

Regular City Council Meeting
September 21, 2015

1. Agenda Only 2015-09-21

Documents: [AGENDA ONLY 2015-09-21.PDF](#)

2. Agenda And Packet 2015-09-21

Documents: [AGENDA AND PACKET 2015-09-21.PDF](#)

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

DAVID BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK(A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

AGENDA
REGULAR CITY COUNCIL MEETING
SEPTEMBER 21, 2015

The Portland City Council will hold a regular City Council Meeting at 7:00 p.m. in City Council Chambers, City Hall. The Honorable Michael F. Brennan, Mayor, will preside.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) September 9, 2015 Special City Council Meeting Minutes

PROCLAMATIONS:

Proc 6-15/16 Proclamation Honoring Officer Sean Hurley and Officer Matthew
(Tab 2) Rider – Sponsored by Mayor Michael F. Brennan.

APPOINTMENTS:

Order 63-15/16 Order Appointing Brendan O’Connell Tax Collector – Sponsored
(Tab 3) by Danielle West-Chuhta, Corporation Counsel.

In the past, upon the appointment of a new Finance Director, that person has also been appointed Tax Collector by the City Council. At the same time and in the same council order, the former Finance Director, who had previously been appointed Tax Collector, was formally relieved of the duty of being Tax Collector.

These actions were taken in conformance with 36 M.R.S. §763. While we have had no such issue with former Finance Director, this action is recommended to vest the new Finance Director with the authority of Tax Collector, for the purpose of committing any outstanding taxes to him, in order that he may place liens and otherwise pursue collection of taxes due to Portland.

Five affirmative votes are required for passage after public comment.

CONSENT ITEMS:

**Order 64-15/16
(Tab 4)**

Order Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Felicia Bruning – Sponsored by Jon P. Jennings, City Manager.

This order authorizes the City Council to approve the transfer of \$2,467.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Felicia Bruning.

This money was seized during a drug investigation conducted by the M.D.E.A. in conjunction with the Portland Police Department. The money will be deposited into the Portland Police Department's drug investigation account. Money in that account is used primarily for drug investigations, training, and equipment.

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Application filed on 8/19/15. New City and State applications. Applicant holds a current Class A Lounge License with Entertainment with Dance at 442-446 Fore St. Applicant wishes to expand to the second floor of the building.

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BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

UNFINISHED BUSINESS:

**Order 172-14/15
(Tab 8)**

Order Approving Two-Party Agreement between the City of Portland and the Maine Department of Transportation Re: Improvements to Forest Avenue – Sponsored by Jon P. Jennings, City Manager.

This order approves a two-party agreement between the Maine Department of Transportation (MDOT) and the City of Portland regarding the planning, development, design, right-of-way, construction, cost sharing and reimbursement for a project to make improvements to Forest Avenue.

The project scope includes but is not limited to reconfiguring the Forest Avenue traffic pattern at Woodfords Corner and Ocean Avenue, widening sidewalks, adding streetscape aesthetics, extending shared lane bikeways, and reducing crossing distances for pedestrians.

The city is also discussing potential additional amenities (including, but not limited to, street finishings, benches and/or higher quality materials) with MDOT and will update the Council on the status of the discussions at a future meeting.

This project has been in discussion for a number of years and the matching and non-matching funds required, \$369,875.10 (the city's matching funds) have been included in the FY 15 Capital Improvement budget. The total cost for the project will be \$1,518,751.00 - \$1,199,000.80 (Federal).

The Agreement has been amended to reflect a correction to the city's local share for preliminary engineering and right of way from 15% to 10%.

This item must be read on two separate days. It was given a first reading on March 2. At the June 15th City Council meeting this item was postponed to this meeting. Staff is requesting that this item be postponed to the October 19th City Council meeting.

**Order 233B-14/15
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Order Approving Annual Adjustments to the Community Development Block Grant (CDBG) Allocation Process – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.

This order approves several procedural changes to the Community Development Block Grant (CDBG) allocation process. These changes are requested in an effort to improve the process and address issues raised through the Fiscal Year 2015-2016 allocation process.

2. Three (3) bonus points be awarded for each child care project or program in the Social Services funding category.

This Order was divided into parts and the second part, now Order 233B-14/15, failed to pass on a 4-4 vote. It returns for further Council action at this meeting pursuant to Council Rule 19.

Staff is requesting that this item be postponed to the October 19th City Council meeting.

**Order 37-15/16
(Tab 10)**

Order Designating 17 Carleton Street Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District – Reconsideration

At the September 9, 2015 City Council meeting, the Council voted 9-0 to reconsider its August 3, 2015 vote approving an Affordable Housing Tax Increment Financing (AHTIF) District for a project at 17 Carleton Street. Due to increased staff capacity to conduct financial underwriting, this TIF had been analyzed in-house. However, the City's TIF policy requires that financial underwriting analysis of all TIF requests for credit enhancement be conducted by a Third Party. There is a Third Party on call that is brought in to do such analyses.

This issue was brought to the attention of the Council after the August 3rd meeting. Subsequently, a Third Party review was requested and a copy of the review is included in the backup materials.

The staff analysis of the project noted that the developer indicated AHTIF revenue would be utilized to offset project operating expenses and was necessary to meet the minimum debt service ratio to receive Low Income Housing Tax Credits (LIHTC). The applicant was seeking a Credit Enhancement Agreement which returned 65% of the revenue to the developer to cover project operating costs. The staff analysis determined that without the AHTIF revenue, the project would fall below allowable debt service coverage ratios and have a negative cash flow. The Third Party analysis is consistent with the staff review.

Rental housing developments affordable to households at or below 60% of the area median income are primarily financed through the LIHTC program. This is a very competitive process and often there is very little difference in the scores that determine which applications receive LIHTC. For example, in 2014, projects awarded tax credits had scores ranging from 49-51 with the next lowest score at 48 and in 2013 the scores were 43-48, with the next lowest score at 42. The Qualified Allocation plan (QAP) awards 3 points to projects that receive a reduction in operating costs through tax increment financing. Often these points help to determine whether a project scores high enough to receive tax credits. The AHTIF is an investment tool available to the City to incentivize housing development.

Both the staff and Third Party analysis support the view that the AHTIF is necessary both financially and to make the project competitive in the LIHTC QAP, and that but for LIHTC, the project will in all likelihood not move forward.

Five affirmative votes are required for passage after public comment.

**Order 38-15/16
(Tab 11)**

**Order Approving and Authorizing the City Manager to Enter into the
the 17 Carleton Street Credit Enhancement Agreement with Avesta
Carleton LP**

This is a companion order to Order 37-15/16 above. Should the Council decide not to adopt Order 37-15/16, which is before it for reconsideration, then a motion to rescind Order 38-15/16 will be necessary. Five votes are required to pass a motion to rescind.

If, however, Order 37-15/16 is adopted, Order 38-15/16 requires no action at this time and will remain in effect.

**Order 62-15/16
(Tab 12)**

Order Accepting and Appropriating \$600,000 of Finance Authority of Maine Grant Funding to Expand the City's Regional Economic Development Revolving Loan Program (REDRLP) – Sponsored by Jon P. Jennings, City Manager.

A pool of \$8 million in additional REDRLP funding was approved by Maine voters in November 2014. The Finance Authority of Maine (FAME) issued a Request for Proposals on April 6, 2015, seeking applications from nonprofit and governmental organizations for REDRLP funding to establish or expand this revolving loan fund within their organization.

Entities were able to apply for an amount that does not exceed \$3.5 million, including previous REDRLP and State Small Business Credit Initiative funds.

The Portland Development Corporation recommended to the City Council that the City apply for \$1 million in additional funding through this program, and the City Council authorized that application on June 1, 2015.

FAME notified the City on July 29, 2015, that it has been approved for \$600,000 in new funding under this program. City Council acceptance and appropriation of this funding is requested and authorization for the City Manager to execute the necessary documents.

This item must be read on two separate days. It was given a first reading on September 9, 2015. Five affirmative votes are required for passage after public comment.

ORDERS:

**Order 68-15/16
(Tab 13)**

Order Approving Purchase and Sale Agreements, Development Consulting Agreement, Remediation Grant Agreement and Housing Trust Fund Grant Re: 65 Munjoy Street – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair, and the Portland Development Corporation, Barry Sheff, President.

In November 2014 the Housing and Community Development Committee (HCDC) approved the issuance of a RFP for the sale and re-development of 65 Munjoy Street.

The RFP was issued on November 19, 2014 and generated one response, a proposal by Adam's Apple LLC to construct an 8-unit residential condominium development. In February 2015 the HCDC authorized staff to negotiate terms of the transaction with the developer.

A complicating factor in making this affordable housing project financially feasible is that the property is contaminated. It is estimated that remediation will cost about \$240,000. A source to cover the cost to remediate the site was found to be available through the Greater Portland Council of Governments (GPCOG) Brownfields Cleanup Grant Fund. GPCOG advised the City and Adam's Apple that they would not qualify for GPCOG's Brownfields grants if the City sold the property directly to Adam's Apple. GPCOG also advised the City, that as a non-profit, the Portland Development Corporation (PDC) would be eligible for these grant funds as long as it owns the site during environmental remediation. The PDC applied for and was successful, being awarded \$200,000 in Brownfields grant funds for the remediation of 65 Munjoy Street.

The Agreements provided with this memo would effectuate the PDC taking ownership of this vacant, contaminated City-owned property to facilitate site remediation utilizing the federal Brownfields cleanup funds available through GPCOG. This would be at no direct cost to the PDC and the PDC would ultimately sell the property to Adam's Apple, LLC to support construction of the 8-unit affordable condominium housing project.

At the PDC's August 20th meeting, the Board voted unanimously to recommend to the City Council that it approve these actions through purchase and sale agreements between the City and PDC and between Adam's Apple, LLC and the PDC; the Development Consulting Agreement between the PDC and Adam's Apple, LLC; and the Brownfields subgrant agreement between the PDC and GPCOG, provided that Adam's Apple, LLC is responsible for the administration of the grant agreement and all costs associated with the grant agreement.

In addition, in a separate vote, the PDC consented to Corporation Counsel's legal representation of the PDC with the understanding that Corporation Counsel would also be representing the City.

The proposal brought forth by Adam's Apple, LLC envisions an 8-unit residential condominium development comprised of two (2) 3-bedroom units, two (2) two-bedroom units and four (4) 1-bedroom units in a single, three-story walk-up building. The project will include six on-site covered parking spaces in a concealed parking area under the building.

The proposal indicates a sales price of \$225,000- \$235,000 for the one-bedroom units, \$274,000 for the two bedroom units and \$298,000 for the three-bedroom units. The units will be affordable to households earning between 100% and 120% of the area median income (Family of Two = \$61,875-\$74,250 & Family of Four = \$77,313-\$92,760).

The project will include deed restrictions that will guarantee future sales to income-qualified owner-occupants for no less than 90 years. The restrictions will also prohibit short-term rentals, such as Airbnb.

In addition, the developer has agreed to a marketing campaign that will target first-time homebuyers.

To address a project financing gap, the developer requested financial assistance from the City's Housing Trust Fund in the amount of \$175,000.

At meetings held on July 8 and July 22, 2015, the HCDC voted 4-0 to recommend to the City Council the terms of the transactions outlined in this memo.

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

AMENDMENTS:

**Order 69-15/16
(Tab 14)**

Amendment to Portland City Code Chapter 6, (Buildings and Building Regulations) Re: Registration and Renewal Fee Discounts – Sponsored by the Public Safety, Health & Human Services Committee, Councilor Edward J. Suslovic, Chair.

As part of the overall recommendations to improve rental housing safety, the Fire/Code Task Force suggested a \$25 per-unit annual landlord registration fee to strengthen the City's existing landlord registration ordinance, ensure that the City has accurate and complete data on rental housing stock including landlord contact information, and support the new Housing Safety Office. The Task Force used the City's conservative estimate that there are 17,000 rental housing units in Portland, excluding the approximately 1,000 Portland Housing Authority (PHA)-owned units. During the Fiscal Year 2016 budget process, the budget team opted to increase the per-unit fee to \$35 and assume a 30% noncompliance rate, for total estimated revenue of \$416,500.

The Task Force did not consider any discounts or exemptions beyond the PHA-owned units; at the City Council's request, staff researched possible options and an ad-hoc stakeholder group (with the landlords who participated in the Task Force as well as others; please see the list below) met on Friday, August 7 to discuss these options.

During the landlord stakeholder meeting on August 7, one of the key points made was that the landlord registration process can and should be used to

incentivize safer buildings, though they agreed that some safety measures can be hard to verify, including an enforced smoke-free policy. They argued, however, that offering a nominal discount for a smoke-free policy could be an effective means to educate landlords about the issue. Ultimately, they came to consensus on the following discounts:

- \$10 for a fully-sprinkled building (verification: testing/maintenance report and/or maintenance contract)
- \$7.50 for a centrally-monitored fire alarm (verification: Fire Department logs and/or alarm contract)
- \$5 for a Housing and Urban Development Housing Quality Standard inspection (verification: inspection report within last year)
- \$10 for a Housing and Urban Development Uniform Physical Condition Standard inspection (verification: inspection report within last year)
- \$2.50 for a smoke-free policy (verification: copy of lease and spot checks)
- The fee should not drop below \$15

The Public Safety, Health & Human Services Committee met on September 8, 2015, and voted 3-1 to forward this item to the City Council with a recommendation for passage.

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LICENSE RENEWALS:

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KEVIN J. DONOGHUE (1)
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(Tab 14)**

Amendment to Portland City Code Chapter 6, (Buildings and Building Regulations) Re: Registration and Renewal Fee Discounts – Sponsored by the Public Safety, Health & Human Services Committee, Councilor Edward J. Suslovic, Chair.

As part of the overall recommendations to improve rental housing safety, the Fire/Code Task Force suggested a \$25 per-unit annual landlord registration fee to strengthen the City's existing landlord registration ordinance, ensure that the City has accurate and complete data on rental housing stock including landlord contact information, and support the new Housing Safety Office. The Task Force used the City's conservative estimate that there are 17,000 rental housing units in Portland, excluding the approximately 1,000 Portland Housing Authority (PHA)-owned units. During the Fiscal Year 2016 budget process, the budget team opted to increase the per-unit fee to \$35 and assume a 30% noncompliance rate, for total estimated revenue of \$416,500.

The Task Force did not consider any discounts or exemptions beyond the PHA-owned units; at the City Council's request, staff researched possible options and an ad-hoc stakeholder group (with the landlords who participated in the Task Force as well as others; please see the list below) met on Friday, August 7 to discuss these options.

During the landlord stakeholder meeting on August 7, one of the key points made was that the landlord registration process can and should be used to

incentivize safer buildings, though they agreed that some safety measures can be hard to verify, including an enforced smoke-free policy. They argued, however, that offering a nominal discount for a smoke-free policy could be an effective means to educate landlords about the issue. Ultimately, they came to consensus on the following discounts:

- \$10 for a fully-sprinkled building (verification: testing/maintenance report and/or maintenance contract)
- \$7.50 for a centrally-monitored fire alarm (verification: Fire Department logs and/or alarm contract)
- \$5 for a Housing and Urban Development Housing Quality Standard inspection (verification: inspection report within last year)
- \$10 for a Housing and Urban Development Uniform Physical Condition Standard inspection (verification: inspection report within last year)
- \$2.50 for a smoke-free policy (verification: copy of lease and spot checks)
- The fee should not drop below \$15

The Public Safety, Health & Human Services Committee met on September 8, 2015, and voted 3-1 to forward this item to the City Council with a recommendation for passage.

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

LICENSE RENEWALS:

IN COUNCIL SPECIAL MEETING SEPTEMBER 9, 2015 VOL. 131 PAGE 21

ROLL CALL: Mayor Brennan called the meeting to order at 7:00 P.M. (Councilors Duson, Brenerman arrived during Proclamation 4.)

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Hinck and seconded by Councilor Costa to approve the minutes of the August 3, 2015 Special City Council Meeting Minutes and the August 3, 2015 Regular City Council Meeting Minutes. Passage 7-0.

PROCLAMATIONS:

Proc 4-15/16 Proclamation Honoring Shana DiMatteo, Health and Human Services Department, Barron Center as Employee of the Month for August, 2015 – Sponsored by Mayor Michael F. Brennan.

Proc 5-15/16 Proclamation Declaring September 11th, 2015, as Roll Up Your Sleeve and Remember Blood Drive Day – Sponsored by Mayor Michael F. Brennan.

APPOINTMENTS:

Order 51-15/16 Order Appointing Constable for 2015 Re: Department of Public Services - Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Suslovic and seconded by Councilor Costa for passage as an emergency. Passage 9-1.

CONSENT ITEMS:

LICENSES:

Order 52-15/16 Order Granting Municipal Officers' Approval of Veranda Group LLC d/b/a Veranda Noodle House. Application for a Class I FSE License with Outdoor Dining on Public Property at 245 Commercial Street – Sponsored by Katherine L. Jones, City Clerk.

Motion was made by Councilor Duson and seconded by Councilor Costa for passage. Passage 9-0.

Order 53-15/16 Order Granting Municipal Officers' Approval of Shangri-la Sichuan Cuisine LLC d/b/a Piao Shang Sichuan Kitchen. Application for a Class XI Restaurant/Lounge at 612 Congress Street – Sponsored by Katherine L. Jones, City Clerk.

Motion was made by Councilor Duson and seconded by Councilor Brenerman for passage. Passage 9-0.

Order 54-15/16 Order Granting Municipal Officers' Approval of Raphael Kabata d/b/a Chez Okapi. Application for a Class XI Restaurant/Lounge License with Entertainment without Dance at 249 St. John Street – Sponsored by Katherine L. Jones, City Clerk.

Motion was made by Councilor Duson and seconded by Councilor Brenerman for passage. Passage 9-0.

Order 55-15/16 Order Granting Municipal Officers' Approval of Tiqa LLC d/b/a Chez Tiqa. Application to Add Outdoor Dining on Public Property at 327 Commercial Street – Sponsored by Katherine L. Jones, City Clerk.

Motion was made by Councilor Duson and seconded by Councilor Costa for passage. Passage 9-0.

Order 56-15/16 Order Granting Municipal Officers' Approval of Nosh LLC d/b/a Nosh Kitchen Bar. Application to Expand Existing Alcohol Service Area for One-Day Event on September 20, 2015 at 551 Congress Street – Sponsored by Katherine L. Jones, City Clerk.

Motion was made by Councilor Duson and seconded by Councilor Costa for passage. Passage 9-0.

BUDGET ITEMS:

COMMUNICATIONS:

Com 3-15/16 Communication Re: Final Recommendations of the Reed School Re-Use Task Force – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.

RESOLUTIONS:

Order 37-15/16

Motion was made by Councilor Brenerman and seconded by Councilor Mavodones to reconsider Order 37-15/16 regarding Carleton Street. Passage 9-0.

Motion was made by Councilor Brenerman and seconded by Councilor Mavodones to postpone order 37 to the September 21, 2015 City Council meeting. Passage 9-0.

UNFINISHED BUSINESS:

Mayor Brennan announced that he would be taking up Order 297 at the end of the agenda.

ORDERS:

Order 57-15/16

Order Authorizing the Deaccession of the Bayside Community Art Mural - Sponsored by the Portland Public Art Committee, Lin Lisberger, Chair.

Motion was made by Councilor Costa and seconded by Councilor Duson for passage. Passage 9-0.

Order 58-15/16

Order Approving the Relocation of Common Ground Gazebo in the Public Art Collection - Sponsored by the Portland Public Art Committee, Lin Lisberger, Chair.

Motion was made by Councilor Costa and seconded by Councilor Duson for passage. Passage 9-0.

Order 59-15/16

Amending Order 235-14/15 Authorizing Increase in the Trash Bag Fee – Sponsored by Councilor Jon Hinck.

Motion was made by Councilor Hinck and seconded by Councilor Donoghue for passage. Passage 5-4, (Mavodones, Brenerman, Costa Suslovic).

Order 60-15/16

Order Accepting an Easement for Public Sidewalk and Granting a Revocable License to the Park-Danforth Condominium Association – Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Costa and seconded by Councilor Donoghue for passage. Passage 8-0, (Suslovic out).

Order 61-15/16

Traffic Schedule Amendments Re: Commercial Street – Sponsored by the Transportation, Sustainability, and Energy Committee, Councilor David A. Marshall, Chair.

Motion was made by Councilor Marshall and seconded by Councilor Donoghue for passage as an emergency. Passage 8-0, (Costa out).

Order 62-15/16 Order Accepting and Appropriating \$600,000 of Finance Authority of Maine Grant Funding to Expand the City's Regional Economic Development Revolving Loan Program (REDRLP) – Sponsored by Jon P. Jennings, City Manager.

This is its first reading.

Order 297-14/15 Amendment to Portland City Code Chapter 33 (Minimum Wage)

Motion was made by Councilor Hinck and seconded by Councilor Duson to amend Order 297 by making direct wage same as under Maine Law. Passage 7-2, (Donoghue, Marshall).

Motion was made by Councilor Brenerman and seconded by Councilor Suslovic to amend Order 297 by adding exemption of persons less than 16 years of age. Motion failed 3-6, (Duson, Mavodones, Hinck, Donoghue, Costa, Brennan).

Motion was made by Councilor Suslovic and seconded by Councilor Duson to amend Order 297 by removing the CPI Escalator. Motion failed 3-6, (Duson, Hinck, Donoghue, Marshall, Costa, Brennan).

Motion was made by Councilor Mavodones and seconded by Councilor Brenerman for passage as amended. Passage 7-2, (Brenerman, Mavodones).

Motion was made by Councilor Donoghue and seconded by Councilor Costa to adjourn. Passage 9-0, 11:15 P.M.

A TRUE COPY.

Katherine L. Jones, City Clerk

IN COUNCIL SPECIAL MEETING SEPTEMBER 9, 2015 VOL. 131 PAGE 21

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Motion was made by Councilor Donoghue and seconded by Councilor Costa to adjourn. Passage 9-0, 11:15 P.M.

A TRUE COPY.

Katherine L. Jones, City Clerk

*Proc 6-15/16
Tab 2 9-21-15*

PROCLAMATION

HONORING

OFFICER SEAN HURLEY AND OFFICER MATTHEW RIDER

WHEREAS: **Officers Hurley and Rider** joined the Portland Police department in 2011 and 2012 respectively and are currently assigned to the patrol unit; and

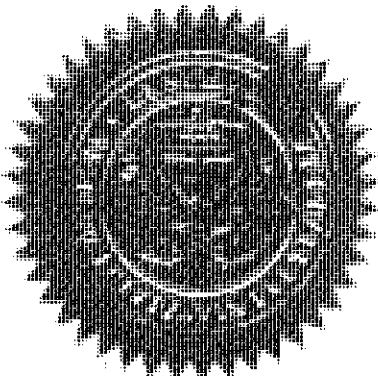
WHEREAS: **Officers Hurley and Rider** are recommended for Officer of the Month for August 2015 for their instrumental roles in identifying and ultimately arresting three murder suspects in connection with a recent homicide; and

WHEREAS: **Officers Hurley and Rider** are additionally recognized for performing three drug arrests, two warrant arrests, five criminal trespass arrests, two theft arrests, and one arrest for reckless conduct with a weapon within the month of August; and

WHEREAS: **Officers Hurley and Rider** are commended for their exemplary police work and commitment to maintaining public safety on the streets here in Portland.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Michael F. Brennan, Mayor of the City of Portland, Maine, and the members of the Portland City Council do hereby proclaim honor and recognition to **Officer Matthew Rider** and **Officer Sean Hurley** as **Officers of the Month for August 2015.**

Signed and sealed this 21th day of September 2015



A handwritten signature in cursive script, reading "Michael F. Brennan", written over a horizontal line.

**Michael F. Brennan, Mayor
City of Portland, Maine**

Order 63-15/16
Tab 3 9-21-15

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPOINTING BRENDAN O'CONNELL TAX COLLECTOR

ORDERED that Brendan O'Connell is hereby appointed tax collector for the City of Portland;
and

BE IT FURTHER ORDERED that the outstanding taxes as listed and on file in the Office of the Finance Director are re-committed to Brendan O'Connell as of 12:01 a.m. on February 23, 2015, the date the former tax collector left employment with the City of Portland.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Corporation Counsel Danielle West-Chuhta

DATE: 9/9/2015

DISTRIBUTION: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

SUBJECT: Order Appointing Brendan O'Connell Tax Collector

SPONSOR: Corporation Counsel

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading 9/21/2015 Final Action 9/21/2015

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

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

I. SUMMARY OF ISSUE (Agenda Description)

In the past, upon the appointment of a new Finance Director, that person has also been appointed tax collector by the City Council. At the same time and in the same council order, the former Finance Director, who had previously been appointed tax collector, was formally relieved of the duty of being tax collector.

These actions were taken in conformance with 36 M.R.S. §763, "Settlement Procedure; Removal from Municipality; Resignation," which was last amended in 1973 and offers a way to respond "if such tax collector refuses to deliver the tax lists and to pay all monies in his hands collected by him." While we have had no such issue with former Finance Director, this action is recommended to fulfill the letter of the law and formally vest the new Finance Director with the authority of Tax Collector, for the purpose of committing any outstanding taxes to him, in order that he may place liens and otherwise pursue collection of taxes due to Portland.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

See above.

III. INTENDED RESULT

Appoint Brendan O'Connell Tax Collector.

IV. COUNCIL GOAL ADDRESSED

n/a

V. FINANCIAL IMPACT

Insures the Finance Director's authority under state statute to collect city taxes.

VI. STAFF ANALYSIS

Corporation Counsel has reviewed this matter and approves this action as to form.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

Order Appointing Brendan O'Connell Tax Collector
36 M.R.S. §763

Prepared by: Nancy English

Date: 9/9/2015

Maine Revised Statutes
Title 36: TAXATION
Chapter 105: CITIES AND TOWNS

**§763. SETTLEMENT PROCEDURE; REMOVAL FROM MUNICIPALITY;
RESIGNATION**

When a tax collector asks the municipal officers to resign the position of tax collector, or when a tax collector has removed, or in the judgment of the municipal officers is about to remove from the municipality before the time set for perfecting his collections, said officers may settle with him for the money that he has received on his tax lists, demand and receive of him such lists, and discharge him therefrom. Said officers may appoint another tax collector, and the assessors or, in the case of primary assessing areas, the municipal officers shall make a new warrant and deliver it to him with said lists, to collect the sums due thereon, and he shall have the same power in their collection as the original tax collector. [1973, c. 695, §20 (AMD) .]

If such tax collector refuses to deliver the tax lists and to pay all moneys in his hands collected by him, when duly demanded, he shall be subject to section 894, and is liable to pay what remains due on the tax lists, said sum to be recovered by the municipal officers in a civil action.

SECTION HISTORY

1967, c. 358, (AMD) . 1973, c. 620, §28 (AMD) . 1973, c. 695, §20 (AMD) .

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PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

*Order 64-15/16
Tab 4 9-8-15*

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING TRANSFER OF FUNDS UNDER
15 M.R.S. §§ 5824(3) and 5826(6)
Re: Felicia Bruning**

ORDERED, that the City Council hereby accepts the amount of \$2,467.00 in forfeited assets in the case of State of Maine vs. Felicia Bruning from the State of Maine to the City of Portland, pursuant to 15 M.R.S. § 5824(3) and § 5826(6) and as provided in the attached "Approval of Transfer."

MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Michael J. Sauschuck, Police Chief

DATE: September 8, 2015

DISTRIBUTION: City Manager, Mayor Brennan, Danielle West-Chuhta, Sonia Bean, Nancy English, Julie Sullivan

SUBJECT: Approval of Transfer

SPONSOR: Police Department

COUNCIL MEETING DATE ACTION IS REQUESTED:

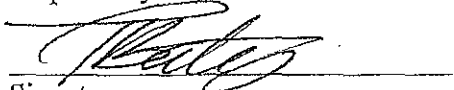
1st reading _____ next available _____ Final Action _____

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

PRESENTATION:

- I. SUMMARY OF ISSUE** The State requires Council approval of the transfer of forfeited cash to the Portland Police Department. (See attached approval form)
- II. REASON FOR SUBMISSION** The State Forfeiture Statute, 15 M.R.S.A. § 5824 (3) and § 5826(6), requires that before any forfeitable item may be transferred to a State agency, County or municipality, the legislative body of that entity must publicly vote to accept the item.
- III. INTENDED RESULT** Funds may be transferred to the Portland Police Department for deposit in the drug investigations account.
- IV. COUNCIL GOAL ADDRESSED**
- V. FINANCIAL IMPACT** The money is used to offset the costs of drug investigations, such as drug analysis, drug purchases, covert surveillance, surveillance equipment, drug training and protective gear, such as body armor.
- VI. STAFF ANALYSIS**
- VII. RECOMMENDATION**
- VIII. LIST ATTACHMENTS**

Prepared by:


Signature

9/8/15
Date

STATE OF MAINE
Cumberland, SS

State of Maine

v.

Felicia Bruning,
Defendant

AND

\$2,467.00 US CURRENCY

DEPENDANT IN REM #1

UNIFIED CRIMINAL DOCKET

Criminal Action

Docket No. CR-15-2098

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}

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}

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}

City/Town Of Portland

Approval Of Transfer

15 M.R.S.A. §5824(3)

and §5826(6)

NOW COMES the City/Town of Portland, Maine, by and through its legislative body, the City/Town Council, and does hereby grant approval pursuant to Section 5824(3) and Section 5826(6) of Title 15 of the Maine Revised Statutes Annotated, to the transfer of the above captioned Defendant(s) *In Rem*, namely \$2,467.00 US Currency, on grounds that the City/Town of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

WHEREFORE, the City/Town of Portland Town/City Council does hereby approve of the transfer of the Defendant(s) *In Rem* to the City/Town of Portland, Maine pursuant to 15 M.R.S.A. §5824(3) and §5826(6).

Dated: _____

Chairperson/Mayor/Selectman/Clerk

(Impress Legislative Body Seal Here)

Order 65-15/16
Tab 5 9-21-15

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER AUTHORIZING WATERFRONT CONCERT FESTIVALS
PRESENTED BY WATERFRONT CONCERTS, LLC
ON THE MAINE STATE PIER AND APPROVING CONTRACTS AND
PERMITS THEREFOR**

BE IT FURTHER ORDERED, that Waterfront Concert Festivals on Maine State Pier are hereby declared as a series of Festivals in 2016 to be presented by Waterfront Concerts, LLC on behalf of event beneficiaries, which will be non-profit organizations; and

BE IT FURTHER ORDERED, that the City Manager is authorized to grant permits to the Festival organizers, Waterfront Concerts, LLC, on behalf of each of the event beneficiaries, pursuant to Sections 25-27 of the Portland City Code for the following activities:

- Waterfront Concerts, LLC will have the use of the Maine State Pier on all mutually agreeable dates of the Waterfront Concert Festivals on Maine State Pier; any and all public announcement and other speakers or amplifiers used to amplify music or other sound shall be maintained at a reasonable level and be configured by Waterfront Concerts, LLC and the City to focus volume on the Maine State Pier and its immediate environment; and

BE IT FURTHER ORDERED, that the Festival Area for all of the approved Festivals will be closed to street vendors pursuant to Section 19-17 of the Portland City Code and is reserved for the use of Waterfront Concerts, LLC, and event beneficiaries for the purpose of conducting the Festivals, subject to the direction and control of the City Manager; and

BE IT FURTHER ORDERED, that the City Manager or designee is hereby authorized to issue a revocable permit for each Festival under Sections 25-26 thru 25-30 of Portland City Code to Waterfront Concerts, LLC and event beneficiaries subject to the following conditions:

- Under no circumstances may alcoholic beverages be sold or consumed on City of Portland right-of-ways during the general admission of each of the approved Festivals, other than at a 21+ beer-only garden to be set up near the stage with security provided by Public Assembly Facilities Management staff; when

reserved seats, however, are sold to an approved Festival, alcohol may be served within the general Festival area.

- Waterfront Concerts, LLC shall indemnify the City and hold it harmless from and against all claims arising out of activities during all said Festivals/events approved hereunder, and shall take out and maintain public liability insurance coverage in the amount of at least \$400,000 per occurrence for personal or bodily injury, death, or property for said purposes.
- All conditions for use of grounds, specified in each permit for all Festivals approved hereunder issued from Public Services Event Office, shall be adhered to.
- Waterfront Concerts, LLC shall have sole authority over participating vendors at the events and may charge a fee to vendors for the opportunity to vend at all of the approved Festivals.
- City permit fees and license fees, and costs for city staff assistance, will be paid by Waterfront Concerts, LLC.

BE IT FURTHER ORDERED, that the Public Assembly Facilities Management Staff or qualified volunteers will provide security at all of the approved Festivals; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue such other temporary licenses, including licenses for food service establishments, as may be required by the Portland City Code, provided that all other applicable requirements of said Code have been met regarding the operation of all of the Festivals approved hereunder; and

BE IT FURTHER ORDERED, that the City Manager is authorized to enter into an Agreement with Waterfront Concerts, LLC and event beneficiaries for the use of the Maine State Pier as described herein; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager to execute said document and any other related documents necessary or convenient to carry out the intent of said document and this Order.

**CITY OF PORTLAND, MAINE
CITY COUNCIL AGENDA REQUEST FORM**

Two copies to be submitted (with supporting material) at least 12 days before Council meeting:

Copies to:	Sonia Bean	Nancy English
	Jon Jennings	Danielle West-Chuhta
	Anita LaChance	Michael Brennan
	Julie Sullivan	

1. Council Meeting at which action is requested (date): September 21, 2015
2. Can action be taken at a later date? Yes X No
Tour and Promoter would like to confirm events in the upcoming weeks.

If a memo addresses the following issues, you may attach and reference the memo, but please highlight it so that staff may easily answer I-V.

I. SUMMARY OF ISSUE

Authorizing Waterfront Concerts to produce a concert series on the Maine State Pier on various dates in the Spring/Summer 2016. All of these concerts would follow the same guidelines imposed by the City of Portland. With approval moving forward, it would allow Waterfront Concerts to confirm, announce, and put tickets on sale in a more timely fashion. It would also alleviate pressure on the organizer and staff in preparing each concert to be presented to City Council. Approval would eliminate the time constraints and increase the ability for organizers to confirm bookings. This would apply only to the 2016 outdoor concert season.

Memo with additional information attached.

II. REASON FOR SUBMISSION (What issue / problem will this address?)

Approval of a concert series would allow the time necessary to announce, sell tickets, and properly promote the individual concerts. With each concert falling under the same guidelines, it would expedite the planning and approval process. This would grant each Waterfront Concerts event over the season:

- A Festival Declaration
- Allowance for control of vendors
- Ability to sell tickets / charge admission
- Granting approval for alcohol sales (Maine State Pier)

III. INTENDED RESULT (How does it resolve the issue / problem?)

See above.

IV. FINANCIAL IMPACT

A negotiated per ticket sold fee, merchandise / food & beverage percentages, and all costs incurred by City Departments for all concerts will be reimbursed by Waterfront Concerts. A similar agreement was in place for 2015, which rendered approximately \$100,000 in NET revenue to the City of Portland. The 2015 season also attracted over 50,000 attendees to Portland's Waterfront. Detail is attached.

V. STAFF ANALYSIS & RECOMMENDATION

Waterfront Concerts, a Maine limited liability company, has previously been approved to organize and present a concert series in 2014 & 2015. The 2014 series consisted of (5) concerts, and the 2015 series consisted of (27) concerts from various genres of music, which attracted over 50,000 attendees to Portland's Waterfront.

Waterfront Concerts is an experienced concert presenter which currently presents events at the Maine State Pier, Darling's Waterfront Pavilion and the Cross Insurance Center in Bangor. They also present events at the Androscoggin Bank Colisee in Lewiston, Cross Insurance Arena, and Merrill Auditorium in Portland.

Following the 2015 Concert Series, Staff feels it has been a positive experience and a good working relationship. Waterfront Concerts will continue to work closely with the City, Casco Bay Ferries, and other existing businesses on improving the overall operation and coexisting in the area of the Maine State Pier. This past season Waterfront Concerts provided additional signage for Portland Schooner Company and The Frances. I would anticipate this type of collaboration to continue. Efforts will continue to be made in minimizing sound levels, and adhering to the determined curfew (which they have demonstrated throughout the 2015 series). Attached is detail from the 2015 season referencing noise complaints received via Police Department, E-mail, Phone, and the SeeClickFix website application.

City Staff are supportive of the Waterfront Concerts – Concert Series.



Sally DeLuca
Acting Director

Department of Recreation & Facilities Management

Andrew J. Downs
Director

Public Assembly Facilities Division

TO: Jon Jennings, City Manager
Anita LaChance, Deputy City Manager
FROM: Andrew Downs, Director of Public Assembly Facilities
DATE: September 8, 2015
RE: Waterfront Concerts – Outdoor Concert Season on the Maine State Pier

I am requesting that the following order be placed on the next City Council agenda (September 21, 2015): order authorizing Waterfront Concerts to produce a concert series on the Maine State Pier on various dates in the Spring/Summer of 2016.

We would like to formally request the authority to maintain holds and confirmations through our office, similar to the process we currently use for events at our other facilities. Each concert will fall under the same guidelines enforced by the City of Portland (Recreation & Facilities Management). Administrative control over the usage of the Maine State Pier would be maintained. We request this provision so Waterfront Concerts can more actively market the Maine State Pier as a viable option for artists looking for summer outdoor concerts in Maine. This would apply only for the 2016 outdoor concert season.

Currently, Waterfront Concerts is holding a number of dates on the Maine State Pier for potential concerts in 2016. They may not use or confirm all of these dates, and they may be inclined to add additional dates. A "season" declaration will allow Waterfront Concerts the flexibility to confirm with the artists and agents in a more timely fashion.

Waterfront Concerts, a Maine limited liability company, has previously been approved to organize and present a concert series in 2014 & 2015. The 2014 series consisted of (5) concerts featuring Dierks Bentley, Reggae Festival w/ Freddie McGregor, Three Doors Down (acoustic), Alanis Morissette, and ZZ Top (postponed). The 2015 series has consisted of (27) concerts of varying performers, which attracted over 50,000 attendees to Portland's Waterfront.

Waterfront Concerts is an experienced concert presenter which currently presents events at the Maine State Pier, Darling's Waterfront Pavilion and the Cross Insurance Center in Bangor. They also present events at the Androscoggin Bank Coliseum in Lewiston, Cross Insurance Arena, and Merrill Auditorium in Portland.

A negotiated per ticket fee, merchandise and food & beverage percentage along with expenses for all City services will be reimbursed by the organizers for each event. A similar agreement was in place for 2015, which rendered approximately \$100,000 in NET revenue to the City of Portland.

Live music will be performed by bands from a stage set-up on the southeast waterside portion of the pier, oriented northwest towards Franklin Street. Any and all public announcement (PA) and other speakers or amplifiers used to amplify music or other sound shall be maintained at a reasonable level and be configured by Waterfront Concerts' contractor and the City to focus volume on the pier and its immediate environment, limiting any sound impacts in residential areas. City Staff will be present at each concert monitoring decibel levels and addressing any noise complaints received through Police Dispatch.



Sally DeLuca
Acting Director

Department of Recreation & Facilities Management

Andrew J. Downs
Director

Public Assembly Facilities Division

While the bulk of the Maine State Pier would be open only to ticket holders that day, access to the schooners that operate from the Maine State Pier would be preserved all day as would access to, and egress from, the adjacent Casco Bay Lines Terminal and garage, and business at the Portland Ocean Terminal. This past season Waterfront Concerts provided additional signage for Portland Schooner Company and The Frances. I would anticipate this type of collaboration to continue.

Beer and food will be made available on the Pier; Waterfront Concerts will be responsible for ensuring that all vendors at the festival have complied with appropriate license requirements, including food service, sale of alcohol and concert licenses. All Security for the event will be provided by the City of Portland's Recreation & Facilities Management Department.

This Council Order will allow the Recreation & Facilities Management Department the flexibility to manage the potential events presented by Waterfront Concerts for the 2016 Summer Season. Following the 2015 Concert Series, Staff feels it has been a positive experience and a good working relationship. Waterfront Concerts will continue to work closely with the City, Casco Bay Ferries, and other existing businesses on improving the overall operation and coexisting in the area of the Maine State Pier. Efforts will continue to be made in minimizing sound levels, and adhering to the determined curfew (which they have demonstrated throughout the 2015 series). Attached is detail from the 2015 season referencing noise complaints received via Police Department, E-mail, Phone, and the SeeClickFix website application.

City Staff are supportive of the Waterfront Concerts – Concert Series.

INFORMATION TRACKING - MAINE STATE PIER CONCERTS 2015

Artist	Day of Event	Date of Event	Concert Times	Temp	Cloud Cover	Wind Direction	Wind Speed
1. Pat Benatar	Saturday	5/2/2015	7-9:20 pm	48 degrees	Partly/Mostly Cloudy	SSE	7-12 mph
Noise Complaints: (2) 1 at Pier from CBL patron							
2. Lee Brice	Saturday	5/16/2015	6:30-9:55 pm	52-57 degrees	Cloudy/Mostly Cloudy	E/NE	5 mph
Noise Complaints: (5) 2 from Munjoy Hill, 1 from Blvd., 1 from Murray Street							
3. Gary Allen	Friday	5/29/2015	7-9:55 p.m.	60-70 degrees	Mostly Sunny/Fog	S-SSE	6-13 mph
Noise Complaints: (0) couple expressed concern at Pier							
4. Billy Idol	Wednesday	6/3/2015	6-8:55 p.m.	54-56 degrees	Sunny	SSE	13 mph
Noise Complaints: (1) Federal Street							
5. Kenny Wayne Shepard	Thursday	6/11/2015	6-9 p.m.	78-86 degrees	Sunny/Partly Cloudy	NNW to W	1-3 mph
Noise Complaints: (0)							
<i>Press Release by Jessica G</i>		6/12/2015	<i>explained upcoming concerts, decibel levels, concert times and what residents do with any concerns</i> <i>Calls come in from to PD Dispatch, and are relayed immediately to the officers at the Pier.</i> <i>Officers inform City Tech Staff who speak with engineers to lower levels.</i>				
6. Rusted Root & The Wailers	Friday	6/12/2015	7-9:55 p.m.	64-75 degrees	Cloudy/Light Rain	SSE	3-15 mph
Noise Complaints: (13) (2) Munjoy Hill 7:40, 8:53, (2) Munjoy Hill, (1) Deering 9:04, (8) various places 92 - 94 dB decibels right before staff got high reading and had levels dropped.							
7. David Gray	Saturday	6/13/2015	6:30-9:50 pm	78-83 degrees	Mostly Sunny/Partly Cloudy	SE/E	0-10 mph
Noise Complaints: (0)							
8. Brett Michaels	Thursday	6/25/2015	6-8:40 p.m.	72-76 degrees	Clear Sunny	S/SE	4-6 mph
Noise Complaints: (3) Staff spoke to promoter several times regarding sound levels. Smaller crowd did not absorb sound well.							
9. Barenaked Ladies	Friday	6/26/2015	6:30-9:55 p.m.	62-67 degrees	Clear	E/SE	3-6 mph
Noise Complaints: (0)							
10. Peter Frampton/Cheap	Saturday	6/27/2015		62-66 degrees	Cloudy/Mostly Cloudy	ESE/SSE	7-8 mph
Noise Complaints: (0)							
11. Easton Corbin	Wednesday	7/8/2015	6pm - 9pm	73-82 degrees	partly cloudy/clear	N	5-10 mph
Noise Complaints: (0)							
12. Kacey Musgraves	Thursday	7/16/2015	6pm - 9pm	66 - 76 degrees	Clear	S/SE	6-9 mph
Noise Complaints: (0) Multiple complaints directed to Waterfront Concerts from Congress Street Area. Most likely caused by an event in Congress Square which went an hour longer than the Pier concert. Complaints were received after the concert had ended.							
13. Tedeschi Trucks	Friday	7/24/2015	Spn - 10:15pm	70 - 72 degrees	partly cloudy/ thunder / lightning	W	4 -6 mph

Noise Complaints: (0) Pier was evacuated due to lightning. Curfew was extended 15 minutes (10:15pm) to compensate for evacuation time.

14. Weird Al Yankovich	Sunday	7/26/2015	5:30pm - 8:35pm	66 degrees	cloudy	S/SSE	5 - 13 mph
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Noise Complaints: (0) No opening act, just Weird Al.

15. American Idol Live	Thursday	7/30/2015	6pm - 9pm	77 - 81 degrees	mostly cloudy / thunder / lightning	S/SW & N/NE	8 -11 mph
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Noise Complaints: (0) New stage delivered. Will be utilized for remaining concerts. Pier was evacuated due to lightning.

16. Weezer	Friday	7/31/2015	7:30pm - 9:45pm	76 - 83 degrees	sunny / clear	WSW/SW	6 - 12 mph
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Noise Complaints: (0)

17. Lewis Black	Saturday	8/1/2015	6:45pm - 9:25pm	75 - 82 degrees	scattered clouds	WNW/W	5 - 13 mph
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Noise Complaints: (0) Speakers were aimed lower to better target the audience. Some concern regarding language from talent.

18. Colbie Caillat & Christina Perri	Sunday	8/2/2015	4:00pm - 8:30pm	75 - 76 degrees	clear	S/SE	5 - 15 mph
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Noise Complaints: (0)

19. Reggae Fest	Friday	8/7/2015	3:00pm - 9:45pm	65 - 76 degrees	partly cloudy	S/SW NE	2 - 15 mph
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Noise Complaints: (1) During 3rd Act (approx 6pm). Approached decibel limit for last two acts.

Sound company and tour engineers were responsive in lowering levels.

20. The Beach Boys	Thursday	8/13/2015	6:30pm - 9pm	68 - 71 degrees	clear	SSW/S	S - 13 mph
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Noise Complaints: (Multiple) Generated from Munjoy Hill, comments via SeeClickFix. (1) through Friends of the Eastern Prom

21. JJ Grey & Mofro	Friday	8/14/2015	6pm - 10pm	69 -75 degrees	clear	S/SSW	6 - 13 mph
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Noise Complaints: (0)

22. Gregg Allman	Tuesday	8/18/2015	6pm - 8:45pm	77 - 84 degrees	partly cloudy	S/SSE	6 - 9 mph
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Noise Complaints: (0)

23. Counting Crows	Thursday	8/20/2015	5pm - 8:45pm	68 - 70 degrees	fog	E/ESE	5 - 8 mph
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Noise Complaints: (5) (4) generated by same individual at Casco Bay Lines. Reading at that location at time of complaint was 86 decibels.

(4) additional complaints thru PD found after the show. Chenery St, North St, Ocean Ave, Breakwater.

24. Scott McCreery	Saturday	8/22/2015	7pm - 9:20pm	69 -73 degrees	mostly cloudy	E	3 - 5 mph
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Noise Complaints: (1)

Sound engineer was asked to turn levels down - he obliged.

Received complaint that was actually related to a hous party in the general area of the Pier.

25. J Beils Band	Thursday	9/3/2015	6pm - 9pm	76 - 80 degrees	partly/mostly cloudy - light rain	Calm	0 mph
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Noise Complaints: (0)

26. Damian & Stephen Marley	Friday	9/4/2015	6pm - 10pm	58 - 74 degrees	clear	calm	0 mph
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Noise Complaints: (3)

Multiple sound engineers throughout the concert. All seemed to push level limits.

All (3) complaints occurred shortly after engineers were reigned in by Tech Staff.

27. Randy Houser	Sunday	9/13/2015	6pm - 915pm	59 - 62 degrees	drizzle/ fog /rain	SE/E	9 - 15 mph
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Noise Complaints: (1)

Federal St - levels were within limits but lowered regardless towards end of the show.

Concert moved from Eastern Promenade - Townsquare Media presenting:

Townsquare Media - Guster	Saturday	8/8/2015	2:00pm - 9:45pm	68 - 76 degrees	partly cloudy	NNE/E/ESE/S	3 - 7 mph
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Noise Complaints: (1)

Concert moved from Eastern Promenade. 6 artists performed throughout the day.

Complaint from Carlyle Rd (Woodfords) via SeeClickFix

FY 15/16 Waterfront Concerts (Revenues vs Expenses)

	<u>Total</u>	<u>Per Concert Avg (27 Shows)</u>
<u>Revenue</u>	\$ 234,794	\$ 8,696
<u>Expense</u>	\$ 141,070	\$ 5,225
<u>Net Revenue</u>	\$ 93,724	\$ 3,471

Revenues include the following:

Ticket Fee is \$1.00 per ticket sold with a minimum of \$1,500.

Reimbursement for all City services including Recreation & Facilities , Police, and Fire expenses.

Merchandise percentage is 10 percent of gross sales (Tour CD's, Posters, Clothing, etc...).

#Food & Beverage percentage is 10 percent of gross sales (Vendor food and non-alcoholic beverages).

#This has not yet been received - and is not reflected in Revenues

*Order 66-15116
Tab 6 9-21-15*

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

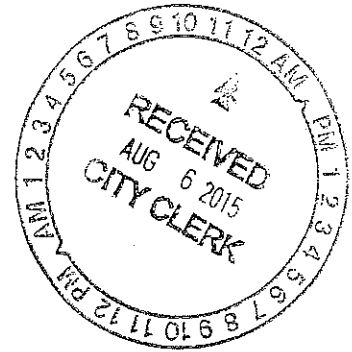
DAVID BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**One Exchange, LLC d/b/a Alchemy. Application for a Class A Lounge License with
Entertainment (unamplified only) with Dance at 1 Exchange St.**

Letter of Intent

Alchemy, LLC.



Dear Mayor and Members of the City Council,

Josh Miranda began his bar and restaurant career in 1989 at Squire Morgans on the corner of Milk and Market street and since then he has dedicated himself to opening up 13 successful establishments. He has a track record of responsibility and commitment to each project he has helped get off the ground.

Josh Soley has been in commercial real estate since 2010 where he worked tirelessly in property maintenance. Over the past few years, Josh has excelled in the industry taking over management of over 500,000 square feet of property. To date, he is a commercial real estate broker with Compass specializing in the sale and leasing of retail properties - specifically in the Old Port.

Both of us were born in the Portland area and both of us have lived and worked here for our entire lives. We love this city and we want to invest in this City by establishing a classical 1890s themed bar that I believe will truly add to Portland and it's historical background. This business will be a speak-easy styled bar that we hope will resemble an old apothecary.

