAILABLE
AT THE BAR

HOT STUFF

- SPINACH & FETA TRIANGLES** v 7
- BEEF DOGS IN PUFF PASTRY** 7
- MOZZARELLA STICKS** v 7
with marinara
- BONELESS WINGS** 8
tossed in buffalo or bbq sauce
- CHICKEN FINGERS** gf 7
choice of dipping sauce
- SOFT PRETZEL BITES**
- honey mustard 7
 - beer cheese 9
- FLATBREADS**
- CHEESE PIZZA v 7
 - BBQ CHICKEN 8
 - BUFFALO CHICKEN 8
- THE SAMPLER** 14
mozzarella sticks, beef dogs, spinach & feta triangles

SWEET THINGS

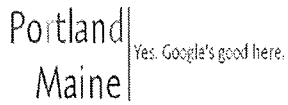
- WARM FUDGE BROWNIE** 4
- A LA MODE 6
- ICE CREAM** gf 4
with chocolate sauce & whipped cream

v = vegetarian

vg = vegan

gf = gluten free

NOTE: ALL MENU ITEMS MAY
CONTAIN TRACES OF GLUTEN,
NUTS, OR OTHER ALLERGENS
DUE TO SHARED COOKING
ENVIRONMENT. BEFORE
PLACING YOUR ORDER, PLEASE
INFORM YOUR SERVER IF A
PERSON IN YOUR PARTY HAS
A FOOD ALLERGY.



Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Re: Muse Paintbar

Dan Hondo <danh@portlandmaine.gov>

Tue, May 26, 2020 at 5:09 PM

To: Jessica Hanscombe <jhanscombe@portlandmaine.gov>

No issues on PD side

On Tue, May 26, 2020 at 2:29 PM Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Good Afternoon

Please see the attached for a change in ownership. This will go to council on 6/15. Please advise. Jess

Jessica Blais Hanscombe
Licensing and Housing Safety Manager
City of Portland
389 Congress Street Room 307
Portland, Maine 04101
207-874-8783
jhanscombe@portlandmaine.gov

--

Lt. Dan Hondo
Portland Maine Police Dept.
Patrol Team B3/B4
(207)874-8513

Legal Advertisement

Notice of Public Hearing City of Portland

A Public Hearing will be held on June 15, 2020 at 5:30 P.M., virtually online, EAD Entertainment LLC dba Muse Paintbar. Application for a Class III & IV FSE at 245 Commercial Street. Sponsored by Jon P. Jennings, City Manager.



CITY OF PORTLAND
Permitting and Inspections Department

May 26, 2020

EAD Entertainment LLC
1230 Peachtree St NE Ste 1750
Atlanta GA 30309

Re: EAD Entertainment LLC dba Muse Paintbar. Application for a Class III & IV FSE at 245 Commercial Street.

Dear Danielle Notarmuzi

This letter shall serve as a reminder of the public hearing before the Portland City Council on **Monday June 15, 2020 at 5:30 p.m.**, for the review of application for a Class III & IV FSE at 245 Commercial Street. The meeting will take place virtually on that date. The agenda will include a link to the meeting, which will be posted the Friday prior to the meeting.

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 jhanscombe@portlandmaine.gov.

Sincerely,

Jessica Hanscombe
Licensing and Housing Safety Manager

MEMORANDUM
City Council Agenda Item

FROM:

DATE: June 10, 2020

SUBJECT: Fiscal Year 2020-2021 Portland Board of Public Education School Budget

Please see the following for background documents:

https://docs.google.com/document/d/1_a-9BuKdwW84xibBmlHnzA6BteKDoAq_yE02OiHEBro/edit

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

None

Prepared by:

Date: 6/10/2020

MEMORANDUM
City Council Agenda Item

FROM:

DATE: June 2, 2020

SUBJECT: Order 181-19/20 Approving State/Local EPS Funding Allocation for Public Education from Kindergarten to Grade 12 for Portland Public Schools for Fiscal Year 2021 - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr. Chair

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

Order 181-19/20 to Order 187-19/20 are orders required by 20-A M.R.S.A. §15690 in order to comply with what is known as LD1, a set of state laws passed to control increases in property taxes.

This order provides \$89,312,286 as the amount determined by state law to be the minimum amount the city must appropriate in order to receive the full amount of state funding under the Essential Programs and Services Funding Act.

This order requires the city to raise \$74,271,401 as the city's contribution to the total cost of funding public education from K-12 as described in the EPS law. The City's Tax levy based on the budget submitted by the Portland Board of Public Education for the total for school budget programs of \$119,862,677 will be \$94,338,744.

This item must be read on two separate days. It was given a first reading on June 1, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. 1. State and Local EPS Funding 6.1.2020

Prepared by:

Date: 6/2/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING STATE/LOCAL EPS FUNDING ALLOCATION
FOR PUBLIC EDUCATION FROM KINDERGARTEN TO GRADE 12
FOR PORTLAND PUBLIC SCHOOLS FOR FISCAL YEAR 2021**

ORDERED, that under and pursuant to the City Charter and the City's Fiscal Year Appropriation Resolve and applicable state law the City hereby approves the following school budget article for Fiscal Year 2020-2021:

Appropriation for State/Local EPS funding Allocation: That the City appropriates the amount of \$89,312,286 for the total cost of funding public education from kindergarten to grade 12, and raises the amount of \$74,271,401 as the City's contribution to the total cost of funding public education from kindergarten to grade 12, both as described in the Essential Programs and Services Funding Act, in accordance with Maine Revised Statutes, Title 20-A, section 15688.

State Mandated Explanation: The City's contribution to the total cost of funding public education from kindergarten to grade 12 as described in the Essential Programs and Services Funding Act is the amount of money determined under state law annually to be the minimum amount that the City must raise in order to receive the full amount of state dollars.

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING NON-STATE FUNDED SCHOOL CONSTRUCTION DEBT
SERVICE FOR PORTLAND SCHOOLS FOR FISCAL YEAR 2021**

ORDERED, that under and pursuant to the City Charter and the City's Fiscal Year Appropriation Resolve and applicable state law the City hereby approves the following school budget article for Fiscal Year 2020-2021:

Appropriation for Non-State Funded Debt Service (20-A M.R.S.A. §15690(2)(A)).

That the City raise and appropriate \$392,289 for the annual payments on debt service previously approved by the legislative body for non-state funded school construction projects and non-state funded portions of school construction projects, in addition to the funds appropriated as the local share of the City's contribution to the total cost of funding public education from kindergarten to grade 12.

State Mandated Explanation: *Non-state funded debt service is the amount of money needed for the annual payments on the City's long-term debt for major capital school construction projects that are not approved for state subsidy. The bonding of this long-term debt was previously approved by the voters or the City Council.*

MEMORANDUM
City Council Agenda Item

FROM:

DATE: June 2, 2020

SUBJECT: Order 183-19/20 Raising and Appropriating Additional Local Funds for Portland Schools for Fiscal Year 2021 - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr.

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

This order appropriates \$17,887,494 in additional city funds over and above regional Essential Programs and Services amount and the non--state funded debt service amount.

This exceeds the EPS funding model by \$17,887,494 and is needed to cover the School Department's costs that the state's funding model does not recognize or recognize fully, including costs to maintain class size; Special Education costs; Regular Instruction costs; Facilities Maintenance costs to address deferred maintenance; technology costs; transportation costs; professional development costs; debt service for pension obligation; and debt service capital renovation costs.

This item must be read on two separate days. It was give a first reading on June 1, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. 3. Appropriating additional Local Funds for Schools in FY2021 6.1.2020

Prepared by:

Date: 6/2/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER RAISING AND APPROPRIATING ADDITIONAL LOCAL FUNDS FOR
PORTLAND SCHOOLS FOR FISCAL YEAR 2021**

ORDERED, that under and pursuant to the City Charter and the City's Fiscal Year Appropriation Resolve and applicable state law the City hereby approves the following school budget article for Fiscal Year 2020-2021:

Authorization to Exceed the Portland School Department's Maximum State and Local Spending Target Established Pursuant to Maine Revised Statutes, Title 20-A § 15671-A(4) and Appropriating Additional Local Funds: That the City raises and appropriates \$17,887,494 in additional local funds, which exceeds the State's Essential Programs and Services allocation model by \$17,887,494 as required to fund the budget recommended by the Portland Board of Public Education.

That amount is needed to cover the School Department's costs that the state's funding model does not recognize or recognize fully, including costs to maintain class size; Special Education costs; Regular Instruction costs; Facilities Maintenance costs to address deferred maintenance; technology costs; transportation costs; professional development costs; debt service for pension obligation; and debt service capital renovation costs.

State Mandated Explanation: *The additional local funds are those locally raised funds over and above the City's local contribution to the total cost of funding public education from kindergarten to grade 12 as described in the Essential Programs and Services Funding Act and local amounts raised for the annual payment on non-state funded debt service that will help achieve the City's budget for educational programs.*

[NOTE: City council approval of this order requires 5 affirmative votes, see 20-A M.R.S.A. section 15671-A(5)(B)(2)(requiring for council approval "a majority of the entire membership of the council") and see Article II, section 11 of the City Charter (requiring 5 affirmative votes for final passage).]

MEMORANDUM
City Council Agenda Item

FROM:

DATE: June 2, 2020

SUBJECT: Order 184-19/20 Approving Total School Operating Budget For Portland Schools for Fiscal Year 2021 - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair.

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

This order is required by 20-A M.R.S.A. §15690(4)(A). It sets the School Budget required by state law. The total amount recommended for that budget is \$113,542,955.

That is the amount based on the budget submitted by the Portland Board of Public Education and would be sent to the voters for approval at a citywide Referendum Election on July 14, 2020. \$92,551,184 of the \$113,542,955 would come from property taxes, \$18,676,771 would come from state subsidy, and \$2,315,000 from other revenues. This order does not provide money unless the other General Fund budget orders are passed.

This item must be read on two separate days. It was given a first reading on June 1, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. 4. Total School Operating Budget FY2021 6.1.2020

Prepared by:

Date: 6/2/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING TOTAL SCHOOL OPERATING BUDGET
FOR PORTLAND SCHOOLS FOR FISCAL YEAR 2021**

ORDERED, that under and pursuant to the City Charter and the City's Fiscal Year Appropriation Resolve and applicable state law the City hereby approves the followingschool budget article for Fiscal Year 2020-2021:

Total School Budget Summary (20-A M.R.S.A. §15690(4)(A)): That the City authorizes the School Committee to expend \$113,542,955 for the Fiscal Year beginning July 1, 2020 and ending June 30, 2021 from the City's contribution to the total cost of funding public education from kindergarten to grade 12 as described in the Essential Programs and Services Funding Act, non-state funded school construction projects, additional local funds for school purposes under the Maine Revised Statutes, Title 20-A, section 15690, unexpended balances, tuition receipts, state subsidy and other receipts for the support of schools.

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROPRIATING AND RAISING FUNDS
FOR ADULT EDUCATION FOR FISCAL YEAR 2021 AS REQUIRED
BY THE MAINE REVISED STATUTES, TITLE 20-A M.R.S. §8603-A(1)**

ORDERED, that the sum of \$2,536,294 is hereby appropriated for Adult Education for Fiscal Year 2020-2021 and that the sum of \$1,717,219 is hereby raised as the local share with authorization to expend any additional, incidental, or miscellaneous receipts in the interest and for the well-being of the adult education program.

***Explanation:** Under state law, the appropriation for Adult Education falls outside the total annual budget for public schools addressed in the prior order when it passes the Appropriation Resolve.*

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER TO RAISE AND APPROPRIATE LOCAL FUNDS
FOR FOOD SERVICE IN THE PORTLAND PUBLIC SCHOOLS FOR FY2021**

ORDERED, that the sum of \$70,341 is hereby raised and appropriated for the Food Service Program for Fiscal Year 2020-2021; and that the Portland School Department is authorized to expend any unexpended balances, and additional, incidental, or miscellaneous receipts in the interest and for the well-being of the food service program.

***Explanation:** This order raises and appropriates local tax revenues for the food service program.*

MEMORANDUM
City Council Agenda Item

FROM:

DATE: June 2, 2020

SUBJECT: Order 187-19/20 Authorizing the Disposition of Any Additional State Subsidy Received for Portland Schools in Fiscal Year 2021 - Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

Disposition of Any Additional State Subsidy Received: In the event that Portland Public Schools receives more state education subsidy than the amount included in its budget, that the City authorizes the Portland Board of Education to use all or part of the additional state subsidy to increase expenditures for school purposes in cost center categories approved by the Portland Board of Education, subject only to approval by the City Council.

This item must be read on two separate days. It was given a first reading on June 1, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. 7. Order re Disposition of Additional State Subsidy 6.1.2020

Prepared by:

Date: 6/2/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER AUTHORIZING THE DISPOSITION OF
ANY ADDITIONAL STATE SUBSIDY RECEIVED
FOR PORTLAND SCHOOLS IN FISCAL YEAR 2021**

ORDERED, that under and pursuant to the City Charter and the City's Fiscal Year Appropriation Resolve and applicable state law the City hereby approves the following school budget article for Fiscal Year 2021:

Disposition of Any Additional State Subsidy Received: In the event that Portland Public Schools receives more state education subsidy than the amount included in its budget, that the City authorizes the Portland Board of Education to use all or part of the additional state subsidy to increase expenditures for school purposes in cost center categories approved by the Portland Board of Education, subject only to approval by the City Council.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: June 4, 2020

SUBJECT: Com 11-19/20 Re: August 10, 2020 Is the New Due Dates for Payment of Excise Taxes, Property Taxes, from Brendan T. O'Connell, Finance Director

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

Executive Order #53-A from Governor Janet T. Mills requires that "municipal officers of the municipality have given reasonable notice to the public of the start date of the municipality's ability to collect tax and process registrations, the methods by which tax collection and registrations may be processed, and the deadline for compliance by vehicle owners." This communication action provides the required notice per the Executive Order and is supplemental to the notices posted on the City website and via press release.

The City of Portland (via the State website) has continuously offered online vehicle / boat / trailer re-registration during the duration of the COVID-19 health emergency. Appointments for new vehicle / boat / trailer registration are now available online at <http://portlandmaine.gov/Treasury> for in person appointments at City Hall in Room 24 and the Treasury Office. We strongly encourage residents to re-register their vehicles / boats / trailers online but in person appointments can also be utilized for re-registration transactions for customers who are unable to re-register online. The deadline for compliance with Executive Order #53-A is August 10, 2020.

To provide residents with financial relief from the COVID-19 pandemic the City previously announced that the second half property tax payment deadline was delayed until June 1, 2020. Any remaining property tax payments should be made online or via mail. The City will be sending 30-Day Demand Notices for Property Taxes on July 10, 2020 and filing Property Tax Liens on August 10, 2020.

As a communication this item requires no public comment or formal Council action

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

None

Prepared by:

Date: 6/4/2020

MEMORANDUM
City Council Agenda Item

FROM:

DATE: June 12, 2020

SUBJECT: Resolve 13-19/20 A Resolution of Affirming City of Portland's Commitment to Racial Equity in the Wake of COVID-19 and the Devastating Impact on Our Community - Sponsored by Mayor Kate Snyder

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

This Resolution affirms the City of Portland's commitment to racial equity in the wake of COVID-19 and the devastating impact on our community. The Mayor and the City Council are committed to centering our community's responses to the COVID-19 global pandemic in racial equity. We will dedicate our resources, platforms, political will and authority to identifying and addressing the ways that the novel coronavirus may exacerbate existing inequities in our communities.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Resolution - Racial Equity.docx

Prepared by:

Date: 6/12/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

A Resolution of Affirming City of Portland's Commitment to Racial Equity in the Wake of COVID-19 and the Devastating Impact on Our Community

WHEREAS, the global pandemic COVID-19 has significantly impacted the health, social and economic fabric of the State of Maine and the City of Portland; and

WHEREAS, Portland is the largest and the most diverse city in the state of Maine and thus has the largest concentration of Black people and other people of color; and

WHEREAS, the disproportionate impact of the novel coronavirus has been on Blacks and African American and other communities of color; and

WHEREAS, Blacks and African Americans make up 1.6 percent of the population of Maine but more than 24 percent of people who have tested positive for COVID-19, and nonwhites make up 5.3% of Maine but more than 29% of people who have tested positive for COVID-19; and

WHEREAS, Portland Maine is committed to equity, fairness, justice, protecting its most vulnerable residents;

NOW, THEREFORE, BE IT RESOLVED, that I, Mayor Kate Snyder, and the Portland City Council are committed to centering our community's responses to the COVID-19 global pandemic in racial equity. We will dedicate our resources, platforms, political will and authority to identifying and addressing the ways that the novel coronavirus may exacerbate existing inequities in our communities.

The City of Portland will lift up the medical and social needs of the most marginalized and demonstrate how centering their needs ensure the safety and health of all. This resolution confirms our commitment to local actions that promote equity. These values will be reflected in new policies and all local government institutions.

Order 72-19/20

Motion to postpone to January 6, 2020: 7-1 (Batson opposed, Cook absent) on 11/18/2019

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO THE PORTLAND CITY CODE CHAPTER 17
RE: FACIAL RECOGNITION TECHNOLOGY PROHIBITION**

WHEREAS, the residents of the City of Portland value privacy as an essential element of their individual freedom; and

WHEREAS, facial recognition technology and other biometric surveillance technology pose unique and significant threats to the civil rights and civil liberties of residents and visitors; and

WHEREAS, the use of facial recognition technology and other biometric surveillance is the functional equivalent of requiring every person to show a personal photo identification card at all times in violation of rights guaranteed by the First, Fourth, and Fourteenth Amendments to the United States Constitution; and

WHEREAS, this technology allows people to be tracked without consent, generating databases about law-abiding Portlanders that may chill the exercise of free speech in public places; and

WHEREAS, facial recognition and other biometric surveillance technology has been repeatedly demonstrated to misidentify women, young people, and people of color and to create an elevated risk of harmful "false positive" identifications; and

WHEREAS, facial recognition and other biometric surveillance would corrupt the core purpose of officer-worn body-worn cameras by transforming those devices from transparency and accountability tools into roving surveillance systems; and

WHEREAS, the use of facial recognition and other biometric surveillance would disproportionately impact the civil

rights and liberties of persons who live in highly policed neighborhoods, and its use would diminish effective policing and public safety by discouraging people in these communities, including victims of crime, undocumented persons, people with unpaid fines and fees, and those with prior criminal history from seeking police assistance or from assisting the police;

NOW, THEREFORE, BE IT ORDERED, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, that the Portland City Code is hereby amended by adding an Article, to be numbered XI, which said Article reads as follows:

ARTICLE XI. FACIAL RECOGNITION TECHNOLOGY

Sec. 17-129. Purpose.

The purpose of this Article to protect the privacy and civil liberties of the residents of the City of Portland.

Sec. 17-130. Definitions.

For the purposes of this Article, the following terms have the following meanings:

Employee means a regular employee of the City of Portland acting in their official capacity.

Facial recognition technology means an automated or semi-automated process that assists in identifying or verifying the identity of an individual based on an individual's face.

Official means an elected or appointed official of the City of Portland acting in their official capacity.

Sec. 17-130. Facial Recognition Technology Prohibition.

No city official or employee shall obtain, retain, access, or use any facial recognition technology or information provided by any facial recognition technology.

**Portland Police Department
Memorandum**

To: Jon Jennings, City Manager
From: Frank Clark, Chief of Police
Date: December 26, 2019
Re: Draft Ordinance - Facial Recognition Prohibition

I have reviewed the draft ordinance language that would effectively prohibit the *use, access or retention* of facial recognition technology or information by City of Portland officials, as contained within the proposed Amendment to Portland City Code Chapter 17, Article XI (17-130).

Although the Portland Police Department does not currently utilize this technology, nor do we have any immediate plans to acquire it, I would be concerned were it to be preemptively prohibited.

Having recently researched this technology more thoroughly, to include review of policy, practice and other materials available through such resources as the International Association of Chiefs of Police (IACP), and the Integrated Justice Information Systems Institute (IJIS), as well as discussions with members of the *National Capital Region Law Enforcement Facial Recognition Phase 2 Pilot Project*, we acknowledge that there are many ways in which facial recognition technology can be used, and that some of those uses may cause public concern related to privacy, civil rights and civil liberties.

We also believe that carefully considered policies and practices can effectively mitigate these related concerns. While we do not have any immediate plans to acquire facial recognition, I am an advocate of taking advantage of contemporary 21st century technologies to drive better public safety outcomes. A ban on facial recognition technology would only take away a potential tool that is helping to increase efficiencies and provide assistance for crime victims and people in crisis in other jurisdictions.

The Technology:

Facial recognition is essentially a software application that uses computer algorithms capable of comparing a photograph of an *unknown* person (e.g., a criminal suspect, an unconscious victim, or an unidentified decedent) to other *known* photographs (e.g., a criminal mugshot database), in order to refute or provide *possible* matches based upon a person's facial feature locations and contours.

In the context of law enforcement investigations, facial recognition systems do not provide a positive identification of an individual; they are merely a tool used to develop a "tip" that may aid in developing investigative leads. The accuracy of facial recognition may vary, but that concern can be mitigated when used in conjunction with sound policies and a trained facial examiner.

No enforcement action can be taken based solely upon the computer's "identification" of a possible suspect or victim. The computer can provide a list of possible candidates (i.e., "leads"), but it does not rise to the constitutionally requisite level of either *reasonable articulable suspicion*, or *probable cause* that would justify a law enforcement action, such as a search, detention or arrest.

Whenever a possible match is found by the computer, human intervention is then required to determine whether or not a person from the "known list" is actually the person whose identity is in question. This would include review by a *trained* facial examiner, who understands how to use

morphological features of the face. It would only be after additional human confirmation and investigation that any action might be possible.

Guiding Principles – Law Enforcement Use of Technologies:

In accordance with the best practices outlined by the IACP Technology Policy Framework, law enforcement agencies should always develop appropriate usage policies to ensure responsible and effective use of technologies. In order to ensure effective implementation, use and community trust, such policies must include guidance intended to ensure the constitutionally protected civil rights and civil liberties of individuals, as well as the privacy protections and criteria related to the collection, storage, use and retention of any data.

Law enforcement has the capacity to thoughtfully and responsibly approach the adoption of facial recognition technology. The IACP released a technology policy framework in 2014.¹ The Criminal Intelligence Coordinating Council released a comprehensive policy development guide for law enforcement use of facial recognition technology in 2017.² The IJIS Institute published a Facial Recognition Use Case Catalogue earlier this year, outlining particular public safety applications and successful uses of the technology.³

Agencies have developed and adopted facial recognition technology policies to address challenges involved with this tool, including the potential for inaccurate results based on skin color. All of these efforts must be taken into account in any policy discussion on facial recognition.

The results returned from a facial recognition candidate are ranked upon computational analysis. The list may contain persons of a different race, gender and / or age of the individual in the questioned photo. Therefore, the images and information in the candidate list are for investigative lead generation purposes only.

Before use of any facial recognition system, law enforcement agencies should provide training to users in regards to the system's use, functions, limitations, accuracy and policy. Such policies should address such areas as the *capture, usage, retention*, and *accuracy* of images, as well as the standards and training required for the human oversight component.

Uses / Database:

Facial recognition technologies and processes have and can be used to:

- Solve crimes, to include unsolved cold cases, or identify wanted persons by comparing a picture taken at a crime scene to images of known people in a mugshot database in order to generate a lead in a criminal investigation;
- Identify persons who have directed substantive threats to a person, or group of persons such as those at large events or mass gatherings;
- Identify missing, endangered, or unconscious persons, or unidentified decedents, to include comparing a cell phone camera image of an unconscious crime victim to a publicly available database of facial images to notify relatives or generate investigative leads;

¹<https://www.theiacp.org/sites/default/files/all-i-j/IACP%20Technology%20Policy%20Framework%20January%202014%20Final.pdf>

² <https://www.bja.gov/Publications/Face-Recognition-Policy-Development-Template-508-compliant.pdf>

³https://cdn.ymaws.com/www.ijis.org/resource/collection/93F7DF36-8973-4B78-A190-0E786D87F74F/Law_Enforcement_Facial_Recognition_Use_Case_Catalog.pdf

- Compare a cell phone camera image of a wandering elderly person with possible dementia to driver's license photos to help determine if they have been reported missing;
- Compare an image of persons involved in potential child sexual exploitation cases to known images in order to help identify potential child victims and perpetrators;
- Intervene in crisis incidents, to include persons expressing suicidal intent or ideations;
- Protect or aid in the exoneration of persons who have been misidentified by an eyewitness;
- Compare an image posted publicly on social media by an individual claiming they want to end their life to a database of driver's license photos to help identify that person so that help can be quickly dispatched.

Comparative Technologies / Best Practice Policies:

If the processes and concerns noted above sound familiar, they involve the same concerns and mitigating processes that have been used for several years now in regards to the implementation of automated fingerprint identification systems (AFIS).

If a person's (latent / unknown) fingerprint is found at the scene of a crime, it can be entered into an automated computerized system, the algorithms of which can provide a list of potential fingerprint matches from a database of (known) criminal defendants. Just like facial recognition, however, a "match" is not allowed based solely upon the results of a computerized comparison. It still requires a trained human examiner to actually compare the questioned (latent / unknown) fingerprint to the known ("inked") fingerprint.

Similar to the potential with facial recognition, AFIS technology is extremely beneficial for such at efficiently and effectively identifying criminal suspects, unidentified decedents, or uncommunicative missing persons, and, like facial recognition, must also be complemented by a trained human using their own senses to confirm or refute the suspicion prior to taking any sort of enforcement action.

Recommendation:

As an advocate of public safety and innovation, as well as staff and investigative effectiveness, efficiency and productivity, and in light of the array of successes and experiences in other jurisdictions, I can certainly see the potential future benefits of this technology. As such, I would recommend against the outright pre-emptive banning of this technology.

I will continue to monitor the progress of this technology, and the associated legal decisions and landscape related to its use. If / when the Portland Police Department seeks to acquire such technology, I would pledge to bring such a request forward to the City Administration and City Council for further public discussion.

I would likewise ensure that we would come to you with a plan that would outline the policies, training and protocols that would need to be put in place to guarantee the appropriate and lawful use of this technology in a balanced and responsible manner.

Thank you, in advance, for your anticipated consideration.

CITY OF PORTLAND, MAINE

MEMORANDUM

To: *Jon Jennings, City Manager*

From: *Paul Bradbury, Airport Director*

Date: *January 2, 2020*

RE: *Facial Recognition Use at U.S. Airports*

I'm writing to provide information on the use of facial recognition technology at airports in the U.S. given the recently proposed amendment to Portland City Code Chapter 17, Article XI Sec. 17-129. As you know, this proposed amendment prohibits the use of any facial recognition technology by City officials or employees. Although no facial recognition technology is currently in use at the Portland International Jetport, it is being rapidly deployed at airports throughout the country by airlines and U.S. Customs and Border Protection. The technology is now in use for international flights at 26 domestic airports.

The rapid deployment now underway at airports is based on the ability of the technology to speed up international traveler processing and provide a better overall customer experience. Both Delta and JetBlue who operate at the Jetport are using facial recognition technology at other airports. JetBlue is using the technology in JFK; and Delta is using it in Atlanta, Minneapolis, and Salt Lake City with plans to have it in all its hubs by the end of this year. The use of facial recognition is optional for passengers, but when used it eliminates the need to show a boarding pass or passport at check-in or security. Information noted by Delta and widely reported showed only a 2% average passenger opt out rate and a reduction in the average time to board an international flight by 10%.

The facial recognition technology in use at airports is not a surveillance program. The technology is simply replacing an existing manual identification check process with an automated process that is more efficient. Although the technology is currently limited to processing on international flights, it is expected to spread to domestic U.S. flights as well.

Even though no facial recognition technology is currently in use at the Jetport, I expect it will be required as part of our planned development of a Federal Inspection Services (FIS) Facility for

the processing of international travelers. This facility and the technology would be used only by airline and U.S. Customs and Border protection staff, but it would be in part obtained through construction contracts issued by the Jetport. The proposed amendment to the City Code states, “No city official or employee shall obtain, retain, access, or use any facial recognition technology or any information provided by any facial recognition technology” The broad prohibition on obtaining this technology may limit our ability to meet the requirements for an FIS facility.

Additionally, if current trends continue, I see many travelers opting in to the use of facial recognition software by airlines for domestic travel in the future. TSA PreCheck is a case study on the willingness of travelers to give up a certain level of privacy (submit to a background check) in order to have a faster more convenient security screening process. Now more than 5 million travelers are enrolled in PreCheck. I expect the same trend to occur with the airline check-in process where travelers will choose to forego the need for tickets, identification cards, and boarding passes for the convenience of facial recognition software. Although the use of these systems will be limited to our airline partners, I expect certain portions of the technology will operate on the Jetport’s data backbone. My interpretation of the proposed amendment is that the operation on a City owned data backbone could be prohibited.

In summary, facial technology software is being rapidly deployed at airports nationwide to support more efficient and convenient processing of travelers. It is not being used for surveillance, but rather to automate a manual process of checking identification. The proposed amendment’s broad language could limit the Jetport’s ability to support what I expect will be the future of traveler check-in at airports.

To: Jon Jennings, City Manager

From: Kathy Alves, Public Buildings & Waterfront

Date: December 22, 2019

Re: Facial Recognition Use in Portland

I'm writing on behalf of our cruise operation partners in the Cruise Canada/New England Region(CCNE), Custom Border Patrol (CBP) and Cruise Lines. Facial recognition is rapidly becoming the means for travelers to provide proper identification for both foreign and domestic travel.

CBP has operated facial recognition pilot programs in various cruise ports across the country since 2015. Due to rapid growth within the cruise industry, expeditious and accurate processing of passengers has become necessary both for CBP and the passenger experience.

Portland is a major player for cruise itineraries, as Portland provides deep water berths and the ability to host some of the largest vessels in the region. Cruises being offered in the CCNE region originate in New York, Boston, Europe and beyond. Given the shortage of CBP agents across the country, deployment of facial recognition technology has helped traveler processing be efficient and accurate.

Currently, Portland hosts vessels with passenger capacity of up to 4,000 passengers who are required to clear customs. This process takes approximately 90 seconds per passenger. This makes for an extremely long wait for most passengers to be processed as CBP is unable to properly staff the facility. Therefore, Portland is not providing the opportunity for visitors to maximize their visit to our city. Due to the processing system in Portland, cruise lines build itineraries that do not require clearing CBP in Portland. This results in shorter stays and less visitor spending locally.

Facial recognition has reduced passenger processing in other ports to approximately 15 seconds per passenger, requiring fewer officers in the processing area and better overall service. Facial recognition in the port of Portland would be accessible only to CBP and their agents. All software is operated through CBP servers, which delete passenger data once the vessel departs the port. This technology would not be used as a surveillance tool, nor would City staff or officials have access to it. Facial recognition would be used for foreign arrivals only, and not on a daily basis.

To: Jon Jennings, City Manager

From: Hanna Pickering, Information Technology

Date: January 2, 2020

Re: Facial Recognition Use in Portland

Please refer to this memorandum to understand potential implications of the recently proposed amendment to Portland City Code Chapter 17, Article XI Sec. 17-129 to security systems (outside of the scope of public safety) and IT access controls.

IMPACT TO EXISTING AND FUTURE SECURITY SYSTEMS

Whether or not the City elects to use facial recognition capabilities where participants have not willingly opted in, it will continue to use camera systems for public safety and security. Existing and future technology solutions may include such capabilities. These capabilities would need to be disabled, if possible, and, where not possible, systems may need to be rejected or replaced, possibly causing the City to adopt suboptimal technology solutions and/ or to incur significant and unnecessary costs.

IMPACT TO IT ACCESS CONTROLS

Adoption of this amendment may limit an individual's ability to use technologies operating on facial recognition, which are popular, pervasive and widely used. Examples of such technologies include Instagram filters and animoji, as well as a reliable replacement to biometric access authentication to access services, applications, and devices. For example, if a City employee opts to use facial recognition technology on an iPhone (personal or work-furnished) they may be limited in exercising their individual preference.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: June 2, 2020

SUBJECT: **Order 190A-19/20 Approving the Consolidation of Voting Districts in the City of Portland to Three Polling Places for the July 14, 2020 State Primary and Municipal Referendum - Sponsored by Katherine L. Jones, City Clerk**

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

The City Clerk is offering an amendment that has been included in the back-up materials and would provide for six (6) consolidated polling places for the July 14, 2020 election.

This order as originally proposed approves the consolidation of voting districts for the July 14, 2020 State Primary Election and Municipal Referendum Questions, into three polling places for the City of Portland.

On the peninsula of Portland, the consolidated polling place would be Cumberland County Civic Center, at 1 Civic Center Square. The following Voting Districts would be consolidated on July 14, 2020 for voting at the Civic Center: 1-1, 1-2, 2-1, 2-2, 3-2.

Off the peninsula of the City of Portland, the consolidated polling place would be First Baptist Church, at 360 Canco Road. The following Voting Districts would be consolidated on July 14, 2020 for voting at the First Baptist Church:
3-1, 4-1, 4-2, 5-1, 5-2.

Peaks Island voting for District 1-3 will remain on Peaks Island, and other island residents would vote as they have in the past.

In order to address City Council and other concerns brought up during public comment at the June 1, 2020 Remote City Council Workshop on the July 14, 2020 election, a staff amendment has been included in the back up material. This amendment proposes some changes to the initial consolidation proposal, and seeks to increase the total number of polling places to six. This would replace the originally proposed three polling places in the original Order.

More specifically, under the amendment, voting districts 1-1 and 1-2 would vote at the East End Community

School, 195 North Street; and Voting Districts 2-1 and 2-2 would vote at Reiche School, 166 Bracket Street.

Off the peninsula, voting districts 3-1 and 3-2 would vote at the Italian Heritage Center, 40 Westland Avenue; voting districts 4-1 and 4-2 would vote at First Baptist Church, 360 Canco Road; and voting districts 5-1 and 5-2, would vote at the Grace Baptist Church, 476 Summit Street. Peaks Island would vote at the Kennedy and Carter Family Community Center located at 129 Island Avenue, Peaks Island, as they have in the past.

This item must be read on two separate days. It was give a first reading on June 1, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please see the attached cost comparison.

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Consolidation of Polling Places for July 14, 2020 Election 6.1.2020
2. Cost comparison
3. City Council Memo
4. Governor Janet Mills Excutive Order No. 56 issued 6.3.2020
5. Amendment to Order 190A Consolidation July 14, 2020 Election 6.15.2020

Prepared by:

Date: 6/2/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE CONSOLIDATION OF THE VOTING DISTRICTS
IN THE CITY OF PORTLAND TO THREE POLLING PLACES
FOR THE JULY 14, 2020 PRESIDENTIAL PRIMARY AND STATE AND
MUNICIPAL REFERENDUM**

ORDERED, that the consolidation of voting districts for the July 14, 2020 State Primary Election and Municipal Referendum Questions into three polling places is hereby approved; and

BE IT FURTHER ORDERED, that on the peninsula of Portland, the consolidated polling place shall be Cumberland County Civic Center, at 1 Civic Center Square, for Voting Districts 1-1, 1-2, 2-1, 2-2, 3-2; and

BE IT FURTHER ORDERED, that off the peninsula of the City of Portland, the consolidated polling place shall be First Baptist Church, at 360 Canco Road, for Voting Districts 3-1, 4-1, 4-2, 5-1, 5-2; and

BE IT FURTHER ORDERED, that Peaks Island will maintain its polling place on the Island, and other island residents will vote as they have in the past.

March 3, 2020 Election Costs for Presidential Primary/Special Ref. &		
Description	Cost	
Staffing/Payroll		
Election Workers	\$27,080.05	
City Staff OT	\$6,607.09	
City Staff Extra Hrs. for part-time(code 29)	\$2,166.38	
Mileage-MAC,Jody,Roger,Tom	\$142.03	
Transportation Abs. Voting GDI & Cliff	\$0.00	
Woodfords Club Rental 3-1	\$500.00	
St.Puis Rental 4-1	\$100.00	
Italian Heritage Rental 3-2(eff. 7/14)	\$1,200.00	
Grace Baptist Rental 5-2	\$100.00	
Ferry- PI Workers, Training	\$36.65	
Consult Fees -Mayoral RCV	\$0.00	
	*TOTAL:	\$37,932.20

*Includes Absentee Voting at Nursing Homes, and election training
 ** Meal Stipend

Eff. Jan. 2020 Warden, Ward Clerks, Dep. Reg., Elec. Workers \$1/hr raise
 \$14./hr

Add'l fees to be incurred if using all 11 polling locations
 (multiply times 9)
 Cost of PPE, Plexiglass Barriers, Hand Sanitizers

Does not include cost for programming, printing ballots,
 advertising

July 14, 2020 Estimated cost of two Polling location		
Description	Cost	
Staffing/Payroll		
Election Workers	\$11,760.00	
City Staff OT	\$4,955.00	
City Staff Extra Hrs. for part-time(code 29)	\$0.00	
Mileage-MAC,Jody,Roger,Tom	\$0.00	
Transportation Abs. Voting GDI & Cliff	\$0.00	
Woodfords Club Rental 3-1	\$0.00	
St.Puis Rental 4-1	\$0.00	
Italian Heritage Rental 3-2	\$0.00	
Grace Baptist Rental 5-2	\$0.00	
Ferry- PI Workers, Training	\$0.00	
Consult Fees -Mayoral RCV	\$0.00	
	*TOTAL:	\$16,715.00

per polling location

Elec. Workers	12ee* 8 hrs* \$12/hr	\$1,152.00
Ballot Clerks	12ee* 8 hrs* \$12/hr	\$1,152.00
4 Floaters	4ee* 8 hrs* \$12/hr	\$384.00
8 Machine Clerks	4ee* 8 hrs* \$12/hr	\$768.00
6 Greeters	6ee* 8 hrs* \$12/hr	\$576.00
1 Warden	1ee* 18 hrs* \$14/hr	\$252.00
1 Ward Clerk	1ee* 18 hrs* \$14/hr	\$252.00
12 Dep. Registrars	12ee* 8 hrs* \$14/hr	\$1,344.00
		\$5,880.00



Office of the City Clerk
Katherine L Jones, CMC

MEMORANDUM

TO: Mayor Snyder and Members of the Portland City Council
FROM: Katherine L. Jones, City Clerk
DATE: May 27, 2020
RE: Consolidation of Polling Places

Governor Mills is going to be issuing an amendment to her Executive Order regarding Elections. Part of the Executive Order is waiving the 90-day requirement to consolidate polling places.

In order for election to run smoothly and efficiently I need to have all polling places secured, and with the proper staff; this consists of Wardens, Ward Clerks and 8 election clerks, (most election clerks don't want to work all day 6:00 AM to 8:00 PM) so we offer shifts, morning and afternoon, which now brings me to 16 people per polling place X 11 = 176 election clerks, Deputy Registrars are essential to registering voters on election day, we currently use 4 per polling place X 11 = 44 .

The CDC guidelines for July-August maintains prohibition on gatherings of more than 50 people and At-Risk people should stay home when possible. Most of my election clerks are in the high-risk category. In order for this election to run successfully we need 242 election staff.

Currently I have one polling place that we need to move. The Exposition building is currently being used by the City to quarantine our most venerable residents. The Expo will need to move to the Troubh Ice Arena for this election. If the Council so wished to consolidate, this Order to move the polling place from the Expo to the Troubh Ice Arena would have to be postponed indefinitely. It has been approved by the Secretary of State's Office and was filed within the 60 days.

Currently one third of the Wardens (Wardens are the appointed individuals that run the election at the polling places), are not willing to work this election. The majority of the election clerks are in the high-risk category and are not willing to take a risk and work this election.

If we were able to consolidate polling places for this election only, I would be able to use two facilities one on peninsular and one off peninsular and keep the Island Voting on Peaks Island

The City Manager has been advised that we could use the Civic Center for one polling place. Voting at this facility would allow for Districts 1-1, 1-2, 2-1, 2-2 and 3-2 to vote. Entering the Civic Center on Center Street (the door that they bring the production in). If inclement weather we can have proper distancing and snake lines around the seating areas, and allow for voters with disabilities to enter and stay within the guidelines at the incoming table.

1. We can have four lines entering the facility. Keeping within the six-foot distancing, within the four lines, we can mark on the ground accordingly.
2. Check in Tables: Election Clerks would be behind plexiglass barriers and would be divided up using 6 clerks checking in the voters by using only 4 letters of the alphabet each (XYZ being 1).
3. Ballot clerks also behind plexiglass barriers putting the voter's proper ballots on the table for the voters to pick up.
4. Voters who enter the building upon checking in will be given a pen for them to use and take with them.
5. Staff will be able to wipe down booths after each use. Voters would then take their ballots to the ballot boxes and then exit the building.
6. Ample room for Poll Watchers and accommodating petitioners. This wouldn't be allowable at our other locations due to size of the facilities and the six-foot distancing.
7. Off peninsular voting can be facilitated at the First Baptist Church, Canco Road. This facility has ample parking and is on the bus route. We would be able to have Districts 3-1, 4-1, 4-2, 5-1, and 5-2 at this facility. First Baptist Church has a very large gymnasium, allowing voters to enter the facility at one door and exiting by using another door. We would be able to use the same set up for checking in and receiving ballots.

8. If the Council is willing to consolidate for the July 14, 2020 election, I can use the Wardens and Ward Clerks that want to work and the election clerks that want to work which will give me coverage for the two polling places. I can also use City Staff to assist where needed.
9. Savings: Please see attached cost comparison. March Presidential Primary Election and projected July 14, 2020 consolidation costs.
10. I am required to have a public hearing on the consolidation. Title 21-A section 631, the municipal officers must hold a public hearing a least 90 days before an election. The Governor's Executive Order will suspend the 90-day consolidation order and allow for public comment up to 15 days prior to the election. We will be in compliance by having our public comment on June 15th.
11. To have a successful election I have to have adequate staffing, Wardens must be present to oversee the entire election all day. Having a third of my election workers absent is very concerning as I take pride in running elections successfully.



