ECONOMIC DEVELOPMENT COMMITTEE

DATE: Tuesday, April 20, 2021
TIME: 5:30 PM
LOCATION:Please click the link below to join the webinar:
https://zoom.us/j/93002473828?pwd=YVdmL1g4ZThhMS9Md3J2eHQzMzNBdz09
Passcode: 295064
Or One tap mobile :
US: +16465588656,,93002473828# or +13017158592,,93002473828#
Or Telephone:
Dial(for higher quality, dial a number based on your current location):
US: +1 646 558 8656 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900 9128 or +1 253 215 8782 or +1 346 248 7799
Webinar ID: 930 0247 3828
International numbers available: https://zoom.us/u/ad5qM05mRI

1. **Zoom Virtual Public Meeting Information**

   a. Please click the link below to join the webinar:
   https://zoom.us/j/93002473828?pwd=YVdmL1g4ZThhMS9Md3J2eHQzMzNBdz09
   Passcode: 295064
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   US: +16465588656,,93002473828# or +13017158592,,93002473828#
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   Webinar ID: 930 0247 3828
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2. **Review and accept Minutes from April 6, 2021, Committee meeting.**

   a. See attached draft meeting Minutes.

3. **Presentation and Committee discussion on the Rental Housing Advisory Committee 2021 Work Plan - Mary Davis**

a. See attached Memorandum and backup.

4. Public Hearing on the Portland Foreside Project Tax Increment Financing Credit Enhancement Agreement Request for Committee discussion and direction – Greg Mitchell

a. See attached memorandum and backup.
NOTE: Executive Session: Pursuant to 1 M.R.S.A 405(6)(C) and 5 M.R.S.A. 13119-A the Committee may go into executive session to provide staff direction on negotiations.

Next Meeting Date: May 4, 2021

Minutes

Remote Housing and Economic Development Committee

April 6, 2021

NOTE: This meeting was held via Zoom and can be viewed at this link: http://www.portlandmaine.gov/1695/Economic-Development-Committee These Minutes provide a record of those in attendance, general discussion taking place, and motions made.

A remote meeting of the Housing and Economic Development Committee (HEDC) of the Portland City Council was held on Tuesday, March 16, 2021, at 5:30 p.m. via Zoom. Present from the Committee was its Chair Councilor Spencer Thibodeau and members Councilors Pious Ali, Tae Chong, and Andrew Zarro. Also present from the City Council was Mayor Karen Snyder. Present from the City staff were Housing and Community Development Division Director Mary Davis, Associate Corporation Counsel Michael Goldman, Housing and Economic Development Director Greg Mitchell, Senior Executive Assistant Lori Paulette, and Housing Program Manager Victoria Volent.

Item #1: Zoom Meeting Information – no Committee action required.

Item #2: Review and vote on March 16, 2021, draft meeting Minutes.

On motion made by Councilor Chong, seconded by Councilor Zarro, the Committee voted unanimously (4-0) to accept the Minutes as published.

Item #3: Quarterly HEDC Work Plan Check-In – Postponed from the March 16th Meeting.

Mr. Mitchell summarized noting that this is intended to be a quarterly check in with the Committee, and the Work Plan in the packet, as approved at the January 19, 2021, Committee meeting has been red-lined to provide progress to date, as well as additional items the Committee has taken up.

Chair Thibodeau suggested that rules and regulations for delivery of food should be added to the Plan.

Councilor Zarro agreed, and thanked Mr. Mitchell for the update, noting that in three months the Committee has accomplished many items. He also suggested that local procurement policy be added to the work plan.

Mr. Mitchell noted the addition, adding that staff will follow Committee direction on prioritizing what should be brought to the top of list.

Chair Thibodeau suggested that for a meeting in May, the Committee could be updated on the local procurement policy, as well as the Rental Housing Advisory Committee, staffed by the Housing Division, and the Rent Board, staffed by the Permitting and Inspections Department.

Chair Thibodeau thanked Mr. Mitchell for this update, adding that if Committee members have additional items as we get further into the calendar year, they can be added.

Item #3: Public Hearing and Vote to recommend to the City Council proposed Purchase and Sale Agreement for City-owned property at 43/91 Douglass Street

Mary Davis noted this item is in front of the Committee with a staff request that the members of the Committee vote to recommend to the City Council approval of the proposed Purchase and Sale Agreement for the sale of City-owned property located at 43 and 91 Douglass Street. The development team, consisting of The Szanton Company and Maine Cooperative Development Partners, are in attendance. Ms. Davis provided a high level review of the rental housing and cooperative housing projects and noted key points in the agreement.

Chair Thibodeau indicated the Agenda includes the opportunity for the Committee to enter into executive session, and further noted the Committee has reviewed and discussed this project during earlier meetings.

Councilor Ali thanked Mary Davis. He also noted area median income levels and amounts should include the figure.

Chair Thibodeau asked if any members would like to go into executive session. Committee members declined.

Chair Thibodeau opened the meeting to public comment. Seeing no one, Chair Thibodeau closed the public comment period.

Councilor Chong indicated he is excited about the Purchase and Sale Agreement (PSA) for this historic sale; the City has not built land trust or cooperative housing in the Portland. It is wonderful these units will be built for the missing middle population, and this is a way to hopefully bridge the lifelong renter cycle by having people grow assets and having a fixed rent to rely upon. He hoped to see more in the future.

Councilor Zarro noted the cooperative model is really interesting and the level of excitement from public comment is indicative of the general support for it.

Chair Thibodeau thanked staff and the applicant. He noted there were two really good ideas for this space and either one of them would have made great projects. This project could set the stage for exciting opportunities in the future. He wished the developers an exciting path forward.

Mayor Snyder is happy to see this moving forward and thanked everyone for their work on it and is excited to see the progress.

On motion made by Councilor Chong, seconded by Councilor Ali, the Committee voted 4-0 to recommend to the City Council approval of the proposed PSA for City-owned property at 43/91 Douglass Street.

Item #4: Public Hearing and Vote to recommend to the City Council proposed Purchase and Sale Agreement for City-owned property at 21 Randall Street.

Mary Davis noted this item is in front of the Committee with a staff request that the members of the Committee vote to recommend to the City Council approval of the proposed PSA for the sale of City-owned property located at 21 Randall Street. Ms. Davis provided a high level review of the project and noted key points in the PSA.

Chair Thibodeau indicated the agenda includes the opportunity for the Committee to enter into executive session, and further noted the Committee has reviewed and discussed this project during earlier meetings.

Chair Thibodeau asked Committee members if they had any questions.

Councilor Ali asked, for the benefit of the public, why the purchase price is one dollar.

Mary Davis noted a purchase price was not built into the RFP with the idea the purchase price could be lower than market rate to allow for the construction of affordable housing. The Douglass Street property was different because there were costs associated with some Parks and Recs facility field work that needed to be done with the hope the sale of the property would help offset those costs. For 21 Randall, allowing the purchase price of the land to be one dollar is a way to allow for affordability; the purchase price of the units could be kept low because there is no cost associated with the purchase of the property.

Councilor Chong also noted, for one dollar, the City will receive 99 years of affordability on this difficult to develop parcel.

Councilor Zarro asked if the City expects a request for funding from the developer.

Mary Davis answered the City does not anticipate there would be a request for an AHTIF, but the proposal did note there would be a future request for Housing Trust Fund financing. Currently, the City has not received a formal request for funding.

Councilor Zarro asked if there is another example of a property selling for one dollar and asking for a credit enhancement agreement.

Mary Davis answered that a portion of the land on which Unity Village sits was a former City-owned parking lot. The City did invest other funds in the development of that property but not an AHTIF.

Chair Thibodeau asked if any member of the Committee would like to go into executive session. Committee members declined.

Chair Thibodeau opened the meeting to public comment.

Kenneth Capron (1375 Forest Ave) asked how does the public gain comfort that these transactions were at arms length and at fair value. How do we know this was not a contractor deal behind the scenes? Where these property considered for the shelter; if not, why not? What else do we have left for City owned property and what are we planning to do with it?

Brian Eng (33 Storer Street) is in favor of this project and indicated he supports using City owned land to make affordable housing projects financially feasible. He noted construction costs are at an all-time high as are housing costs. He applauds the tenacity of the Council and of staff to make things happen sooner rather than later; we really cannot afford to wait. These projects are crucial.

Chair Thibodeau closed the public comment period.

Chair Thibodeau noted this item (and others) received multiple public reviews.

Mary Davis indicated, regarding other City-owned property, staff continues to review other projects. For example an RFP has been issued for 622 Auburn Street. Staff is trying to manage the work flow before bringing forward any new properties for consideration.

Chair Thibodeau noted memos have been prepared depicting City-owned land for discussions regarding a shelter location. 21 Randall was on the list of city-owned parcels, however a shelter would not fit on this lot.

Chair Thibodeau thanked staff for their continued work on the goal of using City assets to create affordable housing (and home-ownership affordable housing). He also noted if the applicant should request a City subsidy, that request would come through the HEDC.

On motion made by Councilor Chong, seconded by Councilor Zarro, the Committee voted 4-0 to recommend to the City Council approval of the proposed PSA for City-owned property at 21 Randall Street.

On a motion made by Councilor Chong, seconded by Councilor Zarro, the Committee voted unanimously (4-0) to adjourn the meeting at approximately 6:20 p.m.

Respectfully, Lori Paulette and Victoria Volent

CITY OF PORTLAND
Housing and Economic Development Department
Housing and Community Development Division

TO: Councilor Thibodeau, Chair,
Members of the Housing and Economic Development Committee

FROM: Mary Davis, HCD Division Director
Housing and Economic Development Department

DATE: April 12, 2021

SUBJECT: Rental Housing Advisory Committee

Rental Housing Advisory Committee (RHAC)

The RHAC was established under Chapter 6 of the City Code (6-225). The committee has nine members (3 landlords, 3 tenants, one person not a landlord or tenant, one member experienced in landlord legal matters, one member experienced in tenant legal matters), each being appointed for a three-year term. The members must be residents of Portland except for the legal representatives who must either be a resident or work in the City of Portland. The City Council appoints the members. Southern Maine Landlord Association and Pine Tree Legal Assistance submit one name for consideration of the respective legal representative positions. The committee is co-chaired by one landlord and one tenant representative.

The ordinance requires that the committee meet not less than quarterly and assigns the following duties to the members of the RHAC:

1. **Provide the Housing Committee with recommendations or proposals for improvements, modifications, or changes regarding landlord and tenant policy issues;** and
2. Identify educational opportunities, seminars, and materials that would be useful to landlords and tenants.

Members of the RHAC have prepared the attached memo in order to facilitate a discussion with the Housing and Economic Development Committee regarding the RHAC work plan for 2021. With more guidance from the HEDC, the RHAC members feel they could make better use of their time.

MEMORANDUM

FROM: **Rental Housing Advisory Committee**

TO: **Housing and Economic Development Committee**

DATE: **March 22, 2021**

SUBJECT: **RHAC Committee Member Feedback**

INTRODUCTION:

What follows is a memo compiling and summarizing the views of the individual Rental Housing Advisory Committee (RHAC) members, provided at the Housing and Economic Development Committee's (HEDC) request. RHAC members were asked for their thoughts on the committee in general, and some potential ideas to explore in committee. Though this memo lists several potential ideas suggested by members, it should be noted that they are provided as examples only, and their inclusion herein does not mean that the RHAC officially recommends or endorses any of them. The RHAC expects to consider these and other ideas over the coming year and looks forward to working closely with the HEDC.