With this bar, we are applying for a Class A Lounge license, Beer & Wine, and amplified entertainment - if possible. We hope to target a wide variety of clientele focusing ages thirty five and older. The establishment we plan to open will be unique in comparison with existing local businesses as we want to create an atmosphere that will engulf all who enter it. When people wander down our staircase, we want them to forget when they are. Alchemy will emphasize the late 19th century aesthetics that we enjoy today in the Old Port district.

Additionally the space is will be finely and rustically built out, have an up-to-date sprinkler system, and all of our my employees will be properly licensed and experienced. We are very anxious to strengthen ties with the community and to make long-lasting relationships in this growing town.

Sincerely,

Josh Soley
T. H. 11-11-11

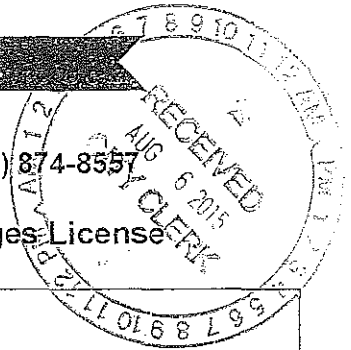
Portland, Maine



Yes Life's good here

Office of the City Clerk • 389 Congress St. • Portland, ME 04101 • (207) 874-8557

Application for Food Service Establishment with Alcoholic Beverages License



Business Information	
Business Name (d/b/a):	One Exchange, d/b/a Alchemy LLC
Location Address:	1 Exchange Street, Portland, ME Zip: 04101
If new, what was formerly at this location:	Legends Bar
Mailing Address:	10 Exchange Street, Portland, ME Zip: 04101
Contact Person:	Josh Soley
Contact Person Email:	Josh@Compass-CB.com
Manager of Establishment:	Josh Miranda
Owner of Premises (Landlord):	Joseph Soley
Address of Premises Owner:	Po Box 4894, Portland, ME 04112 Zip:

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

Name of Owner(s)	Date of Birth	Residence Address

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

Corporate Name		Corporate Mailing Address	
One Exchange, LLC		10 Exchange St., Portland, ME Zip: 04101	
Contact Person:	Josh Soley	Phone:	(207) 210-5677
Principal Officers	Title	Date of Birth	Residence Address
Josh Soley	Managing Partner	6/8/1994	10 Exchange Street, Portland, ME

About Your Establishment

Class of Liquor License:	Class A Lounge		
Type of food served:	Classic and Contemporary small plates		
Please circle all that will be served:	☒ Beer ☒ Wine ☒ Liquor		
Projected percentage of sales:	Generated from Food:	25%	Generated from Alcohol:
Hours & days of operation:	Monday to Sunday, 4pm-1am		

QUESTIONS		☒ Y ☒ N
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?		☒ Y ☒ N
If No, please explain:		
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?		☒ Y ☒ N
If yes, give the distance:		
Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.)		☒ Y ☒ N
Will you permit dancing on the premises?		☒ Y ☒ N
Will you permit dancing after 1:00 a.m.?		☒ Y ☒ N
Will you have outside dining? (If yes, an Outdoor Dining Application is required)		☒ Y ☒ N
If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one).		
Will you have any amusement devices (pinball, video games, juke box)?		☒ Y ☒ N
If yes, please list: # of pinball machines: <u>N/A</u> # of amusements: <u>N/A</u> # of pool tables: <u>N/A</u>		
What is your targeted opening date?		<u>12/1/15</u>
Does the Issuance of this license directly or indirectly benefit any City employee(s)?		☒ Y ☒ N
If Yes, list name(s) of employee(s) and department(s):		
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?		☒ Y ☒ N
If Yes, please list business name(s) and location(s):		
Is any principal officer under the age of 21?		☒ Y ☒ N
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?		☒ Y ☒ N
If Yes, please explain:		

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

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

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

Signature [Signature] Title Managing Partner Date 7/28/15

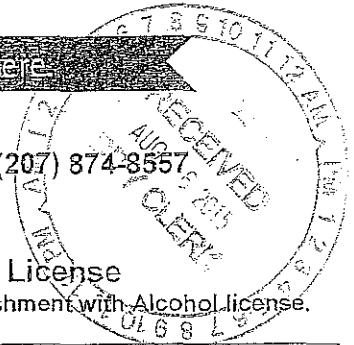
For more information about Liquor Licenses, see Portland City Code Chapter 15 at www.portlandmaine.gov and M.R.S.A. Title 28-A at www.maine.gov

Portland, Maine



Yes, Life's good here

Office of the City Clerk • 389 Congress St. • Portland, ME 04101 • (207) 874-8557
www.portlandmaine.gov



Supplemental Application for Dancing and Entertainment License

License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Alcohol license.

☐ Entertainment without Dancing: \$270 ☒ Entertainment with Dancing: \$485 ☐ After-Hours (1 a.m. to 3 a.m.): \$545

Business Information	
Business Name (d/b/a):	One Exchange LLC d/b/a Alchemy Phone: (207) 210-5677
Location Address:	1 Exchange Street, Portland, ME Zip: 04101

About Your Establishment

Describe in detail the type and nature of the business and proposed entertainment:	
High class cocktail lounge with old fashioned theme and music.	
Will music be electric, acoustical, or both? (Circle)	
Will amplification be used?	Y(N)
yes, where and at what level?	Below 92 decibels
Will music be played (Circle all that apply): Inside Outside	
Will you permit dancing on the premises?	Y(N)
Will you permit dancing after 1:00 a.m.?	Y(N)
What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? Neighboring Building 35 feet	
What is your targeted opening date?	12/1/15
Does the issuance of this license directly or indirectly benefit any City employee(s)?	Y(N)
If Yes, list name(s) of employee(s) and department(s):	

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

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto.

I/ We hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/ We hereby waive any rights to privacy with respect thereto.

Signature

Title

Managing Partner

Date

7/28/15

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

Department of Public Safety
Division

Liquor Licensing & Inspection



Promise by any person that he or she can expedite a liquor license through influence should be completely disregarded.
To avoid possible financial loss an applicant, or prospective applicant, should consult with the Division before making any substantial investment in an establishment that now is, or may be, attended by a liquor license.

BUREAU USE ONLY

License No. Assigned:

Class:

Deposit Date:

Amt. Deposited:

PRESENT LICENSE EXPIRES _____

INDICATE TYPE OF PRIVILEGE: ☐ MALT ☐ SPIRITUOUS ☐ VINOUS

INDICATE TYPE OF LICENSE:

☐ RESTAURANT (Class I,II,III,IV)

☐ HOTEL-OPTINONAL FOOD (Class I-A)

☒ CLASS A LOUNGE (Class X)

☐ CLUB (Class V)

☐ TAVERN (Class IV)

☐ RESTAURANT/LOUNGE (Class XI)

☐ HOTEL (Class I,II,III,IV)

☐ CLUB-ON PREMISE CATERING (Class I)

☐ GOLF CLUB (Class I,II,III,IV)

☐ OTHER: _____

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

1. APPLICANT(S) (Sole Proprietor, Corporation, Limited Liability Co., etc.)		2. Business Name (D/B/A)	
One Exchange, LLC. DOB: _____		One Exchange, LLC d/b/a Alchemy	
Address 10 Exchange Street DOB: _____		Location (Street Address) 1 Exchange St	
City/Town Portland State ME Zip Code 04101		City/Town Portland State ME Zip Code 04101	
Mailing Address 10 Exchange St		Mailing Address 10 Exchange St	
City/Town Portland State ME Zip Code 04101		City/Town Portland State ME Zip Code 04101	
Telephone Number (207) 210-5677 Fax Number _____		Business Telephone Number (207) 210-5677 Fax Number _____	
Federal I.D. # _____		Seller Certificate # _____	

3. If premises are a hotel, indicate number of rooms available for transient guests: N/A
4. State amount of gross income from period of last license: ROOMS \$ _____ FOOD \$ _____ LIQUOR \$ _____
5. Is applicant a corporation, limited liability company or limited partnership? YES ☒ NO ☐

complete Supplementary Questionnaire, If YES

6. Do you permit dancing or entertainment on the licensed premises? YES ☒ NO ☐
7. If manager is to be employed, give name: Josh Miranda
8. If business is NEW or under new ownership, indicate starting date: _____
- Requested inspection date: _____ Business hours: _____
9. Business records are located at: _____
10. Is/are applicants(s) citizens of the United States? YES ☒ NO ☐

11. Is/are applicant(s) residents of the State of Maine? YES ☒ NO ☐

12. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married:
Use a separate sheet of paper if necessary.

Name in Full (Print Clearly)	DOB	Place of Birth
Joshua Aaron Soley	6/8/1994	Portland, ME
Joshua Joseph Miranda	8/20/72	Portland, ME

Residence address on all of the above for previous 5 years (Limit answer to city & state)

Josh Soley - Portland, ME and Syracuse, NY
Josh Miranda - Portland, ME

13. Has/have applicant(s) or manager ever been convicted of any violation of the law, other than minor traffic violations, of any State of the United States? YES ☐ NO ☒

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

14. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?
Yes ☐ No ☒ If Yes, give name: _____

15. Has/have applicant(s) formerly held a Maine liquor license? YES ☐ NO ☒

16. Does/do applicant(s) own the premises? Yes ☐ No ☒ If No give name and address of owner: Joseph Soley

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) Underground bar/
restaurant space containing 5,000 sq ft ±.

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?
YES ☐ NO ☒ Applied for: Pending

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 3 miles Which of the above is nearest? Church

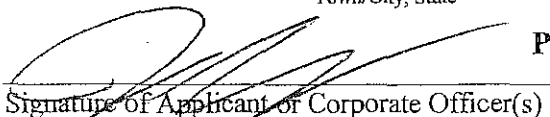
20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES ☐ NO ☒

If YES, give details: _____

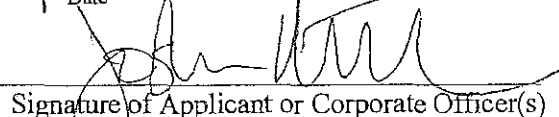
The Division of Liquor Licensing & Inspection is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

NOTE: "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under the Criminal Code, punishable by confinement of up to one year or by monetary fine of up to \$2,000 or both."

Dated at: Portland, ME on July 28th, 20 15
Town/City, State Date


Signature of Applicant or Corporate Officer(s)

Please sign in blue ink


Signature of Applicant or Corporate Officer(s)



State of Maine
Bureau of Alcoholic Beverages
Division of Liquor Licensing and Enforcement

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

For Office Use Only:

License #: _____

Date Filed: _____

For information required for Questions 1 to 4, this information is on file with the Maine Secretary of State's office and must match their record information. Please clearly complete this form in its entirety.

1. Exact legal name:

One Exchange, LLC.

2. Other business name for your entity (DBA), if any:

One Exchange, LLC. d/b/a Alchemy

3. Date of filing with the Secretary of State:

8/18/2014

4. State in which you are formed:

Maine

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

6. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attached additional sheets as needed)

Name	Address for Previous 5 years	Date of Birth	Ownership %
Josh Soley	10 Exchange, Portland, ME	6/8/94	100

7. Is any principal person involved with the entity a law enforcement official?

Yes

☐

No

☒

8. If Yes to Question 7, please provide the name and law enforcement agency:

Name: _____

Agency: _____

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

Yes

☐

No

☒

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

Name: _____

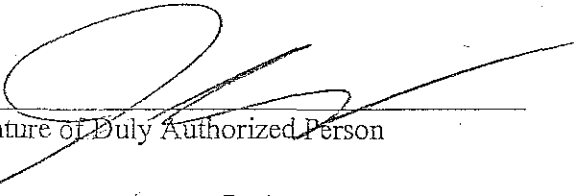
Date of Conviction: _____

Offense: _____

Location of Conviction: _____

Disposition: _____

Signature:



Signature of Duly Authorized Person

7/28/15
Date

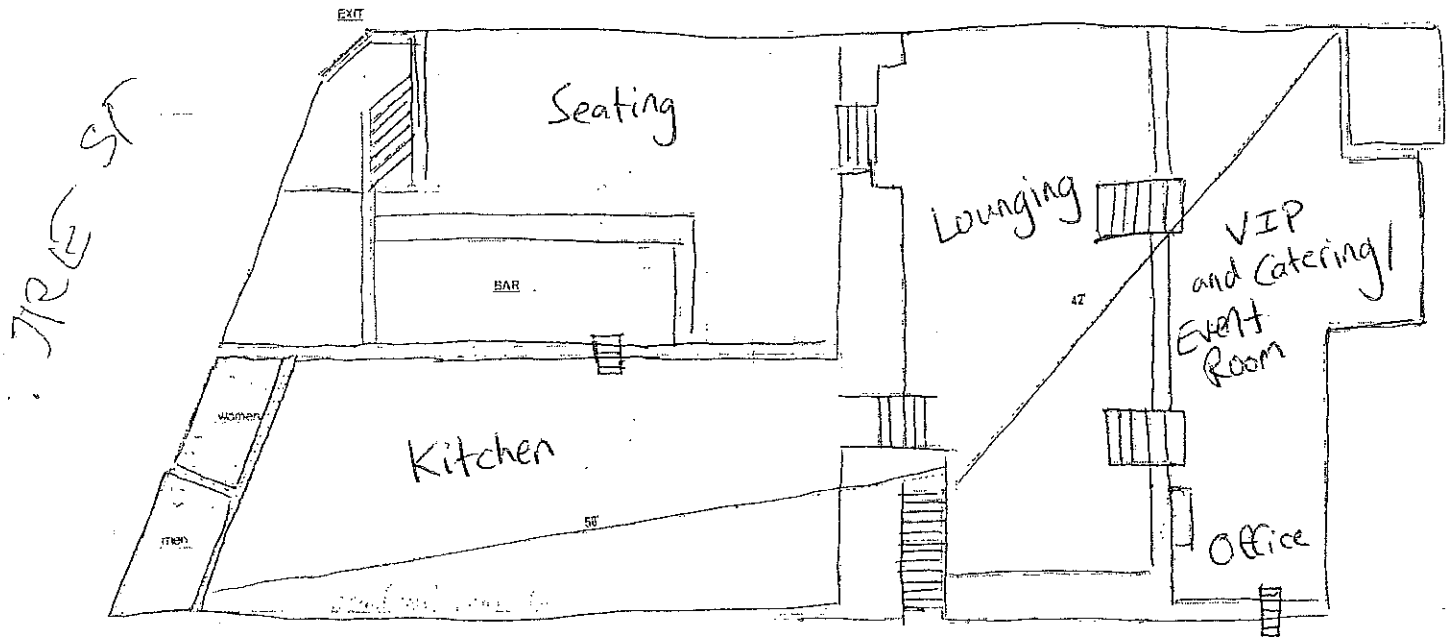
Josh Soley
Print Name of Duly Authorized Person

If you have questions regarding the legal name or assumed (DBA) name on file with the Secretary of State's office, please call (207) 624-7752. The SOS can only speak to the information on file with their office, not the filing of this supplemental information – please direct any questions about this form to our office at the number below.

Submit Completed Forms To: Bureau of Alcoholic Beverages and Lottery Operations
Division of Liquor Licensing and Enforcement
164 State House Station
Augusta, Me 04333-0101
Telephone Inquiries: (207) 624-7220
Fax: (207) 287-3424
Email Inquiries: MaineLiquor@Maine.gov

PREMISE DIAGRAM

EXCHANGE STREET



PLAN OF THE "BASEMENT"
1 EXCHANGE STREET
PORTLAND, MAINE

This is not a survey, but a rough plan showing
in general, the layout and size of the space.

EXIT
0' 5' 10' 15' 20'
SCALE - 1/8" = 1'-0"

WILLIAM NEMMERS, ARCHITECT
424 FORE STREET
PORTLAND, MAINE

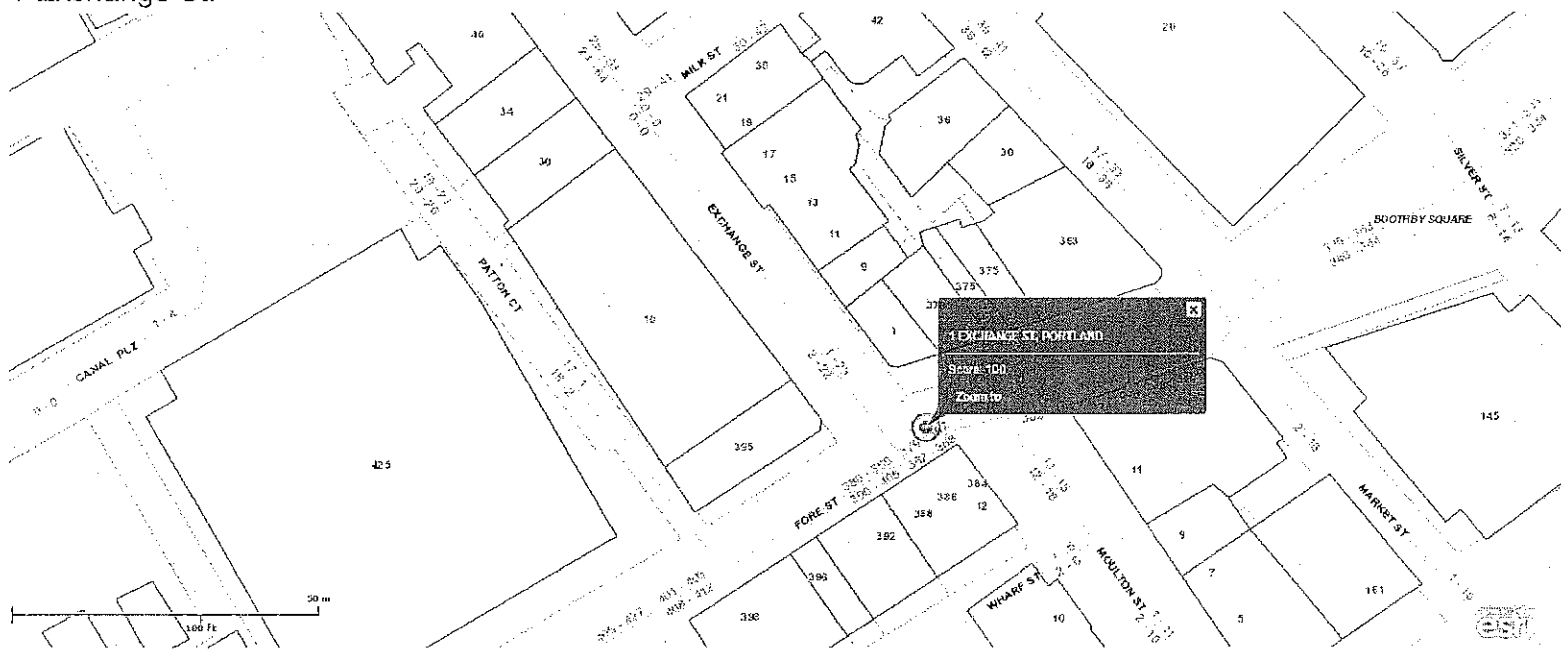
~~330 6/25/21~~

~~500 6/25/21~~

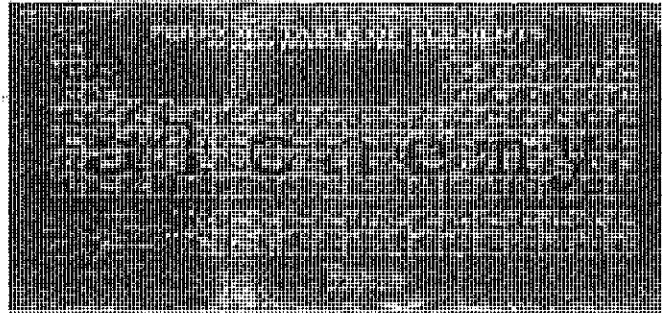
032 FO 14

Alchemy

1 Exchange St.



Copyright 2011 Esri. All rights reserved. Wed Sep 9 2015 11:09:51 AM.



SHANGHAI LOBSTER TACO \$16

MANDARIN HOISIN GLAZED LOBSTER, SPICED CASHEW, ROMAINE,
SAMBAL AIOLI

BANH MI \$8

ROASTED PORK, CARROT, CUCUMBER, CILANTRO, JICAMA, MINI BAGUETTE

WAGYU SLIDER \$12

WAGYU BEEF, PONZU, RED PEPPER, MUSHROOM, BASIL, MANCHEGO

WATERMELON SALAD \$9

ARUGULA, FRISEE, CUCUMBERS, SHEEP'S MILK CHEESE, CRISPY SHALLOTS,
TOASTED PEPITOS, GINGER-SOY VINAIGRETTE

KOREAN BBQ CHICKEN WRAP \$10

ORGANIC CHICKEN, MANGO-PAPAYA RICE, BIBB LETTUCE

SESAME AHI \$12

BLACK SESAME ENCRUSTED TUNA, SEAWEED SALAD

BEEF PINCHO \$10

PAN SEARED BEEF TENDERLOIN SKEWERS, BELL PEPPER, PONZU & PLUM

CRISPY WONTONS \$8

FREE RANGE GROUND CHICKEN, SOY SAUCE, SPICY AVOCADO PUREE

MEAT & CHEESE BOARD \$14

CHORIZO, SOPRESSATA, DRUNKEN GOAT & MANCHEGO

STRONG

SMOKE & GLASS MANHATTAN \$12

BUFFALO TRACE BOURBON, COCCHI VERMOUTH DI TORINO, HOUSE BITTERS,
CHERRY SMOKE

THE GREAT GATSBY \$12

HUDSON MANHATTAN RYE, CYNAR, DOLIN ROUGE, CHOCOLATE-CITRUS SHRUB,
WHITE TRUFFLE OIL, SCRAPPY CHOCOLATE BITTERS, SEA SALT

TEQUILA MOCKINGBIRD \$11

DEL Maguey VIDA MEZCAL, CIDER, CINNAMON, GINGER BEER
OWL & WHALE PERSIMMON BITTERS

COOL HAND LUKE \$9

DICKEL #12, CARDAMARO, GINGER BEER, BEE BALM
BOKER'S STYLE BITTERS

SAVORY

WONG COLLINS \$10

BOMBAY SAPPHIRE EAST GIN, THAI BASIL & LEMONGRASS,
VIETNAMESE PEPPERCORN, YUZU, CUCUMBER, DRY CUCUMBER SODA

MCCHALE'S NAVY \$10

ESPOLON TEQUILA BLANCO, CILANTRO, PINEAPPLE REDUCTION, CELERY SODA,
LIME, CRACKED PEPPER, CHESAPEAKE BAY BITTERS

RIO BRAVO \$10

BACARDI HERITAGE, AGUA LUCA CACHACA, GINGER, PRICKLY PEAR, LIME

SOME LIKE IT HOT \$10

MILAGRO TEQUILA BLANCO, ANCHO REYES CHILI LIQUOR, BLOOD ORANGE, AGAVE,
LIME, SAN PELLEGRINO, SEA SALT & CHILI RIM

BITTER

MURDER ON THE ORIENT EXPRESS \$10

SESAME INFUSED TANQUERAY, FINO SHERRY, PERNOD ABSINTHE MIST,
SUGAR SNAP PEAS

THE GOOD, THE BAD & THE UGLY \$10

GORAL MASTER VODKA, CAMPARI, GRAPEFRUIT JUICE, PASSION FRUIT

SOUTHERN REVIVAL \$11

WOODFORD'S BOURBON, APEROL, BLACK TEA, GRILLED PEACH, LEMON,
WOODFORD'S BITTERS

THE CARY GRANT \$10

MILK WASHED BEEFEATER GIN, SOCIETY FAIR TONIC, CLARIFIED LIME JUICE

FRESH

BATIDA DE CARMEN MIRANDA \$11

LEBLON CACHACA, KIWI, BANANA, LIME, COCONUT MILK, CONDENSED MILK

CALYPSO \$11

PAPA'S PILAR RUM, APPLETON ESTATE RUM, GUAVA, ALMOND,
BLUE & BLACKBERRY GRANITA

THE FRANKIE & ANNETTE \$10

BUDDHA'S HAND CITRON VODKA, DOLAN BLANC, GRILLED WATERMELON JUICE,
LEMON, REGAN ORANGE BITTERS

PISCO PUNCH \$10

PINEAPPLE INFUSED BARSOL PISCO, PINEAPPLE GOMME,
GRAPEFRUIT, LIME, LEMON JUICE



MAINE STATE BUREAU OF IDENTIFICATION
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42
AUGUSTA, ME 04333
(207) 624-7240 (VOICE) (207) 624-4478 (TDD)

Transaction Response #: MIQ99C357868

Criminal History Record

Introduction

This rap sheet was produced in response to the following request (Produced on 2014-12-11) :

Inquiries Name(s) JOSHUA SOLEY (1994-06-08)

NO MATCH WAS FOUND FOR YOUR REQUEST.



MAINE STATE BUREAU OF IDENTIFICATION
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42
AUGUSTA, ME 04333
(207) 624-7240 (VOICE) (207) 624-4478 (TDD)

JANICE GARDNER
389 CONGRESS STREET
ROOM 203
PORTLAND, ME 04101

Transaction Response #: MIQ99C587871

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2015-08-17) :
Inquiries Name(s) JOSHUA J MIRANDA (1972-08-20)

The information in this criminal history record is provided subject to the following caveats:

Important! When a criminal history record and juvenile crime information record check is processed by the State Bureau of Identification using personal identifiers such as name and date of birth, it is possible that the record supplied belongs to another person with the same or essentially similar name and date of birth. Confirmation that convictions relate to person whose record has been requested requires fingerprint comparison. If the information contained in this response will be used to disqualify an applicant for employment, housing, credit, or other benefits or programs, the person making the eligibility determination using this record should provide the applicant with an opportunity to complete or contest the accuracy of the criminal history information in the response. An individual may request amendment or correction of criminal history record information by a criminal justice agency pursuant to 16 M.R.S. section 709.

**THIS RESPONSE IS BEING PRODUCED FOR YOUR REQUEST SENT: 2015-08-17

This record, effective September 1, 2000, contains information relating to persons arrested as fugitives from justice, 15 M.R.S section 201.4 or arrested or charged with Maine crimes. It does not include former crimes no longer classified as criminal, or Class D and E crimes in Title 12 or Title 29-A, former Title 29, unless the crime is alcohol-related or drug-related 25 M.R.S. section 1541.4-A.A. For information regarding excluded Marine Resources crimes in Title 12, contact the Department of Marine Resources. For information regarding excluded Inland Fisheries and Wildlife crimes in Title 12, contact the Department of Inland Fisheries and Wildlife. For information relating to excluded crimes in Title 29-A former Title 29, contact the Secretary of State, Motor Vehicle Division. A list of former crimes is available from this Bureau.

THE FOLLOWING ATN(S) ARE UNSUPPORTED BY FINGERPRINTS IN STATE BUREAU OF IDENTIFICATION FILES:
(317419A).

Identification

Subject Name/or potential Alias Name(s)

MIRANDA, JOSHUA

Subject Description (date information provided listed in parentheses)

State ID Number ME0077687	DOC Number Unknown/NA	
Sex Unknown/NA	Race Unknown/NA	Skin Tone Unknown/NA
Height Unknown/NA	Weight Unknown/NA	Date of Birth 1972-08-20
Hair Color Unknown/NA	Eye Color Unknown/NA	
Scars, Marks, and Tattoos Unknown/NA		
Place of Birth Unknown/NA	Citizenship Unknown/NA	
Residence Residence as of Address	2004-10-25 37 INERNESS ST PORTLAND, ME	
Caution Information Firearms Disqualified	D - Disqualified	

Criminal History

Cycle 001

ATN/Tracking Number	317419A
Earliest Event Date	2001-07-30
Arrest/Charge	(Cycle 001)
Arrest/Charge Date	2001-07-30
Arresting/Charging Agency	MAINE DRUG ENFORCEMENT AGENCY PORTLAND; ME0032000
Subject Name(s)	MIRANDA, JOSHUA
Arrest Type	Adult
Charge 1	
	Charge Number 317419A 001
	Charge Tracking Number 317419A
	Agency MAINE DRUG ENFORCEMENT AGENCY PORTLAND; ME0032000
	Offense Date 2001-07-30
	Charge Description UNLAWFUL TRAFFICKING IN SCHEDULED DRUGS (Charge Class B)
	Statute 17-A MRSA SUBSECTION 1103(1)

State Sequence Code 2773
Severity Felony

Charge 2

Charge Number 317419A 002
Charge Tracking Number 317419A
Agency MAINE DRUG ENFORCEMENT AGENCY PORTLAND; ME0032000
Offense Date 2001-07-30
Charge Description UNLAWFUL POSSESSION OF SCHEDULED DRUGS (Charge Class D)
Statute 17-A MRSA SUBSECTION 1107(1)
State Sequence Code 2786
Severity Misdemeanor

Prosecutor Disposition	No data supplied
Court Disposition	(Cycle 001)
Court Case Number	CR 2001-01157
Court Agency	SUPERIOR COURT ALFRED; ME016015J

Charge 1

Charge Number 317419A 001
Charge Tracking Number 317419A
Agency SUPERIOR COURT ALFRED; ME016015J
Offense Date 2001-07-30
Charge Description UNLAWFUL TRAFFICKING IN SCHEDULED DRUGS (Charge Class B)
Statute 17-A MRSA SUBSECTION 1103(1)
State Sequence Code 2773
Severity Felony
Disposition 2002-07-11; GUILTY

Charge 2

Charge Number 317419A 002
Charge Tracking Number 317419A
Agency SUPERIOR COURT ALFRED; ME016015J
Offense Date 2001-07-30
Charge Description UNLAWFUL POSSESSION OF SCHEDULED DRUGS (Charge Class D)
Statute 17-A MRSA SUBSECTION 1107(1)
State Sequence Code 2786
Severity Misdemeanor
Disposition 2002-07-11; GUILTY

Sentencing	(Cycle 001)
Sentencing Agency	SUPERIOR COURT ALFRED; ME016015J
Court Case Number	CR 2001-01157
Charge Number	317419A 001
Charge Sequence Number	1
Charge Tracking Number	317419A
Sentence	2002-07-11: INCARCERATED 2 years ALL SUSPENDED DEPARTMENT OF CORRECTIONS 2002-07-11: PROBATION 2 years STARTING DATE AFTER INCARCERATION

Sentencing	(Cycle 001)
Sentencing Agency	SUPERIOR COURT ALFRED; ME016015J
Court Case Number	CR 2001-01157
Charge Number	317419A 002
Charge Sequence Number	2
Charge Tracking Number	317419A

Sentence 2002-07-11: INCARCERATED 364 days ALL SUSPENDED YORK COUNTY
JAIL
2002-07-11: PROBATION 2 years STARTING DATE AFTER INCARCERATION

Corrections

No data supplied

Index of Agencies

Agency	SUPERIOR COURT ALFRED; ME016015J
Agency Telephone	207-324-5122
Address	PO BOX 160 ALFRED, ME 04002

Agency	MAINE DRUG ENFORCEMENT AGENCY PORTLAND; ME0032000
Agency Telephone	207-822-0370
Address	565 CONGRESS STREET SUITE 300 PORTLAND, ME 04101

Business Licensing - ALCHEMY - PENDING Business License Approval

From: Gary Hutcheson
To: Business Licensing
Date: 8/21/2015 11:21 AM
Subject: ALCHEMY - PENDING Business License Approval

ALCHEMY - PENDING is Approved for their Business License Inspection by the Police Dept.

Date: 8/21/2015

Zone:
Comments:

Lt. Gary L Hutcheson
Portland Police Department
109 Middle St
Portland, Maine 04101
(207) 756-8295



Office of the City Clerk

Katherine L. Jones, CCM, City Clerk

September 9, 2015

Joshua Soley
1 Dana St., 4th Fl.
Portland, ME 04101

Re: One Exchange, LLC d/b/a Alchemy. Application for a Class A Lounge License with Entertainment (unamplified only) with Dance at 1 Exchange St.

Dear Mr. Soley,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, September 21st, at 7:00 p.m.** for the review of your application for a Class A Lounge License with Entertainment (unamplified only) with Dance at 1 Exchange St. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

You or a representative of the business must be present at this meeting in the event that the City Council has questions regarding the license application. If there is no representation and questions arise, the issue could be postponed.

Should you have any questions or concerns, please do not hesitate to contact our office directly at (207) 874-8557 or by email, BL@portlandmaine.gov

Sincerely,

Janice Gardner
Business License Administrator
207-874-8557
bl@portlandmaine.gov

*Order 67-15/16
Tab 7 9-21-15*

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**Pearl Tap House LLC d/b/a Pearl Tap House. Application to expand Class A Lounge License
with Entertainment with Dance at 442-446 Fore St.**

Rcvd 8/19/15

Letter of Intent

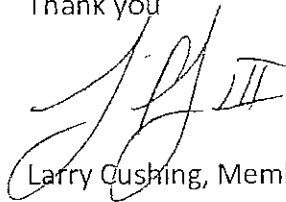
Pearl Tap House LLC
446 Fore St
Portland, Me 04101

To: Michael Brennan and members of the Portland City Council

Our intent is to incorporate the second floor into our current facility at 446 Fore St. The second floor was originally part of the overall facility at 446 Fore St and has been vacant for over six years. The second floor will be used for additional seating and games (i.e. Darts, foosball, video games).

If you have any questions or concerns, please contact me at 207 615-4501 or larrycushing@outlook.com.

Thank you

A handwritten signature in black ink, appearing to read "L. Cushing III".

Larry Cushing, Member

Rcvd 8/19/15

Portland, Maine



Yes. Life's good here.

Office of the City Clerk • 389 Congress St. • Portland, ME 04101 • (207) 874-8557

Application for Food Service Establishment with Alcoholic Beverages License

Business Information:	
Business Name (d/b/a):	Pearl Tap House Phone: 207 523-9600
Location Address:	446 Fore St. Zip: 04101
If new, what was formerly at this location:	
Mailing Address:	446 Fore St. Zip: 04101
Contact Person:	Mark Deane Phone: 207 653-3612
Contact Person Email:	Mark.Deane@comcast.net
Manager of Establishment:	Mark Deane Phone:
Owner of Premises (Landlord):	Deane Part 3 LLC
Address of Premises Owner:	75 Woodland Park Drive Tenafly, NJ Zip: 07670

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

Name of Owner(s)	Date of Birth	Residence Address

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

Corporate Name		Corporate Mailing Address	
Pearl Tap House LLC		446 Fore St. Zip: 04101	
Contact Person:	Mark Deane	Phone:	207 653-3612
Principal Officers	Title	Date of Birth	Residence Address
Mark Deane	Member/manager	8-17-53	34 Patricia Lane Portland, Me 04103
Lawrence C. Cusby III	member	2-4-72	31 Juniper Lane Gray, Me 04039

About Your Establishment

Class of Liquor License:	Class A Lounge	
Type of food served:	Pizza, Subs	
Please circle all that will be served:	☒ Beer ☒ Wine ☒ Liquor	
Projected percentage of sales:	Generated from Food: 50%	Generated from Alcohol: 50%
Hours & days of operation:	Sun-Sat 11am-2am	

QUESTIONS	Y/N
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?	☒ Y
If No, please explain:	
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?	☒ Y
If yes, give the distance:	
Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.)	☒ Y
Will you permit dancing on the premises?	☒ Y
Will you permit dancing after 1:00 a.m.?	☒ Y
Will you have outside dining? (If yes, an Outdoor Dining Application is required)	☒ Y
If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one).	
Will you have any amusement devices (pinball, video games, juke box)?	☒ Y
If yes, please list: # of pinball machines: <u>0</u> # of amusements: <u>2-3</u> # of pool tables: <u>0</u>	
What is your targeted opening date? <u>December 1st for Expansion</u>	
Does the Issuance of this license directly or indirectly benefit any City employee(s)?	☒ Y
If Yes, list name(s) of employee(s) and department(s):	
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?	☒ Y
If Yes, please list business name(s) and location(s): <u>Pearl Tap House LLC, Old Port Stage Bar, Market Place</u> <u>Rooms</u>	
Is any principal officer under the age of 21?	☒ Y
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?	☒ Y
If Yes, please explain:	

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

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

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

Signature [Signature] Title member Date 8/19/15

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



Rec'd 8/19/15

Office of the City Clerk • 389 Congress St. • Portland, ME 04101 • (207) 874-8557
www.portlandmaine.gov

Supplemental Application for Dancing and Entertainment License

License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Alcohol license.

☐ Entertainment without Dancing: \$270	☒ Entertainment with Dancing: \$485	☐ After-Hours (1 a.m. to 3 a.m.): \$545
---	---	--

Business Information	
Business Name (d/b/a):	Pearl Tap House
Location Address:	446 Fore St.
Phone:	207 523-9600
Zip:	04101

About Your Establishment

Describe in detail the type and nature of the business and proposed entertainment:	
Bar, Dance	
Will music be electric, acoustical, or both? (Circle)	
Will amplification be used?	
yes, where and at what level? Current City Limits	
Will music be played (Circle all that apply): Inside Outside	
Will you permit dancing on the premises?	
Will you permit dancing after 1:00 a.m.?	
What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? 150'	
What is your targeted opening date? Dec 1st for Expansion Space	
Does the issuance of this license directly or indirectly benefit any City employee(s)?	
If Yes, list name(s) of employee(s) and department(s):	

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

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto.

I/ We hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/ We hereby waive any rights to privacy with respect thereto.

Signature

[Signature]

Title

Member

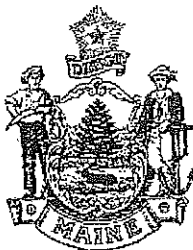
Date

8/19/15

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

Department of Public Safety
Division

Liquor Licensing & Inspection



Promise by any person that he or she can expedite a liquor license through influence should be completely disregarded. To avoid possible financial loss an applicant, or prospective applicant, should consult with the Division before making any substantial investment in an establishment that now is, or may be, attended by a liquor license.

BUREAU USE ONLY

License No. Assigned:

Class:

Deposit Date:

Amt. Deposited:

PRESENT LICENSE EXPIRES _____

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☒ SPIRITUOUS ☒ VINOUS

INDICATE TYPE OF LICENSE:

☐ RESTAURANT (Class I,II,III,IV)

☐ HOTEL-OPTINONAL FOOD (Class I-A)

☐ CLASS A LOUNGE (Class X)

☐ CLUB (Class V)

☐ TAVERN (Class IV)

☒ RESTAURANT/LOUNGE (Class XI)

☐ HOTEL (Class I,II,III,IV)

☐ CLUB-ON PREMISE CATERING (Class I)

☐ GOLF CLUB (Class I,II,III,IV)

☐ OTHER: _____

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

1. APPLICANT(S) - (Sole Proprietor, Corporation, Limited Liability Co., etc.)			2. Business Name (D/B/A)		
Pearl Tap House, LLC DOB: C			Pearl Tap House -		
446 Fore St DOB:			446 Fore St.		
Portland ME DOB: 04/10			Location (Street Address)		
Address			City/Town	State	Zip Code
			Same	Me	04101
			Mailing Address		
City/Town	State	Zip Code	City/Town	State	Zip Code
			207 S23-9600		
Telephone Number	Fax Number		Business Telephone Number	Fax Number	
207 653					
Federal I.D. #			Seller Certificate #		
47-3787627					

3. If premises are a hotel, indicate number of rooms available for transient guests: 1
4. State amount of gross income from period of last license: ROOMS \$ 0 FOOD \$ 5012 LIQUOR \$ 30012
5. Is applicant a corporation, limited liability company or limited partnership? YES ☒ NO ☐

complete Supplementary Questionnaire, If YES

6. Do you permit dancing or entertainment on the licensed premises? YES ☒ NO ☐

7. If manager is to be employed, give name: Merik Deane

8. If business is NEW or under new ownership, indicate starting date: N/A

Requested inspection date: TBD Business hours: 11am-1am

9. Business records are located at: 31 Juniper Lane, Gorham, Me 04039

10. Is/are applicants(s) citizens of the United States? YES ☒ NO ☐

11. Is/are applicant(s) residents of the State of Maine? YES ☒ NO ☐

12. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married:
Use a separate sheet of paper if necessary.

Name in Full (Print Clearly)	DOB	Place of Birth
Meril Deane	5-8-17-53	Leesville, LA
Lawrence Cushing III	2-4-72	Augusta, Me

Residence address on all of the above for previous 5 years (Limit answer to city & state)

Portland, Me 04101
Gray, Me 04039

13. Has/have applicant(s) or manager ever been convicted of any violation of the law, other than minor traffic violations, of any State of the United States? YES ☐ NO ☒

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

14. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?
Yes ☐ No ☒ If Yes, give name: _____

15. Has/have applicant(s) formerly held a Maine liquor license? YES ☒ NO ☐

16. Does/do applicant(s) own the premises? Yes ☐ No ☒ If No give name and address of owner: _____

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) 442-446 F.S. Floor 3
446 2nd Floor

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?
YES ☒ NO ☐ Applied for: _____

19. What is the distance from the premises to the **NEAREST** school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 1000' Which of the above is nearest? Church

20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES ☐ NO ☒

If YES, give details: _____

The Division of Liquor Licensing & Inspection is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

NOTE: "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under the Criminal Code, punishable by confinement of up to one year or by monetary fine of up to \$2,000 or both."

Dated at: Gray, Me on 8-19, 2015
Town/City, State Date

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

Signature of Applicant or Corporate Officer(s)

Lawrence Cushing III



State of Maine
Bureau of Alcoholic Beverages
Division of Liquor Licensing and Enforcement

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

For Office Use Only:

License #: _____

Date Filed: _____

For information required for Questions 1 to 4, this information is on file with the Maine Secretary of State's office and must match their record information. Please clearly complete this form in its entirety.

1. Exact legal name:

Pearl Tap House LLC

2. Other business name for your entity (DBA), if any:

Pearl Tap House

3. Date of filing with the Secretary of State: ~~1-1-15~~ JAN-1-2015

4. State in which you are formed: Maine

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

6. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attached additional sheets as needed)

Name	Address for Previous 5 years	Date of Birth	Ownership %
Mark Deane	34 Patricia Lane Portland, ME 04101	8-17-53	50
Lewen, C. Cusby III	31 Juniper Lane Gray, ME 04039	2-4-72	50

7. Is any principal person involved with the entity a law enforcement official?

Yes

☐

No

☒

8. If Yes to Question 7, please provide the name and law enforcement agency:

Name: _____ Agency: _____

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

Yes ☐ No ☒

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

Name: _____

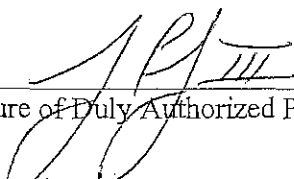
Date of Conviction: _____

Offense: _____

Location of Conviction: _____

Disposition: _____

Signature:



Signature of Duly Authorized Person

Lawrence C Cushing III

Print Name of Duly Authorized Person

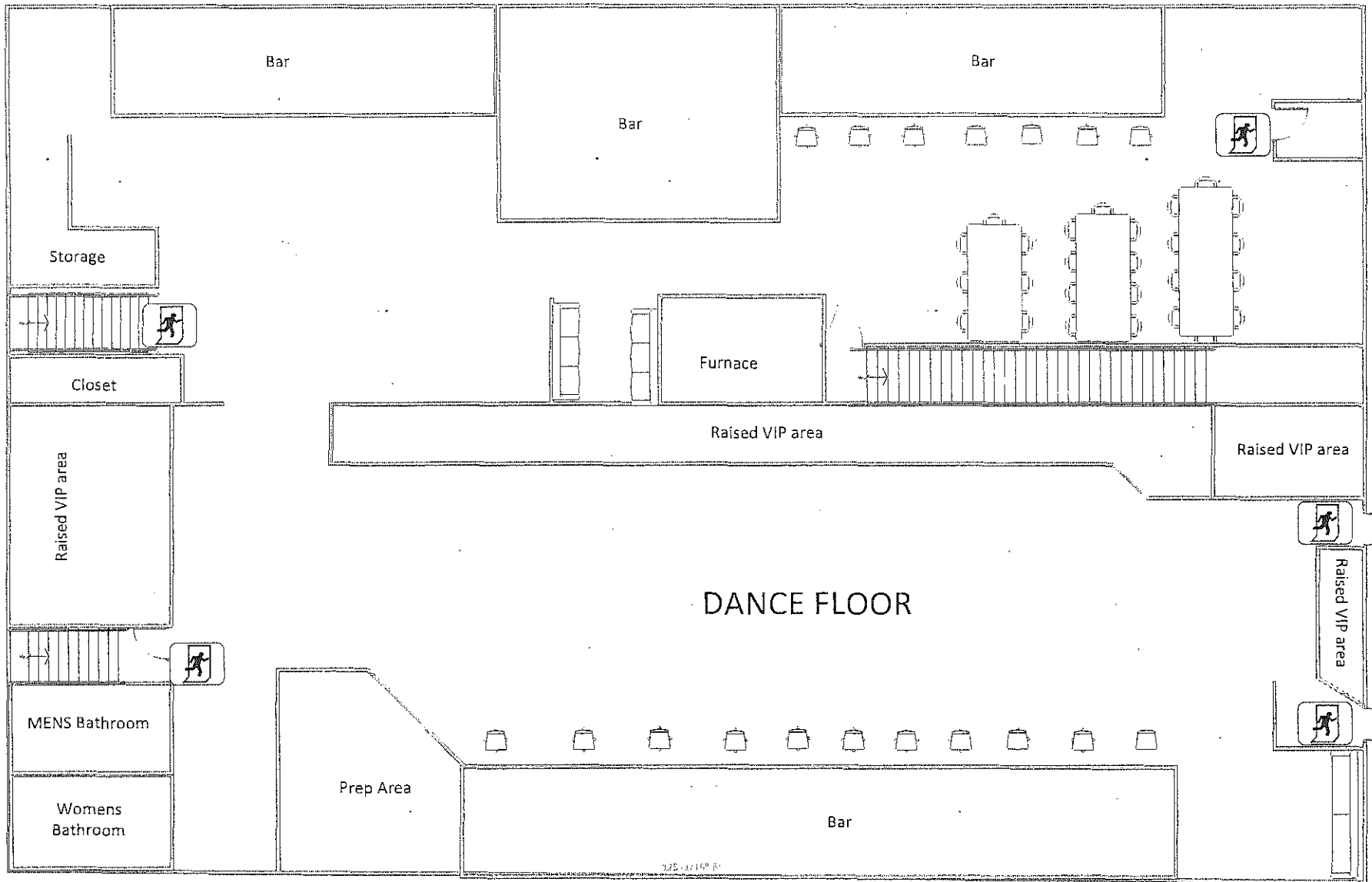
8-19-15

Date

If you have questions regarding the legal name or assumed (DBA) name on file with the Secretary of State's office, please call (207) 624-7752. The SOS can only speak to the information on file with their office, not the filing of this supplemental information – please direct any questions about this form to our office at the number below.

Submit Completed Forms To: Bureau of Alcoholic Beverages and Lottery Operations
Division of Liquor Licensing and Enforcement
164 State House Station
Augusta, Me 04333-0101
Telephone Inquiries: (207) 624-7220
Fax: (207) 287-3424
Email Inquiries: MaineLiquor@Maine.gov

Union St.



First Floor Fox St.



Office of the City Clerk

Katherine L. Jones, CCM, City Clerk

September 9, 2015

Pearl Tap House
446 Fore St.
Portland, ME 04101

Re: Pearl Tap House LLC d/b/a Pearl Tap House. Application to expand Class A Lounge License with Entertainment with Dance at 442-446 Fore St.

Dear Mr. Deane & Mr. Cushing,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, September 21st, at 7:00 p.m.** for the review of your application to expand your Class A Lounge License with Entertainment with Dance at 442-446 Fore St. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

You or a representative of the business must be present at this meeting in the event that the City Council has questions regarding the license application. If there is no representation and questions arise, the issue could be postponed.

Should you have any questions or concerns, please do not hesitate to contact our office directly at (207) 874-8557 or by email, BL@portlandmaine.gov

Sincerely,

Janice Gardner
Business License Administrator
207-874-8557
bl@portlandmaine.gov

From: Gary Hutcheson
To: Licensing, Business
Date: 9/9/2015 12:12 PM
Subject: Re: Pearl Tap House - 442-446 Fore St. - Expansion

I thought I responded. I am all set with this.
Lt. Gary L. Hutcheson
Portland Police Department
109 Middle St
Portland, Maine 04101
(207) 756-8295

>>> Business Licensing 09/09/15 11:08 AM >>>
Hi Gary,

Could I have your feedback on this one? The back-up materials for Council are due today.

Thanks,
Janice

>>> Business Licensing 8/26/2015 12:00 PM >>>
Hello,

For your approval:

Pearl Tap House LLC d/b/a Pearl Tap House at 442-446 Fore St. has submitted an application to expand their premise. They have a current Class A Lounge with entertainment and dance license. They wish to expand to the second floor and it will be used for additional seating and games (darts, foosball, video). They would like to go before Council on 9/21.

Ben & Frank, this is neither a change of ownership or new business, so I don't think you need to do anything.

Contact: Mark Deane - 653-3612 or mark.deane@comcast.net

Their application is attached. Please put feedback into UI.

Thanks,
Janice

Business License Administrator
bl@portlandmaine.gov
207.874.8557

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Order 172-14/15
~~Tab 15 3-2-15~~
~~Tab 12 3-16-15~~
~~Tab 27 5-4-15~~
~~Tab 29 5-15-15~~
DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES JR (A/L)
Tab 8 21-15

**ORDER APPROVING TWO-PARTY AGREEMENT
BETWEEN THE CITY OF PORTLAND
AND THE MAINE DEPARTMENT OF TRANSPORTATION
RE: IMPROVEMENTS TO FOREST AVENUE**

ORDERED, that the Acting City Manager is authorized to enter into the two-party partnership agreement between the City of Portland and the Maine Department of Transportation (MaineDOT), in substantially the form attached, for work on Forest Avenue:

- WIN #020543, Proposed Improvements to Forest Avenue

BE IT FURTHER ORDERED, that the Acting City Manager is hereby authorized to sign the two-party agreements and any other documents necessary to effect the purpose of this order.

**CITY OF PORTLAND, MAINE
CITY COUNCIL AGENDA REQUEST FORM**

**MEMORANDUM
Council Agenda Request**

TO: The City Council of Portland

FROM: Michael Bobinsky, Director of Public Services

DATE: Feb. 18, 2015

DISTRIBUTION: Sheila Hill-Christian, Acting City Manager
Michael Brennan, Mayor
Danielle West-Chuhta, Corporation Counsel
Sonia Bean, Executive Assistant
Nancy English, Administrative Assistant
John Peverada, Parking Manager
Eric Labelle, PE, Assistant Director of Public Services/Operations Mgr.
Katherine Earley, PE, Engineering Services Manager
Jeremiah Bartlett, PE, PTOE, Transportation Systems Engineer

1. Council meeting at which action is requested:

1st reading 3/2/15

2nd reading 3/16/15

2. Can action be taken at a later date: _____ Yes ☒ No.

If no, why not? This is a joint project of the Maine Dept. of Transportation (MDOT) and the City of Portland and is subject to MDOT's scheduling.