Office of
The Governor

No. 56 FY 19/20
DATE June 3, 2020

AN ORDER TO FURTHER FACILITATE THE STATE PRIMARY AND LOCAL ELECTIONS WITHIN PUBLIC HEALTH RESTRICTIONS DUE TO COVID-19

WHEREAS, I proclaimed a state of emergency on March 15, 2020 and a renewed state of emergency on April 14, 2020 and on May 13, 2020 to authorize the use of emergency powers in order to expand and expedite the State's response to the serious health and safety risks of the highly contagious COVID-19; and

WHEREAS, An Act To Implement Provisions Necessary to the Health, Welfare and Safety of the Citizens of Maine in Response to the COVID-19 Public Health Emergency, enacted on an emergency basis and effective upon the Governor's signature on March 18, 2020, authorizes the Governor to take any reasonable administrative actions necessary with respect to the elections originally scheduled for June 9, 2020 to facilitate voting by all residents registered to vote in this State in a manner that preserves and protects public health in response to COVID-19; and

WHEREAS, in Executive Order 39 FY 19/20 ("Executive Order 39") I postponed Maine's primary election to July 14, 2020 due to the risk that voters, poll workers and election officials would be exposed to COVID-19, which is highly contagious and presents a serious risk to life and health; and

WHEREAS, the provisions of Executive Order 39 continue to be in effect but require supplementation in order to address local government and school entities, as well as certain additional general election procedures, preserving the fundamental right of the citizenry to debate and vote on budgets and public policy matters, while limiting large public gatherings in order to protect public health and safety; and

WHEREAS, the governor's emergency powers expressly include the authorities to adjust time frames and deadlines imposed by law, 37-B M.R.S. §742(1)(C)(13)(a), and to suspend the enforcement of a statute prescribing the procedures for conduct of state business pursuant to 37-B M.R.S. §742(1)(C)(1) and §834;

NOW, THEREFORE, I, Janet T. Mills, Governor of the State of Maine, pursuant to 37-B M.R.S. Ch. 13, and P.L. 2019, c. 617, including but not limited to the provisions cited above, do hereby Order as follows:

I. ORDERS

A. As the statewide election (both primary and referendum elections) will be held on July 14, 2020 instead of in June 2020 in accordance with Executive Order 39 FY 20/21, the language in PL 2019, c. 673, sections A-9 and B-10 that provides, “This Part must be submitted to the legal voters of the State at a statewide election held in June 2020,” is modified by substituting “July 2020” for “June 2020” to permit the people of the State of Maine to vote on the ratification of bonds.

B. A town meeting, budget hearing or public hearing on county estimates may be conducted within the current 50 person gathering limitation in a manner so as to preserve the right to debate and the right to vote, but also protecting the public health by preserving social distancing and restricting shared microphones, restrooms, seating and observing any other guidance prescribed by the Maine Center for Disease Control (“MECDC”).

Alternatively, if such a meeting or hearing cannot be held within MECDC guidance, municipal officers or local officials authorized to call open town meetings, open budget meetings or budget hearings may conduct referenda and/or secret ballot elections, including a secret ballot referendum, on July 14 or such other date in calendar year 2020 as the officials may determine, provided that they follow guidance developed by the Secretary of State in consultation with the MECDC. This guidance shall address physical distancing, sanitation and other requirements deemed necessary to provide appropriate protection to voters, clerks, poll workers, and others who may be present in and outside the polling place.

C. Title 30-A M.R.S. § 2528(1) is suspended to allow the municipal officers of a municipality that has not voted to accept secret ballot voting to nevertheless do so during the state of emergency. Elected officials in those municipalities may remain in office until an election is called pursuant to 30-A MRS § 2525.

D. The deadline in 21-A M.R.S. § 121-A requiring that voter registration applications submitted by mail or by a third person must be received by the close of business on the 21st day before election day is suspended and modified to allow such applications to be received by mail or by third person through close of business on July 7, 2020.

E. The requirement in 21-A M.R.S. § 631-A(2) that a public hearing be held at least 90 days prior to an election in order to consolidate polling places is suspended and modified to require such a hearing to be held at least 15 days prior to the election and to be held within MECDC guidelines for gatherings of up to 50 people, or to

be held remotely pursuant to 1 M.R.S. § 403-A, or by an opportunity for comment by email or mail. The requirement in 21-A M.R.S. § 631-A(3) that application must be made to the Secretary of State for approval to change polling places 60 days prior to an election absent an emergency is suspended and modified to authorize submission of such an application up to 10 days prior to the election, preserving the opportunity for a later application due to an emergency situation. The voting place report required to be filed by the clerk under 21-A M.R.S. § 626-A may also be filed with the Secretary of State up to 10 days prior to the election.

- F. The requirement in 21-A M.R.S. § 753-B(5) that the municipal clerks facilitate absentee balloting through personal visits to certain licensed facilities is suspended, such balloting to be conducted in accordance with guidance from the Secretary of State in consultation with municipal clerks, the Department of Health and Human Services and Maine Center for Disease Control, so as to maximize voter participation, while reducing personal contact and protecting the health and safety of voters and municipal staff.
- G. The requirement of 60 days' notice to be given by a municipality of its intent to process absentee ballots prior to election day pursuant to 21-A M.R.S. § 760-B(2) is suspended and modified to require 21 days' notice.
- H. The provisions in 30-A M.R.S. § 2528(4) and (5) that municipal officers file with the clerk the order establishing the wording of any referendum question by the 60th day before the election is suspended and modified to provide for such filing by the 30th day before the election.
- I. For school budget year 2020/2021 only, voter approval of the school budget may be by referendum vote, notwithstanding any statute to the contrary.
- J. Any statute requiring a public hearing or public meeting in advance of a town meeting, school budget meeting, municipal referendum vote or a referendum on a school budget shall be suspended, provided that an opportunity for public comment is afforded by:
 - 1. A hearing conducted within MECDC guidelines for gatherings of up to 50 people;
 - 2. A hearing conducted in accordance with the remote participation requirements of 1 M.R.S. § 403-A;
 - 3. Provision of the statutorily required information at a time and in such a manner as is sufficient to reach voters, together with an opportunity for written comment; or
 - 4. Any combination of the above reasonably intended to maximize both public participation and public health and safety.

- K. A municipal clerk may provide a secure drop box for the return of absentee ballots until 8:00 p.m. on election day in accordance with guidance provided by the Secretary of State.
- L. Solely to the extent that 30-A M.R.S. § 5721-A(7)(A) requires a written ballot to exceed or increase the property tax levy limit at an open town meeting held in compliance with relevant gathering limits, it is suspended in favor of either a show of hands vote or a voice vote during the state of emergency.
- M. The Secretary of State is authorized to issue appropriate guidance, to perform those tasks identified in this Order and as provided in 21-A M.R.S. § 663 (first sentence), and those necessary to facilitate municipal elections and school budget voting during this state of emergency to carry out the intent of this Order.

II. EFFECTIVE DATE

This Order shall take effect on June 3, 2020.


Janet T. Mills
Governor

AMENDMENT TO ORDER 190A
PREPARED BY CORPORATION COUNSEL
RE: INCREASING THE NUMBER OF POLLING PLACES TO SIX

ORDERED, that the consolidation of voting districts for the July 14, 2020 State Primary Election and Municipal Referendum Questions into ~~three-six (6)~~ polling places as a result of the COVID-19 pandemic is hereby approved in accordance with 21-A M.R.S. section 631-A, Executive Order No. 56, and Portland City Code, Chapter 2 (section 2-407 and 2-408) and Chapter 9 (section 9-17); and

BE IT FURTHER ORDERED, that ~~on the peninsula of Portland, there shall be two~~ (2) consolidated polling places on the peninsula of Portland; and

BE IT FURTHER ORDERED, that the consolidated polling place on the peninsula for Voting Districts 1-1 and 1-2 shall be the East End Community School, 195 North Street; and

BE IT FURTHER ORDERED, that the consolidated polling place on the peninsula for Voting Districts 2-1 and 2-2 shall be Cumberland County Civic Center, at 1 Civic Center Square, Reiche School, 166 Bracket Street for Voting Districts 1-1, 1-2, 2-1, 2-2, 3-2; and

BE IT FURTHER ORDERED, that off the peninsula of the City of Portland, ~~there~~ shall be three (3) consolidated polling places; and

BE IT FURTHER ORDERED, that the consolidated polling place off the peninsula for Voting Districts 3-1 and 3-2 shall be the Italian Heritage Center, 40 Westland Avenue; and

BE IT FURTHER ORDERED, that the consolidated polling place off the peninsula, for Voting Districts 4-1 and 4-2 shall be First Baptist Church, at 360 Canco Road, for Voting Districts 3-1, 4-1, 4-2, 5-1, 5-2; and

BE IT FURTHER ORDERED, that the consolidated polling place off the peninsula, for Voting Districts 5-1 and 5-2, shall be the Grace Baptist Church, 476 Summit Street; and

BE IT FURTHER ORDERED, that Peaks Island will maintain its polling place for District and Precinct 1-3 on the Island located at the Kennedy and Carter Family Community Center, 129 Island Avenue, Peaks Island, and other island residents will vote in the locations they as they have in the past.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: June 2, 2020

SUBJECT: Order 191-19/20 Moving the Polling Place at the Portland Exposition Building to the Troubh Ice Arena for the July 14, 2020 Primary and Referendum - Sponsored by Katherine L. Jones, City Clerk

SPONSOR:

(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 no why not?)

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

I. SUMMARY

II. AGENDA DESCRIPTION

In the event that the City Council does not approve the consolidation of the City polling places as set forth in the order above, this order would be necessary. The Portland Exposition Building is not available for the July 14, 2020 election.

This order was postponed to this meeting to coincide with consideration of Order 190A-19/20, consolidating voting districts will be considered. If Order 190A-19/20 is approved, this item may be postponed indefinitely. If not, five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Change of Polling Place 6.1.2020

Prepared by:

Date: 6/2/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER MOVING THE POLLING PLACE AT THE PORTLAND EXPOSITION
BUILDING TO THE TROUBH ICE ARENA FOR
THE JULY 14, 2020 PRIMARY AND REFERENDUM**

ORDERED, that the polling place at the Portland Exposition Building, 239 Park Avenue, is hereby changed to the Troubh Ice Arena, 225 Park Avenue, for the July 14, 2020 Primary and Referendum only.

MEMORANDUM
City Council Agenda Item

FROM: Greg Mitchell, Director

DATE: June 2, 2020

SUBJECT: **Order 192-19/20 Accepting and Appropriating a Grant from the Maine Community Foundation - Sponsored by Jon P. Jennings, City Manager**

SPONSOR: Jon P. Jennings, 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 **Final Action**

Can action be taken at a later date: Yes (If no why not?)

PRESENTATION: Greg Mitchell/5 Minutes

I. SUMMARY

This Order accepts and appropriates a grant from the Maine Community Foundation (MCF) in the amount of \$8,125 to support the City's Office of Economic Opportunity Natural Helpers Program, or for general operating support in light of COVID-19, and to authorize the City Manager to execute any documents for this grant, giving the City Manager authorization to expend the grant for one or both uses.

II. AGENDA DESCRIPTION

The Maine Community Foundation (MCF) has awarded a grant of \$8,125 to support the City's Office of Economic Opportunity (OEO) Natural Helpers Program, or for use for general operating support in light of the COVID-19 Pandemic.

During Fiscal Year 2020, OEO launched the inaugural Natural Helpers Program. The Natural Helpers Program is a national best practice designed to make sure no one is excluded from local government and community resources, utilizing natural born community leaders connect community members to all resources needed to achieve a working, sustainable lifestyle in our city.

This funding will assist in continuing the program, or assist with general operating support in light of the COVID-19 pandemic, or some combination of the two.

This item must be read on two separate days. It was given a first reading on June 1, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

See above.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intended result is for the City Council to accept and appropriate the MCF Grant of \$8,125 in support of the City OEO Office to continue its Natural Helpers Program, or to assist with the City general operating expenses due to COVID-19, or a combination of the two. It is requested that the Order include both categories with the City Manager having the flexibility to determine where it will be best spent.

V. FINANCIAL IMPACT

There is no financial impact to the City in accepting and appropriating the MCF Grant.

VI. STAFF ANALYSIS AND BACKGROUND

Staff's analysis is to accept and appropriate the MCF Grant, with the City Council giving the City Manager the flexibility to utilize the grant for the Natural Helpers program or for City operating expenses in light of COVID-19, or for a combination of the two.

VII. RECOMMENDATION

Staff recommends approval.

VIII. LIST ATTACHMENTS

1. Order Accepting and Appropriating Grant for Natural Helpers Program 6.1.2020
2. 4-2020 Ltr from MCF w Grant Check of \$8,125

Prepared by:

Greg Mitchell, Director

Date: 6/2/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER ACCEPTING AND APPROPRIATING
A MAINE COMMUNITY FOUNDATION GRANT**

ORDERED, that \$8,125 in grant money from the Maine Community Foundation is hereby accepted; and

BE IT FURTHER ORDERED, that \$8,125 in grant funds is hereby appropriated for use by the Natural Helpers Program or for use by the City of Portland with operational expenses related to the Covid-19 Pandemic; and

BE IT FURTHER ORDERED, the City Manager or his or her designee is authorized to execute any and all documents necessary to apply for and accept this funding and otherwise carry out the intent of this Order.



April 9, 2020

Ms. Julia Trujillo Luengo, Director
City of Portland
Office of Economic Opportunity
389 Congress Street
Portland, ME 04101

Dear Ms. Trujillo Luengo:

It is a pleasure to inform you that the Directors of the Maine Community Foundation have approved a \$8,125.00 grant to the City of Portland for the Natural Helpers Leadership Program to address needs and improve connections to key resources city-wide. In light of the global pandemic caused by COVID-19, we recognize that your organizational priorities may have shifted and authorize the use of these funds for general operating support as needed. This grant is made from the Cumberland County Fund of the Maine Community Foundation.

Enclosed is check # 71098 in the amount of \$8,125.00. By accepting, endorsing, or depositing this check, your organization agrees to and accepts the terms outlined below:

- The grantee must be either a Section 501(c)(3) nonprofit or a public organization.
- This grant may only be used for the purpose stated in this letter.
- This grant may not be used for a political campaign or to support attempts to influence legislation of any governmental body other than through making available the results of non-partisan analysis, study and research.
- No portion of the award may be granted to a secondary grantee.
- Unexpended balances must be returned if the grantee loses its exemption from federal income taxation as provided for under Section 501(c)(3) of the Internal Revenue Code.
- Grant funds should be expended within 12 months after payment is issued. At the end of this period any unexpended grant funds should be returned or a written request for an extension of time should be submitted.
- No tangible benefit, goods, or services are received by any individuals or entities connected with the above-mentioned fund.

Submission of Grant Report: All grantees are required to submit a report by February 1, 2021. Please sign on to your account with our online grant platform at www.mainecef.org to complete and submit the report. For your reference only, a copy of the form is available at www.mainecef.org under the section Grant Related Documents. Future funding for your organization will be contingent upon submission of this report.

We encourage you to let others know about your grant. You can find a tip sheet on publicizing your grant, program, or organization, along with a sample press release, on our website: <https://www.mainecef.org/apply-for-a-grant/help-for-applicants/grant-recipient-faq/>. We appreciate when you highlight our support in your publications and/or on your website.

If you have any questions, please contact me in the Ellsworth office. Congratulations!

Sincerely,

John Ochira
Program Officer

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE CHAPTER 14
RE: ZONING ADDITIONS TO THE B-3 DOWNTOWN BUSINESS ZONE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

*That Chapter 14, Section 14-217 is hereby amended to read
as follows:*

Sec. 14-217. Permitted uses.

(a) The following uses are permitted in the B-3, B-3b and
B-3c zones:

1. *Residential:*

- a. Attached single-family, two-family and
multifamily dwellings;
- b. Handicapped family units;
- c. Lodging houses;
- d. Combined living/working spaces including, but not
limited to, artist residences with studio
space; ~~and~~

e. Congregate care facilities.

2. *Business:*

- a. General and business offices;
- b. Professional offices;
- c. Personal services;
- d. Offices of building tradesmen;

- e. Retail establishments, excluding gasoline sales, wholesale and bulk purchase lumber and construction supply sales;
- f. Restaurants, excluding drive-through or drive-in restaurants;
- g. Drinking establishments, except that drinking establishments and chemical-free night clubs, as defined in section 14-47, shall not be permitted in any location in the B-3c zone, including but not limited to the PAD overlay area;
- h. Billiard parlors;
- i. Miscellaneous repair services, excluding motor vehicle repair services;
- j. Communication studios or broadcast and receiving facilities;
- k. Health clubs and gymnasiums;
- l. Theaters and performance and exhibition halls;
- m. Convention and meeting facilities;
- n. Hotels;
- o. Business services;
- p. Parking garages;
- q. Galleries;
- r. Registered dispensary;
- s. Marijuana retail store;
- t. Small-scale marijuana caregiver.

3. *Institutions:*

- a. Museums;
- b. Public or private schools of any type;

- c. Clinics;
- d. Places of assembly;
- e. College, university, trade school;
- f. Nursery schools, kindergartens, and day care facilities or home babysitting services~~;~~;
- g. Governmental offices. As used in this section, governmental office means a place of business of a federal, state, count or municipal governmental entity when professional or clerical duties are performed, including but not limited to back office uses as defined in Section 14-47 and judicial functions~~;~~ and
- h. Intermediate care facility for thirteen (13) or more persons.

4. *Other:*

- a. County and municipal uses;

...



PLANNING BOARD REPORT TO CITY COUNCIL PORTLAND, MAINE

Zoning Text Amendment to B-3 Downtown Business Zone
385 Congress Street
Portland Opportunity Fund LLC, Applicant

Submitted to: Mayor Snyder & the City Council
From: Chair Mazer & the Portland Planning Board
Council Meeting Date: June 1, 2020

Prepared by: Christian Roadman, Planner
Date: May 13, 2020



Context of the B-3 and B-3c zones. 385 Congress Street is highlighted in teal

I. Introduction and Project Summary

At a public hearing on May 12 2020, the Planning Board unanimously found (7-0) that a proposed zoning text amendment to Division 12 Section 14-217 of the City's Land Use Code (adding congregate care facilities and intermediate care facilities as permitted uses) is consistent with the Comprehensive Plan for the City of Portland. The Planning Board recommended this action to the City Council.

Portland Opportunity Fund LLC seeks a zoning text amendment to facilitate development at 385 Congress Street,

which is zoned B-3 downtown business. The proposed text amendment (**Attachment 2**) would add congregate care facilities and intermediate care facilities as permitted uses to the B-3 zone (as well as the B-3b and B-3c zones, which share the same list of permitted uses).

The review of this proposed text change did not include site plan considerations. However, the applicant's intended development provides helpful context. They propose (**Attachment 3**) to "develop an elderly housing complex that would consist of a congregate care facility (independent living apartments) and an intermediate care facility that will be comprised of assisted living units and a memory care facility." If approval is granted by the Planning Board and City Council for a zoning text change, the applicant may follow with a master development plan and / or level III site plan for their broader development intentions.

II. ZONING ANALYSIS

Both proposed additional permitted uses are defined in the zoning code:

Congregate care facility:

"A residential development which provides individual living or dwelling units with support services which provide assistance to residents. Services to be provided shall include:

- (a) Transportation for essential support activities. This service shall be included in the base rent;*
- (b) Provision of at least one (1) meal per day;*
- (c) Programmed social activities which are facilitated by staff. This service shall be included in the base rent;*
- (d) Provision of personal care services including, but not limited to, housekeeping, laundry, and minimal health monitoring; and*
- (e) Installation of emergency call buttons or systems in each congregate care living unit.*

The population of a congregate care facility shall consist of persons fifty-five (55) years of age or older and their spouses and/or disabled persons and their spouses."

Intermediate care facility:

"A facility which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or extended care facility is designed to provide but who, because of their mental or physical condition, require such care and services above the level of room and board. Said facility must be licensed as a board care, residential care facility or equivalent pursuant to the regulations promulgated by the State of Maine Department of Health and Human Services."

Two points in the zoning code's purpose statement for the B-3 zones are particularly relevant to the proposed change: "encourage increased housing opportunity downtown for a diverse residential population," and "reinforce the role of the downtown as a meeting place for community residents and visitors alike from all walks of life and all socio economic groups."

As noted by the applicant (**Attachment 3**), multi-family housing is already permitted in B-3 zones.



Context of 385 Congress Street, which is outlined in teal.

III. CONSISTENCY WITH CITY COMPREHENSIVE PLAN

[Portland's Plan 2030](#) identifies vision statements, policy goals for the City, and principles of future land use. Several of these are relevant to the proposed text amendment.

Vision statements:

Equitable:

"We will remain an open and inclusive city, celebrating diversity and providing a welcoming and safe place for residents and visitors alike."

"We will incorporate the needs of all our residents in planning for our future."

Dynamic:

"Portland will plan for a built environment that encourages an active citizenry."

Secure:

"We will be committed to accessible housing and healthy food for all our residents."

Connected:

“We will foster accessible linkages between where we live, work, shop, and play.”

Policy goals:

Environment: *“Adopt sustainable land use and transportation policies that support connectivity, walkable neighborhoods, and multi-modal transportation.”*

Housing:

“Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences, and financial capabilities of all Portland residents.”

“Encourage additional contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods.”

Transportation: *“Promote multi-modal accessibility, enabling residents and visitors of all ages and abilities to participate fully in the social and economic life of the community.”*

Proposed Text Amendment to B-3 Downtown Business Zone

Sec. 14-217. Permitted uses.

(a) The following uses are permitted in the B-3, B-3b and B-3c zones:

1. Residential:

- a. Attached single-family, two-family and multifamily dwellings;
- b. Handicapped family units;
- c. Lodging houses;
- d. Combined living/working spaces including, but not limited to, artist residences with studio space;
- e. Congregate care facilities.

2. Business:

- a. General and business offices;
- b. Professional offices;
- c. Personal services;
- d. Offices of building tradesmen;
- e. Retail establishments, excluding gasoline sales, wholesale and bulk purchase lumber and construction supply sales;
- f. Restaurants, excluding drive-through or drive-in restaurants;
- g. Drinking establishments, except that drinking establishments and chemical-free night clubs, as defined in section 14-47, shall not be permitted in any location in the B-3c zone, including but not limited to the PAD overlay area;
- h. Billiard parlors;
- i. Miscellaneous repair services, excluding motor vehicle repair services;
- j. Communication studios or broadcast and receiving facilities;
- k. Health clubs and gymnasiums;
- l. Theaters and performance and exhibition halls;
- m. Convention and meeting facilities;
- n. Hotels;
- o. Business services;
- p. Parking garages;
- q. Galleries;
- r. Registered dispensary;
- s. Marijuana retail store;
- t. Small-scale marijuana caregiver.

3. Institutions:

- a. Museums;
- b. Public or private schools of any type;
- c. Clinics;
- d. Places of assembly;
- e. College, university, trade school;

- f. Nursery schools, kindergartens, and day care facilities or home babysitting services.
- g. Governmental offices. As used in this section, governmental office means a place of business of a federal, state, count or municipal governmental entity when professional or clerical duties are performed, including but not limited to back office uses as defined in Section 14-47 and judicial functions;

h. Intermediate care facility for thirteen (13) or more persons.

4. Other:

- a. County and municipal uses;
- b. Studios for artists and craftspeople including, but not limited to, carpenters, cabinetmakers and silk screeners;
- c. Printing, publishing and related manufacture of cardboard or paper boxes, provided that these activities are conducted wholly within a building.
- d. Bed and breakfast, subject to the standards of article V (site plan), sections 14-522 and 14-523 notwithstanding. A bed and breakfast may include a meeting facility if the facility meets the following standards:

- i. The meeting facility shall be limited to the following types of uses:

- (a) Private parties.
 - (b) Business meetings.
 - (c) Weddings.
 - (d) Receptions.
 - (e) Seminars.
 - (f) Business and educational conferences.

- ii. The building in which the bed and breakfast and the meeting facility will be located was in existence on March 3, 1997, and was greater than four thousand (4,000) square feet in floor area on that date.

- e. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:

- i. All applicable provisions of Article V of this chapter shall be met.
 - ii. Parking shall be provided in compliance with Division 20 of this Article.
 - iii. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.
 - iv. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period.
 - v. The building shall meet the applicable occupant load requirements as defined by the International Building Code and the NFPA Life Safety Code, as such codes are amended or adopted by the city.

- f. Wind energy systems, as defined and allowed in Article X, Alternative Energy.



**Bernstein, Shur,
Sawyer & Nelson, P.A.**
100 Middle Street
PO Box 9729
Portland, ME 04104-5029

T (207) 774 - 1200
F (207) 774 - 1127

Mary E. Costigan
(207) 228-7147 direct
mcostigan@bernsteinshur.com

February 19, 2020

James Rather
Development Review Services Manager
City of Portland
389 Congress Street
Portland, ME 04101

RE: Application for B-3 Text Amendment

Dear James:

I am writing on behalf of my client, Portland Opportunity Fund LLC, to apply for a text amendment to the B-3 Downtown Business Zone. As explained in more detail below, we are seeking to amend the B-3 zone by adding Congregate Care Facilities and Intermediate Care Facilities as permitted uses in the B-3.

Portland Opportunity Fund is under contract to purchase a portion of a parcel located at 385 Congress Street. They are proposing to develop an elderly housing complex that would consist of a Congregate care facility (independent living apartments), and an Intermediate care facility that will be comprised of assisted living units and a memory care facility. As currently zoned, the B-3 permits multi-family housing but does not allow congregate care or intermediate care facilities.

Portland Opportunity Fund is a joint venture between Senior Care Development LLC and Benchmark Senior Living. Benchmark is the largest operator of senior housing in New England and has identified the Portland downtown as an ideal location for senior housing. As set forth in more detail in the attached Comprehensive Plan Analysis, the location of senior housing in the B-3 aligns directly with many of the Plan's goals; notably, the economic, housing and transportation goals. Locating senior housing convenient to educational and cultural institutions, medical service centers, social opportunities and public transportation is a benefit to the City, the residents and the local businesses and service-providers.

February 19, 2020
Page 2

Enclosed with this letter are the above-referenced Comprehensive Plan Analysis, evidence of Right, Title and Interest and the Proposed Text Amendment. Thank you for your consideration. Please contact me directly if you have any questions.

Sincerely,



Mary E. Costigan

cc: Eric Gardner

MEMORANDUM
City Council Agenda Item

FROM: Melissa Graffam

DATE: June 5, 2020

SUBJECT: **Order 200-19/20 Approving Modifications to Agreements between the Maine Department of Transportation and Portland Re: Bayside Trail Improvements - Sponsored by Jon P. Jennings, City Manager**

SPONSOR: Jon P. Jennings, 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

Final Action 6/15/2020

Can action be taken at a later date: No This agreement must be approved by City Council and signed by the City Manager as soon as possible to meet proposed bid date of June 24, 2020. The original agreements and schedule modifications for both agreements have already been approved and signed.

PRESENTATION:

I. SUMMARY

City Council is being asked to approve the attached second Modifications to the MaineDOT Agreement for a Federal-Aid Locally Administered Project for WIN 018886.00 and WIN 018364.01 and authorize the City Manager to sign, which would allow the City to move ahead with its plans to improve two sections of the Bayside Trail.

II. AGENDA DESCRIPTION

This order approves modifications to two agreements between the Maine Department of Transportation (MaineDOT) and the City of Portland, obligating MaineDOT to reimburse the City for 80% of the project cost for improvements to the Bayside Trail, including but not limited to sidewalk work, junction improvements, landscaping, electrical and lighting improvements, and water fountain installation.

In the modified agreements, the City agrees to pay for 20% of the work as its municipal share, or \$34,400.00 for WIN 18886.00 and \$30,860.00 for WIN 18364.01. This is an increase of \$10,440.00 for both projects from the original agreements due to higher bid prices from the original estimate in 2017. The increased cost will be funded by money already appropriated for this purpose in an account that receives the Bayside Trail Endowment contributions administered by the Maine Community Foundation.

Staff is requesting that this item be passed as an emergency to allow the work to go to bid on June 24, 2020. Seven affirmative votes are required for passage after public comment.

III. BACKGROUND

Both projects for the Bayside Trail Improvements were originally scoped in 2017. Due to unforeseen conditions the project is just now finalized and ready to go to bid. The scope of work for WIN 18364.01 connects the Bayside Trail to a crosswalk on Marginal Way and Franklin Street. The improvements include sidewalk and ADA improvements, landscaping, and electrical/pedestrian signal improvements. The scope of

work for WIN 18886.00 includes improvements to the junction of the Bayside Trail and Eastern Promenade Trail. The work includes installation of pavers, rain gardens, a water fountain, and landscaping.

Construction work on this project is scheduled to begin after July 2020 and be completed in 2020, with some additional landscaping work extending into 2021. This project is classified as a Federal-aid Locally Administered Project. As such, MaineDOT will pay 80% of the cost. The City will be responsible for 20% of the project cost.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The Bayside Trail Improvement project will improve the trail and make the junctions easier to navigate for pedestrians. In addition, it will beautify the areas and draw more pedestrian traffic to these areas. MaineDOT funds will pay for 80% of the project costs making it beneficial for the City.

V. FINANCIAL IMPACT

The City is obligated to pay 20% of the total construction, inspection, and engineering costs. The total City cost of this work, estimated to be \$65,300.00 would be paid from money already appropriated for this purpose in a City of Portland account that receives the Bayside Trail Endowment contributions administered by the Maine Community Foundation.

VI. STAFF ANALYSIS AND BACKGROUND

Because this is a Federal-aid Locally Administered Project, where Federal/State funds pay 80% of the project costs, it is one of the best alternatives for the City in terms of getting the most improvements for the least expense of City funds.

These are important locations along the Bayside Trail and will promote more pedestrian usage and safer pedestrian access.

VII. RECOMMENDATION

The Department of Public Works recommends approving and signing the subject modifications to allow the Bayside Trail Improvement project to go to bid.

VIII. LIST ATTACHMENTS

1. Order re Modifications of MDOT Agreements Re Bayside Trail Improvements 6.15.2020
2. Mod 2 WIN 018364.01
3. Mod 2 to WIN 018886.00
4. Mod 1 WIN 018364.01
5. Mod 1 to WIN 018886
6. WIN 018886.00 Original Agreement (1)
7. WIN 018364.01 Original Agreement
8. BaysideTrail_EasternProm_Location Map
9. BaysideTrail_MarginalWay_Location Map

Prepared by:

Melissa Graffam

Date: 6/5/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING MODIFICATIONS TO AGREEMENTS BETWEEN
THE MAINE DEPARTMENT OF TRANSPORTATION AND PORTLAND
RE: BAYSIDE TRAIL IMPROVEMENTS**

ORDERED, that the modification to the agreement between the Maine Department of Transportation and the City of Portland to construct improvements to the Bayside Trail with State Work Identification Number 18886.00 is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the agreement between the Maine Department of Transportation and the City of Portland to construct additional improvements to the Bayside Trail with State Work Identification Number 18364.01 is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said documents and any other related documents necessary or convenient to carry out the intent of said documents and this Order.



MaineDOT use only	
AMS ID:	20170509000000000618
CSN:	37418
TEDOCS #:	
PROGRAM:	Multimodal

MAINE DEPARTMENT OF TRANSPORTATION
Modification 2 to an Agreement for a Locally Administered Project
With the
City of Portland
Regarding
Improvements to the Bayside Trail: WIN 018364.01

Agreement Amount: \$154,300.00
Federal Share: \$123,440.00
Municipal Share: \$30,860.00
Effective Date: 05/05/2017
Expiration Date: 12/31/2022

Federal Project #: TAP-1836(401)
Federal Authorization Date: 08/22/2016
Portland's Vendor ID: VC1000073476
Portland's DUNS® #: 07-174-7802
CFDA #20.205: Highway Planning & Construction

Modification 2 amends an Agreement between MaineDOT and the City of Portland that was executed May 5, 2017 for a federal-aid project for improvements to a portion of the Bayside Trail, as follows:

- ☐ **Increased Project Cost.** The estimated Project Cost shall be increased by \$32,300.00 – from the original amount of \$122,000.00 to a new total amount of **\$154,300.00**, as set out below.
- ☐ **Increased Payable Amount.** The maximum payable to the Municipality at the rate of 80 percent of participating costs incurred shall be increased by \$25,840.00 – from \$97,600.00 to **\$123,440.00**.
- ☐ **Increased Local Share.** The Municipality's 20 percent share of participating costs incurred shall be increased by \$6,460.00 – from \$24,400.00 to **\$30,860.00**. Additionally, the Municipality shall be responsible in full for all costs exceeding \$154,300.00, unless MaineDOT approves otherwise by further modifying this Agreement.

All other terms and conditions of the original Agreement shall remain in effect without a gap. MaineDOT and the City of Portland, by their duly authorized representatives, have executed this modification to the original Agreement on the date last signed below.

City of Portland

Maine Department of Transportation

By: _____
Jon P. Jennings, City Manager *

By: _____
Jerry Dostie, Project Manager *

Date: _____

Date: _____

** I certify that the foregoing signature is true and accurate. I further certify – pursuant to 10 M.R.S.A. §9502, et seq. – that the signature, if electronic: (a) is intended to have the same force as a manual signature, (b) is unique to me, (c) is capable of verification, (d) is under my sole control, and (e) is linked to data in such a manner that it is invalidated if the data are changed.*



MaineDOT use only	
AMS ID:	20170516000000000674
CSN:	37473
TEDOCS #:	
PROGRAM:	Multimodal

MAINE DEPARTMENT OF TRANSPORTATION
Modification 2 to an Agreement for a Locally Administered Project
With the
City of Portland
Regarding
Bayside Trail Intersection with Eastern Promenade Trail: WIN 018886.00

MaineDOT Use Only	
Agreement Amount: \$172,200.00	Federal Project #: TAP-1888(600)
Federal Share: \$ 137,760 (80%)	Federal Award Date: 03/05/2015
Municipal Share: \$34,440.00 (20%)	Portland Vendor ID: VC1000073476
Agreement Begin Date: 05/15/2017	Portland DUNS® #: 07-174-7802
Modified End Date: 12/31/2022	CFDA #20.205: Highway Planning & Construction

Modification 2 amends an Agreement for a federal-aid locally administered project between MaineDOT and the City of Portland that was executed May 15, 2017, for improvements to the intersection of the Bayside Trail and the Eastern Promenade Trail, as follows:

- ☐ **Increased Project Cost.** The estimated Project Cost shall be increased by \$19,900.00 – from the original amount of \$152,300.00 to a new total amount of **\$172,200.00**, as set out below.
- ☐ **Increased Payable Amount.** The maximum payable to the Municipality at the rate of 80 percent of participating costs incurred shall be increased by \$15,920.00 – from \$121,840.00 to **\$137,760.00**.
- ☐ **Increased Local Share.** The Municipality's 20 percent share of participating costs incurred shall be increased by \$3,980.00 – from \$30,460.00 to **\$34,440.00**. Additionally, the Municipality shall be responsible for all costs exceeding \$172,200.00, unless MaineDOT approves otherwise in writing by further modifying this Agreement.
- ☐ **Expiration Date.** The expiration date shall be extended from May 31, 2021 to **December 31, 2022**.

All other terms and conditions of the original Agreement shall remain in effect without a gap. MaineDOT and the City of Portland, by their duly authorized representatives, have executed this modification to the original Agreement on the date last signed below.

City of Portland

Maine Department of Transportation

By: _____
Jon P. Jennings, City Manager *

By: _____
Jerry Dostie, Project Manager *

Date: _____

Date: _____

** I certify that the foregoing signature is true and accurate. I further certify – pursuant to 10 M.R.S.A. §9502, et seq. – that the signature, if electronic: (a) is intended to have the same force as a manual signature, (b) is unique to me, (c) is capable of verification, (d) is under my sole control, and (e) is linked to data in such a manner that it is invalidated if the data are changed.*



MaineDOT use only	
AMS ID:	20170509000000000618
CSN:	37418
TEDOCS #:	
PROGRAM:	Multimodal

MAINE DEPARTMENT OF TRANSPORTATION
Modification 1 to an Agreement for a Locally Administered Project
With the
City of Portland
Regarding
Improvements to the Bayside Trail: WIN 018364.01

Agreement Amount: \$122,000.00	Federal Project #: TAP-1836(401)
Federal Share: \$97,600.00	Federal Authorization Date: 08/22/2016
Municipal Share: \$24,400.00	Portland's Vendor ID: VC1000073476
Effective Date: 05/05/2017	Portland's DUNS® #: 07-174-7802
Modified Expiration Date: 12/31/2022	CFDA #20.205: Highway Planning & Construction

Modification 1 amends an Agreement between MaineDOT and the City of Portland that was executed May 5, 2017 for a federal-aid locally administered project consisting of improvements to a portion of the Bayside Trail, as follows:

- ☐ **Expiration Date.** The expiration date shall be extended from May 31, 2020 to December 31, 2022, to reflect the current schedule for the Project.

All other terms and conditions of the original Agreement shall remain in effect without a gap. MaineDOT and the City of Portland, by their duly authorized representatives, have executed this modification to the original Agreement on the date last signed below.

City of Portland

Maine Department of Transportation

By: Jon P. Jennings
Jon P. Jennings, City Manager *

By: Jerry Dostie
Jerry Dostie, Project Manager *

Date: April 17, 2020

Date: April 21, 2020

* I certify that the foregoing signature is true and accurate. I further certify – pursuant to 10 M.R.S.A. §9502, et seq. – that the signature, if electronic: (a) is intended to have the same force as a manual signature, (b) is unique to me, (c) is capable of verification, (d) is under my sole control, and (e) is linked to data in such a manner that it is invalidated if the data are changed.



MaineDOT

MaineDOT use only

AMS ID: 20170516000000000674

CSN: 37473

TEDOCS #:

PROGRAM: Multimodal

**MAINE DEPARTMENT OF TRANSPORTATION
Modification 1 to an Agreement for a Locally Administered Project**

With the
City of Portland

Regarding

Bayside Trail Intersection with Eastern Promenade Trail: WIN 018886.00

(Payable)

MaineDOT Use Only

Agreement Amount: \$152,300

Federal Share: \$121,840 (80%)

Municipal Share: \$30,460 (20%)

Agreement Begin Date: 05/15/2017

Modified End Date: 05/31/21

Federal Project #: TAP-1888(600)

Federal Award Date: 03/05/2015

Portland Vendor ID: VC1000073476

Portland DUNS® #: 07-174-7802

CFDA #20.205: Highway Planning & Construction

Modification 1 amends an Agreement for a federal-aid locally administered project between MaineDOT and the City of Portland that was executed May 15, 2017, for improvements to the intersection of the Bayside Trail and the Eastern Promenade Trail, as follows:

- ☐ **Expiration Date.** The expiration date of the Agreement shall be extended from May 31, 2020 to May 31, 2021 to accommodate the updated construction schedule for the Project.

All other terms and conditions of the original Agreement shall remain in effect without a gap. MaineDOT and the City of Portland, by their duly authorized representatives, have executed this modification to the original Agreement on the date last signed below.

City of Portland

Maine Department of Transportation

By:

Jon P. Jennings, City Manager *

By:

Brian Keezer, Project Manager *

Date:

6/19/19

APPROVED AS TO FORM:

CORPORATION COUNCIL'S OFFICE

Date:

6/19/19

Finance Director
City of Portland, Maine

** I certify that the foregoing signature is true and accurate. I further certify – pursuant to 10 M.R.S.A. §9502, et seq. – that the signature, if electronic: (a) is intended to have the same force as a manual signature, (b) is unique to me, (c) is capable of verification, (d) is under my sole control, and (e) is linked to data in such a manner that it is invalidated if the data are changed.*

Finance Director
City of Portland, Maine



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

Paul R. LePage
GOVERNOR

David Bernhardt
COMMISSIONER

May 15, 2017

Bruce Hyman, Transportation Program Manager
City of Portland, Planning and Transportation Division
389 Congress Street, Fourth Floor
Portland, Maine 04101

Subject: NOTICE TO PROCEED

Final design work for Bayside Trail / Eastern Promenade Trail, WIN 018886.00

Dear Bruce:

Enclosed is the executed agreement for improvements to the intersection of Bayside Trail and Eastern Promenade Trail. The City of Portland is authorized to proceed, meaning that Portland may begin incurring reimbursable costs for final design and permitting work as of **May 15, 2017**.

John Rodrigue is the MaineDOT project manager assigned to work with you on the project. With the agreement in place, please touch base with him to go over the scope of work, budget, schedule and steps in the approval process.

As work progresses, all correspondence and invoices should be directed to John:

By mail: John Rodrigue, Project Manager
Multimodal Program, Bureau of Project Development
Maine Department of Transportation
16 State House Station
Augusta, Maine 04333-0016

By telephone: (207) 592-0428
By e-mail: john.rodrigue@maine.gov

MaineDOT looks forward to working with Portland to the completion of the project.

Sincerely,

Michael Laberge
Local Projects Coordinator



MaineDOT use only	
AMS ID:	_____
CSN:	_____
TEDOCS #:	_____
PROGRAM:	Multimodal (OUC 57000)

MAINE DEPARTMENT OF TRANSPORTATION
Agreement for a Federal-aid Locally Administered Project
With the
City of Portland
Regarding
Intersection of Bayside Trail and Eastern Promenade Trail: WIN 018886.00

Total Agreement Amount: <u>\$152,300</u>	Federal Project #: <u>TAP-1888(600)</u>
Federal Share: <u>\$121,840 (80%)</u>	Federal Award Date: <u>March 5, 2015</u>
Municipal Share: <u>\$30,460 (20%)</u>	Portland Vendor ID: <u>VC1000073476</u>
Effective Date: <u>May 15, 2017</u>	Portland DUNS® #: <u>07-174-7802</u>
Expiration Date: <u>May 31, 2020</u>	CFDA #20.205: <u>Highway Planning & Construction</u>

This Agreement for a federal-aid project to improve the intersection of the Bayside Trail and the Eastern Promenade Trail in Portland, Maine (“the **Project**”) is between the Maine Department of Transportation, an agency of the State of Maine with headquarters at 24 Child Street in Augusta, Maine (“**MaineDOT**”) and the City of Portland, a body corporate and politic with its primary offices at 389 Congress Street in Portland, Maine (“the **City**”).

This Agreement contains the following attachments:

- ☒ Federal Funding Accountability and Transparency Act Form (signature required);
- ☒ Federal Title VI Assurances (signature required).

WHEREAS, the **City** performed preliminary engineering work on the **Project** under a separate agreement – CTM20130711000000000045 / CSN 31851; and

WHEREAS, the **City** shall deliver the **Project** as a Locally Administered Project, subject to **MaineDOT** oversight to ensure that all federal requirements are met.