MEMO:

While the RHAC is composed of a diverse group of people with varying backgrounds amidst tenant and landlord relationships, the common thread is clear: the betterment of the relationship and communication between tenants and landlords in Portland.

Some members were hoping for more a Landlord/Tenant commission that would help resolve landlord-tenant conflicts by hearing cases and issuing decisions and orders. Others were hoping for a more policy driven committee to help meet the needs of our diverse community in an equitable and sustainable way.

Regardless, the issue in Portland remains – navigating how to live here can be confusing and difficult. Securing housing in Portland is marked with fear and uncertainty for many due to high rents and stories in the media of absent landlords not taking responsibility for their buildings. We need to cultivate a culture of affordability and caring, not only for buildings, but also for tenant wellbeing. Homeless, immigrant and service-industry workers in Portland deserve to live in this vibrant community, especially given how much they give to Portland. We not only want to advocate for policies that would improve the lives of all Portland renters, primarily low-income and homeless Portlanders, but also help the City of Portland streamline the guidelines for landlords and tenants, helping educate participants on compliance for rental programs, and bring their voice to the table.

Currently as a group, the RHAC is not truly representative of landlords in Portland (i.e. bigger developers and rental property owners) and we feel we're set up in more of an adversarial way, without much information on comprehensive data regarding the current rental market. These are all barriers to forward progress of our committee. The RHAC should be acting with the HEDC and City Council to promptly and substantively address concerns from the community and mitigate tensions between landlords and tenants, especially during this current climate.

The RHAC has several ideas for ways we can work together to help create some positive change in the community, including but not limited to:

- Recommend to City Council a formal comprehensive study of rental market so all parties can make informed decisions on where and how to focus efforts to aid tenants
- Work with Health Homes to update no smoking notices to include cannabis, as no smoking means no smoking of any kind.
- Create website notices of city ordinances for landlords and tenants (i.e. $30 maximum application fee, easy to understand information regarding violations and correction) that is up-to-date and easy to read for both parties. Maybe include a button on Portland's homepage for direct link to the latest information.
- Work with city and community lenders on a city guaranteed loan program with low interest rates or 10-year forgiveness for rental property owners regarding their property taxes or to repair items such as windows, decks and doors.
- Work with the city on no late fees or penalties for tenants or landlords after any moratorium is lifted.
- Work with the city zoning department to help disseminate information via virtual workshops regarding the application process for property owners to add accessory units to their property.
- Work on policy proposals. Some ideas for policy include:
    - a moratorium on evictions, late fees or legal actions as well as no rent increases during the pandemic and for 30-90 days after the State of Emergency has been lifted
    - recommending no negative credit reporting for tenants impacted by COVID
    - create educational materials for landlords and tenants on positive rent payment credit reporting
    - making affordable housing accessible for those who have or who are experiencing homelessness
    - increasing the requirements of the inclusionary zoning ordinance
    - an ordinance to require landlords to disclose to tenants the reason their application for housing is denied
    - building bridges with landlords and case managers to help Portlanders get and stay housed, helping keep people from becoming homeless
    - amend the ordinance creating the RHAC to enable the group to host educational events

- lobby the Housing Safety Office for increased tenant outreach and enforcement

Also for the HEDC's consideration, attached is information on a landlord/tenant mediation program that the New Hampshire courts recently launched. As with the other ideas mentioned in this memo, its inclusion here is not an indication that the committee recommends its implementation. It is included for informational purposes, and as an example of measures other places are taking to assist tenants and landlords with the challenging conditions created by the pandemic.

Given the diverse background of committee members, it is important to note that some committee members were not fully on board with some of the policy ideas. While there was consensus on a majority of the policy proposal ideas, the committee is interested in working on not only the suggestions noted within but other ideas as well.

We see the myriad of challenges facing the City of Portland's residents – both tenants and landlords – and we'd love to work with you to help solve them, through cooperation and direction across the various boards and committees.

Attachments: WMUR-9 Article on NH Courts' Landlord/Tenant Mediation Program
Info from NH Courts on Landlord/Tenant Mediation Program

From the New Hampshire Judicial Branch website on Landlord/Tenant Procedure:

> What's New? – On February 8, 2021, the Circuit Court is launching a landlord and tenant mediation pilot project in the Concord and Claremont Circuit Courts. Parties involved in eviction cases filed at the pilot courts will be referred to free, confidential and voluntary mediation sessions to their court hearings. All mediation sessions will be conducted remotely, using teleconferencing. Mediators are contracted through the New Hampshire Judicial Branch and are highly qualified professionals who facilitate discussions between parties and help promote a problem-solving atmosphere. Agreements in mediation can often be more flexible, and parties may discover solutions they did not know were available. If the parties reach an agreement, the mediator will help file it with the Court and likely will not need to return to court.
> Source: https://www.courts.state.nh.us/district/landlord.htm

What is landlord/tenant (LT) mediation?

LT mediation offers parties an opportunity to discuss and, if you choose, resolve your cases with the help of a neutral third-party (a mediator) in a private forum. If the parties reach an agreement, you can file it with the Court and likely will not need to return to court. LT cases eligible for mediation include evictions, noise complaints, unpaid rent, security deposits, property damage/repairs, nonrenewal of leases, etc. As with other court processes after the case is filed, mediation is free to parties.

How do I go to landlord/tenant (LT) mediation?

Currently landlord-tenant mediation is *only available* if the case originates in Concord Circuit Court or Claremont Circuit Court. As long as mediation times are available, the court will automatically schedule the case for landlord/tenant mediation once the tenant files an appearance.

Do I have to go through mediation?

Participation in mediation is voluntary. While some landlord/tenant cases are automatically scheduled for mediation, if you do not wish to mediate, you can complete a landlord-tenant mediation opt-out form, file it in court, and serve a copy on the other party. You are also not required to settle and can end mediation at any time. If you do not want to try mediation or do not settle, you will have a hearing on your case.

Who is the mediator and what do they do?

A mediator is a neutral third party who meets with you and ensures each party has an opportunity to raise concerns and be heard. Though some mediators are attorneys, they will not offer legal advice. Rather, mediators facilitate discussions between parties and help promote a problem-solving atmosphere. LT mediators are contracted through the New Hampshire Judicial Branch and are highly qualified professionals with extensive training in landlord/tenant law, conflict resolution, communication skills, and ethics.

What does mediation look like?

In mediation, you will call into a private, confidential conference line. At the start of a mediation session, the mediator will explain the process and answer any questions raised. The mediator will ask each party to share your views and describe what you would like to have happen. The mediator will then explore ways to resolve the matter that are acceptable to both parties. If an agreement is reached, it will be put in writing. You may review it with an attorney and sign it later, or sign it at the end of mediation. If you choose to sign it, the agreement will be presented to a judge who will review it and, if acceptable, approve the agreement. If an agreement cannot be reached between parties, the Court will schedule you for a hearing.

Why mediate?

Agreements in mediation can often be more flexible, and parties may discover solutions they did not know were available. Additionally, unless otherwise agreed upon by both parties, mediation is confidential and cannot be shared with the Court. This means that not even the judge can know what was discussed during mediation.

How long should I expect mediation to take?

Most cases are resolved within 30 minutes.

How much does mediation cost?

There is no additional cost for mediation. Mediators are compensated by the Judicial Branch Office of Mediation and Arbitration.

Source: https://www.courts.state.nh.us/adrp/district/llt/about.htm

New program aims to keep landlord-tenant disputes out of court

Pandemic causes backlog of eviction cases

By: Andy Hershberger, News Reporter with WMUR Channel 9 in Manchester, NH

MANCHESTER, N.H. — A new program is launching in the New Hampshire Circuit Court system that could help settle landlord-tenant disputes that have been exacerbated because of the COVID-19 pandemic.

Officials said the pandemic has caused a backlog of such cases, and the hope is that the pilot program will head off a surge in landlord-tenant cases that could flood the court.

The Emergency Mediation Project started Monday and is designed to help these disputes settle without a hearing before a judge.

"People come in, and they have the opportunity to talk to each other with the help of a trained, neutral third party, so they can come up with creative solutions during this and sort of talk about what's most important to them," said Margaret Huang, of the Office of Mediation and Arbitration.

There have several state and federal programs designed to prevent evictions during the pandemic. The latest from the Centers for Disease Control and Prevention is set to expire March 31. That's when Huang said things could get tricky.

"So, we think there are cases that are missing that would normally be filed during the period of time in which the moratorium has been in place that we think will re-enter the courts once the moratorium expires," she said.

Mediation will be offered for free, and the pilot program will start in Concord and Claremont. Huang said the program will hopefully handle about 12 cases a week and come up with rent or eviction solutions that work for both sides.

"We're hoping that not only will this settle cases, but it will also give people a sense of fairness and a resolution that really does benefit them," she said.

If it's successful, the program could expand to all circuit courts in the future.

Source: https://www.wmur.com/article/new-program-aims-to-keep-landlord-tenant-disputes-out-of-court/35452321

CITY OF PORTLAND
Housing and Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

To: **Housing and Economic Development Committee**

From: **Greg Mitchell, Housing and Economic Development Director**

Date: **April 15, 2021**

Subject: **Portland Foreside Project Tax Increment Financing District Request**

This Memorandum will provide you an overview of the Portland Foreside Project Tax Increment Financing (TIF) District and associated Credit Enhancement Agreement (CEA) Request, along with outlining impacts to the existing Waterfront TIF District.

I note that a Public Hearing is scheduled for this request at your April 20, 2021 meeting, but it is not presented for a vote. Instead, it is presented for Committee discussion and policy direction.

PORTLAND FORESIDE TIF CEA REQUEST

Terms of the Proposed Portland Foreside Project TIF District and CEA Request include:

- ***TIF capture rate*** to developer is 65% for twenty (20) years. This is consistent with City TIF Policy.
- ***Uses (by Developer) of TIF Revenue*** will be restricted to on-site infrastructure per the attached draft documents.
- ***Possible Uses (by City) of TIF Revenue*** could include the same uses included in the Waterfront TIF District (pier repair, Ocean Gateway associated debt, street improvements, pedestrian circulation improvements, dredging, economic development staff) or other uses permitted by State TIF Law. ***I note that reserving use of TIF revenue by the City would require increasing the TIF capture rate above 65%.***

TIF MECHANICS

The Waterfront TIF District includes the entire Portland Company site along, with other property along Portland's waterfront all the way to the West End. This TIF District ends June 30, 2032.

The Portland Foreside TIF District and associated CEA Request would require an amendment to remove the Portland Foreside Project site from the existing Waterfront TIF District.

Establishing a new TIF District and, in the case a Transit Oriented Development District, allows for the new TIF District to be established for the twenty years requested. One advantage of a Transit TIF District is that it will not be counted against State TIF law maximum amount of acreage and value limitations.

The City's upcoming revaluation will affect the estimates of total property tax revenue and TIF capture estimates provided in the attached documents.

SUMMARY AND NEXT STEPS

City staff is seeking direction regarding whether or not to proceed with negotiating the Portland Foreside TIF District and associated CEA Request.

I note that an executive session at your April 20, 2021 Committee meeting is scheduled should you want to discuss this request privately.