3. This item is sponsored by: Michael Bobinsky, Director of Public Services

1. Summary of the Issue:

The attached agreement two-party agreement between the Maine Department of Transportation (MDOT) and the City of Portland requires the approval of the City Council before execution. The agreement includes items regarding the planning, development, design, right of way, construction, cost sharing and reimbursement for a project to make improvements to Forest Avenue in Portland.

2. Reason for Submission

City Code requires that all agreements containing either indemnification or cost sharing must be submitted to the City Council for approval.

3. Intended Result

The project scope includes but not limited to reconfiguring the Forest Ave. traffic pattern at Woodfords Corner and Ocean Avenue, widen sidewalks, add streetscape aesthetics, extend shared lane bikeways and reduce crossing distances for pedestrians.

4. Financial Impacts

This project has been in discussion for a number of years and the matching and non-matching funds required, \$384, 240.75 have been included in the FY 15 Capital Improvement Budget. The total cost for the project will be \$1,518,751.00 - \$1,199,000.80 (Federal) \$135,509.45 State and \$384,240.75 City.

5. Recommendation

Staff Recommends approval of this request.



MaineDOT

**MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT**

PROPOSED IMPROVEMENTS TO FOREST AVENUE

<i>MaineDOT use only</i>	
TEDOCS #:	_____
CT #:	_____
CSN #:	_____
PROGRAM:	_____

(MaineDOT Use Only)

Project Location: Portland, Forest Ave.
State WIN #: 020543.00
Federal Aid Project #: STP-2054(300)

Estimated Municipal Share: \$149,875.00
Vendor Customer #: 17A12144
Agreement Begin Date: _____
Agreement End Date: (3 years from the date last signed below)

This Agreement is entered into between the Maine Department Of Transportation (hereafter the "Department") and the City of Portland, a municipal corporation located in the County of Cumberland (hereafter the "Municipality") (hereinafter the "Parties") regarding the planning, development, design, right of way, construction, cost sharing and reimbursement for a project to make improvements to Forest Ave., in Portland, Maine, (hereafter Project) as follows:

The following checked appendices are hereby incorporated into this Agreement by reference:

- ☒ Appendix A – Project scope, cost sharing, and payment schedule
- ☒ Appendix B – Perpetual Bicycle/Pedestrian Facility Maintenance
- ☒ Appendix B – Perpetual Landscape Maintenance
- ☒ Appendix B – Perpetual Lighting/Flashing Beacon Operation and Maintenance
- ☒ Appendix B – Perpetual Traffic Signal Operation and Maintenance
- ☐ Appendix B – Perpetual Bridge Lighting/Approach Lighting Maintenance & Snow Plowing
- ☒ Appendix C – Additional work requested by Municipality

- A. The Department agrees to procure and administer a contract to construct the Project in accordance with the plans and specifications developed by the Department and, subject to Department approval. This would include any additional plans, specifications and estimates furnished by the Municipality. Please refer to Appendix A of this Agreement for the outline of the scope, limits of work and cost sharing.
- B. The Department shall be the sole administrator of this contract. The Department will pay all project costs, subject to cost sharing by the Municipality, when applicable, as specified in this agreement. Neither the Department nor its contractors will be required to pay for inspections and permits from the Municipality.
- C. The Department reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. The Department also reserves the right to terminate all provisions pertaining to work requested by the Municipality at any time prior to the award of a contract to

construct the Project because of any failure by the Municipality to meet any of the conditions and stipulations set forth in this Agreement.

- D. Upon acceptance of plans, specifications and estimates, the Department shall solicit competitive bids for the Project. Upon acceptance of the lowest acceptable responsive, responsible bid to construct the Project and fulfillment of all terms set forth herein, the Department will submit the information to the Municipality, who will have up to five (5) business days to review the information and notify the Department of any questions or concerns. If the Department is not presented with any questions or concerns during the time allotted all decisions pertaining to the acceptance of the bids, the award and administration of the contract and all payments thereunder shall be the sole discretion of the Department.
- E. The Municipality, at its election, may request that changes be made or work added to the Project during the period of construction, provided the Municipality agrees in writing to pay any additional cost plus an amount not to exceed ten (10%) percent of such construction cost to cover all necessary engineering, inspection and administrative costs associated therewith, unless specified otherwise. All such requests shall be subject to approval by the Department. In the event that such changes or work are approved for federal participation in the cost thereof, such additional cost may be reduced to the non-federal share.
- F. The Municipality agrees to allow the Department's contractor to control all traffic through the work areas in accordance with the Traffic Control Plan approved by the Department. The development of the Traffic Control Plan will follow the process outlined below:
 - 1. The PM will submit the project for Traffic Analysis and Movement Evaluation (TAME), when possible, approximately one year prior to advertisement. Once the results are received, the PM/Regional Traffic Engineer will discuss the proposed project with the Municipality (scope, limits, day or night work, work window, etc).
 - 2. The Municipality will comment on their concerns/issues (two week timeframe allowed).
 - 3. The PM & Designer will incorporate these comments where practical based on engineering judgment.
 - 4. If the Municipality desires, a meeting will be held prior to PS&E to review the project design, Special Provision 105 – Limitations of Operations, Special Provision 107 - Time, etc.
 - 5. The Municipality will have the opportunity to review and comment.
- G. The Municipality agrees to alter, move, relocate or remove, or cause to be, at no cost to the Project, any municipal property, including all fixtures, facilities or monuments, located on, under or above the ground, as necessary to permit construction of the Project, which has not otherwise been provided for during the development of the Project. Any work necessary to do so during the period of construction shall be coordinated with the contractor for the Project.
- H. The Municipality will, at no cost to the Department, assure proper adjustment, relocation, or repair of any portion of a service, whether above or below ground, that is located within the limits of the highway right-of-way and connected to any municipal utility, which might become necessary to permit construction of the Project. The Municipality agrees to hold the Department harmless from any claims for damages occurring as a result thereof.

- I. The Municipality agrees that during and after construction it will apply the requirements of the most recent version of the Department's "Utility Accommodation Policy" as the minimum guidelines notwithstanding any municipal rules that are more lenient.
- J. To the extent that it is statutorily responsible therefore, the Municipality agrees to provide utilities, and to maintain all improvements and fixtures constructed, installed or furnished as a part of the Project in such a manner as necessary to preserve the use and function thereof for the expected period of their normal useful life as determined by accepted engineering and/or industry standards. To the extent any warranty exists for said improvements or fixtures, said warranty shall be first relied on by MaineDOT to address maintenance and/or repairs described in this paragraph.
- K. The Municipality agrees that except for an emergency, or as allowed in § 3351-A, it will prohibit the excavation of the highway within the limits of the Project for a period of at least five (5) years after completion of the Project, and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any city government under the provisions of 23 M.R.S.A. § 3351. Thereafter, all future excavations within the right-of-way of the Project shall be regulated and controlled in the manner specified by the Department in its most recent *"Rules, Regulations and Policies for Highway Openings"*, which is incorporated herein and made a part hereof by reference.
- L. The Municipality will be responsible to keep new or replaced/rehabilitated pedestrian facilities in usable condition.
- M. The Municipality agrees to keep the right-of-way of the Project inviolate from all encroachments and agrees to remove, or cause to be removed, anything that may encroach thereon.
- N. When applicable the Municipality agrees to regulate all entrances to the highway within the limits of the Project in accordance with the provisions of 23 M.R.S.A. § 704.
- O. The Municipality with city council approval agrees to limit all on-street parking to the parking spaces as designed and constructed under the Project.
- P. The Department shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to the Department's option to withhold for the purposes of set-off any monies owed to the Municipality with regard to this Agreement and any other agreement with the Department, including any agreement for a term commencing prior to the term of this Agreement, plus any amounts owed to the Municipality for any other contract with any State of Maine department or agency.
- Q. To the extent permitted by law, the Municipality shall indemnify, defend and hold harmless the Department, its officers, agents and employees from all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by the Municipality, its officials, employees, agents, consultants or contractors. Nothing herein shall waive any defense, immunity or limitation of liability that may be available to either party under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. *Any other provision of this agreement to the contrary notwithstanding, this provision shall survive any termination or expiration of this Agreement.*
- R. The Department may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Municipality and in no event shall any such action be deemed a breach

of contract. Postponement, suspension, abandonment or termination may be taken for any reason by the Department or specifically as the result of any failure by the Municipality to perform any of the services required under this Agreement to the satisfaction of the Department.

In the event of Project termination, all provisions of this Agreement shall become null and void except for those set forth under *Appendices A and C, if attached to this Agreement, as well as those provisions that by their very nature are intended to survive.*

- S. The Municipality certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. If the Municipality is unable to certify to this statement, it shall attach an explanation to this Agreement. The Municipality shall promptly notify MaineDOT if it or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- T. The Parties agree to: comply with and abide by all applicable State and Federal laws, statutes, rules, regulations, standards and guidelines, including the MUTCD and OSHA standards, and Agreement provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.
- U. All provisions of this Agreement, *except those provided above in Paragraphs J-Q and those that by their very nature are intended to survive.* shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.
- V. Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees that although the execution of this agreement by the Department manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
- W. No assignment of this agreement is contemplated, and in no event shall any assignment be made without the express written permission of the Department.

IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT in duplicate effective on the day and date last signed below.

City of Portland

MAINE DEPARTMENT OF TRANSPORTATION

By: _____
Sheila Hill-Christian, Acting City Manager

By: _____
Aurele Gorneau, II

(Date Signed)

(Date Signed)

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.

APPENDIX A
PROJECT SCOPE AND COST SHARING
MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project
MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO FOREST AVENUE

FEDERAL AID PROJECT NO. STP-2054(300)
STATE PROJECT IDENTIFICATION NUMBER (WIN) 020543.00

Project Scope: Reconfigure Forest Ave. traffic pattern at Woodfords Corner and Ocean Ave, widen sidewalks, add streetscape aesthetics, extend shared lane bikeways and reduce crossing distances for pedestrians.

Funding Outline: The Total Project Estimated Cost is \$1,498,751.00, and the Parties agree to share costs through all stages of the Project under the terms outlined below.

Work Element	Municipal Share		Project Share				Total Cost
			MPO FEDERAL Portion		MaineDOT (State) Portion		
	%	\$	%	\$	%	\$	\$
Preliminary Engineering	15	33,721.95	80	179,850.40	10	11,240.65	224,813.00
Right of Way	15	9,375.00	80	50,000.00	10	3,125.00	62,500.00
Construction	10	106,156.30	80	849,250.40	10	106,156.30	1,061,563.00
Construction Engineering	10	14,987.50	80	119,900.00	10	14,987.50	149,875.00
PROJECT SHARES		\$164,240.75		\$1,199,000.80		\$135,509.45	\$1,498,751.00
Total Cost of Additional Work Requested by Municipality (Below)	100%	220,000					
TOTAL ESTIMATED MUNICIPAL SHARE (Receivable Amount)		\$384,240.75					

(Check if applicable)

☒ Additional Work as outlined in Appendix C to this Agreement.

Funding Outline: The Municipality agrees to pay 100% of the costs for the work outlined below.

Additional Work	Cost: 100% Municipal Share
PE - Design to include milling and paving on Forest Ave.	\$10,000
Milling and paving on Forest Ave.	\$200,000
CE - Construction Engineering and inspection/testing	\$10,000
TOTAL COST OF ADDITIONAL WORK REQUESTED BY MUNICIPALITY	\$220,000

Payment:

The Municipality shall submit payment to the Department within 30 days from the invoice date.

1. Prior to award of the contract for Project construction, the Municipality will be invoiced a portion of its share of the cost of the Project. Invoicing will include the following:
 - a. 100% of the local share of the Preliminary Engineering and Right of Way costs; plus
 - b. Fifty percent (50%) of the local share of the Construction and Construction Engineering cost based on the total bid price of the Project; plus
 - c. 100% of all additional work requested by the Municipality (when applicable).
2. Final Voucher Payment to the Contractor. A final bill will be created following the Department's final voucher payment to the Contractor, after all quantities are verified, and any required adjustments have been made. The cost of the work for which the Department will bill the Municipality shall be determined by the contract prices and the completed quantities of the work items or, in the event of termination, the local share of Project development cost to the point of termination as stipulated above. The final invoice will include the Municipality's share of any remaining costs.

Invoicing Schedule: The Municipal Payment Schedule shown below includes estimated invoicing dates based upon the estimated schedule and estimated cost of the Project:

Entity Name	Receivable Amount	Estimated Invoice Date
Portland	\$53,096.95	3-1-16
Portland	\$165,571.90	7-15-16
Portland	\$165,571.90	12-1-16
	\$	

APPENDIX B
PERPETUAL BICYCLE/PEDESTRIAN FACILITY MAINTENANCE

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO FOREST AVENUE

FEDERAL AID PROJECT NO. STP-2054(300)

STATE PROJECT IDENTIFICATION NUMBER (WIN) 020543.00

The Municipality will be responsible for year round maintenance of new or replaced/rehabilitated bicycle/pedestrian facilities in such a manner as necessary to preserve the use and function thereof for the expected period of their normal useful life as determined by accepted engineering and/or industry standards. When necessary, the Department reserves the right to undertake maintenance and invoice the municipality.

APPENDIX B
PERPETUAL LANDSCAPE MAINTENANCE

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO FOREST AVENUE

FEDERAL AID PROJECT NO. STP-2054(300)
STATE PROJECT IDENTIFICATION NUMBER (WIN) 020543.00

The Municipality agrees to be responsible for maintenance of planting and landscaping, including structures, including, but not limited to privies, picnic shelters, interpretive panels, and park areas, as installed or modified, as part of the above referenced project upon completion of said project. The Municipality also agrees to maintain such planting and landscaping upon the expiration of all warranties applicable to such landscaping, including the maintenance of all lawn areas, trees, and shrubs. These responsibilities shall include, but are not limited to, the following:

1. Plantings shall be watered during periods of drought or extreme dryness.
2. Measures shall be taken to remove any build-up of winter sand in planting areas.
3. Pruning, trimming, and removal of dead branches to maintain healthy plant growth or so as not to pose safety hazards or unsightly conditions.
4. Measures shall be taken to control disease and insects using appropriate insecticides and to control weeds on a timely basis, including hand weeding, mulching and/or application of herbicides through proper legal application.
5. Dead or dying plant material shall be replaced with new material of the same type and size as originally planted.
6. Lawns and grassy areas shall be mowed at least weekly during the late spring and early summer growing season and at least once a month during the remainder of the growing season, unless unusual weather conditions or rapid growth dictate otherwise.
7. All areas of turf, trees and shrubbery shall be fertilized using suitable materials.
8. All litter and refuse shall be removed expeditiously.
9. The Department shall provide technical assistance to the Municipality upon request, by recommending the materials and procedures necessary for such maintenance.

APPENDIX B
**PERPETUAL LIGHTING/FLASHING BEACON OPERATION
AND MAINTENANCE**

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO FOREST AVENUE

FEDERAL AID PROJECT NO. STP-2054(300)

STATE PROJECT IDENTIFICATION NUMBER (WIN) 020543.00

- A. The Municipality agrees to operate and maintain the flashing beacon installed under the Project in such a manner as is necessary to preserve the use and function thereof as designed and intended by the Project as follows:
1. The Municipality shall repair or correct all malfunctions and deficiencies in the flashing beacon expeditiously. Any failure to correct the flashing beacon to function as designed could, upon written notification from the Department, result in the Department making all necessary repairs at the Municipality's expense.
 2. The Municipality agrees to be responsible for electrical service for the flashing beacon and agrees to execute any necessary documentation required to establish such service and provide any local permits necessary for installation of such service.
 3. The Municipality shall preserve and maintain the visibility of the flashing beacon at all times by removing all visual impairments thereto.
 4. The Municipality shall make no operational changes or modifications to the flashing beacon without the express written approval of the Department.
 5. The Municipality shall notify the Department in writing prior to any removal or replacement of the flashing beacon.
 6. The Municipality shall maintain all signs and striping necessary or incidental to the operation of the flashing beacon as furnished and installed under the Project.
 7. The Municipality agrees to maintain the beacon with equipment technology equal to or greater than what has been installed.
- B. The Municipality shall implement a Traffic Control Plan in compliance with the Manual on Uniform Traffic Control Devices (MUTCD) including a provision for Municipality employees and/or contractors entering the State's right-of-way for long-term maintenance.

APPENDIX B
PERPETUAL TRAFFIC SIGNAL OPERATION AND MAINTENANCE

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO FOREST AVENUE

FEDERAL AID PROJECT NO. STP-2054(300)
STATE PROJECT IDENTIFICATION NUMBER (WIN) 020543.00

- A. The Municipality agrees to operate and maintain the traffic signal to function as designed and installed by the Department, unless approved otherwise as hereinafter provided or as necessary as follows:
1. All malfunctions and deficiencies in the traffic signal or any equipment appurtenant that is not covered by warrantee shall be repaired or corrected expeditiously in accordance with the Institute of Transportation Engineer's (ITE) "Traffic Signal Installation and Maintenance Manual". Any failure to repair or correct the traffic signal to function as designed could, upon written notification from the Department, result in the Department making all necessary repairs at the Municipality's expense.
 2. The visibility of the traffic signal shall be preserved and maintained at all times by removing any visual impairment thereto.
 3. Except in the case of an emergency, no change in operation or modification to the traffic signal or any equipment appurtenant thereto shall be made without the express written approval of the Department.
 4. The Department shall be notified in writing prior to any removal or replacement of the traffic signal or any equipment and appurtenant thereto. Upon removal, such traffic signal or equipment shall be returned to the Department, at no cost to the Department, unless otherwise agreed upon in writing.
- B. The Municipality agrees to be responsible for the electrical service for the traffic signal and agrees to execute any necessary documentation required to establish such service and provide any local permits necessary for the installation of such service.
- C. The Municipality agrees to maintain all pavement markings (including stop bars, lane use arrows and all striping necessary to delineate the turning lane) and all traffic control signs as furnished under the project.

APPENDIX C
Additional Work

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO FOREST AVENUE

FEDERAL AID PROJECT NO. STP-2054(300)
STATE PROJECT IDENTIFICATION NUMBER (WIN) 020543.00

1. Description of Work Being Added to Project By The Municipality:

Mill and fill along Forest Ave. from Station 12+50 to 28+50

2. The Municipality agrees to furnish all plans, specifications and estimates necessary to include additional work under the Project; No ☒ - Disregard this Section, or Yes ☐ - as follows:

- a) All plans and specifications shall conform to the standards used by the Department as set forth in the latest version of its *"Highway Design Guide"* and *"Standard Details for Highways and Bridges"* and comply with the Department's Utility Accommodation Policy as set forth in its *"Policy On Above Ground Utility Locations"*.
- b) All plans shall be size "D" drawings measuring 22 inches by 36 inches reproducible in black and white print.
- c) All specifications shall be printed on 8-1/2 inch wide by 11 inch long paper suitable for binding in the Department's proposal book.
- d) The Municipality shall provide a detailed engineer's estimate of the cost of such additional work calculated in a manner acceptable to the Department and allowable for bidding. The Municipality agrees that all cost information developed for such bidding shall be kept confidential pursuant to the provisions of Title 23 of the Maine Revised Statutes Annotated (M.R.S.A.) Section 63.
- e) The Municipality shall obtain all permits, licenses, releases and approvals necessary or incidental to the additional work described in Section 1 above.
- f) The submission of all plans, specifications and estimates; as well as all permits, licenses, releases and approvals shall be done in such a timely manner as not to unreasonably delay the Department's schedule for soliciting bids to construct the Project.
- g) The Municipality may utilize the electronic exchange of CADD data; the Municipality must accept pertinent electronic input data as specified by the Department. A copy of the Department's specifications can be found on its website under Business and CADD support. It

is the responsibility of the Municipality to translate this data into other formats required for use in their design software.

3. Following solicitation of competitive bids for the Project under Paragraph D of the Agreement; but before award of a contract to construct the Project that includes additional work as described in Section 1 above; action must be taken by the Municipality:

- a) If the bid price received for such additional work exceeds the detailed engineers estimate by any more than ten (10%) percent, the Municipality may reject such bid price by notifying the Department in writing within five (5) business days following the opening of such bids. The Municipality may waive such right by doing so in writing anytime prior to or during such period. Otherwise, all decisions pertaining to the acceptance of bids and the award of any construction contract shall be the sole discretion of the Department.
- b) If the bid price for such additional work is acceptable to the Municipality, the Municipality shall pay the Department, an amount equal to the Municipality's share of the estimated cost of such additional work based upon the prices of the successful bidder. Following receipt of payment, the Department agrees to award a contract to construct the Project including the additional work.
- c) The parties agree that any additional adjustments to the amount of any payment or deposit made pursuant to the provisions of subparagraph b) above because of any differences between estimated and actual quantities which effects the actual cost of such additional work shall be due and payable upon determination of final quantities, unless the Department determines that the actual cost of such additional work is expected to differ measurably from the amount of such payment, due to changes in quantities placed or work performed during the period of construction.

Order 233B-14/15
Tab 9 9-21-15

Order 233B-14/15

Motion to divide Order 233-14/15 into two parts, passage: 7-1 (Brenerman opposed, Marshall absent) on 5/4/2015

[Divided Order 233A-14/15 including subparagraphs 1 and 3, passage: 8-0 (Marshall absent)]

Divided Order 233B-14/15 including subparagraph 2, failed: 4-4 (Marshall absent, Duson, Costa, Suslovic, Brennan opposed)

Divided Order 233B-14/15: postponed to 5/18/2015, passage: 5-3 (Marshall absent, Duson, Mavodones, Donoghue opposed);

Postponed to 9/21/2015, passage: 8-0 (Marshall recused) on 5/18/2015

MICHAEL F. BRENNAN. (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID BRENERMAN (5)
JON HINCK (A/L)
JILL C. DUSON, (A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

**ORDER APPROVING ANNUAL ADJUSTMENTS TO THE COMMUNITY
DEVELOPMENT BLOCK GRANT (CDBG) ALLOCATION PROCESS**

ORDERED, that the annual adjustments to the Community Development Block Grant (CDBG) Annual Allocation Process are hereby approved in substantially the form attached hereto.

Community Development Block Grant
Allocation Process Changes Attachment
May 4, 2015

This order approves several procedural changes to the Community Development Block Grant (CDBG) allocation process. These changes are requested in an effort to improve the process and address issues raised through the Fiscal Year 2015-2016 allocation process.

2. Three (3) bonus points be awarded for each child care project or program in the Social Services funding category.

*Order 37-15/16
Tab 10 9-21-15*

Order 37-15/16

Passage: 7-2 (Hinck, Costa) on 8/3/2015

Returned to Agenda for Reconsideration: 9-0 on 9/9/2015

Order Postponed till 9/21/2015: 9-0 on 7/20/2015

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER DESIGNATING 17 CARLETON STREET AFFORDABLE HOUSING
DEVELOPMENT DISTRICT AND TAX INCREMENT FINANCING DISTRICT AND
ADOPTING THE MUNICIPAL DEVELOPMENT PROGRAM FOR THE DISTRICT**

WHEREAS, the City of Portland is authorized pursuant to Chapter 206, Subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as an Affordable Housing Development Tax Increment Financing District, and to adopt a Development Program for such District; and

WHEREAS, there is a need for affordable housing in the City of Portland and the surrounding region; and

WHEREAS, Avesta Carleton LP intends to construct certain improvements within the 17 Carleton Street Affordable Housing Development Tax Increment Financing ("TIF") District, including 37 units of affordable housing; and

WHEREAS, the City of Portland will utilize 35% of the tax revenues generated in the District in its General Fund; and

WHEREAS, there is a need to provide continuing affordable housing opportunities for the citizens of Portland and the surrounding region; to improve and broaden the tax base of the City of Portland; and to improve the general economy of the City of Portland, the surrounding region and the State of Maine; and

WHEREAS, the 17 Carleton Street Affordable Housing Development TIF District will help improve and broaden the tax base in the City of Portland; and improve the economy of the City of Portland and the State of Maine; and

WHEREAS, the City held a public hearing on the question of establishing the District in accordance with the requirements of 30-A M.R.S.A. § 5223, upon at least ten (10) days prior notice published in a newspaper of general circulation within the City; and

WHEREAS, the City Council has considered the comments provided at the public hearing, both for and against the designation of the 17 Carleton Street Affordable Housing Development TIF District, if any; and

WHEREAS, it is expected that approval will be sought and obtained from the Maine State Housing Authority, approving the designation of the 17 Carleton Street Affordable Housing Development TIF District and Development Program for the District;

NOW THEREFORE BE IT HEREBY ORDERED BY THE CITY COUNCIL AS FOLLOWS:

That, under and pursuant to the provisions of Title 30-A, Chapter 206, Subchapter 3 of the Maine Revised Statutes as amended, the development program and financial plan entitled “17 Carleton Street Affordable Housing Development District” as presented to this meeting and a copy of which is hereby incorporated herein by reference and as part of the minutes of this meeting, is hereby approved in substantially the form as presented as the Development Program for the District and for the reasons set forth therein, the City, after considering whether the District and the Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City and whether any detriment to any existing property interest in the City, finds and determines that: designation of the District and pursuit of the Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants, and the City further makes the other findings and determinations as set forth in said Development Program and the Exhibits thereto; and

BE IT FURTHER ORDERED, that the area of the City of Portland entitled “17 Carleton Street Affordable Housing Development District” as more particularly described in said Development Program is hereby designated as an affordable housing development district and such designation shall automatically become final and shall take full force and effect upon receipt by the City of approval of the District by the Director of the Maine State Housing Authority, without the requirement of any further action by the City, the Municipal Officers or any party; and

BE IT FURTHER ORDERED, that the percentage of increased assessed value of said District to be retained as captured assessed value in accordance with the

Development Program is hereby established as set forth in the Development Program and Financial Plan; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized and directed, on behalf of the City of Portland, Maine to execute and submit to Director of the Maine State Housing Authority for approval such applications and further documentation as may be necessary or appropriate for final approval and establishment of the "17 Carleton Street Affordable Housing Development District" and its Development Program and Financial Plan pursuant to 30-A M.R.S.A. chapter 206, Subchapter 3; and the City Manager be, and hereby is, authorized and empowered, at his discretion, from time to time, to make such technical revisions to the Development Program for the District as he or she deems reasonably necessary or convenient in order to facilitate the process for review and approval of the District by the Director of the Maine State Housing Authority, so long as such revisions are not inconsistent with this Order or the basic structure and intent of the Development Program; and

BE IT FURTHER ORDERED, that the City's Planning and Urban Development Director is authorized to submit annual reports on the status of the "17 Carleton Street Affordable Housing Development District" on behalf of the municipal legislative body; and

BE IT FURTHER ORDERED, that upon approval of the Director of the Maine State Housing Authority, the City Manager is hereby authorized and directed on behalf of the City of Portland to execute and deliver a Credit Enhancement Agreement substantially in the form attached to the Development Program hereby approved, with such changes thereto as deemed appropriate by the City Manager.

MEMORANDUM
City Council Agenda Item

TO: Members of the Portland City Council

FROM: Planning and Urban Development Department
Housing and Community Development Division

DATE: September 16, 2015

DISTRIBUTION: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

SUBJECT: **Reconsideration of Order 37-15/16 Designating 17 Carleton Street Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District**

SPONSOR: Kevin Donoghue, Chair
Housing and Community Development Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading September 21 Final Action September 21

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

Due to public notice requirements, the City Council meeting for public hearing and vote has been advertised for September 21, 2015 at 7:00 p.m.

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

Mary Davis, Housing and Community Development Division Director will be available to provide information as requested.

I. SUMMARY OF ISSUE (Agenda Description)

At the September 9, 2015 City Council meeting, the Council voted 9-0 to reconsider its August 3, 2015 vote approving an Affordable Housing Tax Increment Financing (AHTIF) District for a project at 17 Carleton Street. Due to increased staff capacity to conduct financial underwriting, this TIF had been analyzed in-house. However, the City's TIF policy requires that financial underwriting analysis of all TIF requests for credit enhancement be conducted by a Third Party. There is a Third Party on call that is brought in to do such analyses. This issue was brought to the attention of the Council after the August 3rd meeting. Subsequently, a Third Party review was requested and a copy of the review is attached.

The staff analysis of the project noted that the developer indicated AHTIF revenue would be utilized to offset project operating expenses and was necessary to meet the minimum debt service ratio to receive Low Income Housing Tax Credits (LIHTC). The applicant was seeking a CEA which returned 65% of the revenue to the developer to cover project operating costs. The staff analysis determined that without the AHTIF revenue, the project would fall below allowable debt service coverage ratios and have a negative cash flow. The Third Party analysis is consistent with the staff review.

Rental housing developments affordable to households at or below 60% of the area median income are primarily financed through the LIHTC program. This is a very competitive process and often there is very little difference in the scores that determine which applications receive LIHTC. For example, in 2014, projects awarded tax credits had scores ranging from 49-51 with the next lowest score at 48 and in 2013 the scores were 43-48, with the next lowest score at 42. The QAP awards 3 points to projects that receive a reduction in operating costs through tax increment financing. Often these points help to determine whether a project scores high enough to receive tax credits. The AHTIF is an investment tool available to the City to incentivize housing development.

Both the staff and Third Party analysis support the view that the AHTIF is necessary both financially and to make the project competitive in the LIHTC QAP, and that but for LIHTC, the project will in all likelihood not move forward.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

On September 9, the City Council voted to reconsider their previous vote on this item.

III. INTENDED RESULT

The result from the establishment of this AHTIF District is the creation of 37 units of rental housing, 5 of which will be available to households at or below 40% of the area median income, 18 units will be available to households at or below 50% of the area median income and 14 units will be available to households at or below 60% of the area median income.

IV. COUNCIL GOAL ADDRESSED

Promote Housing Availability - Provide increased availability in all segments of the housing market while insuring that there is a suitable balance housing opportunities among those sectors.

V. FINANCIAL IMPACT

When completed, this project's new assessed value is estimated at \$2.5 Million, which will yield approximately \$2,238,340 in increased annual property assessed value over the course of the 22-year TIF District. 65% of the increased taxes will be captured and returned to the Developer through a Credit Enhancement Agreement. The remaining revenue will be returned to the City's General Fund.

Here is an overview of the TIF proposal related to the share of future estimated property taxes.

	<u>Dev. Share</u>	<u>City General Fund Share</u>
Years 1-22	\$728,156 or 65%	\$405,694

Total development costs are estimated at \$6,541,371. At full build-out, the development is projected to pay approximately \$51,539 annually in increased property taxes of which \$33,098 is estimated to be returned to the developer and \$18,441 will be returned to the City's General Fund.

In addition, with the tax sheltering benefits of TIF Districts, overall savings to the City during the term of the district are estimated at \$11,203 annually or \$246,484 over the life of the district.

VI. STAFF ANALYSIS

The developer is applying for Low Income Housing Tax Credits (LIHTC) administered by the Maine State Housing Authority. The rules of the LIHTC program are set forth in the Qualified Allocation Plan (QAP). The QAP establishes the scoring system for affordable rental housing development financed by LIHTC. This is a very competitive process and often there is very little difference in the scores that determine which applications receive LIHTC. In 2014, the projects awarded tax credits had scores ranging from 49-51 with the next lowest score at 48; in 2013 the scores were 43-48 with the next lowest score at 42. The AHTIF is an investment tool that the City can utilize to incentive housing development. The QAP awards 3 points to projects that receive a reduction in operating costs through tax increment financing. Often these points help to determine whether a project scores high enough to receive tax credits.

A report on Maine Housing's website lists the "Maine Communities Using AHTIF". As of April 2014 there were 28 AHTIFs across the state, in twenty communities from Fort Fairfield to Biddeford. The report shows two AHTIFs in Augusta, Bangor and Portland, three in Biddeford and four in Lewiston.

In reviewing this TIF request, staff notes two public benefits associated with the TIF District.

- (1) Creation of 37 units of rental housing all of which will be available to households at or below 60% of the area median income including 5 units available to households earning at or below 40% of the area median income.
- (2) Tax sheltering benefits estimated at \$11,204 annually or \$246,484 over the life of the district.

VII. RECOMMENDATION

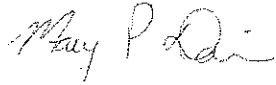
Staff recommends reaffirmation of the previous council action on this item.

VIII. LIST ATTACHMENTS

Third Party Review

Project Pro-Forma
Packet from August 3rd Council Meeting

Prepared by:

A handwritten signature in cursive script, appearing to read "Mary P. Davis".

Mary P. Davis, Director
Housing and Community Development Division

September 16, 2015
Date

**Global Deal Funding, LLC
Shamrock Development
Associates, Inc.
Advisory Services**

MEMORANDUM

To: Mary Davis
From: Sean Carpenter
Re: Tax Incremental Financing Request
Date: August 24, 2015

As requested, we have reviewed the submission for Tax Incremental Financing for the Carleton Street affordable housing project that seeks an operating subsidy of the excess valuation of a "to-be-developed" site at 17 Carleton Street. The purpose of this memo, at your request, is to evaluate the financial feasibility of the project and the use of the TIF statute to meet the City's affordable Housing needs.

Financial Summary

The 37 unit project assumes receipt of roughly \$587,279 in Low Income Housing Tax Credits from the Maine State Housing Agency, as well as an additional soft loan of \$310,910. The applicant will also apply to MSHA for a permanent loan in the amount of \$1,062,926. The proceeds of the LIHTC will be used for construction of the project and a use of bridge financing is intended. Although available every year, LIHTC can be very competitive and final amounts are contingent on application scoring, basis eligibility and the timing of construction. As a result, the final amount may be lower or higher. Therefore, it is not unreasonable to assume that the request of additional soft subsidies may be done as well as a deferral of the developer fee.

Developer Capacity

Avesta Housing is well positioned to handle the execution of this development. Their financial position and experience in developing affordable housing is significant and should give little concern as to the ability to complete the project in accordance with its plans. Additionally, since the project will utilize LIHTC and other state funds, the City should take note that the developer is experienced in layering subsidies on projects. The project as presented to us meets the growing need for affordable housing in the City while creatively utilizing all available resources to execute the development.

Development Risk

The development risk for the project is solely based on the receipt, and therefore sale, of Low Income Housing Tax Credits. Without receipt of the development subsidy, it is unlikely the project will break ground.

Financial Underwriting

When underwriting a transaction, certain areas raise red flags that could extend doubt on the financial viability of a transaction. These areas include operating expenses, debt service coverage ratios, excessive development costs and assumptions that do not meet industry standards. This project assumes considerable operating expenses that exceed 76% of income which could cause operating deficits in years of economic retreat. The developer/sponsor accounted for such a situation through the use of an operating deficit reserve. The underwriting provided by GDF assumes a higher vacancy rate than the developer which is significantly higher than the market. Therefore the concerns are mitigated by market conditions. A review of the operating proforma also notes that the debt service coverage ratio falls below 1.15 in GDF assumptions and below 1.0x in the background materials without the TIF reimbursement. There is no mitigation of this concern as rents are restricted, although the Operating deficit reserve can serve as a stopgap in years that TIF subsidy is delayed.

Meets Program Intent

The statute requires that the project meet certain criteria prior to being submitted for regulatory approval.

Most notably the statute requires:

1. An application with narrative be submitted to the appropriate agency outlining the project that specifically notes that at least 1 public hearing has been held, contain district maps, assessed valuation of the district, proposed valuations and required calculations.
2. Said hearing must be published in a notable written media journal.
3. The project must meet or exceed the City's need for expansion of Affordable Housing
4. The proposal must account for detrimental claims of surrounding property owners.
5. The project must be approved by the City legislative body. This approval will also contain a development program noting the financial benefit to the City in increased valuation and the use of additional tax resources.

Conclusion

A review of the package by GDF notes that all of the above components were dutifully outlined in the package. The project clearly creates affordable housing in an area of great need. The project development sits among residential use areas and will provide a benefit to the neighborhood financially and aesthetically. More than 33% of the units are restricted as affordable (100% affordable) and committed to remain affordable for an extended use period of 30 years beyond LIHTC compliance of 15 years.

PROPERTY SUMMARY, INCOME & EXPENSES

Carelon Street
37 UNITS
2015

Transaction: Acq.
Date Updated: August 25, 2015

Basic Information

Name of Property	Carelon Street
Address	17 Carelon Street
City, State Zip	Portland, ME
Total number of apartments	37
Built	2016
HAP Contract Number	NA
HUD Mortgage Program:	NA
Family, elderly or mixed?	Family

Subsidy/Financial Information

Subsidy/Financial Information	Comments
Tax Incremental Financing	Operating Subsidy
% Affordable	100%
Set Aside	20/50
Extended Use Restrictions?	Yes 30 Year
Additional Subsidy? (236, RAP, Rent Supp?)	TIF
Tax Implications on sale?	\$0
Balance in replacement reserve	\$0
Any additional Cash from sale?	\$0

Rent Analysis

2016											
Bedrooms	Total Units	40% LIHTC	40% LIHTC Rent	50% LIHTC	50% LIHTC Rent	60% LIHTC	60% LIHTC Rent	Section 8 FMR 2015	Utility Allowance	Max LIHTC @60%	Market Rent
Efficiency	12	5	\$540	4	\$675	3	\$813	\$730	\$37	\$773	\$825
1/1	23	0	\$0	14	\$725	9	\$870	\$869	\$45	\$823	\$1,025
2/1	2					2	\$1,044	\$1,074	\$54	\$987	\$1,400
Totals	37	5	\$2,700	18	\$12,850	45	\$12,357				

\$27,907

(Provide a detailed summary of the property and cite sources for above data including FMR's, Utility Allowances, Etc.)

Income Analysis

	Current	Proforma Year	0% per unit
Gross Potential Rent		\$334,884	\$9,051
Vacancy -5.00%		-\$16,744	\$453
Net rental income		\$318,140	\$8,598
Laundry income		\$3,800	\$103
Commercial income			\$0
Miscellaneous income*			\$0
Subtotal other income		\$3,800	\$103
Eff. Gross Income		\$321,940	\$8,701
Stabilized NOI		74,453	Cap Rate
Value		1,389,045	5%

Expense Analysis

Line Item	2015 Actual	Increase to Proforma	Proforma Year	Per apt
Management			\$20,029	\$541
Administration			\$27,133	\$733
Operating & Maint.			\$83,204	\$2,249
Utilities			\$34,943	\$944
Real Estate Taxes			\$46,106	\$1,246
Hazard Insurance			\$11,211	\$303
Reserve Deposits			\$12,950	\$350
Other: MIP			\$11,911	\$322
Total Operating Expenses	\$0	\$0	\$247,487	\$6,689

76.87%

Tax Credit and Median Income Analysis

CITY/STATE		Portland, ME HUD	
MFI:	\$77,100.00	Year	2015
Persons	1	2	3
Very Low-Income (50%)	\$ 27,000	\$ 30,850	\$ 34,700
Imputed (60%)	32,400	37,020	41,640
Low Income (80%)	43,200	49,400	55,550
Utility Allowance		All Utilities Included	
		Sec. 42 Rent Limits	
		@ 50% @ 60% 80%	
STUDIO	\$ 37.00	\$ 675.00	\$ 810.00
1 BED	\$ 45.00	\$ 723.13	\$ 867.75
2 BED	\$ 54.00	\$ 867.50	\$ 1,041.00
3 BED		\$ 1,002.50	\$ 1,203.00
4 BED	\$ -	\$ 1,118.75	\$ 1,342.50
5 BED	\$ -	\$ 1,234.38	\$ 1,481.25
		Utilities Not Included	
		Sec. 42 Rent Limits	
		@ 50% @ 60% @80%	
		\$ 638.00	\$ 773.00
		\$ 678.13	\$ 822.75
		\$ 813.50	\$ 987.00
		\$ 1,002.50	\$ 1,203.00
		\$ 1,118.75	\$ 1,342.50
		\$ 1,234.38	\$ 1,481.25

Notes
Section 42 Rent Limits should be All Utilities Included if Tenants pay no out-of-pocket utilities

DEVELOPMENT BUDGET

Carelton Street
37 Units
2015

I. DEVELOPMENT BUDGET				
	Total Budget	Per Unit	Calculation/Source:	
Land Acquisition	200,000	5,405	10.0%	% Land
Building Acquisition			0	per unit
Total Acquisition Costs	200,000	5,405		
Construction Hard Costs	4,229,427	114,309	40,270	per unit
Site Work	230,050			
Contractor's Gen. Requirements	0		0.0%	4,459,477
Contractor's Overhead	0		6.0%	4,459,477
Davis Bacon Premium			0.0%	4,459,477
Construction Contract	4,459,477	120,526		
Construction Contingency	222,974	6,026	5.0%	4,459,477
Total Construction Costs	4,682,451	126,553		
Architect-Design	328,261	8,872	0.0%	4,459,477
Landscape Architect				
Mechanical Engineer			1.0%	4,459,477
Civil Engineer			2.0%	4,459,477
Structural				
Sprinkler/Electrical Engineer				
Permits	31,250	845	0.0%	
Surveys	53,000	1,432		
Legal	43,500	1,176		
Title & Recording	15,000	405		
Audit/Cost Cert/Accounting	10,000	270		
Appraisal	6,000	162		
Market Study	3,000	81		
Phase I	3,000	81		
Development Consultants	0			
Taxes during construction	20,524	555	2.0%	4,459,477
Insurance during construction	12,000	324	2.0%	4,459,477
Security	0			
Furniture, Fixtures & Equipment	0			
Rent-up & Marketing	47,000	1,270		
Relocation	0			per unit
Resident Services	0			
Soft Cost Contingency	40,000	1,081	0.0%	572,535
Total Soft Costs	612,535	16,555		
Permanent Loan-Fees	16,800	454	1.3%	1,062,926
Construction Loan-Fees	30,109	814		1,062,926
Construction Loan-Interest	93,844	2,536	4.25%	10,100,000
LIHTC Application Fee				
Financial Consulting	15,000	405	4.00%	annual credit
Compliance Monitor Fee	41,818	1,130		per unit
Bond Issuance Costs	0		0.0%	10,100,000
Other Financing Costs	15,000	405		
Total Financing Costs	212,571	5,745		
Operating Reserve	155,632	4,206	0	26,330
Interest Escrow	0			
Insurance Escrow	28,659	775		
MIP				
Initial Operating Deficit Reserve				
Rent Phase-in Reserve				
Working Capital Reserve				
Sensitivity Reserve	0			62,044
Initial Deposit to Replac. Res.	44,524	1,203	0	per unit
Total Reserves	228,815	6,184		
Developer Fee	606,000	16,378		
Held for Reserves	0			
Deferred Developer Fee	0			
Total Developer's Fee	606,000	16,378		
Total Development Costs	6,542,372	176,821		
Construction Period	12			

DEBT & EQUITY

Carelon Street
37 units

Net Operating Income

		Per Unit	
Net Income	\$321,940	8,701	
Operating Expenses	\$247,487	\$6,689	
NOI	\$74,453	2,012	

Debt Sizing Permanent

NOI	74,453			
Debt Service Coverage Factor	1.20			
NOI Available For Debt Service	62,044	Rate + Fees	Term	Amort
Constant	6.442%	5.00%	30	30
DSC Constraint Loan Amount	963,138			
LTV Constraint Loan Amount	1,111,236	Cap Rate	LTV	
		5.36%	80%	
Loan Amount	\$ 1,389,045	963,138	DSC Ratio Year 1	1.14
Loan Amount Input		1,062,926	DSC Ratio Year 15	1.58
Debt Service		68,472		

Tax Credit Calculation

			Rehab Basis	Acq Basis	Historic
Total Basis			6,162,255	47,200	0
(Less: Grants & Other Basis Reductions)					
(Less Annual Historic Credit)	90%	20%	0		
Total Eligible Basis			6,162,255	47,200	
Total Adjusted Basis	QCT/DE No	100%	6,162,255	47,200	
Total Qualified Basis	Applicable fraction	100.00%	6,162,255	47,200	
Applicable Credit Rate	Month of	Sept 15	9.00%		Annual Credit
Calculated Credit Supported by Basis			554,603	0	554,603
Total Annual Credit To Investor			5,545,475	LP %	
Credit Price Per \$1.00			0.88	99.99%	
Federal TC Equity to Project			4,880,018		
State Credit Price Per \$1.00			0.00	99.99%	
State TC Equity to Project			0		

SOURCES & USES

Carelon Street

37 units

USES OF FUNDS DURING CONSTRUCTION

	Amount	Per Unit
Total Acquisition Costs	200,000	5,405
Total Construction Costs	4,682,451	126,553
Total Soft Costs	612,535	16,555
Total Financing Costs	212,571	5,745
Total Reserves	228,815	6,184
Total Developer's Fee	606,000	16,378
TOTAL USES OF FUNDS	6,542,372	176,821

SOURCES OF FUNDS DURING CONSTRUCTION

Debt Financing	Amount	Per Unit
Construction Financing	1,062,926	28,728
TOTAL DEBT FINANCING	1,062,926	28,728

Existing Resources	Amount	Per Unit
Replacement Reserve		0
Deferred Reserves		0
Deferred Contingency		0
TOTAL EXISTING RESOURCES	0	0

Soft Loans	Amount	Per Unit
Deferred Development Fee Loan	246,351	6,658
MSHA	310,910	8,403
AHT	0	0
Energy		0
Operating Cash		0
Seller Note		0
TOTAL SOFT LOANS	557,261	15,061

Equity	Amount	Per Unit
GP Capital Contribution	42,167	1,140
LIHTC Federal	4,880,018	131,892
LIHTC State	0	0
New Pathways	0	0
TOTAL EQUITY	4,922,185	133,032

Grants/Subsidies	Amount	Per Unit
Additional Investor	0	0
		0
		0
TOTAL GRANTS/SUBSIDIES	0	0

TOTAL SOURCES OF FUNDS	6,542,372	176,821
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SURPLUS/ (Gap)	(0)	(0.01)
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USES OF FUNDS STABILIZATION

	Amount	Per Unit
Construction Loan Principal	1,062,926	28,728
Interest Reserve	0	0
Reserves	0	0
Investor Return	0	0
Initial Reserves	0	0
Deferred Developer Fee	0	0
TOTAL USES OF FUNDS	1,062,926	28,728

SOURCES OF FUNDS STABILIZATION

Debt Financing	Amount	Per Unit
Permanent Mortgage	1,062,926	28,728
Excess Development Costs	0	
TOTAL DEBT FINANCING	1,062,926	28,728

Existing Resources	Amount	Per Unit
Replacement Reserve		0
Residual Receipts	0	0
Operating Cash for Development		0
TOTAL EXISTING RESOURCES	0	0

TOTAL SOURCES OF FUNDS	1,062,926	28,728
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SURPLUS/ (Gap)	0	-
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Carelton Street
37

Income		Escalation Year														
Projected		2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028		
	Annual Increase	Stabilization	Yr	Yr	Yr	Yr	Yr	Yr	Yr	Yr	Yr	Yr	Yr	Yr		
Gross Potential Rent	7.0%		\$334,884	\$341,582	\$348,413	\$355,582	\$362,499	\$370,960	\$378,428	\$387,219	\$396,818	\$406,064	\$414,865	\$424,387	\$432,876	\$441,533
Money	7.0%		\$116,744	\$121,078	\$125,431	\$129,798	\$134,124	\$138,482	\$142,871	\$147,324	\$151,818	\$156,211	\$160,611	\$165,113	\$169,613	\$174,280
Net rental income	7.0%		\$518,140	\$524,503	\$530,980	\$537,613	\$544,385	\$551,302	\$558,559	\$566,044	\$573,845	\$581,945	\$590,294	\$598,939	\$607,896	\$617,099
Laundry Income	0.0%		\$3,800	\$3,800	\$3,800	\$3,800	\$3,800	\$3,800	\$3,800	\$3,800	\$3,800	\$3,800	\$3,800	\$3,800	\$3,800	\$3,800
Commercial Income	0.0%		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Miscellaneous Income	0.0%		\$3,734	\$14,093	\$16,276	\$18,789	\$17,126	\$17,470	\$17,816	\$18,176	\$18,538	\$18,804	\$19,288	\$19,672	\$20,063	\$20,663
Subtotal other income	0.0%		\$7,534	\$14,093	\$16,276	\$18,789	\$17,126	\$17,470	\$17,816	\$18,176	\$18,538	\$18,804	\$19,288	\$19,672	\$20,063	\$20,663
ER: Gross Income			\$326,673	\$329,596	\$331,256	\$333,201	\$335,296	\$337,812	\$340,707	\$343,951	\$347,281	\$350,756	\$354,284	\$357,864	\$361,497	\$365,180
Expenses																
	Annual Increase	Proforma	Yr	Yr	Yr	Yr	Yr	Yr	Yr	Yr	Yr	Yr	Yr	Yr	Yr	Yr
Management	2.0%		\$20,629	\$20,430	\$20,838	\$21,255	\$21,680	\$22,114	\$22,558	\$23,007	\$23,467	\$23,937	\$24,415	\$24,904	\$25,402	\$25,907
Administration	2.0%		\$27,133	\$27,676	\$28,229	\$28,794	\$29,367	\$29,957	\$30,556	\$31,167	\$31,791	\$32,426	\$33,073	\$33,733	\$34,411	\$35,107
Maintenance and Operating	3.0%		\$83,204	\$85,700	\$88,271	\$90,918	\$93,647	\$96,456	\$99,350	\$102,330	\$105,400	\$108,562	\$111,819	\$115,174	\$118,620	\$122,161
Utilities	3.0%		\$34,943	\$35,961	\$37,071	\$38,163	\$39,239	\$40,508	\$41,774	\$43,275	\$44,285	\$45,593	\$46,995	\$48,399	\$49,820	\$51,266
Real estate taxes	2.0%		\$48,108	\$47,028	\$47,569	\$48,928	\$49,307	\$50,805	\$51,923	\$52,961	\$54,031	\$55,101	\$56,203	\$57,327	\$58,474	\$59,644
Insurance	1.0%		\$11,211	\$11,547	\$11,884	\$12,251	\$12,618	\$12,997	\$13,387	\$13,786	\$14,192	\$14,626	\$15,067	\$15,516	\$15,964	\$16,421
Other operating expenses	3.0%		\$12,690	\$13,339	\$13,730	\$14,151	\$14,575	\$15,013	\$15,463	\$15,927	\$16,405	\$16,897	\$17,404	\$17,896	\$18,404	\$18,918
Other opex (Res. Services)	2.0%		\$11,911	\$12,145	\$12,382	\$12,640	\$12,893	\$13,151	\$13,414	\$13,682	\$13,956	\$14,236	\$14,519	\$14,810	\$15,106	\$15,406
Total Operating Expenses	2.0%		\$247,487	\$253,869	\$260,403	\$267,121	\$274,018	\$281,100	\$288,372	\$295,838	\$303,505	\$311,378	\$319,463	\$327,764	\$336,290	\$345,039
Net Operating Income																
0																
NOI																
Pre-Construction																
Valuation																
481 Rate																
Payment @05%																
Debt Service																
Permanent Mortgage																
Additional Payments																
Cash Flow After Debt Service																
DSCR																
Amortization Schedule 1st Mortgage																
Balance																
Interest																
Principal Payments																
Sensitivity Analysis																
Residual Valuation																
Net Sale Proceeds																
NOI																
Gross Proceeds																
Sale Costs																
Rehab																
Assume Market Expense																

