

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER THIBODEAU (2)
TAE Y. CHONG (3)
ANDREW J. ZARRO (4)

MARK N. DION (5)
APRIL FOURNIER (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

REMOTE CITY COUNCIL MEETING - JANUARY 4, 2021

The Portland City Council will hold a City Council Meeting remotely using Zoom. The Honorable Kate Snyder, Mayor, will preside.

ZOOM INFORMATION:

The Portland City Council will hold a meeting on Monday, January 4, 2021 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. §403A, 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 unmuted by the host when it is time for public.

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/82953843056?pwd=Ylo0cmJ2UktDbUpZNkxCWTZldmsrZz09>

Passcode: 133508

Or iPhone one-tap :

US: +13126266799,,82953843056#,,, *133508# or
+19292056099,,82953843056#,,, *133508#

Or Telephone:

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

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

Webinar ID: 829 5384 3056

Passcode: 133508

International numbers available: <https://us02web.zoom.us/j/82953843056?pwd=Ylo0cmJ2UktDbUpZNkxCWTZldmsrZz09>

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Approval of the Draft December 21, 2020 City Council Meeting Minutes.

PROCLAMATIONS:

Proc 6-20/21 Recognizing January 18, 2021 as Martin Luther King Jr. Day - Sponsored by Kate Snyder, Mayor

LICENSES:

Order 148-20/21 Granting Municipal Officers' Approval of Rwanda Bean Company LLC dba Rwanda Bean Company. Application for a Class I FSE with Indoor Entertainment at 4 Thompson's Point - Sponsored by Jon P. Jennings, City Manager

Application for a Class I FSE with Indoor Entertainment at 4 Thompson's Point.

Application was filed on 12/14/2020. New City and State applications. Location was previously Cellar Door Winery.

Five affirmative votes are required for passage after public comment.

RESOLUTIONS:

Resolve 6-20/21 Extending the Deadline for the Report from the Racial Equity Steering Committee - Sponsored by Kate Snyder, Mayor

The Racial Equity Steering Committee, established by Resolve 1-20/21 on July 13, 2020, will report its findings to the City Council on or before April 21, 2021. The original deadline set in Resolve 1-20/21 was not feasible and the deadline is extended by this Resolve.

Five affirmative votes are required for passage after public comment.

UNFINISHED BUSINESS:

Order 145-20/21 Accepting and Appropriating \$10,000 Grant from Catholic Charities of Maine - Sponsored by Jon P. Jennings, City Manager

The Housing & Economic Development Department is requesting that the City Council accept and appropriate a \$10,000 grant from Catholic Charities of Maine for use in enhancing access to entrepreneurship options for limited English proficient and immigrant populations through training and customized technical assistance.

The Immigrant Entrepreneur Technical Assistance Continuum Project will support immigrant-owned or -operated start-ups with key technical assistance, seed funding, and resource sharing to ensure the longevity of their business in Portland.

The Immigrant Entrepreneur Technical Assistance Continuum Project will be comprised of two program components: 1) How to Start a Business in the United States, and 2) Hungry for Success: A Community Building Initiative.

This item must be read on two separate days. It received its first reading on December 21, 2020. Five affirmative votes are required for passage after public comment.

Order 146-20/21 Amendment to Portland City Code Chapter 14 Re: Senior-Focused Uses Proposed for the B-3 Downtown Business Zone - Sponsored by the Planning Board, Brandon Mazer, Chair

At a public hearing on November 17, 2020, the Planning Board unanimously voted (7-0) that these proposed zoning text amendments (changing the definition of congregate care facility and adding congregate care facilities and intermediate care facilities as permitted uses) are consistent with the Comprehensive Plan for the City of Portland, and recommending approval by 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 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). Per previous Council concern, the proposal also edits the definition of congregate care facility in the zoning code to clarify its intended purpose.

This item must be read on two separate days. It received its first reading on December 21, 2020. Five affirmative votes are required for passage after public comment.

Order 147-20/21 Amendment to the Zoning Map Re: B-2 to I-M Zone at 7 Rand Road - Sponsored by the Planning Board, Brandon Mazer, Chair

At a public hearing on November 17, 2020, the Planning Board voted (7-0) that this proposed zoning map amendment for approximately 14.68 acres of privately owned land located at 7 Rand Road (from the B-2 Community Business zone to the I-M Industrial zone) is consistent with the Comprehensive Plan for the City of Portland and recommended approval by the City Council.

Brockway-Smith Company seeks a zoning map amendment to rezone the parcel at 7 Rand Road from an I-M Industrial/B-2 Community Business split lot condition to fully I-M, removing the split lot condition via an adjustment to the zoning boundary, so that the property can be brought into greater conformity and allow for more cohesive future expansion of the currently bifurcated site. The subject property is located between Interstate 95 and Rand Road and is 18.4 acres in size. The site is currently developed with a 300,000 SF warehouse, a paved truck staging area, and surface parking. The proposed zone change is illustrated in attachment 1.

This item must be read on two separate days. It received its first reading on December 21, 2020. Five affirmative votes are required for passage after public comment.

ORDERS:

Order 149-20/21 Granting a Thames Street Extension Easement to the Portland Water District - Sponsored by Jon P. Jennings, City Manager

This agenda item would approve a utility easement to the Portland Water District (PWD) in the newly constructed Thames Street Extension and Connector Road.

This easement will allow PWD to access and maintain new water infrastructure, which was installed as part of the City's recently completed Thames Street Extension project. An easement is needed because this section of Thames Street and the so-called Connector Road have not been accepted as a street by the City.

Five affirmative votes are required for passage after public comment.

Order 150-20/21 Granting a Back Cove South Storage Facility Easement to Central Maine Power – Sponsored by Jon P. Jennings, City Manager

This agenda item would grant Central Maine Power (CMP) a utility easement to install infrastructure in the Preble Street soccer fields, for the purpose of providing power to the new Back Cove South Storage Facility.

When the Storage Facility is constructed, it will be able to hold 3.5 million gallons of storm water when the sewage plant is at capacity. The easement will eventually allow lighting for a soccer field proposed to be built above the underground storage facility.

Five affirmative votes are required for passage after public comment.

Order 151-20/21 Approving the Agreement between the Maine Department of Transportation and the City of Portland Re: Rand Road - Sponsored by Jon P. Jennings, City Manager

This agreement, between the Maine Department of Transportation (MaineDOT) and the City of Portland, outlines the responsibilities of each party related to work at the intersection of Route 25 and Larrabee Road (in Portland and Westbrook).

This agreement obligates MaineDOT to:

- Mill and fill a portion of Route 25 and Larrabee Road (see map for details);
- Adjust the City's sanitary sewer manhole frames and covers, as necessary;
- Update and/or install new pedestrian curb ramps to meet ADA requirements;
- Update and/or install and all fixtures after the paving of this section.

The City of Portland is obligated to pay for 100% of the manhole and catch basin adjustment work located in the City of Portland, estimated at \$15,750.

Five affirmative votes are required for passage after public comment.

Order 152-20/21 Extending the Emergency Proclamation to May 10, 2021 - Sponsored by Kate Snyder, Mayor

This order extends to May 10, 2021 certain provisions in the ongoing emergency proclamation that have been in place since the beginning of the COVID-19 shut down.

Five affirmative votes are required for passage after public comment.

Order 153-20/21 Approving "Modification Two" of the Agreement between the Maine Department of Transportation and the City of Portland Re: Congress Street Traffic Lights - Sponsored by Jon P. Jennings, City Manager

In February 2019, the City and State agreed to implement upgrades to traffic signals on Congress Street (between Stevens Avenue and Fore River Parkway) as a "Locally Administered Project", in which the City administers the project and the State helps to fund it.

Since the agreement was signed in February 2019, costs associated with the project have increased significantly. As a result, this modified agreement represents an increase in the amount of funding provided locally and by the State (referred to as "Modification Two" in the agreement).

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:

ZOOM INFORMATION:

The Portland City Council will hold a meeting on Monday, December 21, 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. §403A, 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 unmuted by the host when it is time for public.

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/87662503729?pwd=RVI3NWYvMFF1bWJ4NWt4ZWdva0NjUT09>

Passcode: 619163

Or iPhone one-tap :

US: +19292056099,,87662503729#,,, *619163# or +13017158592,,87662503729#,,, *619163#

Or Telephone:

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

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

Webinar ID: 876 6250 3729

Passcode: 619163

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Mayor Snyder called the meeting to order at 5:33 PM (All Councilors Present).

ANNOUNCEMENTS:

Councilor Zarro announced that today is Winter Solstice, it is one of the oldest winter celebrations. Winter solstice is the longest night and the shortest day of the year. He took a moment of silence for the city's unhoused neighbors that have passed away. He would like to see the City and its neighbors come together and help with the greatest challenge in finding ways to assist our homeless population.

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Approval of the Draft December 7, 2020 Inaugural Meeting and Regular City Council Meeting Minutes.

Motion was made by Councilor Ali and seconded by Councilor Ray to approve the minutes of December 7, Inaugural and Regular City Council meeting minutes. Passage 9-0.

SPECIAL MEETING:

Special Meeting of the Corporator of the Portland Development Corporation

Motion was made by Councilor Chong and seconded by Councilor Thibodeau to recess the meeting of the City Council and convene a Special Meeting of the Corporator of the Portland Development Corporation. Passage 9-0.

Order 137-20/21 Amending Portland Development Corporation COVID-19 Loan and Grant Guidelines for Three Programs - Sponsored by Jon P. Jennings, City Manager

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

Motion was made by Councilor Thibodeau and seconded by Councilor Ali to adjourn the Special meeting of the Corporator of the Portland Development Corporation and reconvene the regular meeting of the City Council. Passage 9-0.

PROCLAMATIONS:

APPOINTMENTS:

Order 138-20/21 Appointing Constables for the Year 2021 - Sponsored by Jon P. Jennings, City Manager

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

Order 139-20/21 Authorizing Special Council and Outside Boards and Commissions Appointments for 2021 -- Sponsored by Kate Snyder, Mayor

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

LICENSES:

BUDGET ITEMS:

COMMUNICATIONS:

Com 16-20/21 Housing Committee 2020 Annual Report - Sponsored by the Housing & Economic Development Committee, Councilor Spencer Thibodeau, Chair

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

Com 17-20/21 Assessment of the Waterfront and Marine Economy - Sponsored by the Housing & Economic Development Committee, Councilor Spencer Thibodeau, Chair

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

Com 18-20/21 Economic Development Committee Accomplishments for Calendar Year 2020 - Sponsored by the Housing & Economic Development Committee, Councilor Spencer Thibodeau, Chair

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

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

RESOLUTIONS:

UNFINISHED BUSINESS:

ORDERS:

Order 140-20/21 Approving Purchase and Sale Agreement with Maine Cooperative Development Partners for 165 Lambert Street - Sponsored by the Housing & Economic Development Committee, Spencer Thibodeau, Chair

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

Order 141-20/21 Accepting an Easement Deed from Portland Water District for a Woodlawn Avenue Turnaround - Sponsored by Jon P. Jennings, City Manager

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

Order 142-20/21 Approving the Transfer of Ownership of Artifacts to the Maine Maritime Museum - Sponsored by Jon P. Jennings, City Manager

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

Order 143-20/21 Authorizing Annual Wage Increase for Corporation Counsel - Sponsored by Kate Snyder, Mayor

Motion was made by Councilor Mavodones and seconded by Councilor Thibodeau for passage. Passage 9-0.

Order 144-20/21 Accepting and Appropriating an Anonymous Donation of \$5,000 For Those In Need - Sponsored by Jon P. Jennings, City Manager

Motion was made by Councilor Ray and seconded by Councilor Mavodones to waive the

second reading. Passage 9-0.

Motion was made by Councilor Thibodeau and seconded by Councilor Mavodones for passage as an emergency. Passage 8-0 (Ali out).

Order 145-20/21 Accepting and Appropriating \$10,000 Grant from Catholic Charities of Maine - Sponsored by Jon P. Jennings, City Manager

Councilor Chong recused himself as he is employed by Catholic Charities of Maine.

This is a first reading.

AMENDMENTS:

Order 146-20/21 Amendment to Portland City Code Chapter 14 Re: Senior-Focused Uses Proposed for the B-3 Downtown Business Zone - Sponsored by the Planning Board, Brandon Mazer, Chair

This is a first reading.

Order 147-20/21 Amendment to the Zoning Map Re: B-2 to I-M Zone at 7 Rand Road - Sponsored by the Planning Board, Brandon Mazer, Chair

This is a first reading.

Motion was made by Councilor Ali and seconded by Councilor Thibodeau to adjourn. Passage 8-0 (Councilor Chong gone), at 7:22 P.M.

A TRUE RECORD

Katherine L. Jones, City Clerk

EXECUTIVE SESSION:

KATE M SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL FOURNIER (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

Pro

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

HONORING

MARTIN LUTHER KING JR DAY

WHEREAS, the Reverend Martin Luther King, Jr. has inspired this country and the world with his vision and dedication to freedom and equality; and

WHEREAS, Martin Luther King, Jr. became the voice of the American civil rights movement in the 1950s and 1960s with eloquent speeches and nonviolent action that resulted in the landmark legislation known as the Civil Rights Act of 1964; and

WHEREAS, the voice of Martin Luther King, Jr. has persevered, and his faith and courage in proclaiming the message of liberty and justice for all lives on; and

WHEREAS, Dr Martin Luther King's vision for Equality, Black Liberation and Human Rights continues to inspire and motivate millions of people in the Black Lives Matter Movement here in Portland, across this country and around the world; and

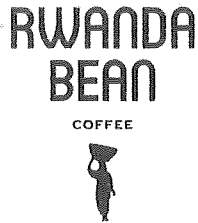
WHEREAS, federal legislation, signed into law on November 2, 1983, established a legal holiday to be celebrated on the third Monday in January to honor the life of civil rights leader Martin Luther King, Jr., who was born on January 15, 1929.

NOW, THEREFORE, BE IT RESOLVED, I Kathleen M. Snyder, Mayor of the City of Portland, Maine and the members of the Portland City Council, observe Monday, January 18, 2021, as MARTIN LUTHER KING JR. DAY.

Signed and sealed this 4th day of January, 2021



**Kathleen M. Snyder, Mayor
City of Portland, Maine**



RWANDA BEAN COMPANY

463 Stevens Ave
Portland, Maine 04103

WEDNESDAY, DECEMBER 2, 2020

**SUBJECT: APPLICATION FOR NEW LIQUOR LICENSE FOR RWANDA BEAN
LOCATED AT THOMPSON POINT**

Dear Mayor and Members of the Portland City Council:

We are excited to submit a proposal for a liquor license at a new location of the former Cellardoor space. Our goal is to develop a retail and manufacturing space that would entail coffee roasting, packaging, together with a retail space for selling coffee, food, and alcohol. We would conduct coffee roasting classes as well conduct events in the space. In essence, other than the inclusion of coffee roasting and packaging, the business operations would be substantially the same as those conducted by Cellardoor under its two business licenses.

The components of their proposed use are as follows:

- Retail counter service of coffee, baked goods and food
- Beer / Wine / Spirits to be sold alone with food and coffee
- Commercial kitchen for the preparation of baked goods
- Manufacturing of Cold Brew Coffee and Tea
- Coffee Roasting / Packaging for Wholesale and retail Distribution
- Reservation based Co-working Stations
- Event / Function Space Rental

Their anticipated employee count (between 4-10) is roughly equivalent to Cellardoor's. They anticipate retail counter and table space to accommodate roughly 40 patrons, also roughly equivalent to Cellardoor.

Other than installing coffee equipment and furnishing the space, no substantial tenant fit up is anticipated.

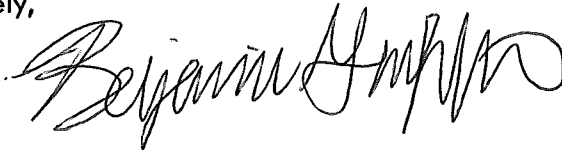
Like the other Brick North tenants, their wholesale operation will entail periodic delivery traffic (FedEx, UPS, and U.S.P.S) during normal business hours.

No major noisy equipment will be used. All kitchen and patron noise will be contained within the building. No odors will emanate from the building except for hoods/exhaust vented up through the roof nearest the location of the coffee roaster. Coffee odors will be minimal, and mitigation will be used if necessary, to maintain requirements of the zoning ordinances currently in place.

We look forward to answering any questions and providing any additional information needed.

Thank you very much in advance for your consideration!

Sincerely,

A handwritten signature in black ink, appearing to read "Benjamin Graffius", with a stylized, cursive script.

Ben Graffius



Permitting and Inspections Department

389 Congress St. Room 307 • Portland, ME 04101 • (207) 874-8557

www.portlandmaine.gov

Application for Food Service Establishment with Alcoholic Beverages License

Business Information	
Business Name (d/b/a):	Rwanda Bean Company Phone: (207) 956-6686
Location Address:	4 Thompson Point Suite 110-111 Zip: 04102
If new, what was formerly at this location:	Cellar Door Winery
Mailing Address:	463 Stevens Ave Portland Zip: ME 04103
Contact Person:	Ben Graffius Phone: (207) 651-0150
Contact Person Email:	bengraffius@gmail.com
Manager of Establishment:	Ben Graffius Date of Birth: 10/23/81 Phone: (207) 651-0150
Owner of Premises (Landlord):	Forefront Brick North, LLC
Address of Premises Owner:	501 Danforth St. Portland Zip: ME 04102

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	
Rwanda Bean Company, LLC		463 Stevens Ave Portland, ME 04103 Zip:	
Contact Person:	Ben Graffius	Phone:	207 651-0150
Principal Officers	Title	Date of Birth	Residence Address
Ben Graffius	COO	10/23/81	27 Berkeley St. Portland, ME 04103
Mike Mendenhall	CEO	08/15/85	76 Spring St Apt #204 S. Portland ME. 04106

About Your Establishment

Class of Liquor License:	Class A Restaurant		
Type of food served:	Bakery Items, Lite Fare		
Please circle all that will be served:	☒ Beer	☒ Wine	☒ Liquor
Projected percentage of sales:	Generated from Food: 75%	Generated from Alcohol: 25%	
Hours & days of operation:	6am - 8pm Mon - Sunday		

QUESTIONS	Y/N
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?	☒ Y ☐ N
If No, please explain:	
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?	☒ Y ☐ N
If yes, give the distance:	
Will you have entertainment on the premises? (If yes, a Supplemental Application for 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).	
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? April 1st, 2021	
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): Rwanda Bean Company, 463 Stevens Ave, Portland, ME 04103	
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, Ben Graffius 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 Benjamin Graffius Title COO Date 11/23/20

For more information about Liquor Licenses, see Portland City Code Chapter 15 at www.portlandmaine.gov and M.R.S.A. Title 28-A at www.maine.gov.



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):	Ruanda Bean Company
Location Address:	290 Thompsons Point State Highway 110 at Portland, ME Portland, ME
Owner Name:	Ben Graffius
Owner Email:	sales@ruandabean.com
Contact Person responsible for Entertainment:	Ben Graffius
Contact Person Email:	sales@ruandabean.com
Manager of Establishment:	Danielle Graffius
Manager Email:	danielle@ruandabean.com

About Your Establishment

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

Coffee Roastery and espresso bar that will also use space for small events. We anticipate small acoustic and lite amplification for live indoor music. Not to exceed 85db for indoor music. Intention to use acoustic music for background music and not to be loud enough for people not to be able to converse.

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 Benjamin Graffius Title COO Date 12/8/20

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

* Details of methods used to minimize impact of entertainment on surrounding uses.

- Music will be indoors and not to exceed 85 db.
- Positioning of speakers will point away from adjoining spaces.
- Notification to surrounding tenants and uses to be notified of any planned music event.

* Sound system details & controls

- Not provided or existing in current space so musician's will provide own equipment that will vary.

* Noise Cancelling or mitigating measure proposed

- Keeping music level low to allow for background music with ability to converse.

- Doors to adjoining spaces shut to dampen noise. Speakers positioned to carry music into area where seating is permitted and away from adjoining spaces.

* Anticipated Sound Readings

- Based upon experience of acoustic musician's noise level not expected to exceed 85 db.



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.

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

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

Legal Business Entity Applicant Name (corporation, LLC): Rwanda Bean Company LLC	Business Name (D/B/A): Rwanda Bean Coffee
Individual or Sole Proprietor Applicant Name(s): Benjamin Graffius	Physical Location: 4 Thompson Point Suite 110-111 Portland, ME 04102
Individual or Sole Proprietor Applicant Name(s): Mike Mwenedata	Mailing address, if different: 463 Stevens Ave Portland ME 04103
Mailing address, if different from DBA address:	Email Address: sales@rwandabean.com
Telephone # (207) 651-0150	Business Telephone # (207) 956-6686
Fax #:	Fax #:
Federal Tax Identification Number: 45-3478998	Maine Seller Certificate # or Sales Tax #: 00000000
Retail Beverage Alcohol Dealers Permit:	Website address: www.rwandabean.com

1. New license or renewal of existing license? ☒ New Expected Start date: 3/1/21
☐ Renewal Expiration Date: _____

2. The dollar amount of gross income for the licensure period that will end on the expiration date above:

Food: _____ Beer, Wine or Spirits: _____ Guest Rooms: _____

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

☒ Malt Liquor (beer) ☒ Wine ☒ Spirits

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

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

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

5. Business records are located at the following address:

463 Stevens Ave, Portland, ME 04103

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

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

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

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

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

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

☐ Yes ☒ No

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

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

☐ Yes ☒ No

If yes, please provide details: _____

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

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

Name of Business	License Number	Complete Physical Address
Rwanda Bean Company	RES-2019-12154	185 Cottage Rd S. Portland ME 04106
portland water TOURS	RES-2019-11835	14 Ocean St. S. Portland ME 04106

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

Full Name	DOB	Place of Birth
Benjamin Graffius	10/23/81	Westbrook, ME
Mike Jean Mwenedata	08/15/85	Kigali, Rwanda
Residence address on all the above for previous 5 years		
Name Benjamin Graffius	Address: 27 Berkeley St	Portland ME 04103
Name	Address: 68 Berkeley St	Portland ME 04103
Name Mike Jean Mwenedata	Address: 76 Spring St. Apt #204	
Name	Address: South Portland, ME	04106

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:

Chris Thompson President, ForeFront GP, LLC
501 Danforth Street, Portland, ME 04102

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

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

The space is open concept with high ceilings and high end finishes. Gourmet Kitchen and long bar separate out the space where customers would be served. Bathrooms are easy to access and spacious for men & women.

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: Church of the Holy Spirit

Distance: 2050 ft

Section II: Signature of Applicant(s)

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

Please sign and date in blue ink.

Dated: 12/2/20

Benjamin Grattius

Signature of Duly Authorized Person

Signature of Duly Authorized Person

Benjamin Grattius

Printed Name Duly Authorized Person

Printed Name of Duly Authorized Person

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.

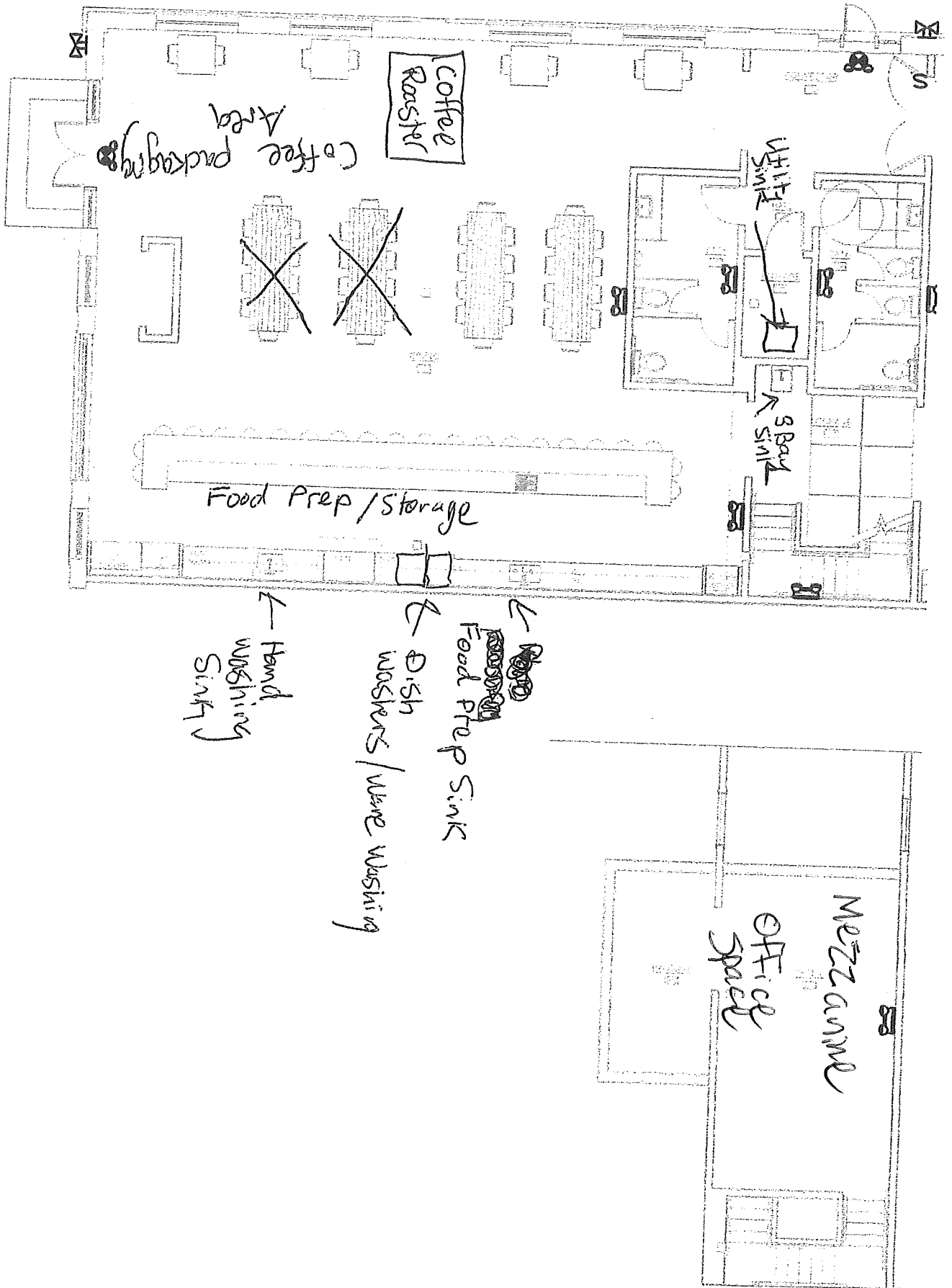
All Questions Must Be Answered Completely. Please print legibly.

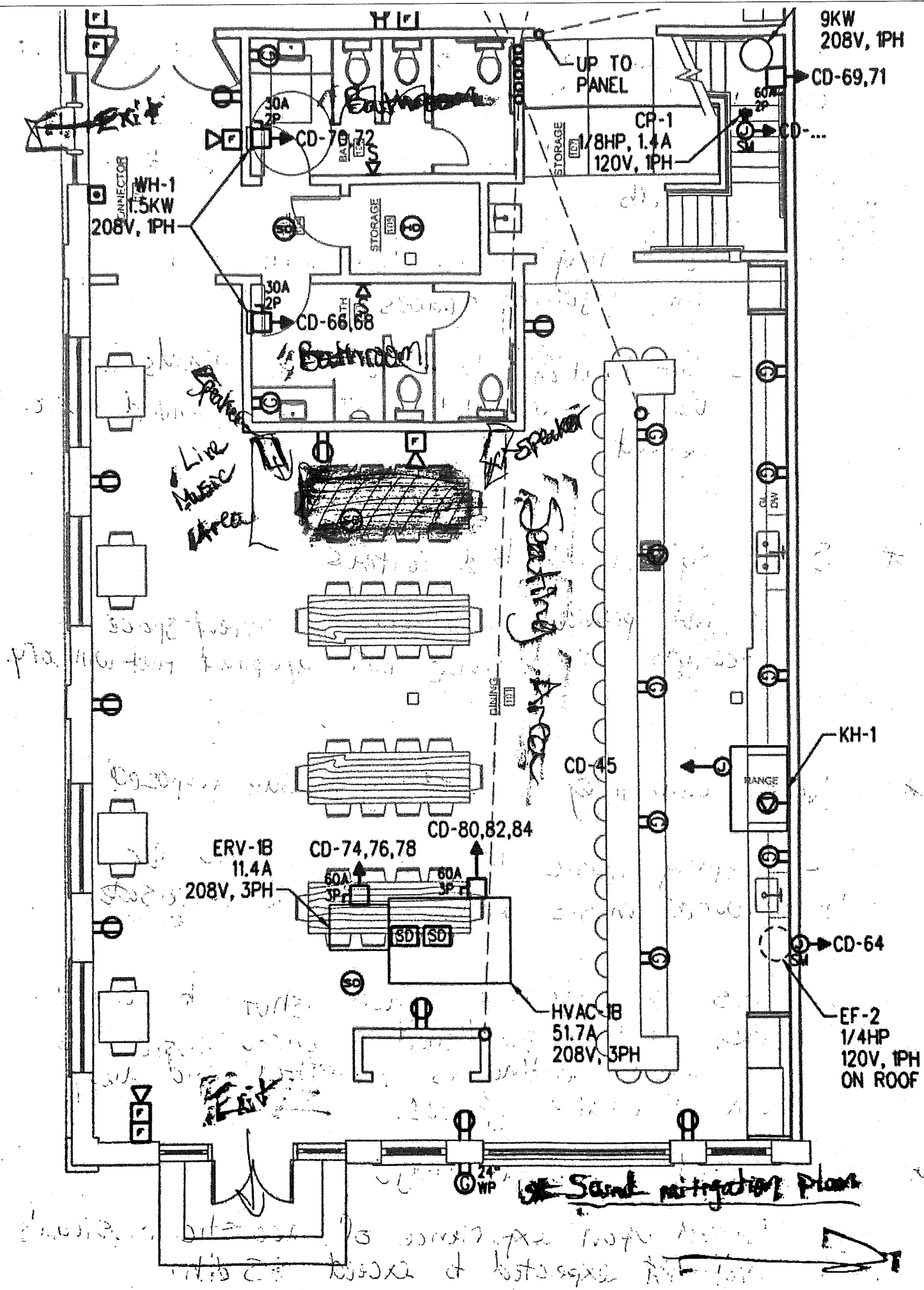
1. Exact legal name: Rwanda Bean Company, LLC
2. Doing Business As, if any: _____
3. Date of filing with Secretary of State: 9/30/2011 State in which you are formed: Maine
4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine:

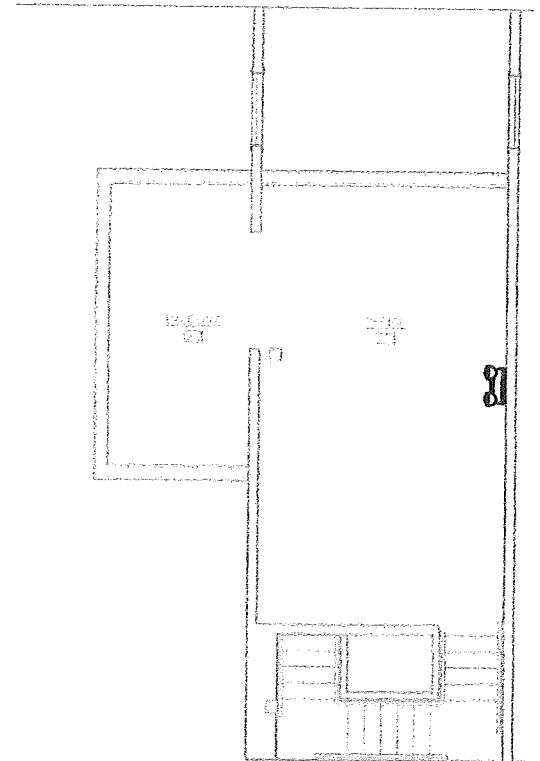
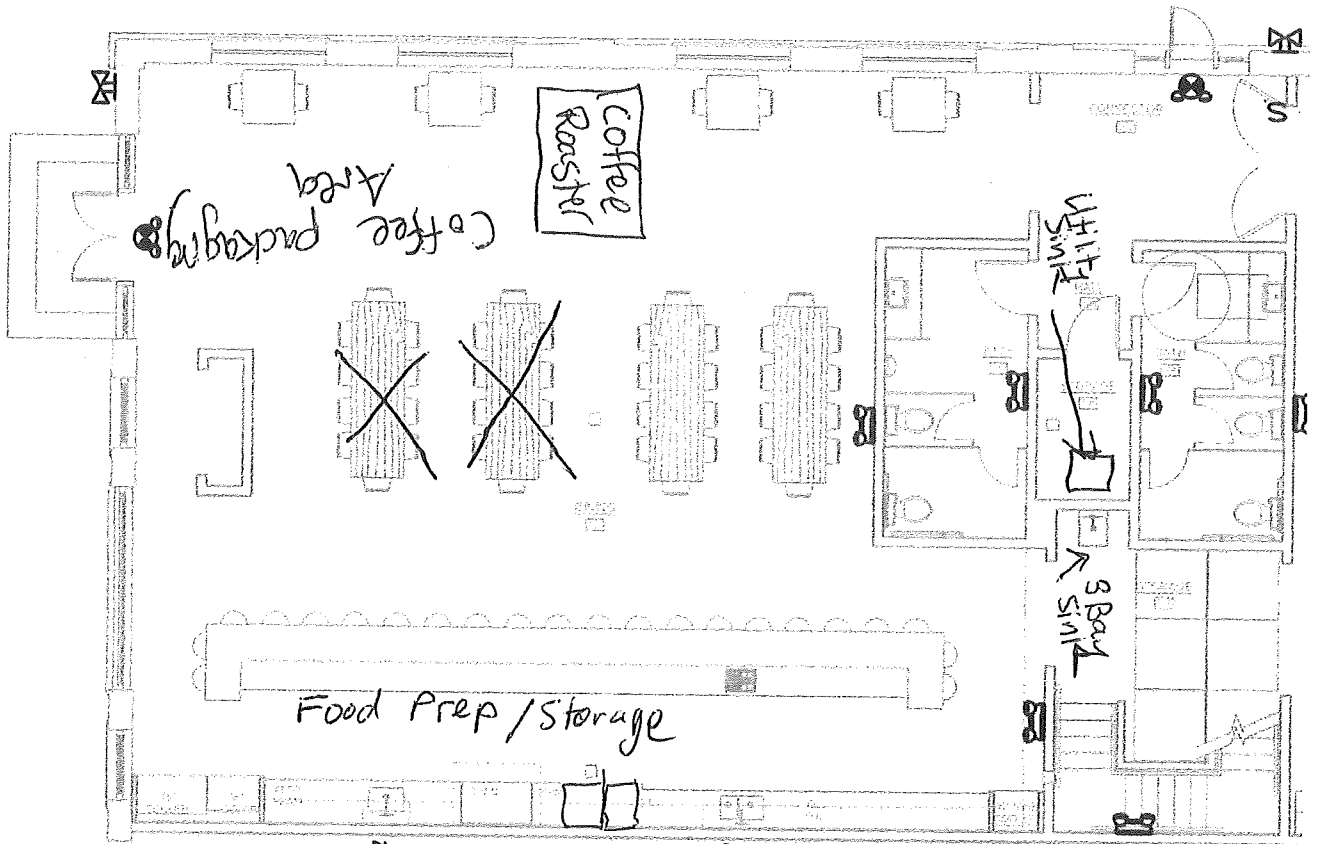
5. List the name and addresses for previous 5 years, birth dates, titles of officers, directors, managers, members or partners and the percentage ownership any person listed: (attached additional pages as needed)

Name	Address (5 Years)	Date of Birth	Title	Percentage of Ownership
Benjamin Graftius	27 Berkeley St Portland ME 04103	10/23/81	COO	22.5
	68 Berkeley St Portland ME 04103			
Mike Jean Mwenedata	76 Spring St. Apt #204 South Portland ME 04106	08/15/85	CEO	67.5
Andrea Learitt	2 Avery Street Apt 28E Boston MA 02111		Investor	5%
Antoine Havton	11 11		Investor	5%

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







Rwanda Bean Thompson Point Draft Menu

- ***The Sunny Side***
sunny side up fried egg | pretzel dough waffle | charred kielbasa sausage and onions | warm beer cheese fondu
- ***Buttermilk Biscuit Bowl***
southern style buttermilk biscuit | sausage gravy | scrambled eggs | crumbled bacon
- ***Vanilla Whoopie Waffle***
warmed whoopie waffle cake | berry compote | honey whipped ricotta | candied pecans
- ***Focaccia Benedict***
house focaccia | spinach pesto | country ham | two poached eggs | hollandaise sauce
- ***The Clucker***
house ciabatta | oven roasted turkey | 2 sunny side fried eggs | cave aged vermont cheddar apple slaw
- ***Beet Poke Bowl***
roasted beets | tamari glaze | farro grains | coconut foam | edamame | radish | peanut sesame
- ***Asparagus Toast***
firefly farms goats milk camembert | olive tapenade | roasted red pepper coulis
- ***Tuna Melt***
union bagel co toasted bagel | tuna | cornichons | mustard seed | white cheddar

Bagels and Breakfast Sandwiches

Bagels

Options: Cream Cheese, Butter, Jam

Egg Sandwiches

Options: Sausage, Veggie Sausage, Bacon, Pesto

Pastries

Donuts

Turnovers

Croissant / Chocolate Croissant

Morning Bun / Sweet Bread

Muffin / Gluten Free Muffin

Coffee Cake

Brownie / Cookies

**DON'T
QUARANTINE
without
CAFFEINE...**

**+
Whoopie Pies**

EMAIL YOUR ORDER:
SALES@RWANDABEAN.COM

12 OZ BAGS \$12

BLONDE
MEDIUM
DARK
ESPRESSO
DECAF

*SPECIFY WHOLE BEAN OR
GROUND

5 LB BAGS \$50

BLONDE
MEDIUM
DARK
ESPRESSO
DECAF

*SPECIFY WHOLE BEAN OR
GROUND

Limited quantity! Free delivery within 5 miles of
stores. Online payment via invoice

32 OZ GROWLERS \$10

NITRO COLD BREW

AVAILABLE FLAVORS:

DARK, MIDNIGHT, BOURBON,
BLONDE

or

12 oz cans \$4

CAPE WHOOPIES \$3.24

AVAILABLE FLAVORS:

MAINIAC (chocolate/vanilla cream)

SPICY HOT CHOCOLATE (chocolate
chocolate/hazelnut/cayenne cream)

BLONDIE (chocolate chip/caramel
cream)

WICKED LOBY LOVE (red velvet/
vanilla cream)

SMART IRISH BLONDE (green
vanilla/vanilla cream)



WE'VE GOT THE GOODS...

....AND CAN BRING THEM TO
YOUR DOOR!

EMAIL YOUR ORDER:
SALES@RWANDABEAN.COM

CHEF JJ KERN

THE SIX PACK \$16

CREATE YOUR OWN ASSORTMENT OF
BAKED GOODS TO MAKE EVERYONE
HAPPY! CHOOSE FROM:

GF BACON CHEDDAR SCONE
GF STRAWBERRY POPPYSEED SCONE
GF BANANA WALNUT BREAD
CINNAMON BUN W/ ICING
CRANBERRY ORANGE MUFFIN

*individual items can be purchased for
\$3/each*

FOR THE FRIDGE \$4

-CASHEW YOGURT
STRAWBERRY or PEACH or
COCONUT+MANGO
-GOIN' NUTS CHIA SEED PUDDING
W/ ALMONDS, CASHEWS, HINTS-
OF GINGER AND CARDAMOM!
BOTH 8 OZ + SERVED W/ GRANDY
OATS GRANOLA! AND VEGAN!

THE BAGEL BOX \$16

MIX AND MATCH FOUR
HAND CRAFTED BAGELS
(SESAME, POPPYSEED, ONION
AND PLAIN) WITH 8 OZ
WHIPPED CREAM CHEESE.

THE BISCUIT BOX \$12

SIX BUTTERMILK BISCUITS MADE
FROM SCRATCH AND FULL OF
SOUTHERN LOVE!
EACH BOX COMES WITH 8 OZ
SALTED HONEY BUTTER.

9" QUICHE \$12

HAM/TOMATO/CHEDDAR
SPINACH/MUSHROOM/CHEDDAR





MAINE STATE BUREAU OF IDENTIFICATION
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42
AUGUSTA, ME 04333
(207) 624-7240 (VOICE)

JESSICA HANSCOMBE
389 CONGRESS ST
PORTLAND, ME 04103

Transaction Response #: MIQ99E567074

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2020-12-18) :

Inquiries Name(s) MIKE J MUWENEDATA (1985-08-15)

NO MATCH WAS FOUND FOR YOUR REQUEST.



MAINE STATE BUREAU OF IDENTIFICATION
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42
AUGUSTA, ME 04333
(207) 624-7240 (VOICE)

JESSICA HANSCOMBE
389 CONGRESS ST
PORTLAND, ME 04103

Transaction Response #: MIQ99E567073

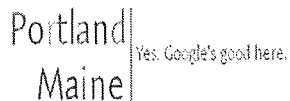
Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2020-12-18) :

Inquiries Name(s) BENJAMIN GRAFFIUS (1981-10-23)

NO MATCH WAS FOUND FOR YOUR REQUEST.



Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Re: Rwanda Bean

Dan Hondo <danh@portlandmaine.gov>

Wed, Dec 16, 2020 at 10:51 AM

To: Jessica Hanscombe <jhanscombe@portlandmaine.gov>

No issues on Pd side

On Tue, Dec 15, 2020 at 2:39 PM Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Good Afternoon

Please see the attached. This will go before council on 1/4. Please advise. Jess

Jessica Blais Hanscombe
Acting Director of Permitting and Inspections
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



1 message

Tue, Dec 15, 2020 at 4:51 PM

Cc: Benjamin Pearson <bnp@portlandmaine.gov>, Chris Beaumont <cbeaumont@portlandmaine.gov>, Dan Hondo <danh@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, Fire Prevention <fireprevention@portlandmaine.gov>, James Sweatt <jjs@portlandmaine.gov>, Jason Grant <jgrant@portlandmaine.gov>, Kathryn Barnes <kbarnes@portlandmaine.gov>, Laurie Carlson <lac@portlandmaine.gov>, Stephen Marcotte <smarcotte@portlandmaine.gov>, Tom Williams <tw@portlandmaine.gov>, Treasury Division <treasury@portlandmaine.gov>

On Tue, Dec 15, 2020 at 2:39 PM Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:
Good Afternoon

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

<https://mail.google.com/mail/u/0?ik=c49f63c34f&view=pt&search=all&permmsgid=msg-head-a%3Ar4409467635849394271%7Cmsg-f%3A1686182714660...> 1/1



CITY OF PORTLAND
Permitting and Inspections Department

December 15, 2020

Rwanda Bean Company
463 Stevens Ave
Portland ME 04103

Re: Rwanda Bean Company LLC dba Rwanda Bean Company. Application for a Class I FSE with Indoor Entertainment at 4 Thompson's Point.

Dear Ben Graffius

This letter shall serve as a reminder of the public hearing before the Portland City Council on **Monday January 4, 2021 at 5:30 p.m.**, for the review of application for a Class I FSE with Indoor Entertainment at 4 Thompson's Point. The meeting will take place virtually. The link can be found on the Meeting Agenda which will be posted on the City Website on January 1, 2021.

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 January 4, 2021 at 5:30 P.M., virtually Rwanda Bean Company LLC dba Rwanda Bean Company. Application for a Class I FSE with Indoor Entertainment at 4 Thompson's Point. Sponsored by Jon P. Jennings, City Manager.

KATHLEEN M SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
ANDREW J. ZARRO (4)

**CITY OF
PORTLAND**
IN THE CITY COUNCIL

MARK N. DION (5)
APRIL FOURNIER (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**Rwanda Bean Company LLC dba Rwanda Bean Company. Application for a Class I FSE
with Indoor Entertainment at 4 Thompson's Point.**

City of Portland

Sound Mitigation Review

Date: 12/28/2020

Business Rwanda Bean Co.

Applicant Ben Graffirs

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

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

CITY OF PORTLAND
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**RESOLUTION EXTENDING THE DEADLINE FOR THE REPORT FROM THE
RACIAL EQUITY STEERING COMMITTEE**

RESOLVED, that the deadline for the report from the Racial Equity Steering Committee for its report to the City Council is hereby extended to on or before April 21, 2021.

Resolve 1-20/21

Amended to add language from Councilor Thibodeau (No. 1 in packet) for a third-party to receive complaints concerning the June 1 into 2 protests: 9-0 on 7/13/2020

Amended to add language from Councilor Ray (No. 2 in packet with additions) narrowing the focus and speeding up the timeline for the report: 7-2 (Mavodones, Snyder) on 7/13/2020

Amended to add language from Councilor Ali (No. 3 in packet with additions) for an independent review of the June 1 into 2 protests (final two "be it further ordered" paragraphs, and additional "whereas" paragraphs: 9-0 on 7/13/2020

Passage as amended: 8-1 (Mavodones) on 7/13/2020

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)

**RESOLUTION ESTABLISHING A RACIAL EQUITY STEERING COMMITTEE TO
DEVELOP RECOMMENDATIONS IN RESPONSE TO SYSTEMIC INEQUITIES**

WHEREAS, during its years as both a part of the state of Massachusetts and before that as a colonial territory of Great Britain, and continuing in the first 45 years of statehood, the State of Maine was governed by rules that allowed slavery, and it had residents who were slave owners, slave traders and slaves; and

WHEREAS, the practice of slavery does violence to the dignity of the human beings made into property, and that violence continues to haunt American society to this day; and

WHEREAS, almost all of the 400 years of Black America's experience was under slavery and Jim Crow laws, both of which allowed preferential opportunity to some while at the same time subjected Blacks and people of color to hardship and disadvantage in all areas of life; and

WHEREAS, during the Civil War, Maine sent its soldiers to fight with the Union against the Confederacy and their courage and sacrifice helped make possible an end to the practice of slavery in the United States; and

WHEREAS, on June 19, 1865, Black slaves in the City of Galveston, Texas, finally learned that the Civil War had been won and they were free and slaves no more; and

WHEREAS, June 19th has been recognized around the country as "Juneteenth," in honor of this historic day and all that it promises all of us as free citizens of the United States; and

WHEREAS, the tragic murder of George Floyd on May 25th, 2020 by the Police in Minneapolis Minnesota created outrage that resulted in Americans from all walks of life across the country protesting police brutality and systematic racism; and

WHEREAS, residents of Portland from diverse backgrounds came together to organize many marches and rallies to protest George Floyd's murder, police brutalities, systematic racism, and call for change; and

WHEREAS, these protests and rallies in Portland were organized and led mostly by young black women and femmes from different groups and attended by cross-generational residents of Portland and across Maine; and

WHEREAS, during two such protests on June 1 and 2 tensions ran high between the police and protesters that led to people throwing water bottles at police officers and 23 protesters were arrested for failing to disperse;

WHEREAS, the protesters used the words, Black Lives Matter, to confront invasive and persistent racial injustice, and they made demands that police forces around the country cease to allow the chokehold and cease to confront Black suspects with escalated violence; and

WHEREAS, the citizens of Portland are rightly outraged by the devaluation of Black lives and humanity; and

WHEREAS, these recent events have illuminated that certain public policies have created inequities and wide disparities of well-being and opportunity among the Black community within Portland, the State of Maine and the United States ; and

WHEREAS, the enormous consequence of systemic racism in our society is that opportunities for employment, housing, health care, safety, wealth, and education have been denied or diminished for Black people and other persons of color; and

WHEREAS, the World Health Organization defines "public health" as "the art and science of preventing disease, prolonging life and promoting health through the organized efforts of society" and those efforts "aim to provide conditions under which people can... be healthy, improve their health and well-being, or prevent the deterioration of their health; and

WHEREAS, the United States Office of Disease Prevention recognizes that discrimination negatively impacts health outcomes; and

WHEREAS, the Portland City Council believes that the time is *now* to declare systemic racism a public health crisis in our community; and

WHEREAS, racial disparities and resulting socioeconomic conditions have contributed to a public health crisis among Black people that has been recently highlighted by the

disproportionate number of Covid-19 cases in Maine among Black people, and People of Color; and

WHEREAS, available data shows that Black people in Maine are arrested and incarcerated at a much higher rate than others; and

WHEREAS, there are documented racial disparities in school discipline; and

WHEREAS, we cannot continue to ignore the widening gap locally and nationally of the trust between people who work in government and the people in the community they serve; and

WHEREAS, closing this gap requires that we address the underlying inequities that continue to divide our community along racial, social and economic lines, and work to build pathways for healing; and

WHEREAS, we recognize that we are at the beginning of a new nationwide and community conversation regarding race and the system that has been in place since 1615 which has created disequity and disadvantage; and

WHEREAS, all citizens of Portland deserve justice, fair treatment, and recognition of their valuable contributions to the community; and

WHEREAS, the City Council desires to provide an alternative path for residents to report concerns or complaints related to policing during the protest on June 1, 2020 in Portland, Maine; and

WHEREAS, engaging the community is in the best interests of the City Council since such engagement will help the healing process to commence, and will help the Council develop policies and budgets that support and serve all Portland citizens;

NOW, THEREFORE, BE IT RESOLVED, that Mayor Snyder and members of the Portland City Council hereby establish a Racial Equity Steering Committee to examine City systems, policies, and procedures and make recommendations to address and respond to systemic racism; and

BE IT FURTHER RESOLVED, that the Racial Equity Steering Committee will be charged with: reviewing the City's approach to public safety, including but not limited to:

1. an examination of the ever expanding role we, as a City, have asked the police to play in our community — ranging from responding to noise complaints, traffic violations, and violent crime to conducting wellness checks and responding to behavioral health calls and drug overdoses — and whether we have provided them with the appropriate resources to accomplish this work;

2. the way in which the City interacts with area agencies, organizations, and non-profits in the name of public safety and how these partnerships can best work to enhance public safety in the City; and
3. recommending changes, as necessary, to various policies, structures, and procedures related to public safety that may disproportionately impact Black people and other persons of color with the specific aim of improving community relations, establishing mutual trust and respect, and rooting out and ending systemic racism; and

BE IT FURTHER RESOLVED, that in addition to the Racial Equity Steering Committee, the Mayor, with input from the City Council, will appoint a working group of not more than three members to select a neutral convener to begin the planning for, and execution of a series of Community Conversations designed to illuminate issues of systemic racism in Portland, and engage community members in a robust dialogue to educate, inform, and foster positive change. These Community Conversations will inform the work and recommendations of the Racial Equity Steering Committee, and will be convened and facilitated by a neutral party in collaboration with local groups, organizations, and individuals, and be supported with funding from the City; and

BE IT FURTHER RESOLVED, that the Racial Equity Steering Committee will consist of no fewer than 9 members and no more than 13 members, all of which will be appointed by the Mayor, with input from the City Council, and shall include a range of stakeholders from the Portland community who are doing racial equity work, such as representatives from the City Council, Portland Public Schools, public safety, housing, healthcare, employment, education, homelessness, the faith community, youth, and community organizers; and

BE IT FURTHER RESOLVED, that the Racial Equity Steering Committee will elect leadership from among its membership, either a Chair or Co-Chairs, who will develop meeting agendas, and who will work closely with an independent facilitator paid for by the City of Portland, and a member of City staff assigned by the City Manager; and

BE IT FURTHER RESOLVED, that the Racial Equity Steering Committee will meet over the course of five (5) months, from September 2020 until January 2021, and will submit their final written report and recommendations to the City Council regarding the ways in which city government should address and respond to institutional racism and structural inequities. The final report shall be submitted to the City Council in the form of a communication on or before January 22, 2021; and

BE IT FURTHER RESOLVED, that while the Council has charged the Racial Equity Steering Committee to initially focus on the realm of public safety, it is the intention of the Council to comprehensively examine other City systems, policies, and structures as we seek to eradicate institutional racism and bias across all facets of our

municipal government, either through a continuation of the work of the Racial Equity Steering Committee after it completes the work of its first charge, the appointment of additional task forces or steering committees, the hiring of consultants or City staff, or other appropriate means; and

BE IT FURTHER RESOLVED, that the City Council hereby requests that the Portland Public Art Committee, which is responsible for administering the Public Art Program collection, and reviewing potential gifts of art to the city's collection according to the Guidelines for the Public Art Ordinance, engage in a public process in order to determine the best way(s) in which to respond to community offers of public art in support of racial equity either through a mural, banner or other form of public art within the City of Portland; and

BE IT FURTHER RESOLVED, that Mayor Snyder and the City Council, request that the City Manager appoint a neutral third-party, with input from the City Council and to be paid for by the City, to (i) compile written concerns or complaints from individuals and (ii) conduct interviews/conversations with individuals who would like to submit testimony and/or complaints, both (i) and (ii) as a result of their participation in the events associated with the June 1 into June 2, 2020 protest in Portland, Maine. The period for individuals to submit complaints and for the neutral third-party to conduct interviews shall be for a period of three (3) weeks and shall be well publicized. The neutral third-party shall submit a confidential work product, consisting of a compiling of the complaints and concerns, to the Portland Police Chief to be investigated further, if applicable. The purpose of the neutral third-party will be to provide individuals, particularly those not comfortable going through traditional channels, the opportunity to share their perspectives and interactions with the various policing parties during the June 1st into June 2nd protest; and

BE IT FURTHER RESOLVED, that the Mayor and City Council, do hereby request that the City Manager appoint an independent third-party to conduct a thorough review of the June 1st into June 2nd protests including the City's response plan for protests and large demonstrations, addressing policing actions of all responding law enforcement agencies and make a full report of the same to the City Council; and

BE IT FURTHER RESOLVED, that the Mayor and the Council are in no way indicting the Portland Police Department, but the purpose of this resolve is to establish a full picture of events and response to the unprecedented protests, to learn from these events, build trust, and be transparent with the communities affected and our community at large.

MEMORANDUM
City Council Agenda Item

FROM: Greg Mitchell, Director

DATE: December 21, 2020

SUBJECT: Order 145-20/21 Accepting and Appropriating \$10,000 Grant from Catholic Charities of Maine - 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 will answer questions if needed.

I. SUMMARY

City staff is recommending the City Council authorize acceptance and appropriation of a \$10,000 grant from Catholic Charities of Maine for use by the Housing and Economic Development Department Office of Economic Opportunity (OEO) to enhance access to entrepreneurship options for limited English proficient and immigrant populations through training and customized technical assistance.

II. AGENDA DESCRIPTION

The Housing & Economic Development Department is requesting that the City Council accept and appropriate a \$10,000 grant from Catholic Charities of Maine for use in enhancing access to entrepreneurship options for limited English proficient and immigrant populations through training and customized technical assistance.

The Immigrant Entrepreneur Technical Assistance Continuum Project will support immigrant-owned or -operated start-ups with key technical assistance, seed funding, and resource sharing to ensure the longevity of their business in Portland.

The Immigrant Entrepreneur Technical Assistance Continuum Project will be comprised of two program components: 1) How to Start a Business in the United States, and 2) Hungry for Success: A Community Building Initiative.

This item must be read on two separate days. It received its first reading on December 21, 2020. Five affirmative votes are required for passage after public comment.

III. BACKGROUND

OEO learned of this \$10,000 grant opportunity from Catholic Charities of Maine for use to enhance access to entrepreneurship options for limited English proficient and immigrant populations through training and customized technical assistance.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

The intended result is to assist the City in funding OEO's initiative to enhance access to entrepreneurship options for limited English proficient and immigrant populations through training and customized technical assistance.

V. FINANCIAL IMPACT

None.

VI. STAFF ANALYSIS AND BACKGROUND

N/A

VII. RECOMMENDATION

Staff recommends the City Council approve the requested actions.

VIII. LIST ATTACHMENTS

1. Order Catholic Charities Grant for Immigrant Services 12.21.2020
2. MOU Executed 10-1-2020

Prepared by:

Greg Mitchell, Director

Date: 12/21/2020

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER ACCEPTING AND APPROPRIATING A \$10,000 GRANT FROM
CATHOLIC CHARITIES OF MAINE**

ORDERED, that a grant in the amount of \$10,000 from the Catholic Charities of Maine is hereby accepted and that amount appropriated for enhanced entrepreneurship options for limited English proficient and immigrant populations as set forth in the grant memorandum of agreement attached hereto; and

BE IT FURTHER ORDERED, that the City Manager or his or her designee is hereby authorized to execute the Grant Agreement in substantially the form attached hereto and whatever other documents are necessary to effect the intent and purpose of this order.

MEMORANDUM OF UNDERSTANDING

Between

Office of Maine Refugee Services Catholic Charities Maine (hereafter OMRS CCM), the City of Portland's Office of Economic Opportunity (hereafter COP OEO), and the City of Portland's Housing and Economic Development Department (hereafter COP HEDD)

WHEREAS, the COP OEO and COP HEDD will collaborate with OMRS CCM to implement the Immigrant Entrepreneur Technical Assistance Continuum Project. This continuum-based model will support immigrant owned or operated start-ups and those already in business with key technical assistance, seed funding, and resource sharing to ensure the longevity of their business' investment within the City of Portland.

WHEREAS, the Immigrant Entrepreneur Technical Assistance Continuum Project will be comprised of two program components: 1) *How to Start a Business in the United States*; 2) *Hungry for Success: A Community Building Initiative*.

WHEREAS, *How to Start a Business in the United States* is a training course consisting of three (3), two (2)-hour workshop sessions, designed for immigrant entrepreneurs with mid-to-high level English language proficiency. The training course would engage with entrepreneurs who have not started a business but would like to learn key aspects of how to start a business in the United States. The City of Portland will secure a series of key speakers in the lending, business planning, book-keeping and marketing sectors to ensure a comprehensive and foundational understanding of how to start a business in Portland, ME. In addition, the City of Portland will engage with key foreign-born business leaders who will offer their expertise and lessons learned with the cohort.

WHEREAS, *Hungry for Success: A Community Building Initiative* would match expert advisors, from within Portland's successful and renowned restaurants, to provide technical assistance to 5-8 restaurants owned by one or more of Portland's racial or immigrant minorities in need of simple and effective improvements to transition owners and staff toward financial stability. The initiative would include two workshops, specifically tailored to the restaurant industry to learn important considerations in marketing, customer service, book-keeping and other key areas informed by some of Portland's community lenders. Participating restaurants would be able to work one-on-one with other restaurant leaders in Portland to assess key areas of need and most prosperous investment areas in their own establishments. Participating restaurants who complete all module requirements would be eligible for a \$500 grant to support expansion in key areas, as described in their final proposal presented to and approved by key mentor restaurants.

Roles and Responsibilities

NOW, THEREFORE, it is hereby agreed by and between the partners as follows:

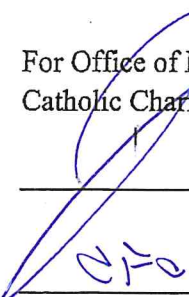
1) OMRS CCM will:

- a. Act as funder for the coordination and facilitation of *How to Start a Business in the United States*, for a total of \$5,000.00.
- b. Act as funder for the coordination and facilitation of *Hungry for Success: A Community Building Initiative*, for a total of \$5,000.00.
- c. Upon receipt of invoice, pay the Contractor the total amount of \$5,000.00 for *How to Start a Business in the United States* as described in this MOU within 30 days of presentation of an invoice to OMRS CCM.
- d. Upon receipt of invoice, pay the Contractor the maximum amount of \$5,000.00 for *Hungry for Success: A Community Building Initiative* as described in this MOU, within 30 days of presentation of an invoice to OMRS CCM.
- e. Support the outreach and community engagement conducted by the COP OEO and COP HEDD to promote the Immigrant Entrepreneur Technical Assistance Continuum Project, as needed.

2) The COP OEO and COP HEDD will:

- a. Conduct outreach and community engagement to promote the Immigrant Entrepreneur Technical Assistance Continuum Project
- b. Identify co-hosts for the Immigrant Entrepreneur Technical Assistance Continuum Project and confirm relevant logistics to complete each session.
- c. Coordinate to identify and confirm dates for the conversation sessions and facilitate the Immigrant Entrepreneur Technical Assistance Continuum Project during the term of this MOU.
- d. Submit invoices and any other approved vendor invoices, W-9, and other requested forms to OMRS CCM in a timely manner.
- e. Submit a short report to OMRS CCM regarding project objectives and outcomes in a timely manner.

For Office of Maine Refugee Services
Catholic Charities Maine



Signature

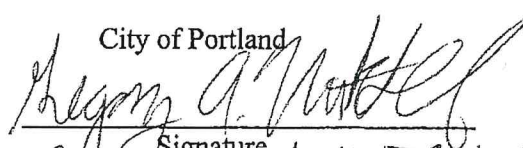
CFO

Name & Title

10/1/2020

Date

City of Portland



Signature

GREGORY A. MITCHELL
ECONOMIC DEV. DIRECTOR

Name & Title

9-30-2020

Date

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE CHAPTER 14
RE: CONGREGATE CARE IN B-3 ZONE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

*That Chapter 14, Article 3 - Definitions, and Article 6 -
Uses, Table 6-C, are hereby amended to read as follows, on the
following pages:*



subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Commercial vessel. Any watercraft used principally in a business or trade, including common carriers of passenger or freight, whether for governmental, nonprofit, or emergency purposes, but not including pleasure craft used principally for recreational purposes.

Common areas. Portions of a lodging house which are available for use by all residents of the lodging house. Common areas shall include, but are not limited to, one or more of the following: kitchens, living rooms, recreation rooms, improved basements, and finished porches. Bathrooms, stairways, hallways, and storage areas shall not be counted as common areas.

Communication studio. A commercial or public communication facility, including radio and television broadcasting and receiving stations and studios.

Community hall. A building or portion of a building used for social, recreational, artistic, civic, or educational community functions. Such a facility would be open to the public for such functions, which, for example, could include but not be limited to performances, dance, exhibitions, cultural exchange, training programs and workshops, neighborhood meetings, or gatherings. As part of these functions and activities, it shall be permissible to serve food, subject to other applicable codes and ordinances.

Condominium. Any interest in real estate created pursuant to the Unit Ownership Act, 33 M.R.S. § 560 et seq., or its equivalent, as it may from time to time be amended.

Congregate care facility. A residential development ~~which provides intended to facilitate aging in place that includes~~ individual ~~living or~~ dwelling units with support services which provide assistance to residents. ~~The population of a congregate care facility shall consist of persons 55 years of age or older and their spouses. A congregate care facility may also accommodate the needs of persons with disabilities and their spouses that are younger than 55 years of age, provided the majority of the residents are 55 years of age or older.~~ Services to be provided shall include the following:

- A. Transportation for essential support activities: ~~This service shall be included in the base rent;~~
 - B. Provision of at least one 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 55 years of age or older and their spouses and/or disabled persons and their spouses.~~

Correctional pre-release facility. A facility housing up to 12 persons, plus staff, serving a primary clientele of persons in correctional pre-release programs.

TABLE 6-C: PERMITTED AND CONDITIONAL USES IN MIXED-USE ZONES

		B-1/B-1b	B-2/B-2b/B-2c	B-3/B-3-b/B-3c ¹¹	B-4	B-5/B-5b	B-6	B-7	Use Standards
Residential	Single-family dwellings	●	●	●		●	●	●	
	Two-family dwellings	●	●	●		●	●	●	
	Multi-family dwellings	● ¹	●	●		●	●	●	
	Handicapped family units			●		●	●	●	
	Combined living/working spaces	●	●	●		●	●	●	
	<u>Congregate care facilities</u>			●					
Institutional	Lodging houses	● ²	●	●	●	●		●	6.4.9
	Clinics	● ²	●	●		●		●	
	Cultural facilities			●		●	●	●	
	Elementary, middle, and secondary schools	● ²	●	●		●	●	●	
	Emergency shelters			○	○	○			6.5.6(B)
	Governmental uses	● ²	●	●	●	●		●	
	Intermediate care facilities		●	●					
	Long-term and extended care facilities		●						
	Places of assembly (< 10,000 SF)	● ²	●	●	●	●	●	●	
	Places of assembly (> 10,000 SF)		●	●	●	●	●	●	
	Preschool facilities	● ²	●	●	●	●	●	●	
	Post-secondary schools		●	●	●	●	●	●	
	Adult business establishments		● ³	● ³					6.4.2
	Auto, boat, and related dealerships		○		●				6.5.6(A)
	Auto service stations		○ ⁴		●	●			6.5.6(A)
	Bars		● ⁵	● ⁵	●	●	●	●	6.4.3
	Bed and breakfasts	●	●	●				●	6.4.4
	Exhibition, meeting, and convention halls			●		●	○	●	
Commercial /Service	Funeral homes		●		●				
	General offices (<5,000 SF)	● ²	●	●	●	●	●	●	6.4.6
	General offices (>5,000 SF)		●	●	●	●	●	●	
	General services (<5,000 SF)	● ²	●	●	●	●	●	●	6.4.6
	General services (>5,000 SF)		●	●	●	●	●	●	
	Hostels	●		●		●		●	6.4.6, 6.4.8
	Hotels		●	●	●	●	● ¹³	●	
	Marijuana retail store		●/○ ⁶	●	●			●	6.4.10
	Recreation and amusement centers				●	●		●	
	Registered marijuana dispensary		●/○ ⁶	●	●			●	6.4.10
	Restaurants	● ²	●	●	●	●	●	●	6.4.3, 6.4.6
	Retail (< 5,000 SF)	● ²	●	●	●	●	●	●	6.4.6, 6.4.15
	Retail (5,000 – 25,000 SF)		●	●	●	●	●	●	6.4.15



PLANNING BOARD REPORT TO CITY COUNCIL PORTLAND, MAINE

Zoning Text Amendments: Congregate Care Facility Definition & Addition of Congregate Care and Intermediate Care Facilities to the 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: December 21, 2020

Prepared by: Planning Staff
Date: December 8, 2020



Context of the B-3 and B-3c zones. 385 Congress Street is highlighted in teal

I. INTRODUCTION AND PROJECT SUMMARY

Portland Opportunity Fund LLC seeks zoning text amendments (**Attachment 1**) adding 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). These amendments would also modify the definition of Congregate Care facilities within the Land Use Code. The proposed definition emphasizes the intention of facilitating aging-in-place, clarifies existing

language, and addresses a concern with the previous definition expressed by the City Council when the proposal was initially brought to them for consideration. The proposed zoning text amendments would facilitate the development (**Attachment 2**) of 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 at 385 Congress Street, which is zoned B-3 Downtown Business.

The review of this proposed text change did not include site plan considerations. If the City Council approves the proposed text changes, the applicant may follow with a Master Development Plan and / or Major Site Plan for their broader development intentions. The proposed change, as a text change to the B-3 zone, would impact the zone in its entirety and not only a future project from the applicant. Accordingly, the Planning Board considered the change from the perspective of whether Congregate and Intermediate Care were appropriate uses for the B-3 overall.

II. ZONING ANALYSIS

Both *congregate care facility* and *intermediate care facility* are currently defined in the Land Use Code; only the definition of congregate care facility is proposed to change as part of this proposal, with intermediate care facility remaining as-is. The existing definitions are as follows:

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 the following:

- A. Transportation for essential support activities. This service shall be included in the base rent;
- B. Provision of at least one 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.
- 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 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 for more than 13 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 within the Land Use 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.*”

Many other uses, including multifamily housing, are currently permitted in the B-3 Downtown Business zone, including:

Residential:

- Attached single-family, two-family, and multifamily dwellings
- Handicapped family units
- Lodging houses
- Combined living / working spaces

Business:

- General and business offices
- Professional offices
- Personal services
- Offices of building tradesmen
- Retail establishments
- Restaurants
- Drinking establishments
- Billiard parlors
- Miscellaneous repair services
- Communication studios
- Health clubs and gymnasiums
- Theaters, performance, and exhibition halls
- Convention and meeting facilities
- Hotels
- Business services
- Parking garages
- Galleries
- Registered dispensary
- Marijuana retail store
- Small-scale marijuana caregiver

Institutions:

- Museums
- Schools
- Clinics
- Places of assembly
- College, university, trade school
- Nursery schools and day care facilities
- Governmental offices

Other:

- County and municipal uses
- Studios for artists and craftspeople
- Printing, publishing, related manufacture
- Bed and breakfast
- Hostels
- Wind energy systems

Congregate Care facilities are currently only permitted in the R-5A residential zone, which is only mapped at a location proximate to Stevens Avenue and Walton Street in the Deering neighborhood. In 2015, Congregate Care facilities were added as a permitted use in that zone in connection with a modification to the definition of Congregate Care to facilitate development at and around the Motherhouse property, which is part of the larger Stevens Square at Baxter Woods development. Intermediate Care facilities are permitted, with restrictions, in the I-M, I-Ma, and I-Mb moderate impact industrial zones, and are conditional uses in R-1, R-2, R-3, R-5, R-6, and R-6A residential

zones.



Context of 385 Congress Street, which is outlined in teal.

III. RESPONSE TO COUNCIL DIRECTION

The City Council initially reviewed a proposal to add Congregate Care as a permitted use in the B-3 Zone on June 1/June 15, 2020, and had some concerns with the current use definition, particularly the possibility that it would unintentionally permit sheltered care group homes or related, non-age-specific uses in the B-3 zone. Acknowledging shelter care group homes and other accommodations for those in need of distinct services were absolutely valuable and needed uses in the city, the emphasis of the deliberation was ensuring that Congregate Care was distinct and clear in its wording, and that the range of establishments that could result from the change could be better gauged. Council was generally supportive of a change to allow Congregate Care facilities, but directed staff to work on clarifying changes to the definition.

The Congregate Care definition includes provisions for housing with services for people 55 years and older or their spouses (so as not to bar a younger spouse of someone 55+) or disabled persons. If the purpose of the definition is to define a type of housing for seniors, which Congregate Care generally is, the definition as worded is muddled. In

Planning staff's assessment of similar definitions around the US, the use is typically, explicitly for senior living. As a way to clarify the purpose of this use, language about the intent of Congregate Care being to foster aging-in-place was added, and parameters for the total share of non-55 years+ residents was added (*A Congregate Care facility may also accommodate the needs of persons with disabilities and their spouses that are younger than 55 years of age, provided the majority of the residents are 55 years of age or older*), so that the resulting balance of the population remains faithful to its intended purpose, but these facilitates may still accommodates those of any age with disabilities who may want or require Congregate Care living.

Though the Congregate Care definition becomes more specific with these changes, as a use currently only permitted in the R-5a zone, the proposed addition of Congregate Care to the B-3 zone expands the possibility for housing with services to those 55 and older as well as to those with disabilities of any age. Congregate Care is also not the exclusive use available for those disabled and requiring assistance at their place of residence (*handicapped family unit, special needs independent living unit, community living arrangement, sheltered care group homes, Intermediate Care facility* are all uses permitted in Portland that provide housing and services to those with special needs). In addition, the freshly adopted Land Use Code provides new language on accommodation for those with disabilities in the event that zoning and existing uses do not meet all needs:

The City of Portland may make reasonable modifications to the requirements of the Land Use Code to accommodate the needs of persons with disabilities as so defined in Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. (1.6.3 Fair Housing accommodation).

The combination of expanding where Congregate Care facilities may occur; refining the definition to have it more explicitly directed to senior housing needs, while allowing a portion of a facility to be available for those of any age with disabilities; the fact of complimentary uses in Portland's Code that also provide housing and a continuum of care options to those with disabilities; and new Fair Housing accommodation provisions, make for a balanced land use approach, and one that increases the diversity of housing options in Portland's downtown.

IV. DEFINITION CHANGE

The proposed new definition (**Attachment 1**) of Congregate Care facility is:

A residential development intended to facilitate aging in place that includes individual dwelling units with support services which provide assistance to residents. The population of a Congregate Care facility shall consist of persons 55 years of age or older and their spouses. A Congregate Care facility may also accommodate the needs of persons with disabilities and their spouses that are younger than 55 years of age, provided the majority of the residents are 55 years of age or older. Services to be provided shall include:

- A. Transportation for essential support activities;*
- B. Provision of at least one meal per day;*
- C. Programmed social activities which are facilitated by staff;*
- 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 unit.*

A redlined version comparing the existing and proposed is attached as Attachment 1).

The above definition emphasizes the use's function ("facilitate aging in place"), removes unclear, redundant, or unnecessarily specific items (e.g., "individual living or dwelling units," "(1)", "this service shall be provided in the base rent") and specifies the expected resident population ("provided the majority of the residents are 55 years of age or older"). In drafting updates to the definition, staff considered definitions for this use within other cities to provide additional context and rationale for these changes (**Attachment 3**).

V. CONSISTENCY WITH CITY COMPREHENSIVE PLAN

[*Portland's Plan 2030*](#) identifies a vision statement, policy goals for the City, and principles of future land use. Several of these are relevant to the proposed text amendment.

Vision statement:

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."

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."

"Create, promote, and facilitate safe, affordable, and practical housing solutions that will meet the evolving needs of Portland residents as they age."

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."*

VI. PLANNING BOARD RECOMMENDATION

The Planning Board considered the proposed text amendment at a hearing on November 17, 2020. After deliberation, and on the basis of staff reports, public testimony, and review of applicable policies, the Planning Board voted

unanimously (7-0) to find that the proposed zoning text amendment to change the definition of Congregate Care facility and to include the addition of Congregate Care facilities and Intermediate Care facilities as permitted uses in the B-3 zone, is consistent with the Comprehensive Plan and recommended adoption to the City Council.

Intermediate Care

ATTACHMENTS

1. Proposed Text Changes
2. Applicant Cover Letter
3. Congregate Care Definition Analysis



subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Commercial vessel. Any watercraft used principally in a business or trade, including common carriers of passenger or freight, whether for governmental, nonprofit, or emergency purposes, but not including pleasure craft used principally for recreational purposes.

Common areas. Portions of a lodging house which are available for use by all residents of the lodging house. Common areas shall include, but are not limited to, one or more of the following: kitchens, living rooms, recreation rooms, improved basements, and finished porches. Bathrooms, stairways, hallways, and storage areas shall not be counted as common areas.

Communication studio. A commercial or public communication facility, including radio and television broadcasting and receiving stations and studios.

Community hall. A building or portion of a building used for social, recreational, artistic, civic, or educational community functions. Such a facility would be open to the public for such functions, which, for example, could include but not be limited to performances, dance, exhibitions, cultural exchange, training programs and workshops, neighborhood meetings, or gatherings. As part of these functions and activities, it shall be permissible to serve food, subject to other applicable codes and ordinances.

Condominium. Any interest in real estate created pursuant to the Unit Ownership Act, 33 M.R.S. § 560 et seq., or its equivalent, as it may from time to time be amended.

Congregate care facility. A residential development ~~which provides intended to facilitate aging in place that includes~~ individual ~~living or~~ dwelling units with support services which provide assistance to residents. ~~The population of a congregate care facility shall consist of persons 55 years of age or older and their spouses. A congregate care facility may also accommodate the needs of persons with disabilities and their spouses that are younger than 55 years of age, provided the majority of the residents are 55 years of age or older.~~ Services to be provided shall include the following:

- A. Transportation for essential support activities: ~~This service shall be included in the base rent;~~
 - B. Provision of at least one 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 55 years of age or older and their spouses and/or disabled persons and their spouses.~~

Correctional pre-release facility. A facility housing up to 12 persons, plus staff, serving a primary clientele of persons in correctional pre-release programs.

TABLE 6-C: PERMITTED AND CONDITIONAL USES IN MIXED-USE ZONES

		B-1/B-1b	B-2/B-2b/B-2c	B-3/B-3-b/B-3c ¹¹	B-4	B-5/B-5b	B-6	B-7	Use Standards
Residential	Single-family dwellings	●	●	●		●	●	●	
	Two-family dwellings	●	●	●		●	●	●	
	Multi-family dwellings	● ¹	●	●		●	●	●	
	Handicapped family units			●		●	●	●	
	Combined living/working spaces	●	●	●		●	●	●	
	<u>Congregate care facilities</u>			●					
Institutional	Lodging houses	● ²	●	●	●	●		●	6.4.9
	Clinics	● ²	●	●		●		●	
	Cultural facilities			●		●	●	●	
	Elementary, middle, and secondary schools	● ²	●	●		●	●	●	
	Emergency shelters			○	○	○			6.5.6(B)
	Governmental uses	● ²	●	●	●	●		●	
	Intermediate care facilities		●	●					
	Long-term and extended care facilities		●						
	Places of assembly (< 10,000 SF)	● ²	●	●	●	●	●	●	
	Places of assembly (> 10,000 SF)		●	●	●	●	●	●	
	Preschool facilities	● ²	●	●	●	●	●	●	
	Post-secondary schools		●	●	●	●	●	●	
	Adult business establishments		● ³	● ³					6.4.2
	Auto, boat, and related dealerships		○		●				6.5.6(A)
	Auto service stations		○ ⁴		●	●			6.5.6(A)
	Bars		● ⁵	● ⁵	●	●	●	●	6.4.3
Commercial /Service	Bed and breakfasts	●	●	●				●	6.4.4
	Exhibition, meeting, and convention halls			●		●	○	●	
	Funeral homes		●		●				
	General offices (<5,000 SF)	● ²	●	●	●	●	●	●	6.4.6
	General offices (>5,000 SF)		●	●	●	●	●	●	
	General services (<5,000 SF)	● ²	●	●	●	●	●	●	6.4.6
	General services (>5,000 SF)		●	●	●	●	●	●	
	Hostels	●		●		●		●	6.4.6, 6.4.8
	Hotels		●	●	●	●	● ¹³	●	
	Marijuana retail store		●/○ ⁶	●	●			●	6.4.10
	Recreation and amusement centers				●	●		●	
	Registered marijuana dispensary		●/○ ⁶	●	●			●	6.4.10
	Restaurants	● ²	●	●	●	●	●	●	6.4.3, 6.4.6
	Retail (< 5,000 SF)	● ²	●	●	●	●	●	●	6.4.6, 6.4.15
	Retail (5,000 – 25,000 SF)		●	●	●	●	●	●	6.4.15



**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

City	Terminology	Definition	Section
Portland (current definition)	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.	Current Portland definition
Washington DC	Continuing Care Retirement Community	A building or group of buildings providing a continuity of residential occupancy and health care for elderly persons. This facility includes dwelling units for independent living, and assisted living facilities, and may include plus a skilled nursing care facility of a suitable size to provide treatment or care of the residents; it may also include ancillary facilities for the further enjoyment, service or care of the residents. The facility is restricted to persons sixty (60) years of age or older or married couples or domestic partners where either the husband or wife spouse or domestic partner is sixty (60) years of age or older.	Text amendment for continuing care retirement community. https://www.ncpc.gov/docs/actions/2017May/ZC_17-01_Delegated_Action_May_2017.pdf
South Portland	Congregate housing or congregate care facility	A residential use consisting of private apartments and central dining facilities and within which a supportive services program is provided to functionally impaired residents who are unable to live independently without assistance yet do not require the constant supervision or intensive health care available at nursing homes. The term "private apartment" shall include private rooms with or without cooking facilities. Congregate housing does not include any facility which is otherwise required to be licensed to provide residential services health care, treatment, rehabilitation, or related services. For purposes of calculating net residential density, one private apartment shall count as one dwelling unit, unless otherwise provided.	ZR 27-201 Definitions https://www.southportland.org/files/2114/6825/0142/CH_27_Zoning_with_New_TOC_format.pdf
Westbrook	Congregate Care Facility	A multiple family dwelling occupied by people in a shared living environment. Such facilities shall consist of individual apartment units, shared community space, shared dining facilities, appropriate recreational facilities and required care services based on individual need.	ZR Chapter 2 - 201 https://www.westbrookmaine.com/DocumentCenter/View/1561/Appendix-A-Land-Use-Ordinance--20181205?bidId=
Sacramento, CA	Congregate Care	a residential facility or portion of a larger phased-living complex, offering independent living accommodations oriented to the particular needs of a segment of the population (usually senior citizens) and including a variety of common facilities, equipment or services available to the tenants. As a minimum requirement, a congregate care facility must maintain congregate cooking and dining programs, and may also offer a variety of congregate recreation, social, transportation, health maintenance and counseling programs. Congregate care shall also include a residential care home or residential care facility which serves six or fewer persons not including the operator or members of the operator's family or persons employed as facility staff. If the facility offers only independent cooking facilities in the private residential units or if common support services are optional, then the facility is defined as a multifamily use. Also, if the facility offers extensive skilled nursing services, memory care, or more intensive medical care as licensed by the State Department of Public Health for more than 6 people, the facility is then defined as a convalescent hospital.	http://gcode.us/codes/sacramentocounty/?view=desktop&topic=16-16_87-16_87_020
Portsmouth, NH	Congregate Care Facility	A residential development consisting of individual dwelling units with centralized amenities such as dining, housekeeping, transportation and organized social and recreational activities, and which may include limited medical services on site.	http://www.planportsmouth.com/landuseregulations/ZoningOrd-170109.pdf
Portsmouth, NH	Continuing Care Retirement Community	A residential development that provides multiple elements of senior adult living including independent living units, assisted living units and skilled nursing care, enabling residents to live at a single location as their medical needs change over time. A CCRC includes common dining, recreation and health facilities and other common areas; provides services such as medical, programmed social activities; and may include limited accessory retail and personal services. A CCRC is intended for and solely occupied by persons 62 years of age or older and thereby qualifies as "housing for older persons" under state law	http://www.planportsmouth.com/landuseregulations/ZoningOrd-170109.pdf
Cambridge, MA	Elderly Oriented Congregate Housing	A form of elderly oriented housing in which each individual or two person family is provided with separate quarters which contain living and sleeping space and which may contain kitchen and bath facilities. Each such living space shall be considered the equivalent of one dwelling unit. Such housing shall also contain common dining, kitchen and social facilities. Limited supportive services may also be provided.	https://library.municode.com/ma/cambridge/codes/zoning_ordinance?nodeId=ZONING_ORDINANCE_ART2.000DE
State of Maine	Age-Friendly Community	Means a community where policies, services, settings and structures support and enable older people to actively age in place and that recognizes the capabilities, resources and needs of older adults, plans to meet the needs of older adults in flexible ways that support healthy and active aging, promotes the inclusion and contributions of older adults in all areas of community life, respects the self-determination and independence of older adults and protects those older adults who are most vulnerable.	http://www.mainelegislature.org/legis/statutes/30-A/title30-Asec4301.html

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO ZONING MAP
RE: B-2 ZONE TO I-M ZONE AT 7 RAND ROAD**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE
IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

That the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, be and hereby is amended by adopting the following map change amendment and specifically rezoning property in a B-2 Zone to an I-M Zone at 7 Rand Road, as shown in the lower purple area bordered by hatch marks in the map attached hereto as Exhibit A.