ATTACHMENTS (Draft documents provided by the applicant)

- Cover Letter from Foreside Development, together with:
  - Draft Portland Foreside Transited Development TIF District
  - Portland Foreside Transit TIF Property Projection Table
  - Draft Credit Enhancement Agreement between City of Portland and PF Developers LLC
  - Draft Fifth Amendment to the Waterfront TIF District
  - Map of TIF Project Area

FORESIDE/

April 14, 2021

Mr. Greg Mitchell
Director of Economic Development
City of Portland
Portland City Hall
389 Congress Street
Portland, ME 04101

Foreside Development
254 Commercial Street
Suite 118
Portland, Maine 04101

TEL / 207.517.1100
EMAIL / info@foresidedevelopment.com
WEB / foresidedevelopment.com

Re: 58 Fore Street | TIF & CEA Application
CONFIDENTIAL

Dear Greg,

Portland Foreside Development Company ("PFDC") respectfully requests the opportunity to present to the City of Portland's Housing and Economic Development Committee (HECD) a proposal for a Tax Increment Financing/Credit Enhancement package associated with the redevelopment of 58 Fore Street (the "Project"). We would like to provide you with the following update about the project as well as a full package for your consideration. The TIF project financial information has been provided within the included package.

58 Fore Street TIF/CEA update

- PFDC is currently underway with Phase 1 of our redevelopment project which includes Block 1 (Sun Life office building, retail space and parking), Building 12 (relocation of historic Building 12 to house a restaurant, office and residential units), extensive infrastructure and utilities and the creation of public pedestrian plaza spaces including grand stair connecting Fore Street to the Eastern Promenade Trail.
- The Phase 1 underway is a modified phase, reduced in scope, due to the COVID-19 pandemic. Coming out of this global pandemic, people in our community will want to be able to gather and be out safely in the City and our project will help facilitate and encourage this to happen.
- The Project is anticipated to include over 400 housing units, including 220 market-rate rental units awaiting a financing package for much needed housing supply to counter the increasing demand in Portland, which is driving rental rates higher.
- The Project has significant infrastructure needs that must be completed early on to prepare the site for additional vertical development. In 2008, the City of Portland invested in the Eastern Waterfront which has led to over 700,000 SF of development projects that have either been completed, or are ongoing today, including WEX, Covetrus, AC Hotel, Ocean Gateway Garage, Bay House 1 and 2, Mariott Residence Inn and Portland Harbor Common. This development density is providing a high level of return on tax dollars invested in infrastructure needed to enable that vertical development.
- The development that has occurred in the City of Portland has taken substantial time and investment – helping to set the groundwork now, so that the area is ready for the future components of a mixed use neighborhood, for which was have an approved Master Development Plan, is critical.
- PFDC has been in regular communication with our local delegation – the offices of Senator Collins and Senator King as well as DECD to discuss potential support that may result from COVID-19. All of these contacts have encouraged PFDC to leverage the City's TIF/CEA process.

As required by the City's TIF Policy, we would also like to highlight the number of quality permanent jobs and construction jobs that are associated with our project. In 2020, PFDC commissioned Camoin Associates to prepare an Economic Impact Study specifically for the redevelopment of 58 Fore Street which resulted in the following findings:

- Creation of approximately 2,591 construction jobs over the life of the project.
  - Construction earnings will be at approximately $200M
  - Tax revenue from construction: $9.9M to the City
  - Sales tax from construction: $13.4M for Maine

- Creation of approximately 3,411 permanent new jobs from businesses that open and operate on the property.
  - Annual earnings of $222M and annual sales of $678M from businesses located on the site
  - Sales tax of $12.6M and income tax of $6.6M to the State annually

We also understand that we need to demonstrate our ability to meet the requirements under Section B(3)(a) of the City's TIF Policy which includes:

- City Green Building Code
- State Prevailing Wage Requirements
- Equal Employment Opportunities & Nondiscrimination

PFDC would like to ask the HECD to please consider collaborating on a standard public private partnership in the form of a TIF/CEA package. The focus would be to capture enough revenue to support the infrastructure on the site, typically the municipality's responsibility.

Thank you for your consideration.

Sincerely,

Casey Prentice
Managing Partner
Portland Foreside Development Company

ECONOMIC DEVELOPMENT PROGRAM

CITY OF PORTLAND, MAINE

An Application for a Municipal Tax Increment Financing District

PORTLAND FORESIDE TRANSIT-ORIENTED MUNICIPAL DEVELOPMENT AND TAX INCREMENT FINANCING DISTRICT DEVELOPMENT PROGRAM

Presented To:
City of Portland Economic Development Committee

April 20, 2021

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Portland Foreside Transit-Oriented Municipal Development and Tax Increment Financing District Development Program

I. Introduction

The Maine Legislature established municipal tax increment financing ("TIF") as an economic development tool to be used by municipalities to: (a) provide new employment opportunities; (b) improve and broaden its tax base; and (c) improve the general economy of the State. The Legislature recognizes that the State and its municipalities benefit from a municipality's economic development partnership with a local business to promote responsible new development that (a) enhances local efforts for economic, industrial or commercial development; and (b) retains and expands the local tax base and employment opportunities. The Maine Legislature expanded the municipal TIF program to allow municipalities to create "transit-oriented" TIF districts to facilitate and promote economic development projects that link land uses with transit facilities to support and be supported by a transit system or systems. The City of Portland (the "City" or "Portland") previously adopted a transit-oriented development TIF district at Thompson's Point, and now can enter into another such an undertaking with PF Developer LLC, and related entities (the "Company") as a means to maximize the private investment dollars of the Company to accelerate and enhance the development potential and accomplish important public infrastructure projects.

The Portland City Council on March 18, 2002, designated the Waterfront Municipal Development and Tax Increment Financing District (as amended, the "Waterfront District") and adopted the Development Program for the Waterfront District (as amended, the "Waterfront Development Program"). The City has approved various amendments and added additional parcels since the original approval. The Waterfront District is set to expire on June 30, 2032. The Waterfront District includes a portion of the project to be undertaken by the Company.

The City now proposes to designate a new **Portland Foreside Transit-Oriented Development and Tax Increment Financing District** (the "District") and adopt this Development Program (the "Development Program") for the District that includes the Portland Foreside parcels and the Department of Transportation path and rail parcels in the vicinity of the Project . *[need City feedback about scope of district geography]* A list of included parcels is provided in Section II.C hereof. Concurrently, the City is amending the Waterfront District to remove the portion that comprises the Company's project. This new District would run for up to the maximum term of 30 years from July 1, 2021 through and including June 30, 2052 and possibly allow for the City not only to undertake the City project costs currently outlined in the existing Waterfront District Development Program but also additional transit-oriented City projects identified in Section II.D. hereof. It will also provide a unique opportunity to partner with the Company in undertaking a variety of projects that will benefit the City and the private development that would not otherwise be undertaken at all or as quickly.

The Portland Foreside development project is a proposed mixed-use development on approximately 10 acres along the City's eastern waterfront (the "Project"). The Company plans to develop the Project in a manner that includes a substantial investment in public infrastructure with the stated goal of helping members of the public pass from private project common spaces to publicly owned areas without noticing the difference. The Project is planned to include over 1.4 million square feet of residential development, office space, hotel lodging, restaurants, retail, a marina, parking and outdoor spaces. The current master plan includes a connection to adjacent lands owned by the City slated to be converted into waterfront public open space, connection to Fore Street, and will also provide access to and improvements for pedestrian trails and water frontage.

As will be described below in further detail, this Project is of such a scope and scale that the Company will be building a tremendous amount of infrastructure. For more routine-sized development projects, this infrastructure would be constructed and built by the City itself. ***These infrastructure projects include water, sewer, power, tel/data, storm drainage and catch basins, roads, sidewalks, transformers, improvements to the City's retaining wall supporting Fore Street, improvements to the seawall supporting the MDOT corridor that facilitates improved pedestrian access along the waterfront, street lighting, urban landscaping, urban furniture, urban trash/recycling facilities and services, urban wayfinding and information facilities, traffic signage and signaling, and all other utilities, services, and equipment typically constructed, owned and maintained by the municipality in an urban setting, and all financing costs, capital reserves, debt service costs and other costs and accounts typically and customarily associated with the ownership of common infrastructure assets by the City and/or other quasi-municipal entities providing utility services to the public related thereto. These improvements are anticipated to cost $209,500,000 over the first 20-year period.***

In addition, the current financial circumstances related to COVID-19 and the global health pandemic require that the Project partner with the City to undertake this significant infrastructure work, in order to make the project commercially viable. The project schedule and phasing has been adjusted to address the COVID-19 environment and the Project been forced to restructure the entire capitalization strategy in order to meet the needs of our tenant, Sun Life Financial.

The Portland Foreside development project was scheduled to close on $150M debt facility from an institutional debt fund in March 2020. This closing was structured in a way to deliver the capital required to construct an approximately 500,000SF Phase 1 that included an office building for Sun Life Financial, relocation and reuse of Building 12, preservation and adaptive reuse of the historic buildings into a public market, event space and office space, 14 residential units, and a 600-space parking garage. The collapse and volatility of the global financial markets in the middle of March due to COVID-19 led to the cancellation of our loan the week of the project's loan closing.

Recognizing the collapse of the construction lending environment, instead of terminating their lease, Sun Life Financial provided a 6-month extension to the project to allow the world time to adjust to COVID-19 and for the project to source a new source of debt financing. COVID-19 disrupted the liquidity of the debt markets in a manner comparable to the Great Recession. Furthermore, COVID-19 is testing legal contracts in the construction industry as projects were forced to stop work and have experienced significant mid-construction delays and cost increases that will affect legal precedence for Guaranteed Maximum Price (GMP) contracts. This combination, along with the continued uncertainty about further COVID-19 impacts, has led to a dramatic tightening of global capital markets and resulted in loan covenants and restrictions that dramatically impact the feasibility for continued site development without sourcing a means to pay down the loan balance in an amount associated with the infrastructure expenses currently underway.

In light of the continued COVID-19 impacts to the capital markets and business environment the Project was forced to delay the financing of a public food market, event space and additional office development as those three uses are among the most impacted by the COVID-19 pandemic. That in turn also postponed the financing of the 600-space parking garage, which is another of the most impacted uses as less people are commuting to work on a daily basis. In order to preserve the timeline with Sun Life Financial, the Project isolated the Sun Life office building, the reconstruction of Building 12 and infrastructure necessary for those uses and have pursued and secured debt financing for that standalone project. However, as a result of the tightened lending environment and the executed lease that does not allow for increased building revenues, the Sun Life Office building was not non-financially viable with the addition of infrastructure expenses. In order to remedy this loan to value imbalance, the lender required PFDC to pledge all of the vacant land as additional collateral. Therefore, in order to release that additional collateral, which would be required to further develop the site, PFDC must first pay down the loan to achieve the required loan to value ratio by the current construction lender.

The success of the Project on the modified schedule and phasing will serve as a crucial beacon of recovery following the public health crisis, producing significant public benefits for the City of Portland. Those public benefits are projected to include:

- ***Permanent Job creation*** estimates creating 3,400 permanent jobs, including the creation of nearly 1,000 high paying jobs related to the Sun Life Financial relocation to downtown Portland.

- ***Jobs supported during Development*** exceeding 2,500 jobs. With high current unemployment rates, construction-related jobs provide employment opportunities during a critical time when people and families are in need. These jobs will save homes, lessen the burden on the city and state and provide spending power to keep other small businesses operational

- ***Sales for Maine Vendors during Development*** in excess of $678 million.

- ***Private development project infrastructure investment totaling over $40 million*** of upfront capital expenditure including approximately 6 acres of publicly accessible common areas typically associated with municipal roadways and sidewalks including storm water systems, utilities corridors, common area lighting and all other infrastructure.

