

Special City Council Meeting
September 7, 2016

1. Agenda Only

Documents:

[AGENDA ONLY 2016-09-07.PDF](#)

2. Agenda And Packet

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[AGENDA AND PACKET 2016-09-07.PDF](#)

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

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

AGENDA
SPECIAL CITY COUNCIL MEETING
SEPTEMBER 7, 2016

The Portland City Council will hold a Special City Council Meeting at 5:00 p.m. in City Council Chambers, City Hall. The Honorable Ethan K. Strimling, Mayor, will preside.

PLEDGE OF ALLEGIANCE:

ARTS IN THE CHAMBER:

Bill Round, Cellist
Portland Symphony Orchestra

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) 5:00 p.m. August 1, 2016, 1 Regular City Council Meeting Minutes
 7:00 p.m. August 1, 2016, Special City Council Meeting Minutes

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(Tab 2) Month - Sponsored by Mayor Ethan K. Strimling.

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(Tab 6)**

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Councilor Justin Costa resigned from the PACTS (Portland Area Comprehensive Transportation System) Policy Committee effective August 25, 2016, creating a vacancy. Mayor Strimling has requested to be appointed to PACTS Policy Committee to fulfill the remainder of that term, set to end in December of 2016.

Five affirmative votes are required for passage after public comment.

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Application submitted on 7/22/16. Applicant holds a current Brewery/Winery/Distillery Alcohol Service License with Food Service without Preparation, Entertainment without Dance, and Outdoor Dining on Private Property at 103 Fox Street.

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ImmuCell Corporation is a growing animal health company that develops, manufactures, and sells products that improve animal health and productivity in the dairy and beef industries.

As part of the final stage of its Mast Out drug development strategy, the Company hopes to arrange financing to construct a two-story, 12,625 sq. ft. production facility near its 56 Evergreen Drive facility, in the 1039 Riverside business condominium. ImmuCell estimates the initial land building (shell) costs at approximately \$3 million and estimates the fit-out and equipment phase at approximately an additional \$14.5 million.

This project is consistent with and satisfies the primary purposes of the City's Tax Increment Financing (TIF) Policy in that it supports economic development; stimulates expansion of the City's commercial and industrial tax base; and creates quality employment.

The project also satisfies three primary general principles of the City's TIF Policy in that a minimum of \$1 million in taxable investment property value will be created; jobs will be created; and it will assist the City in maximizing tax sheltering benefits.

The financial impact to the City would be in the form of new tax revenue from the planned expansion, while returning a portion of the new real estate tax revenue back to ImmuCell for financial support over 12 years. The table below provides an overview of the estimated new property tax revenue arrangement.

Years and TIF Capture Rate	Project Financial Support	City General Fund
1-11 @ 65%	\$357,369	\$192,430
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Total	\$374,222	\$231,754

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The Energy & Sustainability Committee met on July 20, 2016, and voted unanimously to forward this item to the City Council.

During their meeting on July 20, the Energy and Sustainability Committee reviewed proposed terms to develop a solar array on the closed and capped Ocean Avenue Landfill. The project was proposed by Revision Energy in response to an RFP the City issued in June, 2015 to explore solar power generation. Under Revision's proposal, which was the only proposal submitted in response to the RFP, Revision would install and own a 660 KW array. The City would purchase from Revision all power generated by the array under a power purchase agreement.

After the first 6 years of the agreement, the City would have the option (but not the obligation) to purchase the array. In January, 2016 the City of South Portland joined the proposal in order to facilitate construction of an identical solar array on their closed landfill and to reduce overall project costs.

Moving forward with the project would create one of the largest municipal solar arrays in Maine and underscore the City of Portland's commitment to supporting renewable energy. The Energy and Sustainability Committee unanimously recommends moving forward with this project.

Planning staff is currently revising the zoning ordinance to allow stand-alone solar generation facilities in the City. They presented an outline of their recommendations to the Energy and Sustainability Committee in June in order to get feedback.

The Planning Board discussed this item on August 9, 2016 and will bring it to a public hearing soon.

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This item must be read on two separate days. It was given a first reading on August 1, 2016. Eight affirmative votes are required for passage after public comment, in compliance with Portland City Code Section 2-43(c)(1), which regulates any sale, use, or improvement of land held by the Portland Land Bank. The Ocean Avenue Landfill is in the Portland Land Bank.

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Re: Puppy and Kitten Mills – Sponsored by the Health & Human
Services Committee, Councilor Edward J. Suslovic, Chair.**

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This ordinance would prohibit the retail sale of dogs and cats in the City of Portland, unless sourced from an animal care facility or rescue organization (as defined in the ordinance).

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This recommended Drainage Easement contains 228 sq. ft. +/- and is for the sole purpose of and conveying the right to maintain through, under, and across said easement area the existing riprap, conduits or pipelines with all necessary fixtures and appurtenances for conveying storm water (collectively, the “Drainage Fixtures”) and to repair, maintain, clean, and replace such riprap, conduits or pipelines through, under, and across said Easement Area, with all necessary fixtures and appurtenances; and to enter upon said Easement Area for only the foregoing purposes; reserving to the City the right to use the Easement Area for any and all purposes, and the right to relocate the Drainage Fixtures at 471 Danforth Street and amend the Easement Deed accordingly.

If the Marshalls fail to comply with any of the provisions of the recommended Drainage Easement Deed, the Easement shall be extinguished and all outstanding rights and interest shall revert to the City.

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The Draft Lease is proposed to include 1,172 square feet of commercial space along with 1,772 square feet of basement storage space for Creative Portland's (CP) use as its headquarters and to support CP's programs which include First Friday Art Walk, 2 Degrees Portland, and updating the City's Cultural Plan, among others. Providing CP use of this space as a "storefront" will improve CP's profile in Portland and allow it to better interface with its constituency and provide more direct service and accessibility going forward. Previously, CP has been operating in an upper floor office space in downtown Portland at Congress Square.

The financial impact and terms are as follows:

Term: Seven (7) years with one renewal option for up to three years at a rental rate subject to mutual agreement. It is noted that the Portland Development Corporation (PDC) approved a loan to CP in the amount of \$25,000 to cover the cost of space fit-up investment. The 7-year term matches the term of the PDC loan.

Rent: Fixed at \$1,000 per year

Parking: None

Conditions: Lease termination in event of PDC loan default.

The Economic Development Committee reviewed this at their August 23 meeting and voted unanimously (2-0 [as Councilor Costa arrived shortly after this item was taken up and voted on]) to forward this lease to the City Council with a recommendation of approval.

Five affirmative votes are required for passage after public comment.

**Order 48-16/17
(Tab 18)**

**Order Approving License to India Newbury Residences LLC -
– Sponsored by the Planning Board, Elizabeth Boepple, Chair.**

On May 24, 2016, the Planning Board approved a Level III Subdivision application for a twenty-nine (29) condominium development at 62 India Street and the Level II site plan application under the India Street Form-Based Code was approved by the Planning Authority on May 24, 2016. The Planning Board voted unanimously (6-0) to approve the application with waivers and conditions, including a condition that the applicant obtain the appropriate licenses from the city for the footings and roof overhang. The Department of Planning and Urban Development is now forwarding this license to the Council for approval.

Five affirmative votes are required for passage after public comment.

**Order 49-16/17
(Tab 19)**

Order Approving the Interlocal Stormwater Agreement Re: Casco and Saco Bay Watershed Municipalities – Sponsored by Jon P. Jennings, City Manager.

The City of Portland is permitted to discharge stormwater from its Municipal Separate Storm Sewer System (MS4) to the waters of the United States under a General Permit from Maine Department of Environmental Protection. This permit is separate from the Maine Pollutant Discharge Elimination System (MEPDES) permit that regulates Portland's wastewater system and combined sewer overflow (CSO) abatement program. The MS4 General Permit includes six Minimum Control Measures (MCMs) designed to help reduce the amount of pollution discharged from the MS4. In 2002 a group of 14 municipalities in the Greater Portland Area regulated under the MS4 General Permit, including Portland, formed the Interlocal Stormwater Working Group (ISWG) in order to share information, resources and generally reduce the cost of implementing several of these Minimum Control Measures.

The Cumberland County Soil and Water Conservation District (CCSWCD), given their mission and expertise, helped to organize and facilitate this partnership.

Over the years, much of their effort has been focused on public outreach, education and community participation in water quality issues, helping these communities to meet many of the requirements of two of the MCMs at a fraction of the cost of developing such programs in each individual community.

CCSWCD has requested that the City execute a letter of agreement, which provides for the City to pay its share of the costs of CCSWD's services. The City has allocated funding for its portion of the dues that allow the ISWG and CCSWCD to work together to implement these stormwater pollution prevention programs. The City has provided a letter of agreement on an annual basis.

Five affirmative votes are required for passage after public comment.

**Order 50-16/17
(Tab 20)**

Order Approving the Three-Party Agreement between Portland Water District, Westbrook and Portland Re: Brighton Avenue Area – Sponsored by Jon P. Jennings, City Manager.

This agreement between Portland, Westbrook, and the Portland Water District formalizes responsibilities and revenue terms for sanitary sewer discharges from a small area of Brighton Avenue.

The properties in this area are within Portland but discharge sewage into a sewer system that flows into Westbrook for treatment. This agreement is modeled after the existing Intermunicipal Agreement with the same parties for the Riverside Street Sewer Service area that also discharges to Westbrook.

Five affirmative votes are required for passage after public comment.

**Order 51-16/17
(Tab 21)**

Order Approving Agreements between Portland, Maine Department of Transportation and Portland Area Comprehensive Transportation System Re: Washington Avenue and Congress Street Projects - Sponsored by Jon P. Jennings, City Manager.

As follow-up to a prior City Council Order (#202-15/16) endorsing applications to PACTS (Portland Area Comprehensive Transportation System), candidate projects for the 2019 Transportation Improvement (TIP) Program have been determined. Two of the candidates identified for Portland require a Preliminary Design Report (PDR); they are:

- Washington Avenue from Congress Street to just past Cumberland Avenue/7-11, which include street and sidewalk reconstruction, streetscape enhancements, as well as traffic signal replacement; and
- Congress Street signal upgrades from State Street to Temple Street to better support outcomes from the Congress Street Bus Corridor, in addition to critical signal equipment modernization needs.

These projects can only progress towards a May 1, 2017 PDR deadline if there is City Council endorsement of the three-party agreements prior to October 2016. These three-party agreements support only the design and Right-of-way (ROW) phases of these projects; future two-party agreements, Local Match funding, and City Council Order requests are necessary to proceed to construction in 2019.

Projects awarded by the PACTS TIP Program are typically financed with 75% federal and state funds and 25% local funds. The estimated costs of Preliminary Design Report and right-of-way determination phases for these specific projects are as follows:

Project Name	Estimated PDR and ROW Cost	Local Share (25%)
Washington Avenue	\$175,600	\$43,900
Congress Street Signals	\$83,750	\$20,938
	Total = \$259,350	Total = \$64,838

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

EXECUTIVE SESSION:

Discussion and Consideration of the City's Legal Rights and Duties Under the State's New General Assistance Rules and Laws, Pursuant to 1 M.R.S. Section 405(6)(E) – Sponsored by Jon P. Jennings, City Manager.

BREAK FOR DINNER:

7:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

EXECUTIVE SESSION:

Disposition of City Property (Bayside Department of Public Works Occupied Properties, Portland Waterfront Property, Riverside Street, Cambridge Street and Canco Road), Pursuant to 1 M.R.S. Section 405(6)(C) – Sponsored by Jon P. Jennings, City Manager.

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**Order 48-16/17
(Tab 18)**

**Order Approving License to India Newbury Residences LLC -
– Sponsored by the Planning Board, Elizabeth Boepple, Chair.**

On May 24, 2016, the Planning Board approved a Level III Subdivision application for a twenty-nine (29) condominium development at 62 India Street and the Level II site plan application under the India Street Form-Based Code was approved by the Planning Authority on May 24, 2016. The Planning Board voted unanimously (6-0) to approve the application with waivers and conditions, including a condition that the applicant obtain the appropriate licenses from the city for the footings and roof overhang. The Department of Planning and Urban Development is now forwarding this license to the Council for approval.

Five affirmative votes are required for passage after public comment.

**Order 49-16/17
(Tab 19)**

Order Approving the Interlocal Stormwater Agreement Re: Casco and Saco Bay Watershed Municipalities – Sponsored by Jon P. Jennings, City Manager.

The City of Portland is permitted to discharge stormwater from its Municipal Separate Storm Sewer System (MS4) to the waters of the United States under a General Permit from Maine Department of Environmental Protection. This permit is separate from the Maine Pollutant Discharge Elimination System (MEPDES) permit that regulates Portland's wastewater system and combined sewer overflow (CSO) abatement program. The MS4 General Permit includes six Minimum Control Measures (MCMs) designed to help reduce the amount of pollution discharged from the MS4. In 2002 a group of 14 municipalities in the Greater Portland Area regulated under the MS4 General Permit, including Portland, formed the Interlocal Stormwater Working Group (ISWG) in order to share information, resources and generally reduce the cost of implementing several of these Minimum Control Measures.

The Cumberland County Soil and Water Conservation District (CCSWCD), given their mission and expertise, helped to organize and facilitate this partnership.

Over the years, much of their effort has been focused on public outreach, education and community participation in water quality issues, helping these communities to meet many of the requirements of two of the MCMs at a fraction of the cost of developing such programs in each individual community.

CCSWCD has requested that the City execute a letter of agreement, which provides for the City to pay its share of the costs of CCSWD's services. The City has allocated funding for its portion of the dues that allow the ISWG and CCSWCD to work together to implement these stormwater pollution prevention programs. The City has provided a letter of agreement on an annual basis.

Five affirmative votes are required for passage after public comment.

**Order 50-16/17
(Tab 20)**

Order Approving the Three-Party Agreement between Portland Water District, Westbrook and Portland Re: Brighton Avenue Area – Sponsored by Jon P. Jennings, City Manager.

This agreement between Portland, Westbrook, and the Portland Water District formalizes responsibilities and revenue terms for sanitary sewer discharges from a small area of Brighton Avenue.

The properties in this area are within Portland but discharge sewage into a sewer system that flows into Westbrook for treatment. This agreement is modeled after the existing Intermunicipal Agreement with the same parties for the Riverside Street Sewer Service area that also discharges to Westbrook.

Five affirmative votes are required for passage after public comment.

**Order 51-16/17
(Tab 21)**

Order Approving Agreements between Portland, Maine Department of Transportation and Portland Area Comprehensive Transportation System Re: Washington Avenue and Congress Street Projects - Sponsored by Jon P. Jennings, City Manager.

As follow-up to a prior City Council Order (#202-15/16) endorsing applications to PACTS (Portland Area Comprehensive Transportation System), candidate projects for the 2019 Transportation Improvement (TIP) Program have been determined. Two of the candidates identified for Portland require a Preliminary Design Report (PDR); they are:

- Washington Avenue from Congress Street to just past Cumberland Avenue/7-11, which include street and sidewalk reconstruction, streetscape enhancements, as well as traffic signal replacement; and
- Congress Street signal upgrades from State Street to Temple Street to better support outcomes from the Congress Street Bus Corridor, in addition to critical signal equipment modernization needs.

These projects can only progress towards a May 1, 2017 PDR deadline if there is City Council endorsement of the three-party agreements prior to October 2016. These three-party agreements support only the design and Right-of-way (ROW) phases of these projects; future two-party agreements, Local Match funding, and City Council Order requests are necessary to proceed to construction in 2019.

Projects awarded by the PACTS TIP Program are typically financed with 75% federal and state funds and 25% local funds. The estimated costs of Preliminary Design Report and right-of-way determination phases for these specific projects are as follows:

Project Name	Estimated PDR and ROW Cost	Local Share (25%)
Washington Avenue	\$175,600	\$43,900
Congress Street Signals	\$83,750	\$20,938
	Total = \$259,350	Total = \$64,838

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

EXECUTIVE SESSION:

Discussion and Consideration of the City's Legal Rights and Duties Under the State's New General Assistance Rules and Laws, Pursuant to 1 M.R.S. Section 405(6)(E) – Sponsored by Jon P. Jennings, City Manager.

BREAK FOR DINNER:

7:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

EXECUTIVE SESSION:

Disposition of City Property (Bayside Department of Public Works Occupied Properties, Portland Waterfront Property, Riverside Street, Cambridge Street and Canco Road), Pursuant to 1 M.R.S. Section 405(6)(C) – Sponsored by Jon P. Jennings, City Manager.

IN COUNCIL SPECIAL MEETING AUGUST 1, 2016 VOL. 133 PAGE 7

ROLL CALL: Mayor Strimling called the meeting to order at 5:00 P.M. (Councilor Hinck absent, Councilor Thibodeau and Councilor Costa arrived during announcement. Councilor Duson arrived during Order 20).

ANNOUNCEMENTS:

RECOGNITIONS:

SPECIAL MEETING OF THE PORTLAND DEVELOPMENT CORPORATION

Motion was made by Suslovic and seconded by Councilor Ray to recess the special City Council meeting and convene the Special meeting of the Corporator of the Portland Development Corporation. Passage 7-0.

Order 20-16/17 Order Amending the Portland Development Corporation's ("PDC") Business Assistance Program for Job Creation Guidelines – Sponsored by Barry Sheff, President of the Portland Development Corporation.

Motion was made by Councilor Suslovic and seconded by Councilor Duson for passage. Passage 8-0.

Motion was made by Councilor Ray and seconded by Councilor Costa to adjourn the meeting of the Corporation Portland Development Corporation and reconvene the Special City Council meeting. Passage 8-0.

APPROVAL OF MINUTES OF PREVIOUS MEETINGS:

Motion was made by Councilor Ray and seconded by Councilor Suslovic for approval of the minutes of July 6, 2016, 5:00 pm and 7:00 pm meetings. Passage 8-0.

PROCLAMATIONS:

Proc 2-16/17 Proclamation Honoring Officer Michael Bennis as Officer of the Month for June 2016 – Sponsored by Mayor Ethan K. Strimling.

**Proc 3-16/17 Proclamation Honoring Edward Walsh, Parks, Recreation, and
(Tab 4) Facilities Department as Employee of the Month for July, 2016 –
Sponsored by Mayor Ethan K. Strimling.**

**Proc 4-16/17 Proclamation Honoring Richard Blackburn – Sponsored by Mayor
Ethan K. Strimling and City Manager Jon P. Jennings.**

IN COUNCIL SPECIAL MEETING AUGUST 1, 2016 VOL. 133 PAGE 8

APPOINTMENTS:

Order 21-16/17 Order Confirming the Appointment of Victoria Morales as Associate Corporation Counsel – Sponsored by Danielle West-Chuhta, Corporation Counsel.

Motion was made by Councilor Ray and seconded by Councilor Duson for passage as an emergency. Passage 8-0.

**Order 22-16/17 Order Appointing Dylan S. Whitaker as a Constable for 2016
Re: Department of Parks, Recreation & Facilities – Sponsored by Jon P. Jennings, City Manager.**

Motion was made by Councilor Suslovic and seconded by Councilor Thibodeau for passage as an emergency. Passage 8-0.

Order 23-16/17 Order Appointing Mayor Ethan K. Strimling to the Board of Directors of the Greater Portland Transit District - Sponsored by Mayor Ethan K. Strimling.

Motion was made by Councilor Suslovic and seconded by Councilor Thibodeau for passage. Passage 8-0.

CONSENT ITEMS:

Order 24-16/17 Order Declaring October 2, 2016 the 25th Annual Maine Marathon/Relay & Maine Half Marathon Festival – Sponsored by Jon P. Jennings, City Manager.

Order 25-16/17 Order Declaring November 11, 2016 as the Veterans Day Parade Festival – Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Thibodeau and seconded by Councilor Ray for passage of the Consent Items. Passage 8-0.

Order 26-16/17 Order Granting Municipal Officers' Approval of Mark's Sports, LLC d/b/a Mark's Sports. Application for a Class XI Restaurant/Lounge with Outdoor Dining on Private Property at 50 Wharf Street – Sponsored by Katherine Jones, City Clerk.

Motion was made by Councilor Ray and seconded by Councilor Thibodeau for passage. Passage 8-0.

IN COUNCIL SPECIAL MEETING AUGUST 1, 2016 VOL. 133 PAGE 9

LICENSES:

BUDGET ITEMS:

COMMUNICATIONS:

Com 2-16/17 **Communication Re: 2016/2017 Work Plan Associated with the Portland Economic Development Vision and Plan – Sponsored by the Economic Development Committee, Councilor David Brenerman, Chair.**

Com 3-16/17 **Communication Re: Appointment of Tom Estabrook to the Pesticide and Fertilizer Task Force – Sponsored by Mayor Ethan K. Strimling and Councilor Nicholas M. Mavodones, Jr., Chair of the Pesticide & Fertilizer Task Force.**

RESOLUTIONS:

UNFINISHED BUSINESS:

ORDERS:

Order 27-16/17 **Order Authorizing the Director of the Office of Permitting and Inspections to Approve Certain Liquor License Applications - Sponsored by Katherine L. Jones, City Clerk.**

Motion was made by Councilor Thibodeau and seconded by Councilor Ray for passage. Passage 8-0.

Order 28-16/17 **Order Approving a License to Luminato Condominium, LLC – Sponsored by the Planning Board, Elizabeth Boepple, Chair.**

Motion was made by Councilor Costa and seconded by Councilor Suslovic for passage. Passage 8-0.

Order 29-16/17 **Order Approving the Agreement with Verizon Wireless for the Installation of Small Cell Technology – Sponsored the Economic Development Committee, Councilor David Brenerman, Chair.**

Councilor Thibodeau recused himself, his Law Firm works for Verizon Wireless.

Motion was made by Councilor Brenerman and seconded by Councilor Costa for passage. Passage 7-0. (Thibodeau recused)

IN COUNCIL SPECIAL MEETING AUGUST 1, 2016 VOL. 133 PAGE 10

Order 30-16/17 Order Approving the First Amendment of the South Portland and Service – Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Ray and seconded by Councilor Brenerman for passage. Passage 8-0.

Order 31-16/17 Order Changing Polling Place for District 3 Precinct 1 from the Woodfords Congregational Church to The Woodfords Club - Sponsored by Katherine L. Jones, City Clerk.

Motion was made by Councilor Duson and seconded by Councilor Thibodeau for passage. Passage 7-1 (Suslovic).

Order 32-16/17 Order Dispensing with and Waiving Requirement of Second Reading on Separate Day with Respect to Approval of General Airport Refunding Revenue Bonds – Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Ray and seconded by Councilor Brenerman for passage. Passage 7-0 (Costa out).

Order 33-16/17 Order Authorizing Refunding of General Airport Refunding Revenue Bonds - Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Ray and seconded by Councilor Thibodeau for passage. Passage 8-0.

Order 34-16/17 Order Appropriating Proceeds of General Airport Refunding Revenue Bonds – Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Ray and seconded by Councilor Thibodeau for passage. Passage 8-0.

Order 35-16/17 Order Approving Relocation of the Acrobatic Dogs Sculpture in the Public Art Collection - Sponsored by Lin Lisberger, Chair of the Portland Public Art Committee.

Motion was made by Councilor Duson and seconded by Councilor Ray for passage. Passage 8-0.

IN COUNCIL SPECIAL MEETING AUGUST 1, 2016 VOL. 133 PAGE 11

Order 36-16/17

**Order Appropriating a Brownfields Revolving Loan Fund Grant
– Sponsored by Jon P. Jennings, City Manager. This item was given
first reading on December 7, 2015.**

Motion was made by Councilor Thibodeau and seconded by Councilor
Duson for passage. Passage 8-0.

Motion was made by Councilor Ray and seconded by Councilor Thibodeau
to adjourn the Special City Council meeting and move into Executive
Session pursuant to 1 M.R.S. Section 405 (6) (D)- Labor negotiations.
Passage 8-0.

Motion was made by Councilor Duson and seconded by Councilor
Thibodeau to come out of Executive Session. Passage 8-0.

A TRUE COPY.

Katherine L. Jones, City Clerk

IN COUNCIL SPECIAL MEETING AUGUST 1, 2016 VOL. 133 PAGE 12

ROLL CALL: Mayor Strimling called the meeting to order at 7:00 P.M. (Councilor Hinck absent).

Motion was made by Mayor Strimling and seconded by Councilor Ray to split the public comments. Public comment will be held for the 5:00 meeting first. The 7:00 public comment will be held right after the 5:00.

UNFINISHED BUSINESS:
ORDERS:

Order 37-16/17 **Order Designating ImmuCell Corporation Municipal Development and Tax Increment Financing District – Sponsored by the Economic Development Committee, Councilor David Brenerman, Chair.**

This is its first reading.

Order 38-16/17 **Order Approving Credit Enhancement Agreement with ImmuCell Corporation – Sponsored by the Economic Development Committee, Councilor David Brenerman, Chair.**

This is its first reading.

Order 39-16/17 **Order Authorizing the City Manager to Negotiate an Agreement with Revision Energy LLC for Installation of Solar Power Array on Ocean Avenue Landfill – Sponsored by the Energy and Sustainability Committee, Councilor Jon Hinck, Chair.**

This is its first reading.

AMENDMENTS:

Order 40-16/17 **Amendment to Portland City Code Chapter 5 Animals & Fowl Re: Puppy and Kitten Mills – Sponsored by the Health & Human Services Committee, Councilor Edward J. Suslovic, Chair.**

This is its first reading.

Motion was made by Councilor Thibodeau and seconded by Councilor Costa to adjourn. Passage 8-0, 7:40 P.M.

A TRUE COPY.

Katherine L. Jones, City Clerk

*Proc 5-16/17
Tab 2 9-7-16*

PROCLAMATION

RECOGNIZING

CHARCOT-MARIE-TOOTH DISEASE AWARENESS MONTH

SEPTEMBER 2016

WHEREAS: Charcot-Marie-Tooth Disease ("CMT") is a neurological disorder characterized by slow and progressive degeneration of the muscles in the feet, lower legs, hands and arms, causing loss of normal function and/or sensation. This disease can be severely disabling and accompanied by chronic pain and overwhelming fatigue; and

WHEREAS: Charcot-Marie-Tooth Disease affects 1 in 2,500 in the United States; and

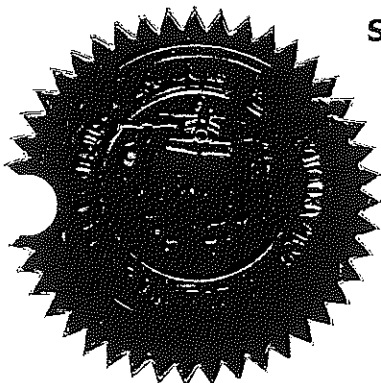
WHEREAS: Patients with CMT must constantly advocate on their own behalf to doctors, medical professionals and educators who are often unaware of, or insufficiently educated about the disorder, its symptoms and the substantial obstacles faced by those affected by the disease; and

WHEREAS: The residents of Portland can help promote awareness of the disease and support the development and research of new drugs that can treat the effects CMT, improve the quality of life by those that suffer from the disease and develop a cure; and

WHEREAS: In September 2016, we urge residents of the City of Portland to unite in aiding the cause of the Charcot-Marie-Tooth Association in furthering these goals.

NOW THEREFORE, be it resolved, that I, Ethan K. Strimling, Mayor of the City of Portland, and members of the City Council, do hereby proclaim that September is **CHARCOT-MARIE-TOOTH AWARENESS MONTH** and encourage all residents to come together to support those suffering from CMT.

Signed and sealed this 7th day of September, 2016



A handwritten signature in black ink, appearing to read "Ethan K. Strimling", is written over a horizontal line.

Ethan K. Strimling, Mayor
City of Portland, Maine

Pro 6-16/17
Tab 3 9-7-16

PROCLAMATION

Honoring

Duane Currie

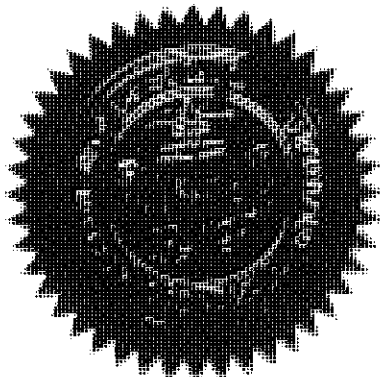
Employee of the Month

August 2016

- WHEREAS:** **Duane Currie** of the Public Works Department has been named the City of Portland Employee of the Month by a committee of his peers and selected for this distinct honor from a workforce of 1,300; and
- WHEREAS:** This award is presented in recognition of **Duane's** work as a Public Works Parts Manager with over 23 years of City service. **Duane** is tasked with ordering parts for the City's diverse fleet. **Duane** locates hard to find parts, at good prices, and immediate availability; and
- WHEREAS:** **Duane's** knowledge of part sources, coupled with his vast experience with City owned equipment, is an enormous benefit to the shop. Over the years **Duane** has become a respected leader in the shop with a remarkable work ethic and leadership skills; and
- WHEREAS:** **Duane** was asked to serve as the Acting Fleet Supervisor while the position has been vacant and he did not hesitate to accept the additional responsibility of shop operations while continuing to keep the parts room functioning well. While serving in more of a leadership role, shop morale and productivity have improved. **Duane's** service to the City is greatly appreciated by all in the shop. **Duane** truly is an asset to the Public Works Department and to the City.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Ethan K. Strimling, Mayor of the City of Portland, Maine, and the members of the Portland City Council do hereby proclaim honor and recognition to **Duane Currie** as **City Employee of the Month, August, 2016**.

Signed and Sealed this 7th day of September, 2016



A handwritten signature in black ink, appearing to read "Ethan K. Strimling", is written over a horizontal line.

**Ethan K. Strimling, Mayor
City of Portland, Maine**

Proc 7-16/17
Tab 4 9-7-16

PROCLAMATION
HONORING
OFFICER BRENT ROSS

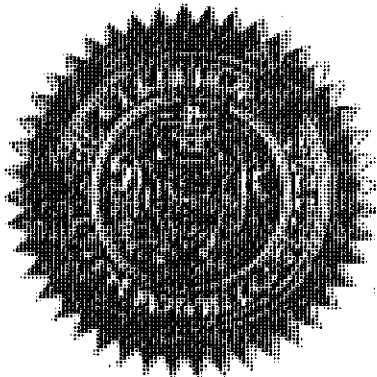
- WHEREAS:** Officer Ross joined the Portland Police Department in September 2015 following his time as a Sergeant in the United States Army Reserve. He was deployed to the Ukraine supporting military operations as a medic; and
- WHEREAS:** Officer Ross held the position of security officer for Mercy Hospital where he gained beneficial experience to become a police officer. It was during this position that Officer Ross had the opportunity to meet many of the Portland police officers; and
- WHEREAS:** Officer Ross is an active participant in "Operation Bayside Boost" focusing on quality of life issues in the Bayside neighborhood. During his patrols he pursued a wanted felon on foot for roughly a half a mile before he was safely taken into custody; and
- WHEREAS:** Officer Ross diligently performs his duties and supports his teammates, eagerly tackling any tasks assigned to him. Officer Ross is an outstanding representative of the department and treats the public with the utmost courtesy and professionalism; and
- WHEREAS:** Officer Ross is commended for his exemplary performance and outstanding representation of the Portland Maine Police Department.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Ethan K. Strimling, Mayor of the City of Portland, Maine, and the members of the Portland City Council do hereby proclaim honor and recognition to Officer Brent Ross as Officer of the Month for July 2016.

Signed and sealed this 7th day of September 2016



Ethan K. Strimling, Mayor
City of Portland, Maine



Proc 8-16/17
Tab 5 9-7-16

PROCLAMATION

HONORING PORTLAND LITTLE LEAGUE GIRLS 8-10 ALL STAR SOFTBALL TEAM

WHEREAS, Portland Little League has a long standing reputation for excellence and is an integral part of our community; and

WHEREAS, The Portland community is proud of Portland Little League and its dedicated athletes and coaches; and

WHEREAS, The Portland Little League Girls 8-10 All Star Softball Team of 2016 is comprised of several extraordinary young athletes;

Cassadie Armstrong	Maria DelMonte	Hadleigh McParlan
Shay Rosenthal	Hannah Hawkes	Lindsay Rogers
Ally Brady	Sophie Hill	Shay Rosenthal
Anna Kennedy-Jensen	Nausica Ferros	Haley Mascolo
Marcella Beyer-LaBrecque	Ainsley Dunn	Ruby Chase

WHEREAS, The Portland Little League Girls 8-10 All Star Softball Team recently captured the District 6 Championship and State of Maine Championship titles and placed among the top nine teams in the East under the direction and guidance of its **Manager, Julie Armstrong and Coaches, Michelle Hawkes and Ed Rogers;** and

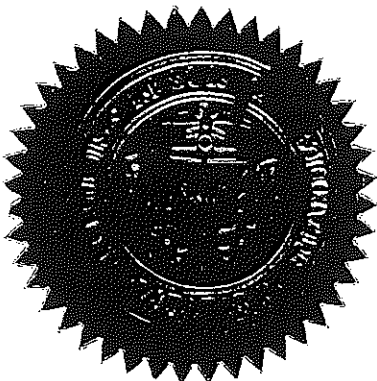
WHEREAS, The City of Portland wishes to acknowledge the impressive accomplishments of the 2016 Portland Little League Girls 8-10 All Star Softball Team;

NOW, THEREFORE, BE IT RESOLVED, THAT I Ethan K. Strimling, Mayor of the City of Portland and members of the City Council do hereby express sincere congratulations to the players and coaches for an outstanding season and for winning the **2016 District Six Girls 8-10 All Star Softball Team Championship** and the **2016 State of Maine Girls 8-10 All Star Softball Team Championship** and representing the City and State at the **2016 Eastern Regionals.**

Signed and sealed this 7th day of September, 2016



**Ethan K. Strimling, Mayor
City of Portland, Maine**



*Proc 9-16/14
Tab 6 9-7-16*

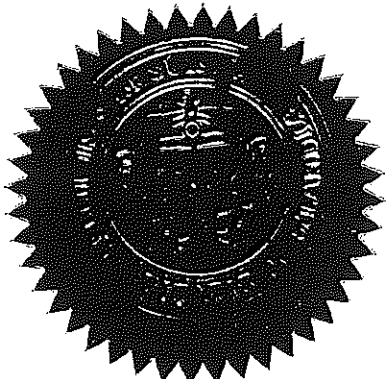
PROCLAMATION

RECOGNIZING

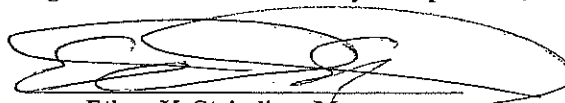
SEPTEMBER AS SCHOOL ATTENDANCE AWARENESS MONTH

- WHEREAS:** Good attendance is essential to student achievement and graduation, and we are committed to dedicating our resources and attention to reducing chronic absenteeism rates, with a focus starting as early as prekindergarten and kindergarten; and
- WHEREAS:** Chronic absence – missing 10 percent or more of school for any reason including excused and unexcused absences, or just two of three days a month – is a proven predictor of academic trouble and dropout rates; and
- WHEREAS:** Chronic absence is now a required reporting metric under the federal Every Student Succeeds Act; and
- WHEREAS:** Chronic absence predicts lower third-grade reading proficiency, course failure and eventual dropout, it weakens our communities and our local economy; and
- WHEREAS:** The impact of chronic absence hits low-income students and children of color particularly hard if they don't have the resources to make up for lost time in the classroom and are more likely to face systemic barriers to getting to school – such as unreliable transportation, lack of access to health care, unstable or unaffordable housing; and
- WHEREAS:** Attendance gaps among groups of students often turn into achievement gaps that undermine student success. Chronic absence particularly exacerbates the achievement gap that separates low-income students from their peers, since students from low-income families are both more likely to be chronically absent and more likely to be affected academically by missing school; and
- WHEREAS:** Health care providers can share the importance of school attendance with families and can offer proactive, preventive care to reduce absence; and
- WHEREAS:** All students – even those who show up regularly – are affected by chronic absence because teachers must spend time reviewing for students who missed lessons; and
- WHEREAS:** Chronic absence can be significantly reduced when schools, families and communities work together to identify barriers to attendance, monitor and promote good attendance and keep children from getting to school.

NOW, THEREFORE, BE IT RESOLVED, THAT I Ethan K. Strimling, Mayor of the City of Portland and members of the City Council do hereby proclaim September as Attendance Awareness Month.



Signed and sealed this 7th day of September, 2016


Ethan K. Strimling, Mayor
City of Portland, Maine

Order 41-16/17
Tab 7 9-7-14

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 MAYOR ETHAN STRIMLING TO THE POLICY
COMMITTEE OF THE PORTLAND AREA
COMPREHENSIVE TRANSPORTATION SYSTEM**

ORDERED, that Mayor Ethan Strimling is hereby appointed to the Policy Committee of the Portland Area Comprehensive Transportation System for the rest of the 2016 calendar year.

*Order 43-16/17
Tab 8 9-7-16*

ETHAN STRIMLING (MAYOR)
BELINDA RAY (1)
SPENCER THIBODEAU (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:**

**Rising Tide Brewing Company, LLC d/b/a Rising Tide Brewing Company. Application to
expand Outdoor Dining on Private Property at 103 Fox Street.**



handcrafted in Portland, Maine

103 Fox Street
Portland, Maine 04101

July 22, 2016

Mayor Ethan Strimling
City Council
City of Portland, Maine
389 Congress Street
Portland, ME 04101

Dear Mr. Mayor and Members of City Council:

I am writing to request an amendment to our outdoor dining permit that would allow us the flexibility to temporarily extend our serving area from time to time to encompass an additional 30' x 50' area in our parking lot, immediately adjacent to our currently licensed area. The area is entirely on private property. Ropes and barrels will be used to delineate the licensed area where beer consumption is permitted.

We anticipate using this extra consumption space only for a few special events per year. These events will include our 6th Anniversary Party (benefitting the Good Shepherd Food Bank) on October 2, 2016 from 12pm to 5pm, as well as a Community Boat Swap Event to be held in May 2017 (benefitting Maine Island Trail Association, Sail Maine, and Ripple Effect).

A diagram of the proposed revised licensed area is attached.

Please do not hesitate to contact me at 207-650-0678 if you require any additional information.

Best regards,

Heather Sanborn
Co-Owner/Dir. of Business Ops.



Outdoor Dining Permit Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

Check all that apply: ☐ New Application for Outdoor Dining or ☐ Renewal Application for Outdoor Dining AMENDMENT TO EXISTING PERMIT ☒ Application for dining on Private Property		
☐ Outdoor Dining in a Public Park ☐ If Renewal, are there changes to previous permit?		
☐ Outdoor Dining in a Historic District ☐ Yes ☐ No		
☐ Petition for Exception for Special Circumstances		
☒ Liquor License required?		
City Clerk signature for liquor license approval: <u>Tasting Room Permit approved in May</u>		
OR Pending Comment Date: _____		
Location Name & Address: <u>103 FOX STREET</u>	Chart	Block Lot
Owner Name: <u>FOX STREET REALTY LLC</u>	Total Square Footage of Proposed Outdoor Dining Area: ¹ <u>PRIVATE PROPERTY</u>	
Owner Phone #: <u>207-233-1229</u>		
Applicant *must* be owner or lessee	Fee: \$80 (Public-Annual) \$125 (Private 1X)	
Name: <u>Rising Tide Brewing Company LLC</u>	Total Sq. Ft.: _____	
Address: <u>103 Fox Street</u>	Sq. Ft. Fee: (sq ft x \$2) \$ <u>125</u>	
City, State & Zip: <u>Portland ME 04101</u>	(sq ft x \$6 for public parks)	
E-Mail: <u>heather@risingtidebrewing.com</u>	Total Fees: \$ <u>125</u>	
	(Permit not issued until all fees are paid)	
Current use: <u>Brewery with tasting room and events space</u>		
Business name: <u>Rising Tide Brewing Company</u>		
Seating area dimensions: <u>61x34 with additional 30x50 for occ</u>		
How many chairs? _____ How many tables? <u>5</u>		
☒ Yes Alcohol is served.		
☐ No Alcohol being served.		
Who should we contact: <u>Heather Sanborn</u> Phone: <u>207-650-0678</u>		
Address: <u>103 Fox Street, Portland, ME 04101</u> E Mail: <u>heather@risingtidebrewing.</u>		

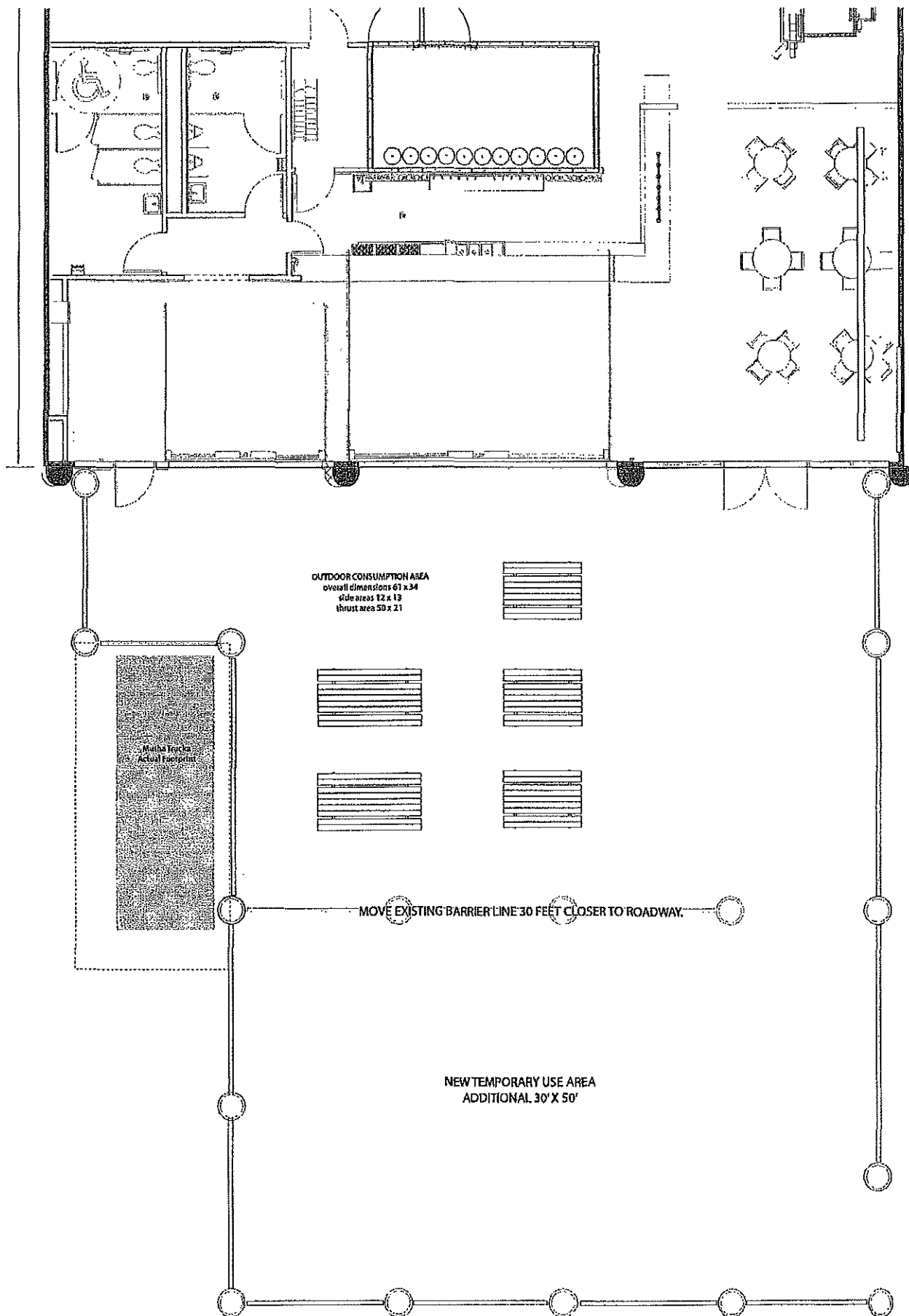
Please submit all of the information outlined in the Outdoor Dining Application Checklist. Failure to do so will result in the automatic denial of your permit. New applications and renewals are reviewed on an annual basis and should be submitted no later than June 1st.

In order to be sure the City fully understands the full scope of the project, the Planning and Development Department may request additional information prior to the issuance of a permit. For further information visit us on-line at www.portlandmaine.gov, stop by the Building Inspections office, room 315 City Hall or call 874-8703.

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

Signature of Applicant: Heather Sanborn Date: 7/28/16

¹ In no instance shall the total square footage of dining area equal more than 10% of park space, unless the applicant receives a waiver from the Director of Parks and Recreation or his or her designee.



Portland, Maine



Yes. Life's good here.

Department of Permitting and Inspections

Michael Russell, MS.