Legend

- IRON PIPE OR ROD FOUND
- GRANITE MONUMENT FOUND
- HYDRANT
- LIGHT POLE
- UTILITY POLE
- PROPERTY LINE
- BUILDING
- CURB
- EDGE OF PAVEMENT
- CONCRETE
- FENCE
- OE OVERHEAD ELECTRIC
- IPF / IRF IRON PIPE OR ROD FOUND
- N/F NOW OR FORMERLY
- 000/000 DEED BOOK / PAGE
- CB CATCH BASIN
- MH MANHOLE
- WG WATER GATE
- (D) DEED DIMENSION

SCALE : 1" = 80'

0' 40' 80' 160'

Plan References

- "STANDARD BOUNDARY SURVEY, SOUTHERLY OF BRIGHTON AVE., PORTLAND, MAINE FOR RICHARDSON AND TROUGH" BY OWEN HASKELL, INC. DATED MARCH 21, 1989.
- "PLAN OF LAND MADE FOR THE PINE TREE SHOPPING CENTER, GORDON F. BLOOM, PORTLAND, MAINE" BY H.I. & E.C. JORDAN SURVEYORS DATED AUGUST 1963.
- "LAND TITLE SURVEY ON RAND ROAD, PORTLAND, MAINE FOR THE EMERY-WATERHOUSE COMPANY, RAND ROAD, PORTLAND, MAINE 04103" BY OWEN HASKELL, INC. DATED MAY 11, 1993 REVISED JAN. 18, 1995.
- "RAND ROAD SIDELINE SURVEY FROM PORTLAND TERMINAL RAILROAD TO BRIGHTON AVE. AND A PORTION OF BRIGHTON AVE., CITY OF PORTLAND, MAINE PUBLIC WORKS DEPARTMENT, ENGINEERING SECTION NOV. 13, 2003"
- "ALTA/NSPS LAND TITLE SURVEY, 7 RAND ROAD, PORTLAND, CUMBERLAND COUNTY, MAINE MADE FOR BROCKWAY-SMITH COMPANY" JUNE 14, 2019 REVISED JUNE 21, 2019 BY OWEN HASKELL, INC.

Utility Note

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, 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-DISFAE AT LEAST THREE BUSINESS DAYS BEFORE PERFORMING ANY CONSTRUCTION. DUE TO OSHA CONFINED SPACE REQUIREMENTS, ALL INVERTS AND PIPE SIZES MUST BE VERIFIED PRIOR TO ANY CONSTRUCTION.

General Notes

- OWNER OF RECORD: RAND ROAD HOLDINGS, LLC
7 RAND ROAD, PORTLAND, ME
TAX MAP: 264-A-5; 262-A-1;
263-A-10 & 264-B-1
C.C.R.D. BOOK 31342 PAGE 191
- BEARINGS ARE MAGNETIC 1956 PER PLAN REFERENCE 3.
- THIS PLAN IS A COMPILATION OF PLAN REFERENCE 3 AND A FIELD INSPECTION IN MAY & JUNE 2019.
- THERE ARE 203 PARKING SPACES, 2 OF WHICH ARE HANDICAPPED SPACES.

Certificate

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.

DATE

RANDY R. LOUBIER, PLS #2407

Zoning Information (B2)

THE SURVEYED PARCEL IS LOCATED IN THE B2 (BUSINESS COMMUNITY) DISTRICT AND IM INDUSTRIAL ZONE AS SHOWN ON OFFICIAL ZONING MAP OF THE CITY OF PORTLAND. THE ZONING INFORMATION BELOW IS TAKEN FROM THE ZONING REPORT DATED JUNE 18, 2019, BY ZONING SOLUTIONS, INC. FOR THE B2 DISTRICT.

Minimum Lot Size	None
Minimum Street Frontage	20 feet
Front Yard Setback Minimum	None
Rear Yard Setback Minimum	10 feet, except as provided for below
Side Yard Setback Minimum	5 feet for accessory structures
Side Yard on Side Street Setback Minimum	None
Front Yard Maximum 1, 2	5 feet for accessory structures

Structure Stepbacks

Height maximum

Maximum Impervious Surface Ratio

Minimum Lot Area per Dwelling Unit

Parking

No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable. 3

Portions of a structure above 35 feet shall be no closer than 5 feet from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone. 45 feet except as provided for below:

a. 50 feet if first floor is partially or wholly occupied by a commercial use.

b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet.

c. 65 feet within 65 feet of Franklin St.

a. For residential uses: None

b. For all other permitted uses: 80% in B-2 and B-2c

c. For all other permitted uses: 90% in B2b

a. Off-peninsula locations, as defined in section 14-47: 1,500 square feet, except as provided for in (b) below.

b. On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 square feet.

For that part of every business, manufacturing, and industrial building not catering to retail trade and with floor area over three thousand (3,000) square feet: One (1) parking space for each one thousand (1,000) square feet of floor area, or major fraction thereof.

Zoning Information (IM)

IM INDUSTRIAL ZONE

- Minimum lot size:
 - Correctional pre-release facilities: Ten thousand (10,000) square feet.
 - Other uses: None.
- Other uses: None.
- (a) Maximum impervious surface ratio: I-M and I-Ma zone: Seventy-five (75) percent. I-Mb zone: One hundred (100) percent. City of Portland Land Use Code of Ordinances Chapter 14 Sec. 14-250 Rev. 1-6-1997 14-371
- (b) Maximum building height: I-M and I-Mb zones: Seventy-five (75) feet. I-Ma zone: Forty-five (45) feet.
- (c) Minimum side yards: Principal and accessory structures in the I-M and the I-Ma zone: Each structure shall be set back one (1) foot from each side property line for each one (1) foot of building height, up to twenty-five (25) feet, except that the minimum side yard shall be thirty-five (35) feet when the side property line abuts a residential zone. Principal and accessory structures in the I-Mb zone: None, except that the minimum side yard shall be twenty-five (25) feet when the side property line abuts a residential zone.
- (d) Minimum rear yards: Principal and accessory structures in the I-M and I-Ma zone: Each structure shall be set back one (1) foot from the rear property line for each one (1) foot of building height, up to twenty-five (25) feet, except that the minimum rear yard shall be thirty-five (35) feet when the rear property line abuts a residential zone. Principal and accessory structures in the I-Mb zone: None, except that the minimum rear yard shall be twenty-five (25) feet when the rear property line abuts a residential zone.
- (e) Minimum front yard: Principal and accessory structures in the I-M and I-Ma zone: Each structure shall be set back one (1) foot from the front property line for each one (1) foot of building height. Principal and accessory structures in the I-Mb zone: None.
- (f) Minimum street frontage: Sixty (60) feet.
- (h) Pavement setback from lot boundaries: Ten (10) feet.

Plan of Proposed
Zoning Amendment
7 Rand Road, Portland, Maine
Made for
Brockway-Smith Company
203 Read Street, Portland, Maine



OWEN HASKELL, INC.
PROFESSIONAL LAND SURVEYORS

390 US ROUTE 1, UNIT 10, FALMOUTH, ME 04105 TEL. 207-774-0424

DRAWN BY: RS / JLW DATE: JAN. 29, 2020 JOB NO. 2019-094 P
CHECKED BY: RRL SCALE: 1" = 80' DRWG. NO. 2-PRO

PLANNING BOARD REPORT

TO CITY COUNCIL

PORTLAND, MAINE



7 Rand Road Rezoning
 Zoning Map Amendment
 Brockway-Smith Company, Applicant
 ZN-001041-2020 CBL: 262 A001

Submitted to: Portland City Council From: Portland Planning Board Council Meeting Date: December 21, 2020	Prepared by: Andrew Tufts, Planner Date: December 7, 2020
---	--

I. INTRODUCTION

At a public hearing on November 17, 2020, the Planning Board found (7-0) that a proposed zoning map amendment for approximately 14.68 acres of privately owned land located at 7 Rand Road from B-2 Community Business to I-M Industrial zone is consistent with the Comprehensive Plan for the City of Portland. The Planning Board issued a positive recommendation to the City Council.

The applicant, Brockway-Smith Company requested the zoning map amendment to rezone the parcel at 7 Rand Road from an I-M Industrial/B-2 Community Business split lot condition to fully I-M, removing the split lot condition via an adjustment to the zoning boundary and so that the property can be brought into greater conformity and allow for more cohesive future expansion of the currently bifurcated site. The subject property is located between Interstate 95 and Rand Road and is 18.4 acres in size. The site is currently developed with a 300,000 SF warehouse, a paved truck staging area, and surface parking.

In considering the proposal, the Board members considered the consistency of the proposal with *Portland's Plan 2030*; specifically, the economic development goals of the plan and its future land use vision. The Planning Board found the proposed zone change to be consistent with *Portland's Plan 2030* and unanimously recommended the map amendment to the City Council for adoption.

One Planning Board workshop for this project was held on October 13, 2020 and the public hearing took place on November 17, 2020.

- **Owner/Applicant:** Brockway-Smith Company
- **Applicant Representatives:** Mary Costigan (Applicant), Bernstein Shur; Charlie Smith, Owner

II. PROPOSED MAP AMENDMENT

Current Zoning: I-M Industrial & B-2 Community Business

Proposed Zoning: I-M Industrial

Current Use(s) at Site: Warehouse

Future Contemplated Use(s) at Site: Warehouse expansion

Total Parcel Area: 18.376 acres

III. BACKGROUND



Fig. 1: Project area and surrounding uses

Use Context

The 7 Rand Road site includes one parcel and is currently occupied by a 300,000 SF warehouse and associated surface parking & staging area. The property is currently under contract, having been sold to Brockway-Smith Company on March 31, 2020. The sale involved the formation of two lots which are now under separate ownership. Following the lot divide, the warehouse lot is approximately 14.68 acres, and the remaining B-2 parcel is approximately 3.69 acres.

Outer Brighton Avenue in the vicinity of the subject property is a major arterial road, ranging from 50 to 100 feet in width, with four to six travel lanes. Rand Road, connecting Brighton Ave to the Westbrook Arterial, is approximately 50 feet in width, with two travel lanes and a center turn lane. Uses fronting along this segment of Rand Road include a mix of auto dealerships, commercial retail, and a variety of industrial uses. To the east lies a low to medium density residential neighborhood within an R-3 zone, with single family homes. The I-95 interchange lies approximately half a mile south-west, at the Westbrook Arterial Toll Plaza. The western half of the parcel is undeveloped and abuts I-95. Further to the west, across the interstate lies the former site of Pike Industries, which is now being redeveloped as Rock Row, a new mixed-use commercial and residential development. The north edge of the parcel abuts Lowe's Home Improvement, a building of comparable size and hundreds of surface parking spaces. The Mountain West Division Rail Corridor runs along the parcel's southern boundary.

Zoning Context

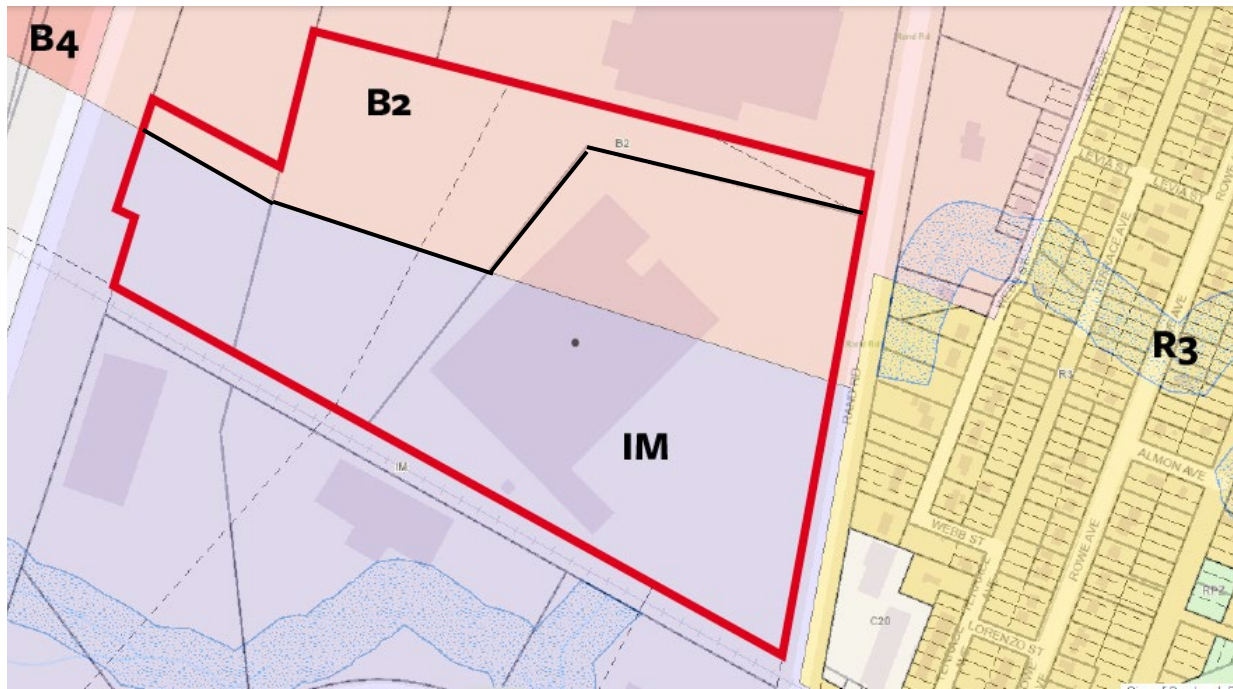


Fig. 3: Existing Zone Map & Parcel Boundary

The subject property straddles the boundary of the B-2 and I-M zones. The northern portion of the site is zoned B-2, which extends northward to Brighton Avenue. The southern portion of the site is zoned I-M, which extends southward between Rand Road and I-95 to the Westbrook Arterial. The area directly across Rand Road, to the east, is zoned R-3, which is the predominant residential zone of outer Brighton Avenue. To the south and east lies a Resource Protection (RP) zone which encompasses the Fore River Sanctuary. A Shoreland Overlay Zone abuts the site to the south and east due to a tributary of the Fore River. A portion of this tributary crosses the southeast corner of the site, but is buried below grade.

IV. ZONING ANALYSIS

The existing warehouse use is not permitted in the B-2 zone. In order to facilitate that use, and to allow future development potential at the subject property under the existing I-M use categories, the applicant has sought this map amendment. The I-M zone allows a broad range of commercial and industrial uses. Permitted uses in the I-M include but are not limited to construction services, wholesale trade, warehousing, intermodal transportation facilities, repair services, plant nurseries, food processing, and solid waste facilities. In addition to Rand Road, I-M is generally mapped directly off of major corridors such as Warren Avenue, Riverside Street, Presumpscot Street, and East Bayside.

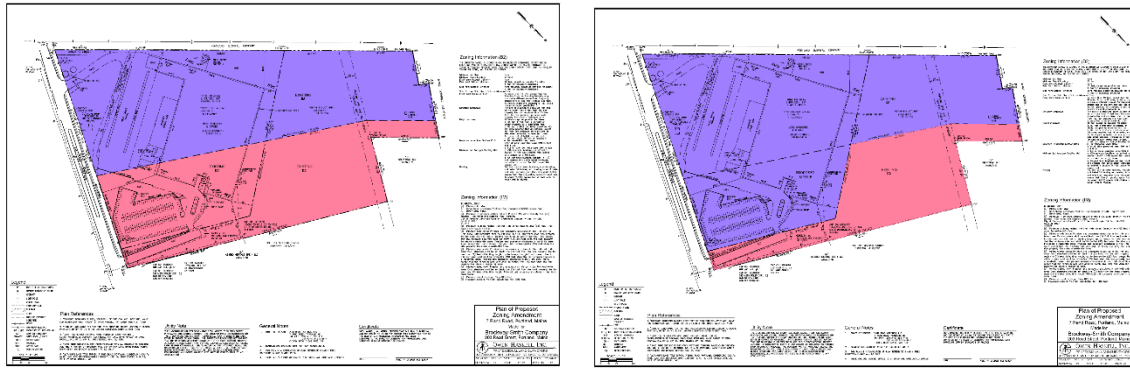


Fig. 4: Existing & proposed zoning boundaries

The B-2 zone is intended to encourage a greater variety of commercial uses and at a higher intensity than the I-M zone. The B-2 zone is also intended to increase housing opportunities via the higher density allowance and to encourage mixed-use activities. Table 1 compares the purpose statements of the two zones as written in the ordinance.

The purpose statements of the I-M and B-2 zones are as follows:

I-M, I-Ma, & I-Mb	To provide zones in areas of the city in which low- and moderate-impact industries and transportation-related uses will coexist. I-M and I-Ma zones are located on arterials or collectors. The I-Mb zone is similarly located on the peninsula. These locations provide for direct access onto arterials, thereby protecting residential neighborhoods from drive-through traffic. The purpose of the I-M, I-Ma and I-Mb industrial zones is also to provide for larger industrial buildings and for the limited or controlled use of areas outside of structures for storage of materials and machinery. These facilities often require large volumes of imported materials and products which result in large volumes of shipping and receiving. Often uses may be highway-oriented and transportation-related, thus relying on citywide and regional transportation infrastructure. Industrial uses in these moderate-impact industrial zones may require separation from higher-impact uses.
B-2	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. 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/B-1b zones. The zone provides a broad range of goods and services 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. The zone should provide locations for moderate to high-density housing in urban neighborhoods along arterials.

Permitted Uses & Dimensional Requirements.

The change from B-2 to I-M would allow the expansion of the existing warehouse use (along with other uses) at the subject property. The I-M zone allows a different range of uses than the B-2, including warehouses. The I-M zone has both more restrictive dimensional standards and more permissive. The I-M includes greater frontage requirements, larger setbacks, and a max. impervious coverage, while also

allowing for greater heights. Permitted and conditional uses as well as dimensional requirements in both the I-M and B-2 zones are included as Attachment 2.

V. POLICY ANALYSIS

The applicant has submitted an analysis of the project's conformance with the Comprehensive Plan (refer to **Attachment B**). Staff have identified the following goals and policies which are relevant to the proposed map amendment and find the proposal in conformance with economic development goals of the Comprehensive Plan, as well as the future land use vision. As stated, the purpose of the I-M zone is:

- The moderate impact industrial zones are intended to provide zones in areas of the city in which light and moderate impact industrial and transportation-related uses will coexist.
- The moderate impact industrial (I-M and I-Ma) zones are located on arterials or collectors. The I-Mb zones are similarly located on the peninsula. These locations provide for direct access onto arterials, thereby protecting residential neighborhoods from drive-through traffic.
- The I-M, I-Ma and I-Mb industrial zones are intended to provide for larger industrial buildings and for the limited or controlled use of areas outside of structures for storage of materials and machinery. These facilities often require large volumes of imported materials and products which result in large volumes of shipping and receiving. Often uses may be highway-oriented and transportation-related, thus relying on citywide and regional transportation infrastructure.
- Industrial uses in the moderate impact industrial zones may require separation from higher impact uses, which should be directed to the high impact industrial zone.

The central vision of Portland's Plan 2030 is represented by the equitable, sustainable, connected, dynamic, authentic and secure vision statement graphic. Applicable policy includes the following:



A Vibrant City

Promote an economic climate that increases job opportunities and overall economic well-being.

2. SUPPORT LOCAL BUSINESS RETENTION AND RECRUITMENT

- Pursue policies that create, nurture, and retain local businesses.
- Support job creation and business growth through public initiatives and private, institutional, and regional partnerships.
- Strengthen City programs and services that support business development.

5. TARGET AREAS FOR JOB GROWTH

- Ensure that new employment can be accommodated in priority growth areas across the City.
- Evaluate zoning and the condition of existing infrastructure in priority areas - downtown, in identified neighborhood nodes, and along transit corridors – to ensure that employment and housing growth can be supported.
- Expand possibilities for live/work spaces – residential living space with integrated creative work space.

- Modify ordinances and make strategic investments to better promote business development and job creation in priority areas.

Portland's Plan 2030's also affirms the continued value of industrial space to the City's economic diversity (see Economy Policy Guide and Future Land Use). Though the uses permitted in B zones also provide a range of uses important to the city, the proposed zoning change aligns with the historic patterns of activity at the site, allows for more cohesive future use, and is consistent with what has been an area of industrial activity within an industrial zoning framework.

VI. PUBLIC COMMENT/NEIGHBORHOOD MEETING

No public comments have been submitted to date.

VIII. PLANNING BOARD RECOMMENDATION

The Planning Board considered the proposed map amendment at a hearing on November 17, 2020. After a considered discussion about the appropriate zone boundaries, and on the basis of staff reports, public testimony, and review of applicable policies, the Planning Board voted unanimously (7-0) to find that the proposed zoning map amendment for approximately 14.68 acres of privately owned land located at 7 Rand Road from B-2 Community Business to I-M Industrial zone is consistent with the Comprehensive Plan and recommended adoption of the proposed map amendment to the City Council.

IX. ATTACHMENTS

A. CITY COUNCIL REPORT ATTACHMENTS

1. Planning Board Report
2. Use and Dimensional Tables

B. APPLICANT'S ATTACHMENTS

- A - COVER LETTER
- B - COMPREHENSIVE PLAN
- C - MAP CHECKLIST
- D - REDACTED PURCHASE & SALE
- E - PLAN OF DIVISION
- F - EXISTING ZONING MAP
- G - PROPOSED ZONING MAP

PLANNING BOARD REPORT PORTLAND, MAINE



7 Rand Road Rezoning
Zoning Map Amendment
Brockway-Smith Company, Applicant
ZN-001041-2020 CBL: 262 A001

Submitted to: Portland Planning Board
Public Hearing Date: November 17, 2020

Prepared by: Andrew Tufts, Planner
Date: November 13, 2020



Fig. 1: Surrounding context of 7 Rand Road, highlighted in orange

I. INTRODUCTION

Brockway-Smith Company seeks a zoning map amendment to rezone the parcel at 7 Rand Road from an I-M Industrial/B-2 Community Business split lot condition to fully I-M, removing the split lot condition via an adjustment to the zoning boundary & so that the property can be brought into greater conformity and allow for more cohesive future expansion of the currently bifurcated site. The subject property is located

between Interstate 95 and Rand Road and is 18.4 acres in size. The site is currently developed with a 300,000 SF warehouse, a paved truck staging area, and surface parking.

- Owner/Applicant: Brockway-Smith Company
- Applicant Representatives: Mary Costigan (Applicant), Bernstein Shur; Charlie Smith, Owner

II. PROPOSED MAP AMENDMENT

Current Zoning: I-M Industrial & B-2 Community Business

Proposed Zoning: I-M Industrial

Current Use(s) at Site: Warehouse

Future Contemplated Use(s) at Site: Warehouse expansion

Total Parcel Area: 18.376 acres

The current I-M zoning allows for light and moderate impact industrial and transportation-related uses to coexist. The proposed rezoning is intended to facilitate future warehouse expansion that the current B-2 zoning does not allow, as the existing use is legally non-conforming.

III. BACKGROUND



Fig. 2: Project area and surrounding uses

Use Context

The 7 Rand Road site includes one parcel and is currently occupied by a 300,000 SF warehouse and associated surface parking & staging area. The property is currently under contract, having been sold to

Brockway-Smith Company on March 31, 2020. The sale involved the formation of two lots which are now under separate ownership. Following the lot divide, the warehouse lot is approximately 14.68 acres, and the remaining B-2 parcel is approximately 3.69 acres.

Outer Brighton Avenue in the vicinity of the subject property is a major arterial road, ranging from 50 to 100 feet in width, with four to six travel lanes. Rand Road, connecting Brighton Ave to the Westbrook Arterial, is approximately 50 feet in width, with two travel lanes and a center turn lane. Uses fronting along this segment of Rand Road include a mix of auto dealerships, commercial retail, and a variety of industrial uses. To the east lies a low to medium density residential neighborhood within an R-3 zone, with single family homes. The I-95 interchange lies approximately half a mile south-west, at the Westbrook Arterial Toll Plaza. The western half of the parcel is undeveloped and abuts I-95. Further to the west, across the interstate lies the former site of Pike Industries, which is now being redeveloped as Rock Row, a new mixed-use commercial and residential development. The north edge of the parcel abuts Lowes Home Improvement, a building of comparable size and hundreds of surface parking spaces. The Mountain West Division Rail Corridor runs along the parcel's southern boundary.



Fig. 3: Rand Road with subject property on right side of frame



Fig. 4: View of subject property from Rand Road



Fig. 5: Birds Eye Perspective of Subject Property

Zoning Context

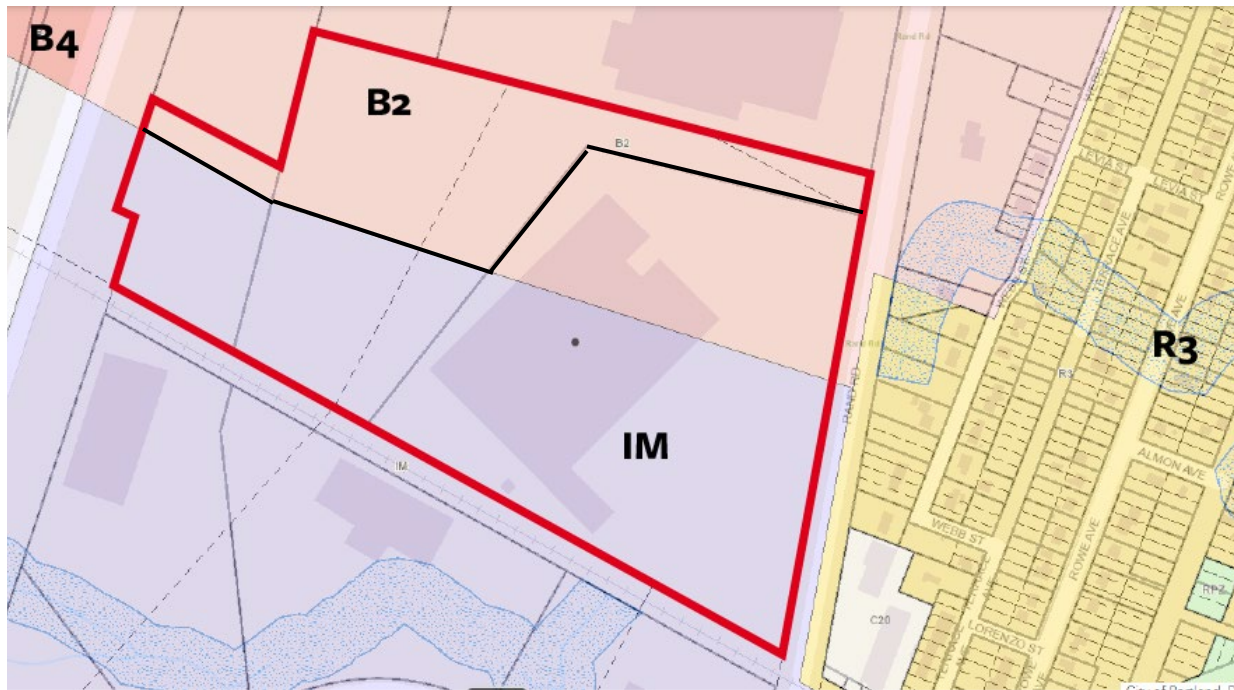


Fig. 6: Existing Zone Map & Parcel Boundary

The subject property straddles the boundary of the B-2 and I-M zones. The northern portion of the site is zoned B-2, which extends northward to Brighton Avenue. The southern portion of the site is zoned I-M, which extends southward between Rand Road and I-95 to the Westbrook Arterial. The area directly across Rand Road, to the east, is zoned R-3, which is the predominant residential zone of outer Brighton Avenue. To the south and east lies a Resource Protection (RP) zone which encompasses the Fore River Sanctuary. A Shoreland Overlay Zone abuts the site to the south and east due to a tributary of the Fore River. A portion of this tributary crosses the southeast corner of the site, but is buried below grade.

IV. CONCEPTUAL FUTURE DEVELOPMENT

While a development proposal was not included within the application package for this zoning map amendment, the applicant seeks a rezoning at the subject property to facilitate the future expansion of the existing warehouse facility which is allowed in the I-M zone. Further expansion within the B-2 portion of the site is not permitted due to the legally nonconforming status of the industrial use.

V. ZONING ANALYSIS

The existing warehouse use is not permitted in the B-2 zone. In order to facilitate that use, and to allow future development potential at the subject property under the existing I-M use categories, the applicant has sought this map amendment. The I-M zone allows a broad range of commercial and industrial uses. Permitted uses in the I-M include but are not limited to construction services, wholesale trade, warehousing, intermodal transportation facilities, repair services, plant nurseries, food processing, and solid

waste facilities. In addition to Rand Road, I-M is generally mapped directly off of major corridors such as Warren Avenue, Riverside Street, Presumpscot Street, and East Bayside.

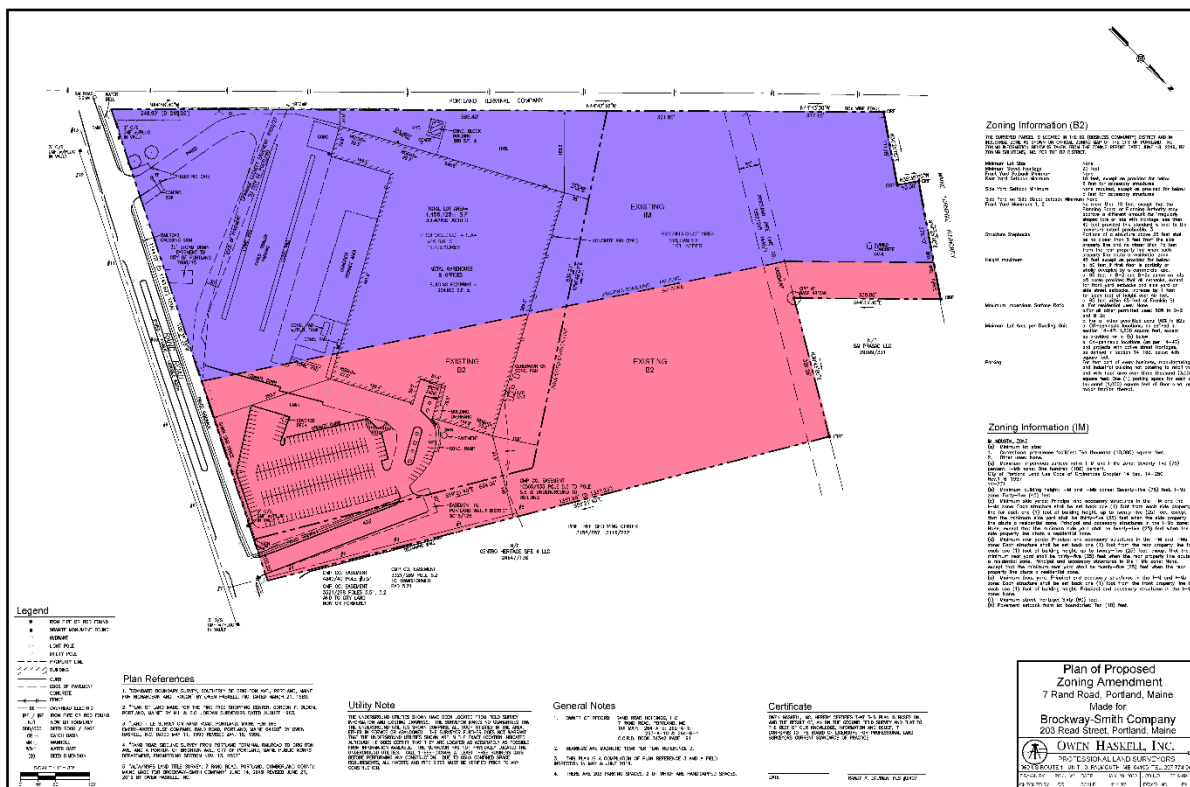


Fig. 7: Existing Zoning – Source: Owen Haskell, Inc.

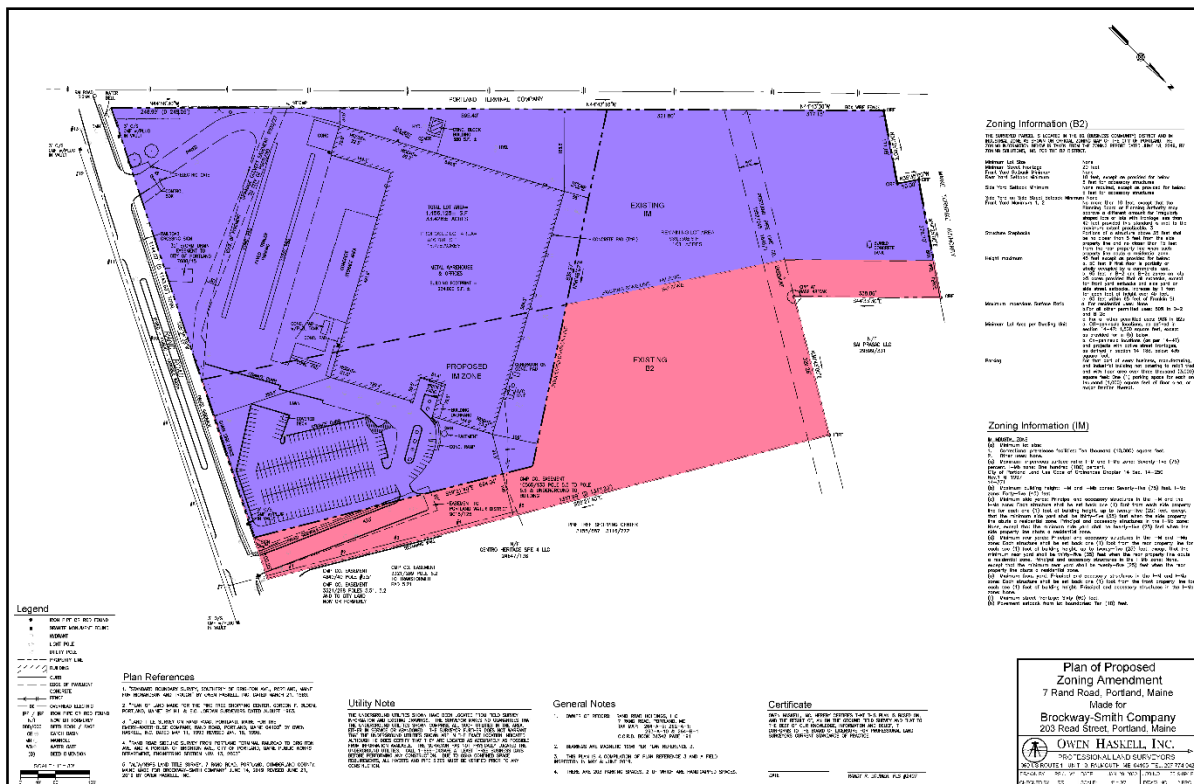


Fig. 8: Proposed Zoning – Source: Owen Haskell, Inc.

The B-2 zone is intended to encourage a greater variety of commercial uses and at a higher intensity than the I-M zone. The B-2 zone is also intended to increase housing opportunities via the higher density allowance and to encourage mixed-use activities. Table 1 compares the purpose statements of the two zones as written in the ordinance.

Table 1: Purposes

	I-M Industrial	B-2 Community Business
Purpose	The moderate impact industrial zones are intended to provide zones in areas of the city in which light and moderate impact industries and transportation-related uses will coexist.	The purpose of the B-2 community business zone is:
	The moderate impact industrial (I-M and I-Ma) zones are located on arterials or collectors. The I-Mb zones are similarly located on the peninsula. These locations provide for direct access onto arterials, thereby protecting residential neighborhoods from drive-through traffic.	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.
	The I-M, I-Ma and I-Mb industrial zones are intended to provide for larger industrial buildings and for the limited or controlled use of areas outside of structures for storage of materials and	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

machinery. These facilities often require large volumes of imported materials and products which result in large volumes of shipping and receiving. Often uses may be highway-oriented and transportation-related, thus relying on citywide and regional transportation infrastructure.

Industrial uses in the moderate impact industrial zones may require separation from higher impact uses, which should be directed to the high impact industrial zone.

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.

Permitted Uses

The change from B-2 to I-M would allow the expansion of the existing warehouse use (along with other uses) at the subject property. The I-M zone allows a different range of uses than the B-2, including warehouses vs residential. Permitted and conditional uses in both the I-M and B-2 zones are outlined in the tables below:

Table 2: Permitted and Conditional Uses – Shown with X if listed in Zone

			I-M	B-2
Permitted	Residential	Single-family and two-family dwellings		x
		Multi-family dwellings		x ²
		Handicapped family units		x
		Single-family manufactured housing		
		Combined living/working spaces		x
		Lodging houses		x
	Institutional	Schools		x
		Clinics	x	x
		Places of assembly	x	x
		Long term, extended and intermediate care facilities		x
		Governmental buildings and uses/municipal uses	x	x
		College, university or trade schools		x

Table 2: Permitted and Conditional Uses – Shown with X if listed in Zone

			I-M	B-2
		Nursery schools, kindergartens		
		Day care facilities	x	x
	Business	General, business & professional offices	x	x
		Personal services	x	x
		Offices of building tradesmen	x	x
		Retail establishments	x	x
		Restaurants		x
		Drinking establishments		x
		Billiard parlors		x
		Mortuaries or funeral homes		x
		Miscellaneous repair services, excluding motor vehicle repair	x	x
		Communication studios or broadcast and receiving facilities	x	x
		Health clubs and gymnasiums	x	x
		Veterinary hospitals	x	x
		Theaters	x	x
		Hotels		x
		Dairies and bakeries	x	x
		Drive-throughs when accessory to a principal use	x	x
		Registered medical marijuana dispensaries		x
		Accessory uses	x	x
		Cemeteries		
		Parks	x	

Table 2: Permitted and Conditional Uses – Shown with X if listed in Zone

			I-M	B-2
Conditional		Home occupation	x	
		Special needs independent living units		
		Conversion into bed and breakfast		
		Hostels		x
		Wind energy systems	x	x
		Utility substations	x	x
		Bed and breakfasts		x
		Studios for artists and craftspeople	x	x
	Residenti	Sheltered care group homes		
		Conversion into bed and breakfast (over 5 rooms)		
	Institutional	Schools		
		Long-term and extended care facilities	x	
		Intermediate care facility	x	
		Places of assembly	x	
		Hospital	x	
		College, university, trade schools	x	
	Business	Major and minor auto service stations existing as of 1999		x
		Car washes		x
		Drive-throughs associated with a permitted use adjacent to residential zones		x
		Automobile dealerships		x
	Other	Utility substations	x	
		Professional offices		

Table 2: Permitted and Conditional Uses – Shown with X if listed in Zone

			I-M	B-2
		Chancellery		
		Nursery school and kindergartens		
		Off-street parking for passenger cars for permitted uses		
		Day care facilities	x	
		Temporary wind anemometer towers	x	x
		Hostels		
		Wind energy systems	x	x
		Printing and publishing establishments	x	x
		Wholesale distribution establishments	x	x
		Research and developments and related production establishments	x	x

¹ Any residential use permitted in the residential zone abutting the lot is permitted. If there is no abutting residential zone, any residential use permitted in the nearest residential zone to the lot is permitted.

² If nearest residential zone is R-4, R-5, R-6, or R-7 or if first floor is used for commercial purposes.

Dimensional Requirements– I-M and B-2

Space & Bulk Standards	I-M	B-2
Minimum Lot Size	Correctional prerelease facilities: Ten thousand (10,000) square feet. Other uses: None.	None
Minimum Street Frontage	60'	20'
Front Yard Setback	Minimum front yard: Principal and accessory structures in the I-M and I-Ma zone: Each structure shall be set back one (1) foot from the front property line for each one (1) foot of building height.	No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable
Rear Yard Setback	Principal and accessory structures in the I-M and I-Ma zone: Each structure shall be set back one (1) foot from the rear property line for each one (1) foot of building height, up to twenty-five (25) feet, except that the	10 ft except for accessory structures 5 ft

	minimum rear yard shall be thirty-five (35) feet when the rear property line abuts a residential zone.	
Min Side Yard	Principal and accessory structures in the I-M and the I-Ma zone: Each structure shall be set back one (1) foot from each side property line for each one (1) foot of building height, up to twenty-five (25) feet, except that the minimum side yard shall be thirty-five (35) feet when the side property line abuts a residential zone.	None except for accessory structures 5 ft
Max Side Yard on Side Street	None	(not outlined in ordinance)
Min Side Yard on Side Street	None	None
Structure Stepbacks	None	Portions of a structure above 35 feet shall be no closer than 5 feet from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone
Max Building Height	75'	45 feet except as provided for below: a. 50 feet if first floor is partially or wholly occupied by commercial use b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each feet of height over 45 feet c. 65 feet within 65 feet of Franklin Street
Max Floor Area	None	(not outlined in ordinance)
Min Lot Area / Unit	None	a. Off-peninsula locations, as defined in section 14-47: 1500 sf, except as provided for in b b. On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188 below: 435 sf
Max impervious surface	75%	For residential uses: none For all other permitted uses: 80% in B-2 and B-2 c For all other permitted uses: 90% in B-2b

VI. POLICY ANALYSIS

The applicant has submitted an analysis of the project's conformance with the Comprehensive Plan (refer to **Attachment B**). Staff have identified the following goals and policies which are relevant to the proposed map amendment and find the proposal in conformance with economic development goals of the Comprehensive Plan, as well as the future land use vision. As stated, the purpose of the I-M zone is:

- The moderate impact industrial zones are intended to provide zones in areas of the city in which light and moderate impact industrial and transportation-related uses will coexist.
- The moderate impact industrial (I-M and I-Ma) zones are located on arterials or collectors. The I-Mb zones are similarly located on the peninsula. These locations provide for direct access onto arterials, thereby protecting residential neighborhoods from drive-through traffic.
- The I-M, I-Ma and I-Mb industrial zones are intended to provide for larger industrial buildings and for the limited or controlled use of areas outside of structures for storage of materials and machinery. These facilities often require large volumes of imported materials and products which result in large volumes of shipping and receiving. Often uses may be highway-oriented and transportation-related, thus relying on citywide and regional transportation infrastructure.
- Industrial uses in the moderate impact industrial zones may require separation from higher impact uses, which should be directed to the high impact industrial zone.