- ***Diverse housing supply of over 500 new housing units at the Project***, both for rent and for sale, which is specifically identified by the City as being a high priority development type. With new housing supply over the past 10 years being less than 10% of the City's Comprehensive Plan target, the cost of housing has surged creating an affordability issue. This development will add much needed housing supply to help balance the increasing demand, lowering the effective housing costs across the city.

- ***New total property tax revenue*** averaging an estimated $____ million annually associated with the Project's assessed value.

- ***Tax Shift Benefits*** averaging an estimated savings to the City of $___________ annually.

- ***Significant projected new sales per year for Maine businesses.*** $222 million in annual earnings and nearly $678 million in annual sales will result from economic activity generated by the Project, both from on-site operations and resident household spending.

II. Development Program Narrative

A. The Portland Foreside Project

The Portland Foreside development project consists of approximately 10 acres of real estate along the City's eastern waterfront at the former Portland Company complex. The Portland Foreside Transit-Oriented TIF District would be comprised of all of the approximately 10 contiguous acres of Portland Foreside parcels. This significant development project will generate revenues to serve many of the City's goals.

Portland Foreside has existed for decades as a dilapidated and vacant site that has been underutilized and experiences frequent criminal and vagrant activity. The Company proposes to redevelop the property to its highest and best use as an urban mixed-use site that adds vibrancy and pedestrian activity in line with the City's vision as stated in the City's Comprehensive Plan. The proposed plan for the redevelopment includes the following components on six development blocks on the property, as well as a marina:

Phase 1

Phase 1 was comprised of an ~16 acre marina called Fore Points Marina. While permitting for this complex project involved over 5 local, state and federal permits and began in 2014, construction commenced in 2018 and concluded in August of 2020. The project was awarded a highly competitive federal grant in the maximum amount allowed under the program of $1.7M. Fore Points Marina was awarded this grant due to it's dedication to transient berthing. Where downtown Portland had 2 transient berthing slips, Fore Points opened up the waterfront by adding 150 new slips, with over 1,000 linear feet of new transient berthing options. As a community made up of inhabited islands with seasonal populations of around 40,000, this added marine infrastructure is much needed and will increase the public's access to the waterfront and add vibrancy to the waterfront. Most notably, the increase in dockage helps alleviate pressure on the working waterfront wharfs, which started to price out the fisherman and other working waterfront uses. This increased dockage occurred in areas not previously used and therefore was truly additive to the waterfront community.

Fore Points Marina has spent millions of dollars on infrastructure related to power, water, sewer (federally mandated pump out facilities), tel/data and fuel infrastructure to support the use. Continued infrastructure is still needed to fully bring all of the utilities online, including increased power requirements via new underground lines and increased transformer sizes and a large waste station pump to connect the marina to a public sewer line located on the western half of the site.

Phase 2

The most western block referred to as Block 1A includes a 140,500 square foot class-A office building with ground floor retail and parking, and will serve as a new building for Sun Life Financial, Inc. Additionally, one of the most iconic historic Portland Company buildings, Building 12 (9,600 SF), will be reconstructed to the south of the Block 1 office building. Building 12 will have a ground floor restaurant, called Twelve, second floor office space and 3rd floor residential. In addition to the buildings, approximately $12M of infrastructure is included in Phase 2, which is necessary to bring utilities and services into the site to service the two new buildings. This infrastructure includes a grand staircase that connects the Munjoy Hill community to the waterfront via a new public access easement extending from Fore Street to the water's edge. The project has 3 distinct construction and design contracts – Block 1A, Building 12, and infrastructure. This project is under construction.

Phase 3

Adjacent and just to the east of Block 1A lies the seven remaining Portland Company buildings that make up the Portland Company Historic District, also often referred to as Block 2 or the Historic Core. The Historic Core is a celebration of Portland's industrial heritage. The Company has worked extensively with Greater Portland Landmarks, Maine Preservation, and the local Historic Preservation Board to dedicate roughly 1.5 acres surrounding Block 2 as a local historic district. Occupying 66,200 SF of the historic buildings will be the new 58 Fore Market Hall. This market will feature a highly curated and diverse group of local food and beverage entrepreneurs to provide a variety of prepared foods, produce, specialty goods, meats and seafood to make it a highlighted destination for locals and tourists alike. The upper floors of the historic buildings will feature approximately 16,000 SF of highly functional event space and 10,000 SF of office space. In addition to the historic buildings, the block is comprised of two alleys and two plazas both of which are being designed to provide an optimally engaging pedestrian experience, complete with outdoor seating and seasonal public programming.

Adjacent to the east of Block 2 lies Block 4 which will be a newly constructed 235,800 SF parking garage that holds approximately 600 cars with 10,000 SF of ground floor retail and 18,000 SF residential wrapping the west side of the building. As parking spaces have become a scarce commodity in downtown Portland, the garage offers a much-needed publicly accessible solution to reducing strain on the overburdened street parking. This parking is needed to support the continued development on site. Locals and tourists can commute to the site by car and park without oversaturating street parking throughout nearby neighborhoods.

Block 4 also includes the construction of 220 residential units over the parking garage and retail wrap. The residential multifamily apartment buildings will be set atop a structured parking foundation, wrapped with ground floor retail and street-level townhome units fronting on Fore Street, contextually relevant in scale to their neighbors across the street.

In addition to the publicly accessible plazas and alleys mentioned previously, other substantial infrastructure improvements to the site are required to deliver Phase 2 and Phase 3. These include the construction of an access road that runs from Block 4 across the site to connect into Thames Street as well as service vehicle channels throughout the site to enable trash removal and access for emergency vehicles. Additionally, a utility corridor to service the site, inclusive of water, sewer, storm water, electric, tel/data, natural gas, etc will be constructed under the access road and pedestrian plazas. The Company and the City are working cooperatively to optimize this utility corridor. Furthermore, various walkways, waterfront viewpoints and multiple stairways intended to provide pedestrian access into and through the site from the top of the Fore Street retention wall will be needed to ensure site accessibility and provide encouragement of multimodal means of transportation.

Phase 3 will include infrastructure costs associated with the collection of hardscape areas surrounding the buildings that will create a series of walkways and recreational areas intended for public enjoyment to enhance the economic activity of the area. Infrastructure improvements necessary for the completion of Phase 3 will be sizeable, including the extension of all utilities.

Prior to COVID, phases 2 and 3 were combined under a single loan facility that was ultimately terminated following the announcement of the State of Emergency on Friday, March 13, 2020. However, Phases 2 and 3 have a completed and fully approved Level III Site Plan with the city for a combined 443,000 SF of development. We anticipate revisions to that plan given design modifications resulting from COVID, however these phases are truly shovel ready.

<u>Phase 4</u>

Phase 4 will consist of several different components including a 3 story office building with ground floor retail located on Block 1B (approximately 55,000 SF), a hotel/condo project with ground floor retail on Block 5 (approximately 247,650 SF) and a commercial building on Block 3 (approximately 30,800 SF) that will hold restaurant/retail uses and potentially office space.

Phase 5

Phase 5 is comprised of the most eastern block on the site, referred to as Block 6, and will contain approximately 187,550 SF of mixed-use development. Due to its geographic position, it has a unique shape and dramatic grade changes which make this block likely to be the last phase of development. These attributes are architectural opportunities to create dynamic spaces both inside and out, offering future patrons and users a unique experience.

B. *The Transit-oriented TIF District*

A transit-oriented development is a type of development that links land use with transit facilities to support and be supported by a transit system. The Portland Foreside Project is situated within close proximity to several nearby neighborhoods including Munjoy Hill, Back Cove and Downtown. Through providing multimodal transit routes with the numerous walkway, plazas and streetscapes planned for the parcel within the District, the entire area becomes publicly accessible and navigable by environmentally friendly modes of transportation such as bikes, walking or running. The intention of offering highly functional pathways into, throughout and around the site is to encourage the community to travel to the site on foot or by bike to cut down on emissions, traffic, parking and create a healthier overall urban cityscape. The eastern promenade's current high-volume use shows the potential for curating multimodal transit routes. The walkway is active with pedestrians from the early morning until sunset all four seasons. Portland Foreside has designed site infrastructure to enable volumes exceeding the observed foot traffic to easily flow through the site and surrounding areas included in the District. Additionally, Fore Points Marina currently rents slips to many island residents in Casco Bay and facilitates both drop-offs and pick-ups for local water taxis. The marina is envisioned to continue to facilitate multi-modal transit for island residents seeking a private transportation alternative to the quasi-municipal Casco Bay Lines.

The District consists of a transit-oriented development area and a transit-oriented development corridor. A transit-oriented development area is an area of any shape such that no part of the perimeter is more than ¼ mile from an existing or planned transit facility. A transit-oriented development corridor is a strip of land of any length and up to 500 feet on either side of a roadway serving as a principal transit route. The District contains a transit-oriented development corridor that begins at the east end of the Eastern Promenade trail and continues through the Project and ends on the western side of the Portland Landing waterfront park for a total distance that exceeds 2000 feet.

The captured value will be calculated on only the new tax value generated within the District from Phased developments and will not affect the current property tax base.

The following properties comprise the TIF District designation and are subject to this application (see Exhibit B).

Plot Description	Land Owner	Land Plot	Square Footage	Acreage
Portland Foreside	PFDC	018-A001	269,182	6.18
	PFDC	018-A002	44,374	1.02
	PFDC	018-A003	125,017	2.87
	PFDC	019-A003	12,087	0.28
	PFDC	N/A*	2,247	0.05
		PFDC Total	*452,907*	*10.40*
DOT Path and Rail	State	018-A013	52,736	1.21
	State	019-A015	33,789	0.78
		Total	***53,943***	***12.39***

* Note that a small portion of Land Plot 019-A010 was purchased by the Company.

C. *The Development Program and Credit Enhancement Agreement*

By designating and adopting the Portland Foreside Transit-Oriented TIF District, the City will capture up to one hundred percent (100%) of the new assessed value created within the District over the original assessed value and retain the new tax revenues generated from the captured assessed value. During the up to thirty (30) year District term, the City will enter into a twenty (20) year credit enhancement agreement with a sixty-five percent (65%) allocation of the TIF revenues. The credit enhancement agreement will be for the express purpose of offsetting the significant costs associated with the infrastructure projects typically borne by the municipality that are required to facilitate private development. ***The Company is proposing to have the books and records associated with the uses of the Credit Enhancement Agreement proceeds to be reviewed by an independent accounting firm annually, with a copy of the reviewed financials sent to the City for full transparency.*** This CEA will benefit, enhance and accelerate the private development, while also bringing tremendous benefits to the City.

D. Municipal Use of TIF Revenues

The City of Portland will consider use from the remaining tax revenues generated from the TIF District, over and above what is allocated through the Credit Enhancement Agreement, for transit-oriented and other economic development projects that will expand and improve transit connections between Portland Foreside and key locations within Portland as well as certain transit projects through the City, and will promote economic development generally as presented in the following Project Cost table.