August 10, 2016

Rising Tide Brewing Company
Attn: Heather Sanborn
103 Fox Street
Portland, ME 04101

**Re: Rising Tide Brewing Company, LLC d/b/a Rising Tide Brewing Company.
Application to expand Outdoor Dining on Private Property at 103 Fox Street.**

Dear Ms. Sanborn,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Wednesday, September 7th, at 5:00 p.m.**, for the review of your application to expand Outdoor Dining on Private Property at 103 Fox Street. 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.

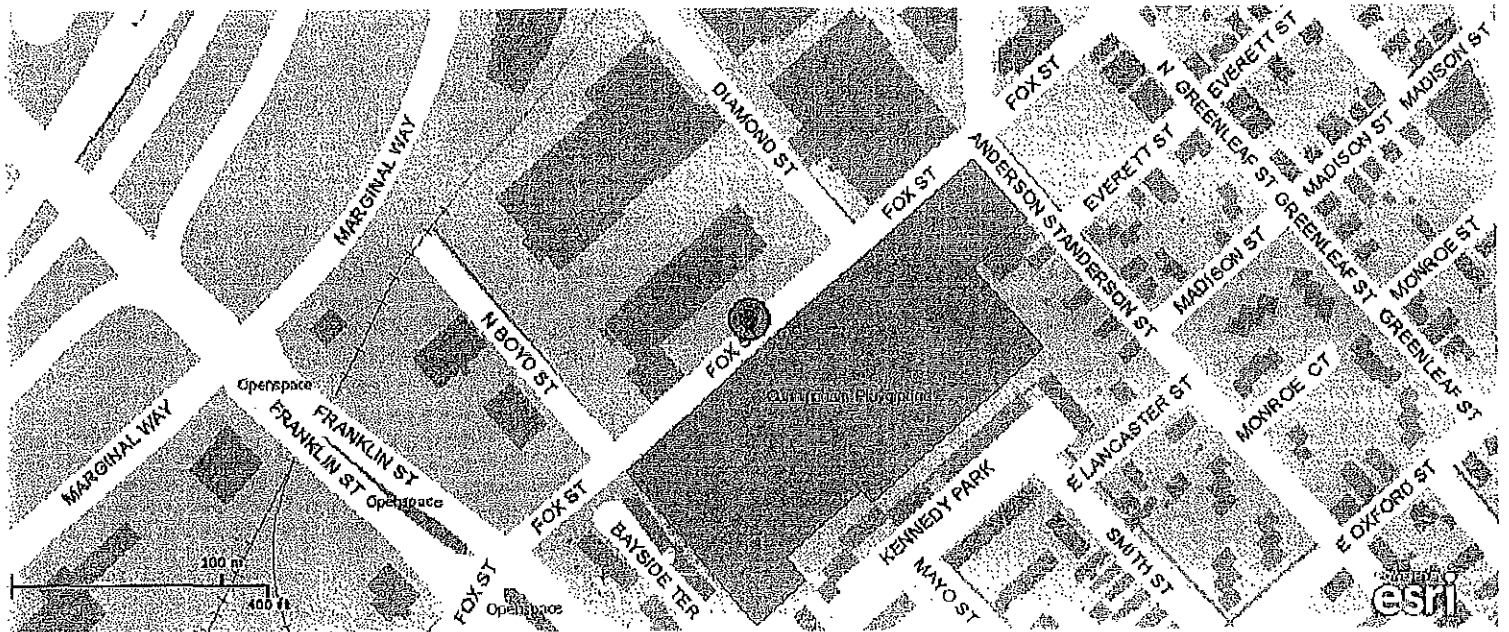
Should you have any questions or concerns, please do not hesitate to contact our office directly at (207) 874-8557 or by email, BL@portlandmaine.gov

Sincerely,

A handwritten signature in black ink that reads "Melissa Caiazzo".

Melissa Caiazzo
Business License Assistant
207-874-8557
bl@portlandmaine.gov

Rising Tide



Copyright 2011 Esri. All rights reserved. Mon Aug 22 2016 03:18:40 PM.

**Legal Advertisement
Notice of Public Hearing
City of Portland**

A Public Hearing will be held on September 7th at 5:00 P.M., in City Council Chambers, 389 Congress St., on Rising Tide Brewing Company, LLC d/b/a Rising Tide Brewing Company. Application to expand Outdoor Dining on Private Property at 103 Fox Street. Sponsored by Michael Russell, Director of Permitting and Inspections.

*Order 43-16/17
Tab 9 9-7-16*

ETHAN STRIMLING (MAYOR)
BELINDA RAY (1)
SPENCER THIBODEAU (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:

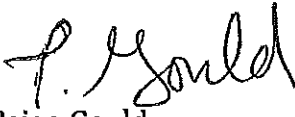
Ocean Ave, LLC d/b/a Tipo. Application for a Class I FSE with Outdoor Dining on Private Property at 182 Ocean Ave.

7/14/2016

Dear Mayor Ethan Strimling and Members of the City Council,

I am writing to you to request a Class I Restaurant/Lounge Liquor License for our new restaurant Tipo, which is located at 182 Ocean Ave. Tipo is going to be full service restaurant offering traditional Italian fare to the local community. After running our first restaurant, Central Provisions, for over 2.5 years, we have found that the majority of our customers are from away... We are hoping to provide the Back Cove community and the surrounding areas with a neighborhood spot to stop for a wood fired pizza, homemade pasta dish, and a small selection of beer, wine, and Italian inspired cocktails. Thank you for your consideration.

Sincerely,


Paige Gould

Chris Gould



Portland, Maine



Yes. Life's good here.

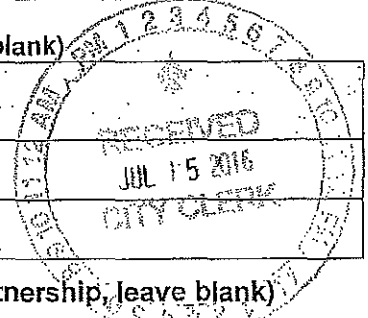
Office of the City Clerk • 389 Congress St. • Portland, ME 04101 • (207) 874-8557

Application for Food Service Establishment with Alcoholic Beverages License

Business Information:	
Business Name (d/b/a):	Tipo
Location Address:	182 Ocean Ave
Phone:	(617) 678-7360
If new, what was formerly at this location:	Borealis Breads Cafe & Bakery
Mailing Address:	12 Lambert Rd. Freeport, ME
Contact Person:	Paige Gould
Contact Person Email:	paige@central-provisions.com
Manager of Establishment:	Robyn Luongo
Owner of Premises (Landlord):	Lucy Lu, LLC
Address of Premises Owner:	12 Lambert Rd. Freeport, ME
Zip:	04103
Zip:	04032
Phone:	(617) 678-7360
Phone:	(508) 259-1085
Zip:	04032

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	
Ocean Ave, LLC		12 Lambert Rd. Freeport	
Contact Person:	Paige Gould	Phone:	(617) 678-7360
Zip:	04032		
Principal Officers	Title	Date of Birth	Residence Address
Chris Gould	member	11/11/83	12 Lambert Rd. Freeport, ME 04032
Carol Gould	member	12/11/56	66 Broad St. Bethel, ME
Scott Gould	member	4/20/51	66 Broad St. Bethel, ME
Rexer Bortke	member	3/20/59	12 Broadview Ave, Maplewood, NJ
Ungrid Nagy	member	4/7/56	12 Broadview Ave, Maplewood, NJ

About Your Establishment

Class of Liquor License:	Class 1 Restaurant/Lounge	
Type of food served:	Full Service	
Please circle all that will be served:	Beer Wine Liquor	
Projected percentage of sales:	Generated from Food: \$1,048,062	Generated from Alcohol: \$407,580
Hours & days of operation:	Thurs-Sun 4pm-10pm Sat-Sun 11pm-2pm	

QUESTIONS	Y/N
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?	Y/N
If No, please explain:	
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?	Y/N
If yes, give the distance:	
Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.)	Y/N
Will you permit dancing on the premises?	Y/N
Will you permit dancing after 1:00 a.m.?	Y/N
Will you have outside dining? (If yes, an Outdoor Dining Application is required)	Y/N
If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one).	
Will you have any amusement devices (pinball, video games, juke box)?	Y/N
If yes, please list: # of pinball machines: _____ # of amusements: _____ # of pool tables: _____	
What is your targeted opening date?	12/20/16
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):	
Central Provisions 414 Fore St. Portland, ME 04101	
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:	
Chris Gould got a BUI. Please see attached sheets.	

I Paige Gould 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 P. Gould Title Director of Operations Date 7/14/16



Outdoor Dining Permit Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

Check all that apply: ☒ New Application for Outdoor Dining or ☐ Renewal Application for Outdoor Dining ☒ Application for dining on Private Property ☐ Outdoor Dining in a Public Park ☐ If Renewal, are there changes to previous permit? ☐ Outdoor Dining in a Historic District ☐ Yes ☒ No ☐ Petition for Exception for Special Circumstances ☒ Liquor License required? City Clerk signature for liquor license approval: _____ _____: 09/07/2016				
Location Name & Address: Ocean Ave, LLC 182 Ocean Ave. Portland, ME		Chart 140	Block C	Lot 012
Owner Name: Lucy Lu, LLC Owner Phone #: (617)678-7360		Total Square Footage of Proposed Outdoor Dining Area: ¹ 17.25 ft x 38.58 ft		
Applicant *must* be owner or lessee Name: Ocean Ave, LLC Address: 12 Lambert Road City, State & Zip: Freeport, ME 04032 E-Mail: paige@central-provisions.com		Fee: \$80 (Public-Annual) \$125 (Private IX) Total Sq. Ft.: 665.56 Sq. Ft. Fee: (sq ft x \$2) \$ _____ (sq ft x \$6 for public parks) Total Fees: \$ _____ (Permit not issued until all fees are paid)		
Current use: Restaurant Business name: Tipo				
Seating area dimensions: _____ How many chairs? 34 How many tables? 17 ☒ Yes Alcohol is served. ☐ No Alcohol being served.				
Who should we contact: Paige Gould Phone: 617-678-7360 Address: 12 Lambert Road Freeport, ME 04032 E Mail: paige@central-provisions.com				

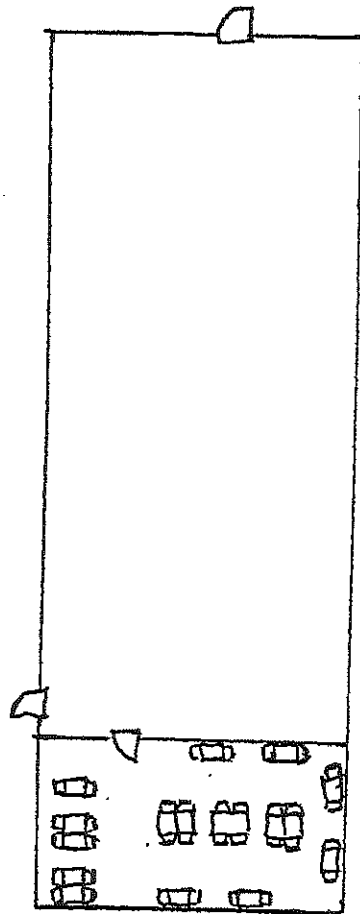
Please submit all of the information outlined in the Outdoor Dining Application Checklist. Failure to do so will result in the automatic denial of your permit. New applications and renewals are reviewed on an annual basis and should be submitted no later than June 1st.

In order to be sure the City fully understands the full scope of the project, the Planning and Development Department may request additional information prior to the issuance of a permit. For further information visit us on-line at www.portlandmaine.gov, stop by the Building Inspections office, room 315 City Hall or call 874-8703.

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

Signature of Applicant: Paige Gould Date: 7/14/16

¹ In no instance shall the total square footage of dining area equal more than 10% of park space, unless the applicant receives a waiver from the Director of Parks and Recreation or his or her designee.



Side walk

Side walk

Ocean Ave

Ocean Ave, LLC
182 Ocean Ave
Portland, ME

Walton St

**BUREAU OF ALCOHOLIC BEVERAGES
DIVISION OF LIQUOR LICENSING & ENFORCEMENT
8 STATE HOUSE STATION
AUGUSTA, ME 04333-0008**



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.

DEPARTMENT USE ONLY

LICENSE NUMBER:

CLASS:

DEPOSIT DATE

AMT. DEPOSITED:

BY:

CK/MO/CASH:

PRESENT LICENSE EXPIRES _____

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☒ SPIRITUOUS ☒ VINOUS

INDICATE TYPE OF LICENSE:

☒ RESTAURANT (Class I,II,III,IV)

☐ RESTAURANT/LOUNGE (Class XI)

☐ HOTEL-OPTINONAL FOOD (Class I-A)

☐ HOTEL (Class I,II,III,IV)

☐ CLASS A LOUNGE (Class X)

☐ CLUB-ON PREMISE CATERING (Class I)

☐ CLUB (Class V)

☐ GOLF CLUB (Class I,II,III,IV)

☐ TAVERN (Class 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)	
Ocean Ave, LLC		TIPD	
DOB:			
DOB:			
DOB:			
Address		Location (Street Address)	
		182 Ocean Ave.	
City/Town		State	Zip Code
Portland		ME	04102
12 Lambert Rd.		Mailing Address	
		12 Lambert Rd.	
City/Town	State	Zip Code	
Freeport	ME	04032	
Telephone Number	Fax Number	Business Telephone Number	Fax Number
(607) 678-7300		(607) 678-7300	
Federal I.D. #	Seller Certificate #		
81-2093188			

EMAIL ADDRESS: chris@central-provisions.com

3. If premises is a hotel, indicate number of rooms available for transient guests: _____

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 ☐

If YES, complete Supplementary Questionnaire

6. Do you permit dancing or entertainment on the licensed premises? YES ☐ NO ☒
7. If manager is to be employed, give name: Robyn Luongo
8. If business is NEW or under new ownership, indicate starting date: 12/2016
 Requested inspection date: 11/2016 Business hours: Tues - Sun. 4pm - 10pm Sat. - Sun. 11am - 2pm
9. Business records are located at: Mittel Azen 82 Exchange St. Portland, ME 02101
10. Is/are applicant(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
Chris Gould	11/11/83	Exeter, NH
Robyn Luongo	8/17/83	Chelsea, MA
Paige Gould	10/31/83	Wayne, NJ

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

Chris Gould: 12 Lambert Rd. 04101, 414 Fore St. 04101, 257 State St. Apt 3 04101, 10 Cumberland Av. 02118
 Paige Gould: 91 Stroudwater St. 04092, 23 Turner Street #3 04101, 100 W. Concord St. #1a 02118

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: Chris Gould

Date of Conviction: 3/12/2002

Offense: DUI

Location: Rumford, ME

Disposition: Guilty

14. Will any law enforcement official benefit financially either directly 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: _____

Lucy Lu, LLC 12 Lambert Rd. Freeport, ME 04032

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required)

Full service Italian Restaurant

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?

YES ☐ NO ☒ Applied for: 9/1/2016

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? .2 miles Which of the above is nearest? School

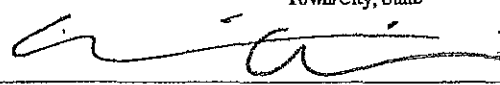
20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES ☒ NO ☐

If YES, give details: Bangor Savings Bank and SBA

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 14, 20 16
Town/City, State Date


Signature of Applicant or Corporate Officer(s)

Chris Gould
Print Name

Please sign in blue ink


Signature of Applicant or Corporate Officer(s)

Paige Gould
Print Name

NOTICE – SPECIAL ATTENTION

All applications for NEW or RENEWAL liquor licenses must contact their Municipal Officials or the County Commissioners in unincorporated places for approval of their application for liquor licenses prior to submitting them to the bureau.

THIS APPROVAL EXPIRES IN 60 DAYS.

FEE SCHEDULE

Class I	Spirituos, Vinous and Malt	\$ 900.00
	CLASS I: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers; OTB.	
Class I-A	Spirituos, Vinous and Malt, Optional Food (Hotels Only)	\$1,100.00
	CLASS I-A: Hotels only that do not serve three meals a day.	
Class II	Spirituos Only	\$ 550.00
	CLASS II: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; and Vessels.	
Class III	Vinous Only	\$ 220.00
	CLASS III: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.	
Class IV	Malt Liquor Only	\$ 220.00
	CLASS IV: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts.	
Class V	Spirituos, Vinous and Malt (Clubs without Catering, Bed & Breakfasts)	\$ 495.00
	CLASS V: Clubs without catering privileges.	
Class X	Spirituos, Vinous and Malt – Class A Lounge	\$2,200.00
	CLASS X: Class A Lounge	
Class XI	Spirituos, Vinous and Malt – Restaurant Lounge	\$1,500.00
	CLASS XI: Restaurant/Lounge; and OTB.	

FILING FEE \$ 10.00

UNORGANIZED TERRITORIES \$10.00 filing fee shall be paid directly to County Treasurer. All applicants in unorganized territories shall submit along with their application evidence of payment to the County Treasurer.

All fees must accompany application, made payable to the **Treasurer of Maine**. This application must be completed and mailed to Bureau of Alcoholic Beverages and Lottery Operations, Division of Liquor Licensing and Enforcement, 8 State House Station, Augusta ME, 04333-0008. Payments by check subject to penalty provided by Title 28A, MRS, Section 3-B.



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:

Ocean Ave, LLC

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

Tipo

3. Date of filing with the Secretary of State: 4/29/16

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 %
Chris Gould	12 Lambert Rd. Freeport, ME 414 Fore St. Portland, ME	11/11/83	52%
Carol Gould	66 Broad St. Bethel, ME	12/11/56	7%
Scott Gould	66 Broad St. Bethel, ME	4/20/51	7%
Peter Bodtke	12 Broadview Ave. Maplewood, NJ	3/20/59	7%
Ingrid Nagy	12 Broadview Ave. Maplewood, NJ	4/7/56	7%

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: Chris Gould

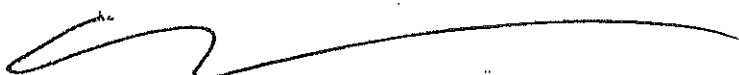
Date of Conviction: 3/12/2002

Offense: DUI

Location of Conviction: Rumford, ME

Disposition: Guilty

Signature: _____



Signature of Duly Authorized Person

7/14/16
Date

Chris Gould

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 Enforcement
8 State House Station Augusta, Me 04333-0008
Telephone Inquiries: (207) 624-7220
Fax: (207) 287-3434
Email Inquiries: MaineLiquor@Maine.gov

A1-1

Tipo Sample Menu

RAW:

Oysters on the Half Shell:	\$15/30
mignonette-cocktail sauce-chili ice	
Fluke Crudo:	\$9
basil pesto-lemon-bottarga	
Spanish Mackerel Crudo:	\$10
chard onion-caper-olive oil	
Local Beef Carpachio:	\$17
Arugula-aged balsamic-parmigiano reggiano	

COLD:

Antipasti:	\$26
Assorted cured meats-cheeses-marinated vegetables	
Arugula salad:	\$6
Pickled vegetables-prosecco vinaigrette	
Heirloom tomatoes:	\$17
Salted sardines-pistachio-prociutto de parma	
Burrata cheese:	\$14
Black olive-nasturtium-golden raisins	
Pickled sardines:	\$12
Shallot-celery-lemon-olive oil	

PIZZA:

Margherita:	\$15
Mozzarella-tomato-basil	
Lamb Sausage:	\$19
Harissa-za'atar-feta-arugula	
Lardo (white):	\$18
Fig-olive-garlic-chili	
Clam (white):	\$18
Clam cream-roasted leeks-fontina-chili	
Eggplant Parm:	\$16
Local tomatoes-mozzarella	

PASTA:

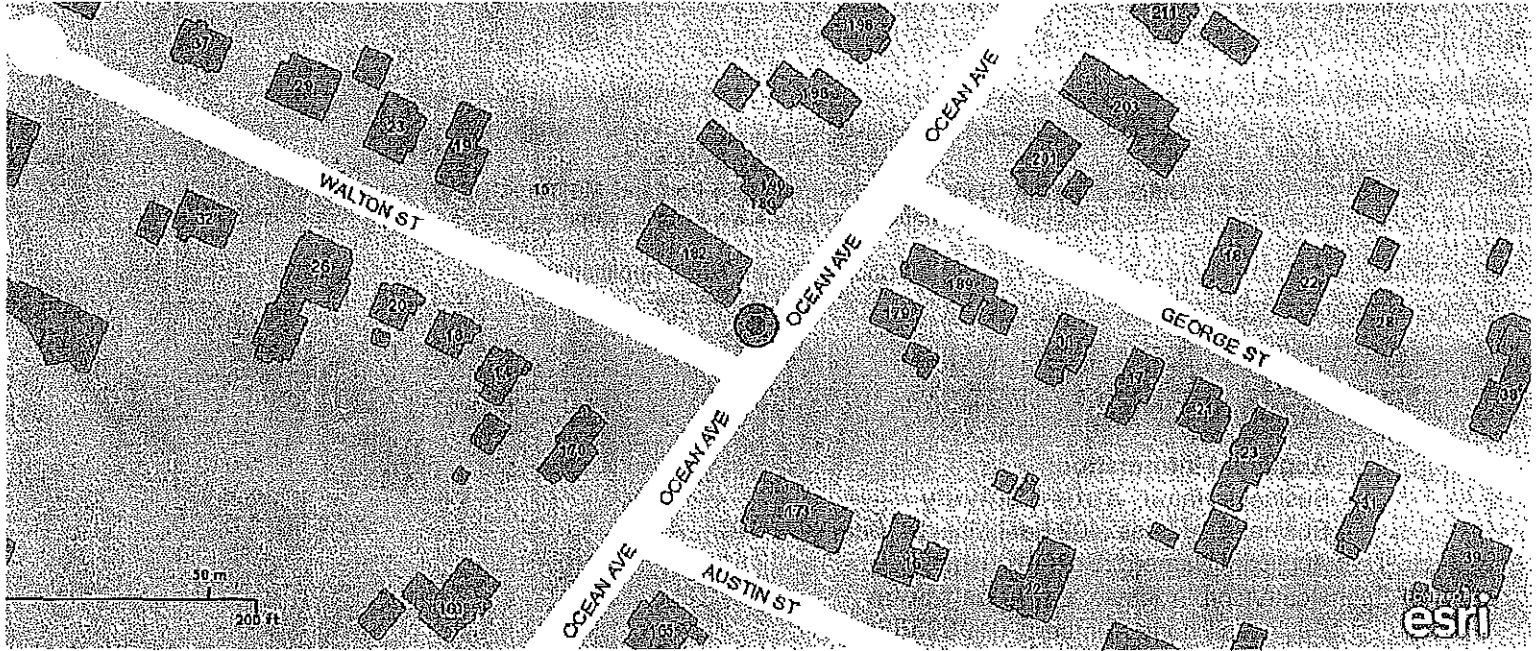
Rye Cavatelli:	\$16/30
Pork ragout-mascarpone-oregano	
Bluefin Farfalle:	\$18/32
Aged pecorino-lemon agrumato-thyme	
Squid ink tagliatini:	\$17/31
Tomato-sea urchin-bread crumbs	

WOOD OVEN:

Garlic knots:	\$5
Fresh out the wood oven	
Octopus:	\$15
Fava bean-fregola sarda-preserved lemon-romesco	
Foie Gras (3oz):	\$26
Maine raspberry-cipollini onion-fat soaked toast	
Artichokes:	\$12
Peri peri-garlic-lemon	
Cherry stone clams:	\$16
Vermouth-chives-olive oil	

SWEET:

Daily gelato:	\$7
Ask your server about todays selection	



Copyright 2011 Esri. All rights reserved. Mon Aug 22 2016 03:15:57 PM.

Tipo-182 Ocean Ave

Gary Hutcheson <garyh@portlandmaine.gov>

Tue, Aug 16, 2016 at 3:39 PM

To: Melissa Caiazzo <mcaiazzo@portlandmaine.gov>

Cc: Craig Messinger <cm@portlandmaine.gov>, David Margolis-Pineo <dmp@portlandmaine.gov>, zoning@portlandmaine.gov, David Petruccelli <petruccellid@portlandmaine.gov>, Eric Cobb <ecobb@portlandmaine.gov>, Gary Rogers <garyr@portlandmaine.gov>, Keith Gautreau <kng@portlandmaine.gov>, Laurie Carlson <lac@portlandmaine.gov>, Rachel Smith <rms@portlandmaine.gov>, Tom Williams <tw@portlandmaine.gov>, Treasury Division <treasury@portlandmaine.gov>, Vernon Malloch <vwm@portlandmaine.gov>, Paul Fagone <psf@portlandmaine.gov>

No issues from PD.

On Tue, Aug 16, 2016 at 10:09 AM, Melissa Caiazzo <mcaiazzo@portlandmaine.gov> wrote:

[Quoted text hidden]

--

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



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

MELISSA CAIAZZO
389 CONGRESS ST
PORTLAND, ME 04101

Transaction Response #: MIQ99C939548

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2016-07-27) :

inquiries Name(s) PETER BODTKE (1959-03-20)

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)

MELISSA CAIAZZO
389 CONGRESS ST
PORTLAND, ME 04101

Transaction Response #: MIQ99C939541

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2016-07-27) :

inquiries Name(s) INGRID NAGY (1956-04-07)

NO MATCH WAS FOUND FOR YOUR REQUEST.



Department of Permitting and Inspections
Michael Russell, MS.

August 10, 2016

Tipo
Attn: Paige Gould
12 Lambert Rd
Freeport, ME 04032

Re: Ocean Ave, LLC d/b/a Tipo. Application for Class I FSE with Outdoor Dining
on Private Property at 182 Ocean Ave.

Dear Mrs. Gould,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Wednesday, September 7th, at 5:00 p.m.**, for the review of your application for Class I FSE with Outdoor Dining on Private Property at 182 Ocean Ave. 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,

Melissa Caiazzo
Business License Assistant
207-874-8557
bl@portlandmaine.gov

**Legal Advertisement
Notice of Public Hearing
City of Portland**

A Public Hearing will be held on September 7th at 5:00 P.M., in City Council Chambers, 389 Congress St., on Ocean Ave, LLC d/b/a Tipo. Application for a Class I FSE with Outdoor Dining on Private Property at 182 Ocean Ave. Sponsored by Michael Russell, Director of Permitting and Inspections.

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Order 37-16/14
Tab 24 8-1-16
Tab 10 9-7-16
DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER DESIGNATING IMMUCELL CORPORATION MUNICIPAL
DEVELOPMENT AND TAX INCREMENT FINANCING DISTRICT**

WHEREAS, the City of Portland is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as a Tax Increment Financing District; and

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

WHEREAS, ImmuCell Corporation intends to expand its operation near its current facility at 56 Evergreen Drive by constructing a two-story, 12,625 square foot production facility at an estimated investment of \$3 Million, together with fit-up and equipment phase at an additional \$14.5 Million; and

WHEREAS, the City of Portland will invest tax increment financing revenue as detailed in the Development Program in support of ImmuCell's expansion with this Tax Increment Financing District; and

WHEREAS, there is a need to provide continuing employment 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 ImmuCell Corporation will help to provide continued employment for the citizens of Portland and the surrounding region; 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, there is a need to encourage the development, expansion and improvement of commercial, retail and light manufacturing facilities within the City through the establishment of Municipal Development and Tax Increment Financing Districts in accordance with the provisions of Chapter 206 of Title 30-A; and

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

WHEREAS, the City desires to designate the ImmuCell Corporation Municipal Development and Tax Increment Financing District and adopt a Development Program for such District; and

WHEREAS, it is expected that approval will be sought and obtained from the Maine Department of Economic and Community Development, approving the designation of the District and the adoption of the Municipal Development Program for the District;

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

Section 1. The City hereby finds and determines that:

- (a) The acquisition, construction and installment of all real and personal property improvements, buildings, structures, fixtures and equipment within the district contemplated by the Municipal Development Program will be completed in accordance with State law; and
- (b) The designation of the District and pursuit of the Municipal Development Program will generate substantial economic benefits for the City and its residents, including employment opportunities, broadened and improved tax base and economic stimulus, and therefore constitutes a good and valid public purpose.

Section 2. Pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, the City hereby designates the ImmuCell Corporation Municipal Development and Tax Increment Financing District, as more particularly set forth in the document entitled "IMMUCELL CORPORATION MUNICIPAL DEVELOPMENT AND TAX INCREMENT FINANCING DISTRICT" as presented to the City Council in the form attached hereto as Attachment 1 and that document is hereby incorporated by reference into this resolution and approved as the Municipal Development Program for the District (the "Development Program").

Section 3. Pursuant to the provisions of 30-A M.R.S.A. § 5224, the City hereby adopts the statement of the percentage of Assessed Value to be retained by the City set forth as Exhibit A in the ImmuCell Corporation Municipal Development and Tax Increment Financing District Application for purposes of said Section 5224.

Section 4. The City Manager be, and hereby is, authorized, empowered and directed to submit the proposed designation of the District and the proposed Development Program for the District to the State of Maine Department of Economic and Community Development for review and approval pursuant to the requirements of 30-A M.R.S.A. § 5226(2).

Section 5. The City Manager or his or her designee be, and hereby is, authorized to execute and deliver a credit enhancement agreement substantially in the form described in the Development Program and attached as Attachment H thereto.

Section 6. The foregoing designation of the District and the adoption of the Development Program for the District shall automatically become final and shall take full force and effect upon receipt by the City of approval of the designation of the District and adoption of the Development Program by the Department of Economic and Community Development, without requirements of further action by the City, the Council or any other party.

Fwd: ImmuCell TIF Amendments - stb@portlandmaine.gov

Inbox | x

Jon Jennings

12:25 PM (1 minute ago)

Reply

to me

----- Forwarded message -----

From: Michael Brigham <mbrigham@immucell.com>

Date: Wed, Aug 31, 2016 at 4:35 PM

Subject: RE: ImmuCell TIF Amendments

To: Ethan Strimling <estrimling@portlandmaine.gov>

Cc: Jason Shedlock <jshedlock@portlandmaine.gov>, Greg Mitchell <gmitchell@portlandmaine.gov>, "Jennings, Jon" <jpj@portlandmaine.gov>, "Brenerman, David (dbrenerman@portlandmaine.gov)" <dbrenerman@portlandmaine.gov>, Elizabeth Williams <ewilliams@immucell.com>

Dear Mr. Mayor: Thank you for taking the time to visit with me and our VP of Manufacturing Operations at our facility on August 22nd. I am writing in response to the written details that you provided to me on Monday the 29th about the three amendments you may propose regarding our TIF request. I have reviewed the issues internally and with counsel, our construction manager and some of the City representatives that I have been working with for years. I wish I could support your proposed amendments, but I cannot. Please allow me to explain. As I mentioned to you during our meeting, my initial and primary concern was that any amendments could add costs to our project and delay the timeline. I now know that this would be the case. We have been working in good faith with the City staff and the Economic Development Committee for many years now, including many months now more recently specifically on the TIF. We have followed all existing rules and guidelines in good faith. There has been ample opportunity for public comment earlier in the process. Implementing these proposed changes at this late stage would certainly add costs and delays to our project. We are nearly 15 years into this project to seek FDA approval of a novel treatment for subclinical mastitis in lactating dairy cows. We still have about three years to go before we can reasonably expect regulatory approval and commercial sales. It is important to note the significant development risks that we will continue to undertake over the next three years. In short, no approval will be granted by the FDA before we pass their

inspection and earn their approval of the manufacturing facility that we are about to begin constructing (we expect to break ground in September). With the support of the three members of the Economic Development Committee, we have gone ahead urgently with the design and permitting phase and are nearing completion of the competitive bidding process with contractors. We face many risks as we complete the development stage of the product, including financing, employment, product quality and regulatory (to name a few). As a public company, we are completely transparent with our finances. We have recently raised equity and debt financing, and we intend to invest most of our available cash. The TIF is a very important fourth leg to our "four-legged" stool. It is with all four legs of this stool that we expect to successfully navigate this risky path to FDA approval of a pharmaceutical drug in Portland. Our markets are well west of here (as the Maine dairy herd continues to shrink and the Maine beef market is very small). We spent a good deal of time in the Kansas City Animal Health Corridor considering the very generous financial incentives offered there. We are proud to have called Maine our home since 1982 and to have decided to make this \$18,000,000 investment here. Lastly, I would like to address the concerns I have about increased costs and delayed timelines associated with each of the three amendments more specifically.

Amendment 1: I am confident that the contractors we engage will pay a competitive prevailing wage. This is very specialized and highly technical labor. However, we have already gone to bid, and adding payroll auditing requirements at this late stage would increase costs and delay progress.

Amendment 2: Hiring local (Portland) 25 percent and diverse 25 percent would be extremely difficult, if not impossible, to achieve. By the way, our construction manager does believe that we would have no issue exceeding this local hire requirement at the State of Maine level. We have already obtained bids from subcontractors without these requirements, so to invite additional subcontractors to meet this requirement at this point would be a challenge, not to mention would add preconstruction costs and delay the start of construction. Our construction manager notes that past projects in Maine have not yielded a diverse percentage of 25 percent. They would need to have their Diversity / Community Outreach Manager (from their Boston office) get involved with setting up and administering this process, which adds to the construction cost and causes delays. We could not agree to financial penalties for missing these arbitrary targets.

Amendment 3: You did not mention this one to us during our meeting on August 22nd. Not all of the trades in this local market have apprenticeship programs. This would be extremely difficult, if not impossible, to achieve.

The following comment refers to all three proposed amendments. No business could agree to the ambiguous final clause of your proposed amendments because of the uncertainty that it carries. We have a very good relationship with the current City Manager, Jon Jennings, but a clause that leaves implementing and policing of a significant business clause up in the air to be defined in the future is not a good way for us to do business. Mr. Mayor, I respectfully request your support for our TIF. Again, this is one of many tools we are utilizing to help our small company take huge risks to grow in Portland. We can afford no increased costs or time delays. I respectfully suggest that your ideas would be more appropriately addressed with City Council and the general public on a go-forward basis, but not on a project like ours that is so far down the road. Best regards,

Best regards,

Michael F. Brigham

President and CEO

ImmuCell Corporation

56 Evergreen Drive

Portland, ME 04103

(207) 878-2770 Ext. 3106

mbrigham@immucell.com

AMENDMENT TO ORDER 37-16/17
RE: REGULATION OF CONSTRUCTION EMPLOYMENT AND
CONSTRUCTION IN THE
IMMUCELL CREDIT ENHANCEMENT AGREEMENT
PREPARED BY CORPORATION COUNSEL FOR MAYOR STRIMLING

ORDER DESIGNATING IMMUCELL CORPORATION MUNICIPAL
DEVELOPMENT AND TAX INCREMENT FINANCING DISTRICT

WHEREAS, the City of Portland is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate specified areas within the City as a Tax Increment Financing District; and

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

WHEREAS, ImmuCell Corporation intends to expand its operation near its current facility at 56 Evergreen Drive by constructing a two-story, 12,625 square foot production facility at an estimated investment of \$3 Million, together with fit-up and equipment phase at an additional \$14.5 Million; and

WHEREAS, the City of Portland will invest tax increment financing revenue as detailed in the Development Program in support of ImmuCell's expansion with this Tax Increment Financing District; and

WHEREAS, there is a need to provide continuing employment 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 ImmuCell Corporation will help to provide continued employment for the citizens of Portland and the surrounding region; 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, there is a need to encourage the development, expansion and improvement of commercial, retail and light manufacturing facilities within the City through the establishment of Municipal Development and Tax Increment Financing Districts in accordance with the provisions of Chapter 206 of Title 30-A; and

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

WHEREAS, the City desires to designate the ImmuCell Corporation Municipal Development and Tax Increment Financing District and adopt a Development Program for such District; and

WHEREAS, it is expected that approval will be sought and obtained from the Maine Department of Economic and Community Development, approving the designation of the District and the adoption of the Municipal Development Program for the District;

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

Section 1. The City hereby finds and determines that:

- (a) The acquisition, construction and installment of all real and personal property improvements, buildings, structures, fixtures and equipment within the district contemplated by the Municipal Development Program will be completed in accordance with State law; and
- (b) The designation of the District and pursuit of the Municipal Development Program will generate substantial economic benefits for the City and its residents, including company and construction employment opportunities, broadened and improved tax base and economic stimulus, and therefore constitutes a good and valid public purpose.

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Section 3. Pursuant to the provisions of 30-A M.R.S.A. § 5224, the City hereby adopts the statement of the percentage of Assessed Value to be retained by the City set forth as Exhibit A in the ImmuCell Corporation Municipal Development and Tax Increment Financing District Application for purposes of said Section 5224.

Section 4. The City Manager be, and hereby is, authorized, empowered and directed to submit the proposed designation of the District and the proposed Development Program for the District to the State of Maine Department of Economic and Community Development for review and approval pursuant to the requirements of 30-A M.R.S.A. § 5226(2).

Section 5. The City Manager or his or her designee be, and hereby is, authorized to execute and deliver a credit enhancement agreement substantially in the form described in the Development Program and attached as Attachment H thereto.

Section 6. The foregoing designation of the District and the adoption of the Development Program for the District shall automatically become final and shall take full force and effect upon receipt by the City of approval of the designation of the District and adoption of the Development Program by the Department of Economic and Community Development, without requirements of further action by the City, the Council or any other party.

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Order 38-16/17
Tab 25 8-1-16
Tab 11 9-7-16
DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING CREDIT ENHANCEMENT AGREEMENT
WITH IMMUCELL CORPORATION**

ORDERED, that the Credit Enhancement Agreement between the City of Portland and ImmuCell Corporation is hereby approved in substantially the form attached hereto; and

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

**AMENDMENT #1 TO ORDER 38-16/17
RE: PAYMENT OF STATE PREVAILING WAGES
PREPARED BY CORPORATION COUNSEL FOR MAYOR STRIMLING**

**ORDER APPROVING CREDIT ENHANCEMENT AGREEMENT
WITH IMMUCELL CORPORATION**

ORDERED, that the Credit Enhancement Agreement between the City of Portland and ImmuCell Corporation is hereby approved in substantially the form attached hereto; and

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

CREDIT ENHANCEMENT AGREEMENT

between

CITY OF PORTLAND, MAINE

and

IMMUCELL CORPORATION

Dated as of _____, 2016

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EXHIBITS:

- Exhibit A. ImmuCell Corporation Municipal Development and Tax Increment Financing District Program
- Exhibit B. Company Tax Increment Revenue Allocation
- Exhibit C. Certification of Costs Form

THIS CREDIT ENHANCEMENT AGREEMENT (the "Agreement") dated as of _____, 2016, between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine, a corporation duly organized and existing under the laws of the State of Maine (the "City"), with a place of business in Portland, Maine, and ImmuCell Corporation, a Delaware corporation (the "Company"), having a place of business at 56 Evergreen Drive, Portland, Maine 04103

WITNESSETH

WHEREAS, the City designated the ImmuCell Corporation Municipal Development and Tax Increment Financing District (the "District") and adopted a development program therefor (the "Development Program") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the Portland City Council on _____, 2016; and

WHEREAS, upon submission of an application to the State Department of Economic and Community Development ("DECD"), the City expects DECD to review and approve the ImmuCell Corporation Municipal Development and Tax Increment Financing District and Development Program; and

WHEREAS, the City designated the ImmuCell Corporation Municipal Development and Tax Increment Financing District, adopted the Development Program and entered into this Agreement in order to induce the Company to move forward with ImmuCell's expansion from its existing facility at 56 Evergreen Drive to a new two-story, 12,625 square foot (approx.) production facility on Caddie Lane in the District (the "Project"); and

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

WHEREAS, the City and the Company desire and intend that this Agreement 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. All other capitalized terms not otherwise defined herein shall have the meaning given such terms in the Development Program.

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

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

“Captured Assessed Value” means the percentage of Increased Assessed Value retained in the ImmuCell Corporation Municipal Development and Tax Increment Financing District in each year during the term of the ImmuCell Corporation Municipal Development and Tax Increment Financing District as specified in Section 3.1 below.

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

“Current Assessed Value” means the then current assessed value of the Property located within the ImmuCell Corporation Municipal Development and Tax Increment Financing District to be determined by the City’s Assessor as of April 1 of each year that this Agreement remains in effect.

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

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

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

“DECD” shall have the meaning given such term in the recitals hereto.

“Development Program” means the development program and financial plan for the District and attached hereto as Exhibit A.

“Development Program Fund” shall have the meaning given such term in Section 2.1 hereto.

“District” shall have the meaning given such term in the recitals hereto, which District is depicted on the maps contained in Exhibits A and B to the Development Program.

“Effective Date” shall have the meaning given such term in Section 6.1 hereto.

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

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

“Original Assessed Value” means \$52,600, the assessed value of the Property as of April 1, 2015.

“Project” shall mean the new construction and its associated employment opportunities, as well as the meaning given such term in the recitals hereto.

~~“Project” shall have the meaning given such term in the recitals hereto.~~

“Project Construction Employment” shall mean the employment provided by the construction work of the Project.

“Project Cost Account” means the account in the Development Program Fund described in Section IV(B) of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

“Project Costs” means all costs incurred by the Company on the Project within the meaning set forth in 30-A M.R.S.A. §5222(14), as amended.

“Property” means the land and all real property improvements located in the District and taxable by the City.

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

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

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

“State Prevailing Wages” shall mean the current wage rates and fringe benefits as required under applicable State prevailing wage law under 26 M.R.S. §1306, or Portland City Ordinance Ch. 33, §§33-1 to 33-12, whichever is greater.

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

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

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

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

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

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

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

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

ARTICLE II

DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

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

Section 2.2. Deposits into Company TIF Account.

Each year during the term of this Agreement, commencing with the City’s 2016-2017 fiscal year and continuing thereafter for the remaining term of this Agreement, through and including the City’s 2027-2028 fiscal year, there shall be deposited into the Company TIF Account contemporaneously with each payment of Property Taxes an amount equal to that portion of the Property Taxes constituting Company Tax Increment Revenues for the period to which the payment relates. Any and all revenues, if any, resulting from investment of monies on deposit shall be retained by the City and withdrawn from the Company TIF Account contemporaneously with payment to the Company.

Section 2.3. Use of Monies in Company TIF Account.

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

Section 2.4. Monies Held in Trust.

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

Section 2.5. Investments.

Any monies in the Company TIF 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 at all times invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Company TIF Account. If the City experiences any losses in association with these

investments related to the Company TIF Account, the City shall still pay to the Company the amounts required under Section 3.1 hereof.

Section 2.6. Tax Payments.

The Company shall pay or cause to be paid when due all Property Taxes assessed by the City unless contested by the Company by appropriate proceedings pursuant to Maine law. No payments shall be made by the City under this Agreement at any time any such taxes or amounts are due and unpaid.

Section 2.7. State Prevailing Wages.

The firm(s) utilized in the construction of the project will pay all employees that it employs on the project the current wage rates and fringe benefits as required under applicable State prevailing wage law under 26 M.R.S.A. §1306, or Portland City Ordinance Ch. 33, §§33-1 to 33-12, whichever is greater.

Section 2.8. Enforcement.

The City Manager or his or her designee is authorized to adopt rules and regulations for the proper administration and enforcement of the Credit Enhancement Agreement.

ARTICLE III PAYMENT OBLIGATIONS

Section 3.1. Captured Assessed Value; Retained Tax Increment Revenues.

During the term of the Development Program, the City shall annually retain the percentage of Increased Assessed Value and Increased Assessed Value indicated on Exhibit B attached hereto as Captured Assessed Value.

The Property Taxes paid with respect to the Captured Assessed Value shall be retained as Retained Tax Increment Revenues. The City agrees that all one hundred percent (100%) of the Retained Tax Increment Revenues shall constitute Company Tax Increment Revenues. Each year during the term of this Agreement, the City shall deposit into the Company TIF Account contemporaneously with each payment of Property Taxes an amount equal to one hundred percent (100%) of that portion of the property tax payment constituting Company Tax Increment Revenues, in accordance with the provisions of Section 2.2 of this Agreement and the priorities established by 30-A M.R.S.A. § 5227(3)(B), starting with taxes assessed for the 2013-2014 Tax Year and continuing thereafter for the remaining term of this Agreement, ending with taxes assessed for the City's 2027-2028 fiscal year, based on the April 1, 2027 Current Assessed Value.

Section 3.2. Credit Enhancement Payments.

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

Section 3.3. Failure to Make Payment.

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

Section 3.4. Manner of Payments.

a. The payments provided for in this Article III shall be paid in immediately available funds in the manner provided hereinabove for its own use and benefit. Notwithstanding the above, no payments shall be made unless used to satisfy debt service on indebtedness incurred to finance qualified "Project Costs" as that term is defined under Chapter

206 of Title 30-A of the Maine Revised Statutes and as described as part of the Project in the Development Program or used to pay directly, or to reimburse the Company for payment of such Project Costs.