NOW, in consideration of the previous statements, **MaineDOT** and the **City** (“the **Parties**”) establish and agree to the following terms and conditions:

ARTICLE 1. ROLES AND RESPONSIBILITIES

- 1A. **ROLE OF CITY.** The **City** shall assign a full-time qualified employee with current Local Project Administration (“LPA”) certification from **MaineDOT** to manage the **Project** and carry out the **City**’s responsibilities under this Agreement. This Local Project Administrator shall abide by the guidance in the latest edition of **MaineDOT**’s *Local Project Administration Manual & Reference Guide* (“LPA Manual.”) If the certified administrator leaves the **City** or ceases to oversee the **Project**, the **City** shall stop work and notify the **MaineDOT** Project Manager. **MaineDOT** will evaluate the situation and determine a course of action.

- ☐ The following employee of the **City** shall serve as Local Project Administrator:
Name: Bruce Hyman, Transportation Program Manager
Phone: (207) 874-8717
Email: bhyman@portlandmaine.gov

1B. **ROLE OF MAINEDOT.** **MaineDOT** will assign a Project Manager to the **Project** to carry out the State of Maine's responsibilities under this Agreement. This person or a designee will have the authority to request design changes to meet applicable laws and design standards; accept and reject invoices; review construction activities to ensure compliance with contract documents; and take all other action needed to ensure proper performance of this Agreement.

- ☐ **MaineDOT** has assigned the following individual to serve as Project Manager:
Name: John Rodrigue
Email Address: john.rodrigue@maine.gov
Phone Number: (207) 592-0428

ARTICLE 2. PROJECT FINANCES

- 2A. **UPSET LIMIT.** The estimated cost of all phases of the **Project** – preliminary engineering, right-of-way, construction and construction engineering – is **\$152,300** (the "Upset Limit.") **Project** costs eligible for federal financial participation shall not exceed this Upset Limit without **MaineDOT's** written approval, through an executed modification to this Agreement.
- 2B. **FEDERAL SHARE.** **MaineDOT**, with funding from the Federal Highway Administration ("the FHWA"), will reimburse the **City** for costs eligible for federal participation through all phases at the rate of **80%**, up to a maximum contribution at this rate of **\$121,840**.
- 2C. **LOCAL SHARE.** The **City**, with funding other than from the U.S. Department of Transportation, shall share in all costs eligible for federal participation through all phases at the rate of **20%**, or an estimated **\$30,460**. The **City** shall be fully responsible for all expenditures:
1. Exceeding the Upset limit of this Agreement set forth in Article 2A above;
 2. Incurred before the date of notice to proceed, as set forth in Article 3B, "Authorization";
 3. Deemed ineligible for federal financial participation.
- 2D. **REIMBURSEMENT.** **MaineDOT** will reimburse the **City** for federally eligible costs incurred on the **Project** at the rate in Article 2B, "Federal Share." The **City** shall bill **MaineDOT** no more than monthly and no less than quarterly, subject to these conditions:
1. The **City** shall submit Invoices on letterhead in the format shown in Communication 4 of the LPA Manual.
 2. The **City** shall provide with each invoice documentation of charges incurred and proof of payment, with sufficient detail to satisfy the **MaineDOT** Project Manager.
 3. Each invoice shall include a progress report for the service period of the invoice.
 4. Each invoice shall show **MaineDOT's** and the **City's** portion of **Project** costs, including a running total of costs incurred to date.
 5. The **City** must certify that amounts claimed are correct and not claimed previously.

6. Payment of the final invoice from the **City** shall be contingent upon a final inspection of the completed **Project** to determine the acceptability of the work.
- 2E. MAINEDOT COSTS. Costs that **MaineDOT** incurs for work on the **Project** shall be paid for out of the **Project**. The **City** shall share in these costs at the rate in Article 2C, "Local Share." **MaineDOT** will reconcile these costs upon completion of the **Project** and deduct the **City's** share from the final invoice payment.
- 2F. FINAL COST. If the final cost of the **Project** is less than the Upset Limit in Article 2A, reimbursement to the **City** will be capped at the percentage of actual costs in Article 2B, "Federal Share." The **City** shall refund any overpayment to **MaineDOT**.
- 2G. REPAYMENT. If the **City** withdraws from the **Project**, leading to termination of this Agreement for cause, the **City** shall refund all invoice payments from **MaineDOT** and reimburse **MaineDOT** fully for costs incurred for work in the **Project**.
- 2H. SETOFF. **MaineDOT** shall have all of its common-law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for purposes of set-off any money due to the **Municipality** under this Agreement up to any amount due to the State with regard to this Agreement or any other agreement with **MaineDOT**; any other agreement with any state department or agency, including any agreement for a term commencing before the term of this Agreement; and any amount due to the State for any other reason including, but not limited to, tax delinquencies, fee delinquencies or monetary penalties relative thereto. **MaineDOT** will exercise its set-off rights in accordance with standard state practices including, in cases of set-off pursuant to an audit, finalization of the audit by **MaineDOT**, its representatives, or the State Controller.

ARTICLE 3. PROJECT DEVELOPMENT

- 3A. SCOPE OF WORK. This Agreement shall apply to a **Project** consisting of final design, construction and construction engineering work for improvements to the intersection of the Bayside Trail and Eastern Prom Trail. Any substantial change shall require **MaineDOT's** written approval to be eligible for financial assistance from **MaineDOT**.
- 3B. AUTHORIZATION. The **City** shall receive written notice to proceed from **MaineDOT** before starting any reimbursable work or executing any service contract under this Agreement. This notice shall be contingent upon **MaineDOT** receiving authorization for federal financial participation in the **Project** and executing this Agreement.
- 3C. KICKOFF. The **Parties** shall hold a project kickoff to go over the scope of work, estimated cost, schedule, and legal requirements before any work begins.
- 3D. PROGRESS REPORTS. The **City** shall provide **MaineDOT** with regular progress reports at intervals established by **MaineDOT's** Project Manager.
- 3E. CORRESPONDENCE. Communication 1 through Communication 20 of the LPA Manual shall be used to correspond with **MaineDOT**.
- 3F. CONSULTANT SERVICES. If the **City** intends to contract for consultant services under this Agreement, the **City** shall:
1. Use a qualifications-based selection method and not the lowest price. Using price as a selection factor will render consultant work on the **Project** ineligible for federal funding.

2. Obtain the **MaineDOT** Project Manager's written approval before awarding a contract.
3. Incorporate "Consultant General Conditions for Local Public Agencies" into contracts.
4. Obtain **MaineDOT's** written approval before modifying a contract. Work that is performed on a consultant contract outside of the original scope of work without an approved and executed modification in place shall be ineligible for reimbursement.
5. Evaluate the performance of its consultant upon completion of the contract in accordance Section 2.10 of the LPA Manual, "Consultant Evaluations."

3G. DESIGN WORK. Design plans, specifications, estimates and contract documents for the **Project** shall be developed in accordance with **MaineDOT's** *Engineering Instructions, Highway Design Guide, Standard Specifications* and *Standard Details*, as applicable.

1. The **City** shall submit the final plans, specifications and estimate (PS&E) to **MaineDOT** for review and acceptance.
2. The **City** shall address to **MaineDOT's** satisfaction all changes requested or concerns expressed by **MaineDOT** before **MaineDOT** will authorize the **City** to advertise for construction bids. Advertising for bids or proceeding to the construction stage without **MaineDOT's** written authorization shall render the entire **Project** *ineligible* for federal funding.
3. **MaineDOT's** acceptance of the final PS&E package shall not relieve the Engineer of Record, whether a **Municipal** employee or consultant, of responsibility for the quality of the engineering documents for the **Project**.

3H. ENVIRONMENTAL PROCESS. **MaineDOT** will prepare and submit to the FHWA all documentation required under the National Environmental Policy Act ("NEPA"). The **City** shall provide **MaineDOT** with Communication 11 of the LPA Manual and the completed NEPA Documentation Checklist to assist with this work.

3I. PERMITS. The **City** shall obtain all approvals, permits and licenses for the **Project**. The **City** shall provide **MaineDOT** with copies of all such documents and an environmental certification in the format shown in Communication 12 of the LPA Manual, as part of the final PS&E package for the **Project**.

3J. UTILITIES. The **City** shall coordinate the **Project** with any utility and railroad that may be affected. The **City** shall provide **MaineDOT** with a utility certification in the format shown in Communication 13 of the LPA Manual, as part of the final PS&E package. **MaineDOT's** Utility Accommodation Rules (2014) shall apply to required utility relocations.

3K. RIGHT OF WAY. The **Parties** will coordinate right-of-way acquisition as follows:

1. **MaineDOT** will carry out the right-of-way process for sections of the **Project** located on a state highway.
2. The **City** shall carry out the right-of-way process for sections of the **Project** located off of the state highway system. In doing so, the **City** shall:
 - a. Follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("Uniform Act") and the **MaineDOT** "Right of Way LPA Manual."

- b. Provide a right-of-way map or similar plan meeting **MaineDOT's** standards that shows all rights obtained for the **Project**.
 - c. Provide **MaineDOT** with a right-of-way certification in the format shown in Communication 14 of the LPA Manual, as part of the final PS&E package.
3. The **City** shall dedicate permanently to the **Project** for public use any municipal property needed for the **Project**.

3L. **FORCE ACCOUNT.** If the **City** intends to build the **Project** with municipal labor or to furnish materials for the **Project** using a "Force Account" process, the **City** shall obtain written authorization to do so from **MaineDOT** before proceeding. If so authorized, the **City** shall comply with federal regulations 23 CFR, sections 635.201 to 635.205: "Force account construction."

3M. **SOLICITATION OF BIDS.** The **City** shall use competitive bidding to hire a construction contractor unless **MaineDOT** authorizes Force Account work. Upon written authorization from **MaineDOT**, the **City** shall advertise for bids, as follows:

1. The **City** shall follow the procedures in **MaineDOT's** Standard Specifications (November 2014 Edition), Section 102, "Bidding."
2. The **City** shall submit bid tabulations to **MaineDOT** for review and shall obtain **MaineDOT's** written approval before awarding a contract.
3. The **City** shall ensure that the following documents are part of the contract book for the **Project**:
 - a. Davis-Bacon prevailing wage rates;
 - b. Form FHWA-1273 or other applicable federal provisions; and
 - c. Signed Title VI Assurances.

3N. **CONTRACT AWARD.** Upon receiving **MaineDOT's** written approval, the **City** shall award a contract for the **Project** to the lowest responsive and responsible bidder in accordance with **MaineDOT's** *Standard Specifications* (November 2014 Edition), Section 103, "Award and Contracting." The **City** shall administer the contract for the duration of the **Project**.

3O. **CONSTRUCTION.** During construction of the **Project**, the **City** shall:

1. Provide a Project Resident who is either a qualified municipal employee with LPA certification or a consultant hired through a qualifications-based selection method.
2. Hold a pre-construction / pre-utility meeting with **MaineDOT**, the contractor, utilities and any other parties involved in the construction work before any work begins.
3. Coordinate materials testing necessary to meet the Minimum Testing Requirements that **MaineDOT** established for the **Project**.
4. Submit contract modifications to **MaineDOT** for review and comment before they are executed. ***MaineDOT** reserves the right not to reimburse the **City** for work under a contract modification executed without **MaineDOT's** review and approval.*
5. If applicable, provide **MaineDOT** with a set of revised as-built plans within 90 days of completion of construction.

3P. MAINEDOT OVERSIGHT. **MaineDOT** will inspect construction activities, test materials and review documentation to ensure compliance with the **Project** specifications and terms of the construction contract. **MaineDOT** may reject work or materials out of compliance and withhold reimbursement to the **City** for such work or materials.

3Q. MAINTENANCE. The **City** shall maintain the completed **Project** year-round for its standard useful life or 20 years, whichever is longer. Maintenance work shall consist of upkeep and repairs needed to maintain a firm, stable and slip-resistant surface, including snow removal. Maintenance shall not be delegated to any other party without specific, written approval from **MaineDOT**, which shall be attached to this Agreement.

ARTICLE 4 – TERMINATION

4A. FOR CAUSE. **MaineDOT** will have just cause to terminate this Agreement in the event of default by the **City**, as defined in Article 4B below. **MaineDOT** will afford the **City** a cure period of fourteen (14) calendar days, effective on the **City**'s receipt of Notice of Default. If the **City** fails to address all defaults within this cure period, **MaineDOT** may terminate this Agreement for cause, with these conditions:

1. **MaineDOT** shall recover from the **City** all reimbursements made and costs incurred for work on the terminated **Project**.
2. **MaineDOT** shall be held harmless against any claim of breach of contract filed against the **City** by any third party, in accordance with Article 6B, "Indemnification."
3. The **City** shall forfeit all federal funds remaining in the terminated **Project**.

4B. DEFAULT. **MaineDOT** shall send the **City** a Notice of Default if the **City**:

1. Withdraws its support for the **Project**; or
2. Makes inadequate progress within 18 months of execution of this Agreement; or
3. Takes any action that renders the **Project** ineligible for federal-aid funding; or
4. Uses **Project** funds for a purpose not authorized by this Agreement; or
5. Misrepresents or falsifies of any claim for reimbursement; or
6. Fails to meet standards of performance outlined in this Agreement.

4C. FOR CONVENIENCE. The **Parties** may terminate this Agreement for convenience by mutual consent for any reason not defined as "default," as follows:

1. In case of Termination for Convenience, **MaineDOT** will reimburse the **City** for federally eligible work performed under this Agreement until the effective termination date. The **City**'s share of **MaineDOT**'s costs for work on the **Project** shall be deducted from the final invoice amount owed to the **City**.
2. **MaineDOT** will reprogram for other purposes all federal funds remaining in the **Project**.

ARTICLE 5 – RECORDS & AUDIT

- 5A. **Project** records are printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the **City**. The **City** shall retain all such records for at least **5 years** from the date either of **MaineDOT**'s acceptance of the final invoice for the **Project** or the termination of this Agreement. If any litigation, claim, negotiation or audit has begun before the end of this **5-year** period, all **Project** records shall be kept at least until all issues arising from any such action are resolved.
- 5B. The **City** and any consultant or contractor working on its behalf shall allow authorized representatives of the Federal Government and the State of Maine to inspect and audit **Project** records at reasonable times. Copies shall be furnished at no cost to the Federal Government or to the State of Maine.
- 5C. Audits shall be performed in accordance with generally accepted government auditing standards and federal regulation 2 CFR, Section 200, Subpart F - "Audit Requirements."

ARTICLE 6. GENERAL PROVISIONS

- 6A. **GOVERNING LAW.** The laws of the State of Maine shall govern this Agreement. Additionally, the **Parties** shall comply with all federal regulations that apply to the **Project**, including but not limited to 23 CFR, "Highways"; 49 CFR, "Transportation"; and 2 CFR, Section 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
- 6B. **CONFIDENTIALITY.** The **City** shall protect the confidentiality of right-of-way negotiations, property appraisals, and engineering estimates of the construction cost in accordance with the provisions of Title 23 of the Maine Revised Statutes Annotated (MRSA), Section 63: "Confidentiality of Records."
- 6C. **INDEMNIFICATION.** To the extent allowed by law, the **City** shall indemnify, defend and hold harmless **MaineDOT**, its officers, agents and employees from all claims, suits or liabilities arising from negligent or wrongful act, error or omission by the **City**, its officers, employees, agents, consultants or contractors. Nothing in this article shall waive any defense, immunity or limitation of liability that may be available to either party under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or other privileges or immunities provided by law. *Any other provision of this Agreement to the contrary notwithstanding, this provision shall survive the termination or expiration of this Agreement.*
- 6D. **EQUAL EMPLOYMENT OPPORTUNITY.** The **City** and all consultants and contractors hired pursuant to this Agreement shall not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, sexual orientation or disability unless related to a bona fide occupational qualification. The **City** and all consultants and contractors hired pursuant to this Agreement shall take affirmative action to ensure that all such applicants are employed and that all such employees are treated regardless of their race, color, religious creed, sex, national origin, ancestry, age, sexual orientation or disability during any period of employment under this Agreement.

- 6E. INDEPENDENT CAPACITY. The **City**, its employees, agents, representatives, consultants and contractors *shall not* act as officers, employees or agents of **MaineDOT**.
- 6F. FLOW DOWN. Contracts between the **City** and all third parties shall contain or incorporate by reference applicable provisions of this Agreement.
- 6G. BINDING EFFECT. The **Parties** shall be bound by the terms of this Agreement, which shall apply to its executors, their successors, administrators and legal representatives.
- 6H. ENTIRE AGREEMENT. This document represents the entire Agreement between the **Parties**. Neither **MaineDOT** nor the **City** shall be bound by any statement, correspondence, agreement or representation not expressly contained in this Agreement.

ARTICLE 7. DEBARMENT

- 7A. By signing this Agreement, the **City** certifies to the best of its knowledge and belief that it and its officers, agents and employees associated with the **Project** are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by the Federal Government. If the **City** cannot certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the **City** shall notify **MaineDOT** promptly if it or any officer, agent or employee associated with the **Project** is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by the Federal Government.
- 7B. The **City** agrees that it shall not hire an outside entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by the Federal Government.

ARTICLE 8. CONFLICT OF INTEREST

- 8A. No person with a direct or indirect financial or personal interest in any contract or subcontract for the **Project** shall negotiate, make, accept or approve any such contract or subcontract.
- 8B. The **City** shall not hire any engineer, lawyer, appraiser, inspector or other professional to provide services for **Project** who has a direct or indirect financial or other personal interest in any contract or subcontract for the **Project**, other than the person's employment or retention by the **City**. No officer or employee of any such engineer, lawyer, appraiser, inspector or other professional retained by the **City** to work on the **Project** shall have a direct or indirect financial or other personal interest in any real property acquired for the **Project** unless such interest is openly disclosed to **MaineDOT** and such officer, employee or person has not participated in such acquisition for and in behalf of the **City**.
- 8C. No person or entity entering into a contract for the **Project** may have a direct or indirect financial or other interest in the **Project** or its outcome – other than the performance of the contract. This prohibition includes, without limitation: a.) any agreement with, or other interest involving, third parties having an interest in the outcome of the **Project** that is the subject to the contract; b.) any agreement providing incentives or guarantees of future work on the **Project** or related matters; and c.) any interest in real property acquired for the **Project** unless such interest is disclosed to **MaineDOT** before the person or entity entered into the contract.

ARTICLE 9. EXPIRATION

This Agreement shall expire upon **MaineDOT's** payment of the final invoice from the **City** for the **Project** or **three (3) years** from the final day of the month in which this Agreement was executed, whichever occurs first, except as follows:

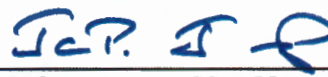
1. Article 3R, "Maintenance," shall be enforced for at least twenty (20) years.
2. Article 5, "Records & Audit," shall remain in place until all activity pursuant to this provision is completed.
3. Article 6B, "Confidentiality," shall remain in effect until negated by law.
4. Article 6C, "Indemnification," shall remain in place until specifically terminated by the **Parties** or negated by law.

ARTICLE 10. AGREEMENT APPROVAL

The undersigned municipal representative assures that the **City's** legislative body has approved the **City's** entry into this Agreement, has appropriated or authorized use of required matching funds, and has authorized the representative to sign this Agreement.

IN WITNESS WHEREOF, the **Parties** have executed this Agreement effective on the date last signed below.

City of Portland

By: 
Jon Jennings, City Manager

Date: 5/11/17

Maine Department of Transportation

By: 
William A. Pulver, P.E., Director,
Bureau of Project Development

Date: 5-15-17

I certify that the foregoing signature is true and accurate. I further certify – pursuant to 10 M.R.S.A. §9407 and §9502 – that the signature, if electronic: (a) is intended to have the same force as my LPA Manual signature; (b) is unique to me; (c) is capable of verification; and (d) is under my control.

APPROVED AS TO FORM:

CORPORATION COUNSEL'S OFFICE


Finance Director
City of Portland, Maine

Federal Funding Accountability and Transparency Act

The **City of Portland, Maine** and its contractors may be subject to the provisions of the Federal Funding Accountability and Transparency Act of 2006 as amended and any regulations, policies, procedures and guidance documents adopted pursuant thereto or in connection therewith.

If the Federal portion of the **Project** exceeds \$25,000, an authorized representative from the **City** shall sign this document under (B) below and return it with the **Project Agreement**. Additionally, the **City** shall provide the following information, *if applicable*:

A) The total compensation and names of the top five officers if:

- More than 80% of the **City's** annual gross revenues are from the U.S. Federal Government; and
- Those revenues are greater than \$25 million annually; and
- Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).

B) Legal name and DUNS® number on file with the Central Contractor Registration (CCR):

City of Portland, Maine

07-174-7802

Sign and Print Legal CCR Name

DUNS® Number

Authorized Representative: _____

Jon Jennings, City Manager

U.S. Department of Transportation (U.S. DOT)

Federal Highway Administration – Standard Title VI / Nondiscrimination Assurances

DOT Order No. 1050.2A

The **City of Portland, Maine** (the "Recipient") **AGREES THAT**, as a condition of receiving Federal financial assistance from the U.S. Department of Transportation (U.S. DOT) through the Federal Highway Administration (FHWA), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory citations hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from the U.S. DOT, including the FHWA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its federally assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal Highway Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

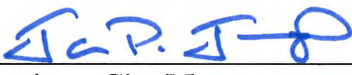
The City of Portland, Maine, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. **The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or Agreement subject to the Acts and the Regulations.**
4. If applicable, the Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. If applicable, the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. You must keep records, reports, and submit the material for review upon request to the FHWA, or their designees in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in it programs. The person signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

DATED April 6, 2017

By 
Jon Jennings, City Manager
City of Portland, Maine

Encl.: Appendices A and E

APPENDIX A TO THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, **Federal Highway Administration**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the **Federal Highway Administration**, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the **Federal Highway Administration**, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the **Federal Highway Administration**, may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the **Federal Highway Administration**, may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E TO THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. §324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

Paul R. LePage
GOVERNOR

David Bernhardt
COMMISSIONER

May 8, 2017

Bruce Hyman, Transportation Program Manager
City of Portland, Planning and Transportation Division
389 Congress Street, Fourth Floor
Portland, Maine 04101

Subject: NOTICE TO PROCEED
Final design work for Bayside Trail Improvements, WIN 018364.01

Dear Bruce:

Enclosed is the executed agreement for improvements to the Bayside Trail. The City of Portland is authorized to proceed, meaning that Portland may begin incurring reimbursable costs for final design and permitting work as of **May 5, 2017**.

John Rodrigue is the MaineDOT project manager assigned to work with you on the project. With the agreement in place, please touch base with him to go over the scope of work, budget, schedule and steps in the approval process.

As work progresses, all correspondence and invoices should be directed to John:

By mail: John Rodrigue, Project Manager
Multimodal Program, Bureau of Project Development
Maine Department of Transportation
16 State House Station
Augusta, Maine 04333-0016

By telephone: (207) 592-0428
By e-mail: john.rodrigue@maine.gov

MaineDOT looks forward to working with Portland to the completion of the project.

Sincerely,

Michael Laberge
Local Projects Coordinator



MaineDOT use only
AMS ID: 20170509000000000618
CSN: 37418
TEDOCS #: 1599725

MAINE DEPARTMENT OF TRANSPORTATION
Agreement for a Federal-aid Locally Administered Project
With the
City of Portland
Regarding
Improvements to the Bayside Trail: WIN 018364.01

Upset Limit: \$122,000	Federal Project #: TAP-1836(401)
Federal Share: \$97,600	Federal Award Date: August 22, 2016
Municipal Share: \$24,400	Portland's Vendor ID: VC1000073476
Effective Date: May 5, 2017	Portland's DUNS® #: 07-174-7802
Expiration Date: May 31, 2020	CFDA #20.205: Highway Planning & Construction

This Agreement for a Federal-aid Project to connect the Bayside Trail to a crosswalk at Marginal Way in Portland, Maine ("the **Project**") is between the Maine Department of Transportation, an agency of the State of Maine with headquarters at 24 Child Street in Augusta, Maine ("MaineDOT") and the City of Portland, a body corporate and politic with its primary offices at 389 Congress Street in Portland, Maine ("the **City**").

This Agreement contains the following attachments:

- ☒ Federal Funding Accountability and Transparency Act Form (signature required);
- ☒ Federal Title VI Assurances (signature required).

WHEREAS, preliminary engineering and right-of-way work necessary for the **Project** were performed under a separate agreement – CTM20130711000000000045 / CSN 31851; and

WHEREAS, the **City** shall deliver the **Project** as a Locally Administered Project, subject to **MaineDOT** oversight to ensure that all federal requirements are met.

NOW, in consideration of the previous statements, **MaineDOT** and the **City** ("the **Parties**") establish and agree to the following terms and conditions:

ARTICLE 1. ROLES AND RESPONSIBILITIES

1A. **ROLE OF CITY.** The **City** shall assign a full-time qualified employee with current Local Project Administration ("LPA") certification from **MaineDOT** to manage the **Project** and carry out its responsibilities under this Agreement. This Local Project Administrator shall abide by the guidance in the latest edition of **MaineDOT's Local Project Administration Manual & Reference Guide** ("LPA Manual.") If the certified administrator leaves the **City** or ceases to oversee the **Project**, the **City** shall stop work and notify the **MaineDOT** Project Manager. **MaineDOT** will evaluate the situation and determine a course of action.

- ☐ The following employee of the **City** shall serve as Local Project Administrator:

Name: Bruce Hyman, Transportation Program Manager
Phone: (207) 874-8717
Email: bhyman@portlandmaine.gov

1B. ROLE OF MAINEDOT. **MaineDOT** will assign a Project Manager to the **Project** to carry out the State of Maine's responsibilities under this Agreement. This person or a designee will have the authority to request design changes to meet applicable laws and design standards; accept and reject invoices; review construction activities to ensure compliance with contract documents; and take all other action needed to ensure proper performance of this Agreement.

☐ **MaineDOT** has assigned the following individual to serve as Project Manager:

Name: John Rodrigue
Email Address: john.rodrigue@maine.gov
Phone Number: (207) 592-0428

ARTICLE 2. PROJECT FINANCES

2A. UPSET LIMIT. The estimated total cost of the **Project** is **\$122,000** ("Upset Limit.") **Project** costs eligible for federal financial participation shall not exceed this Upset Limit without **MaineDOT's** written approval, through an executed modification to this Agreement.

2B. FEDERAL SHARE. **MaineDOT**, with Transportation Alternatives funding from the Federal Highway Administration ("FHWA"), will share in all **Project** costs eligible for such federal participation at the rate of **80%**, up to a maximum contribution at this rate of **\$97,600**.

2C. LOCAL SHARE. The **City**, with funding other than from the U.S. Department of Transportation, shall share in all **Project** costs eligible for federal participation at the rate of **20%**, or an estimated **\$24,400**. The **City** shall be fully responsible for all expenditures:

1. Exceeding the Upset limit of this Agreement set forth in Article 2A above;
2. Incurred before the date of notice to proceed, as set forth in Article 3B, "Authorization";
3. Deemed ineligible for federal financial participation.

2D. MAINEDOT COSTS. Costs that **MaineDOT** incurs for work on the **Project** shall be paid for out of the **Project**. The **City** shall share in these costs at the rate in Article 2C, "Local Share." **MaineDOT** will reconcile these costs upon completion of the **Project** and deduct the **City's** share from the final invoice payment.

2E. REIMBURSEMENT. **MaineDOT** will reimburse the **City** for federally eligible costs incurred on the **Project** at the rate in Article 2B, "Federal Share." The **City** shall bill **MaineDOT** no more than monthly and no less than quarterly, subject to these conditions:

1. The **City** shall submit invoices in the format of Communication 4, in the LPA Manual.
2. The **City** shall provide with each invoice documentation of charges incurred and proof of payment, with sufficient detail to satisfy the **MaineDOT** Project Manager.
3. Each invoice shall include a progress report for the service period of the invoice.
4. Each invoice shall show **MaineDOT's** and the **City's** portion of **Project** costs, including a running total of costs incurred to date.
5. The **City** must certify that amounts claimed are correct and not claimed previously.

6. Payment of the final invoice from the **City** shall be contingent upon a final inspection of the completed **Project** to determine the acceptability of the work.
- 2F. FINAL COST. If the final cost of the **Project** is less than the Upset Limit in Article 2A, reimbursement to the **City** will be capped at the percentage of actual costs in Article 2B, "Federal Share." The **City** shall refund any overpayment to **MaineDOT**.
- 2G. REPAYMENT. If the **City** withdraws from the **Project**, leading to termination of this Agreement for cause, the **City** shall refund all invoice payments from **MaineDOT** and reimburse **MaineDOT** fully for costs incurred for work in the **Project**.
- 2H. SET-OFF. **MaineDOT** will have the option to exercise its common law, equitable and statutory rights of set-off to recover payment made to the **City** for work later deemed ineligible for federal funding. These rights will include, but will not be limited to, **MaineDOT's** option to withhold money owed to the **City** under this Agreement and any other agreement with **MaineDOT** or any other agency of the State of Maine, including any contract starting before the effective date of this Agreement.

ARTICLE 3. PROJECT DEVELOPMENT

- 3A. SCOPE OF WORK. This Agreement shall apply to a **Project** consisting of final design, construction and construction engineering work for pedestrian safety improvements to connect the Bayside Trail to a crosswalk at Marginal Way. Any substantial change shall require **MaineDOT's** written approval to be eligible for financial assistance from **MaineDOT**.
- 3B. AUTHORIZATION. The **City** shall receive written notice to proceed from **MaineDOT** before starting any reimbursable work on the **Project** under this Agreement.
- 3C. PROGRESS REPORTS. The **City** shall provide **MaineDOT** with regular progress reports at intervals established by **MaineDOT's** Project Manager.
- 3D. CONSULTANT SERVICES. If the **City** intends to contract for consultant services under this Agreement, the **City** shall:
1. Use a qualifications-based selection method and not the lowest price. Using price as a selection factor will render consultant work on the **Project** ineligible for federal funding.
 2. Obtain the **MaineDOT** Project Manager's written approval before awarding a contract.
 3. Incorporate "Consultant General Conditions for Local Public Agencies" into contracts.
 4. Obtain **MaineDOT's** written approval before modifying a contract. Work that is performed on a consultant contract outside of the original scope of work without an approved and executed modification in place shall be ineligible for reimbursement.
 5. Evaluate the performance of its consultant upon completion of the contract in accordance Section 2.10 of the LPA Manual, "Consultant Evaluations."
- 3E. DESIGN WORK. Design plans, specifications, estimates and contract documents for the **Project** shall be developed in accordance with **MaineDOT's** *Engineering Instructions*, *Highway Design Guide*, *Standard Specifications* and *Standard Details*, as applicable.

1. The **City** shall submit the final plans, specifications and estimate (PS&E) to **MaineDOT** for review and acceptance.
 2. The **City** shall address to **MaineDOT's** satisfaction all changes requested or concerns expressed before **MaineDOT** will authorize the **City** to advertise for construction bids. Advertising for bids or proceeding to the construction stage without **MaineDOT's** written authorization shall render the entire **Project** *ineligible* for federal funding.
 3. **MaineDOT's** acceptance of the final PS&E package shall not relieve the Engineer of Record, whether a **Municipal** employee or consultant, of responsibility for the quality of the engineering documents for the **Project**.
- 3F. ENVIRONMENTAL REVIEW. The National Environmental Policy Act ("NEPA") process was completed under WIN 018364.00, and that work was part of a separate contract, CTM20130711000000000045 / CSN 31851.
- 3G. PERMITS. The **City** shall obtain all approvals, permits and licenses for the **Project**. The **City** shall provide **MaineDOT** with copies of all such documents and an environmental certification in the format shown in Communication 12 of the LPA Manual, as part of the final PS&E package for the **Project**.
- 3H. UTILITIES. The **City** shall coordinate the **Project** with any utility and railroad that may be affected. The **City** shall provide **MaineDOT** with a utility certification in the format shown in Communication 13 of the LPA Manual, as part of the final PS&E package. **MaineDOT's** Utility Accommodation Rules (2014) shall apply to required utility relocations.
- 3I. RIGHT OF WAY. All right-of-way acquisitions required for the **Project** were completed under **MaineDOT** WIN 018364.00, and that work was part of a separate contract, CTM20130711000000000045 / CSN 31851.
- 3J. SOLICITATION OF BIDS. Upon written authorization from **MaineDOT**, the **City** shall advertise for competitive bids, as follows:
1. The **City** shall follow the procedures in **MaineDOT's** Standard Specifications (November 2014 Edition), Section 102, "Bidding."
 2. The **City** shall submit bid tabulations to **MaineDOT** for review and shall obtain **MaineDOT's** written approval before awarding a contract.
 3. The **City** shall ensure that the **Project** contract book contains the following documents:
 - a. Davis-Bacon prevailing wage rates;
 - b. Form FHWA 1273 (Appendix A to Division 100: Section 1, Bidding Provisions); and
 - c. Signed Title VI Assurances.
- 3K. CONTRACT AWARD. Upon receiving **MaineDOT's** written approval, the **City** shall award a contract for the **Project** to the lowest responsive and responsible bidder in accordance with **MaineDOT's** *Standard Specifications* (November 2014 Edition), Section 103, "Award and Contracting." The **City** shall administer the contract for the duration of the **Project**.
- 3L. CONSTRUCTION. During construction of the **Project**, the **City** shall:
1. Provide a Project Resident who is either a qualified municipal employee with LPA certification or a consultant hired through a qualifications-based selection method.

2. Hold a pre-construction / pre-utility meeting with **MaineDOT**, the contractor, utilities and any other parties involved in the construction work before any work begins.
3. Coordinate materials testing necessary to meet the Minimum Testing Requirements that **MaineDOT** established for the **Project**.
4. Submit contract modifications to **MaineDOT** for review and comment before they are executed. ***MaineDOT** reserves the right not to reimburse the **City** for work under a contract modification executed without **MaineDOT's** review and approval.*
5. If applicable, provide **MaineDOT** with a set of revised as-built plans within 90 days of completion of construction.

3M. MAINEDOT OVERSIGHT. **MaineDOT** will inspect construction activities, test materials and review documentation to ensure compliance with the **Project** specifications and terms of the construction contract. **MaineDOT** may reject work or materials out of compliance and withhold reimbursement to the **City** for such work or materials.

3N. MAINTENANCE. The **City** shall maintain the completed **Project** year-round for its standard useful life or 20 years, whichever is longer. Maintenance work shall consist of upkeep and repairs needed to maintain a firm, stable and slip-resistant surface, including snow removal. Maintenance shall not be delegated to any other party without specific, written approval from **MaineDOT**, which shall be attached to this Agreement.

ARTICLE 4 – TERMINATION

4A. FOR CAUSE. **MaineDOT** will have just cause to terminate this Agreement in the event of default by the **City**, as defined in Article 4B. **MaineDOT** will afford the **City** a cure period of fourteen (14) calendar days, effective on the **City's** receipt of Notice of Default. If the **City** fails to address all defaults within this cure period, **MaineDOT** may terminate this Agreement for cause, with these conditions:

1. **MaineDOT** shall recover from the **City** all reimbursements made and costs incurred for work on the terminated **Project**.
2. **MaineDOT** shall be held harmless against any claim of breach of contract filed against the **City** by any third party in accordance with Article 6B, "Indemnification."
3. The **City** shall forfeit all federal funds remaining in the terminated **Project**.

4B. DEFAULT. **MaineDOT** shall send the **City** a Notice of Default if the **City**:

1. Withdraws its support for the **Project**; or
2. Takes any action that renders the **Project** ineligible for federal-aid funding; or
3. Uses **Project** funds for a purpose not authorized by this Agreement; or
4. Misrepresents or falsifies of any claim for reimbursement; or
5. Fails to meet standards of performance outlined in this Agreement.

4C. FOR CONVENIENCE. The **Parties** may terminate this Agreement for convenience by mutual consent for any reason not defined as "default," as follows:

1. In case of Termination for Convenience, **MaineDOT** will reimburse the **City** for federally eligible work performed under this Agreement until the effective termination date. The **City's** share of **MaineDOT's** costs for work on the **Project** shall be deducted from the final invoice amount owed to the **City**.
2. **MaineDOT** will reprogram for other purposes all federal funds remaining in the **Project**.

ARTICLE 5 – RECORDS & AUDIT

- 5A. **Project** records are printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the **City**. The **City** shall retain all such records for at least **5 years** from the date either of **MaineDOT's** acceptance of the final invoice for the **Project** or the termination of this Agreement. If any litigation, claim, negotiation or audit has begun before the end of this **5-year** period, all **Project** records shall be kept at least until all issues arising from any such action are resolved.
- 5B. The **City** and any consultant or contractor working on its behalf shall allow authorized representatives of the Federal Government and the State of Maine to inspect and audit **Project** records at reasonable times. Copies shall be furnished at no cost to the Federal Government or to the State of Maine.
- 5C. Audits shall be performed in accordance with generally accepted government auditing standards and federal regulation 2 CFR, Section 200, Subpart F - "Audit Requirements."

ARTICLE 6. GENERAL PROVISIONS

- 6A. **GOVERNING LAW.** The laws of the State of Maine shall govern this Agreement. Additionally, the **Parties** shall comply with all federal regulations that apply to the **Project**, including but not limited to 23 CFR, "Highways"; 49 CFR, "Transportation"; and 2 CFR, Section 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
- 6B. **CONFIDENTIALITY.** The **City** shall protect the confidentiality of right-of-way negotiations, property appraisals, and engineering estimates of the construction cost in accordance with the provisions of Title 23 of the Maine Revised Statutes Annotated (MRSA), Section 63: "Confidentiality of Records."
- 6C. **INDEMNIFICATION.** To the extent allowed by law, the **City** shall indemnify, defend and hold harmless **MaineDOT**, its officers, agents and employees from all claims, suits or liabilities arising from negligent or wrongful act, error or omission by the **City**, its officers, employees, agents, consultants or contractors. Nothing in this article shall waive any defense, immunity or limitation of liability that may be available to either party under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or other privileges or immunities provided by law. *Any other provision of this Agreement to the contrary notwithstanding, this provision shall survive the termination or expiration of this Agreement.*
- 6D. **INDEPENDENT CAPACITY.** The **City**, its employees, agents, representatives, consultants and contractors *shall not* act as officers, employees or agents of **MaineDOT**.

- 6E. **EQUAL EMPLOYMENT OPPORTUNITY.** The **City** and all consultants and contractors hired pursuant to this Agreement shall not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, sexual orientation or disability unless related to a bona fide occupational qualification. The **City** and all consultants and contractors hired pursuant to this Agreement shall take affirmative action to ensure that all such applicants are employed and that all such employees are treated regardless of their race, color, religious creed, sex, national origin, ancestry, age, sexual orientation or disability during any period of employment under this Agreement.
- 6F. **FLOW DOWN.** Contracts between the **City** and all third parties shall contain or incorporate by reference applicable provisions of this Agreement.
- 6G. **BINDING EFFECT.** The **Parties** shall be bound by the terms of this Agreement, which shall apply to its executors, their successors, administrators and legal representatives.
- 6H. **ENTIRE AGREEMENT.** This document represents the entire Agreement between the **Parties**. Neither **MaineDOT** nor the **City** shall be bound by any statement, correspondence, agreement or representation not expressly contained in this Agreement.

ARTICLE 7. DEBARMENT

- 7A. By signing this Agreement, the **City** certifies to the best of its knowledge and belief that it and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by the Federal Government. If the **City** cannot certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the **City** shall notify **MaineDOT** promptly if it or its principals is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by the Federal Government.
- 7B. The **City** agrees that it shall not hire an outside entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by the Federal Government.

ARTICLE 8. CONFLICT OF INTEREST

- 8A. The **City** agrees that no person or entity with a direct or indirect financial or personal interest in any contract or subcontract for the **Project** shall negotiate, make, accept or approve any such contract or subcontract.
- 8B. The **City** shall refrain from hiring any engineer, lawyer, appraiser, inspector or other professional to provide services for **Project** who has a direct or indirect financial or other personal interest in any contract or subcontract for the **Project**, other than the person's employment or retention by the **City**. No officer or employee of any such engineer, lawyer, appraiser, inspector or other professional retained by the **City** to work on the **Project** shall have a direct or indirect financial or other personal interest in any real property acquired for the **Project** unless such interest is openly disclosed to the **City** and such officer, employee or person has not participated in such acquisition for and on behalf of the **City**.

8C. The **City** agrees that no person or entity entering into a contract for the **Project** may have a direct or indirect financial or other interest in the **Project** or its outcome – other than the performance of the contract. This prohibition includes, without limitation: a.) any agreement with, or other interest involving, third parties having an interest in the outcome of the **Project** that is the subject to the contract; b.) any agreement providing incentives or guarantees of future work on the **Project** or related matters; and c.) any interest in real property acquired for the **Project** unless such interest is disclosed to the **City** before the person or entity enters into the contract.

ARTICLE 9. EXPIRATION

This Agreement shall expire upon **MaineDOT's** payment of the final invoice from the **City** for the **Project** or **three (3) years** from the final day of the month in which this Agreement was executed, whichever occurs first, except as follows:

1. Article 3N, "Maintenance," shall be enforced for at least twenty (20) years.
2. Article 5, "Records & Audit," shall remain in place until all activity pursuant to this provision is completed.
3. Article 6B, "Confidentiality," shall remain in effect until negated by law.
4. Article 6C, "Indemnification," shall remain in place until specifically terminated by the **Parties** or negated by law.

ARTICLE 10. AGREEMENT APPROVAL

The undersigned municipal representative assures that the **City's** legislative body has approved the **City's** entry into this Agreement, has appropriated or authorized use of required matching funds, and has authorized the representative to sign this Agreement.

IN WITNESS WHEREOF, the **Parties** have executed this Agreement effective on the date last signed below.

City of Portland

By: 
Jon Jennings, City Manager

Date: 4/7/17

Maine Department of Transportation

By: 
William A. Pulver, P.E., Director,
Bureau of Project Development

Date: 5-5-17

I certify that the foregoing signature is true and accurate. I further certify – pursuant to 10 M.R.S.A. §9407 and §9502 – that the signature, if electronic: (a) is intended to have the same force as my LPA Manual signature; (b) is unique to me; (c) is capable of verification; and (d) is under my control.

Federal Funding Accountability and Transparency Act

The **City of Portland, Maine** and its contractors may be subject to the provisions of the Federal Funding Accountability and Transparency Act of 2006 as amended and any regulations, policies, procedures and guidance documents adopted pursuant thereto or in connection therewith.

If the Federal portion of the **Project** exceeds \$25,000, an authorized representative from the **City** shall sign this document under (B) below and return it with the **Project Agreement**. Additionally, the **City** shall provide the following information, *if applicable*:

A) The total compensation and names of the top five officers if:

- More than 80% of the **City's** annual gross revenues are from the U.S. Federal Government; and
- Those revenues are greater than \$25 million annually; and
- Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).