Possible Municipal Use of TIF Revenues Outside CEA – Project Cost Table

Note: All citations refer to Title 30-A, Chapter 206, Section 5225

Project	**Statutory Citation**	**Estimated Cost**
PREVIOUSLY APPROVED PROJECTS FROM WATERFRONT DISTRICT:		
In District: Capital Infrastructure Design and Investments, including financing costs, for example:		
Pier and Wharf Structural Repair	(1)(A)(1)(2)(3)(7)	$15,000,000
Local Match for Ocean Gateway Project	(1)(A)(2)	$1,000,000
Street Studies and Improvements (Remedy Traffic Congestion)	(1)(A)(1)(2)(3)(7)	$20,000,000
Pedestrian and Multi-Modal Circulation and Amenity Improvements	(1)(A)(1)(2)(3)(7)	$2,000,000
New Publicly Owned Pier	(1)(A)(1)(2)(3)(7)	$3,000,000
Multi-Modal Surface and Structured Parking	(1)(A)(1)(2)(3)(7)	$10,000,000
Utilities Infrastructure (for Commercial Development)	(1)(A)(1)(2)(3)(7)	$15,000,000
In and out of District: (a) Funding the Economic Development Department, including prorated salaries of City Manager, Finance, and Planning Urban Development Director and Planning staff;	(1)(A)(5) and (C)(1)	$50,000 Annually effective 7/1/2010 for 22 years, or $1,100,000 total. $750,000
(b) Workforce training funds. Costs of services and equipment to provide skills development and training, including scholarships to in-state educational institutions or to online learning entities when in-state options are not available, for jobs created or retained, of value to marine industry;	(1)(C)(4)	$250,000
(c) Costs of funding economic development programs or events;	(1)(C)(1)	$5,000,000
(d) Costs of funding environmental improvements projects for commercial use, including sea level adaptation studies and infrastructure improvements;	(1)(C)(2)	$1,000,000
(e) Professional services costs.		$5,000,000
(f) Dredging of commercial vessel berthing; and,	(1)(A)(4); 1(C)(1)	$5,000,000
(g) Dredge sediment disposal and CAD Cell development.	(1)(A)(1)(2)(7)	

NEWLY PROPOSED PROJECTS IN PORTLAND FORESIDE TRANSIT-ORIENTED TIF DISTRICT: ***[Will need City assistance to complete transit-related menu of uses for TIF revenues.]*** **In District:** **In and out of District:** *[Include regional and local transit costs and projects based on City feedback.]* *[Include Portland Harbor Common elements.]* **Total Estimate of TIF Revenue Expenditure over 30-year term:**	(1)(A) and (1)(C)(2)	**$__________ excluding CEA Projects**

Note: The City reserves its right to undertake its City project costs with municipal indebtedness if it chooses to do so.

E. Operational Components

1. Public Facilities.

Contributions from the Portland Foreside development project will result in a variety of important public improvements all identified in the project cost table in Sections II.B. hereof. Any improvements that continue to be privately owned will be the responsibility of private entities as applicable.

2. Uses of Private Property within District.

The Credit Enhancement Agreement will allow the Company to use TIF funds to continue to develop the Project by enabling the Company to release collateral from the bank financing Phase 2 by paying down the Phase 2 loan in the amount of the infrastructure expense (approximately $12M) and keeping the Loan to Value at bank approved levels commensurate with standard banking practices (maximum of 75%). Furthermore, financing the internal site infrastructure and common areas through the Credit Enhancement Agreement will enable Loan to Values for future phases to remain in commercially viable levels such that financing will be achievable. ***Without assistance through a TIF/CEA as proposed, no further development will be possible given the loan documents in place for Phase 2, which were put in place during the height of COVID in order to facilitate lease obligations for Sun Life Financial.***

3. Plans for Relocation of Persons Displaced by Development Activities.

There are no persons to be displaced by the District's development activities.

4. Environmental Controls

The Development Program proposes improvements that will comply with all federal, state, and local rules and regulations and applicable land use requirements; the results of any environmental diligence on the site as may be conducted by the Company shall be made available to the City for review upon request.

5. Proposed Operation of District

The Project will be developed by the Company, its successors, affiliates and partners, or assigns, who will be responsible for payment of all maintenance expenses, insurance, and taxes on the Project.

During the up to thirty-year life of the District, the City of Portland, City Council, or its designee, will be responsible for the administration of the District. The Company will be solely responsible for completion of the development project.

III. Physical Description

The District will be comprised of approximately 12 acres of property. Please see Exhibit A for an area map showing the site location of the District in relation to the municipal boundaries. Please see Exhibit B for a more detailed map of the District itself.

IV. Financial Plan

A. *Costs and Sources of Revenues*

The District comprises an area depicted on maps at Exhibit A and B and includes taxable real and personal property with an original assessed value of the original District of $_____

as of March 31, 2021 (i.e., April 1, 2020). The development within the District is estimated to add an additional $436,000,000 of new assessed real property taxable value to the City over time. This revenue is based upon preliminary construction cost estimates prepared in good faith by the Company and its consultants, which have been reviewed by the City Assessor, but final values may be higher or lower depending upon the ultimate cost of construction which may not be determined until the project is permitted, financed, and construction is complete. The Project is expected by be undertaken in phases as noted in Section II.A. above.

The attached Exhibit C details the projections based upon the anticipated assessed value increases within the District. Exhibit C is a projection based upon best available information and is included for demonstration purposes only. No assurances are provided as to the resulted reflected therein.

The Development Program provides for the new tax revenues generated by the increased in assessed value of the Phased improvements within District to be captured and designated as TIF revenues. The City will allocate the retained revenues to the economic development activities described in the Development Program.

B. *Development Program Fund*

The Development Program requires the establishment of the Portland Foreside Development Program Fund pledged to, and charged with, the payment of the project costs in the manner outlined in 30-A M.R.S.A. §5227(3).

The Portland Foreside Development Program Fund is established consisting of a Project Cost Account, which includes two sub-accounts designated as the "Credit Enhancement Agreement TIF Account" and "City Project Cost Account" pledged to, and charged with, payment of eligible project costs.

C. *Financial Plan*

As shown in Exhibit C, the development within the described District is expected add approximately $436,000,000 of new taxable property value in the City of Portland and the TIF revenues associated with such value will be allocated generally as follows:

Each year during the up to 30-year District term, the City will retain up to one hundred percent (100%) of the TIF revenues generated within in the District. Sixty-five percent (65%) of the TIF revenues will be paid to the Company through the CEA over its term of active twenty (20) years, which will be used to finance the anticipated costs of common infrastructure for the Project.

Actual payments to the Credit Enhancement Agreement TIF Project Cost Account and the City Project Cost Account will be determined based upon the actual increased assessed value retained within the District and by the terms of the Credit Enhancement Agreement. Taxes paid on any new value not captured in the District will flow to the City's General Fund, as in the normal course.

The District is to be established for up to a period of thirty (30) years.

V. Tax Shifts

In accordance with Maine statutes governing the establishment of Tax Increment Financing Districts, the tables set forth in Exhibit C identifies the tax shifts that are expected to result during the term of this District from the establishment of the District. A summary of the annual average tax shift impacts follows:

General Purpose Aid to Education Tax Shift:	$_______
Municipal Revenue Sharing Tax Shift:	$_______
County Tax Shift:	$_______
Total Average Annual Savings	$_______

VI. Municipal Approvals

A. Public Hearing Notice

The City of Portland gave proper Notice of Public Hearing in accordance with the requirements of 30-A M.R.S.A. Section 5226. Attached as Exhibit D, is a copy of the Notice of Public Hearing published in the *Portland Press Herald*, a newspaper of general circulation in the City on ___________, a date at least ten (10) days prior to the public hearing. The public hearing was held on ________, in accordance with the requirements of 30-A M.R.S.A. § 5226(1).

B. Public Hearing

A Public Hearing at which the Proposed Portland Foreside Transit-Oriented Development and TIF District and Development Program was discussed and held on _________, in the Portland City Council Chambers. A copy of the minutes of that meeting is included as Exhibit E.

C. Authorizing Votes

An attested copy of the Order of the Portland City Council designating the Portland Foreside Transit-Oriented Development TIF District and adopting this Development Program is included as Exhibit F.

D. Assessor's Certificate

A letter from the Tax Assessor of the City of Portland certifying the Original Assessed Value of the District is included as Exhibit G.

E. Statutory Requirements & Thresholds Form

A completed Department form is attached as Exhibit H to demonstrate the District complies with all applicable statutory requirements and thresholds.

EXHIBITS

Portland Foreside Transit TIF: CITY OF PORTLAND, MAINE

B1 Office; B1 Second Office; Historic Core; B3 Retail & Office; B5 Hotel (and parking pedestal); B5 Residential Condo (and parking pedestal); B4 Residential (and parking pedestal); B6 Residential Condo (and parking pedestal); and B7 Marina

TIF Year	Tax Year	Projected New Assessed Value	Percent of Value Captured in TIF	TIF District Captured Assessed Value	Projected Mil Rate 23.31	Total TIF Revenue	Company Common Infrastructure Credit Enhancement TIF Revenue Percentage	Company Common Infrastructure Credit Enhancement TIF Revenue	City Development Program Fund TIF Revenue Percentage	City Development Program Fund TIF Revenue
0	2021	$14,260,300	0%	$0	23.31	$0	0%	$0	0%	$0
1	2022	$58,563,600	100%	$58,563,600	23.31	$1,365,118	65%	$887,326	35%	$477,791
2	2023	$178,370,230	100%	$178,370,230	23.31	$4,157,810	65%	$2,702,577	35%	$1,455,234
3	2024	$315,533,040	100%	$315,533,040	23.31	$7,355,075	65%	$4,780,799	35%	$2,574,276
4	2025	$377,192,520	100%	$377,192,520	23.31	$8,792,358	65%	$5,715,032	35%	$3,077,325
5	2026	$406,865,358	100%	$406,865,358	23.31	$9,484,031	65%	$6,164,620	35%	$3,319,411
6	2027	$436,538,195	100%	$436,538,195	23.31	$10,175,705	65%	$6,614,208	35%	$3,561,497
7	2028	$436,538,195	100%	$436,538,195	23.31	$10,175,705	65%	$6,614,208	35%	$3,561,497
8	2029	$436,538,195	100%	$436,538,195	23.31	$10,175,705	65%	$6,614,208	35%	$3,561,497
9	2030	$436,538,195	100%	$436,538,195	23.31	$10,175,705	65%	$6,614,208	35%	$3,561,497
10	2031	$436,538,195	100%	$436,538,195	23.31	$10,175,705	65%	$6,614,208	35%	$3,561,497
11	2032	$436,538,195	100%	$436,538,195	23.31	$10,175,705	65%	$6,614,208	35%	$3,561,497
12	2033	$436,538,195	100%	$436,538,195	23.31	$10,175,705	65%	$6,614,208	35%	$3,561,497
13	2034	$436,538,195	100%	$436,538,195	23.31	$10,175,705	65%	$6,614,208	35%	$3,561,497
14	2035	$436,538,195	100%	$436,538,195	23.31	$10,175,705	65%	$6,614,208	35%	$3,561,497
15	2036	$436,538,195	100%	$436,538,195	23.31	$10,175,705	65%	$6,614,208	35%	$3,561,497
16	2037	$436,538,195	100%	$436,538,195	23.31	$10,175,705	65%	$6,614,208	35%	$3,561,497
17	2038	$436,538,195	100%	$436,538,195	23.31	$10,175,705	65%	$6,614,208	35%	$3,561,497
18	2039	$436,538,195	100%	$436,538,195	23.31	$10,175,705	65%	$6,614,208	35%	$3,561,497
19	2040	$436,538,195	100%	$436,538,195	23.31	$10,175,705	65%	$6,614,208	35%	$3,561,497
20	2041	$436,538,195	100%	$436,538,195	23.31	$10,175,705	65%	$6,614,208	35%	$3,561,497
21	2042	$436,538,195	100%	$436,538,195	23.31	$10,175,705	0%	$0	100%	$10,175,705
22	2043	$436,538,195	100%	$436,538,195	23.31	$10,175,705	0%	$0	100%	$10,175,705
23	2044	$436,538,195	100%	$436,538,195	23.31	$10,175,705	0%	$0	100%	$10,175,705
24	2045	$436,538,195	100%	$436,538,195	23.31	$10,175,705	0%	$0	100%	$10,175,705
25	2046	$436,538,195	100%	$436,538,195	23.31	$10,175,705	0%	$0	100%	$10,175,705
26	2047	$436,538,195	100%	$436,538,195	23.31	$10,175,705	0%	$0	100%	$10,175,705
27	2048	$436,538,195	100%	$436,538,195	23.31	$10,175,705	0%	$0	100%	$10,175,705
28	2049	$436,538,195	100%	$436,538,195	23.31	$10,175,705	0%	$0	100%	$10,175,705
29	2050	$436,538,195	100%	$436,538,195	23.31	$10,175,705	0%	$0	100%	$10,175,705
30	2051	$436,538,195	100%	$436,538,195	23.31	$10,175,705	0%	$0	100%	$10,175,705
					20 Yr. Totals:	**$183,789,972**		**$119,463,482**		**$64,326,490**
					30 Yr. Totals:	**$285,547,025**		**$119,463,482**		**$166,083,543**
					30 Yr. Average:	**$9,518,234**	**42%**	**$3,982,116**	**57%**	**$5,536,118**
					20 Yr. Average:	**$9,189,499**	**65%**	**$5,973,174**	**35%**	**$3,216,325**