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

Section 3.5. Obligations Unconditional.

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

Section 3.6. Limited Obligation.

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

ARTICLE IV PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of Company TIF Account.

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

Section 4.2. Perfection of Interest.

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

Section 4.3. Further Instruments.

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

Section 4.4. Liens.

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

Section 4.5. Access to Books and Records.

All books, records, notes and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Account shall at all reasonable times be open to inspection by the Company, its agents and employees.

ARTICLE V DEFAULTS AND REMEDIES

Section 5.1. Events of Default.

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

a. Any failure by the City to pay any amounts due under Section 3 above when the same shall become due and payable;

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

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

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

Section 5.2. Remedies on Default.

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

Section 5.3. Remedies Cumulative.

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

Section 5.4. Enforcement Rights.

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

ARTICLE VI
EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

This Agreement shall become effective upon its execution and delivery by the parties hereto (the "Effective Date") and shall remain in full force from the date hereof and shall expire on the later of the completion of deposits and payments required pursuant to Articles II and III hereof with respect to the City's 2027-2028 fiscal year relating to Current Assessed Value as of April 1, 2027, or upon the performance of all obligations on the part of the City and the Company hereunder, including without limitation payment of all amounts to be paid to Company.

Section 6.2. Cancellation and Expiration of Term.

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

ARTICLE VII ASSIGNMENT

Section 7.1. Consent to Pledge and/or Assignment.

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

Section 7.2. Assignment.

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

ARTICLE VIII MISCELLANEOUS

Section 8.1. Successors.

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

Section 8.2. Parties in Interest.

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

Section 8.3. Severability.

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

Section 8.4. No Personal Liability.

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

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

Section 8.5. Counterparts.

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

Section 8.6. Governing Law.

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

Section 8.7. Notices.

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

If to the City:

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

If to the Company:

ImmuCell Corporation
56 Evergreen Drive
Portland, ME 04103
Attn: Michael F. Brigham, President

With a copy to:
Pierce Atwood LLP
254 Commercial Street
Portland, ME 0410
Attn: James M. Saffian, Esq.

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

Section 8.8. Amendments.

Neither this Agreement nor the Development Program may be amended without the express written consent of all of the parties hereto, which consent shall not be unreasonably

withheld, conditioned or delayed. Provided, however, the parties agree to amend this Agreement in order to fulfill such reasonable requirement that a lender may require in connection with financing of the Project. This Agreement may only be amended in compliance with the provisions of 30-A M.R.S.A. §5211 et seq., as amended.

Section 8.9. Net Agreement.

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

Section 8.10. Integration.

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

Section 8.11. Project Responsibility.

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

Section 8.12. Benefit of Assignees or Pledgees.

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

Section 8.13. No Third Party Benefits.

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

Section 8.14. Indemnification.

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

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

Section 8.15. Waiver of Recapture.

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

(Signature page break.)

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

WITNESS

CITY OF PORTLAND, MAINE

By: _____

Jon P. Jennings
Its City Manager

IMMUCELL CORPORATION

By: _____

Michael F. Brigham
Its President

**Exhibit A to Credit Enhancement Agreement – ImmuCell Corporation Municipal
Development and Tax Increment Financing District Development Program**

EXHIBIT B to Credit Enhancement Agreement: Company Tax Increment Revenues

CEA Years:	Increased Assessed Value to be captured as Captured Assessed Value (and Reimbursed to Company):
Years 1-11 (FY2016-2017 to FY2026-2027)	65%
Years 12 (FY2027-2028)	30%

EXHIBIT C to Credit Enhancement Agreement – Certification of Costs Form (ImmuCell Corporation TIF District)

The undersigned does hereby certify the following project costs were incurred in the Tax Year starting April 1, 20__ and ending March 31, 20__ as follows:

<u>Improvements</u>	<u>Actual Costs</u>
----------------------------	----------------------------

_____	_____
_____	_____
_____	_____

Total:	_____
---------------	-------

Date: _____

By: _____

Name: _____

Its: _____



Economic Development Department
Gregory A. Mitchell, Director

TO: Chair and Members of the Economic Development Committee

FROM: Gregory A. Mitchell, Economic Development Director

DATE: June 29, 2016

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

SUBJECT: Order Authorizing Tax Increment Financing District and Credit Enhancement Agreement with ImmuCell

SPONSOR: Economic Development Committee/Councilor Brenerman, Chair. Vote taken by the Committee on June 28, 2016 was unanimous (3-0).

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading: August 1, 2016 **Final Action:** September 7, 2016

Can action be taken at a later date: ____ Yes **X-No (If no, why not?)** Because of one Council meeting in August, as well as the expected construction schedule for ImmuCell's project, staff is recommending Council action take place on September 7, 2016.

PRESENTATION: Greg Mitchell, Economic Development Director/5 Minutes

I. ONE SENTENCE SUMMARY

ImmuCell is requesting City Council approval to establish a Tax Increment Financing (TIF) District and enter into a Credit Enhancement Agreement (CEA) with the City to support its expansion project near its current facility at 56 Evergreen Drive.

II. AGENDA DESCRIPTION

ImmuCell Corporation is a growing animal health company that develops, manufactures, and sells products that improve animal health and productivity in the dairy and beef industries. Its lead product in development is **Mast Out** which is novel, ground-breaking treatment for mastitis in lactating dairy cows. As part of the final state of its **Mast Out** drug development strategy, the Company hopes to arrange financing to construct a two-story, 12,625 sq. ft. production facility near to its 56 Evergreen Drive facility, in the 1039 Riverside business condominium. ImmuCell estimates the initial land building (shell) costs at approximately \$3.0 million and estimates the fit-out and equipment phase at approximately an additional \$14.5 million.

This project is consistent with and satisfies the primary purposes of the City's TIF Policy in that it supports economic development; stimulates expansion of the City's commercial and industrial tax base; and creates quality employment. The project also satisfies three primary general principles of the City's TIF Policy in that a minimum of \$1 million in taxable investment property value will be created; jobs will be created, and assists the City in maximizing tax sheltering benefits.

III. BACKGROUND

ImmuCell Corporation is a growing animal health company that develops, manufactures, and sells products that improve animal health and productivity in the dairy and beef industries. It has developed products that provide significant, immediate immunity to newborn dairy and beef livestock. Over the last nearly 16 years, ImmuCell has also invested significant resources in excess of \$11 Million in the R&D of a product that addresses mastitis, the most significant cause of economic loss to the dairy industry. Its lead product in development is **Mast Out** which is novel, ground-breaking treatment for mastitis in lactating dairy cows.

As part of the final state of its **Mast Out** drug development strategy, the Company hopes to arrange financing to construct a two-story, 12,625 sq. ft. production facility near to its 56 Evergreen Drive facility, in the 1039 Riverside business condominium. ImmuCell estimates the initial land building (shell) costs at approximately \$3.0 million and estimates the fit-out and equipment phase at approximately an additional \$14.5 million.

IV. INTENDED RESULT OR COUNCIL GOAL ADDRESSED

The intended result is for the City to partner with ImmuCell in supporting this expansion by creating the TIF District and entering into a CEA with ImmuCell for financial support.

V. FINANCIAL IMPACT

The financial impact to the City would be in the form of new tax revenue from the planned expansion, while returning a portion of the new real estate tax revenue back to ImmuCell for financial support over 12 years. The table below provides an overview of the estimated new property tax revenue arrangement.

Years and TIF Capture Rate	Project Financial Support	City General Fund
1-11 @ 65%	\$357,369	\$192,430
12 @ 30%	\$16,853	\$39,324
Total	\$374,222	\$231,754

Additionally, the City of Portland will realize estimated tax shelter benefits or savings associated with the proposed TIF District which total \$151,283 over the twelve years. Tax shelter benefits provided by this TIF District will help mitigate education aide and revenue sharing decreases and limit potential increases in County tax assessments.

VI. STAFF ANALYSIS

This project is consistent with and satisfies the primary purposes of the City's TIF Policy in that it supports economic development; stimulates expansion of the City's commercial and industrial tax base; and creates quality employment. The project also satisfies three primary general principles of the City's TIF Policy in that a minimum of \$1 million in taxable investment property value will be created; jobs will be created, and assists the City in maximizing tax sheltering benefits.

Also, per the City's TIF Policy, the City's participation in the project appears to be financially necessary in order for it to proceed.

Lastly, supporting growth of the life or bioscience industry is a targeted economic sector in the City's Economic Development Plan + Vision.

VII. RECOMMENDATION

Staff presented this to the Economic Development Committee at its meeting on June 28, 2016. The Committee voted unanimously (3-0) to forward this to the City Council with a recommendation that it authorize the establishment of the TIF District and enter into a CEA with ImmuCell due to the economic benefits and increased quality bioscience manufacturing type employment.

VIII. LIST ATTACHMENTS

Municipal Tax Increment Financing Cover Sheet

Employment Goals Form

ImmuCell Corporation Municipal Development Tax Increment Financing District Program
Application dated June 23, 2016

Credit Enhancement Agreement between City of Portland and ImmuCell Corporation

APPLICATION COVER SHEET

MUNICIPAL TAX INCREMENT FINANCING

A. General Information

1. Municipality Name: City of Portland, Maine		
2. Address: 389 Congress Street, Portland, ME 04101-3509		
3. Telephone: (207) 874-8945	4. Fax: (207) 756-8217	5. Email: gmitchell@portlandmaine.gov
6. Municipal Contact Person: Gregory A. Mitchell, Director, Economic Development Department		
7. Business Name: ImmuCell Corporation		
8. Address: 56 Evergreen Drive, Portland, ME 04103		
9. Telephone: (207) 878-2770 x3106	10. Fax: (207) 878-2117	11. Email: mbrigham@immucell.com
12. Business Contact Person: Michael F. Brigham, President and CEO		
13. Principal Place of Business: 56 Evergreen Drive, Portland, ME 04103		
14. Company Structure (e.g. corporation, sub-chapter S, etc.): Corporation		
15. Place of Incorporation: Delaware		
16. Names of Officers: See attached		
17. Principal Owner(s) Name: N/A		
18. Address: 56 Evergreen Drive, Portland, ME 04103		

B. Disclosure

1. Check the public purpose that will be met by the business using this incentive (any that apply):		
☒ job creation	☐ job retention	☒ capital investment
☐ training investment	☒ tax base improvement	☐ public facilities improvement
☐ other (list):		
2. Check the specific items for which TIF revenues will be used (any that apply):		
☒ real estate purchase	☒ machinery & equipment purchase	☐ training costs
☒ debt reduction	☐ other (list):	

C. Employment Data

List the company's goals for the number, type and wage levels of jobs to be created or retained as part of this TIF development project (*please use next page*).

ImmuCell 2016 TIF Application: Directors, Officers and Owners

Directors and Officers:

Michael F. Brigham, President and CEO

Joseph H. Crabb, VP and Chief Scientific Officer

Directors:

David S. Cunningham

Linda Rhodes

Jonathan E. Rothschild

David S. Tomsche

Paul R. Wainman

Officers:

Bobbi Jo Brockmann, VP of Sales and Marketing

Elizabeth L. Williams, VP of Manufacturing Operations

Owners:

ImmuCell Corporation is a publicly-held corporation with approximately 2,500 stockholders.

EMPLOYMENT GOALS
Company Goals for Job Creation and Job Retention

<i>A. Job Creation Goals</i>			
<i>Occupational Cluster*</i>	<i>Full-time</i>	<i>Part-time</i>	<i>Wage Level</i>
1. Executive, Professional & Technical	6		**Average Total Annual Compensation \$105,500
2. Administrative Support, inc. Clerical			\$
3. Sales & Service			\$
4. Agriculture, Forestry & Fishing			\$
5. Maintenance, Construction, Production, & Transportation	8		**Average Total Annual Compensation \$63,000
<i>B. Job Retention Goals</i>			
<i>Occupational Cluster*</i>	<i>Full-time</i>	<i>Part-time</i>	<i>Wage Level</i>
1. Executive, Professional & Technical			\$
2. Administrative Support, inc. Clerical			\$
3. Sales & Service			\$
4. Agriculture, Forestry & Fishing			\$
5. Maintenance, Construction, Production, & Transportation			\$
*Please use the Occupational Cluster descriptions on the next page to complete this form.			

**** Average Total Annual Compensation=Average Employee Salary + Benefits.**

INSTRUCTIONS

A. Job Creation Goals. Please list the number, type and wage level of jobs created as a result of the economic development incentive. NOTE: For this form, "full-time" employment means 30 hours or more; "part-time" employment means less than 30 hours. "Wage level" means the average annual wage paid for jobs created within an occupational cluster, e.g. either their annual salary, or their hourly wage times their annual hours. Also, "type" means "occupational cluster" which refers to the 12 categories defined below. Please include the number of your employees (both full-time and part-time) working within the category that most closely reflects their job duties.

B. Job Retention Goals. Please list the number, type and wage level of jobs retained as a result of the economic development incentive. Part B should be completed using same definitions in Part A.

OCCUPATIONAL CLUSTERS

1. EXECUTIVE, PROFESSIONAL & TECHNICAL

Executive, administrative and managerial. Workers in executive, administrative and managerial occupations establish policies, make plans, determine staffing requirements, and direct the activities of businesses and other organizations. Workers in management support occupations, such as accountant and auditor or underwriter, provide technical assistance to managers.

Professional specialty. This group includes engineers; architects and surveyors; computer, mathematical, and operations research occupations; life, physical, and social scientists; lawyers and judges; social, recreational, and religious workers; teachers, librarians, and counselors; health diagnosing, assessment, and treating occupations; and communications, visual arts, and performing arts occupations.

Technicians and related support. This group includes health technologists and technicians, engineering and science technicians, computer programmers, tool programmers, aircraft pilots, air traffic controllers, paralegals, broadcast technicians, and library technicians.

2. ADMINISTRATIVE SUPPORT, INCLUDING CLERICAL

Administrative support, including clerical. Workers in this group prepare and record memos, letters and reports; collect accounts; gather and distribute information; operate office machines; and handle other administrative tasks.

3. SALES AND SERVICE

Marketing and sales. Workers in this group sell goods and services, purchase commodities and property for resale, and stimulate consumer interest.

Service. This group includes a wide range of workers in protective, food and beverage preparation, health, personal, private household, and cleaning and building services.

4. AGRICULTURE, FORESTRY AND FISHING

Agriculture, forestry and fishing. Workers in these occupations cultivate plants, breed and raise animals, and catch fish.

5. MAINTENANCE, CONSTRUCTION, PRODUCTION & TRANSPORTATION

Mechanics, installers, and repairers. Workers in this group adjust, maintain, and repair automobiles, industrial equipment, computers, and many other types of machinery.

Construction trades and extractive. Workers in this group construct, alter, and maintain buildings and other structures or operate drilling and mining equipment.

Production. These workers set up, adjust, operate, and tend machinery and/or use hand tools and hand-held power tools to make goods and assemble products.

Transportation and material moving. Workers in this group operate the equipment used to move people and materials. This group also includes handlers, equipment cleaners, helpers, and laborers who assist skilled workers and perform routine tasks.



CITY OF PORTLAND, MAINE

ImmuCell Corporation Municipal Development and Tax Increment Financing District Program Application

Prepared By:

The City of Portland Economic Development Department

July 23, 2016

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ImmuCell Corporation Municipal Development and Tax Increment Financing District Development Program

I. Introduction

The Maine Legislature established municipal tax increment financing (“TIF”) as an economic development tool to be used by municipalities to: (a) provide new employment opportunities; (b) improve and broaden its tax base; and (c) improve the general economy of the State. The Legislature recognizes that the State and its municipalities benefit from a municipality’s economic development partnership with a local business to promote responsible new development that (a) enhances local efforts for economic, industrial or commercial development; and (b) retains and expands the local tax base and employment opportunities. The City of Portland (the “City” or “Portland”) now has the opportunity to enter into such an undertaking with ImmuCell Corporation (the “Company” or “ImmuCell”).

Portland desires to establish the proposed ***ImmuCell Corporation Municipal Development and Tax Increment Financing District*** (the “District” or “TIF District”) to support ImmuCell Corporation’s expansion from its existing facility at 56 Evergreen Drive to a new two-story, 12,625 square foot (approx.) production facility on Caddie Lane (the “ImmuCell Project”).

By designating the proposed TIF District consistent with the provisions of 30-A M.R.S.A. §5223, adopting this Development Program, and authorizing a credit enhancement agreement, the City will accomplish a variety of goals. The public benefits associated with the ImmuCell Project and the TIF District include:

- Provide support for Portland’s ***continued economic development***;
- Create ***new property tax revenue*** averaging an estimated \$50,498 annually while maintaining all existing tax revenues generated within the City;
- Produce ***Tax Shift Benefits*** averaging an estimated savings to the City of \$12,607 annually, resulting from the portion of the new increased assessed value to be captured in the District¹;
- Create ***employment opportunities*** for area residents;
- ***Improve the general economy*** of the City and the State of Maine.

¹ By creating a TIF District, the City can “shelter” all or a portion of the very significant increase in valuation that the ImmuCell Project will bring about. The tax shelter provided by this TIF will help mitigate revenue sharing and education aid decreases, and limit potential increases in its County tax assessments. Together the tax shift benefits are estimated at approximately \$151,283 over the 12-year term of the District with an average annual savings of \$12,607.

II. Development Program Narrative

A. The ImmuCell Project

ImmuCell Corporation is a growing animal health company that develops, manufactures and sells products that improve animal health and productivity in the dairy and beef industries. ImmuCell has developed products that provide significant, immediate immunity to newborn dairy and beef livestock. ImmuCell currently produces **First Defense®**, the best-in-class treatment for calf scours. Over the last nearly 16 years, the Company has also invested significant resources (in excess of \$11 million) in the research and development of a product that addresses mastitis, the most significant cause of economic loss to the dairy industry. This lead product in development is **Mast Out®**, a novel, ground-breaking treatment for mastitis in lactating dairy cows.

As part of the final stage of its **Mast Out®** drug development strategy, the Company plans to construct a two-story, 12,625 square foot production facility near to its 56 Evergreen Drive facility (in the 1039 Riverside business condominium). The Company hopes to break ground during the second half of 2016 and would expect to complete construction of the building shell by the end of 2016 or early 2017. Work on the building infrastructure, equipping this building shell with an ISO-8 manufacturing room, installing and validating all the necessary process equipment and other equipment installation will then continue over the winter and through the balance of 2017. ImmuCell estimates the initial land and building (shell) costs at approximately \$3.0 million and estimates the fit-out and equipment phase at approximately an additional \$14.5 million.

Due to the recent, significant increase in sales of **First Defense®**, the Company is utilizing every square foot of its existing facility at 56 Evergreen Drive to increase production capacity. This includes utilizing a 7,100 square foot addition that was added to their building in early 2015. If this new facility is constructed, the Company plans to relocate all **Mast Out®** activities out of the current facility to make room for additional growth in **First Defense®** production. All **Mast Out®** activities would be located in the new facility.

Once completed, the project will enable the Company to complete its New Animal Drug Application (NADA) to the FDA for **Mast Out®** and to manufacture pharmaceutical-grade Nisin at commercial-scale. ImmuCell intends to take all appropriate steps to pursue a successful commercialization of **Mast Out®**.

As you are aware, manufacturing in Maine has been in a lengthy decline over the last several decades. Recent papers and reports document how Maine manufacturing jobs have dropped from one of every three jobs in 1960 to less than one in six today. Furthermore, economists predict that Maine has little potential for growth; while U.S. manufacturing employment will recover somewhat, Maine's is forecast to continue a modest decline and will see little in the way of job growth in the recovery. (See *Maine Economic Outlook: New England Economic Partnership October 2014: Maine*, Charles S. Colgan, Professor of Public Policy & Management at the Muskie School of Public Service, University of Southern Maine.) In 2012, the Maine Department of Labor estimated that employment in manufacturing accounted for just 8.5 percent

of nonfarm jobs. (See Research Brief entitled *Manufacturing Jobs: Trends, Issues, and Outlook*, Maine Department of Labor - Center for Workforce Research and Information, July 2012.)

However, notwithstanding this decline, manufacturing still remains an important part of the Maine economy, contributing annual economic output of \$6 billion and accounting for approximately 10% percent of the gross state product. (See *2014 Manufacturing Summit Report*, Manufacturers Association of Maine.) Indeed, the same *Manufacturing Summit Report* notes one bright spot in the manufacturing area is the Bioscience / Technology sector. Specifically to that sector, the report states that:

Maine's bioscience industry employs nearly 6,200 Mainers in 225 business establishments across the state. Maine has a specialized employment concentration in drugs and pharmaceuticals, a sector which has also seen strong job growth since 2007 (17% increase). In Maine, the bioscience sector total employment impact is 27,915 and average annual wage of \$62,303.

Commercial introduction of a product like **Mast Out**® in the United States is a costly, time and labor-intensive, multi-step process. Production of the product requires approval of a New Animal Drug Application (NADA) by the U.S. Food and Drug Administration's Center for Veterinary Medicine (FDA). (In addition, foreign regulatory approvals would be required for sales in key markets outside of the United States, which would involve some different requirements.)

ImmuCell's NADA is subject to the FDA's phased review of the following five principal Technical Sections:

1. Environmental Impact (completed - 2008);
2. Target Animal Safety (completed - 2012);
3. Effectiveness (completed - 2012);
4. Human Food Safety (expected completion in 2017)
5. Chemistry, Manufacturing and Controls – Drug Substance / Drug Product (anticipated submission when this new production facility is complete)

The Company believes that it can be in a position to achieve FDA approval in 2019. In light of the lengthy, difficult and expensive process that ImmuCell faces, a TIF arrangement with the City is critical in order to make the economics of the ImmuCell project work. This sort of economic development assistance will help the Company through the next phase of its animal drug development goal. In addition, the City would help to achieve the important economic development goal of preserving and expanding manufacturing jobs in the City of Portland.

ImmuCell currently employs 47 people. In addition to the above-described capital investment, ImmuCell estimates that the expansion project could lead to the creation of up to 14 jobs, including a Vice President of Engineering / Operations, a Plant Manager and other technical and production jobs.

B. The TIF District

The TIF District is depicted on City Tax Map 331, Block A, Lot 001-011, consisting of Lot 11 in the Second Tee Business Park Condominium. The TIF District is comprised of approximately 1.11 acres. The captured value will be calculated on only the new real property tax value generated within the TIF District from the development and will not affect the current property tax base. Please see Exhibit A and Exhibit B for maps depicting the District.

1. Area map showing site location of TIF district in relation to geographic location of municipal boundaries (Exhibit A).
2. Tax map showing TIF District (Exhibit B).

C. The Development Program

The City of Portland, by designating the ImmuCell TIF District, will capture a certain percentage, as shown in Exhibit C, of the new assessed value created within the District over the original assessed value and retain from the District the new tax revenues generated from the captured assessed value. A portion of these revenues will be allocated based upon the terms of the Credit Enhancement Agreement (“CEA”) with ImmuCell for the sole, express purpose of offsetting a portion of the actual and verifiable costs associated with the ImmuCell Project.

D. Municipal Use of TIF Revenues

The City of Portland will utilize no tax revenues generated from the TIF District, over and above what is allocated through the Credit Enhancement Agreement, for City projects. Rather, the portion of the increased assessed value that is not captured for the TIF will produce tax revenue for the City’s General Fund.

E. Operational Components

1. Public Facilities.

None.

2. Uses of Private Property within District.

The Credit Enhancement Agreement will allow for the development of the ImmuCell Project on private property controlled by ImmuCell.

3. Plans for relocation of persons displaced by development activities.

No displacement or relocation of persons is associated with this project and the proposed TIF District.

4. Environmental Controls

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

5. Proposed Operation of District

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

During the twelve-year term of the TIF District, the City of Portland City Council, or its designee, will be responsible for the administration of the District. ImmuCell will be solely responsible for completion of the ImmuCell Project.

III. Physical Description

The total acreage of the proposed ImmuCell District is 1.11 acres. Exhibit I contains financial and statistical information relating to the District required as a prerequisite to designation of the District by the City and approval by DECD.

IV. Financial Plan

A. Costs and Sources of Revenues

The TIF District comprises an area of approximately 1.11 acres of taxable real property with an original assessed value of \$52,600 as of March 31, 2016 (i.e., April 1, 2015). The development within the District is estimated to add just under an additional \$2.2 million of new assessed real property taxable value to the City. The new assessed real property taxable value for the uncaptured portion of the ImmuCell Project is estimated to be approximately \$750,000. This revenue is based upon preliminary construction cost estimates prepared in good faith by the Company and its consultants, which have been reviewed and approved by the City, but final values may be higher or lower depending upon the ultimate cost of construction which may not be determined until construction is complete.

As depicted in Exhibit A and Exhibit B, the District is comprised of 1.11 acres of private property. The City will enter into a Credit Enhancement Agreement with the Company in which the City will agree to reimburse the Company a portion of the property taxes paid on the new real property value resulting from the ImmuCell Project. The term of the TIF reimbursement is a period of twelve (12) years. The captured value/reimbursement percentages are outlined below in Section IV.C.

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

B. Development Program Fund

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

The ImmuCell Corporation Development Program Fund is established consisting of a Project Cost Account, which includes a sub-account designated as the "Company TIF Account" pledged to, and charged with, payment of eligible project costs.

C. Financing Plan

The percentage of the increased assessed value within the District that will be captured as captured assessed value is identified in the table below. The CEA between the Company and the City will begin in TIF year 1 of the District so as to maximize the economic development impact of the District. TIF revenues will be allocated generally as described on Exhibit C and summarized below:

CEA Years:	Percentage of Increased Assessed Value to be Captured as Captured Assessed Value (and Reimbursed to Company):
Years 1-11	65%
Year 12	30%

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

The TIF District is to be established for a period of twelve (12) years.

V. Financial Data

Exhibit I contains financial and statistical information relating to the District required as a prerequisite to designation of the District by the City and approval by DECD.

VI. Tax Shifts

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

General Purpose Aid to Education Tax Shift:	\$11,065
Municipal Revenue Sharing Tax Shift:	815
County Tax Shift:	<u>726</u>
Total Average Annual Savings:	\$12,607

VII. Municipal Approvals

A. Public Hearing Notice

The City of Portland did give proper Notice of Public Hearing in accordance with the requirements of 30-A M.R.S.A. Section 5226. Attached as Exhibit D, is a copy of the Notice of Public Hearing published in the *Portland Press Herald*, a newspaper of general circulation in the City on _____, 2016, a date at least ten (10) days prior to the public hearing.

B. Public Hearing

A Public Hearing at which the Proposed ImmuCell Corporation and TIF District was discussed and held in accordance with the requirements of 30-A M.R.S.A. § 5225(1) on the ____ day of _____, 2016, in the Portland City Council Chambers. A copy of the minutes of that meeting is included as Exhibit E.

C. Authorizing Votes

An attested copy of the Order of the Portland City Council designating the ImmuCell Corporation and TIF District is included as Exhibit F.

D. Assessor's Certificate

A letter from the Tax Assessor of the City of Portland certifying that the Original Assessed Value of the District as of March 31, 2016 (i.e., April 1, 2015) is \$52,600 is included as Exhibit G.

Exhibit A

**CITY OF PORTLAND
IMMUCELL CORPORATION MUNICIPAL DEVELOPMENT AND
TAX INCREMENT FINANCING DISTRICT**

TIF DISTRICT LOCATION MAP

Page 6

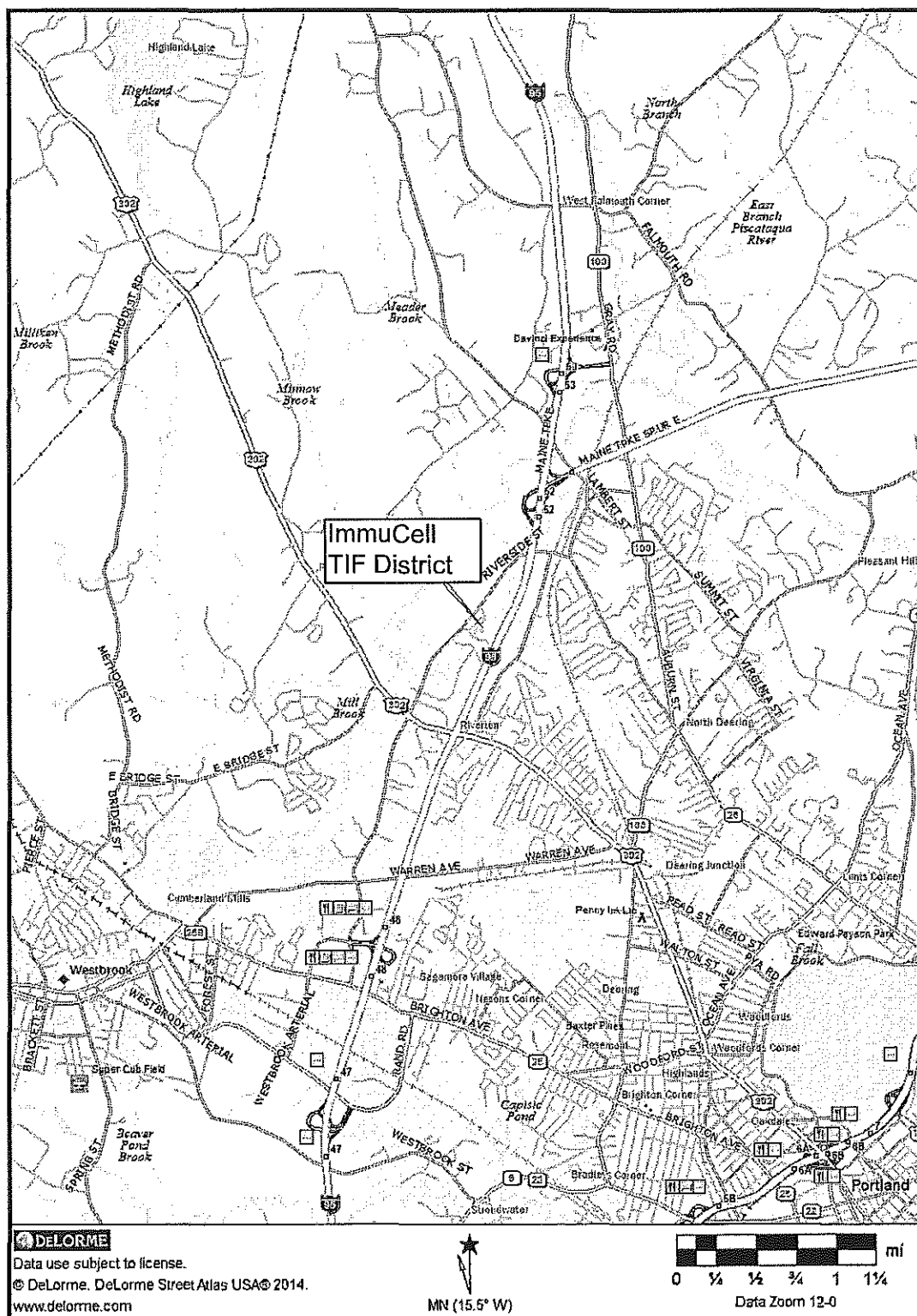
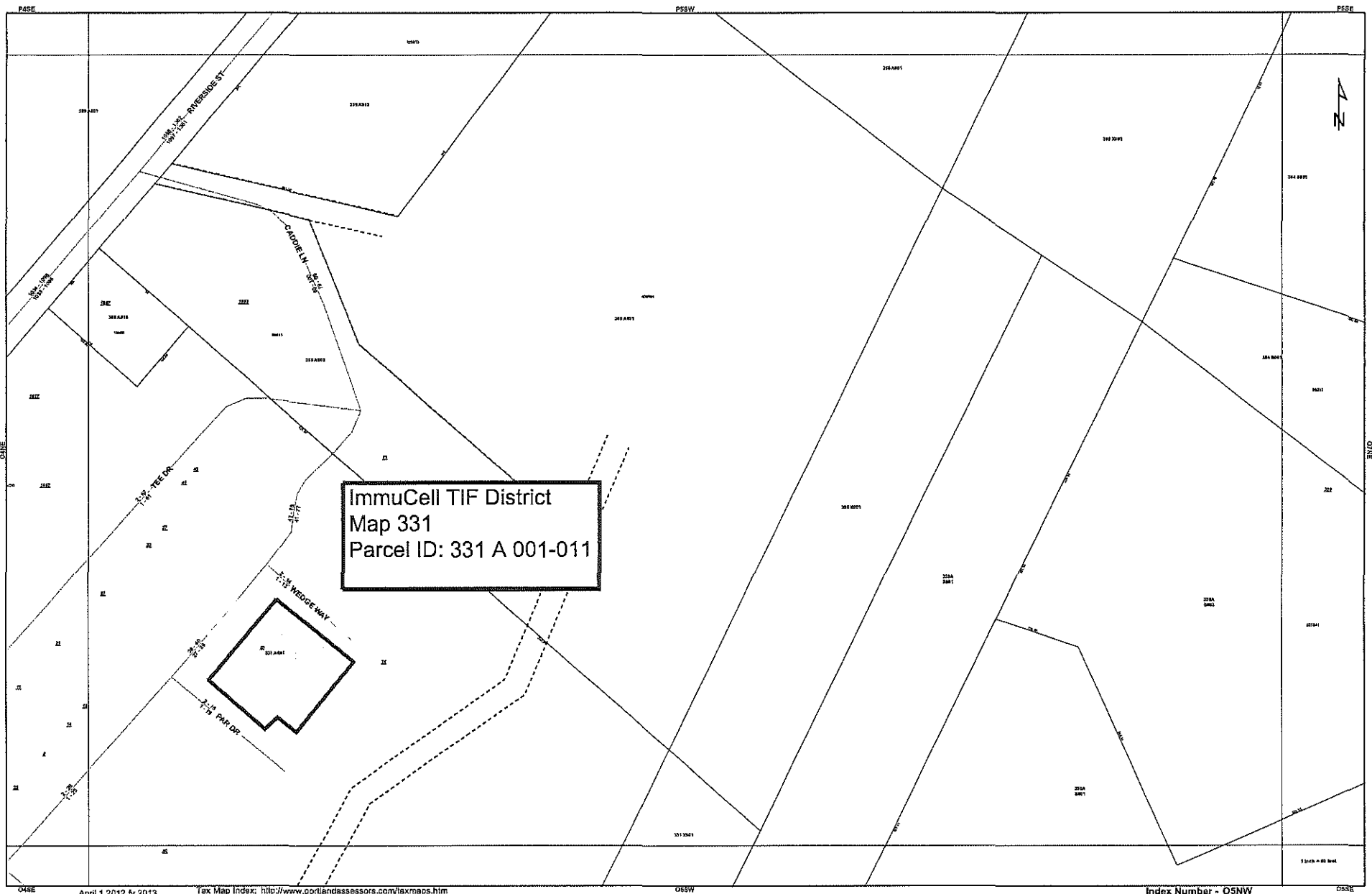


Exhibit B

**CITY OF PORTLAND
IMMUCELL CORPORATION MUNICIPAL DEVELOPMENT AND
TAX INCREMENT FINANCING DISTRICT**

TIF DISTRICT TAX MAP



April 1 2012 fy 2013

Tax Map Index: <http://www.portlandassessors.com/taxmaps.htm>

Index Number - OSNW

**CITY OF PORTLAND
IMMUCELL CORPORATION MUNICIPAL DEVELOPMENT AND
TAX INCREMENT FINANCING DISTRICT
TIF PROJECTIONS & TAX SHIFT CALCULATIONS**

City of Portland - TIF Model
ImmuCell Corporation

			A	B	C	D	E	F	G	H	I	J
Assessing												
TIF	Date	Fiscal	Estimated	Increased	Total New	CAV %	Increased	Projected	Total	Tax Increment		City General
Year	1-Apr	Year	Taxable Value	Value	Taxes	Retained	Value Retained	Mill Rate	Tax	to Developer		Fund Revenue
							as CAV		Increment	%	\$	\$
1	2016	2016-2017	2,200,000	2,147,400	45,181	65%	1,395,810	\$21.04	29,368	100%	29,368	15,813
2	2017	2017-2018		2,147,400	46,085	65%	1,395,810	\$21.46	29,955	100%	29,955	16,130
3	2018	2018-2019		2,147,400	47,007	65%	1,395,810	\$21.89	30,554	100%	30,554	16,452
4	2019	2019-2020		2,147,400	47,947	65%	1,395,810	\$22.33	31,165	100%	31,165	16,781
5	2020	2020-2021		2,147,400	48,906	65%	1,395,810	\$22.77	31,789	100%	31,789	17,117
6	2021	2021-2022		2,147,400	49,884	65%	1,395,810	\$23.23	32,424	100%	32,424	17,459
7	2022	2022-2023		2,147,400	50,881	65%	1,395,810	\$23.69	33,073	100%	33,073	17,809
8	2023	2023-2024		2,147,400	51,899	65%	1,395,810	\$24.17	33,734	100%	33,734	18,165
9	2024	2024-2025		2,147,400	52,937	65%	1,395,810	\$24.65	34,409	100%	34,409	18,528
10	2025	2025-2026		2,147,400	53,996	65%	1,395,810	\$25.14	35,097	100%	35,097	18,899
11	2026	2026-2027		2,147,400	55,076	65%	1,395,810	\$25.65	35,799	100%	35,799	19,277
12	2027	2027-2028		2,147,400	56,177	30%	644,220	\$26.16	16,853	100%	16,853	39,324
13	2028	2028-2029										
14	2029	2029-2030										
Total					605,976				374,222		374,222	231,754
Avg. Annual					50,498				31,185		31,185	19,313

TIF ASSUMPTIONS

Mill Rate	\$21.04
Years in TIF Term	12
OAV	\$ 52,600
*Increased assessed value of real property value of new investment retained in the TIF District.	

Tax Shift*

TIF Year	Fiscal Year	Tax Shift Benefits	Education Shift	Rev. Sharing Shift	County Tax Shift
		Total			
	1 2016-2017	\$0	\$0	\$0	\$0
	2 2017-2018	\$0	\$0	\$0	\$0
	3 2018-2019	\$13,199	\$11,585	\$854	\$760
	4 2019-2020	\$13,199	\$11,585	\$854	\$760
	5 2020-2021	\$13,199	\$11,585	\$854	\$760
	6 2021-2022	\$13,199	\$11,585	\$854	\$760
	7 2022-2023	\$13,199	\$11,585	\$854	\$760
	8 2023-2024	\$13,199	\$11,585	\$854	\$760
	9 2024-2025	\$13,199	\$11,585	\$854	\$760
	10 2025-2026	\$13,199	\$11,585	\$854	\$760
	11 2026-2027	\$13,199	\$11,585	\$854	\$760
	12 2027-2028	\$13,199	\$11,585	\$854	\$760
	13 2028-2029	\$13,199	\$11,585	\$854	\$760
	14 2029-2030	\$6,092	\$5,347	\$394	\$351
		\$151,283	\$132,784	\$9,784	\$8,714

*Estimate of additional State Education Subsidy and Municipal Revenue Sharing and reduced County Tax to City as a result of sheltering incremental value in the Districts.

Exhibit D

**CITY OF PORTLAND
IMMUCELL CORPORATION MUNICIPAL DEVELOPMENT AND
TAX INCREMENT FINANCING DISTRICT**

PUBLIC HEARING NOTICE

Exhibit E

**CITY OF PORTLAND
IMMUCELL CORPORATION MUNICIPAL DEVELOPMENT AND
TAX INCREMENT FINANCING DISTRICT
CITY COUNCIL MEETING MINUTES**

Exhibit F

**CITY OF PORTLAND
IMMUCELL CORPORATION MUNICIPAL DEVELOPMENT AND
TAX INCREMENT FINANCING DISTRICT**

CITY COUNCIL ORDER

**CITY OF PORTLAND
IMMUCELL CORPORATION MUNICIPAL DEVELOPMENT AND
TAX INCREMENT FINANCING DISTRICT**

ASSESSOR'S CERTIFICATE

The undersigned Tax Assessor for the City of Portland, Maine, does hereby certify pursuant to the provisions of 30-A M.R.S.A. § 5254 that the assessed value of the ImmuCell TIF District as described in the ImmuCell Corporation Municipal Development and Tax Increment Financing District Development Program to which this certificate is included, was \$52,600 as of March 31, 2016 (i.e., April 1, 2015).

IN WITNESS WHEREOF, this certificate has been executed as of this ____ day of _____, 2016.

CITY ASSESSOR

By: _____
Richard W. Blackburn

**CITY OF PORTLAND
IMMUCELL CORPORATION MUNICIPAL DEVELOPMENT AND
TAX INCREMENT FINANCING DISTRICT
FORM OF CREDIT ENHANCEMENT AGREEMENT**

CREDIT ENHANCEMENT AGREEMENT

between

CITY OF PORTLAND, MAINE

and

IMMUCELL CORPORATION

Dated as of _____, 2016

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EXHIBITS:

- Exhibit A. ImmuCell Corporation Municipal Development and Tax Increment Financing District Program
- Exhibit B. Company Tax Increment Revenue Allocation
- Exhibit C. Certification of Costs Form

THIS CREDIT ENHANCEMENT AGREEMENT (the "Agreement") dated as of _____, 2016, between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine, a corporation duly organized and existing under the laws of the State of Maine (the "City"), with a place of business in Portland, Maine, and ImmuCell Corporation, a Delaware corporation (the "Company"), having a place of business at 56 Evergreen Drive, Portland, Maine 04103

WITNESSETH

WHEREAS, the City designated the ImmuCell Corporation Municipal Development and Tax Increment Financing District (the "District") and adopted a development program therefor (the "Development Program") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the Portland City Council on _____, 2016; and

WHEREAS, upon submission of an application to the State Department of Economic and Community Development ("DECD"), the City expects DECD to review and approve the ImmuCell Corporation Municipal Development and Tax Increment Financing District and Development Program; and

WHEREAS, the City designated the ImmuCell Corporation Municipal Development and Tax Increment Financing District, adopted the Development Program and entered into this Agreement in order to induce the Company to move forward with ImmuCell's expansion from its existing facility at 56 Evergreen Drive to a new two-story, 12,625 square foot (approx.) production facility on Caddie Lane in the District (the "Project"); and

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

WHEREAS, the City and the Company desire and intend that this Agreement 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. All other capitalized terms not otherwise defined herein shall have the meaning given such terms in the Development Program.

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

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

“Captured Assessed Value” means the percentage of Increased Assessed Value retained in the ImmuCell Corporation Municipal Development and Tax Increment Financing District in each year during the term of the ImmuCell Corporation Municipal Development and Tax Increment Financing District as specified in Section 3.1 below.

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

“Current Assessed Value” means the then current assessed value of the Property located within the ImmuCell Corporation Municipal Development and Tax Increment Financing District to be determined by the City’s Assessor as of April 1 of each year that this Agreement remains in effect.

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

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

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

“DECD” shall have the meaning given such term in the recitals hereto.

“Development Program” means the development program and financial plan for the District and attached hereto as Exhibit A.

“Development Program Fund” shall have the meaning given such term in Section 2.1 hereto.

“District” shall have the meaning given such term in the recitals hereto, which District is depicted on the maps contained in Exhibits A and B to the Development Program.

“Effective Date” shall have the meaning given such term in Section 6.1 hereto.

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

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

“Original Assessed Value” means \$52,600, the assessed value of the Property as of April 1, 2015.

“Project” shall have the meaning given such term in the recitals hereto.

“Project Cost Account” means the account in the Development Program Fund described in Section IV(B) of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

“Project Costs” means all costs incurred by the Company on the Project within the meaning set forth in 30-A M.R.S.A. §5222(14), as amended.

“Property” means the land and all real property improvements located in the District and taxable by the City.

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

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

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

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

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

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

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

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

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

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

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

ARTICLE II

DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

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

Section 2.2. Deposits into Company TIF Account.

Each year during the term of this Agreement, commencing with the City’s 2016-2017 fiscal year and continuing thereafter for the remaining term of this Agreement, through and including the City’s 2027-2028 fiscal year, there shall be deposited into the Company TIF Account contemporaneously with each payment of Property Taxes an amount equal to that portion of the Property Taxes constituting Company Tax Increment Revenues for the period to which the payment relates. Any and all revenues, if any, resulting from investment of monies on deposit shall be retained by the City and withdrawn from the Company TIF Account contemporaneously with payment to the Company.

Section 2.3. Use of Monies in Company TIF Account.

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

Section 2.4. Monies Held in Trust.

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

Section 2.5. Investments.

Any monies in the Company TIF 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 at all times invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Company TIF Account. If the City experiences any losses in association with these

investments related to the Company TIF Account, the City shall still pay to the Company the amounts required under Section 3.1 hereof.

Section 2.6. Tax Payments.