PROJECT NAME: Carleton Street
LOCATION: 17 Carleton Street, Portland, ME

Date: 6.15.15
Program Development Budget

DEVELOPMENT ASSUMPTIONS				
Total Units		37	Inflation Adjustments	Yr 1-5 Yr. 6-15 Yr. 16-30
# @ 40% AMI (LIHTC)	13.5%	5	Rent	2.00% 2.00% 2.00%
# @ 50% AMI (LIHTC)	48.6%	18	Operating Expense	3.00% 3.00% 3.00%
# @ 50% AMI (High HOME)	0.0%	0	Other Income	2.00% 2.00% 2.00%
# @ 80% AMI (LIHTC)	37.8%	14	Debt Coverage Ratio	1.15
# @ Market	0.0%	0	Vacancy	5%
Appraised Market Value		1,556,213	Market Value/Unit	\$42,060

LIHTC Alloc.	587,279
Equity yield	0.88
Synd. %	98.99%
Equity Raise	5,167,534

Historic Credit FED	0
Equity yield	0.99
Synd. %	98.99%
Equity Raise	0

Number of Tax-payers	1
Historic Credit STATE	0
Equity yield	0
Synd. %	98.99%
Equity Raise	0

Total Equity:	5,167,534
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Gross Square Footage	29,074
Construction Cost/Sq ft.	\$153

PRO FORMA DEVELOPMENT BUDGET				
	Residential	Per Unit	Commercial	Total
Site Improvements	230,050	6,218		230,050
Construction	4,229,427	114,309		4,229,427
General Requirements	0	0		0
Builder Overhead	0	0		0
Builder Profit	0	0		0
Bond Premium	0	0		0
Construction Contingency	5.0%	222,974	6,026	222,974
Subtotal Construction Costs	4,682,451	126,553	0	4,682,451
Building Permits and Fees	31,250	845		31,250
Survey & Engineering	53,000	1,432		53,000
Design & Permitting	328,261	8,872		328,261
Legal	43,500	1,176		43,500
Title & Recording	15,000	405		15,000
Accounting	10,000	270		10,000
Construction Period Tax	26,524	555		26,524
Construction Period Insurance	12,000	324		12,000
Other: FF&E, Security, Soft Contingency	40,000	1,081		40,000
Subtotal Soft Costs	553,535	14,960	0	553,535
Construction Loan Origination Fees	16,800	454		16,800
Construction Loan Interest	93,844	2,536		93,844
Lender Inspection Fees	5,650	153		5,650
Letter of Credit Fee	1,200	32		1,200
Permanent Loan Fees	23,259	629		23,259
Other: Construction Lender Legal	15,000	405		15,000
Subtotal Finance Costs	155,752	4,210	0	155,752
Market Survey	3,000	81		3,000
Appraisal	6,000	162		6,000
Environmental Study	3,000	81		3,000
LIHTC Fees - prepaid monitoring	41,818	1,130		41,818
Other: Commissioning	15,000	405		15,000
Other:	0	0		0
Subtotal Miscellaneous	68,818	1,860	0	68,818
Acquisition: Buildings	0	0		0
Acquisition: Land	200,000	5,405		200,000
Acquisition: Legal	0	0		0
Subtotal Acquisition	200,000	5,405	0	200,000
Operating Deficit Escrow	155,632	4,206		155,632
Pre-funded Replacements	44,524	1,203		44,524
Tax & Insurance Escrow	28,659	775		28,659
Total Syndication Expenses	0	0		0
Consultant Fee	0	0		0
Developer Overhead	302,500	8,176		302,500
Developer Profit	302,500	8,176		302,500
Rent-Up Reserve & Marketing	47,000	1,270		47,000
Subtotal Fee and Reserves	880,814	23,806	0	880,814
Total Development Costs	6,541,371	176,794	0	6,541,371

MAXIMUM DEVELOPER FEE AVAILABLE	775,000
ACTUAL DEVELOPER FEE	605,000
% OF MAXIMUM DEVELOPER FEE	78.1%
NET DEVELOPER FEE COLLECTED	605,000
% OF MAXIMUM DEVELOPER FEE	78.1%

FLOW OF FUNDS									
Sources	CLC 8/31/14	11/29/14	During Construction 2/27/15 5/28/15 8/28/15	PLC 12/31/15	2015	2016	Total		
Beginning Cash	0	0	0	0	0	0	0	0	0
Capital Contribution	516,753		516,753		3,776,605	178,711	178,711	5,167,534	
Construction Loan	314,314	1,179,457	662,704	1,179,457	1,179,457			4,515,390	
GP Bridge Loan								0	
MSHA Subsidy (IIA)	310,910				0			310,910	
MSHA Amortizing Mortgage					1,062,926			1,062,926	
TIF Loan					0			0	
Other: Amortizing Loan 1								0	
Other: Amortizing Loan 2								0	
Other: City FedHOME		0						0	
Other: NW Capital	0.00							0.00	
Sponsor Loan								0.00	
Development Fee Loan		0			0			0	
TOTAL SOURCES	1,141,977	1,179,457	1,179,457	1,179,457	4,839,532	178,711	178,711	11,056,760	
Uses									
Acquisition	200,000							200,000	
Construction		1,170,613	1,170,613	1,170,613	1,170,613			4,682,451	
Soft Costs	600,000	-14,616	-14,616	-14,616	-14,616	12,000		553,535	
Financing Costs	61,909	23,461	23,461	23,461	23,461			155,752	
Miscellaneous	53,818					62,000		115,818	
Dev Fee	226,250					21,328	178,711	605,000	
Reserves					228,814			228,814	
TOTAL DEV. COSTS	1,141,977	1,179,457	1,179,457	1,179,457	324,142	178,711	178,711	6,541,371	
Repay GP Bridge Loan					0			0	
Repay Construction Loan					4,515,390			4,515,390	
Other Syndication Costs	0				0			0	
SUBTOTAL OTHER ITEMS	0	0	0	0	4,515,390	0	0	4,515,390	
TOTAL USES OF FUNDS	1,141,977	1,179,457	1,179,457	1,179,457	4,839,532	178,711	178,711	11,056,760	
Ending Cash	0	0	0	0	0	0	0	0	

PROJECT FINANCING							
Source	Amount	Rate	Term	Lien	Annual D/S		
					Yr. 1-5	Yr. 6-15	Yr. 16-30
Source 1: MSHA Subsidy (IIA)	310,910	0.00%	30	First	0	0	0
Source 2: MSHA Amortizing Mortgage	1,062,926	6.00%	30	First	63,776	63,776	63,776
Source 3: TIF Loan	0			First	0	0	0
Source 4: Other: Amortizing Loan 1	0			Second	0	0	0
Source 5: Other: Amortizing Loan 2	0			Second	0	0	0
Source 6: Other: City FedHOME	0	0.00%	30	Second	0	0	0
Source 7: Other: NW Capital	0			Third		Grant	
Source 8: Sponsor Loan	0	0.00%	30	Unsecured		Cash Flow	
Source 9: Development Fee Loan	0			Unsecured		Cash Flow	
Source 10: Net Syndication	5,167,534	50.88					
Capitalization Gap (Surplus)	0						
Total	6,541,371						310,910

COLLATERAL COVERAGE		
	Total	Per Unit
Projected Mortgage	1,062,926	28,729
Appraised Market Value	1,556,213	42,060
Loan to Value Ratio	68%	
Market Rent Differential	100,416	226
Supportable Mort.: Unrestricted	2,458,639	66,450
Subsidy per Unit		8,403
Subsidy per Low Income Unit		8,403

PROPOSED RENT SCHEDULE									
Type	AMI	# Units	Rents from Applicant	Program Max Rents	Gross Rent	Market Rent	Utility Allow.	Total Rent	
Efficiency	40% LIHTC	5			\$40	\$65	37	30,180	
	50% LIHTC	4			675	\$825	37	30,624	
	60% HOME					\$825		0	
	60% LIHTC	3			813	\$825	37	27,936	
12	Market	0			825	\$825		0	
	40% LIHTC	0			578	\$1,025	45	114,240	
	50% LIHTC	14			726	\$1,025		0	
	High-HOME	9			870	\$1,025	45	89,100	
23	60% LIHTC	9			1,025	\$1,025		0	
	Market	0						0	
	Low-HOME	0			870	\$1,400	54	0	
	High-HOME	0				\$1,400		0	
2	60% LIHTC	2			1,044	\$1,400	54	23,760	
	Market	0			1,400	\$1,400		0	
	Low-HOME	0						0	
	50% LIHTC	0					0	0	
0	High-HOME	0					0	0	
	60% LIHTC	0					0	0	
	Market							0	
								0	
4BR	60% HOME					\$0	0	0	
	50% LIHTC					\$0	0	0	
	60% HOME					\$0	0	0	
	60% LIHTC					\$0	0	0	
0	Market							0	
								0	
								0	
								0	
Other								0	
								0	
								0	
								0	
Subtotals		37						315,840	
			Vacancy Rate			6%		(15,792)	
			Other Income			65% TIF		29,969	
			Other Income			Laundry		3,800	
Effective Gross Income								333,817	

AFFORDABLE MORTGAGE CALCULATION			
Effective Gross Income		333,817	
Annual Operating Expense		247,487	
Stabilized NOI		86,330	
DSCR	1.15	11,290	
\$ Avail for DS		75,069	
Other DS		0	
Balance		75,069	
Affordable Mortgage	8.00%	1,043,409	

BREAK-EVEN ANALYSIS:			RENT SENSITIVITY		OCCUPANCY	
		Total				Annual
Operating Expense		247,487			Gross Revenues	240,600
Debt Service		63,776				
Break-even Rent		701			Break-even Occupancy	89%

OPERATING EXPENSES				
Expense	Annual	Annual Per Unit	Monthly Per Unit	
Administrative Expenses:				
Management Fees	20,029	541	45	
Management Changes	20,029	541	45	
Marketing Expenses	555	15	1	
Legal Expenses	1,850	50	4	
Auditing Expenses	4,689	127	11	
Other Administrative Expenses	0			
Administrative Expenses	47,182	1,275	106	
Operating Expenses:				
Janitorial Payroll	0	0	0	
Janitorial Supplies and Equipment	0	0	0	
Janitorial Contractual Services	17,056	461	38	
Natural Gas	12,894	348	29	
Electricity	11,100	300	25	
Water and Sewer	10,949	286	25	
Garbage and Trash Removal	5,646	158	13	
Vehicle and Equipment Expenses	0	0	0	
Other Operating Expenses	0	0	0	
Operating Expenses	57,645	1,563	130	
Maintenance Expenses:				
Maintenance Payroll	0	0	0	
Grounds Tools and Supplies	0	0	0	
Grounds Contractual Services	7,088	191	16	
Miscellaneous Ground Maintenance	0	0	0	
Miscellaneous Charges - Grounds	0	0	0	
Building Maintenance Payroll	0	0	0	
Building Tools and Supplies	4,296	114	9	
Building Contractual Services	18,500	500	42	
Building Systems Maintenance	17,760	480	40	
Miscellaneous Building Maintenance	12,766	345	29	
Tenant Damage Claims - Building	0	0	0	
Maintenance Expenses	50,302	1,630	136	
General Expenses:				
Property Taxes	46,106	1,246	104	
Property and Liability Insurance	11,211	303	25	
Tenant Computer Network Expense	1,129	31	3	
Tenant Service Expenses	10,782	291	24	
General Expenses	69,229	1,971	166	
Replacement Reserve Funding	12,550	350	29	
Commercial Expenses (if applicable)	0	0	0	
Total	247,487	6,689		

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT												
4 Months												
	8/31/14	12/31/14	12/31/15	12/30/16	12/31/17	12/31/18	12/31/19	12/30/20	12/31/21	12/31/22	12/31/23	12/30/24
Effective Gross Income		111,272	333,817	340,493	347,303	354,249	361,334	368,561	375,932	383,451	391,120	398,842
Less Operating Expense		82,496	247,467	254,912	262,559	270,436	278,549	286,906	295,513	304,378	313,510	322,915
Net Operating Income		28,777	86,330	85,581	84,744	83,813	82,785	81,655	80,419	79,072	77,610	76,027
Less RLP Repay		21,259	63,776	63,776	63,776	63,776	63,776	63,776	63,776	63,776	63,776	63,776
Less Other Repay		0	0	0	0	0	0	0	0	0	0	0
Cash Flow		7,518	22,554	21,806	20,968	20,037	19,009	17,880	16,644	15,297	13,835	12,252
Cash Flow per Unit		610	610	589	567	542	514	483	450	413	374	331
Debt Coverage Ratio(RLP)		1.35	1.35	1.34	1.33	1.31	1.30	1.28	1.26	1.24	1.22	1.18
Operating Reserve Balance	155,632	163,413	171,584	180,163	188,171	198,630	208,561	218,989	228,939	241,436	253,507	266,183

Total Cash Flow
Projected over 12 Years

207,045
515
10 Year Averages
1.30

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT, continued											
	Yr 15										
	12/31/25	12/31/26	12/31/27	12/30/28	12/31/29	12/31/30	12/31/31	12/30/32	12/31/33	12/31/34	12/31/35
Effective Gross Income	406,921	415,059	423,361	431,828	440,464	449,274	458,259	467,424	476,773	486,308	496,035
Less Operating Expense	332,602	342,580	352,858	363,444	374,347	385,577	397,145	409,059	421,331	433,971	446,990
Net Operating Income	74,319	72,479	70,503	68,384	66,117	63,696	61,115	58,365	55,442	52,338	49,045
Less RLP Repay	63,776	63,776	63,776	63,776	63,776	63,776	63,776	63,776	63,776	63,776	63,776
Less Other Repay	0	0	0	0	0	0	0	0	0	0	0
Cash Flow	10,543	8,703	6,727	4,609	2,342	(79)	(2,661)	(5,410)	(8,334)	(11,438)	(14,731)
Cash Flow per Unit	285	235	182	125	63	(2)	(72)	(146)	(225)	(309)	(398)
Debt Coverage Ratio(RLP)	1.17	1.14	1.11	1.07	1.04	1.00	0.96	0.92	0.87	0.82	0.77
Operating Reserve Balance	266,183	279,492	293,466	308,140	323,547	338,724	356,631	371,802	384,981	395,897	404,254
											408,738

PROFORMA OPERATING INCOME AND EXPENSE STATEMENT, continued									
	12/30/36	12/31/37	12/31/38	12/31/39	12/30/40	12/31/41	12/31/42	12/31/43	8/29/44
Effective Gross Income	505,955	516,074	526,396	536,924	547,662	558,615	569,788	581,183	395,205
Less Operating Expense	460,400	474,212	488,438	503,091	518,184	533,729	549,741	566,233	388,814
Net Operating Income	45,556	41,863	37,958	33,833	29,478	24,886	20,047	14,950	6,391
Less RLP Repay	63,776	63,776	63,776	63,776	63,776	63,776	63,776	63,776	42,517
Less Other Repay	0	0	0	0	0	0	0	0	0
Cash Flow	(18,220)	(21,913)	(25,818)	(29,943)	(34,297)	(38,889)	(43,729)	(48,825)	(36,126)
Cash Flow per Unit	(492)	(592)	(668)	(809)	(927)	(1,051)	(1,182)	(1,320)	(1,465)
Debt Coverage Ratio(RLP)	0.71	0.66	0.60	0.53	0.46	0.39	0.31	0.23	0.15
Operating Reserve Balance	409,736	412,002	410,660	405,407	395,734	381,224	361,395	335,736	282,756

MEMORANDUM
City Council Agenda Item

TO: Members of the Portland City Council

FROM: Planning and Urban Development Department
Housing and Community Development Division

DATE: July 15, 2015

DISTRIBUTION: (City Manager, Mayor, Corporation Counsel, Sonia Bean, Nancy English)

SUBJECT: (1) Order Designating 17 Carleton Street Affordable Housing
Development District and Tax Increment Financing District and
Adopting the Municipal Development Program for the District

(2) Order Approving Credit Enhancement Agreement with Avesta
Carleton LP

SPONSOR: Kevin Donoghue, Chair
Housing and Community Development Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading July 20 Final Action August 3

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

Due to public notice requirements, the City Council meeting for public hearing and vote has been advertised for August 3, 2015 at 7:00 p.m.

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

Mary Davis, Housing and Community Development Division Director will be available to provide information as requested.

I. SUMMARY OF ISSUE (Agenda Description)

17 Carleton Street Affordable Housing TIF (AHTIF) Development District is being proposed for property located on Carleton Street. The development consists of 37 affordable units.

The proposal is for a 22-year TIF with 65% of the total projected new taxes captured, annual estimated average at \$33,098 over the 22-year TIF, as a reimbursement to the Developer through a CEA. The Developer's share of TIF revenue will be used to pay operating costs for the project.

The remaining TIF revenues will be allocated to the City's General Fund, average annual estimated at \$18,441.

At its meeting on June 10, 2015, the Housing and Committee Development Committee voted 4-0 to recommend this AHTIF request to the City Council for approval.

A recommendation of approval of an Affordable Housing Tax Increment Financing District (AHTIF) from the HCDC to the Council is not the same as approval of the overall project. After carefully weighing the potential benefits and impacts on the City and surrounding neighborhood against the standards in the Land Use Ordinance, the Planning Board will ultimately determine if a project meets those standards. Approval of an AHTIF will be contingent on the project's final approval by the Planning Board.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

The City Council must: (1) authorize the creation of the AHTIF District; and
(2) approve the Credit Enhancement Agreement

III. INTENDED RESULT

The intended result from the establishment of this AHTIF District is the creation of 37 units of rental housing, 5 of which will be available to households at or below 40% of the area median income, 18 units will be available to households at or below 50% of the area median income and 14 units will be available to households at or below 60% of the area median income.

IV. COUNCIL GOAL ADDRESSED

Promote Housing Availability - Provide increased availability in all segments of the housing market while insuring that there is a suitable balance housing opportunities among those sectors.

V. FINANCIAL IMPACT

When completed, this project's new assessed value is estimated at \$2.5 Million, which will yield approximately \$2,238,340 in increased annual property assessed value over the course of the 22-year TIF District. 65% of the increased taxes will be captured and returned to the Developer through a Credit Enhancement Agreement. The remaining revenue will be returned to the City's General Fund.

Here is an overview of the TIF proposal related to the share of future estimated property taxes.

	<u>Dev. Share</u>	<u>City General Fund Share</u>
<u>Years 1-22</u>	<u>\$728,156 or 65%</u>	<u>\$405,694</u>

Total development costs are estimated at \$6,541,371. At full build-out, the development is projected to pay approximately \$51,539 annually in increased property taxes.

In addition, with the tax sheltering benefits of TIF Districts, overall savings to the City during the term of the district averages an estimated annual amount of \$11,203+, or \$246,484+ over the life of the district.

VI. STAFF ANALYSIS

Public Benefits In reviewing this TIF request, staff notes the public benefit associated with the TIF District of an additional 37 units of mixed income housing all of which will be available to households at or below 60% of the area median income.

VII. RECOMMENDATION

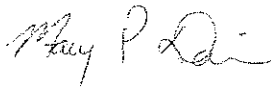
Staff recommends approval of this request and asks that the City Manager be authorized to sign and submit the documents, in substantially the form as enclosed, to Maine Housing for approval.

It is requested that the City Council set the Public Hearing for the 17 Carleton Street AHTIF District and approval of the Credit Enhancement Agreement for the City Council meeting on August 3, 2015 at 7:00 p.m.

VIII. LIST ATTACHMENTS

Maine State Housing Authority's Affordable Housing TIF Application
17 Carleton Street Affordable Housing Tax Increment Financing Development Program
Credit Enhancement Agreement.
Declaration of Covenants
TIF Projection Table
TIF District Map

Prepared by:



Mary P. Davis, Director
Housing and Community Development Division

July 15, 2015
Date

MAINE STATE HOUSING AUTHORITY

APPLICATION

Affordable Housing Tax Increment Financing

The Municipal Affordable Housing Development Districts statute, 30-A M.R.S.A. §§5245 – 5250-G, referred to as the "TIF Statute" in this Application, applies to affordable housing tax increment financing in Maine. The TIF Statute provides that before a municipality's designation of an affordable housing development district and its adoption of the associated affordable housing development program for the district become effective, MaineHousing must review the proposed district and development program to ensure compliance with the TIF Statute.

All applications to MaineHousing for review of an affordable housing development district and its associated development program must be on this form and include all eight Attachments noted below.

Sections 1 and 2 below are in fillable PDF format and may be completed on-line. After you have completed Sections 1 and 2, please print the Application and sign where indicated in Section 1.

This Application, with Attachments 1 through 8, may be submitted to MaineHousing in one of two ways:

By e-mail to Anne Paré sent to apare@mainehousing.org, or

By mail to: Anne Paré, MaineHousing, 353 Water Street, Augusta, Maine 04330

In this Application "district" means an affordable housing development district and "development program" means an affordable housing development program.

SECTION 1 – APPLICANT INFORMATION

1-1 Name of applicant city or town: City of Portland, Maine

1-2 Municipal official submitting this Application:

Printed name Jon P. Jennings

Title City Manager

Mailing address 389 Congress Street, Portland, Maine 04101

Phone number 207-874-8689

E-mail address jpj@portlandmaine.gov

The municipal official named above certifies that he/she has the authority to submit this Application to MaineHousing and further certifies that to the best of his/her knowledge, the information contained in this Application and its Attachments is true.

Signature

Date

- 1-3 Municipal official with authority to submit annual reports to MaineHousing on the status of the district:

Printed name Jeff Levine

Title Director, Planning & Urban
Development Department

Mailing address 389 Congress Street, 4th Floor, Portland, Maine 04101

Phone number 207 874-8430

E-mail address jlevine@portlandmaine.gov

SECTION 2 – NOTICE AND HEARING

Before designating a district or adopting a development program, the municipal legislative body must

- (a) hold at least one public hearing,
- (b) publish notice of the hearing at least 10 days before the date of the hearing in a newspaper of general circulation in the municipality,
- (c) at the hearing, consider
 - (i) whether the district and development program will contribute to the expansion of affordable housing or the betterment of the health, welfare or safety of the residents,
 - (ii) any claim by a party that the district or development program will be detrimental to that party's property interests for which substantial evidence is produced, and whether any adverse economic effect is outweighed by the availability of affordable housing or the betterment of resident health, welfare or safety.

- 2-1 Date of public notice: July 22, 2015

Attachment 1 – Newspaper Notice

Include as Attachment 1 a copy of the newspaper page showing the public notice and the newspaper name and date.

- 2-2 Date of public hearing: August 3, 2015

Attachment 2 – Public Hearing Record

Include as Attachment 2 the record of the meeting at which the public hearing was held, certified by the municipal clerk.

Attachment 3 – Additional Documents

Include as Attachment 3 all documentation submitted to, or prepared by, the municipality relating to items (c)(i) and (c)(ii) above.

SECTION 3 – MUNICIPAL APPROVAL

Conditions of municipal approval of district and development program

The TIF Statute sets out conditions for the designation of a district and adoption of a development program by a city or town. A municipality must designate a district and adopt a development program meeting these conditions.

To assist municipalities in ensuring that districts and development programs comply with the conditions of the TIF Statute, we have set out below a Checklist in Appendix A that can be used in designating a district and adopting a development program. The Checklist covers the conditions in the TIF Statute that need to be met in approving the district and development program. While MaineHousing does not require municipalities to fill in or follow the format of the Checklist, in reviewing a district and development program approved by a municipality, we will look for specific information in the Application materials (including the Attachments) the city or town submits to us showing compliance with all the conditions of the TIF Statute.

IMPORTANT NOTE: Because the TIF Statute defines a district as "a specified area within the corporate limits of a municipality that has been designated . . . to be developed" under a development program, a development program must, at a minimum, include new construction of affordable housing or rehabilitation of existing housing inside the district, or both. A municipality may not create a district for the sole purpose of capturing tax increment revenues that would result only from inflationary adjustments to property values with no development of new housing or rehabilitation of existing housing in the district.

Attachment 4 – Municipal Approval

Include as Attachment 4 a copy of the order or resolution and vote of the municipal legislative body approving the district and development program, certified by the municipal clerk.

Attachment 5 – District Maps

Include as Attachment 5 a municipal map and tax map showing the district boundaries.

Attachment 6 – Certification of Original Assessed Value of District

Include as Attachment 6 a dated certification signed by the municipal assessor showing the original assessed value of the district. "Original assessed value" means the taxable assessed value of the district as of the March 31st before municipal approval of the district.

Attachment 7 – Development Program

Include as Attachment 7 a copy of the development program approved by the municipality's legislative body.

Attachment 8 – Credit Enhancement or Other Agreement

Include as Attachment 8 a copy of the credit enhancement agreement or other tax increment revenue sharing agreement, whether or not executed.

See Appendix A below for
Checklist for Approval of District and Development Program

Appendix A

Checklist for Approval of District and Development Program

The TIF Statute sets out conditions for the designation of a district and adoption of a development program by a city or town. A municipality must designate a district and adopt a development program meeting these conditions.

To assist municipalities in ensuring that districts and development programs comply with the conditions of the TIF Statute, we have set out below a **Checklist** that can be used in designating a district and adopting a development program. The Checklist covers the conditions in the TIF Statute that need to be met in approving the district and development program. While MaineHousing does not require municipalities to fill in or follow the format of the Checklist, in reviewing a district and development program approved by a municipality, we will look for specific information in the Application materials (including the Attachments) the city or town submits to us showing compliance with all the conditions of the TIF Statute.

SEE NARRATIVE ATTACHED.

NARRATIVE

DISTRICT AND DEVELOPMENT PROGRAM DESCRIPTION

17 CARLETON STREET AFFORDABLE HOUSING TIF DEVELOPMENT DISTRICT

District Description:

The 17 Carleton Street Affordable Housing TIF Development District is a .5722 acre site located on the east side of Carleton Street, between Pine and West Streets in the West End neighborhood of the City of Portland. The development will include the construction of a new building with thirty-seven (37) rental housing units with a thirty-one (31) space surface parking lot. The new building will be four stories along Carleton Street with the surface parking at the rear of the property. The site is located in the Residential R-6 zone and is in the West End Historic District. Permitted uses in the R-6 zone include single and multi-family dwellings. 100% of the district acreage is suitable for residential use. A municipal map and a tax map identifying the district are included as Attachment 5.

District Acreage:

The total district acreage of .5722 is .0000462% of the total municipal acreage of 12,386. The total acreage of all development districts is 4.84 of which there are two municipal development districts that are exempt for the acreage maximum. The exempt districts are a transit oriented district and a downtown/transit oriented district which have a combined acreage of 3.65%.

The original assessed value (OAV) of the district as of March 31, 2015 is \$261,660. The OAV of all existing and proposed affordable housing development districts as a percentage of all taxable property value is .0002%. A Certification of Original Assessed Value is included as Attachment 6.

Development Program Dates:

First tax year of development program: July 1, 2015

Last tax year of development program: June 30, 2037

The municipal fiscal year is July 1 through June 30.

The Development Program Agreement is included as Attachment 7.

Does the development program meet an identified housing need in the City of Portland?:

The proposed development is consistent with the Housing Component of the City of Portland's Comprehensive Plan in that it helps to meet the goal of ensuring that "an adequate supply of housing is available to meet the needs, preferences and financial capabilities of all Portland households, now and in the future." The district will be a primarily residential development which will create thirty-seven (37) units of rental housing, of which 100% of the units will be available to households earning at or below 60% of the area median income. Recent market studies, including a recent analysis completed for the Avesta Washington Avenue project, substantiate the need for a diversity of affordable housing options and also highlight a significant need for affordable, efficiency apartments for the increasingly large number of single-person households in the Portland area.

Mechanism to ensure ongoing affordability:

The development within the district will remain affordable for 30 years. A Declaration of Covenants and Restrictions, requiring income affordability, as noted in the chart below, will be recorded in the Cumberland County Registry of Deeds.

17 Carleton Street		
Efficiency Units (12)	at or below 40% area median income	5
	at or below 50% area median income	4
	at or below 60% area median income	3
1-Bedroom Units (23)	at or below 40% area median income	0
	at or below 50% area median income	14
	at or below 60% area median income	9
2-Bedroom Units (2)	at or below 40% area median income	0
	at or below 50% area median income	0
	at or below 60% area median income	2
Total Units		37

Operation of housing and facilities in the district:

TIF revenue will be used by the developer as an operating cost subsidy. The property will be operated and managed by Avesta Housing Management Corporation.

Specific uses of TIF revenue:

The operating costs of the development will be financed with a combination of rental income, income from on-site laundry facilities and TIF revenue in the estimated amount of \$29,969 annually.

Financial plan for each year the development will be in effect:

Attachment 9 outlines the estimate of increased assessed value of the district and a calculation of estimated tax shifts showing the effect on the City of Portland's state revenue sharing, education subsidies and county taxes resulting from creation of the district and the capture of increased assessed value. The development will be financed with a combination of local, state and federal funding including low income housing tax credits. Approximately \$5,167,534 will be funded through syndication of the tax credits and the remaining \$1,373,836 will be financed through the state funding agency. An itemized development budget showing all sources and uses of funds for development is included in Attachment 9.

Estimated total tax increment revenues \$728,156

Total annual revenue sharing tax shift \$948

Total annual education subsidy tax shift \$3,928

Total annual county tax shift \$770

Allocation of total tax increment revenues from the district:

65% of the total tax increment revenues from the district will be allocated to the project owner.

0% of the total tax increment revenues from the district will be allocated to the municipality. A copy of the Credit Enhancement Agreement is attached as Attachment 8.

Relocation plan for persons temporarily or permanently displaced by development activities:

Not applicable. Property to be developed is currently used as a surface parking lot.

Description of environmental controls to be applied:

The developer has submitted a Level III application for site plan and subdivision review that is currently under review by the local Planning Board and local Historic Preservation Board. The project is being reviewed subject to the Site Plan and Subdivision Ordinance of the Land Use Code. The project will also be reviewed by the local Historic Preservation Board for the design of the building and compatibility with the neighborhood. The proposed development has been reviewed by municipal staff for conformance with the relevant review standards of the local Subdivision Ordinance and applicable regulations. Staff comments will be submitted for review to the local Planning Board and local Historic Preservation Board.

Development program consistent with comprehensive planning:

Date of comprehensive plan final adoption November, 2015.

Is the proposed development consistent with the plan? Yes

Does the development program comply with Maine law limiting growth-related capital investments (30-A MRSA §4349-A) Yes

Is the district in conflict with the municipal charter? No

List of Attachments

Attachment 1 – Newspaper Notice

Attachment 2 – Public Hearing Record

Attachment 3 – Documentation of Municipal consideration of (i) whether the district and development program will contribute to the expansion of affordable housing or the betterment of the health, welfare or safety of the residents (ii) any claim by a party that the district or development is detrimental to that party's property interests for which substantial evidence is produced, and whether adverse economic effect is outweighed by the availability of affordable housing or the betterment of resident health, welfare or safety.

Attachment 4 – Municipal Approval

Attachment 5 – District Maps

Attachment 6 – Certification of Original Assessed Value of District

Attachment 7 – Development Program

Attachment 8 – Credit Enhancement Agreement

Attachment 9 – Financial Plans

CITY OF PORTLAND
17 CARLETON STREET AFFORDABLE HOUSING DEVELOPMENT DISTRICT
DEVELOPMENT PROGRAM

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Exhibits

- Exhibit A Estimated Allocation of Tax Increment and Estimated Tax Increment Revenues
- Exhibit B Estimated Development Costs
- Exhibit C Property Description and Configuration of the District
- Exhibit D Certificate of Assessor
- Exhibit E Credit Enhancement Agreement
- Exhibit F Tax Shift Computations
- Exhibit G Notice of Public Hearing
- Exhibit H City Council Orders
- Exhibit I Declaration of Covenants, Conditions and Restrictions

17 Carleton Street Affordable Housing Development District Development Program

Article I. Introduction and Summary of Benefits.

A. Affordable Housing Development District. This Development Program provides for the creation of an Affordable Housing Development District located at 17 Carleton Street in Portland. The area includes approximately .5722 acres. By providing for the reinvestment of a portion of the new or incremental tax revenues in the District, the District will provide an impetus for affordable housing development within the District and the development of affordable, livable housing and the containment of the costs of unplanned growth in the City.

B. Benefits of the District.

1. Affordable Housing. This Development Program will provide for the development of affordable housing in the City and the containment of the costs of unplanned growth.

2. No City Bonds or Risks. The District will not involve any borrowings by or the issuance bonds of the City to pay for any of the costs of the Development Program and will not affect existing tax revenues in any way.

3. Additional Tax Revenues. Creation of the District and Development Program will result in additional tax revenues for the City.

4. Shelter of New Tax Base Growth. The captured assessed value of the District will be sheltered from the otherwise negative impacts of new development that result in increased county taxes and loss of State aid to education and revenue sharing when new development occurs without the creation of a Affordable Housing Tax Increment Financing District. The sheltered portion of the tax increment revenues will be used to pay Project Costs.

Article II. Development Program Narrative and Designation of the District.

Section 2.01: Statement of Means and Objectives. The City of Portland ("the City"), like many other Maine municipalities, desires to provide affordable housing in the City and to contain costs of unplanned growth by providing the facilities described in this Development Program.

In order to fulfill these goals, certain property has been proposed as the 17 Carleton Street Affordable Housing Development District (the "District"). The Development Program described herein will serve the purpose of administering the District as an Affordable Housing Development District pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended (the "Development Program"). Upon approval by the City of Portland designating the District and adoption of this Development Program by the City, the designation of the District and adoption of the Development Program will become final immediately, subject only to approval by the Director of the Maine State Housing Authority. The Development Program provides for affordable housing similar in some respects to the economic development incentives called municipal tax increment financing ("TIF") similar to that adopted by a number of other Maine municipalities including the City. An Affordable Housing Development District involves the creation of a geographically defined district in the City and the "capture" or reinvestment of some of the new increased or "incremental" tax revenues generated on the increased assessed value of property in the District to pay certain costs of the development.

The District is designed to stimulate development of affordable housing in the City by allocating certain tax revenues generated on the increased assessed value in the District to Project Costs, consisting of allowable operating costs per 30-A M.R.S.A. §5249 and described in Section 2.03 hereof by Avesta Carleton, LP, its successors and assigns (the "Developer"). Under the Development Program, the City will make portions of the tax increment revenues as set forth in Section 3.04 hereof and under the Credit Enhancement Agreement attached hereto as Exhibit E hereto from the District available to the Developer pursuant to such Credit Enhancement Agreement (the "Credit Enhancement Agreement"). These revenues will be used either to pay or reimburse the Developer for Project Costs per Section 2.03 directly. All additional Project Costs will be the responsibility of the Developer, its successors or assigns. All tax increment revenues following expiration of the term of the Credit Enhancement Agreement will go directly into the City's general fund.

The District will result in significant new tax revenues for the City.

The Development Program thus will provide significant public benefit to the City by providing for the development of affordable housing in the City and for new tax revenues. The means and objectives of the Development Program are to provide: financial assistance towards Project Costs, and the development of affordable housing in the City.

The City, by adopting this Development Program, finds that the Development Program described herein, including the Capital Project, will provide substantial affordable housing in the City, thereby accomplishing an important public purpose.

Section 2.02: Brief Discussion of Financial Plan. The following is a brief summary of the Financial Plan. The Financial Plan is set forth in greater detail in Article III of this Development Program. As described in Section 3.04 hereof and Exhibit A hereof, the property taxes assessed by the City upon the Increased Assessed Value of property in the District (the "Tax Increment") resulting from the investments by the Developer will be captured or used by the City under the Development Program to pay Project Costs described in Section 2.03 hereof. The development costs and sources and uses of funds associated with the Development Program within the District are described in Article III. The Project Costs and any continuing investment by Developer will be financed by Developer through equity of the Developer, its successors or assigns and the tax increment revenues from the District. As part of the Development Program, the City and Developer will enter into a Credit Enhancement Agreement pursuant to which the City will pay to Developer the percentage of Tax Increment Revenues from the Increased Assessed Value with respect to property in the District, described herein as the Tax Increment Revenues (Developer's Share) for the term of the District to pay Project Costs related thereto. All tax revenues from the District not payable to Developer under the Credit Enhancement Agreement will be paid to the General Fund of the City. Any tax revenues presently generated on existing property in the District will continue to be paid to the General Fund of the City. The Development Program costs will be paid only from the Tax Increment on assessed value produced by new development in the District occurring after the tax year ending on the March 31st prior to adoption of this Development Program.

Section 2.03: Project Costs Descriptions. A. Project General Description. The Capital Project at 17 Carleton Street involves the redevelopment of approximately .5722 acres, into an affordable housing neighborhood. The objective of the project is that 100% of the units in the District will be affordable housing, meaning a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 60% of the median income for the area as defined by the United States Department of Housing and Urban Development. This project consists of 37 units of low income housing tax credit apartments, the targeting for those units will be 5 of the units at 40% Area Median Income, 18 of the units at 50% Area Median Income and 14 of the units at 60% of the Area

Median Income. The zoning for the project assures that this number of units and this affordability objective will be met.

The project includes the new construction of 37 efficiency apartments in one elevator building.

The 17 Carleton Street project is projected to have a total local increased assessed valuation at build out of approximately \$2,500,000 based upon current real estate values and City assessment practices. Based upon the estimated tax rate upon completion, the project will pay approximately \$29,969 in increased property taxes to the Developer at 65% capture in year 3 at full build out. A portion of this new revenue would be offset by increased county taxes and reduced state revenue sharing and education funding resulting from the increased state valuation, were it not included in a Development District.

"Project Costs" as defined in Title 30-A, Chapter 206, Section 5249 of the Maine Revised Statutes will include operating costs, including but not limited to property management and administration, utilities, routine repairs and maintenance, insurance, real estate taxes and funding of a projects capital reserve account.

B. Need for the Affordable Housing TIF. Over the 22-year TIF, the estimated average annual payment is \$33,098 (as set forth in Exhibit A). Developer's Share of the Tax Increment Revenue is designated to pay operating costs for the project at 17 Carleton Street. The Tax Increment Revenue described in section 3.04 will help pay for operating costs over a period of twenty-two (22) years. Without the TIF and these other funding sources the project could not go forward.

The Municipal Affordable Housing Development District law enacted by the Maine Legislature in 2003 creates an opportunity to fill this gap in the project financing through the mechanism of the TIF program. The program operates essentially the same way that the traditional commercial TIF program has with a few exceptions. The Affordable Housing TIF program is administered by the Maine State Housing Authority.

Section 2.04: Relocation Plan. No businesses or persons will be displaced or relocated as a result of the development activities proposed in the District.

Section 2.05: Environmental Controls. All environmental controls required by law shall apply to development in the District, including any applicable requirements of the City of Portland Zoning Ordinance and all applicable State and Federal environmental laws and regulations.

Section 2.06: District Operation. The day-to-day operations of the District will require no substantial efforts by the City. The Developer, its successor or assigns, will operate the improvements constructed by Developer and pay all maintenance and operational expenses of its facilities. The City, however, will be responsible for maintenance and operation of any part of the District that may become a public road or other public facility

Section 2.07: Assurance of Compliance. The City hereby determines that the District and this Development Program complies with the provisions of 30-A M.R.S.A. § 4349-A (growth management). The proposed development in the District is consistent with the Comprehensive Plan for the City of Portland which includes the City's Housing Plan, which calls for additional affordable housing in the City.

Section 2.08: Program Duration. The duration of the District will be 22 years from the designation of the District and the effective date of the approval of the District by the Director of the Maine State Housing Authority.

Section 2.09: Approval Considerations and Characteristics of the District. A. Statutory Considerations for Approval. Before designating the District and before establishing this Development Program, the City has considered any evidence presented at such public hearing and has considered whether the District and Development Program will contribute to the expansion of affordable housing opportunities within the City and to the betterment of the health, welfare or safety of the inhabitants of the City. The City hereby determines and finds that the District created hereunder and this Development Program will make a contribution to the expansion of affordable housing opportunities within the City and the betterment of the health, welfare or safety of its inhabitants, constituting good and valid public purposes and that any adverse economic effect on or detriment to any existing property interests is outweighed by the contribution made by the District and the Development Program to the availability of affordable housing within the City and to the betterment of the health, welfare and safety of its inhabitants.

B. Statutory Conditions for Approval: Physical Characteristics. The City hereby finds and determines that the District satisfies the conditions imposed under Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, as a prerequisite to designation of the District, including those relating to the physical description of the District and to certain financial and statistical information as follows:

(i) All of the land in the District is suitable for residential uses, is zoned for residential uses, and is in need of rehabilitation or redevelopment and therefore at least 25%, by area, of the real property within the District meets at least one of the following statutory criteria: (1) be suitable for residential use; (2) be a blighted area; or (3) be in need of rehabilitation or redevelopment;

(ii) The total area of the District is approximately .5722 acres and thus such area represents less than 2% of the total acreage of the City. The total area of the District and the total area of all development districts in the City (which combined total is 599.85 acres) is 4.84%, which includes 3.65% included in two exempt districts, a transit oriented district and a downtown/transit oriented district, of the total acreage of the City and thus does not exceed 5% of the total acreage of the City; the total area of all existing and proposed affordable housing development districts in the City is 0.0182% of the total acreage of the City and does not exceed 5% of the total acreage of the City;

(iii) The Original Assessed Value of the District is as set forth in Exhibit D hereto and the Original Assessed Value of all existing and proposed affordable housing development districts within the City is \$1,533,510 and such amount of Original Assessed Value does not exceed 5% of the total value of taxable property within the City as of April 1st preceding the date of the designation of the District;

(iv) The aggregate value of municipal general obligation indebtedness financed by the proceeds from affordable housing development districts within Cumberland County does not exceed \$50,000,000 adjusted by a factor equal to the percentage change in the United States Bureau of Labor Statistics Consumer Price Index, United States City Average from January 1, 2002 to the date of calculation; and

C. Community Housing Need. The City finds that this Capital Program will meet a community housing need identified in the City's Housing Plan and Comprehensive Plan. The Credit Enhancement Agreement provides a mechanism to ensure the ongoing affordability for a period of at least 30 years for

rental units, which mechanism is the Declaration attached hereto as Exhibit I. The District is primarily a residential development on which 100% of the dwelling units will be affordable housing and that may be designed to be compact and walkable and to include internal open space, other common open space and one or more small-scale nonresidential uses of service to the residents of the development. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable.

Section 2.10: Designation of the District. The City, by adoption of this Development Program, hereby designates the 17 Carleton Street Affordable Housing Development District as an Affordable Housing Development District and as an Affordable Housing Tax Increment Financing District. A plan depicting the District is attached hereto as Exhibit C and the District is further described therein.

Article III. Financial Plan.

Section 3.01: Cost Estimates for the Development Program. The estimated expenses of the Project Costs are set forth in Exhibit B.

Section 3.02: Amount of Indebtedness to be Incurred. The City will not incur any indebtedness in connection with the Development Program. The Development Program will be financed through a combination of funds of the Developer, its successors and assigns, various loans and the Tax Increment of the District.

Section 3.03: Sources of Anticipated Revenues. The source of the revenue to be used to pay the Project Costs of this Development Program is a portion of the Tax Increment on the Increased Assessed Value of the District. Tax Increment means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District. Increased Assessed Value means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. Current Assessed Value means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect. Property Taxes means any and all ad valorem property taxes levied, charged or assessed against property by the City or on its behalf.

Original Assessed Value means the assessed value of the District as of March 31, 2015. Attached hereto as Exhibit D is the anticipated form of certification of Original Assessed Value by the Assessor of the City of Portland in accordance with the requirements of Title 30-A § 5250-A of the Maine Revised Statutes. All Property Tax on the Original Assessed Value shall continue to be deposited in the general fund of the City.

The City will deposit the Tax Increment Revenues (Developer's Share) as described in Section 2.02 and Section 3.04 hereof and in Exhibit A into the Developer's Project Cost Account of the Affordable Housing Development Program Fund and pay such Tax Increment (Developer's Share) to Developer in accordance with the terms of the Credit Enhancement Agreement to be entered between the City and the Developer.

Section 3.04: Estimated Increased Assessed Value; Portion Applied to Development Program. The percentage of the Increased Assessed Value of the District to be retained as Captured Assessed Value in

each year is 65%. Such Captured Tax Increment Revenues will be returned to the Developer each year in the manner described below.

The Tax Increment Revenues (Developer's Share) to be paid to the Developer each year during the term of this Development Program will be an amount which shall be captured and retained to reimburse the Developer for Project Costs pursuant to the Credit Enhancement Agreement. The Tax Increment Revenues (Developer's Share) shall be equal to the corresponding fiscal year's projected allocation percentage for each payment according to Exhibit A, but Developer's Share will be the entire amount of the 65% of captured revenue. The percentage determination of the Tax Increment Revenues (Developer's Share) as determined as described above shall apply regardless whether the actual Tax Increment Revenues are more or less than the estimated or projected Tax Increment Revenues set forth in Exhibit A.

"Tax Shift Formulas" mean the formulas utilized by the State of Maine in calculating: (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. § 5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior years level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

The amount of Tax Increment from the total Increased Assessed Value that is to be paid each year to the Developer under Credit Enhancement Agreement to pay or reimburse Project Costs is hereinafter called the "Tax Increment Revenues (Developer's Share)."

The table attached hereto as Exhibit A also sets forth: (i) the annual estimates of the Increased Assessed Value of the District resulting from implementation of the Development Program; (ii) the estimated annual Tax Increment Revenues per year on the Increased Assessed Value following implementation of the Development Program, stated respectively as (a) a total, and (b) the estimated amount of the Tax Increment Revenues (Developer's Share)

Based on the manner in which Tax Increment Revenues (Developer's Shares) are defined, a share of the incremental property tax revenues derived from the increased valuation will be returned to the Developer to cover the Project Costs as described in Section 2.03 hereof.

To comply with the provisions of the State of Maine, the Credit Enhancement Agreement includes a provision for the recapture of certain amounts relating to any affordable rental housing units that are not maintained as affordable for a period of at least thirty years.

The amount of the Tax Increment Revenues on the Increased Assessed Value of all property in the District for each year during the term of the District to be allocated and paid to the Developer each year pursuant to the Credit Enhancement Agreement shall be equal to the product for each year during the term of the District of (a) the relevant Developers Percentage Allocation of the Tax Increment (Developer

Share) for each year as computed as described above, times (b) the actual amount of the Tax Increment for each year. Such percentage allocations shall apply regardless of whether the actual Tax Increment Revenues each year are more or less than the Tax Increment Revenues as estimated or projected in Exhibit A of this Development Program, provided that in no fiscal year will the Developer's Share be less than 65% of the captured revenue through the term of the District.

An Affordable Housing Development Program Fund shall be established by the City consisting of a Project Cost Account. The Project Cost Account shall consist of the Developer's Project Cost Account (the "Developer's Project Cost Account"). The Developer's Project Cost Account will be pledged to and charged with payment of amounts due to Developer under the Credit Enhancement Agreement. Upon receipt of each payment of property tax with respect to property in the District, the City shall deposit into the Developer's Project Cost Account according to the terms of the Credit Enhancement Agreement that portion of each payment constituting the percentage of total actual Tax Increment for such year equal to the Tax Increment Revenues (Developer's Share). The amounts in the Developer's Project Cost Account shall be used and applied solely to fund the payments to Developer under the Credit Enhancement Agreement.

Section 3.05: Description of Terms and Conditions of Agreements. A description of the terms and conditions of the agreements, contracts and obligations to be entered into by the City is set forth in the Credit Enhancement Agreement to be entered into by the City and the Developer which will be substantially in the form attached hereto as Exhibit E. The Credit Enhancement Agreement sets forth the obligations of the City to pay to Developer each year during the term of that Agreement Tax Increment Revenues (Developer's Share) from all Property Tax with respect to all property in the District, as provided in such Credit Enhancement Agreement.

Section 3.06: Calculation of Tax Shifts. In accordance with Maine statutes governing the establishment of affordable housing development districts, Exhibit F identifies the estimated tax shifts which will result during the term of the District from the establishment of the District, using formulas approved by the Director of the Maine State Housing Authority. Exhibit F also contains a summary of the methodology and calculations utilized in calculating such estimated tax shifts.

The 17 Carleton Street project will pay property taxes to the City based upon the local assessed valuation of the project and the City's annual tax rate. Exhibit A shows the estimated property taxes that will be paid by the project over the next 22 years based upon the estimated local assessed valuation and the estimated tax rate of \$19.80/\$1000 for the first year of the District. The amount of property taxes paid by owners of property in the District to City will be the same whether the project is included in a TIF district or not.

If the project is not part of a TIF, some of these new tax revenues will be offset by what are commonly called tax shifts. Since the City's total state valuation will be higher as a result of the project, its share of Cumberland County taxes will increase. The increased valuation and population will change the amount the City receives in State Revenue Sharing. The increased valuation and increased school enrollment will change the amount the City receives in state education aid.

Exhibit F thus shows the estimated amount of these tax shifts compared to what they would be if the new valuation is "sheltered" in a TIF and, therefore, does not get counted in the City's state valuation that is used in calculating county tax, revenue sharing and state education aid.

The actual extent and amount of the tax shifts can vary from this estimate since they are controlled by factors outside the City's control such as the rate of increase in the County budget, the amount of state

sales and income tax collected, the amount of funding provided by the state for education aid, and the formula used to distribute that aid. So the extent and value of the shifts could be more or less than estimated.

Article IV. Municipal Approvals.