The central vision of Portland's Plan 2030 is represented by the Venn diagram demonstrating the integral interrelation of the community's core belief that Portland is equitable, sustainable, connected, dynamic, authentic and secure. The vision conveys the message of the City's need to balance many competing needs to assure the advance of the vision as a unified concept. In this instance, that the City's goals for job growth and transforming Portland through orderly growth and development be balanced with needs for connectivity of the street grid, sustainability of infrastructure and the ability to maintain that infrastructure, and security in the sense of public safety. Applicable policy includes the following:



A Vibrant City

Promote an economic climate that increases job opportunities and overall economic well-being.

2. SUPPORT LOCAL BUSINESS RETENTION AND RECRUITMENT

- Pursue policies that create, nurture, and retain local businesses.
- Support job creation and business growth through public initiatives and private, institutional, and regional partnerships.
- Strengthen City programs and services that support business development.

5. TARGET AREAS FOR JOB GROWTH

- Ensure that new employment can be accommodated in priority growth areas across the City.
- Evaluate zoning and the condition of existing infrastructure in priority areas - downtown, in identified neighborhood nodes, and along transit corridors – to ensure that employment and housing growth can be supported.
- Expand possibilities for live/work spaces – residential living space with integrated creative work space.
- Modify ordinances and make strategic investments to better promote business development and job creation in priority areas.

Portland's Plan 2030's also affirms the continued value of industrial space to the City's economic diversity (see Economy Policy Guide and Future Land Use). Though the uses permitted in B zones also provide a range of uses important to the city, the proposed zoning change aligns with the historic patterns of activity at the site, allows for more cohesive future use, and is consistent with what has been an area of industrial activity within an industrial zoning framework.

VII. PUBLIC COMMENT/NEIGHBORHOOD MEETING

The Planning Division mailed 144 notices of this public hearing, to property owners within 500 feet of the property. A legal advertisement for the meeting ran on November 7, and November 10, 2020.

This application is a map amendment regarding property that is already developed. It is not related to a proposed site plan, and a neighborhood meeting was not required. No public comments have been submitted to date.

VIII. REQUISITE COUNCIL ACTION & STAFF RECOMMENDATION

Any proposed rezoning, regardless of whether it is recommended by the Planning Board, must be approved by the City Council in order to take effect. Staff recommends that the Planning Board consider a positive recommendation to City Council for adoption of the map amendment for the rezoning area, as presented.

IX. PROPOSED MOTION FOR MAP AMENDMENT

On the basis of plans and materials submitted by the applicant, the City of Portland Land Use Code, Portland's Comprehensive Plan, public comment, the information provided in public hearing on November 17, 2020 for the application ZN-001041-2020 (7 Rand Road), and/or other findings as follows:

The Planning Board finds that the proposed rezoning to the I-M Industrial zone for the property located at 7 Rand Road **[is or is not]** consistent with the Comprehensive Plan for the City of Portland; and

Therefore, the Planning Board **[recommends or does not recommend]** to the City Council adoption of the zoning map amendment for 7 Rand Road from B-2 Community Business to the I-M Industrial.

ATTACHMENTS

Applicant Submission

- A - COVER LETTER
- B - COMPREHENSIVE PLAN
- C - MAP CHECKLIST
- D - REDACTED PURCHASE & SALE
- E - PLAN OF DIVISION
- F - EXISTING ZONING MAP
- G - PROPOSED ZONING MAP

TABLE 6-C: PERMITTED AND CONDITIONAL USES IN MIXED-USE ZONES

		B-1/B-1b	B-2/B-2b/B-2c	B-3/B-3b/B-3c ¹¹	B-4	B-5/B-5b	B-6	B-7	Use Standards
Residential	Single-family dwellings	●	●	●		●	●	●	
	Two-family dwellings	●	●	●		●	●	●	
	Multi-family dwellings	● ¹	●	●		●	●	●	
	Handicapped family units			●		●	●	●	
Institutional	Combined living/working spaces	●	●	●		●	●	●	
	Lodging houses	● ²	●	●	●	●		●	6.4.9
	Clinics	● ²	●	●		●		●	
	Cultural facilities			●		●	●	●	
	Elementary, middle, and secondary schools	● ²	●	●		●	●	●	
	Emergency shelters			○	○	○			6.5.6(B)
	Governmental uses	● ²	●	●	●	●		●	
	Intermediate care facilities		●						
	Long-term and extended care facilities		●						
	Places of assembly (< 10,000 SF)	● ²	●	●	●	●	●	●	
	Places of assembly (> 10,000 SF)		●	●	●	●	●	●	
	Preschool facilities	● ²	●	●	●	●	●	●	
	Post-secondary schools		●	●	●	●	●	●	
	Adult business establishments		● ³	● ³					6.4.2
	Auto, boat, and related dealerships		○		●				6.5.6(A)
	Auto service stations		○ ⁴		●	●			6.5.6(A)
	Bars		● ⁵	● ⁵	●	●	●	●	6.4.3
	Bed and breakfasts	●	●	●				●	6.4.4
	Exhibition, meeting, and convention halls			●		●	○	●	
Commercial/Service	Funeral homes		●		●				
	General offices (<5,000 SF)	● ²	●	●	●	●	●	●	6.4.6
	General offices (>5,000 SF)		●	●	●	●	●	●	
	General services (<5,000 SF)	● ²	●	●	●	●	●	●	6.4.6
	General services (>5,000 SF)		●	●	●	●	●	●	
	Hostels	●		●		●		●	6.4.6, 6.4.8
	Hotels		●	●	●	●	● ¹³	●	
	Marijuana retail store		●/○ ⁶	●	●			●	6.4.10
	Recreation and amusement centers				●	●		●	
	Registered marijuana dispensary		●/○ ⁶	●	●			●	6.4.10
	Restaurants	● ²	●	●	●	●	●	●	6.4.3, 6.4.6
	Retail (< 5,000 SF)	● ²	●	●	●	●	●	●	6.4.6, 6.4.15
	Retail (5,000 – 25,000 SF)		●	●	●	●	●	●	6.4.15
	Retail (>25,000 SF)		●	●	●	●	●	●	6.4.15

TABLE 6-C (CONT.): PERMITTED AND CONDITIONAL USES IN MIXED USE ZONES

	B-1/B-1b	B-2/B-2b/B-2c	B-3/B-3b/B-3c ¹¹	B-4	B-5/B-5b	B-6	B-7	Use Standards
Industrial	Small-scale marijuana caregiver	●	●	●			●	6.4.10
	Theaters and performance halls	●	●	●	●	●	●	
	Veterinary services	●		●			●	
	Communication studios	●	●	●	●	●	●	
	Dairies	● ⁷		●				
	High-tech manufacturing						●	6.5.6(D)
	Intermodal transportation facilities				●	●	●	
	Laboratory and research facilities	●		●		●	●	6.5.6(E)
	Low-impact industrial (<10,000 SF)	● ⁸	●	●	●	●	● ⁸	6.5.6(E)
	Low-impact industrial (>10,000 SF)	● ⁸		●	●			
	Marijuana testing facilities			●				
	Marijuana manufacturing facilities			●				6.4.10
	Marijuana cultivation facilities (<7,000 SF plant canopy)			●				
	Printing and publishing	● ⁹	●	●	●	●	●	
	Repair services	●	●	●	●	●	●	
	Studios for artists and craftspeople	● ²	●	●	●	●	●	
	Tow lots			●				6.4.17
	Warehousing, storage, and distribution	● ¹⁰		●	● ¹⁰	● ^{10, 14}	● ^{10, 14}	6.5.6(E)
	Marine uses				●	●		6.4.11
	Correctional pre-release facilities			●				6.4.7
	Off-street parking		●/● ¹²		●	●	●	6.5.6(H)
Other	Parks and open spaces	●	●	●	●	●	●	
	Solar energy system (minor)	●	●	●	●	●	●	6.4.16
	Solar energy system (major)			●				
	Utility substations	●	●	●	●	●	●	6.5.6(L)
	Wind energy system (minor)		●	●	●	●	●	6.4.18

¹ Permitted if permitted in the adjacent or nearest residential zone. In other cases, permitted if located above first floor commercial, or on first floor where a minimum depth of 25 ft. along the principal frontage is maintained for commercial use.

² Permitted on the ground floor only in the B-1b zone.

³ Permitted in the B-2 and B-3 zones only.

⁴ Permitted as a conditional use in the B-2 only. Expansion of auto service stations in existence as of 11/15/99 permitted as a conditional use in the B-2b and B-2c zones.

⁵ Not permitted in the B-2c and B-3c zones.

⁶ Permitted in the B-2 zone. Conditional in the B-2b and B-2c.

⁷ Permitted only if an expansion of an existing dairy.

⁸ Permitted with a retail component only. Low-impact industrial uses greater than 10,000 SF are permitted in the B-2 only.

⁹ Printing and publishing of 10,000 SF or less, or expansion of printing and publishing establishments greater than 10,000 SF in existence as of 4/4/88, shall be treated as a conditional use.

¹⁰ Permitted in the B-2/B-2b/B-2c as a conditional use if 10,000 SF or less. Self-storage permitted in the B-4 zone. Self-storage permitted as a conditional use in the B-5 zone (on-peninsula locations only) in buildings existing as of 12/16/15. Self-storage not permitted in the B-2/B-2b/B-2c, B-6, and B-7 zones.

¹¹ See PAD Overlay for additional use regulations.

¹² Structured parking shall be permitted. Surface parking shall be treated as a conditional use.

¹³ Hotels shall be limited to no more than 150 rooms.

¹⁴ Wholesale is allowed as conditional use, providing the wholesale operation is associated with an onsite retail establishment and occupies less than 15,000 SF.

TABLE 6-E: PERMITTED AND CONDITIONAL USES IN INDUSTRIAL & AIRPORT ZONES

		I-L/I-Lb	I-M/I-Mb	I-H/I-Hb	A-B ⁷	Use Standards
Institutional	Airports				● ⁸	
	Preschool facilities	●	●			
	Emergency shelters	●	●	●		6.5.6(B)
	Intermediate care facilities		● ⁴			
	Places of assembly (<10,000 SF)	●				
Commercial/Services	Bars				●	
	General offices (<5,000 SF)	● ¹	●			
	General offices (>5,000 SF)	● ¹	●			
	General services (<5,000 SF)				●	
	General services (>5,000 SF)				●	
	Hotels				●	
	Recreation and amusement centers	●	●			
	Repair services	●	●	●		
	Restaurants				●	
	Animal-related services	● ²				
	Construction & engineering services	●	●	●		
	Dairies	●	●	●		
	Fish waste processing			●		
	Food & seafood processing, packing, and distribution		●	●		
	High-impact industrial uses			●		
	Intermodal transportation facilities	●	●	●		
	Laboratory and research facilities	●	●	●		
	Low-impact industrial	●	●	●		
	Lumber yards	●	●	●		
	Marijuana cultivation facility (<2,000 SF plant canopy)	●	●	●		
	Marijuana cultivation facility (2,000-7,000 SF plant canopy)		●	●		
Industrial	Marijuana cultivation facility (>7,000 SF plant canopy)			●		6.4.10
	Marijuana manufacturing facility	●	●	●		
	Marijuana testing facility	●	●	●		
	Printing and publishing	●	●	●		
	Recycling and solid waste disposal facilities		● ⁵	● ⁵		
	Studios for artists and craftspeople	●	●			
	Telecommunication towers (ground-mounted)		●	●		
	Tow lots		●	●		6.4.17
	Warehousing, storage, and distribution facilities	● ³	●	●		

TABLE 6-E (CONT.): PERMITTED AND CONDITIONAL USES IN INDUSTRIAL & AIRPORT ZONES

		I-L/I-Lb	I-M/I-Mb	I-H/I-Hb	A-B ⁷	Use Standards
	Correctional pre-release facilities		● ⁶	● ⁶		6.4.7
	Marinas	●				
	Off-street parking				●	
Other	Solar energy system (minor)	●	●	●	●	6.4.16
	Solar energy system (major)		●	●	①	
	Utility substations	●	●	●		
	Wind energy system (minor)	①	●	●	●	6.4.18
	Wind energy system (major)		●	●	①	

¹ Only back office uses permitted.

² Not including kennel or boarding facilities.

³ Must be less than 10,000 SF in floor area. No outdoor storage permitted. Self-storage not permitted in the I-L/I-Lb zone.

⁴ Permitted in existing structures not designed for industrial, amusement, warehouse or manufacturing uses as of 9/15/14 or later. Such structures may be reused or expanded to establish a facility of no more than 30 persons plus staff.

⁵ Permitted within an enclosed structure only.

⁶ Not permitted in the I-Ma, I-Mb, or I-Hb zones.

⁷ Permitted uses on lots within airport restricted access areas shall be limited to those which do not require or encourage access or visits by the public and which provide technical administrative or other support to airport operations.

⁸ Including airport administration, terminals, carrier operations, concessions, reservations and ticket sales, freight, repair and storage, fueling services, flying schools, car rental operations, and other associated uses.

DIMENSIONAL STANDARDS

TABLE 7-E: MIXED-USE ZONE DIMENSIONAL STANDARDS

		B-1/B-1b	B-2/B-2b/B-2c	B-3/B-3b/B-3c	B-4	B-5/B-5b	B-6	B-7
Lot area (min.)	School	20,000 SF			10,000 SF			
	Place of assembly	10,000 SF						
Lot area per dwelling unit (min.)	On-peninsula	435 SF	435 SF					
	Off-peninsula	1,000 SF	1,000 SF, except 435 SF if active street frontage ³					
Lot area per rooming unit (min.)	On-peninsula	150 SF	150 SF					
	Off-peninsula	350 SF	350 SF					
Street frontage (min.)		20 ft.	20 ft.	15 ft.	60 ft.			
Front setback (from all street frontages) (max.)		10 ft., or the average front yard depth of nearest developed lots if < 10 ft.	10 ft.	5 ft.	20 ft.	None, except 10 ft. in B-5b	10 ft. ⁷	10 ft.
Rear setback (min.)	Principal	None, except 10 ft. if abutting a residential zone	10 ft.		20 ft.			
	Accessory	None, except 5 ft. if abutting a residential zone	5 ft.		7 ft.			
Side setback (min.)	Principal	None, except 5 ft. if abutting residential zone	None		10 ft.			
	Accessory		5 ft.		5 ft.			
Stepbacks (above 35 ft. when property line abuts a residential zone) (min.)		Side: 10 ft. Rear: 15 ft.	Side: 5 ft. Rear: 15 ft.					
Length of building wall at maximum setback (min.)							70% of street frontage or 25% of building perimeter ⁸	75% of street frontage or 25% of building perimeter ⁹
Length of undifferentiated blank wall along publicly accessible way (max.)				30 ft., except 15 ft. within PAD Overlay				
Floor area (max.)		Non-residential uses on first floor: 10,000 SF total ¹ Restaurants (public area): 2,000 SF Clinics: 3,000 SF	Laboratory and research facilities, warehousing: 10,000 SF	None, except 15,000 SF for each floor above 125 ft.		Laboratory and research facilities and warehousing: 15,000 SF Exhibition and meeting halls: 20,000 SF		

TABLE 7-E (CONT.): MIXED-USE ZONE DIMENSIONAL STANDARDS

	B-1/B-1b	B-2/B-2b/B-2c	B-3/B-3b/B-3c	B-4	B-5/B-5b	B-6	B-7
Structure height (max.)	On-Peninsula: 45 ft., except 50 ft. along Congress Street if commercial first floor and residential above ² Off-Peninsula: 35 ft.	45 ft., except: 50 ft. if first floor is in commercial use and 65 ft. in B-2 and B-2c on lots >5 ac. if required side and rear setbacks are increased by 1 foot for each foot of height over 45 ft.	See Downtown Height Overlay Map	65 ft.	65 ft., except in B-5b along W. Commercial St. south of Danforth St. ⁵ and 120 ft. on Thompson's Point ⁶	65 ft. or as otherwise governed by the B-6 Building Height Overlay Map	See Bayside Height Overlay Map
Lot coverage (max.)			25% of lot area for portions of structures exceeding 125 ft. in height ⁴				
Impervious surface ratio (max.)	90%	Residential: None Other uses in B-2 and B-2c: 80% Other uses in B-2b: 90%		80%			

¹ Uses in structures which existed prior to the date of enactment of the B-1/B-1b zones are exempt.

² The commercial first floor uses shall utilize at least 75 % of the first-floor frontage along Congress Street and shall have an average depth of at least 20 ft.

³ A building will be determined to have an active street frontage upon meeting the following guidelines to the greatest extent practicable: the primary building façade shall be within 10 ft. feet of the front lot line; there shall be no parking on the lot within 35 ft. of the front lot line; no more than 25% of the first floor primary façade shall consist of access to garages, unutilized space, service entrances, storage or mechanicals and the remaining minimum 75% shall have an average depth of a minimum of 20 ft. for residential or commercial uses; and all primary ground floor entries to multi-family buildings must orient to street, not to interior blocks or parking lots.

⁴ Except that no floor area shall be required to be less than 10,000 SF.

⁵ For parcels of land in the B-5b zone located along W. Commercial St. south of Danforth St.: West of the projection of the centerline of the Fletcher St. right-of-way, the maximum building height shall be 45 ft.; and, east of the projection of the centerline of the Fletcher St. right-of-way and west of the projection of the centerline of the Emery St. right-of-way, the maximum building height shall be 55 ft. A projection of the centerline of a street is defined by extending the centerline of the referenced street right-of-way along its most southerly block to the centerline of W. Commercial St. Furthermore, notwithstanding Subsection 7.5.1, no rooftop structure located between the projections of the centerlines of Emery St. and Fletcher St., as described above, shall exceed a height of 62 ft as measured from average grade of the building at its foundation.

⁶ Applies only to parcels subject to an approved master development plan. Thompson's Point is defined as the contiguous parcels of upland occupying the peninsula bounded on the east by Route 295, on the north by the Mountain Division Rail right-of-way, and on the south and west by the Fore River and its associated wetlands. Nearby lands accessed from Hobart and Osgood Streets are not included.

⁷ Does not apply to parking garages and public transportation facilities. Notwithstanding required setbacks, new structures located in the blocks located south of Fore Street and north of Commercial Street and its extension shall build to the key building envelopes shown on the B6 Building Height Overlay & Building Envelopes map. Buildings located in the area east of the Fore Street Connector shall not have a maximum front setback and shall not be required to build to the key building envelope perimeter. Parking structures and the buildings for public transportation facilities may, however, be set back beyond the key building envelopes (toward the interior of blocks), but may not occupy the land between the key building envelope and the street right-of-way.

⁸ For buildings fronting on two or more streets, the minimum building wall on one street may be decreased so long as the frontage is proportionally increased on other streets in so far that the building wall on the secondary street is not reduced to less than 25 ft. Buildings in the area east of the Fore Street Connector shall not be subject to this requirement.

⁹ Does not apply to additions to or relocations of designated historic structures or structures determined to be eligible by the Historic Preservation Board.

TABLE 7-G: INDUSTRIAL & AIRPORT ZONE DIMENSIONAL STANDARDS

	I-L/I-Lb		I-M/I-Ma/I-Mb		I-H/I-Hb		A-B
Lot area (min.)							20,000 SF
Street frontage (min.)	60 ft.		60 ft.		60 ft.		50 ft. ²
Lot width (min.)							50 ft.
Front setback (min.)	I-L	25 ft.	I-M/I-Ma	1 ft. for each ft. of building height	I-H	25 ft.	None, except 20 ft. if property has frontage on Westbrook St.
	I-Lb	None	I-Mb	None	I-Hb	None	
Rear setback (min.)	I-L	25 ft., except 40 ft. when abutting residential zone	I-M/I-Ma	1 ft. for each ft. of building height up to 25 ft., except 35 ft. when abutting residential zone	I-H	35 ft.	None., except 50 ft. if abutting residential zone or use ³
	I-Lb	None, except 25 ft. when abutting residential zone	I-Mb	None, except 25 ft. when abutting residential zone	I-Hb		
Side setback (min.)	I-L	25 ft., except 40 ft. when abutting residential zone	I-M/I-Ma	1 ft. for each ft. of building height up to 25 ft., except 35 ft. when abutting residential zone	I-H	35 ft.	None, except 25 ft. if abutting residential zone or use ³
	I-Lb	None, except 25 ft. when abutting residential zone	I-Mb	None, except 25 ft. when abutting residential zone	I-Hb		
Structure height (max.)	45 ft.		I-M/I-Mb	75 ft.	75 ft.		75 ft., except 45 ft. within 100 ft. of a residential zone
			I-Ma	45 ft.			
Impervious surface ratio (max.)	I-L	65%	I-M/I-Ma	75%	I-H	85%	70% ²
	I-Lb	100%	I-Mb	100%	I-Hb	100%	
Pavement setback (min.) ¹	15 ft.		10 ft.		10 ft.		

¹ Shall not apply to entrance drives.

² Except for lots in airport restricted access areas, which shall not be subject to this provision.

³ No structure may extend beyond the building line established for any runway or taxiway. If provided, rear and side yards must not be less than 5 ft. in width.



**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 28, 2020

James Rather
Development Review Services Manager
389 Congress Street
Portland, ME 04101

Subject: Zoning Map Amendment: 7 Rand Road

Dear James:

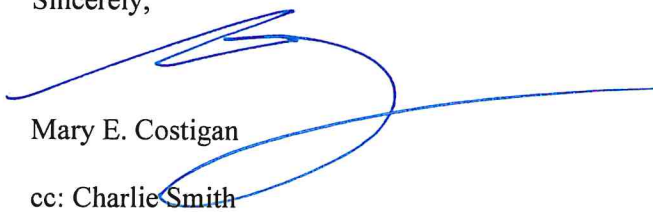
On behalf of my client, Brockway-Smith Company, we are requesting a zoning map amendment to shift the IM zone line that cuts through the middle of the parcel located at 7 Rand Road, such that the entire parcel would be in the I-M Industrial Zone. One half of the parcel, including one-third of the existing warehouse, is currently located in B-2 Community Business Zone.

Brockway-Smith is under contract to purchase the property and intends to continue to use the property for warehousing, which is permitted in I-M, but not B-2. In addition, Brockway-Smith would like to expand the warehouse, but such expansion would not be allowed in the B-2 Zone. As set forth in the attached Comprehensive Plan analysis, moving the I-M Zone line to encompass the entire warehouse into the I-M Zone is consistent with the City's Comprehensive Plan.

As shown on the attached plan of division, the current owner will retain a portion of the lot, so we are only seeking to amend the zoning on the lot we are purchasing. The highlighted area on the plan of division, as well as the proposed zoning map amendment, show the extent of the zone change request. The zone line would remain the same on the parcel retained by the seller.

Enclosed with this letter are the Comprehensive Plan Analysis, evidence of Right, Title and Interest, the plan of division and the Proposed Map Amendment. Thank you for your consideration. Please contact me directly if you have any questions.

Sincerely,



Mary E. Costigan

cc: Charlie Smith

COMPREHENSIVE PLAN ANALYSIS

PROPOSED MAP AMENDMENT FOR 7 RAND ROAD

At the time the warehouse at 7 Rand Road was constructed in 1972, the City had hand-drawn zoning maps and the zone lines did not always follow the lot lines. The warehouse on the property was constructed such that approximately one third of the building is located in the B-2 Community Business Zone and the remainder is in the I-M Industrial Zone. Although a conforming use in both zones at the time of construction, the warehouse use is now a legally nonconforming use in the B-2 Zone. Moving the zone line to encompass the entire warehouse within the I-M Zone is consistent with the Comprehensive Plan (the “Plan”), as explained in more detail below.

Relevant, Consistent City Goals and Strategies

Economy

- Create economic prosperity by growing Portland’s tax and employment base.
- Invest in, attract, and retain human capital to support a growing economy.

As set forth in the Plan, “there are many challenges for Portland’s economy, including a scarcity of office, industrial, and commercial space to meet current demand.” Moving the zone line to make the entire warehouse a permitted use will enable the future expansion of the warehouse to meet current and future demand. In addition, the future strategies to meet economic goals in the Plan include supporting local business retention and recruitment. Brockway-Smith is a New England business that has had operations in Portland beginning with its first Portland warehouse in Morrill’s Corner in 1926. It has had numerous locations in Portland, and as it grows, it continues to retain a presence in Portland. This latest relocation is from Read Street to Rand Road. This proposed map amendment to include an entire warehouse within the IM Industrial Zone is entirely consistent with the Comprehensive Plan and will enable use and expansion of an existing industrial warehouse in an appropriate location for such use.

Transportation

- Support economic vitality by ensuring the efficient movement of goods, services, and people.

Encouraging growth of industrial uses in existing industrial locations, supports continued efficiency in movement of goods. Allowing for such expansion in place also allows for operations to occur from a single location, thus adding to the efficiency.

Future Land Use

- Encourage orderly growth and development in appropriate areas of each community.
- Thoughtful expansion or investment in institutional and industrial sites.

The Future Land Use section of the Plan focuses on areas for future growth while recognizing the changes that will occur to existing facilities and uses, such as the thoughtful expansion of industrial sites.

Based on the above analysis, the proposed zoning map amendment to expand a portion of the I-M Industrial Zone to include the entirety of an existing warehouse is consistent with the Comprehensive Plan.

CITY OF PORTLAND
Planning & Urban Development Department

MAP AMENDMENT SUBMISSION CHECKLIST	
* Please submit each document <u>and</u> drawing as a separate PDF file * Please submit all drawings in a <u>24 x 36</u> sheet size * Please confirm each item by electronically checking the boxes to the left for each document/drawing	
GENERAL APPLICATION DOCUMENTS	
☒	Project Description Cover Letter with detailed project description
☒	Consistency with Comprehensive Plan Analysis of the consistency of the zone change request with the goals, policies and land use plan of Portland's Comprehensive Plan.
☒	Completed Checklist – Map Amendment Application (this document)
☒	Right, Title and Interest Deeds, leases, or purchase and sales agreements
PLANS	
☒	Vicinity Map
☒	Proposed Map Amendment (please use the Portland zoning map as a reference)
☐	Site Plan (if applicable) Provide a site plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries.

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the "Agreement") is dated effective as of the date the last party signs on the signature page below (the Effective Date"), by and between Rand Road Holdings, LLC, a limited liability company organized under the State of Maine having a principal place of mailing address at c/o Spinnaker Trust, 123 Free Street, Portland, ME 04101 ("Seller") and Brockway-Smith Company, a Massachusetts corporation with a mailing address of 35 Upton Drive, Wilmington, MA 01887 ("Buyer").

RECITALS:

A. Seller owns certain real property consisting of approximately 33.50 acres of land (the "Land") with an approximate 242,965 square foot industrial building ("Building") located at 7 Rand Road, Portland, Maine described in deed recorded in Cumberland County Registry of Deeds Book 31342, Page 191 and described on the City of Portland Tax Assessors Map 262-A-1, 263A-A-10 and 264-B-1, more particularly described on EXHIBIT A attached hereto, including all right, title and interest of Seller in and to any rights of way, privileges and appurtenances pertaining thereto, including, without limitation, any street adjoining any portion of the land and any air and development rights related to the land if any (the "Site"); and

B. Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller, upon the terms and conditions of this Agreement, a portion of the Site consisting of:

- (1) A portion of the Land to be referred to and depicted as the "Building Parcel" (as hereinafter provided), which is generally depicted on Exhibit B (the "Preliminary Plan") attached hereto. The specific layout of the Building Parcel shall be mutually agreed upon by Buyer and Seller, and depicted on the Lot Division Plan (defined in Section 3.1(3) below) to be delivered by Seller to Buyer and shall include any rights of way, privileges and appurtenance pertaining thereto including, without limitation, any street adjoining any portion of the Building Parcel and any air development rights relating to the Building Parcel, if any, to the extent transferable.
- (2) The Building and all buildings, structures and other improvements located on the Building Parcel (collectively, "Improvements") and all equipment and fixtures including, but not limited to, heating, cooling, plumbing, electrical and ventilation equipment, boilers, burners, heaters, plumbing and bathroom fixtures, electrical and lighting equipment and fixtures and all window treatments and all of Seller's right, title and interest in and to the building related equipment of any kind located on the Site or within the Building whether affixed to the Building or otherwise located at the Site on the date hereof; but not including any of the foregoing owned by [REDACTED] ("Personal Property").
- (3) All of Seller's transferable right, title and interest, if any, in and to any and all licenses, permits, agreements, approvals, privileges or warranties relating to the Building Parcel, the Improvements or the Personal Property (the "Approvals").

The Building Parcel, the Improvements, the Personal Property and the Approvals shall collectively be referred to as the "Property".

CPS
4/22/19

C. The conveyance of the Property shall include perpetual nonexclusive easements and a right of way to use the existing driveway leading from Rand Road, for the purposes described in Section 1.2 below, which shall be located on the portion of the Site retained by Seller which shall be referred to and depicted as the "Retained Parcel" on the Lot Division Plan (the "Retained Parcel"), and certain utility easements in and over the Retained Parcel as described at Section 1.2 below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, Seller and Buyer hereby agree as follows:

1. **AGREEMENT OF PURCHASE AND SALE: PURCHASE PRICE**

- 1.1 **Agreement of Purchase and Sale.** In accordance with and subject to the terms and conditions of this Agreement, Seller agrees to sell and convey the Property to Buyer and Buyer agrees to purchase and accept the Property from Seller. Seller agrees that the title to be conveyed to Buyer shall be fee simple title.
- 1.2 **Easements.** The conveyance of the Property shall include (i) a perpetual, nonexclusive easement and right of way to use the existing driveway leading from Rand Road on the Retained Parcel shown on EXHIBIT B for pedestrian and vehicular access and egress to the Property, (ii) the perpetual easement to use, operate, repair, maintain and replace any currently existing utility lines, water and sewer lines and stormwater drainage pipes, swales, ponds and facilities now serving the Property and located through, over and under the existing driveway and/or Retained Parcel; and (iii) the perpetual nonexclusive easement to locate, use, operate, repair, maintain and replace a below ground natural gas line, and related appurtenant facilities, which connects to natural gas distribution line on the land now or formerly of Brixmor SPE 4 LP to the Property, pursuant to and in compliance with that certain Easement Agreement between Brixmor SPE 4 LP and Northern Utilities, Inc. d/b/a Unitil, dated December 29, 2016 and recorded in said Registry of Deeds in Book 33739, Page 180. The driveway easement and such other easements shall each be in form reasonably satisfactory to Buyer and Seller.
- 1.3 **Purchase Price.** The purchase price (the "Purchase Price") for the Property shall be [REDACTED], subject to credits, prorations and other adjustments as provided for in this Agreement.
- 1.4 **Payment of the Purchase Price.** Buyer will pay the sum of [REDACTED] as an Earnest Money Deposit upon full execution hereof. Such Earnest Money Deposit shall be payable to Jensen Baird Gardner & Henry (the "Escrow Agent"), to be held in escrow in accordance with the terms of this Agreement. Upon expiration of the last to expire of the Inspection Period (as defined at Section 4), the Plan Review Period (as defined at Section 3.1(3)) or the Survey Review Period (as defined at Section 2.3(1)), if this Agreement is not otherwise terminated, Buyer shall increase the Earnest Money Deposit to [REDACTED], at which point the Earnest Money Deposit shall be non-refundable, except for (a) a default, beyond any applicable defined cure period, by Seller under this Agreement, (b) Seller's refusal or inability to close; (c) failure of any of the conditions to close or (d) any other provision of

this Agreement which provides for a refund of the Earnest Money Deposit. Buyer shall pay the balance of the Purchase Price to Seller in immediately available funds via federal wire transfer to the Seller's designated account on the Closing Date (as defined at Section 6.1) and as provided herein, subject to the credits and prorations set forth in this Agreement.

2. CONDITION OF TITLE; SURVEY MATTERS

2.1 **Title and Title Condition.** It shall be a condition to the Closing that Seller shall convey good and clear record and marketable title to the Property free from any encumbrances or other title defects, except for utility easements benefiting the Property and which are not Unpermitted Exceptions as defined at Section 2.2(I), and except for other encumbrances and title defects which Buyer agrees to accept. Seller shall within seven (7) days of the Effective Date provide Buyer with a copy of any title insurance policy or commitment in Seller's possession or control relating to the Site. Buyer shall, at its sole cost and expense, have the title to the Property examined. Buyer shall give written notice ("Title Defect Notice") to the Seller no later than forty-five (45) days from the Effective Date ("Title Review Period") if such title examination discloses any title defect which is unacceptable to Buyer in its sole and absolute discretion (collectively, "Unpermitted Exceptions"). Any matter of record title as of the effective date of Buyer's title examination which is not the subject of a Title Defect Notice, shall be conclusively deemed waived by Buyer and shall constitute a "Permitted Exception, except for mortgages or other liens which shall constitute Unpermitted Exceptions whether or not included in the Title Defect Notice."

2.2 **Title Defects.**

- (1) If Buyer gives a Title Defect Notice to Seller in accordance with the provisions of 2.1 above, then with respect to any Unpermitted Exception which is a mortgage or similar encumbrance created voluntarily by Seller and which secures only the payment of a stated indebtedness ("Monetary Lien"), Seller shall either (a) pay the amount necessary to remove such Monetary Lien from the record title to the Property and will, on or prior to the Closing Date, obtain a recordable instrument or other documentation sufficient to cause Buyer's title insurance company to delete such matter from an owner's title insurance policy to be issued to Buyer at standard rates, or (b) in the case only of a Monetary Lien securing the payment of a mortgage held by an institutional lender pay on the Closing Date the sum required to remove such Monetary Lien from the record title out of the Purchase Price to be received at the Closing pursuant to arrangements acceptable to Buyer and Buyer's counsel. With respect to any Unpermitted Exception which is not a Monetary Lien ("Nonmonetary Encumbrance"), Seller shall notify Buyer, within ten (10) days after Seller's receipt of the Title Defect Notice, whether Seller will attempt to cure such Nonmonetary Encumbrance. If Seller does not agree to attempt to cure such Nonmonetary

Encumbrance by notice given to Buyer on or before the expiration of said ten (10) day period, Buyer shall have the right, by notice given to Seller within ten (10) days after the earlier to occur of the expiration of said ten (10) day period or Buyer's receipt of Seller's notice, either to waive the Nonmonetary Encumbrance without abatement or reduction of the Purchase Price, or terminate this Agreement. If Seller agrees to attempt to cure the Nonmonetary Encumbrance, then Seller shall use best reasonable efforts to cure or remove such Nonmonetary Encumbrance. If after using best reasonable efforts, Seller has not removed or cured any Nonmonetary Encumbrance within thirty (30) days of Seller's receipt of a Title Defect Notice, Buyer shall, as its sole remedy and either (a) accept title to the Property subject to such Nonmonetary Encumbrance, in which case any Nonmonetary Encumbrance identified in the Title Defect Notice which Seller has not cured or removed shall constitute a Permitted Exception and the Closing shall occur without any credit against or abatement of the Purchase Price on account thereof; or, (b) elect to terminate this Agreement, in which case the Earnest Money Deposit, together with all interest, shall be immediately refunded to Buyer, all obligations of the parties hereto (except those which expressly survive termination) shall cease, and this Agreement shall be null and void and without recourse to the parties hereto.

- (2) If prior to the Closing an updated title report shows any new matter which did not appear on the record title to the Property as of the effective date of the initial title examination performed by Buyer which is not acceptable to Buyer in Buyer's sole discretion, then Buyer shall have the right to give Seller written notice of any such new matter which shall then be deemed to be an Unpermitted Exception and in such instances the parties shall have the same rights and obligations as to such new Unpermitted Exception as stated in Section 2.2(1) above.

2.3 Survey.

- (1) Seller shall within seven (7) days of the Effective Date provide Buyer with copies of all surveys, site plans, building plans or similar plans in Seller's possession or control which relate to the Site. Buyer may, at Buyer's expense, either before or after receipt of the Lot Division Plan (as defined at Section 3.1(3)), arrange for the preparation by a surveyor or engineer ("surveyor"), of a new or updated ALTA/NSPS Survey of the Property (the "ALTA/NSPS Survey", which shall include the Lot Division Plan as provided at Section 3.1(3)), certified to Buyer and the Buyer's title insurance company, and if Buyer elects to have a new or updated survey prepared, Seller shall cooperate with Buyer and the surveyor to enable the surveyor to prepare an ALTA/NSPS Survey, including, without limitation, providing the surveyor and Buyer with any and all surveys or records of the Site in the possession or control of Seller and permitting the surveyor to have access to the Site. Buyer shall have given written notice to Seller ("Survey Defect Notice") not later than thirty (30) days from the date Buyer receives the Lot Division Plan of any survey matter, zoning compliance issues survey related exceptions or any survey exceptions that the Buyer's title company indicates will appear on a title insurance policy which are not

acceptable to Buyer in Buyer's sole discretion ("Unpermitted Survey Exceptions"). Any such exceptions or survey matters which are shown on the Lot Division Plan or on any other ALTA/NSPS Survey obtained by Buyer which are not set forth in a Survey Defect Notice within said thirty (30) day period ("Survey Review Period") shall be deemed approved. Seller shall notify Buyer, within ten (10) days after Seller's receipt of the Survey Defect Notice, whether Seller will attempt to cure such Unpermitted Survey Exceptions. If Seller does not agree to attempt to cure such Unpermitted Survey Exceptions by notice given to Buyer on or before the expiration of said ten (10) day period, Buyer shall have the right, by notice given to Seller within ten (10) days after the earlier to occur of the expiration of said ten (10) day period or Buyer's receipt of Seller's notice, either to waive the Unpermitted Survey Exceptions without abatement or reduction of the Purchase Price, or terminate this Agreement. If Seller agrees to attempt to cure the Unpermitted Survey Exceptions, then Seller use best reasonable efforts to cure or remove such Unpermitted Survey Exceptions. If after using best reasonable efforts, Seller has not removed or cured any Unpermitted Survey Exceptions within sixty (60) days of Seller's receipt of a Survey Defect Notice, Buyer shall, as its sole remedy either (a) accept title to the Property subject to such Unpermitted Survey Exceptions, in which case any Unpermitted Survey Exceptions identified in the Survey Defect Notice which Seller has not cured or removed shall constitute a Permitted Exception and the Closing shall occur without any credit against or abatement of the Purchase Price on account thereof; or, (b) elect to terminate this Agreement, in which case the Earnest Money Deposit, together with all interest, shall be immediately refunded to Buyer, all obligations of the parties hereto (except those which expressly survive termination) shall cease, and this Agreement shall be null and void and without recourse to the parties hereto.

- (2) If prior to the Closing, any encroachments or other survey exceptions which did not appear on the Lot Division Plan or on any ALTA/NSPS Survey obtained by Buyer are discovered which are not acceptable to Buyer, in Buyer's sole discretion, then Buyer shall have the right to give written notice of any such newly discovered survey exception to Seller and in such instances the parties shall have the same rights and obligations as to such newly discovered survey exception as stated in Section 2.3(1) above.

- 2.4 **Title Insurance Policy.** It shall be a condition to Buyer's obligations to purchase the Property that Buyer may obtain an owner's (and lender's, if applicable) policy of title insurance at normal premium rates insuring title to the Property free from any encumbrances except for the Permitted Exceptions.

3. **APPROVALS AND CONDITIONS**

3.1 **Conditions.** The obligations of Buyer under this Agreement shall be subject to and contingent upon the satisfaction of the following conditions within the time periods specified below:

(1) **Approval of Title.** Buyer shall have approved the condition of title and survey of the Property pursuant to Sections 2.1 through 2.3 above within the time periods provided therein.

(2) **Title Policy.** Buyer (and Buyer's lender, if applicable) shall (if elected to do so) have received a commitment to obtain the title insurance policy(ies) described in Section 2.4.

(3) **Division.**

a. The specific boundaries of the Building Parcel and the Retained Parcel shall be mutually agreed upon by Buyer and Seller and if Buyer and Seller for any reason are not able to agree upon the boundaries of the Building Parcel and the Retained Parcel, this Agreement shall terminate and the Earnest Money Deposit shall be returned to Buyer.

b. Seller shall, at Seller's sole cost and expense, arrange for the preparation, by a surveyor or civil engineering firm reasonably acceptable to Buyer, of a plan in recordable form ("Lot Division Plan") which sets forth the Building Parcel and the Retained Parcel as mutually agreed upon by Buyer and Seller. The Lot Division Plan shall show the location of all Improvements on the Site including, but not limited to the Building, the location of all existing utility, water and sewer lines and all drainage facilities on the Site and shall identify the driveway easement and all other easements which are to be granted to Buyer in accordance with Section 1.2. The Lot Division Plan and the division of the Site into the Retained Parcel and the Building Parcel shall establish to the satisfaction of the Buyer in its sole discretion that the Property (including the Building and any other existing Improvements or the Building Parcel) conforms in all respects to any and all applicable municipal, state and other government regulations including, but not limited to, applicable zoning and land-use laws (including, but not limited to, set back requirements, frontage requirements, lot size requirements and building and impervious coverage ratios), that the Property abuts and has access to a public way duly laid out by the City of Portland and has access to all utility, water and sewer lines and drainage facilities. Seller shall cooperate with Buyer in the division of the Site and shall allow Buyer to consult with Seller and Seller's surveyor or engineer in connection with the preparation of the Lot Division Plan. Buyer shall have a period of thirty (30) days from the delivery of the completed Lot Division Plan ("Plan Review Period") to review the Lot Division Plan and if Buyer is not satisfied in Buyer's absolute discretion with the Lot Division Plan, Buyer

may terminate this Agreement prior to the expiration of the Plan Review Period.