The Company shall pay or cause to be paid when due all Property Taxes assessed by the City unless contested by the Company by appropriate proceedings pursuant to Maine law. No payments shall be made by the City under this Agreement at any time any such taxes or amounts are due and unpaid.

ARTICLE III PAYMENT OBLIGATIONS

Section 3.1. Captured Assessed Value; Retained Tax Increment Revenues.

During the term of the Development Program, the City shall annually retain the percentage of Increased Assessed Value and Increased Assessed Value indicated on Exhibit B attached hereto as Captured Assessed Value.

The Property Taxes paid with respect to the Captured Assessed Value shall be retained as Retained Tax Increment Revenues. The City agrees that all one hundred percent (100%) of the Retained Tax Increment Revenues shall constitute Company Tax Increment Revenues. Each year during the term of this Agreement, the City shall deposit into the Company TIF Account contemporaneously with each payment of Property Taxes an amount equal to one hundred percent (100%) of that portion of the property tax payment constituting Company Tax Increment Revenues, in accordance with the provisions of Section 2.2 of this Agreement and the priorities established by 30-A M.R.S.A. § 5227(3)(B), starting with taxes assessed for the 2013-2014 Tax Year and continuing thereafter for the remaining term of this Agreement, ending with taxes assessed for the City's 2027-2028 fiscal year, based on the April 1, 2027 Current Assessed Value.

Section 3.2. Credit Enhancement Payments.

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

Section 3.3. Failure to Make Payment.

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

Section 3.4. Manner of Payments.

a. The payments provided for in this Article III shall be paid in immediately available funds in the manner provided hereinabove for its own use and benefit. Notwithstanding the above, no payments shall be made unless used to satisfy debt service on indebtedness incurred to finance qualified "Project Costs" as that term is defined under Chapter

206 of Title 30-A of the Maine Revised Statutes and as described as part of the Project in the Development Program or used to pay directly, or to reimburse the Company for payment of such Project Costs.

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

Section 3.5. Obligations Unconditional.

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

Section 3.6. Limited Obligation.

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

ARTICLE IV PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of Company TIF Account.

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

Section 4.2. Perfection of Interest.

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

Section 4.3. Further Instruments.

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

Section 4.4. Liens.

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

Section 4.5. Access to Books and Records.

All books, records, notes and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Account shall at all reasonable times be open to inspection by the Company, its agents and employees.

ARTICLE V DEFAULTS AND REMEDIES

Section 5.1. Events of Default.

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

a. Any failure by the City to pay any amounts due under Section 3 above when the same shall become due and payable;

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

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

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

Section 5.2. Remedies on Default.

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

Section 5.3. Remedies Cumulative.

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

Section 5.4. Enforcement Rights.

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

ARTICLE VI
EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

This Agreement shall become effective upon its execution and delivery by the parties hereto (the "Effective Date") and shall remain in full force from the date hereof and shall expire on the later of the completion of deposits and payments required pursuant to Articles II and III hereof with respect to the City's 2027-2028 fiscal year relating to Current Assessed Value as of April 1, 2027, or upon the performance of all obligations on the part of the City and the Company hereunder, including without limitation payment of all amounts to be paid to Company.

Section 6.2. Cancellation and Expiration of Term.

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

ARTICLE VII ASSIGNMENT

Section 7.1. Consent to Pledge and/or Assignment.

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

Section 7.2. Assignment.

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

ARTICLE VIII MISCELLANEOUS

Section 8.1. Successors.

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

Section 8.2. Parties in Interest.

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

Section 8.3. Severability.

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

Section 8.4. No Personal Liability.

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

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

Section 8.5. Counterparts.

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

Section 8.6. Governing Law.

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

Section 8.7. Notices.

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

If to the City:

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

If to the Company:

ImmuCell Corporation
56 Evergreen Drive
Portland, ME 04103
Attn: Michael F. Brigham, President

With a copy to:
Pierce Atwood LLP
254 Commercial Street
Portland, ME 0410
Attn: James M. Saffian, Esq.

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

Section 8.8. Amendments.

Neither this Agreement nor the Development Program may be amended without the express written consent of all of the parties hereto, which consent shall not be unreasonably

withheld, conditioned or delayed. Provided, however, the parties agree to amend this Agreement in order to fulfill such reasonable requirement that a lender may require in connection with financing of the Project. This Agreement may only be amended in compliance with the provisions of 30-A M.R.S.A. §5211 et seq., as amended.

Section 8.9. Net Agreement.

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

Section 8.10. Integration.

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

Section 8.11. Project Responsibility.

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

Section 8.12. Benefit of Assignees or Pledges.

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

Section 8.13. No Third Party Benefits.

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

Section 8.14. Indemnification.

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

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

Section 8.15. Waiver of Recapture.

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

(Signature page break.)

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

WITNESS

CITY OF PORTLAND, MAINE

By: _____

Jon P. Jennings
Its City Manager

IMMUCELL CORPORATION

By: _____

Michael F. Brigham
Its President

**Exhibit A to Credit Enhancement Agreement -- ImmuCell Corporation Municipal
Development and Tax Increment Financing District Development Program**

EXHIBIT B to Credit Enhancement Agreement: Company Tax Increment Revenues

CEA Years:	Increased Assessed Value to be captured as Captured Assessed Value (and Reimbursed to Company):
Years 1-11 (FY2016-2017 to FY2026-2027)	65%
Years 12 (FY2027-2028)	30%

EXHIBIT C to Credit Enhancement Agreement – Certification of Costs Form (ImmuCell Corporation TIF District)

The undersigned does hereby certify the following project costs were incurred in the Tax Year starting April 1, 20__ and ending March 31, 20__ as follows:

<u>Improvements</u>	<u>Actual Costs</u>
----------------------------	----------------------------

_____	_____
_____	_____
_____	_____

Total:	_____
---------------	-------

Date: _____

By: _____

Name: _____

Its: _____

**CITY OF PORTLAND
IMMUCELL CORPORATION MUNICIPAL DEVELOPMENT AND
TAX INCREMENT FINANCING DISTRICT
DECD STATUTORY REQUIREMENTS TABLE**

SECTION A Acreage Caps		
1. Total municipal acreage;	12,386	
2. Acreage of proposed Municipal TIF District;	1.11	
3. Downtown-designation ² acres in proposed Municipal TIF District;	0	
4. Transit-Oriented Development ³ acres in proposed Municipal TIF District;	0	
5. Total acreage [=A2-A3-A4] of proposed Municipal TIF District counted toward 2%	1.11	
6. Percentage [=A5÷A1] of total acreage in proposed Municipal TIF District (CANNOT	0.009%	
7. Total acreage of all <u>existing/proposed</u> Municipal TIF districts in municipality including Municipal Affordable Housing Development districts: ⁴ (See attached table)	Existing	599.882
	Proposed	1.11
	Total:	600.992
30-A § 5223(3) EXEMPTIONS ⁵		
8. Acreage of an <u>existing/proposed</u> Downtown Municipal TIF district;	422	
9. Acreage of all <u>existing/proposed</u> Transit-Oriented Development Municipal TIF districts;	30	
10. Acreage of all <u>existing/proposed</u> Community Wind Power Municipal TIF districts;	0	
11. Total acreage of all existing or proposed of all <u>existing/proposed</u> Single Taxpayer/High Valuation ⁶ Municipal TIF districts;	0	
12. Acreage in all <u>existing/proposed</u> Municipal TIF districts common to ⁷ Pine Tree Development Zones per 30-A § 5250-I (14)(A) excluding any such acreage also factored in Exemptions 8-10 above;	0	
13. Total acreage [=A7-A8-A9-A10-A11-A12] of all <u>existing/proposed</u> Municipal TIF districts counted toward 5% limit;	148.982	
14. Percentage of total acreage [=A12÷A1] of all <u>existing/proposed</u> Municipal TIF districts (CANNOT EXCEED 5%).	1.203%	
15. Real property in proposed Municipal TIF District that is:	ACRES	% [=Acres÷A2]
a. A blighted area;	0	0
b. In need of rehabilitation, redevelopment or conservation;	0	0
c. Suitable for commercial or arts district uses.	1.11	100%
TOTAL (except for § 5223 (3) exemptions a., b. OR c. must be at least 25%)		

² Before final designation, the Commissioner will seek advice from MDOACF and MDOT per 30-A § 5226(2).

³ For Transit-Oriented Development (TOD) definitions see 30-A § 5222 sub-§§ 19-24.

⁴ For AH-TIF acreage requirement see 30-A § 5247(3)(B) because that Program has its own/separate valuation limit.

⁵ Downtown/TOD overlap nets single acreage/valuation caps exemption.

⁶ For this exemption see 30-A § 5223(3)(C) sub-§§ 1-4.

⁷ PTZ districts approved through December 31, 2008.

SECTION B. Valuation Cap		
1. Total TAXABLE municipal valuation—use most recent April 1	\$7,707,200,000	
2. Taxable Original Assessed Value (OAV) of proposed Municipal TIF District as of March 31 preceding municipal designation—same as April 1 prior to such March 31;	\$52,600	
3. Taxable OAV of all <u>existing/proposed</u> Municipal TIF districts in municipality: (See attached table)	Existing	\$1,106,390,070
	Proposed	\$52,600
	Total:	\$1,106,442,670
30-A § 5223(3) EXEMPTIONS		
4. Taxable OAV of an <u>existing/proposed</u> Downtown Municipal TIF district;	\$968,136,850	
5. Taxable OAV of all <u>existing/proposed</u> Transit-Oriented Development Municipal TIF districts;	\$4,970,470	
6. Taxable OAV of all <u>existing/proposed</u> Community Wind Power Municipal TIF districts;	0	
7. Taxable OAV of all <u>existing/proposed</u> Single Taxpayer/High Valuation⁸ Municipal TIF districts;	0	
8. Taxable OAV in all <u>existing/proposed</u> Municipal TIF districts common to Pine Tree Development Zones per 30-A § 5250-I (14)(A) excluding any such OAV also factored in Exemptions 4-7 above;	0	
9. Total taxable OAV [=B3-B4-B5-B6-B7-B8] of all <u>existing/proposed</u> Municipal TIF districts counted toward 5% limit;	\$133,335,350	
10. Percentage of total taxable OAV [=B9÷B1] of all <u>existing/proposed</u> Municipal TIF districts (CANNOT EXCEED 5%).	1.730%	

⁸ For this exemption see 30-A §5223(3)(C) sub-§§ 1-4.

TIF No.	District Name	Acreage	2% Limit	OAV
1	Bramhall/Holt Hall	1.065	0.009%	\$349,110
2	Waterfront and Sub District	4.95	0.040%	\$7,667,310
3	Bayside Expanded TIF District	129.18	1.043%	\$122,318,180
4	Riverwalk/Ocean Gateway	3.68	0.030%	\$1,085,550
5	Pearl Place/Avesta-AH TIF	1.035	0.008%	exempt - AH
6	Baxter Library TIF District	0.37	0.003%	\$0
7	Public Market/Power Pay	1.07	0.009%	\$1,862,600
8	McAuley Place	5.32	0.043%	\$0
9	Avesta/409 Cumberland Ave-AH TIF	0.410	0.003%	exempt - AH
10	Thompson's Pt TOD/TIF II	50.00	0.242%	\$4,970,470
11	134 Washington Avenue/AH TIF	0.230	0.002%	exempt - AH
12	17 Carleton St/AH TIF	0.572	0.005%	exempt - AH
13	Downtown TOD and Omnibus TIF District	422.00	3.407%	\$968,136,850
	Sub-Total - Existing	599.892		1,106,390,070
14	ImmuCell	1.11	0.009%	\$2,600
	TOTAL ACREAGE / OAV	600.992		1,106,442,670.00
	<u>Excluded Acreage</u>			
	Downtown TIF Acreage	(422.00)		(\$968,136,850)
	Transit-Oriented TIF Acreage	(30.00)		(\$4,970,470)
	Community Wind Power Acreage	0.00		0
	Single Taxpayer/High Valuation	0.00		0
	Pine Tree Zone Acreage	0.00		0
	TOTAL ACREAGE / OAV - Countable	148.992		133,335,350
	5% Limit		1.203%	1.730%
	Municipal Acreage	12,386.00		
	Taxable Valuation (4/1/16)			7,707,200,000
	Remaining Amount that can be TIF'd	470.308		252,024,650

NOTE: ☐ Proposed TIF District
☐ Affordable Housing TIFs

AMENDMENT #2 TO ORDER 38-16/17
RE: HIRING PREFERENCE FOR LOCAL, DIVERSE, DISADVANTAGED AND
VETERAN WORKFORCE
PREPARED BY CORPORATION COUNSEL FOR MAYOR STRIMLING

ORDER APPROVING CREDIT ENHANCEMENT AGREEMENT
WITH IMMUCELL CORPORATION

ORDERED, that the Credit Enhancement Agreement between the City of Portland and ImmuCell Corporation is hereby approved in substantially the form attached hereto; and.

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

CREDIT ENHANCEMENT AGREEMENT

between

CITY OF PORTLAND, MAINE

and

IMMUCELL CORPORATION

Dated as of _____, 2016

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EXHIBITS:

- Exhibit A. ImmuCell Corporation Municipal Development and Tax Increment Financing District Program
- Exhibit B. Company Tax Increment Revenue Allocation
- Exhibit C. Certification of Costs Form

THIS CREDIT ENHANCEMENT AGREEMENT (the "Agreement") dated as of _____, 2016, between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine, a corporation duly organized and existing under the laws of the State of Maine (the "City"), with a place of business in Portland, Maine, and ImmuCell Corporation, a Delaware corporation (the "Company"), having a place of business at 56 Evergreen Drive, Portland, Maine 04103

WITNESSETH

WHEREAS, the City designated the ImmuCell Corporation Municipal Development and Tax Increment Financing District (the "District") and adopted a development program therefor (the "Development Program") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the Portland City Council on _____, 2016; and

WHEREAS, upon submission of an application to the State Department of Economic and Community Development ("DECD"), the City expects DECD to review and approve the ImmuCell Corporation Municipal Development and Tax Increment Financing District and Development Program; and

WHEREAS, the City designated the ImmuCell Corporation Municipal Development and Tax Increment Financing District, adopted the Development Program and entered into this Agreement in order to induce the Company to move forward with ImmuCell's expansion from its existing facility at 56 Evergreen Drive to a new two-story, 12,625 square foot (approx.) production facility on Caddie Lane in the District (the "Project"); and

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

WHEREAS, the City and the Company desire and intend that this Agreement 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. All other capitalized terms not otherwise defined herein shall have the meaning given such terms in the Development Program.

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

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

“Captured Assessed Value” means the percentage of Increased Assessed Value retained in the ImmuCell Corporation Municipal Development and Tax Increment Financing District in each year during the term of the ImmuCell Corporation Municipal Development and Tax Increment Financing District as specified in Section 3.1 below.

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

“Current Assessed Value” means the then current assessed value of the Property located within the ImmuCell Corporation Municipal Development and Tax Increment Financing District to be determined by the City’s Assessor as of April 1 of each year that this Agreement remains in effect.

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

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

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

“DECD” shall have the meaning given such term in the recitals hereto.

“Development Program” means the development program and financial plan for the District and attached hereto as Exhibit A.

“Development Program Fund” shall have the meaning given such term in Section 2.1 hereto.

“District” shall have the meaning given such term in the recitals hereto, which District is depicted on the maps contained in Exhibits A and B to the Development Program.

“Effective Date” shall have the meaning given such term in Section 6.1 hereto.

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

“Hiring Preference for Local, Diverse, Disadvantaged and Veteran Workforce” shall mean compliance with a hiring plan.

“Hiring Plan” shall mean a plan certifying that Twenty-Five Percent (25%) of all Project work hours are paid to individuals from a local, diverse, disadvantaged and/or veteran background, as more specifically described in Section 2.7. hereto.

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

“Original Assessed Value” means \$52,600, the assessed value of the Property as of April 1, 2015.

“Project” shall mean the new construction and its associated employment opportunities, as well as the meaning given such term in the recitals hereto.

~~“Project” shall have the meaning given such term in the recitals hereto.~~

“Project Construction Employment” shall mean the employment provided by the construction work of the Project.

“Project Cost Account” means the account in the Development Program Fund described in Section IV(B) of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

“Project Costs” means all costs incurred by the Company on the Project within the meaning set forth in 30-A M.R.S.A. §5222(14), as amended.

“Property” means the land and all real property improvements located in the District and taxable by the City.

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

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

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

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

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

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

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

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

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

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

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

ARTICLE II

DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

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

Section 2.2. Deposits into Company TIF Account.

Each year during the term of this Agreement, commencing with the City's 2016-2017 fiscal year and continuing thereafter for the remaining term of this Agreement, through and including the City's 2027-2028 fiscal year, there shall be deposited into the Company TIF Account contemporaneously with each payment of Property Taxes an amount equal to that portion of the Property Taxes constituting Company Tax Increment Revenues for the period to which the payment relates. Any and all revenues, if any, resulting from investment of monies on deposit shall be retained by the City and withdrawn from the Company TIF Account contemporaneously with payment to the Company.

Section 2.3. Use of Monies in Company TIF Account.

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

Section 2.4. Monies Held in Trust.

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

Section 2.5. Investments.

Any monies in the Company TIF 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 at all times invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Company TIF Account. If the City experiences any losses in association with these

investments related to the Company TIF Account, the City shall still pay to the Company the amounts required under Section 3.1 hereof.

Section 2.6. Tax Payments.

The Company shall pay or cause to be paid when due all Property Taxes assessed by the City unless contested by the Company by appropriate proceedings pursuant to Maine law. No payments shall be made by the City under this Agreement at any time any such taxes or amounts are due and unpaid.

Section 2.7. Hiring Preference

The firm(s) involved in the Project Construction Employment of this project shall make a priority of employing local, diverse, disadvantaged and veteran workers by:

(A) Presenting a Hiring Plan, certifying that 25 percent of all project work hours belong to individuals who:

(1) Maintain primary residence in the City of Portland for at least 30 days prior to commencing work on the project

(B) Further incorporated in the Hiring Plan certifying 25 percent of all project work hours belong to any combination of the following classifications:

(1) Belong to one or more of the following protected classes as referenced in the Maine Human Rights Act:

(a) Race, color, national origin, sex, disability, genetic information, sexual orientation, gender identity or expression

(2) Considered disadvantaged, defined as:

(a) at the time of commencing work has an income of less than 80% of the Area Median Income (AMI); or

(b) facing one of the following barriers to employment:

(i) lacking a permanent domicile

(ii) being a custodial single parent

(iii) receiving public assistance

(iv) lacking a GED or High School diploma

(v) participation in a vocational English as a second language (ESL) program, or

(3) An active, reserve, or honorably discharged member of the Armed Forces

(C) To demonstrate compliance with this section, the firm(s) shall provide, with this certification, a list of all trades or classifications of craft employees it will employ on the project.

The City Council Authorizes the City Manager or his or her designee to implement a Bonus and Penalty System that:

(A) For lack of achievement of the 25 percent Local and 25 percent Diverse, Disadvantaged, Veteran hire requirements, levies a penalty amount equal to the journeyman or apprentice state prevailing wage for the primary trade used by the firm for each hour the firm fell short of the hiring requirement; and

(B) Incentivizes achieving a 35 percent Local and 35 percent Diverse, Disadvantaged, Veteran hire by implementing a financial bonus system that complies with applicable law and does not exceed one percent of the estimated cost of the contract.

Section 2.8. Enforcement.

The City Manager or his or her designee is authorized to adopt rules and regulations for the proper administration and enforcement of the Credit Enhancement Agreement.

ARTICLE III PAYMENT OBLIGATIONS

Section 3.1. Captured Assessed Value; Retained Tax Increment Revenues.

During the term of the Development Program, the City shall annually retain the percentage of Increased Assessed Value and Increased Assessed Value indicated on Exhibit B attached hereto as Captured Assessed Value.

The Property Taxes paid with respect to the Captured Assessed Value shall be retained as Retained Tax Increment Revenues. The City agrees that all one hundred percent (100%) of the Retained Tax Increment Revenues shall constitute Company Tax Increment Revenues. Each year during the term of this Agreement, the City shall deposit into the Company TIF Account contemporaneously with each payment of Property Taxes an amount equal to one hundred percent (100%) of that portion of the property tax payment constituting Company Tax Increment Revenues, in accordance with the provisions of Section 2.2 of this Agreement and the priorities established by 30-A M.R.S.A. § 5227(3)(B), starting with taxes assessed for the 2013-2014 Tax Year and continuing thereafter for the remaining term of this Agreement, ending with taxes assessed for the City's 2027-2028 fiscal year, based on the April 1, 2027 Current Assessed Value.

Section 3.2. Credit Enhancement Payments.

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

Section 3.3. Failure to Make Payment.

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

Section 3.4. Manner of Payments.

a. The payments provided for in this Article III shall be paid in immediately available funds in the manner provided hereinabove for its own use and benefit. Notwithstanding the above, no payments shall be made unless used to satisfy debt service on indebtedness incurred to finance qualified "Project Costs" as that term is defined under Chapter

206 of Title 30-A of the Maine Revised Statutes and as described as part of the Project in the Development Program or used to pay directly, or to reimburse the Company for payment of such Project Costs.

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

Section 3.5. Obligations Unconditional.

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

Section 3.6. Limited Obligation.

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

ARTICLE IV PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of Company TIF Account.

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

Section 4.2. Perfection of Interest.

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

Section 4.3. Further Instruments.

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

Section 4.4. Liens.

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

Section 4.5. Access to Books and Records.

All books, records, notes and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Account shall at all reasonable times be open to inspection by the Company, its agents and employees.

ARTICLE V DEFAULTS AND REMEDIES

Section 5.1. Events of Default.

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

a. Any failure by the City to pay any amounts due under Section 3 above when the same shall become due and payable;

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

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

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

Section 5.2. Remedies on Default.

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

Section 5.3. Remedies Cumulative.

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

Section 5.4. Enforcement Rights.

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

ARTICLE VI
EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

This Agreement shall become effective upon its execution and delivery by the parties hereto (the “Effective Date”) and shall remain in full force from the date hereof and shall expire on the later of the completion of deposits and payments required pursuant to Articles II and III hereof with respect to the City’s 2027-2028 fiscal year relating to Current Assessed Value as of April 1, 2027, or upon the performance of all obligations on the part of the City and the Company hereunder, including without limitation payment of all amounts to be paid to Company.

Section 6.2. Cancellation and Expiration of Term.

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

ARTICLE VII ASSIGNMENT

Section 7.1. Consent to Pledge and/or Assignment.

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

Section 7.2. Assignment.

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

ARTICLE VIII MISCELLANEOUS

Section 8.1. Successors.

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

Section 8.2. Parties in Interest.

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

Section 8.3. Severability.

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

Section 8.4. No Personal Liability.

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

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

Section 8.5. Counterparts.

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

Section 8.6. Governing Law.

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

Section 8.7. Notices.

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

If to the City:

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

If to the Company:

ImmuCell Corporation
56 Evergreen Drive
Portland, ME 04103
Attn: Michael F. Brigham, President

With a copy to:
Pierce Atwood LLP
254 Commercial Street
Portland, ME 0410
Attn: James M. Saffian, Esq.

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

Section 8.8. Amendments.

Neither this Agreement nor the Development Program may be amended without the express written consent of all of the parties hereto, which consent shall not be unreasonably

withheld, conditioned or delayed. Provided, however, the parties agree to amend this Agreement in order to fulfill such reasonable requirement that a lender may require in connection with financing of the Project. This Agreement may only be amended in compliance with the provisions of 30-A M.R.S.A. §5211 et seq., as amended.

Section 8.9. Net Agreement.

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

Section 8.10. Integration.

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

Section 8.11. Project Responsibility.

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

Section 8.12. Benefit of Assignees or Pledgees.

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

Section 8.13. No Third Party Benefits.

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

Section 8.14. Indemnification.

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

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

Section 8.15. Waiver of Recapture.

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

(Signature page break.)

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

WITNESS

CITY OF PORTLAND, MAINE

By: _____
Jon P. Jennings
Its City Manager

IMMUCELL CORPORATION

By: _____
Michael F. Brigham
Its President

**Exhibit A to Credit Enhancement Agreement – ImmuCell Corporation Municipal
Development and Tax Increment Financing District Development Program**

EXHIBIT B to Credit Enhancement Agreement: Company Tax Increment Revenues

CEA Years:	Increased Assessed Value to be captured as Captured Assessed Value (and Reimbursed to Company):
Years 1-11 (FY2016-2017 to FY2026-2027)	65%
Years 12 (FY2027-2028)	30%

EXHIBIT C to Credit Enhancement Agreement – Certification of Costs Form (ImmuCell Corporation TIF District)

The undersigned does hereby certify the following project costs were incurred in the Tax Year starting April 1, 20__ and ending March 31, 20__ as follows:

<u>Improvements</u>	<u>Actual Costs</u>
----------------------------	----------------------------

_____	_____
_____	_____
_____	_____

Total:	_____
---------------	-------

Date: _____

By: _____

Name: _____

Its: _____

**AMENDMENT #3 TO ORDER 38-16/17
RE: PARTNERSHIP WITH APPRENTICE PROGRAMS
PREPARED BY CORPORATION COUNSEL FOR MAYOR STRIMLING**

**ORDER APPROVING CREDIT ENHANCEMENT AGREEMENT
WITH IMMUCELL CORPORATION**

ORDERED, that the Credit Enhancement Agreement between the City of Portland and ImmuCell Corporation is hereby approved in substantially the form attached hereto; and

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

CREDIT ENHANCEMENT AGREEMENT

between

CITY OF PORTLAND, MAINE

and

IMMUCELL CORPORATION

Dated as of _____, 2016

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EXHIBITS:

- Exhibit A. ImmuCell Corporation Municipal Development and Tax Increment Financing District Program
- Exhibit B. Company Tax Increment Revenue Allocation
- Exhibit C. Certification of Costs Form

THIS CREDIT ENHANCEMENT AGREEMENT (the "Agreement") dated as of _____, 2016, between the City of Portland, Maine, a municipal body corporate and politic and a political subdivision of the State of Maine, a corporation duly organized and existing under the laws of the State of Maine (the "City"), with a place of business in Portland, Maine, and ImmuCell Corporation, a Delaware corporation (the "Company"), having a place of business at 56 Evergreen Drive, Portland, Maine 04103

WITNESSETH

WHEREAS, the City designated the ImmuCell Corporation Municipal Development and Tax Increment Financing District (the "District") and adopted a development program therefor (the "Development Program") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the Portland City Council on _____, 2016; and

WHEREAS, upon submission of an application to the State Department of Economic and Community Development ("DECD"), the City expects DECD to review and approve the ImmuCell Corporation Municipal Development and Tax Increment Financing District and Development Program; and

WHEREAS, the City designated the ImmuCell Corporation Municipal Development and Tax Increment Financing District, adopted the Development Program and entered into this Agreement in order to induce the Company to move forward with ImmuCell's expansion from its existing facility at 56 Evergreen Drive to a new two-story, 12,625 square foot (approx.) production facility on Caddie Lane in the District (the "Project"); and

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

WHEREAS, the City and the Company desire and intend that this Agreement 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. All other capitalized terms not otherwise defined herein shall have the meaning given such terms in the Development Program.

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

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

“Apprenticeship Program” shall mean the apprenticeship program that a qualified company administers, which qualification requires that company to have participated in a Class A Apprenticeship Program for the past three years for each separate trade or classification in which it employs employees and shall continue to participate in such program or programs for the duration of the project.

“Captured Assessed Value” means the percentage of Increased Assessed Value retained in the ImmuCell Corporation Municipal Development and Tax Increment Financing District in each year during the term of the ImmuCell Corporation Municipal Development and Tax Increment Financing District as specified in Section 3.1 below.

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

“Current Assessed Value” means the then current assessed value of the Property located within the ImmuCell Corporation Municipal Development and Tax Increment Financing District to be determined by the City’s Assessor as of April 1 of each year that this Agreement remains in effect.

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

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

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

“DECD” shall have the meaning given such term in the recitals hereto.

“Development Program” means the development program and financial plan for the District and attached hereto as Exhibit A.

“Development Program Fund” shall have the meaning given such term in Section 2.1 hereto.

“District” shall have the meaning given such term in the recitals hereto, which District is depicted on the maps contained in Exhibits A and B to the Development Program.

“Effective Date” shall have the meaning given such term in Section 6.1 hereto.

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

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

“Original Assessed Value” means \$52,600, the assessed value of the Property as of April 1, 2015.

“Project” shall mean the new construction and its associated employment opportunities, as well as the meaning given such term in the recitals hereto.

~~“Project” shall have the meaning given such term in the recitals hereto.~~

“Project Construction Employment” shall mean the employment provided by the construction work of the Project.

“Project Cost Account” means the account in the Development Program Fund described in Section IV(B) of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

“Project Costs” means all costs incurred by the Company on the Project within the meaning set forth in 30-A M.R.S.A. §5222(14), as amended.

“Property” means the land and all real property improvements located in the District and taxable by the City.

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

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

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

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

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

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

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

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

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

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

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

ARTICLE II DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

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

Section 2.2. Deposits into Company TIF Account.

Each year during the term of this Agreement, commencing with the City's 2016-2017 fiscal year and continuing thereafter for the remaining term of this Agreement, through and including the City's 2027-2028 fiscal year, there shall be deposited into the Company TIF Account contemporaneously with each payment of Property Taxes an amount equal to that portion of the Property Taxes constituting Company Tax Increment Revenues for the period to which the payment relates. Any and all revenues, if any, resulting from investment of monies on deposit shall be retained by the City and withdrawn from the Company TIF Account contemporaneously with payment to the Company.

Section 2.3. Use of Monies in Company TIF Account.

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

Section 2.4. Monies Held in Trust.

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

Section 2.5. Investments.

Any monies in the Company TIF 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 at all times invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Company TIF Account. If the City experiences any losses in association with these

investments related to the Company TIF Account, the City shall still pay to the Company the amounts required under Section 3.1 hereof.

Section 2.6. Tax Payments.

The Company shall pay or cause to be paid when due all Property Taxes assessed by the City unless contested by the Company by appropriate proceedings pursuant to Maine law. No payments shall be made by the City under this Agreement at any time any such taxes or amounts are due and unpaid.

Section 2.7. Apprenticeship Program

The firm(s) utilized on the construction related to this project must have participated in a Class A Apprenticeship Program for the past three years for each separate trade or classification in which it employs employees and shall continue to participate in such program or programs for the duration of the project.

(A) For purposes of this section, a Class A Apprenticeship Program is an apprenticeship program that is currently registered with and approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journeyman status for at least three of the past five (5) years.

(B) To demonstrate compliance with this section, the firm shall provide, with this certification, a list of all trades or classifications of employees it will employ on the project and documentation verifying it participates in a Class A Apprenticeship Program for each trade or classification listed.

(C) If the firm participates in a recently formed apprenticeship program for an employee it employs, it may satisfy the training requirement of this certification by providing documentation showing that the program in which it participates:

(i) has been established within the past five (5) years;

(ii) is currently registered with and approved by the U.S. Department of Labor or a state apprenticeship agency; and

(iii) provides bona fide apprenticeship training to participants and is in compliance with the standards and requirements applicable to registered apprenticeship programs under 29 C.F.R. 29, including the requirement under these rules to maintain as at least one registered apprentice in accordance with the guidelines of 29 C.F.R. 29.6(a).

Section 2.8. Enforcement.

The City Manager or his or her designee is authorized to adopt rules and regulations for the proper administration and enforcement of the requirements of this Credit Enhancement Agreement.

ARTICLE III PAYMENT OBLIGATIONS

Section 3.1. Captured Assessed Value; Retained Tax Increment Revenues.

During the term of the Development Program, the City shall annually retain the percentage of Increased Assessed Value and Increased Assessed Value indicated on Exhibit B attached hereto as Captured Assessed Value.

The Property Taxes paid with respect to the Captured Assessed Value shall be retained as Retained Tax Increment Revenues. The City agrees that all one hundred percent (100%) of the Retained Tax Increment Revenues shall constitute Company Tax Increment Revenues. Each year during the term of this Agreement, the City shall deposit into the Company TIF Account contemporaneously with each payment of Property Taxes an amount equal to one hundred percent (100%) of that portion of the property tax payment constituting Company Tax Increment Revenues, in accordance with the provisions of Section 2.2 of this Agreement and the priorities established by 30-A M.R.S.A. § 5227(3)(B), starting with taxes assessed for the 2013-2014 Tax Year and continuing thereafter for the remaining term of this Agreement, ending with taxes assessed for the City's 2027-2028 fiscal year, based on the April 1, 2027 Current Assessed Value.

Section 3.2. Credit Enhancement Payments.

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

Section 3.3. Failure to Make Payment.

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

Section 3.4. Manner of Payments.

a. The payments provided for in this Article III shall be paid in immediately available funds in the manner provided hereinabove for its own use and benefit. Notwithstanding the above, no payments shall be made unless used to satisfy debt service on indebtedness incurred to finance qualified "Project Costs" as that term is defined under Chapter

206 of Title 30-A of the Maine Revised Statutes and as described as part of the Project in the Development Program or used to pay directly, or to reimburse the Company for payment of such Project Costs.

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

Section 3.5. Obligations Unconditional.

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

Section 3.6. Limited Obligation.

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

ARTICLE IV PLEDGE AND SECURITY INTEREST

Section 4.1. Pledge of Company TIF Account.

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

Section 4.2. Perfection of Interest.

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

Section 4.3. Further Instruments.

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

Section 4.4. Liens.

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

Section 4.5. Access to Books and Records.

All books, records, notes and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Account shall at all reasonable times be open to inspection by the Company, its agents and employees.

ARTICLE V DEFAULTS AND REMEDIES

Section 5.1. Events of Default.

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

a. Any failure by the City to pay any amounts due under Section 3 above when the same shall become due and payable;

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

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

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

Section 5.2. Remedies on Default.

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

Section 5.3. Remedies Cumulative.

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

Section 5.4. Enforcement Rights.

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

ARTICLE VI
EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

This Agreement shall become effective upon its execution and delivery by the parties hereto (the "Effective Date") and shall remain in full force from the date hereof and shall expire on the later of the completion of deposits and payments required pursuant to Articles II and III hereof with respect to the City's 2027-2028 fiscal year relating to Current Assessed Value as of April 1, 2027, or upon the performance of all obligations on the part of the City and the Company hereunder, including without limitation payment of all amounts to be paid to Company.

Section 6.2. Cancellation and Expiration of Term.

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

ARTICLE VII ASSIGNMENT

Section 7.1. Consent to Pledge and/or Assignment.

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

Section 7.2. Assignment.

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

ARTICLE VIII MISCELLANEOUS

Section 8.1. Successors.

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

Section 8.2. Parties in Interest.

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

Section 8.3. Severability.

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

Section 8.4. No Personal Liability.

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

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

Section 8.5. Counterparts.

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

Section 8.6. Governing Law.

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

Section 8.7. Notices.

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

If to the City:

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

If to the Company:

ImmuCell Corporation
56 Evergreen Drive
Portland, ME 04103
Attn: Michael F. Brigham, President

With a copy to:
Pierce Atwood LLP
254 Commercial Street
Portland, ME 0410
Attn: James M. Saffian, Esq.

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

Section 8.8. Amendments.

Neither this Agreement nor the Development Program may be amended without the express written consent of all of the parties hereto, which consent shall not be unreasonably

withheld, conditioned or delayed. Provided, however, the parties agree to amend this Agreement in order to fulfill such reasonable requirement that a lender may require in connection with financing of the Project. This Agreement may only be amended in compliance with the provisions of 30-A M.R.S.A. §5211 et seq., as amended.

Section 8.9. Net Agreement.

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

Section 8.10. Integration.

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

Section 8.11. Project Responsibility.

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

Section 8.12. Benefit of Assignees or Pledges.

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

Section 8.13. No Third Party Benefits.

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

Section 8.14. Indemnification.

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

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

Section 8.15. Waiver of Recapture.

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

(Signature page break.)

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

WITNESS

CITY OF PORTLAND, MAINE

By: _____
Jon P. Jennings
Its City Manager

IMMUCELL CORPORATION

By: _____
Michael F. Brigham
Its President

**Exhibit A to Credit Enhancement Agreement – ImmuCell Corporation Municipal
Development and Tax Increment Financing District Development Program**

EXHIBIT B to Credit Enhancement Agreement: Company Tax Increment Revenues

CEA Years:	Increased Assessed Value to be captured as Captured Assessed Value (and Reimbursed to Company):
Years 1-11 (FY2016-2017 to FY2026-2027)	65%
Years 12 (FY2027-2028)	30%

EXHIBIT C to Credit Enhancement Agreement – Certification of Costs Form (ImmuCell Corporation TIF District)

The undersigned does hereby certify the following project costs were incurred in the Tax Year starting April 1, 20__ and ending March 31, 20__ as follows:

<u>Improvements</u>	<u>Actual Costs</u>
----------------------------	----------------------------

_____	_____
_____	_____
_____	_____

Total:	_____
---------------	-------

Date: _____

By: _____

Name: _____

Its: _____

**AMENDMENT #4 TO ORDER 38-16/17
RE: ENERGY EFFICIENCY
PREPARED BY CORPORATION COUNSEL FOR MAYOR STRIMLING**

**ORDER APPROVING CREDIT ENHANCEMENT AGREEMENT
WITH IMMUCELL CORPORATION**

ORDERED, that the Credit Enhancement Agreement between the City of Portland and ImmuCell Corporation is hereby approved in substantially the form attached hereto; and

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

CREDIT ENHANCEMENT AGREEMENT

between

CITY OF PORTLAND, MAINE

and

IMMUCELL CORPORATION

Dated as of _____, 2016

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EXHIBITS:

- Exhibit A. ImmuCell Corporation Municipal Development and Tax Increment Financing District Program
- Exhibit B. Company Tax Increment Revenue Allocation
- Exhibit C. Certification of Costs Form

THIS CREDIT ENHANCEMENT AGREEMENT (the "Agreement") dated as of _____, 2016, between the City of Portland, Maine, a municipal body corporate and political subdivision of the State of Maine, a corporation duly organized and existing under the laws of the State of Maine (the "City"), with a place of business in Portland, Maine, and ImmuCell Corporation, a Delaware corporation (the "Company"), having a place of business at 56 Evergreen Drive, Portland, Maine 04103

WITNESSETH

WHEREAS, the City designated the ImmuCell Corporation Municipal Development and Tax Increment Financing District (the "District") and adopted a development program therefor (the "Development Program") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the Portland City Council on _____, 2016; and

WHEREAS, upon submission of an application to the State Department of Economic and Community Development ("DECD"), the City expects DECD to review and approve the ImmuCell Corporation Municipal Development and Tax Increment Financing District and Development Program; and

WHEREAS, the City designated the ImmuCell Corporation Municipal Development and Tax Increment Financing District, adopted the Development Program and entered into this Agreement in order to induce the Company to move forward with ImmuCell's expansion from its existing facility at 56 Evergreen Drive to a new two-story, 12,625 square foot (approx.) production facility on Caddie Lane in the District (the "Project"); and

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

WHEREAS, the City and the Company desire and intend that this Agreement 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. All other capitalized terms not otherwise defined herein shall have the meaning given such terms in the Development Program.

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

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

“Captured Assessed Value” means the percentage of Increased Assessed Value retained in the ImmuCell Corporation Municipal Development and Tax Increment Financing District in each year during the term of the ImmuCell Corporation Municipal Development and Tax Increment Financing District as specified in Section 3.1 below.

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

“Current Assessed Value” means the then current assessed value of the Property located within the ImmuCell Corporation Municipal Development and Tax Increment Financing District to be determined by the City’s Assessor as of April 1 of each year that this Agreement remains in effect.

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

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

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

“DECD” shall have the meaning given such term in the recitals hereto.

“Development Program” means the development program and financial plan for the District and attached hereto as Exhibit A.

“Development Program Fund” shall have the meaning given such term in Section 2.1 hereto.

“District” shall have the meaning given such term in the recitals hereto, which District is depicted on the maps contained in Exhibits A and B to the Development Program.

“Effective Date” shall have the meaning given such term in Section 6.1 hereto.

“Energy Efficiency” shall mean that the Project must meet or exceed the requirements of Portland City Code Chapter 6, sections 6-165 – 6-169, of the City’s Green Building Code as if it were “new construction . . . to be funded in whole or in part by the City of Portland.”

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

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

“Original Assessed Value” means \$52,600, the assessed value of the Property as of April 1, 2015.

“Project” shall mean the new construction and its associated employment opportunities, as well as the meaning given such term in the recitals hereto.

~~“Project” shall have the meaning given such term in the recitals hereto.~~

“Project Construction Employment” shall mean the employment provided by the construction work of the Project.

“Project Cost Account” means the account in the Development Program Fund described in Section IV(B) of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

“Project Costs” means all costs incurred by the Company on the Project within the meaning set forth in 30-A M.R.S.A. §5222(14), as amended.

“Property” means the land and all real property improvements located in the District and taxable by the City.

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

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

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

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

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

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

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

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

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

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

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

ARTICLE II

DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

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

Section 2.2. Deposits into Company TIF Account.

Each year during the term of this Agreement, commencing with the City’s 2016-2017 fiscal year and continuing thereafter for the remaining term of this Agreement, through and including the City’s 2027-2028 fiscal year, there shall be deposited into the Company TIF Account contemporaneously with each payment of Property Taxes an amount equal to that portion of the Property Taxes constituting Company Tax Increment Revenues for the period to which the payment relates. Any and all revenues, if any, resulting from investment of monies on deposit shall be retained by the City and withdrawn from the Company TIF Account contemporaneously with payment to the Company.

Section 2.3. Use of Monies in Company TIF Account.

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

Section 2.4. Monies Held in Trust.

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

Section 2.5. Investments.

Any monies in the Company TIF 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 at all times invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Company TIF Account. If the City experiences any losses in association with these

investments related to the Company TIF Account, the City shall still pay to the Company the amounts required under Section 3.1 hereof.

Section 2.6. Tax Payments.

The Company shall pay or cause to be paid when due all Property Taxes assessed by the City unless contested by the Company by appropriate proceedings pursuant to Maine law. No payments shall be made by the City under this Agreement at any time any such taxes or amounts are due and unpaid.

Section 2.7. Energy Efficiency

The Project must meet or exceed the requirements of Portland City Code Chapter 6, sections 6-165 – 6-169, of the City's Green Building Code as if it were "new construction ... to be funded in whole or in part by the City of Portland."

Section 2.8. Enforcement.

The City Manager or his or her designee is authorized to adopt rules and regulations for the proper administration and enforcement of the Credit Enhancement Agreement.

ARTICLE III PAYMENT OBLIGATIONS

Section 3.1. Captured Assessed Value; Retained Tax Increment Revenues.

During the term of the Development Program, the City shall annually retain the percentage of Increased Assessed Value and Increased Assessed Value indicated on Exhibit B attached hereto as Captured Assessed Value.

The Property Taxes paid with respect to the Captured Assessed Value shall be retained as Retained Tax Increment Revenues. The City agrees that all one hundred percent (100%) of the Retained Tax Increment Revenues shall constitute Company Tax Increment Revenues. Each year during the term of this Agreement, the City shall deposit into the Company TIF Account contemporaneously with each payment of Property Taxes an amount equal to one hundred percent (100%) of that portion of the property tax payment constituting Company Tax Increment Revenues, in accordance with the provisions of Section 2.2 of this Agreement and the priorities established by 30-A M.R.S.A. § 5227(3)(B), starting with taxes assessed for the 2013-2014 Tax Year and continuing thereafter for the remaining term of this Agreement, ending with taxes assessed for the City's 2027-2028 fiscal year, based on the April 1, 2027 Current Assessed Value.

Section 3.2. Credit Enhancement Payments.

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

Section 3.3. Failure to Make Payment.

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

Section 3.4. Manner of Payments.

a. The payments provided for in this Article III shall be paid in immediately available funds in the manner provided hereinabove for its own use and benefit. Notwithstanding the above, no payments shall be made unless used to satisfy debt service on indebtedness incurred to finance qualified "Project Costs" as that term is defined under Chapter

206 of Title 30-A of the Maine Revised Statutes and as described as part of the Project in the Development Program or used to pay directly, or to reimburse the Company for payment of such Project Costs.

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

Section 3.5. Obligations Unconditional.

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

Section 3.6. Limited Obligation.

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

**ARTICLE IV
PLEDGE AND SECURITY INTEREST**

Section 4.1. Pledge of Company TIF Account.

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

Section 4.2. Perfection of Interest.

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

Section 4.3. Further Instruments.

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

Section 4.4. Liens.

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

Section 4.5. Access to Books and Records.

All books, records, notes and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Account shall at all reasonable times be open to inspection by the Company, its agents and employees.

ARTICLE V DEFAULTS AND REMEDIES

Section 5.1. Events of Default.