Section 4.01: Public Hearing. Before designating the District, the City legislative body of the City held a public hearing. Notice of the hearing was published on July 22, 2015, a date that was at least 10 days before the hearing, in The Portland Press Herald, a newspaper of general circulation within the City. Attached hereto as Exhibit G is a copy of the Notice of Public Hearing. The Public hearing was held in accordance with the requirements of 30-A M.R.S.A. § 5250 on August 3, 2015. At the public hearing, interested parties were given a reasonable opportunity to present testimony concerning the District and the Development Program.

Section 4.02: Authorizing Votes. Attached as Exhibit H is a copy of the Orders proposed for adoption by the City Council of the City of Portland at a meeting thereof duly called and held on August 3, 2015 designating the District and adopting the Development Plan.

The undersigned, being the City Manager of the City of Portland, certifies that all of the information contained herein is true and correct to the best of my knowledge.

Dated: August _____, 2015

Jon P. Jennings, City Manager, City of Portland

CREDIT ENHANCEMENT AGREEMENT

This Credit Enhancement Agreement, dated as of August _____, 2015, between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine (the "City"), and Avesta Carleton LP, a Maine limited partnership (the "Developer").

WITNESSETH THAT

WHEREAS, the City designated the 17 Carleton Street Affordable Housing Development District (the "District") pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, by vote of the City Council at a meeting held on August 3, 2015 and pursuant to the same City Council Meeting action adopted a development program and financial plan for the District (the "Development Program"), and

WHEREAS, the Director of the Maine State Housing Authority has reviewed and approved the District and the Development Program, and

WHEREAS, the Development Program contemplates the execution and delivery of a credit enhancement agreement between the City and the Developer and the City approved the execution and delivery of a credit enhancement agreement as described in the Development Program pursuant to such City Council Meeting approval and a resolution of the Municipal Officers, adopted August 3, 2015 by vote of the City Council and the City and the Developer desire and intend that this Credit Enhancement Agreement 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. Definitions. The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

"Affordable Housing Development Program Fund" means the Affordable Housing Development Program Fund described in Article III of the Development Program and established and maintained pursuant to Article II hereof.

"Agreement" means this Credit Enhancement Agreement between the City and the Developer.

"Captured Assessed Value" means the amount, stated as percentages or stated sums, of the Increased Assessed Value that is utilized from year to year to finance the Capital Program and Public Improvements described in the Development Program; the Captured Assessed Value of the District shall be 65% of the Increased Assessed Value.

"City" means the City of Portland, Maine, a municipality duly organized and existing under the laws of the State of Maine, its successors and assigns.

"Current Assessed Value" means the assessed value of the District certified by the municipal assessor as of April 1st of each year that the District remains in effect.

"Developer" means Avesta Carleton LP, its successors and assigns.

“Development Program” means the Development Program for the District as adopted by the City at a meeting of the City Council held on August 3, 2015.

“District” means the 17 Carleton Street Affordable Housing Development District designated by the City pursuant to Chapter 206, subchapter 3 of Title 30-A of the Maine Revised Statutes, as amended, by vote of its City Council at a meeting held on August 3, 2015.

“Financial Plan” means the financial plan described in Article III of the Development Program.

“Fiscal Year” means July 1 to June 30 each year or such other fiscal year as the City may establish.

“Increased Assessed Value” means the valuation amount by which the Current Assessed Value of the District exceeds the Original Assessed Value of the District. If the Current Assessed Value is equal to or less than the Original Assessed Value, there is no Increased Assessed Value.

“Original Assessed Value” means the assessed value of the District as of March 31, 2015, which amount was Two Hundred Sixty-One Thousand Six Hundred Sixty Dollars (\$261,660).

“Project” means the design, planning, development, acquisition, construction, financing and installation of the Development Program as described in Section 2.03 of said Development Program.

“Project Costs” means any expenditures or monetary obligations incurred or expected to be incurred that are authorized by section 5249 of title 30-A of the Maine Revised Statutes and included in the Development Program.

“Project Cost Account” means the Developer’s Project Cost Account described in Article III of the Development Program and established and maintained pursuant to Article II of this Agreement.

“Property Taxes” means any and all ad valorem property taxes levied, charged or assessed against real estate in the District by the City or on its behalf.

“Qualified Investments” means any and all securities, obligations or accounts in which municipalities may invest their funds under applicable Maine law.

“Tax Increment” means all Property Taxes assessed by the City, in excess of any state, county or special district tax, upon the Increased Assessed Value of all property in the District.

“Tax Increment Revenues (Developer’s Share)” means that percentage of the Tax Increment with respect to real estate now or hereafter located in the District retained pursuant to the terms of the Development Program to pay Project Costs of the Capital Program, and which amount is to be deposited each year during the term of this Agreement in the Developer’s Project Cost Account to fund payments to the Developer due pursuant to this Agreement. The Tax Increment Revenues (Developer’s Share) is sixty-five percent (65%). The Tax Increment Revenues (Developer’s Share) will be calculated each year as more particularly described herein and in Exhibit A of the Development Program and will be based on the Increased Assessed Value of the District which percentage or amount shall be captured and retained to pay to the Developer the costs of the Capital Program described in the Development Program.

“Tax Shift” means the sum of the following amounts as calculated under the Tax Shift Formulas, as hereafter defined: (a) the difference between (i) the county tax payable by the City if the Captured

Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of County Tax were included in the City's valuation in calculating the county tax, and (ii) the county tax payable by the City to the extent that the Captured Assessed Value is excluded from the City's valuation in calculating the county tax; plus (b) the difference between (i) the State aid to education that would be received by the City if the Captured Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of State aid to education were included in the City's valuation in calculating State aid to education, and (ii) the State aid to education that received by the City to the extent that the Captured Assessed Value is excluded from the City's valuation in calculating such amounts of State aid to education; plus (c) the difference between (i) the State revenue sharing that would be received by the City if the Captured Assessed Value that under the then existing Tax Shift Formulas is not included in the actual calculation of State revenue sharing were included in the City's valuation in calculating the amount of State revenue sharing, and (ii) the State revenue sharing received each year to the extent that the Captured Assessed Value is excluded in the City's valuation in calculating such amounts of revenue sharing. Examples of the calculation of the estimated Tax Shifts based on the current Tax Shift Formulas are attached as Exhibit F to the Development Program.

"Tax Shift Formulas" means the formulas utilized by the State of Maine in calculating (a) the county tax payable in accordance with 30-A M.R.S.A. § 706 and 36 M.R.S.A. §§ 305(1), 381, as amended, and any successor provisions; (b) the municipal revenue sharing distribution of the Local Government Fund in accordance with 30-A M.R.S.A. § 5681, as amended, and any successor provision, provided, however, that distribution of the Disproportionate Tax Burden Fund (the Revenue II fund), if any, shall not be taken into consideration in such calculation since taxes assessed on captured value within a tax increment financing district are included in the amounts of the property assessed in determining allocations of such Disproportionate Tax Burden Fund; and (c) State aid to education, including aid for total operating costs, total program cost allocation (taking into account the maximum local share or circuit breaker) and total debt service cost allocation (taking into account the maximum local share or circuit breaker), but not taking into account any hold harmless or hardship cushion that results in additional State aid to education to the prior year's level even through the calculation would have resulted in a reduction, all as computed in accordance with Maine Department of Education Form ED 261 or any successor form.

"Tax Payment Date" means the date(s) on which Property Taxes levied by the City are due and payable from owners of property located within the City.

Section 1.2. Interpretation and Construction. In this Agreement, unless the context otherwise requires:

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

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), limited liability companies, 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 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. All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.

(f) If any clause, provision, Article or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision, Article or Section shall not affect any of the remaining provisions hereof.

ARTICLE II: DEVELOPER'S PROJECT COST ACCOUNT OF THE AFFORDABLE HOUSING DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Developer's Project Cost Account of the Affordable Housing Development Program Fund. The City hereby confirms the creation and establishment of (a) the 17 Carleton Street Affordable Housing Development District Affordable Housing Development Program Fund; and (b) a segregated fund in the name of the City designated as the "17 Carleton Street Affordable Housing Development District Developer's Project Cost Account of the Affordable Housing Development Program Fund" (the "Developer's Project Cost Account") pursuant to, and in accordance with the terms and conditions of the Development Program. The Affordable Housing Development Program Fund shall consist of the Developer's Project Cost Account as described in the Development Program.

Section 2.2. Deposits into Developer's Project Cost Account of the Affordable Housing Development Program Fund. The City shall deposit into the Developer's Project Cost Account contemporaneously with each payment of Property Tax by owners of property in District during the term of the District an amount equal to that portion thereof constituting the Tax Increment Revenues (Developer's Share) for the period or year to which the payment relates and shall allocate the amount so deposited to fund fully and pay the payments due to Developer under Article III of this Agreement.

Section 2.3. Use of Monies in Developer's Project Cost Account of the Affordable Housing Development Program Fund. Monies deposited in the Developer's Project Cost Account 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 deposited with or paid into the Developer's Project Cost Account to fund payments of the Developer under the provisions hereof and the provisions of the Development Program, shall be held by the City in trust, for the benefit of the Developer.

Section 2.5. Investments. The monies in the Developer's Project Cost Account 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 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 Developer's Project Cost Account.

Section 2.6. Liens. The City shall not hypothecate or grant or create any liens, security interests, encumbrances, or other interests of any nature whatsoever, with respect to the Developer's Project Cost Account or any funds therein, other than the interest granted to the Developer hereunder in and to the amounts on deposit therein.

ARTICLE III: PAYMENT OBLIGATIONS

Section 3.1. Credit Enhancement Payments. (a) The term of this Agreement shall be for twenty-two (22) years as described below. The City agrees to pay to the Developer within 30 days of the end of each fiscal year (ends June 30 each year) this Agreement is in effect payments equal to the Tax Increment Revenues (Developer's Share) beginning with the designation and approval of the District by the Director of the Maine State Housing Authority, that being the City Fiscal Year beginning July 1, 2015 and ending June 30, 2016 (FY16) and continuing with each Fiscal Year of the City thereafter through and including June 30, 2037 (FY37). The City shall make all such payments of the Tax Increment Revenues (Developer's Share) to the Developer, its successors and assigns according to Exhibit A of the Development Program, based upon the corresponding fiscal year's projected allocation percentage for each payment. The Developer's share will be 100% of the captured revenue (based on 65% of the value captured) as indicated on Exhibit A. The obligation of the City to make such payments shall be a limited obligation payable solely from that portion of the Tax Increment Revenues (Developer's Share) payable to the Developer hereunder, whether or not actually deposited into the Developer's Project Cost Account, and shall not constitute a general debt or obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine or any political subdivision thereof.

(b) If, with respect to any Tax Payment Date, the owner or owners of property in the District fail(s) to pay any portion of the Property Taxes assessed by the City, because of a valuation dispute or otherwise, the Property Taxes actually paid with respect to such Tax Payment Date shall first be applied to taxes due on account of the Original Assessed Value and second shall constitute Tax Increment Revenues.

(c) Annually, Developer will provide operating cash flow statements as back-up documentation of Projects Costs for its TIF payments, which documentation will be kept confidential by the City.

Section 3.2. Completion of Development Program. Prior to receiving the first payment under this Agreement, Developer shall provide evidence reasonably satisfactory to the City of the Company's ability to complete the Project in accordance with State law. Reasonably satisfactory evidence shall include the Company's having closed on the financing for the Project.

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 Section 3.1 hereof, the item or installment so unpaid shall continue from year-to-year, as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid and the City agrees to pay the same with interest thereon at the rate equal to the interest rate per annum payable by owners of property in the City on Property Taxes that are not paid when due, but only from Tax Increment Revenues (Developer's Share) paid to the City by the Developer from time to time, and any earnings thereon, whether or not deposited into the Developer's Project Cost Account of the Affordable Housing Development Program Fund. Payments shall be applied first against accrued interest and then against principal. The Developer shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to deposit all Tax Increment Revenues (Developer's Share) to the Developer's Project Cost Account and its obligation to make payments to the Developer.

Section 3.4. Manner of Payments. The payments provided for in this Article III shall be paid in immediately available funds directly to the Developer in the manner provided hereinabove for its own use and benefit, for qualified Project Costs.

Section 3.5. Obligations Unconditional. 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 Developer. The City shall not suspend or discontinue any such payment or terminate this Agreement for any cause, including without limitation, any acts or circumstances that may constitute failure of consideration or frustration of purpose or any damage to or destruction of the Project or any change in the tax or other laws of the United States, the State of Maine or any political subdivision of either thereof.

Section 3.6. Limited Obligation. The City's obligations of payment hereunder shall be limited obligations of the City payable solely from monies on deposit in the Developer's Project Cost Account, and any earnings thereon, pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of the Tax Increment Revenues (Developer's Share) payable to the Developer hereunder, and any earnings thereon, whether or not actually deposited into the Developer's Project Cost Account. This Agreement shall not directly or indirectly or contingently obligate the City, the State of Maine, or any other municipality or political subdivision to levy or to pledge any form of taxation or to levy or to make any appropriation for their payment, excepting the City's obligation to levy Property Taxes upon the property in the District and the pledge of the Tax Increment Revenues (Developer's Share), and earnings thereon, established under this Agreement.

ARTICLE IV: PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of Developer's Project Cost Account. In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge to the Developer the Developer's Project Cost Account to the extent of Developer's Rights under this Agreement to receive funds from the Developer's Project Cost Account and all sums of money and other securities and investments now or hereafter therein.

Section 4.2. Perfection of Interest. The City authorizes the Developer to file and, if necessary, shall cooperate with the Developer in causing appropriate financing statements and continuation statements naming the Developer as pledgee of all amounts from time to time on deposit in the Developer's Project Cost Account to be duly filed and recorded in the appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder. To the extent deemed necessary by the Developer, the City will at such time and from time to time as requested by Developer establish the Developer's Project Cost Account as a segregated fund under the control of an escrow agent, trustee or other fiduciary so as to perfect Developer's interest therein.

Section 4.3. Further Instruments. The City shall, upon the reasonable request of the Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City.

Section 4.4. No Disposition of Developer's Project Cost Account. Except as permitted hereunder, the City shall not sell, lease, pledge, grant a security interest in, assign or otherwise dispose, encumber or hypothecate any interest in the Developer's Project Cost Account and will promptly pay or

cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part hereof not permitted hereby.

Section 4.5. Access to Books and Records. All books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Developer's Project Cost Account shall at all reasonable times be open to inspection by the Developer, its agents, lenders, designees 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 to Developer when the same shall become due and payable;

(b) any failure by the City to make deposits into the Affordable Housing Development Program Fund or the Developer's Project Cost Account as and when due;

(c) any failure by the City or the Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or the Developer to be observed or performed, provided, however, that failure of Developer or any other owner of property in the District to pay Property Taxes when due shall not constitute an event of default hereunder; or

(d) if a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding up or liquidation of the City's affairs shall have been entered against the City or 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 ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.

Section 5.2. Remedies on Default. Whenever any Event of Default referred to in Section 6.1 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 Developer shall also have the right to exercise any rights and remedies available to a secured party under the laws of the State of Maine.

Section 5.3. Remedies Cumulative. No remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to 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 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 City with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Event of Default be continued or repeated.

Section 5.4. Agreement to Pay Attorneys' Fees and Expenses. Notwithstanding the application of any other provision hereof, in the event any party should default under any of the provisions of this Agreement and the non-defaulting party shall require and employ attorneys or incur other expenses or costs for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the City or the Developer herein contained, the defaulting party shall, on demand thereof pay to the non-defaulting party the reasonable attorneys fees, costs and expenses so incurred by the non-defaulting party.

Section 5.5. Disputes. The parties agree that in the event of any dispute or disagreement hereunder 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. The City hereby waives any right to withhold, suspend or setoff payments during the pendency of any such dispute, this waiver being limited and expressly intended to affect only those rights necessarily related to or arising directly under the terms of this Agreement.

ARTICLE VI: EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term. This Agreement shall become effective upon its execution and delivery by the parties hereto and shall remain in full force from the date hereof for the entire term of this Agreement and shall expire upon the payment of all amounts due to the Developer hereunder and the performance of all obligations on the part of the City and the Developer hereunder.

Section 6.2. Cancellation and Expiration of Term. At the termination or other expiration of this Agreement and following full payment of all amounts due and owing to the Developer hereunder or provision for payment thereof and of all other fees and charges having been made in accordance with the provisions to this Agreement, the City and the Developer shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

ARTICLE VII: ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST

Section 7.1. Consent to Pledge and/or Assignment. The City hereby acknowledges that it is the intent of the Developer to pledge and assign and to grant security interests in and to this Agreement and the amounts payable to Developer hereunder and Developer's 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 Developer to make such assignment or pledge or to grant such security interests. Recognizing this intention, the City does hereby consent and agree to the grant of such security interests and to the pledge and assignment of all the Developer's right, title and interest in, to and under this Agreement and in and to the payments to be made to Developer hereunder, to third parties as collateral or security for indebtedness and other obligations or otherwise, on one or more occasions during the term hereof.

Section 7.2. Pledge, Assignment or Security Interest. The City hereby consents to the pledge, assignment or granting of a security interest by the Developer (or the pledge and assignment by any one Developer) of its right, title and interest in, to and under this Agreement. The City agrees to execute and

deliver any assignments, pledge agreements, consents or other confirmations required by the prospective secured party, pledgee or assignee, including without limitation, recognition of the secured party, pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such secured party, pledgee or assignee the position of such secured party, assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to the secured party, pledgee or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

Section 7.3. Assignment. Except as provided in this Article VII, the Developer shall not have the right to transfer and assign to any person or entity all or any portion of its rights in, to and under this Agreement; provided however, that any transfer of the real property within the District shall carry with it the benefit of this Agreement so long as (i) the rental units within the District remain affordable after such transfer; (ii) the prospective owner establishes to the reasonable satisfaction of the City that the financial benefits provided by this Agreement are still necessary to maintain the viability of the Project and (iii) the City Council approves the transfer.

ARTICLE VIII: MISCELLANEOUS

Section 8.1. Successors. The covenants, stipulations, promises and agreements set forth herein shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

Section 8.2. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.3. No Personal Liability of Officials of the City. 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 individual capacity and neither the members of the City Council of the City nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.4. 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 8.5. Governing Law. The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Section 8.6. Notices. All notices, certificates, requests, requisitions or other communications by the City or the Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when hand delivered or mailed by first class mail, postage prepaid, addressed as follows:

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

If to the Developer: Avesta Carleton LP

c/o Avesta Housing Development Corporation
307 Cumberland Avenue
Portland, ME 04101

Any 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 8.7. Amendments. This Agreement may be amended only with the concurring written consent of the parties hereto.

Section 8.8. 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 any abatement, deductions or setoffs.

Section 8.9. Benefit of Assignees or Pledges. The City agrees that this Agreement is executed in part to induce secured parties, 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 secured parties, assignee or pledgee from time to time of the Developer's right, title and interest herein.

Section 8.10. Maine Housing Rules and Requirements. The Developer and the City shall comply with any rules adopted by the Maine State Housing Authority and with any conditions of approval imposed by the Maine State Housing Authority following designation of the District. The City shall report annually to the Director of the Maine State Housing Authority regarding the status of the District, including the following matters as required by law: (a) certify that the public purpose of the District is being met; (b) account for any sales of property within the District; and (c) certify that rental units within the District remain affordable. The parties shall comply with the rule provisions for recovery of public revenue if conditions for approval of the District are not maintained for the duration of the District, as provided by rules adopted by the Maine State Housing Authority in accordance with applicable law. The Developer agrees to provide all information as required by the City to satisfy its reporting obligations.

Section 8.11. Affordability Covenants. The Developer and the City shall, in order to assure the continued affordability of the rental units as required by the Development Program, Maine State Housing Authority and applicable laws, regulations and ordinances, execute a declaration which is substantially in the same form as the "Declaration of Covenants, Conditions and Restrictions which is attached to the Development Program as Exhibit I.

Section 8.12 Valuation Agreement. The Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates, estimated amounts of the Increased Assessed Value and the Tax Increment, estimated amounts of the Tax Increment Revenues (Developer's Share), estimated development costs and other estimates. The City and the Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) prejudice the rights of any party to be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise with respect to Developer's property for purposes of ad valorem property taxation or any tax abatement proceeding or (b) modify or change in any way the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

Section 8.13. Integration. This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the

Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

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

WITNESS

CITY OF PORTLAND

By: _____
Jon P. Jennings, Its City Manager

AVESTA CARLETON LP

BY: Pinetree Housing Development I LLC,
its General Partner

By: _____
Dana Totinan, Its President

O:\HCD\HCD Staff\Mary\AHTIF\Carleton Street\Council Packet\Revised Packet\Draft CEA Revised 7-15-15.docx

Declaration of Covenants, Conditions and Restrictions

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is entered into by and between the City of Portland, a public body corporate and politic with its principal place of business at 389 Congress Street, Portland, Maine, 04101 ("City") and Avesta Carleton LP ("Developer") with a mailing address of 307 Cumberland Avenue, Portland, Maine 04101.

WITNESSETH

WHEREAS, the Developer acknowledges that City is providing Affordable Housing Tax Increment Financing to the Developer (the "AHTIF") for project operating costs associated with the development of a total of thirty-seven (37) units of affordable rental housing located at 17 Carleton Street (the "Development"); and

WHEREAS the Developer acknowledges City's resulting beneficial interest in the Development, and Developer acknowledges that its ownership and operation of the Development are in furtherance of discharge of the public trust; and

WHEREAS, City has provided the AHTIF to Developer in consideration of the Developer's agreement to abide by the provisions of this Declaration.

NOW THEREFORE, City and the Developer agree as follows:

1. The covenants and restrictions of the Developer set forth herein are intended to be and shall be considered covenants which run with the real estate described in Exhibit A attached hereto and shall bind all subsequent owners of the real estate described in Exhibit A attached hereto, except to the extent provided herein.
2. The covenants of the Developer set forth herein are enforceable by City as a contract beneficiary whether or not the Developer is or remains indebted to City under the AHTIF, except to the extent provided herein.
3. The covenants of the Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by the Developer, foreclosure or transfer of title in lieu of foreclosure, , except to the extent provided herein, but shall cease to apply to the Development in

the event of involuntary noncompliance caused by fire or other substantial destruction, seizure, requisition or other event that prevents City from enforcing the Developer's covenants contained herein.

4. The term "Qualified Project Period" as used herein shall mean the period beginning on the date of completion of the construction of the Development, as determined by City, and terminating on a date twenty-two (22) calendar years thereafter, except for the shorter period provided in subsection (f) below, for a portion of the Development.

5. The Developer agrees to comply with this Declaration throughout the Qualified Project Period.

6. The Developer hereby covenants and represents to City as follows:

- a. The Development shall be located on the real estate described in Exhibit A attached hereto and shall consist of the facilities described in Developer's application to City.
- b. The Development shall consist of the land described in Exhibit A together with a building or a portion of a building or structure or several proximate and interrelated buildings or structures and facilities functionally related and subordinated thereto:
 - i. each containing one or more similarly constructed units and facilities which are functionally related and subordinate to such units; and
 - ii. all of the thirty-seven residential units of which will, on a continuous basis, be rented or available on a non-transient basis for rental to members of the general public.
- c. The total housing costs including rent and utilities of tenants occupying the rent restricted units in Development as of the date of this Declaration may not increase for twelve months beginning on the date of this Declaration.
- d. The Developer shall maintain all of the units included in the Development rented or available for rental on a continuous basis to members of the general public throughout the Qualified Project Period.
- e. The Developer acknowledges and represents to City that the Development consists of thirty-seven (37) residential rental units. Throughout the Qualified Project Period, the thirty-seven (37) residential units in the Development must be occupied by individuals or families with the following income requirements:

- 5 units occupied by households at or below 40% of area median income
- 18 units occupied by households at or below 50% of area median income
- 14 units occupied by households at or below 60% of area median income

In its operation of the Project, Grantor agrees to comply with all applicable federal, state and local laws and regulations.

- i. Income and area median income shall be as determined by the United States Department of Housing and Urban Development and income limits shall be adjusted for family size.
- ii. At least annually, City shall determine whether the income, based on the current income, of the tenants residing in the Development exceeds the applicable income limits as described in this Section 6 (the "Determination"). The Developer shall furnish to City such information as City shall require, including certification of occupancy and tenant income, in order to assure that the covenants set forth herein are being fully satisfied. Income certifications and related information submitted to and accepted by Maine State Housing Authority shall be acceptable to the City for purposes of this subsection.
- iii. A unit occupied by a tenant who, at the commencement of occupancy, met the applicable income limitations shall continue to be treated as occupied by a qualified tenant even though the tenant's income may exceed the applicable income limitations at the time of the most recent Determination.
- iv. After initial occupancy but upon again becoming vacant, a unit shall be treated as occupied by an individual or family meeting the applicable income limitations until occupied, at which time the character of the unit shall be redetermined in light of the new occupants income, other than occupancy by another tenant for a temporary period not to exceed thirty-one (31) days.
- f. Developer shall not make any change in the nature, size, number or location of the units in the Development or the amount of commercial or non-residential space.

7. Developer agrees to furnish to City such information as City may require in form acceptable to City, including without limitation certifications and/or verification of occupancy and tenant income certifications (subject to Section 6(e)(ii) above), to determine Developer's compliance with the covenants set forth herein.

8. Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, books and records related to compliance with the covenants contained in this Declaration. Such books, records, documents and plans shall be kept for: (a) a minimum of six (6) years after the expiration of the Qualified Project Period for those books, records, documents and plans pertaining to the rent and occupancy requirements described in Section 6 of this Declaration and the rent roll for all units in the Development; and (b) for a minimum of six (6) years after the end of the fiscal year or calendar year, as applicable, for all other books, records, documents and plans pertaining to the Development. Upon reasonable notice, City may audit and examine these books, records, documents and plans, and may inspect the buildings, grounds, equipment offices of the Development.

9. Developer shall use tenant lease forms acceptable to City, or, if there are no written leases, written and signed certifications by tenants to determine whether tenants meet the applicable income limits. Such leases or certifications shall contain clauses wherein each tenant certifies as to the accuracy of statements made relating to income and agrees that family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, that the tenant will comply with all requests for information with respect thereto from the Developer or City, and that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of the tenancy. Lease forms which have been approved by Maine State Housing Authority shall be deemed approved by City.

10. Developer agrees that it shall pay real estate taxes, as assessed by City, on Development. In the event that ownership of the Development or a portion thereof becomes tax exempt, either by transfer, conversion or otherwise, an amount shall be paid annually to City, equal to the amount that would have been assessed as real estate taxes had the Development or a portion thereof remained taxable. Developer shall notify any party to whom it transfers any of its interest in the Development of this requirement.

11. Developer covenants and agrees to take such action as City deems necessary to comply with the covenants herein or to correct or cure any failure of the Developer to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law. The Developer shall immediately notify City if the Developer anticipates that occupancy may fall below the limits set forth in Section 6(e) of this Declaration and agrees to take such action as City deems necessary to prevent non-compliance with such paragraph.

12. In the event the Developer fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, City shall be able to exercise any of its rights under the documents executed in connection with the AHTIF, maintain an action in law or in equity against the Developer to recover damages incurred by City from such failure, and to require the Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by the Developer.

13. Developer shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to

attorney's fees and other costs of litigation) which may be incurred by City arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration as a result of such breach. The obligations survive the termination or expiration of this Declaration as necessary to effect its provisions.

14. This Declaration may be amended or modified in whole or in part only by written agreement of Developer and City clearly expressing the intent to modify this Declaration.

15. The validity of any clause, part or provision of this Declaration shall not effect the validity of the remaining portions of thereof.

16. This Declaration shall be binding upon Developer's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.

17. This Declaration is created pursuant to, and shall be construed in accordance with and governed by the laws of the State of Maine, including but not limited to 33 M.R.S.A. § 121 et. seq.

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and City effective _____, 2015.

CITY OF PORTLAND

Witness _____

Jon P. Jennings
Its City Manager

AVESTA CARLETON LP

BY: Pinetree Housing Development I
LLC
Its General Partner

By: Dana Totman
Its: President

[This Space Intentionally Left Blank]

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2015

Personally appeared the above named Jon P. Jennings, City Manager to the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2015

Personally appeared the above named Dana Totman, President of Pinetree Housing Development I LLC, General Partner of Avesta Carleton L.P., a Maine limited partnership, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said limited partnership and corporation.

Before me,

Notary Public/Attorney-at-Law

(Print or type name)

Exhibit A

Property Description
17 Carleton Street, Portland, Maine



Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland- TIF Model for 17 Carleton Street AH TIF							
0% Sheltered - Years 1 and 2 with 100% to City General Fund; 65% to Developer Project Account Years 3 to 22, and 35% to City General Fund Years 3 to 22							
TIF Year	Tax Year- April 1	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation			
				Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
1	2015	\$138,340	\$0	\$0	\$0	\$0	\$0
2	2016	\$538,340	\$0	\$0	\$0	\$0	\$0
3	2017	\$2,238,340	\$1,454,921	\$0	\$948	\$770	\$1,718
4	2018	\$2,238,340	\$1,454,921	\$3,928	\$948	\$770	\$5,646
5	2019	\$2,238,340	\$1,454,921	\$7,857	\$948	\$770	\$9,574
6	2020	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
7	2021	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
8	2022	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
9	2023	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
10	2024	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
11	2025	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
12	2026	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
13	2027	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
14	2028	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
15	2029	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
16	2030	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
17	2031	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
18	2032	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
19	2033	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
20	2034	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
21	2035	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
22	2036	\$2,238,340	\$1,454,921	\$11,785	\$948	\$770	\$13,503
22 Year TIF Total		\$45,443,480	\$29,098,420	\$212,127	\$18,953	\$15,403	\$246,484
Annual Average:				\$9,642	\$862	\$700	\$11,204

AH TIF for 17 Carleton Street
OAV a/o 3/31/2015: \$261,600

City of Portland- TIF Projection Table for 17 Carleton St AHTIF									
0% Sheltered - Years 1 and 2 with 100% to City General Fund; 65% to Developer Project Account Years 3 to 22, and 35% to City General Fund Years 3 to 22									
TIF Year	Tax Year- April 1	Increased Assessed Value Real Prop.	% of Value Captured	Captured Valuation	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non- Captured General Fund Revenues
1	2015	\$138,340	0.00%	\$0	19.80	\$0	\$0	\$0	\$2,739
2	2016	\$538,340	0.00%	\$0	20.19	\$0	\$0	\$0	\$10,871
3	2017	\$2,238,340	65.00%	\$1,454,921	20.60	\$29,969	\$29,969	\$0	\$16,137
4	2018	\$2,238,340	65.00%	\$1,454,921	21.01	\$30,568	\$30,568	\$0	\$16,460
5	2019	\$2,238,340	65.00%	\$1,454,921	21.43	\$31,179	\$31,179	\$0	\$16,789
6	2020	\$2,238,340	65.00%	\$1,454,921	21.86	\$31,803	\$31,803	\$0	\$17,125
7	2021	\$2,238,340	65.00%	\$1,454,921	22.30	\$32,439	\$32,439	\$0	\$17,467
8	2022	\$2,238,340	65.00%	\$1,454,921	22.74	\$33,088	\$33,088	\$0	\$17,816
9	2023	\$2,238,340	65.00%	\$1,454,921	23.20	\$33,749	\$33,749	\$0	\$18,173
10	2024	\$2,238,340	65.00%	\$1,454,921	23.66	\$34,424	\$34,424	\$0	\$18,536
11	2025	\$2,238,340	65.00%	\$1,454,921	24.13	\$35,113	\$35,113	\$0	\$18,907
12	2026	\$2,238,340	65.00%	\$1,454,921	24.62	\$35,815	\$35,815	\$0	\$19,285
13	2027	\$2,238,340	65.00%	\$1,454,921	25.11	\$36,531	\$36,531	\$0	\$19,671
14	2028	\$2,238,340	65.00%	\$1,454,921	25.61	\$37,262	\$37,262	\$0	\$20,064
15	2029	\$2,238,340	65.00%	\$1,454,921	26.12	\$38,007	\$38,007	\$0	\$20,465
16	2030	\$2,238,340	65.00%	\$1,454,921	26.65	\$38,767	\$38,767	\$0	\$20,875
17	2031	\$2,238,340	65.00%	\$1,454,921	27.18	\$39,543	\$39,543	\$0	\$21,292
18	2032	\$2,238,340	65.00%	\$1,454,921	27.72	\$40,334	\$40,334	\$0	\$21,718
19	2033	\$2,238,340	65.00%	\$1,454,921	28.28	\$41,140	\$41,140	\$0	\$22,153
20	2034	\$2,238,340	65.00%	\$1,454,921	28.84	\$41,963	\$41,963	\$0	\$22,596
21	2035	\$2,238,340	65.00%	\$1,454,921	29.42	\$42,802	\$42,802	\$0	\$23,047
22	2036	\$2,238,340	65.00%	\$1,454,921	30.01	\$43,658	\$43,658	\$0	\$23,508
22 Year TIF Total		\$45,443,480		\$29,098,420		\$728,156	\$728,156	\$0	\$405,694
Annual Average							\$33,098		\$18,441

Order 38-15/16
Tab 11 9-21-15

Order 38-15/16

Passage: 7-2 (Hinck, Costa) on 8/3/2015

Effective 8/13/2015

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO
THE 17 CARLETON STREET CREDIT ENHANCEMENT AGREEMENT
WITH AVESTA CARLETON LP**

ORDERED, that the credit enhancement agreement between the City of Portland and Avesta Carleton LP related to the 17 Carleton Street Affordable Housing Tax Increment Financing District is hereby approved and the City Manager is authorized to sign the agreement in substantially the same form as attached hereto and any other related documents that are necessary or convenient to carry out the intent of said agreement.

Order 62-15/16
~~Tab 17 9-9-15~~
Tab 12 9-21-15

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER ACCEPTING AND APPROPRIATING \$600,000 OF
FINANCE AUTHORITY OF MAINE GRANT FUNDING TO EXPAND
THE CITY'S REGIONAL ECONOMIC DEVELOPMENT
REVOLVING LOAN PROGRAM (REDRLP)**

ORDERED, that the amount of \$600,000 be and hereby is accepted and appropriated from grant funding from the Finance Authority of Maine (FAME) to expand the City's Regional Economic Development Revolving Loan Program (REDRLP); and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized to execute the FAME grant agreement and whatever other documents are necessary to effect the intent and purpose of the agreement.



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

City Council Agenda Item

TO: Mayor and Members of the City Council

FROM: Greg Mitchell, Economic Development Director

DATE: August 20, 2015

SUBJECT: Order Authorizing City to Accept and Appropriate Grant Funding of \$600,000 from the Finance Authority of Maine (FAME) to Expand the City's Regional Economic Development Revolving Loan Program (REDRLP), administered by the Portland Development Corporation.

SPONSOR: Jon P. Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading: September 9, 2015; 2nd Reading and Final Action: September 21, 2015

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

PRESENTATION: Greg Mitchell, Economic Development Director (5 Minutes if needed)

I. SUMMARY OF ISSUE

A pool of \$8 Million in additional REDRLP funding was approved by Maine voters in Nov. 2014. FAME issued a Request for Proposals on April 6, 2015 seeking applications from nonprofit and governmental organizations for REDRLP funding to establish or expand this revolving loan fund within their organization. Entities were able to apply for an amount that does not exceed \$3.5 million, including previous REDRLP and SSBCI (State Small Business Credit Initiative) funds.

The Portland Development Corporation (PDC) recommended to the City Council that the City apply for \$1 Million in additional funding through this program, and the City Council authorized that application on June 1, 2015.

FAME notified the City on July 29, 2015, that it has been approved for \$600,000 in new funding under this program. City Council acceptance and appropriation of this funding is requested and authorization for the City Manager to execute the necessary documents.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

City Council approval and appropriation is needed to expand the REDLP fund administered by the PDC Board and staff, and authorize the City Manager to execute the necessary documents.

III. INTENDED RESULT

The intended result is the expansion of the City's REDRLP fund, administered by the PDC, for loans to Portland businesses.

IV. COUNCIL GOAL ADDRESSED

Promote economic development in the City in a manner that provides for increased property values, diversification across industry sectors, and high paying jobs.

V. FINANCIAL IMPACT

There is no financial impact in the City accepting and appropriating the additional REDRLP grant funding of \$600,000 to be administered by the PDC for loans to Portland businesses. FAME will hold the \$600,000 for the City and release them as each eligible loan project is approved.

VI. STAFF ANALYSIS

Presently, \$148,998 remains available to lend in PDC's REDRLP fund, all of which is second generation, meaning these funds have been lent out once and paid back with interest. The principal balance of outstanding REDRLP loans is \$374,693.

There is a \$3.5 million FAME cap and City of Portland cap on grant funds received from FAME for lending from REDRLP and SSBCI. To date, the City has received a total of \$1,380,492 (comprised of \$425,038 in REDRLP; \$132,954 in special category REDRLP; and, \$822,500 in SSBCI). The additional \$600,000 approved would bring the City's total to just over \$1.9 Million. That would allow the City to also access just over \$1.5 million in additional SSBCI funds before reaching the \$3.5 million cap.

There are differing benefits and costs for both funds, making it helpful to have the opportunity to access either source, depending on the project. While the SSBCI Program has fewer constraints than REDRLP relative to the borrower's business type, number of employees and annual sales, it does have substantial private funding leverage requirements that are challenging for many of the smaller projects that seek PDC funds. The PDC requests SSBCI dollars from FAME as needed because that program is first-come-first-served until the funds run out. At this time there is at least several million dollars remaining, with more that FAME could access from the U.S. Treasury once Maine uses what it currently has.

VII. RECOMMENDATION

At its meeting on June 1, 2015, the City Council unanimously voted (9-0) to authorize the City to apply for \$1 Million in grant funds from FAME to expand the PDC's REDRLP fund for loans to Portland businesses.

Staff recommends the City Council now accept and appropriate the \$600,000 to expand the PDC's REDRLP fund, and authorize the City Manager to execute the necessary documents.

VIII. LIST ATTACHMENTS

- FAME Approval letter of July 29, 2015 with its attachments, including document for execution by the City Manager.



July 29, 2015

Gregory A. Mitchell, Director
City of Portland
389 Congress Street
Portland, ME 04101

RE: Regional Economic Development Revolving Loan Program - Award Notification

Dear Mr. Mitchell:

Congratulations! On behalf of the Finance Authority of Maine ("FAME"), I am pleased to inform you that City of Portland has been approved for \$600,000 in new funding under the Regional Economic Development Revolving Loan Program ("REDRLP" or the "program") for use in connection with your agency's REDRLP revolving loan fund.

In determining REDRLP award amounts, FAME took several factors into account:

In the 2015 round of proposal solicitations, FAME received 15 applications seeking a total of \$12,300,000 in funding. Of the 15, 14 agencies were approved for funding from State bond proceeds in the amount of \$8,000,000.

FAME sought to secure the broadest possible distribution of REDRLP funds to eligible agencies, making sure that businesses in every area of the State would have access to these funds.

FAME awarded funds based on: the population of each applicant's service area; the applicant's level of utilization of prior loan funds under the program (if applicable); the amount of new funding requested by the applicant; as well as any overlap or duplication of geographic region or sub-region.

Upon receipt of signature on the enclosed addendum to the Disbursement and Pledge Agreement by an authorized official of City of Portland, you may begin to request funds for REDRLP loans under this new allocation. (Agencies with funds remaining from prior allocations should use those allocations first.) The recent statutory changes to the program and the amendment to the REDRLP Rule (Chapter 314 of FAME's Rules) are effective as of June 30, 2015.

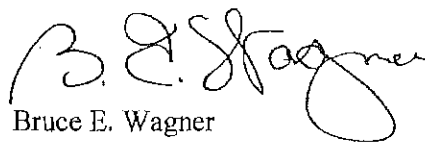
E:\Awards\letterForm Portland.doc

Also enclosed is a complete list of the organizations awarded funds under the 2015 allocation, and an updated list of all participating agencies and their REDRLP service areas. Because REDRLP funding is limited, FAME encourages regional cooperation among participating organizations to insure maximum loan availability for potential borrowers.

Charlie Emmons, Senior Commercial Loan Officer at FAME, is available to work with you as you begin to request new funds. You should feel free to contact him at (207) 620-3510.

Once again, congratulations. All of us at FAME look forward to continued successful operation of the program.

Sincerely,

A handwritten signature in black ink, appearing to read "B. E. Wagner". The signature is fluid and cursive, with the first and last names being more prominent than the middle initial.

Bruce E. Wagner
Chief Executive Officer

**FIFTH ADDENDUM TO REGIONAL ECONOMIC DEVELOPMENT REVOLVING LOAN PROGRAM
DISBURSEMENT AND PLEDGE AGREEMENT**

This Addendum is made as of this _____ day of _____, 2015 by and between City of Portland ("Contractor") and the Finance Authority of Maine ("Authority").

RECITALS:

A. Pursuant to the terms and conditions set forth in a certain Regional Economic Development Revolving Loan Program Disbursement and Pledge Agreement dated February 9, 1996, as previously amended (the "Agreement"), the Authority has disbursed funds to the Contractor for use in accordance with the terms and conditions of the Agreement.

B. The Fund has been replenished by the State of Maine and Contractor has applied for an additional disbursement and the Authority has agreed to make an additional disbursement, in accordance with the Agreement, as amended hereby.

C. In addition, recent statutory and regulatory changes have affected the Regional Economic Development Revolving Loan Program and other updates are necessary to the Agreement.

NOW, THEREFORE, in consideration of the mutual representations, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. The following specific provisions of the Agreement are amended as follows:

- A. **Section 1.1** is amended to read: The Authority agrees to disburse an amount up to \$3,500,000 ("Disbursement") to Contractor from the Fund, to the extent that funds become available and in accordance with the Authority's processes for disbursement of funds from time to time, and in accordance with the provisions hereinafter set forth. Contractor agrees to use the Disbursement and its proceeds solely for purposes set forth in its application(s), in any commitments issued by the Authority and accepted by Contractor, and in accordance with this Agreement and Chapter 314 of the Rules of the Authority, as may be amended, governing the Program, a copy of which is attached hereto as Exhibit A ("Rule"). In particular, Contractor may only use a Disbursement for real estate development projects as described in the Rule if Contractor provided a real estate development strategy to the Authority in connection with the 2015 disbursement of funds.
- B. A revised Fund Requisition form, as referenced in **Section 1.4**, is attached as an updated Exhibit B to the Agreement. In addition, the last sentence of **Section 1.4** is amended to read: Contractor shall requisition the Authority for the most recently allocated portion of its total Disbursement within three years of the date hereof, or forfeit any claim to any part of the Disbursement not yet released by such date.
- C. **Section 1.6**: The amount of \$100,000 is changed to \$150,000.
- D. **Section 4.3** is amended to read: Contractor is authorized to approve or deny any loan applications it receives from potential borrowers under this Program, provided that Contractor must obtain the Authority's prior written approval to make its loans of \$150,000 or more.
- E. The second sentence of **Section 4.7** is deleted.
- F. **Section 4.8** is deleted and reserved.
- G. **Section 5.1**, as previously amended, is amended to read: Contractor may not use monies disbursed from the fund for administrative expenses, but may charge a commitment fee to Borrowers of up to two percent (2%) and may use interest earnings on its Revolving Loan Fund not to exceed seven percent (7%) of each loan annually on loans to cover its reasonable operating costs, including loan fund management, technical assistance and education.
- H. **Section 6.1(B)** is amended to read: Failure of Contractor to pay any amounts owed to the Authority pursuant to the Authority's request for any such payment;

1. **Section 6.1(F)** is amended to read: Failure of Contractor to maintain the loan program default rate set forth herein.

Section 2. The Contractor agrees to comply with the Rule, as amended. The most recent version of the Rule is attached hereto as an updated Exhibit A to the Agreement.

Section 3. This Addendum shall be construed in accordance with Maine law and shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 4. Except as modified herein, the provisions of the Agreement are hereby ratified and confirmed and shall remain in full force and effect.

Section 5. The Agreement as amended hereby may not be further modified except by written agreement executed by each of the parties hereto.

Section 6. Terms used herein and not otherwise defined are used as defined in the Agreement.

IN WITNESS WHEREOF, the Authority and the Contractor have caused this Addendum to be executed in their corporate names by duly authorized representatives as of the date first above written.

WITNESS

CITY OF PORTLAND

By: _____

Its:

Finance Authority of Maine

By: Bruce E. Wagner

Its: Chief Executive Officer

Chapter 314: REGIONAL ECONOMIC DEVELOPMENT REVOLVING LOAN PROGRAM

Summary: This rule establishes the procedures and standards applicable to eligible local, regional or statewide nonprofit or governmental economic development organizations which may receive disbursements from the Regional Economic Development Revolving Loan Program Fund administered by the Authority for purposes of making loans to eligible borrowers in order to create or retain jobs, as well as revitalize downtowns and build strong communities and a sustainable economy, or for quality child care projects. The Authority may make disbursements of up to \$3,500,000 to applicants, pursuant to a contract, and the applicants may make loans of up to \$350,000 to eligible borrowers within the parameters established by this rule. The Authority may also make direct loans to eligible borrowers for quality childcare projects.

SECTION 1. Definitions

Defined Terms. The following terms, some of which are defined in the *Finance Authority of Maine Act*, 10 MRSA §961 *et seq.* (the "Act"), shall have the following meanings in this rule:

- A. "Applicant" means a local, regional or statewide nonprofit or governmental economic development corporation or entity that may have submitted an application for program funds to the Authority.
- B. "Authority" means the Finance Authority of Maine.
- C. "Borrower" means a sole proprietorship, a limited liability company, partnership or corporation which has applied to receive financial assistance pursuant to this program from an applicant pursuant to this program, or, in the case of an applicant seeking a loan for a quality child care project, has applied to receive financial assistance from the Authority.
- D. "Chief Executive Officer" means the Authority's Chief Executive Officer or any person acting under the delegated authority and supervision of the Chief Executive Officer.
- E. "Commitment" means a letter from the Authority signed by the Chief Executive Officer to make a disbursement from the fund to an applicant, or with regard to a quality child care project, to a borrower, on the terms and conditions and subject to the requirements therein.
- F. "Community facilities" means buildings having available at least fifty-one percent (51%) of square footage to be used at least part of the time for public meetings and activities. Such meetings and activities may include services that foster job creation and provide access for individuals in the community to such services as long-term care, respite care, health care, education, and cultural activities.
- G. "Contract" means a contract between the Authority and any applicant for provision of a disbursement from the fund.

- H. "Eligible Project" means a project meeting the criteria set forth in this rule.
- I. "Fund" means the Regional Economic Development Revolving Loan Program Fund, established pursuant to 10 MRSA §1026-M and administered by the Authority.
- J. "Members" means the members of the Board of Directors of the Finance Authority of Maine.
- K. "Mixed-use real estate" means projects involving both housing and commercial activities wherein at least fifty-one percent (51%) of the square-footage is used for commercial purposes.
- L. "Prime Rate" means the lowest bank prime rate of interest as published in the Wall Street Journal.
- M. "Program" means the Regional Economic Development Revolving Loan Program as described in and governed by the Act and this rule.
- N. "Quality child care project" means physical improvements to be made to a site used or to be used for providing, for compensation, regular service of care and protection for any part of a day less than 24 hours to a child or children under 16 years of age whose parents work outside the home, attend an educational program or are otherwise unable to care for their children which (1) meets all required licensing standards; and (2) utilizes recognized quality indicators for child care services approved by the Department of Health and Human Services.
- O. "State" means the State of Maine.
- P. "Value-added natural resource enterprises" means business or commercial activity that adds some additional value to products derived from at least one of Maine's natural resources such as forests, land and plants, fish, water, wind, and sun.

SECTION 2. Program Implementation and Assistance Provided

The program shall be administered by and is delegated to the Chief Executive Officer. The Authority may provide financial assistance in the form of a disbursement from the fund in an amount up to \$3,500,000 to an eligible applicant, which may in turn, provide financial assistance to eligible borrowers in an amount up to \$350,000 in the form of a loan, in accordance with the Act and this rule. The Authority may also provide financial assistance in the form of direct loans to borrowers for quality childcare projects.

SECTION 3. Advisory Committees/Boards

The Chief Executive Officer may establish advisory committees or boards to assist applicants in developing loan or equity-like debt underwriting and administrative capacity and portfolio monitoring and servicing capabilities.

SECTION 4. Application Procedure and Content (for other than direct loans to borrowers)

- A. From time to time, the Authority shall solicit applications for disbursements from the fund. The Authority shall specify a time within which applicants seeking consideration must have submitted a complete application. Any applications received after such time may be held for future consideration.
- B. Each applicant shall submit an application to the Chief Executive Officer on such forms and with such attachments as the Chief Executive Officer may require consistent with the purposes of the program and this rule.
- C. The Chief Executive Officer will review each application for completeness and eligibility. Applications that are not substantially complete may be deemed not received until completed. The Chief Executive Officer shall determine when an application is received, which determination shall be final.
- D. The application shall contain the following:
 - (1) a description of the applicant, including its funding sources, the region or regions it serves and a summary of all of its direct lending programs, including account balances, lending criteria and default rates;
 - (2) the methods and criteria the applicant employs for qualifying borrowers, including any lending and economic development strategies that target the types of eligible borrowers set forth in Section 9 of this rule;
 - (3) the fees that an applicant intends to charge to a borrower for technical or administrative assistance and for loan commitments;
 - (4) for disbursements not to be used for quality child care projects, the methods by which the applicant will leverage funds from other sources in an amount equal to at least two times the amount requested;
 - (5) the applicant's investment policy;
 - (6) for disbursements not to be used for quality child care projects, the applicant's strategy for creation and retention of jobs (written comprehensive plan for economic development in its area), and its strategy, if applicable, for real estate development including commercial, mixed-use real estate, and community facilities. Such a strategy must be submitted and demonstrated as part of the application process in order to make loans pursuant to Section 9(A)(1)(i);
 - (7) for disbursements not to be used for quality childcare projects, the applicant's existing or proposed small business marketing, and technical assistance plan;
 - (8) a description of the applicant's staff by organizational chart and résumé;
 - (9) the applicant's organizational audits and program audits shall be provided for each year the applicant has administered programs in the three most recent years;

- (10) the applicant's proposed performance measurements and goals including default rates and a process for monitoring compliance therewith;
- (11) the applicant's collateralization plan;
- (12) the amount requested; and
- (13) such other information as the Authority may require.