Notes:

1. These projections are based on projections of increased assessed values which the Company has reviewed with the City Assessor based on project plans and timelines in early 2020. They can be updated as appropriate.

2. Projections assume a flat mil rate.

3. Projections assume a 20-year credit enhancement agreement during which time the payment obligation to the credit enhancement agreement is an average of 65% to support the enumerated infratructure related costs identified in the Development Program.

CREDIT ENHANCEMENT AGREEMENT

between

CITY OF PORTLAND, MAINE

And

PF DEVELOPER LLC

Dated as of _______ __, 2021

TABLE OF CONTENTS

EXHIBITS:

THIS CREDIT ENHANCEMENT AGREEMENT dated as of ________, between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine, a corporation duly organized and existing under the laws of the State of Maine (the "City"), with a place of business in Portland, Maine, and PF Developer LLC, a Maine corporation (the "Company"), having an office at Merrill's Wharf, 254 Commercial Street, Portland, Maine 04101.

WITNESSETH

WHEREAS, the City designated the Portland Foreside Transit-Oriented Municipal Development and Tax Increment Financing District (the "District") and adopted a development program therefor (the "Development Program") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the Portland City Council on _____, 2021; and

WHEREAS, upon submission of an application to DECD, the City expects DECD to review and approve the Portland Foreside Transit-Oriented Municipal Development and Tax Increment Financing District and the Development Program; and

WHEREAS, the City designated the Portland Foreside Transit-Oriented Municipal Development and Tax Increment Financing District, adopted the Development Program and entered into this Agreement in order to realize significant increased assessed values that will allow the City to undertake transit-related and other economic development City investments and projects, and to support the Company's significant infrastructure projects that support the common elements of the Company's Project, including but not limited to water, sewer, power, tel/data, storm drainage and catch basins, roads, sidewalks, transformers, improvements to the City's retaining wall supporting Fore Street, improvements to the seawall supporting the MDOT corridor that facilitates improved pedestrian access along the waterfront, street lighting, urban landscaping, urban furniture, urban trash/recycling facilities and services, urban wayfinding and information facilities, traffic signage and signaling, and all other utilities, services, furniture, fixtures and equipment typically constructed, owned and maintained by the municipality in an urban setting, and all financing costs, capital reserves, debt service costs and other costs and accounts typically and customarily associated with the ownership of common infrastructure assets by the City and/or other quasi-municipal entities providing utility services to the public related thereto; and

WHEREAS, in connection with the Development Program, and as contemplated thereby, the City and the Company have agreed to execute and deliver this Agreement; and

WHEREAS, the City and the Company desire and intend that this Agreement, shall be and constitute the credit enhancement agreement contemplated by and described in the Development Program;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1. <u>Definitions</u>.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise. All other capitalized terms not otherwise defined herein shall have the meaning given such terms in the Development Program.

"Act" means Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended.

"Agreement" shall mean this Credit Enhancement Agreement dated as of the date set forth above between the City and the Company, as such may be further amended by the parties from time to time.

"Captured Assessed Value" means the percentage of Increased Assessed Value retained in the Portland Foreside Transit-Oriented Municipal Development and Tax Increment Financing District in each year during the term of the Portland Foreside Transit-Oriented Development and Tax Increment Financing District as specified in Section 3.1 below.

"City" shall have the meaning given such term in the recitals hereto.

"City TIF Subaccount" means the account described in the Financial Plan section of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Company" shall have the meaning given such term in the first paragraph hereto, and shall also mean and include any assignee or successor thereof, including but not limited to any future limited partnership formed by Company.

"Company Tax Increment Revenues" means in each year this Agreement is in effect an amount of money equal to the Retained Tax Increment Revenues allocated to the Company pursuant to Section 3.1 hereof.

"Company TIF Subaccount" means the account described in the Financial Plan section of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Current Assessed Value" means the then current assessed value of the Property located within the Portland Foreside Transit-Oriented Municipal Development and Tax Increment Financing District to be determined by the City's Assessor as of April 1 of each year that this Agreement remains in effect.

"DECD" means the State of Maine Department of Economic and Community Development.

"Development Program" means the development program and financial plan for the Portland Foreside Transit-Oriented Municipal Development and Tax Increment Financing District adopted by the City and attached hereto as Exhibit A.

"Portland Foreside Transit-Oriented Municipal Development and Tax Increment Financing District" shall have the meaning given such term in the recitals hereto.

"Financial Plan" means the financial plan described in the "Financial Plan" section of the Development Program.

"Increased Assessed Value" means the valuation amount by which the Current Assessed Value of the Property exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any year, there is no Increased Assessed Value in that year.

"Original Assessed Value" means $________, being the taxable assessed value of all property in the District as of March 31, 2021 (April 1, 2020).

"Project" means improvements within the District contemplated to be constructed by the Company and as more specifically described in the Development Program.

"Project Cost Account" means the account in the Development Program Fund described in Section 2.01 of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Project Costs" means costs incurred by the Company on infrastructure projects that support the common elements of the Company's Project, including but not limited to water, sewer, power, tel/data, storm drainage and catch basins, roads, sidewalks, transformers, improvements to the City's retaining wall supporting Fore Street, improvements to the seawall supporting the MDOT corridor that facilitates improved pedestrian access along the waterfront, street lighting, urban landscaping, urban furniture, urban trash/recycling facilities and services, urban wayfinding and information facilities, traffic signage and signaling, and all other utilities, services, furniture, fixtures and equipment typically constructed, owned and maintained by the municipality in an urban setting, and all financing costs, capital reserves, debt service costs and other costs and accounts typically and customarily associated with the ownership of common infrastructure assets by the City and/or other quasi-municipal entities providing utility services to the public related thereto.

"Property" means the land and all real property improvements resulting from the Project that are located in the approximately 10-acre Portland Foreside Transit-Oriented Municipal Development and Tax Increment Financing District and taxable by the City.

"Property Taxes" means any and all ad valorem property taxes levied, charged or assessed against the Property by the City or on its behalf and actually paid to the City, but excluding any county, state or special district taxes that are separately levied, charged or assessed against the Property.

"Qualified Investments" shall mean any and all securities, obligations or accounts in which municipalities may invest their funds under applicable Maine law, and which are of the same type and tenor as the investments in which the City invests its own funds.

"Retained Tax Increment Revenues" means that portion of Property Taxes paid with respect to the Captured Assessed Value.

"Tax Payment Date" means the later of the date(s) on which Property Taxes assessed by the City with respect to the Property are due or are paid, or if any such day is not a business day, the next succeeding business day.

"Tax Year" shall have the meaning given such term in 30-A M.R.S.A. §5222(18), as amended, to wit: April 1 to March 31.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

a. The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before, the date of delivery of this Agreement.

b. Words importing a particular gender mean and include correlative words of every other gender.

c. Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

d. Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

e. All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

ARTICLE II
DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

Within sixty (60) days after the Effective Date, the City shall create and establish a segregated fund designated as the "Portland Foreside Development Program Fund" (hereinafter the "Development Program Fund") pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5227(3). The Development Program Fund shall consist of a Project Cost Account that is pledged to and charged with the payment of project costs as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A. § 5227(3)(A)(1). The Project Cost Account shall also contain two subaccounts designated as the "Company TIF Subaccount" and the "City TIF Subaccount."

Section 2.2. Deposits into Company TIF Subaccount.

Each year during the term of this Agreement, commencing with the April 1, 2022 Tax Year (Fiscal Year 2022-2023) continuing thereafter for a total of twenty (20) years or the remaining term of the original term of the District, whichever is shorter, there shall be deposited into the Company TIF Subaccount contemporaneously with each payment of Property Taxes an amount equal to that portion of the Property Taxes constituting Company Tax Increment Revenues for the period to which the payment relates. Any and all revenues, if any, resulting from investment of monies on deposit shall be retained by the City and withdrawn from the Company TIF Subaccount contemporaneously with payment to the Company.

Section 2.3. Use of Monies in Company TIF Subaccount.

Monies deposited in the Company TIF Subaccount shall be used and applied exclusively to fund the City's payment obligation described in Article III hereof.

Section 2.4. Monies Held in Trust.

All monies required to be paid into the Company TIF Subaccount under the provisions hereof and the provisions of the Development Program, other than investment earnings thereon, shall be held by the City, in trust, for the benefit of the Company.

Section 2.5. Investments.

Any monies in the Company TIF Subaccount shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are at all times invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Company TIF Subaccount. If the City experiences any losses in association with these investments related to the Company TIF Subaccount, the City shall still pay to the Company the amounts required under Section 3.1 hereof.

Section 2.6. Tax Payments.

The Company shall pay or cause to be paid when due all Property Taxes assessed by the City unless contested by the Company by appropriate proceedings pursuant to Maine law. No payments shall be made by the City under this Agreement at any time any such taxes or amounts are due and unpaid by the Company. To the extent there are unpaid taxes or amounts due and unpaid by other property taxpayers in the District, the City shall make payments to the Company according to this Agreement for those portions of the TIF revenues that have been paid.

ARTICLE III
PAYMENT OBLIGATIONS

Section 3.1. Captured Assessed Value; Retained Tax Increment.

During the term of the Development Program, the City shall annually retain the percentage of Increased Assessed Value indicated on Exhibit B attached hereto as Captured Assessed Value. The Property Taxes paid with respect to the Captured Assessed Value shall be retained as Retained Tax Increment Revenue. Each year commencing with the April 1, 2022 Tax Year (Fiscal Year 2022-2023) falls and continuing thereafter for a total of twenty (20) years or the remaining term of the original term of the District, whichever is shorter, the City shall deposit into the Company TIF Subaccount contemporaneously with each payment of Property Taxes an amount equal to one hundred percent (100%) of that portion of the property tax payment constituting Company Tax Increment Revenues, in accordance with the provisions of Section 2.2 of this Agreement and the priorities established by 30-A M.R.S.A. § 5227(3)(B).