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

a. Any failure by the City to pay any amounts due under Section 3 above when the same shall become due and payable;

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

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

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

Section 5.2. Remedies on Default.

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

Section 5.3. Remedies Cumulative.

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

Section 5.4. Enforcement Rights.

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

ARTICLE VI
EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

This Agreement shall become effective upon its execution and delivery by the parties hereto (the "Effective Date") and shall remain in full force from the date hereof and shall expire on the later of the completion of deposits and payments required pursuant to Articles II and III hereof with respect to the City's 2027-2028 fiscal year relating to Current Assessed Value as of April 1, 2027, or upon the performance of all obligations on the part of the City and the Company hereunder, including without limitation payment of all amounts to be paid to Company.

Section 6.2. Cancellation and Expiration of Term.

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

ARTICLE VII ASSIGNMENT

Section 7.1. Consent to Pledge and/or Assignment.

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

Section 7.2. Assignment.

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

ARTICLE VIII MISCELLANEOUS

Section 8.1. Successors.

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

Section 8.2. Parties in Interest.

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

Section 8.3. Severability.

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

Section 8.4. No Personal Liability.

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

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

Section 8.5. Counterparts.

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

Section 8.6. Governing Law.

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

Section 8.7. Notices.

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

If to the City:

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

If to the Company:

ImmuCell Corporation
56 Evergreen Drive
Portland, ME 04103
Attn: Michael F. Brigham, President

With a copy to:
Pierce Atwood LLP
254 Commercial Street
Portland, ME 0410
Attn: James M. Saffian, Esq.

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

Section 8.8. Amendments.

Neither this Agreement nor the Development Program may be amended without the express written consent of all of the parties hereto, which consent shall not be unreasonably

withheld, conditioned or delayed. Provided, however, the parties agree to amend this Agreement in order to fulfill such reasonable requirement that a lender may require in connection with financing of the Project. This Agreement may only be amended in compliance with the provisions of 30-A M.R.S.A. §5211 et seq., as amended.

Section 8.9. Net Agreement.

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

Section 8.10. Integration.

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

Section 8.11. Project Responsibility.

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

Section 8.12. Benefit of Assignees or Pledgees.

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

Section 8.13. No Third Party Benefits.

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

Section 8.14. Indemnification.

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

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

Section 8.15. Waiver of Recapture.

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

(Signature page break.)

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

WITNESS

CITY OF PORTLAND, MAINE

By: _____

Jon P. Jennings
Its City Manager

IMMUCELL CORPORATION

By: _____

Michael F. Brigham
Its President

**Exhibit A to Credit Enhancement Agreement – ImmuCell Corporation Municipal
Development and Tax Increment Financing District Development Program**

EXHIBIT B to Credit Enhancement Agreement: Company Tax Increment Revenues

CEA Years:	Increased Assessed Value to be captured as Captured Assessed Value (and Reimbursed to Company):
Years 1-11 (FY2016-2017 to FY2026-2027)	65%
Years 12 (FY2027-2028)	30%

EXHIBIT C to Credit Enhancement Agreement – Certification of Costs Form (ImmuCell Corporation TIF District)

The undersigned does hereby certify the following project costs were incurred in the Tax Year starting April 1, 20__ and ending March 31, 20__ as follows:

<u>Improvements</u>	<u>Actual Costs</u>
----------------------------	----------------------------

_____	_____
_____	_____
_____	_____

Total:	_____
---------------	-------

Date: _____

By: _____

Name: _____

Its: _____

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 39-16/17
Sat 26 8-1-16
Sat 12 9-7-16*

**ORDER AUTHORIZING THE CITY MANAGER TO NEGOTIATE
AN AGREEMENT WITH REVISION ENERGY LLC FOR
INSTALLATION OF SOLAR POWER ARRAY ON OCEAN AVENUE LANDFILL**

ORDERED, that the City Manager or his or her designees, in consultation with the Corporation Counsel, are hereby authorized to negotiate a power purchase agreement and a related lease or license agreement with Revision Energy LLC for the installation of a solar power array on the Ocean Avenue Landfill substantially in accordance with the provisions of the term sheet attached hereto, and which agreement shall not become effective without subsequent review and approval by the City Council.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Troy Moon

DATE: 7/21/2016

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

SUBJECT: Order ...

SPONSOR: Jon Hinck, Chair, Energy and Sustainability Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading X Final Action

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)

SUMMARY OF ISSUE (Agenda Description)

During their meeting on July 20, the Energy and Sustainability Committee reviewed proposed terms to develop a solar array on the closed and capped Ocean Avenue Landfill. The project was proposed by Revision Energy in response to an RFP the City issued in June, 2015 to explore solar power generation. Under Revision's proposal, which was the only proposal submitted in response to the RFP, Revision would install and own a 660 KW array. The City would purchase from Revision all power generated by the array under a power purchase agreement. After the first 6 years of the agreement, the City would have the option (but not the obligation) to purchase the array. In January, 2016 the City of South Portland joined the proposal in order to facilitate construction of an identical solar array on their closed landfill and to reduce overall project costs. Moving forward with the project would create one of the largest municipal solar arrays in Maine and underscore the City of Portland's commitment to supporting renewable energy. The Energy and Sustainability Committee unanimously recommends moving forward with this project.

Planning staff is currently revising the zoning ordinance to allow stand-alone solar generation facilities in the City. They presented an outline of their recommendations to the Energy and Sustainability Committee in June in order to get feedback. They will present to the Planning Board on August 9.

The Land Bank Commission approved installation of the solar array during the meeting in January, 2016.

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

To move forward, the City Council will need to authorize the City Manager or his designees to negotiate terms of a power purchase agreement, an appropriate lease or license agreement, and to issue permits

necessary to construct the solar array. The order would authorize the City Manager to negotiate these documents within the parameters of the attached term sheet presented by Revision Energy, which would subsequently be presented to the City Council for approval.

III. INTENDED RESULT

Approving the order authorize the City Manager to negotiate a power purchase agreement with Revision Energy in order to create 660 kW solar array on the closed and capped Ocean Avenue Landfill.

IV. COUNCIL GOAL ADDRESSED

The City Council has a stated goal of promoting renewable energy in the City of Portland.

V. FINANCIAL IMPACT

In order to monetize the value of a federal investment tax credit, the City cannot take ownership of the solar array for at least six years and would purchase the power generated by the private owner – Revision Energy – under the terms of a power purchase agreement. The term of the proposed contract sets an initial rate of \$0.1056 kWh with a 2.5% annual escalation. This is approximately \$0.02 higher than the City currently pays for electricity. In addition to purchasing power under the agreement, the City would also be responsible for the cost of installing electrical cable to connect the array to a nearby CMP pole, which is expected to cost about \$50,000.00. Once the City executes its option to purchase the array the cash flow becomes positive. Assuming the buy-out occurs in year seven, the City would recoup its costs and the project would become revenue positive in year 10. We project the array to accrue a financial benefit to the City of over \$3 million during the 40 year projected life of the project. In year 7, the optional buyout cost would be \$1.6 million dollars. Given projected constraints on the Capital Improvement Budget, the City Council at that time may choose to defer the buyout option to a future year. As time passes, the buyout cost declines but this would be offset by the costs associated with the power purchase agreement.

VI. STAFF ANALYSIS

City staff members from Portland and South Portland have worked closely with the principals of Revision Energy to develop the proposal to develop solar arrays on each city's closed landfills. After considerable work, we have arrived at financial terms that make moving forward with the project feasible.

Closed landfills are ideal hosts for solar arrays because it allows a beneficial use of an area that cannot otherwise be developed. As proposed, the project would preserve the existing recreational uses in the area such as dog walking, bike riding, and bird watching. The Land Bank Commission approved siting the array at this location in January, 2016.

The City Council has established supporting renewable energy as a goal. Implementing this project would allow the City to host a facility generating 660 kW of electricity. The annual output of 1.2 million kWh per year represents approximately 3% of the City's annual consumption and is roughly equivalent to the power consumed by City Hall and Merrill Auditorium.

VII. RECOMMENDATION

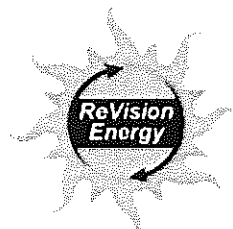
We recommend approval of the order authorizing the City Manager to negotiate and execute the agreements necessary to implement the Ocean Avenue Solar Project within the parameters of the term sheet offered by Revision Energy.

VIII. LIST ATTACHMENTS

Project Term Sheet

Prepared by: Troy Moon

Date: 7/22/2016



Professional design, installation and service of solar energy systems

Troy Moon, Sustainability Director
City of Portland
389 Congress St.
Portland, Maine 04101

July 27, 2016

Dear Troy,

On behalf of ReVision Energy, I am pleased to provide the following terms for a proposed Power Purchase Agreement (PPA) for a photovoltaic solar energy project at the former Ocean Avenue landfill site.

Project Description: 920.7 kWdc solar array, with estimated production of 1,203,570 kwh/year.

- (2,970) Q-cell 310-watt solar electric modules, or equivalent, with 25-year performance warranty;
- (25) SMA STP24000TL-US-10 and (3) SMA STP20000TL-US-10 inverters, or equivalent, with 15-year performance warranty;
- Revenue grade electric metering and remote system monitoring to allow real-time online access to solar energy generation;
- Maine DEP approved site design with ballasted ground mounted array, wind rating of 120 mph;
- Balance of system components including all wiring, hardware and fittings needed to provide a National Electrical Code and NABCEP compliant installation.

Power Purchase Agreement: ReVision Energy and/or its financing partner will finance, build, own and operate the system for life of PPA. The City will provide for a line extension and new electrical service to access the landfill and will purchase all power produced under the following terms:

Power price: 10.56¢/kWh in year one, to increase by 2.5% annually.

Term: 25 years, with option to extend to 30 years. At end of term, City can elect to take over system or have it removed and the property restored to prior conditions at no cost

Buyout Options: The City will have an option to purchase in Year 7 or 10, and at regular intervals thereafter, at fair market value or the following schedule, whichever is higher.

Estimated Y7 Buyout: \$1,598,423

Estimated Y10 Buyout: \$1,365,670

ReVision Energy is the largest full service renewable energy contractor in northern New England. Since 2003, ReVision has installed more than 5,000 solar systems for commercial, residential, municipal, educational and non-profit clients. Our professional installation team includes master electricians and NABCEP certified solar installers and technicians, and is backed by a 24-hour service guarantee.

Sincerely,

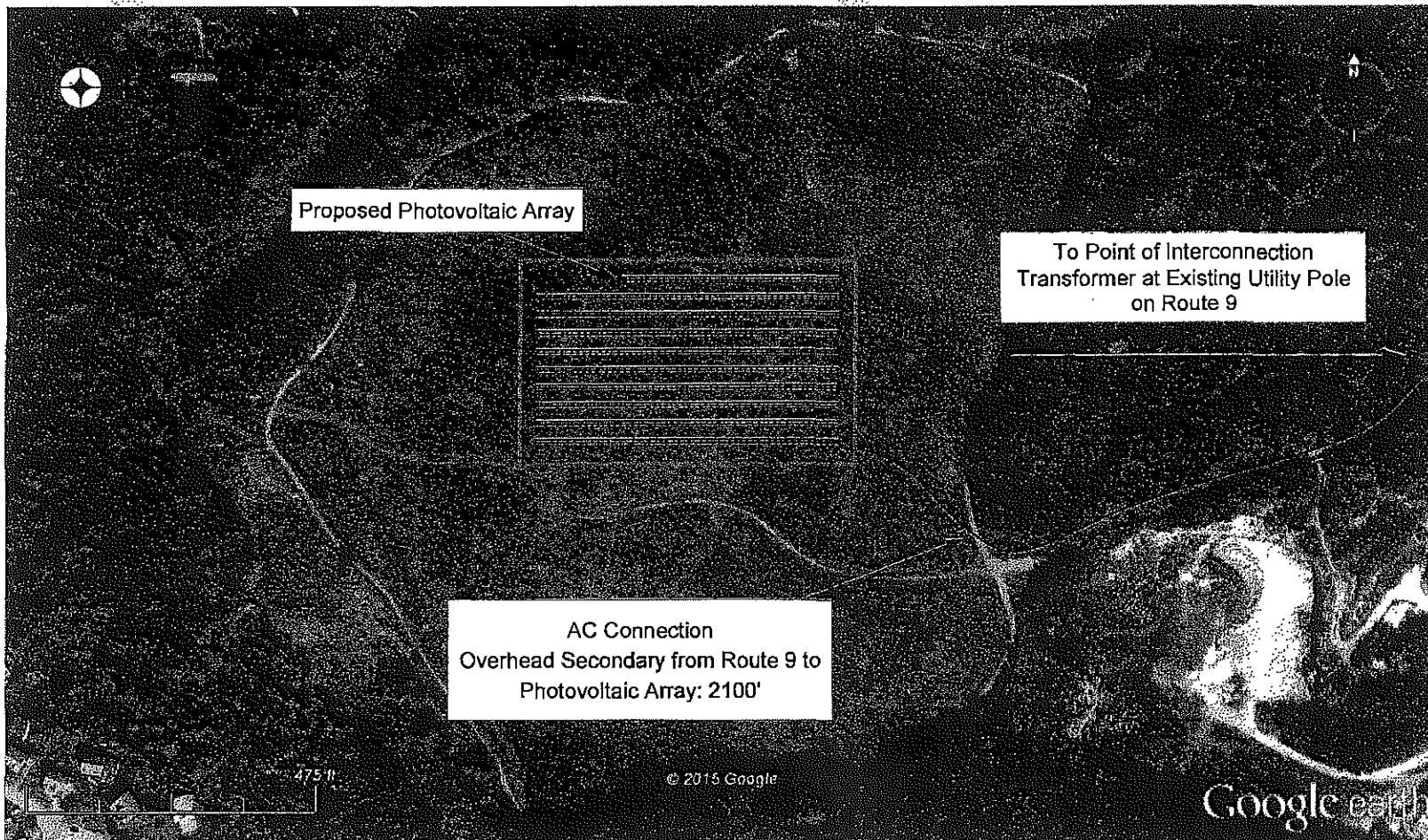
Steve Hinchman, Director of Financing
ReVision Energy, LLC
207.837.8637
steveh@revisionenergy.com

91 West Main Street
Liberty, ME 04949
(207) 589-4171

142 Presumpscot Street
Portland, ME 04103
(207) 221-6342

7 Commercial Drive
Exeter, NH 03833
(603) 501-1822

www.revisionenergy.com



142 Presumpscot Street
Portland, ME 04103
(207) 221-8342

Project Information

Old City Landfill
Ridge Road
Portland, ME 04103

System Type:

903.96 kW_{dc} Photovoltaic Array

Drawing Name:

Site Map

Page: 1 of 4

Drawn By: L. Brosiek

Date: August 20, 2016

Rev. Number: 0

Project Design Notes:

Preliminary Design Plan, Not for Construction

Total DC System Size: 903.96 kW_{dc}

2,916 Modules in Portrait, 10 Rows Total
9 Rows of 150, 1 Row of 108, Columns of 2 High

Module Type: ReneSola 310W JC310M-24/Ab
Module Dimensions: 77.01" x 39.06" x 1.57"

First Year kWh Production: 1,244,475 kWh

Degradation Percentage: 0.5% per year

Total AC System Size:
(27) 24kW Inverters, 648 kW_{ac}

Inverter Type and Specifications:
SMA STP 24000TL-US-10

Max AC Power per Inverter: 24 kW_{ac}
Max AC Output Current per Inverter: 29A
Nominal AC Voltage: 480 / 277 V WYE

Racking System: Ground Mount, Ballasted Block
Wind Rating of Mounting System: 120 mph

Array Tilt: 35° Array Azimuth: 180°
Ground Slope: -3% Grade (-2°) to the North

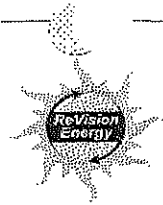
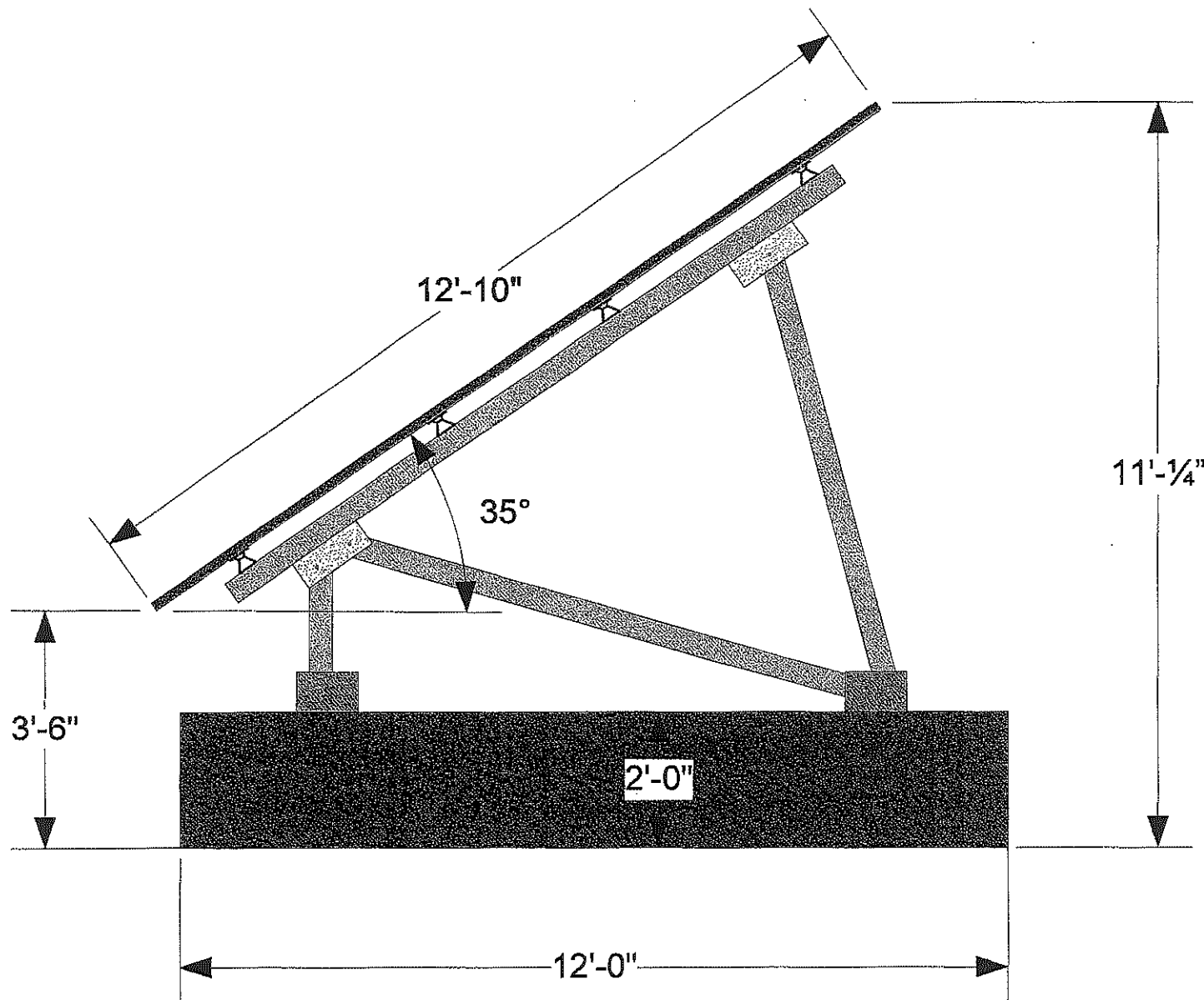
Array Dimensions: 500'-0" x 283'-7"
Array Perimeter: 550'-0" x 350'-0" (Fencing)
Inter-row Spacing: 20'-2"

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Professional Engineer Stamp of Approval

Dimensions of Photovoltaic Array, Ground Mount Racking System, Side View:



142 Presumpscot Street
Portland, ME 04103
(207) 221-6342

Project Information

Old City Landfill
Ridge Road
Portland, ME 04103

System Type:

903.96 kWdc Photovoltaic Array

Drawing Name:

Ground Mount Profile:
Ballasted Block Racking System

Page: 2 of 4

Drawn By: L. Broshek

Date: August 20, 2015

Rev. Number: 0

Project Design Notes:

Preliminary Design Plan, Not for Construction

2,915 Modules in Portrait, 10 Rows Total
9 Rows of 150, 1 Row of 105, Columns of 2 High

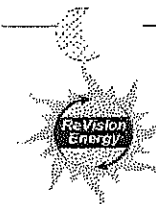
Module Type: ReneSola 310W JC310M-24/Ab
Module Dimensions: 77.01" x 39.00" x 1.67"

Racking System: Ground Mount, Ballasted Block
Wind Rating of Mounting System: 120 mph
Array Tilt: 35° Array Azimuth: 180° (True)
Concrete Ballasted Blocks
Leading Edge, 3'-6" from ground

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Professional Engineer Stamp of Approval



142 Presumpscot Street
Portland, ME 04103
(207) 221-6342

Project Information

Old City Landfill
Ridge Road
Portland, ME 04103

System Type:

903.96 kW_{dc} Photovoltaic Array

Drawing Name:

Inter-Row Spacing Requirements

Page: 3 of 4

Drawn By: L. Brostek

Date: August 20, 2018

Rev. Number: 0

Project Design Notes:

Preliminary Design Plan, Not for Construction

Module Type: ReneSola 310W JC310M-24/Ab
Module Dimensions: 77.01" x 39.06" x 1.57"

Racking System: Ground Mount, Ballasted Block
Wind Rating of Mounting System: 120 mph

Array Tilt: 35° Array Azimuth: 180°
Ground Slope: -3% Grade (-2°) to the North

Array Dimensions: 600'-0" x 263'-7"
Inter-row Spacing: 20'-2"

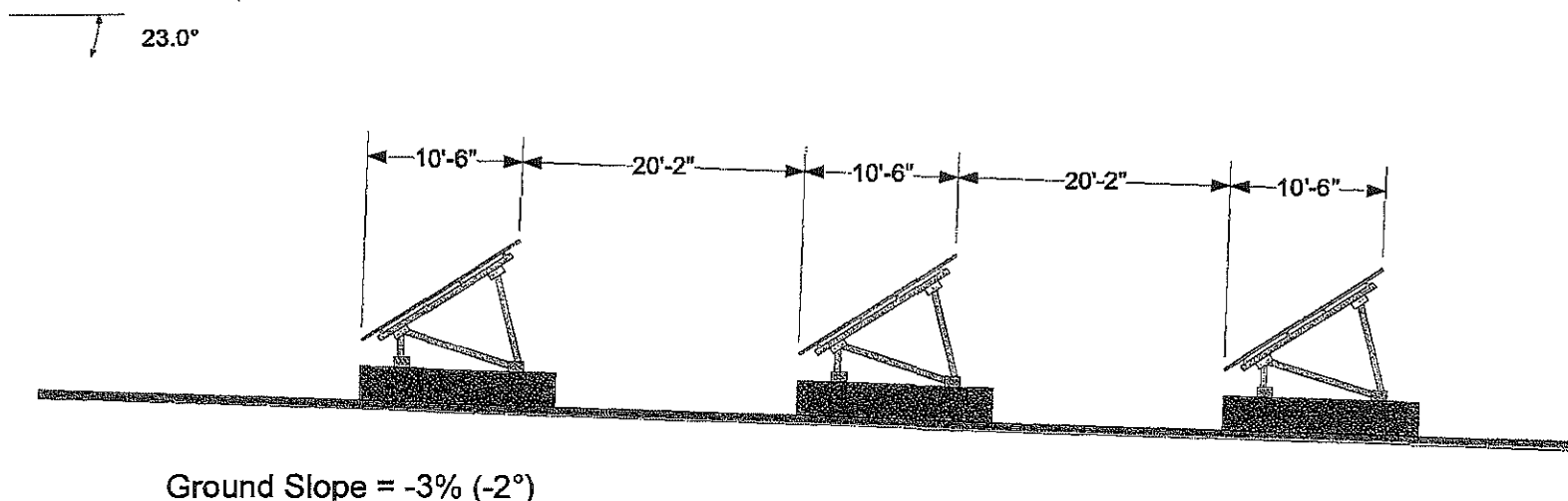
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Professional Engineer Stamp of Approval:

Inter-row Spacing Requirement (Shadow Distance):

To eliminate shading during peak sun hours, distance between rows shall be a minimum of 20'-2" from the top of the front panel to the bottom of the back panel. Shading calculations are based on the sun's position and altitude angle over Portland, ME on Winter Solstice (21 December).





142 Presumpscot Street
Portland, ME 04103
(207) 221-6342

Project Information

Old City Landfill
Ridge Road
Portland, ME 04103

System Type:

903.96 kW_{DC} Photovoltaic Array

Drawing Name:

Irradiance Shading

Page: 4 of 4
Drawn By: L. Brosiek
Date: August 20, 2015
Rev. Number: 0

Project Design Notes:

Preliminary Design Plan, Not for Construction

Module Type: ReneSola 310WJC310M-24Ab
Module Dimensions: 77.01" x 39.06" x 1.57"

Racking System: Ground Mount, Ballasted Block
Wind Rating of Mounting System: 120 mph

Array Tilt: 35° Array Azimuth: 180°
Ground Slope: -3% Grade (-2°) to the North

Array Dimensions: 500'-0" x 283'-7"
Inter-row Spacing: 20'-2"

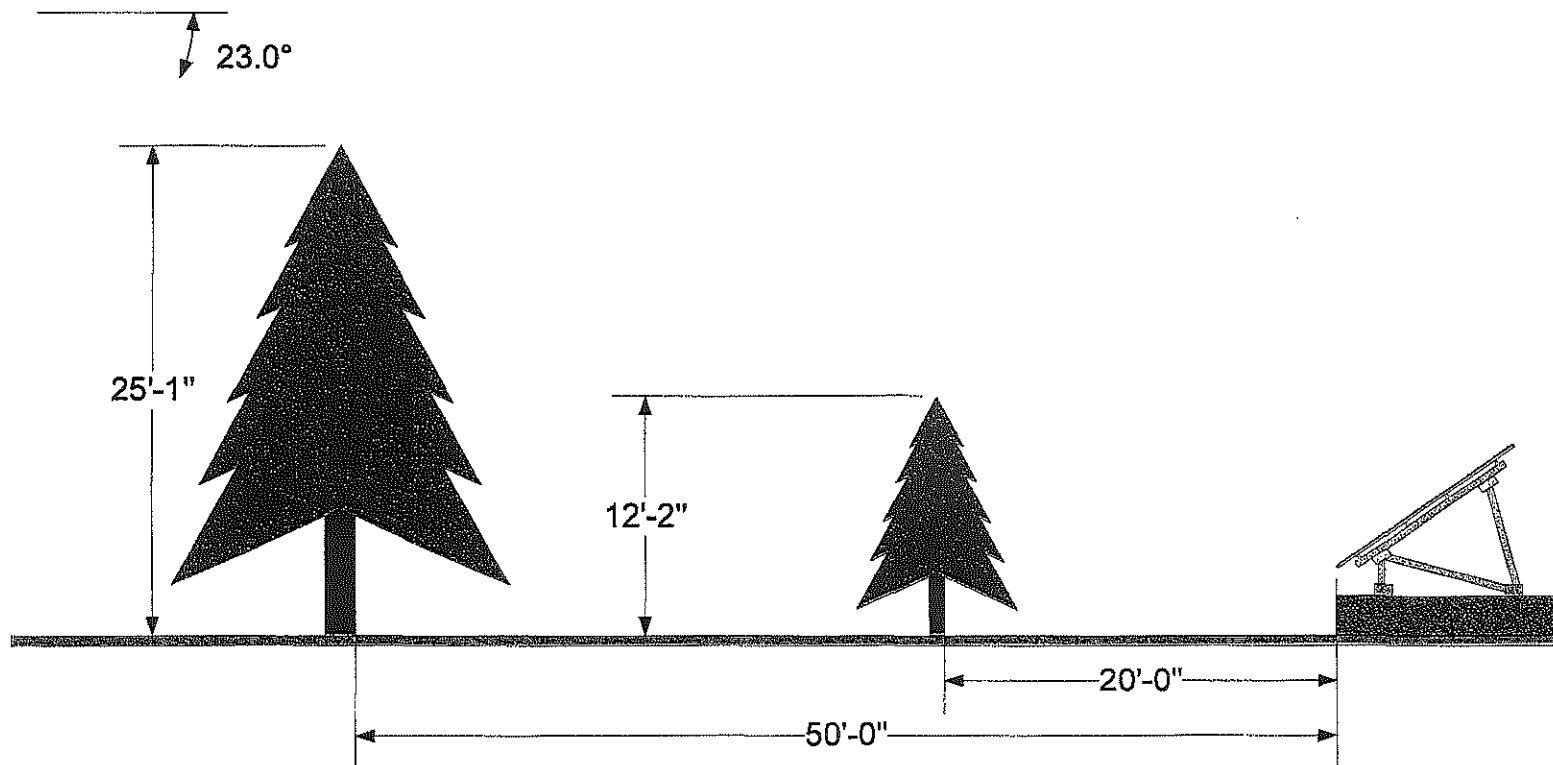
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Professional Engineer Stamp of Approval:

Irradiance Spacing (Shade-free Zone):

Keeping the solar array shade-free optimizes annual energy production. Shade elimination requires a zone that extends from the East, South, and West edges of the array that is free of any obstacles (buildings, vegetation, or other) that would cast a shadow. This irradiance spacing varies with height and distance as shown.



Ocean Avenue Landfill

Acreage



660.00 kW_{AC} Photovoltaic Array – Site Plan



AC Connection
Overhead Secondary from Route 9 to
Photovoltaic Array: 2100'



142 Presumpscot Street
Portland, ME 04103
(207) 221-6342

Customer Name:

Old City Landfill
Ridge Road
Portland, ME 04103

System Type:

Photovoltaic Array

Total DC System Size: 920.70 kW_{DC}

(2,970) Modules, As Shown
6 Rows of 216, 1 Row of 189
Columns of 2 High in Portrait

Module Type: Q.CELL 310W Q.PRO L-G3

First Year kWh Production: 1,203,570 kWh
(Specific Yield: 1307 kWh / kW)

Degradation Percentage: 0.5% per year

Total AC System Size: 660.00 kW_{AC}

(28) Grid-tied Inverters, Mounted to Racking:
Inverter Types and Specifications:

(25) SMA STP24000TL-US-10
Max AC Power per Inverter: 24 kW_{AC}
Max AC Output Current per Inverter: 29A
Nominal AC Voltage: 480Y / 277 V
108 Modules per Inverter

(3) SMA STP20000TL-US-10
Max AC Power per Inverter: 20 kW_{AC}
Max AC Output Current per Inverter: 24A
Nominal AC Voltage: 480Y / 277 V
90 Modules per Inverter

Racking System: Ground Mount, Ballasted
Wind Rating of Mounting System: 120 mph

Array Tilt: 35°
Array Azimuth: 180°
Ground Slope: Negligible

Array Area: 800'-0" x 300'-0"
Array Perimeter: 2,000'-0"
Inter-row Spacing: 22'-5" between rows

To account for thermal expansion of racking, 2"
gaps shall be installed at the array every 100'.

Designed by: LB

Date: January 26, 2016

SITE PLAN

SHEET A01

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660.00 kW_{AC} Photovoltaic Array – Site Plan



142 Presumpscot Street
Portland, ME 04103
(207) 221-6342

Customer Name:

Capped Landfill
929 Highland Ave
South Portland, ME 04106

System Type:

Photovoltaic Array

Total DC System Size: 920.70 kW_{DC}

(2,970) Modules, As Shown
Columns of 2 High in Portrait

Module Type: Q.CELL 310W Q.PRO L-G3

First Year kWh Production: 1,204,020 kWh
(Specific Yield: 1,307 kWh / kW)

Degradation Percentage: 0.5% per year

Total AC System Size: 660.00 kW_{AC}

(28) Grid-tied Inverters, Mounted to Racking:
Inverter Types and Specifications:

(25) SMA STP24000TL-US-10
Max AC Power per Inverter: 24 kW_{AC}
Max AC Output Current per Inverter: 29A
Nominal AC Voltage: 480Y / 277 V
108 Modules per Inverter

(3) SMA STP20000TL-US-10
Max AC Power per Inverter: 20 kW_{AC}
Max AC Output Current per Inverter: 24A
Nominal AC Voltage: 480Y / 277 V
90 Modules per Inverter

Racking System: Ground Mount, Ballasted
Wind Rating of Mounting System: 120 mph

Array Tilt: 35°
Array Azimuth: 180°
Ground Slope: Negligible

Array Area: 800'-0" x 300'-0"
Array Perimeter: 2,200'-0"
Inter-row Spacing: 22'-5" between rows

To account for thermal expansion of racking, 2"
gaps shall be installed at the array every 100'.

Designed by: LB

Date: January 26, 2016

SITE PLAN

SHEET A01

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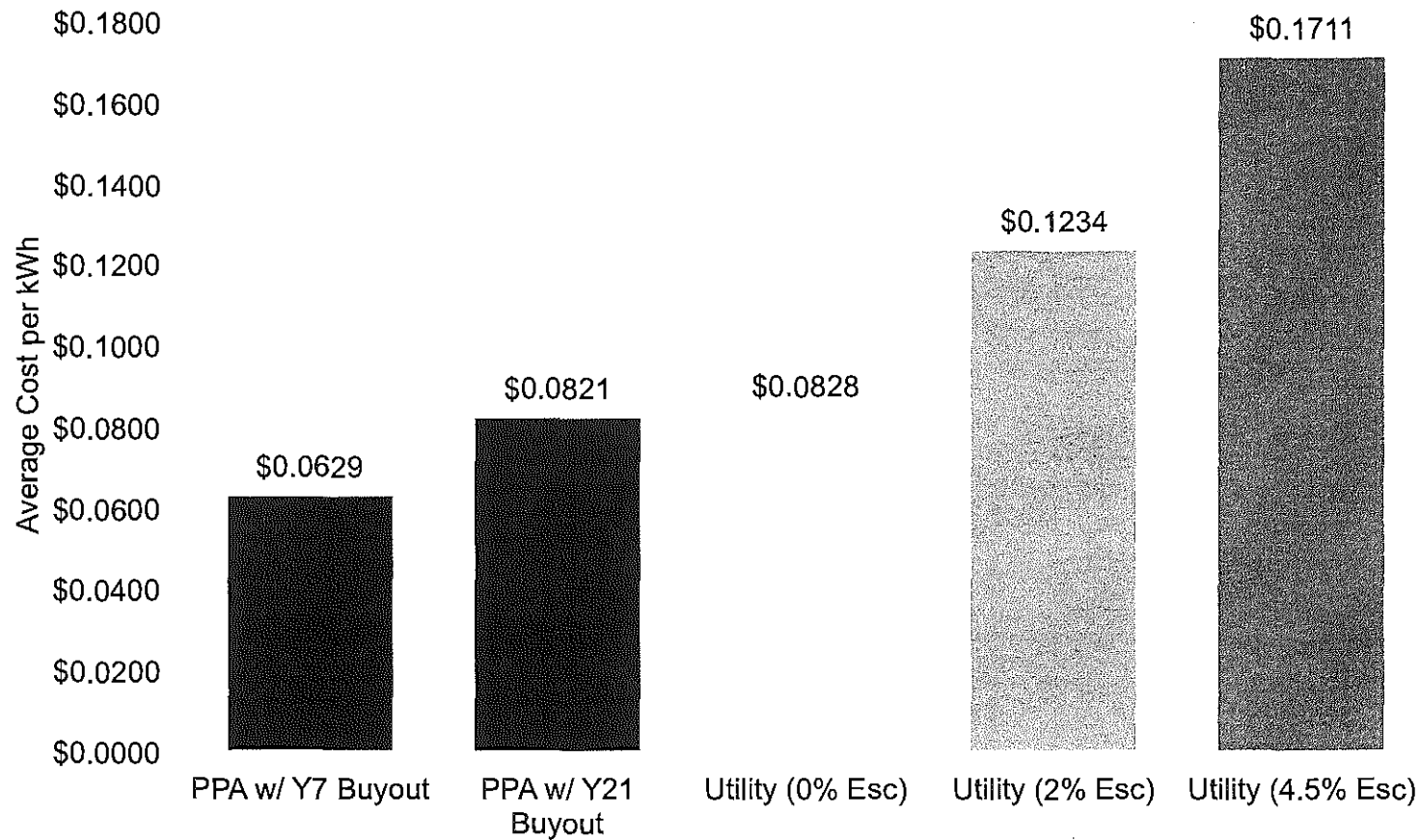
This diagram is provided as a service and is based on the understanding of the information supplied. It is subject to change based on actual conditions, applicable edition of the National Electric Code, and local governmental authorities.

Landfills PPA Comparison

1st Price Schedule			Revised Offer		PPA Comparison		
Year	PPA \$/kWh	Est. Purchase Price	PPA \$/kWh	Est. Purchase Price	Difference	Cumulative	Purchase
1	\$ 0.11500	\$ 2,895,655	\$ 0.12450	\$ 2,569,950	\$6,703	\$6,703	\$325,705
2	\$ 0.11730		\$ 0.12699		\$6,803	\$13,506	
3	\$ 0.11965		\$ 0.12953		\$6,904	\$20,410	
4	\$ 0.12204		\$ 0.13212		\$7,007	\$27,417	
5	\$ 0.12448		\$ 0.13476		\$7,112	\$34,529	
6	\$ 0.12697		\$ 0.13746		\$7,218	\$41,747	
7	\$ 0.15400	\$ 2,001,969	\$ 0.14021	\$ 1,570,000	\$22,251	\$19,496	\$431,969
8	\$ 0.15708	\$ 1,890,303	\$ 0.14301		\$22,582	\$3,086	
9	\$ 0.16022	\$ 1,769,396	\$ 0.14587		\$22,919	\$26,005	
10	\$ 0.16343	\$ 1,638,650	\$ 0.14879		\$23,260	\$49,265	
11	\$ 0.16669	\$ 1,542,560	\$ 0.15176		\$23,607	\$72,872	
12	\$ 0.17003	\$ 1,437,809	\$ 0.15480		\$23,959	\$96,831	
13	\$ 0.17343	\$ 1,323,832	\$ 0.15790		\$24,316	\$121,146	
14	\$ 0.17690	\$ 1,200,003	\$ 0.16105		\$24,678	\$145,824	
15	\$ 0.18044	\$ 1,065,779	\$ 0.16428		\$25,046	\$170,870	
16	\$ 0.18404	\$ 920,395	\$ 0.16756		\$25,419	\$196,288	
17	\$ 0.18773	\$ 763,170	\$ 0.17091		\$25,797	\$222,086	
18	\$ 0.19148	\$ 593,346	\$ 0.17433		\$26,182	\$248,268	
19	\$ 0.19531	\$ 410,119	\$ 0.17782		\$26,572	\$274,840	
20	\$ 0.19922	\$ 212,639	\$ 0.18137		\$26,968	\$301,808	
					Net with buyout		\$390,222

Landfill Array – Solar v. CMP

40-Year Energy Price



City of Portland -Landfill

Year 1 Purchase Vs. Year 7 Purchase

Portland Year 1 Purchase						
Year	Portland Bond PMT	Operating Expenses	REC Value	Utility Bill	Annual Savings	Cumulative Savings
1	\$ (195,581)	\$ (31,779)	\$ 47,214	\$ 105,780	\$ (74,366)	\$ (74,366)
2	\$ (195,581)	\$ (30,877)	\$ 46,978	\$ 108,935	\$ (70,545)	\$ (144,911)
3	\$ (195,581)	\$ (30,020)	\$ 46,742	\$ 112,184	\$ (66,675)	\$ (211,586)
4	\$ (195,581)	\$ (29,207)	\$ 46,508	\$ 115,530	\$ (62,749)	\$ (274,335)
5	\$ (195,581)	\$ (28,434)	\$ 46,275	\$ 118,976	\$ (58,764)	\$ (333,099)
6	\$ (195,581)	\$ (27,700)	\$ 46,044	\$ 122,524	\$ (54,713)	\$ (387,811)
7	\$ (195,581)	\$ (37,850)	\$ 45,813	\$ 126,179	\$ (61,439)	\$ (449,250)
8	\$ (195,581)	\$ (37,187)	\$ 45,584	\$ 129,942	\$ (57,243)	\$ (506,493)
9	\$ (195,581)	\$ (36,558)	\$ 45,355	\$ 133,817	\$ (52,967)	\$ (559,460)
10	\$ (195,581)	\$ (35,961)	\$ -	\$ 137,809	\$ (93,733)	\$ (653,193)
11	\$ (195,581)	\$ (35,393)	\$ -	\$ 141,919	\$ (89,055)	\$ (742,248)
12	\$ (195,581)	\$ (34,854)	\$ -	\$ 146,151	\$ (84,284)	\$ (826,532)
13	\$ (195,581)	\$ (34,342)	\$ -	\$ 150,510	\$ (79,413)	\$ (905,945)
14	\$ (195,581)	\$ (33,856)	\$ -	\$ 154,999	\$ (74,438)	\$ (980,382)
15	\$ (195,581)	\$ (33,394)	\$ -	\$ 159,622	\$ (69,353)	\$ (1,049,735)
16	\$ (195,581)	\$ (31,456)	\$ -	\$ 164,383	\$ (62,654)	\$ (1,112,389)
17	\$ (195,581)	\$ (31,039)	\$ -	\$ 169,286	\$ (57,335)	\$ (1,169,724)
18	\$ (195,581)	\$ (30,644)	\$ -	\$ 174,335	\$ (51,890)	\$ (1,221,614)
19	\$ (195,581)	\$ (30,268)	\$ -	\$ 179,534	\$ (46,315)	\$ (1,267,929)
20	\$ (195,581)	\$ (29,911)	\$ -	\$ 184,889	\$ (40,604)	\$ (1,308,532)
Total Net Savings					\$ (1,308,532)	

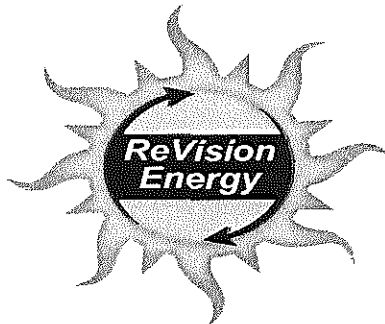
Portland Year 7 Purchase						
Year	Portland PPA/Bond PMT	Operating Expenses	REC Value	Utility Bill	Annual Savings	Cumulative Savings
1	\$ (143,115)	\$ -	\$ -	\$ 105,780	\$ (37,334)	\$ (37,334)
2	\$ (145,247)	\$ -	\$ -	\$ 108,935	\$ (36,312)	\$ (73,646)
3	\$ (147,411)	\$ -	\$ -	\$ 112,184	\$ (35,227)	\$ (108,873)
4	\$ (149,608)	\$ -	\$ -	\$ 115,530	\$ (34,077)	\$ (142,950)
5	\$ (151,837)	\$ -	\$ -	\$ 118,976	\$ (32,861)	\$ (175,811)
6	\$ (154,099)	\$ -	\$ -	\$ 122,524	\$ (31,575)	\$ (207,386)
7	\$ (143,614)	\$ (37,850)	\$ 45,813	\$ 126,179	\$ (9,472)	\$ (216,858)
8	\$ (143,614)	\$ (37,187)	\$ 45,584	\$ 129,942	\$ (5,276)	\$ (222,134)
9	\$ (143,614)	\$ (36,558)	\$ 45,355	\$ 133,817	\$ (999)	\$ (223,134)
10	\$ (143,614)	\$ (35,961)	\$ -	\$ 137,809	\$ (41,766)	\$ (264,900)
11	\$ (143,614)	\$ (35,393)	\$ -	\$ 141,919	\$ (37,088)	\$ (301,988)
12	\$ (143,614)	\$ (34,854)	\$ -	\$ 146,151	\$ (32,317)	\$ (334,305)
13	\$ (143,614)	\$ (34,342)	\$ -	\$ 150,510	\$ (27,446)	\$ (361,750)
14	\$ (143,614)	\$ (33,856)	\$ -	\$ 154,999	\$ (22,471)	\$ (384,221)
15	\$ (143,614)	\$ (33,394)	\$ -	\$ 159,622	\$ (17,386)	\$ (401,607)
16	\$ (143,614)	\$ (31,456)	\$ -	\$ 164,383	\$ (10,687)	\$ (412,294)
17	\$ (143,614)	\$ (31,039)	\$ -	\$ 169,286	\$ (5,367)	\$ (417,661)
18	\$ (143,614)	\$ (30,644)	\$ -	\$ 174,335	\$ 77	\$ (417,584)
19	\$ (143,614)	\$ (30,268)	\$ -	\$ 179,534	\$ 5,652	\$ (411,932)
20	\$ (143,614)	\$ (29,911)	\$ -	\$ 184,889	\$ 11,363	\$ (400,569)
Total Net Savings					\$ (400,569)	