B) Legal name and DUNS® number on file with the Central Contractor Registration (CCR):

City of Portland, Maine

07-174-7802

Sign and Print Legal CCR Name

DUNS® Number

Authorized Representative: _____


Jon Jennings, City Manager

U.S. Department of Transportation (U.S. DOT)
Federal Highway Administration – Standard Title VI / Nondiscrimination Assurances

DOT Order No. 1050.2A

The **City of Portland, Maine** (the "Recipient") **AGREES THAT**, as a condition of receiving Federal financial assistance from the U.S. Department of Transportation (U.S. DOT) through the Federal Highway Administration (FHWA), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory citations hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from the U.S. DOT, including the FHWA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its federally assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal Highway Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

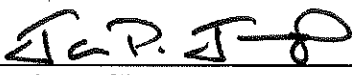
The City of Portland, Maine, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. **The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or Agreement subject to the Acts and the Regulations.**
4. If applicable, the Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. If applicable, the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. You must keep records, reports, and submit the material for review upon request to the FHWA, or their designees in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in it programs. The person signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

DATED April 6, 2017

By 
Jon Jennings, City Manager
City of Portland, Maine

Encl.: Appendices A and E

APPENDIX A TO THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, **Federal Highway Administration**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the **Federal Highway Administration**, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the **Federal Highway Administration**, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the **Federal Highway Administration**, may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the **Federal Highway Administration**, may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E TO THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. §324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

**Signature Request: Agreement for Locally Administered Project
Improvements to Bayside Trail, Portland: WIN 018364.01**

May 3, 2017

Bill:

Attached is an agreement with Portland for a locally administered project consisting of final design, construction and construction engineering work for improvements to the Bayside Trail. The Bureau of Planning programmed a total of \$122,000 for the project, consisting of 80% from MaineDOT (\$97,600) and 20% from Portland (\$24,400).

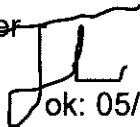
The Federal Highway Administration authorized the preliminary engineering stage of the project on August 22, 2016. Our Project Manager is John Rodrigue.

Please sign and date the agreement and return it to me. You will see from Jeff Tweedie's initials below that he has reviewed and signed off on the agreement.

Thank you.

Mike Laberge
Multimodal Program

Cc: Jeff Tweedie, Multimodal Program Manager


ok: 05/03/2017

Order 176-16/17

Passage: 8-0 (Costa absent) on 3/27/2017

Effective 4/6/2017

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING AGREEMENT BETWEEN PORTLAND AND MAINE
DEPARTMENT OF TRANSPORTATION
RE: FRANKLIN STREET AND MARGINAL WAY BAYSIDE TRAIL ENHANCEMENT**

ORDERED, that the two-party agreement between the Maine Department of Transportation and the City of Portland, for design and construction of the Franklin Street and Marginal Way Bayside Trail Enhancement is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said documents and any other related documents necessary or convenient to carry out the intent of said documents and this Order.

Laberge, Michael

From: LeBlanc, Steven E
Sent: Thursday, August 18, 2016 9:05 AM
To: Laberge, Michael
Cc: Farrell, Debora B
Subject: RE: Portland Agreement for Review, WIN 018364.01

OK. Thanks.

From: Laberge, Michael
Sent: Thursday, August 18, 2016 8:59 AM
To: LeBlanc, Steven E
Cc: Farrell, Debora B
Subject: RE: Portland Agreement for Review, WIN 018364.01

Hi Steve. Most of the pre-construction work in the project was completed under a previous contract and WIN, as referenced in the first section of the agreement. That is why I put that language in the "Whereas" sections, so that people would understand what is happening. Therefore, some sections that typically are in our agreements are not needed.

The project is already kicked off, and most of the correspondence does not apply because it was already used in the previous project.

I will send confirmation when the WIN is active.

Mike Laberge, Local Projects Coordinator
Maine Department of Transportation
Bureau of Project Development Multimodal Program
16 State House Station
Augusta, ME 04333-0016

207 624-3508 (office)
207 557-2176 (cell)
Web: <http://www.maine.gov/mdot/lpa/>

From: LeBlanc, Steven E
Sent: Thursday, August 18, 2016 8:34 AM
To: Laberge, Michael
Cc: Farrell, Debora B
Subject: RE: Portland Agreement for Review, WIN 018364.01

Hi Mike,

Based on a limited review, the following errors or discrepancies were identified:

- Sections that were included in previous contracts ("Kickoff" and "Correspondence") do not appear to be in this contract. Is that intentional or an oversight?
- PIN active/authorized documentation is required to complete the review

As noted by you, the Effective Date and Expiration Date are to be based on the date the agreement is signed, so it is assumed those fields will be populated at that time.

Thanks, Steve

From: Laberge, Michael
Sent: Wednesday, August 17, 2016 4:58 PM
To: LeBlanc, Steven E
Cc: Farrell, Debora B
Subject: Portland Agreement for Review, WIN 018364.01

Steve,

Please review the attached agreement with the City of Portland. Gregg Goggin said the WIN would be activated on Thursday, 8/18. As usual, the start and end dates are tied to the execution date of the Agreement.

I will not send out the agreement for signature until the WIN is active. I will attach confirmation to the final, executed document.

Mike Laberge, Local Projects Coordinator
Maine Department of Transportation
Bureau of Project Development Multimodal Program
16 State House Station
Augusta, ME 04333-0016

207 624-3508 (office)

207 557-2176 (cell)

Web: <http://www.maine.gov/mdot/lpa/>

Maine Department Of Transportation

Project Manager - Projex Status Authorization

Status/Authorizations - Project: 018364.01 - PORTLAND, BAYSIDE TRAIL CONSTR

Status	Active	Status Date	8/23/16
Federal Project Number	TAP-1836(401)	WIN Add Date	6/28/16
Project Type	10-Capital Improvement Programmed		

Federal Approval Dates

<u>Stage</u>	<u>Auth To Proceed</u>	<u>STIP</u>
Preliminary Engineering	8/22/16	8/4/16
Right Of Way		8/4/16
ROW Negotiations/Acquisitions		
Advertise/Construction		8/4/16
CE Construction Engineering		



CITY OF PORTLAND, MAINE
DEPT. OF PUBLIC WORKS
212 CANCO RD STE B
PORTLAND, MAINE 04103
PHONE (207) 874-8846 FAX (207) 874-8852

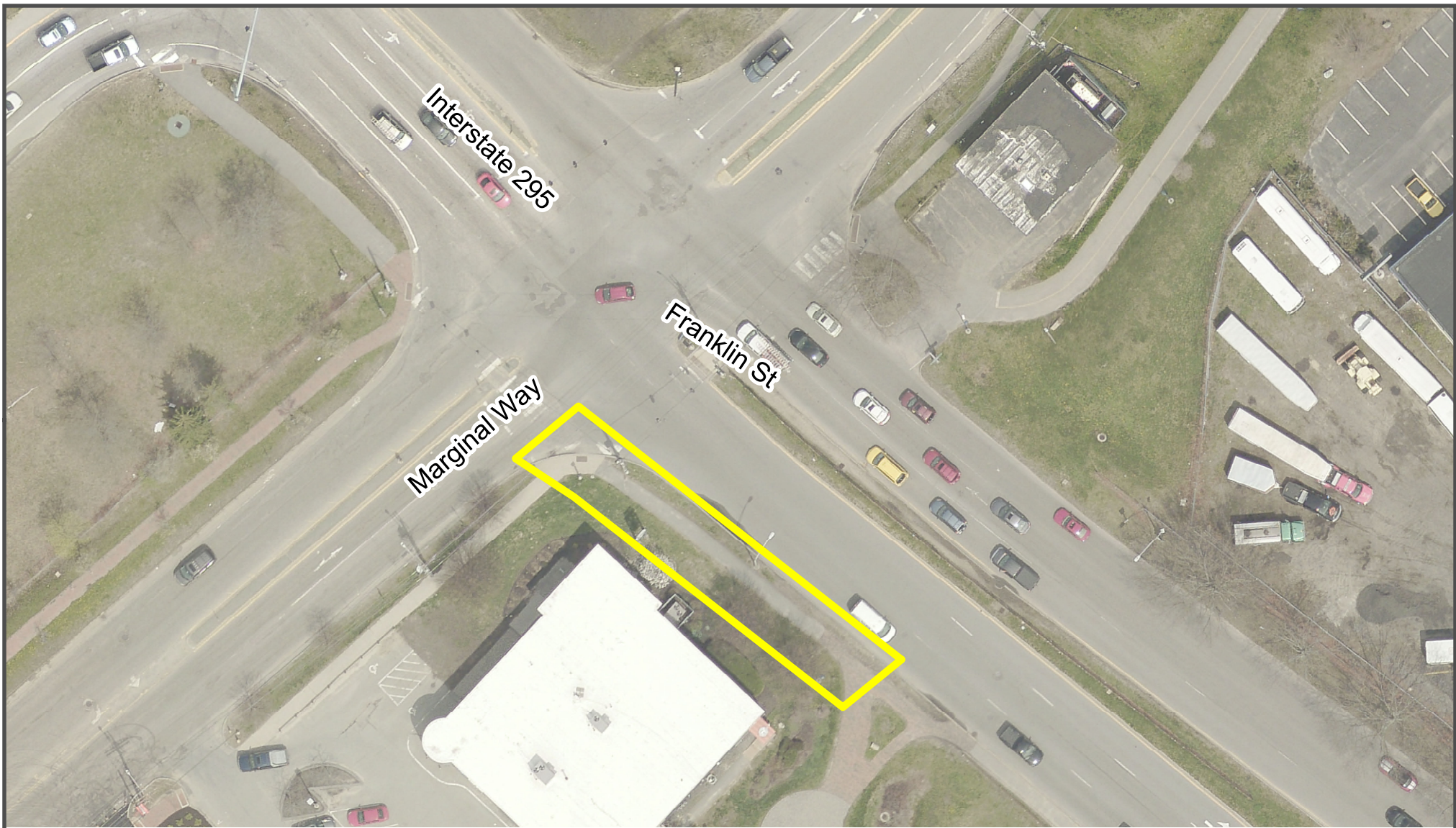
Bayside Trail Junction with Eastern Prom Trail



June 2020

DRAWN BY: TSY

0 50 100
Feet



CITY OF PORTLAND, MAINE
DEPT. OF PUBLIC WORKS
212 CANCO RD STE B
PORTLAND, MAINE 04103
PHONE (207) 874-8846 FAX (207) 874-8852

Bayside Trail Intersection with Marginal Way and Franklin St



June 2020

DRAWN BY: TSY

0 25 50
Feet

FROM: Helen Donaldson

DATE: June 2, 2020

SUBJECT: **Order 201-19/20 Approving the Donation of Approximately \$50,000 from
Maine Medical Center - Sponsored by Jon P. Jennings, City Manager**

SPONSOR: Jon P. Jennings, 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 6/15/2020 **Final Action 7/13/2020**

PRESENTATION: Helen Donaldson, Director of Special Projects, 5 minute oral presentation

This Council item would allow the city to accept grant funding from Maine Medical Center’s Caring Community Grant Program for city-led projects at Andrews Square, Harborview Park, and Dougherty Field/outer Congress Street.

This Council item would allow the city to accept grant funding from Maine Medical Center's (MMC) Caring Community Grant Program for city-led projects at Andrews Square, Harborview Park, and Dougherty Field/outer Congress Street.

1. Andrews Square Improvements (requested by Western Promenade Neighborhood Association): This grant funding (\$20,000) would supplement city CIP funding for improvements to Andrews Square, including the installation of lighting, landscaping, and bollards. This project is being led by the Department of Public Works. Money would be placed in a separate infrastructure account accessible to DPW.

2. Harborview Park (requested by the West End Neighborhood Association): This grant funding (approximately \$10,000) would fund improvements to Harborview Park, including the addition of new park benches, new picnic tables, and invasive species removal. This project is being led by the Parks Department. Money would be placed in the West End Neighborhood Association Other Special Revenue account.

3. Dougherty Field and Congress Street Lighting (requested by the Libbytown Neighborhood Association): This grant funding (\$20,000) would allow for the addition of Big Belly trash cans and park benches at Dougherty Field, as well as 'seed' money for relocating the basketball court closer to the multi-use field and the relocated playground. It would also pay for the addition of lighting at the city parcel of land at Congress and Lowell Streets, which is next to Denny's and across from the 295 off-ramp, a gateway into the city. This

project is being led by the Parks Department. Money would be placed in the Libbytown Neighborhood Association Other Special Revenue account.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

MMC's Institutional Overlay Zone requires that the hospital establish a Caring Community Grant program, a program that would distribute annual grants to neighborhood associations or other entities operating within the neighborhoods surrounding MMC. The zoning lays out general objectives for the grant program, but leaves the specifics regarding the program to Maine Medical Center's Neighborhood Advisory Committee (NAC).

After developing a structure for the grant program over the past year, this fall, the NAC solicited applications for the first round of funding. In accordance with guidelines drafted by the Committee, following review by a subgroup, a slate of recommended grant projects was forwarded to the NAC for approval. The approved grant projects include three that are to be implemented with city departments acting as lead entities. These are the three grants discussed here.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

This Caring Community grant funding will facilitate implementation of these DPW- and Parks-led projects. These grants directly relate to goals around the city's capital improvement planning.

V. FINANCIAL IMPACT

The Caring Community grant funding will provide approximately \$50,000 of additional funds with which to make capital improvements to Andrews Square, Harborview Park, and Dougherty Field/outer Congress Street.

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

The Department of Parks, Recreation, and Facilities, the Department of Public Works, and the Department of Planning and Urban Development all support the acceptance of these funds.

VIII. LIST ATTACHMENTS

1. MMC Donation from Community Benefit 6.15.2020

Prepared by:

Helen Donaldson

Date: 6/2/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE DONATION OF APPROXIMATELY \$50,000
FROM MAINE MEDICAL CENTER**

WHEREAS, Maine Medical Center (“MMC”) has, as a product of its Institutional Overlay Zone, has established a Caring Community Grant program; and

WHEREAS, the purpose of the Caring Community Grant program is to distribute annual grants to neighborhood associations or other entities operating within the neighborhoods surrounding MMC; and

WHEREAS, three of the hospital’s 2020 grants, including funds for improvements at Andrews Square, Harborview Park, and Dougherty Field and Congress Street, are to neighborhood associations for projects for which City departments will act as the lead implementing entity;

NOW THEREFORE, BE IT ORDERED, that Caring Community Grant funding of approximately Fifty Thousand Dollars (\$50,000) is hereby accepted and shall be used to allow the City to improve and enhance:

- Andrews Square;
- Harborview Park; and
- Dougherty Field and Congress Street Lighting; and

BE IT FURTHER ORDERED, the City of Portland shall be the custodian of this Caring Community Grant funding and shall account for these funds in dedicated accounts.

MEMORANDUM
City Council Agenda Item

FROM: Greg Mitchell, Director

DATE: May 29, 2020

SUBJECT: **Order 202-19/20 Approving and Authorizing Land Exchange Agreement and License Agreement between J.B. Brown & Sons and the City of Portland Re: Emery Street and Quarry Road, and Commencement of Discontinuance of an Undeveloped Portion of Emery Street - Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair**

SPONSOR: Economic Development Committee, Councilor Justin Costa/Chair, meeting held on May 27, 2020, and the vote was 3-0 (Councilor Thibodeau not present for this item due to a conflict).

(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 6/15/2020

Final Action 6/15/2020

Can action be taken at a later date: No Time is of the essence to begin this construction for the Veteran's Administration relocation, particularly to close on construction financing.

PRESENTATION: Greg Mitchell/5 Minutes.

I. SUMMARY

The Proposed Land Exchange Agreement between the City of Portland and JB Brown, along with the proposed discontinuance of a portion of Emery Street, supports new construction of the Veteran Administration (VA) facility with parking garage, and adds additional property to the City-owned Canco Road Public Works and Parks & Recreation Complex for city outside storage use.

II. AGENDA DESCRIPTION

Under direction of the Economic Development Committee, a Land Exchange Agreement has been negotiated to swap an undeveloped portion of Emery Street at the Commercial Street intersection, which must first be discontinued, in exchange for undeveloped industrial property owned by J.B. Brown & Sons located at the end of Quarry Road.

The City needs additional property adjacent to the City Canco Road Complex for outside storage. The J.B. Brown & Sons property proposed for the land exchange includes 20,000+/- square feet. J.B. Brown & Sons has allowed the City to use this property, at no cost, for over two (2) years.

The City property to be exchanged includes an undeveloped portion of Emery Street at the Commercial Street intersection with 11,000+/- square feet, which is proposed for street discontinuance. The final square footage and descriptions for each property will be determined by property surveys. It is noted that the City will retain easements for below, at ground and above ground utilities, including a pedestrian access easement across the portion of Emery Street to be discontinued along with additional easements on J.B. Brown & Sons property. The separate properties, to be swapped, have been determined to be of equivalent value, which is approximately \$49,000.00.

In order to provide J.B. Brown & Sons with access to the Emery Street property as early as possible, the Land Exchange Agreement also includes a semi-permanent License Agreement that will allow J.B. Brown & Sons to close on its construction financing and begin construction of the Veterans Administration Project prior to the completion of the street discontinuance and the closing of the exchange. The License Agreement will terminate upon the completion of the discontinuance, or if J.B. Brown & Sons fails to build the proposed development, fails to rebuild the building in the event that it is destroyed, or if they otherwise fail to comply with the terms of the Agreement.

The process for discontinuing this portion of Emery Street is dictated by state statute.

Staff is requesting that this order be passed as an emergency in order to support project financing. Seven affirmative votes are required for passage as an emergency.

III. BACKGROUND

See above.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

This land exchange will support new construction of a VA facility with parking garage located on West Commercial Street, as well as to add to City-owned property located on Canco Road which supports municipal Public Works and Parks & Recreation Department services.

V. FINANCIAL IMPACT

The separate properties, to be swapped, have been determined to be of equivalent value so there is no direct cost to the City other than property survey expenses.

VI. STAFF ANALYSIS AND BACKGROUND

City staff recommends the City Council vote to approve the City of Portland and JB Brown Land Exchange Agreement substantially in the attached form, as well as start the process for discontinuance of a portion of Emery Street.

VII. RECOMMENDATION

The Economic Development Committee met on May 27, 2020, and voted 3-0 (Councilor Thibodeau not present due to a conflict) to forward this to the City Council for approval.

VIII. LIST ATTACHMENTS

1. J.B. Brown & Sons Land Exchange re Emery Street 6.15.2020
2. Emery and Quarry Rd Land Exchange Agreement clean for Council 061120

Prepared by:

Greg Mitchell, Director

Date: 5/29/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING AND AUTHORIZING
LAND EXCHANGE AGREEMENT AND LICENSE AGREEMENT BETWEEN
J.B. BROWN & SONS AND THE CITY OF PORTLAND RE: EMERY STREET
AND QUARRY ROAD,
AND COMMENCEMENT OF DISCONTUANCE OF AN UNDEVELOPED
PORTION OF EMERY STREET**

ORDERED, that the Land Exchange Agreement between J.B.Brown & Sons and the City of Portland for an undeveloped portion of Emery Street in exchange for a parcel of J.B. Brown property on Quarry Road is hereby approved and accepted in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that a Revocable License Agreement for J.B. Brown & Sons allowing its use of this portion of Emery Street is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Manager or his designee shall commence the discontinuation of the portion of Emery Street described in the Land Exchange Agreement in accordance with 26 M.R.S. § 3026-A and other applicable legal requirements; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said documents and any other related documents necessary or convenient to carry out the intent of the above orders.

LAND EXCHANGE AGREEMENT

This Land Exchange Agreement (this “Agreement”) is made as of the ____ day of June, 2020 (the “Effective Date”), by and between **J.B. BROWN & SONS** (“JBB”), a Maine corporation with offices in Portland, Maine, and the **CITY OF PORTLAND**, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 (the “City”).

Section 1. Introduction.

Each of the parties owns real property in Portland, Maine. The parties have agreed to exchange certain property, and to provide for certain appurtenant easements in connection with the exchange, all on the terms and conditions set forth in this Agreement. The properties that are the subject of this exchange are shown on **Exhibit A**, **Exhibit B**, and **Exhibit C**, attached hereto and are incorporated herein.

Section 2. Property to be Exchanged.

In the exchange:

(i) Parcel 1. The City will take steps to discontinue the parcel of land depicted on **Exhibit A** and identified as part of an unimproved portion of an approximately 60-foot wide public right of way, known as Emery Street (“Parcel 1”) thereby providing JBB with fee ownership in Parcel 1 for all lawful uses, including, without limitation, access and egress for motorized vehicles; *provided, however*, that the City shall retain certain, specific easements, in common with JBB, on Parcel 1 for (i) ingress and egress for pedestrians, bicycles, and similar non-motorized uses, and (ii) underground, on ground, and above ground utilities ((i)-(ii) collectively referred to as the “Emery Street Easements”). The approximate locations of the Emery Street Easements are generally depicted on **Exhibit A**. JBB hereby waives any right to any damages or other compensation from the City resulting from the discontinuance of Parcel 1.

(ii) Parcel 2. JBB will convey to the City the parcel of unimproved land depicted on **Exhibit B** and identified as a portion of Tax Map 150-A-8, together with an easement for vehicular and pedestrian access over the private portion of Quarry Road labeled “Extension of Quarry Road” on **Exhibit B** (“Parcel 2”);

(iii) 30’ Easement. JBB will convey to the City a non-exclusive perpetual easement in common with JBB, its successors and assigns, under, over, and across a portion of JBB’s land abutting and parallel with Parcel 1, having a width of thirty (30) feet from the easterly sideline of Parcel 1, which easement area is generally depicted on **Exhibit C** as the shaded area on that certain plan entitled “Proposed 30’ Wide Sewer Easement” by Gorrill Palmer (hereinafter referred to as the “30’ Easement Area”), for the installation and maintenance of conduits, pipelines, and all other necessary fixtures and appurtenances for conveying storm water and sewer water (the “30’ Sewer and Stormwater Easements”). JBB or its affiliate shall be solely responsible for all costs associated with the design and installation

of a new City sewer line in the 30' Easement Area, which shall be constructed in accordance with all applicable City specifications and requirements (the "Sewer Line"). JBB's obligations under this paragraph shall survive the closing or termination of this Agreement provided that the parties execute the License Agreement; provided, however, once installation of the Sewer Line has been completed and accepted by the City, JBB shall have no further maintenance or repair obligations for the Sewer Line. If, in the future, the City decides to construct a storm water drainage facility in the 30' Easement Area, the City shall do so at its own cost and expense. The 30' Sewer and Stormwater Easements shall be conveyed to the City by easement deed in substantially the form attached hereto as **Exhibit D**.

All of these conveyances will be on the terms and conditions set forth in this Agreement.

Section 3. **Equivalent Value.**

The parties agree that (i) the value of Parcel 1, together with the 30' Sewer and Stormwater Easements, is equivalent to the value of Parcel 2, and (ii) each party's conveyance is in full consideration of the other party's conveyance. Except for any closing expenses as provided in Section 10 (herein) below, neither JBB nor the City is providing any other consideration for the exchange, unless the City exercises the Parcel 2 Alternative, as that term is defined below.

Section 4. **Property Being Exchanged "As-Is".**

(a) **Parcel 1.** Except as described in Section 2(i) above and as hereinafter set forth, JBB acknowledges that it is acquiring Parcel 1 "as is" with all faults. The City has made no representations or warranties of any kind whatsoever with respect to the condition of Parcel 1 or the compliance of Parcel 1 with any laws, rules, regulations or ordinances, including (without limitation) any relating to zoning, the environment, or hazardous materials.

(b) **Parcel 2.** The City acknowledges that it is acquiring Parcel 2 "as is" with all faults. JBB has made no representations or warranties of any kind whatsoever with respect to the condition of Parcel 2 or the compliance of Parcel 2 with any laws, rules, regulations or ordinances, including (without limitation) any relating to zoning, the environment, or hazardous materials.

Section 5. **Title, Inspections.**

(a) **Title Examinations.** The parties will have from the date of this Agreement until 6:00 PM Eastern Daylight Savings Time on the sixtieth (60th) day after the date of this Agreement (the "Due Diligence Period") to complete their respective title examinations. Title shall be good, marketable and insurable title, free and clear of all encumbrances except (i) as set forth in **Exhibit B**, (ii) the Easements described in Section 2(i) herein, (iii) zoning ordinances, and (iv) real estate taxes not yet due and payable.

(b) **Inspections.** During the Due Diligence Period, each party and its employees, consultants, contractors and agents shall have the right, at their own expense, to enter on Parcel 1

or 2 at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things that each party determines, in its sole discretion, to be required to determine the suitability of the property for the parties' intended use (collectively, the "Inspections").

(c) Objections. Each party will have until the end of the Due Diligence Period to deliver to the other party any written objections to title matters (other than the permitted exceptions identified herein) that materially affect marketability, insurability, or use of Parcel 1 or Parcel 2, respectively, or to unacceptable results of the Inspections. Objections not made prior to the end of the Due Diligence Period will be deemed waived; *provided, however*, that objections pertaining to matters of record first appearing after the date of this Agreement may be made at any time prior to the Closing.

(d) Option to Cure. In the event of a title or Inspection objection, the party owning the property that is the subject of the objection will have the option, but not the obligation, to cure the objection and will notify the other party of its election within ten (10) business days after receipt of the title objection. In the event that the party owning the property that is the subject of the objection elects to cure the objection, that party thereupon will have thirty (30) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the party owning the property that is the subject of the objection does not elect to cure the objection, or having elected to cure the objection fails to timely do so, the other party will have the option either to terminate this Agreement (after which neither party will have any further obligation or liability to the other under this Agreement) or to waive the objection in writing and proceed to the Closing; *provided, however*, that in the event that the parties execute the License Agreement, JBB shall remain obligated to execute and deliver to the City the 30' Sewer and Stormwater Easement Deed and either (i) the Parcel 2 deed or (ii) the Back-Up Consideration, as those terms are defined below.

Section 6. Conditions Precedent to Closing.

(a) The City shall make reasonable efforts to cause the discontinuance of the portion of Emery Street identified as Parcel 1 on or before August 1, 2020. *Provided, however*, that in the event that the City Council votes not to approve the discontinuance of Parcel 1, but the parties have executed the License Agreement (as that term is defined in Section 11 hereof), the parties shall proceed to Closing with respect to Parcel 2 and the 30' Sewer and Stormwater Easements, *provided, however*, if the occurrence of the Parcel 2 Alternative described below has also occurred, the City may elect to accept from JBB in lieu of acquiring Parcel 2 in exchange for the License the Back-up Consideration (as defined in paragraph (b) below).

(b) The City is satisfied in its sole discretion (1) with the results of the Inspections, (2) that JBB has good, marketable and insurable title in Parcel 2, and (3) that JBB has the corporate power to convey Parcel 2 and the 30' Sewer and Stormwater Easements to the City. Notwithstanding anything to the contrary in this Agreement, and *provided* that the parties have executed the License Agreement, in the event that the City determines at any time prior to closing

that title to Parcel 2 or the results of any Inspection are in any way unsatisfactory to the City (the “Parcel 2 Alternative”), the City may elect to accept from JBB in lieu of acquiring Parcel 2 the sum of Forty-Nine Thousand Dollars (\$49,000.00) (the “Back-up Consideration”).

Section 7. Closing.

The Closing will be held on or before the thirtieth (30th) day after the later of the following: (i) the expiration of the Due Diligence Period, (ii) the date on which the Conditions to Closing described in Section 6 above are completed to the satisfaction of each party to this Agreement, or (iii) October 31, 2020 (the “Closing”), which Closing shall be held at the Offices of Verrill, LLP, at One Portland Square, Portland, Maine, or on such other date or at such other place as the parties may agree.

Section 8. Deeds.

(a) Deed or Parcel 2 Alternative Price to City. At the Closing, JBB will deliver to the City (i) a fully-executed Quitclaim Deed with Covenant conveying Parcel 2, or in the event the City elects the Parcel 2 Alternative as described in Section 6(b) above, JBB shall pay to the City the Back-up Consideration, and (ii) an easement deed for the 30’ Sewer and Stormwater Easements in substantially the form attached as Exhibit D (the “30’ Sewer and Stormwater Easement Deed”).

(b) Certificate of Discontinuance. At the Closing, the City will record a certificate of discontinuance for Parcel 1, subject to the Easements set forth in Section 2(i) herein, provided that the City Council has approved the discontinuance.

(c) Property Descriptions. The property descriptions contained in the deed to the City and the Certificate of Discontinuance will be based on survey plans (the “Plans”) that will more specifically describe the properties shown on **Exhibit A**, **Exhibit B**, and **Exhibit C**. The Plans will be distributed to the parties prior to the expiration of the Due Diligence Period for final approval. The parties will agree on the descriptions of Parcel 1, Parcel 2, and the 30’ Easement Area prior to the Closing.

(d) Abutter Status. Each deed or street discontinuance, as applicable, will recite that the grantee is an abutter to the grantor.

Section 9. Closing Deliverables.

(a) City Deliverables. At the Closing, and as a condition thereto, the City will deliver in connection with its conveyance to JBB the following as applicable:

- (i) the executed street discontinuation subject to the provisions of Section 8(b) above;
- (ii) documentation acceptable to JBB indicating that this transaction has been duly authorized and that the person executing documents on behalf of the City is duly authorized to do so;

- (iii) an executed owner's affidavit in form satisfactory to the City indicating no tenants or other occupants presently in possession and indicating no debts due for labor or services performed or materials used that could give rise to mechanic's liens.

In the event the contemplated transfer by the executed street discontinuation is not part of the transaction to be conducted at Closing, then in such an event, the items listed in this Section 9(a), clauses (i) through (iii), inclusive, will not be applicable or required.

(b) JBB Deliverables. At the Closing, and as a condition thereof, JBB will deliver in connection with its conveyance to the City, as applicable:

- (i) the executed deed to Parcel 2 or the Back-up Consideration described in Section 8(a) above;
- (ii) an executed State of Maine Real Estate Transfer Tax Declaration;
- (iii) an executed notice pursuant to 38 M.R.S.A. § 563(6) stating that, to the best of JBB's knowledge, no underground storage facility for the storage of oil or petroleum exists on Parcel 2;
- (iv) the 30' Sewer and Stormwater Easement Deed;
- (v) documentation acceptable to the City indicating that this transaction has been duly authorized and that the person executing documents on behalf of JBB is duly authorized to do so;
- (vi) an executed certificate of non-foreign and Maine residency status; and
- (vii) an executed owner's affidavit indicating no tenants or other occupants presently in possession and indicating no debts due for labor or services performed or materials used that could give rise to mechanic's liens.

In the event the contemplated transfer by JBB to City of Parcel 2 is not part of the transaction to be conducted at Closing, then in such an event, the items listed in this Section 9(b), clauses (ii), (iii), and (v) through (vii), inclusive, will not be applicable or required.

Section 10. Closing Costs and Apportionments.

(a) Real Estate Taxes and Assessments. The parties acknowledge that the City is exempt from taxes or assessments on Parcel 1 and that Parcel 1 is exempt from the same for fiscal year 2020/21. As to Parcel 2, JBB shall be liable for all real estate taxes and assessments for fiscal year 2020/21. JBB shall pay all such taxes for fiscal year 2020 on or before the Closing.

(b) Real Estate Transfer Tax. Each real estate transfer tax declaration will state that the

value of the properties that is the subject of the declaration is the assessed value, and JBB will pay its share of real estate transfer taxes. The parties acknowledge that, pursuant to 36 M.R.S.A. §4641-C(1), the City is exempt from real estate transfer taxes.

(c) Recording Fees. The City will pay the recording fees for the Parcel 2 deed and the 30' Sewer and Stormwater Easement Deed from JBB. JBB will pay the recording fees for the Certificate of Discontinuance for Parcel 1.

(d) Legal Fees and Expenses. The parties each will bear the cost of their respective legal fees, costs, and expenses.

Section 11. License Prior to Closing. Upon execution of this Agreement, the parties hereby agree and acknowledge that the parties shall execute a license agreement for JBB's use of Parcel 1, substantially in the form attached hereto as **Exhibit E** and incorporated herein by reference (the "License Agreement").

Section 12. Representations and Warranties.

(a) City. The City represents and warrants that:

(i) It has full power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

(ii) This Agreement has been duly authorized, executed, and delivered by the City and is a legal, valid, and binding agreement of the City, enforceable in accordance with its terms. The execution, delivery, and performance of this Agreement by the City will not violate any judgment or order applicable to the City or the City's instruments of organization, governance or operation, and will not result in any material breach of, or constitute a material default under, or result in the creation of any material lien, charge, security interest, or other encumbrance upon Parcel 1 or any note, bond, indenture, mortgage, deed of trust, bank loan, or credit agreement to which the City is a party or by which Parcel 1 is bound.

(iii) The City has not received any written notice of any pending condemnation, violation of law, or other legal action of any kind materially and adversely affecting Parcel 1.

(iv) The City has no knowledge of any pending or threatened litigation, administrative action, or governmental investigation or examination (including, but not limited to, environmental investigations, examinations, claims, and demands) concerning Parcel 1.

(v) To the best of City's knowledge, no third party other than JBB, its successors and assigns, has any right to acquire all or any part of Parcel 1.

(b) JBB. JBB represents and warrants that:

(i) JBB has full power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

(ii) This Agreement has been duly authorized, executed, and delivered by JBB and is a legal, valid, and binding agreement of JBB, enforceable in accordance with its terms. The execution, delivery, and performance of this Agreement by JBB will not violate any judgment or order applicable to JBB or JBB's instruments of organization, governance or operation, and will not result in any material breach of, or constitute a material default under, or result in the creation of any material lien, charge, security interest, or other encumbrance upon Parcel 1 or the 30' Easement Area or any note, bond, indenture, mortgage, deed of trust, bank loan, or credit agreement to which JBB is a party or by which Parcel 1 is bound; provided, however, execution and delivery of the 30' Sewer and Stormwater Easement Deed will require the consent of the mortgagee currently holding a mortgage lien on JBB's land where the 30' Easement Area is situated, which consent will be obtained by JBB prior to Closing.

(iii) JBB has not received any written notice of any pending condemnation, violation of law, or other legal action of any kind materially and adversely affecting Parcel 2.

(iv) JBB has no knowledge of any pending or threatened litigation, administrative action, or governmental investigation or examination (including, but not limited to, environmental investigations, examinations, claims, and demands) concerning Parcel 2 or the 30' Easement Area.

(v) No third party has any right to acquire all or any part of Parcel 2 or the 30' Easement Area.

(c) Survival. All representations and warranties contained herein are intended to remain true and correct as of the Closing, are deemed to be restated at the Closing, and will survive the Closing.

Section 13. General Provisions.

(a) Assignment. Neither this Agreement nor any of the rights or obligations of any party pursuant to this Agreement may be assigned without the prior written consent of the other party.

(b) Brokers. Each party will indemnify and hold harmless the other from and against any claims for brokerage commissions arising out of any brokerage agreements entered into by the indemnifying party.

(c) Governing Law. This Agreement is governed by, and is to be construed and enforced in accordance with, the laws of the State of Maine (without regard to conflicts-of-laws principles that would require the application of any other law).

(d) Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the exchange of the property that is the subject of this Agreement, supersedes all prior oral or written offers, negotiations, agreements, understandings, and courses of dealing between the parties relating thereto, and is subject to no understandings, conditions or representations other than those expressly stated herein. This Agreement may be modified or amended only by means of a writing signed by the parties.

(e) Notices. Any notices required or permitted to be given hereunder will be given in writing, signed by the party giving the same, and will be delivered (a) in person, (b) by a commercial overnight courier that guarantees next business day delivery and provides a receipt, or (c) by electronic mail (with Request a Read Receipt), and such notices will be addressed as follows:

To JBB:

Vincent P. Veroneau
J.B. Brown & Sons
10 Free Street
P.O. Box 207
Portland, Maine 04112-0207
E-Mail: veroneau@jbbbrown.com

with a copy to:

David L. Galgay, Jr., Esq.
Verrill Dana
One Portland Square
Portland, Maine 04101-4054
E-Mail: dgalgay@verrill-law.com

To City:

Jon P. Jennings
City Manager
City of Portland
389 Congress Street
Portland, Maine 04101
E-Mail: gmitchell@portlandmaine.gov with a copy to:

Danielle West-Chuhta, Esq. Corporate Counsel
City of Portland
389 Congress Street
Portland, Maine 04101
E-Mail: DWCHUHTA@portlandmaine.gov

[End of Page / Signature Page Follows]

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

J.B. Brown & Sons

City of Portland

By: _____
Vincent P. Veroneau
Its President

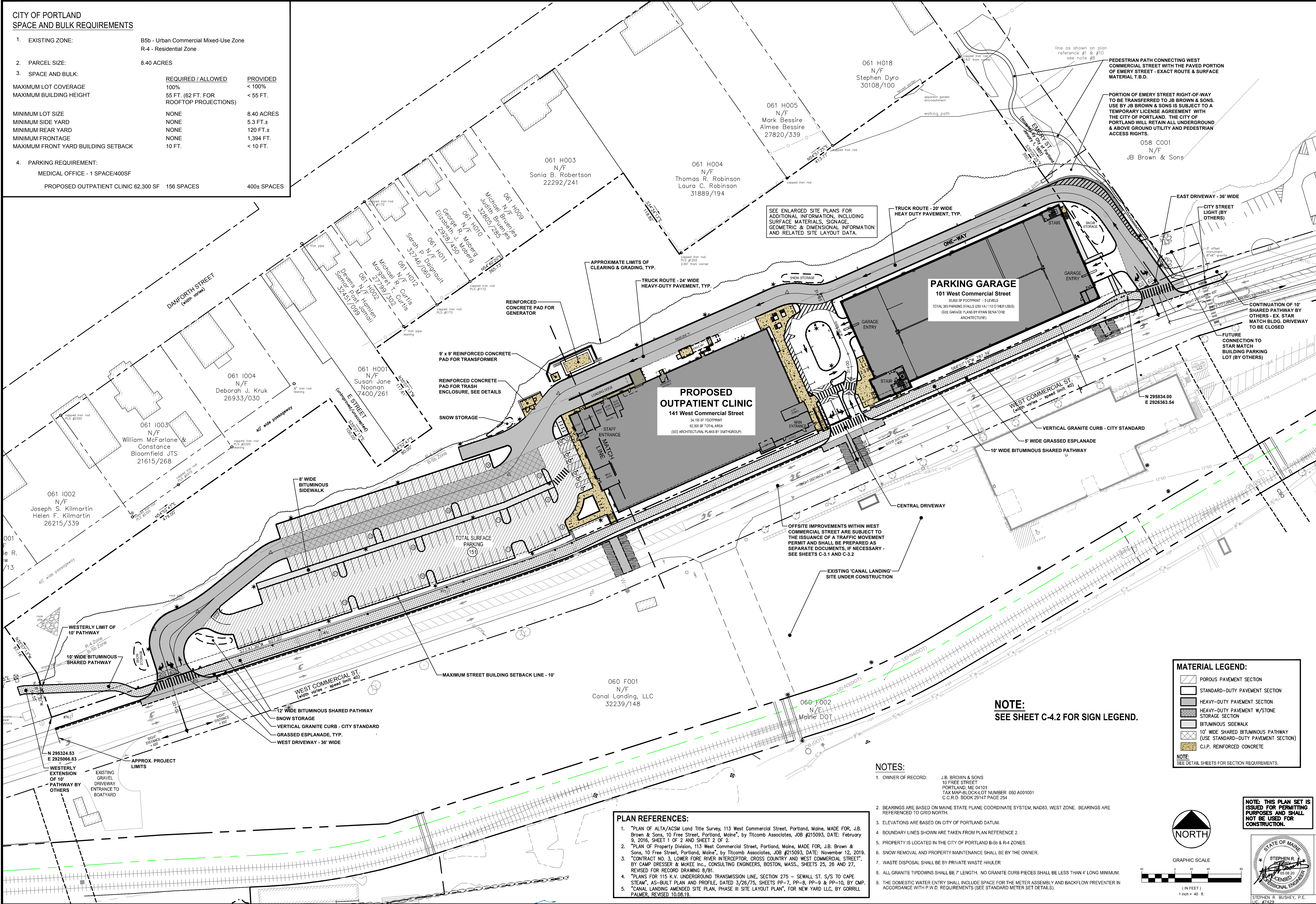
By: _____
Jon P. Jennings
Its City Manager

Approved as to Form: _____
Corporation Counsel

Approved as to Funds: _____
Finance Dept.

EXHIBIT A

[Depiction of Parcel 1]



U:\3572_VA Clinic West Commercial St-Portland, ME\Z - CAD\DWG\3572-SITE.dwg 5/8/2020 4:24 PM

EXHIBIT B

[Depiction of Parcel 2]

LINE	BEARING	DISTANCE
L1	S73°01'44"E	5.00'
L2	S10°22'12"W	112.69'
L3	N79°37'48"W	10.00'
L4	S28°08'12"W	89.53'
L5	N61°49'02"W	60.00'
L6	N28°08'12"E	89.49'
L7	N10°22'12"E	112.69'
L8	S79°37'48"E	10.00'
L9	N14°29'30"E	676.46'
L10	N14°10'00"E	247.57'
L11	N24°16'00"E	138.54'
L12	N74°38'20"E	166.21'
L13	N74°38'20"E	39.92'
L14	N44°03'16"E	65.77'
L15	N72°13'00"E	78.63'
L16	N7°53'19"E	205.92'
L17	S89°00'09"E	136.25'
L18	N77°30'51"E	11.61'

1. PLAN OF PROPERTY IN PORTLAND, MAINE MADE FOR J.B. BROWN & SONS PLAN SHOWING THE EXISTING R.R. LOCATION EXHIBIT A AND THE PROPOSED RELOCATION EXHIBIT B AT ROCKY HILL BY J.B. BROWN & SONS BY H.I. & E.C. JORDAN, SURVEYORS DATED AUGUST 1, 1979.
2. PLAN OF SUBDIVISION IN PORTLAND, MAINE MADE FOR J.B. BROWN & SONS BY H.I. & E.C. JORDAN, SURVEYORS DATED MARCH 27, 1981.
RECORDED IN PLAN BOOK 130, PAGE 43.
3. COMPOSITE PLAN OF J.B. BROWN & SONS PARCELS IN PORTLAND, MAINE, MADE BY H.I. & E.C. JORDAN, SURVEYORS DATED SEPT. 14, 1995, RECORDED IN PLAN BOOK 132, PAGE 10.
4. PLAN OF PROPERTY IN PORTLAND, MAINE, MADE FOR FIRST BAPTIST CHURCH OF PORTLAND BY H.I. & E.C. JORDAN, SURVEYORS DATED APRIL 1, 1986.
5. PLAN OF SURVEY FOR SELTZER & RYDHOLM BY E.C. JORDAN DATED 1981.
6. EXISTING CONDITIONS SURVEY ON ALLEN AVE., MAGNOLIA ST., PRINCETON ST. & MORRILL ST. EXTENSION, PORTLAND, MAINE MADE FOR VHB BY OWEN HASKELL, INC. DATED SEPTEMBER 20, 2001 REVISED THROUGH DECEMBER 16, 2003.
7. STANDARD BOUNDARY & TOPOGRAPHIC SURVEY AT 212 CANCO ROAD, PORTLAND, MAINE MADE FOR NELSON & SMALL DATED 2028, 1996, REV. 05-01-07 BY OWEN HASKELL, INC.
8. ALTA/CMS LAND TITLE SURVEY 212 & 250 CANCO ROAD PORTLAND, CUMBERLAND COUNTY, MAINE MADE FOR THE CITY OF PORTLAND BY OWEN HASKELL, INC. DATED JANUARY 25, 2016.
9. PLAN OF TRACK AT ROCKY HILL PORTLAND TERMINAL COMPANY DATED JANUARY 14, 1952 RECORDED IN PLAN BOOK 38, PAGES 16 & 17.