- c. The Closing shall be contingent upon Seller, at Seller's sole cost and expense, obtaining any necessary municipal or other approvals for the subdivision of the Site pursuant to the Lot Division Plan (as finally approved by Buyer) and if Seller determines that such approvals are not required, the Closing shall be contingent upon Buyer's confirmation, in Buyer's sole judgment, that such approvals are not required and if Buyer does not so confirm such determination, Buyer may terminate this Agreement. If Buyer elects to terminate this Agreement pursuant to this subsection, the Earnest Money Deposit, together with all interest, shall be immediately refunded to Buyer, all obligations of the parties hereto (except those which expressly survive termination) shall cease, and this Agreement shall be null and void and without recourse to the parties hereto.
- (4) **Improvements; Building Addition.** Buyer's obligations are contingent upon Buyer's determination, in Buyer's sole discretion, that the division of the Site as set forth in the Lot Division Plan allows for the installation of a fire lane in compliance with all laws and regulations of the City of Portland including, but not limited to, applicable zoning requirements to be installed around the perimeter of the Building, and for the Property to provide sufficient "unimproved space" in compliance with applicable zoning requirements to enable Buyer to construct a 100,000 square foot addition to the Building to be located in the direction of Rand Road and the existing parking lots towards the railroad tracks as depicted on Exhibit B. If Buyer is not satisfied in Buyer's sole discretion, that the division of the Site will allow the installation of such fire lane or provide such sufficient "unimproved space", Buyer may terminate this Agreement prior to the expiration of the Plan Review Period. If Buyer elects to terminate this Agreement pursuant to this subsection, the Earnest Money Deposit, together with all interest, shall be immediately refunded to Buyer, all obligations of the parties hereto (except those which expressly survive termination) shall cease, and this Agreement shall be null and void and without recourse to the parties hereto.
 - (5) **Inspection of Property and Due Diligence Evaluation.** Buyer shall have a period of forty-five (45) days from the Effective Date ("Inspection Period") to determine, in Buyer's sole, absolute discretion, that Buyer is satisfied with the physical and environmental condition of the Property, and is satisfied, in its sole, absolute and subjective discretion, as to the feasibility of acquiring, owning and further developing the Property, as contemplated by Buyer, and operating the Property for the use and in the manner contemplated by Buyer. During such Inspection Period, Buyer shall have access to the Property for the purpose of making inspections, investigations, and tests thereof including, but not limited to, building and system inspections and such tests, borings and inspections which Buyer deems

necessary to determine if there are any hazardous wastes, hazardous substances, oils or hazardous materials in, on, under or about the Property. Seller shall make available to Buyer all environmental studies or reports in Seller's possession or control, wetland delineation reports, geological reports, prior land use permit applications filed by Seller and decisions obtained by Seller with the City of Portland, State of Maine or any federal agency having jurisdiction, to Buyer within ten (10) days from the Effective Date. Buyer shall comply with all applicable laws, rules and regulations in connection with its inspections and/or investigations of the Property and all matters related thereto. Any and all costs and expenses of Buyer's inspection/investigation of the Property shall be borne by Buyer. Buyer shall indemnify and hold Seller harmless against any and all damage to the Property, liability for mechanic's liens or personal injury, arising out of Buyer's inspections and investigations of the Property. It is expressly agreed that the foregoing indemnity shall be deemed to survive the Closing or the termination of this Agreement. Buyer agrees that upon Seller's request Buyer will provide to Seller and to cause each of its agents, contractors, subcontractors, consultants and other representatives who enter upon the Property to provide to Seller, prior to any such entry, evidence of insurance covering the activities to be conducted by Buyer and its employees, agents, contractors subcontractors, consultants and representatives.

If Buyer is not satisfied with the results of Buyer's inspections and investigations, Buyer may terminate this Agreement by written notice to Seller prior to the end of the Inspection Period. If Buyer fails to terminate this Agreement prior to the expiration of the Inspection Period, Buyer shall be conclusively deemed to have waived the right to terminate under this Section 3.1(5). If Buyer elects to terminate this Agreement pursuant to this subsection, the Earnest Money Deposit, together with all interest, shall be immediately refunded to Buyer, all obligations of the parties hereto (except those which expressly survive termination) shall cease, and this Agreement shall be null and void and without recourse to the parties hereto.

- (6) **Possession; Condition of Property.** At Closing, Seller shall deliver full possession of the Property to Buyer free of all leases, tenancies and occupancies of any person or entity other than [REDACTED]

[REDACTED], [REDACTED]. As of the Closing, the Property shall not be in material violation of any applicable law or regulation of any governmental authority. The physical condition of the Property at the Closing shall be in substantially similar condition as compared to such condition as of the close of the Inspection Period, subject to the expansion of Tenant's leased space and related changes in the configuration of Tenant's leased space generally as depicted on Exhibit C attached hereto. If Seller is unable to deliver possession to Buyer as hereinabove provided or if as of the Closing, the Property is in material violation of any such law, regulation or governmental authority or the physical condition of the Property is not in substantially

similar condition as compared to such condition as of the close of the Inspection Period, as hereinabove provided, Buyer may terminate this Agreement by written notice to Seller. If Buyer terminates this Agreement pursuant to this subsection, the Earnest Money Deposit together with all interest shall be immediately refunded to Buyer, all obligations of the parties hereto (except those which expressly survive termination) shall cease and this Agreement shall be null and void without recourse to the parties.

- (7) **Lease Matters.** The Closing shall be contingent upon Buyer's receipt of an estoppel certificate from the Tenant in the form of EXHIBIT D attached hereto. If Seller is unable to deliver such estoppel certificate or if the estoppel certificate delivered by the Tenant indicates a landlord default or other materially adverse fact, Buyer may terminate this Agreement by written notice to Seller. If Buyer terminates this Agreement pursuant to this subsection, the Earnest Money Deposit together with all interest shall be immediately refunded to Buyer, all obligations of the parties hereto (except those which expressly survive termination) shall cease and this Agreement shall be null and void without recourse to the parties.
- (8) **Flood Zone; Restrictions.** The Closing shall be contingent upon Buyer's determination that the Property is not located in a flood plain area or flood plain zone or any such other flood prone area as determined under the Rules and Procedures of the Federal Flood Insurance Program and that Buyer's use and further development of the Property as contemplated by Buyer will not be prohibited or substantially interfered with by any applicable law, regulation or ordinance relating to wetlands, conservation, land preservation or similar classifications or zoning ordinances or by any easement, restriction or other agreement. If Buyer's not satisfied with its determination, Buyer may terminate this Agreement at any time prior to the expiration of the Survey Review Period. If Buyer elects to terminate this Agreement pursuant to this subsection, the Earnest Money Deposit, together with all interest, shall be immediately refunded to Buyer, all obligations of the parties hereto (except those which expressly survive termination) shall cease, and this Agreement shall be null and void and without recourse to the parties hereto.

- 3.2 **Consequences of Termination of this Agreement.** If this Agreement is terminated by Buyer pursuant to Sections 2.2, 2.3, 2.4, 3.1, 6.7, 7.1, 8.1 or any other section specifically referring to this Section 3.2, then the following shall occur: (i) Buyer shall return to Seller all documents delivered by Seller to Buyer pursuant to this Agreement; (ii) Buyer shall deliver copies of all studies, reports, plans and surveys, including the ALTA/NSPS Survey, in Buyer's possession or control to Seller, and (iii) Seller shall promptly cause the return of the Earnest Money Deposit to Buyer. Upon completion of all of the foregoing, this Agreement shall be deemed terminated and neither party shall have any further rights against nor obligations to the other hereunder or in connection herewith except to the extent that any provision of this Agreement specifically survives any termination.

4. **WARRANTIES.**

4.1 **Representations of Buyer.** Buyer represents for the benefit of Seller that the following facts are true and correct as of the execution of this Agreement and shall be true and correct as of the Closing Date:

- (1) **Organization.** Buyer is a corporation duly organized and validly existing under the laws of the Commonwealth of Massachusetts with the full corporate power to enter into this Agreement.
- (2) **Authority.** The authority, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by all requisite action of Buyer and no other authorizations or approvals whether of governmental bodies or otherwise are necessary in order to enable Buyer to enter or to comply with this Agreement.
- (3) **Binding Effect of Documents.** This Agreement and the other documents to be executed by Buyer hereunder, upon execution and delivery thereof by Buyer, will have been duly entered into by Buyer, and will constitute legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms. Neither this Agreement nor anything provided to be done under this Agreement violates or shall violate any contract, document, understanding, agreement or instrument to which Buyer is a party or by which it is bound.

4.2 **Representations of Seller.** Seller represents for the benefit of Buyer and Buyer's successors and assigns that the following facts are true and correct as of the execution of this Agreement and shall be true and correct as of the Closing Date and shall survive the Closing Date.

- (1) **Organization.** Seller is a limited liability company duly organized and validly existing under the laws of the State of Maine with full power to enter into this Agreement.
- (2) **Authority.** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by all requisite action of Seller, and no other authorizations or approvals, whether of governmental bodies or otherwise, are necessary in order to enable Seller to enter into or to comply with the terms of this Agreement.
- (3) **Binding Effect of Documents.** This Agreement and the other documents to be executed by Seller hereunder, upon execution and delivery thereof by Seller, will have been duly entered into by Seller, and will constitute legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their terms.

- (4) **Condemnation Proceedings.** Seller has received no written notice of any condemnation proceedings, eminent domain proceedings or similar actions or proceedings against the Property or any municipal betterments or special assessments proposed with respect to the Property.
- (5) **Foreign Person.** Seller is not a foreign person and is a "United States Person" as defined in Section 7701(a)(30) of the Internal Revenue Code, as amended.
- (6) **Violations.** Seller has no knowledge relative to the Property being in violation of, (A) any of the Approvals or any conditions thereof, (B) any easement, restrictive covenant or other matter of record affecting the Property or any part thereof, (C) any laws, statutes, ordinances, codes, regulations, rules, orders, or other requirements of any local, state or federal authority or any other governmental entity or agency having jurisdiction over the Property or any part thereof, including, without limitation, any of the foregoing affecting zoning, land-use, subdivision, building, health, traffic, environmental, hazardous waste or flood control matters (all of the foregoing items in (C), collectively, called the "Governmental Regulations").
- (7) **Litigation.** Seller has no knowledge of any suits, actions or proceedings pending or threatened against or affecting the Property or which would prevent Seller from performing any of the transactions to be performed by Seller herein before any court or administrative agency or officer.
- (8) **Hazardous Materials.** During the time of Seller's ownership of the Property, Seller has no knowledge of the release of any hazardous substance, hazardous waste, hazardous materials or oil or other petroleum products at the Property or into the environment from the Property, except as previously disclosed to Buyer in a Phase I Environmental Site Assessment prepared by St. Germain Collins dated October 22, 2018, St. Germain Collins File No. 3602-0001.
- (9) **No Lease.** Seller has not entered into any leases, licenses or other occupancy agreements (written or verbal) which grant any possessory interest in and to any portion of the Property and that remain in effect other than the Lease, or that otherwise give rights with regard to the use of the Property, maintenance or service contracts or other agreements which will affect the Property after the Closing.
- (10) **No Options.** There are no purchase options, purchase contracts, or other agreements, written or oral, whereby any person could claim a legal or equitable right, title or interest in the Property or any portion thereof.
- (11) **No Citations.** Seller has no knowledge of any written notice or citation from (i) any federal, state, county or municipal authority alleging any fire, health, safety, building, pollution, environmental, zoning or other violation of any law, regulation, permit, order or directive in respect of the Property

or any part thereof, which has not been entirely corrected in accordance with applicable law; or (ii) any insurance company or bonding company of any defects or inadequacies in the Property or any part thereof, which would adversely affect the insurability of the same or of any termination or threatened termination of any policy of insurance or bond.

- (12) **No Default.** Performance of this Agreement will not result in a breach of, constitute a default under, or result in the imposition of a lien or encumbrance upon the Property under any agreement instrument, covenant, restriction, or organizational documents by which Seller or the Property is bound, and Seller is not prohibited from consummating the transactions contemplated herein by any law or regulation, agreement, instrument restriction, order or judgment.
- (13) **No Bankruptcy.** No bankruptcy or insolvency proceeding under the Bankruptcy Code or any state bankruptcy or insolvency law filed by or against Seller is pending and no such filing is contemplated by Seller, or, to Seller's knowledge, threatened.
- (14) **No Rights.** Seller has no knowledge of any existing rights (e.g., rights of first refusal) or other consents or waivers required for the completion of the delivery of the deed.
- (15) **No Underground Storage Facilities.** Seller has no knowledge of underground storage facilities or other subsurface storage facilities used to hold petroleum products or other hazardous materials now in use or previously abandoned at the Property.
- (16) **Municipal Water and Sewer.** The Property is serviced by municipal water and sewer. Seller has no knowledge of an onsite subsurface water disposal system at the Property.
- (17) **No Tax Liability.** Seller has no knowledge of Seller owing any past due taxes to the State of Maine.
- (18) **No Sanctions.** Seller has no knowledge of being subject to sanctions of the United States government or, to Seller's knowledge, in violation of any federal, state, municipal or local laws, statutes, codes, ordinances, orders, decrees, rules or regulations.
- (19) **Challenges.** Seller has no knowledge of any claim by any third party which challenges or disputes Seller's title to the Site or any dispute or disagreement as to the location of the boundary lines of the Site.

All warranties and representations of Seller set forth in this Agreement shall survive the Closing Date. For the avoidance of doubt, Buyer acknowledges that the Property is being sold in its "as-is" and "where-is" condition, with all faults, and without Seller's representation as to warranties as to the physical condition of the Property, or issues ascertainable from public record.

- 4.3 **No Warranties or Representations.** Except as expressly stated in this Agreement, Buyer agrees that Seller has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, or agreements of any kind or character, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the value, nature, quality or condition of the Property, or the suitability of the Property for any and all activities and uses which Buyer may conduct thereon.
- 4.4 **Documents Provided by Seller.** Buyer agrees that any information, documentation, studies, permits and/or analysis which are in Seller's possession that pertain to the Property, including but not limited to, those items referred to in Section 2.3 which Seller makes available to Buyer are provided for Buyer's convenience only and Seller makes no representation or warranty whatsoever as to the accuracy or the completeness thereof or information contained therein or as to the condition of the Property (except as provided in this Article 4) or any rights related to the possible development of the Property.

5. **ADDITIONAL AGREEMENTS OF BUYER AND SELLER**

- 5.1 **Right of Entry.** Buyer and its representatives, employees, contractors, agents and designees shall have the right to enter upon the Site and enter the Building upon twenty-four (24) hours' advance telephone or e-mail notice, at Buyer's sole cost and expense, during normal business hours prior to the Closing Date, in order to inspect and investigate the Property or its environmental condition and, subject to Section 3.1(3) hereinbefore, to conduct any and all tests, surveys and studies Buyer deems necessary or convenient. Buyer shall indemnify Seller against and hold Seller and the Property free and harmless from any damage to the Property arising out of any such entry, testing, and investigation by Buyer or its representatives, employees, agents, contractors, or designees. Should Buyer conduct or cause environmental studies to be conducted, Buyer shall cause all residue or product samples relating thereto to be disposed of in full compliance with applicable law. Buyer shall restore the Property to its existing condition subsequent to the completion of all of Buyer's investigations or inspections of the Property or upon the conclusion of the Inspection Period, whichever shall first occur.
- 5.2 **Seller Covenants.** Seller agrees that so long as this Agreement is in effect:
- (1) **Occupancy.** Seller shall not permit occupancy of or enter into any new lease, license or other occupancy agreement for space in or on the Property, or any portion thereof, except for the Lease.
 - (2) **Contracts.** Seller shall not enter into any service or maintenance contract relating to the Property which is not terminable as of the Closing Date. Seller shall terminate any existing service or maintenance contracts as of the Closing Date at Buyer's request; provided that such service or maintenance contracts are terminable without penalty.

- (3) **Personal Property.** All Personal Property included in this Agreement shall not be removed from any of the Improvements, unless the same is replaced with similar items of at least equal quality prior to the Closing.
- (4) **Insurance.** Seller shall maintain fire and extended coverage and liability insurance coverage on the Property in the same amounts as presently carried by Seller.

If the Property has been damaged by fire or other casualty and is not fully repaired at the time of the Closing or a proceeding for condemnation or taking by eminent domain of all or any part of the Property shall be commenced, then (unless Buyer terminates this Agreement as provided hereunder), Seller shall convey and Buyer shall accept such title to the Property in such unrestored condition, without reduction to the Purchase Price other than in the amount of the deductible amount, if any, under Seller's property insurance policy applicable to the Property, and Seller shall pay over, and assign to Buyer any insurance proceeds or condemnation awards recovered or recoverable by Seller arising from fire or other casualty to, or condemnation of, the Property which have not been applied by Seller to restore the Property, and Buyer shall receive an assignment of Seller's contract rights against any contractor engaged by Seller to repair the Improvements. Notwithstanding anything to the contrary set forth in this Agreement, in the event that the Building and/or any Improvements to the Property are destroyed or damaged by fire or other casualty prior to the delivery of the deed, Buyer may, at Buyer's option, terminate this Agreement by written notice to Seller and the provisions of Section 3.2 shall be applicable.

- (5) **Financing.** Seller shall not execute any new mortgage on the Property or modify the existing mortgage(s) on the Property, or otherwise encumber the Property in an amount which, together with the amount of all other mortgages and monetary liens, will exceed the net amount of the Purchase Price to be received by Seller at the Closing, after deduction (if any) for the adjustments and costs described in Section 6.4 and 6.5 above or create any other new encumbrance or restriction affecting the Property.

- 5.3 **Representations and Warranties.** Neither Buyer nor Seller will cause any action to be taken that would cause any of the representations or warranties made by such party in this Agreement to be false as of the Closing Date. Each party shall promptly notify the other party in writing of the occurrence of any event or condition which occurs prior to the Closing Date which causes a change in the facts related to the truth of any of the representations or warranties made in Article 4 of this Agreement.

6. **CLOSING DATE.**

- 6.1 **Closing.** The date of closing ("Closing Date") shall be on a date designated by Seller in a written notice delivered to Buyer ("Closing Notice") which Closing Notice may not be delivered prior to the expiration of the Due Diligence Period,

Title Review Period, Plan Review Period and Survey Review Period and which date may be no sooner than forty-five (45) days after the date of delivery of the Closing Notice. In no event shall the Closing be later than April 1, 2020. If Seller fails to deliver a Closing Notice on or before February 14, 2020, the Closing Date shall be April 1, 2020. The terms "Closing" and "Closing Date" as used herein shall mean the date upon which a Statutory Quitclaim with Covenant deed conveying the Property to Buyer is delivered by Seller to Buyer for recording in the Cumberland County (Maine) Registry of Deeds. Possession shall be delivered at Closing as provided at Section 3.1(6). The Closing shall take place through an escrow pursuant to a mutually agreed upon escrow letter setting forth the terms of the escrow.

6.2 **Buyer's Obligations.** At the Closing Date, Buyer shall deliver to Seller:

- (1) The Purchase Price in immediately available funds as provided at Section 1.3.
- (2) An executed closing statement.
- (3) An executed Assignment and Assumption of the Lease.
- (4) An executed Real Estate Transfer Tax Declaration.

6.3 **Seller's Obligations.** On or before the Closing Date, Seller shall deliver to Buyer all of the following:

- (1) Statutory Quitclaim with Covenant deed, in form and substance reasonably acceptable to Buyer's counsel, executed and acknowledged by Seller, conveying the Property to Buyer, in its AS-IS and WHERE-IS condition with all faults, free of all liens and encumbrances except Permitted Exceptions.
- (2) An executed Maine Real Estate Transfer Tax Declaration.
- (3) A copy of the resolutions of the Members of Seller authorizing the execution, delivery and performance by Seller of this Agreement, and designating one or more managers to execute documents, including the deed, in Seller's name in connection herewith, certified as correct and complete by a manager of Seller, together with an incumbency certificate for each person executing documents on behalf of Seller (or other evidence of authority acceptable to Buyer's counsel), a good standing certificate certified by the state of Seller's formation (and State of Maine if required to register therein) and a manager's certificate certifying as to the authorization of Seller to execute and deliver this Agreement and perform its obligations under this Agreement.
- (4) A Non-Foreign Affidavit executed by Seller in the standard form.

- (5) A standard Seller's Affidavit or other affidavit required by the Buyer's title insurance company to issue a title policy to Buyer (and Buyer's lender, if applicable) without exception as to parties in possession and as to mechanic's or materialmen liens.
- (6) An affidavit indicating that Seller is a Maine resident, or in lieu thereof or another applicable exemption, Buyer shall be entitled to withhold and account for 2.5% of the Purchase Price as required by 33 M.R.S. §5250-A.
- (7) A notice regarding underground storage tanks pursuant to 38 M.R.S. §563.
- (8) An executed closing statement.
- (9) An Assignment and Assumption of the Lease in form satisfactory to Buyer's counsel.
- (10) The estoppel certificate from the Tenant and the Tenant waiver referred to at Section 3.1(7).
- (11) An executed Quitclaim with Covenant Bill of Sale conveying the Personal Property.
- (12) Such other documents and instruments as may be specifically required in this Agreement or as may be customarily provided by sellers in transactions of this type and reasonably required by Buyer's title insurance company such as a 1099 Form and a W-9 Form; but in any event not including a survey affidavit.

6.4 **Prorations and Adjustments.** Seller shall be responsible for and pay all accrued expenses with respect to the Property accruing up to 11:59 P.M. on the day prior to the Closing Date (the "Adjustment Date") and shall be entitled to receive and retain all revenue from the Property accruing up to such time. On the Closing Date the following adjustments and apportionments shall be made in cash or by closing adjustment as of the Closing Date:

- (1) Real estate taxes, personal property taxes, stormwater charges and utility charges, if any, shall be prorated.
- (2) Rents, common area payments, tax payments and other payments payable under the Lease shall be apportioned, and the security deposits credited to Buyer.
- (3) Seller shall at Closing pay all utility charges according to final readings.

6.5 **Closing Costs.**

- (1) Seller shall pay:

- i. Preparation charges for Seller's documents;
 - ii. The cost of any Seller's other obligations under this Agreement;
 - iii. Seller's share (50%) of the transfer tax due to the State of Maine; and
 - iv. Recording costs relating to discharging any liens of record.
- (2) Buyer shall pay:
- i. Recording costs for the deed;
 - ii. The premium for a standard ALTA Owner's form of Title Policy, including any desired endorsements;
 - iii. The cost of any of Buyer's other obligations under this Agreement; and
 - iv. Buyer's share (50%) of the transfer tax due to the State of Maine.

6.6 **Additional Conditions to Buyer's Obligation to Purchase the Property.** In addition to the conditions set forth in Section 3.1, Buyer's obligation to purchase the Property from Seller pursuant to this Agreement is subject to and conditioned upon the fulfillment of each and all of the following conditions precedent, unless waived in writing by Buyer, in Buyer's sole and absolute discretion:

- (1) Each and every representation and warranty of Seller contained in this Agreement shall be true and correct in all material respects on the Closing Date.
- (2) The title insurance company selected by Buyer shall be unconditionally obligated and committed to issuing the title policy to Buyer as set forth at Section 2.5.

6.7 **Additional Conditions to Seller's Obligation to Convey the Property.** Seller's obligation to convey the Property to Buyer pursuant to this Agreement is subject to and conditioned upon the fulfillment of each and all of the following conditions precedent, unless waived in writing by Seller: (a) each and every representation and warranty of Buyer contained in this Agreement shall be true and correct in all material respects on the Closing Date; (b) Buyer shall have performed the requirements and delivered the documents described in Section 6.2 hereof on or prior to the Closing Date; and (c) Buyer shall have paid the Purchase Price.

7. **REMEDIES**

7.1 **Seller's Default.** In the event that Seller breaches or shall have failed in any material respect on the Closing Date to have performed any of the covenants and agreements contained in this Agreement which are to be performed by Seller on or

before the Closing Date, any material representation or warranty of Seller herein was untrue when made, or Seller shall have caused any material representation or warranty to become untrue between the date of this Agreement and the Closing Date, then Buyer's sole and exclusive remedy shall be to (i) take any and all legal actions necessary to compel Seller to convey the Property in accordance with the terms of this Agreement (it being acknowledged that damages at law would be an inadequate remedy), and to consummate the transaction contemplated by this Agreement in accordance with the provisions of this Agreement provided however that if the remedy of specific performance is not available because Seller has conveyed the Property (or any portion thereof) to a third party in breach of this Agreement, Buyer may seek to recover Buyer's actual damages, or (ii) to terminate this Agreement whereupon the Earnest Money Deposit, together with all interest thereon, shall be immediately refunded to Buyer, all obligations of the parties hereto (except those which expressly survive termination) shall cease, and this Agreement shall be null and void and without recourse to the parties hereto.

- 7.2 **Buyer's Default.** In the event that Buyer breaches or shall have failed in any material respect on the Closing Date to have performed any of the covenants and agreements contained in this Agreement which are to be performed by Buyer on or before the Closing Date, any material representation or warranty of Buyer herein was untrue when made, or Buyer shall have caused any material representation or warranty to become untrue between the date of this Agreement and the Closing Date, then Seller's sole and exclusive remedy shall be to (i) take any and all legal actions necessary to compel Buyer to purchase the Property in accordance with the terms of this Agreement (it being acknowledged that damages at law would be an inadequate remedy), and to consummate the transaction contemplated by this Agreement in accordance with the provisions of this Agreement, or (ii) to terminate this Agreement whereupon the Earnest Money Deposit, together with all interest thereon, shall be immediately released to Seller, all obligations of the parties hereto (except those which expressly survive termination) shall cease, and this Agreement shall be null and void and without recourse to the parties hereto.

- 7.3 **Intentionally Deleted.**

8. **EMINENT DOMAIN**

- 8.1 **Election to Terminate.** If on or before the Closing Date all or any material part of the Property is taken or threatened to be taken by condemnation or other power of eminent domain, Buyer may, by written notice given to Seller within thirty (30) days after Buyer shall have notice of such taking or threatened taking (and the Closing Date shall be extended if necessary to allow Buyer said thirty (30) day period) elect, in Buyer's sole and absolute discretion, to terminate this Agreement or proceed with the transaction contemplated hereby in accordance with the terms and conditions set forth herein and in the event of a termination of the provisions of Section 3.2 shall be applicable. If Buyer fails to deliver written notice to Seller of its election to terminate this Agreement, then Buyer shall be conclusively deemed to have elected to proceed with this Agreement.

- 8.2 **Election Not to Terminate.** If on or before the Closing Date any part of the Property is taken or threatened to be taken by condemnation or other power of eminent domain but this Agreement is not terminated by Buyer pursuant to Section 8.1 above, then the Purchase Price shall be reduced (but not below zero) by an amount equal to the sum, if any, that was actually paid to Seller for such taking and Seller shall assign, transfer and set over to Buyer all of Seller's right, title and interest in and to any awards that may in the future be made for such taking or threatened taking.

9. **INDEMNIFICATION.**

- 9.1 **Breach of Warranty and Representation.** Each party shall hold harmless, indemnify, protect and defend the other from and against any and all claims, liability and losses, and expenses related thereto (including reasonable attorneys' fees), which the indemnified party incurs by reason of a breach of any of the warranties, representations or covenants of the indemnifying party contained in Sections 4.1 and 4.2.

10. **MISCELLANEOUS PROVISIONS.**

- 10.1 **Brokerage Commissions.** Seller hereby represents and warrants to Buyer that Seller has made no statement or representation nor entered into any agreement with a broker, salesman or finder in connection with the transactions contemplated by this Agreement, except with [REDACTED]

[REDACTED]. Buyer hereby represents and warrants to Seller that Buyer has made no statement or representation nor entered into any agreement with a broker, salesman or finder in connection with the transactions contemplated by this Agreement other [REDACTED]. In the event of a claim for any brokers' or finders' fees or commissions in connection with the negotiation or execution of this Agreement or the transactions contemplated hereby, Seller shall indemnify, hold harmless and defend Buyer from and against such claim if such claim shall be based upon any statement or representation or agreement alleged to have been made by Seller, and Buyer shall indemnify, hold harmless and defend Seller from and against such claim if such claim shall be based upon any statement, representation or agreement alleged to have been made by Buyer.

- 10.2 **Notices.** Any notice, demand, approval, consent or other communication required or desired to be given under this Agreement in writing shall be directed to the party involved at the address indicated below:

Seller: Rand Holdings, LLC
c/o Spinnaker Trust
123 Free Street

Portland, ME 04101
Attn: Richard Curran
dickcurran@spinnakertrust.com
coneil@spinnakertrust.com
Tel.: 207-553-7106

With a copy to: Nicholas D. Morrill, Esq.
Jensen Baird Gardner & Henry
Ten Free Street, 4th Floor
P. O. Box 4510
Portland, ME 04112-4510
nmorrill@jbggh.com
Tel.: 207-775-7271

Buyer: Brockway Smith Company
35 Upton Drive
Wilmington, MA 01887
Attn: Charles Smith, President
csmith@broscos.com
Tel.: 781-475-9100

With a copy to: Robert C. Dunkless, Esq.
Ottenberg & Dunkless LLP
10 Post Office Square, 7th Floor
Boston, MA 02109
dunkless@odllp.com
Tel.: 617-342-8600

And

Tom Hanson, Esq.
Bernstein Shur
100 Middle Street
P. O. Box 9729
Portland, ME 04104
thanson@bernsteinshur.com
Tel.: 207-228-7335

Any notice, demand, approval, consent or other communication may be given by personal service, recognized overnight air courier or by mail or by e-mail with confirmation by any of the foregoing means. Any notice, demand, approval, consent or other communication given (a) personally shall be deemed delivered upon receipt, (b) by recognized air courier, freight prepaid, shall be deemed delivered on the next business day, (c) by e-mail shall be deemed delivered when sent (provided that confirmation is sent by any of the foregoing means) by and (d) by mail shall be deemed to have been given when two (2) business days have elapsed from the date it was deposited in the United States mail, certified and

postage prepaid, addressed to the party to be served at said address or at such other address of which that party may have given notice under the provisions of this Section 10.2.

- 10.3 **Modification.** This Agreement may not be modified or amended except by a written agreement executed by Seller and Buyer, and only to the extent set forth therein.
- 10.4 **Intentionally Omitted.**
- 10.5 **Form of Documents.** All instruments and documents to be executed and delivered under this Agreement by any party to any other party shall be in form reasonably satisfactory to the other party.
- 10.6 **Successors and Assigns.** This Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of the parties.
- 10.7 **Duplicate Counterparts.** This Agreement may be executed in duplicate counterparts, all of which together shall constitute a single instrument, and each of which shall be deemed an original of this Agreement for all purposes, notwithstanding that less than all signatures appear on any one counterpart.
- 10.8 **Section Headings.** The various section headings in this Agreement are inserted for convenience of reference only, and shall not affect the meaning or interpretation of this Agreement or any provision hereof.
- 10.9 **Exhibits.** All Exhibits attached to, and to which reference is made in, this Agreement are incorporated into, and shall be deemed a part of, this Agreement.
- 10.10 **Entire Agreement.** This Agreement is the entire agreement of Seller and Buyer with respect to the Property and the transaction contemplated hereby, containing all of the terms and conditions to which Seller and Buyer have agreed. This Agreement supersedes and replaces entirely all previous oral and written understandings, if any, of Seller and Buyer respecting the Property and the transaction contemplated hereby.
- 10.11 **Time.** Time is of the essence in this Agreement and each and every provision of this Agreement.
- 10.12 **Governing Law.** This Agreement shall be governed by the laws of the State of Maine.
- 10.13 **Severability.** If any paragraph, section, sentence, clause or phrase contained in this Agreement becomes or is held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining paragraphs, sections, sentences, clauses or phrases contained in this Agreement shall not be affected thereby.
- 10.14 **Ambiguities Not to be Construed Against Drafting Party.** The doctrine that any ambiguity contained in a contract shall be construed against the party whose

counsel has drafted the contract is expressly waived by each of the parties hereto with respect to this Agreement.

- 10.15 **Signers' Warranty.** Each individual executing and delivering this Agreement on behalf of an entity hereby warrants and represents to the other party that he or she has been duly authorized and empowered to do so.
- 10.16 **Facsimile Signatures.** The parties agree that facsimile signatures on this Agreement will be accepted as original signatures hereto.
- 10.17 **I.R.C. Section 1031 Exchange.** Seller or Buyer may, at Closing, elect to effectuate a like-kind exchange of the Property, with respect to all or a portion of the Purchase Price, with a view toward such exchange qualifying for tax deferred treatment under Section 1031 of the Internal Revenue Code, as amended (the "Code") (the "1031 Election"), by notifying Buyer (or Seller, as the case may be) in writing, at or prior to the Closing, that it is making the 1031 Election. In the event of a 1031 Election, Seller (or Buyer, as the case may be) may, in accordance with the Treasury Department regulations, assign this Agreement to a qualified exchange intermediary ("Qualified Intermediary") of Seller's (or Buyer's, as the case may be) choice to effectuate the exchange. Seller and Buyer agree to cooperate with each other in qualifying for such like-kind exchange and in accordance with and subject to the terms, provisions, and limitations of this Agreement, including, but not limited to, the terms, provisions and limitations of this Section 10.17; provided, however, the party being asked to cooperation shall not have any responsibility, obligation or liability with respect to any such transaction or the effectiveness of the same; and provided, further, the exchange does not delay or postpone the Closing Date. The parties agree to execute such documents and instruments as are reasonably necessary to implement such an exchange, provided such documents and instruments are in form and substance reasonably acceptable to the party executing the same. In no event, however, shall Buyer's (or Seller's, as the case may be) obligations under any other provision of this Agreement be diminished as a result of the 1031 Election or the effectuation of the like-kind exchange contemplated thereby. Similarly, Buyer's (or Seller's, as the case may be) rights under any other provision of this Agreement shall not be diminished nor shall Buyer's (or Seller's, as the case may be) obligations under this Agreement be increased as a result of such election or the effectuation of the like-kind exchange contemplated thereby. Buyer's (or Seller's, as the case may be) sole obligation as to the like-kind exchange shall be to cooperate in good faith with Seller's (or Buyer's as the case may be) efforts to effectuate such an exchange in accordance with and subject to the terms, provisions and limitations of this Section 10.17 and at no cost or expense to Buyer (or Seller, as the case may be).
- 10.18 **Risk of Loss.** All risk of loss with respect to the Property shall remain with Seller pending closing.
- 10.19 **Escrow Agent.** Escrow Agent shall be responsible for holding and disbursing the Earnest Money Deposit in accordance with the terms of this Agreement, and the duties and responsibilities of the Escrow Agent shall be determined solely by the express terms and provisions of this Agreement. Escrow Agent shall hold the

Earnest Money Deposit in escrow, in a non-interest bearing account. If there is a dispute regarding the disposition of the Earnest Money Deposit, the Escrow Agent shall not distribute the Earnest Money Deposit until directed by joint written instructions from Seller and Buyer or until receipt of a final judgment of a court with appropriate jurisdiction. As an alternative thereto, Escrow Agent may tender the Earnest Money Deposit into a court appropriate jurisdiction and interplead both parties thereto and thereafter be free from any further obligation to the parties or hereunder. Escrow Agent may decline to act and shall not be liable for failure to act if in doubt as to its duties and responsibilities hereunder. Escrow Agent shall have the right to consult with counsel of its own choosing in the performance of its duties and responsibilities hereunder, and shall not be liable for any action taken in good faith in reliance upon the advice of counsel. Escrow Agent may act upon any instrument or signature reasonably believed by Escrow Agent to be genuine and may assume that any person purporting to give any notice or instruction hereunder, reasonably believed by Escrow Agent to be authorized, has been duly authorized to do so. Escrow Agent is not charged with any knowledge of or any duties or responsibilities, except as set forth in this Agreement. Except for willful misconduct, Escrow Agent shall be excused from all responsibilities, including insolvency of any depository, absolutely. The provisions of this Section shall survive the Closing or the earlier termination of this Agreement and may not be amended without the prior written consent of Escrow Agent.

- 10.20 **Acceptance of Deed.** The acceptance and recording of a deed to the Property by Buyer or its nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation of Seller herein contained or expressed, except such as are, by the express terms hereof, to be performed after the delivery of said deed.
- 10.21 **Use of Funds at Closing.** To enable Seller to make conveyance as herein provided, Seller shall, at the Closing Date, use the purchase money or any portion thereof to clear the title of any or all Monetary Encumbrances, provided that all instruments so procured are recorded simultaneously with the delivery of said deed; provided, however, that discharges of mortgages granted by Seller to and held by institutional lenders may be obtained by counsel for Buyer or Buyer's lender, using funds deducted from the proceeds due to Seller, and recorded in the ordinary course of business following completion of the conveyance from Seller to Buyer.
- 10.22 **Assignability; Nominee.** Buyer shall not record this Agreement. Buyer may not assign its rights under this Agreement without the prior written consent of Seller provided, however, that Buyer shall have the right to designate a "nominee" (as hereinafter defined) to take title to the Premises by notice to Seller given not later than seven (7) days prior to the Closing Date; provided, however, that no such nomination shall release Buyer from any liability or obligation under this Agreement. Any entity in which any principals or affiliates of Buyer have operational control will be deemed a "nominee" for the purposes of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Agreement is executed by the parties on the dates set next to their signatures below, but shall be deemed dated for reference purposes as of the date first above written.

WITNESS:

Jane Sadzewska

BUYER:

BROCKWAY-SMITH COMPANY

Charles F. Smith

By: Charles F. Smith

Its: President & CEO

Date signed: 4/22/19

WITNESS:

Chris O'Neil

SELLER:

RAND ROAD HOLDINGS, LLC

Charles L. Hildreth, Jr. President,
RR E-W, Inc., Managing member of

By: Rand Road Holdings

Its: CHARLES L. HILDRETH, JR.

Date signed:

4/19/2019

EXHIBIT A

SITE DESCRIPTION

A certain lot or parcel of land with buildings thereon situated on the Westerly side of Rand Road in the City of Portland, County of Cumberland and State of Maine, being bounded and described as follows:

Beginning at the intersection of the Northwesterly sideline of Rand Road as conveyed to the State of Maine on December 20, 1969 and recorded in the Cumberland County Registry of Deeds in Book 3116, Page 772 and the Northeasterly sideline of Portland Terminal Company land:

Thence, by said railroad land on the following courses:

N-44°-56'-30"-W a distance of 248.26 feet;
N-44°-47'-10"-W a distance of 1217.20 feet;
N-44°-43'-30"-W a distance of 317.15 feet to a rod marking the Easterly line of land of the Maine Turnpike Authority.

Thence, by land of the Maine Turnpike Authority on the following courses:

N-34°-25'-00"-E a distance of 171.09 feet to a rod;
N-55°-35'-00"-W a distance of 50.00 feet to a rod;
N-34°-25'-00"-E a distance of 276.70 feet to a rod marking land now or formerly of Brighton Travellers Associates recorded in said Registry in Book 7354, Page 107;

Thence, by said Brighton Travellers Associates on the following courses:

S-44°-33'-30"-E a distance of 338.86 feet to a rod;
N-30°-43'-00"-E a distance of 329.26 feet to an iron marking the Southerly line of land now or formerly of Gordon F. Bloom, for the "Pine Tree Shopping Center."

Thence, by the Southerly line of said Pine Tree Shopping Center S-59°-21'-40"-E a distance of 1337.20 feet to the Westerly line of said Rand Road;

Thence, by the Westerly line of said Rand Road S-26°-37'-00"-W a distance of 1143.60 feet to the point of beginning.

Above courses are magnetic 1956.

Reference is made to a plan of the above-described property entitled "Land Title Survey on Rand Road, Portland, Maine for The Emery-Waterhouse Company, Rand Road, Portland, Maine 04103" made by Owen Haskell, Inc., dated May 11, 1993, Job No. 93038P, Bk. No. 640P.

Legend

- IRON PIPE OR ROD FOUND
- GRANITE MONUMENT FOUND
- HYDRANT
- LIGHT POLE
- UTILITY POLE
- PROPERTY LINE
- ▨ BUILDING
- CURB
- EDGE OF PAVEMENT
- CONCRETE
- FENCE
- OE — OVERHEAD ELECTRIC
- IPF / IRF IRON PIPE OR ROD FOUND
- N/F NOW OR FORMERLY
- 000/000 DEED BOOK / PAGE
- CB ○ CATCH BASIN
- MH ○ MANHOLE
- WG ○ WATER GATE
- (D) DEED DIMENSION

SCALE : 1" = 80'

0' 40' 80' 160'

Plan References

- "STANDARD BOUNDARY SURVEY, SOUTHERLY OF BRIGHTON AVE., PORTLAND, MAINE FOR RICHARDSON AND TROUGH" BY OWEN HASKELL, INC. DATED MARCH 21, 1989.
- "PLAN OF LAND MADE FOR THE PINE TREE SHOPPING CENTER, GORDON F. BLOOM, PORTLAND, MAINE" BY H.I. & E.C. JORDAN SURVEYORS DATED AUGUST 1963.
- "LAND TITLE SURVEY ON RAND ROAD, PORTLAND, MAINE FOR THE EMERY-WATERHOUSE COMPANY, RAND ROAD, PORTLAND, MAINE 04103" BY OWEN HASKELL, INC. DATED MAY 11, 1993 REVISED JAN. 18, 1995.
- "RAND ROAD SIDELINE SURVEY FROM PORTLAND TERMINAL RAILROAD TO BRIGHTON AVE. AND A PORTION OF BRIGHTON AVE., CITY OF PORTLAND, MAINE PUBLIC WORKS DEPARTMENT, ENGINEERING SECTION NOV. 13, 2003"
- "ALTA/NSPS LAND TITLE SURVEY, 7 RAND ROAD, PORTLAND, CUMBERLAND COUNTY, MAINE MADE FOR BROCKWAY-SMITH COMPANY" JUNE 14, 2019 REVISED JUNE 21, 2019 BY OWEN HASKELL, INC.

Utility Note

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, 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-DISSAFE AT LEAST THREE BUSINESS DAYS BEFORE PERFORMING ANY CONSTRUCTION. DUE TO OSHA CONFINED SPACE REQUIREMENTS, ALL INVERTS AND PIPE SIZES MUST BE VERIFIED PRIOR TO ANY CONSTRUCTION.