Section 3.2. Credit Enhancement Payments.

The City shall pay to the Company all Company Tax Increment Revenues due and owing pursuant to Section 3.1 and then on deposit in the Company TIF Subaccount within thirty (30) days following the last Tax Payment Date in each fiscal year during the term of this Agreement, or within thirty (30) days of receipt of the Company's request for annual payment submitted in accordance with Section 3.4(b) hereof, whichever shall occur last.

Section 3.3. Failure to Make Payment.

In the event the City should fail to, or be unable to, make any of the payments required under the foregoing provisions of this Article III, the item or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. The Company shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to establish and maintain the Account and to deposit Company Tax Increment Revenues to the Account and its obligation to make required payment to the Company.

Section 3.4. Manner of Payments.

a. The payments provided for in this Article III shall be paid in immediately available funds in the manner provided hereinabove for the Company's own use and benefit on Project Costs. Notwithstanding the above, the Company shall have the books and records associated with the Project Costs and CEA funds reviewed by an independent accounting firm on an annual basis and submitted to the City to ensure a full understanding of the Project Costs being incurred by the Company.

b. The City shall make required payments in response to requests for annual payment submitted by the Company setting forth the amount of the payment and containing a certification in the form attached hereto as Exhibit C.

Section 3.5. Obligations Unconditional.

Except as otherwise expressly provided in this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Company. Notwithstanding the above, the City reserves the right to terminate this Agreement upon a final judgment by a court of competent jurisdiction to the effect that the Agreement or Development Program adopted in connection herewith or any payment made thereunder is or would be illegal or invalid. In such event, the termination shall relate back to the original date of the Agreement which shall be deemed void ab initio, and neither party shall have any obligations or liability hereunder, under the Development Program or in respect of any of the transactions contemplated thereby, and shall be left in whatever positions, financial or otherwise, they may be in as of the date of termination.

Section 3.6. Limited Obligation.

Except as otherwise expressly provided in this Agreement, the City's obligations of payment hereunder shall be limited obligations of the City payable solely from Retained Tax Increment Revenues and any earnings thereon, pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation on the part of the City or a charge against or pledge of the faith and credit or taxing power of the City, but shall be payable solely from the Retained Tax Increment Revenues received by the City, and any earnings thereon. This Agreement shall not directly or indirectly or contingently obligate the City to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the City's obligation to assess property taxes upon the Project and the pledge of the Retained Tax Increment Revenues established under this Agreement.

ARTICLE IV
PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of Company TIF Subaccount.

In consideration of this Agreement and other valuable consideration and for the purpose of securing the City's payment of the amounts provided for hereunder, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge to the Company the Company TIF Subaccount and all sums of money and other securities and investments therein.

Section 4.2. Perfection of Interest.

To the extent deemed necessary or desirable by the Company, the City shall cooperate with the Company in executing certain control or three party agreements, and also consent to appropriate financing statements and continuation statements being duly filed and recorded in the appropriate state offices, as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests in the funds in the Company TIF Subaccount.

Section 4.3. Further Instruments.

The parties hereto shall, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement, provided, however that no such instruments or agreements shall pledge the credit of the City.

Section 4.4. Liens.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Company TIF Subaccount and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

Section 4.5. Access to Books and Records.

All books, records, notes and documents in the possession of the City relating to the Portland Foreside Transit-Oriented Municipal Development and Tax Increment Financing District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Company TIF Subaccount shall at all reasonable times be open to inspection by the Company, its agents and employees.

ARTICLE V
DEFAULTS AND REMEDIES

Section 5.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default":

a. Any failure by the City to pay any amounts due under Section 3.3 above when the same shall become due and payable;

b. Any failure by the City to make deposits into the Company TIF Subaccount as and when due;

c. Other than as provided in paragraph (a) and (b) above, any failure by the City or the Company to observe and perform in all material respects any respective covenant, condition, agreement or provision contained herein on the part of the City or the Company respectively to be observed or performed, including any failure of the Company to use payments made under this Agreement as required in Section 3.6 of this Agreement, which failure is not cured within thirty (30) days following written notice thereof; provided, however, that this subsection (c) shall not be construed to include the Company's failure to pay Property Taxes on the Property in the Portland Foreside Transit-Oriented Municipal Development and Tax Increment Financing District for any reason as an Event of Default hereunder; and

d. If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises shall appoint a conservator or receiver or liquidator for the City, or if any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings for the winding up or liquidation of the City's affairs shall have been entered against the City or if the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have a petition in bankruptcy dismissed within a period of 90 consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.

Section 5.2. Remedies on Default.

Whenever any Event of Default referred to in Section 5.1 hereof shall have occurred and be continuing, the non-defaulting party may take any one or more of the following remedial steps: (a) the non-defaulting party may take whatever action at law or at equity as may appear necessary or desirable to collect any amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the non-defaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder; and (b) the Company shall also have the right to exercise any rights and remedies available to a secured party under the laws of the State of Maine. No party has the right to terminate this Agreement.

Section 5.3. Remedies Cumulative.

No remedy herein conferred upon or reserved by any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to the remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default or to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the rights to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

Section 5.4. <u>Enforcement Rights</u>.

The City and the Company agree that each party hereto shall have the right to initiate a legal proceeding to enforce the specific performance of this Agreement, it being understood and agreed that this Agreement is a material inducement to the Company continuing its pursuit of the Project. The parties agree that in the event of any dispute or disagreement hereunder the Company and the City shall continue to make payment of all amounts due hereunder in the manner and at the times specified herein until final resolution of such dispute, whether by mutual agreement or final decision of a court, arbitrator or other dispute resolution mechanism**.**

ARTICLE VI
EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. <u>Effective Date and Term</u>.

This Agreement shall become effective upon its execution and delivery by the parties hereto and shall remain in full force from the date hereof and shall expire on the later of the end of the 2041-2042 fiscal year of the City or upon the performance of all obligations on the part of the City and the Company hereunder, including without limitation payment of all amounts to be paid to Company.

Section 6.2. <u>Cancellation and Expiration of Term</u>.

At the termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and the Company shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

ARTICLE VII
ASSIGNMENT

Section 7.1. <u>Consent to Pledge and/or Assignment</u>.

The City hereby acknowledges that the Company may from time to time pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Project, although no obligation is hereby imposed on the Company to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of all the Company's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Company hereunder, to third parties as collateral or security for financing the Development Program, on one or more occasions during the term hereof. The City agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by such prospective pledgee or assignee, including without limitation recognition of the pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder. The City agrees to execute and deliver any other documentation including, without limitation, any reasonable three-party control agreement, as shall confirm to such pledgee or assignee the position of such assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to such pledgee or assignee such rights and/or remedies as the Company or such pledgee or assignee may reasonably deem necessary for the establishment, perfection and protection of its interest herein.

Section 7.2 Assignment.

Except as provided in Section 7.1, and except for the purpose of securing financing for the Project or for an assignment to a successor entity or an affiliate entity, the Company shall not transfer or assign any portion of its rights in, to and under this Agreement without the consent of the City, which consent shall not be unreasonably withheld.

ARTICLE VIII
MISCELLANEOUS

Section 8.1. Successors.

In the event the City or the Company are dissolved, merged into or consolidated with another entity, or undergo any form of corporate reorganization, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 8.2. Parties in Interest.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and the Company any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and the Company; provided, however, that if the payment obligations of the City hereunder are held by a final and binding proceeding to be illegal or invalid, this Agreement shall terminate. In such event all obligations of the parties shall terminate, and no party shall have any further liability to the other hereunder.

Section 8.3. Severability.

Except as otherwise provided herein, in case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.4. No Personal Liability.

(a) No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity and neither the members of the City Council of the City, or any official, officer, agent, servant or employee of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

(b) No covenant, stipulation, obligation or agreement of the Company contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future director, member, officer, agent, servant or employee of the Company in his or her individual capacity and neither the directors, members, officers, agents, servants or employees of the Company shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.5. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 8.6. Governing Law.

The laws of the State of Maine shall govern the construction and enforcement of this Agreement in all respects.

Section 8.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or the Company pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, or, for any notice of an Event of Default, by registered or certified mail, return receipt requested, addressed as follows:

If to the City:

Corporation Counsel's Office
City of Portland
389 Congress Street
Portland, ME 04101

If to the Company:

Portland Foreside Development Company, LLC
Merrill's Wharf
254 Commercial Street
Portland, Maine 04101.
Attn: _________

With a copy to:

Bernstein Shur
100 Middle Street, P.O. Box 9729
Portland, ME 04104
Attn: Shana Cook Mueller, Esq.

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 8.8. Amendments.

Neither this Agreement nor the Development Program may be amended without the express written consent of all of the parties hereto, which consent shall not be unreasonably withheld, conditioned or delayed. Provided, however, the parties agree to amend this Agreement in order to fulfill such reasonable requirement that a lender may require in connection with financing of the Project. This Agreement may only be amended in compliance with the provisions of 30-A M.R.S.A. §5211 et seq., as amended.

Section 8.9. Net Agreement.

This Agreement shall be deemed and construed to be a "net agreement," and the City shall pay absolutely net during the term hereof all payments required hereunder, free of any deductions, and without abatement, or setoffs; provided, it is understood that the City's payment obligations are to be satisfied solely from Retained Tax Increment Revenues actually paid in by the Company and received by the City.

Section 8.10. Integration.

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the Company relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 8.11. Project Responsibility.

The parties hereto agree, and the City hereby acknowledges that the Company shall have no obligation to go forward with the Project referred to herein or in the Development Program. Such Project is subject to final approval by the Company.

Section 8.12. Benefit of Assignees or Pledgees.

The City agrees that this Agreement is executed in part to induce assignees or pledgees to provide financing for the Project and accordingly all covenants and agreements on the part of the City as to the amounts payable hereunder are hereby declared to be for the benefit of any such assignee or pledgee from time to time of the Company's right, title and interest herein.

Section 8.13. No Third Party Benefits.

Except as otherwise expressly authorized herein, this Agreement is entered into solely between, and may be enforced only by the City and the Company and its assignees or pledgees, and this Agreement will not be deemed to create any rights in other third parties, or to create any obligations of a party to this Agreement to any such third parties. In clarification of the foregoing, no tenant at the Property obligated under its lease or rental agreement with the Company to pay all or any portion of the property taxes associated with the Property shall be entitled to any of the funds in the Company TIF Subaccount or to the benefit thereof without a formal assignment or pledge from the Company of the rights and duties to this Agreement.

Section 8.14. Indemnification.

a. The Company agrees to defend, indemnify and hold harmless the City, its officers, agents and employees from any and all claims and expenses, including its attorney fees, arising out of or associated with the City’s approval of the Portland Foreside Transit-Oriented Municipal Development and Tax Increment Financing District and its preparation of and participation in this Agreement, including expenses arising from any default hereunder by the Company but excluding any such claims or expenses as may relate to actions or proceedings resulting from a default hereunder by the City. This indemnification obligation shall survive termination of this Agreement or a finding that this Agreement is void or invalid.

b. The City agrees to defend, indemnify and hold harmless the Company, its officers, agents and employees from any and all claims and expenses, including its attorney fees, arising out of or associated with any default hereunder by the City. This indemnification obligation shall survive termination of this Agreement or a finding that this Agreement is void or invalid.

Section 8.15. <u>Waiver of Recapture</u>.