Proposals Assume an Annual 3.5% Utility Rate Increase

Bond Assumptions: 20 Year Amortization Schedule @ 3.5%

Inputs

System Size in kW	920.70
Kwh/kW/year	1307
Annual Degradation %	0.5%
Year 1 PPA Rate	\$0.1245
PPA Escalator %	2%
Year 1 Utility Rate	\$0.083
Utility Escalator	3.5%
Year 7 Premium	\$0.000
Turnkey Price	\$2,569,950
Buyout Price	\$1,570,000



Year	Annual Generation	Utility \$/kWh	Utility Price	PPA \$/kWh Price	ReVision Price	Annual PPA Savings	Cumulative PPA Savings	O&M	Annual PPA Savings with buyout	Cumulative PPA Savings with buyout
1	1203355	\$0.0828	\$99,604	\$0.1245	\$149,818	(\$50,214)	(\$50,214)		(\$50,214)	(\$50,214)
2	1197338	\$0.0857	\$102,575	\$0.1245	\$149,069	(\$46,494)	(\$96,707)		(\$46,494)	(\$96,707)
3	1191351	\$0.0887	\$105,634	\$0.1270	\$151,290	(\$45,656)	(\$142,363)		(\$45,656)	(\$142,363)
4	1185395	\$0.0918	\$108,785	\$0.1295	\$153,544	(\$44,759)	(\$187,122)		(\$44,759)	(\$187,122)
5	1179468	\$0.0950	\$112,029	\$0.1321	\$155,832	(\$43,803)	(\$230,925)		(\$43,803)	(\$230,925)
6	1173570	\$0.0983	\$115,370	\$0.1348	\$158,154	(\$42,783)	(\$273,708)		(\$42,783)	(\$273,708)
7	1167703	\$0.1017	\$118,811	\$0.1375	\$160,510	(\$41,699)	(\$315,407)	(\$4,604)	(\$1,455,792)	(\$1,729,500)
8	1161864	\$0.1053	\$122,355	\$0.1402	\$162,902	(\$40,547)	(\$355,954)	(\$4,604)	\$117,751	(\$1,611,749)
9	1156055	\$0.1090	\$126,004	\$0.1430	\$165,329	(\$39,325)	(\$395,279)	(\$4,604)	\$121,401	(\$1,490,349)
10	1150274	\$0.1128	\$129,762	\$0.1459	\$167,792	(\$38,030)	(\$433,309)	(\$4,604)	\$125,159	(\$1,365,190)
11	1144523	\$0.1168	\$133,632	\$0.1488	\$170,292	(\$36,660)	(\$469,969)	(\$4,604)	\$129,029	(\$1,236,161)
12	1138800	\$0.1208	\$137,618	\$0.1518	\$172,830	(\$35,212)	(\$505,181)	(\$4,604)	\$133,014	(\$1,103,147)
13	1133106	\$0.1251	\$141,722	\$0.1548	\$175,405	(\$33,683)	(\$538,864)	(\$4,604)	\$137,119	(\$966,028)
14	1127441	\$0.1295	\$145,949	\$0.1579	\$178,019	(\$32,069)	(\$570,933)	(\$4,604)	\$141,346	(\$824,682)
15	1121804	\$0.1340	\$150,302	\$0.1611	\$180,671	(\$30,369)	(\$601,302)	(\$4,604)	\$145,699	(\$678,983)
16	1116195	\$0.1387	\$154,785	\$0.1643	\$183,363	(\$28,578)	(\$629,880)	(\$4,604)	\$150,181	(\$528,802)
17	1110614	\$0.1435	\$159,401	\$0.1676	\$186,095	(\$26,694)	(\$656,574)	(\$4,604)	\$154,798	(\$374,004)
18	1105061	\$0.1485	\$164,156	\$0.1709	\$188,868	(\$24,712)	(\$681,286)	(\$4,604)	\$159,552	(\$214,452)
19	1099535	\$0.1537	\$169,051	\$0.1743	\$191,682	(\$22,631)	(\$703,917)	(\$4,604)	\$164,448	(\$50,004)
20	1094038	\$0.1591	\$174,093	\$0.1778	\$194,538	(\$20,445)	(\$724,361)	(\$96,674)	\$77,420	\$27,416
21	1088567	\$0.1647	\$179,286	\$0.1814	\$197,437	(\$18,151)	(\$742,512)	(\$4,604)	\$174,682	\$202,098
22	1083125	\$0.1705	\$184,633	\$0.1850	\$200,379	(\$15,746)	(\$758,258)	(\$4,604)	\$180,029	\$382,127
23	1077709	\$0.1764	\$190,140	\$0.1887	\$203,364	(\$13,225)	(\$771,482)	(\$4,604)	\$185,536	\$567,664
24	1072320	\$0.1826	\$195,811	\$0.1925	\$206,394	(\$10,584)	(\$782,066)	(\$4,604)	\$191,207	\$758,871
25	1066959	\$0.1890	\$201,651	\$0.1963	\$209,470	(\$7,819)	(\$789,885)	(\$4,604)	\$197,047	\$955,918
26	1061624	\$0.1956	\$207,665	\$0.2003	\$212,591	(\$4,926)	(\$794,811)	(\$4,604)	\$203,061	\$1,158,979
27	1056316	\$0.2025	\$213,858	\$0.2043	\$215,758	(\$1,900)	(\$796,711)	(\$4,604)	\$209,255	\$1,368,234
28	1051034	\$0.2095	\$220,237	\$0.2083	\$218,973	\$1,264	(\$795,447)	(\$4,604)	\$215,633	\$1,583,867
29	1045779	\$0.2169	\$226,805	\$0.2125	\$222,236	\$4,570	(\$790,878)	(\$4,604)	\$222,202	\$1,806,069
30	1040550	\$0.2245	\$233,570	\$0.2168	\$225,547	\$8,023	(\$782,855)	(\$4,604)	\$228,966	\$2,035,035
31	1035348	\$0.2323	\$240,536	\$0.2211	\$228,908	\$11,628	(\$771,227)	(\$4,604)	\$235,933	\$2,270,968
32	1030171	\$0.2405	\$247,710	\$0.2255	\$232,318	\$15,392	(\$755,835)	(\$4,604)	\$243,106	\$2,514,074
33	1025020	\$0.2489	\$255,098	\$0.2300	\$235,780	\$19,318	(\$736,517)	(\$4,604)	\$250,494	\$2,764,569
34	1019895	\$0.2576	\$262,706	\$0.2346	\$239,293	\$23,413	(\$713,104)	(\$4,604)	\$258,103	\$3,022,672
35	1014795	\$0.2666	\$270,541	\$0.2393	\$242,859	\$27,683	(\$685,421)	(\$4,604)	\$265,938	\$3,288,610
36	1009721	\$0.2759	\$278,610	\$0.2441	\$246,477	\$32,133	(\$653,288)	(\$4,604)	\$274,007	\$3,562,616
37	1004673	\$0.2856	\$286,920	\$0.2490	\$250,150	\$36,770	(\$616,518)	(\$4,604)	\$282,316	\$3,844,933
38	999649	\$0.2956	\$295,477	\$0.2540	\$253,877	\$41,600	(\$574,918)	(\$4,604)	\$290,874	\$4,135,807
39	994651	\$0.3059	\$304,290	\$0.2590	\$257,660	\$46,630	(\$528,287)	(\$4,604)	\$299,686	\$4,435,493
40	989678	\$0.3166	\$313,365	\$0.2642	\$261,499	\$51,867	(\$476,421)	(\$4,604)	\$308,762	\$4,744,255

40 Year Lifecycle Cash Flow Analysis - Portland & South Portland Landfill Solar
July 7, 2016

Assumptions (black fixed, blue variable)

Solar kW	920.7	REC Income	\$	25
Solar kwp	1307	REC Term		10
Solar kWh	1,203,355	REC Exp		2%
Derate	0.50%	O&M (\$/kW)		\$5
PPA Rate	0.1056	Loan Term		20
PPA Escalator	2.5%	Loan Rate		3.00%
Market Rate	0.0856	Buyout Amount	\$	1,598,423
Market Escalator	2.68%	Inverter (\$/watt)	\$	0.10

Market Rates		Supply	T&D	Total
CMP SGS	20%	0.06443	0.059564	0.1239940
CMP MGS	80%	0.0692	0.006815	0.076015
Weighted Average				0.0856108

CO2 Emission Reduction Factor	1.09	1,311,657	655.83
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Pro Forma

	Solar kWh	PPA Rate	PPA Cost	Market Rate	Market Cost	Net Energy Cost	Rec Income	Total Income	O&M	Interest	Principal	Inverter Replacement	Total Expenses	Annual	Cumulative
1	1,203,355	\$0.1056	\$127,087	\$0.0856	\$103,020	-\$24,067		-\$24,067					\$0	-\$24,067	-\$24,067
2	1,197,338	\$0.1083	\$129,613	\$0.0879	\$105,252	-\$24,361		-\$24,361					\$0	-\$24,361	-\$48,428
3	1,191,351	\$0.1110	\$132,189	\$0.0903	\$107,533	-\$24,657		-\$24,657					\$0	-\$24,657	-\$73,085
4	1,185,395	\$0.1137	\$134,816	\$0.0927	\$109,862	-\$24,954		-\$24,954					\$0	-\$24,954	-\$98,039
5	1,179,468	\$0.1166	\$137,496	\$0.0952	\$112,243	-\$25,253		-\$25,253					\$0	-\$25,253	-\$123,292
6	1,173,570	\$0.1195	\$140,229	\$0.0977	\$114,675	-\$25,554		-\$25,554					\$0	-\$25,554	-\$148,846
7	1,167,703			\$0.1003	\$117,159	\$117,159	\$28,609	\$145,768	-\$4,604	-\$47,953	-\$59,486		-\$112,043	\$33,725	-\$115,121
8	1,161,864			\$0.1030	\$119,697	\$119,697	\$28,466	\$148,163	-\$4,604	-\$46,168	-\$61,271		-\$112,043	\$36,120	-\$79,000
9	1,156,055			\$0.1058	\$122,291	\$122,291	\$28,323	\$150,614	-\$4,604	-\$44,330	-\$63,109		-\$112,043	\$38,572	-\$40,429
10	1,150,274			\$0.1086	\$124,940	\$124,940	\$28,182	\$153,122	-\$4,604	-\$42,437	-\$65,002		-\$112,043	\$41,079	\$651
11	1,144,523			\$0.1115	\$127,647	\$127,647	\$0	\$127,647	-\$4,604	-\$40,487	-\$66,953		-\$112,043	\$15,605	\$16,255
12	1,138,800			\$0.1145	\$130,413	\$130,413	\$0	\$130,413	-\$4,604	-\$38,478	-\$68,961		-\$112,043	\$18,370	\$34,626
13	1,133,106			\$0.1176	\$133,238	\$133,238	\$0	\$133,238	-\$4,604	-\$36,409	-\$71,030		-\$112,043	\$21,196	\$55,821
14	1,127,441			\$0.1207	\$136,125	\$136,125	\$0	\$136,125	-\$4,604	-\$34,278	-\$73,161		-\$112,043	\$24,083	\$79,904
15	1,121,804			\$0.1240	\$139,074	\$139,074	\$0	\$139,074	-\$4,604	-\$32,083	-\$75,356		-\$112,043	\$27,032	\$106,936
16	1,116,195			\$0.1273	\$142,088	\$142,088	\$0	\$142,088	-\$4,604	-\$29,823	-\$77,616		-\$112,043	\$30,045	\$136,981
17	1,110,614			\$0.1307	\$145,166	\$145,166	\$0	\$145,166	-\$4,604	-\$27,494	-\$79,945		-\$112,043	\$33,124	\$170,104
18	1,105,061			\$0.1342	\$148,311	\$148,311	\$0	\$148,311	-\$4,604	-\$25,096	-\$82,343		-\$112,043	\$36,269	\$206,373
19	1,099,535			\$0.1378	\$151,525	\$151,525	\$0	\$151,525	-\$4,604	-\$22,626	-\$84,813		-\$112,043	\$39,482	\$245,855
20	1,094,038			\$0.1415	\$154,808	\$154,808	\$0	\$154,808	-\$4,604	-\$20,081	-\$87,358	-\$92,070	-\$204,113	-\$49,305	\$196,550
21	1,088,567			\$0.1453	\$158,162	\$158,162	\$0	\$158,162	-\$4,604	-\$17,461	-\$89,979		-\$112,043	\$46,119	\$242,669
22	1,083,125			\$0.1492	\$161,588	\$161,588	\$0	\$161,588	-\$4,604	-\$14,761	-\$92,678		-\$112,043	\$49,546	\$292,215
23	1,077,709			\$0.1532	\$165,089	\$165,089	\$0	\$165,089	-\$4,604	-\$11,981	-\$95,458		-\$112,043	\$53,047	\$345,261
24	1,072,320			\$0.1573	\$168,666	\$168,666	\$0	\$168,666	-\$4,604	-\$9,117	-\$98,322		-\$112,043	\$56,624	\$401,885
25	1,066,959			\$0.1615	\$172,320	\$172,320	\$0	\$172,320	-\$4,604	-\$6,167	-\$101,272		-\$112,043	\$60,278	\$462,163
26	1,061,624			\$0.1658	\$176,054	\$176,054	\$0	\$176,054	-\$4,604	-\$3,129	-\$104,310		-\$112,043	\$64,011	\$526,174
27	1,056,316			\$0.1703	\$179,868	\$179,868	\$0	\$179,868	-\$4,604	\$0	\$0		-\$4,604	\$175,265	\$701,439
28	1,051,034			\$0.1748	\$183,765	\$183,765	\$0	\$183,765	-\$4,604	\$0	\$0		-\$4,604	\$179,162	\$880,601
29	1,045,779			\$0.1795	\$187,747	\$187,747	\$0	\$187,747	-\$4,604	\$0	\$0		-\$4,604	\$183,143	\$1,063,744
30	1,040,550			\$0.1843	\$191,815	\$191,815	\$0	\$191,815	-\$4,604	\$0	\$0		-\$4,604	\$187,211	\$1,250,955
31	1,035,348			\$0.1893	\$195,970	\$195,970	\$0	\$195,970	-\$4,604	\$0	\$0		-\$4,604	\$191,367	\$1,442,322
32	1,030,171			\$0.1944	\$200,216	\$200,216	\$0	\$200,216	-\$4,604	\$0	\$0		-\$4,604	\$195,613	\$1,637,935
33	1,025,020			\$0.1996	\$204,554	\$204,554	\$0	\$204,554	-\$4,604	\$0	\$0		-\$4,604	\$199,951	\$1,837,886
34	1,019,895			\$0.2049	\$208,986	\$208,986	\$0	\$208,986	-\$4,604	\$0	\$0		-\$4,604	\$204,383	\$2,042,268
35	1,014,795			\$0.2104	\$213,514	\$213,514	\$0	\$213,514	-\$4,604	\$0	\$0		-\$4,604	\$208,910	\$2,251,179
36	1,009,721			\$0.2160	\$218,140	\$218,140	\$0	\$218,140	-\$4,604	\$0	\$0		-\$4,604	\$213,536	\$2,464,715
37	1,004,673			\$0.2218	\$222,866	\$222,866	\$0	\$222,866	-\$4,604	\$0	\$0		-\$4,604	\$218,263	\$2,682,978
38	999,649			\$0.2278	\$227,695	\$227,695	\$0	\$227,695	-\$4,604	\$0	\$0		-\$4,604	\$223,091	\$2,906,069
39	994,651			\$0.2339	\$232,628	\$232,628	\$0	\$232,628	-\$4,604	\$0	\$0		-\$4,604	\$228,025	\$3,134,093
40	989,678			\$0.2401	\$237,668	\$237,668	\$0	\$237,668	-\$4,604	\$0	\$0		-\$4,604	\$233,065	\$3,367,158

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 40-16/17
~~Tab 24-8-1-16~~
Tab 13 9-7-16

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 5 ANIMALS & FOWL
RE: PUPPY AND KITTEN MILLS**

WHEREAS, around the United States significant number of puppies and kittens sold at pet stores come from large-scale, commercial breeding facilities (hereinafter "puppy mills" and "kitten mills," respectively); and

WHEREAS, according to The Humane Society of the United States, it is estimated that 10,000 puppy mills produce more than 2,400,000 puppies a year in the United States and that most pet store dogs and cats come from puppy mills and kitten mills; and

WHEREAS, the documented abuses endemic to puppy and kitten mills include over-breeding; inbreeding; minimal to non-existent veterinary care; lack of adequate and nutritious food, water and shelter; lack of socialization; lack of adequate space; and lack of adequate exercise; and

WHEREAS, the inhumane conditions in puppy and kitten mill facilities lead to health, welfare and behavioral issues in the animals bred in those facilities; and

WHEREAS, current Federal and State of Maine regulations do not thoroughly address the sale of puppy and kitten mill dogs and cats in pet stores; and

WHEREAS, restricting the retail sale of puppies and kittens to those sourced from shelters or rescue organizations is likely to decrease the demand for puppies and kittens bred in puppy and kitten mills; and

WHEREAS, restricting the retail sale of puppies and kittens to only those that are sourced from animal shelters and rescue organizations will likely reduce pet

overpopulation and thus the burden on such agencies and financial costs on local taxpayers; and

WHEREAS, the City Council for the City of Portland hereby finds that it is in the best interests of the City of Portland to adopt reasonable regulations to reduce costs to the City and its residents, protect the citizens of the City who may purchase cats or dogs from a pet store or other business establishment, help prevent inhumane breeding conditions, promote community awareness of animal welfare, and foster a more humane environment in the City;

NOW, THEREFORE, BE IT ORDAINED that, pursuant to the City's home rule powers provided for in 30-A M.R.S. section 3001 and 7 M.R.S. section 3950, the City of Portland Code of Ordinances is hereby amended by adding Article V. and sections to be numbered 500 to 505, which said sections read as follows:

ARTICLE V. RESTRICTIONS ON THE SALE OF DOGS AND CATS

Sec. 5-500. Definitions.

The following words when used in this article shall have the following meanings:

Animal care facility shall mean an animal control center or animal shelter, maintained by or under contract with any state, county, or municipality, whose mission or practice is, in whole or significant part, protecting the welfare of animals and placing animals in permanent homes or with animal rescue organizations.

Animal rescue organization shall mean any not-for-profit organization which has tax-exempt status under Section 501(c)(3) of the United States Internal Revenue Code, whose mission and practice is, in whole or in significant part, the rescue of animals and the placement of those animals in permanent homes, and which does not obtain dogs or cats from a breeder or broker for payment or compensation.

Breeder shall mean a person who maintains dogs or cats for the purpose of breeding and selling their offspring.

Broker shall mean a person who transfers dogs or cats at wholesale for resale by another.

Cat shall mean a member of the Felis catus family.

Dog shall mean a member of the Canis familiaris family, or resultant hybrid.

Offer for sale shall mean to sell, offer for sale or adoption, barter, auction, give away or otherwise dispose of a dog or cat.

Pet shop shall mean any place, business, establishment or vehicle required to be licensed under 7 M.R.S. § 3933. Such definition shall not include an animal care facility or animal rescue organization, as defined.

Sec. 5-501. Prohibition on Pet Shop Sales.

(a) A pet shop shall offer for sale only those dogs and cats that:

(i) Are older than eight (8) weeks; and

(ii) Have been obtained from or are displayed in cooperation with:

(1) An animal care facility; or

(2) An animal rescue organization; and

(b) A pet shop shall not offer for sale a dog or cat that is younger than eight (8) weeks old;

(c) Each pet shop shall maintain records sufficient to document the source of each dog or cat the pet shop acquires, for at least one (1) year following the date of acquisition. Such records shall be made available, immediately upon request, to any designated representative of the City including, but not limited to, the Chief of Police or his or her designee, any animal control officer, any designated representative of the Animal Welfare Program or any state humane agent as defined in 17 M.R.S. §1011.

(d) Each pet shop offering dogs or cats for sale shall post, in a conspicuous location on the cage or enclosure of each animal, a sign listing the name of the animal care facility or animal rescue organization from which each dog or cat in the cage or enclosure was acquired.

Sec. 5-502. Prohibition on Sales in Public Places.

(a) It shall be unlawful for any person to sell, exchange, trade, barter, lease or display any dog or cat on any roadside, public right-of-way, parkway, median, park, other recreation area, flea market or other outdoor market, or commercial or retail parking lot regardless of whether such access is authorized.

(b) This section shall not apply to the following:

- (i) The display or adoption of dogs or cats by an animal care facility or an animal rescue organization; or
- (ii) The display of dogs or cats as part of a state or county fair exhibition, 4-H program, or other similar exhibitions or educational programs.

Sec. 5-503. Enforcement.

The provisions of this Article may be enforced by the City Manager or his or her designee.

Sec. 5-504. Penalties for Violation.

(a) A violation of this Article shall be punished by a minimum penalty of two hundred and fifty dollars (\$250.00) Each instance of a dog or cat offered for sale and displayed or obtained in violation of this Article is considered a separate violation under this provision.

(b) This Article may also be enforced pursuant to Portland City Code Chapter 1, §§1-1 to 1-15.

Sec. 5-505. Severability.

In the event that any section, subsection or portion of this article, or the application of such section, subsection or portion of this article to any person or circumstance, shall be declared by any competent Court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or portion of this article, or the applicability of such section, subsection or portion of this article to other persons or circumstances.

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan

FROM: Dawn Stiles

DATE: 7/9/2016

SUBJECT: Puppy and Kitten Mills

SPONSOR:

(If sponsored by a Council committee, include the date the committee met, the results of the vote, and the meeting minutes.

Health & Human Services Committee – Sponsor

Meeting Date: June 14, 2016

Unanimous Vote to Send Ordinance to Council (draft attached)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading ___ Sept. 7, 2016 Final Action ___ Sept. 19, 2016 (double session)

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

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

I. ONE SENTENCE SUMMARY

This ordinance would prohibit the retail sale of dogs and cats, unless sourced from an animal care facility or rescue organization (as defined in the ordinance), in the city of Portland.

II. AGENDA DESCRIPTION

II. BACKGROUND

The State of Maine legislature passed a puppy and Kitten bill FY 2015 session but it was vetoed by the Governor. Supporters have turned to local communities to provide leadership on this issue.

III. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Although there currently are no retail stores selling dogs or cats in Portland the passage of this ordinance will prohibit any in the future.

V. FINANCIAL IMPACT

None anticipated

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

VII. RECOMMENDATION

Passage of the ordinance

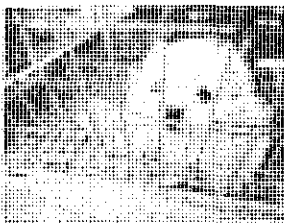
VIII. LIST ATTACHMENTS

Draft Ordinance

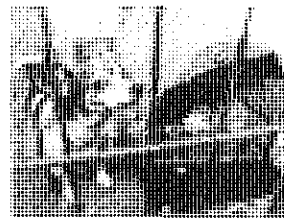
Prepared by: Dawn Stiles

Date: 6/21/16

Bean/agendarequestmemo/rev 11/2015



PLEASE SUPPORT LD 335
A BILL TO RESTRICT THE SALE OF
DOGS AND CATS IN PET STORES



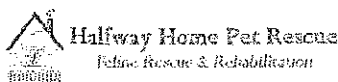
As the Executive Director of the Franklin County Animal Shelter and member of the Animal Welfare Advisory Council, I urge you to support LD 335 for the following reasons:

- In each of its last three internal audits, the USDA has concluded that its inspectors turn a blind eye to horrific violations by licensees and are ineffective at deterring bad actors or preventing inhumane conditions. Accordingly, the fact that a commercial breeding facility is USDA-inspected means very little. The reality is that most USDA-licensed breeders house dozens or even hundreds of dogs in small wire cages for their entire lives.
- A review of USDA inspection reports for commercial breeders selling their dogs to Maine pet stores reveal repeat violations including a dog with "an open wound on the right side of its upper neck/cheek area...reddened and moist looking and was hairless" and the presence of "dried, caked fecal residue and other debris on 25 to 30 percent of the floor...dogs are in contact with the affected flooring...it indicates an unsanitary living condition."
- Reputable and responsible breeders do not sell to pet shops. A review of the Code of Ethics for the National Breed Clubs representing all 178 dog breeds recognized by the AKC found that 96% of them include statements to the effect that their breeders should not or do not sell to pet stores.
- A 2013 study published by the *Journal of American Veterinary Medicine* concluded that they could recommend that puppies be obtained from pet stores because the study demonstrated that obtaining dogs from pet stores versus noncommercial breeders represented a significant risk factor for the development of a wide range of undesirable behavioral characteristics, especially aggressive behavior.
- More than ¹⁴⁰ laws have been passed across the country that restrict or prohibit the sale of cats and dogs in pet stores. These laws effectively drive the market toward pet adoption and responsible dog breeders, and pet stores have thrived after switching to a humane model of offering puppies and kittens for adoption from nearby shelters as it brings in new customers and attracts positive media attention. Unlike USDA inspections, such laws have been effective in providing an incentive for the commercial breeding industry to clean up its act.
- LD 335 will serve the best interests of Maine residents and their pets. It will place important restrictions on a channel of distribution for substandard breeding operations by keeping puppies and kittens from commercial breeders with serious Animal Welfare Act violations out of Maine's pet stores; increase the demand for cats and dogs from responsible breeders, animal shelters and rescue organizations; raise awareness about animal welfare; and promote humane values within the state.

Thank you for the opportunity to provide this information.

Heidi Jordan

LD 335 IS SUPPORTED BY THE FOLLOWING ORGANIZATIONS



Title 7: AGRICULTURE AND ANIMALS

Chapter 717: ANIMAL WELFARE ACT

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Maine Revised Statutes
Title 7: AGRICULTURE AND ANIMALS
Chapter 717: ANIMAL WELFARE ACT

§3901. ANIMAL WELFARE ACT

This chapter is known and may be cited as the "Animal Welfare Act." [1995, c. 502, Pt. C, §5 (AMD) .]

SECTION HISTORY

1987, c. 383, §3 (NEW). 1995, c. 502, §C5 (AMD) .

§3902. PURPOSES; COMPREHENSIVE PROGRAM

The primary legislative purposes of this Act are to provide for the licensing of dogs and the humane and proper treatment of animals. To ensure the humane and proper treatment of animals, the commissioner shall develop, implement and administer a comprehensive program that upholds the animal welfare laws of the State through communication, education and enforcement. [2001, c. 617, §4 (AMD) .]

SECTION HISTORY

1987, c. 383, §3 (NEW). 2001, c. 617, §4 (AMD) .

§3903. MEMBERSHIP

(REPEALED)

SECTION HISTORY

1987, c. 383, §3 (NEW). 1989, c. 701, §§2,6 (AMD). 1991, c. 267, §1 (AMD). 1991, c. 622, §FF2 (AMD). 1991, c. 779, §52 (AFF). 1991, c. 779, §3 (RP) .

§3903-A. ANIMAL WELFARE BOARD; MEMBERSHIP

(REPEALED)

SECTION HISTORY

1991, c. 779, §4 (NEW). 1995, c. 502, §C6 (RP) .

§3904. TERMS OF OFFICE

(REPEALED)

SECTION HISTORY

1987, c. 383, §3 (NEW). 1991, c. 779, §5 (AMD). 1995, c. 502, §C7 (RP) .

§3905. ADMINISTRATION

(REPEALED)

SECTION HISTORY

1987, c. 383, §3 (NEW). 1991, c. 779, §6 (AMD). 1995, c. 502, §C8 (RP) .

§3906. POWERS AND DUTIES OF THE BOARD**(REPEALED)**

SECTION HISTORY

1987, c. 383, §3 (NEW). 1989, c. 503, §B47 (AMD). 1989, c. 701, §§3,4,6 (AMD). 1991, c. 267, §§2,3 (AMD). 1991, c. 622, §§FF3-10 (AMD). 1991, c. 779, §52 (AFF). 1991, c. 779, §7 (RP).

§3906-A. POWERS AND DUTIES OF BOARD**(REPEALED)**

SECTION HISTORY

1991, c. 779, §8 (NEW). 1995, c. 502, §C9 (RP).

§3906-B. POWERS AND DUTIES OF COMMISSIONER

The commissioner has the powers and duties set forth in this section. [1991, c. 779, §9 (NEW) .]

1. Dog licensing laws. The commissioner shall carry out the dog licensing laws and furnish to municipalities all license blanks, stickers and tags.

[1997, c. 690, §1 (AMD) .]

2. Animal Welfare Fund. The commissioner shall deposit all license fees received pursuant to chapters 721, 723, 725 and 735 in a separate account established by the Treasurer of State and known as the Animal Welfare Fund. The commissioner shall deposit 1/2 of feed registration fees collected under section 714, subsection 1 and revenue in excess of \$100,000 from the surcharge collected under section 714, subsection 4 in the Animal Welfare Fund. This account does not lapse, but continues from year to year. The commissioner shall pay from the Animal Welfare Fund the expense of furnishing license blanks, stickers and tags, travel expenses and salaries for necessary personnel, payments to animal shelters and expenses incurred in the administration of this Part.

[2009, c. 148, §2 (AMD) .]

3. Dog recorders. The commissioner shall appoint dog recorders in unorganized territories and establish fees for services rendered.

[1991, c. 779, §9 (NEW) .]

4. Training and certification of animal control officers. The commissioner shall develop both a basic and advanced program to train animal control officers. The basic program must include training in investigation of complaints of cruelty to animals, training in response to calls concerning animals suspected of having rabies and training in enforcement of dog licensing laws and rabies immunization laws.

The advanced training must include, but is not limited to, training in animal cruelty with respect to hoarders of animals, animal cruelty with respect to domestic violence, new laws, case reviews and report writing.

The commissioner shall certify all animal control officers who complete the training programs.

[2007, c. 439, §1 (AMD) .]

5. Cruelty to animals.

[1995, c. 502, Pt. C, §10 (RP) .]

6. Inspections. The commissioner shall inspect licensed facilities as provided in chapters 723 and 735.

[1997, c. 690, §3 (AMD) .]

7. Payment of fees. The commissioner may authorize payments to providers of special services to animals when the commissioner determines those services are in the public interest.

[1991, c. 779, §9 (NEW) .]

8. Copies of law. The commissioner shall seasonably forward to the clerks of municipalities copies of this Part.

[1991, c. 779, §9 (NEW) .]

9. Employees. The commissioner, in consultation with the Animal Welfare Advisory Committee, shall employ, subject to the Civil Service Law, necessary employees to assist in enforcing this Part and in carrying out the commissioner's duties and responsibilities. The commissioner shall conduct a background check of a potential employee. The commissioner may not hire as a state humane agent a person who has been convicted of murder, a Class A or Class B offense, a violation under Title 17-A, chapter 9, 11, 12 or 13, a violation of Title 19-A, section 4011 or a criminal violation under Title 17, chapter 42 or a person who has been adjudicated of a civil violation for cruelty to animals under chapter 739 or who has been convicted or adjudicated in any other state, provincial or federal court of a violation similar to those specified in this subsection.

[2007, c. 439, §2 (AMD) .]

9-A. Humane agents. The commissioner shall assign a humane agent to each of the following areas of specialization:

A. Blood sports; [2003, c. 405, §2 (NEW) .]

B. Exotic animals; [2003, c. 405, §2 (NEW) .]

C. Large animals; [2003, c. 405, §2 (NEW) .]

D. Mental health and domestic violence; [2003, c. 405, §2 (NEW) .]

E. Small animals; and [2003, c. 405, §2 (NEW) .]

F. Training. [2003, c. 536, §1 (AMD) .]

[2003, c. 536, §1 (AMD) .]

10. Rules. Pursuant to Title 5, chapter 375, the commissioner shall adopt, amend and repeal rules, including emergency rules, necessary for the proper administration, implementation, enforcement and interpretation of any provision of law that the commissioner is charged with administering.

[1991, c. 779, §9 (NEW) .]

11. Cruelty to animals. The commissioner, in cooperation with animal control officers, shall investigate complaints of cruelty to animals and enforce cruelty-to-animal laws in accordance with chapter 739 and Title 17, chapter 42. The Attorney General and the district attorneys shall assist the commissioner with the commissioner's enforcement responsibilities.

[1995, c. 502, Pt. C, §12 (NEW) .]

12. Intermittent agents. The commissioner shall appoint intermittent humane agents as necessary to assist the commissioner in carrying out the commissioner's duties and responsibilities. The commissioner shall train and coordinate efforts of intermittent agents. These intermittent agents are unclassified employees whose training, compensation and hours of employment are determined by the commissioner.

[1995, c. 502, Pt. C, §12 (NEW) .]

13. Spaying and neutering fund.

[2003, c. 682, §1 (RP) .]

14. Information. The commissioner may obtain, develop or disseminate any information useful or convenient for carrying out any purpose or power of the commissioner.

[1995, c. 502, Pt. C, §12 (NEW) .]

15. Annual report. The commissioner shall report the activities of the commissioner annually by March 1st to the joint standing committee of the Legislature having jurisdiction over agricultural matters and the joint standing committee of the Legislature having jurisdiction over taxation matters. This report must include a summary of cases of cruelty to animals investigated by the commissioner, a summary of final dispositions of those cases and, with respect to companion animals, a report of the number of animal shelter intakes, the number of sterilizations and the number of euthanizations and an account of deposits into and payments from the Companion Animal Sterilization Fund established in section 3910-B.

[2003, c. 682, §2 (AMD) .]

16. Animal welfare auxiliary fund. The commissioner may accept gifts, donations, bequests, endowments, grants and matching funds from any private or public source for the purposes of ensuring the humane and proper treatment of animals and enhancing the administration and enforcement of this Part and Title 17, chapter 42. The commissioner shall deposit all funds accepted for these purposes and all proceeds from sales authorized under subsection 17 into a separate, nonlapsing account known as the animal welfare auxiliary fund. All gifts, donations, bequests, endowments, grants, proceeds and matching funds received must be used for the benefit of and accomplishment of the objectives in this Part and Title 17, chapter 42 and any gift, donation, bequest, endowment, grant or matching funds accepted with a stipulated purpose may be used only for that purpose.

All money deposited in the animal welfare auxiliary fund in accordance with section 1820-A, subsection 4 must be used for investigating alleged cases of mistreatment or abuse of equines and enhancing enforcement of this Part and Title 17, chapter 42 as these laws pertain to equines.

[2009, c. 548, §1 (AMD) .]

17. Fund-raising. The commissioner may engage in the marketing and selling of general merchandise products to generate supplemental funds, which must be deposited in the animal welfare auxiliary fund established under subsection 16.

[2009, c. 548, §2 (NEW) .]

SECTION HISTORY

1991, c. 779, §9 (NEW). 1993, c. 468, §§2,3 (AMD). 1995, c. 502, §§10-12 (AMD). 1997, c. 690, §§1-3 (AMD). 2001, c. 399, §2 (AMD). 2001, c. 422, §3 (AMD). 2003, c. 405, §§1-3 (AMD). 2003, c. 536, §1 (AMD). 2003, c. 682, §§1,2 (AMD). 2005, c. 281, §§3,4 (AMD). 2007, c. 439, §1 (AMD). 2007, c. 439, §2 (AMD). 2009, c. 148, §2 (AMD). 2009, c. 548, §§1, 2 (AMD).

§3906-C. ANIMAL WELFARE ADVISORY COUNCIL

The Animal Welfare Advisory Council, as established by Title 5, section 12004-I, subsection 2-C and referred to in this section as the "council," shall advise the commissioner on matters pertaining to animal welfare. [2001, c. 399, §3 (RPR).]

1. Membership. The council consists of 14 members appointed by the Governor as follows:

- A. One member representing municipal interests; [2001, c. 399, §3 (RPR).]
- B. One animal control officer; [1991, c. 779, §10 (NEW).]
- C. One member representing licensed animal shelters; [1991, c. 779, §10 (NEW).]
- D. One member representing licensed boarding kennels; [2009, c. 333, §1 (AMD).]
- E. One member representing licensed pet shops; [1995, c. 502, Pt. C, §13 (AMD).]
- F. [2001, c. 399, §3 (RP).]
- G. One member who is or has been a veterinarian licensed to practice in the State; [2001, c. 399, §3 (RPR).]
- H. One member who owns a pet and represents the interests of the public in animal welfare, generally; [2009, c. 333, §1 (AMD).]
- I. One attorney with experience in animal welfare law; [2001, c. 399, §3 (NEW).]
- J. One cooperative extension agent or specialist; [2001, c. 399, §3 (NEW).]
- K. One member with expertise in equine care; [2003, c. 405, §4 (AMD).]
- L. One member with expertise in livestock representing a statewide farming organization; [2009, c. 333, §1 (AMD).]
- M. One member representing a state-based animal advocacy group; [2009, c. 333, §1 (AMD).]
- N. One member who holds a kennel license issued under section 3923-C; and [2009, c. 333, §1 (NEW).]
- O. One member representing licensed breeding kennels. [2009, c. 333, §1 (NEW).]

In making the appointment of the veterinarian member, the Governor shall consider nominations made by the Maine Veterinary Medical Association. In making the appointment of the person holding a kennel license issued under section 3923-C, the Governor shall consider nominations made by state-based dog clubs.

[2009, c. 333, §1 (AMD) .]

2. Staff. The department shall provide necessary staffing services to the council.

[2009, c. 343, §1 (AMD) .]

3. Compensation. Members of the council are entitled to travel and meal expenses only.

[2001, c. 399, §3 (RPR) .]

4. Terms of office. Except for initial appointees, each member serves for a term of 3 years or until the member's successor has been appointed. A member may not serve more than 2 consecutive terms. In the case of a vacancy for any reason, the Governor shall appoint a member representing the same interest to fill the unexpired term.

[2009, c. 343, §2 (AMD) .]

5. Initial terms of office. Initially, 4 appointed members serve for one year, 4 members serve for 2 years and 3 members serve for 3 years.

[2001, c. 399, §3 (RPR) .]

6. Administration; meetings. The council shall elect one of its members as chair. The chair serves for a 2-year period and may not serve as chair for consecutive 2-year periods.

The council shall hold regular public meetings every other month but may waive by majority vote a succeeding meeting. The chair shall call special meetings of the council whenever requested in writing by 2 or more members. The council shall send notice and minutes of the meetings to the joint standing committee of the Legislature having jurisdiction over animal welfare matters.

[2001, c. 399, §3 (RPR) .]

7. Duties. The council shall perform the following duties:

A. Review and advise the commissioner on proposed revisions to the animal welfare laws and rules;

[2001, c. 399, §3 (NEW) .]

B. Assist the commissioner in the continuing implementation and evaluation of the animal welfare laws and rules; [2001, c. 399, §3 (NEW) .]

C. Review training programs for humane agents and animal control officers and make recommendations for training appropriate to the duties of the humane agents and animal control officers; [2001, c. 399, §3 (NEW) .]

D. Research options for increasing revenue to the Animal Welfare Fund to ensure funding for the implementation and enforcement of the animal welfare laws and rules, periodically evaluate the adequacy of funding for those laws and rules and make recommendations to the commissioner; and [2001, c. 399, §3 (NEW) .]

E. Advise the commissioner on other matters related to the animal welfare laws and rules. [2001, c. 399, §3 (NEW) .]

[2001, c. 399, §3 (NEW) .]

SECTION HISTORY

1991, c. 779, §10 (NEW). 1995, c. 502, §C13 (AMD). 2001, c. 399, §3 (RPR). 2003, c. 405, §4 (AMD). 2009, c. 333, §1 (AMD). 2009, c. 343, §§1, 2 (AMD).

§3907. DEFINITIONS

As used in this Part, and in every law relating to or affecting animals, unless the context indicates otherwise, the following terms have the following meanings. [1987, c. 383, §3 (NEW) .]

1. Act. "Act" means the Animal Welfare Act.

[2005, c. 2, §10 (COR) .]

1-A. Abandoned dog.

[2013, c. 115, §1 (RP) .]

1-B. Abandoned animal. "Abandoned animal" means an animal that has been deserted by its owner or keeper, excluding animals that are part of a population control effort.

[2013, c. 115, §2 (NEW) .]

2. Animal. "Animal" means every living, sentient creature not a human being.

[1987, c. 383, §3 (NEW) .]

3. Animal control. "Animal control" means control of dogs, cats, and domesticated or undomesticated animals in accordance with section 3948.

[1993, c. 468, §4 (AMD) .]

4. Animal control officer. "Animal control officer" means the person appointed periodically by a municipality pursuant to chapter 725.

[1995, c. 490, §1 (AMD) .]

5. Animal control shelter.

[1993, c. 657, §2 (RP) .]

5-A. Animal shelter. "Animal shelter" means a:

A. Facility that houses domesticated animals and operates for the purpose of providing stray, abandoned, abused or owner-surrendered animals with sanctuary or finding the animals temporary or permanent adoptive homes; or [2015, c. 223, §1 (NEW) .]

B. Rescue group. [2015, c. 223, §1 (NEW) .]

[2015, c. 223, §1 (RPR) .]

6. At large. "At large" means off the premises of the owner and not under the control of any person whose personal presence and attention would reasonably control the conduct of the animal.

[1987, c. 383, §3 (NEW) .]

7. Board.

[2005, c. 510, §2 (RP) .]

8. Boarding kennel. "Boarding kennel" means any place, building, tract of land or abode in or on which 3 or more privately owned companion animals are kept at any one time for their owners in return for a fee or compensation and includes a facility where 3 or more companion animals are kept for training purposes for compensation.

[2009, c. 343, §3 (AMD) .]

8-A. Breeding kennel. "Breeding kennel" means a location where 5 or more adult female dogs or cats capable of breeding are kept and some or all of the offspring are offered for sale, sold or exchanged for value or a location where more than 16 dogs or cats raised on the premises are sold to the public in a 12-month period. "Breeding kennel" does not include a kennel licensed by a municipality under section 3923-C

when the dogs are kept primarily for hunting, show, training, sledding, competition, field trials or exhibition purposes and not more than 16 dogs are offered for sale, sold or exchanged for value within a 12-month period.

[2011, c. 100, §1 (AMD) .]

9. Business day. "Business day" means any day of the calendar year other than a Saturday, Sunday or legal holiday.

[1987, c. 383, §3 (NEW) .]

9-A. Cat identification. "Cat identification" means:

A. A registered microchip used in conjunction with a visible collar and tag, with a faceted, reflective ear stud or a tipped or notched ear; [2001, c. 363, §1 (NEW) .]

B. A collar or collar and tag worn by the cat that provides the current name, address and telephone number of the owner; or [2001, c. 363, §1 (NEW) .]

C. A collar and tag providing the name and address of the animal shelter that issued the tag. [2001, c. 363, §1 (NEW) .]

[2001, c. 363, §1 (NEW) .]

10. Clerk; municipal clerk. "Clerk" or "municipal clerk" means the clerk of a municipality, the deputy clerk or assistant clerk, where directed by the clerk, carrying out the duties of this Part.

[1987, c. 383, §3 (NEW) .]

11. Commissioner. "Commissioner" means the Commissioner of Agriculture, Conservation and Forestry or his duly authorized agent.

[1987, c. 383, §3 (NEW); 2011, c. 657, Pt. W, §6 (REV) .]

11-A. Companion animal. "Companion animal" means a cat or dog.

[2003, c. 682, §3 (NEW) .]

11-B. Council. "Council" means the Animal Welfare Advisory Council as established by Title 5, section 12004-I, subsection 2-C or its duly authorized agent.

[2005, c. 510, §4 (NEW) .]

12. Constable. "Constable" means a law enforcement officer appointed by municipal officers pursuant to law.

[1987, c. 383, §3 (NEW) .]

12-A. Equine facility.

[1999, c. 498, §1 (RP) .]

12-B. Foster home.

[2005, c. 510, §5 (RP) .]

12-C. Dog. "Dog" means a member of the genus and species known as *canis familiaris*, except that in chapters 720, 721, 725, 727, 729 and 739 "dog" means a member of the genus and species known as *canis familiaris* or any canine, regardless of generation, resulting from the interbreeding of a member of *canis familiaris* with a wolf hybrid.

[2011, c. 100, §2 (AMD) .]

12-D. Dangerous dog. "Dangerous dog" means a dog or wolf hybrid that bites an individual or a domesticated animal who is not trespassing on the dog or wolf hybrid owner's or keeper's premises at the time of the bite or a dog or wolf hybrid that causes a reasonable and prudent person who is not on the dog or wolf hybrid owner's or keeper's premises and is acting in a reasonable and nonaggressive manner to fear imminent bodily injury by assaulting or threatening to assault that individual or individual's domestic animal. "Dangerous dog" does not include a dog certified by the State and used for law enforcement use. "Dangerous dog" does not include a dog or wolf hybrid that bites or threatens to assault an individual who is on the dog or wolf hybrid owner's or keeper's premises if the dog or wolf hybrid has no prior history of assault and was provoked by the individual immediately prior to the bite or threatened assault.