General Notes

- OWNER OF RECORD: RAND ROAD HOLDINGS, LLC
7 RAND ROAD, PORTLAND, ME
TAX MAP: 264-A-5; 262-A-1;
263-A-10 & 264-B-1
C.C.R.D. BOOK 31342 PAGE 191
- BEARINGS ARE MAGNETIC 1956 PER PLAN REFERENCE 3.
- THIS PLAN IS A COMPILATION OF PLAN REFERENCE 3 AND A FIELD INSPECTION IN MAY & JUNE 2019.
- THERE ARE 203 PARKING SPACES, 2 OF WHICH ARE HANDICAPPED SPACES.

Certificate

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.

DATE

RANDY R. LOUBIER, PLS #2407

Zoning Information (B2)

THE SURVEYED PARCEL IS LOCATED IN THE B2 (BUSINESS COMMUNITY) DISTRICT AND IM INDUSTRIAL ZONE AS SHOWN ON OFFICIAL ZONING MAP OF THE CITY OF PORTLAND. THE ZONING INFORMATION BELOW IS TAKEN FROM THE ZONING REPORT DATED JUNE 18, 2019, BY ZONING SOLUTIONS, INC. FOR THE B2 DISTRICT.

Minimum Lot Size	None
Minimum Street Frontage	20 feet
Front Yard Setback Minimum	None
Rear Yard Setback Minimum	10 feet, except as provided for below
Side Yard Setback Minimum	5 feet for accessory structures
Side Yard on Side Street Setback Minimum	None
Front Yard Maximum 1, 2	5 feet for accessory structures

Structure Stepbacks

Height maximum

Maximum Impervious Surface Ratio

Minimum Lot Area per Dwelling Unit

Parking

No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable. 3

Portions of a structure above 35 feet shall be no closer than 5 feet from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone. 4

45 feet except as provided for below:

a. 50 feet if first floor is partially or wholly occupied by a commercial use.

b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet.

c. 65 feet within 65 feet of Franklin St.

a. For residential uses: None

b. For all other permitted uses: 80% in B-2 and B-2c

c. For all other permitted uses: 90% in B2b

a. Off-peninsula locations, as defined in section 14-47: 1,500 square feet, except as provided for in (b) below.

b. On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 square feet.

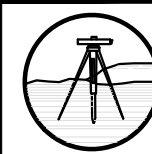
For that part of every business, manufacturing, and industrial building not catering to retail trade and with floor area over three thousand (3,000) square feet: One (1) parking space for each one thousand (1,000) square feet of floor area, or major fraction thereof.

Zoning Information (IM)

IM INDUSTRIAL ZONE

- Minimum lot size:
 - Correctional pre-release facilities: Ten thousand (10,000) square feet.
 - Other uses: None.
- Other uses: None.
- (a) Maximum impervious surface ratio: I-M and I-Ma zone: Seventy-five (75) percent. I-Mb zone: One hundred (100) percent. City of Portland Land Use Code of Ordinances Chapter 14 Sec. 14-250 Rev. 1-6-1997 14-371
- (b) Maximum building height: I-M and I-Mb zones: Seventy-five (75) feet. I-Ma zone: Forty-five (45) feet.
- (c) Minimum side yards: Principal and accessory structures in the I-M and the I-Ma zone: Each structure shall be set back one (1) foot from each side property line for each one (1) foot of building height, up to twenty-five (25) feet, except that the minimum side yard shall be thirty-five (35) feet when the side property line abuts a residential zone. Principal and accessory structures in the I-Mb zone: None, except that the minimum side yard shall be twenty-five (25) feet when the side property line abuts a residential zone.
- (d) Minimum rear yards: Principal and accessory structures in the I-M and I-Ma zone: Each structure shall be set back one (1) foot from the rear property line for each one (1) foot of building height, up to twenty-five (25) feet, except that the minimum rear yard shall be thirty-five (35) feet when the rear property line abuts a residential zone. Principal and accessory structures in the I-Mb zone: None, except that the minimum rear yard shall be twenty-five (25) feet when the rear property line abuts a residential zone.
- (e) Minimum front yard: Principal and accessory structures in the I-M and I-Ma zone: Each structure shall be set back one (1) foot from the front property line for each one (1) foot of building height. Principal and accessory structures in the I-Mb zone: None.
- (f) Minimum street frontage: Sixty (60) feet.
- (h) Pavement setback from lot boundaries: Ten (10) feet.

Plan of Proposed
Zoning Amendment
7 Rand Road, Portland, Maine
Made for
Brockway-Smith Company
203 Read Street, Portland, Maine



OWEN HASKELL, INC.
PROFESSIONAL LAND SURVEYORS

390 US ROUTE 1, UNIT 10, FALMOUTH, ME 04105 TEL. 207-774-0424

DRAWN BY: RS / JLW DATE: JAN. 29, 2020 JOB NO. 2019-094 P

CHECKED BY: RRL SCALE: 1" = 80' DRWG. NO. 1-BND

Legend

- IRON PIPE OR ROD FOUND
- GRANITE MONUMENT FOUND
- HYDRANT
- LIGHT POLE
- UTILITY POLE
- PROPERTY LINE
- BUILDING
- CURB
- EDGE OF PAVEMENT
- CONCRETE
- FENCE
- OE OVERHEAD ELECTRIC
- IPF / IRF IRON PIPE OR ROD FOUND
- N/F NOW OR FORMERLY
- 000/000 DEED BOOK / PAGE
- CB CATCH BASIN
- MH MANHOLE
- WG WATER GATE
- (D) DEED DIMENSION

SCALE : 1" = 80'

0' 40' 80' 160'

Plan References

- "STANDARD BOUNDARY SURVEY, SOUTHERLY OF BRIGHTON AVE., PORTLAND, MAINE FOR RICHARDSON AND TROUGH" BY OWEN HASKELL, INC. DATED MARCH 21, 1989.
- "PLAN OF LAND MADE FOR THE PINE TREE SHOPPING CENTER, GORDON F. BLOOM, PORTLAND, MAINE" BY H.I. & E.C. JORDAN SURVEYORS DATED AUGUST 1963.
- "LAND TITLE SURVEY ON RAND ROAD, PORTLAND, MAINE FOR THE EMERY-WATERHOUSE COMPANY, RAND ROAD, PORTLAND, MAINE 04103" BY OWEN HASKELL, INC. DATED MAY 11, 1993 REVISED JAN. 18, 1995.
- "RAND ROAD SIDELINE SURVEY FROM PORTLAND TERMINAL RAILROAD TO BRIGHTON AVE. AND A PORTION OF BRIGHTON AVE., CITY OF PORTLAND, MAINE PUBLIC WORKS DEPARTMENT, ENGINEERING SECTION NOV. 13, 2003"
- "ALTA/NSPS LAND TITLE SURVEY, 7 RAND ROAD, PORTLAND, CUMBERLAND COUNTY, MAINE MADE FOR BROCKWAY-SMITH COMPANY" JUNE 14, 2019 REVISED JUNE 21, 2019 BY OWEN HASKELL, INC.

Utility Note

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, 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-DISSAFE AT LEAST THREE BUSINESS DAYS BEFORE PERFORMING ANY CONSTRUCTION. DUE TO OSHA CONFINED SPACE REQUIREMENTS, ALL INVERTS AND PIPE SIZES MUST BE VERIFIED PRIOR TO ANY CONSTRUCTION.

General Notes

- OWNER OF RECORD: RAND ROAD HOLDINGS, LLC
7 RAND ROAD, PORTLAND, ME
TAX MAP: 264-A-5; 262-A-1;
263-A-10 & 264-B-1
C.C.R.D. BOOK 31342 PAGE 191
- BEARINGS ARE MAGNETIC 1956 PER PLAN REFERENCE 3.
- THIS PLAN IS A COMPILATION OF PLAN REFERENCE 3 AND A FIELD INSPECTION IN MAY & JUNE 2019.
- THERE ARE 203 PARKING SPACES, 2 OF WHICH ARE HANDICAPPED SPACES.

Certificate

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.

DATE

RANDY R. LOUBIER, PLS #2407

Zoning Information (B2)

THE SURVEYED PARCEL IS LOCATED IN THE B2 (BUSINESS COMMUNITY) DISTRICT AND IM INDUSTRIAL ZONE AS SHOWN ON OFFICIAL ZONING MAP OF THE CITY OF PORTLAND. THE ZONING INFORMATION BELOW IS TAKEN FROM THE ZONING REPORT DATED JUNE 18, 2019, BY ZONING SOLUTIONS, INC. FOR THE B2 DISTRICT.

Minimum Lot Size	None
Minimum Street Frontage	20 feet
Front Yard Setback Minimum	None
Rear Yard Setback Minimum	10 feet, except as provided for below
Side Yard Setback Minimum	5 feet for accessory structures
Side Yard on Side Street Setback Minimum	None
Front Yard Maximum 1, 2	5 feet for accessory structures

Structure Stepbacks

Height maximum

Maximum Impervious Surface Ratio

Minimum Lot Area per Dwelling Unit

Parking

No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable. 3

Portions of a structure above 35 feet shall be no closer than 5 feet from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone. 45 feet except as provided for below:

a. 50 feet if first floor is partially or wholly occupied by a commercial use.

b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet.

c. 65 feet within 65 feet of Franklin St.

a. For residential uses: None

b. For all other permitted uses: 80% in B-2 and B-2c

c. For all other permitted uses: 90% in B2b

a. Off-peninsula locations, as defined in section 14-47: 1,500 square feet, except as provided for in (b) below.

b. On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 square feet.

For that part of every business, manufacturing, and industrial building not catering to retail trade and with floor area over three thousand (3,000) square feet: One (1) parking space for each one thousand (1,000) square feet of floor area, or major fraction thereof.

Zoning Information (IM)

IM INDUSTRIAL ZONE

- Minimum lot size:
 - Correctional pre-release facilities: Ten thousand (10,000) square feet.
 - Other uses: None.
- Other uses: None.
- (a) Maximum impervious surface ratio: I-M and I-Ma zone: Seventy-five (75) percent. I-Mb zone: One hundred (100) percent. City of Portland Land Use Code of Ordinances Chapter 14 Sec. 14-250 Rev. 1-6-1997 14-371
- (b) Maximum building height: I-M and I-Mb zones: Seventy-five (75) feet. I-Ma zone: Forty-five (45) feet.
- (c) Minimum side yards: Principal and accessory structures in the I-M and the I-Ma zone: Each structure shall be set back one (1) foot from each side property line for each one (1) foot of building height, up to twenty-five (25) feet, except that the minimum side yard shall be thirty-five (35) feet when the side property line abuts a residential zone. Principal and accessory structures in the I-Mb zone: None, except that the minimum side yard shall be twenty-five (25) feet when the side property line abuts a residential zone.
- (d) Minimum rear yards: Principal and accessory structures in the I-M and I-Ma zone: Each structure shall be set back one (1) foot from the rear property line for each one (1) foot of building height, up to twenty-five (25) feet, except that the minimum rear yard shall be thirty-five (35) feet when the rear property line abuts a residential zone. Principal and accessory structures in the I-Mb zone: None, except that the minimum rear yard shall be twenty-five (25) feet when the rear property line abuts a residential zone.
- (e) Minimum front yard: Principal and accessory structures in the I-M and I-Ma zone: Each structure shall be set back one (1) foot from the front property line for each one (1) foot of building height. Principal and accessory structures in the I-Mb zone: None.
- (f) Minimum street frontage: Sixty (60) feet.
- (h) Pavement setback from lot boundaries: Ten (10) feet.

Plan of Proposed
Zoning Amendment
7 Rand Road, Portland, Maine
Made for
Brockway-Smith Company
203 Read Street, Portland, Maine



OWEN HASKELL, INC.
PROFESSIONAL LAND SURVEYORS

390 US ROUTE 1, UNIT 10, FALMOUTH, ME 04105 TEL. 207-774-0424

DRAWN BY: RS / JLW DATE: JAN. 29, 2020 JOB NO. 2019-094 P

CHECKED BY: RRL SCALE: 1" = 80' DRWG. NO. 1-EX

Legend

- IRON PIPE OR ROD FOUND
- GRANITE MONUMENT FOUND
- HYDRANT
- LIGHT POLE
- UTILITY POLE
- PROPERTY LINE
- BUILDING
- CURB
- EDGE OF PAVEMENT
- CONCRETE
- FENCE
- OE OVERHEAD ELECTRIC
- IPF / IRF IRON PIPE OR ROD FOUND
- N/F NOW OR FORMERLY
- 000/000 DEED BOOK / PAGE
- CB CATCH BASIN
- MH MANHOLE
- WG WATER GATE
- (D) DEED DIMENSION

SCALE : 1" = 80'

0' 40' 80' 160'

Plan References

- "STANDARD BOUNDARY SURVEY, SOUTHERLY OF BRIGHTON AVE., PORTLAND, MAINE FOR RICHARDSON AND TROUGH" BY OWEN HASKELL, INC. DATED MARCH 21, 1989.
- "PLAN OF LAND MADE FOR THE PINE TREE SHOPPING CENTER, GORDON F. BLOOM, PORTLAND, MAINE" BY H.I. & E.C. JORDAN SURVEYORS DATED AUGUST 1963.
- "LAND TITLE SURVEY ON RAND ROAD, PORTLAND, MAINE FOR THE EMERY-WATERHOUSE COMPANY, RAND ROAD, PORTLAND, MAINE 04103" BY OWEN HASKELL, INC. DATED MAY 11, 1993 REVISED JAN. 18, 1995.
- "RAND ROAD SIDELINE SURVEY FROM PORTLAND TERMINAL RAILROAD TO BRIGHTON AVE. AND A PORTION OF BRIGHTON AVE., CITY OF PORTLAND, MAINE PUBLIC WORKS DEPARTMENT, ENGINEERING SECTION NOV. 13, 2003"
- "ALTA/NSPS LAND TITLE SURVEY, 7 RAND ROAD, PORTLAND, CUMBERLAND COUNTY, MAINE MADE FOR BROCKWAY-SMITH COMPANY" JUNE 14, 2019 REVISED JUNE 21, 2019 BY OWEN HASKELL, INC.

Utility Note

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, 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-DISFAE AT LEAST THREE BUSINESS DAYS BEFORE PERFORMING ANY CONSTRUCTION. DUE TO OSHA CONFINED SPACE REQUIREMENTS, ALL INVERTS AND PIPE SIZES MUST BE VERIFIED PRIOR TO ANY CONSTRUCTION.

General Notes

- OWNER OF RECORD: RAND ROAD HOLDINGS, LLC
7 RAND ROAD, PORTLAND, ME
TAX MAP: 264-A-5; 262-A-1;
263-A-10 & 264-B-1
C.C.R.D. BOOK 31342 PAGE 191
- BEARINGS ARE MAGNETIC 1956 PER PLAN REFERENCE 3.
- THIS PLAN IS A COMPILATION OF PLAN REFERENCE 3 AND A FIELD INSPECTION IN MAY & JUNE 2019.
- THERE ARE 203 PARKING SPACES, 2 OF WHICH ARE HANDICAPPED SPACES.

Certificate

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.

DATE

RANDY R. LOUBIER, PLS #2407

Zoning Information (B2)

THE SURVEYED PARCEL IS LOCATED IN THE B2 (BUSINESS COMMUNITY) DISTRICT AND IM INDUSTRIAL ZONE AS SHOWN ON OFFICIAL ZONING MAP OF THE CITY OF PORTLAND. THE ZONING INFORMATION BELOW IS TAKEN FROM THE ZONING REPORT DATED JUNE 18, 2019, BY ZONING SOLUTIONS, INC. FOR THE B2 DISTRICT.

Minimum Lot Size	None
Minimum Street Frontage	20 feet
Front Yard Setback Minimum	None
Rear Yard Setback Minimum	10 feet, except as provided for below
Side Yard Setback Minimum	5 feet for accessory structures
Side Yard on Side Street Setback Minimum	None
Front Yard Maximum 1, 2	5 feet for accessory structures

Structure Stepbacks

Height maximum

Maximum Impervious Surface Ratio

Minimum Lot Area per Dwelling Unit

Parking

No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable. 3

Portions of a structure above 35 feet shall be no closer than 5 feet from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone. 45 feet except as provided for below:

a. 50 feet if first floor is partially or wholly occupied by a commercial use.

b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet.

c. 65 feet within 65 feet of Franklin St.

a. For residential uses: None

b. For all other permitted uses: 80% in B-2 and B-2c

c. For all other permitted uses: 90% in B2b

a. Off-peninsula locations, as defined in section 14-47: 1,500 square feet, except as provided for in (b) below.

b. On-peninsula locations (as per 14-47) and projects with active street frontages, as defined in section 14-188, below: 435 square feet.

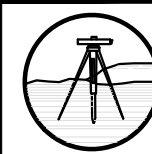
For that part of every business, manufacturing, and industrial building not catering to retail trade and with floor area over three thousand (3,000) square feet: One (1) parking space for each one thousand (1,000) square feet of floor area, or major fraction thereof.

Zoning Information (IM)

IM INDUSTRIAL ZONE

- Minimum lot size:
 - Correctional pre-release facilities: Ten thousand (10,000) square feet.
 - Other uses: None.
- Other uses: None.
- (a) Maximum impervious surface ratio: I-M and I-Ma zone: Seventy-five (75) percent. I-Mb zone: One hundred (100) percent. City of Portland Land Use Code of Ordinances Chapter 14 Sec. 14-250 Rev. 1-6-1997 14-371
- (b) Maximum building height: I-M and I-Mb zones: Seventy-five (75) feet. I-Ma zone: Forty-five (45) feet.
- (c) Minimum side yards: Principal and accessory structures in the I-M and the I-Ma zone: Each structure shall be set back one (1) foot from each side property line for each one (1) foot of building height, up to twenty-five (25) feet, except that the minimum side yard shall be thirty-five (35) feet when the side property line abuts a residential zone. Principal and accessory structures in the I-Mb zone: None, except that the minimum side yard shall be twenty-five (25) feet when the side property line abuts a residential zone.
- (d) Minimum rear yards: Principal and accessory structures in the I-M and I-Ma zone: Each structure shall be set back one (1) foot from the rear property line for each one (1) foot of building height, up to twenty-five (25) feet, except that the minimum rear yard shall be thirty-five (35) feet when the rear property line abuts a residential zone. Principal and accessory structures in the I-Mb zone: None, except that the minimum rear yard shall be twenty-five (25) feet when the rear property line abuts a residential zone.
- (e) Minimum front yard: Principal and accessory structures in the I-M and I-Ma zone: Each structure shall be set back one (1) foot from the front property line for each one (1) foot of building height. Principal and accessory structures in the I-Mb zone: None.
- (f) Minimum street frontage: Sixty (60) feet.
- (h) Pavement setback from lot boundaries: Ten (10) feet.

Plan of Proposed
Zoning Amendment
7 Rand Road, Portland, Maine
Made for
Brockway-Smith Company
203 Read Street, Portland, Maine



OWEN HASKELL, INC.
PROFESSIONAL LAND SURVEYORS

390 US ROUTE 1, UNIT 10, FALMOUTH, ME 04105 TEL. 207-774-0424

DRAWN BY: RS / JLW	DATE: JAN. 29, 2020	JOB NO. 2019-094 P
CHECKED BY: RRL	SCALE: 1" = 80'	DRWG. NO. 2-PRO

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

CITY OF PORTLAND
IN THE CITY COUNCIL

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER GRANTING A THAMES STREET EXTENSION EASEMENT
TO PORTLAND WATER DISTRICT**

ORDERED, that the attached easement on Thames Street Extension from the City of Portland to Portland Water District is hereby granted 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 document and any other related documents necessary or convenient to carry out the intent of said document.

EASEMENT AGREEMENT

KNOW ALL PERSONS BY THESE PRESENTS that the **CITY OF PORTLAND**, a body politic and corporate organized and existing under the laws of the State of Maine having a mailing address of 389 Congress Street, Portland, Maine 04101 (“Grantor” or “City”) as owner of a certain parcel of land located in Portland, Cumberland County, Maine, known as the Thames Street Extension, and which parcel is more particularly described in Exhibit A attached hereto and made a part hereof (the “Premises”), in consideration of One Dollar and other valuable consideration, releases to **PORTLAND WATER DISTRICT**, a quasi-municipal corporation duly organized under the laws of the State of Maine, with a mailing address of 225 Douglass Street, Portland, Maine 04102 (“Grantee”), without covenant, an easement in the Premises (the “**Easement**”) to construct, operate, maintain, repair, replace, and remove conduits and pipe lines for conveying water, electricity and telecommunications with all necessary fixtures or appurtenances (collectively, “Water Facilities”), together with the right at all times to make connections with said conduits or pipeline(s) to land adjoining the Premises by means of conduits or pipes, to install electric or other energized control lines and appurtenances upon or under said Premises; and to enter upon said Premises at any and all times for any of the foregoing purposes.

Notwithstanding anything to the contrary herein, Grantee shall not install any above-ground Water Facilities in the Premises without the prior written consent of the City, which the City may withhold in its absolute discretion.

In the event that Grantee disturbs the surface of the Premises or any of Grantors’ land adjacent to the Premises in connection with the exercise of its rights under this Easement Agreement, Grantee will, at its sole expense, restore the surface of such areas so-disturbed to substantially the same or better condition as existed prior to such disturbance.

The City agrees that no building or other structure shall be erected or installed within the Premises contrary to any statute, law, ordinance or safety regulation or policy. Rights reserved to the City shall not be used or exercised in any manner which will unreasonably interfere with the rights, privileges and authority herein granted to Grantee. The City expressly reserves and retains the right to use, or to grant to others the right to use, the surface and subsurface of, and air space above, the areas subject to the rights and easements herein granted, provided that such use shall not materially interfere with the exercise by Grantee of the rights and easements herein granted. The Easement is subject to the rights of other utilities that may be located within the Premises.

The Grantee, its successors and assigns shall not perform any work within the Premises without the prior written consent of the Grantor, its successors and assigns, which consent shall not be unreasonably delayed or withheld. In circumstances where repair or replacement of the Water Facilities is required on an immediate basis due to emergency conditions, Grantee need not obtain Grantor's prior written consent, but Grantee will notify Grantor of such work as soon as practical.

Whenever exercising its rights within the Premises pursuant to the provisions of a right or easement granted hereunder, such activity shall be performed in a safe, diligent and workmanlike manner, at Grantee's sole cost and expense, in compliance with all applicable laws, ordinances, and regulations, including, without limitation, any and all requirements of the City regarding land use approvals. Grantee shall promptly remove all waste, tools, and all material and equipment after each permitted entry upon the Premises.

Without waiving any defenses or immunities or limits of liability available to it under the Maine Tort Claims Act or other applicable law, Grantee hereby agrees to indemnify and hold harmless the Grantor from and against any and all claims, damages, suits and liability ("Claims") to the extent such Claims result from Grantee's acts or omissions (including those of any employee or contractor of the Grantee) under this Easement.

This Easement Agreement, as the same may be amended from time to time, shall be binding on and inure to the benefit of the successors and assigns of the parties: the burdens of the Easement created hereby shall burden and run with the Premises, and Grantee shall have the right to assign its Easement created hereby.

Grantee acknowledges and agrees that this Easement shall automatically terminate when the City accepts the Thames Street Extension as a public City street. City shall provide notice to Grantee of such acceptance of the Thames Street Extension as a City street. Grantee shall record an affidavit in form acceptable to the City upon such termination of this Easement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on this ____ day of _____, 2021.

CITY:
CITY OF PORTLAND

Witness

By: _____
Jon P. Jennings
Its City Manager

STATE OF MAINE
COUNTY OF CUMBERLAND, SS

_____, 2021

Then personally appeared the above-named Jon P. Jennings, in his capacity as City Manager for the City of Portland, Maine, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act of deed of said City of Portland.

Before me,

Notary Public/Maine Attorney at Law
Printed Name: _____
Commission Expires: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

GRANTEE:

PORTLAND WATER DISTRICT

Witness

By: _____
Carrie M. Lewis
General Matter

STATE OF MAINE
COUNTY OF CUMBERLAND, SS

_____, 2020

Personally appeared before me the above named authorized representative of Portland Water District, Carrie M. Lewis, its General Manager, and acknowledged the foregoing instrument to be her free act and deed in said capacity and the free act and deed of said City of Portland.

Before me,

Notary Public/Maine Attorney at Law
Printed Name: _____
Commission Expires: _____

EXHIBIT A

Thames St. Extension

A certain lot or parcel of land situated northerly of Thames Street in the City of Portland, County of Cumberland and State of Maine bounded and described as follows:

Beginning at the northwesterly corner of the terminus of Thames Street being N47°28'43" E along the westerly sideline of Thames Street 153.05 feet from the northeasterly corner of land now or formerly of Hancock Street LLC as described in deed book 34347/163;

Thence, the following courses and distances through the land now or formerly of the City of Portland as described in deed book 10924, page 84;

N 47°28'43" E a distance of 188.32 feet;

N 30°15'31" E a distance of 12.49 feet;

N 52°05'24" W a distance of 33.61 feet;

Along a tangent curve to the right having a radius of 425.00 feet and an arc length of 70.64 feet, a chord bearing of N 47°19'42" W and chord distance of 70.56 feet;

N 42°34'01" W a distance of 5.51 feet to the easterly line of land now or formerly of 100 Fore Street LLC as described in deed book 33748, page 1;

Thence, N 66°39'40" E along the easterly line of land of said 100 Fore Street LLC 58.52 feet to the southerly line of land now or formerly of CPB2 I LLC as described in deed book 35576, page 153 and deed book 35264. Page 286;

Thence, along the southerly line of land of said CPB2 I LLC along a curve to the left having a radius of 370.00 feet, an arc length of 47.73 feet, a chord bearing of S 48°23'40" E and chord distance of 47.70 feet;

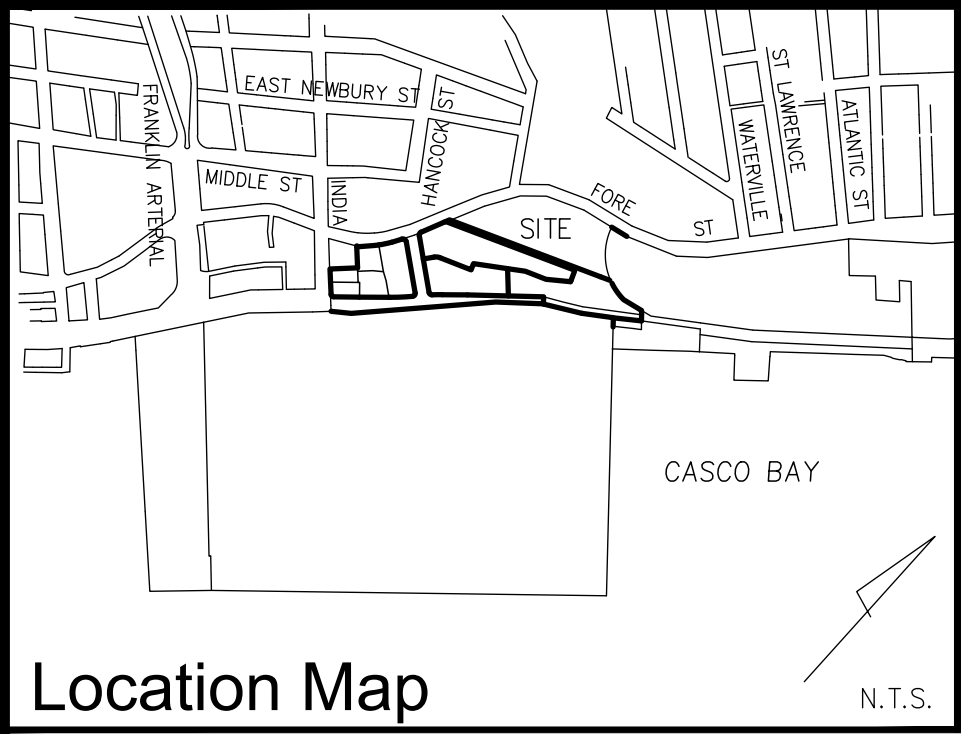
Thence, S 52°05'24" E continuing along the southerly line of land of CPB2 I LLC 100.09 feet to the westerly line of land now or formerly of State of Maine;

Thence, S 41°26'32" W along the westerly line of said State of Maine 145.33 feet;

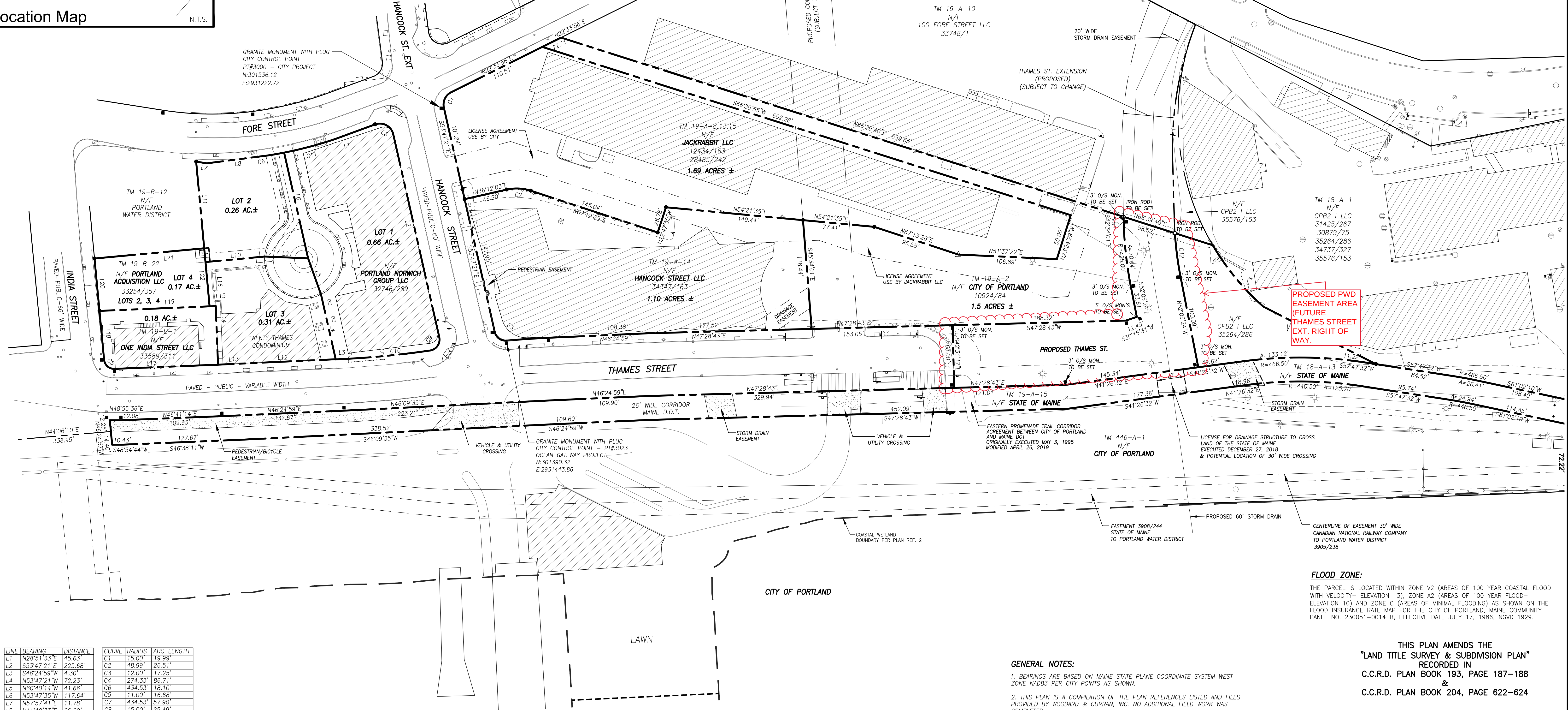
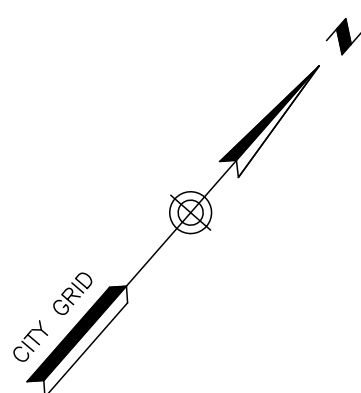
Thence, S 47°28'43" W continuing along the westerly line of land of State of Maine 121.01 feet to the northeasterly corner of the terminus of said Thames Street;

Thence, N 42°31'17" W along the northerly terminus of Thames Street 68.00 feet to the point of beginning, containing 22,459 s.f. or 0.52 acres, more or less.

Bearings are based on Maine State Plane Coordinate System.



- LEGEND:**
- UTILITY POLE
 - MANHOLE
 - ELECTRIC/GAS METER
 - SIGN
 - CATCH BASIN
 - HYDRANT
 - WATER VALVE OR SHUTOFF
 - GAS VALVE
 - LIGHT POLE
 - FENCE
 - CURB
 - IPF/IRF
 - N/F
 - 000/000
 - IRON PIPE OR ROD FOUND
 - NOW OR FORMERLY
 - DEED BOOK / PAGE



LINE	BEARING	DISTANCE	CURVE	RADIUS	ARC LENGTH
L1	N28°51'33"E	45.63'	C1	15.00'	19.99'
L2	S53°47'21"E	225.68'	C2	48.99'	26.51'
L3	S46°24'59"W	4.30'	C3	12.00'	17.25'
L4	N53°47'21"W	22.23'	C4	274.33'	86.71'
L5	N60°40'14"W	41.66'	C6	434.53'	18.10'
L6	N53°47'35"W	117.64'	C5	11.00'	16.68'
L7	N57°57'41"E	11.78'	C7	434.53'	57.90'
L8	N41°40'33"E	66.60'	C8	15.00'	25.49'
L9	S51°21'23"W	47.13'	C9	12.00'	19.77'
L10	S43°41'09"W	64.62'	C10	971.00'	98.70'
L11	N46°18'50"W	94.47'	C11	434.53'	76.00'
L12	S46°24'59"W	125.94'	C12	370.00'	47.73'
L13	S46°41'14"W	2.02'			
L14	N43°10'34"W	63.64'			
L15	S46°38'39"W	6.69'			
L16	N46°18'50"W	48.27'			
L17	S46°41'14"W	112.38'			
L18	N46°24'57"W	53.22'			
L19	N46°38'39"E	119.71'			
L20	N46°24'57"W	57.09'			
L21	N43°41'10"E	119.66'			
L22	N46°18'50"W	63.27'			

PLAN REFERENCES:

1. LAND TITLE SURVEY & SUBDIVISION PLAN IN PORTLAND, MAINE U.S.A. MADE FOR THE TRUST FOR PUBLIC LAND, THE CITY OF PORTLAND, THE MAINE DEPARTMENT OF TRANSPORTATION, THE CANADIAN NATIONAL RAILWAY COMPANY DATED FEB. 19, 1993, REV. 9/11/04/96 BY OWEN HASKELL, INC. AND RECORDED IN PLAN BOOK 193, PAGE 187.
2. RECORDING PLAT OCEAN GATEWAY MADE FOR THE CITY OF PORTLAND AND STATE OF MAINE, BY OWEN HASKELL, INC., DATED AUGUST 4, 2004, RECORDED IN PLAN BOOK 204, PAGE 622-624
3. SUBDIVISION PLAN, 20 THAMES STREET, PORTLAND, MAINE MADE FOR RECORD OWNER ESSEXNORTH 20 THAMES LLC OCTOBER 23, 2017 BY OWEN HASKELL, INC. RECORDED IN PLAN BOOK 217, PAGE 466.
4. EXISTING CONDITIONS PLAN MAINE STATE PIER - CASCO BAY COMMERCIAL STREET, PORTLAND, MAINE MADE FOR STANTEC BY OWEN HASKELL, INC. DATED AUGUST 8, 2017.
5. BOUNDARY & TOPOGRAPHIC SURVEY ON HANCOCK & THAMES STREETS, PORTLAND, MAINE MADE FOR ARCHETYPE BY OWEN HASKELL, INC. DATED JUNE 15, 2017, REVISED THROUGH 10/26/17.

6. BOUNDARY & TOPOGRAPHY SURVEY AT 58 FORE STREET, PORTLAND, MAINE MADE FOR WOODARD & CURRAN BY OWEN HASKELL, INC. AUGUST 29, 2016, REVISED THROUGH FEB. 2019.
7. EXHIBIT PLAN PARCELS TO BE CONVEYED 58 FORE STREET, PORTLAND, MAINE MADE FOR WOODARD & CURRAN BY OWEN HASKELL, INC. DATED MARCH 21, 2018.
8. TOPOGRAPHIC SURVEY 100 FORE STREET MADE FOR JONATHAN COHEN BY OWEN HASKELL, INC. DATED DECEMBER 4, 2017 REVISED THROUGH 12/17/18.
9. BOUNDARY SURVEY AND PROPOSED CONVEYANCE 144 FORE STREET AND HANCOCK STREET, PORTLAND, CUMBERLAND COUNTY, STATE OF MAINE FOR RECORD OWNER JACKRABBIT LIMITED LIABILITY CO., BY LEWIS & WASINA, INC., DATED 5/18/2010 AND REVISED THROUGH 10/4/2010. ON FILE WITH THE CITY OF PORTLAND DEPARTMENT OF PUBLIC WORKS.

GENERAL NOTES:

1. BEARINGS ARE BASED ON MAINE STATE PLANE COORDINATE SYSTEM WEST ZONE NAD83 PER CITY POINTS AS SHOWN.
2. THIS PLAN IS A COMPILATION OF THE PLAN REFERENCES LISTED AND FILES PROVIDED BY WOODARD & CURRAN, INC. NO ADDITIONAL FIELD WORK WAS COMPLETED.
3. THE PURPOSE OF THIS PLAN IS TO SHOW THE CURRENT CONFIGURATION OF PARCELS IN COMPARISON TO THE FORMER CONFIGURATION AS SHOWN ON PLAN REFERENCES 1 & 2. THERE HAVE BEEN DIVISIONS AND ADJUSTMENTS TO THESE PROPERTY LINES SINCE THE FIRST SUBDIVISION IN 1992, OF WHICH HAVE BEEN DOCUMENTED AND SHOWN ON PLAN REFERENCES 3-9. THIS PLAN ALSO SHOWS THE PROPOSED THAMES STREET LOCATION AND MISCELLANEOUS LAND SWAPS BETWEEN CITY OF PORTLAND, STATE OF MAINE AND CPB2 I LLC.

CERTIFICATE:

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.

DATE: RANDY R. LOUBIER, PLS #2407

FLOOD ZONE:

THE PARCEL IS LOCATED WITHIN ZONE V2 (AREAS OF 100 YEAR COASTAL FLOOD WITH VELOCITY - ELEVATION 13), ZONE A2 (AREAS OF 100 YEAR FLOOD - ELEVATION 10) AND ZONE C (AREAS OF MINIMAL FLOODING) AS SHOWN ON THE FLOOD INSURANCE RATE MAP FOR THE CITY OF PORTLAND, MAINE COMMUNITY PANEL NO. 230051-0014 B, EFFECTIVE DATE JULY 17, 1986, NGVD 1929.

THIS PLAN AMENDS THE
"LAND TITLE SURVEY & SUBDIVISION PLAN"
RECORDED IN
C.C.R.D. PLAN BOOK 193, PAGE 187-188
&
C.C.R.D. PLAN BOOK 204, PAGE 622-624

Amended Subdivision Plat
Ocean Gateway
Commercial Street, Thames Street &
Fore Street, Portland, Maine
Made for Owner of Record
City of Portland
389 Congress Street, Portland, Maine



OWEN HASKELL, INC.

PROFESSIONAL LAND SURVEYORS
390 U.S. ROUTE ONE, UNIT 10, FALMOUTH, MAINE 04105

DRAWN BY: RRL/JLW DATE: JULY 17, 2019 JOB NO. 2018-344 P
CHECKED BY: RRL SCALE: 1" = 50' DRWG. NO. SP-2 OF 3

MAIN EXTENSION AGREEMENT

THIS AGREEMENT, made this 24th day of MAY, 2019 by and among the **PORTLAND WATER DISTRICT**, a Maine quasi municipal corporation located at 225 Douglass Street Portland, Maine, hereinafter called the "District", and the **CITY OF PORTLAND** of Portland, Maine hereinafter called the "Developer", and **D. & C. CONSTRUCTION CO., INC.**, a Massachusetts corporation with a mailing address of P.O. Box 415, Rockland, MA 02370, hereinafter called the "Contractor".

Main Extension Agreement #: 3025

WITNESSETH:

WHEREAS, the Developer desires to have the District extend its water facilities in conjunction with the construction of a project known as Thames Street Extension, located at Portland, Maine; (hereinafter "DEVELOPMENT") as in the Town as follows:

Install 287 feet more or less of 12-inch water main in Thames Street

Install 0 public fire hydrants

Install 1 1-inch diameter domestic water services.

Deposit Required: \$ 4,392.00

Allowance for Fire Protection: \$1,140.00

And

WHEREAS, in conjunction with the Development, Contractor shall construct the said water fixtures and infrastructure needed to provide water service and fire protection service to the Development; and

WHEREAS, at the completion of the Development, the District shall assume ownership of the public infrastructure constructed under the terms of this Agreement;

NOW THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties agree as follows:

1. Prior to the construction of facilities, the Developer shall provide to the District a deposit of **\$4,392.00**, which deposit is the District's estimated cost of construction inspection of said water main extension and related appurtenances, fire protection, and service and meter costs.
2. Water facilities constructed under this agreement, located outside of the Development, are subject to refundable customer contributions. During a ten-year period after the connection of the first customer to the main extension, each new customer connected to the outside facilities will pay prior to obtaining service a customer contribution as calculated pursuant to rules of the Portland Water District.. The contribution will be collected by the District and forwarded to the Developer. (See second page of this Agreement for the contribution calculation).
3. Where the facilities are being installed in other than an accepted public way, the Developer shall furnish the District, from the owner of record, a properly executed permanent easement, free of encumbrances, entitling the District to construct, own, operate, maintain, repair and replace the above-described facilities.