SECTION 5. Applicant Eligibility (for other than direct loans to borrowers)

In order to approve an application, the Chief Executive Officer must determine that the applicant, either independently or with the assistance of an advisory board or committee or by contract with appropriate agencies, organizations or individuals:

- A. for disbursements not to be used for quality child care projects, is capable of providing financial assistance to businesses in order to create and protect jobs;
- B. is able to prudently and effectively administer a direct loan fund;
- C. is able to coordinate with other business assistance, employment training and social assistance programs;
- D. for disbursements not to be used for quality child care projects, has a strategy for the creation and retention of jobs and, if applicable, a strategy for real estate development including commercial, mixed-use real estate and community facilities;
- E. for disbursements not to be used for quality child care projects, has an effective small business marketing and technical assistance plan;
- F. has enough expert assistance available to it to underwrite, document and service and collect loans and assist its clients; and
- G. can provide funds from other sources in the amounts required pursuant to Section 8(B).

SECTION 6. Disbursements From the Fund (other than direct loans to borrowers)

- A. Upon a determination of eligibility to receive a disbursement from the fund, the Chief Executive Officer shall determine an amount to be disbursed to an applicant that achieves the widest possible geographic range of distribution of funds, as well as the least possible duplication of disbursement of funds in any one region. The Chief Executive Officer shall take into account the following criteria:
 - (1) The size of the region or regions served by the applicant and the demand for loan funds within such region or regions;
 - (2) The relative demand for funds from other eligible applicants;

- (3) Whether the applicant serves statewide or a geographic area or segment of potential borrowers not served by others; and
 - (4) The number of types of eligible projects referred to in Section 9(A) of this rule within the applicant's area.
- B. The maximum total disbursement to any one applicant shall be \$3,500,000.
- C. The Chief Executive Officer may determine that a reasonable and prudent amount shall be retained in the fund despite any application that may be pending in order to have funds available to subsequent applicants. In addition, the Chief Executive Officer may determine that a reasonable and prudent amount shall be specifically designated as available only to those applicants which may be in the process of developing or retaining the necessary expertise, with or without the Authority's assistance, to meet the eligibility requirements of this program. The following criteria shall apply to disbursements from this designated fund:
 - (1) The Authority may, in its discretion, determine that an eligible applicant shall receive a disbursement from this designated fund which applicant shall be further subject to the limitations set forth in this subsection. Such a determination will be based primarily on the amount requested, the overall quality of the application and the extent to which receipt of a disbursement from this designated fund will assist in building lending capacity in underserved areas;
 - (2) The Authority may, in its discretion, waive any of the application or eligibility criteria, to the extent not mandated by the Act, in order to achieve wide geographic distribution of program funds and build capacity in underserved areas; and
 - (3) To the extent that an applicant receives a disbursement from this designated fund, such applicant may not make a loan to an eligible borrower in excess of an amount to be set forth in the applicant's contract, without the prior written approval of the Authority.
- D. The Chief Executive Officer shall issue a commitment to an applicant to disburse the determined amount in multiple disbursements upon satisfaction of any terms and conditions set forth therein.
- E. In the event an applicant fails to use the funds allocated to the applicant within two years of the commitment date, the Authority may allocate the funds designated for that applicant to one or more applicants. The Authority will use its best efforts to assure that the funds are reallocated for use in the region or regions for which they were originally designated.
- F. The Chief Executive Officer shall allocate all amounts accrued in the fund from interest earnings on the fund on a "first come, first served" basis to applicants who:
 - (1) Have entered into a contract with the Authority;
 - (2) Have disbursed the full amount originally committed to the Applicant;

- (3) Have complied with all terms and conditions of their contract with the Authority;
and
- (4) Identify a specific borrower with an eligible project for use of the new allocation.

SECTION 7. Contracts; Fees and Expenses

An applicant must enter into a contract with the Authority regarding the funds to be disbursed. At a minimum, the contract must specify:

- A. That each applicant shall establish its own revolving loan fund with the monies it receives from the Authority. An applicant may make loans from its own fund within the parameters of this rule.
- B. A loan payment default rate that will be acceptable to the Authority during the term of the contract. To the extent the applicant's actual default rate exceeds that set forth in the contract, the Authority
 - (1) may require that all loans which the applicant proposes to make thereafter be approved by the Authority, until the applicant brings its loan payment default rate into compliance with the contract, and
 - (2) may require that the applicant pay to the Authority an amount equal to the difference between the acceptable default rate set forth in the contract and the actual default rate. A loan payment default shall be defined as any payment that is ninety (90) days or more past due.
- C. That the funds are to be disbursed in periodic installments as the applicant commits to make loans to eligible borrowers, up to the original amount of the total disbursement.
- D. That the applicant will use program funds only for eligible projects, and as otherwise set forth in this rule.
- E. That the applicant will operate its loan program in substantial conformance with its proposal to the Authority.
- F. That except as set forth in Section 6(C), the applicant shall be responsible for review of loan applications from eligible borrowers, determination of eligibility of those borrowers and feasibility of the project and/or approval or denial of those applications. The applicant's determination shall be final in the case of loans under \$150,000 or in the case of denials in any amount. In all cases, the applicant must have the Authority's approval of any loans of \$150,000 or more.
- G. That officers or employees of the applicant or members of any credit committees of the applicant shall be barred from participation in any way and any decision regarding projects which that officer, employee or member has a direct or indirect personal financial interest.

- H. That the Authority may withhold further funding and may require repayment of any undisbursed loan funds and loan repayments including an assignment of all loan documents if the applicant is in breach of its contract.
- I. That the applicant may not use any monies disbursed from the fund (including that portion of loan repayments from borrowers that represent principal repayment) for administrative expenses but may charge a commitment fee of up to two percent (2%) and may use actual interest earnings, not to exceed seven percent (7%) of its outstanding program loans annually, on loans to cover reasonable operating costs, including loan fund management, technical assistance and education. To the extent interest earnings on outstanding program loans accrue, but are not paid by borrowers, these earnings may be used, when and if collected, to offset operating costs which have not been previously paid by other program loan commitment fees and interest earnings, subject to the limitations set forth in this paragraph.
- J. That the applicant shall pay an annual fund administration fee to the Authority equal to one percent (1%) of the amount of the applicant's total disbursement which has been received by the applicant to date. To the extent that fund monies have not been disbursed, the Authority is entitled to a fund administration fee equal to one percent (1%) of those undisbursed amounts, to be derived from interest earned thereon. All such fund administration fees payable by applicants shall be determined and payable beginning on the first anniversary date of the applicant's contract. The Authority may, in its sole discretion, voluntarily reduce the amount of annual fund administration fees for all applicants if the Authority determines that such a fee reduction is warranted. Any such fee reduction may be for a specified period.
- K. That any amounts disbursed to an applicant must be lent to the intended borrower within three (3) months of the applicant's receipt. If not lent within three (3) months, any such monies must be returned to the Authority's fund upon request of the Authority with a written explanation as to why the loan was not made.
- L. Such other terms and conditions as the Authority deems appropriate.

SECTION 8. Loan Terms and Conditions

An applicant, and in the case of eligible quality child care projects, the Authority, may make a loan to an eligible borrower from program funds under the following terms and conditions:

- A. Loans may not exceed \$350,000 to a borrower (including an affiliated entity) for an eligible project, provided, however, for projects other than quality child care projects, approval of the Authority is required for loans of \$150,000 or more, except that those applicants which have received a disbursement from the specially designated fund set forth in Section 6(C) must comply with the limitations set forth therein.
- B. Loans of less than \$50,000 and loans for quality child care projects may be for the total amount of new funds being provided to a borrower. Loans of \$50,000 or more for borrowers other than quality child care projects may not exceed one-half (1/2) of the net new funds being provided to a borrower.
- C. Each applicant shall establish interest rates, amortization schedules and repayment terms

for each borrower except that loans for quality child care projects must bear a rate of interest not greater than 5%, and loans for other eligible projects may not bear a rate of interest greater than the prime rate of interest plus seven percent (7%). Direct loans from the Authority for quality child care projects shall be subject to a 1% commitment fee payable to the Authority at the time the commitment is accepted, and shall bear interest at a rate of 5%. No loan may be for a term longer than twenty (20) years.

- D. When necessary, an applicant may provide for flexible repayment terms and may require additional payments tied to the borrower's financial success.
- E. An applicant shall require collateral for loans but may subordinate to loans from other lenders.
- F. Such other terms and conditions as may be determined by an applicant and approved by the Authority.

SECTION 9. Eligible Projects

- A. In order for a project or borrower to be eligible for financial assistance under the program, the project or borrower must meet the criteria of subsections 2, 3, and 4, below, and must meet the criteria of subsection 1 below, as follows:

- (1) The borrower has one-hundred (100) or fewer employees or annual sales of \$10,000,000 or less and it consists of or involves at least one of the following:
 - (a) Manufacturing technologies, such as value added wood products, specialty fabricated metal and electronic products, precision manufacturing and use of composites or advanced materials;
 - (b) Technologies, such as advanced information systems, advanced telecommunications, energy and environmental products and services;
 - (c) Value-added natural resource enterprises and biological and natural resources technologies, such as aquaculture, marine technology, agriculture, forestry products and biotechnology;
 - (d) A business converting from defense dependencies;
 - (e) A business significantly engaged in export of goods or services to locations outside the State;
 - (f) A business that dedicates significant resources to research and development activities;
 - (g) Other businesses with fifteen (15) or fewer employees; and
 - (h) A quality child care project.
 - (i) A business significantly engaged in commercial and/or mixed-use real estate and/or community facilities real estate development; and

- (j) A business significantly engaged in serving tourists, such as in the area of outdoor recreation, culture and heritage and hospitality.
 - (2) The borrower is unable to obtain funding needed for the project from other public and private sources including the personal resources of the owners of the business borrowing from the fund.
 - (3) The borrower has committed all reasonably available resources to the project, obtained financial commitment from other sources of financing and demonstrated a reasonable likelihood that the loan can be repaid.
 - (4) The loan is not used to make distributions to or for the benefit of an owner of the business borrowing from the fund or a related entity.
- B. Among eligible borrowers seeking loans for projects other than quality child care projects, an applicant shall give priority to businesses and projects with the potential of meeting one or both of the following objectives:
- (1) The financing will help the borrower pursue a business that adds significant value to raw materials or inventory;
 - (2) The financing is likely to result in a long-term net increase in permanent, quality jobs, which may include ownership or self-employment opportunities that meet a local or regional need or the retention of jobs in jeopardy of being lost.
- C. For loans made by applicants or made directly by the Authority for quality child care projects, not more than \$15,000 of program loan proceeds shall be used for lead abatement.
- D. The Authority shall reserve an amount of no less than \$300,000 from the fund for loans for quality child care projects, whether made by applicants or directly by the Authority.

SECTION 10. Reports

An applicant shall report semiannually to the Authority on the projects being funded and the administration of the program. The report must include a description of each project, the amount, type and terms of assistance the project received, the number of jobs that were created or retained and other information the Authority requires. The report must contain an accounting of the loan portfolio and any loans that are past due, as well as an accounting of the applicant's operating costs incurred and charged to the program.

SECTION 11. Audit

The Authority shall review annually each applicant's participation in the program and may, in its discretion, require an independent audit at the expense of the applicant. If the Authority determines that an applicant has used funds for ineligible purposes, the applicant shall repay those funds to the Authority for deposit into the fund. The Authority may not disburse additional funds to an applicant until it has repaid the misapplied funds and has fully complied with its obligations

under the contract with the Authority. In addition to other fees the Authority is authorized to charge the fund hereunder, the Authority shall be entitled to charge the fund for reasonable costs incurred by the Authority for the performance of the audits described in this Section 11.

SECTION 12. Appeal to the Members

- A. In the event that an applicant's application is rejected by the Chief Executive Officer, the applicant shall have the right to appeal the decision of the Chief Executive Officer to the members. Notice of the appeal, together with a statement of the reasons why the Chief Executive Officer's decision should be reversed or modified, shall be given to the Chief Executive Officer, in writing within 20 days after the date the Chief Executive Officer mails the notice of rejection to the applicant. The appeal shall be heard at a meeting of the members. The applicant must be present to support the appeal. The appeal shall be based on the record before the Chief Executive Officer on the date of the rejection. The decision of the Chief Executive Officer shall be final unless the members determine that the rejection by the Chief Executive Officer was arbitrary, capricious or an abuse of discretion, in which event the members may overturn or modify the decision of the Chief Executive Officer and may direct the Chief Executive Officer to take further action with respect to the application.
- B. In the event that a borrower's application that is reviewed by the Authority in accordance with this rule is rejected by the Chief Executive Officer, the Chief Executive Officer's determination shall be final and there shall be no further right of appeal to the members.

SECTION 13. Waiver of Rule

The Chief Executive Officer may waive any requirement of this rule except to the extent that the requirement is mandated by the Act, in cases where the deviation from the rule is insubstantial and is not contrary to the purposes of the program.

SECTION 14. Effective Date

This rule as amended by Amendment 7 does not take effect unless and until the Authority receives additional funding of at least \$1 million from the State pursuant to bonds issued pursuant to Public Law 2013, Chapter 596, or by state appropriation after January 1, 2015.

(APA Office Note: according to FAME, the contingency was met on June 30, 2015 when FAME received more than \$1 million from the State pursuant to bonds issued pursuant to Public Law 2013 ch. 506.)

STATUTORY AUTHORITY: 10 M.R.S.A. §969-A(14); 10 M.R.S.A. §1026-M(11); P.L. 1999, Ch. 401, Part 000; PL 2003, Ch.195; PL 2009, Ch.131; 10 M.R.S. §1026-A; P.L. 2013 ch. 605

EFFECTIVE DATE:

June 11, 1995 (Original Rule)

AMENDED:

November 2, 1998 (Amendment 1)
January 17, 2000 (Amendment 2)
September 17, 2002 (Amendment 3), changes to sections 2, 6(B) and 7(I)
November 4, 2003 (Amendment 4)
January 3, 2010 (Amendment 5)
June 8, 2011 (Amendment 6)
April 11, 2015 – filing 2015-063 (Amendment 7)
April 24, 2015 – Summary, and Section 9(A) corrected

NOTIFICATION RECEIVED OF APPROPRIATED FUNDS BY SECRETARY OF STATE (CEC, APA):

July 23, 2015 – see Section 14 of this rule.

Loan Reporting and REDRLP Fund Requisition Form

Check which applies:

- ☐ First Generation - Direct request of funds from FAME
- ☐ Second Generation - Loans made from revolved funds

Attachments:

1. This form must be submitted at least two weeks in advance of an intended loan closing. Please assign a loan number to each proposed Borrower. This number must coincide with future reporting on your "Semi-Annual Reconciliation Reports."
2. NOTE: A signed Commitment Letter, if it is for a disbursement, must accompany this request.
3. For REDRLP loans of \$150,000 or more, please provide a copy of the loan analysis prepared for this request.

REDRLP Contractor _____

Mailing Address _____

Contract Officer _____

Phone _____ Email _____

Legal Name of Borrower _____

Mailing Address _____ Phone: _____

Loan Number _____ Jobs Retained _____ Jobs Created _____

Purpose of Borrowing _____

Please mark the appropriate eligibility category for this loan (see rule Section 9 (A) for details):

- ☐ Manufacturing technologies.
- ☐ Technologies, such as advanced information, telecommunications, energy and environmental.
- ☐ Value-added natural resource technologies.
- ☐ A business converting from defense dependency.
- ☐ A business significantly engaged in export or goods or services to locations outside of State.
- ☐ A business that dedicates significant resources to research and development activities.
- ☐ Business with fifteen (15) or fewer employees.
- ☐ A quality child care project.
- ☐ Business significantly engaged in commercial and/or mixed-use real estate and/or community facilities development.
- ☐ Business significantly engaged in serving tourists, such as outdoor recreation, culture, heritage and hospitality.



Proposed Loan Structure

SOURCES		USES	
REDRLP Funds	\$		\$
Bank	\$		\$
Borrower	\$		\$
Other	\$		\$
TOTAL	\$		\$

Requisition Amount _____ Month & Year Close Date _____

Signature of Contract Officer _____ Date _____

AGENCY	Award
Androscoggin Valley Council of Governments	\$ 500,000.00
Biddeford/Saco Area Economic Development Corp.	\$ 1,100,000.00
Coastal Enterprises, Inc.	\$ 1,000,000.00
Community Concepts Finance Corp.	\$ 325,000.00
Eastern Maine Development Corporation	\$ 925,000.00
Greater Portland Council of Governments	\$ 900,000.00
Kennebec Valley Council of Governments	\$ 300,000.00
Lewiston Auburn Economic Growth Council	\$ 500,000.00
MaineStream Finance	\$ 400,000.00
MidCoast Council of Governments	\$ 250,000.00
Northern Maine Development Commission	\$ 750,000.00
City of Portland	\$ 600,000.00
Sunrise County Economic Council	\$ 150,000.00
Somerset Economic Development Corporation	\$ 300,000.00
Total:	\$ 8,000,000.00

**Regional Economic Development Revolving Loan Program
Agency Service Areas**

Androscoggin Valley Council of Governments

Androscoggin County (except Lewiston, Auburn, Lisbon); Franklin County; and Oxford County (except Hebron, Norway, Otisfield, Oxford, Paris, Waterford, West Paris)

Bangor Airport Civic Development Corp.

Bangor

Biddeford-Saco Area Economic Development Corporation

York County

Caribou Chamber of Commerce & Industry

Caribou

Coastal Enterprises, Inc.

Sagadahoc County (except Bath and Topsham), Lincoln, Knox and Waldo Counties

Community Concepts Finance Corporation

Androscoggin County (except Lewiston, Auburn, Lisbon) and Oxford County (except Brownfield, Denmark, Fryeburg, Hiram, Lovell, Porter, Stoneham, Stow, Sweden)

Eastern Maine Development Corporation

Penobscot (except Bangor), Piscataquis, Washington (except Lubec) and Hancock Counties

Fort Kent, Town of

Fort Kent

Greater Portland Council of Governments

Cumberland County (except Brunswick, Portland)

Kennebec Valley Council of Governments

Kennebec and Somerset Counties

Lewiston Auburn Economic Growth Council

Lewiston and Auburn

Lisbon, Town of

Lisbon

Lubec, Town of

Lubec

MaineStream Finance

Penobscot (except Bangor) and Piscataquis Counties

MidCoast Council of Governments

Topsham, Bath and Brunswick

**Regional Economic Development Revolving Loan Program
Agency Service Areas**

Northern Maine Development Commission

Aroostook County (except Caribou, Fort Kent, Presque Isle)

Portland, City of

Portland

Presque Isle, City of

Presque Isle

Somerset Economic Development Corporation

Somerset County

Sunrise County Economic Council

Washington County (except Lubec)

Washington Hancock Community Agency

Washington (except Lubec) and Hancock Counties

*Order 68-15/16
Tab 13 9-21-15*

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING PURCHASE AND SALE AGREEMENTS,
DEVELOPMENT CONSULTING AGREEMENT,
REMEDATION GRANT AGREEMENT AND HOUSING TRUST FUND GRANT
RE: 65 MUNJOY STREET**

ORDERED, that Purchase and Sale Agreement between the City of Portland and Portland Development Corporation (PDC) for 65 Munjoy Street is hereby approved in substantially the form attached hereto as Exhibit A; and

BE IT FURTHER ORDERED, that Development Consulting Agreement between the PDC and Adam's Apple, LLC is hereby approved in substantially the form attached hereto as Exhibit B; and

BE IT FURTHER ORDERED, that the PDC is authorized to accept \$200,000.00 from Greater Portland Council of Governments (GPCOG) from its Brownfields Cleanup Revolving Loan Funds, and the related Brownfields Program Subgrant Agreement between the PDC and GPCOG is hereby approved in substantially the form attached hereto as Exhibit C; and

BE IT FURTHER ORDERED, that \$175,000 in funds from the Housing Trust Fund are hereby allocated and appropriated in order to fund the development of affordable housing units at 65 Munjoy Street; and

BE IT FURTHER ORDERED, that the Housing Trust Fund Agreement between the City of Portland and Adam's Apple, LLC is hereby approved in substantially the form attached hereto as Exhibit D; and

BE IT FURTHER ORDERED, that the Purchase and Sale Agreement between Portland Development Corporation and Adam's Apple, LLC for 65 Munjoy Street is hereby approved in substantially the form attached hereto as Exhibit E; and

BE IT FURTHER ORDERED, that the First-Time Homebuyer Set-Aside and Marketing Plan 65 Munjoy Street Memorandum of Understanding between the City of Portland and Adam's Apple, LLC (MOU) is hereby approved in substantially the form attached hereto as Exhibit F; and

BE IT FURTHER ORDERED, that the Declaration of Covenants, Conditions, and Restrictions between the City of Portland and Adam's Apple, LLC for 65 Munjoy Street is

hereby approved in substantially the form attached hereto as Exhibit G;

BE IT FURTHER ORDERED, that the City Manager is hereby authorized to execute the Purchase and Sale Agreement between the City of Portland and PDC, the MOU, the Housing Trust Fund Agreement, the Declaration of Covenants, Conditions, and Restrictions, and whatever other documents are necessary to effect the intent and purpose of those agreements upon review by the Office of Corporation Counsel; and

BE IT FURTHER ORDERED, that the Chair or Assistant Secretary of the PDC are authorized to execute the Purchase and Sales Agreement between the City of Portland and the PDC, the Purchase and Sales Agreement between PDC and Adam's Apple, LLC, the Brownfields Grant Agreement between Greater Portland Council of Governments and PDC, and the Development Services Agreement between PDC and Adam's Apple, LLC and whatever other documents are necessary to effect the intent and purpose of those agreements upon review by the Office of Corporation Counsel; and

BE IT FURTHER ORDERED, that the Office of Corporation Counsel is hereby authorized to represent the City of Portland and the Portland Development Corporation in the transactions approved by this order.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Planning and Urban Development Department
Economic Development Department

DATE: September 9, 2015

DISTRIBUTION: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

SUBJECT: Order Approving the Purchase and Sale Agreements, Development Consulting Agreement and Remediation Grant Agreement and Housing Trust Fund Grant re: 65 Munjoy Street

SPONSOR: Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair

Barry Sheff, President of the Portland Development Corporation

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading September 21st Final Action October 5th

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

The developer needs to move forward with the property remediation as soon as possible.

PRESENTATION: Jeff Levine, Planning & Urban Development Department Director
Greg Mitchell, Economic Development Director, Barry Sheff, PDC Board President and Mary Davis, HCD Division Director (5 minutes)

I. SUMMARY OF ISSUE (Agenda Description)

In November 2014 the Housing and Community Development Committee (HCDC) approved the issuance of a RFP for the sale and re-development of 65 Munjoy Street. The RFP was issued on November 19, 2014 and generated one response, a proposal by Adam's Apple LLC to construct an 8-unit residential condominium development. In February 2015 the HCDC authorized staff to negotiate terms of the transaction with the developer.

A complicating factor in making this affordable housing project financially feasible is that the property is contaminated. It is estimated that remediation will cost about \$240,000. A source to cover the cost to remediate the site was found to be available through the Greater Portland Council of Governments (GPCOG) Brownfields Cleanup Grant Fund. GPCOG advised the City and Adam's Apple that they would not qualify for GPCOG's Brownfields grants if the City sold the property directly to Adam's Apple. GPCOG also advised the City, that as a non-profit, the Portland Development Corporation (PDC) would be eligible for these grant funds as long as it

owns the site during environmental remediation. The PDC applied for and was successful, being awarded \$200,000 in Brownfields grant funds for the remediation of 65 Munjoy Street.

The Agreements provided with this memo would effectuate the PDC taking ownership of this vacant, contaminated City-owned property to facilitate site remediation utilizing the federal Brownfields cleanup funds available through GPCOG. This would be at no direct cost to the PDC and the PDC would ultimately sell the property to Adam's Apple, LLC to support construction of the 8-unit affordable condominium housing project.

At the PDC's August 20th meeting, the Board voted unanimously to recommend to the City Council that it approve these actions through purchase and sale agreements between the City and PDC and between Adam's Apple, LLC and the PDC; the Development Consulting Agreement between the PDC and Adam's Apple, LLC; and the Brownfields subgrant agreement between the PDC and GPCOG, provided that Adam's Apple, LLC is responsible for the administration of the grant agreement and all costs associated with the grant agreement. In addition, in a separate vote, the PDC consented to Corporation Counsel's legal representation of the PDC with the understanding that Corporation Counsel would also be representing the City.

The proposal brought forth by Adam's Apple, LLC envisions an 8-unit residential condominium development comprised of two (2) 3-bedroom units, two (2) two-bedroom units and four (4) 1-bedroom units in a single, three-story walk up building. The project will include six on-site covered parking spaces in a concealed parking area under the building.

The proposal indicates a sales price of \$225,000- \$235,000 for the one-bedroom units, \$274,000 for the two bedroom units and \$298,000 for the three-bedroom units. The units will be affordable to households earning between 100% and 120% of the area median income (Family of Two = \$61,875-\$74,250 & Family of Four = \$77,313-\$92,760). The project will include deed restrictions that will guarantee future sales to income-qualified owner-occupants for no less than 90 years. The restrictions will also prohibit short-term rentals, such as Air BnB. In addition, the developer has agreed to a marketing campaign that will target first-time homebuyers.

To address a project financing gap, the developer requested financial assistance from the City's Housing Trust Fund in the amount of \$175,000.

At meetings held on July 8 and July 22, 2015, the HCDC voted 4-0 to recommend to the City Council the terms of the transaction outlined in this memo.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

This is being submitted to the City Council to authorize:

(A). the transfer of the property to the PDC for the period of remediation and subsequent sale by the PDC to the Adam's Apple LLC; Terms of the sale and transfer as set forth in the P&S Agreements between the City, PDC and Adam's Apple LLC which are attached;

(B). the PDC to enter into a Grant Agreement between the PDC (subgrantee) and GPCOG, including the appropriation of GPCOG Brownfields Grant funds with conditions; the Grant Agreement is attached;

(C). the PDC to enter into a Development Consulting Agreement with Adam's Apple, LLC to manage the grant and the remediation of the site; the Development Consulting Agreement is attached;

(D). the appropriation of \$175,000 in Housing Trust Funds with terms and conditions as set for in a Housing Trust Fund Agreement and Declaration of Covenants, Restrictions and Conditions which are attached.

III. INTENDED RESULT

The intended result is for the site to be redeveloped as a result of environmental remediation and the construction of an 8-unit affordable condominium housing project. This project is consistent with the City's original vision for affordable housing in the neighborhood and on the former Adam's School property.

IV. COUNCIL GOAL ADDRESSED

Promote Housing Availability – Provide increased availability in all segments of the housing market while ensuring that there is a suitable balance of housing opportunities among those sectors.

V. FINANCIAL IMPACT

There is no financial impact to the PDC in taking ownership of the property, nor in the site being remediated with \$200,000 from the GPCOG Brownfields Grant. The financial impact to the City would include a request of \$175,000 from the City's Housing Trust Fund, \$40,000 of which would assist with the remediation and \$135,000 would assist with project construction. Once the site is transferred to the PDC and then remediated, the PDC will sell the property to Adam's Apple, LLC based on the terms that the City negotiated with the developer. These terms are contained in the P&S Agreement between the PDC and Adam's Apple, LLC.

In addition, the redevelopment of this site will generate new real estate tax revenue to the City, as the property will be redeveloped into 8 condominium units which will be offered for sale once construction is complete. The developer has estimated \$30,000 in new annual property tax revenue. A comparison review of the Adam's School Condominiums which are located adjacent to this site indicates that this estimate would be consistent.

VI. STAFF ANALYSIS

Per the P&S Agreement between the City and the PDC, the City (Seller) agrees to defend, indemnify and hold harmless the PDC (Buyer), its officers, agents and employees from and against any and all claims, demands, liability, loss, cost or expense. Indemnification provisions are also included in the Development Consulting Agreement, pursuant to which Adam's Apple will oversee the remediation work and the administration of the GPCOG grant.

This economic development project is solely about housing. To date, staff is not aware of the PDC being involved in housing projects without there being some commercial component (e.g.,

retail, industrial or office uses). While involvement in this project would broaden the PDC's focus, facilitating new housing development is economic development and, therefore, staff feels it is consistent with the PDC's by-laws.

The design proposal submitted by Adam's Apple LLC is essentially comparable to the Munjoy Street Affordable Housing Feasibility Study prepared by the Bluestone Planning Group. The Bluestone study identified two triple-decker styled flats with flat roofs as the most viable design option with 8 residential units and two surface on-site parking spaces.

The developer has proposed a sales and marketing plan that provides a preference to first time homebuyers and outlines reasonable efforts to market the project to first time homebuyers under parameters established in a Memorandum of Understanding (MOU) between the City and Adam's Apple LLC. Under the terms of the MOU, Adam's Apple LLC has pledged to actively pursue a 70 day marketing campaign whereby no fewer than 6 of the units will be set aside for buyers that qualify as first time homebuyers. The Housing and Community Development Office will be an active participant in this marketing campaign.

VII. RECOMMENDATION

(1) Recommendation of action to be taken by the City Council as Incorporator of the PDC

The PDC reviewed these documents at its August 20, 2015 meeting and recommends to the City Council, as the incorporator of the PDC, that it transfer 65 Munjoy Street to the PDC for the purpose of accessing a GPCOG Brownfields grant to assist with the remediation of the environmental contamination on the property, after which the PDC will sell the property to Adam's Apple, LLC. The PDC recommendations are being brought forward simultaneously with the recommendations of the Housing and Community Development Committee and presented to the City Council for approval.

- That Barry Sheff, as President of the Portland Development Corporation or Greg Mitchell as the Portland Development Corporation Assistant Secretary be authorized and directed, on behalf of the Portland Development Corporation, to execute such documents as may be necessary or appropriate, including but not limited to a Purchase and Sale Agreement between City and PDC, a Purchase and Sale Agreement between PDC and Adam's Apple, LLC, a Grant Agreement between PDC (subgrantee) and GPCOG, including appropriation of GPCOG Brownfields Grant funds with conditions, and a Development Consulting Agreement between PDC and Adam's Apple, LLC. In addition that Barry Sheff or Greg Mitchell be authorized and empowered, at their discretion, to make such technical revisions to any such document determined to be necessary to facilitate this transaction, so long as such revisions are not inconsistent with the terms outlined in this memo.
- The City Council is also being asked to consent to Corporation Council's representation of both the PDC and the City on this project.

(2) Recommendation of action to be taken by the City Council

- Final sale of the property at 65 Munjoy Street to Adam's Apple, LLC with the understanding that (a) a marketing campaign as outlined in a Memorandum of Understanding between the City of Portland and Adam's Apple LLC will be implemented;
- Appropriation of \$175,000 in Housing Trust Funds - \$40,000 towards remediation costs and \$135,000 towards the cost of construction of 8 affordable homeownership units. A Housing Trust Fund (HTF) Grant Agreement and Declaration of Covenants will be recorded. The HTF Grant Agreement will outline the use of the Housing Trust Fund money. The Declaration of Covenants will secure the ongoing affordability restrictions on the property which will require (a) that the units be affordable to households earning between 100% and 120% of the area median income (adjusted for family size); (b) require future sales to income-qualified owner-occupants for no less than 90 years; and (c) short-term rentals, such as AirBnB, will be prohibited.
- That the City Manager be authorized and directed, on behalf of the City of Portland, to execute such documents as may be necessary or appropriate, including but not limited to a Purchase and Sale Agreement between City and PDC, a Housing Trust Fund Grant Agreement, a Declaration of Covenants, Restrictions and Conditions and a Memorandum of Understanding. In addition that the City Manager be authorized and empowered, at his discretion, to make such technical revisions to any such document determined to be necessary to facilitate this transaction, so long as such revisions are not inconsistent with the terms outlined in this memo.
- The City Council is also being asked to consent to Corporation Council's representation of both the PDC and the City on this project.

VIII. LIST ATTACHMENTS

Purchase and Sale Agreement between City and PDC;
Purchase and Sale Agreement between PDC and Adam's Apple, LLC;
Grant Agreement between PDC (subgrantee) and GPCOG, including appropriation of GPCOG Brownfields Grant funds with conditions;
Development Consulting Agreement between PDC and Adam's Apple, LLC
Housing Trust Fund Grant Agreement
Declaration of Covenants, Restrictions and Conditions
Memorandum of Understanding

Prepared by: Nelle Hanig, Economic Development Department
Mary P. Davis, Director, Housing & Community Development Division

Date: September 9, 2015

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT for the purchase and sale of real estate made this _____ day of _____, 2015 by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "SELLER"), and the PORTLAND DEVELOPMENT CORPORATION, a Maine nonprofit corporation ("BUYER" or "PDC"), both with a mailing address of 389 Congress Street, Portland, Maine.

W I T N E S S E T H:

WHEREAS, the SELLER is the owner of certain land known as the Adams School Parking Lot located at 65 Munjoy Street in Portland, Maine, as more specifically described in Exhibit A, attached hereto and incorporated herein (the "Premises"), and as generally depicted in the plan attached as Exhibit B and incorporated herein; and

WHEREAS, the SELLER desires to sell the Premises and published a November 19, 2014 "Request for Proposals For the Sale and Reuse of Property Located at 65 Munjoy Street, RFP #4115," as amended by Addendum #1, dated December 18, 2014, copies of which are attached hereto and collectively marked Exhibit C and incorporated herein (the Request for Proposals and Addendum #1 are collectively referred to herein as the "RFP"); and

WHEREAS, Adam's Apple, LLC, a Maine limited liability company ("Adam's Apple") submitted a proposal in response to the RFP (the "Proposal"), a copy of which is attached hereto as Exhibit D and incorporated herein; and

WHEREAS, after reviewing all proposals submitted in response to the RFP, the SELLER selected Adam's Apple as the successful bidder; and

WHEREAS, Adam's Apple desires to purchase the Premises and construct affordable housing on it in accordance with the terms of the Proposal and the RFP (the "Proposed Development"), and the SELLER desires that Adam's Apple do so; and

WHEREAS, the Premises is impacted by certain environmental contaminants as described in a July 1, 2014 Phase I Environmental Site Assessment and an August 8, 2014 Phase II Environmental Site Assessment, both by Credere Associates, LLC, copies of which are attached hereto and collectively marked Exhibit E and incorporated herein by reference (collectively, the "ESAs"); and

WHEREAS, prior to constructing the Proposed Development, certain environmental remediation work must be completed as described in a certain September 17, 2014 Voluntary Response Action Program Work Plan and September 17, 2014 Soil Management Plan prepared by Credere Associates, LLC (collectively, the “VRAP Work Plan”), copies of which are attached hereto and collectively marked Exhibit F and incorporated herein by reference; and

WHEREAS, in order to finance the VRAP Work Plan, Adams Apple consulted with the Greater Portland Council of Governments (“GPCOG”) regarding the availability of brownfields cleanup grants that might be available to cover the cost of the VRAP Work Plan; and

WHEREAS, GPCOG advised Adams Apple and SELLER that they would not qualify for GPCOG’s Brownfields Remediation grants because SELLER may be a potentially responsible party for the environmental contaminants and Adams Apple is not a public or nonprofit entity, but that BUYER, as a nonprofit corporation, would qualify for a grant if it were the owner of the Premises; and

WHEREAS, BUYER, with the assistance of Adams Apple, applied for and has been awarded a brownfields cleanup grant from the Greater Portland Council of Governments (“GPCOG”) in order to finance the VRAP Work Plan as set forth in the June __, 2015 _____, a copy of which is attached hereto and marked Exhibit G and incorporated herein by reference; and

WHEREAS, BUYER and GPCOG have entered into a GPCOG Brownfields Program Subgrant Agreement of near or even date herewith (the “Grant Agreement”), a copy of which is attached hereto and marked Exhibit H and incorporated herein by reference; and

WHEREAS, SELLER, BUYER, and Adams Apple have agreed that in order to complete the VRAP Work Plan prior to the conveyance of the Property to Adams Apple, SELLER would first convey the Premises to BUYER, provided that BUYER shall then convey the Premises to Adams Apple after completion of the VRAP Work Plan; and

WHEREAS, Adam’s Apple and BUYER have entered into a Development Consulting Agreement of near or even date herewith (the “Development Consulting Agreement”) pursuant

to which Adam's Apple shall act as BUYER's agent to oversee the VRAP Work Plan during BUYER's ownership of the Premises and be responsible for the administration of the Grant Agreement and all costs associated with the Grant Agreement at no cost to BUYER; and

WHEREAS, SELLER desires to convey the Premises to BUYER provided that BUYER conveys the Premises to Adams Apple in accordance with the terms and conditions of this Agreement and those of a separate Purchase and Sale Agreement between BUYER and Adams Apple of near or even date herewith.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **RECITALS INCORPORATED BY REFERENCE.** The recitals set forth above are hereby incorporated herein by reference and made a part of this Agreement. The restatement in this document of any term of any of its attachments shall not be deemed to waive any term not so restated. If any disagreement is found between the RFP or the Proposal and this document, then this document shall govern; and the RFP shall govern over the Proposal, to the extent they disagree; provided, however, that this document and all of its attachments shall be construed to be supplemental to one another to the extent possible.
2. **SALE.** SELLER agrees to sell the Premises to BUYER, and BUYER agrees to buy the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.
3. **CONSIDERATION.** The consideration for the Premises shall be One Dollar (\$1.00) (the "Purchase Price").
4. **TITLE.** SELLER shall convey the Premises to BUYER at the closing in fee simple with good and marketable or insurable title by quitclaim deed without covenant acceptable to BUYER. If SELLER is unable to convey title to the Premises in accordance with the provisions of this paragraph, then SELLER shall have a reasonable time period, not to exceed 30 days from the time SELLER receives written notice of the defect, unless otherwise agreed to by both parties, during which it shall make a good faith effort to remedy the title, after which time, if such defect is not corrected so that there is marketable and insurable title, BUYER may within 2 days thereafter, at BUYER's option, terminate this Agreement, and neither party shall have any further obligation hereunder.
5. **POSSESSION.** Full possession of the Property will be delivered to Buyer at the transfer of title, free and clear of all tenancies or occupancies by any person or entity.

6. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire or otherwise, until transfer of title hereunder, is assumed by the SELLER. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated.
7. **PROPERTY SOLD "AS IS, WHERE IS."** BUYER acknowledges that BUYER has had an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." SELLER, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Acceptance by BUYER of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the SELLER of every agreement and obligation contained herein.
8. **INDEMNIFICATION.** Subject to and limited by the defenses, immunities and limitations of liability available to the SELLER under the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq., SELLER hereby agrees to defend, indemnify and hold harmless the BUYER, its officers, agents, and employees from and against any and all claims, demands, liability, loss, cost or expense (including but not limited to attorneys' fees and other costs of litigation) that may be incurred by the BUYER arising out of or in any way related to its ownership, use, or maintenance of the Premises, or the ownership, use, or maintenance of the Premises by the BUYER'S predecessors in title or any other third party.
9. **CLOSING.** Time is of the essence in the performance of this Agreement. The closing shall be held at City Hall, within sixty (60) days after the date first set forth above.
10. **OBLIGATION OF SELLER TO REPURCHASE PROPERTY.** In the event that the Maine DEP does not issue a Certificate of Completion of Remedial Actions ("COC") for the Premises on or before that date that is 12 months after the date of execution of the Purchase and Sale Agreement for the Premises between BUYER and Adam's Apple of near or even date herewith, the SELLER shall repurchase the Premises from the BUYER at the Purchase Price, unless Adam's Apple exercises its right to require the PDC to convey the Premises pursuant to paragraph 9 of the Purchase and Sale Agreement between BUYER and Adam's Apple and paragraph 8 of the Development Consulting Agreement. The provisions of this paragraph shall be included in SELLER's deed to BUYER.
11. **COVENANTS, RESTRICTIONS, AND OPTION TO REPURCHASE IN BUYER'S DEED TO ADAMS APPLE.** Within 30 days after the Maine DEP issues a COC, BUYER shall convey the Premises to Adam's Apple in accordance with the terms of the Purchase and Sale Agreement between BUYER and Adams Apple of near or even date herewith. This paragraph shall survive the closing of this

Agreement. BUYER's deed to Adams Apple shall contain a declaration of covenants and restrictions that shall include, without limitation, the following provisions, which shall survive closing of that Agreement and run with the land:

- a. Grantee shall construct eight (8) new affordable ownership housing units on the Premises in substantially the form and for the affordable housing uses set forth in the Proposal and in the RFP, with Grantee's compliance with this provision to be satisfied by: (1) Grantee recording a subdivision plan for the Premises approved by the Planning Board of the City of Portland showing 8 housing units, and (2) with regard to a unit proposed to be conveyed, the City of Portland having issued a certificate of occupancy for that particular unit. At the request of Grantee, the City of Portland shall duly execute, from time to time, a verification of subdivision approval and issuance of certificates of occupancy in recordable form.
- b. The parties agree that the units shall be subject to an "Affordability Declaration" which shall be established by the due execution and recording of the following documents in substantially the same form as those attached hereto and incorporated herein by reference: (i) Declaration of Covenants, Conditions and Restrictions, Exhibit J, (ii) Affordability Agreement, Exhibit K, and (iii) Declaration of Condominium, Affordability of Units provision, Exhibit L.
- c. If Grantee has not started and diligently pursued construction of eight (8) new affordable ownership housing units as provided above by July 31, 2017, Grantor or the City of Portland shall have the right, but not the obligation, to repurchase the Premises at the Purchase Price, provided, however, that Grantor or the City of Portland must notify Grantee of its intent to repurchase the Premises in writing by August 15, 2017, and if the Grantor or the City of Portland fails to so notify Grantee, this provision, and the rights thereunder are waived. At the request of Grantee, Grantor and the City of Portland shall promptly duly execute, from time to time, verification of the exercise or non-exercise of this right in recordable form.
- d. Environmental Indemnification. Grantee covenants and agrees to indemnify, defend, and hold Grantor and the City of Portland harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Grantor or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises,

including without limitation the environmental matters identified in the RFP, the ESAs, and the VRAP Work Plan. This duty to indemnify, defend, and hold harmless shall run with the land herein conveyed and be binding upon Grantee's successors, assigns, and transferees until such date as Grantee, its successors, assigns or transferees obtain a Certificate of Completion of Remedial Actions ("COC") from the Maine DEP for the Project as described in a Development Consulting Agreement between Seller and Buyer of even or near even date herewith; upon that date, the Environmental Indemnification described in this paragraph (d) shall no longer run with the land to subsequent successors, assigns or transferees of Grantee.

- e. Payment In Lieu Of Property Taxes. Grantee agrees in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City of Portland in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Grantee shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine. This covenant shall run with the land herein conveyed and be binding upon Grantee's successors, assigns, and transferees.
- 12. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by Seller and Buyer.
- 13. HEADINGS AND CAPTIONS. The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.
- 14. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.
- 15. TIME. The SELLER and BUYER each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.
- 16. GOVERNING LAW. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be

invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

17. **NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE SELLER: City of Portland
ATTN: CITY MANAGER
389 Congress Street
Portland, ME 04101

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

FOR BUYER: Portland Development Corporation
Attention: Greg Mitchell
389 Congress Street
Portland, Maine 04101

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

18. **SIGNATURES; MULTIPLE COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a faxed, pdf or other reproduced or electronic document shall be considered the equivalent of an original signature.
19. **BROKERS.** Seller and Buyer each represents and warrants that neither has dealt with a real estate broker in connection with this transaction. Buyer agrees to indemnify and hold harmless Seller from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, Seller agrees to indemnify and hold harmless Buyer from any claims made by any broker should Seller's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written above.

CITY OF PORTLAND

WITNESS

Jon P. Jennings
Its City Manager

WITNESS

PORTLAND DEVELOPMENT CORPORATION

By: _____
Printed Name:
Its:

Approved as to Form:

Corporation Counsel's Office

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT for the purchase and sale of real estate made this _____ day of _____, 2015 by and between the PORTLAND DEVELOPMENT CORPORATION, a Maine nonprofit corporation ("SELLER" or "PDC"), and ADAM'S APPLE, LLC, a Maine limited liability company with a place of business in Portland, Maine and mailing address of 17 Chestnut Street, 3rd Floor, Portland, Maine 04101 ("BUYER").

W I T N E S S E T H:

WHEREAS, pursuant to the terms of a Purchase and Sale Agreement between SELLER and the City of Portland (the "City") of near or even date herewith, the City intends to convey to SELLER certain land known as the Adams School Parking Lot located at 65 Munjoy Street in Portland, Maine, as more specifically described in Exhibit A, attached hereto and incorporated herein (the "Premises"), and as generally depicted in the plan attached as Exhibit B and incorporated herein; and

WHEREAS, the City published a November 19, 2014 "Request for Proposals For the Sale and Reuse of Property Located at 65 Munjoy Street, RFP #4115," as amended by Addendum #1, dated December 18, 2014, copies of which are attached hereto and collectively marked Exhibit C and incorporated herein (the Request for Proposals and Addendum #1 are collectively referred to herein as the "RFP"); and

WHEREAS, BUYER submitted a proposal in response to the RFP (the "Proposal"), a copy of which is attached hereto as Exhibit D and incorporated herein; and

WHEREAS, after reviewing all proposals submitted in response to the RFP, the City selected BUYER as the successful bidder; and

WHEREAS, BUYER desires to purchase the Premises and construct affordable housing on it in accordance with the terms of the Proposal and the RFP (the "Proposed Development"), and the City desires that BUYER do so; and

WHEREAS, the Premises is impacted by certain environmental contaminants as described in a July 1, 2014 Phase I Environmental Site Assessment and an August 8, 2014 Phase II Environmental Site Assessment, both by Credere Associates, LLC, copies of which are

attached hereto and collectively marked Exhibit E and incorporated herein by reference (collectively, the “ESAs”); and

WHEREAS, prior to constructing the Proposed Development, certain environmental remediation work must be completed as described in a certain September 17, 2014 Voluntary Response Action Program Work Plan and September 17, 2014 Soil Management Plan prepared by Credere Associates, LLC (collectively, the “VRAP Work Plan”), copies of which are attached hereto and collectively marked Exhibit F and incorporated herein by reference; and

WHEREAS, in order to finance the VRAP Work Plan, BUYER consulted with the Greater Portland Council of Governments (“GPCOG”) regarding the availability of brownfields cleanup grants that might be available to cover the cost of the VRAP Work Plan; and

WHEREAS, GPCOG advised BUYER and the City that they would not qualify for GPCOG’s Brownfields Remediation grants because the City may be a potentially responsible party for the environmental contaminants and Adam’s Apple is not a public or nonprofit entity, but that SELLER, as a nonprofit corporation, would qualify for a grant if it were the owner of the Premises; and

WHEREAS, SELLER, with the assistance of BUYER, applied for and has been awarded a Brownfields Remediation Program grant from GPCOG in order to finance the VRAP Work Plan as set forth in GPCOG’s June 15, 2015 letter to SELLER, a copy of which is attached hereto and marked Exhibit G and incorporated herein by reference; and

WHEREAS, BUYER and GPCOG have entered into a GPCOG Brownfields Program Subgrant Agreement of near or even date herewith (the “Grant Agreement”), a copy of which is attached hereto and marked Exhibit H and incorporated herein by reference; and

WHEREAS, SELLER, BUYER, and the City have agreed that in order to complete the VRAP Work Plan prior to the conveyance of the Property to BUYER, the City would first convey the Premises to SELLER, provided that SELLER would then convey the Premises to BUYER after completion of the VRAP Work Plan; and

WHEREAS, SELLER and BUYER have entered into a Development Consulting Agreement of near or even date herewith pursuant to which BUYER shall act as SELLER's agent to oversee the VRAP Work Plan during SELLER's ownership of the Premises and be responsible for the administration of the Grant Agreement and all costs associated with the Grant Agreement at no cost to SELLER; and

WHEREAS, the SELLER desires to convey the Premises to BUYER in accordance with the terms and conditions of this Agreement, provided that the CITY conveys the Premises to SELLER pursuant to a Purchase And Sale Agreement between the City and SELLER of near or even date herewith (the "City-PDC Agreement"), a copy of which is attached hereto as Exhibit I and incorporated herein by reference).

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **RECITALS INCORPORATED BY REFERENCE.** The recitals set forth above are hereby incorporated herein by reference and made a part of this Agreement. The restatement in this document of any term of any of its attachments shall not be deemed to waive any term not so restated. If any disagreement is found between the RFP or the Proposal and this document, then this document shall govern; and the RFP shall govern over the Proposal, to the extent they disagree; provided, however, that this document and all of its attachments shall be construed to be supplemental to one another to the extent possible.
2. **SALE.** SELLER agrees to sell the Premises to BUYER, and BUYER agrees to buy the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.
3. **CONSIDERATION.** The consideration for the Premises shall be One Dollar (\$1.00) (the "Purchase Price").
4. **TITLE.** SELLER shall convey the Premises to BUYER at the closing in fee simple with good and marketable or insurable title by quitclaim deed without covenant acceptable to BUYER. If SELLER is unable to convey title to the Premises in accordance with the provisions of this paragraph, then SELLER shall have a reasonable time period, not to exceed 30 days from the time SELLER receives written notice of the defect, unless otherwise agreed to by both parties, during which it shall make a good faith effort to remedy the title, after which time, if such defect is not corrected so that there is marketable and insurable title, BUYER may within 2 days

thereafter, at BUYER's option, terminate this Agreement, and neither party shall have any further obligation hereunder.

5. **POSSESSION.** Full possession of the Property will be delivered to Buyer at the transfer of title, free and clear of all tenancies or occupancies by any person or entity.
6. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire or otherwise, until transfer of title hereunder, is assumed by the SELLER. Except to the extent that the Premises may be altered by the work performed under the VRAP Work Plan, the Premises is to be delivered in substantially the same condition as of the date of this Agreement.
7. BUYER acknowledges that BUYER has had an opportunity to inspect the Premises, and to hire professionals to do so, and that the Premises will be sold "as is, where is" and "with all faults." SELLER, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Furthermore, SELLER and its agents make no representations or warranties regarding the number, quantity, quality, or count of any items of personal property. Acceptance by BUYER of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the SELLER of every agreement and obligation contained herein.
8. **COVENANTS, RESTRICTIONS, AND OPTION TO REPURCHASE IN SELLER'S DEED TO BUYER.** SELLER's deed to BUYER shall contain a declaration of covenants and restrictions that shall include, without limitation, provisions in substantially the form set forth below, which shall survive the closing of this Agreement and run with the land:
 - a. Grantee shall construct eight (8) new affordable ownership housing units on the Premises in substantially the form and for the affordable housing uses set forth in the Proposal and in the RFP, with Grantee's compliance with this provision to be satisfied by: (1) Grantee recording a subdivision plan for the Premises approved by the Planning Board of the City of Portland showing 8 housing units, and (2) with regard to a unit proposed to be conveyed, the City of Portland having issued a certificate of occupancy for that particular unit. At the request of Grantee, the City of Portland shall duly execute, from time to time, a verification of subdivision approval and issuance of certificates of occupancy in recordable form.
 - b. The parties agree that the units shall be subject to an "Affordability Declaration" which shall be established by the due execution and recording of the following documents in substantially the same form as those attached hereto and incorporated herein by reference: (i) Declaration

of Covenants, Conditions and Restrictions, Exhibit J, (ii) Affordability Agreement, Exhibit K, and (iii) Declaration of Condominium, Affordability of Units provision, Exhibit L.