1. OWNER OF RECORD:
J.B. BROWN & SONS
TAX MAP 148 BLOCK A LOT 2
TAX MAP 150 BLOCK A LOTS 2, 3 & 8
TAX MAP 151A BLOCK A LOTS 14, 15, 16 & 22
PART OF TAX MAP 151A BLOCK A LOT 23
C.C.R.D. 3531/151, 4256/60, 4468/226, 4589/152,
4839/13, 12118/16

2. BEARINGS ARE BASED ON TRUE NORTH PER PLAN REFERENCE 2.

APPROVED BY THE
CITY OF PORTLAND PLANNING BOARD

SACOB

STREET C. O'BRIEN

CITY PLANNING DIRECTOR

pursuant § 19-496(c) of
Portland City Code

DATE

THIS PLAN AMENDS
"PLAN OF SUBDIVISION IN PORTLAND, MAINE MADE
FOR J.B. BROWN & SONS MARCH 27, 1981"
RECORDED IN
C.C.R.D. PLAN BOOK 130 PAGE 43

ON
QUARRY ROAD, PORTLAND, MAINE
MADE FOR RECORD OWNER
J.B. BROWN & SONS
10 FREE STREET, PORTLAND, MAINE

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

Drawn By	RRL	Date	Job No.
Trace By	JLW	FEBRUARY 26, 2016	2016-009 P
Check By	RRL	Scale	Drwg. No.
Book No.	1104	1" = 100'	1

STATE OF MAINE, CUMBERLAND, ss
 REGISTRY OF DEEDS
 RECEIVED March 22, 2016
 AT 10 hr. 29 min. Am AND RECORDED
 IN PLAN BOOK 2116, PAGE 83
Hayden
 ATTEST: _____
 REGISTER

SCALE : 1" = 100'



A horizontal scale bar with alternating black and white segments. It is marked with '0'', '50'', '100'', and '200'' at regular intervals.

▲	CAPPED 5/8" IRON ROD SET
●	MAG NAIL SET
○	IRON PIPE OR ROD FOUND
⊕	HYDRANT
○	UTILITY POLE
○	MANHOLE
⊙	CATCH BASIN
☀	LIGHT POLE
—	SIGN
⊗	ELECTRIC METER
⊗	BOLLARD
—	FENCE
—	OVERHEAD WIRES
—	WATER LINE
—	GAS LINE
—	SANITARY SEWER
—	RAILROAD TRACKS
N/F	NOW OR FORMERLY
000/000	DEED BOOK/PAGE
T/M	TAX MAP
P/O	PART OF
SP.	SPACES

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO WARRANTIES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES. CALL 1-888-DIGSAFE AT LEAST THREE BUSINESS DAYS BEFORE PERFORMING ANY CONSTRUCTION.

OWEN HASKELL, INC. HEREBY CERTIFIES THAT THIS PLAN IS BASED ON, AND THE RESULT OF, AN ON THE GROUND FIELD SURVEY AND THAT TO THE BEST OF OUR KNOWLEDGE, INFORMATION AND BELIEF, IT CONFORMS TO THE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS CURRENT STANDARDS OF PRACTICE, WITH THE EXCEPTION OF MARKERS NOT SET AT ALL CORNERS.

3/21/16
DATE

Randy R. Loubier
RANDY R. LOUBIER, PLS NO. 2407

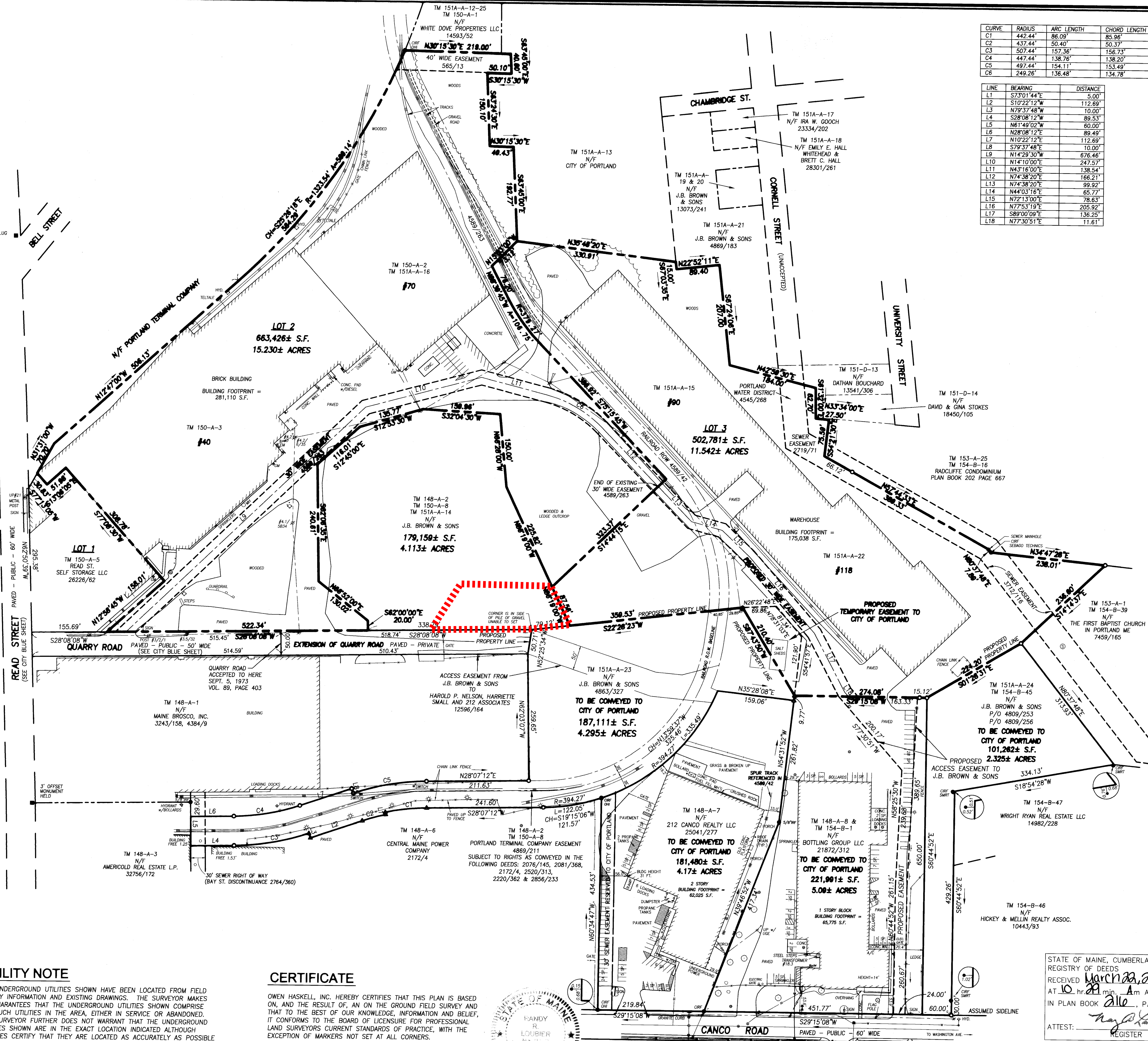
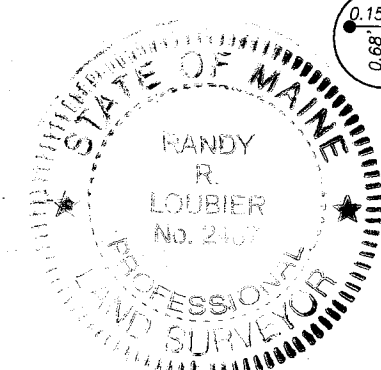
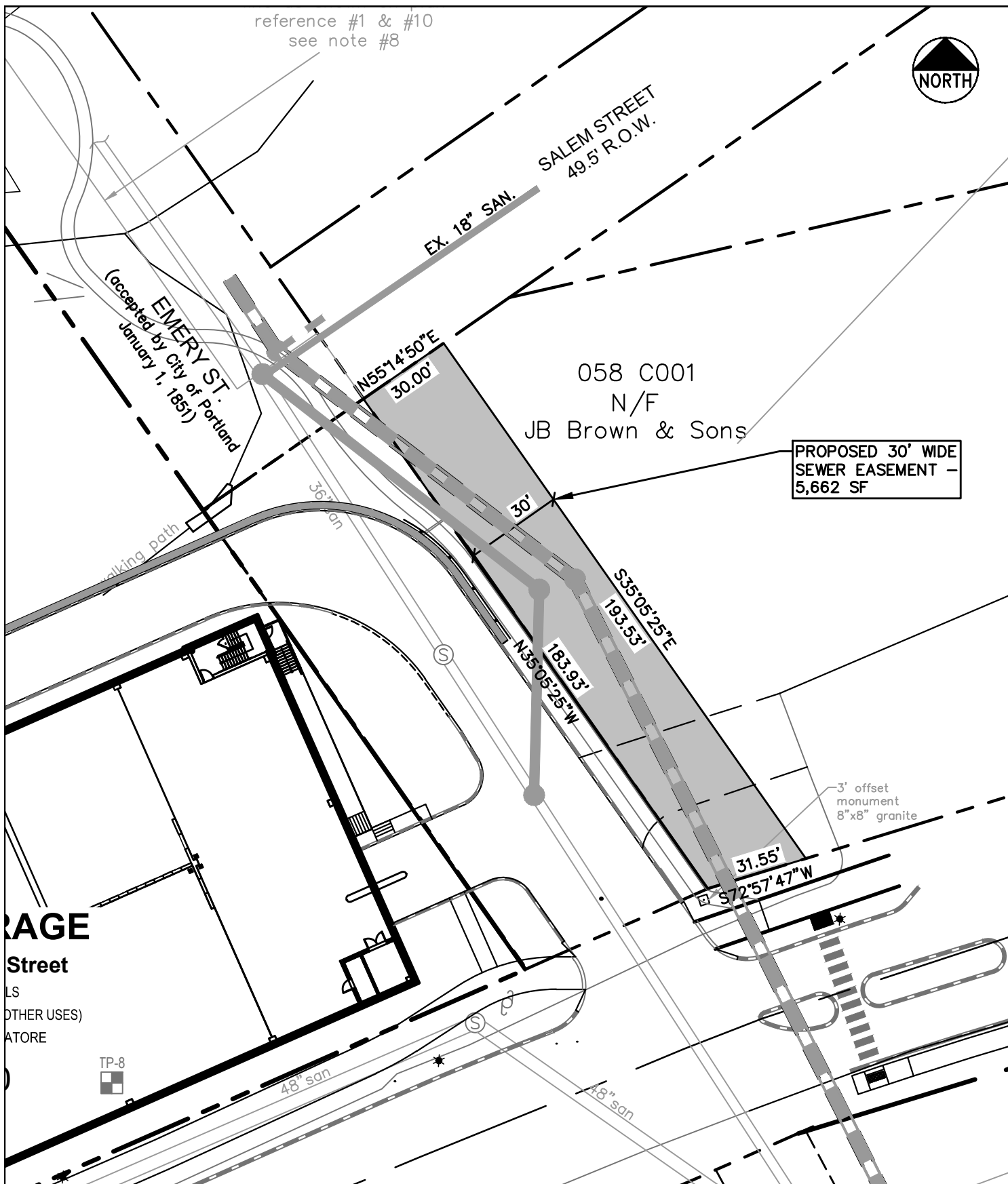


EXHIBIT C

[Depiction of 30' Easement Area]



PROPOSED 30' WIDE SEWER EASEMENT - LAND OF JB BROWN & SONS

VA Clinic, West Commercial Street, Portland, Maine

Design: SRB	Date: JUNE 2020
Draft: CDD	Job No.: 3572
Checked: SRB	Scale: 1" = 40'
File Name: 3572-UTILITY.dwg	



Relationships. Responsiveness. Results.
www.gorrillpalmer.com
207.772.2515

EXHIBIT
A

EXHIBIT D

[30' Sewer, Stormwater, and Access Easement Deed]

EASEMENT DEED

KNOW ALL PERSONS BY THESE PRESENTS, that **J.B. BROWN & SONS**, a Maine corporation, with a mailing address of 10 Free Street, P.O. Box 207, Portland, Maine 04112-0207, (“Grantor”) in consideration of One Dollar (\$1.00) and other valuable consideration paid by the **CITY OF PORTLAND**, a body politic and corporate with a mailing address of 389 Congress Street, Portland, Maine 04101 (“Grantee”), does hereby grant, with quitclaim covenants, to the said City of Portland the certain easements and rights of way described below, and on, over, under, through, and across the real property described in Exhibit A attached hereto, and shown on the sketch attached hereto as Exhibit B (the “Easement Area”), both incorporated herein by reference.

An easement and right of way for the purpose of, and conveying the right, but not the obligation, to enter the Easement Area with workers, equipment, and vehicles, and to construct, install and perpetually maintain on, under, through, and across the Easement Area, conduits and/or pipelines, together with all necessary fixtures and appurtenances, for retaining, channeling, or conveying storm water, sewer water, and other underground utilities; together with the right, but not the obligation, to lay, relay, replace, repair, maintain, clean, and remove said conduit and/or pipelines and related fixtures and appurtenances; together with the right, but not the obligation, at all times to make connections with said utility systems on land, other than Grantor’s land, adjoining said easement by means of pipes or other services; and together with the right, but not the obligation, to trim, cut down and remove trees, bushes, and other vegetation of all kinds, to remove debris and deposits of any kind to such extent as Grantee determines is reasonably necessary or appropriate for any of the above purposes; and to enter upon said Easement Area at any and all times for any of the foregoing purposes.

The Grantee also hereby agrees as follows:

- (a) Grantee shall be responsible for any damage caused to any portion of the Grantor’s land, the improvements thereon or its contents arising from its use of its Easement Area rights.
- (b) Any materials used or debris generated by Grantee, its agents, licensees, invitees or employees in the exercise of its use of the Easement Area will be cleaned and removed no less frequently than daily, except for any

temporary staging or similar apparatus used in the proper exercise of Grantee's rights under this Easement Deed.

- (c) Grantee shall not deposit or scatter or allow the depositing or scattering of any type of waste, broken equipment, used cans or containers, or other debris, but shall keep the Easement Area free and clear of all such refuse.
- (d) All work done in the exercise of the Easement Area, shall be in accordance with all federal, state and local laws, with all applicable permits and approvals having been obtained by the Grantee doing the work in advance of any such work.
- (e) All work done in connection with the easements herein granted shall be in a safe manner and in such a manner as not to pose a health or safety risk to either the Grantor or the Grantee, and their respective invitees, licensees, guests and the like, or to the public.
- (f) All work done in connection with the easements herein granted shall be done with minimal interference with the business of the Grantor and its tenants, invitees, licensees, guests, customers, clients and the like.
- (g) Any and all destruction of, damage to, or disturbance of the Easement Area shall be repaired, replaced or restored to its original condition at the sole cost of Grantee.
- (h) Grantor shall not be liable to Grantee for any cost, damages, liabilities, losses or expenses relating to or arising from Grantee's use of the Easement Area, except to the extent that such cost, damages, liabilities, losses or expenses are caused by Grantor's negligent act or omission.

Grantor hereby reserves the right to use the Easement Area for any purposes it shall deem appropriate, provided that such use shall not interfere with Grantee's use of the Easement Area. In clarification of the foregoing, nothing contained herein shall preclude Grantor from (i) constructing within the Easement Area, parking spaces, driveways, lighting fixtures, utilities, drainage lines, landscaping and similar improvements, and the use thereof, or (ii) using the surface and subsurface of the Easement Area for other utility easements, so long as such uses described in clauses (i) and (ii) do not materially interfere with the easement rights herein granted; provided, however, that prior to making any such improvements, Grantor shall submit any plans to make such improvements to Grantee for its written approval, which approval will not be unreasonably delayed, withheld, or conditioned by Grantee.

Grantee, on behalf of its contractors, subcontractors, guests and invitees, agrees that its use and occupancy of the Easement Area in accordance with the terms and conditions of this Easement Deed is at Grantee's own risk, and Grantee hereby releases Grantor from all claims for any damages, injury or death arising therefrom by Grantee or Grantee's contractors,

subcontractors, guests and invitees, except to the extent that such claims are caused by Grantor's negligent act or omission.

Grantor, at its sole option and upon sixty (60) days prior written notice to Grantee, has the right to relocate the Easement Area and the storm water, sewer water, and any other utility lines, fixtures, and appurtenances located therein, provided, however, that said relocated easement area shall be on the Grantor's land, and Grantor shall be responsible for the cost and expense associated with the relocation, design, and reconstruction of Grantee's sewer, storm water, and other utility lines, fixtures, and appurtenances in the relocated easement area in accordance with Grantee's specifications and requirements.

By acceptance of this Easement Deed, Grantee hereby agrees to the terms and conditions of the easements herein granted.

[End of Page / Signature Page Follows]

IN WITNESS WHEREOF, the said J.B. BROWN & SONS has hereunto caused this instrument to be signed by Vincent P. Veroneau, Its President, duly authorized, this _____ day of _____, 2020.

WITNESS:

J.B. BROWN & SONS

By: _____

Vincent P. Veroneau

Its President

STATE OF MAINE
CUMBERLAND, ss.

_____, 2020

Personally appeared the above-named Vincent P. Veroneau in his capacity as President of J.B. Brown & Sons and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of J.B. Brown & Sons.

Before me,

Notary Public/Attorney-at-Law

Print Name

Exhibit A

EXHIBIT E
[License Agreement For Parcel 1]

REVOCABLE LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this “Agreement”) is made this ____ day of June, 2020 (the “Effective Date”), by and between the **CITY OF PORTLAND**, a Maine municipal corporation with a place of business in Portland, Maine (“Licensor” or “City”) and the **J.B. BROWN & SONS**, a Maine corporation with offices in Portland, Maine (“Licensee”).

WHEREAS, Licensor is the current owner of that certain portion of an approximately 60-foot wide public right of way identified as Emery Street (the “City Property”) as shown on that certain plan entitled “Site Layout Plan – East Side, U.S. Department of Veterans Affairs—Community Based Outpatient Clinic,” prepared by Gorrill Palmer and dated Nov. 2019 (the “Plan”);

WHEREAS, Licensee is the abutting owner on both sides of the City Property as shown on the Plan (“JBB Property”); and

WHEREAS, subject to approval by the Portland City Council, Licensor intends to discontinue the City Property (i.e., that certain portion of Emery Street as shown on the Plan to be discontinued) and being more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the “License Area”), in exchange for certain land owned by Licensee on Quarry Road in Portland, Maine, which land swap will be evidenced by a certain Land Exchange Agreement of near or even date herewith; and

WHEREAS, until License Area is discontinued by Licensor, or until this Agreement is otherwise terminated, Licensor intends to allow Licensee to use License Area for the purposes set forth below in accordance with the terms and conditions of this Agreement; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I. TERM: This License shall commence on the Effective Date and terminate upon the earlier of (i) the City Council’s approval of the discontinuance of the City Property and the recording of a certificate of discontinuance in the Cumberland County Registry of Deeds, or (ii) an Event of Revocation, as that term is defined below.

ARTICLE II. PERMITTED USES: Licensor hereby grants to Licensee, together with its lessees, agents, contractors, subcontractors, visitors and invitees, the right to use the License Area for pedestrian and vehicular access to the JBB Property and all uses depicted on the Plan within the License Area; *provided, however*, that said use by Licensee does not interfere with Licensor’s use of the License area for (i) public ingress and egress by pedestrians, bicycles, and other non-motorized pedestrian uses and (ii) underground, on-ground, and above ground utilities.

ARTICLE III. ASSIGNMENT: This License is assignable to any subsequent owners of the property depicted on the Plan, and in the event of such assignment, Licensee shall notify the City of such assignment no fewer than 10 days prior to the effective date of such assignment.

ARTICLE IV. NOTICES: Any notices required or permitted to be given hereunder will be given in writing, signed by the party giving the same, and will be delivered (a) in person, (b) by a commercial overnight courier that guarantees next business day delivery and provides a receipt, or (c) by electronic mail (with Request a Read Receipt), and such notices will be addressed as follows:

Licensor at: **City of Portland**
389 Congress Street
Portland, Maine 04101

Licensee at: **J.B. Brown & Sons**
10 Free Street, Suite 100
Portland, Maine 04112

ARTICLE V. INDEMNITY: To the fullest extent permitted by law, Licensee shall defend, indemnify and hold the Licensor, 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, just or unjust, that arise out of or are caused by the any act or omission of Licensee, its partners or members, agents, invitees, 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. Licensee's obligations under this paragraph shall survive the termination of this License.

ARTICLE VI. INSURANCE: Prior to the execution of this Agreement, the Licensee 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;
- Occurrence-based Automobile 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 Automobile and Commercial General Liability Insurance, the Licensee shall name the Licensor as an additional insured for coverage only in those areas where government immunity has been expressly waived, including, without limitation, as set forth in 14 M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of

any defenses, immunities or limitations of liability or damages available to the Licensor 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 Licensor. Prior to execution of this Agreement, the Licensee shall furnish the Licensor and thereafter maintain certificates evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice to the Licensor of termination of insurance from the insurance provider or agent. Licensee shall also provide a copy of any endorsement naming the Licensor as additional insured. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees. Upon Licensor's request, Licensee shall provide Licensor with a complete copy of any of the above-referenced policies. Licensee 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). Licensor's acceptance or lack of acceptance of Licensee's Certificate of Insurance or other evidence of insurance shall not be construed as a waiver of the Licensee's obligation to obtain and maintain such insurance as required by this agreement. If the Licensee maintains broader coverage and/or higher limits than the minimum shown above, the Licensor requires and shall be entitled to the broader coverage and/or higher limits maintained by the Licensee.

ARTICLE VII. RELEASE: Licensee hereby releases the Licensor and its officers, agents and personnel (collectively, the "Releasees") from any and all claims, liabilities, damages, losses, costs, fees and expenses arising out of or resulting, directly or indirectly, from Licensee's use of any City Property, including, without limitation, injuries, losses and damages for bodily injury (including disability or death) and property damage, regardless of cause, including any and all claims, damages and liabilities that arise out of or result from any actions or omissions, including negligence, on the part of any of the Releasees. Licensee promises not to sue any of the Releasees with respect to any such claims or liabilities. This waiver and release is intended to be as broad as the law allows and shall survive termination of this agreement.

ARTICLE VIII. MAINTENANCE, RESTORATION. Licensee shall be responsible for the proper maintenance of any improvements it makes in the Licensed Area. In the event of damage to such improvements and/or the Licensed Area, Licensee shall promptly repair/restore the same. Prior to such repair/restoration, Licensee shall notify the City (in writing and by telephone) at least forty-eight hours before it plans to conduct such repair or restoration and shall work with City staff on the closure, if needed, of any City streets in the vicinity of the property in order to conduct such repair/restoration. All work performed upon and use of the Licensed Area for the purposes set forth herein shall be at Licensee's sole cost and expense (unless otherwise agreed in writing), the parties acknowledging that there may be temporary interruptions in enjoyment of the City's property adjacent to the Licensed Areas related to the conduct of any work related to this License. Licensee agrees at its sole expense to restore any portion of the Licensed Areas and adjacent City property affected by work conducted by Licensee under this License to substantially the same condition that it was in prior to such work or as close to that condition as is reasonably practicable. The City also acknowledges and agrees that during the construction of the buildings and development contemplated by the Plan, public ingress and egress by pedestrians, bicycles, and other non-motorized pedestrian uses may be interrupted and not available within the License Area; provided, however, that

during any such interruption, Licensee shall provide a temporary detour for such ingress and egress on Licensee's property abutting the Licensed Area.

ARTICLE IX. CITY UTILITIES. Licensee agrees that City may enter and utilize the Licensed Area at any time for the purpose of installing, repairing, replacing, or maintaining improvements to its public facilities or utilities necessary for the health, safety and welfare of the public or for any other public purpose. City shall bear no responsibility or liability for any damage or disruption or other adverse consequences resulting from any improvements installed by Licensee, but City will make reasonable efforts to minimize such damage. In the event that any installation, reinstallation, relocation or repair of any existing or future utility or improvements owned by, constructed by or on behalf of the public or at public expense is made costlier by virtue of the construction, maintenance or existence of Licensee's improvements and use, Licensee shall pay to City an amount equal to such additional cost as reasonably determined by the Director of Public Works or said Director's duly authorized representatives.

ARTICLE X. REVOCATION. Licensor may revoke this License six (6) months after receipt by the Licensee of written notice that an Event of Revocation (as defined below) has occurred, identifying such Event of Revocation, provided that such Event of Revocation is not cured within six (6) months after Licensee's receipt of such notice, except as set forth in subsection (d) below. "Event of Revocation" shall mean:

- a. Licensee's non-compliance with any of the terms of this Agreement;
- b. the building shown on the Plan fails to be constructed substantially in accordance with the Plan or any amendments thereto;
- c. the building as shown on the Plan is destroyed, removed or otherwise thereafter ceases to exist on Licensee's property and construction to rebuild said building has not begun within twelve (12) months of said destruction or removal, or
- d. failure to maintain insurance as required under Section 6 above, and such failure is not remedied within thirty (30) days after written notice thereof.
- e. Licensee's breach of the Land Exchange Agreement between the parties of near or even date herewith.

Notwithstanding any other provision herein, in the event that a notice of an Event of Revocation is delivered to Licensee, any mortgagee of Licensee's property shall be entitled to cure the matter set forth in such notice within the time frames set forth above, and the City agrees to accept such performance by any such mortgagee of Licensee's obligations hereunder.

ARTICLE XI. NO PROPERTY RIGHTS. This instrument is a license only and no provision hereof shall be construed as conveying an easement or other estate in land.

ARTICLE XII. MISCELLANEOUS: This License sets forth the entire agreement of the parties with respect to the subject matter hereof. Any changes to this License shall be approved in writing, signed by all of the parties. No provision of this License shall be deemed to have been waived unless the event giving rise to such waiver has occurred, and unless such waiver is in writing. No such waiver shall be deemed to be a waiver of any other or further similar or dissimilar obligation or liability of the party or parties in whose favor the waiver was given. This License shall be governed by the laws of the State of Maine.

Signature page follows.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the day and year first above mentioned.

WITNESS:

CITY OF PORTLAND

By: _____
Jon P. Jennings
Its City Manager

“Licensor”

WITNESS:

J.B. BROWN & SONS

By: _____
Vincent P. Veroneau
Its President

“Licensee”

STATE OF MAINE
CUMBERLAND, ss.

_____, 2020

Then personally appeared the above-named Jon P. Jennings, City Manager of the City of Portland, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

Notary Public/Attorney at Law

STATE OF MAINE
CUMBERLAND, ss.

_____, 2020

Then personally appeared the above-named Vincent P. Veroneau, President of J.B. Brown & Sons, as aforesaid, and acknowledged the foregoing to be his free act and deed in his said capacity, and the free act and deed of said corporation.

Before me,

Attorney-at-Law/Notary Public

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: May 21, 2020

SUBJECT: **Order 203-19/20 Designating the 104 Grant Street Affordable Housing District and Tax Increment Financing District and Adopting the Municipal Development Program for the District - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair**

SPONSOR: Jill C. Duson, Chair of the Housing Committee
Justin Costa, Chair of the Economic Development Committee

(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 6/1/2020

Final Action 6/15/2020

Can action be taken at a later date: No (If no why not?)

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

Mary Davis, Housing and Community Development Division Director will be available for questions.

I. SUMMARY

Watson Renewal Grant LLC is proposing to construct twenty-three (23) condominium units at 104 Grant Street. The project will include one (1) two-bedroom and twenty-two (22) one-bedroom condominiums. Fifty-two percent (52%) or a total of twelve (12) of the twenty-three units, will be available for sale as workforce housing, affordable to households at 120% of the area median income. The remaining eleven (11) units will be moderately priced as compared to the average condominium sales price on the Portland peninsula market rate. The developer is requesting financial assistance through the creation of an Affordable Housing Tax Increment Financing District.

II. AGENDA DESCRIPTION

At a meeting held on May 5, 2020, the Economic Development Committee (4-0) voted to forward this item to the City Council with a recommendation for passage.

Under the terms of a Purchase and Sale Agreement between the City of Portland and Tom Watson & Co., LLC, related to the city sale of 82 Hanover Street, the buyer's post-closing obligations required construction of at least 23 units at property located at 104 Grant Street. Watson Renewal Grant LLC (WRG) is a partnership formed to meet that obligation. WRG is proposing to construct 23 condominium units on the 104 Grant Street site and is requesting financial assistance from the City in the form of an Affordable Housing Tax Increment Financing District and Credit Enhancement Agreement to assist with the cost of construction of the project.

The development district will include 23 units of workforce housing. The project will include 1 two-bedroom and 22 one-bedroom condominiums. Fifty-two percent (52%) or a total of twelve of the twenty-three units, will

be available for sale as workforce housing affordable to households at 120% of the area median income. The units will have affordability restrictions through the Affordable Housing TIF Program, MaineHousing's Subdivision Grant Program and the City's Inclusionary Zoning Ordinance. The units will range in size from 498 to 760 square feet. The sale price of the units will range from approximately \$203,000 to \$355,000. Twelve units will be priced below \$260,000 with eight of those units priced at \$203,064.

This Project has received City Planning Board approval.

If approved, the Affordable Housing Tax Increment Financing will be provided through a Credit Enhancement Agreement that would return to the developer their actual costs paid on annual Project debt service based upon an annual maximum 75% capture rate for upwards of thirty (30) years with a total captured revenue cumulative "cap" or maximum. The cap would be the total cumulative TIF CEA payment amount equal to the total actual debt service cost. When the cap is reached the TIF CEA expires. Currently, 75% of the increased taxable value for 30 years is estimated at a 30-year annual average of \$91,649. The new assessed value is estimated at \$4.419 million which will yield \$3.99 million in increased annual assessed property value. The property has a current taxable value of \$419,600. Total development costs are estimated at \$6.5 million. At full build out the development district is projected to pay an annual average of \$122,199 in new taxes, of which an estimated \$30,550 (30-year annual average) will be non-captured general fund revenue. In addition, the city will continue to receive general fund revenues of \$13,472 (30-year annual average) on the original assessed value of the property.

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

III. BACKGROUND

The financial analysis for this Project found that the Project is unlikely to proceed with the inclusion of 12 units of affordable worker housing without the AHTIF CEA under the requested terms.

The City Council must (1) Authorizing the creation of the AHTIF district; and (2) approve the Credit Enhancement Agreement.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Establish an Affordable Housing Tax Increment Financing District to support the development of 23 condominium units.

Increase access to home ownership housing that is safe and affordable and accessible for working individuals and families.

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

The Housing and Community Development Division works with an independent consultant who performs third party underwriting reviews of all requests for City funding (local and federal resources), including Affordable Housing Tax Increment Financing requests. The financial analysis for this Project found that the Project is unlikely to proceed without the TIF CEA under the requested terms. A copy of the analysis is attached. Tax increment financing requests are reviewed by the Economic Development Committee with the Housing

Committee weighing in on affordable housing TIF requests.

The Economic Development Committee and the Housing Committee held a joint meeting on March 4, 2020 to review this request. At a meeting held on May 5, 2020, the Economic Development Committee (4-0) voted to forward this item to the City Council with a recommendation for passage.

VII. RECOMMENDATION

Staff is requesting City Council (1) approve the establishment of the 104 Grant Street Affordable Housing TIF District, (2) approve a Credit Enhancement Agreement with Watson Renewal Grant LLC and (3) authorize the City Manager, or his designee, to sign and submit to MaineHousing for approval, the documents to establish the district, in substantially the same form as enclosed.

VIII. LIST ATTACHMENTS

1. Designating 104 Grant Street Affordable Housing TIF 6.1.2020
2. Project Information for Council Packet
3. DEV PROG 104 Grant St Clean for Council 060420
4. Dec of Cov 104 Grant St Clean for Council 060420

Prepared by:

Mary Davis, Division Director

Date: 5/21/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER DESIGNATING THE 104 GRANT STREET AFFORDABLE HOUSING
DEVELOPMENT DISTRICT AND
TAX INCREMENT FINANCING DISTRICT AND ADOPTING THE
MUNICIPAL DEVELOPMENT PROGRAM FOR THE DISTRICT**

WHEREAS, the City of Portland is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as an Affordable Housing Development Tax Increment Financing District, and to adopt a Development Program for such District; and

WHEREAS, there is a need for affordable housing in the City of Portland and the surrounding region; and

WHEREAS, Watson Renewal Grant LLC intends to construct certain improvements within the 104 Grant Street Affordable Housing Development Tax Increment Financing (“TIF”) District, including twenty-three (23) condominium units of which fifty-two percent (52%) or a total of twelve (12) of the twenty-three (23) units, will be available for sale as workforce housing, affordable to households at 120% of the area median income.

WHEREAS, the City of Portland will utilize 25% of the tax revenues generated in the District in its General Fund; and

WHEREAS, there is a need to provide continuing affordable housing opportunities for the workforce of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

WHEREAS, the 104 Grant Street Affordable Housing Development TIF District will help improve and broaden the tax base in the City of Portland; and improve the economy of the City of Portland and the State of Maine; and

WHEREAS, the City has held a public hearing on the question of establishing the District in accordance with the requirements of 30-A M.R.S.A. § 5223, upon at least ten (10) days prior notice published in a newspaper of general circulation within the City; and

WHEREAS, the City desires to designate the 104 Grant Street Affordable Housing Development and Tax Increment Financing District and adopt a Development Program for such District; and

WHEREAS, the City Council has considered the comments provided at the public hearing, both for and against the designation of the 104 Grant Street Affordable Housing Development TIF District, if any; and

WHEREAS, it is expected that approval will be sought and obtained from the Maine State Housing Authority, approving the designation of the 104 Grant Street Affordable Housing Development TIF District and Development Program for the District;

NOW THEREFORE BE IT HEREBY ORDERED BY THE CITY COUNCIL AS FOLLOWS:

That, under and pursuant to the provisions of Title 30-A, Chapter 206, Subchapter 3 of the Maine Revised Statutes as amended, the development program and financial plan entitled “104 Grant Street Affordable Housing Development District” as presented to this meeting and a copy of which is hereby incorporated herein by reference and as part of the minutes of this meeting, is hereby approved in substantially the form as presented as the Development Program for the District and for the reasons set forth therein, the City, after considering whether the District and the Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City and whether any detriment to any existing property interest in the City, finds and determines that: designation of the District and pursuit of the Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants, and the City further makes the other findings and determinations as set forth in said Development Program and the Exhibits thereto; and

BE IT FURTHER ORDERED, that the area of the City of Portland entitled “104 Grant Street Affordable Housing Development District” as more particularly described in said Development Program is hereby designated as an affordable housing development district and such designation shall automatically become final and shall take full force and effect upon receipt by the City of approval of the District by the Director of the Maine

State Housing Authority, without the requirement of any further action by the City, the Municipal Officers or any party; and

BE IT FURTHER ORDERED, that the percentage of increased assessed value of said District to be retained as captured assessed value in accordance with the Development Program is hereby established as set forth in the Development Program and Financial Plan; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized and directed, on behalf of the City of Portland, Maine to execute and submit to Director of the Maine State Housing Authority for approval such applications and further documentation as may be necessary or appropriate for final approval and establishment of the “104 Grant Street Affordable Housing Development District” and its Development Program and Financial Plan pursuant to 30-A M.R.S.A. Chapter 206, Subchapter 3; and the City Manager be, and hereby is, authorized and empowered, at his discretion, from time to time, to make such technical revisions to the Development Program for the District as he or she deems reasonably necessary or convenient in order to facilitate the process for review and approval of the District by the Director of the Maine State Housing Authority, so long as such revisions are not inconsistent with this Order or the basic structure and intent of the Development Program; and

BE IT FURTHER ORDERED, that the City’s Planning and Urban Development Director is authorized to submit annual reports on the status of the “104 Grant Street Affordable Housing Development District” on behalf of the municipal legislative body; and

BE IT FURTHER ORDERED, that upon approval of the Director of the Maine State Housing Authority, the City Manager is hereby authorized and directed on behalf of the City of Portland to execute and deliver a Credit Enhancement Agreement substantially in the form attached to the Development Program hereby approved, with such changes thereto as deemed appropriate by the City Manager.

104 Grant Street

EXECUTIVE SUMMARY

Watson Renewal Grant LLC (“WRG”), a partnership consisting of Tom Watson and Renewal Housing Associates LLC (collectively, the “Sponsors”), proposes to redevelop 104 Grant Street (the “Property”) into 23-units of homeownership workforce housing (the “Project”). The project will consist of 1 two-bedroom and 22 one-bedroom condominiums ranging in size from 500 SF to 750 SF. Eight (8) of the 23 units will be regulated under the City of Portland’s Inclusionary Zoning ordinance and the State of Maine’s Affordable Housing Tax Increment Financing Statute 30-A MRSA Sec 5247. An additional four (4) units will be regulated under the Maine State Housing Authority’s Subdivision Grant Program. The remaining units will be sold without deed restrictions. The prices for the ‘conventional’ units are projected to be below the average sales price for condominium units sold on the Portland peninsula.

The Sponsors’ goals for the Project are two-fold; one, ***to provide high quality homeownership opportunities to first-time homebuyers and middle-income Portland residents***. Second, ***to strengthen the Parkside neighborhood by increasing the number of owner-occupied housing units***.

The Project’s total development costs are projected to be \$6,495,000. The Sponsors will finance the acquisition and development of the Project with a combination of conventional construction financing and public subsidy. Specifically, WRG will raise ***\$5,175,000 in private funds*** through a traditional construction loan, private capital and a deferment of Sponsor sale proceeds and fees.

WRG will also generate \$1,320,000 in funding through the Maine’s Affordable Housing Tax Increment Financing program and Maine Housing’s Subdivision Grant Program. Specifically, under this application, the Sponsors are seeking to establish an AHTIF District in order ***to utilize 75% of the incremental tax revenue generated by the new condominium units to repay principal and interest on a \$1,050,000 loan (the “AHTIF Loan”), the proceeds of which will be used to construct the building***. A detailed schedule of the Project’s sources and uses is provided below. Attached as Exhibit A is an AHTIF Schedule.

SOURCES

Construction Loan	4,250,000
AHTIF Loan	1,050,000
Additional Sub Debt	270,000
Seller Note	215,000
Deferred Developer Fee Note	215,000
Sponsor Equity	495,000
Total	6,495,000

USES

Acquisition	405,000
Hard Costs	4,850,000
Soft Costs	907,000
Financing Costs	333,000
Total	6,495,000

PUBLIC BENEFITS

The Project will achieve a number of public benefits;

- ***Redevelop a non-conforming commercial building located in a residential neighborhood***

The Property currently consists of a vacant, single-story building that is non-conforming for both use and space (setbacks) for properties in the R6 Zone. The proposed building will meet current building codes, zoning and site plan requirements for new construction multifamily properties.

- ***Address an area of significant need within the Portland housing market; homeownership opportunities that are affordable to small, middle income households. Consider the following regarding the Portland market;***

- *More than 56% of all households are Non-Family and more than 40% consist of a single individual*
- *Middle-income (100% to 120% AMI) 1 and 2-person households earn between \$65,000 and \$90,000*
- *Middle-income households can generally afford homes priced between \$200,000 and \$300,000*
- *The average sales price of a condo on the Portland peninsula is \$440,000 (median = \$358,000)*

The Project will create 23 units of housing with estimated prices ranging from \$190,000 to \$355,000, with a projected average sales price below \$265,000.

- ***Preserve long-term affordability through deed restrictions***

The Project will create i) 8 units that are regulated under Portland's IZ ordinance and deed restricted to remain affordable to households at 110% AMI for a period of 30 years and ii) 4 additional units regulated under Maine Housing's Subdivision Grant Program and deed restricted to remain affordable to households at 120% AMI for a period of 10 years.

- ***Strengthen the Parkside Neighborhood***

The Parkside Neighborhood has traditionally had one of the highest concentrations of non owner-occupied properties in Portland. In addition, relative to other intown neighborhoods, Parkside has experienced a limited amount of investment to create new housing units – particularly serving the homeownership market.

The Project will in result in a direct investment in Parkside of more than \$4.8M and create 23 new homeownership opportunities in the neighborhood.

- ***Generate a high level of property tax revenue for the City of Portland's General Fund relative to other redevelopment scenarios***

Currently, 104 Grant generates less than \$10,000 in annual property taxes. If the Property is redeveloped as ***market rate rental housing***, it will produce approximately \$45,000 in taxes per year. Under the Sponsors' homeownership model, the Project will generate enough tax revenue to finance a \$1,050,000 AHTIF loan to pay for construction costs – ***and***, still contribute \$35,000 in annual tax revenue to Portland's General Fund.

Therefore, the net cost to Portland taxpayers to support a workforce homeownership development versus a market rate rental project is approximately \$10,000 per year.

SPONSOR INFORMATION

Tom Watson is the current owner of 104 Grant Street. In 1993, Tom started Port Property Management, a residential rental apartment management company based in Portland. Today, the company operates 65 rental properties, representing more than 1,300 apartments in the greater Portland market – with a high concentration of units located on Portland peninsula. The company prides itself on helping to stabilize and revitalize Portland’s downtown residential neighborhoods through professional, hands-on management and continuous investment in its real estate portfolio.