4. The Contractor will commence and complete the construction of:

Installation of water fixtures, such as mains, services & hydrants in Thames Street in Portland, Maine, hereinafter called the "Project". Developer/Contractor affirms that it has received all permits and approvals necessary for the construction of Development, including but not limited to local land use approvals and street opening and excavation permits required for utility work in the public way. District agrees, if required by the permitting authority, that it will obtain utility location and street opening permits required for construction of the Project.

5. The Contractor will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Project. All construction shall be completed according to District specifications and procedures. At least ten (10) days prior to the commencement of construction of the Project, Contractor shall notify the District of the proposed start and completion dates of the construction of the Project. All work shall be warranted for a period of one year.

6. The Contractor agrees to perform all of the work described in the Contract Documents and comply with the terms therein at no direct cost to the District, except that the District will make refunds as described in this Agreement.

7. The term "Contract Documents" means and includes the following:

(A) Agreement

(B) Contractor's Schedule of Unit Prices located within the City of Portland's Thames Street Extension Contract Documents bid # 19047.

(C) Performance Guarantee

(D) Certificate of Title and Project Acceptance

(E) General Conditions

(F) Supplemental General Conditions

(G) Drawing prepared by City of Portland, From the Thames Street Extension project bid # 19047, , plan numbered C-102 and dated May 2019.

(H) Specifications prepared or issued by the District.

8. The Schedule of Unit Prices, Maintenance Bond, Certificate of Title and Project Acceptance, General Conditions, Supplemental Conditions, Drawings and Specifications designated above are contained in the City of Portland's Thames Street Extension Contract documents bid #19047. The Contractor must also adhere to all requirements located in the Portland Water District standard construction specifications and procedures which are publicly available on the District's website. Their terms are expressly incorporated herein and made a part hereof.

9. Prior to the execution of this Agreement, Contractor will procure and maintain insurance coverage as required by the District in the amounts shown on Exhibit A, attached hereto and incorporated herein by

reference. The District shall be named as additional insured on Contractor's general liability coverage. CONTRACTOR shall furnish and thereafter maintain certificates evidencing such coverage, which certificates shall guarantee thirty (30) days' notice to District of termination of insurance from insurance company or agent.

10. Within 60 days following the District's determination of the final expenses incurred for the extension, including main, public fire protection allocation and service, the deposit made hereunder shall be adjusted to the actual cost of construction and inspection, either by the District's return to the Developer of any excess amount, or by additional payment made to the District by the Developer covering the deficiency.

11. If the lines and grades of the street or way are not acceptable by the municipality and the District, or valid permanent easements covering the water main extension satisfactory to the District have not been executed, the District reserves the right to use any remaining advance towards upgrading the main to meet utility specifications and/or obtain the permanent easements required by this agreement. The District reserves the right not to accept a main until it has been inspected and tested and meets all District specifications. Any inspection or test shall be at the expense of the person requesting service or acceptance. The District further reserves the right to refuse to commence water service until the main has been brought up to all District specification.

12. The District shall bill or deduct from any refund of the advance otherwise due the Developer, (i) the cost of any relocation of the District's facilities due to any change of the line or grade of any street or way; and (ii) any costs incurred by the District for repairing or rebuilding facilities of the District at the above-described location if damaged by the Contractor or his agent at any time prior to acceptance of the street or way by the municipality.

13. Contractor shall reimburse fully and completely indemnify and save harmless the District from any and all loss, damage, liability, claim, action, cost and expense (including attorneys' fees) caused by or arising out of the construction of the Project, including without limitation damages for bodily injury, death or property damage and any and all such costs and expenses incurred to assure the safety, protection and continuity of future operations which are deemed necessary by the District, specifically including, but not limited to, costs of inspection.

14. In the event that the work performed by Contractor in the public way is unsatisfactory to any permitting authority, and the District, as the holder of the street opening permit, is required to incur any expense or costs in investigating the work of Contractor or to remediate the work, Contractor shall be liable to the District for 150% of such costs and expenses incurred by the District. This obligation to the District shall be in addition to the indemnification obligation described in Paragraph 13 of this Agreement.

15. Upon completion of the PROJECT and inspection and acceptance of the DISTRICT, the following components of the PROJECT shall become the property of and responsibility of the DISTRICT:

Install 287 feet more or less of 12-inch water main in Thames Street

Install 0 public fire hydrants

Install 1 1-inch diameter water services

Maine

The District will have a continuing obligation for the future maintenance of these facilities, and the right to make further extensions continuously and laterally from said extension without obligation to this agreement.

16. The failure of the District to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any of said terms or conditions but the same shall be and remain in full force and effect at all times.

17. This Agreement shall be governed by Maine law, and subject to the rules for water main extensions and service lines enacted by the Portland Water District Board of Trustees, and shall be binding upon all parties hereto and their respective heirs, personal representatives, administrators and assigns.

18. Disputes arising under this agreement to the Board of Trustees for resolution.

IN WITNESS WHEREOF, the parties hereto, being duly authorized, have hereunto set their hands the day and year first above-written.

PORTLAND WATER DISTRICT (DISTRICT)

Signed: Carrie M. Lewis

Name: Carrie M. Lewis

Title: General Manager

Morgan Twaddell

(Witness)

CITY OF PORTLAND (DEVELOPER)

Signed: Brendan T. O'Connell

Print Name: Brendan O'Connell for

Title: Jon P. Jennings, City Manager

Address: 389 Congress St.

Portland, ME 04101

Email Address: JPT@portlandmaine.gov

[Signature]
(Witness)

APPROVED AS TO FORM:

REGISTRATION COUNSEL'S OFFICE

Maine

D. & C. CONSTRUCTION CO., INC.
(CONTRACTOR)


(Witness)Signed: Print Name: BRADFORD S. CLOWESTitle: PRESIDENTAddress: Box 415
Rockland, Mass. 02370Email Address: brad@dandcconstruction.com

Customer Contributions by Customers Outside Development: If a main extension must cross property other than that within the Development prior to reaching the Development, and customers located on the property outside the Development are connected to the main extension within ten years following connection of the first customer at any location on the extension, those customers shall be required to make a customer contribution. The total cost of the main extension shall be allocated between the Development and the area outside the Development on the basis of the number of feet within the Development and the number of feet outside the Development. After determining the total cost of the portion of the main extension outside the Development on the basis of this allocation, customers outside the Development should be required to make a contribution. For the purpose of determining the contribution or reallocating contributions when subsequent customers outside the Development are connected, the Developer shall be considered the equivalent of the number of customers within the Development or the number of services constructed, whichever is greater, as if all those customers or services were located at the termination of the portion of the extension located outside the Development. If a Development is master metered, the number of customers within the Development, for purposes of this subsection, shall be considered as the number of residential, commercial or industrial units or establishments.

EXHIBIT A

Portland Water District Insurance Requirements

1) General Requirements:

- a) The Contractor shall file appropriate Certificates of Insurance with the DISTRICT. All Certificates of Insurance shall provide that notice shall be given to the DISTRICT at least thirty (30) days prior to the expiration or termination of any insurance and shall name the DISTRICT as an additional insured. This notice shall be in writing.
- b) All Certificates of Insurance provided to the DISTRICT shall be issued by companies licensed and registered to do business in the State of Maine.
- c) All Certificates of Insurance coverage shall be delivered to the District prior to the work commencing.
- d) Prior to the expiration date of any insurance, the Contractor shall furnish to the DISTRICT a certificate showing the insurance then maintained by or on behalf of the Contractor pursuant to these requirements.

2) Specific Coverage. Insurance to be carried by the Contractor shall, as a minimum, include:

- a) Commercial general liability insurance with a minimum combined single limit for bodily injury and property damage of \$500,000 and \$500,000 aggregate to include completed operations coverage. The DISTRICT must be named additional insured on this insurance. The vendor shall also require that all subcontractors carry this same insurance with the same limits.
- b) Automobile liability insurance, including but not limited to, coverage for owned, non-owned, and hired vehicles with limits of not less than \$500,000 per occurrence. The Contractor shall also require that all subcontractors carry this same insurance with the same limits.
- c) Workers' Compensation Insurance providing statutory benefits, in each case as required by law. The Contractor shall also require that all subcontractors carry this same insurance with the same limit.
- d) Other insurance appropriate to the work, e.g.: Diving, Aircraft, Umbrella, Professional, Environmental Impairment.

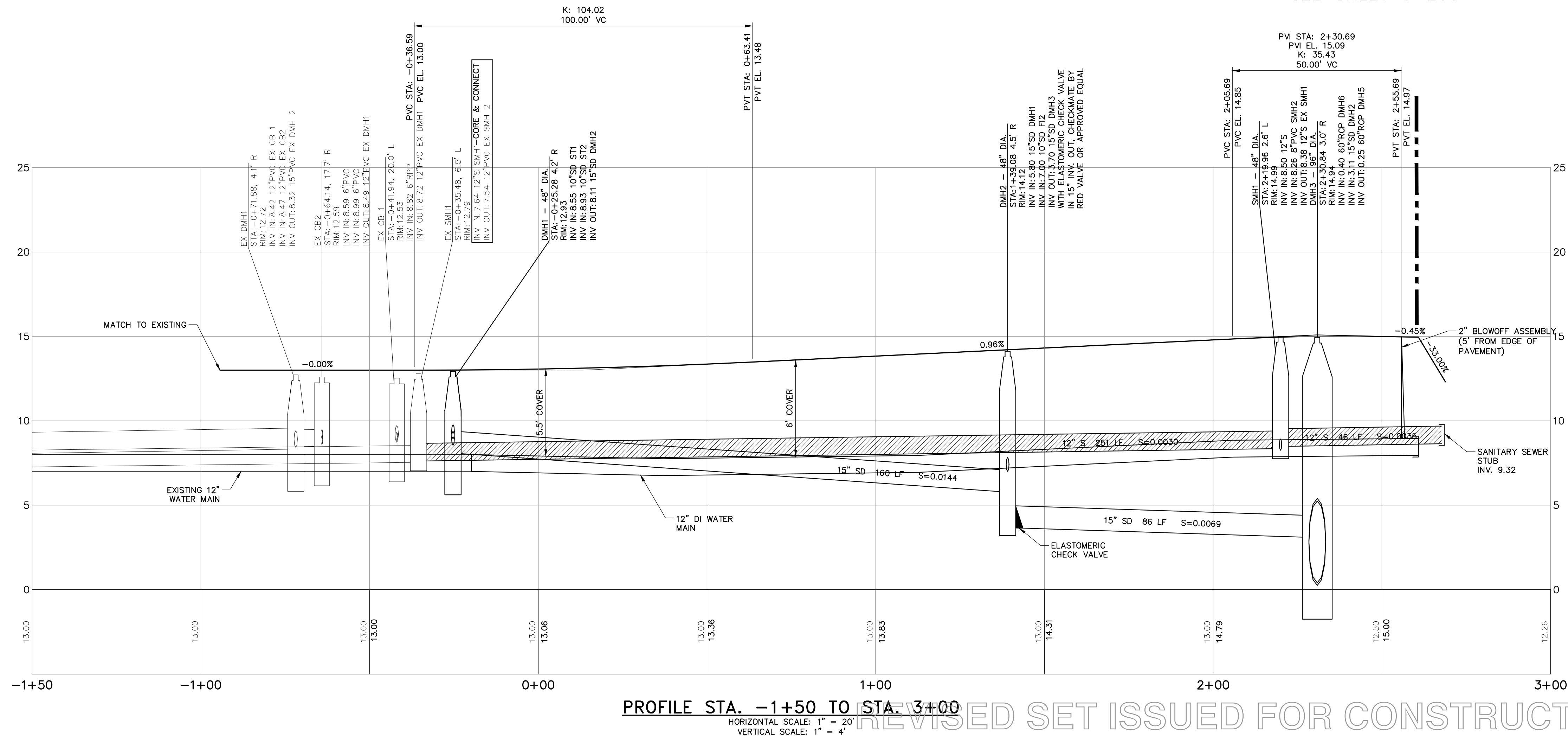
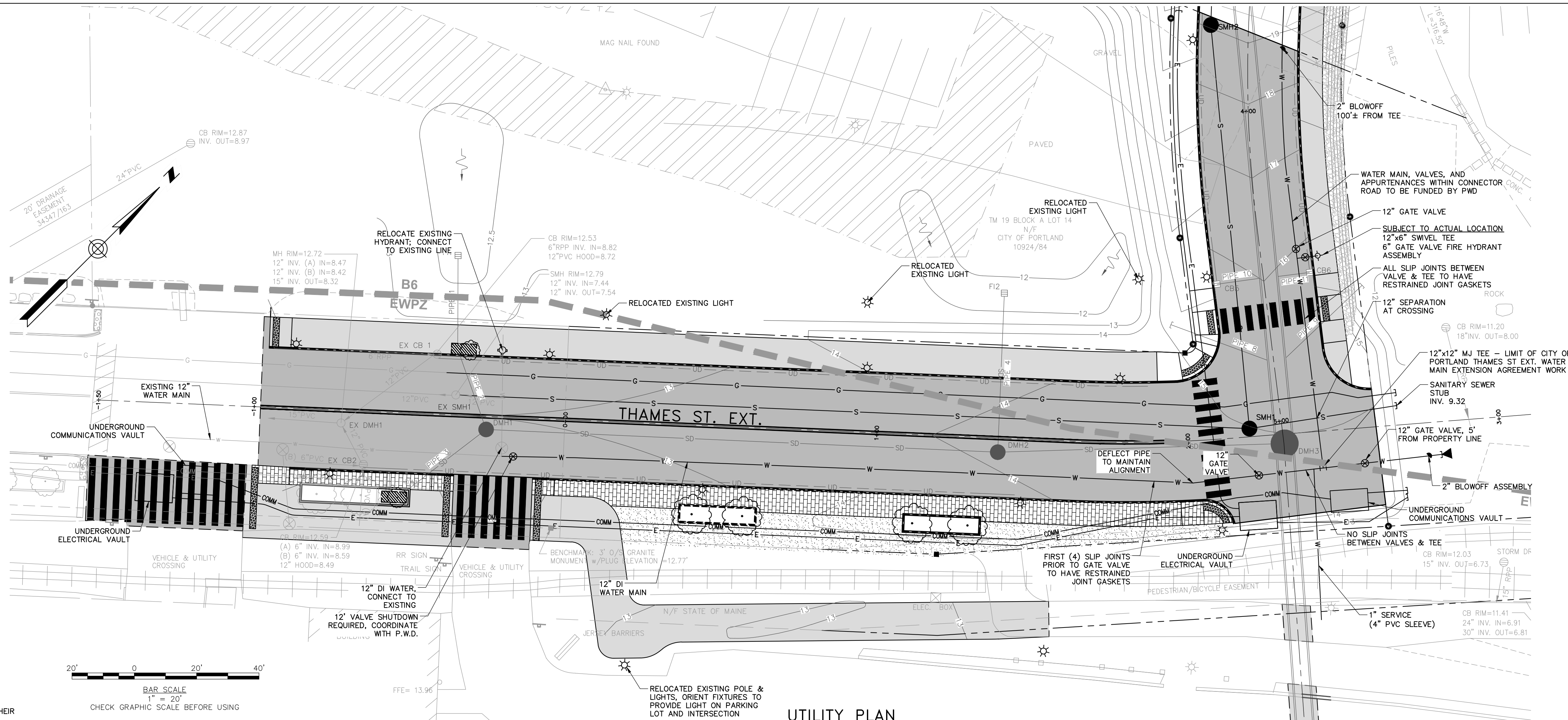
Maine

File: main extension agreement template - rev 2-1-16.docx

\\woodardcurran.net\shared\Projects\0230637.00 Portland ME - 2017 Grd Eng Srvs\wp\37 Eastern Waterfront Roadway Ext. Design\Drawings\Civil\0230637.37 CID.dwg, May 24, 2019 - 8:55am

UTILITIES NOTES:

1. ALL PROPOSED UTILITIES (WATER, ELECTRIC, SANITARY, STORM SEWER, ETC.) AND THEIR CONNECTIONS, DISCONNECTION AND RELOCATION OF EXISTING UTILITIES SHALL BE COMPLETED IN ACCORDANCE WITH THE REQUIREMENTS OF THE UTILITY COMPANY HAVING JURISDICTION. ANY COORDINATION WITH THE MUNICIPALITY AND/OR UTILITY COMPANY, PERMITS OR APPROVALS REQUIRED SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.
2. CONDUIT FOR ELECTRIC LINES SHALL BE WATER-TIGHT IN ADDITION TO CONFORMING TO UTILITY COMPANY REQUIREMENTS.
3. COORDINATE CONSTRUCTION ACTIVITY WITH UTILITY COMPANIES, EMERGENCY SERVICES AND CITY. NOTIFY UTILITY COMPANIES AT LEAST 48 HOURS PRIOR TO WORK ACTIVITY ADJACENT TO THOSE UTILITIES.
4. CONTRACTOR SHALL ARRANGE AND PREPARE FOR ALL NECESSARY TEMPORARY UTILITIES AS REQUIRED TO COMPLETE WORK, INCLUDING ANY NECESSARY SUB-METERING OR TEMPORARY CONNECTIONS.
5. ALL WATER LINE (MAINS, SERVICES, HYDRANTS, ETC.) CONSTRUCTION SHALL BE COMPLETED IN ACCORDANCE WITH THE PORTLAND WATER DISTRICT TECHNICAL SPECIFICATIONS, LATEST EDITION. PORTLAND WATER DISTRICT TECHNICAL SPECIFICATIONS SHALL GOVERN IN THE CASE OF ANY AND ALL CONFLICTS IN THE PROJECT CONSTRUCTION DOCUMENTS AT NO ADDITIONAL COST TO OWNER.
6. ALL GAS LINE (MAINS, SERVICES, GATE VALVES, METERS, ETC.) CONSTRUCTION SHALL BE COMPLETED IN ACCORDANCE WITH UNTIL'S TECHNICAL SPECIFICATIONS, LATEST EDITION. UNTIL'S TECHNICAL SPECIFICATIONS SHALL GOVERN IN THE CASE OF ANY AND ALL CONFLICTS IN THE PROJECT CONSTRUCTION DOCUMENTS AT NO ADDITIONAL COST TO OWNER.
7. EXISTING UTILITIES SHOWN ON THESE PLANS WERE COMPILED FROM A FIELD SURVEY PREPARED BY OWEN HASKELL, INC. THESE PLANS DO NOT NECESSARILY DEPICT THE EXACT LOCATIONS OF ALL UTILITIES, WHICH MAY EXIST AT THIS TIME WITHIN THE SURVEY LIMITS. THERE MAY BE EXISTING LINES OTHER THAN THOSE INDICATED. THE LOCATIONS AND ELEVATIONS OF ALL EXISTING UTILITIES SHALL BE CONSIDERED APPROXIMATE AND MUST BE VERIFIED BY THE CONTRACTOR PRIOR TO ANY UTILITY CONNECTIONS OR CROSSINGS OF PROPOSED OR EXISTING UTILITIES. THE CONTRACTOR SHALL REPORT ANY DISCREPANCIES TO THE ENGINEER IN WRITING. THE CONTRACTOR SHALL CONTACT THE RESPECTIVE UTILITY COMPANIES RELATIVE TO THE LOCATIONS AND ELEVATIONS OF THESE LINES. NO SEPARATE OR ADDITIONAL COMPENSATION WILL BE ALLOWED TO THE CONTRACTOR DUE TO ANY VARIANCE BETWEEN THE DATA SHOWN ON THE PLANS AND ACTUAL FIELD CONDITIONS ENCOUNTERED. THE CONTRACTOR IS RESPONSIBLE FOR HIS/HER OWN DETERMINATION AS TO THE TYPE AND LOCATION OF THE EXISTING UTILITIES AS MAY BE NECESSARY TO AVOID DAMAGE AND TO FACILITATE THE PROPOSED CONNECTION(S).
8. WHEREVER POSSIBLE, PROVIDE 10 FOOT HORIZONTAL SEPARATION BETWEEN WATER AND SEWER LINES. WHEN THIS HORIZONTAL SEPARATION IS NOT POSSIBLE, INSTALL SEWER LINE AT LEAST 18 INCHES BETWEEN BOTTOM OF WATER LINE AND TOP OF SEWER.
9. FOR SEWER LINE CROSSING WATER LINE TRENCHES, PROVIDE AT LEAST 18 INCHES BETWEEN BOTTOM OF WATER LINE AND TOP OF SEWER.
10. INSULATE ALL SEWER, FORCEMAINS AND WATER MAINS WHICH HAVE LESS THAN 4 FEET OF COVER OR WHERE DIRECTED BY THE ENGINEER. RIGID INSULATION REQUIRED: 2" THICK, BY 4" WIDE, UNLESS OTHERWISE NOTED. COSTS ASSOCIATED WITH INSULATION ARE INCIDENTAL TO CONTRACT.
11. INSTALL THRUST BLOCKS AT ALL BENDS IN FORCEMAIN AND WATER MAIN. SEE CIVIL DETAIL ON SHEET xxxxx.
12. PROVIDE END CAPS ON ALL UNDERDRAIN PIPING EXCEPT WHERE DAYLIGHTED, UNLESS OTHERWISE NOTED.
13. PRIOR TO THE START OF CONSTRUCTION, CONTRACTOR SHALL DIG TEST PITS TO VERIFY THE LOCATION OF POTENTIAL EXISTING UNDERGROUND UTILITY CONFLICTS. CONTRACTOR SHALL VERIFY LOCATION AND ELEVATION OF ALL EXISTING UTILITIES AT PROPOSED UTILITY CROSSINGS, AND ADVISE THE ENGINEER IN WRITING OF ANY DISCREPANCIES.
14. ALL PROPOSED UTILITIES AND THEIR CONNECTIONS, DISCONNECTION AND RELOCATION OF EXISTING UTILITIES SHALL BE COMPLETED IN ACCORDANCE WITH THE REQUIREMENTS OF THE UTILITY COMPANY HAVING JURISDICTION. ANY COORDINATION WITH THE MUNICIPALITY AND/OR UTILITY COMPANY, PERMITS OR APPROVALS REQUIRED SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.
15. UNLESS OTHERWISE SPECIFIED, PIPE FOR STORM DRAINS SHALL BE MATERIAL OR APPROVED EQUAL, WITH WATER TIGHT JOINTS, PIPE JOINTS, FITTINGS AND OTHER APPURTENANCES SHALL BE IN ACCORDANCE WITH SECTION X.

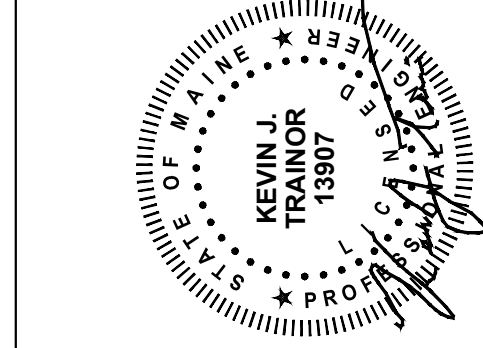


PROJECT NAME: THAMES STREET EXTENSION PROJECT

CITY OF PORTLAND, MAINE
DEPARTMENT OF PUBLIC WORKS
DIVISION OF STREETS AND SANITATION
REPORT AND DRAWING NO. 1001
PHONE (207) 888-6846 FAX (207) 888-6862

DESIGN BY: KJT
DRAWN BY: BCM
CHECKED BY: KJT
SHEET NAME: UTILITY PLAN

DATE: APRIL 2019
PAGE: 6 OF 20
SHEET NO.: C-102
VAULT #:



NO.	REVISION	DATE
2	REVISED FOR CONSTRUCTION	02/28/19
1	ADDENDUM 1	01/25/19
	SUBMISSION	

WOODARD & CURRAN
41 Hutchins Drive
Portland, Maine 04102
800-426-4262 | www.woodardcurran.com
COMMITMENT & INTEGRITY DRIVE RESULTS

WC: 0230637.37



October 16, 2019

Thames St. Extension

A certain lot or parcel of land situated northerly of Thames Street in the City of Portland, County of Cumberland and State of Maine bounded and described as follows:

Beginning at the northwesterly corner of the terminus of Thames Street being N47°28'43" E along the westerly sideline of Thames Street 153.05 feet from the northeasterly corner of land now or formerly of Hancock Street LLC as described in deed book 34347/163;

Thence, the following courses and distances through the land now or formerly of the City of Portland as described in deed book 10924, page 84;

N 47°28'43" E a distance of 188.32 feet;

N 30°15'31" E a distance of 12.49 feet;

N 52°05'24" W a distance of 33.61 feet;

Along a tangent curve to the right having a radius of 425.00 feet and an arc length of 70.64 feet, a chord bearing of N 47°19'42" W and chord distance of 70.56 feet;

N 42°34'01" W a distance of 5.51 feet to the easterly line of land now or formerly of 100 Fore Street LLC as described in deed book 33748, page 1;

Thence, N 66°39'40" E along the easterly line of land of said 100 Fore Street LLC 58.52 feet to the southerly line of land now or formerly of CPB2 I LLC as described in deed book 35576, page 153 and deed book 35264. Page 286;

Thence, along the southerly line of land of said CPB2 I LLC along a curve to the left having a radius of 370.00 feet, an arc length of 47.73 feet, a chord bearing of S 48°23'40" E and chord distance of 47.70 feet;

Thence, S 52°05'24" E continuing along the southerly line of land of CPB2 I LLC 100.09 feet to the westerly line of land now or formerly of State of Maine;

Thence, S 41°26'32" W along the westerly line of said State of Maine 145.33 feet;

Thence, S 47°28'43" W continuing along the westerly line of land of State of Maine 121.01feet to the northeasterly corner of the terminus of said Thames Street;

Thence, N 42°31'17" W along the northerly terminus of Thames Street 68.00 feet to the point of beginning, containing 22,459 s.f. or 0.52 acres, more or less.

Bearings are based on Maine State Plane Coordinate System.

AGREEMENT

THIS AGREEMENT, effective as of the 2nd day of June, 2019 by and between the City of Portland, a body politic and corporate with a mailing address of 389 Congress Street, Portland, Maine 04101 (hereinafter referred to as "the City") and the Portland Water District, a quasi-municipal corporation duly organized under the Laws of the State of Maine, with a mailing address of 225 Douglass Street, Portland, Maine 04102 (hereinafter referred to as "the District").

WHEREAS, the City entered into a contract with D&C Construction Co., Inc. dated March 1, 2019 (the "D&C Contract") for construction of a project known as the Thames Street Extension and Munjoy stormwater outfall project in the City of Portland (hereinafter called "the Project"); and

WHEREAS, under the D&C Contract, D&C, on behalf of the City, is constructing an extension of the District's water main in land known as the Thames Street Extension as described in the D&C Contract and a Main Extension Agreement among the City, the District, and D&C Construction dated May 24, 2019 (the "Main Extension Agreement"); and

WHEREAS, the District desires to install a new portion of its water main system within the Project limits in a proposed road known as the Connector Road (the "Connector Road Main"); and

WHEREAS, the Connector Road Main serves the public interest, and

WHEREAS, the City included the Connector Road Main installation in the scope of work for the Thames Street Extension, as depicted on the project plan C-102 dated May, 2019, attached hereto and incorporated herein by reference as Exhibit A; and

WHEREAS, the portion of the water main system generally depicted on Exhibit A as the Connector Road Main shall be installed by the City's contractor, D&C construction, subject to the terms and conditions of this Agreement; and

WHEREAS, the District has agreed to reimburse the City in full for the Connector Road Main installation performed pursuant to this Agreement, including any inspection services and post construction testing required.

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

1. In connection with its construction of the Project, the City shall cause D&C Construction to install the Connector Road Main.
2. The District agrees to reimburse the City for all costs associated with the Connector Road Main, which, as set forth in Attachment B are \$48,288.00.

City: Portland, Maine
Project: Thames Street Extension-
Water Main Installation

3. The District shall be responsible for providing all engineering and inspection necessary for work relating to the construction and maintenance of the Connector Road Main. The District shall coordinate inspection services and testing services with the City's contractor and project management staff. To the extent possible, this work shall be done in a way that meets the contractor's schedule and in such a manner as to not cause delay to the overall Project.
4. The District's on-site representative shall coordinate with the City inspector and provide the City inspection with an itemized, daily summary of all work completed and chargeable to the District by the end of each day.
5. Upon execution of this Agreement, the City shall invoice the District for \$48,288.00 for the work performed on behalf of the District consistent with the costs and provisions outlined in Attachment B. The District shall pay the City within 30 days of receipt of the invoice.
6. Upon acceptance of Connector Road Main by the District, the ownership of the Connector Road Main will be transferred to the District. At no time during the term of this Agreement or any time thereafter shall the City be responsible for the maintenance or operation of the Connector Road Main.

After the Connector Road Main work is accepted by the City and the District, the City agrees to grant the District a utility easement in form reasonably acceptable to the City and the District for the full width of the proposed future connector road right of way, located within the City of Portland Ocean Gateway Property, until such time the roadway becomes an accepted City right of way. The District shall draft the easement language to be reviewed and approved by the City prior to execution. The easement shall be subject to the approval of the Portland City Council. Upon acceptance of the Connector Road Main by the District, the City and the District shall also enter into a temporary license agreement in form acceptable to the parties, which will allow the District to maintain the Main in the easement area until the easement is executed and delivered to the District.

7. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a pdf or electronic document shall be considered the equivalent of an original signature.
8. Each party shall indemnify and hold the other party and its agents and employees harmless from any and all claims, actions or liabilities of any nature arising out of the performance of this Agreement. Nothing herein shall or is intended to waive and defense, immunity or limitation of liability available to the District or the City, their officers, agents or employees under the Maine Tort Claims Act, 14 M.R.S. §8101, et seq. or any other privileges and/or immunities provided by law.

[Signatures Next Page]

City: Portland, Maine
Project: Thames Street Extension-
Water Main Installation

IN WITNESS WHEREOF, the Parties to this Agreement have executed the same on the day and year first written above, the City of Portland by and through its City Manager, duly authorized, and the Portland Water District by and through its General Manager, duly authorized.

IN THE PRESENCE OF:

CITY OF PORTLAND

Sonia Dean
(Witness - City)

By *Jon P. Jennings*
Jon P. Jennings
City Manager

PORTLAND WATER DISTRICT

Donna M. Katsourides
(Witness - District)

By *Carrie Lewis*
Carrie Lewis
General Manager

APPROVED AS TO FORM:
[Signature]
CORPORATION COUNSEL'S OFFICE

City: Portland, Maine
Project: Thames Street Extension-
Water Main Installation

ATTACHMENT A
Thames Street Extension and Munjoy Stormwater Outfall Utility Plan C-102



WOODWARD
& CURRAN

41 Hutchins Drive
Portland, Maine 04102
800.426.4262 | www.woodwardclark.com
COMMITMENT & INTEGRITY DRIVE RESULTS

ATTACHMENT B

The District agrees to reimburse the City for the following project related costs:

Note: The lineal footage of water-main listed below is an estimate based on the design plan. As stated above the District agrees to pay the City based on actual quantities of the accepted work.

- 135 LF of 12" water-main @ \$200/LF = **\$27,000**
- 1 EA -6" Hydrant Assembly including 12"x6" swivel tee and 6" gate valve fire hydrant assembly LS @ \$7,500/LS= **\$7,500**
- 1 EA- 12" Gate Valve @ =\$4,500/EA= **\$4,500**
- 1 EA -2" blow off Assembly @ \$3,500/EA=**\$3,500**
- 1 LS 12"x12" MJ Tee @ \$1,650/LS= **\$1,650**
- 1 EA 12" water main offset @\$4,138.00/EA= **\$4,138.00**

Total Estimated Cost to be reimbursed to the City: **\$48,288.00**

City: Portland, Maine
Project: Thames Street Extension-
Water Main Installation

ATTACHMENT C
Project Bid Pricing and Change Order Pricing

THAMES STREET EXTENSION & MUNJOY STORMDRAIN OUTFALL PROJECT - BID #19047

SEWER SEPARATION				PETERS CONSTRUCTION		SARGENT CORPORATION		D&C CONSTRUCTION		SHAW BROTHERS	
Item No.	Qty.	UOM	Item Description	Unit Cost	Ext	Unit Cost	Ext	Unit Cost	Ext	Unit Cost	Ext
902.101	1	LS	Installation of Electrical Utility Distribution System	\$316,250.00	\$316,250.00	\$162,500.00	\$162,500.00	\$117,500.00	\$117,500.00	\$366,000.00	\$366,000.00
W-1	290	LF	12-inch Ductile Iron Water Main	\$185.15	\$53,693.50	\$134.00	\$38,860.00	\$200.00	\$58,000.00	\$170.00	\$49,300.00
W-2	1	EA	12-inch MJ Gate Valve	\$2,928.00	\$2,928.00	\$4,000.00	\$4,000.00	\$4,500.00	\$4,500.00	\$3,500.00	\$3,500.00
W-3	1	EA	2-inch Blowoff	\$2,584.00	\$2,584.00	\$1,600.00	\$1,600.00	\$3,500.00	\$3,500.00	\$1,800.00	\$1,800.00
TOTAL BID					\$375,455.50		\$206,960.00		\$183,500.00		\$420,600.00

Easement
Underground Line

City of Portland, a Maine Municipality with a mailing address of 389 Congress St, Portland, ME, 04101 (Grantor(s)), for consideration given, grants to CENTRAL MAINE POWER COMPANY, a Maine Corporation with an office at 83 Edison Drive, Augusta, Maine 04336, and its successors and assigns (collectively Grantees), with quitclaim covenants, the right and easement, in common with others, to erect, bury, maintain, rebuild, respace, patrol, operate, and remove and do all other actions involving electric and communication distribution equipment and facilities, consisting of wires and cables, together with all necessary fixtures and appurtenances under a portion of the surface of the land of the Grantor(s) in the City/Town of Portland, Cumberland County, Maine. The said equipment and facilities are attached to a line commencing at Pole/Pad MH509, Bryant Press Line (AKA Preble Street), Portland and extending to include Pole(s)/Pad(s) MH 510, PM510.1, and PM 11, Bryant Press Line (AKA Preble Street), Portland. This easement affects land conveyed to the Grantor(s) in a deed from State of Maine, dated May 06, 1980, and recorded in the Cumberland County Registry of Deeds in Book 4598 Page 26. This easement is an easement in gross and is not for the sole purpose of serving the Grantor(s) or Grantor's land. The rights granted herein include the right to keep the surface of ground above its underground cables and other electrical equipment free from structures, improvements and growth which, in the judgment of the Grantees, may interfere with the proper operation or maintenance of said underground cables; and the right to enter upon the land of the Grantor(s) for any and all of the foregoing purposes.

Grantee shall promptly remove all waste, tools, and all material and equipment after each permitted entry upon the Grantor’s property pursuant to this easement.

The rights herein granted are subject to any leases, easements, rights, restrictions, and/or mortgages of record, insofar as the same are now in force and applicable.

WITNESS the hand(s) and seal(s) of Grantor(s) duly authorized representatives on_____, _____.
Signed, Sealed and Delivered in the presence of:

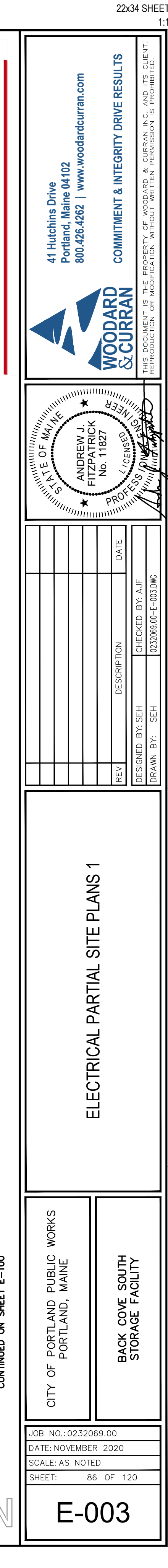
City of Portland

Jon P. Jennings, City Manager

State of Maine
County of Cumberland

The above-named Jon P. Jennings, City Manager of the City of Portland, personally appeared before me this ____ day of _____, _____ and acknowledge the foregoing instrument to be his free act and deed in his said compacity and the free act and deed of the said City of Portland.

Notary Public/Attorney
Printed Name:
My Commission Expires:





CITY OF PORTLAND, MAINE
DEPT. OF PUBLIC WORKS
WATER RESOURCES
212 CANCO ROAD, PORTLAND, MAINE 04107
JANUARY 2020

AERIAL LOCATION MAP **BACK COVE SOUTH STORAGE FACILITY** **PORTLAND, MAINE**



2
FIGURE

FEBRUARY 11, 2020

DESIGN BY: BAR DRAWN BY: BAR CHECK BY: BAR

0 200 400 800
Feet

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

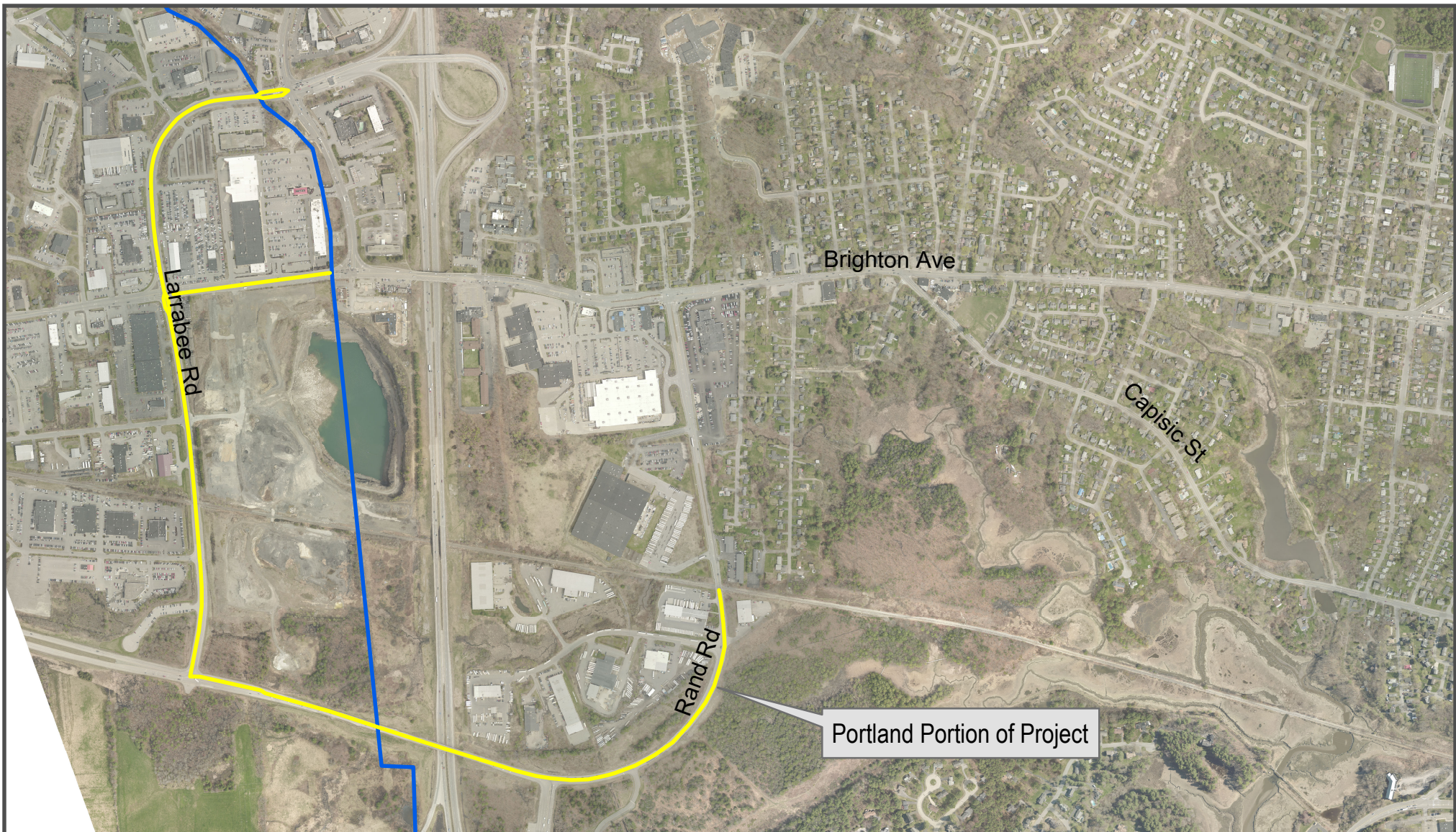
**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(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: RAND ROAD**

ORDERED, that the Municipal/State Agreement between the Maine Department of Transportation and the City of Portland for manhole cover and pedestrian improvements on Rand Road, with Work Identification Number 23709, 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.

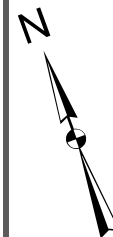


CITY OF PORTLAND, MAINE
DEPT. OF PUBLIC WORKS
212 CANCO RD, PORTLAND, MAINE 04103
PHONE (207) 874-8846 FAX (207) 874-8852

Rt 25 & Larabee Rd Mill/Fill WIN 023709

Legend

- Rt 25 and Larabee Rd Mill/Fill
- Portland-Westbrook Town Line



DECEMBER 2020

DESIGN BY: TSY

0 0.05 0.1 0.2
Miles

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
<u>Example:</u> ADD: NEW ITEM ANNUAL EXPENDITURES LESS: TOTAL NEW ITEM ANNUAL REVENUES =NEW ITEM NET TAX RATE IMPACT PROJECTION		\$0 \$0 \$0	\$1,236 \$0 \$1,236	\$1,236 \$0 \$1,236	\$1,236 \$0 \$1,236	\$1,236 \$0 \$1,236
New Program Impact to the Mil Rate	\$0.0000	\$0.0000	\$0.0002	\$0.0002	\$0.0002	\$0.0002
New Program % Impact on Mil Rate	0.0000%	0.0000%	0.0014%	0.0014%	0.0014%	0.0007%
Mil Rate Including New Program	\$11.3400	\$22.4800	\$11.3402	\$22.4802	\$11.3402	\$22.4802

Notes: The CIP impact will begin in FY 22 and will last for the 20 year life of the bond.
There are no annual revenues or start up expenses.