In order to induce Company to construct the Project Costs, in the event this Credit Enhancement Agreement, the Development Program or designation of the Portland Foreside Transit-Oriented Municipal Development and Tax Increment Financing District is found or held void or invalid or if for any reason the payments made by the City hereunder are held contrary to law or improper by a Court of law with final jurisdiction over this Agreement, the City irrevocably waives its rights to reclaim, recapture or otherwise recover any TIF proceeds paid to the Company or any assignee pursuant to this Agreement.

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers or members, as the case may be, all as of the date first above written.

WITNESS	**CITY OF PORTLAND, MAINE**
______________________________	By:__________________________________ Printed Name:_______________ Its City Manager
	PF DEVELOPER LLC
______________________________	By:__________________________________ Its ___________

Exhibit A to Credit Enhancement Agreement

Portland Foreside Transit-Oriented Municipal Development and Tax Increment Financing District Development Program

<u>EXHIBIT B to Credit Enhancement Agreement</u>
Company Tax Increment Revenues

CEA Years:	Percentage of Increased Assessed Value to be Captured as Captured Assessed Value and Reimbursed to Company:
1	65%
2	65%
3	65%
4	65%
5	65%
6	65%
7	65%
8	65%
9	65%
10	65%
11	65%
12	65%
13	65%
14	65%
15	65%
16	65%
17	65%
18	65%
19	65%
20	65%

<u>EXHIBIT C</u> to Credit Enhancement Agreement – Annual Payment Certification Form

Portland Foreside Transit-Oriented Development TIF District

<u>Calculation of Company Retained Tax Increment Revenues</u>

The undersigned does hereby certify as follows:

a. For the City's fiscal year ____________, the Current Assessed Value of the Property is $________________ and the current mil rate is ____________.

b. The Original Assessed Value is $_________ ____________________.

c. The Captured Assessed Value is $_____________, calculated as follows:

Current Assessed Value (from paragraph (a)):	$______________
<u>minus Original Assessed Value (from paragraph (b)):</u>	-$_____________________
equals Increased Assessed Value:	$______________
<u>times Annual TIF Percentage (from Exhibit B):</u>	________%
equals Captured Assessed Value for Company:	$______________

d. The Company Retained Tax Increment Revenues is $______________, calculated by multiplying the Captured Assessed Value for Company times the current mil rate.

e. Evidence of costs incurred on Project Costs as defined in the Credit Enhancement Agreement is enclosed hereto.

Date:__________________

By:______________________________

Name: ____________________________

Its: ______________________________

ECONOMIC DEVELOPMENT
CITY OF PORTLAND, MAINE

An Application for a Municipal Development and Tax Increment Financing District

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FIFTH AMENDMENT TO WATERFRONT MUNICIPAL DEVELOPMENT AND TAX INCREMENT FINANCING DISTRICT DEVELOPMENT PROGRAM

[Removing the 58 Fore Street/Portland Foreside parcels from the District]

Presented To:
City of Portland Economic Development Committee:

April 20, 2021

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I. Development Program Amendment Narrative

A. Introduction/ Summary of the Fifth Amendment to the Waterfront Municipal Development and Tax Increment Financing District

The City seeks an amendment to the Waterfront Municipal Development and Tax Increment Financing District (together with subsequent amendments thereto, the "District") and Development Program (the "Amendment" and, together with subsequent amendments thereto, the "Development Program").

This Amendment would remove certain acreage from the District to make the area available to designate a new Municipal Development and Tax Increment Financing District, to be known as the Portland Foreside Transit Oriented Municipal Development and Tax Increment Financing District. The following parcels are proposed to be removed from the District with the associated Chart, Lot, and Block (CBL) designations:

- 58 Fore Street/Portland Foreside: 018-A001, 018-A002, 018-A003 and 019-A003

This Amendment is structured and proposed pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended. This Amendment shall be effective on _________, the start date of the Portland Foreside Transit Oriented Municipal Development and Tax Increment Financing District.

B. The Existing District and Development Program

On March 18, 2002, the City of Portland (the "City") designated the Waterfront Municipal Development and Tax Increment Financing District and adopted the Development Program for the District. The Department of Economic and Community Development ("DECD") approved the original District and the original Development Program on March 29, 2002. The City created the District to capture new taxable investment primarily from commercial development occurring along the City's waterfront and to fund a variety of public facilities and improvements as well as City economic development projects and activities. The original term of the District was ten (10) years. The original acreage of the District was 3.4 acres and the initial original assessed value of the District was $6,716,410.

The *First Amendment* to the Development Program, approved by DECD on June 28, 2019, included the following:

- Extended the District's 10-year term for an additional 20 years through fiscal year July 1, 2031 to June 30, 2032;
- Increased the size of the District by adding an additional 1.55 acres as a sub-district, thereby increased the total size to 4.95 acres and an original assessed value of $7,667,310;

- Amended the capture and retention rates;
- Added certain projects to the approved project list; and
- Added the ability to enter into credit enhancement agreements with potential companies/developers within the City's Waterfront Central Zone.

The *Second Amendment* to the Development Program, approved by DECD on May 29, 2018, included the following:

- Added three properties with the following Chart, Lot, and Block (CBL) numbers:
    - 019-A-014001;
    - 031-K-003001; and,
    - 031-K-103001.

The *Third Amendment* to the Development Program, approved by DECD on April 5, 2019, included the following:

– Added sixteen properties as listed on the map in Exhibit A; and
– Increased City TIF revenue investment options, as well as increased the geographic area by amending and renaming the WREZ to the "Waterfront Development Growth Area Ordinance" (WGA).

The *Fourth Amendment* to the Development Program, approved by DECD on August 26, 2019, included the following:

- Added the following properties with the following CBL numbers and locations:
    - 060-A001on West Commercial Street;
    - 038-G001 at Commercial and Center Streets;
    - 030-D005 on Commercial Street; and
    - 019-B022 and 019 B004 on Fore and India Streets.

C. Physical Description and Original Assessed Value

Prior to this Amendment, the District was comprised of 97.615 acres in the City's waterfront area and had a total original assessed value of $______. Following the removal of parcels 018-A001, 018-A002, 018-A003 and 019-A003, with an original assessed value of $__________, the District will be comprised of ____ acres and will have a total original assessed value of $_____. Please see Exhibit A for an amended map of the District and Exhibit B for an amended Assessor's Certificate for the District.

D. Special Procedural Explanation

Please note that this Amendment is also presented to the City Council on the same date as a proposal for a new Municipal Development and Tax Increment Financing District, specifically, the *Portland Foreside Transit Oriented Municipal Development and Tax Increment Financing*

District. This project is also located in the existing Waterfront TIF District and is the reason this Amendment is being presented.

II. Evidence of Public Hearing and Vote for Amendment

A. Notice of Public Hearing

Attached as Exhibit C, is a copy of the Notice of Public Hearing published in the *Portland Press Herald*, a newspaper of general circulation in the City, a date at least ten (10) days prior to the public hearing. The public hearing was held on __________, in accordance with the requirements of 30-A M.R.S.A. § 5226(1).

B. Minutes of Public Hearing

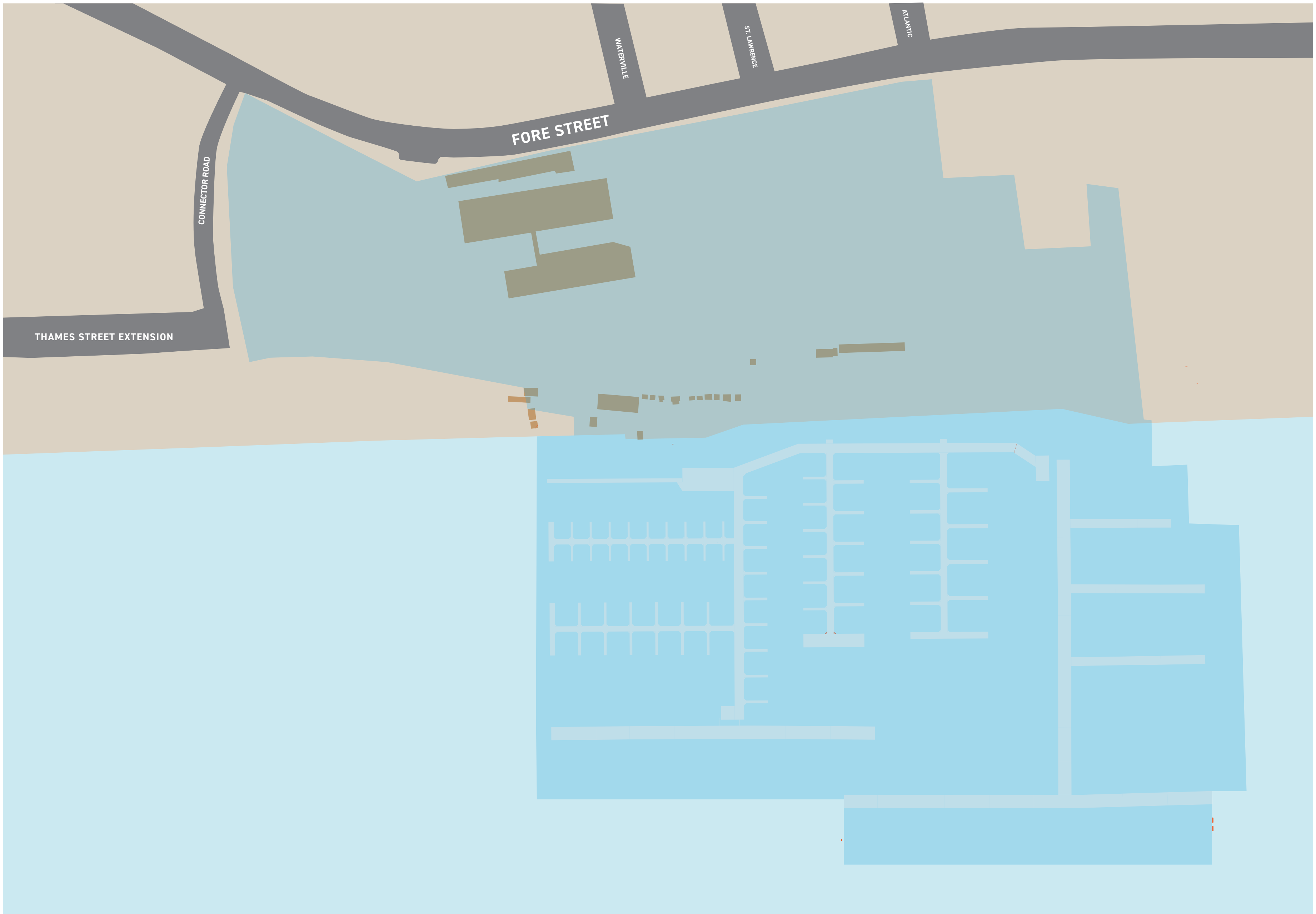
Attached as Exhibit D, is a certified copy of the minutes of the public hearing held on _________, at which time the proposed District was discussed by the public.

C. Authorizing Votes

Attached as Exhibit E is an attested copy of the City of Portland Council Order, which was approved by the City Council at a City Council meeting duly called and held ___________, adopting the Amendment to the Development Program.

D. Statutory Requirements & Thresholds form

Attached as Exhibit F is a completed statutory requirements and thresholds form for the District.


FORE STREET
WATERVILLE
ST. LAWRENCE
ATLANTIC
CONNECTOR ROAD
THAMES STREET EXTENSION