In addition to acquiring and upgrading existing rental properties, Tom has been involved in two major downtown housing development projects in Portland; i) The Hiawatha, 139 units of rental housing developed at Longfellow Square and ii) 117 Lofts, an historic restoration and conversion of the former Schlotterbeck & Foss office building into 56 units of rental housing serving the Bayside neighborhood.

Renewal Housing Associates LLC (“Renewal”) is a multifamily housing development company based in Portland, Maine. Renewal’s primary focus is renovating legacy affordable housing properties that require capital improvements and long-term use restrictions. The company also develops for-sale, infill housing projects targeting middle income and first-time homebuyers. Renewal’s principals are specialist in obtaining federal, state and local resources to create and preserve affordable and workforce housing. Since 2001, Renewal has invested more than \$275M to preserve and create more than 2,800 units of affordable housing in seven states and the District of Columbia.

In Portland, Renewal’s principals have completed two innovative urban infill projects—West Port Lofts and Onejoy—similar in scope and mission to the project proposed for 104 Grant Street. In each of these previous developments, blighted and non-conforming West End properties were acquired and redeveloped to create for-sale workforce housing serving middle-income households and first-time homebuyers. At Onejoy, Renewal successfully developed and sold the first for-sale Workforce Housing unit regulated under Portland’s Inclusionary Zoning Ordinance.

Renewal is majority-owned by **Leon N. Weiner & Associates Inc. (“LNWA”)**, a Delaware-based, fully integrated multifamily housing and real estate development company. Founded in 1949, LNWA and its affiliates have developed over 15,000 apartments and homes. Today, the company operates more than 6,900 housing units located in ten states and the District of Columbia. The company has extensive experience developing affordable, market rate and mixed-income housing serving both the for-sale and rental markets.

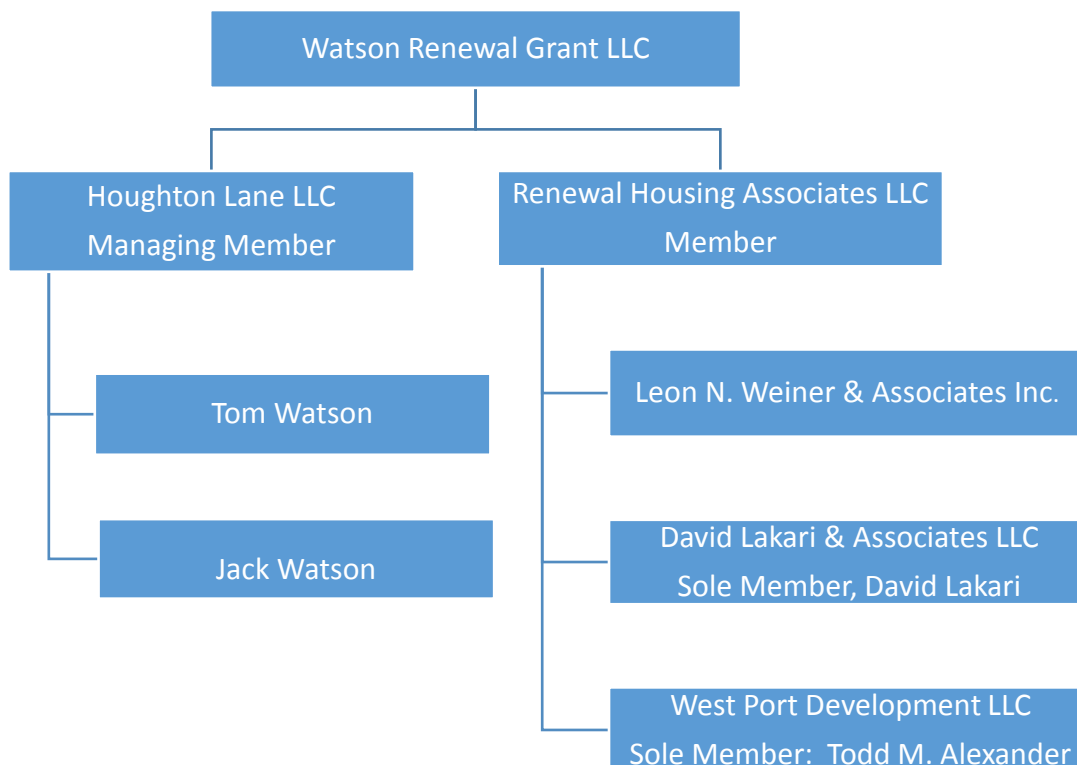
LNWA is mission-driven housing company. Each housing development, in which the company is involved has an affordability component. The company founder and namesake, Leon N. Weiner, was a tireless advocate for and national leader in the development of housing to serve people of all income levels. During Leon’s prodigious career, he was named Housing Person of the Year by the National Housing Conference and the Fair Housing Person of the Year by the United State Department of Housing and Urban Development. Leon served on President Lyndon Johnson’s Kaiser Commission on Urban Housing, which led to the cornerstone Housing Act of 1968. He was a Director for the Federal Home Loan Bank and President of the National Association of Home Builders. In 1979, Leon was inducted in the National Association of Home Builders’ Housing Hall of Fame, where he was recognized as “...***the conscience of the housing industry in America....***”

104 Grant Street

Our Approach: Renewal’s principals recognize every project has a unique set of characteristics and stakeholders. Ultimately, our job is to identify the stakeholders and their goals—and then marry these goals with the condition and circumstance surrounding a specific site or development. We view each project as a partnership—between owners, developers, municipal officials, neighborhood groups, investors, contractors and, ultimately, our residents. Our approach distinguishes us from other developers and owners; we value the opportunity to work on a diverse team with disparate goals, and we are comfortable serving in different capacities, ranging from traditional developer-owner to joint-venture partner. Most importantly, as part of a company that has been developing real estate since 1949, our primary focus is to find opportunities to work with people and organizations that are committed to the things that we believe define successful real estate development projects; ***a spirit of collaboration, a desire for shared success and a view toward long-term relationships.***

ORGANIZATIONAL STRUCTURE

The Property is currently owned by 104 Grant Street LLC, which consists of two members, Tom Watson and Jack Watson. The Sponsors have formed Watson Renewal Grant LLC to acquire, finance and redevelop the Property. The members of WRG are Houghton Lane LLC and Renewal Housing LLC. Tom Watson and Jack Watson are the sole members of Houghton Lane. The members of Renewal Housing are Leon N. Weiner & Associates, David Lakari & Associates and West Port Development LLC. Houghton Lane is the Managing Member of WRG and Tom Watson serves as its Manager. Below is an organizational chart.



104 Grant Street

THE PORTLAND PENINSULA CONDOMINIUM MARKET:

The case to support the development of affordable homeownership opportunities on the Portland peninsula:

What can the average Portland household afford?

	1-Person Household		2-Person Household	
	100% AMI	120% AMI	100% AMI	120% AMI
Annual Income	\$65,100	\$78,120	\$74,400	\$89,280
Monthly Income for Housing Costs (30%)	\$1,628	\$1,953	\$1,860	\$2,232
Target Sales Price	\$210,000	\$260,000	\$240,000	\$295,000
Down Payment ¹	\$14,700	\$18,200	\$16,800	\$20,650
Mortgage Amount	\$195,300	\$241,800	\$223,200	\$274,350
Monthly Mortgage Payment ²	\$999	\$1,237	\$1,142	\$1,404
Private Mortgage Insurance ³	\$81	\$101	\$93	\$114
Property Taxes	\$306	\$379	\$350	\$430
Property Insurance	\$70	\$80	\$75	\$85
Utilities ⁴	\$161	\$161	\$205	\$205
Total Monthly Housing Costs ⁵	\$1,617	\$1,957	\$1,864	\$2,237

1. Average down payment of first-time homebuyer is 7%. 2. Assumes 4.5% Interest Rate on mortgage loan

3. assumes .5% of loan amount annually

4. source Maine Housing Utility Allowance

5. Does not include homeowners association fees (condo) or maintenance costs (single-family)

How many units under \$300,000 are sold each year...and how many are available right now?

	Last 12 Months		Currently Available (Nov '19)	
	Units Sold	Average Price	Total Units	Months Supply
< \$200,000	11		2	2.18
\$200,000 to \$300,000	84		8	1.14
> \$300,000	177		109	7.39
All Condominiums	272	\$440,000	125	5.34

What percent of their income does a typical middle-income Portland household need to spend on housing costs to purchase a unit at the current average sales price?

	1-Person Household		2-Person Household	
	100% AMI	120% AMI	100% AMI	120% AMI
Annual Income	\$65,100	\$78,120	\$74,400	\$89,280
Monthly Income for Housing Costs (30%)	\$1,628	\$1,953	\$1,860	\$2,232
Sales Price	\$440,000	\$440,000	\$440,000	\$440,000
Total Monthly Housing Costs	\$3,182	\$3,192	\$3,231	\$3,241
Percent of Income Spent on Housing Costs	58%	48%	51%	43%

104 Grant Street

The following information is organized and formatted to correspond with the Maine State Housing Authority's Application for Affordable Housing Tax Increment Financing, Appendix A Checklist for Approval of District and Development Program.

LOCATION

The proposed location for the Affordable Housing Tax Increment Financing District is 104 Grant Street, Portland Maine 04102 (the "AHTIF District" or "District").

CBL: 48-C-8, City of Portland Tax Map E8NE.

DISTRICT DESCRIPTION:

- a. **Physical Description:** The District, 104 Grant Street, is located within the Parkside Neighborhood on the Portland peninsula. The District contains a single tax parcel, which consists of 14,261 SF, or .33 acres. The property currently contains a vacant single-story building that previously housed administrative offices and a maintenance facility for a real estate management company.
- b. **Municipal Map Showing District Boundaries:** A municipal map identifying the boundaries of the District is attached as Exhibit B.
- c. **Tax Map Showing District Boundaries:** A tax map identifying the District boundaries is attached as Exhibit C.

DOCUMENT AT LEAST 25% OF THE DISTRICT ACREAGE IS SUITABLE FOR RESIDENTIAL USE, BLIGHTED, OR IN NEED OF REHABILITATION/REDEVELOPMENT:

- a. **Percent Acreage Suitable for Residential Use:** The District is 14,261 SF, or .33 acres. 100% of the District is suitable for residential use.
- b. **Percent of Acreage that is Blighted:** None of the acreage in the District is currently blighted.
- c. **Percent of Acreage in need of Rehabilitation/Redevelopment:** 100% of the District is in need of redevelopment.
- d. **Physical Description to Support Above:** The District is highly suitable for multifamily residential redevelopment. As described below, the District is located in a R-6 Residential Zone, which is intended for high density multifamily uses. The District is completely surrounded by residential uses that are primarily high-density, multifamily properties in similar scale and form as the Sponsor's proposed development. The District is also in close proximity to employment centers (downtown Portland), health care centers (Maine Med and Mercy Hospital), services (downtown, Congress Street corridor and Bayside), civic institutions (City Hall, Post Office), public parks (Deering Oaks, Portland Trails System) and public transportation nodes.

In further support for the need of redevelopment, the existing building located in the District is vacant. It is a legal, non-conforming non-residential use within a residential zone.

104 Grant Street

- e. **Zoning Designation for District:** The District is located in the R-6 Residential Zone. As stated in the Portland Land Use Ordinance, the purpose of the R-6 Zone is: "... (a) to set aside areas on the peninsula for housing characterized primarily by multifamily dwellings at a high density providing a wide range of housing for differing types of households; and to conserve the existing housing stock and residential character of neighborhoods by controlling the scale and external impacts of professional offices and other nonresidential uses, (b) in cases of qualifying small, vacant, underutilized lots located in the urban residential and business zone, to encourage new housing development consistent with the compact lot development pattern typically found on the peninsula...."

The R-6 Zone also allows certain density bonuses and other incentives for developments that provide affordable and workforce housing units.

- f. **Allowed Uses in the Zone:** The R-6 Residential Zone primarily is intended for high-density, single-family and multifamily residential uses. Other permitted uses in the R-6 Zone include;
1. Lodging house;
 2. Cemeteries;
 3. Parks, and other active and passive noncommercial recreation spaces;
 4. Accessory uses customarily incidental and subordinate to the location, function, and operation of principal uses,
 5. Home occupations,
 6. Municipal uses,
 7. Special needs independent living units,
 8. Hostels

DISTRICT ACERAGE DIVIDED BY MUNICIPAL ACREAGE IS NOT MORE THAN 2%

- **Total District Acreage:** .33
- **Total Municipal Acreage:** 12,386
- **District Acreage as a Percent of Total Acreage:** .0027%

TOTAL ACERAGE OF ALL EXISTING AND PROPOSED DEVELOPMENT DISTRICTS IN MUNICIPALITY DIVIDED BY TOTAL MUNICIPAL ACREAGE IS NOT MORE THAN 5%. *(City of Portland to Complete)*

ORIGINAL ASSESS VALUE (OAV) OF DISTRICT *(City of Portland to Complete)*

OAV OF ALL EXISTING AND PROPOSED AFFORDABLE HOUSING DEVELOPMENT DISTRICTS IN THE MUNICIPALITY DIVIDED BY AGGREGATE TAXABLE PROPERTY VALUE AS OF APRIL 1ST BEFORE MAINE HOUSING APPROVAL IS NOT MORE THAN 5%. *(City of Portland to Complete)*

DEVELOPMENT PROGRAM STATE AND END DATES *(City of Portland to Complete)*

THE DEVELOPMENT PROGRAM MEETS AN IDENTIFIED HOUSING NEED IN MUNICIPALITY:

- a. **Description of Need:** Despite healthy residential development activity in recent years, Portland's housing market has remained relatively unaffordable. The problem remains particularly acute among homeownership opportunities on the Portland peninsula. As of December, 2019, the average sales price for a condominium (traditionally one of the most affordable forms of homeownership within a market) on the Portland peninsula was \$440,000. The median sales price was \$358,000.

Condominium prices in Portland's urban residential neighborhoods far exceed what an average household in Cumberland County can afford. Using the City of Portland's Inclusionary Zoning Maximum Sales Price formula, one to three person households (Portland's average household size is 2.08) at the 80% to 120% AMI levels, can generally afford homes in the \$150,000 to \$350,000 range.

Portland's lack of affordable homeownership opportunities significantly impedes the City's goals for future growth. According to the Portland's 2017 Comprehensive Plan, the City's 10-year population growth target is approximately 72,000 people (by 2027), up from 66,681 people today. To achieve this goal, the City needs to create approximately 2,557 new housing units. Given the disparity between average condominium prices on the Portland peninsula and median income levels, traditional first-time homebuyers and moderate-income households are priced out of Portland and must seek other markets in which to purchase a home.

Portland has identified Parkside as a neighborhood that benefits from moderate to high residential density—and, therefore, could accommodate some of the demand for new housing units. From the City's *2017 Comprehensive Plan, A Livable City*;

"...Portland has a number of neighborhoods that offer traditional urban densities — Munjoy Hill, the West End, **Parkside**, Deering Center, for example — and these neighborhoods are largely successful. Residents can access stores, schools, dining, and entertainment within walking distance of their homes. By foot or bike, they can easily reach transit, trails, and recreational opportunities. These characteristics are largely possible because of their density. Well-designed density is integral to healthy, walkable city neighborhoods...."

- b. **Description of How Development Program Meets Need:** The Project will address the for-sale affordable housing need in Portland by creating eight (8) homeownership units that will be deed restricted to remain affordable for households at or below 120% AMI for a period of 30 years. In addition, the Project will create 11 units that are not deed restricted, but will be moderately priced as compared to the average condominium sales price on the Portland peninsula.

- c. **Information on Housing Units Created:**

1. New Rental Units Created: None
2. Existing Rental Units Rehabilitated: None

104 Grant Street

3. New Single-Family Homes, Including Condominiums, Constructed: 23
4. Existing Single-Family Homes, Including Condominiums, Rehabilitated: None

DISTRICT MUST BE PRIMARILY A RESIDENTIAL DEVELOPMENT

- a. **Description of Residential and Non-Residential Uses in District and Acreage of Each:** 100% of the District will be redeveloped for residential uses. The Sponsors propose to construct a 4-story building, consisting of 23 units of housing (condominiums) and associated common areas serving the building (stairwells, hallways, elevator, HVAC/mechanical room, etc...). The District will also include a private parking lot dedicated for the future unit owners of the Project.
- b. **Description of Accessory Uses Relating to Residential Uses:** The only accessory uses within the District will be the condominium association common areas, such as the parking lot, bike storage, main entrance/lobby, HVAC/mechanical rooms and trash/recycling facilities.

AT LEAST 33% OF THE HOUSING UNITS IN THE DISTRICT MUST BE AFFORDABLE HOUSING

- a. **Number of new affordable rental units in District:** 0
- b. **Number of new affordable single-family, owner-occupied, including condominiums, in District:** 8 units – or 33% of the housing units in the development – will be deed restricted under the City of Portland’s Inclusionary Zoning Ordinance. An additional 4 units will be deed restricted under Maine Housing’s Subdivision Grant Program.
- c. **Total number of new housing units in District:** 23
- d. **Affordable housing units as a percent of total units:** 34.78% (just AHTIF); 52.17% including MH Subdivision Grant units.

MECHANISM TO ENSURE ON-GOING AFFORDABILITY *(City of Portland to Complete)*

OPERATION OF HOUSING AND FACILITIES IN DISTRICT

- a. **Description of housing and facilities in the District will be operated after completion:** The housing units developed at 104 Grant Street will be administered by a condominium association. The association will be governed by a board consisting of unit owners. The rules and regulations for the association will be set forth in the association declaration and bylaws.

The association declaration and bylaws are first established and created by the project Sponsors, who will serve as the declarant for the association. The declarant will oversee administration of the association through the development period, until condominium units are sold and administration is transferred to the association board. Under Maine statute, the administration and governance of the association transfers from the declarant to a board consisting of unit owners upon sale of 75% of the condominium units.

- b. **Entity responsible for operations:** The unit owners, through an elected board, are responsible for administering the operations of the condominium association. Typically, associations will hire a third-party management company for administrative and maintenance support.

The declarant will hire Gebhardt Property Management to oversee the day-to-day maintenance and operations of the building and association. GPM is based in Portland's West End neighborhood, in close proximity to the Project. The company has extensive experience managing condominium association properties located on the Portland peninsula. The Sponsors have worked with GPM on two similar condominium developments in the West End.

- c. **Source of operating funds:** The operations of the association will be funded by monthly condominium association dues paid by the unit owners. Dues will be set annually once the association adopts an operating budget for the year. The first annual budget and related monthly dues will be set by the declarant. The monthly dues are estimated to be \$250 per unit per month. A final budget and monthly dues will be set prior to commencement of construction, when the final building program design has received Site Plan and Subdivision approval.

SPECIFIC PLANNED USES OF TAX INCREMENT REVENUES FROM THE DISTRICT:

- a. **Description of each improvement, facility, program, or other activity included in the development program that may or will be funded in whole or in part with tax increment revenues:** The tax increment revenues will be used to repay principal and interest on a loan (the "AHTIF Loan"). The proceeds of the AHTIF Loan will be used to pay the direct construction costs associated with building the 23-unit condominium.
- b. **Improvements within the District:** The residential building constructed within the District is projected to cost \$4,850,000. The size of the AHTIF Loan is projected to be \$1,050,000. One hundred percent of the proceeds of the AHTIF Loan will be used during the construction period to pay costs that are part of the Sponsor's construction contract.
- c. **Improvement outside the district:** No improvements will be made outside of the District.
- d. **Amount of tax increment revenues inside and outside:** The AHTIF Loan will be repaid using the Project's share of tax increment revenue generated from the new condominium units constructed within the District.
- e. **Amount and source of other funding the development program:** See schedule on following page.

104 Grant Street

SOURCES

	% of Total	
Construction Loan	4,250,000	65.43%
AHTIF Loan	1,050,000	16.17%
Additional Sub Debt	270,000	4.16%
Seller Note	215,000	3.31%
Deferred Developer Fee Note	215,000	3.31%
Sponsor Equity	495,000	7.62%
Total	6,495,000	100.00%

USES

	% of Total	
Acquisition	405,000	6.24%
Hard Costs	4,850,000	74.67%
Soft Costs	907,000	13.96%
Financing Costs	333,000	5.13%
Total	6,495,000	100.00%

- f. **Timing of each planned improvement:** The Project will begin the site plan and subdivision application process in Q4 2019. Pending final regulatory approvals, the Project will close on its construction financing in Q2, 2020, with construction completion anticipated for Q3, 2021.

MUNICIPALITY MAY USE TAX INCREMENT REVENUES FROM A DISTRICT TO ESTABLISH A PERMANENT HOUSING DEVELOPMENT REVOLVING LOAN FUND OR INVESTMENT FUND: (Not Applicable)

A FINANCIAL PLAN FOR EACH YEAR THE DEVELOPMENT PROGRAM WILL BE IN EFFECT. *(City of Portland to Complete)*

RELOCATION PLAN FOR PERSONS TEMPORARILY OR PERMANENTLY DISPLACED BY DEVELOPMENT ACTIVITIES

The District currently consists of a vacant administrative office and maintenance facility. As such, there is no resident relocation required as part of the project.

DESCRIPTION OF ENVIRONMENTAL CONTROLS TO BE APPLIED

The Sponsors have engaged MAI Environmental, a South Portland-based environmental engineering firm for environmental consulting services during the development period. MAI Environmental has completed Phase II testing for the Property. The findings and associated soil management plans have been incorporated in the development program and budget.

104 Grant Street

DEVELOPMENT PROGRAM CONSISTENT WITH COMPREHENSIVE PLANNING *(City of Portland to Complete)*

DISTRICT NOT IN CONFLICT WITH MUNICIPAL CHARTER *(City of Portland to Complete)*

FOR MUNICIPAL DEBT FINANCING ONLY: (Not Applicable)

END, MAINE STATE HOUSING AUTHORITY AHTIF APPLICATION CHECKLIST

RENEWAL HOUSING ASSOCIATES LLC

January 21st, 2020

Mary P. Davis,
Division Director, Housing & Community Development Division
Planning & Urban Development Department, City of Portland
389 Congress Street Room 312
Portland ME 04101

RE: AHTIF APPLICATION, 104 GRANT STREET ("The Goodwin")

Dear Mary:

Thank you for the meeting to discuss the AHTIF application for 104 Grant Street. As discussed, I am providing this letter to update and clarify certain aspects of the project.

- **Unit Mix:** The project now consists of **23 one-bedroom units ranging in size from 488 SF to 768 SF.** The majority of units are between 610 and 620 SF.
- **Affordable Housing - Number of Units and Affordability Restrictions:** Under the financing plan proposed in our application, the affordability requirements at the project are as follows;
 - **City of Portland "Workforce Units":**
 - Two (2) Workforce Units with a 30-year deed restriction (Required 10% Units)
 - Six (6) Workforce Units with a 10-year deed restriction (Additional Workforce Units to meet state statute for AHTIF homeownership requirements)

Units will be regulated subject to the City of Portland's *Workforce Housing Agreement Declaration of Covenants, Conditions & Restrictions*

- **Maine Housing "Affordable Homeownership Units":**
 - Four (4) Affordable Units with a 9-year deed restriction

Units will be regulated subject to Maine Housing's *Declaration of Covenants & Restrictions*

Enclosed with this letter is a chart to fully detail the affordability restrictions on the project. Also, for your reference, I have enclosed information on Maine Housing's Subdivision Grant Program, as well as the state AHTIF Statute to document the 10-year deed restriction for homeownership projects.

Respectfully,



Todd M. Alexander





This map shows the Deering Oaks Park area. A red square marks the 'APPROXIMATE AHTIF DISTRICT' at the intersection of Grant St and Deering Ave. The map includes labels for Deering Oaks Park, Ice Arena, and various streets including Grant St, Sherman St, Cumberland Ave, Deering Ave, Melles St, State St, and High St. A north arrow is located in the top right corner.

1. PROPERTY LINES OBTAINED FROM MAINE OFFICE OF GIS DATA CATALOG FOR CITY OF PORTLAND.
2. BACKGROUND IMAGERY OBTAINED FROM CITY OF PORTLAND PARCEL VIEWER ON 7/26/19.



DRAWING NO.
EX-B
19 of 31

EXHIBIT C: CITY OF PORTLAND TAX PARCEL MAP, AHTIF DISTRICT BOUNDARIES



Attachment 3. Project Pro Forma

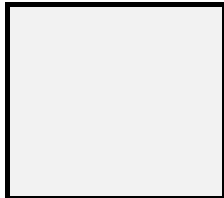
Exhibit A1: Development Pro Forma | 104 Grant Street

ACQUISITION		
Land Bldg	400,000	
Misc Closing Costs	5,000	
	SUBTOTAL	405,000
HARD COSTS		
Construction (GMP)	4,600,000	
Environmental (Remediation)	30,000	
Appliances	70,000	
Contingency	150,000	
	SUBTOTAL	4,850,000
SOFT COSTS		
A&E Design+Structural+Admin	165,000	
Interior Design	10,000	
GeoTech	20,000	
Civil+Survey	38,000	
Owner's Construction Rep	25,000	
Environmental (Reports+Fees)	45,000	
Special Testing Insp.	5,000	
FF&E + Signage	10,000	
Parking	40,000	
Developer Legal	50,000	
Site Plan Approval	10,000	
Building Permit + Fees	82,000	
Utility Connection Fees	60,000	
Adv+Marketing+Staging	25,000	
Insurance	30,000	
Property Taxes	15,000	
Stormwater Fees	2,000	
R.E. Transfer Tax	15,000	
Other Closing Costs	5,000	
Misc Soft Costs	10,000	
Developer Overhead	215,000	
Property Management	10,000	
Post Constr. Carrying Costs	20,000	
	SUBTOTAL	907,000
FINANCING COSTS		
Origination Fees	16,000	
SubDebt Subsidy Fees	5,000	
Lender 3rd Party Fees	13,000	
Lender Legal	15,000	
Title & Recording	7,000	
Interest Expense	200,000	
AHTIF Reserve	77,000	
	SUBTOTAL	333,000
	TOTAL	6,495,000

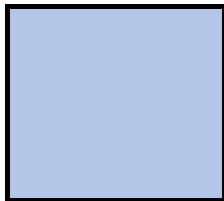
SCHEDULE OF DEED RESTRICTED UNITS

Unit	Bedroom	IZ Unit	AHTIF (IZ)	MH Unit
		10%	33.33%	
401	1			
402	1			1
403	1			
404	1			
405	1			1
406	1			
301	1			
302	1		1	1
303	1			1
304	1			1
305	1		1	1
306	1			
201	1			
202	1		1	1
203	1		1	1
204	1	1		1
205	1		1	1
206	1			
101	1			
102	1	1		1
103	1	1		1
105	2			
106	1			
TOTALS	24	3	5	12

DETAILED AFFORDABILITY MATRIX



Unit Type: Market Rate
Unit Count: 10 one-bedroom units and 1 two-bedroom unit
Maximum Sales Price: TBD by Market
Maximum Income, Qualified Buyer: Unrestricted
Form of Deed Restriction: None
Term of Deed Restriction: N/A



Unit Type: Workforce Housing, as Regulated by Maine Housing's Subdivision Grant Program
Total Unit Count: 4 one-bedroom units
Maximum Sales Price (as of 01.01.2020): \$260,000, adjusted for inflation annually by Maine Housing, per the terms of its Deed Restriction
Maximum Income, Qualified Buyer: \$93,000 for a 1 or 2-person household, as adjusted annually by MaineHousing
Form of Deed Restriction: Maine Housing Declaration of Covenants and Restrictions
Term of Deed Restriction: 9 Years



Unit Type: AHTIF + Workforce Housing, per Maine State Statute (30-A Chapter 205, Sec 5247) and City of Portland (Chapter 14, Division 30, Section 14-485)
Total Unit Count: 5 one-bedroom units
Maximum Sales Price (as of 01.01.2020): \$203,064, adjusted annually based on affordability formula for households at or below 110% AMI
Maximum Income, Qualified Buyer (as of 01.01.2020): 1-Person Household \$78,120, 2-Person: \$89,280
Form of Deed Restriction: Portland Workforce Housing Agreement, Declaration of Covenants, Conditions and Restrictions
Term of Deed Restriction: 10 Years*

*Note: Per Portland Land Use Code Section 14-487(e)7 and Portland *Implementing Guidelines for Developers of Homeownership Housing* page 7, the 'Additional Workforce Units' above the required 10% "...shall be affordable at the initial sale with no restrictions placed on subsequent sales of the unit...." Per Maine State Statute 30-A, Chapter 205 Section 5247(3)(E), Affordable Housing TIF owner-occupied units shall be affordable for at least 10 years



Unit Type: IZ - Workforce Housing, per City of Portland (Chapter 14, Division 30, Section 14-485)
Total Unit Count: 3 one-bedroom units (Units 102, 103 and 204)
Maximum Sales Price (as of 01.01.2020): \$203,064, adjusted annually based on affordability formula or households at or below 110% AMI
Maximum Income, Qualified Buyer (as of 01.01.2020): 1-Person Household \$78,120, 2-Person: \$89,280
Form of Deed Restriction: Portland Workforce Housing Agreement, Declaration of Covenants, Conditions and Restrictions
Term of Deed Restriction: 30 Years*

*Note: Per Portland Land Use Code Section 14-487(e)7, the term of affordability on the required 10% Workforce Units is reduced to 30 years if the number of Workforce Units provided exceeds 25% of the units within the project.

Attachment 4. Third Party Financial Analysis

MARKOVCHICK ADVISORS, LLC

Integrity driven value and service

David S. Markovchick, Principal

34 Tremolo Point Mt. Vernon, ME 04352 p: 207.293.2618 c: 207.446.7425 dsmarkovchick@gmail.com

To: Mary Davis, Division Director, Office of Housing & Community Development,
City of Portland
From: David Markovchick
RE: Watson Renewal Grant, LLC
Date: March 25, 2020

Executive Summary

The project sponsor is Watson Renewal Grant, LLC ("WRG"). WRG is a partnership between Tom Watson and Renewal Housing Associates, LLC, (collectively, the Sponsors). WRG proposes to redevelop 104 Grant Street, ("the Property") into 23 units of "home ownership work force housing", ("the Project). All units are proposed to be sold. The Project will consist of, one (1) two-bedroom unit, eight (8) units will be regulated under the City's Inclusionary Zoning, ("IZ") Ordinance and the State of Maine Affordable Housing Tax Increment Financing Statute. An additional four (4) units will be regulated under the Maine State Housing Authority's, (MSHA) Subdivision Grant Program. The remaining units will be sold without deed restrictions. WRG states, the prices for the conventional units are projected to be below the average sales prices for condominium units sold on the peninsula.

Sources and Uses of Funds:

<u>Sources:</u>			<u>Uses:</u>		
		<u>% of total</u>			<u>% of total</u>
Construction Loan	\$4,250,000	65.43%	Acquisition	\$ 405,000	6.24%
AHTIF Loan	1,050,000	16.17%	Hard Cost	4,850,000	74.67%
Additional Sub Debt	270,000	4.16%	Soft Costs	907,000	13.96%
Seller Note	215,000	3.31%	Financing Costs	333,000	5.13%
Deferred Dev. Fee Note	215,000	3.31%			
Sponsor Equity	<u>495,000</u>	<u>7.62%</u>			
TOTAL	\$6,495,000	100%	TOTAL	\$6,495,000	100%

Development Budget

The development budget consists of four major components: Acquisition Cost, Construction Costs (Hard Cost), Soft Costs, and Financing Cost. The budget is based on a proposal by WRG as supported by preliminary construction estimates of Benchmark dated August 7, 2020.

Acquisition cost

Acquisition cost represents the cost of acquiring the real estate at 104 Grant Street and related deminimis closing costs. The property is being acquired by WRG in a related party transaction. The sale price is \$400,000, represented as a discount over fair market value, supported by a broker's opinion of value dated February 28, 2020. Further noted is the fact that the property is currently assessed at \$419,600 by the City. It is represented that an option agreement between the parties to sell at the noted prices is in place. Based on a 23-unit condominium project this represents an acquisition cost \$17,391/ unit.

Construction Cost

Construction Costs (Hard Costs), of \$4,850,000 are supported in part by a dated proposed construction budget from August 7, 2019. The budget is based on preliminary site drawings with specifications abstracted from a project completed in the Spring of 2019. This was used for guidance purposes. The Budget that supports the hard cost estimate provides a base line cost of \$4,579,783 representing a difference of \$270,000 from the \$4,850,000 construction budget. This is explained as a contingency and allowance for certain final unit fit up costs.

Contingency:

The contingency of \$150,000 contained in the development budget represents 2% of the proposed budget. As presented the development budget is based on calculations that are approximately, seven months old and is therefore perceived to be a thin; due to time, material cost escalation, and lack of a revised development budget or firm construction contract(s).

Soft Costs

Soft costs represent 14% or \$907,000 of the total development budget of \$6,495,000. Of the \$907,000 of soft costs \$215,000 or approximately 24% represents developer overhead. Developer overhead represents only 3% of the total development budget.

Financing Costs

As proposed this project will be financed through the following structure, **(note as of the date of this analysis there are no executed commitments and/or term sheets for the proposed financing structure):**

Gorham Savings Bank has offered a preliminary term sheet for a construction loan of \$4,250,000 with a 4.75% interest rate. This construction loan is proposed to be a two-year interest only construction loan. The Bank will require principle reduction with sale of any units occurring within the two-year window of the construction loan. The balance of the loan is to be paid in full at the completion of construction.

Genesis Community Loan Fund has provided a letter of interest offering terms of 10/28 years on a \$1,050,000 AHTF loan. Interest only is payable during construction period. The specimen rate is 5.75%. Upon completion the loan amortizes on a 28-year term with a balloon payment at the end of the initial 10 years. Genesis is offering to consider a refinancing at the end of the 10 years.

Equity investments are offered in two Tranches. Houghton Lane and RHA will offer an initial investment of \$495,000 split 50/50 among the partners. WRG and its members will be responsible for any additional equity investments required to cover additional cost of construction or over runs. As of this writing no executed term sheets are provided.

Developer Financials

Watson Renewal Grant LLC is a partnership formed between Houghton Lane LLC and Renewal Housing Associates LLC. Tom and Jack Watson are the sole members of Houghton Lane. Members of Renewal Housing Associates are Leon N Weiner & Associates, Inc., West Port Development, LLC and David Lakari & Associates. Houghton Lane is the Managing member of WRG, and Tom Watson is its Manager.

Developer Financials are provided for Tom Watson (personal) dated December 2019 (unsigned). No statement for the development company of Tom Watson is provided. An audited financial statement for Leon N. Weiner & Associates, Inc. and Subsidiaries, Inc., dated December 31, 2018 is provided. Weiner's financials are a year old most likely due to the current calendar and tax season.

Watson's net worth is centered in real estate investments, both commercial and personal. The basis for evaluation of commercial property values is undetermined, the statement is provided on a stated basis. Debt/Net worth is a strong 47%. Personal Debt/Net Worth on a state value basis is 7% currently a reasonably strong liquidity of 34% of total personal assets.

The Weiner statement is audited with a qualified opinion, the result of different accounting treatment of certain assets based on accrual vs. cost basis accounting.

The balance sheet of 2018 reflects liquidity against total assets representing 12% of total assets. Based on total asset strength the company debt/net worth was 1.65x representing a moderate amount of leverage.

In a signed commitment WGR and its members represent that they will be responsible for additional equity investments to pay development cost overruns and repayment of primary construction loans that cannot be repaid through unit sales. WRG and its members are guarantors for each of the construction loans.

Operating Budget & 28 Year Cashflow Projection

Project Income:

This is a proposed two year build out project commencing with closing. During this period funding is anticipated to be provided by construction loans proposed by Gorham Savings Bank, Genesis (AHITF loan), a combination of developer(s) sub debt loans, pledged equity, and deferred fees. As of the date of this analysis the commitments are not yet confirmed via executed financing commitments or term sheets.

Exit construction revenues occur via the sale of the 23 condo units consisting of eight (8) City of Portland IZ units and four (4) units regulated by the MSHA's Subdivision Grants Program. The balance of the units is expected to be sold at below the average sales price of comparable unsubsidized units on the peninsula. Additional revenues are derived from the sale of 12 parking spaces, producing \$114,000 in additional project revenues.

The Bank's proposed first mortgage financing requires units that are pre-sold during construction have sales revenues applied to reduce principal for of its loan. The proformas factor in generation of this debt reducing cash during the second year of construction as pre-sold units. This is reflected in the following Operating Budget. TIF captured revenues flow to WRG commencing in year three for 28 years amortizing the proposed Genesis AHTIF loan over that period.

Operating Expense

For the first two years of the project operating expenses are matched to the project's only sources of revenue; the loans, partner equity capital, and deferred fees and subordinated debt. As previously mentioned, these are not sufficiently supported due to lack of executed documentation.

Based on the proposed budget the project debt service coverage is estimated as follows:

For the first year of construction coverage is 2.9x due to interest only expenses. In year two it jumps dramatically to 9.7x due to the estimated sale¹ of the 23 units and repayment of the bank loan. In years three to five it is estimated debt service coverage is break even at 1:1 with the commencement of proposed TIF recapture. Over the remaining years, aggregating the TIF revenue steam it is estimated that coverage will be a strong 1.9X coverage. Coverage during these years is improved with the progression of the increasing value of TIF revenues in the out years.

¹ The Bank will require pay down of construction principal with each unit sold prior to completion of the 2-year construction loan. An assumption is made that all units will be pre-sold in year two.

WATSON RENEWAL GRANT LLC
PRO FORMA OPERATING BUDGET
 Loan closing - to - 30-year Projection

SUMMARY (\$)	24 MONTH CONSTRUCTION		TIF RECAPTURE			
	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEARS 6 - 28
Operating Revenue						
Total Unit Sales (1)		6,054,000				
TIF Captured Revenue (2)			76,464	77,994	79,554	2,599,088
Gorham Loan	4,250,000					
Genesis AHTIF Loan	1,050,000					
Sponsor Equity	495,000					
Sub Debt	270,000					
Seller Note	215,000					
Deferred Developer Fees	215,000					
Total Revenue	6,495,000	6,054,000	76,464	77,994	79,554	2,599,088

Operating Expenses						
Acquisition Costs	185,000	215,000				
Estimated Construction Costs	4,850,000					
Bank Loan Repayment (3)		4,250,000				
Soft Costs	907,000					
Financing Costs (non-interest)	133,000					
Amortization (4)			18,738	19,767	20,857	990,638
Interest (5)	164,220	164,220	57,553	56,524	55,435	376,447
Total Expenses	6,239,220	4,629,220	76,291	76,291	76,292	1,367,085

Net Income	255,780	1,424,780	173	1,703	3,262	1,232,003
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ASSUMPTIONS

1. Assumes units will be pre-sold by the end of construction.
2. TIF Recapture applied to project starting in years three (3) to 28.
3. Bank loan is to be paid in full at the end of construction. Bank requires pre-sold unit income to be applied to the construction loan.
4. As Proposed the AHTIF loan is a ten- year loan with a 28- year amortization with refinancing prospectively available at the end of ten years.
5. Interest expenses represent the interest expense on both the proposed bank loan (2 years) and AHTIF loan on a 28-year amortization.

Recommendations

Without the TIF, and in the absence of an affordable alternativeⁱ, it is unlikely the project would proceed to include 12 units of affordable worker housing. Without this the developer loses the incentive to generate below market rate worker housing.

Approval is recommended subject to the following as pre-approval conditions:

1. All required standard documentation for construction are obtained and reviewed to the satisfaction of the City.
2. Credit ratings are reviewed and found satisfactory to the City.
3. Signed and updated financial statements (audited and/or internally prepared) for the partners are obtained and satisfactorily reviewed.
4. All financing documents, including, but not limited to executed term sheets, financing commitments, construction contracts, partnership agreements, and option agreements are obtained and satisfactorily reviewed.
5. The assessed valuation of the property in its present condition and use is verified by the City.

ⁱ As of this writing current economic conditions exist in US financial markets that may open alternative economic incentives or alternative sources of affordable capital. Economic uncertainty may also delay projects of this nature requiring major budget revisions.