- c. If Grantee has not started and diligently pursued construction of eight (8) new affordable ownership housing units as provided above by July 31, 2017, Grantor or the City of Portland shall have the right, but not the obligation, to repurchase the Premises at the Purchase Price, provided, however, that Grantor or the City of Portland must notify Grantee of its intent to repurchase the Premises in writing by August 15, 2017, and if the Grantor or the City of Portland fails to so notify Grantee, this provision, and the rights thereunder are waived. At the request of Grantee, Grantor and the City of Portland shall promptly duly execute, from time to time, verification of the exercise or non-exercise of this right in recordable form.
- d. Environmental Indemnification. Grantee covenants and agrees to indemnify, defend, and hold Grantor and the City of Portland harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Grantor or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, including without limitation the environmental matters identified in the RFP, the ESAs, and the VRAP Work Plan. This duty to indemnify, defend, and hold harmless shall run with the land herein conveyed and be binding upon Grantee's successors, assigns, and transferees until such date as Grantee, its successors, assigns or transferees obtain a Certificate of Completion of Remedial Actions ("COC") from the Maine DEP for the Project as described in a Development Consulting Agreement between Seller and Buyer of even or near even date herewith; upon that date, the Environmental Indemnification described in this paragraph (d) shall no longer run with the land to subsequent successors, assigns or transferees of Grantee.
- e. Payment In Lieu Of Property Taxes. Grantee agrees in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City of Portland in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Grantee shall possess and be vested with all rights and privileges as to

abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine. This covenant shall run with the land herein conveyed and be binding upon Grantee's successors, assigns, and transferees.

9. **CLOSING.** Time is of the essence in the performance of this agreement. The closing shall be held at the office of BUYER's counsel, within thirty (30) days after the Maine DEP issues a Certificate of Completion of Remedial Actions ("COC") for the Premises. Buyer acknowledges that pursuant to the City-PDC Agreement, the City has an obligation to repurchase the Premises from SELLER in the event that the COC is not issued on or before that date which is twelve (12) months after the date of execution of this Purchase and Sale Agreement unless Adam's Apple exercises its right to require the PDC to convey the Premises to Adam's Apple pursuant to this paragraph 9 of the Purchase and Sale Agreement between PDC and Adam's Apple and paragraph 8 of the Development Consulting Agreement. In the event that the City does so, this Agreement shall terminate and neither party shall have any liability to the other or any further obligation under this Agreement. Similarly, Seller acknowledges that pursuant to Paragraph 8 of the Development Consulting Agreement between Seller and Buyer of even or near even date herewith, in the event of a termination of that Agreement for reasons as specified therein, Developer/BUYER, at its option, has a right to require PDC/SELLER to convey the Property to BUYER, in accordance with the terms of this Agreement, in the same condition it is in as of the date of termination or a better condition if BUYER opts to proceed with the Development, provided, however, that PDC/SELLER shall have no obligation to improve or otherwise alter the condition of the Property prior to such conveyance.
10. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Any real estate taxes and utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. SELLER is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to BUYER's financing or closing shall be paid for by BUYER.
11. **TIME.** The SELLER and BUYER each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.
12. **DEFAULT AND REMEDIES.** In the event that BUYER defaults hereunder for a reason other than the default of the SELLER, SELLER may pursue all legal or equitable remedies available to it. In the event SELLER defaults under this Agreement, and if BUYER is not then in default hereunder, BUYER shall have the right to pursue specific performance as its sole remedy.
13. **ENTIRE AGREEMENT.** This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by Seller and Buyer.

14. Notwithstanding anything to the contrary in this Agreement or any of its attachments, it is the intent of both parties that the BUYER shall develop the Premises in substantially the form and for the affordable housing uses set forth in the RFP and the Proposal. Accordingly, the parties covenant and agree that, prior to closing, they will execute such additional documents as are not inconsistent herewith, including but not limited to Exhibits H, I and J, and as may be reasonably necessary to effectuate such intent.
15. **HEADINGS AND CAPTIONS.** The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.
16. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.
17. **GOVERNING LAW.** This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.
18. **NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE SELLER: Portland Development Corporation
Attention: Greg Mitchell
389 Congress Street
Portland, Maine 04101

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

FOR BUYER: Adam's Apple, LLC
17 Chestnut Street, 3rd Floor
Portland, Maine 04101

With a copy to: Barbara Vestal, Esq.
Chester & Vestal, P.A.
107 Congress Street
Portland, Maine 04101

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

20. BROKERS. Seller and Buyer each represents and warrants that neither has dealt with a real estate broker in connection with this transaction. Buyer agrees to indemnify and hold harmless Seller from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, Seller agrees to indemnify and hold harmless Buyer from any claims made by any broker should Seller's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written above.

WITNESS

PORTLAND DEVELOPMENT CORPORATION

By: _____
Printed Name:
Its:

ADAM'S APPLE, LLC

WITNESS

By: _____
Printed Name:
Its:

Approved as to Form:

Corporation Counsel's Office

**GPCOG BROWNFIELDS PROGRAM
SUBGRANT AGREEMENT**

THIS AGREEMENT is made and entered into on this _____ day of _____, 2015 by and between the Portland Development Corporation (hereinafter referred to as "Subgrantee"), and the Greater Portland Council of Governments (GPCOG) a recipient of a Brownfields Cleanup Revolving Loan Fund (BCRLF) capitalization grant from the U.S. Environmental Protection Agency (hereinafter referred to as the "Grantor") under Agreement Number BF96175401.

WITNESSETH:

WHEREAS, GPCOG is authorized under Comprehensive Environmental Response Compensation and Liability Act (CERCLA) 104(k)(3)(B)(ii) and the terms and conditions of (EPA Grant Number BF96175401) to make subgrants to eligible entities and non-profit organizations from these funds ("Grant Funds"); and

WHEREAS, the Subgrantee is (an eligible entity under CERCLA 104(k)(1) or a non-profit organization as defined in 31 USC 6101, Note) owns by way of fee simple title certain real property located 65 Munjoy Street in Portland, Maine, (the "Property"), which property is more particularly described in Exhibit 1, attached hereto; and

WHEREAS, the Grantor has agreed to grant to Subgrantee certain of the Grant Funds which will be used by the Subgrantee for a portion of the remediation of the Property (the "Remediation Work"); which is more particularly described in Exhibit 2, and attached hereto; and

WHEREAS, the Property is not listed, or proposed for listing on the National Priorities List of the U. S. Environmental Protection Agency ("EPA"); and

WHEREAS, the Subgrantee is not a generator or transporter of any contamination located at the Property; and

WHEREAS, the Subgrantee is not and has never been subject to any penalties resulting from environmental non-compliance at or on the Property nor is the Subgrantee, or, to the best of its knowledge, its Project contractors or subcontractors currently suspended, debarred, or otherwise declared ineligible for participation in this federal program or from the receipt of these funds; and

WHEREAS, a claim has not been asserted against the Subgrantee for liability under CERCLA §107 at the Property.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, it is mutually agreed by and between the parties as follows:

1. Grantor agrees to grant to Subgrantee the sum of not more than \$200,000 to be used by the Subgrantee for the Remediation Work (the "Project Grant Funds") subject to the terms and conditions herein. The Subgrantee is accountable to the Grantor for using EPA funds only for eligible and allowable costs under CERCLA 104(k) and the terms and conditions of Agreement Number BF96175401.

2. Subgrantee agrees to provide a cost share of \$40,000 consisting of eligible and allowable costs under CERCLA 104(k) and the terms and conditions of Agreement Number BF96175401. Subgrantee may meet this requirement by contributing cash, materials or labor to the cleanup project.
3. Subgrantee shall carry out the Remediation Work in accordance with CERCLA 104 (k) and applicable terms and conditions of Grant Number BF96175401. These requirements include those prohibitions on the use of Project Grant Funds found at CERCLA 104(k)(4)(B) for administrative costs, and response costs for which the Subgrantee is potentially liable at the Property under CERCLA 107.
4. The Subgrantee will comply with (Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations 40 CFR Part 30 or Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments, 40 CFR Part 31) and all other applicable provisions of federal, state or local law.
5. The Subgrantee will provide the Grantor with all reports and other documents required for subgrantees or subawardees by 40 CFR Part 30 or 40 CFR Part 31, as applicable.
6. The Subgrantee will adhere to OMB Cost Principles found at (2 CFR Part 230 for Non-profits or 2 CFR Part 225 for State, Local or Tribal Governments or 2 CFR Part 220 for Educational Institutions).
7. Subgrantee shall carry out the Remediation Work in accordance with the Davis-Bacon Act of 1931 (CERCLA 104(g)(1), 40 U.S.C. 276a-276a-5 and 42 U.S.C. 3222). CERCLA compliance with Davis Bacon requires payment of Federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with Grant Funds. The Subgrantee must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the remediation construction contract. In addition, the Subgrantee must maintain records verifying compliance with the Davis Bacon Act. Subgrantee will work with Grantor to ensure Grantor's Davis-Bacon requirements are met.
8. The Subgrantee shall provide the Grantor with a copy of the Phase I and Phase II Environmental Assessment of the Property performed according to the American Society for Testing and Materials (ASTM) standards (collectively, the "Assessment"). The Subgrantee shall be responsible for the payment of all costs and expenses related to the Assessment. The Subgrantee agrees that the Project Grant Funds shall not be used for the payment of any cost or expense related to the Assessment. The Assessment shall include, but is not limited to site background, the threat posed to by the contaminant to public health, welfare and the environment and all past enforcement activities conducted by any governmental agency, and the site testing results.
9. The Grantor shall designate an environmental project manager who shall review and approve of the proposed cleanup and coordinate the work to be performed using Project Grant Funds. The Grantor's environmental project manager will review the Subgrantee's remedial planning, design, and engineering documents and review the cleanup activities as they are on-going to

ensure that the cleanup is being completed in accordance with all local, State, and Federal requirements and is protective of human health and the environment.

10. The Subgrantee shall prepare a Community Relations Plan ("CRP") with the assistance and cooperation of the Grantor. The CRP shall include, where applicable, the following:
 - a. Copies of interviews or meetings conducted with residents and community leaders, local officials, and public interest groups.
 - b. Copies of news releases and other information that explains the proposed project, such releases and information to be disseminated throughout the area surrounding the affected area.
 - c. Procedures for the establishment of a local information repository at or near the Property that includes public information supplied by both the Subgrantee and the Grantor related to the proposed Remediation Work. The Subgrantee shall supply the Grantor with any additional information that would assist the Grantor in documenting the Remediation Work.
11. After the Subgrantee has prepared the CRP, the Subgrantee shall draft an analysis of brownfields cleanup alternatives that will include information about the Property and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the cleanup proposed. The Subgrantee shall submit copies of the draft analysis of brownfields cleanup alternatives to the Grantor for approval. The Subgrantee agrees to accept advice and suggestions from the Grantor and to incorporate those suggestions or requests for revisions as appropriate.
12. After the Grantor has approved the draft analysis of brownfields cleanup alternatives, the Subgrantee shall make the document available for review and public comment for a period of not less than thirty (30) days from the date of publication of the public notice.
13. After the public comment period, the Subgrantee shall incorporate all appropriate comments, in the reasonable discretion of Subgrantee, into a final analysis of brownfields cleanup alternatives document and prepare a written response to the public comments, if appropriate.
14. After the analysis of brownfields cleanup alternative has been finalized, the Subgrantee shall prepare a scope of work containing detailed design and construction plans and specifications for the Remediation Work including a budget and work schedule; a health and safety plan (OSHA 1910-120 - 126) and a quality assurance project plan which sets forth the manner and method of collecting samples to assure the complete removal of all hazardous substances that are located at the Property and are to be removed as a part of the Remediation Work (collectively, such documents are referred to as the "Project Documents") and submit same to Grantor for approval.
15. Prior to the initiation of the Remediation Work, including any cleanup activities, the Subgrantee must provide to the Grantor copies of all of the state required remedial planning documents and the state's approval of those documents, if required, as well as evidence of enrollment in the Maine's Voluntary Remediation Action Program.

16. The Subgrantee understands and agrees that all of the Project Grant Funds provided by Grantor to Subgrantee shall be used by the Subgrantee towards the cleanup and remediation of the Property identified in Exhibit 1. Subgrantee shall supply the Grantor with design and construction plan and specifications for the redevelopment of the Property and evidence of project feasibility in the form of a detailed project budget reflecting all project sources. All sources of project financing shall be supported by letters of interest and term sheets from an accredited lending institution.

Subgrantee shall complete a competitive bidding process for the Project Grant Funds in accordance with Federal procurement requirements under Brownfield regulations.

17. The Subgrantee further understands and agrees that any and all work performed on the Property for which the Project Grant Funds are used and the receipt of any Project Grant Funds under this Agreement is conditioned upon the Subgrantee's full compliance with the terms and provisions of the Project Documents and this Agreement.
18. The Project Grant Funds shall be payable to the Subgrantee as reimbursement for eligible and allowable expenses incurred by the Subgrantee based upon (for Part 31 subgrantees actual disbursements for costs incurred for Remediation Work for Part 30 subgrantees based on progress in accordance with the approved cleanup project budget (the "Budget"), attached hereto and made a part hereof as Exhibit 2 or actual disbursements for costs incurred or Remediation Work at the discretion of the Grantor). No reimbursement shall be made to the Subgrantee without the written approval of the Grantor. The Grantor shall not advance nor be obligated to advance any Project Grant Funds to the Subgrantee prior to the receipt of properly executed lien waivers. Reimbursement of Project Grant funds to the Subgrantee will take place after the receipt of invoices for costs incurred for Remediation work, and review of all information, documents and back up information to support the reimbursement request.
19. Subgrantee agrees must keep all expenditures from the Project Grant Funds within the approved Budget. Subgrantee shall not exceed any of the costs enumerated in the approved Project Budget without the prior written approval of the Grantor.
20. The Grantor may withhold up to five (5%) percent of each payment requested as a retainage until the Subgrantee has completed the Remediation Work.
21. The awarding of this Grant shall be subject to:
- a. Opinion of the Subgrantee's Counsel that the Subgrantee, if a corporation, is in good standing and that all documents executed by the Subgrantee are valid and enforceable in accordance with their respective terms.
 - b. Written authorization in the form of a resolution, or order of the City Council, as corporator of Subgrantee, authorizing the Subgrantee to accept the Project Grant Funds and authorizing Subgrantee's representative to execute this Grant Agreement on behalf of the Subgrantee.
 - c. Evidence by the Subgrantee that no outstanding taxes, fees, charges, mortgages, liens, encumbrances or other assessments have been filed or are recorded against the Property.

- d. Evidence of general liability insurance coverage with limits of liability of \$1,000,000. All insurance coverage required by this section shall remain in full force and effect during the term of this Agreement.
- e. Identification of the contractor and subcontractor selected by the Subgrantee for the Remediation Work, when determined.
- f. The Grantor's receipt of cleanup project cost breakdown based upon estimates and prices supplied by the Subgrantee.

The Grantor reserves the right to waive any or all requirements of this section.

- 22. Subgrantee shall commence work on the Remediation Work within 180 days from the date of execution of this Agreement and shall complete and perform all of the Remediation Work within 220 days in accordance with the approved Schedule of Work attached hereto and made a part hereof as Exhibit 3.

In the event the Subgrantee experiences project delays which are beyond the control of the Subgrantee that result in the project timeline exceeding either the 180 or 220 day limits above, Grantor shall provide reasonable extensions to the deadlines in this section, to the extent that such extensions comport with Grantor's obligations under the BCRLF.

- 23. All Remediation Work performed pursuant to this Agreement and with Project Grant Funds shall be performed in a good and workmanlike manner.
- 24. All material changes or modification to the Remediation Work or the Project Documents shall be approved in writing by the Grantor prior to such change or modification becoming effective. All additional costs incurred, as the result of any change orders shall be the responsibility of the Subgrantee. In the event that unforeseen conditions are discovered during the implementation of the Remediation Work, the Subgrantee reserves the right to revise the cleanup action and the Project Documents.
- 25. Subgrantee, at its sole cost and expense, and from sources other than Grant Funds, shall be responsible for obtaining all permits, licenses, approvals, certifications and inspections required by federal, state or local law and to maintain such permits, licenses, approvals, certifications and inspections in current status during the term of this Agreement.
- 26. The Subgrantee shall:
 - a. Notify the Grantor when the Remediation Work is complete. The notice shall contain certification or documentation that the Remediation Work is complete and has been performed in accordance with the terms of this Agreement. This notice shall summarize the actions taken, the resources committed and the problems encountered in completion of the project, if any, and shall be submitted to the Grantor for review and approval before it is finalized.
 - b. Perform all of its obligations and agreements under this Agreement, and any other agreements or instruments to which the Subgrantee is a party and which relate to the Project Grant Funds and the Remediation Work.

27. Subject to and limited by the protections, immunities and defenses of the Maine Tort Claims Act, 14 M.R.S. § 8101 et seq., the Subgrantee agrees to protect, indemnify, defend and hold harmless, the Grantor, its officers, administrators, agents, servants, employees and all other persons or legal entities to whom the Grantor may be liable from, for or against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect or consequential and including, but not limited to, all reasonable fees, expenses and charges of attorneys and other professionals, court costs, and other reasonable fees and expenses for bodily injury, including death, personal injury and property damage, arising out of or in connection with the performance of any work or any responsibility or obligation of the Subgrantee as provided herein and caused in whole or in part by any act, error, or omission of the Subgrantee, its agents, servants, employees or assigns.
28. The Subgrantee shall erect a sign on the Property stating that the Remediation Work is being financed in part by BCRLF Grant Funds and the Grantor and providing the appropriate contacts for obtaining information on activities being conducted at the site and for reporting suspected criminal activities. The sign erected on the Property site shall comply with all requirements of the state and local law applicable to on-premise outdoor advertising.
29. If the Subgrantee sells or transfers the Property to another non-related or affiliated business, entity or corporation prior to completion of the Remediation Work, then, in that event, the Subgrantee shall immediately repay the entire amount of Project Grant Funds advanced to Subgrantee to the Grantor. Any change in use of the property from the original agreement needs to be approved by the Grantor.
30. Any forbearance by the Grantor with respect to any of the terms and conditions of this Agreement shall in no way constitute a waiver of any of Grantor's rights or privileges granted hereunder.
31. In the event of a default of any of the terms or conditions of this Agreement then, in that event, the entire amount of Project Grant Funds disbursed to Subgrantee shall become immediately due and payable without the necessity of demand from Grantor. The Subgrantee shall be deemed to be in default under this Agreement upon the occurrence of any or more of the following events (each an "Event of Default"):
 - a. The Subgrantee assigns this Agreement or any Project Grant Funds advanced hereunder or any interest herein to a third party or if the Property or any interest is conveyed, assigned or otherwise transferred without the prior written consent of the Grantor.
 - b. Any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement shall prove to be false in any material respect.
 - c. The Subgrantee defaults in the performance of any term, covenant or condition to be performed hereunder and such default is not remedied within sixty (60) days, unless a longer period of time is reasonably required to cure the default, from and after receipt of written notice by certified mail, return receipt requested, from the Grantor to the Subgrantee, specifying said default, of, if such default cannot be remedied within that period and remedial effort is not commenced within that period and diligently and continuously pursued, the Grantor shall have the right to proceed by appropriate judicial proceedings to enforce performance or observation of the applicable provisions

- of this Agreement and/or terminate this Agreement and recover damages from the Subgrantee to the extent allowed by law.
- d. Any proceeding involving the Subgrantee or the Property, commenced under any bankruptcy or reorganization arrangement, probate, insolvency, readjustment of debt, dissolution or liquidation law of the United States, or any state, but if such proceedings are instituted, no Event of Default shall be deemed to have occurred hereunder unless the Grantor either approves, consents to, or acquiesces in such proceedings, or such proceedings are not dismissed within ninety (90) days.
 - e. An order, judgment or decree is entered, without the application, approval or consent of the Grantor, by any court of competent jurisdiction approving the appointment of a receiver, trustee or liquidator of the Subgrantee of all or a substantial part of its assets, and such order, judgment or decree shall continue in effect for a period of ninety (90) days.

Upon the occurrence of any one or more of the Events of Default enumerated above, all amounts of Project Grant Funds disbursed to Subgrantee by Grantor pursuant to this Agreement shall become due and payable, without presentment, demand, protest or notice of any kind to the Grantor, all of which are hereby expressly waived by the Subgrantee.

- 32. The Subgrantee agrees to maintain financial and programmatic records pertaining to all matters relative to this Agreement in accordance with 40 CFR Part 30 or Part 31, as applicable and generally accepted accounting principles and procedures and to retain all of its records and supporting documentation applicable to this Agreement for a period of 3 years following the completion and close out of Agreement Number BF96175401 except as follows:
 - a. Records that are subject to audit findings shall be retained three (3) years after such findings have been resolved.
 - b. All available records and supporting documents shall be made available, upon request, for inspection or audit by the Grantor or its representatives or representatives of EPA, EPA's Office of Inspector General, the Comptroller General, or other authorized representatives of the Federal Government.
- 33. The Subgrantee agrees to permit the Grantor or its designated representative to inspect and/or audit its records and books relative to this Agreement at any time during normal business hours and under reasonable circumstances, upon reasonable notice and to copy therefrom any information that the Grantor desires relevant to this Agreement. The Grantor shall provide written notice to the Subgrantee prior to the execution of this provision. The Subgrantee agrees to deliver the records or have the records delivered to the Grantor or its designated representative at an address designated by such party. If the Grantor or its representative finds that the records delivered by the Subgrantee are incomplete, the Subgrantee agrees to pay the Grantor or its representative's costs to travel to the Subgrantee's office or other location where the books or records are located to audit or retrieve the complete records.
- 34. The Subgrantee will comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, the Subgrantee will undertake good faith efforts in compliance with 40 CFR Part 33 to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE)

35. The Subgrantee shall not assign or attempt to assign directly or indirectly, any of its rights under this Agreement or under any instrument referred to herein without the prior written consent of the Grantor. The Subgrantee shall not assign all or any portion of the Property made the subject of this Agreement without the prior written consent of the Grantor. Notwithstanding anything to the contrary herein, Grantor acknowledges that pursuant to a certain Development Consulting Agreement between Adam's Apple, LLC and Subgrantee, Adam's Apple, LLC will be administering this Agreement and shall be responsible for all of PDC's obligations, duties, and expenses under this Agreement, and Grantor hereby consents to the same.

36. This Agreement is not intended to create or vest any rights in any third party or to create any third party beneficiaries.

37. All amendments to this Agreement shall be in writing and signed by both parties hereto.

38. It is expressly understood that a failure or delay on the part of the Subgrantee in the performance, in whole or in part, or any of the terms of this Agreement, if such failure is attributable to an Act of God, fire, flood, riot, insurrection, embargo, emergency or governmental orders, regulations, priority, or other limitations or restrictions, or other similar unforeseen causes beyond the reasonable control of such party, the failure or delay shall not constitute a breach or Event of Default under this Agreement; however, the Subgrantee shall use its best effort to insure that the Project is completed in a reasonable time without unnecessary delay.

39. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

40. No failure of either party to exercise any power or right given it hereunder or to insist on strict compliance by the other party with its obligations hereunder, and so custom of practice of the parties at variance with the terms hereof shall constitute a waiver of the other party's right to demand at any time exact compliance with the terms hereof.

41. All notices, requests, instructions or other documents to be given hereunder to either party by the other shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the date on which personally delivered or, if sent by certified or registered mail, on the day mailed to the parties as follows:

TO THE GRANTOR:

Neal Allen, Executive Director
Greater Portland Council of Governments
970 Baxter Boulevard, Suite 201
Portland, Maine 04103

TO THE SUBGRANTEE:

Greg Mitchell, Director of Economic Development
Portland Development Corporation

Portland City Hall
389 Congress Street, Room 308
Portland, ME 01401

or to such other address as a party may subsequently specify in writing to the other party.

42. If any provision or item of this Agreement is held invalid, such invalidity shall not affect other provisions or items of this Agreement that can be given effect without the invalid provisions or items, and to this end, the provisions of this Agreement are hereby declared severable.
43. Except for any exhibits, attachments, plats or other documents as may be affixed hereto, made a part hereof, and properly identified herewith, this Agreement constitutes the entire contract between the parties, and shall not be otherwise affected by any other purported undertaking, whether written or oral.

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be executed in the name and on behalf of each of them (acting individually or by their respective officers or appropriate legal representatives, as the case may be, hereunto duly authorized) as of the day and year first written above.

WITNESS:

SUBGRANTEE:
PORTLAND DEVELOPMENT CORPORATION

Printed Name: _____
Its: _____

WITNESS:

GRANTOR:
GREATER PORTLAND COUNCIL OF
GOVERNMENTS

Printed Name: _____
Its: _____

Exhibit 1

Evidence that the Portland Development Corporation owns by way of **fee simple title** certain real property located at 65 Munjoy Street, Portland, Maine (Map 3, Block M, Lot 5).

Exhibit 2

Draft scope of remediation work

Exhibit 3

Draft schedule for remediation work

Other documents to be provided at closing

- \$500 application fee
- A **zoning determination** by the City of Portland that the project, as designed, appears to meet all of the standards of the R6 Residential zone, subject to Planning Board approval.
- Demonstration of project feasibility as described in Section 12 above.

DEVELOPMENT CONSULTING AGREEMENT

THIS AGREEMENT is made as of the _____ day of _____, 2015, by and between Portland Development Corporation, a Maine nonprofit corporation with a place of business and mailing address of 389 Congress Street, Portland, Maine 04101 ("PDC"), and Adam's Apple, LLC, a Maine limited liability company with a place of business in Portland, Maine and mailing address of 17 Chestnut Street, 3rd Floor, Portland, Maine 04101 (the "Developer"), (collectively, the "Parties).

WITNESSETH:

WHEREAS, PDC, provides a continuum of financial assistance to business and industry throughout the city of Portland and works to institute economic development programs in Portland to ensure compliance with the city's goals, objectives, and requirements; and

WHEREAS, PDC wishes to acquire an approximately .15 acre property in the vicinity of 65 Munjoy Street in Portland (the "Property") and contract for the remediation of onsite soils known to contain environmental contaminants and thus classified as "special waste" under the Maine DEP's Maine Solid Waste Management Rules: Chapter 400 (the "Project"); and

WHEREAS, the Project is described in a certain September 17, 2014 Voluntary Response Action Program Work Plan and September 17, 2014 Soil Management Plan prepared by Credere Associates, LLC (collectively, the "VRAP Work Plan"), copies of which are attached hereto and collectively marked Exhibit A and incorporated herein by reference; and

WHEREAS, the Maine Department of Environmental Protection ("DEP") has issued to the City of Portland a December 8, 2014 No Action Assurance Letter (the "NAAL") in response to the VRAP Work Plan; and

WHEREAS, in order to finance the VRAP Work Plan, PDC consulted with the Greater Portland Council of Governments ("GPCOG") regarding the availability of brownfields cleanup grants that might be available to cover the cost of the VRAP Work Plan; and

WHEREAS, PDC, with the assistance of Developer, applied for and has been awarded a Brownfields Remediation Program grant from GPCOG in order to finance the VRAP Work Plan as set forth in GPCOG's June 15, 2015 letter to PDC, a copy of which is attached hereto and marked Exhibit B and incorporated herein by reference; and

WHEREAS, PDC and GPCOG have entered into a GPCOG Brownfields Program Subgrant Agreement of near or even date herewith (the "Grant Agreement"), a copy of which is attached hereto and marked Exhibit C and incorporated herein by reference; and

WHEREAS, PDC wishes to contract with Developer to act as its agent to oversee aspects of the Project on behalf of PDC as further described herein; and

WHEREAS, PDC wishes to complete the Project for the purpose of preparing the Property for eventual transfer to Developer for the purpose of developing a three-story residential development

consisting of at least (eight) 8 units of affordable ownership housing as further described in the Developer's January 13, 2015 development proposal to the City of Portland (the "Development"); and

WHEREAS, the Project, upon completion of construction, is expected to achieve multiple housing and economic development goals of the City of Portland;

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

1. Appointment. PDC hereby appoints the Developer as its agent to render specific services in overseeing the Project as described herein, with Developer's duties to be subject to and limited by the terms of this Agreement.

2. Services. The Developer shall perform certain services relating to the acquisition, permitting, and remediation of the Property as set forth in this Agreement and Developer shall consult with PDC as necessary to see the Project through to final completion. Developer shall use commercially reasonable efforts in the performance of its duties under this Agreement. Developer has performed or shall perform, on behalf of and at no cost to PDC, the following duties:

a. Perform Environmental Due Diligence

Update previous environmental assessments prior to PDC's acquisition of the Property; and

b. Develop Projects Plans, Budgets and Timelines

Develop a complete Project budget including balanced sources and uses, subject to approval of PDC as specified in l. below. Develop an overall Project plan in accordance with the NAAL to be performed by others, and prepare a comprehensive Project timeline; and

c. Secure Project Funding

Secure grants, loans, and/or private equity for PDC in an amount sufficient to fully capitalize the expenses of the Project; and

d. Procure and Oversee Professional Services

Negotiate and secure professional services at competitive market cost as required by the Project including but not limited to such professional services as: (1) environmental study, planning, monitoring, and reporting, (2) insurance services, (3) site assessment services, and (4) site design and engineering services.

e. Secure Required Regulatory Approvals

Secure for PDC approval any additional environmental plans (ABCA, CRP, SSQAPP) and permits as required by all applicable state, local and Federal standards from such entities as the Environmental Protection Agency, Maine Department of Environmental Protection and the City of Portland.

f. Procure and Oversee Remediation Services

Secure through a competitive process, a remediation contractor to perform the remediation of the site in conformance with the VRAP Work Plan and the NAAL. Negotiate a contract on

behalf of PDC in a form satisfactory to the City of Portland's Corporation Counsel, and once executed, administer and oversee said remediation services on behalf of PDC; and

g. Community Outreach

Facilitate open and effective communications with neighborhood groups, local organizations, abutters and other parties affected by or interested in the remediation of the Property on behalf of PDC and in its capacity as Developer; and

h. Changes

Submit suggestions or requests for reasonable changes which might improve the feasibility, efficiency, or efficacy of the Project, with any changes to executed contracts to be made only by written change order signed by Developer, PDC and any other party to the contract being modified; and

i. Insurance And Indemnification

- i. Prior to the execution of this Agreement, the Developer shall, at its own expense, carry Professional Liability Insurance for errors, omissions and negligence, in the amount of One Million Dollars (\$1,000,000.00) per claim. The Developer will also procure and maintain Automobile Insurance, General Liability Insurance, and Pollution liability coverage in amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, death and property damage, naming the PDC and City of Portland as an additional insured thereon, and also Workers' Compensation Insurance coverage. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the PDC and City of Portland, its officers or employees. For all coverages, the Developer shall furnish the PDC and thereafter maintain certificates evidencing all such coverages in a form satisfactory to the PDC, which certificates shall guarantee thirty (30) days' notice to the PDC of termination of insurance from insurance company or agent. Developer shall also be responsible for the cost of any insurance coverage that PDC is required to obtain pursuant to the GPCOG Grant Agreement.
- ii. To the fullest extent permitted by law, Developer shall defend, indemnify and hold harmless the PDC and the City of Portland, their officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and attorney's fees arising out of or resulting from the performance of this Agreement, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property, including the loss of use therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Developer, anyone directly or indirectly employed by it, or anyone for whose act it may be liable. This provision shall survive termination of this Agreement.
- iii. Environmental Indemnification. To the fullest extent permitted by law, Developer shall defend, indemnify, and hold PDC and the City of Portland harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement

payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against PDC or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Property, including without limitation the environmental matters identified in the July 1, 2014 Phase I Environmental Site Assessment and August 8, 2014 Phase II Environmental Site Assessment, both by Credere Associates, LLC, and the VRAP Work Plan. This provision shall survive termination of this Agreement.

j. Submit Applications for Financing

Prepare and submit on behalf of PDC financing applications including but not limited to the Greater Portland Council of Government's (GPCOG) Brownfield Cleanup Revolving Loan Fund (RLF) program; and

k. Record Keeping

Assemble and retain all contracts, agreements, approvals, accounting ledgers, reports and other records and data as may be necessary to carry out the Developer's functions hereunder and provide the same to PDC; and

l. Budgeting

Prepare and revise from time to time the development budget showing all sources and uses of funds implementing the Project (the "Development Budget"). PDC shall have the right to approve the Development Budget. The Development Budget shall include a reasonable project "Development Fee" payable to the Developer in connection with the Project as further described in Section 7 below. The Development Budget shall not include any direct expense to PDC and all Project expenses, including any Development Fee, will be fully capitalized by sources from entities other than PDC.

m. Accounting

Management of project accounting including intake of project sources and payment of project expenses, budgeting as described in Section 2(l) above, the preparation and submission of monthly requisitions, and preparation and presentation of final project accounting.

n. GPCOG Grant Administration

Without limiting any of the Developer's services described above, Developer shall be responsible for the administration of the Grant Agreement and all costs associated with the Grant Agreement.

3. Term. The term of this Agreement shall begin on the date hereof and shall terminate on the date that the Maine DEP issues a certificate of completion for the Project. Provided, however, that

if the DEP does not issue a certificate of completion on or before that date which is twelve (12) months after the date of execution of the Purchase and Sale Agreement between PDC and Developer, this Agreement shall automatically terminate unless extended by mutual agreement of the parties.

4. Duties of PDC. PDC shall cooperate with Developer, to the extent necessary, to enable Developer to perform the services described in section 2, and hereby authorizes its staff to take such action as is necessary to carry out these duties.

PDC acknowledges that failure to fulfill its obligations set forth above could adversely affect the viability of the Project and the Development. PDC agrees to use reasonable commercial efforts to fulfill all its said obligations. Developer acknowledges and agrees, however, that Developer is responsible for performing all of its obligations under this Agreement with minimal involvement by PDC or its staff.

Provided the other party is not in default of the terms and conditions of this Agreement, both PDC and Developer agree that neither of them shall hire any consultants who are to be paid from the Development Fee or otherwise commit to or cause any expenditure of Development Fee unless the other party consents thereto.

5. Limitations on Authority. In performing its duties under Section 2 above, Developer shall have the discretion and authority to determine the means and methods of undertaking the Project activities and expenditures necessary to bring the Project to final and successful completion of the VRAP Work Plan. Notwithstanding anything to the contrary in this Agreement, Developer covenants and agrees that all of its services provided hereunder shall be consistent with the terms and conditions of GPCOG's Brownfields Cleanup grant program, and all federal, state, and local laws, regulations, rules, and ordinances.

6. Books and Records. Developer, with the cooperation of PDC staff, shall keep reasonably detailed and accurate financial records substantiating all costs expended by PDC and Developer in connection with the Project. To the extent Developer incurs Project-related expenditures for which it expects to be reimbursed, Developer shall keep reasonably detailed and accurate records of such expenditures and shall furnish the same to PDC upon request and in any event contemporaneously with any reimbursement request for such expenses.

7. Development Fee. For the development services to be performed by the Developer under this Agreement, PDC shall pay the Developer Fee presented in the Project budget which shall not exceed 10% of project costs and shall be due and payable only to the extent that there are GPCOG Brownfield Cleanup grant funds available to pay such Developer Fee after all other Project expenses are paid and that the Developer Fee is allowable under the grant.

Provided the other party is not in default of the terms and conditions of this Agreement, both PDC and the Developer agree not to voluntarily or knowingly take actions that may result in a reduction of the Development Fee. Notwithstanding anything to the contrary in this Agreement, both parties also recognize such reductions may be unavoidable due to circumstances beyond their control. The parties agree to consult in connection with events or circumstances that may result in a reduction

of the Development Fee, but PDC shall not be obligated to accept reductions in other budget items that will otherwise have an adverse effect on PDC or the viability of the Project.

8. Default; Remedies.

- a. Default by Developer. If the Developer shall be in significant and material default in the performance of any of its covenants or obligations under this Agreement and such default shall continue unremedied for a period of thirty (30) days after its receipt of written notice thereof from PDC to the Developer, then PDC may terminate this Agreement for cause by written notice to the Developer.

Notwithstanding any termination of this Agreement by PDC for cause, Developer shall nonetheless be entitled to be paid an equitable amount of Developer's Fee as described in Section 7 which is commensurate with the reasonable value of the Developer's services through the date of Developer's receipt of PDC's notice of default, provided that such amount is available and allowable under the GPCOG Brownfields Cleanup grant, less any actual money damages incurred by PDC that directly arise from Developer's default, excluding consequential damages. Developer shall also be entitled to be reimbursed for any legitimate Project expenses, as evidenced by written invoices, actually paid by Developer prior to the date of Developer's receipt of PDC's notice of default, provided that funds for such expenses are available and allowable under the GPCOG Brownfields Cleanup grant.

- b. Default by PDC. If PDC shall be in significant and material default in the performance of any of its covenants or obligations under this Agreement and such default shall continue unremedied for a period of thirty (30) days after its receipt of written notice thereof from Developer to PDC, then Developer may terminate this Agreement for cause by written notice to PDC, but such termination shall not terminate PDC's obligation to pay any earned Developer's Fee to Developer, provided that such amount is available and allowable under the GPCOG Brownfields Cleanup grant.

In the event Developer terminates this Agreement pursuant to Section 8 b. due to default by PDC or in the event PDC terminates this Agreement for a reason other than that specified in Section 8 a. above, Developer shall be entitled to collect all of its legitimate Project expenses, as evidenced by written invoices, actually paid by Developer prior to the date of termination, plus an equitable amount of Developer's Fee as described in Section 7 which is commensurate with the reasonable value of the Developer's services through the date of termination, provided that such amounts are available and allowable under the GPCOG Brownfields Cleanup grant and shall, at Developer's option, also have the right to require PDC to convey the Property to Developer, in accordance with the terms of the Purchase and Sale Agreement between the parties, in the same condition it is in as of the date of termination or a better condition if Developer opts to proceed with the Development, provided, however, that PDC/SELLER shall have no obligation to improve or otherwise alter the condition of the Property prior to such conveyance.

9. Notwithstanding anything to the contrary in this Agreement, in the event that GPCOG does not disburse the GPCOG Brownfields Cleanup grant funds, this Agreement shall be null and void and neither party shall have any obligation or liability to the other hereunder

10. Burden and Benefit; Entire Agreement. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. Neither party may assign this Agreement without the consent of the other party. This Agreement contains the entire agreement between the parties hereto with respect to the matters set forth herein and is intended to be an integration of all prior agreements, conditions or undertakings between the parties hereto with respect to such matters. Except as expressly set forth in this Agreement, there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between the parties hereto with respect to the matters set forth herein.

11. Third-Party Beneficiary. Nothing in this Agreement shall be construed to make any of the parties hereto liable for any of the debts or other obligations of any other party hereto, and the parties hereto specifically acknowledge, agree and declare that no person is intended to be a third-party beneficiary of this Agreement.

12. General. This Agreement shall be construed and enforced in accordance with the laws of Maine, without regard to principles of conflicts of laws. No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto. No purported or alleged waiver of any of the provisions of this Agreement shall be binding and effective unless in writing and signed by the party against whom it is sought to be enforced. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which together shall constitute one and the same Agreement. All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section. All personal pronouns used in this Agreement, whether used in the masculine, feminine and neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

WITNESS:

Portland Development Corporation

By: _____
Barry Sheff, its President

Adams Apple, LLC

By: _____
Ethan Boxer-Macomber, its Member

**CITY OF PORTLAND
HOUSING TRUST FUND
AGREEMENT WITH
ADAM'S APPLE, LLC**

This Agreement is made as of the ____ day of August, 2015, by and between the **CITY OF PORTLAND**, a body politic and corporate, with a place of business at 389 Congress Street, Portland, Maine (hereinafter "CITY") and **ADAMS APPLE LLC**, a Maine limited liability corporation with a place of business at 17 Chestnut Street, 3rd Floor, Portland, Maine, (hereinafter "DEVELOPER").

RECITALS

WHEREAS, the CITY published a November 19, 2014 "Request for Proposals For the Sale and Reuse of Property Located at 65 Munjoy Street (the "Premises"), RFP #4115," as amended by Addendum #1, dated December 18, 2014, copies of which are attached hereto and collectively marked Exhibit A and incorporated herein (the Request for Proposals and Addendum #1 are collectively referred to herein as the "RFP"); and

WHEREAS, DEVELOPER submitted a proposal in response to the RFP (the "Proposal"), a copy of which is attached hereto as Exhibit B and incorporated herein; and

WHEREAS, after reviewing all proposals submitted in response to the RFP, the CITY selected DEVELOPER as the successful bidder; and

WHEREAS, DEVELOPER desires to purchase the Premises and construct affordable housing on it in accordance with the terms of the Proposal and the RFP (the "Proposed Development"), and the City desires that DEVELOPER do so; and

WHEREAS, pursuant to the terms of Purchase and Sale Agreements between the CITY and the Portland Development Corporation (hereinafter "PDC") and between the PDC and DEVELOPER of near or even date herewith, copies of which are attached hereto as Exhibits C and D, respectively, and incorporated herein, the CITY is causing the Premises to be conveyed to Developer for the construction of the Proposed Development; and

WHEREAS, the Premises is impacted by certain environmental contaminants as described

in a July 1, 2014 Phase I Environmental Site Assessment and an August 8, 2014 Phase II Environmental Site Assessment, both by Credere Associates, LLC, copies of which are attached hereto and collectively marked Exhibit E and incorporated herein by reference (collectively, the “ESAs”); and

WHEREAS, prior to constructing the Proposed Development, certain environmental remediation work must be completed as described in a certain September 17, 2014 Voluntary Response Action Program Work Plan and September 17, 2014 Soil Management Plan prepared by Credere Associates, LLC (collectively, the “VRAP Work Plan”), copies of which are attached hereto and collectively marked Exhibit F and incorporated herein by reference; and

WHEREAS, in order to finance the VRAP Work Plan, PDC consulted with the Greater Portland Council of Governments (“GPCOG”) regarding the availability of brownfields cleanup grants that might be available to cover the cost of the VRAP Work Plan; and

WHEREAS, GPCOG advised DEVELOPER and the City that they would not qualify for GPCOG’s Brownfields Remediation grants because the City may be a potentially responsible party for the environmental contaminants and Adam’s Apple is not a public or nonprofit entity, but that PDC, as a nonprofit corporation, would qualify for a grant if it were the owner of the Premises; and

WHEREAS, PDC, with the assistance of DEVELOPER, applied for and has been awarded a Brownfields Remediation Program grant from GPCOG in order to finance the VRAP Work Plan as set forth in GPCOG’s June 15, 2015 letter to PDC, a copy of which is attached hereto and marked Exhibit G and incorporated herein by reference; and

WHEREAS, PDC and GPCOG have entered into a GPCOG Brownfields Program Subgrant Agreement of near or even date herewith (the “Brownfields Grant Agreement”), a copy of which is attached hereto and marked Exhibit H and incorporated herein by reference; and

WHEREAS, PDC, DEVELOPER, and the CITY have agreed that in order to complete the VRAP Work Plan prior to the conveyance of the Property to DEVELOPER, the CITY would first convey the Premises to PDC, provided that PDC would then convey the Premises to

DEVELOPER after completion of the VRAP Work Plan; and

WHEREAS, PDC and DEVELOPER have entered into a Development Consulting Agreement of near or even date herewith, a copy of which is attached hereto as Exhibit I and incorporated herein, pursuant to which DEVELOPER shall act as PDC's agent to oversee the VRAP Work Plan during PDC's ownership of the Premises and be responsible for the administration of the Brownfields Grant Agreement and all costs associated with that agreement at no cost to PDC; and

WHEREAS, in order to help finance the VRAP Work Plan and construct the Proposed Development, the DEVELOPER has requested \$175,000.00 in funds from the City's Housing Trust Fund - \$40,000.00 of which will assist in financing the environmental remediation costs for the Premises, and \$135,000.00 of which will assist in financing the costs of construction of the Proposed Development; and

WHEREAS, in order to assist in promoting the availability of affordable housing in Portland, the CITY agrees to provide DEVELOPER with \$175,000.00 in funds from the City's Housing Trust Fund in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. Recitals Incorporated by reference. The recitals set forth above are hereby incorporated herein by reference and made a part of this Agreement. The restatement in this document of any term of any of its attachments shall not be deemed to waive any term not so restated. If any disagreement is found between this agreement and its attachments, then this document shall govern; provided, however, that this document and all of its attachments shall be construed to be supplemental to one another to the extent possible.
2. Grant. The CITY agrees, on the terms and conditions contained in this Agreement, to make a Grant to the DEVELOPER in the principal amount of One Hundred Seventy-Five Thousand Dollars (\$175,000.00) in City of Portland Housing Trust Funds (the "HTF Grant").

3. Use of Proceeds; Disbursements. The DEVELOPER shall use the proceeds of the HTF Grant for the costs associated with the VRAP Work Plan and the construction of the Proposed Development and the CITY shall disburse the proceeds as follows.
- a. The CITY shall disburse \$40,000.00 to DEVELOPER during the course of the DEVELOPER's performance under the Development Consulting Agreement. Such costs must be eligible and allowable costs under the Brownfields Grant Agreement.
 - b. The CITY shall also disburse \$135,000.00 of the HTF Grant proceeds to the DEVELOPER after the PDC conveys the Premises to the DEVELOPER and the DEVELOPER commences construction of the Proposed Development. Such disbursement shall only be for hard costs associated with the construction of the Proposed Development.
 - c. The City shall reimburse DEVELOPER for the above costs within 30 days after receipt of an itemized invoice from Developer in form and substance satisfactory to the CITY.
4. Conditions Precedent; Mortgage. The CITY's commitment to make the HTF Grant and the obligation of the CITY to make any disbursements pursuant thereto, are subject to performance by the DEVELOPER of all of its obligations under this Agreement required through the date of disbursement, and to the CITY having received on or before the Closing Date all of the items set forth in the above Recitals and all of the exhibits and amendments thereto (collectively, the "HTF Grant Documents"), each in form and substance satisfactory to the CITY. The obligation of the CITY to make any disbursement hereunder is subject to the performance by the DEVELOPER of all of its obligations under the HTF Grant Documents. The performance of DEVELOPER after disbursement of the HTF Grant shall be guaranteed by a Note for full repayment of funds disbursed, secured by a Mortgage on the Premises, at 0% interest, with one-eighth (1/8) of the Note to be deemed satisfied upon the sale of each of the 8 housing units in accordance with the terms of said Note, this Agreement, and a Declaration of Covenants, Conditions, and Restrictions between the parties of near or even date herewith. CITY shall execute a partial release of mortgage immediately prior to the sale of each unit. The Note and Mortgage shall be in the form attached hereto as Exhibits J and K.
5. Representations and Warranties of the DEVELOPER. The DEVELOPER represents and warrants to the CITY (which representations and warranties shall survive the closing of this Agreement) as follows:
- a. The DEVELOPER has all requisite power and authority to conduct its businesses, to own its properties and to execute and deliver, and to perform all of its obligations under this Agreement and the HTF Grant Documents.
 - b. The execution, delivery and performance by the DEVELOPER of this Agreement, and the HTF Grant Documents do not and will not (i) require any consent or approval of any other person which DEVELOPER has not obtained, (ii) violate any provision of any law, rule, regulation (including, without limitation, Regulation of the Board of Governors of the Federal Reserve System), order, writ, judgment,

injunction, decree, determination or award presently in effect having applicability to the DEVELOPER, (iii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which the DEVELOPER is a party or by which its properties may be bound or affected, or (iv) except as may be provided by this Agreement and/or the HTF Grant Documents, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever on the Premises.

- c. The DEVELOPER is not to its knowledge in material default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any indenture, agreement, lease or instrument by which it is bound.
- d. Except as disclosed to the CITY in writing, there are no actions, suits or proceedings pending or, to the knowledge of the DEVELOPER, threatened against or affecting the DEVELOPER or any properties or assets of the DEVELOPER before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which, if determined adversely to the DEVELOPER would have a material adverse effect on the financial condition, properties, or operations of the DEVELOPER.
- e. The DEVELOPER has filed all tax returns (Federal, state and local) required to be filed and paid all taxes shown thereon to be due, including interest and penalties, or provided adequate reserves for payment thereof.

6. Affirmative Covenants of the DEVELOPER Other than Reporting Requirements. From the date hereof and thereafter for so long as the DEVELOPER is indebted to the CITY, whether under the HTF Grant Documents or otherwise, the DEVELOPER will, unless the CITY shall otherwise consent in writing:

- a. Payment of Taxes, etc. Pay and discharge all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any Assets or properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a lien or charge upon any of its properties or Assets provided that the DEVELOPER shall not be required to pay any such tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings and as to which DEVELOPER shall have set aside on its books adequate reserves in accordance with generally accepted accounting principles. Provided, however, that if Developer is still indebted to the CITY at the time that the Declarant Control Period ends after six of the eight units have been sold, Developer shall only be responsible for payment of real estate taxes on the remaining unsold units.
- b. Maintenance of Insurance. Maintain insurance in favor of the DEVELOPER and the CITY, as their interests may appear, with responsible and reputable insurance companies reasonably acceptable to the CITY, to the extent of CITY's interest. All such insurance policies shall name the CITY as loss payee or additional insured and shall provide for at least thirty (30) days' prior notice to the CITY before cancellation or amendment of any such policy. The DEVELOPER shall provide the CITY with such evidence as the CITY may reasonably request from time to time as to the maintenance of all such insurance.