TEDOCS #: _____

CT#: _____

CSN#: _____

Program: _____

MAINE DEPARTMENT OF TRANSPORTATION UTILITY RECEIVABLE AGREEMENT

(MaineDOT Use Only)

Project Location: <u>Portland & Westbrook</u>	Estimated Agreement Amount: \$ <u>\$15,750.00</u>
State WIN #: <u>23709.00</u>	Vendor Customer #: _____
Federal Aid Project #: <u>2370900</u>	MaineDOT Signed Date: _____
	Forecasted Agreement End Date: <u>12/31/2021</u>

THIS AGREEMENT, entered into the last date signed herein at the end of this agreement, between the **Maine Department Of Transportation** (hereafter the “Department”) and the **City of Portland**, duly authorized and existing under the Laws of the State of Maine and having an office in the City of Portland, County of Cumberland (the “Utility”) (the Department and the Utility are collectively referred to as the “Parties”).

1. The Department is implementing a transportation project identified as “Federal Aid Project Number 2370900; WIN: 23709.00 (the “Project”) for highway improvements in the City of Portland, Cumberland County;

2. In connection with the Project, the Department has prepared plans and specification for the Project that resulted in the following determination:

 X The Department has identified the locations of existing utility facilities owned and maintained by the Utility and lawfully installed within the limits of the public highway right-of-way and the impact limits of the Project that must be relocated to accommodate the Project (the “Affected Facilities”);

3. The Affected Facilities consist of Sewer System Manholes;

4. The Utility has prepared and provided to the Department the scope of work necessary for relocating or installing the Affected Utilities (the “Utility Work”) and the estimated costs associated therewith, which are outlined in **Appendix A**, attached hereto and made a part hereof. The costs associated with the Utility Work are the sole responsibility of the Utility.

5. The Parties wish to establish a process for including the Utility Work in the Department's construction contract for the Project.

NOW, THEREFORE, the Parties agree as follows:

6. Plans, Specifications and Estimate:

- a. The Utility shall, at its own expense, perform and provide all engineering, design and related services related to the Utility Work necessary to enable the Department and/or its consultant to generate construction plans, specifications and an estimate of material quantities for the Utility Work to be included in the Project contract. The Utility will be responsible for locating and recording the location of all Utility Work, including services and other appurtenances within the Project area. To the extent possible and consistent with laws, practices and policies of the Department and the industry, the Utility Work shall be performed in accordance with the plans and specifications provided by the Utility and, if applicable, the most recent version of the Department's Standard Specifications.
- b. All plans shall be on sheets of the same size used by the Department and be reproducible by black and white printing. Specifications shall be on 8 ½ x 11-inch paper, suitable for binding with the Department's specifications. The estimate of quantities shall be in the form prescribed by the Department. In the event of field changes to the Utility Work, the Utility shall prepare any additional plans and specifications and the Department shall prepare a Project change order and amend this Agreement incorporating any changes therein. All plans and specifications will be marked with the Federal Aid Project Number referenced in this Agreement.
- c. The Utility will provide the Department with the plans, specifications and an updated estimate as described in Appendix A no later than one month prior to the scheduled advertise date for the Project.
- d. The Utility shall be responsible for obtaining a Utility Location Permit from the Department in accordance with Title 35-A M.R.S.A. Chapter 25 and for recording the location of all utilities in a manner and form to be specified by the Department.
- e. **Standard Approach:** The Department will prepare the Project contract documents to include the Utility Work specified in Appendix A. The Utility agrees to have these items included in the Department's Project construction contract. Bidders will be required to bid both the Project work and the Utility Work. The Utility Work will be paid for by the Utility, and any changes that increase the Utility Work estimate or amount will be paid for through a written modification of this agreement approved by both the Utility and the Department.

7. Inspection:

- a. The Utility shall be responsible for providing all engineering and inspection associated with the Utility Work including computing quantities for payment and other incidental and related work unless otherwise stated herein. By the end of each work day, whenever Utility Work is performed, the Utility will provide the Department's on-site representative with an itemized summary of all the Utility Work completed.
- b. The Department shall provide inspection of the quality and compaction of backfill installed in connection with the construction contract, excluding bedding and other special backfills and materials used in the installation of the Utility Work.
- c. If the Utility Work is included in the Project contract pursuant to Section 6.e. above, the Utility agrees to the following:
 - i. Should the Utility find the Project contractor's materials or workmanship to be insufficient in any way, the Utility agrees to inform the Department's on-site representative as soon as possible, but no later than the end of the day in which the problem is identified.
 - ii. As administrator to the construction contract, the Department's on-site representative shall be responsible for authorizing all payments relating to the Utility Work, issuing all directives to the Project's contractor and making the final determination in the event of any disagreements.

8. Ownership of Completed Utilities: Upon completion of the Utility Work the Utility shall assume complete ownership of, and responsibility for, the utility facilities installed in connection with the Utility Work.

9. Claims: The Utility shall be responsible for the prompt review and settlement of any claims arising from or related to the Utility Work or its impact on the Project.

10. Indemnification: The Utility shall indemnify, defend and hold harmless the Department and its officers, employees, agents and assigns, from and against any and all claims, liability or expenses, including but not limited to reasonable attorney's fees and litigation costs (the "Claims"), to the extent such Claims are caused, or alleged to have been caused, by acts or omissions of the Utility or any of its officers, employees, agents, representatives, supervisors, contractors, subcontractors or consultants in connection with the performance of its obligations under this Agreement. Nothing in this Agreement is intended or shall be construed to waive any defense, immunity or limitation of liability that may be available to the Department or the Utility pursuant to the Maine Tort Claims Act (14 M.R.S. § 8101 *et seq.*) or any other privileges or immunities provided by law. The terms outlined in this section shall survive any termination or expiration of this Agreement.

11. **Buy America Requirements:** This agreement is subject to the requirements of Buy America in accordance with Federal Regulation 23 CFR 635.410 Section 1518. Specific requirements are presented in MaineDOT Standard Specification Section 100, Appendix A, Section 3.A., Buy America which are incorporated and made a part hereof by reference.

12. **Subsequent Excavations and/or Installations:** Except in the case of an emergency, the Utility acknowledges and agrees to refrain from applying for a permit for the excavation of the highway within the limits of the Project for a period of at least (3) years following the completion of the Project, and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any municipal government under the provisions of 23 M.R.S.A. § 3351. In all cases, whether an excavation moratorium as described above applies, or as in the case of Light Capital Paving projects where no excavation moratorium applies, the Utility further acknowledges and agrees that all subsequent excavations and/or installations within the right-of-way of the Project limits shall be regulated and controlled in the manner specified by the most recent version of the Department's *"Utility Accommodation Rules"*, which are incorporated and made a part hereof by reference. The terms outlined in this section shall survive any termination or expiration of this Agreement.

13. **Non-Appropriation and Termination:** Anything herein to the contrary notwithstanding, the Utility acknowledges and agrees that, although the execution of this Agreement by the Department manifests the Department's intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this Agreement does not create any obligation on behalf of the Department in excess of such appropriations. In the event of unanticipated impacts on the Project, such as, changes in the Project design, or a loss in Project funding, or a delay in advertising or awarding of the contract, the Department may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Utility and in no event shall any such action be deemed a breach of contract.

14. **Payment:** If the Utility Work is included in the Project contract pursuant to Section 6.e. above, the Utility agrees to reimburse the Department for the full amount of the cost of the utility work. A detailed breakdown of the anticipated cost of the Utility Work is attached hereto and incorporated herein as Appendix A. The Department will issue a final invoice after all the Utility Work is complete, all quantities are verified, and any required adjustments have been made. The Department, at its sole discretion, may issue periodic invoices for portions of the Utility Work as it is being completed. The final invoice will include any remaining costs or credits. The Utility shall submit payment to the Department within 30 days from the invoice date.

15. Contact Information:

For the Department:

Name: David Lycette

Address: Maine DOT
16 State House Station

E-mail: david.lycette@maine.gov

Telephone: (207) 592-1378

For the Utility:

Name: Lauren Andersen, P.E.

Address: City of Portland
212 Canco Road
Portland, ME 04103

E-mail: landersen@portlandmaine.gov

Telephone: 207-874-8844

16. No Relief of Responsibilities: Nothing in this agreement is intended, nor shall be interpreted, to relieve the Utility of any responsibilities or duties imposed upon it by law.

IN **WITNESS WHEREOF**, the Parties hereto have executed this Agreement effective on the date last signed below.

CITY OF PORTLAND

By: _____

Print Name: _____

Title
Duly Authorized

DATE: _____

**STATE OF MAINE
DEPARTMENT OF TRANSPORTATION**

By: _____

Print Name: _____

Title
Duly Authorized

DATE: _____

APPENDIX A
PROJECT SCOPE

MAINE DEPARTMENT OF TRANSPORTATION
UTILITY RECEIVABLE AGREEMENT

CITY OF PORTLAND – DEPARTMENT OF PUBLIC SERVICES
(Route 25, 25B and Larrabee Road)

FEDERAL AID PROJECT NO. 2370900
STATE PROJECT IDENTIFICATION NUMBER (WIN) 23709.00

Project Scope: Lower all sewer manholes on the project if needed for milling and raise all sewer manholes on the project after shim to match new final surface paving.

ESTIMATE OF UTILITY WORK:

Item #	Pay Item	Estimated Quantity /Unit	Unit Price	Utility Cost
812.162	Adjusting Sewer Manhole to Grade	9 Each	\$1,750.00	\$15,750.00
Total Cost:				\$15,750.00

ESTIMATED PAYMENT SCHEDULE:

Utility	Payment Amount	Estimated Invoice Date
City of Portland	\$15,750.00	After utility work is complete. On or after 7/1/2021.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: December 21, 2020

SUBJECT: **Order 152-20/21 Extending the Emergency Proclamation to May 10, 2021 -
Sponsored by Kate Snyder, Mayor**

SPONSOR: Mayor Kate Snyder

(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 extends to May 10, 2021 certain provisions in the ongoing emergency proclamation that have been in place since the beginning of the COVID-19 shut down.

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. Order Extending the Emergency Proclamation to May 10, 2020 1.4.2021
2. Amendment to Proclamation Re Extension of Emergency 9.9.2020
3. Winter 2021 Outdoor Dining Survey Results (1)

Prepared by:

Date: 12/21/2020

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER EXTENDING
THE EMERGENCY PROCLAMATION TO MAY 10, 2021**

ORDERED, that the Proclamation Declaring the Continued State of Emergency and Requirement to Stay at Home, issued by the City Manager Jon P. Jennings on March 24, 2020, and renewed, extended, and amended by the Portland City Council on March 30th, April 13th and April 27th, 2020, repealed with certain provisions retained on May 4, 2020, amended and extended as Order 177-19/20, amended and extended as Order 10-20/21 to September 9, 2020, amended and extended as Order 85-20/21 on September 9, 2020 to October 19, 2020, and amended and extended to January 4, 2021 by Order 114-20/21, is hereby amended to extend the State of Emergency to May 10, 2021; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute any related documents necessary or convenient to carry out the intent of this Order.

EMERGENCY PROCLAMATION

WHEREAS, there is currently an outbreak of novel coronavirus disease 2019 (“COVID-19”), a respiratory illness, first detected in Wuhan City, Hubei Province, China, and it continues to expand to a growing number of international locations, including the United States; and

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services announced a nationwide public health emergency to respond to COVID- 19; and

WHEREAS, on March 11, 2020, the World Health Organization (the “WHO”) declared that global health crisis involving COVID-19 is a pandemic; and

WHEREAS, on March 12, 2020, the State of Maine identified and confirmed its first case of COVID-19; and

WHEREAS, on March 13, 2020, the City of Portland, Maine identified and confirmed its first case of COVID-19; and

WHEREAS, on March 16, 2020, the City of Portland declared an emergency and issued an emergency proclamation wherein in, among other things, restaurants and bars were to be closed for in-person gatherings and only open for take-out dining; and

WHEREAS, COVID-19 has been detected in millions of people worldwide and is primarily spread from person to person; and

WHEREAS, COVID-19 is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety; and

WHEREAS, on December 22, 2020, Governor Mills extended the Maine Proclamation of the State of Emergency for another 30 days through to January 21, 2021;

WHEREAS, the Portland City Council deems it proper and necessary to temporarily suspend certain provisions of the Portland City Code of Ordinances relating to traffic,

outdoor dining and retail service, and parking in City streets for the purposes of allowing businesses to reopen or continue operating without undue hardship while also maximizing physical distancing;

NOW THEREFORE, BE IT ORDERED, that the Mayor and City Council of the City of Portland, do hereby declare and order as follows:

1. A civil state of emergency continues to exist within the City of Portland.
2. This Proclamation is issued in accordance with, and hereby incorporates by reference, Governor Mills' FY 19/20 Executive Order Numbers 14, 19, 28, 34, 49, 50, 53, 55, 56, and 57, and FY 20/21 Executive Orders 1 to 19, as amended from time to time, and any other Executive Orders hereinafter issued by the Governor relating to Covid-19 and that, by their terms, are applicable to individuals and businesses within the City of Portland, and any interpretive guidance issued by the State regarding those Orders including, but not limited to, the implementation of the State's Restarting Plan, which are all also hereby incorporated into this Order by this reference.
3. For the duration of this proclamation, and except as expressly stated herein, all provisions of the City Code permitting dogs to be off leash and under voice control on public streets or publicly owned or publicly accessible property are suspended during the hours between 10:00 a.m. and 5:00 p.m. All dogs on any public street or publicly owned property must be controlled by a leash of not more than the specified lengths permitted under Chapter 5 of the Portland City Code for particular parks or publicly owned property during those aforementioned hours, except that dogs shall continue to be permitted to be under voice control in the Ocean Avenue Dog Park and the Valley Street Park.
4. The laws and rules outlined in the Land Use Code, including, but not limited to, the Site Plan, Subdivision, Historic Preservation Ordinance, and other procedures applicable to the City planning and land use application and review processes contained in Chapter 14, to the extent they impose limitations on the amount of time permitted for the holding of public hearings, the certification of applications, the holding of neighborhood meetings, the submission of recommendations, any required or necessary voting, the taking of final actions, and the issuance of determinations, are suspended, and any such time limitations are tolled for the duration of this Proclamation.
5. The neighborhood meetings required in Chapter 14 of the City Code may be conducted by an applicant remotely through telephonic, video, electronic or other similar means of remote participation under the following conditions:
 - A. Notice of the neighborhood meeting has been widely given to the parties required by the City's code to receive notice by electronic, telephonic, or other

means and includes the method by which the public and interested parties may attend;

- B. The applicant and all individuals speaking on behalf of the applicant in the remote meeting are able to hear and speak during the meeting and members of the public attending the remote meeting are able to hear the applicant and its representatives; and
 - C. Members of the public attending the remote meeting are able to participate through telephonic, video, electronic or other similar means of remote participation.
- 6. For the duration of this Proclamation, unless earlier rescinded by the City Council, the City Manager may suspend, by written agreement with a person, entity, or service provider providing emergency and essential services, suspend the rules and laws relating to Buildings and Building Regulations (Chapter 6), Licenses and Permits (Chapter 15), and Fire Prevention and Protection (Chapter 10) for all projects or properties undertaking temporary emergency and essential services during the duration of the declared State and City State of Emergency. Any agreement shall outline programmatic details and demonstrate, to the Manager's satisfaction, that the property and land use being undertaken meets minimum life safety requirements and that the suspension of the rules and laws suspended hereunder and otherwise applicable will not unduly impact the health and safety of the public.
 - 7. No City-issued permit, license, application, or appeal shall be considered granted, approved or denied, constructively or otherwise, due to a failure of the permit granting authority to act within the time required by a City ordinance, bylaw, rule or regulation; provided, however, that the permit granting authority acts within 45 days of the termination of this Proclamation; provided, however, that the applicant and Permit Granting Authority may agree to alternative timing in writing.
 - 8. This Order is enacted as an emergency, and shall remain in effect through May 10, 2021.
 - 9. The City Manager in consultation with the City's Traffic Engineer is hereby authorized to temporarily close certain non-arterial streets to through traffic as necessary to protect the health and safety of pedestrians, employees and patrons of local businesses, and other members of the public, including by promoting effective physical distancing. The City Manager or his designee may promulgate rules and regulations relating to these temporary street closures as necessary to protect public health and safety.
 - 10. Beginning on June 1, 2020 and continuing through the termination of this Emergency Proclamation, whichever comes first, City ordinances and regulations related to the operation and licensing of dining and retail services shall be temporarily suspended in order to allow display, storage, or sale of merchandise and sale, service, and

consumption of food and/or drinks, including alcoholic beverages, in certain temporary outdoor areas on public and/or private property subject to the following:

- All retail or food establishment operations must be in accordance with existing ordinances and licensing requirements unless the Department of Permitting and Inspections has issued a temporary permit or extension of existing permit pursuant to the authority granted herein.
- Food service establishments with frontage on City streets closed to through traffic by the City Manager may be authorized to add or expand their premises with outdoor dining in sidewalks, portions of street rights-of-way, or other public spaces by obtaining a Temporary Extension of Premise and/or Temporary Outdoor Dining Permit in accordance with temporary rules and regulations adopted by the Department of Permitting and Inspections.
- Any food service establishment may apply for a Temporary Extension of Premise and/or Temporary Outdoor Dining Permit authorizing outdoor dining on City sidewalks, parks, or in privately owned parking lots in accordance with temporary rules and regulations adopted by the Department of Permitting and Inspections.
- The number, and location, and permitting fees for dining facilities in dedicated City parking spaces (“Parklets”) will be governed by rules and regulations promulgated by the City Manager.
- The City Manager is hereby temporarily authorized to modify the City’s Traffic Schedule in order to change designated “parking” spaces to “no parking” spaces as he, in consultation with the City’s Traffic Engineer, deems necessary and appropriate to protect the public health and safety, including in order to allow the operation of additional Parklets throughout the City.
- Access required under the Americans with Disabilities Act shall be maintained.
- In order to allow retail establishments to improve physical distancing capabilities after resuming operations, retailers may apply for a Temporary Sidewalk/Street Sale Permit authorizing outdoor display and sale of retail items in accordance with temporary rules and regulations adopted by the Department of Permitting and Inspections.
- No street artists shall be permitted on any City street closed to through traffic under the authority granted herein. The City Manager may modify regulations governing street artists, including placing limits on location and operation, as he may deem necessary in order to maximize appropriate physical distancing in compliance with guidance from the Maine CDC, and to protect public health and safety.

- The Permitting and Inspections Department may grant permits for temporary structures on City property in connection with a permit issued pursuant to this order and regulations thereunder. Structures must comply with all applicable, building, life safety, and other requirements.
11. The City Manager or his designee is authorized to temporarily modify or limit public access to City parks or other grounds as deemed necessary to protect the public health and safety. The City Manager is further authorized to modify existing rules and regulations relating to the sale of food and the operation of food trucks.
 12. Violation of or failure to comply with this Order is punishable by a fine of \$500.00 per occurrence plus the costs of prosecution.
 13. If any provision of this Proclamation or its application to any person or circumstance is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Proclamation are severable.

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 EXTENDING
THE EMERGENCY PROCLAMATION TO OCTOBER 19, 2020

ORDERED, that the Proclamation Declaring the Continued State of Emergency and Requirement to Stay at Home, issued by the City Manager Jon P. Jennings on March 24, 2020, and renewed, extended, and amended by the Portland City Council on March 30th, April 13th and April 27th, 2020, repealed with certain provisions retained on May 4, 2020, amended and extended as Order 177-19/20 and amended and extended as Order 10-20/21 to September 9, 2020 is hereby amended to extend the State of Emergency to October 19, 2020; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute any related documents necessary or convenient to carry out the intent of this Order.

EMERGENCY PROCLAMATION

WHEREAS, there is currently an outbreak of novel coronavirus disease 2019 (“COVID-19”), a respiratory illness, first detected in Wuhan City, Hubei Province, China, and it continues to expand to a growing number of international locations, including the United States; and

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services announced a nationwide public health emergency to respond to COVID- 19; and

WHEREAS, on March 11, 2020, the World Health Organization (the “WHO”) declared that global health crisis involving COVID-19 is a pandemic; and

WHEREAS, on March 12, 2020, the State of Maine identified and confirmed its first case of COVID-19; and

WHEREAS, on March 13, 2020, the City of Portland, Maine identified and confirmed its first case of COVID-19; and

WHEREAS, on March 16, 2020, the City of Portland declared an emergency and issued an emergency proclamation wherein in, among other things, restaurants and bars were to be closed for in-person gatherings and only open for take-out dining; and

WHEREAS, COVID-19 has been detected in millions of people worldwide and is primarily spread from person to person; and

WHEREAS, COVID-19 is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety; and

Whereas, on September 2, 2020, Governor Mills extended the Maine Proclamation of the State of Emergency for another 30 days through to October 1, 2020;

WHEREAS, the Portland City Council deems it proper and necessary to temporarily suspend certain provisions of the Portland City Code of Ordinances relating to traffic, outdoor dining and retail service, and parking in City streets for the purposes of allowing businesses to reopen or continue operating without undue hardship while also maximizing physical distancing;

NOW THEREFORE, BE IT ORDERED, that the Mayor and City Council of the City of Portland, do hereby declare and order as follows:

1. A civil state of emergency continues to exist within the City of Portland.

2. This Proclamation is issued in accordance with, and hereby incorporates by reference, Governor Mills' FY 19/20 Executive Order Numbers 14, 19, 28, 34, 49, 50, 53, 55, 56, and 57, and Fiscal Year 2021 Executive Orders 1 to 8, as amended from time to time, and any other Executive Orders hereinafter issued by the Governor relating to Covid-19 and that, by their terms, are applicable to individuals and businesses within the City of Portland, and any interpretive guidance issued by the State regarding those Orders including, but not limited to, the implementation of the State's Restarting Plan, which are all also hereby incorporated into this Order by this reference.
3. For the duration of this proclamation, and except as expressly stated herein, all provisions of the City Code permitting dogs to be off leash and under voice control on public streets or publicly owned or publicly accessible property are suspended during the hours between 10:00 a.m. and 5:00 p.m. All dogs on any public street or publicly owned property must be controlled by a leash of not more than the specified lengths permitted under Chapter 5 of the Portland City Code for particular parks or publicly owned property during those aforementioned hours, except that dogs shall continue to be permitted to be under voice control in the Ocean Avenue Dog Park and the Valley Street Park.
4. The laws and rules outlined in the Land Use Code, including, but not limited to, the Site Plan, Subdivision, Historic Preservation Ordinance, and other procedures applicable to the City planning and land use application and review processes contained in Chapter 14, to the extent they impose limitations on the amount of time permitted for the holding of public hearings, the certification of applications, the holding of neighborhood meetings, the submission of recommendations, any required or necessary voting, the taking of final actions, and the issuance of determinations, are suspended, and any such time limitations are tolled for the duration of this Proclamation.
5. The neighborhood meetings required in Chapter 14 of the City Code may be conducted by an applicant remotely through telephonic, video, electronic or other similar means of remote participation under the following conditions:
 - A. Notice of the neighborhood meeting has been widely given to the parties required by the City's code to receive notice by electronic, telephonic, or other means and includes the method by which the public and interested parties may attend;
 - B. The applicant and all individuals speaking on behalf of the applicant in the remote meeting are able to hear and speak during the meeting and members of the public attending the remote meeting are able to hear the applicant and its representatives; and
 - C. Members of the public attending the remote meeting are able to participate through telephonic, video, electronic or other similar means of remote participation.

6. For the duration of this Proclamation, unless earlier rescinded by the City Council, the City Manager may suspend, by written agreement with a person, entity, or service provider providing emergency and essential services, suspend the rules and laws relating to Buildings and Building Regulations (Chapter 6), Licenses and Permits (Chapter 15), and Fire Prevention and Protection (Chapter 10) for all projects or properties undertaking temporary emergency and essential services during the duration of the declared State and City State of Emergency. Any agreement shall outline programmatic details and demonstrate, to the Manager's satisfaction, that the property and land use being undertaken meets minimum life safety requirements and that the suspension of the rules and laws suspended hereunder and otherwise applicable will not unduly impact the health and safety of the public.
7. The laws and rules outlined in the Licenses and Permits Code (Chapter 15) and the Vehicles for Hire Code (Chapter 30), to the extent they impose deadlines for renewing existing licenses, taking action on applications for new or renewal licenses, or issuing new or renewal licenses are suspended, and any such time limitations are tolled for the duration of this Proclamation.
8. No City-issued permit, license, application, or appeal shall be considered granted, approved or denied, constructively or otherwise, due to a failure of the permit granting authority to act within the time required by a City ordinance, bylaw, rule or regulation; provided, however, that the permit granting authority acts within 45 days of the termination of this Proclamation; provided, however, that the applicant and Permit Granting Authority may agree to alternative timing in writing.
9. A City-issued permit in effect or existence as of March 16, 2020, including any deadlines or conditions of the permit, shall not lapse or otherwise expire and the expiration date of the permit or time period for meeting a deadline or for performance of a condition of the permit, shall be tolled for the duration of this Proclamation.
10. Effective immediately, and continuing for thirty (30) days after the expiration of this emergency proclamation, the City adopts an Affordable Rental Housing Incentive Program pursuant to which any person who holds a short term rental registration for a non-owner occupied short term rental unit pursuant to Sec. 6-150 et seq., is entitled to a one-time payment of \$1,000.00 so long as that person:
 - (a) relinquishes their short-term rental registration for that unit;
 - (b) registers the unit as a long-term rental (or has an existing long-term rental registration for that unit); and
 - (c) provides evidence to the Housing and Community Development Division that the person has entered into an agreement to lease the unit to a tenant for a minimum of one (1) year, and that tenant will be receiving either Section 8 funds or General Assistance funds for the unit. The \$1,000 payment shall be paid out of the Housing Trust Fund but shall not exceed a total of \$25,000. These funds shall be distributed on a first come first served basis.

The provisions of Chapter 14 of the Portland City Code governing approval of the Council's Housing Trust Fund Annual Plan are suspended to permit the temporary addition and funding of the Affordable Rental Housing Incentive Program to the Housing Trust Fund Annual Plan for the conversion of short-term rental dwelling units to rental housing units during the period beginning April 28, 2020 until thirty (30) days after the termination of this Proclamation.

11. This Order is enacted as an emergency, and shall remain in effect through October 19, 2020.
12. The City Manager in consultation with the City's Traffic Engineer is hereby authorized to temporarily close certain non-arterial streets to through traffic as necessary to protect the health and safety of pedestrians, employees and patrons of local businesses, and other members of the public, including by promoting effective physical distancing. The City Manager or his designee may promulgate rules and regulations relating to these temporary street closures as necessary to protect public health and safety.
13. Beginning on June 1, 2020 and continuing through either (1) the termination of this Emergency Proclamation or (2) November 1, 2020, whichever comes first, City ordinances and regulations related to the operation and licensing of dining and retail services shall be temporarily suspended in order to allow display, storage, or sale of merchandise and sale, service, and consumption of food and/or drinks, including alcoholic beverages, in certain temporary outdoor areas on public and/or private property subject to the following:
 - All retail or food establishment operations must be in accordance with existing ordinances and licensing requirements unless the Department of Permitting and Inspections has issued a temporary permit pursuant to the authority granted herein.
 - Food service establishments with frontage on City streets closed to through traffic by the City Manager may be authorized to add or expand their premises with outdoor dining in sidewalks, portions of street rights-of-way, or other public spaces by obtaining a Temporary Extension of Premise and/or Temporary Outdoor Dining Permit in accordance with temporary rules and regulations adopted by the Department of Permitting and Inspections.
 - Any food service establishment may apply for a Temporary Extension of Premise and/or Temporary Outdoor Dining Permit authorizing outdoor dining on City sidewalks, parks, or in privately owned parking lots in accordance with temporary rules and regulations adopted by the Department of Permitting and Inspections.
 - The number, and location, and permitting fees for dining facilities in dedicated City parking spaces ("Parklets") will be governed by rules and regulations promulgated by the City Manager.

- The City Manager is hereby temporarily authorized to modify the City's Traffic Schedule in order to change designated "parking" spaces to "no parking" spaces as he, in consultation with the City's Traffic Engineer, deems necessary and appropriate to protect the public health and safety, including in order to allow the operation of additional Parklets throughout the City.
 - Access required under the Americans with Disabilities Act shall be maintained.
 - In order to allow retail establishments to improve physical distancing capabilities after resuming operations, retailers may apply for a Temporary Sidewalk/Street Sale Permit authorizing outdoor display and sale of retail items in accordance with temporary rules and regulations adopted by the Department of Permitting and Inspections.
 - No street artists shall be permitted on any City street closed to through traffic under the authority granted herein. The City Manager may modify regulations governing street artists, including placing limits on location and operation, as he may deem necessary in order to maximize appropriate physical distancing in compliance with guidance from the Maine CDC, and to protect public health and safety.
14. The City Manager or his designee is authorized to temporarily modify or limit public access to City parks or other grounds as deemed necessary to protect the public health and safety. The City Manager is further authorized to modify existing rules and regulations relating to the sale of food and the operation of food trucks.
 15. For the duration of this proclamation, upon application, the City Manager may waive the licensing requirements of Chapter 4, Article III, Division II, regarding entertainment licenses, so long as he is satisfied that the applicant has taken sufficient steps to minimize the impact of such entertainment on surrounding properties and that the entertainment will not disturb public health, safety, or welfare.
 16. Violation of or failure to comply with this Order is punishable by a fine of \$500.00 per occurrence plus the costs of prosecution.
 17. If any provision of this Proclamation or its application to any person or circumstance is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Proclamation are severable.



CITY OF PORTLAND

Jon P. Jennings, City Manager

To: Mayor Snyder and City Council
From: Jon P. Jennings, City Manager
Date: December 29, 2020
RE: Winter 2021 Outdoor Operations Survey

To assist small businesses during the COVID-19 pandemic, the City has implemented an outdoor dining/retail program that allows businesses to continue to serve customers as safely as possible. Staff recommend an extension of the Emergency Proclamation allowing, among other things, businesses to continue to operate outdoors in order to ensure safe and continued operations during a challenging time.

As of December 29, 2020, approximately 57 small businesses hold permits to operate outdoors (on either public and private property) through January 4, 2021. To determine whether the small business community was interested in continuing to operate outdoors past January 4, staff distributed a survey in late December.

Survey Results *(as of December 30, 2020)*

- Response rate: 31.6%
- Of those who responded:
 - 61% are interested in continuing to operate outdoors after January 1, 2021

Anecdotal feedback provided by respondents is included below:

“People are dressing warmer just to have drinks outside [because] they still don’t feel comfortable inside yet.”

“Nothing works for us if the weather is really cold, wet or windy but weather permitting it helps us. Just being set up outside is drawing business to us. It may become impossible for us if we have a heavy snowfall this winter just because of the constant furniture moving.”

“We erected temporary shelters to protect people from the weather in a parklet and it has been a game changer for our business with nearly all revenue coming from the outdoor dining. We have

medical grade air purifiers, barriers, and social distanced tables inside and still nearly all our customers prefer to sit outdoors. Please continue the outdoor dining through the spring of 2021. I am using a generator to power heaters and lights but it would be enormously helpful to use a power box located adjacent to my parklet to provide power instead of a generator.”

“It takes a lot of time, energy and cost to keep switching gears. Now that we spent the money and time into setting up outside it would be so valuable to be able to continue right into spring instead of having to break everything down, lay everyone off and wait until next year. Indoor dining is not an option for us with such a small space. Being able to operate outdoors straight through into 2021 is a complete game changer for someone like us.”

“The outdoor dining was a great help into early December. However, our customers don't see it as an option with the onset of wintry weather. Perhaps start up again in April and May 2021?”

“Given that we had only until Nov. 1st, and then only until Jan 1st., we did not invest heavily in creating a suitable environment for outdoor dining. We have also noticed how much additional space has been allotted to businesses toward the eastern end of Middle Street - this has put us at an extreme disadvantage in this time of limited customers, limited business and limited resources. Please, if you're going to make changes, kindly give us more advance notice.”

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING MODIFICATION TWO OF THE AGREEMENT BETWEEN
THE MAINE DEPARTMENT OF TRANSPORTATION AND
THE CITY OF PORTLAND
RE: CONGRESS STREET TRAFFIC SIGNALS**

ORDERED, that the second modification of the Agreement between the Maine Department of Transportation and the City of Portland with WIN 018664 for additional federal funding for traffic signal upgrades on Congress Street from Fore River Parkway to Stevens Avenue 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: 20161011000000000190

CSN: 36622

TEDOCS #:

PROGRAM: Multimodal

MAINE DEPARTMENT OF TRANSPORTATION
Modification 2 to a Locally Administered Project Agreement
With the
City of Portland
Regarding
Advanced Traffic Management System on Congress Street

MaineDOT Use Only

Modified Agreement Amount: \$1,048,000.00

Federal Funds: \$412,950.00

State Funds: \$15,000.00

Local Funds: \$620,050.00

Agreement Begin Date: 10/06/2016

Modified End Date: 12/31/2022

Federal Authorization Date: 01/04/2016

Federal Project #: STP-1866(400)

MaineDOT WIN: 018664.00

Portland Vendor ID: VC1000073476

Portland DUNS Number: 07-174-780

CFDA #: 20.205

Modification 2 hereby amends an Agreement for a federal-aid project consisting of traffic signal upgrades on Congress Street in Portland that took effect October 6, 2016, as shown below.

ARTICLE 2. PROJECT FINANCES

- ☐ Section 2A UPSET LIMIT shall be modified to read as follows: The current estimated cost of the Project is **\$1,048,000.00** (Project Cost), to be shared as set out below.

Preliminary Engineering and Right of Way

Local		Federal		Total
25%	\$27,750.00	75%	\$83,250.00	\$111,000.00

Construction

Local		Federal		State	Total
67.00%	\$571,050.00	31.24%	\$265,950.00	1.76%	\$852,000.00

Construction Engineering

Local		Federal		Total
25%	\$21,250.00	75%	\$63,750.00	\$85,000.00

- ☐ Section 2B MAINEDOT SHARE shall be modified to read as follows: In the preliminary engineering, right of way and construction engineering stages, MaineDOT will contribute federal money at the rate of **75 percent**, up to a maximum of **\$147,000**. In the construction stage, MaineDOT will contribute federal funding at the approximate rate of **31.24 percent**, up to a maximum of **\$265,950.00**. Additionally, MaineDOT will contribute state funds to the construction stage of the Project at the approximate rate of 1.76 percent, up to **\$15,000.00**.

☐ Section 2C LOCAL SHARE shall be modified to read as follows: In the preliminary engineering, right of way and construction engineering stages, the City shall share in federally participating costs at the rate of **25 percent**, or an estimated **\$49,000.00**. In the construction stage, the City shall share in federally participating costs at the approximate rate of **67 percent**, or an estimated **\$571,050.00**. Additionally, the City shall be fully responsible for the following:

1. Costs exceeding the total of this Agreement, as shown in Section 2A above; and
2. Costs incurred before the original execution date of this Agreement.

ARTICLE 9. EXPIRATION

This section shall be modified to read as follows: This Agreement shall expire upon MaineDOT's payment of the final invoice from the City for the Project or **December 31, 2022**, whichever occurs first, except as follows:

1. Section 3Q, Maintenance, shall be enforced in accordance with Attachment 3 to the original Agreement.
2. Article 4, Records & Audit, shall remain in place until all activity pursuant to this provision is completed.
3. Section 5B, Confidentiality, shall remain in effect until negated by law.
4. Section 5C, Indemnification, shall remain in place until specifically terminated by the **Parties** or negated by law.

All other terms and conditions of the original Agreement shall remain in effect. **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

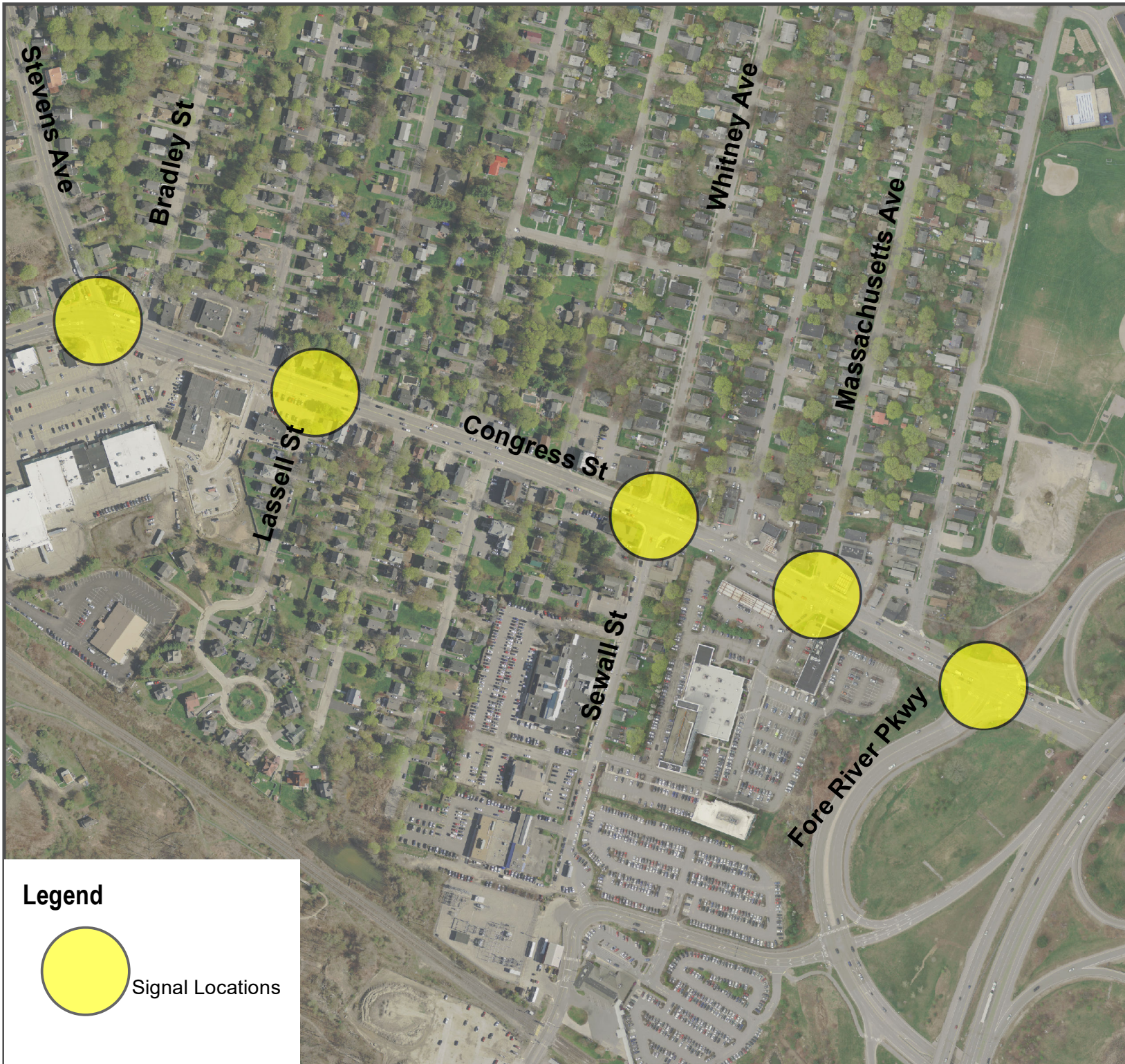
By: _____
Jon P. Jennings, City Manager *

By: _____
Jeff Tweedie, Program Manager *
Multimodal Program

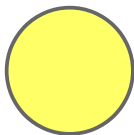
Date: _____

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.*



Legend



Signal Locations



CITY OF PORTLAND, MAINE
DEPT. OF PUBLIC WORKS

212 CANCO RD, SUITE B,
PORTLAND, MAINE 04103
PHONE (207) 874-8846 FAX (207) 874-8852

CONGRESS STREET SIGNAL UPGRADES

STEVENS AVENUE TO
FORE RIVER PARKWAY

December 2018



1 inch = 375 feet

0 125 250 500
Feet

FISCAL IMPACT NOTE New Program Cost Data:	Year 1		Year 2	
	City Rate	City / Sch Combined Rate	City Rate	City / Sch Combined Rate
Example:				
ADD: NEW ITEM ANNUAL EXPENDITURES		\$46,504		\$46,504
LESS: TOTAL NEW ITEM ANNUAL REVENUES				
=NEW ITEM NET TAX RATE IMPACT PROJECTION	\$46,504	\$46,504	\$46,504	\$46,504
New Program Impact to the Mil Rate	\$0.0059	\$0.0059	\$0.0059	\$0.0059
New Program % Impact on Mil Rate	0.0519%	0.0262%	0.0519%	0.0262%
Mil Rate Including New Program	\$11.3459	\$22.4859	\$11.3459	\$22.4859

Notes: The new item will begin on July 1, 2019 and will increase annual expenditures by \$75,000 per year of \$10,000 per year. Additionally the program will have startup expenses of \$20,000 in year 1 only.

Year 3	
City Rate	City / Sch Combined Rate
	\$46,504
\$46,504	\$46,504
\$0.0059	\$0.0059
0.0519%	0.0262%
\$11.3459	\$22.4859

with offsetting revenue