Attachment 5. TIF Model Spreadsheets

City of Portland - Affordable Housing (AH) TIF Model
 104 Grant Street; 048 C008001
[OAV: \\$419,600 ao 3/31/2020](#)
 2% Mil Rate Escalation
 75% Capture to AH TIF Project; 25% to City General Fund

City of Portland- TIF Projection Table for 104 Grant Street AH TIF										
TIF Year	Tax Year- April 1	Increased Assessed Value Real Prop.	% of Value Captured	Captured Valuation	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non- Captured General Fund Revenues	City OAV General Fund Revenues
1	2020	\$0	75.00%	\$0	23.78	\$0	\$0	\$0	\$0	\$9,962
2	2021	\$0	75.00%	\$0	24.25	\$0	\$0	\$0	\$0	\$10,161
3	2022	\$3,999,820	75.00%	\$2,999,865	24.74	\$74,207	\$74,207	\$0	\$24,736	\$10,365
4	2023	\$3,999,820	75.00%	\$2,999,865	25.23	\$75,691	\$75,691	\$0	\$25,230	\$10,572
5	2024	\$3,999,820	75.00%	\$2,999,865	25.74	\$77,205	\$77,205	\$0	\$25,735	\$10,783
6	2025	\$3,999,820	75.00%	\$2,999,865	26.25	\$78,749	\$78,749	\$0	\$26,250	\$10,999
7	2026	\$3,999,820	75.00%	\$2,999,865	26.78	\$80,324	\$80,324	\$0	\$26,775	\$11,219
8	2027	\$3,999,820	75.00%	\$2,999,865	27.31	\$81,930	\$81,930	\$0	\$27,310	\$11,443
9	2028	\$3,999,820	75.00%	\$2,999,865	27.86	\$83,569	\$83,569	\$0	\$27,856	\$11,672
10	2029	\$3,999,820	75.00%	\$2,999,865	28.41	\$85,240	\$85,240	\$0	\$28,413	\$11,906
11	2030	\$3,999,820	75.00%	\$2,999,865	28.98	\$86,945	\$86,945	\$0	\$28,982	\$12,144
12	2031	\$3,999,820	75.00%	\$2,999,865	29.56	\$88,684	\$88,684	\$0	\$29,561	\$12,387
13	2032	\$3,999,820	75.00%	\$2,999,865	30.15	\$90,458	\$90,458	\$0	\$30,153	\$12,635
14	2033	\$3,999,820	75.00%	\$2,999,865	30.76	\$92,267	\$92,267	\$0	\$30,756	\$12,887
15	2034	\$3,999,820	75.00%	\$2,999,865	31.37	\$94,112	\$94,112	\$0	\$31,371	\$13,145
16	2035	\$3,999,820	75.00%	\$2,999,865	32.00	\$95,995	\$95,995	\$0	\$31,998	\$13,408
17	2036	\$3,999,820	75.00%	\$2,999,865	32.64	\$97,914	\$97,914	\$0	\$32,638	\$13,676
18	2037	\$3,999,820	75.00%	\$2,999,865	33.29	\$99,873	\$99,873	\$0	\$33,291	\$13,950
19	2038	\$3,999,820	75.00%	\$2,999,865	33.96	\$101,870	\$101,870	\$0	\$33,957	\$14,229
20	2039	\$3,999,820	75.00%	\$2,999,865	34.64	\$103,908	\$103,908	\$0	\$34,636	\$14,513
21	2040	\$3,999,820	75.00%	\$2,999,865	35.33	\$105,986	\$105,986	\$0	\$35,329	\$14,803
22	2041	\$3,999,820	75.00%	\$2,999,865	36.04	\$108,105	\$108,105	\$0	\$36,035	\$15,099
23	2042	\$3,999,820	75.00%	\$2,999,865	36.76	\$110,268	\$110,268	\$0	\$36,756	\$15,401
24	2043	\$3,999,820	75.00%	\$2,999,865	37.49	\$112,473	\$112,473	\$0	\$37,491	\$15,709
25	2044	\$3,999,820	75.00%	\$2,999,865	38.24	\$114,722	\$114,722	\$0	\$38,241	\$16,024
26	2045	\$3,999,820	75.00%	\$2,999,865	39.01	\$117,017	\$117,017	\$0	\$39,006	\$16,344
27	2046	\$3,999,820	75.00%	\$2,999,865	39.79	\$119,357	\$119,357	\$0	\$39,786	\$16,671
28	2047	\$3,999,820	75.00%	\$2,999,865	40.58	\$121,744	\$121,744	\$0	\$40,581	\$17,004
29	2048	\$3,999,820	75.00%	\$2,999,865	41.39	\$124,179	\$124,179	\$0	\$41,393	\$17,344
30	2049	\$3,999,820	75.00%	\$2,999,865	42.22	\$126,663	\$126,663	\$0	\$42,221	\$17,691
30 Year TIF Total		\$111,994,960		\$83,996,220		\$2,749,457	\$2,749,457	\$0	\$916,486	\$404,148
30 Year Average				\$2,799,874		\$91,649	\$91,649		\$30,550	\$13,472

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland - TIF Model for 104 Grant Street Affordable Housing TIF							
75% Sheltered - 30 years - 75% to Developer Project Account - 25% to City General Fund							
TIF Year	Tax Year- April 1	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation			
				Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
1	2020	\$0	\$0	\$0	\$0	\$0	\$0
2	2021	\$0	\$0	\$0	\$0	\$0	\$0
3	2022	\$3,999,820	\$2,999,865	\$0	\$2,248	\$1,656	\$3,904
4	2023	\$3,999,820	\$2,999,865	\$8,280	\$2,248	\$1,656	\$12,184
5	2024	\$3,999,820	\$2,999,865	\$16,559	\$2,248	\$1,656	\$20,464
6	2025	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
7	2026	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
8	2027	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
9	2028	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
10	2029	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
11	2030	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
12	2031	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
13	2032	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
14	2033	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
15	2034	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
16	2035	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
17	2036	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
18	2037	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
19	2038	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
20	2039	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
21	2040	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
22	2041	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
23	2042	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
24	2043	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
25	2044	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
26	2045	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
27	2046	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
28	2047	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
29	2048	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
30	2049	\$3,999,820	\$2,999,865	\$24,839	\$2,248	\$1,656	\$28,743
30 Year TIF Total		\$111,994,960	\$83,996,220	\$645,811	\$62,947	\$46,377	\$755,135
30 Year TIF Avg.		\$3,733,165	\$2,799,874	\$21,527	\$2,098	\$1,546	\$25,171

CITY OF PORTLAND
104 GRANT STREET
AFFORDABLE HOUSING DEVELOPMENT DISTRICT
DEVELOPMENT PROGRAM
Date: , 2020

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- Exhibit J District Narrative

104 Grant Street
Affordable Housing Development District Development Program

Article I. Introduction and Summary of Benefits.

A. Affordable Housing Development District. This Development Program provides for the creation of an Affordable Housing Development District located at 104 Grant Street in Portland Maine. The area includes approximately .33 acres. By providing for the reinvestment of a portion of the new or incremental tax revenues in the District, the District will provide an impetus for affordable housing development within the District and the development of affordable, livable housing and the containment of the costs of unplanned growth in the City.

B. Benefits of the District.

1. Affordable Housing. This Development Program will provide for the development of affordable housing in the City and the containment of the costs of unplanned growth.

2. No City Bonds or Risks. The District will not involve any borrowings by or the issuance bonds of the City to pay for any of the costs of the Development Program and will not affect existing tax revenues in any way.

3. Additional Tax Revenues. Creation of the District and Development Program will result in additional tax revenues for the City.

4. Shelter of New Tax Base Growth. The captured assessed value of the District will be sheltered from the otherwise negative impacts of new development that result in increased county taxes and loss of State aid to education and revenue sharing when new development occurs without the creation of an Affordable Housing Tax Increment Financing District. The sheltered portion of the tax increment revenues will be used to pay Project Costs.

Article II. Development Program Narrative and Designation of the District.

Section 2.01: Statement of Means and Objectives. The City of Portland (“the City”), like many other Maine municipalities, desires to provide affordable housing in the City and to contain costs of unplanned growth by providing the facilities described in this Development Program.

In order to fulfill these goals, certain property has been proposed as the 104 Grant Street Affordable Housing Development District (the “District”). The Development Program described herein will serve the purpose of administering the District as an Affordable Housing Development District pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended (the “Development Program”). Upon approval by the City of Portland designating the District and adoption of this Development Program by the City, the designation of the District and adoption of the Development Program will become final immediately, subject only to approval by the Director of the Maine State Housing Authority. The Development Program provides for affordable housing similar in some respects to the economic development incentives called municipal tax increment financing (“TIF”) similar to that adopted by a number of other Maine municipalities including the City. An Affordable Housing Development District involves the creation of a geographically defined district in the City and the “capture” or reinvestment of some of the new increased or “incremental” tax revenues generated on the increased assessed value of property in the District to pay certain costs of the development.

The District is designed to stimulate development of affordable housing in the City by allocating certain tax revenues generated on the increased assessed value in the District to Project Costs, consisting of allowable capital debt service costs per 30-A M.R.S.A. §5249 and described in Section 2.03 hereof by Watson Renewal Grant LLC, its successors and assigns (the “Developer”). Under the Development Program, the City will make portions of the tax increment revenues as set forth in Section 3.04 hereof and under the Credit Enhancement Agreement attached hereto as Exhibit E hereto from the District available to the Developer pursuant to such Credit Enhancement Agreement (the “Credit Enhancement Agreement”). These revenues will be used either to pay or reimburse the Developer for Project Costs per Section 2.03 directly. All additional Project Costs will be the responsibility of the Developer, its successors or assigns. All tax increment revenues following expiration of the term of the Credit Enhancement Agreement will go directly into the City's general fund.

The District will result in significant new tax revenues for the City.

The Development Program thus will provide significant public benefit to the City by providing for the development of affordable housing in the City and for new tax revenues. The means and objectives of the Development Program are to provide: financial assistance towards Project Costs, and the development of affordable housing in the City.

The City, by adopting this Development Program, finds that the Development Program described herein, including the Capital Project, will provide substantial affordable housing in the City, thereby accomplishing an important public purpose.

Section 2.02: Brief Discussion of Financial Plan. The following is a brief summary of the Financial Plan. The Financial Plan is set forth in greater detail in Article III of this Development Program. As described in Section 3.04 hereof and Exhibit A hereof, the property taxes assessed by the City upon the Increased Assessed Value of property in the District (the “Tax Increment”) resulting from the investments by the Developer will be captured or used by the City under the Development Program to pay Project Costs described in Section 2.03 hereof. The development costs and sources and uses of funds associated with the Development Program within the District are described in Article III. The Project Costs and any continuing investment by Developer will be financed by Developer through equity of the Developer, its successors or assigns and the tax increment revenues from the District. As part of the Development Program, the City and Developer will enter into a Credit Enhancement Agreement pursuant to which the City will pay to Developer the percentage of Tax Increment Revenues from the Increased Assessed Value with respect to property in the District, described herein as the Tax Increment Revenues (Developer’s Share) for the term of the District to pay Project Costs related thereto. All tax revenues from the District not payable to Developer under the Credit Enhancement Agreement will be paid to the General Fund of the City. Any tax revenues presently generated on existing property in the District will continue to be paid to the General Fund of the City. The Development Program costs will be paid only from the Tax Increment on assessed value produced by new development in the District occurring after the tax year ending on the March 31st prior to adoption of this Development Program.

Section 2.03: Project Costs Descriptions.

A. Project General Description. The Capital Project at 104 Grant Street involves the construction of approximately .33 acres, into an affordable housing neighborhood. The objective of the project is that 34% of the units in the District will be affordable housing, meaning a decent, safe and sanitary dwelling apartment or other living accommodation for a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development. This project consists of one four story building to be built which will contain a total of

twenty-three (23) units of owner-occupied housing with eight (8) of those units affordable to households that income qualify at or below 120% of the area median income. The zoning for the project assures that this number of units and this affordability objective will be met.

The 104 Grant Street project is projected to have a total local increased assessed valuation at build out of approximately \$3,999,820 based upon current real estate values and City assessment practices. Based upon the estimated tax rate upon completion, the project will pay approximately a thirty year annual average of \$91,649 in increased property taxes to the Developer at full build out. A portion of this new revenue would be offset by increased county taxes and reduced state revenue sharing and education funding resulting from the increased state valuation, were it not included in a Development District.

“Project Costs” as defined in Title 30-A, Chapter 206, Section 5249 of the Maine Revised Statutes will include capital costs, including but not limited to the acquisition of land or construction of public infrastructure improvements for affordable housing development; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures; site preparation and finishing work; and all fees and expenses that are eligible to be included in the capital costs of such improvements, including but not limited to, licensing and permitting expenses and planning, engineering, architectural, testing, legal and accounting expenses. Project Costs are more explicitly defined in the Credit Enhancement Agreement as Qualified Reimbursable Costs.

B. Need for the Affordable Housing TIF. Over the 30-year TIF, the estimated average annual payment is \$91,649 (as set forth in Exhibit A). Developer’s Share of the Tax Increment Revenue is designated to pay Qualified Reimbursable Costs, as defined in the Credit Enhancement Agreement, for the project at 104 Grant Street. The Tax Increment Revenue described in section 3.04 will help pay for Qualified Reimbursable Costs, over a period of no more than thirty (30) years. Without the TIF and these other funding sources the project could not go forward.

The Municipal Affordable Housing Development District law enacted by the Maine Legislature in 2003 creates an opportunity to fill this gap in the project financing through the mechanism of the TIF program. The program operates essentially the same way that the traditional commercial TIF program has with a few exceptions. The Affordable Housing TIF program is administered by the Maine State Housing Authority.

Section 2.04: Relocation Plan. The property currently contains an empty one-story commercial/industrial building that is non-conforming with use and space for the zone. No businesses or persons will be displaced as a result of the development activities proposed in the District.

Section 2.05: Environmental Controls. All environmental controls required by law shall apply to development in the District, including any applicable requirements of the City of Portland Zoning Ordinance and all applicable State and Federal environmental laws and regulations.

Section 2.06: District Operation. The day-to-day operations of the District will require no substantial efforts by the City. The Developer, its successor or assigns, will operate the improvements constructed by Developer and pay all maintenance and operational expenses of its facilities. The City, however, will be responsible for maintenance and operation of any part of the District that may become a public road or other public facility

Section 2.07: Assurance of Compliance. The City hereby determines that the District and this Development Program complies with the provisions of 30-A M.R.S.A. § 4349-A (growth management).

The proposed development in the District is consistent with the Comprehensive Plan for the City of Portland which includes the City's Comprehensive Plan, which calls for additional affordable housing in the City.

Section 2.08: Program Duration. The duration of the District will be thirty (30) years after the tax year in which this Development Program was approved by the Director of the Maine State Housing Authority. The first Tax Year of the Development Program begins April 1, 2020 and the last Tax Year of the Development Program begins April 1, 2049.

Section 2.09: Approval Considerations and Characteristics of the District.

A. Statutory Considerations for Approval. Before designating the District and before establishing this Development Program, the City has considered any evidence presented at such public hearing and has considered whether the District and Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City. The City hereby determines and finds that the District created hereunder and this Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and that any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants.

B. Statutory Conditions for Approval; Physical Characteristics. The City hereby finds and determines that the District satisfies the conditions imposed under Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, as a prerequisite to designation of the District, including those relating to the physical description of the District and to certain financial and statistical information as follows:

(i) All of the land in the District is suitable for residential uses, is zoned for residential uses, and is in need of rehabilitation or redevelopment and therefore at least 25%, by area, of the real property within the District meets at least one of the following statutory criteria: (1) be suitable for residential use; (2) be a blighted area; or (3) be in need of rehabilitation or redevelopment;

(ii) The total area of the District is approximately .33 acres and thus such area represents less than 2% of the total acreage of the City. The total area of the District and the total area of all development districts, including this proposed district, in the City (which combined total is 694.851 acres) is 5.61% of total acreage in the City. Of that 694.851 acres, this includes 451.01 acres, in two exempt districts, a transit oriented district and a downtown/transit oriented district, which when subtracted from the 694.851 acres is 243.814 acres, representing 1.96% of the total acreage of the City and thus does not exceed 5% of the total acreage of the City. The total area of all existing and this proposed affordable housing development districts in the City is 9.5557 acres (0.08%) of the total acreage of the City and does not exceed 5% of the total acreage of the City;

(iii) The Original Assessed Value of the District is as set forth in Exhibit D hereto and the Original Assessed Value of all existing and proposed affordable housing development districts within the City is \$2,244,210 and such amount of Original Assessed Value does not exceed 5% of the total value of taxable property within the City as of April 1st preceding the date of the designation of the District.

C. Community Housing Need. The City finds that this Capital Program will meet a community housing need identified in the City's Comprehensive Plan. The Credit Enhancement Agreement provides a mechanism to ensure the ongoing affordability for a period of at least ten (10) years for home ownership units, which mechanism is the Declaration attached hereto as Exhibit I. The District is primarily a residential development on which 34% of the dwelling units will be affordable housing and that may be designed to be compact and walkable and to include internal open space, other common open space and one or more small-scale nonresidential uses of service to the residents of the development. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable.

Section 2.10: Designation of the District. The City, by adoption of this Development Program, hereby designates the 104 Grant Street Affordable Housing Development District as an Affordable Housing Development District and as an Affordable Housing Tax Increment Financing District. A plan depicting the District is attached hereto as Exhibit C and the District is further described therein.

Article III. Financial Plan.

Section 3.01: Cost Estimates for the Development Program. The estimated expenses of the Project Costs are set forth in Exhibit B.

Section 3.02: Amount of Indebtedness to be Incurred. The City will not incur any indebtedness in connection with the Development Program. The Development Program will be financed through a combination of funds of the Developer, its successors and assigns, various loans and the Tax Increment of the District.

Section 3.03: Sources of Anticipated Revenues. The source of the revenue to be used to pay the Project Costs of this Development Program is a portion of the Tax Increment on the Increased Assessed Value of the District. Tax Increment means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District. Increased Assessed Value means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. Current Assessed Value means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect. Property Taxes means any and all ad valorem property taxes levied, charged or assessed against property by the City or on its behalf.

Original Assessed Value means the assessed value of the District as of March 31, 2020; (tax year April 1, 2019, Fiscal Year 2020). Attached hereto as Exhibit D is the anticipated form of certification of Original Assessed Value by the Assessor of the City of Portland in accordance with the requirements of Title 30-A § 5250-A of the Maine Revised Statutes. All Property Tax on the Original Assessed Value shall continue to be deposited in the general fund of the City.

The City will deposit the Tax Increment Revenues (Developer's Share) as described in Section 2.02 and Section 3.04 hereof and in Exhibit A into the Developer's Project Cost Account of the Affordable Housing Development Program Fund and pay such Tax Increment (Developer's Share) to

Developer in accordance with the terms of the Credit Enhancement Agreement to be entered between the City and the Developer.

Section 3.04: Estimated Increased Assessed Value; Portion Applied to Development Program. The percentage of the Increased Assessed Value of the District to be retained as Captured Assessed Value in each year is 75%. Such Captured Tax Increment Revenues will be returned to the Developer each year in the manner described below.

In the event of a revaluation of taxable property within the City, the Captured Assessed Value of this District may be adjusted in proportion to the change in taxable assessed property valued within the District in the year of the revaluation resulting from such revaluation.

The Tax Increment Revenues (Developer's Share) to be paid to the Developer each year during the term of this Development Program will be an amount which shall be captured and retained to reimburse the Developer for Qualified Reimbursable Costs pursuant to the Credit Enhancement Agreement. The Tax Increment Revenues (Developer's Share) shall be equal to the corresponding fiscal year's projected allocation percentage for each payment according to Exhibit A, but Developer's Share will be an amount equal to the lesser of (1) the total amount of Developer's Qualified Reimbursable Costs for the prior Fiscal Year, or (2) all amounts then on deposit in the Developer Project Cost Subaccount. To the extent that the Qualified Reimbursable Costs in any given CEA Year exceed the amounts then on deposit in the Developer Project Cost Subaccount, then the Developer is eligible to receive payment for the unreimbursable portion of the year's Qualified Reimbursable Costs in a future year if and when the amounts on deposit in the Developer Project Cost Subaccount exceed the then current year Qualified Reimbursable Costs. In no event shall the total aggregate amount of Tax Increment Revenue (Developer's Share) during the term of the District exceed the lesser of (1) the cumulative amount of Qualified Reimbursable Costs paid to Developer's AHTIF Lender, or (2) Two Million Five Hundred Thousand (\$2,500,000). The percentage determination of the Tax Increment Revenues (Developer's Share) as determined as described above shall apply regardless whether the actual Tax Increment Revenues are more or less than the estimated or projected Tax Increment Revenues set forth in Exhibit A.

"Tax Shift Formulas" mean the formulas utilized by the State of Maine in calculating: (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. §5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior year's level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

The amount of Tax Increment from the total Increased Assessed Value that is to be paid each year to the Developer under Credit Enhancement Agreement to pay or reimburse Project Costs is hereinafter called the "Tax Increment Revenues (Developer's Share)."

The table attached hereto as Exhibit A also sets forth: (i) the annual estimates of the Increased Assessed Value of the District resulting from implementation of the Development Program; (ii) the estimated annual Tax Increment Revenues per year on the Increased Assessed Value following implementation of the Development Program, stated respectively as (a) a total, and (b) the estimated amount of the Tax Increment Revenues (Developer's Share)

Based on the manner in which Tax Increment Revenues (Developer's Shares) are defined, a share of the incremental property tax revenues derived from the increased valuation will be returned to the Developer to cover the Project Costs as described in Section 2.03 hereof.

To comply with the provisions of the State of Maine, the Credit Enhancement Agreement includes a provision for the recapture of certain amounts relating to any affordable housing units that are not maintained as affordable for a period of at least thirty years.

The amount of the Tax Increment Revenues on the Increased Assessed Value of all property in the District for each year during the term of the District to be allocated and paid to the Developer each year pursuant to the Credit Enhancement Agreement shall be equal to the product for each year during the term of the District of (a) the relevant Developers Percentage Allocation of the Tax Increment (Developer Share) for each year as computed as described above, times (b) the actual amount of the Tax Increment for each year. Such percentage allocations shall apply regardless of whether the actual Tax Increment Revenues each year are more or less than the Tax Increment Revenues as estimated or projected in Exhibit A of this Development Program, provided that in no fiscal year will the Developer's Share be less than 100% of the captured revenue through the term of the District.

An Affordable Housing Development Program Fund shall be established by the City consisting of a Project Cost Account. The Project Cost Account shall consist of the Developer's Project Cost Account (the "Developer's Project Cost Account"). The Developer's Project Cost Account will be pledged to and charged with payment of amounts due to Developer under the Credit Enhancement Agreement. Upon receipt of each payment of property tax with respect to property in the District, the City shall deposit into the Developer's Project Cost Account according to the terms of the Credit Enhancement Agreement that portion of each payment constituting the percentage of total actual Tax Increment for such year equal to the Tax Increment Revenues (Developer's Share). The amounts in the Developer's Project Cost Account shall be used and applied solely to fund the payments to Developer under the Credit Enhancement Agreement.

Section 3.05: Description of Terms and Conditions of Agreements. A description of the terms and conditions of the agreements, contracts and obligations to be entered into by the City is set forth in the Credit Enhancement Agreement to be entered into by the City and the Developer which will be substantially in the form attached hereto as Exhibit E. The Credit Enhancement Agreement sets forth the obligations of the City to pay to Developer each year during the term of that Agreement Tax Increment Revenues (Developer's Share) from all Property Tax with respect to all property in the District, as provided in such Credit Enhancement Agreement.

Section 3.06: Calculation of Tax Shifts. In accordance with Maine statutes governing the establishment of affordable housing development districts, Exhibit F identifies the estimated tax shifts which will result during the term of the District from the establishment of the District, using formulas approved by the Director of the Maine State Housing Authority. Exhibit F also contains a summary of the methodology and calculations utilized in calculating such estimated tax shifts.

The 104 Grant Street project will pay property taxes to the City based upon the local assessed valuation of the project and the City's annual tax rate. Exhibit A shows the estimated property taxes that will be paid by the project over the next 30 years based upon the estimated local assessed valuation and the estimated tax rate of \$23.78/\$1000 for the first year of the District. The amount of property taxes paid by owners of property in the District to City will be the same whether the project is included in a TIF district or not.

If the project is not part of a TIF, some of these new tax revenues will be offset by what are commonly called tax shifts. Since the City's total state valuation will be higher as a result of the project, its share of Cumberland County taxes will increase. The increased valuation and population will change the amount the City receives in State Revenue Sharing. The increased valuation and increased school enrollment will change the amount the City receives in state education aid.

Exhibit F thus shows the estimated amount of these tax shifts compared to what they would be if the new valuation is "sheltered" in a TIF and, therefore, does not get counted in the City's state valuation that is used in calculating county tax, revenue sharing and state education aid.

The actual extent and amount of the tax shifts can vary from this estimate since they are controlled by factors outside the City's control such as the rate of increase in the County budget, the amount of state sales and income tax collected, the amount of funding provided by the state for education aid, and the formula used to distribute that aid. So the extent and value of the shifts could be more or less than estimated.

Article IV. Municipal Approvals.

Section 4.01: Public Hearing. Before designating the District, the City legislative body of the City held a public hearing. Notice of the hearing was published on [enter date notice was published in the paper], a date that was at least 10 days before the hearing, in The Portland Press Herald, a newspaper of general circulation within the City. Attached hereto as Exhibit G is a copy of the Notice of Public Hearing. The Public hearing was held in accordance with the requirements of 30-A M.R.S.A. § 5250 on [enter date of city council meeting where public hearing occurred]. At the public hearing, interested parties were given a reasonable opportunity to present testimony concerning the District and the Development Program.

Section 4.02: Authorizing Votes. Attached as Exhibit H is a copy of the Orders proposed for adoption by the City Council of the City of Portland at a meeting thereof duly called and held on [enter date of city council meeting] designating the District and adopting the Development Plan.

The undersigned, being the City Manager of the City of Portland, certifies that all of the information contained herein is true and correct to the best of my knowledge.

Dated: _____

Jon P. Jennings City Manager,
City of Portland

CITY OF PORTLAND
Declaration of Covenants, Conditions and Restrictions for the 104 Grant Street Affordable Housing Tax Increment Financing District

This Declaration of Covenants, Conditions and Restrictions (the “Declaration”) is entered into by and between the City of Portland, a public body corporate and politic with its principal place of business at 389 Congress Street, Portland, Maine, 04101 (“City”) and Watson Renewal Grant, LLC, a Maine limited liability company with a mailing address of c/o Renewal Housing Associates LLC, 2 Union Street, 5th Floor, Portland, Maine 04101 (“Developer”).

W I T N E S S E T H

WHEREAS, the Developer acknowledges that City is providing Affordable Housing Tax Increment Financing to the Developer (the “AHTIF”) for project operating costs associated with the development of twenty-three (23) units of homeownership housing (the “Units”) located at 104 Grant Street, Portland, Maine (the “Development”), at least eight (8) of which Units shall be Workforce Units, as that term is defined herein; and

WHEREAS, the Developer acknowledges City’s resulting beneficial interest in the Development, and Developer acknowledges that its ownership and operation of the Development are in furtherance of discharge of the public trust; and

WHEREAS, because the Development consists of homeownership units, Developer has agreed to certain restrictions on the sale and resale of the Workforce Units, including restrictions on the price for which the Workforce Units may be sold, the parties who may purchase Workforce Units, and occupancy restrictions, all on the terms and conditions hereinafter provided; and

WHEREAS, City has provided the AHTIF to Developer in consideration of the Developer’s agreement to abide by the provisions of this Declaration.

NOW THEREFORE, City and the Developer agree as follows:

1. **Term.** The term of this Declaration shall be for the period beginning on the date of the approval of the District by the Director of the Maine State Housing Authority (the “Effective Date”). With respect to each Workforce Unit, as that term is defined below, this Declaration shall remain in full force and effect for a period of ten years after the date of the initial sale of such unit by the Developer (the “Qualified Project Period”).
2. **Enforceability of Covenants.** The covenants and restrictions of Developer set forth herein are intended to be and shall be considered covenants that run with the real estate described in Exhibit A attached hereto and made a part hereof and shall bind all subsequent owners and holders of any interest in said real estate, except to the extent herein provided. The City may enforce the covenants set forth herein as a contract beneficiary whether or not Developer is or remains indebted to the City. The covenants of Developer set forth herein shall survive a sale, transfer, or other disposition of the Development or any portion thereof, a foreclosure or transfer of title in lieu of foreclosure, or the repayment of the AHTIF, but shall cease to apply to the Development in the event of involuntary noncompliance caused by substantial destruction, seizure, requisition, or change in law or an action of a governmental agency that prevents the City from enforcing the covenants, even though compensated by insurance, provided that the AHTIF is repaid within a reasonable period of time after such involuntary loss or substantial destruction.
3. **Covenants.** Developer hereby covenants and represents to the City as follows:
 - a. **Development.** The Development shall consist of the land described in Exhibit A attached hereto, together with all improvements, which after completion of the work will contain a total of twenty-three (23) condominium units of homeownership housing and related amenities. The units in the Development shall be of comparable quality and have comparable amenities. Developer shall not make any change in the nature, size, number or location of the units in the Development and the facilities in the units. The Development’s declaration of condominium shall incorporate by reference, and be subject to, the provisions of this Declaration.
 - b. **Transfer to Qualified Buyer.** Except as may be set forth herein, Developer may sell, transfer, or otherwise dispose of a Workforce Unit only to a Qualified Buyer, as that term is defined herein. Any purported sale, transfer or other disposition to any other person or entity done without following the procedures set forth below, or in violation of the price limitations set forth below, shall be **null and void**. For purposes hereof, the parties agree that the term “**Qualified Buyer**” means a person or household with a gross income not exceeding 120% of the HUD Portland, Maine Metropolitan FMR Area Median Income figures for a household of that size as calculated by the City and which person or household must intend to and in fact occupy the Workforce Unit as their primary residence on a continuing basis. Workforce Units may not be rented out by the Developer or subsequent owner of a Workforce Unit (a “Workforce Unit Owner”) for short or long-term periods during the term of this Declaration. A Qualified Buyer may not qualify if any member of the household owns other residential real estate at the time of the Developer provides the City with a Notice of Intent, as that term is defined below. The City reserves the right to perform an asset test to help determine a

household's income.

- c. Household size/composition upon the unit's sale should be appropriate to the size of the unit. A one-bedroom unit has a minimum household size of one (1) person and a maximum household size of two (2) persons.
4. **Transfer to Owner's Heirs.** If a Workforce Unit Owner should die still owning a Workforce Unit during the term of this Declaration, then upon receipt of notice from the personal representative of the decedent's estate given within ninety (90) days of the death of such owner (or the last surviving co-owner if the Workforce Unit was owned in joint tenancy), the City shall, except for good cause shown, consent to a transfer of the Workforce Unit to one or more of the following:
- a. The spouse of the deceased owner (in cases where such spouse was not a joint tenant with owner); or
 - b. The child or children of the deceased owner; or
 - c. Member(s) of the deceased owner's household who have resided in the Workforce Unit for at least three years prior to the owner's death.

Any subsequent transfer by a transferee under A, B, or C, above, shall be subject to the terms of this Agreement.

5. **Notice to the City; Procedure for Sale.**

- a. In each instance that a Workforce Unit Owner intends to sell, transfer or otherwise dispose of a Workforce Unit to a third party, then prior to listing the Workforce Unit for sale or entering into a purchase and sale agreement, or otherwise taking any steps to consummate the sale of the Workforce Unit, the Workforce Unit Owner shall first give the City written notice of such intent (the "**Notice of Intent**") addressed to the City at the address set forth below or at such other address as the City shall provide to Developer by written notice.
- b. Within ten (10) days of receiving the Notice of Intent, the City shall determine (1) the qualifications and income guidelines for a Qualified Buyer hereunder, and (2) the Workforce Unit Owner's "**Maximum Allowable Price**" as determined under Section 5(d), below. The City shall communicate the results of such determinations to the Workforce Unit Owner within said ten (10) day period.
- c. The Workforce Unit Owner shall market Workforce Units to Qualified Buyers at a price not to exceed the Maximum Allowable Price. The City shall have the right in all cases to determine whether a proposed buyer is a Qualified Buyer, as defined herein. The City shall have ten (10) days from the date it receives all information about a prospective buyer necessary to determine if the prospective buyer is indeed a Qualified Buyer hereunder. The Workforce Unit Owner shall contractually require such potential

buyers to provide the City with whatever reasonable information the City requests in order to make the determinations required under this subsection. To the extent permitted by law, all information provided regarding any prospective Qualified Buyer shall be kept and maintained in confidence by the City. The Workforce Unit Owner shall require the Qualified Buyer to acknowledge and agree to be bound by the terms and conditions of this Declaration by executing an acknowledgment form in substantially the same form as that attached hereto as **Exhibit B** (the “Buyer’s Agreement”). As a condition of the purchase of any of the Workforce Units, the buyer shall assume, in writing, all of the obligations of the “Developer” hereunder with respect to said Workforce Unit. The Buyer’s Agreement shall be attached to and recorded in the Cumberland County Registry of Deeds with the deed from the Workforce Unit Owner conveying the Workforce Unit. A Workforce Unit Owner shall not be liable for the Qualified Buyer’s performance of its obligations under the Buyer’s Agreement.

- d. Maximum Allowable Price. The City will determine the Maximum Allowable Price for any sale of a Workforce Unit during the term of this Declaration based on the following calculations:
 - i. Begin by determining monthly income available for the Housing Expenses described below (“Monthly Housing Income”) by calculating 30% of the gross monthly income for a household earning 110% AMI as appropriate for the minimum household size for each Workforce Unit by bedroom type. $(\text{Household's } 110\% \text{ AMI} \times 0.30) / 12 = \text{Monthly Housing Income}$
 - ii. Housing Expenses covered by Monthly Housing Income include mortgage payments and other housing related expenses such as real estate taxes, mortgage insurance, condominium/homeowners association fees, property insurance, and utilities, as set forth below.
 1. Utilities included in Housing Expenses include electricity, heat, hot water, cooking energy, sewer, water, and trash collection. The City shall make reasonable assumptions based on a unit’s bedroom count as to the monthly cost of each utility. To determine what is reasonable, the City may utilize the figures estimated by HUD and distributed through the Portland Housing Authority annually for similar utility allowances based on a unit’s bedroom count. The City shall reserve the right to determine a different metric should the HUD figures be unavailable.
 2. Mortgage insurance will be estimated similar to current rates utilized by the Federal Housing Administration (FHA) or another reasonable method as determined by the City. Currently, for 30 year mortgages of less than \$625,000 with Loan to Value (LTV) ratios equal or less than 95%, the FHA utilizes a rate of 80 basis points on the mortgaged amount. The actual rate used in the calculation will be determined at the time the unit is marketed.

- iii. The Maximum Allowable Price will then be based on a 30 year fixed rate mortgage with a 5% down payment. It will be allowable for a Qualified Buyer to offer a larger down payment, but a down payment larger than 5% will not increase the Maximum Allowable Price of a Workforce Unit. Mortgage interest rates for the Maximum Allowable Price calculation will be the average national mortgage rate over the past thirteen years as determined by the Freddie Mac Primary Mortgage Market Survey or another source as determined reasonable by the City. The interest rate for the calculation will be determined at the time the unit is marketed.
 - e. Developer shall not segregate or physically isolate the Workforce Units from each other and from other units in the Development and the Developer shall use its best efforts to proportionately distribute the Workforce Units among each unit size in the Development.
- 6. **Compliance.** Developer agrees to furnish to City such information as City may require in a form acceptable to City, including without limitation certifications and/or verifications of occupancy and resident income, to determine Developer's compliance with the covenants set forth herein. Information deemed acceptable by Maine State Housing Authority shall be acceptable to the City.
- 7. **Real Estate Taxes.** Developer agrees that it shall pay all real estate taxes assessed on the Development during its ownership of the Development; provided, however, that a Workforce Unit Owner shall be responsible for paying all real estate taxes assessed on a Workforce Unit owned by that owner. Nothing contained in this section shall be deemed a waiver or limitation on Developer's or a Workforce Unit Owner's right to seek abatement of property taxes if they believe their property is over-assessed.
- 8. **Records.** Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, books and records related to compliance with the covenants contained in this Declaration. Such books, records, documents and plans shall be kept for: (a) a minimum of six (6) years after the expiration of the Qualified Project Period for those books, records, documents and plans pertaining to the sale and occupancy requirements described in this Declaration. Upon reasonable notice, City may audit and examine these books, records, documents and plans, and may inspect the buildings, grounds, equipment offices of the Development.
- 9. **Violation.** Developer shall immediately notify the City if Developer anticipates or discovers any noncompliance with any restriction or covenant in this Declaration, including, without limitation, noncompliance with the occupancy restrictions in Section 3 of this Declaration. Developer agrees to take such action as the City deems necessary to prevent noncompliance or to correct or cure any failure to comply with the covenants in this Declaration. In the event the Developer fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, the City shall be entitled to exercise any of its rights under the documents executed in connection with the AHTIF, maintain an action in law

or in equity against the Developer to recover damages incurred by the City from such failure, including, without limitation, reasonable attorneys' fees and costs, and to require the Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by the Developer.

10. **Indemnification.** Developer shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to reasonable attorney's fees and other costs of litigation) which may be incurred by the City arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration or any action taken by the City to enforce or exercise its rights under this Declaration as a result of such breach, except for claims arising from the gross negligence or willful acts of the City. The obligations under this section shall survive the termination or expiration of this Declaration as necessary to effectuate its provisions.
11. **Modifications.** This Declaration may be amended or modified, in whole or in part, only by written agreement of all Workforce Unit Owners, the Developer and the City clearly expressing the intent to modify this Declaration.
12. **Severability.** The validity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.
13. **Successors and Assigns.** This Declaration shall be binding upon Developer's respective heirs, personal representatives, executors, administrators, successors, assigns, and all Workforce Unit Owners and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.
14. **Governing Law.** This Declaration shall be construed in accordance with and governed by the laws of the State of Maine.
15. **Notices.** Any notice or demand required or provided for in this Declaration shall be in writing and shall be deemed to have been sufficiently given for all purposes when hand-delivered or mailed by certified or registered United States mail, postage prepaid, or sent by overnight United States mail or overnight commercial delivery service to the Developer or the City at their respective addresses set forth herein, or at such other address as either of them may from time to time hereafter designate by notice given to the other as herein provided. The City shall endeavor to provide a copy of any notice to Developer, or such other addresses as may from time to time hereafter be designated by notice given to the City as herein provided.
16. **Intercreditor.** This Declaration is subject to the terms and conditions of the Intercreditor and Subordination Agreement by and among Maine State Housing Authority, the City of Portland, _____, and _____ **[construction lender and any other entities providing financing will also be parties]** dated _____, _____ to be recorded in the Cumberland County Registry of Deeds herewith.

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and City as of _____, 2020.

CITY OF PORTLAND

Witness

By:_____
Jon P. Jennings
Its City Manager

**State of Maine
Cumberland, ss.**

_____, 2020

Personally appeared the above named Jon P. Jennings, City Manager to the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

Developer signature page follows.

WATSON RENEWAL GRANT, LLC

Witness

By: _____
Name: Todd Alexander
Its Co-Manager

State of Maine
Cumberland, ss.

_____, 2020

Personally appeared the above named Todd Alexander, Co-Manager of Watson Renewal Grant, LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of Watson Renewal Grant, LLC.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

EXHIBIT A

EXHIBIT B

**ACKNOWLEDGMENT AND RECEIPT OF
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE 104 GRANT STREET
AFFORDABLE HOUSING TAX INCREMENT FINANCING DISTRICT
Unit ____, 104 Grant Street, Portland, Maine**

I/We _____(insert buyer names) hereby acknowledge and agree that I am/we are in receipt of a copy of the Declaration of Covenants, Conditions and Restrictions for the 104 Grant Street Affordable Housing Tax Increment Financing District for 104 Grant Street between the City of Portland and Watson Renewal Grant, LLC dated ____, 2020, which was recorded at the Cumberland County Registry of Deeds at Book _____, Page _____ (the "Declaration") (a copy of which is attached hereto). I/We acknowledge and agree that the Declaration is binding upon our unit identified as Unit No. _____ at 104 Grant Street, Portland, Maine (the "Workforce Unit") and that as owner(s) of the Workforce Unit, I am/we are bound by the all of the provisions of the Declaration, including, without limitation, the restrictions on the sale and occupancy of the Workforce Unit. This Acknowledgment shall be recorded in the Cumberland County Registry of Deeds together with the deed conveying the Workforce Unit to me.

ACKNOWLEDGED AND AGREED TO ON THIS _____ DAY OF _____, 20____.

BUYER

Witness

By:_____

Print Name:_____

**State of Maine
Cumberland, ss.**

_____, 2020

Personally appeared the above named _____ [Buyer] and acknowledged the foregoing instrument to be their free act and deed.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: May 21, 2020

SUBJECT: **Order 204-19/20 Approving and Authorizing the City Manager to Enter Into the Credit Enhancement Agreement with Watson Renewal Grant LLC - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair and the Economic Development Committee, Councilor Justin Costa, Chair**

SPONSOR: Justin Costa, Chair of the Economic Development Committee
Jill C. Duson, Chair of the Housing Committee

(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 6/1/2020

Final Action 6/15/2020

Can action be taken at a later date: No (If no why not?)

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

I. SUMMARY

This is a companion order to Order -19/20 above.

II. AGENDA DESCRIPTION

At a meeting held on May 5, 2020, the Economic Development Committee (4-0) voted to forward this item to the City Council with a recommendation for passage.

This is a companion order to Order 203-19/20 above.

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

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

With of vote 4-0 the Economic Development Committee voted to forward this item to the City Council with a recommendation for passage.

VIII. LIST ATTACHMENTS

1. CEA 104 Grant St Clean for Council 060420

Prepared by:

Mary Davis, Division Director

Date: 5/21/2020

CREDIT ENHANCEMENT AGREEMENT

between

THE CITY OF PORTLAND, MAINE

and

WATSON RENEWAL GRANT LLC

DATED: _____, 2020

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Exhibit 1 Copy of District Map

THIS CREDIT ENHANCEMENT AGREEMENT dated as of [Enter Date, 2020], between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine (the “City”), and Watson Renewal Grant LLC, a Maine limited liability company (the “Developer”).

WITNESSETH THAT

WHEREAS, the City designated the *104 Grant Street Municipal Affordable Housing Development and Tax Increment Financing District* (the “District”) pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the City Council at a meeting of the City Council held on [Enter Date of Council Meeting, 2020], Order ____ - 19/20 (the “Vote”) and pursuant to the same Vote adopted an affordable housing development program, including a financial plan, for the District (the “Development Program”); and

WHEREAS, the City received the approval of the District and the Development Program by Maine State Housing Authority (“MSHA”) on [Enter Date of District Approval by Maine Housing] and anticipates the approval of the amended District and the Development Program by MSHA; and

WHEREAS, the Development Program contemplates the execution and delivery of a credit enhancement agreement between the City and the Developer, and the City approved the execution and delivery of a credit enhancement agreement as described in the Development Program pursuant to the Vote, and the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute the Credit Enhancement Agreement contemplated and described in the Development Program in the name of and on behalf of the City; and

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

“Act” means chapter 206 of Title 30-A of the Maine Revised Statutes and regulations adopted thereunder, as amended from time to time.

“Agreement” shall mean this Credit Enhancement Agreement between the City and the Developer dated as of the date set forth above, as such may be amended from time to time.

“Authority” means the Maine State Housing Authority.

“Captured Assessed Value” means the amount, stated as a percentage, of the Increased Assessed Value of the District that is retained in each Tax Year during the term of the District, as specified in Section 2.3 hereof, to fund Project costs authorized in the Development Program.

“City” shall have the meaning given such term in the first paragraph hereto.

“Current Assessed Value” means the then-current assessed real property value of the District as determined by the City Tax Assessor as of April 1 of each Tax Year that the District remains in effect.

“Developer Project Cost Subaccount” means that portion of the Project Cost Account of the Development Program Fund for the District set aside for the Developer established and maintained according to Article II hereof.

“Development Program” shall have the meaning given such term in the recitals hereto.

“Development Program Fund” means the Affordable Housing Development Program Fund described in the Development Program and established and maintained pursuant to Article II hereof and 30-A M.R.S.A. § 5250-A(3)(A) consisting of subaccounts further described herein.

“Director” means the Director of the Maine State Housing Authority.

“District” shall have the meaning given such term in the first recital hereto.

“Effective Date of the Development Program” means the start date identified in Section 2.08 of the Development Program.

“Fiscal Year” means July 1 to June 30 each year or such other fiscal year as the City may from time to time establish.

“Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the amount by which the Current Assessed Value for such year exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any given Tax Year, there is no Increased Assessed Value in that year.