- c. Existence and Assets. Do or cause to be done all things necessary to preserve, renew and keep in full force and effect the existence of DEVELOPER and comply with all laws and regulations applicable to said limited liability company; preserve all of its Assets and property used or useful in the conduct of the company's business and keep the same in good repair, working order and condition, and from time to time, make, or cause to be made, all needful and proper repairs, renewals, replacements, betterments and improvements thereto, so that the business carried on in connection therewith may be properly and advantageously conducted at all times.
 - d. Visitation Rights. At any reasonable time and from time to time, and on reasonable advance notice, permit the CITY or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the DEVELOPER and to discuss the affairs, finances and accounts of the DEVELOPER.
 - e. Keeping of Records and Books of Account. Keep adequate records and books of account, in which complete entries will be made in accordance with generally accepted accounting principles consistently applied, reflecting all financial transactions of the DEVELOPER.
 - f. Unit Owner Income Requirements (Affordability). DEVELOPER shall comply with all provisions of the Declaration of Covenants, Conditions, and Restrictions, between the parties of near or even date herewith and all other HTF Grant Documents, and at any reasonable time and from time to time, and on reasonable advance notice, City or any agents or representatives thereof, may examine and make copies of records verifying compliance with the Affordability Requirements thereof.
 - g. DEVELOPER shall use the moneys granted pursuant to this Agreement only for the purposes set forth above.
 - h. Developer shall obtain certificates of occupancy for all units in the Proposed Development on or before July 31, 2018.
7. Negative Covenants of the DEVELOPER. It is understood by City that Developer will be obtaining construction financing from a commercial lender, and that the commercial lender will require the individual Members of Developer to contribute private equity to the funds to be used for construction. This commercial construction loan and contribution of private equity will constitute loans to Developer. In addition, the HTF Grant will be used for environmental remediation and hard costs of construction as outlined in Paragraph 3, above. CITY and DEVELOPER understand and hereby agree that the loan securing repayment of the HTF Grant in the event of default will be subordinate to the construction financing from the commercial lender and that the private equity loans from the individual members of Developer will be subordinate to the HTF Grant funds, and the parties agree to promptly execute such documents as are necessary to effectuate that subordination. Except for the construction financing from a commercial lender, the private equity loans provided by members of Developer, and the loan associated with the HFT Grant described herein, from the date hereof and thereafter for so long as the DEVELOPER is indebted to the CITY, the DEVELOPER will not, without the prior written consent of the CITY, which shall not be unreasonably withheld:

- a. Liens, Etc. Create, incur, assume or suffer to exist any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance (including the lien or retained security title of a conditional vendor) of any nature, upon or with respect to the Premises, or assign or otherwise convey any right to receive income, except that the foregoing restrictions shall not apply to pledges, liens or other charges or encumbrances:
- i. for taxes, assessments or governmental charges or levies on property or Assets of the DEVELOPER if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings, and as to which it shall have set aside on its books adequate reserves;
 - ii. Liens, charges, and encumbrances described in any Intercreditor Agreement;
 - iii. imposed by law, such as carriers', warehousemen's and mechanics' liens and other similar liens incurred by it in good faith and in the ordinary course of business;
 - iv. arising out of pledges or deposits under worker's compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation;
 - v. deposits to secure the performance of bids, tenders, contracts (other than for the repayment of Indebtedness) or leases, or to secure statutory obligations or surety or appeal bonds, or to secure indemnity, performance or other similar bonds all in the ordinary course of business;
 - vi. purchase money security interests limited to those items of personal property obtained pursuant to purchase money financing;
 - vii. encumbrances pertaining to utilities and other services to be provided to the Premises.
- b. Assumptions, Guaranties, Etc. of Indebtedness of Other Persons. Assume, guarantee, endorse or otherwise become directly or contingently liable (including, without limitation, liable by way of agreement, contingent or otherwise, to purchase or provide funds for payment, to supply funds to or otherwise invest in the debtor or otherwise to assure the creditor against loss) in connection with any obligation or indebtedness of any other Person, except as permitted by this Agreement and except for guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.
- c. Mergers, Etc. Dissolve, liquidate, merge, consolidate with or otherwise acquire all or substantially all of the assets of any other Person or more than ten percent (10%) of the capital stock or ownership interest of any other Person, or sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Assets (whether now owned or hereafter acquired) to any Person.
- d. Sales, Etc. of Assets. Sell, assign, lease or otherwise dispose of any of its Assets (other than in the ordinary course of business), unless any such Asset is replaced with a like Asset of equal or greater value.

- e. Sale and Leaseback. Enter into any sale and leaseback arrangement with any lender or investor.
8. Reporting Requirements. From the date hereof and thereafter until the DEVELOPER has sold all units in the Proposed Development, the DEVELOPER will, unless the CITY shall otherwise consent in writing, furnish to the CITY:
- a. as soon as possible and in any event within ten (10) days after the DEVELOPER has received notice from the CITY that it believes there has been an occurrence which will be an Event of Default unless it is cured within the applicable cure period, a statement of the DEVELOPER setting forth details of such possible Event of Default and the action which the DEVELOPER proposes to take to cure with respect thereto;
 - b. as soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of the DEVELOPER until the Proposed Development is completed, a true copy of the financial statements for such year for the DEVELOPER, including therein balance sheets of the DEVELOPER as of the end of such fiscal year and statements of income and retained earnings and a statement of cash flows of the DEVELOPER for such fiscal year, in each case prepared on a reviewed basis by independent certified public accountants of recognized standing acceptable to the CITY.
9. Events of Default. The DEVELOPER shall be in default under this Agreement upon the occurrence of any of the following events ("Events of Default"):
- a. Any representation, covenant or warranty made by the DEVELOPER in this Agreement and/or in any of the Grant Documents or in any written certificate, agreement, instrument or statement contemplated by or made or delivered pursuant to or in connection with this Agreement and/or any of the Grant Documents, shall prove to have been incorrect in any material respect when made; or
 - b. The DEVELOPER shall fail to perform or observe any term, covenant or agreement contained in this Agreement and/or any of the HTF Grant Documents on its part to be performed or observed within ninety (90) days after receiving written notice from CITY; or
 - c. The DEVELOPER shall fail to pay any Indebtedness owing by the DEVELOPER, any interest, commitment fee or premium thereon, when due or, if permitted by the terms of the relevant document, within any applicable grace period as referenced in this section, whether such Indebtedness shall become due by scheduled maturity, by required prepayment, by acceleration, by demand or otherwise; or the DEVELOPER shall fail to perform any term, covenant or agreement on its part to be performed under any agreement or instrument (other than this Agreement or the HTF Grant Documents) evidencing or securing or relating to any Indebtedness owing by the DEVELOPER, when required to be performed, or, if permitted by the terms of the relevant document, within any applicable grace period, if the effect of such failure is to accelerate, or to permit the holder or holders of such Indebtedness to accelerate the maturity of such Indebtedness; or
 - d. This Agreement, or any of the HTF Grant Documents, shall, at any time after their respective execution and delivery and for any reason, cease to be in full force and

effect or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the DEVELOPER, or the DEVELOPER shall deny that it has any further liability or obligation under this Agreement and/or any of the HTF Grant Documents; or

- e. The DEVELOPER shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay or fail generally to pay its debts as they become due or shall file a voluntary petition in bankruptcy, or if an order for relief shall be entered in any proceeding of the DEVELOPER under the federal bankruptcy code or if DEVELOPER shall file any petition or answer seeking any reorganization, arrangement, composition, adjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or other applicable federal, state or other statute, law or regulation, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the DEVELOPER or of all or any substantial part of its properties, or if action shall be taken for the purpose of effecting any of the foregoing; or
- f. The DEVELOPER shall be adjudicated a bankrupt, or if any proceeding against the DEVELOPER seeking any reorganization, arrangement, composition, adjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or other applicable federal, state or other statute, law or regulation shall be commenced and not stayed or dismissed within ninety (90) days, or if any trustee, custodian, receiver or liquidator of the DEVELOPER or of all or any substantial part of the properties of the DEVELOPER shall be appointed without the consent or acquiescence of the DEVELOPER; or
- g. DEVELOPER fails to comply with the Affordable Housing Covenants as defined in the HTF Grant Documents and such failure is not cured within sixty (60) days' written notice thereof, provided, however, that if such failure cannot be cured within such sixty (60) day period, DEVELOPER shall have an additional reasonable period of time in which to cure the same, provided DEVELOPER commences to cure and diligently prosecutes the cure during the initial sixty (60) day period to the CITY's satisfaction; or
- h. The cancellation, lapse, or termination of any insurance coverage required to be maintained by the DEVELOPER under any of the HTF Grant Documents, and the same is not reinstated within five (5) days of notice from CITY; or
- i. The Premises is conveyed, voluntarily encumbered or otherwise transferred in any way (except as expressly contemplated herein) without the prior written consent of the CITY, which consent shall not be unreasonably withheld; or
- j. The Premises or any material portion thereof is materially injured or destroyed by fire or otherwise or any material portion thereof is taken by eminent domain and the insurance proceeds or condemnation award do not, in CITY's judgment, fully compensate the DEVELOPER therefor; or
- k. A default in any loan documents executed by DEVELOPER for financing the Proposed Development not cured within a period of sixty (60) days after notice of such default.

10. Remedies of CITY. Upon the occurrence of any one or more Events of Default not cured within any applicable grace period and at any time thereafter:

- a. The CITY may, by written notice to the DEVELOPER, declare its obligation to make the HTF Grant and any further disbursements to be terminated, whereupon the same shall forthwith terminate, and the DEVELOPER shall immediately reimburse the CITY for all disbursements already made hereunder.
- b. The City shall be able to exercise any of its rights under this Agreement or the HTF Grant Documents, maintain an action, and pursue all remedies, in law or in equity against the Developer, including, without limitation, to recover damages incurred by City from such failure, and to require Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and in the HTF Agreement and to immediately cure any failure by the Developer to comply with the covenants set forth herein or in the HTF Grant Documents. In the event of any dispute between the CITY and DEVELOPER under this Agreement or the HTF Grant Documents, in the event the CITY prevails, the CITY shall be entitled to recover from CONTRACTOR its reasonable attorneys fees and costs of litigation.

11. Definitions. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Assets" means any and all of the DEVELOPER's presently owned or hereafter acquired tangible and intangible property, rights, interests, franchises, licenses, permits, claims and benefits including without limitation all accounts, contract rights, Receivables, chattel paper, general intangibles, patents, trademarks, trade names, copyrights, equipment, machinery, goods, inventory, fixtures, vehicles, leasehold interests, real property, cash and the proceeds, products, accessions, replacements and substitutions therefor, wheresoever located and howsoever evidenced, and any right, title or interest of the DEVELOPER in any of the foregoing types of property owned by any other Person.

"Closing Date" means the date on which this Agreement becomes effective, which date is first written above.

"Disbursements" means each advance of funds by the CITY to the DEVELOPER in accordance with this Agreement as part of the HTF Grant.

"Events of Default" has the meaning assigned to that term in Section 9.

"Indebtedness" (i) all indebtedness or other obligations of any other person for borrowed money or for the deferred purchase price of property or services the payment or collection of which such person has guaranteed (except by reason of endorsement for collection in the ordinary course of business) or in respect of which such person is liable, contingently or otherwise, including, without limitation, liable by way of agreement to purchase, to provide funds for payment, to supply funds to or otherwise to invest in such other person, or otherwise to assure a creditor against loss, (ii) all indebtedness or other obligations of any other Person for borrowed money or for the deferred purchase price of property or

services secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance upon or in the Assets and/or property (including, without limitation, accounts and contract rights) owned by such person, whether or not such person has assumed or become liable for the payment of such indebtedness or obligations, and (iii) capitalized lease obligations of such person and (iv) all other liabilities or obligations of such person which would, in accordance with generally accepted accounting principles, be classified as liabilities of a person conducting a business the same as or similar to that of such person.

"Person" means in individual, corporation, partnership, joint venture, trust or unincorporated organization, or a government or any agency or political subdivision thereof.

"HTF Grant Documents" means all of the documents and agreements referenced in this Agreement, all exhibits and amendments thereto, and all other documents that the CITY may require in connection therewith up to the Closing Date.

12. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistent with those applied in the preparation of the financial statements and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles.
13. No Waiver; Cumulative Remedies. No failure or delay on the part of the CITY, or any other holder of the Note in exercising any right, power or remedy under this Agreement and/or any of the HTF Grant Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.
14. Amendments, Etc. No amendment, modification, termination, or waiver of any provision of this Agreement or any of the HTF Grant Documents nor consent to any departure by the DEVELOPER therefrom, shall in any event be effective unless the same shall be in writing and signed by the CITY and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the DEVELOPER in any case shall entitle the DEVELOPER to any other or further notice or demand in similar or other circumstances, except as otherwise provided herein.
15. Addresses for Notices, Etc. All notices, requests, demands and other communications provided for hereunder shall be in writing (including telegraphic communication) and delivered by hand, mailed or telegraphed or delivered to the applicable party at the addresses indicated below:

If to the DEVELOPER: ADAM'S APPLE, LLC
 17 Chestnut Street, 3rd Floor

Portland ME 04101

with a copy to: Barbara Vestal, Esq.
Chester & Vestal, P.A.
107 Congress Street

Portland, ME 04101

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

with a copy to: Corporation Counsel
City of Portland
389 Congress Street
Portland, ME 04101

or, as to each party, at such other address as shall be designated by such party in a written notice to each other party complying as to delivery with the terms of this Section. All such notices, requests, demands and other communications shall be effective when actually delivered by hand or shall, when mailed or telegraphed, be effective three (3) days after deposit in the mails or delivery to the telegraph company, respectively, addressed as aforesaid, except that notices or requests to the CITY pursuant to any of the provisions of Article I, shall not be effective until received by the CITY.

16. DEVELOPER shall indemnify and hold CITY and its agents harmless from and against any and all claims, demands, liability, loss cost or expense (including, but not limited to reasonable attorney's fees and other costs of litigation) which may be incurred by CITY arising out of or in any way related to DEVELOPER's breach of any of its obligations under this Agreement or the HTF Grant Documents or any action taken by CITY to enforce or exercise its rights under this Agreement or the HTF Grant Documents as a result of such breach. The obligations under this section shall survive the termination or expiration of this Agreement as necessary to effect its provisions.
17. Protection of Assets. In addition to the disbursements, the CITY may at any time at its option discharge or bond any liens or other encumbrances upon, purchase and maintain required insurance in respect of, and otherwise preserve and protect the value of the Assets, and pay any other sums DEVELOPER is obligated to pay under this Agreement, the Note and/or the Grant Documents. Any amounts expended by the CITY for any such purpose shall be treated in all respects as disbursements and shall be secured by the Grant Documents.
18. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the DEVELOPER and the CITY and their respective successors and assigns,

except that the DEVELOPER shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the CITY. The CITY may assign, negotiate or pledge all or any portion of its rights under this Agreement or any of its rights or security with respect to the HTF Grant Documents and in case of such assignment, negotiation or pledge the DEVELOPER shall accord full recognition thereto.

19. Grantee understands that the grant funds to be supplied by the City represents the City's sole commitment to the cost of the Proposed Development. Any and all additional costs associated with the Proposed Development over and above the City's grant funding shall be borne by the Grantee. This Agreement does not form a partnership or joint venture between the parties hereto.
20. Governing Law. This Agreement and the Note shall be governed by, and construed in accordance with, the laws of the State of Maine.
21. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
22. Survival. This Agreement and all covenants, agreements, representations and warranties made herein and the certificates delivered pursuant hereto shall survive the making by the CITY of this HTF Grant and the execution and delivery to the CITY of the HTF Grant Documents.
23. Headings. Article and Section headings in this Agreement are included herein for convenience or reference only and shall not constitute a part of this Agreement for any other purpose.
24. Inconsistent Provisions. To the extent of any inconsistency between the provisions of this Agreement, the Note and/or the HTF Grant Documents, the provisions of this Agreement shall control; provided, however, that nothing herein or in any other part of this Agreement shall be construed to limit the right of DEVELOPER to require PDC, as SELLER, to convey the Premises to DEVELOPER pursuant to Paragraph 8 of the Development Consulting Agreement between PDC and Developer and/or pursuant to Paragraph 9 of the Purchase and Sale Agreement between PDC and Developer in the event of the conditions outlined therein.

Signature page follows

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the parties as of the date first above written.

WITNESS:

CITY OF PORTLAND

By: _____
Jon Jennings
Its City Manager

ADAM'S APPLE, LLC

Witness _____

By: _____
Printed Name: _____
Its _____

EXHIBIT J

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is entered into by and between the CITY OF PORTLAND, a public body corporate and politic with a mailing address of City Hall, 389 Congress Street, Portland, ME 04101 (City") and Adam's Apple, LLC, a Maine limited liability company with a place of business and mailing address of 17 Chestnut Street, Portland, Maine 04101 ("Developer").

WITNESSETH

WHEREAS, the City is providing a grant to Developer in the amount of \$175,000.00 from its Housing Trust Fund (the "Grant") to assist with the construction of an 8 unit residential condominium project for low to moderate income families on land known as 65 Munjoy Street, Portland, Maine (the "Development"), and the City is causing that land to be conveyed to Developer by the Portland Development Corporation for the sum of one dollar; and

WHEREAS, the Developer acknowledges City's resulting beneficial interest in the Development, and Developer acknowledges that its development and sales of units in the Development are in furtherance of the discharge of a public trust; and

WHEREAS, City has provided the Grant to Developer and has caused the land to be conveyed to Developer in consideration of the Developer's agreement to abide by the provisions of this Declaration,

NOW THEREFORE, the City and Developer agree as follows:

1. During the term of this Declaration, all of the units in the Development, being at least 8 units, shall be available for sale to and ownership by only those households earning no more than 120% of area median income ("Eligible Households") as defined by the U.S. Department of Housing and Urban Development ("HUD") or any successor agency.

2. The covenants and restrictions of the Developer and City set forth herein are intended to be and shall be considered covenants which run with the real estate described in Exhibit A attached hereto and shall during the term of this Declaration bind all subsequent owners of the real estate described in Exhibit A attached hereto, and all owners of units in the Development, except to the extent provided herein.

3. The covenants of the Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by the Developer, foreclosure or transfer of title in lieu of foreclosure, except to the extent provided herein, but shall cease to apply to the Development in the event of involuntary noncompliance caused by fire or other substantial destruction, seizure, requisition or other event that prevents City from enforcing the Developer's covenants contained herein.

4. The term of this Declaration shall commence at the date of the execution of the Declaration and continue for a period of up to ninety (90) years after the first conveyance of any Unit to a Unit Owner unless sooner terminated by City as provided herein. For a period of ninety (90) years after completion of the Condominium (the "Restricted Period"), the Condominium Owners' Association shall not have any power to amend the Affordability Declaration without the consent of the City of Portland. After the passage of twenty (20) years after completion of the Condominium, and once every ten (10) years thereafter or at such other times as may be allowed by the City of Portland, upon the vote of a majority of the Unit owners, the Condominium Owners' Association may petition the City of Portland, as Qualified Holder under 33 M.R.S.A. Section 121(3), to terminate this Declaration of Covenants, Conditions and Restrictions. Upon (a) the approval of such termination by the City of Portland, as evidenced by the recording of a document terminating the Affordability Declaration, or (b) the passage of ninety (90) years after the first conveyance of any Unit to a Unit Owner, the Units shall no longer be subject to any affordability restrictions.

5. Developer and City agree and intend that the covenants contained herein are to be interpreted as "Affordable Housing Covenants" as defined by 33 M.R.S.A. Section 121. Both Developer and the City shall be deemed to be "Qualified Holders" under 33 M.R.S.A. Section 121(3) from the date of execution hereof until the date of the completion of the first sale of each of the units in the Development (hereinafter "Initial Sales Period"); during that Initial Sales Period, Developer shall have primary responsibility for the enforcement and administration of this Agreement and the City shall take no action either to enforce or administer this Agreement unless Developer fails to do so after written notice by the City.

Notwithstanding anything to the contrary above, during the initial sales period, Developer shall obtain written and signed certifications of residents in a form acceptable to City to determine the qualifications of the residents for purchase of a unit. Such certifications shall contain clauses wherein each resident (a) certifies as to the accuracy of statements made relating to the resident's income, (b) agrees that resident income and other eligibility requirements shall be deemed substantial and material obligations of the ownership, (c) agrees to comply all requests for information with respect thereto from Developer or City, and (d) agrees that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of a substantial obligation of the ownership. Developer covenants and agrees to take such action as City reasonably deems necessary to comply with the covenants herein or to correct or cure any failure of the Developer to comply with the covenants herein.

After the Initial Sales Period, provided Developer has not defaulted in its obligations under this Agreement, Developer shall cease to be a Qualified Holder and the City shall be the sole Qualified Holder with sole right, but not the obligation, to enforce and administer these covenants.

6. Developer hereby covenants and represents to City as follows:

(a) The Development shall consist of one or more buildings and be located on the real estate described in Exhibit A attached hereto.

(b) All of the units in the Development shall be sold to Eligible Households during the Initial Sales Period. After the Initial Sales Period, it shall be City's responsibility to ensure that on subsequent sales, all of the units in the Development are sold to Eligible Households.

7. During the Initial Sales Period, Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, records related to compliance with the covenants contained in this Declaration. Such books, records, documents and plans shall be kept for a minimum of six (6) years after the expiration of the Initial Sales Period.

8. During the Initial Sales Period, Developer covenants and agrees to take such action as City deems necessary to comply with the covenants herein or to correct or cure any failure of the Developer to comply with the covenants herein. In the event Developer fails to comply with the covenants set forth herein and fails to cure such non-compliance within any applicable cure period, City may maintain an action to require Developer, through injunctive relief or specific performance, to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by Developer.

9. In the event the Developer fails to comply with the covenants set forth herein, or fails to comply with the terms of a certain Housing Trust Fund Grant Agreement between the Developer and the City of near or even date herewith (the "HTF Agreement"), a copy of which is attached hereto as Exhibit B and incorporated herein by reference, and fails to cure such non-compliance within any applicable cure period, City shall be able to exercise any of its rights under the HTF Agreement, maintain an action in law or in equity against the Developer to recover damages incurred by City from such failure, and to require Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and in the HTF Agreement and to immediately cure any failure to comply with the covenants set forth herein by the Developer. In the event of any litigation between the City and Developer under this Declaration or the HTF Agreement, should the City be the prevailing party, the City shall be entitled to recover from Developer its reasonable attorneys fees and costs of litigation.

10. Developer shall defend, indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to attorney's fees and other costs of litigation) which may be incurred by the City arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration or any action taken by the City to enforce or exercise its rights under this Declaration as a result of such breach, except for claims arising from the gross negligence or willful acts of the City. The obligations under this section shall survive the termination or expiration of this Declaration as necessary to effectuate its provisions.

11. This Declaration may be amended or modified in whole or in part only by written agreement of Developer and City clearly expressing the intent to modify this Declaration.

12. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of remaining portions thereof.

13. This Declaration shall be binding upon the Developer and its successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.

14. Any notice or demand required or provided for in this Declaration shall be in writing and shall be deemed to have been sufficiently given for all purposes when hand-delivered or mailed by certified or registered United States mail, postage prepaid, or sent by overnight United States mail or overnight commercial delivery service to the Developer or the City at their respective addresses set forth herein, or at such other address as either of them may from time to time hereafter designate by notice given to the other as herein provided.

15. This Declaration is created pursuant to and shall be construed in accordance with and governed by the laws of the State of Maine, including 33 M.R.S.A. Section 121, et. seq.

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and City this ____ day of _____, 2015.

WITNESS

CITY OF PORTLAND

By: _____
Jon Jennings, City Manager

STATE OF MAINE
CUMBERLAND, ss.

_____, 2015

Personally appeared the above named Jon Jennings, City Manager of the City of Portland as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

Notary Public/Attorney at Law

Printed name: _____

My Commission Expires: _____

WITNESS

ADAM'S APPLE, LLC, Developer

By: _____
Peter L. Bass, its Member

STATE OF MAINE
CUMBERLAND, ss.

_____, 2015

Personally appeared the above named Peter L. Bass, Member of Adam's Apple, LLC as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said company.

Before me,

Notary Public/Attorney at Law

Printed name: _____

My Commission Expires: _____

MEMORANDUM OF UNDERSTANDING

Marketing Plan - 65 Munjoy Street: To Address First-Time Homebuyer Set-Aside and Household Size Restrictions for 3 Bedroom Units

This Memorandum of understanding is made the _____ day of _____, 2015 by and between Adam's Apple, LLC, a Maine limited liability corporation ("AALLC") and the City of Portland, a Maine body corporate and politic with a place of business in Portland, Maine (the "City"), collectively, (the "Parties").

WITNESSETH:

WHEREAS, the City has agreed to sell and AALLC has agreed to purchase an approximately 6,771 square foot parcel of land located in the vicinity of 65 Munjoy Street in Portland, Maine; and

WHEREAS, AALLC was selected by the City through a competitive RFP (request for proposals) process and based on the development proposal submitted by AALLC on January 13, 2015 calling for an 8-unit residential condominium with all units to be sold at price points affordable to households of moderate incomes in the range of 100-120% of Area Median income (the "Project"); and

WHEREAS, the City, in order to advance its affordability goals for the Project, intends to grant the project a \$175,000 subsidy from the City's Housing Trust Fund (the "HTF"); and

WHEREAS, on June 17, 2015, AALLC was successful in securing a commitment from the Greater Portland Council of Governments in the amount of \$200,000 to partially fund the environmental remediation of contaminated soils known to exist at the subject property; and

WHEREAS, on July 8, 2015 the City's Housing and Community Development Committee voted unanimously to recommend that the City Council approve the project as presented but with an additional requirement that four (4) of units be set aside for first-time homebuyers at initial point of sale only; and

WHEREAS, AALLC supports the spirit and intent of a first-time homebuyer set-aside and has pledged to actively pursue the goal of identifying and placing qualifying first-time homebuyers in at least 4 of the units at the Project to the extent that this can be achieved without adding risk or delay to, or otherwise affecting the financial feasibility of the Project; and

WHEREAS, AALLC supports the spirit and intent of selling 3 bedroom units to households of 3 or greater and has pledged to actively pursue the goal of identifying and placing qualifying 3 plus member households in the two (2) 3-bedroom units at the

Project to the extent that this can be achieved without adding risk or delay to, or otherwise affecting the financial feasibility of the Project; and

WHEREAS, AALLC, finds that a first-time homebuyer set-aside as well as certain restrictions on household size, if legally or contractually binding on the Project, through such mechanism as a condition of purchase and sale, condition of HTF grant agreement, deed restriction, or the like, would extend scheduled Project marketing time and Project carrying costs and therefore impair AALLC's ability to secure construction financing at terms needed to make the Project feasible; and

WHEREAS, the parties wish to memorialize the terms by which the first-time homebuyer set-aside goal and certain household size restrictions will be pursued by AALLC in the course of its execution of the Project without unduly affecting AALLC's ability to secure construction loan financing at terms that preserve the feasibility of the Project;

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

1. AALLC pledges to work closely with the City to implement the following internal project marketing plan in order to provide would-be first-time homebuyers with ample time and support to learn about the project, demonstrate their eligibility and financial capacity to purchase a unit, and benefit from a preferred position in the reservation process in the form of a first-time homebuyer set-aside.
2. AALLC pledges to work closely with the City to implement the following internal project marketing plan in order to provide 3 plus member household homebuyers with ample time and support to learn about the project, demonstrate their eligibility and financial capacity to purchase a unit, and benefit from a preferred position in the reservation process.

AALLC's internal marketing plan to restrict 3 bedroom units to households of 3 or more and the first-time homebuyer set-aside plan shall be structured as follows:

Phase I – Open Marketing Campaign

Within 21 days of execution of Purchase and Sale, and HTF Agreements between the Parties, AALLC shall craft and implement, with and through its contracted sales agent, a comprehensive marketing campaign to actively market the units at the Project by various means including but not limited to:

- i. List one of each type of unit on the Multiple Listing Service (MLS), referencing assistance available for first-time homebuyers, and directing interested parties to contact AALLC's sales agent, Bay Realty; and

- ii. Run an advertisement for the Project in the Sunday Real Estate section of the Portland Press Herald / Maine Sunday Telegram, referencing assistance available for first-time homebuyers, and encouraging interested parties to contact AALLC's sales agent; and
- iii. Distribute a press release to local media outlets announcing the Project, referencing assistance available for first-time homebuyers, and encouraging interested parties to contact AALLC's sales agent; and
- iv. Pursue first-time homebuyer leads received prior to the execution of contractual agreements between the Parties and add such leads to the Interested Parties List; and
- v. Solicit first-time homebuyer leads from Avesta Housing's Homeownership Center (AHC), local FHA lenders, and the City of Portland's Community Development Division (CDD).

Phase II – First-Time Homebuyer Set-Aside Period and 3 Bedroom Unit Family Size Restrictions.

For a period of **70 days** following the full commencement of the marketing campaign described above, AALLC shall set aside no fewer than **6 of the units** at the Project for buyers that qualify as first-time homebuyer's as defined by MaineHousing (the "First-Time Homebuyer Set-Aside Period"). During the First-Time Homebuyer Set-Aside Period, AALLC shall either directly or through its agents:

- i. Collect and compile a general "Interested Parties List" of all parties that express interest in purchasing a unit at the Project as a result of the marketing efforts outlined above; and
- ii. Communicate with all interested parties to assess whether such parties may potentially qualify as "First-Time Homebuyers" as defined by MaineHousing and/or as "3 or more member households".
- iii. Openly share and regularly review the Interested Parties List with the City of Portland's Community Development Division and Avesta Housing's Homeownership Center each of which will provide support in the effort to prequalify first-time homebuyers and 3 or more member households.
- iv. Surround all potential First-Time Homebuyers with outreach and support from AALLC's sales agent, Avesta Housing's Homeownership Center (AHC), local FHA lenders, and the City of Portland's Community Development Division (CDD). Such support shall include but not be limited to:

- a. Free enrollment in AHC classes for first-time homebuyer and financial literacy training, and
 - b. Mortgage prequalification assistance, and
 - c. Review of all forms of sub-market assistance available to first-time homebuyers such as FHA financing, down-payment assistance programs, and the like.
- v. Prepare as many first-time buyers and 3 or more member households as possible from the Interested Parties List to be financially pre-qualified to move forward and enter into a reservation agreement for a unit within the Project.
- vi. Enter into reservation agreements (if prior to recording of subdivision plat and declaration of condominium) or purchase & sale agreements (if post recording of plat and declaration) with qualifying first-time homebuyers and with 3 or more member households who have demonstrated the financial capacity and desire to purchase a unit in the Project at the full list price.
- vii. Reservation agreements¹ will be converted to purchase and sale agreements upon recording of the subdivision plat and declaration of condominium provided that there will have been no change in their qualifications in terms of First-Time Homebuyer status, household size status or financial capacity to close at the full list price.
- viii. Phase II shall end with respect to first time homebuyers after **6 units** have been reserved or contracted for sale to qualifying first-time homebuyers or 70 calendar days from the start of the phase; whichever comes first. Phase II shall end with respect to 3 or more member households 70 calendar days after the start of the phase, or sooner if both 3-bedroom units are under contract to first time homebuyers who are also 3 or more member households.
- ix. During Phase II, at least **2 units** shall be exempt from the first time homebuyer set-aside and may be reserved or placed under contract with non-first-time homebuyers (the "Exempt Units"). One of the two Exempt Units shall be a one-bedroom unit and the other may be a two- or three-bedroom unit, at the discretion of AALLC. Aside from these bedroom parameters, the Exempt Units may be any two units within the Project.

Phase III- Open Reservation Period

Following the end of Phase II, as defined above, AALLC will continue to work with its community partners as outlined for Phase II in an ongoing effort to attract, support, and qualify first-time homebuyers and 3 or more member households to the project. However, AALLC will be under no further obligation under this or any other agreement to provide first-time homebuyers or 3 or more member households with any special set-asides, and

¹ See Sample Reservation Agreement Attached

following the end of Phase II, all remaining units in the Project, if any, may be marketed and sold to any qualifying buyer regardless of household size and regardless of whether a first time homebuyer. This internal marketing plan applies only to initial unit sales, and has no bearing on resale of any unit by the initial purchaser.

IN WITNESS WHEREOF, the parties have caused the Memorandum to be executed as of the day and year first written above.

ADAM'S APPLE, LLC

Witness

By: _____
Ethan Boxer-Macomber,
Managing Member

Witness

By: _____
Peter Bass,
Managing Member

CITY OF PORTLAND

Witness

By: _____
Jon P. Jennings, City Manager

*Order 69-15/16
Tab 14 9-21-15*

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6, (BUILDINGS AND BUILDING REGULATIONS),
Re: Registration and Renewal Fee Discounts**

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

1. *That Chapter 6, Section 6-151 of the Portland City Code
is hereby amended as follows:*

Sec. 6-151. Registration required.

(a) For purposes of this Article, a *rental unit* is a portion of any residential structure that is rented or available for rent to any individual or individuals for any length of time. A Single-Family Home, Condominium, or Apartment that is occupied by the owner or owners, and of which no portion is rented or available for rent, is not a *rental unit*. Any portion of a Single-Family Home, Condominium, or Apartment that is rented to or available to be rented to an individual or individuals who are not the owner or owners is a *rental unit*. *Dwelling units* and *rooming units* as defined in §6-106 are, without limitation, *rental units*.

(b) *Registration of ownership.* The owner or owners of all buildings containing one (1) or more rental units within the city shall register their ownership interest, address, telephone number, and e-mail address, as well as the name, address and telephone number of the person or entity responsible for managing the property with a housing safety official designated by the city manager as provided in section 6-152 by January 1, 2016 or within thirty (30) days of purchase of the property and/or building, whichever occurs later.

(c) *Fee for Registration.* The owner or owners shall pay to a housing safety official designated by the city manager a fee of \$35 per rental unit at the time of registration. Failure to pay this fee by January 1, 2016 shall constitute a violation pursuant to section 6-153.

(d) *Annual Renewal and Fee.* The owner or owners shall renew their registration annually by updating the information provided in their initial registration and by payment to the City through a housing safety official designated by the City Manager of a fee of \$35 per rental unit. Failure to update information or pay the annual renewal fee by January 1 shall constitute a violation pursuant to section 6-153.

(e) *Registration of management companies.* Any individual, firm, corporation or purchaser under a land installment contract pursuant to Title 13 M.R.S.A. § 481 et seq. as may be amended from time to time, managing property subject to the registration requirements of subsection (a) shall register with the building authority its management responsibility by January 1, 2016 or within thirty (30) days of assuming management responsibility. Any filing shall be updated, at least annually, if there are any changes whatsoever with regard to the information supplied. Failure to register management responsibility or update the information supplied regarding such management responsibility shall constitute a violation pursuant to section 6-153.

(f) *Registration and Renewal Fee Discounts.* In recognition that there are certain actions that owners of rental units may take that reduce the safety risk and decrease the financial burden upon the City, the following discounts to the registration fee and renewal fee are available:

- (1) \$10 discount for each rental unit within a fully-sprinkled building as verified by a testing report, maintenance report or a maintenance contract, which shall be provided at the time of registration and upon each renewal;
- (2) \$7.50 discount for each rental unit within a building with a centrally-monitored fire alarm as verified by Fire Department logs or an alarm contract, which shall be provided at the time of registration and upon each renewal;
- (3) \$5.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Housing Quality Standard (HQS) inspection within the preceding year as verified by the HQS inspection report, which shall be provided at the time of registration and upon each renewal;

- (4) \$10.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Uniform Physical Condition Standard (UPCS) inspection within the preceding year as verified by the UPCS inspection report, which shall be provided at the time of registration and upon each renewal;
- (5) \$2.50 for a rental unit that is subject to a signed lease which prohibits smoking by tenants as verified by a copy of the current lease, which shall be provided at the time of registration and upon each renewal. The existence of and enforcement of such provision may also be verified through inspections or upon spot checks of the rental unit.

The total amount of discounts from the annual registration or renewal fee as described above shall not exceed \$20.00, and the minimum annual fee for registration or renewal shall be \$15.00 per unit.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Julie Sullivan

DATE: 9/14/15

DISTRIBUTION: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

SUBJECT: Housing Safety Office: Proposed Landlord Registration Fee Discounts

SPONSOR: Councilor Suslovic, Public Safety, Health & Human Services; met 9/8/15 and voted 3-1.

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading Sept 21 Final Action Oct 5

Can action be taken at a later date: Yes X No (If no why not?) The landlord registration fees are due Jan. 1, and the new Housing Safety Office needs the discounts finalized in order to conduct thorough outreach to the landlords.

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

I. SUMMARY OF ISSUE (Agenda Description) As part of the overall recommendations to improve rental housing safety, the Fire/Code Task Force suggested a \$25 per-unit annual landlord registration fee to strengthen the City's existing landlord registration ordinance, ensure that the City has accurate and complete data on rental housing stock including landlord contact information, and support the new Housing Safety Office. The Task Force used the City's conservative estimate that there are 17,000 rental housing units in Portland, excluding the approximately 1,000 Portland Housing Authority-owned units. During the Fiscal Year 2016 budget process, the budget team opted to increase the per-unit fee to \$35 and assume a 30% noncompliance rate, for total estimated revenue of \$416,500.

The Task Force did not consider any discounts or exemptions beyond the PHA-owned units; at the City Council's request, I have researched possible options and an ad-hoc stakeholder group (with the landlords who participated in the Task Force as well as others; please see the list below) met on Friday, August 7 to discuss these options.

During the landlord stakeholder meeting on August 7, one of the key points made was that the landlord registration process can and should be used to incentivize safer buildings, though they agreed that some safety measures can be hard to verify, including an enforced smoke-free policy. They argued, however, that offering a nominal discount for a smoke-free policy could be an effective means to educate landlords about the issue. Ultimately, they came to consensus on the following discounts:

- -\$10 for a fully-sprinkled building (verification: testing/maintenance report and/or maintenance contract)
- -\$7.50 for a centrally-monitored fire alarm (verification: Fire Department logs and/or alarm contract)
- -\$5 for a HUD HQS inspection (verification: inspection report within last year)
- -\$10 for a HUD UPCS inspection (verification: inspection report within last year)
- -\$2.50 for a smoke-free policy (verification: copy of lease and spot checks)
- The fee should not drop below \$15

II. REASON FOR SUBMISSION (Summary of Issue/Background) See I.

III. INTENDED RESULT Finalize landlord registration fees for 1/1/16 implementation.

IV. COUNCIL GOAL ADDRESSED Rental housing safety

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS Landlord registration fee memo; options; program research; proposed ordinance language.

Prepared by: Julie Sullivan and Adam Lee

Date: 9/14/15



Executive Department
Julie Sullivan, Acting Chief of Staff

M E M O R A N D U M

TO: Public Safety, Health & Human Services Committee, City Council
FROM: Julie Sullivan
DATE: August 27, 2015
RE: Landlord Registration Fee – Possible Discounts/Exemptions and Revenue Impacts

As part of the overall recommendations to improve rental housing safety, the Fire/Code Task Force suggested a \$25 per-unit annual landlord registration fee to strengthen the City's existing landlord registration ordinance, ensure that the City has accurate and complete data on rental housing stock including landlord contact information, and support the new Housing Safety Office. The Task Force used the City's conservative estimate that there are 17,000 rental housing units in Portland, excluding the approximately 1,000 Portland Housing Authority-owned units. During the Fiscal Year 2016 budget process, the budget team opted to increase the per-unit fee to \$35 and assume a 30% noncompliance rate, for total estimated revenue of \$416,500.

The Task Force did not consider any discounts or exemptions beyond the PHA-owned units; at the City Council's request, I have researched possible options and an ad-hoc stakeholder group (with the landlords who participated in the Task Force as well as others; please see the list below) met on Friday, August 7 to discuss these options.

First, thirty-four municipalities around the country who have landlord registration fee ordinances were reviewed. An extremely wide range of fees are required, with more commonalities among the kinds of discounts or exemptions offered. Many exempt owner-occupied buildings with two or sometimes more units; the Task Force chose not to include this exemption as part of its initial recommendations. Many more offer no discounts or exemptions whatsoever. Most have some discount or exemption for government-owned/operated buildings and/or those inspected as part of federal and/or state funding requirements.

I spoke at length with Bob Conroy of MaineHousing, who is expert on HUD funding requirements around inspections, as well as his colleague Kim Weed, who is in charge of inspections for MaineHousing. Both agreed that discounting or exempting government-owned/operated units or those subject to state/federal inspections is a meaningful choice that still ensures the safety of those units. They did not think that smoke-free policies were reasonable grounds for a discount, nor did I find evidence among any of the 34 municipalities reviewed of such discounts.



Executive Department
Julie Sullivan, Acting Chief of Staff

Finally, the option of a discount for a fully-sprinkled building is far more complicated to enact than one would think, primarily because our ordinance does not clearly distinguish a threshold above which a building is required to be fully sprinkled, nor do we have any records showing how many rental housing units are in buildings which are fully sprinkled. I also did not find evidence among any of the 34 comparison cities of such a discount.

During the landlord stakeholder meeting on August 7, one of the key points made was that the landlord registration process can and should be used to incentivize safer buildings, though they agreed that some safety measures can be hard to verify, including an enforced smoke-free policy. They argued, however, that offering a nominal discount for a smoke-free policy could be an effective means to educate landlords about the issue. Ultimately, they came to consensus on the following discounts:

- -\$10 for a fully-sprinkled building (verification: testing/maintenance report and/or maintenance contract)
- -\$7.50 for a centrally-monitored fire alarm (verification: Fire Department logs and/or alarm contract)
- -\$5 for a HUD HQS inspection (verification: inspection report within last year)
- -\$10 for a HUD UPCS inspection (verification: inspection report within last year)
- -\$2.50 for a smoke-free policy (verification: copy of lease and spot checks)
- The fee should not drop below \$15

On the following spreadsheet, you will see the revenue impact of implementing an exemption and a discount for the approximately 3,500 units that are inspected by state or federal agents. There is about an \$86,000 revenue loss for an exemption, and about a \$16,000 loss for a \$5/unit discount for a HUD HQS inspected properties and a \$10/unit discount for HUD UPCS inspected properties.

Because we have no way to estimate the number of residential rental units with sprinkler systems, fire alarms, or smoke-free policies, I cannot predict with any certainty what the revenue loss would be for such discounts. We could put fields on the registration form and begin to track these with the idea of providing discounts once we understand the ramifications.

It seems prudent to implement the discount for government-inspected units with a minimal revenue loss; I am hopeful we can minimize the non-collection rate through efficient and effective staff outreach and follow-up around the registration process. These units require less City staff time to inspect or follow up (we do receive complaints regarding these properties), and the programs are generally not able to pass on any rent increases to their tenants. It does seem that discounts for sprinkler systems, centrally-monitored fire alarms, and smoke-free policies may make sense, and perhaps could be phased in for year two.



Executive Department
Julie Sullivan, Acting Chief of Staff

Following the stakeholder meeting, the City Manager met with Councilor Suslovic regarding the possible discounts. Councilor Suslovic supported the stakeholder group's recommendations and added that he would like the smoke-free policy discount to require that landlords include smoke-free language in their leases.

Stakeholder Group:

Mark Adelson, Portland Housing Authority

Jim Harmon

Norman Maze, Shalom House

Russ Pierce, Port Properties

Cullen Ryan, Community Housing of Maine

Crandall Toothaker (*Task Force member*)

Dana Totman, Avesta Housing

Brit Vitalius, Southern Maine Landlord Association President (*Task Force member*)

Carleton Winslow (*Task Force member*)

Landlord Registration Fee
Possible Discounts/Exemptions
8/10/2015

Option 1: Exemption for all government owned/operated, and/or inspected units.

All PHA-owned units - approx 1,000 (no impact to initial registration fee revenue estimate because not included)
Approximately 3,500 additional units are inspected by state or federal agents as a condition of their funding

	Rental units	Per unit fee	Collection rate	Revenue estimate	Loss
Initial registration fee revenue estimate	17,000	\$ 35	70%	\$ 416,500	
Revenue with exemption	13,500	\$ 35	70%	\$ 330,750	\$ 85,750

Option 2: Exemption for government owned/operated and discount for government-inspected units.

	Rental units	Per unit fee	Collection rate	Revenue estimate	Loss
Revenue with exemption and discount	13,500	\$ 35	70%	\$ 330,750	
		~2500 at \$30,			
	3,500	~1000 at \$25	70%	\$ 70,000	
				\$ 400,750	\$ 15,750

Option 3: Exemption for government owned/operated and discount for full sprinkler system.

According to the City's Fire Prevention Office, there is no way to estimate the number of buildings that are fully sprinkled. There have been changes over the years to City ordinances affecting sprinkler requirements, so there is no clear threshold above which sprinklers are required, nor does the City track which buildings are fully sprinkled.

All new construction, including single-family homes, requires sprinklers (at least for the past 4-5 years).

Option 4: Exemption for government owned/operated and discount for smoke-free policies.

I could find no evidence of any other municipality around the country providing a discount for smoke-free policies. Arguably, there is also a potentially significant difference between having a policy and enforcing it, which would be difficult for inspectors to assess. I do not recommend a discount for smoke-free policies.

Landlord Registration Fee Program Research

City/Town	Fee	Discount(s)/Exemption(s)
Collinsville, IL	\$25 plus \$25/unit	None
Baltimore, MD	▪ Owner-occupied, 1-2 tenants: \$40/unit ▪ Owner-occupied, 3+ tenants: \$50/unit ▪ Not owner-occupied: \$50/unit ▪ Must be inspected at landlords' cost by state-licensed home inspector	▪ Solely owner-occupied with relative of owner ▪ 7+ units in one building with one owner ▪ Apartment complexes ▪ Group houses ▪ Exempted as required by federal or state law
Bellingham, WA	\$10/unit for 1-20 units in same building, annually \$8/unit for 20+ units in same building, annually	The following rental housing units are required to register but are exempt from paying the registration fee and from inspection: Owner-occupied buildings containing two units; Units owned, operated or managed by a government agency or authority or are specifically exempted from a fee by state or federal law, however, once government ownership, operation or management ceases so does the exemption for fee payment; Rental units that receive funding or subsidies from federal, state or local government, and that are inspected at least once every three years as a condition of that funding; and Accessory dwelling units that are attached to a single family residential unit AND the owner of the property resides in either of those housing units.
Bernardsville, NJ	\$100/unit annually	None
Boston, MA	▪ \$25/unit initial annually, \$15/unit renewals ▪ \$2500 max per building; \$5000 max per complex (2+ buildings)	▪ Rental units owned/operated by the government ▪ Owner-occupied in building with 6 or fewer units
Broward County, FL	\$75 annually	owned by a federal, state, or local housing program or the federal Department of Housing and Urban Development
Burlington, NJ	\$100/property, every two years	None
Burlington, VT	\$50 initially and upon sale/transfer	None

City/Town	Fee	Discount(s)/Exemption(s)
Cedar Rapids, IA	\$50 one-time license fee plus the following annually: ▪ \$30 single-family or duplex ▪ \$25 plus \$8/unit for 3+ unit buildings	Owner-occupied units
Coral Springs, FL	\$56/property	Owner-occupied
DeKalb, IL	\$50/unit, plus \$15.24/unit over 2 units	None
Flint, MI	\$112 annual license; inspection fees as follows: ▪ \$225 single family ▪ \$300 two family ▪ \$90/unit for 3-4 units ▪ \$75/unit for 5-50 units ▪ \$45/unit for 51+ units	None
Freeport, IL	\$19/unit	None
Gary, IN	\$75 initially, \$25 renewal annually	None
Hammond, IN	\$80/unit, annually	None
Hartford, CT	\$25/property at construction, renovation, sale, etc	None
Lambertville, NJ	\$50/property, annually	None
Lawrence, NJ	\$75/unit, annually plus \$75 for certificate of inspection by licensed Lawrence Twp Housing Inspectors	Exempt if owner-occupied or occupied by relative of owner and no rent paid
Metuchen, NJ	\$40 per rental unit per address; \$50 for the first 4 dwelling units \$10 for each additional 4 units or fraction thereof.	None
Middlesex, NJ	\$50/unit annually	None
Millville, NJ	\$150/unit, annually	None
Nashville, TN	\$10 flat fee, annually	None
North Brunswick, NJ	\$30/property, every 3 years	None
Overland Park, KS	▪ Single family, duplex, triplex only ▪ \$10 for first unit, \$2/additional unit, annually	None
Palmyra, NJ	\$110 annually	None
Pittsburgh, PA	\$65/unit, annually	Exemptions for universities, institutional housing, Housing Authority – “because the City has their contact info already”

City/Town	Fee	Discount(s)/Exemption(s)
		Considering additional exemptions.
Scranton, PA	\$150/property plus \$50/unit, annually	Owner-occupied with 4 or fewer units Elderly, multi-dwelling units with 75% or more of occupants over age of 65 Those that operate under IRS Code Section 42
Seattle, WA	▪ \$175/property plus \$2/unit ▪ Renew every 5 years ▪ Required inspection by City or City-certified inspector every 10 years at landlords' expense	Housing units that a government entity or housing authority owns, operates or manages; or units exempted from municipal regulation by federal, state, or local law. Rental housing units that receive funding or subsidies from federal, state, or local government when the rental housing units are inspected by a federal, state, or local governmental entity at least once every five years as a funding or subsidy requirement; and the rental housing unit owner or agent submits information to the Department within 60 days of being notified that an inspection is required that demonstrates the periodic federal, state, or local government inspection is substantially equivalent to the inspection required by this Chapter; and Rental housing units that receive conventional funding from private or government insured lenders when the rental housing unit is inspected by the lender or lender's agent at least once every five years as a requirement of the loan; and the lender or lender's agent submits information to the Department within 60 days of being notified that an inspection is required that demonstrates the periodic lender inspection is substantially equivalent to the inspection required by this Chapter; and Accessory dwelling units and detached accessory dwelling units, provided the owner lives in one of the housing units on the property and an "immediate family"

City/Town	Fee	Discount(s)/Exemption(s)
		member as identified section 22.206.160.C.1.e lives in the other housing unit on the same property.
Skokie, IL	\$25/unit annually	Owner-occupied units
Troy, NY	\$150/property initially and again only when information changes	None
Urbana, IL	▪ \$55/single family home ▪ \$70/duplex ▪ \$65/building 3+ units ▪ Add \$16/unit for 4+ units ▪ Renew annually	• nursing homes • hotels/motels • housing authority units • University Certified Housing
Waterloo, IA	\$25/unit annually	None
West Hollywood, CA	\$120/unit	▪ Landlord- or relative-occupied units ▪ Units subsidized by the government ▪ Institutional facilities ▪ Nonprofit housing ▪ Must apply for exemption annually
Youngstown, OH	\$40 for first unit, then \$25/unit in the same building, annually	Public housing units or other properties subject to annual inspection pursuant to Federal regulations (Section 8) have to register their properties BUT DO NOT have to pay the registration fee. Also, Owner Occupied properties DO NOT have to pay the fee.