For the purposes of this definition, "dog or wolf hybrid owner's or keeper's premises" means the residence or residences, including buildings and land and motor vehicles, belonging to the owner or keeper of the dog or wolf hybrid.

[2011, c. 100, §3 (AMD) .]

12-E. Feral cat. "Feral cat" means a cat without owner identification of any kind that consistently exhibits extreme fear in the presence of people.

[2007, c. 439, §3 (NEW) .]

12-F. Dog licensing agent. "Dog licensing agent" means a veterinarian office or animal shelter that licenses dogs for a municipality.

[2013, c. 115, §3 (NEW) .]

13. Service dog kept for breeding purposes. "Service dog kept for breeding purposes" means a male or female dog owned by a nonprofit organization for the purpose of producing puppies to be trained as service dogs and living with a resident of the State.

[2007, c. 664, §8 (AMD) .]

14. Service dog kept prior to training. "Service dog kept prior to training" means a dog under 18 months of age, owned by a nonprofit organization for the purpose of training as a service dog and living temporarily with a resident of the State prior to training.

[2007, c. 664, §9 (AMD) .]

15. Humane agent. "Humane agent" means an employee of the department who assists in enforcing this Part.

[2001, c. 422, §4 (AMD) .]

15-A. Humane society.

[1993, c. 657, §4 (RP) .]

15-B. Humanely clean conditions. "Humanely clean conditions" means that both indoor areas and outdoor enclosures are cleaned on a periodic basis to remove excretions and other waste materials, dirt and trash with sufficient frequency to minimize health hazards and to provide adequately clean living conditions for the species of animal.

[2007, c. 702, §5 (NEW) .]

15-C. Humanely trap. "Humanely trap" means to trap an animal using traps and trapping methods that are designed to avoid injury to animals to the greatest extent practicable for animal control or animal rescue purposes.

[2013, c. 115, §4 (NEW) .]

16. Keeper. "Keeper" means a person in possession or control of a dog or other animal. A person becomes the keeper of a stray domesticated animal, other than a dog or livestock, if the person feeds that animal for at least 10 consecutive days.

[1995, c. 490, §4 (AMD) .]

17. Kennel. "Kennel" means 5 or more dogs kept in a single location under one ownership for breeding, hunting, show, training, field trials, sledding, competition or exhibition purposes. The sale or exchange of one litter of puppies within a 12-month period alone does not constitute the operation of a kennel.

[2011, c. 100, §4 (AMD) .]

18. Law enforcement officer. "Law enforcement officer" means any person who, by virtue of his public employment, is vested by law with a duty to maintain public order, enforce any law of this State establishing a civil violation, prosecute offenders or make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

[1987, c. 383, §3 (NEW) .]

18-A. Livestock. "Livestock" means cattle; equines; sheep; goats; swine; domesticated cervids, fowl and rabbits; members of the family Camelidae, genus lama and genus vicugna; bison; and ratites.

[2007, c. 439, §4 (AMD) .]

19. Municipality. "Municipality" means an organized city, town or plantation.

[1993, c. 657, §5 (AMD) .]

20. Mutilate. "Mutilate" means to injure or disfigure by irreparably damaging body parts. "Mutilate" does not include conduct performed by a licensed veterinarian or conduct that conforms to accepted veterinary practices.

[1997, c. 456, §2 (AMD) .]

21. Owner. "Owner" means a person owning, keeping or harboring a dog or other animal.

[1993, c. 657, §6 (AMD) .]

22. Person. "Person" means an individual, corporation, partnership, association or any other legal entity.

[1987, c. 383, §3 (NEW) .]

22-A. Pet animal.

[1997, c. 690, §6 (RP) .]

22-B. Pet. "Pet" means a dog, cat or other domesticated animal commonly kept as a companion, but does not include tamed animals that are ordinarily considered wild animals or livestock.

[1997, c. 690, §7 (AMD) .]

23. Pet shop. "Pet shop" means a place or vehicle in or on which any dogs, cats, rodents, reptiles, fish, pet birds, exotic birds or exotic animals not born and raised on those premises are kept for the purpose of sale to the public.

[1993, c. 657, §8 (AMD) .]

23-A. Rescue group. "Rescue group" means an organization or individual that receives domesticated animals that have been abandoned, surrendered or removed from an animal facility or that takes in homeless dogs or cats and sells, gives or otherwise places the animals in private homes.

[2015, c. 223, §2 (AMD) .]

23-B. Population control effort. "Population control effort" means the activities, programs and projects aimed at reducing the number of cats and dogs without homes, including, but not limited to, the trapping, neutering and vaccinating of feral cats, the trapping of cats for impoundment at an animal shelter and spaying or neutering services for abandoned animals and stray dogs and cats.

[2013, c. 115, §5 (NEW) .]

24. Respective municipality. "Respective municipality" means, in the case of towns, plantations and cities, the municipality where the dog or ferret is found; in the case of unorganized territories, the municipality near or adjacent to the unorganized territory where the dog or ferret is found; or the designee of that municipality.

[1993, c. 657, §9 (AMD) .]

24-A. Service dog. "Service dog" means a dog that meets the definition of "service animal" set forth in Title 5, section 4553, subsection 9-E, paragraph A or B.

[2011, c. 369, §3 (AMD) .]

25. Shelter.

[1993, c. 657, §10 (RP) .]

25-A. Stray. "Stray" means off the owner's premises and not under the control of a person.

[1993, c. 657, §11 (NEW) .]

25-B. Small animal. "Small animal" means a bird, reptile or amphibian or a small mammal, other than a cat or dog, commonly kept as a household pet and that is an unrestricted species designated by the Commissioner of Inland Fisheries and Wildlife in rules adopted pursuant to Title 12, chapter 915.

[2013, c. 115, §6 (NEW) .]

26. Torment, torture and cruelty. "Torment, torture and cruelty" means every act, omission or neglect, whether by the owner or any other person, where unjustifiable physical pain, suffering or death is caused or permitted.

[1987, c. 383, §3 (NEW) .]

26-A. Unorganized territory. "Unorganized territory" means all areas located within the jurisdiction of the State, except areas located within organized cities and towns, and Indian reservations. "Unorganized territory" does not include plantations.

[1995, c. 490, §5 (NEW) .]

27. Vertebrate. "Vertebrate" means a subphylum of chordate animals comprising those having a brain enclosed in a skull or cranium and a segmented spinal column, including mammals, birds, reptiles, amphibians and fish.

[1987, c. 383, §3 (NEW) .]

28. Warrant.

[2015, c. 223, §3 (RP) .]

29. Well cared for. "Well cared for" means that the animal is receiving necessary sustenance, necessary medical attention, proper shelter, protection from the weather and humanely clean conditions and that the animal has not been nor is being injured, overworked, tormented, tortured, abandoned, poisoned, beaten, mutilated or exposed to a poison with the intent that it be taken by the animal.

[1987, c. 383, §3 (NEW) .]

30. Wolf hybrid. "Wolf hybrid" means a mammal that is the offspring of the reproduction between a species of wild canid or wild canid hybrid and a domestic dog or wild canid hybrid. "Wolf hybrid" includes a mammal that is represented by its owner to be a wolf hybrid, coyote hybrid, coydog or any other kind of wild canid hybrid.

[1999, c. 127, Pt. A, §16 (RPR) .]

SECTION HISTORY

1987, c. 383, §3 (NEW). 1991, c. 622, §FF11 (AMD). 1991, c. 779, §§11-15 (AMD). 1991, c. 779, §52 (AFF). 1993, c. 468, §§4,5 (AMD). 1993, c. 657, §§1-11 (AMD). 1995, c. 351, §1 (AMD). 1995, c. 409, §§1,2 (AMD). 1995, c. 490, §§1-5 (AMD). 1997, c. 33, §1 (AMD). 1997, c. 456, §§1,2 (AMD). 1997, c. 690, §§4-8 (AMD). 1997, c. 704, §1 (AMD). 1999, c. 127, §A16 (AMD). 1999, c. 350, §1 (AMD). 1999, c. 498, §1 (AMD). 2001, c. 363, §1 (AMD). 2001, c. 399, §4 (AMD). 2001, c. 422, §4 (AMD). 2003, c. 334, §2 (AMD). 2003, c. 536, §2 (AMD). 2003, c. 682, §3 (AMD). RR 2005, c. 2, §10 (COR). 2005, c. 510, §§1-5 (AMD). 2007, c. 439, §§3-5 (AMD). 2007, c. 664, §§8-10 (AMD). 2007, c. 702, §§3-6 (AMD). 2009, c. 343, §§3, 4 (AMD). 2009, c. 403, §1 (AMD). 2011, c. 100, §§1-4 (AMD). 2011, c. 369, §3 (AMD). 2011, c. 657, Pt. W, §6 (REV). 2013, c. 115, §§1-6 (AMD). 2015, c. 223, §§1-3 (AMD).

§3908. GOVERNMENTAL FUNCTION (REPEALED)

SECTION HISTORY

1987, c. 383, §3 (NEW). 1997, c. 690, §9 (RP).

§3909. ENFORCEMENT

1. Attorney General and District Attorneys. Whenever a person has engaged in or is about to engage in an act or practice that constitutes a violation of this Part, a rule adopted pursuant to this Part or a condition of an order, license or permit approved or decision issued by the commissioner pursuant to this Part, or that constitutes a violation of Title 17, chapter 42, the Attorney General or a District Attorney, at the request of the commissioner, may institute proceedings before the District Court or Superior Court for an order enjoining those acts or practices, an order directing compliance or imposing a civil or criminal penalty, or any combination of these actions, as provided by law. Upon a showing by the commissioner that the person has engaged or is about to engage in such an act or practice, the court may grant a permanent or temporary injunction, restraining order or other order as appropriate.

[2005, c. 422, §1 (AMD) .]

2. Designated employees of the department. For purposes of prosecution under this section, the commissioner may authorize humane agents and a state veterinarian who have been certified in accordance with subsection 3-A to issue and serve civil violation processes against offenders pursuant to the Maine Rules of Civil Procedure, Rule 80H and any other applicable rules of court for violations of this Part. The commissioner may authorize certified humane agents or a certified state veterinarian to represent the department in District Court in the prosecution of civil violations of these laws. A certified humane agent or a certified state veterinarian may seek civil penalties as provided by law as well as a permanent or temporary injunction, restraining order or other equitable relief as the court finds appropriate.

[2009, c. 652, Pt. A, §6 (RPR) .]

2-A. Animal welfare citation form. The commissioner shall designate the Uniform Summons and Complaint as the citation form to be used by the department.

A. The Department of Public Safety is responsible for all Uniform Summons and Complaint forms issued to the department. The commissioner or the commissioner's designee is responsible for the further issuance of Uniform Summons and Complaint books to humane agents and a state veterinarian certified under subsection 3-A and for the proper disposition of those books. [2009, c. 343, §6 (NEW) .]

B. It is unlawful and official misconduct for any humane agent or other public employee to dispose of an official citation form or Uniform Summons and Complaint, except in accordance with law and as provided for in an applicable official policy or procedure of the department. [2009, c. 343, §6 (NEW) .]

C. A Uniform Summons and Complaint may be filed in a court having jurisdiction and constitutes a lawful complaint to commence any criminal prosecution or civil violation proceeding if the Uniform Summons and Complaint is duly sworn to as required by law and is otherwise legally sufficient. [2009, c. 343, §6 (NEW) .]

D. A Uniform Summons and Complaint, when served upon a person by a humane agent, functions as a summons to appear in court. A person who fails to appear in court after having been served with a summons commits a Class E crime. Upon that person's failure to appear, the court may issue a warrant of arrest. It is an affirmative defense to prosecution under this paragraph that the failure to appear resulted from just cause. [2009, c. 343, §6 (NEW) .]

[2009, c. 343, §6 (NEW) .]

3. Education requirement; management.

[2003, c. 405, §5 (RP) .]

3-A. Humane agents; training requirements. Continuing employment of a humane agent hired after October 1, 2003 is contingent upon the successful completion by that agent of a 100-hour service training program at the Maine Criminal Justice Academy or a nationally recognized training program on investigation and enforcement of animal welfare laws and the successful completion of an examination on state animal welfare laws and rules adopted pursuant to this Part. To issue and serve civil violation processes or represent the department in District Court under subsection 2, a humane agent or a state veterinarian must have completed a program at the Maine Criminal Justice Academy that certifies familiarity with court procedures.

A humane agent, regardless of appointment date, shall complete training in the handling of small and large animals and a minimum of 40 hours of training each year, including a combination of classroom and hands-on training.

[2009, c. 343, §7 (AMD) .]

4. Subpoenas. The commissioner or the commissioner's designee after consultation with the appropriate attorney for the State or the legal counsel for the department may:

A. Serve subpoenas requiring persons to disclose or provide to the department information or records in their possession that are necessary and relevant to an investigation under the animal welfare laws.

(1) The department may apply to the District Court to enforce a subpoena.

(2) A person who complies with a subpoena is immune from civil or criminal liability that might otherwise result from the act of turning over or providing information or records to the department.

[2001, c. 422, §5 (NEW) .]

[2001, c. 422, §5 (NEW) .]

5. Enforcement provision; animal control officers. The certification of an animal control officer under section 3906-B may be suspended or revoked by the commissioner in accordance with Title 5, chapter 375.

[2009, c. 343, §8 (NEW) .]

6. Confidential information. The names of and other identifying information about persons providing information pertaining to criminal or civil cruelty to animals to the department are confidential information and may not be released.

[2013, c. 267, Pt. C, §1 (NEW) .]

SECTION HISTORY

1987, c. 383, §3 (NEW). 1991, c. 779, §16 (AMD). 1995, c. 490, §6 (AMD). 1997, c. 456, §3 (RPR). 1997, c. 683, §B1 (AMD). 1999, c. 254, §2 (AMD). 2001, c. 422, §5 (AMD). 2003, c. 405, §§5,6 (AMD). 2003, c. 536, §3 (AMD). 2005, c. 422, §1 (AMD). 2009, c. 213, Pt. M, §2 (AMD). 2009, c. 343, §§5-8 (AMD). 2009, c. 652, Pt. A, §6 (AMD). 2013, c. 267, Pt. C, §1 (AMD).

§3910. JURISDICTION

(REPEALED)

SECTION HISTORY

1987, c. 383, §3 (NEW). 2001, c. 617, §5 (RP).

§3910-A. FORFEITURES AND SURCHARGE

1. Forfeitures. Unless otherwise provided, any court in this State shall collect fines or forfeitures imposed for violations of this Part and pay the fine or forfeiture into the treasury of the municipality where the offense or violation was committed. The municipal clerk shall deposit and expend fines and forfeitures received in accordance with section 3945.

[2001, c. 617, §6 (NEW) .]

2. Surcharge imposed. A surcharge of \$10 must be added to every fine, forfeiture or penalty imposed by any court in this State for a violation of this Part. The surcharge, for the purposes of collection and collection procedures, is considered a part of the fine, forfeiture or penalty. All funds collected as a result of this surcharge must be deposited monthly in the Animal Welfare Fund established under section 3906-B, subsection 2.

[2001, c. 710, §5 (AMD); 2001, c. 710, §6 (AFF) .]

SECTION HISTORY

2001, c. 617, §6 (NEW). 2001, c. 710, §5 (AMD). 2001, c. 710, §6 (AFF).

§3910-B. COMPANION ANIMAL STERILIZATION FUND

1. Establishment. There is established the Companion Animal Sterilization Fund, an interest-bearing account, referred to in this section as "the fund." The fund receives money deposited by the Treasurer of State pursuant to Title 36, section 5284-A, revenues generated in accordance with this section, all revenue from the surcharges collected under section 3933, subsection 4, revenue received from surcharges in accordance with section 714, subsection 4 and any money contributed voluntarily to the fund. All money deposited in the fund and the earnings on that money remain in the fund to be used for the spaying or neutering of companion animals owned by persons meeting income limit standards and for the necessary direct administrative and personnel costs associated with the management of the fund and may not be deposited in the General Fund or any other fund except as specifically provided by law. The fund may not be charged for indirect costs under a departmental indirect cost allocation plan.

[2009, c. 148, §3 (AMD) .]

1-A. Option to contract for administration of the fund. The commissioner may contract the administration of the fund to a suitable organization or individual selected through a competitive process. The contracting organization or individual shall administer the fund in accordance with procedures and eligibility standards established under subsection 2. The contracting organization or individual may not expend more than 15% of the fund annually for administrative costs.

[2007, c. 539, Pt. CCCC, §2 (NEW) .]

2. Subsidies; development of standards. The commissioner shall develop procedures and eligibility standards for the awarding of subsidies to low-income persons for the spaying or neutering of those persons' companion animals. Procedures and eligibility standards must be developed in consultation with veterinarians and representatives of humane societies and animal shelters.

[2003, c. 682, §4 (NEW) .]

3. Fund-raising. The commissioner or the commissioner's authorized agent may provide for the creation, reproduction, sale, licensing and distribution and other disposal of any art or other products for the purpose of generating revenues for the fund. All money generated from the sale of these items must be deposited into the fund.

[2003, c. 682, §4 (NEW) .]

4. Oversight. The Animal Welfare Advisory Council established in section 3906-C or a subcommittee of the council shall review the objectives of the fund and make recommendations for maximizing use of available resources to meet the objectives of the fund. The council or subcommittee shall review the administration of the fund and make recommendations, which may include the development of a competitive process to contract for the administration of the fund.

[2007, c. 539, Pt. CCCC, §3 (NEW) .]

SECTION HISTORY

2003, c. 682, §4 (NEW). 2005, c. 281, §5 (AMD). 2005, c. 510, §6 (AMD). 2007, c. 539, Pt. CCCC, §§1-3 (AMD). 2009, c. 148, §3 (AMD).

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*Order 44-16/17
Tab 14 9-7-16*

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 AN EXTENSION OF THE REPORTING DEADLINE OF THE
PESTICIDE AND FERTILIZER TASK FORCE**

ORDERED, that the deadline provided in Order 263-15/16 establishing the Pesticide and Fertilizer Task Force, and an extension approved by Order 18-16/17 shall be extended and the Task Force shall report back to the City Council's Energy and Sustainability Committee on or before December 30, 2016 and formally present to the Committee at its January 2017 meeting a draft Pesticide and Fertilizer Ordinance and any other related recommendations.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Troy Moon, Sustainability Coordinator

DATE: 8/9/2016

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

SUBJECT: Order ...

SPONSOR: Councilor Nicholas Mavodones, Chair, Pesticide and Fertilizer Task Force

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading _____ Final Action X

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

On July 6 the City Council extended the due date for a report by the Pesticide and Fertilizer Task Force to September 16. The Task Force Chair is requesting a further extension. Action is required at this time so an extension may be granted before the deadline.

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

I. SUMMARY OF ISSUE (Agenda Description)

The City Council created the Pesticide and Fertilizer Task Force (Order 263-15/16) which is comprised of individuals with knowledge and expertise regarding the use and environmental impacts of pesticides and fertilizers. This body was charged with reporting to the Energy and Sustainability Committee by July 11, 2016 with a final report to the committee on July 20, 2016 unless the City Council granted an extension. During the task force meeting on June 14, the task force members discussed their work plan and established a meeting schedule that required an extension. Councilor Mavodones, as Task Force Chair, requested that the initial report to the Energy and Sustainability Committee be presented by September 16, 2016 with a report to the committee on September 20, 2016. During their meeting on August 2, the Task Force determined that it will not be able to complete its work by that time. Councilor Mavodones requests the City Council grant a further extension and allow the Task Force to submit its report to the Energy and Sustainability Committee by December 30, 2016 with a report to the Committee on January.

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

The order establishing the Pesticide and Fertilizer Task Force allows the Pesticide and Fertilizer Task Force to request an extension of their report dates which shall not be reasonably denied.

III. INTENDED RESULT

Adopting the order will permit the Pesticide and Fertilizer Task Force to continue their work in order to draft substantive recommendations regarding the use of pesticides and fertilizers in the City of Portland.

IV. COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS

The Pesticide and Fertilizer Task Force continues to study the environmental and financial issues related to the use of pesticides and fertilizers. To be effective, they require additional time to study relevant documents and discuss them.

VII. RECOMMENDATION

We recommend approval of the extension.

VIII. LIST ATTACHMENTS

Prepared by: Troy Moon

Date: 8/9/2016

*Order 45-16/17
Tab 15 9-4-16*

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 GRANTING A DRAINAGE EASEMENT
ON LAND BANK LAND AT 471 DANFORTH STREET
TO WILLIAM AND KATHERINE MARSHALL**

ORDERED, that a drainage easement on City of Portland Land Bank land at 471 Danforth Street is hereby granted to William and Katherine Marshall in substantially the form attached hereto; and

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



Economic Development Department
Gregory A. Mitchell, Director

TO: Mayor and City Council

FROM: Gregory A. Mitchell, Economic Development Director

DATE: August 19, 2016

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

SUBJECT: Order Authorizing Drainage Easement Over City Property
at 471 Danforth Street

SPONSOR: Jon P. Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading and Final Action: September 7, 2016

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

PRESENTATION: Greg Mitchell, Economic Development Director – 5 Minutes

I. ONE SENTENCE SUMMARY

City Council authorization of this Drainage Easement on City property at 471 Danforth Street to the Marshalls and their abutting property at 476 Danforth Street is being recommended so that the Marshalls can access the Easement property for repair and maintenance.

II. AGENDA DESCRIPTION

The proposed Drainage Easement Deed to William and Katherine Marshall at 476 Danforth Street is being recommended as they constructed drainage for their property and inadvertently went over their property line into a portion of property owned by the City which is in the Land Bank. Both the Land Bank Commission and Park Commission have reviewed the request for a drainage easement and voted to recommend to the City Council approval (Land Bank Commission voted unanimously 8-0; Parks Commission voted 9-0-1 (one abstention)).

This recommended Drainage Easement contains 228 sq. ft. +/- and is for the sole purpose of and conveying the right to maintain through, under, and across said Easement Area the existing riprap, conduits or pipelines with all necessary fixtures and appurtenances for conveying storm water (collectively, the "Drainage Fixtures") and to repair, maintain, clean, and replace such riprap, conduits or pipelines through, under, and across said Easement Area, with all necessary

fixtures and appurtenances; and to enter upon said Easement Area for only the foregoing purposes; reserving to the City the right to use the Easement Area for any and all purposes, and the right to relocate the Drainage Fixtures on the servient estate and amend the Easement Deed accordingly.

If the Marshalls fail to comply with any of the provisions of the recommended Drainage Easement Deed, the Easement shall be extinguished and all outstanding rights and interest shall revert to the City.

III. BACKGROUND

The Marshalls' property at 476 Danforth Street required major drainage upgrades which were done with a portion (approximately 228 sq. ft. +/-) encroaching on the City property at 471 Danforth Street which is in the Land Bank. They applied to purchase all or a portion of this City property, and, after review, staff recommended that a drainage easement only be provided at no cost to the Marshalls. The drainage improvements made provide both the Marshalls' and the City's property better drainage flow.

As noted previously, this was reviewed by both the Parks Commission and the Land Bank Commission which recommended to the City Council approval of the drainage easement.

IV. INTENDED RESULT OR COUNCIL GOAL ADDRESSED

The intended result is for the Marshalls to be able to maintain, repair, and replace fixtures in this Drainage Easement area.

V. FINANCIAL IMPACT

There is no financial impact to the City.

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

Staff's analysis of this request is that because of the major drainage improvements undertaken by the Marshalls and its positive impact on both their and the City's properties, that the Drainage Easement Deed be approved at no cost.

VII. RECOMMENDATION

It is the recommendation of staff, the Parks Commission, and the Land Bank Commission that the City Council approve of the Drainage Easement Deed.

VIII. LIST ATTACHMENTS

- A. Survey map showing recommended Drainage Easement Area highlighted in yellow;
- B. Recommended Drainage Easement Deed.

DRAINAGE EASEMENT DEED

KNOW ALL PERSONS BY THESE PRESENTS, that the **CITY OF PORTLAND**, a body politic and corporate with a mailing address of 389 Congress Street, Portland, Maine ("Grantor") in consideration of One Dollar (\$1.00) and other valuable consideration paid by **WILLIAM H. MARSHALL and KATHERINE M. MARSHALL**, each with a mailing address of 467 Danforth Street, Portland, Maine 04011 ("Grantee"), does hereby convey to the Grantee, the following drainage easement over the premises described in Exhibit A attached hereto (the "Easement Area") and incorporated herein by reference:

An easement for the sole purpose of and conveying the right to maintain through, under and across said Easement Area the existing riprap, conduits or pipelines with all necessary fixtures and appurtenances for conveying storm water (collectively, the "Drainage Fixtures") and to repair, maintain, clean, and replace such riprap, conduits or pipelines through, under, and across said Easement Area, with all necessary fixtures and appurtenances; and to enter upon said Easement Area for only the foregoing purposes; reserving to the Grantor and its lessees, heirs and assigns the right to use the Easement Area for any and all purposes, and the right to relocate the Drainage Fixtures on the servient estate and amend this Easement Deed accordingly.

By acceptance of this Easement Deed, Grantee covenants and agrees that it shall maintain the Easement Area in good order and repair and free from obstructions that would interfere with the proper drainage function performed within the Easement Area.

By acceptance of this Easement Deed, the Grantee agrees for itself and its successors and assigns to properly and professionally undertake all work permitted hereunder within the Easement Area at its sole cost and expense, and, following the completion of any work within the Easement Area and the disturbance of the Easement Area or any land adjacent thereto, to restore the Easement Area and land adjacent thereto to substantially the condition in existence prior to the undertaking of such work subject to such modifications as may be mutually agreed upon by the parties.

By acceptance of this Easement Deed Grantee further agrees to defend, indemnify and hold the Grantor harmless from any personal injury or property damage resulting from the Grantee's use of the Easement Area. Grantee shall procure and maintain liability insurance in an amount of at least Four Hundred Thousand Dollars (\$400,000) combined single limit (or the amount stated in the Maine Tort Claims Act as the same may be amended from time to time), covering claims for bodily injury, death and property damage and shall either name the City of Portland as an additional insured with respect to such coverage or shall obtain a contractual liability endorsement covering the obligations

of Licensee under the terms of this Easement. Grantee shall provide Grantor with evidence of such insurance coverage and shall obtain an endorsement providing City with no less than ten (10) days' notice prior to non-renewal or cancellation thereof. Such notice shall be sent to City of Portland, Corporation Counsel, 389 Congress Street, Portland, ME 04101.

If Grantee fails to comply with any of the provisions set forth in this Easement Deed, the easement shall be extinguished and all outstanding rights and interest shall revert to Grantor, its successors or assigns.

IN WITNESS WHEREOF, Brendan O'Connell, Finance Director for the City of Portland has hereunto set his hand and seal on this ____ day of _____, 2016.

WITNESS

CITY OF PORTLAND

Brendan O'Connell
Its Finance Director

STATE OF MAINE
CUMBERLAND, ss.

Dated: _____, 2016

Personally appeared the above-named Brendan O'Connell, Finance Director for the City of Portland, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said City of Portland.

Before me,

Notary Public/Attorney-at-Law

Exhibit A

A certain easement situated northerly of but not adjacent to Danforth Street in the City of Portland, Cumberland County, State of Maine, bounded and described as follows and as shown on Exhibit B attached herein:

COMMENCING at a point where the northerly line of Danforth Street intersects with the southerly line of the Western Promenade;

THENCE, S78°07'42"W five hundred fifty-three and eighty-two hundredths feet (553.82') along the northerly line of Danforth Street to the southwesterly corner of land now or formerly of William H. and Katherine M. Marshall as described in a deed dated October 15, 2013 and recorded in deed book 31098, page 81 of the Cumberland County Registry of Deeds;

THENCE, N11°52'18"W four and twenty-five hundredths feet (4.25') along the southwesterly line of said Marshall to the southeasterly corner of land now or formerly of the City of Portland as described in a deed dated July 7, 1911 and recorded in Deed Book 878, Page 220, said corner is witnessed by a 5/8" rebar set with an aluminum cap stamped "City of Portland-DPW-Survey Mark PLS 2335";

THENCE, N11°52'18"W thirty-two and seventy-five hundredths feet (32.75') continuing along the southwesterly line of said Marshall to **THE POINT OF BEGINNING**;

THENCE, S59°57'27"W twelve and no hundredths feet (12.00') through lands now or formerly of the said City of Portland, to a point;

THENCE, N11°52'18"W twenty and no hundredths feet (20.00') continuing through lands now or formerly of the said City of Portland, to a point;

THENCE, N59°57'27"E twelve and no hundredths feet (12.00') continuing through lands now or formerly of the said City of Portland, to a point in the southwesterly line of land now or formerly of said Marshall;

THENCE, S11°52'18"E twenty and no hundredths feet (20.00') along the southwesterly line of land now or formerly of said Marshall to **THE POINT OF BEGINNING**.

Meaning and intending to convey a drainage easement over a portion of lands now or formerly conveyed to the City of Portland by Sarah F. Cassidy, James Cassidy and Anne L. Cassidy in a deed dated July 7, 1911 and recorded in said Registry in Deed Book 878, Page 220.

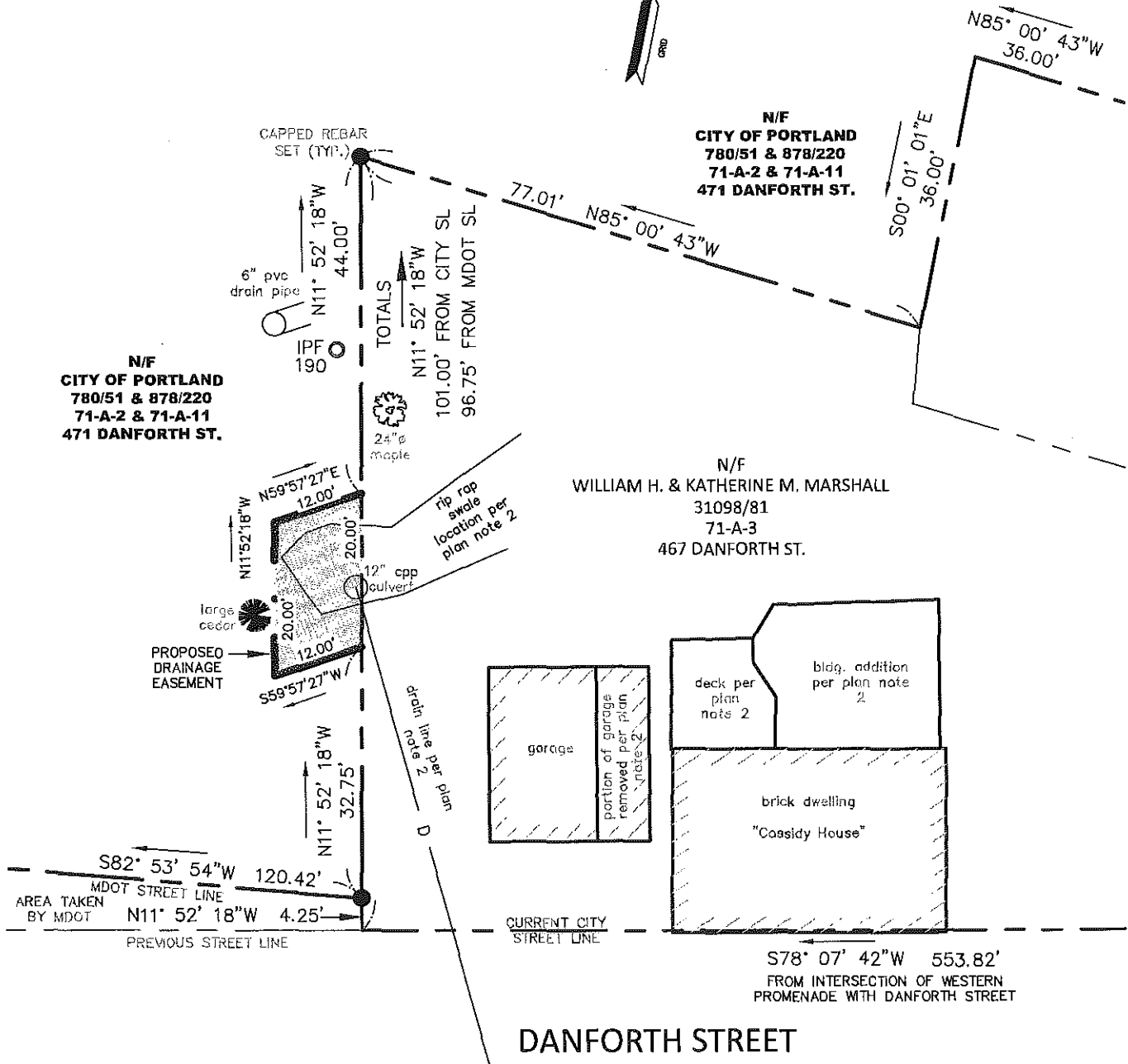
The above described drainage easement contains two hundred twenty-eight square feet more or less (228 s.f.±).

This deed description is based on a "Plan of City Property at 54 Western Promenade and 471 Danforth Street," dated January 25, 2013, by the City of Portland, Maine Public Works Department, Engineering Section to be on file at said Public Works Department.

The basis of bearing for this deed is the Maine State Plane Coordinate System (2 zone projection), West Zone, using the NAD 1983 (HARN) Datum and the U.S. Survey foot as the unit of measurement.

EXHIBIT B

1. THE PROPERTY LINES AND BUILDINGS SHOWN HEREON WERE TAKEN FROM THE FOLLOWING PLAN: "CITY PROPERTY AT 54 WESTERN PROMENADE AND 471 DANFORTH ST." DATED JAN. 25, 2013 BY THE CITY OF PORTLAND.
2. THE LOCATION OF THE RIP RAP SWALE, DRAINAGE LINE AND CHANGES IN THE BUILDINGS WERE TAKEN FROM THE FOLLOWING PLAN: "AS-BUILT SURVEY PLAN OF MARSHALL PROPERTY" REVISED 11-23-2014 BY SEBAGO TECHNICS, INC.



CITY OF PORTLAND
PUBLIC WORKS
ENGINEERING DIVISION

PROPOSED DRAINAGE EASEMENT
FOR CITY PROPERTY AT 471 DANFORTH

CIVIL 3D PROJECT: DANFORTH-WESTERN PROMENADE DB
DRAWING: 467 DANFORTH DRAINAGE EASEMENT 2016.dwg

SCALE:
1" = 20'

DATE:
08/12/2016

*Order 46-16/17
Tab 16 9-7-16*

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 A BUS SHELTER EASEMENT
AT 40 AUBURN STREET FROM KENIKE LLC**

ORDERED, that a bus shelter easement at 40 Auburn Street is hereby accepted from Kenike LLC in substantially the form attached hereto.

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan

FROM: Bruce Hyman, Transportation Program Manager

DATE: August 22, 2016

SUBJECT: Bus Shelter Easement, xxx Auburn Street, Portland, ME

SPONSOR: Jon Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading ___ Sept. 7, 2016 ___ Final Action ___ Sept. 7, 2016 ___

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) None

I. ONE SENTENCE SUMMARY

Council action is sought for an easement at 40 Auburn Street to facilitate the installation of a bus shelter by METRO as part of its larger bus shelter program to increase customer comfort and convenience to spur higher bus ridership.

II. AGENDA DESCRIPTION

City and METRO staff have worked to secure an easement from the property owner, KENIKE LLC, and the current tenant, Bath Savings Institution, for the installation of a bus shelter at a priority, high potential ridership bus stop in North Deering along the number 9A/9B route across from Northgate Plaza at xxx Auburn Street, Portland, Maine.

The easement language has been prepared by the Corporation Counsel office.

III. BACKGROUND

For several years, city staff have been working with METRO and GPCOG staff to identify priority locations for the installation of bus shelters. Many locations are with the public right-of-way but many are not. Securing easements for those locations for which there is not adequate right-of-way has been progressing for a year. This Auburn Street location was identified as a high priority by METRO for a shelter. This bus stop and Routes 9A/9B serve a large population catchment area of elderly riders shopping at Northgate Plaza and other nearby businesses.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Adoption of the easement by the City Council will enable the installation of a bus shelter by METRO this year.

V. FINANCIAL IMPACT

None. METRO assumes responsibility for shelter acquisition, installation and maintenance costs and liability responsibilities for bus shelters.

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

VII. RECOMMENDATION

Staff supports council adoption of this easement for the bus shelter program as part of the larger package of bus transit system improvements including real-time traveler information, route frequency and service modifications and service area expansions (the Breez service to and from Portland to Freeport and Yarmouth, etc.) to increase bus transit ridership.

VIII. LIST ATTACHMENTS

Easement prepared by Corporation Counsel

Prepared by: Bruce Hyman, Transportation Program Manager

Date: August 22, 2016

Bean/agendarequestmemo/rev 11/2015

DRAFT

TRANSIT SHELTER EASEMENT AGREEMENT

THIS TRANSIT SHELTER EASEMENT AGREEMENT (this "Agreement") is made this ____ day of _____ 2016, by and between KENIKE, LLC, a Maine limited liability company with a mailing address of _____ (the "Grantor") and the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and a mailing address of 389 Congress Street, Portland, Maine 04101 (the "City").

WITNESSETH:

WHEREAS, pursuant to a certain Quitclaim Deed With Covenant dated September 20, 2000 and recorded in the Cumberland County Registry of Deeds in Book 15835, Page 276, Grantor is the owner of that certain real property situated in Portland, Cumberland County, Maine, and located at or near 40 Auburn Street (the "Property"), said real property being more particularly described in said deed; and

WHEREAS, the City desires to have a METRO Bus Shelter constructed on a portion of the Property for the benefit of the public; and,

WHEREAS, the City or its designee will construct said METRO Bus Shelter on a certain lot or parcel of land more particularly described below;

NOW THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, and in further consideration of the mutual covenants and terms, conditions and restrictions hereinafter set forth, the Grantor hereby gives, grants, bargains and conveys unto the City, its successors and assigns, in perpetuity, an easement for the purposes of maintaining a METRO bus shelter, including related facilities as hereinafter described, and an easement for members of the public to wait, board and disembark METRO buses at the Bus Shelter in and over that portion of the Property generally depicted in Exhibit A hereto and more particularly described as follows (the "Easement Area"):

A certain easement being located on the westerly side of Auburn Street in the City of Portland, County of Cumberland, State of Maine, bounded and described as follows.

Beginning at a point on the westerly side of Auburn Street, said point of beginning being located S 06°11'41" E by said Auburn Street a distance of Fifty-Eight and 39/100 (58.39) feet from the second angle point in the westerly side of Auburn Street southerly of the intersection of said Auburn Street with the southerly side of Sanborn Street, said point of beginning also being located S 30°47'30" W a distance of Ninety-Three and 28/100 (93.28) feet from a 6"x6" granite monument with brass plug on the easterly side of said Auburn Street.
Thence:

- 1) S 06°11'41" E by said Auburn Street a distance of Fifteen and 00/100 (15.00) feet to a point;
- 2) S 83°48'19" W through land now or formerly of Kenike LLC as described in a deed recorded in the Cumberland County Registry in Book 15835, Page 276 a distance of Ten and 50/100 (10.50) feet to a point;
- 3) N 06°11'41" W through said land of Kenike LLC a distance of Fifteen and 00/100 (15.00) to a point;
- 4) N 83°48'19" E through said land of Kenike LLC a distance of Ten and 50/100 (10.50) feet to the point of beginning.

Bearings are referenced to grid north, Maine State Plane Coordinate System, NAD83, West Zone.

The above described easement contains 157 square feet, more or less, lying over land now or formerly of Kenike LLC as described in a deed recorded in the Cumberland County Registry of Deeds in Book 15835, Page 27 (the "Kenike Property") and a portion of a sidewalk easement conveyed to the City of Portland as described in deeds recorded in said Registry in Book 19790, Page 149 and Book 20229, Page 174.

The terms, conditions, and restrictions of this Easement Agreement are as follows:

1. That the City or its designee shall have the right but not the obligation to erect and maintain a METRO Bus Shelter and related facilities over, under and within the Easement Area. Members of the public may wait, board and disembark buses at the said METRO Bus Shelter.
2. That in the event that the City or its designee constructs a METRO Bus Shelter in the Easement Area, the City or its designee shall have the right to maintain, operate, alter, repair, rebuild, inspect, patrol, replace and remove said bus shelter and other associated fixtures, equipment and appurtenances thereto over, under and within the Easement Area and to use adjacent land at times of and for the purposes appurtenant to said repair or maintenance, together with the right to cut and remove trees, obstructions, bushes, shrubs, roots, and earth, and to do any other work necessary for the purposes of installing, maintaining, operating, repairing and replacing said Bus Shelter and for the purposes of maintaining, as the Licensee deems necessary, visibility and safety along the existing sidewalk that abuts the Easement Area. No building or other structure shall be erected within the Easement Area contrary to any statute, law, ordinance or safety regulation or policy or inconsistent with the City's rights granted herein. Rights reserved to the Licensor shall not be used or exercised in any manner that will interfere with the rights, privileges and authority herein granted to the City.

3. That the City or its designee shall be and remain responsible for any and all expenditures of labor and materials or other costs or expense in the construction, repair, maintenance, and replacement of said METRO Bus Shelter within the Easement Area and related facilities.
4. That the City or its designee shall be responsible for any and all labor or other costs or expense which results from any and all future repair, relocation, or dismantling of the METRO Bus Shelter within the Easement Area and related facilities.
5. That the City agrees, to the extent allowed by Maine law, to hold Grantor harmless from any and all liability arising out of the installation and maintenance of said Easement Area and not caused by the negligence of Grantor, provided, however, that nothing herein is intended to, nor shall it be deemed to, waive, amend or otherwise modify any claim of immunity, any defense or any limitation of liability available to the City under the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq. or other applicable law.
6. The Grantor shall not be responsible for the cutting or trimming of any vegetation and cleanliness of the grounds at or around the Easement Area and the removal of trash from trash receptacles and litter from the Easement Area.
7. This Agreement shall not divest the Grantor of any rights or interests in its Property not herein mentioned.
8. All notices given under this Agreement must be in writing and must be given by U.S. certified mail (written receipt) addressed to the parties at the addresses first set forth above. Notices shall be deemed delivered three (3) days from the date sent if addressed as set forth herein. Either party may notify the other of a change of address, which will only be effective by written notice. As necessary, day to day communication may occur between the Grantor and METRO, concerning the administration of this Agreement.
9. Within forty-five (45) days following termination of this Agreement, the City agrees to remove the said METRO Bus Shelter and related facilities from the Easement Area and to return the Easement Area to substantially the same condition it was in on the date hereof.
10. This Agreement shall be binding upon Grantor and City and their respective successors and assigns.

TO HAVE AND HOLD the rights, privileges and easement herein granted to the City of Portland, its successors and assigns forever. The covenants agreed to and the terms, conditions, and restrictions imposed herein shall be binding upon the Grantor, its agents, tenants, successors and assigns and shall continue as a servitude running with the land.

AND the Grantor covenants that it is vested of the premises in fee, has the right to convey the same in fee simple, and that the same are free from encumbrances except as stated herein.

IN WITNESS WHEREOF, the parties have set their hands and seals, the last party to sign being authorized to complete the day and year first written above, and which day and year shall be the effective date of this Agreement.

WITNESS:

KENIKE, LLC

By: _____
Printed Name: _____
Its: _____

STATE OF MAINE

COUNTY OF CUMBERLAND

_____, 2016

Then personally appeared the above-named _____, the _____ of Kenike, LLC and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said limited liability company.