“Original Assessed Value” means Four Hundred and Nineteen Thousand dollars (\$419,600), the taxable assessed real property value of the District as of March 31, 2020.

“District” shall mean that portion of the District which is comprised of any real property portion of the District, or improvements thereon associated with the Project. A copy of the District map is attached hereto as Exhibit 1 as well as an informational map showing the Project in the District.

“Non-Captured Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the difference between the Increased Assessed Value and the Captured Assessed Value.

“Project” means the planned twenty-three (23) unit mixed-income housing project to be named the Goodwin located in the District.

“Project Cost Account” means the project cost account associated with the Project as described in the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5250-A(3)(A)(1) and Article II hereof.

“Property Taxes” means any and all *ad valorem* property taxes levied, charged or assessed against the Project located in the District by the City, or on its behalf.

“Qualified Reimbursable Costs” means certain annual Project debt service, more specifically defined as principal, interest and any fees, except late fees or other penalties incurred due to a default of the Developer, and charged by the Developer’s affordable housing tax increment financing lender (“Developer’s AHTIF Lender”) that are actually incurred and paid by the Developer.

“State” means the State of Maine

“Tax Increment Revenues” means that portion of all real property taxes assessed and paid to the City in any Tax Year, in excess of any state, or special district tax, upon the Increased Assessed Value.

“Tax Payment Date” means the later of the date(s) on which property taxes levied by the City are due and payable, in full, from owners of property located within the City, or are actually paid to the City with respect to taxable property located within the District.

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. § 5246(16), as amended, to wit: April 1 to March 31.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

(f) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

(g) If any clause, provision or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof.

ARTICLE II

AFFORDABLE HOUSING DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

Within sixty (60) days after the Effective Date of the Development Program, the City shall create and establish a segregated fund in the name of the City designated as the “104 Grant Street Municipal Affordable Housing Development and Tax Increment Financing District Program Fund” (hereinafter the “Development Program Fund”) pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5250-A(3). The Development Program Fund shall consist of the Developer Project Cost Subaccount, which is pledged to and charged with the payment of Project costs described in the Development Program, as provided in 30-A M.R.S.A. § 5250-A(3)(A)(1). The Developer Project Cost Subaccount is pledged to and charged with the payment of costs in the manner and priority provided in Section 3.1(b) below.

Section 2.2. Liens.

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Developer Project Cost Subaccount described in Section 2.1 hereof or any funds therein, other than the interest in favor of Developer hereunder; provided, however, that nothing herein shall prohibit the creation of property tax, sewer or other liens on property in the District in accordance with and entitled to priority pursuant to Maine law.

Section 2.3. Captured Assessed Value; Deposits into Development Program Fund.

(a) Each Tax Year during the term of this Agreement, commencing with the April 1, 2020 Tax Year and continuing thereafter through the April 1, 2049 Tax Year (collectively the “CEA Years”), the City shall retain in the District seventy-five percent (75%) of the Increased Assessed Value as Captured Assessed Value. The remaining 25% of the Increased Assessed Value is referred to herein as the Non-Captured Increased Assessed Value.

In the event of a revaluation of taxable property within the City, the Captured Assessed Value of this District may be adjusted in proportion to the change in taxable assessed property valued within the District in the year of the revaluation resulting from such revaluation.

(b) For each of the CEA Years, the City shall deposit into the Development Program Fund contemporaneously with each payment of Property Taxes during the term of this Agreement an amount equal to seventy-five percent (75%) of that portion of the property tax payment constituting Tax Increment Revenues. The City shall allocate such 75% portion to the Developer Project Cost Subaccount. The remaining 25% portion of the property tax payment constituting Tax Increment Revenues shall be deposited into the City’s general fund.

(c) Notwithstanding anything herein to the contrary, if the District property becomes

exempt from the obligation to pay property taxes, after application by the owner of the District property to the City for such exemption, then upon the granting of such exemption, this Agreement shall terminate and no further deposit or payment obligations on the part of the City shall exist.

(d) Any and all revenues resulting from investment earnings on deposits in the Development Program Fund shall be retained in the Development Program Fund and applied for Development Program purposes relating to the Development Program Fund as prescribed by 30-A M.R.S.A Section 5250-A(3), subject to the payment obligations set forth in Article III below.

Section 2.4. Use of Monies in Development Program Fund.

All monies in the Development Program Fund that are allocable to and/or deposited in Developer Project Cost Subaccount shall in all cases be used and applied to fund fully the City's payment obligations to Developer as described in Articles II and III hereof. Developer shall be obligated to use such payments for operating costs of the Project and credit enhancement pursuant to the Development Program and Title 30-A M.R.S.A. § 5249.

Section 2.5. Monies Held for Benefit of Developer.

All monies required to be deposited with or paid into Developer Project Cost Subaccount under the provisions hereof and the provisions of the Development Program, exclusive of any investment earnings thereon, shall be held by the City for the benefit of Developer, subject to the payment obligations set forth in Article III below.

ARTICLE III PAYMENT OBLIGATIONS

Section 3.1. Developer Payments.

(a) On an annual basis, the City agrees to pay Developer, within thirty (30) days of the end of each Fiscal Year, an amount equal to the lesser of (1) the total amount of Developer's Qualified Reimbursable Costs for the prior Fiscal Year, or (2) all amounts then on deposit in the Developer Project Cost Subaccount. To the extent that the Qualified Reimbursable Costs in any given CEA Year exceed the amounts then on deposit in the Developer Project Cost Subaccount, then the Developer is eligible to receive payment for the unreimbursed portion of the previous year's Qualified Reimbursable Costs in a future year if and when the amounts on deposit in the Developer Project Cost Subaccount exceed the then current year Qualified Reimbursable Costs. In no event shall the total aggregate amount paid to Developer during the term of this Agreement exceed the lesser of (1) the cumulative amount of Qualified Reimbursable Costs paid to Developer's AHTIF Lender, or (2) Two Million Five Hundred Thousand Dollars (\$2,500,000.00). Any funds remaining in the Developer Project Cost Subaccount after Developer has received all allowable payments under this Agreement shall be returned to the City's general fund.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real or personal property located in the District remain unpaid, because of a bona fide valuation dispute being pursued by Developer, the property taxes actually paid with respect to such Tax Payment Date shall, first, be applied to taxes due on account of Original Assessed Value and deposited into the City's general

fund; and second, shall constitute payment of Property Taxes with respect to Non-Captured Increased Assessed Value and deposited into the City's general fund; and third, shall constitute payment of Property Taxes with respect to Captured Assessed Value, to be applied to payment of Developer 's share of the Tax Increment Revenues for the year concerned and deposited into Developer Project Cost Subaccount.

Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real or personal property located in the District remain unpaid from successor owners of real or personal property within the District, the property taxes actually paid with respect to such Tax Payment Date shall, first, be applied to taxes due on account of Original Assessed Value and deposited into the City's general fund; and second, shall constitute payment of Property Taxes with respect to Non-Captured Increased Assessed Value and deposited into the City's general fund; and third, shall constitute payment of Property Taxes with respect to Captured Assessed Value, to be applied to payment of Developer 's share of the Tax Increment Revenues for the year concerned and deposited into Developer Project Cost Subaccount.

(c) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against real or personal property located in the District remain due to the City from and unpaid by Developer, for any reason other than a bona fide valuation dispute, or if any portion of any other fee or charge due to the City by Developer including but not limited to sewer fees, ambulance fees, or assessments, remain unpaid, no payment of Developer 's share of the Tax Increment Revenues for the year concerned will be deposited into the Developer Project Cost Subaccount until such property taxes assessed against real or personal property located in the District are paid in full.

(d) Annually, Developer will provide loan payment statements as back-up documentation of Project Costs for its TIF payments, which documentation will be kept confidential by the City.

(e) Prior to receiving the first payment under this Agreement, Developer shall provide evidence reasonably satisfactory to the City of the Developer's ability to complete the Project in accordance with State law. Reasonably satisfactory evidence shall include documentation that the Developer has closed on complete financing for the Project.

(f) On a bi-weekly basis during the course of construction of the Project, Developer must provide documentation in a form reasonably satisfactory to the City demonstrating that all firms employed in the construction phase of the Project have compensated their employees, at all relevant times, the current wage rates and fringe benefits as required under applicable state prevailing wage law, 26 M.R.S. §1306, or the City's minimum wage requirements set forth in Chapter 33, Sections 1-12 of the Portland City Code, whichever is greater.

(g) Developer must provide evidence reasonably satisfactory to the City demonstrating that the Project was designed, constructed and rehabilitated in accordance with the City's Green Building Code set forth in Chapter 6, Article VII, of the Portland City Code.

Section 3.2. Failure to Make Payment.

In the event the City should fail to, or be unable to, make any of the payments at the

time and in the amount required under the foregoing provisions of this Article III including in the event that the amount deposited into Developer Project Cost Subaccount is insufficient to reimburse Developer for the full amount due to Developer under this Agreement, the amount or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. Developer shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to deposit Tax Increment Revenues to Developer Project Cost Subaccount and its obligation to make payment out of Developer Project Cost Subaccount to Developer.

Section 3.3. Manner of Payments.

The payments provided for in this Article III shall be paid directly to Developer at the address specified in Section 8.7 hereof in the manner provided hereinabove by check drawn on the City.

Section 3.4. Obligations Unconditional.

Subject to Developer's compliance with the terms and conditions of this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional, and the City shall not suspend or discontinue any payment hereunder or terminate this Agreement for any cause, other than pursuant to this Agreement or by court order or by reason of a final judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal.

Section 3.5. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Tax Increment Revenues pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of Tax Increment Revenues payable to Developer hereunder, whether or not actually deposited into Developer Project Cost Subaccount in the Development Program Fund. This Agreement shall not directly, indirectly or contingently obligate the City, the State of Maine, or any other City or political subdivision to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the pledge of the Tax Increment Revenues established under this Agreement.

ARTICLE IV PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of and Grant of Security Interest in Developer Project Cost Subaccount.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance

of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge Developer Project Cost Subaccount described in Section 2.1 hereof and all sums of money and other securities and investments therein to Developer.

Section 4.2. Perfection of Interest.

(a) Upon written request by Developer, the City will establish the Developer Project Cost Subaccount described in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by Developer so as to perfect Developer's interest therein. The cost of establishing and monitoring such a fund (including the cost of counsel to the City with respect thereto) shall be borne exclusively by Developer. In the event such a fund is established under the control of a trustee or fiduciary, the City shall cooperate with Developer in causing appropriate financing statements and continuation statements naming Developer, or its designee, as pledgee of all such amounts from time to time on deposit in the fund to be duly filed and recorded in the appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.

(b) In the event Developer requires the establishment of a segregated fund in accordance with this Section 4.2, the City's responsibility shall be expressly limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by Developer. The City shall have no liability for payment over of the funds concerned to Developer by any such escrow agent, trustee or other fiduciary, or for any misappropriation, investment losses or other losses in the hands of such escrow agent, trustee or other fiduciary. Notwithstanding any change in the identity of Developer's designated escrow agent, trustee or other fiduciary, the City shall have no liability for misdelivery of funds if delivered in accordance with Developer's most recent written designation or instructions actually received by the City.

Section 4.3. Further Instruments.

The City shall, upon the reasonable request of Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City; and provided further that the cost of executing and delivering such further instruments (including the reasonable and related costs of counsel to the City with respect thereto) shall be borne exclusively by Developer.

Section 4.4. No Disposition of Developer Project Cost Subaccount.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in Developer Project Cost Subaccount and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

Section 4.5. Access to Books and Records.

All books, records and documents in the possession of either of the parties to this Agreement relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Developer Project Cost

Subaccount shall at all reasonable times and upon reasonable notice be open to inspection by both parties to this Agreement, and the agents and employees of the parties to this Agreement.

ARTICLE V DEFAULTS AND REMEDIES

Section 5.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an “Event of Default”:

(a) Any failure by the City to pay any amounts due to Developer when the same shall become due and payable;

(b) Any failure by the City to make deposits into Developer Project Cost Subaccount as and when due;

(c) Any failure by the City or Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or Developer to be observed or performed, which failure is not cured within thirty (30) days following written notice thereof; and

(d) If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of Developer's affairs shall have been entered against the Developer or the Developer shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Developer or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the Developer or the failure by the Developer to have an involuntary petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the Developer.

(e) If any secured lender of Developer accelerates the indebtedness owed to it;

(f) If any written representation or warranty given to the City by Developer is knowingly incorrect or incomplete in any material respect, other than statements made about or in agreements with the City that were later changed by mutual consent;

(g) If Developer fails to maintain adequate surety bonding during construction at the levels and terms as may be required from time to time by the Developer's secured lenders and/or Developer allows mechanics' liens to encumber the Project for a period of more than sixty (60) days.

(h) any discontinuance of the District property as “affordable housing,” pursuant to the definition contained in Title 30-A M.R.S.A. Section 5246.

Section 5.2. Remedies on Default.

Subject to the provisions contained in Section 8.13, whenever any Event of Default

described in Section 5.1 hereof shall have occurred and be continuing, the nondefaulting party, following the expiration of any applicable cure period, shall have all rights and remedies available to it at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may be necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the nondefaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder. Further, the non-defaulting party may elect to terminate this Agreement upon 30 days' written notice to the defaulting party.

Section 5.3. Remedies Cumulative.

Subject to the provisions of Section 8.13 below concerning dispute resolution, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

ARTICLE VI EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

Notwithstanding any other provision of this Agreement, this Agreement is conditioned upon receipt of the Director's unconditional approval of the City's designation of the District and adoption of the Development Program. Following execution and delivery of this Agreement, the Agreement shall not be or become binding and enforceable until receipt of such unconditional approval. Upon receipt of such approval, this Agreement shall remain in full force from the Effective Date of the Development Program and shall expire March 31, 2050 or sooner upon the payment of all amounts due to Developer hereunder and the performance of all obligations on the part of the City hereunder, unless even sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

The City may terminate this Agreement by delivering written notice of such termination to Developer in the event that Developer does not receive a certificate of occupancy for the Project by June 30, 2023.

Termination by City. Notwithstanding anything to the contrary in this Agreement, in the event that the Declaration, as that term is defined below, is terminated by foreclosure of a lien on the Project that has priority over the Declaration, the City shall have the right to terminate this Agreement by providing Developer with 30 days written notice prior to the effective date of termination. If the City elects to exercise its right to terminate this Agreement due to a foreclosure of the Declaration, the

Developer shall have the right to attempt to reinstate and enforce the Declaration. If the Developer elects to exercise its right to reinstate and enforce the Declaration, it shall provide written notice to the City within 30 days of receipt of the City's notice of its intent to terminate the Agreement. The Developer will then have one (1) year to reinstate the Declaration or cause the Declaration to be reinstated by the foreclosing party; provided, however, that the City shall have no obligation to make payments to Developer hereunder after it provides the termination notice unless and until the Declaration is reinstated and in full force and effect.

Section 6.2. Cancellation and Expiration of Term.

At the acceleration, termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and Developer shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

ARTICLE VII
ASSIGNMENT AND PLEDGE OF DEVELOPER'S
INTEREST

Section 7.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest.

The City hereby acknowledges that Developer may pledge, assign and grant a security interest in its right, title and interest in, to and under this Agreement as collateral for financing by a bank, financial institution, Maine State Housing Authority, or other public and private lending institutions and organizations to Developer for the Project, although no obligation is hereby imposed on Developer to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of and the grant of a security interest in all Developer's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Developer hereunder, to third parties as collateral or security for indebtedness or otherwise, on one or more occasions during the term hereof. The City agrees upon request to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee or secured party, including without limitation recognition of the pledgee or assignee or secured party as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such pledgee or assignee or secured party the position of such assignee or pledgee or secured party and the irrevocable and binding nature of this Agreement, and provide to the pledgee or assignee such rights and/or remedies as the parties may reasonably deem necessary for establishing, perfection and protection of its interest herein. Developer shall be responsible for the City's necessary and reasonable costs of counsel with respect to any such pledge or assignment.

Section 7.2. Transfer.

Except as specified in Section 7.1 hereof, Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE VIII MISCELLANEOUS

Section 8.1. Successors.

In the event of the dissolution, merger or consolidation of the City or Developer, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 8.2. Parties-in-Interest.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and Developer any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and Developer.

Section 8.3. Severability.

In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.4. No Personal Liability of Officials of the City.

(a) No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity, and neither the City Council nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

(b) No covenant, stipulation, obligation or agreement of Developer contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future officer, agent, servant or employee of Developer in his or her individual capacity, and no official, officer, employee or agent of Developer shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.5. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 8.6. Governing Law.

The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Section 8.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, addressed as follows:

If to the City:

City of Portland
Attn. Housing and Community Development Division
389 Congress Street
Portland, ME 04101

With a copy to:

Corporation Counsel's Office
389 Congress Street
Portland, Maine 04101

If to Developer:

Watson Renewal Grant LLC
c/o Renewal Housing Associates LLC
2 Union Street, 5th Floor
Portland, Maine 04101

With a copy to:

Tom Federle
Federle Law
254 Commercial Street
Portland, ME 04101

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 8.8. Amendments.

This Agreement may be amended only with the concurring written consent of both of the parties hereto.

Section 8.9. Records.

The City shall maintain records which are adequate in all respects to make the calculation of Increased Assessed Value and Tax Increment Revenues required to calculate the deposits into the Development Program Fund hereunder, and shall provide to Developer, upon request by Developer, a summary of such calculations.

Section 8.10. Reserved.

Section 8.11. Integration.

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 8.12. Reserved.

Section 8.13. Dispute Resolution.

In the event of a dispute regarding this Agreement or the transactions contemplated by it, the parties hereto will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after one party first brings the dispute to the attention of the other party, either party may file suit to resolve the dispute in the Superior Court located in Cumberland County, State of Maine, which the parties agree shall have exclusive jurisdiction for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder. This clause shall not bar the City's assessment or collection of property taxes in accord with law, including by judicial proceedings, including tax lien thereof.

Section 8.14. Tax Laws and Valuation Agreement.

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by Developer. Without limiting the foregoing, the City and Developer shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on Developer's property. In addition, the Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The City and Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) prejudice the rights of any party or be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to Developer's property for purposes of ad valorem property taxation or (b) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

Section 8.15. Affordability Covenants.

The Developer and the City shall, in order to assure the continued affordability of the units in the Project as required by the Development Program, Maine State Housing Authority and applicable laws, regulations and ordinances, execute a declaration (the "Declaration") which is substantially in the same form as the Declaration of Covenants, Conditions and Restrictions which is attached to the Development Program as Exhibit I.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers, all as of the date first above written.

WITNESS:

CITY OF PORTLAND, ME

By: _____
Name: Jon P. Jennings
Its City Manager

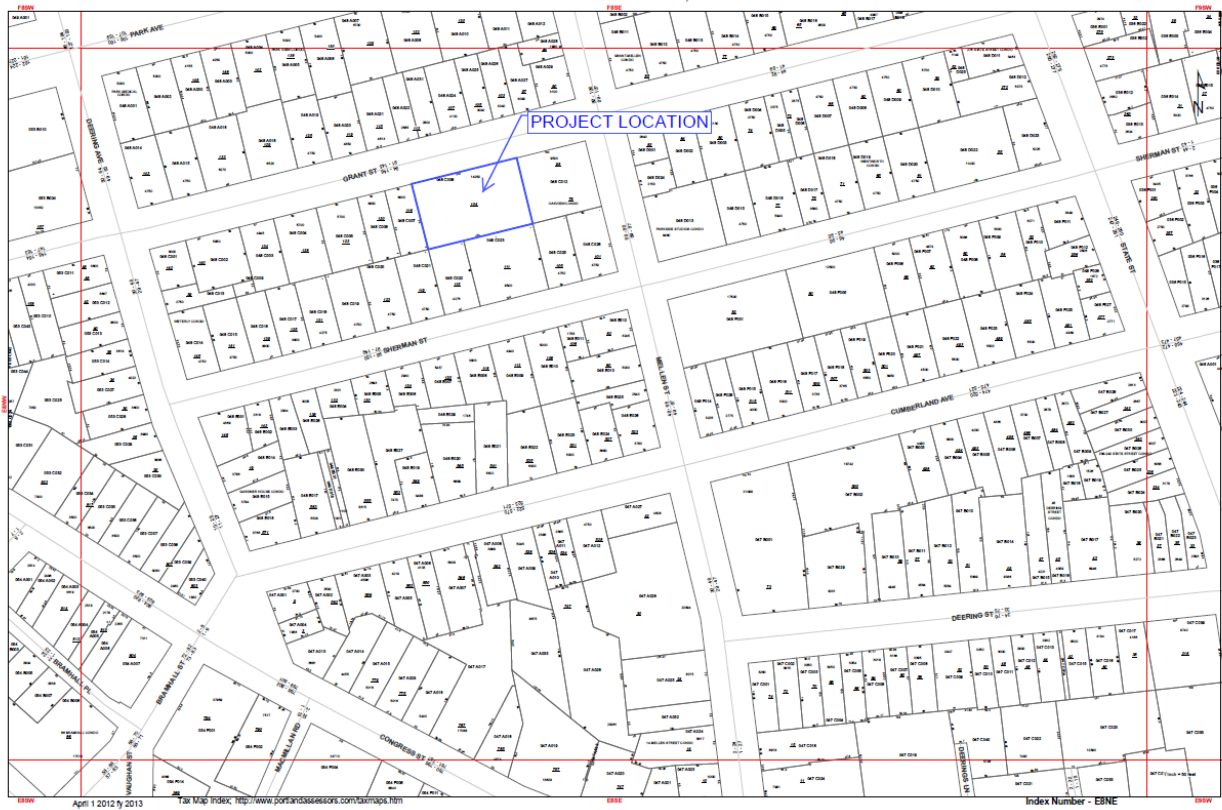
WATSON RENEWAL GRANT, LLC

WITNESS:

By: _____
Name: Todd Alexander
Its: Co-Manager

EXHIBIT 1

EXHIBIT C: CITY OF PORTLAND TAX PARCEL MAP, AHTIF DISTRICT BOUNDARIES



MEMORANDUM
City Council Agenda Item

FROM: Melissa Graffam

DATE: May 27, 2020

SUBJECT: **Order 205-19/20 Approving an Agreement between the Maine Department of Transportation and Portland Re: Improvements to Stevens Avenue - Sponsored by Jon P. Jennings, City Manager**

SPONSOR: Jon P. Jennings, 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 6/15/2020

Final Action 7/13/2020

Can action be taken at a later date: No

PRESENTATION:

I. SUMMARY

City Council is being asked to approve the attached MaineDOT Municipal Partnership Agreement and authorize the City Manager to sign the agreement, which would allow the City to move ahead with its plans to pave Stevens Avenue between Forest Avenue and Clinton Street.

II. AGENDA DESCRIPTION

This project is part of the Maine Department of Transportation (MaineDOT) Municipal Partnership Agreement Program; the City administers the project and receives 50% funding from the state. By signing the partnership agreement, the City is able to proceed with the project and Maine DOT is obligated to pay for 50% of the estimated project cost, or \$500,000.00.

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

III. BACKGROUND

The Stevens Avenue paving project was originally planned for construction during the 2020 Calendar Year. The project construction will be in 2021.

The City wants to sign this agreement now to ensure that the MaineDOT funding is allocated for this project so work can proceed next year. The scope of the project includes a 2" mill and fill, curb work, ADA upgrades, re-installation of speed humps, and re-striping after final paving.

Construction work on this project is scheduled to begin after April 15, 2021 and be completed by Fall 2021. This project is classified as a pavement preservation project and is part of the MaineDOT MPI Program. The City will be responsible for 50% of the paving cost and 100% of any overages to the original estimate.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The Stevens Avenue paving project will improve the pavement surface and ride quality on a regionally important minor arterial. It will also improve the speed bumps here to help slow down traffic along a school route and improve pedestrian facilities by upgrading the sidewalk ramps. MaineDOT will pay for 50% of the project costs.

V. FINANCIAL IMPACT

The City is obligated to pay 50% of the estimated project cost, or \$500,000.00 and 100% of any overages due to added scope in the project area. The total City cost of this paving work, estimated to be \$500,000.00, would be paid from a FY21 CIP account established for pavement preservation. Please see the attached fiscal impact note for additional information.

VI. STAFF ANALYSIS AND BACKGROUND

This is a Minor Arterial in the City of Portland near multiple schools and businesses. Stevens Avenue was ranked with a low PCI when it was last evaluated and the City continues to receive public complaints about the condition of the road. Without this project, the road will continue to deteriorate.

VII. RECOMMENDATION

The Department of Public Works recommends approving and signing the subject agreement to allow the city to pave Stevens Avenue from Forest Avenue to Clinton Street in the 2021 construction season.

VIII. LIST ATTACHMENTS

1. Order Approving Agreement with MaineDOT and Portland Re Stevens Avenue 6.15.2020
2. Stevens Ave MDOT MPI Location Map (1)
3. Portland MPI Agreement Stevens Ave 21932.04
4. Stevens Ave Fiscal Impact - Fiscal Impact Note

Prepared by:

Melissa Graffam

Date: 5/27/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE AGREEMENT BETWEEN THE MAINE
DEPARTMENT OF TRANSPORTATION AND THE CITY OF PORTLAND
RE: IMPROVEMENTS TO STEVENS AVENUE**

ORDERED, that the Municipal/State Agreement between the Maine Department of Transportation and the City of Portland for improvements to Stevens Avenue, with Work Identification Number 21932.04, is hereby approved in substantially the form attached hereto: and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said documents and any other related documents necessary or convenient to carry out the intent of said documents and this Order.



CITY OF PORTLAND, MAINE
DEPT. OF PUBLIC WORKS
212 CANCO RD, STE B,
PORTLAND, MAINE 04101
PHONE (207) 874-8846 FAX (207) 874-8852

Stevens Ave

MDOT MPI Paving



MAY 2020

DRAWN BY: TSY

0 250 500 1,000 Feet

Internal Use Only	
TEDOCS #:	
CT#:	CSN#:

**STATE OF MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL PARTNERSHIP AGREEMENT**

WIN 21932.04

REGARDING PORTLAND STEVENS AVE

This Cooperative Agreement (AGREEMENT) is entered into by and between the MAINE DEPARTMENT OF TRANSPORTATION (“MaineDOT”), an agency of state government with its principal administrative offices located on Child Street, Augusta, Maine, and the **CITY OF PORTLAND** (“MUNICIPALITY”), a municipality in the State of Maine with offices located at **389 CONGRESS ST, PORTLAND, ME.**

WHEREAS,

Portland shall mill 2” and pave 2” with a HMA overlay and shim as necessary on Stevens Ave from Forest Ave to Clinton St at a width of approximately 48’. The length of the project is approximately 0.85 miles and includes reinstalling raised speed tables and reconstructing sidewalk ramps meeting ADA requirements. Repairs to curb and pavement are also included in this work.

Portland estimates this project at **\$1,000,000.00**

PORTLAND SHALL:

- A. Procure all contracts for and oversee the Projects on **Stevens Ave** for the Work outlined above.
- B. Cause such Work to be performed in accordance with a design by an engineer licensed in the State of Maine. The Licensed Engineer shall provide a certification to the Municipality and to MaineDOT that, in his/her professional opinion, the Project as designed will provide a smooth ride, not reduce the safety, mobility or structural quality of the state [state aid] road. All design documents must be stamped and signed in accordance with this provision by the Professional Engineer.
- C. Agree to secure all necessary Federal, State and Local permits necessary to complete the work. Portland also agrees to secure any needed property rights in accordance with all applicable State and Federal Law.
- D. Agrees that any exceptions to State Design Standards shall be documented as part of this process. This documentation shall compare the new design to the existing conditions for each of the exceptions to current design standards. Any such exceptions shall be displayed on the cover sheet for the Project plans with the signature and PE stamp of the engineer responsible for the design of the Project.
- E. Be responsible, within the Project limits, for the following:

- a. Ensuring that the safety of the corridor and the life of the resulting structural and design elements are equal to or better than existing conditions and design;
 - b. Ensuring that the structures, roadways and/or design features affected by the Project work shall, at a minimum, be of equal dimensions to the existing features or structures and shall be of improved quality in terms of materials and utility;
 - c. Ensuring that the Project does not introduce any unanticipated safety hazards to the traveling public;
 - d. Ensuring that the Project retains the same level of mobility or improves mobility of travel within the corridor;
 - e. Ensuring that the Project does not in any manner decrease the life expectancy of this component of Maine's transportation system; and,
 - f. Ensuring that the Project meets the most recent standards of Americans with Disabilities Act of 1990 (ADA) design requirements.
- F. Provide certification through their Engineer to MaineDOT that the Project is complete and was constructed as designed.
- G. Ensure that construction shall commence within EIGHTEEN (18) months and shall be certified complete within THIRTY SIX (36) months of execution of this agreement. **PORTLAND** may forfeit the unpaid balance of this grant if these deadlines are not met or they cannot demonstrate earnest and good faith efforts to meet them.
- H. Be responsible for or cause its contractors to be responsible for all damage to public or private property of any kind resulting from any act, omission, neglect or misconduct of **PORTLAND** or its contractors, including damage to vehicles passing through the Project limits.
- I. Bear all risk of loss relating to the Project and the Work regardless of cause.
- J. The signal hardware, if any, must be approved by the MaineDOT State Traffic Engineer, consistent with the future of the Mobility Report.

MAINEDOT SHALL:

- A. **Provide a maximum \$500,000.00 in State funds supporting the Work stated above.** Reimbursement will be made by the Department at a minimum of 1/3 project completion upon receipt of supporting cost documentation from the Municipality. Payments will be made per Appendix A attached. The Department's Region Engineer shall review the costs and certify their eligibility prior to reimbursement of Municipal Partnership Initiative Funds. Payment by MaineDOT Municipal Partnership Initiative funds shall not exceed **\$500,000.00** or 50% of the actual costs incurred and paid by the Municipality.
- B. **This project has been approved for Calendar Year 2020.** If the **Municipality** commences construction of the project as outlined above prior to January 1, 2020, the Municipality assumes the risk and responsibility for costs incurred, in the event that funding levels fall

below MaineDOT projections. If this occurs, the Municipality will not receive reimbursement from MaineDOT. Should the project commence prior to January 1, 2020, the MaineDOT will not accept request for reimbursement until after January 1, 2020.

PORTLAND and **MaineDOT** agree to function within all applicable laws, statutes, regulations, and AGREEMENT provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT in duplicate effective on the day and date last signed.

CITY OF PORTLAND

Dated: _____

By: _____

Jon Jennings
City Manager

STATE OF MAINE
DEPARTMENT OF TRANSPORTATION

Dated: _____

By: _____

Bruce Van Note
Commissioner
MaineDOT

APPENDIX A
PROJECT SCOPE AND COST SHARING MAINE
DEPARTMENT OF TRANSPORTATION

Municipal Partnership Initiative Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO: STEVENS AVENUE

STATE PROJECT IDENTIFICATION NUMBER (WIN) 21932.04_

FUNDED CONSTRUCTION YEAR 2020

Project Scope: Mill 2" and pave HMA overlay and shim as necessary on Stevens Ave. from Forest Ave. to Clinton St. at approximately a 48' width and 0.85 mile length. Includes reinstalling speed tables, and reconstructing ADA ramps and repair to curb and pavement.

Funding Outline: The Total Project Estimated Cost is \$1,000,000 and the Parties agree to share costs through all stages of the Project under the terms outlined below.

Work Element	Municipal Share		State Share		Total Cost
	%	\$	%	\$	\$
Project Costs	50	500,000	50	500,000	1,000,000
PROJECT SHARES		500,000		500,000	1,000,000
Total Cost of Additional Work above agreement estimate	100%				
TOTAL ESTIMATED MUNICIPAL REIMBURSEMENT		500,000			

REIMBURSEMENT SCHEDULE:

Upon 1/3 project completion the municipality may begin invoicing the Department. Preferred invoicing interval is 1/3, 2/3, final, the Department will accept monthly invoices after 1/3 project completion with a maximum invoice submittal not to exceed 5 invoices.

DESIGN EXCEPTIONS REQUIRED: ☐ YES ☒ NO

Design exceptions where required for this project. Please see attached approval from MaineDOT Chief Engineer outlining design exceptions.

FISCAL IMPACT NOTE New Program Cost Data:	Year 1		Year 2		Year 3	
	City Rate	City / Sch Combined Rate	City Rate	City / Sch Combined Rate	City Rate	City / Sch Combined Rate
Example:						
ADD: NEW ITEM ANNUAL EXPENDITURES		\$0		\$37,500		\$37,500
LESS: TOTAL NEW ITEM ANNUAL REVENUES		\$0		\$0		\$0
=NEW ITEM NET TAX RATE IMPACT PROJECTION	\$0	\$0	\$37,500	\$37,500	\$37,500	\$37,500
New Program Impact to the Mil Rate	\$0.0000	\$0.0000	\$0.0047	\$0.0047	\$0.0047	\$0.0047
New Program % Impact on Mil Rate	0.0000%	0.0000%	0.0419%	0.0211%	0.0419%	0.0211%
Mil Rate Including New Program	\$11.3400	\$22.4800	\$11.3447	\$22.4847	\$11.3447	\$22.4847

Notes: The CIP impact will actually begin in 2021 and remain for the 20 year life of the bond.

MEMORANDUM
City Council Agenda Item

FROM: Mary Davis, Division Director

DATE: May 28, 2020

SUBJECT: **Order 206-19/20 Amendment to Portland City Code Chapter 6 Buildings and Building Regulations Re: Rental Application Fees - Sponsored by the Housing Committee, Councilor Jill Duson, Chair**

SPONSOR: Jill C. Duson, Chair of the Housing Committee
(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 6/15/2020

Final Action

Can action be taken at a later date: No (If no why not?)

PRESENTATION: A member(s) of the Rental Housing Advisory Committee will be available for questions.

I. SUMMARY

The Rental Housing Advisory Committee recommends the City enact an ordinance to ban application fees for rental housing units.

II. AGENDA DESCRIPTION

On May 13, 2020, the Housing Committee voted (2-1) to forward this item to the City Council with a recommendation for passage.

On December 16, 2019 the Rental Housing Advisory Committee (RHAC) voted 5-3 to recommend to the Housing Committee that the City prohibit landlords from charging application fees.

The RHAC is charged with providing the Housing Committee with recommendations or proposals for improvements, modifications, or changes regarding landlord and tenant policy issues and identifying education opportunities, seminars, and materials that would be useful to landlords and tenants.

At the RHAC's first meeting on September 24, 2019, several members expressed concern that rental housing application fees are a significant barrier preventing low and moderate income residents from securing housing in Portland. City staff informed the committee that staff in the Housing and Community Development Division had heard concerns about application fee fraud and abuse and had made the Housing Committee aware of that issue.

The RHAC discussed the fact that there is no state law or city ordinance limiting application fees. There is no requirement that a fee charged be linked to the landlord's cost in running a background check. Tenants are also generally not in a position to know whether they have actually been considered for an apartment for which they have paid an application fee.

At the October 28, 2019 meeting of the RHAC members of committee articulated several areas of concern: landlords who collect application fees with no intention of renting to the applicant; landlords who collect

application fees from multiple applicants and do not conduct background checks; and landlord who do not supply copies of reports to applicants who are not selected as tenants. The group discussed the concern that application fees price low and moderate income tenants out of Portland at multiple meetings.

Members of the Committee proposed language banning fees phrased to allow only a security deposit and first month's rent to be charged at the beginning of a tenancy.

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

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

Enact an ordinance to ban application fees for rental housing units.

Increase access to rental and home ownership that is safe, affordable, and accessible

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

The Rental Housing Advisory Committee is requesting the City Council to enact an ordinance to ban application fees for rental housing units.

VIII. LIST ATTACHMENTS

1. Ch. 6 Sec. 6-223.1 Rental Application Fees 6.15.2020
2. RHAC Committee Memo re Application Fees

Prepared by:

Mary Davis, Division Director

Date: 5/28/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE
Chapter 6 BUILDINGS AND BUILDING REGULATIONS
RE: RENTAL APPLICATION FEES**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

- 1. That Section 6-223.1 of the Portland City Code is hereby
added to read as follows:*

6-223.1. Rental application fees restricted.

At or prior to the commencement of any tenancy, no landlord may
require a tenant or prospective tenant to pay any amount in
excess of the following:

(a) Rent for the first full month of occupancy; and

(b) A security deposit as defined in 14 M.R.S. §6032.

MEMORANDUM

FROM: Rental Housing Advisory Committee
DATE: February 5, 2020
SUBJECT: Rental Application Fees

I. SUMMARY

The Rental Housing Advisory Committee recommends that the City enact an ordinance to ban application fees for rental housing units.

II. BACKGROUND

The Rental Housing Advisory Committee (RHAC) is charged with providing the Housing Committee with recommendations or proposals for improvements, modifications, or changes regarding landlord and tenant policy issues and identifying education opportunities, seminars, and materials that would be useful to landlords and tenants.

At the RHAC's first meeting on September 24, 2019, group members brainstormed issues of concern to landlords and tenants. Several members expressed concern that rental housing application fees are a significant barrier preventing low and moderate income residents from securing housing in Portland. City staff informed the committee that staff in the Housing and Community Development Division had heard concerns about application fee fraud and abuse and had made the Housing Committee aware of that issue. City staff informed the group that the Housing Committee suggested that application fees might be a topic the RHAC could take up.

The RHAC discussed the fact that there is no state law or city ordinance limiting application fees. There is no requirement that a fee charged be linked to the landlord's cost in running a background check. Tenants are generally not in a position to know whether they have actually been considered for an apartment for which they have paid an application fee. Mindful that RHAC's charge includes education, members of the group discussed whether there are education solutions to these issues.

At the October 28, 2019 meeting of the RHAC members of committee articulated several areas of concern: landlords who collect application fees with no intention of renting to the applicant, landlords who collect application fees from multiple applicant and do not conduct background checks, and landlord who do not supply copies of reports to applicants who are not selected as tenants. The group discussed the concern that application fees price low and moderate income tenants out of Portland at multiple meetings.

The RHAC discussed several ways to address application fees. Proposals included a limitation on the amount that could be charged, a requirement that fees collected be refunded to tenants, a requirement that landlords provide copies of background checks to tenants, a prohibition on charging application fees when a tenant provides a landlord with a copy of a recent background check, and a ban on application fees.

Members of the Committee expressed concern that landlords could continue charging application fees by giving those fees another name and the proposed language banning fees is phrased to allow only a security deposit and first month's rent to be charged at the beginning of a tenancy.

On December 16, 2019 the RHAC voted 5-3 to recommend to the Housing Committee that the City prohibit landlords from charging application fees. (the committee currently has 8 members because a tenant member resigned) The RHAC drafted a resolution at the December 16th meeting to accompany the recommendation to explain the committee's rationale and the RHAC approved the resolution 6-2.

III. ANALYSIS AND BACKGROUND

RHAC understands that the Housing Committee would like to see “more than anecdotal” evidence demonstrating that application fees are a significant problem in the community. RHAC members have researched this issue and we have not found any studies that are responsive to this request.

Pine Tree Legal Assistance (PTLA) was asked whether they track calls about application fees. RHAC member Katherine McGovern explained that PTLA tracks cases based on the legal issue involved and so can provide data on the number of tenants who called about issues like evictions or security deposits but because there are no state or local laws limiting application fees, inability to afford application fees is not categorized or tracked as a legal problem. Ms. McGovern shared throughout the RHAC’s discussion about this issue that PTLA’s clients struggle to find affordable housing in Portland and application fees are a significant problem for PTLA’s clients.

RHAC co-chair Meredith Cook, who has worked as a housing specialist at Through These Doors and is currently employed by Preble Street as the Maine Hunger Initiative Social Change Advocate, told the committee that application fees are such a significant barrier for low-income tenants that Preble Street caseworkers searching for housing with clients do not even apply with landlord who charge application fees.

RHAC member Wendy Harmon conducted a survey of members of the Southern Maine Landlord Association regarding members’ practices regarding application fees. Ms. Harmon submitted the results of the survey to the group and these results are attached. Some members reported not charging application fees and those that charge application fees reported that they charge between \$25 and \$50 per adult applicant. Landlords who charge application fees reported collecting those fees from somewhere between one and nine applicants per available apartment.

Each RHAC meeting has included time for public comment. At the November 25, 2019 RHAC meeting three members of the public offered their views and testimony about their experiences with application fees. Jenna Dorr described her family’s experience of scrambling to find new housing and spending more than \$500 in application fees without know whether background checks were actually being conducted or whether they were truly being considered for apartments. Alyssa Floyd described paying application fees and never knowing why she was not offered an apartment. Jim Devine encouraged the committee to propose rules that are easy to understand and coherent. (Public comment for this meeting is summarized the meeting minutes and in the Bangor Daily News story attached).

IV. RECOMMENDATION

RHAC recommends that the following provision be added to Chapter 6 of the City’s ordinances:

“At or prior to the commencement of any tenancy, no lessor may require a tenant or prospective tenant to pay any amount in excess of the following:

- (i) Rent for the first full month of occupancy; and
- (ii) A security deposit as defined in 14 MRS 6032”

V. LIST ATTACHMENTS

1. Resolution including proposed ordinance language submitted to the Housing Committee
2. “Renters say application fees a barrier to living in Portland’s pricey housing market.” Bangor Daily News article by Nick Schroeder, December 2, 2019
3. “Unregulated application fees make Portland’s housing crisis even more expensive for renters.” Maine Beacon, October 17, 2019

4. Examples of ordinances/statutes from other jurisdictions: Minnesota, Oregon, Minneapolis
5. Survey of Southern Maine Landlord Association members conducted by Wendy Harmon.

Prepared by: Katherine McGovern and approved by the Rental Housing Advisory Committee on a vote of 5-3

Date: February 5, 2020

Resolution

WHEREAS, application fees are a significant barrier to low and moderate income people in finding housing in the City of Portland; and

WHEREAS, tenants are likely to pay multiple fees before finally securing housing, and

WHEREAS, there are no laws in Maine regulating application fees.

THEREFORE BE IT RESOLVED, the Rental Housing Advisory Committee sees application fees as a significant burden on tenants when securing housing; and

THEREFORE BE IT FURTHER RESOLVED, the Rental Housing Advisory Committee recommends to the City Council Housing Committee to address this concern through the recommended policy change in City ordinance, below.

Application Fee Ban:

At or prior to the commencement of any tenancy, no lessor may require a tenant or prospective tenant to pay any amount in excess of the following:

- (i) Rent for the first full month of occupancy, and
- (ii) A security deposit as defined in 14 MRS 6032