Notary Public/Attorney-at-Law
Print Name: _____
My Commission Expires: _____

WITNESS:

CITY OF PORTLAND

By : _____

Jon P. Jennings

Its City Manager

STATE OF MAINE

COUNTY OF CUMBERLAND

_____, 2016

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

Notary Public/Attorney-at-Law

Print Name: _____

My Commission Expires: _____

JOINDER BY TENANT

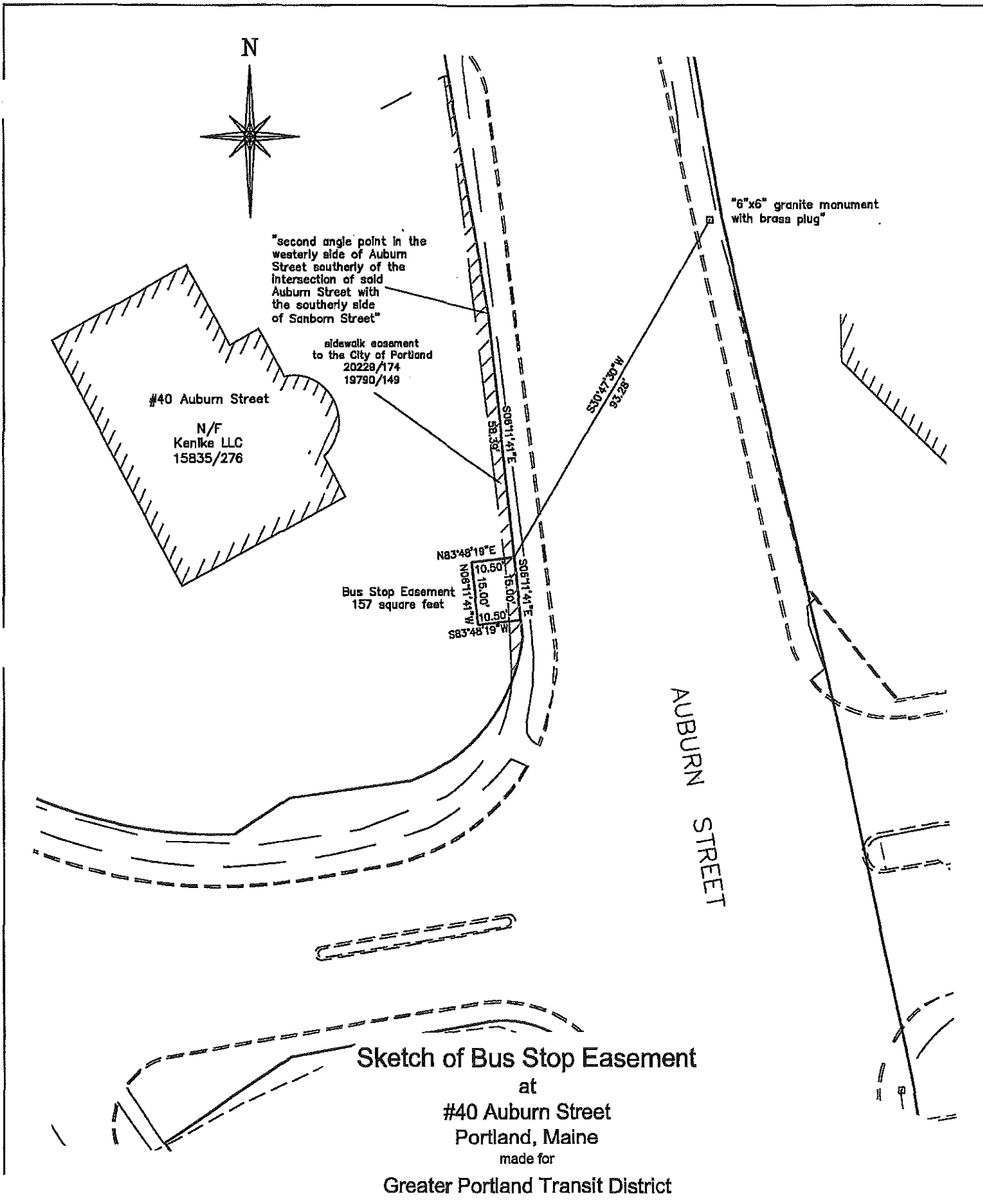
BATH SAVINGS INSTITUTION, a Maine bank corporation and tenant lawfully occupying the Property, hereby joins this agreement solely to indicate its joinder to, and consent to, this instrument.

BATH SAVINGS INSTITUTION

By: _____

Printed Name _____

Its: _____



JOB# 216068	DATE: July 22, 2016	 Titcomb Associates 133 Gray Road, Falmouth, Maine 04105 (207)797-9199 www.titcombsurvey.com
	SCALE: 1"=30'	

*Order 47-16/14
Tab 17 9-4-16*

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 THE LEASE TO CREATIVE PORTLAND CORPORATION
FOR OFFICE SPACE AT 84 FREE STREET**

ORDERED, that the Lease Agreement for office space for Creative Portland Corporation at 84 Free Street in the Spring Street Building/Garage is hereby approved in substantially the form attached hereto; and

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



Economic Development Department
Gregory A. Mitchell, Director

TO: Mayor and City Council

FROM: Gregory A. Mitchell, Economic Development Director

DATE: August 24, 2016

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

SUBJECT: Order Authorizing Lease of City Property at 84 Free Street to Creative Portland

SPONSOR: Economic Development Committee, Councilor Brenerman/Chair

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading and Final Action: September 7, 2016

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

PRESENTATION: Greg Mitchell, 5 Minutes

I. ONE SENTENCE SUMMARY

This proposed Lease with Creative Portland (CP) for City-owned space at 84 Free Street will allow for CP to expand and have more visibility in the downtown.

II. AGENDA DESCRIPTION (Agenda Description)

The Draft Lease is proposed to include 1,172 square feet of commercial space along with 1,772 square feet of basement storage space for CP's use as its headquarters and to support CP's programs which include First Friday Art Walk, 2 Degrees Portland, and updating the City's Cultural Plan, among others. Providing CP use of this space as a "storefront" will improve CP's profile in Portland and allow it to better interface with its constituency and provide more direct service and accessibility going forward. Previously, CP has been operating in an upper floor office space in the downtown at Congress Square.

III. BACKGROUND

The City has been marketing the 84 Free Street space with broker assistance for over three years, with limited commercial interest. CP has now shown a direct interest to lease this space for its

headquarters, which has resulted in the draft Lease attached. The anticipated start date is October 1, 2016.

IV. INTENDED RESULT OR COUNCIL GOAL ADDRESSED

The intended result is to have the 84 Free Street space active and vibrant, and housing CP's headquarters will allow for this to occur.

V. FINANCIAL IMPACT

The financial impact and terms are as follows:

Term: Seven (7) years with one renewal option for up to three years at a rental rate subject to mutual agreement. It is noted that the Portland Development Corporation (PDC) approved a loan to CP in the amount of \$25,000 to cover the cost of space fit-up investment. The 7-year term matches the term of the PDC loan.

Rent: Fixed at \$1,000 per year

Parking: None

Conditions: Lease termination in event of PDC loan default.

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

Staff has worked diligently with commercial broker assistance to market this space to attract tenancy with no success, so CP's use of the space will activate it and provide additional assistance to this City non-profit organization.

VII. RECOMMENDATION

The Economic Development Committee reviewed this at their August 23 meeting and voted unanimously (2-0 [as Councilor Costa arrived shortly after this item was taken up and voted on]) to forward this lease to the City Council with a recommendation of approval.

VIII. LIST ATTACHMENTS

- a. Proposed Lease Agreement

LEASE AGREEMENT

This Lease is made as of the ____ day of _____, 2016, by and between CREATIVE PORTLAND CORPORATION, a Maine non-profit corporation having a place of business at 142 High Street, #421, Portland, Maine (hereinafter referred to as "Tenant"), and CITY OF PORTLAND, a Maine Municipality having its principal place of business at 389 Congress St., Portland, Maine (hereinafter sometimes referred to as "Landlord" and sometimes as "City").

WHEREAS, Tenant desires to relocate its offices and has obtained a \$25,000.00 loan of near or even date herewith from the Portland Development Corporation for the purpose of renovating its new space (the "PDC Loan"); and

WHEREAS, Landlord owns real property located at 84 Free Street, Portland, Maine, which is a portion of the Spring Street Building/Garage described below (said portion hereinafter referred to as "Premises"), and desires to lease said Premises to Tenant upon certain terms and conditions set forth herein; and

WHEREAS, Landlord has sufficient right, title and interest in and to the real property, together with the facilities, easements, rights, licenses, and privileges hereinafter granted, and has full power and authority to enter into this Agreement in respect thereof;

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein contained, the sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Premises.

Landlord does hereby lease, demise and let unto Tenant certain portions of the City building known as the Spring Street Building/Garage at 84 Free Street in Portland, Maine, namely the 1,172+/- sq. ft. of office space on the first floor and 1,772 +/- sq. ft. in the basement of said Garage. Tenant agrees to accept the Premises in "as is" condition without representation or warranty by Landlord as to its condition or fitness for a particular purpose.

2. Term.

- a. The term of this Lease shall commence October 1, 2016 (the "Commencement Date") and expire on September 30, 2023.
- b. Provided that Landlord, in its sole discretion, first determines that Tenant is not in default of any term or condition of this Lease, this Lease may be extended for up to three years at a rental amount subject to the mutual agreement of the parties. Tenant shall provide written notice to Landlord of

its desire to extend the term of the Lease under this paragraph no less than ninety (90) days before the end of the term of this Lease.

- c. Any holding over by Tenant at the expiration of this Lease and any extension thereof shall not constitute a renewal of the Lease, but at Landlord's election such holding over shall result in a tenancy-at-will from month to month at the same rent in effect at the expiration of the Lease.

3. Rent.

The annual rent for the premises shall be \$1,000.00, payable in advance. Tenant shall pay the City rent for the first year of the term of this Lease within thirty days after the Commencement Date. Tenant shall pay rent for each subsequent year of this lease on each anniversary of the Commencement Date.

4. Parking

No parking is provided as part of this lease.

5. Obligations of Landlord.

The Landlord shall provide, at Landlord's expense the following services:

- a. Maintenance and repair of the roof, exterior walls and structure of the building of which the Premises are a part, reasonable wear and tear, damage by fire and other casualty only excepted. Provided, however, that if such maintenance or repair is made necessary by fault or neglect of the Tenant or the employees, contractors, agents or invitees of Tenant, such maintenance or repair shall be at the expense of the Tenant and Tenant shall pay all costs therefor.
- b. Maintenance of any Building common areas and any exterior Building grounds.

6. Obligations of Tenant.

The Tenant, at the Tenant's sole expense shall:

- a. Determine all zoning information and secure all necessary or required permits and approvals for its proposed use of the Premises. Landlord makes no representations or warranties as to the suitability of, or the ability to obtain regulatory approval for the Premises for Tenant use.
- b. Provide all HVAC Mechanical Equipment and Fit-up Improvements and be responsible for the cost of any modifications to existing mechanical

equipment to serve 84 Free Street space along with any fit-up improvements.

- c. Submit any and all intended modifications to the Premises to Landlord for its approval prior to commencement of work. Tenant agrees that all work shall be completed in compliance with all applicable state and municipal building codes and ordinances.
- d. Maintain the entire portion of the Premises including windows and doors in good repair. Casualty damage to windows and doors shall be the responsibility of the Tenant.
- e. Be responsible for all maintenance and repairs of the Premises, including but not limited to air conditioning/heating system, plumbing, electrical and communication lines, as well any portions of such utility systems located in the Building/Garage but outside the Premises;
- f. Properly bag and remove all trash and garbage.
- g. Provide and be responsible for all cleaning and janitorial services including the cleaning of exterior windows for the Premises.
- h. Pay and be responsible for all costs associated with utilities pertaining to the Premises including but not limited to all expenses relating to its use of telephone/communication services, internet, electricity, gas, heat, cooling, water and sewer and any submeters required for those utilities.
- i. Tenant shall make no improvements to Premises without prior written approval of Landlord.

7. Use of Premises.

During the term of this Lease, the Premises may be used by Tenant for administrative office space, meeting space for its board members, basement storage, to provide the public with access to Tenant's services, and for no other purposes. Tenant must at all times comply with all applicable federal, state, and local laws, ordinances, codes, regulations and other requirements in its use of the Premises.

8. Assignment/Subletting.

Tenant shall not be permitted to assign this lease or sublet space without the express written consent of Landlord.

9. Casualty Damage.

- a. If the Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use, then, and in such case, the Rent hereinabove stated or a just and proportional part thereof, according to the nature and extent of injuries sustained, shall be suspended or abated, until the Premises shall have been put in proper condition for use by Landlord. Provided, however, in the event that restoration is not reasonably possible within ninety (90) days after the occurrence of such damage or destruction, then either Landlord or Tenant shall have the right to terminate this Lease by giving the other party written notice of such termination within thirty (30) days after such damage or destruction, and upon the giving of such notice, the term of this Lease shall cease and come to an end as of the date of such damage or destruction and any unearned rent shall be returned to Tenant.
- b. Tenant shall be responsible for covering the equipment and supplies with such property and casualty insurance as it deems necessary and Landlord shall have no responsibility therefor. Tenant assumes all risk of damage, loss or casualty to its property, equipment and/or supplies while located at the Premises, even if the cause of such damage is the result of the negligent act or omission of Landlord, its officers or employees. Tenant shall defend, indemnify and hold the Landlord harmless from any claim arising out of or relating to any damage, loss or casualty to its property, equipment and/or supplies while at the Premises. Any casualty insurance obtained by Tenant for its property, equipment or supplies at the Premises shall include a waiver of subrogation against the Landlord.

10. Return of Premises; Trade Fixtures.

Tenant at the expiration of the Lease term shall peaceably yield up to Landlord the Premises including any renovations or leasehold improvements installed by Tenant during the term hereof, in good repair in all respects, reasonably use and wear and damage by fire and all other unavoidable casualties excepted. Tenant shall have the right to remove all trade fixtures, equipment and other personal property installed or placed by it at its expense in, on or about the Premises; provided, however, all damage caused by or as a result of such removal shall be repaired by Tenant.

11. Signage.

Tenant, at its sole expense, shall have the right to erect a sign on the Building provided it obtains all necessary permits and approvals. Final design and location of exterior signs shall be subject to Landlord's written approval, which approval shall not be unreasonably delayed or withheld, and shall be in accordance with all local and state governmental laws, ordinances, codes and regulations.

12. Insurance.

The Tenant will maintain at all times during its use and occupancy of the Premises adequate insurance coverage of not less than One Million Dollars (\$1,000,000) per occurrence for general liability, workers compensation insurance in the amount required by Maine law; and fire legal liability insurance in the minimum amount of One Hundred Thousand Dollars (\$100,000).

The Tenant shall furnish the Landlord with certificates of insurance indicating compliance with this paragraph in a form satisfactory to Landlord. The certificates shall provide that the coverage may not be cancelled without thirty (30) days advance notice of cancellation to the Landlord, and the Landlord shall be named as an additional insured on all liability policies, which shall be stated on such certificates. Any insurance provided by the Tenant shall be primary to any coverage which the Landlord may provide. Liability insurance coverage shall also extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, to the extent caused by, or resulting from negligent acts, operations, or omissions of Tenant, its officers, agents, employees, invitees, and/or contractors.

13. Indemnity.

- a. General. To the fullest extent permitted by law, Tenant shall at its own expense defend, indemnify, and hold harmless the Landlord, its officers, agents, and employees from and against any and all liability, claims, damages, penalties, losses, expenses, or judgments, just or unjust, arising from injury or death to any person, or damage to property sustained by anyone (including but not limited to Landlord employees or property), including but not limited to claims based upon violation of any environmental law or regulation, except to the extent that such claims are caused by a negligent act or omission of the Landlord, its officers, agents, servants or employees.

Tenant shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against Landlord or in which Landlord may be impleaded with others upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which Landlord is a party, Landlord shall have the right to participate at its own discretion and expense and no such suit or action shall be settled without prior written consent of Landlord. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to Landlord which would otherwise exist.

- b. Without limiting the foregoing, to the fullest extent permitted by law, Tenant hereby agrees to assume all risk of injury, harm or damage to any person or property (including but not limited to all risk of injury, harm or

damage to Tenant's officers, agents, employees, contractors, customers or invitees or to their property) arising out of, during, or in connection with the rental or use of the Premises or any portion thereof and the activities hereunder which injury, harm or damage is alleged to be related to the presence of mold at or in the Premises, and to defend, indemnify and hold the Landlord harmless from any such liability, claims, damages, losses or expenses.

- c. Covenant against liens: Tenant shall not cause or permit any lien against the Landlord's property or any improvements thereto to arise out of or accrue from any action or use thereof by Tenant and shall hold the Landlord harmless therefrom; provided, however, that Tenant may in good faith contest the validity of any alleged lien. Upon request of the Landlord, Tenant shall post a bond warranting payment of any such lien in the event Tenant contests such lien.
- d. Survival. The Terms of this Section shall expressly survive the expiration or termination of this Agreement.

14. Covenants of Landlord.

Landlord covenants that it is the owner in fee of the Premises and can and will provide quiet enjoyment of the Premises during the original and any extended terms of the Lease, and that the Lease is signed by a duly authorized individual.

15. Default.

- a) The occurrence of any of the following shall be an event of default under this Lease (each, an "Event of Default"):
 - i) Failure of a Party to perform any obligations or comply with any terms or conditions under this Lease and such failure continues for a period of fifteen (15) days from such Party's receipt of written notice from the other Party; provided, however, that if such failure to perform a material obligation is not capable of being cured within fifteen (15) days from receipt of written notice, then such period shall be extended, provided that the defaulting Party commences to cure such failure within thirty (30) days and thereafter diligently continues to cure such failure to completion.
 - ii) Failure of tenant to comply with the terms and conditions of any of the PDC Loan documents.
 - iii) Either Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect.

- b) Upon a party's default and failure to cure, the other party shall have the right, at its option, and in addition to any other remedies, to terminate this Lease by giving the party in default written notice thereof and upon the giving of such notice, this Lease and the term hereof shall cease.
- c) Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in accordance with the provisions of hereof. If this lease is terminated, Tenant shall remain liable to Landlord for all Rent accrued and unpaid up to the date of such termination, as well as all Rent for the remainder of the term as and when it shall come due. Tenant shall pay all reasonable costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel and consultant fees, that are incurred by Landlord as a result of Tenant's default under this Lease.

16. Notices.

Any notice required to be given under this Lease shall be in writing and shall be hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the parties as stated below or such other address as either party may designate in writing to which its future notices shall be sent.

To Tenant:

Creative Portland Corporation
P. O. Box 4675
Portland, ME 04112

To Landlord:

Parking Manager
City of Portland
389 Congress Street
Portland, Maine 04101
cc: City Manager, same address

17. Amendment.

Both parties hereto acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties except such as are expressed herein. The terms of this Lease may be modified or amended by the mutual assent of the parties hereto; provided, however, that no such modification or amendment to this Lease shall be binding until in writing and signed by both parties.

18. Inspection and Entry.

The Landlord and/or its agents, may, with reasonable notice, enter to view, show and make any repairs or inspection of the Premises. The Landlord shall have the right of immediate entry without notice in the event of any emergency or if the Tenant fails to pay rent, commits waste, or otherwise fails to comply with terms and conditions hereof.

19. Entire Agreement.

This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes any and all prior agreements and commitments with respect thereto. There are no oral or written understandings, warranties, terms or conditions, and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

20. Severability.

Any term or provision of this Agreement that is or becomes invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining term and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

21. Successors Bound.

The terms, covenants and agreements herein contained shall be for the benefit of and be obligatory upon the heirs, successors and assigns of the respective parties hereto.

22. Governing Law; jurisdiction.

This Lease shall be governed by and construed in accordance with the laws of the State of Maine. All disputes hereunder which are not mutually resolved shall be resolved by trial without a jury in the Courts of Cumberland County, State of Maine.

23. Force Majeure.

Neither Tenant nor Landlord shall be deemed in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, acts of God, war, acts of superior governmental authority or other reason over which it has no control; provided, however, that the suspension of performance shall be no longer than that required by the force majeure and the party prevented from performance has given written notice thereof to the other party.

24. Counterparts.

This Agreement may be signed in any number of counterparts, which, together, shall represent a fully executed original as if signed by both Parties.

25. Non-Waiver.

No waiver of any breach of any one or more of the conditions of this Lease by the Landlord or Tenant shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the day and year first above written.

WITNESS:

CREATIVE PORTLAND CORPORATION

By: _____

Name: _____

Its: _____

CITY OF PORTLAND

By: _____

Jon P. Jennings
Its City Manager

Approved as to form:

Approved as to funds:

Corporation Counsel's Office

Finance Department

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 48-16/14
Tab 18 9-7-16*

ORDER APPROVING A LICENSE TO INDIA NEWBURY RESIDENCES LLC

ORDERED, that a license allowing encroachments by foundation footings and a roof overhang in the public right-of-way is hereby approved for India Newbury Residences LLC in substantially the form attached hereto; and

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

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Jeff Levine, Director, Planning and Urban Development Department

DATE: August 23, 2016

DISTRIBUTION: Jon Jennings, City Manager; Mayor Ethan Strimling; Anita Lachance, Assistant City Manager; Danielle West-Chuhta, Corporation Counsel; Sonia Bean, Nancy English and Julie Sullivan

SUBJECT: Proposed License Agreement for India Newbury Residences, LLC

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading _____ **Final Action:** September 7, 2016

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

I. SUMMARY OF ISSUE (Agenda Description)

On May 24, 2016, the Planning Board approved a Level III Subdivision application for a twenty-nine (29) condominium development at 62 India Street and the Level II site plan application under the India Street Form Based Code was approved by the Planning Authority on May 24, 2016. The Planning Board voted unanimously (6-0) to approve the application with waivers and conditions, including a condition that the applicant obtain the appropriate licenses from the city for the footings, roof overhang. The Department of Planning and Urban Development is now forwarding this license to the Council.

II. REASON FOR SUBMISSION

The license requires City Council approval and, per Corporation Counsel, qualifies as a one-reading item.

III. INTENDED RESULT

The easement will allow the building footings in the right-of-ways along Newbury and India Streets, the main entrance canopy over Newbury Street, and the retail canopy along India Street.

IV. COUNCIL GOAL ADDRESSED

The project provides 29 new housing units and a contribution to the Housing Trust Fund.

V. FINANCIAL IMPACT

The project will ultimately result in tax revenue to the City as well as a \$290,000 contribution to the Housing Trust Fund.

VI. STAFF ANALYSIS AND RECOMMENDATION

Corporation Counsel's office has reviewed the license with the attached plan and has approved the draft as presented here. As noted above, the Planning Board approved the proposed development on May 24, 2016 with the condition that the applicant obtains the required licenses.

VII. LIST ATTACHMENTS

1. Footings and Canopy licenses between the City of Portland and India Newbury Residences, LLC
2. Exhibit B License Area

Prepared by: Caitlin Cameron, Urban Designer

Date: August 23, 2016

LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into as of the ____ day of September, 2016, between the **CITY OF PORTLAND**, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (the "City" or "Licensor"), and **India Newbury Residences LLC**, with a place of business in Portland, Maine and mailing address of 2730 Transit Road, West Seneca, New York 14224, its successors and assigns (hereinafter the "Licensee"), who hereby agree as follows:

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, a revocable license is hereby granted to Licensee to occupy portions of land and portions of airspace above land owned by the City and adjacent to property of Licensee located on Newbury Street and India Street, described in deeds to Licensee recorded in the Cumberland County Registry of Deeds in Book 31458, Page 109 and Book 32883, Page 140 (together, "Licensee's Property"), for the purpose of permitting the encroachment of footings and foundation, cornice overhangs, and entrance awnings and/or overhangs over the City property ("encroachments") to be located according to, and used as described in **Exhibit A** attached hereto and made a part hereof (collectively the "Licensed Areas"), together with the right from time to time to bring upon the Licensed Areas and areas adjacent thereto workers, materials and machinery necessary for the use and enjoyment of the License granted herein. Occupancy of the Licensed Areas is subject to the following conditions:

1. All work performed upon and use of the Licensed Areas for the purposes set forth herein shall be at Licensee's sole cost and expense (unless otherwise agreed in writing), the parties acknowledging that there may be temporary interruptions in enjoyment of the City's property adjacent to the Licensed Areas related to the conduct of any work related to this License. Licensee agrees at its sole expense to restore any portion of the Licensed Areas and adjacent City property damaged by work conducted by Licensee related to this License to substantially its condition prior to such work, or as close to that condition as is reasonably practicable. Licensee, its successors and assigns, shall defend, indemnify and hold the City, its officers, agents, and employees harmless from any and all claims, including but not limited to claims for damage to City property and reasonable attorney's fees, which arise out of Licensee's use, or the use of others, of the City's property as described above.

2. At all times during the Term of this License Agreement, Licensee, its agents and assigns, specifically including, but not limited to any condominium association as soon as any unit is transferred, shall exclusively be responsible for repairing, keeping and maintaining the Licensed Areas in a safe condition generally, by, among other things: ensuring prompt removal of, or otherwise eliminating snow and ice from all encroachments and in a manner that does not endanger pedestrians; preventing, by design and rules and supervision, objects stored or otherwise present on the encroachments from falling or being dropped or thrown onto the City's sidewalk; repairing, replacing or removing all encroachments as necessary for public safety; taking any and all other measures necessary to protect pedestrians in the sidewalk from injury or other harm arising out of the presence of the encroachments.

3. Licensee shall procure and maintain liability insurance in an amount of at least Four Hundred Thousand Dollars (\$400,000) combined single limit (or the amount stated in the Maine Tort Claims Act as the same may be amended from time to time), covering claims for bodily injury, death and property damage and shall either name the City of Portland as an additional insured with respect to such coverage or shall obtain a contractual liability endorsement covering the obligations of Licensee under the terms of this license. Licensee shall provide City with evidence of such insurance coverage and shall obtain an endorsement providing City with no less than ten (10) days notice prior to non-renewal or cancellation thereof. Such notice shall be sent to City of Portland, Corporation Counsel, 389 Congress Street, Portland, ME 04101. Failure of Licensee to procure or maintain such insurance coverage shall be an Event of Revocation as set forth in Section 5 below subject to cure period as provided in Section 5 below.

4. This license is assignable to any subsequent owners of the property and/or building located on the land depicted on the "Subdivision Plat of 50-62 India Street" approved by the Portland Planning Board on May 24, 2016 located at the corner of Newbury Street and India Street, Portland, Maine, to be recorded herewith in the Cumberland County Registry of Deeds (the "Plan"), including without limitation a condominium association managing such land for the benefit of unit owners; and the duties and obligations hereunder shall, in any event, run with the land and burden all subsequent owners holding rights to use any portion of the Licensed Areas

5. Subject to the provisions of Sections 6 and 7 hereof, this Agreement may be revoked six (6) months after receipt by the Licensee of written notice that an Event of Revocation has occurred, identifying such Event of Revocation, provided that such Event of Revocation is not cured within six (6) months after receipt of such notice by Licensee except as set forth in clause 3 below. "Event of Revocation" shall mean: 1) the building shown on the Plan fails to be constructed substantially in accordance with the Plan or any amendments thereto; 2) the building as shown on the Plan is destroyed, removed or otherwise thereafter ceases to exist on Licensee's Property and construction to rebuild said building has not begun within twelve (12) months of said destruction or removal, or 3) failure to maintain insurance as required under Section 3 above, and such failure is not remedied within thirty (30) days after written notice thereof. City acknowledges that Licensee may amend this Agreement, upon the written approval of the City, for the purpose of correcting and/or revising Exhibit A, to more accurately show the encroachments described above that are being licensed under this Agreement.

6. Any notice of an Event of Revocation delivered pursuant to Section 4 of this Agreement must be sent by certified mail, return receipt requested to the Licensee at the address for Licensee set forth above, or at such other address as the Licensee may provide to the City in writing from time to time. Copies of any notices sent to Licensee shall also be sent to: Tom Hanson, Esq., Bernstein Shur, 100 Middle Street, Portland, Maine 04101 and _____

7. Notwithstanding any other provision herein, in the event that a notice of an Event of Revocation is delivered pursuant to Section 5 hereof, any mortgagee of Licensee's Property shall be entitled to cure the matter set forth in such notice within the time frames set forth in

Section 5 hereof, and the City agrees to accept such performance by any such mortgagee of Licensee's obligations hereunder. In addition, the City agrees to accept any cure of any Event of Revocation by any of Licensee's members.

IN WITNESS WHEREOF, the City of Portland has caused this Revocable License to be executed by Jon Jennings, its City Manager thereunto duly authorized, as of the day and year first written above.

CITY OF PORTLAND

By: _____
Jon Jennings, its City Manager
thereunto duly authorized

STATE OF MAINE
CUMBERLAND, ss

September ____, 2016

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

Print name: _____

My commission expires: _____

Seen and Agreed to by India Newbury Residences LLC

By: _____
Gordon Reger, its Manager

EXHIBIT A

TO

LICENSE AGREEMENT

A certain license area situated within the southwesterly side of India Street and within the southeasterly side of Newbury Street, in the City of Portland, County of Cumberland, and State of Maine as shown on the Subdivision Plan of 50-62 India Street for India Newbury Residences, LLC, by Sebago Technics, Inc. (project number 14164) last dated July 12, 2016, and being more particularly bounded and described as follows:

Beginning at the most southerly intersection corner of Newbury Street and India Street, on the southwesterly sideline of India Street and the southeasterly sideline of Newbury Street;

Thence S 52°-20'-05" W along the southeasterly sideline of Newbury Street, a distance of 106.10 feet;

Thence N 37°-39'-55" W through Newbury Street, a distance of 2.50 feet;

Thence N 52°-20'-05" E through Newbury Street and into India Street, a distance of 108.25 feet;

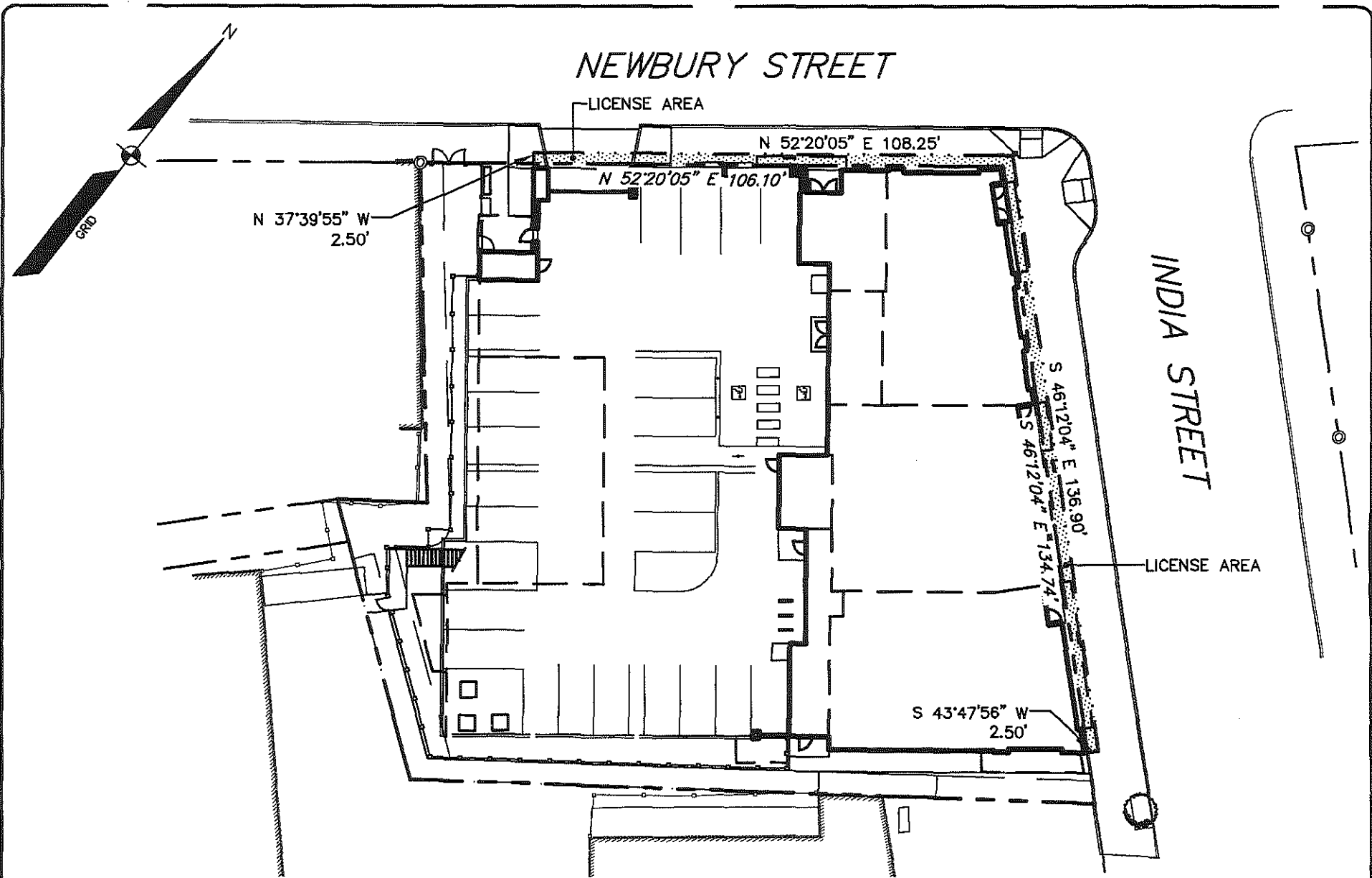
Thence S 46°-12'-04" E through India Street, a distance of 136.90 feet;

Thence S 43°-47'-56" W through India Street, a distance of 2.50 feet to the southwesterly sideline of India Street;

Thence N 46°-12'-04" W, along the southwesterly sideline of India Street, a distance of 134.74 feet to the Point of Beginning.

Meaning and intending to describe a 2.50 foot wide license area within India and Newbury Streets abutting lands of India Newbury Residences LLC as described in deeds recorded in the Cumberland County Registry of Deeds in Book 32883, Page 140 and Book 31458, Page 109.

The bearings shown hereon are Grid North, Maine State Plane Coordinate System, West Zone 1802, NAD83.



SEBAGO
TECHNICS

WWW.SEBAGOTECHNICS.COM

75 John Roberts Rd. Suite 1A
South Portland, ME 04106
Tel. 207-200-2100

250 Goddard Rd. Suite B
Lewiston, ME 04240
Tel. 207-783-5858

LICENSE AREA EXHIBIT B OF 50-62 INDIA STREET

LOCATION:
50-62 INDIA STREET
PORTLAND, MAINE

FOR: INDIA NEWBURY RESIDENCES, LLC
35 FAY ST. SUITE 107B
ROXBURY, MA 02118

SCALE: 1" = 30'

DATE: 8-22-16

SHEET:
1 OF 1

*Order 49-16/17
Tab 19 9-7-16*

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 THE INTERLOCAL STORMWATER AGREEMENT
RE: CASCO AND SACO BAY WATERSHED MUNICIPALITIES**

ORDERED, that the Interlocal Agreement between Portland and the Cumberland County Soil & Water Conservation District, Cape Elizabeth, Cumberland, Falmouth, Freeport, Gorham, Scarborough, South Portland, Westbrook, Windham and Yarmouth to implement federal requirements for stormwater minimum control measures is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said document in substantially the form attached hereto and any other related documents necessary or convenient to carry out the intent of said documents and this Order.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Douglas Roncarati, Stormwater Program Coordinator

DATE: July 15, 2016

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

SUBJECT: FY2017 Letter of Agreement to Participate in the Interlocal Stormwater Working Group

SPONSOR:

(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 September 7, 2016 Final Action N/A

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)

The City of Portland is permitted to discharge stormwater from its Municipal Separate Storm Sewer System (MS4) to the Waters of the United States under a General Permit from Maine Department of Environmental Protection. This permit is separate from the Maine Pollutant Discharge Elimination System (MEPDES) permit that regulates Portland's wastewater system and combined sewer overflow (CSO) abatement program. The MS4 General Permit includes six Minimum Control Measures (MCMs) designed to help reduce the amount of pollution discharged from the MS4. In 2002 a group of 14 municipalities in the Greater Portland Area regulated under the MS4 General Permit, including Portland, formed the Interlocal Stormwater Working Group (ISWG) in order to share information, resources and generally reduce the cost of implementing several of these Minimum Control Measures. The Cumberland County Soil and Water Conservation District (CCSWCD), given their mission and expertise, helped to organize and facilitate this partnership. Over the years, much of their effort has been focused on public outreach, education and community participation in water quality issues, helping these communities to meet many of the requirements of two of the MCMs at a fraction of the cost of developing such programs in each individual community.

CCSWCD has requested that the City execute the attached letter of agreement, which provides for the City to pay its share of the costs of CCSWCD's services. The City has allocated funding for its portion of the dues that allow the ISWG and CCSWCD to work together to implement these stormwater pollution prevention programs.

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

Because the agreement does not include a termination for convenience clause, the City Manager cannot sign it without prior Council approval. It is for this reason I respectfully request that the City Council approve the agreement and authorize the City Manager to sign this Letter of Agreement.

III. INTENDED RESULT

The Council's authorization will allow the City to enter into the agreement with the Interlocal Stormwater Working Group and Cumberland County Soil and Water Conservation District. This will allow the City to continue to participate in this collaborative regional stormwater pollution prevention effort and realize the many benefits, including significant compliance program cost savings, which membership confers to participating communities.

IV. COUNCIL GOAL ADDRESSED

By authorizing the City Manager to sign and enter into this Letter of Agreement, the City Council will be furthering the following goals:

Advance Environmental Program: Advance an environmental program that safeguards our natural resources, promotes a healthy lifestyle and supports a sustainable economy;

Improve City Services: Operate the city government in an efficient and effective manner that is responsive to all segments of the community in a manner that is transparent and accountable and;

Intergovernmental Collaboration: Create a collaborative process for the on-going establishment of pro-active priorities at the regional, state and federal levels that advance the interests of the city.

V. FINANCIAL IMPACT

By authorizing the City Manager to enter into and sign this Letter of Agreement the City is committing to a contribution of \$10,100 in dues for FY2017. This figure represents a slight increase over last year's commitment of \$10,000 and reflects an increase in compliance requirements under the MS4 General Permit for Permit Year 4 (i.e.: The five year General Permit is effective between July 1, 2013 and June 30, 2018). In anticipation of the City's continued participation in the ISWG, the Department of Public Services budgeted \$11,000 in the FY17 Stormwater Budget under line 571-3140-500.20-40 Administrative Services, item 3. MS4-ISWG Dues.

VI. STAFF ANALYSIS

Participation in the Interlocal Stormwater Working Group provides the City with a very cost-effective means of meeting several of its stormwater program compliance requirements under the MS4 General Permit. This partnership provides a forum for regulated communities to share information, practices and resources related to stormwater pollution prevention. It also promotes collaborative regional solutions to water resource issue in the Greater Portland Area. Finally, participation in the ISWG provides an excellent venue for the regulated communities, State agencies, local water resource conservation groups and other entities to discuss the challenges of meeting the requirements of the Clean Water Act.

VII. RECOMMENDATION

Staff recommends that the Council approve the FY2017 Letter of Agreement with the Interlocal Stormwater Working Group and Cumberland County Soil and Water Conservation District and authorize the City Manager to sign the agreement..

VIII. LIST ATTACHMENTS

Letter of Agreement for FY2017

Prepared by: Douglas Roncarati, Stormwater Program Coordinator

Date: 7/15/2016

**INTERLOCAL AGREEMENT AMONG
CUMBERLAND COUNTY SOIL & WATER CONSERVATION DISTRICT
AND
CASCO BAY AND SACO BAY WATERSHED MUNICIPALITIES**

This Interlocal Agreement (“Agreement”) is made this ____ day of _____, 20____, by and among Cumberland County Soil & Water Conservation District, 35 Main Street, Suite 3, Windham, Maine 04062 (the “District”), an agency of the State of Maine, and the Casco Bay and Saco Bay Watershed Municipalities (the municipalities of Cape Elizabeth, Cumberland, Falmouth, Freeport, Gorham, Portland, Scarborough, South Portland, Westbrook, Windham, Yarmouth together referred to as the “Casco Bay Watershed Municipalities” and the municipalities of Biddeford, Old Orchard Beach, Saco together referred to as the “Saco Bay Watershed Municipalities”), each a municipal corporation under the laws of the State of Maine. The Casco Bay Watershed Municipalities and the Saco Bay Watershed Municipalities also are referred to herein collectively as the “Municipalities.” The foregoing also are referred to herein collectively as the “Parties” or singly as “Party.”

WHEREAS, the Municipalities are subject to the United States Environmental Protection Agency (“USEPA”) National Pollutant Discharge Elimination System (“NPDES”) Program’s Phase II Municipal Separate Storm Sewer System (“MS4”) regulations, as administered by the Department of Environmental Protection (“DEP”) through the Maine Pollutant Discharge Elimination System (“MPDES”) Program.

WHEREAS, the Municipalities are and have been regulated under a MS4 General Permit (the “General Permit”) that was first issued by DEP in 2003 and is renewed every five years.

WHEREAS, the District, under 12 M.R.S.A. Chapter 1, is an agency of the State and a public body corporate and politic, exercising public powers including, without limitation, the powers to carry out preventive and control measures and works of improvement for flood prevention, or the conservation, development, utilization and disposal of water within the District, and to cooperate, or enter into agreements with, and within the limits of appropriations or other funds duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the District, in the carrying on of erosion control

and prevention operations and works of improvement for flood prevention and the conservation, development, utilization and disposal of water within the District.

WHEREAS, State law encourages the development of regional coalitions of local governments in order to establish efficient and effective delivery of municipal services, and the Municipalities wish to meet the regulatory requirements of the General Permit as efficiently and cost-effectively as possible with minimal duplication of efforts.

WHEREAS, many of the requirements of the General Permit lend themselves to a regional collaborative approach that allows efficiencies and cost-effective implementation for the stormwater minimum control measures (“MCM Requirements”) required under the MS4 regulations and the General Permit, which include:

1. Public Education & Outreach;
2. Public Involvement;
3. Illicit Discharge Detection & Elimination (IDDE);
4. Controlling Runoff from Construction;
5. Managing runoff during Post-Construction; and
6. Pollution Prevention & Good Housekeeping.

WHEREAS, the District has expertise in stormwater management and in stormwater-related public education, outreach and involvement, and the District has agreed to provide stormwater management and stormwater-related public education, outreach and involvement services to the Municipalities to assist in implementation of the MCM Requirements through the Interlocal Stormwater Working Group (“ISWG”) that was formed in 2002. Since that time, the District has provided services to wholly satisfy minimum control measures 1 and 2 for the Municipalities in ISWG¹.

¹ In 2002, municipalities participating in ISWG were limited to the Casco Bay Watershed Municipalities, who participated in a grant-funded project to address 3 issues (MS4 rule, FEMA hazard mitigation eligibility requirements, delegation of Stormwater permitting authority to municipalities). In 2005, the Saco Bay Watershed Municipalities joined ISWG, and along with the Cumberland County Municipalities, executed an Interlocal Agreement to include all 14 Municipalities, which allowed CCSWCD to provide assistance for MCM1 and 2 throughout the Casco Bay Watershed and Saco Bay Watershed Municipalities.

WHEREAS, the recent regulatory atmosphere has seen an increase in enforcement and inspections by both USEPA and DEP. Subsequently, additional MS4 minimum control measures have been identified where the Municipalities can collaborate, which will result in cost-effective regional collaborative implementation of all six minimum control measures, in whole or in part.

WHEREAS, the District has expertise in all aspects of MS4 regulation implementation and has gained valuable knowledge and insight from attending the regulatory inspections that have occurred with both USEPA and DEP.

WHEREAS, it will be to the advantage of all Parties to provide regional collaborative assistance through the District and ISWG, enabling each Municipality to cost-effectively address and implement the MCM Requirements, and to provide consistent oversight for management of stormwater that will benefit the waters of each Municipality and the State of Maine.

WHEREAS, Maine statute (30-A M.R.S.A. §§ 2203 *et. seq.*) clearly states that the Interlocal Cooperation Act is to be “liberally construed” to effectuate “the intent of Legislature to avoid proliferation of special purpose districts and inflexible laws,” and authorizes the District, as an agency of State Government, to exercise, enjoy and act jointly or cooperatively with any party capable of similar powers, privileges or authority, including the Municipalities.

WHEREAS, all Parties are willing to share in a regional implementation of the MCM Requirements on a cost-sharing basis through this Agreement, with the District being the technical and educational service provider for the Municipalities, and with these services being provided through ISWG.

NOW THEREFORE, in consideration of these covenants herein, the Parties do agree as follows:

1. This Agreement is an interlocal cooperation agreement pursuant to 30-A M.R.S.A. §§ 2203 *et. seq.* for the purpose of providing regional implementation of the MCM Requirements and assistance for each Municipality on a cost-sharing basis on the terms and conditions set forth in this Agreement. The Municipalities will work collaboratively and cooperatively with the District through ISWG.

2. The specific terms and conditions of this Agreement are as follows:

A. Its duration

The term of this Agreement shall commence upon execution and shall continue for the duration of each five-year General Permit, and shall renew automatically for the term of each successive General Permit unless a Party nonrenews or sooner terminates its participation under this Agreement as provided in Section 2.E below.

B. The precise organization, composition and nature of any separate entity created by the agreement

At the beginning of each Fiscal Year, which shall be from July 1 of one year until June 30 of the next year, that a General Permit or renewal thereof is in effect, which also shall be the "Permit Year," each Municipality shall select an ISWG representative (the "ISWG Representative") who shall be available to attend regular ISWG meetings and for consultation as necessary. The ISWG Representatives shall meet every other month to conduct regular meetings, and more frequently if needed, and these regular meetings may be supplemented by additional committee meetings (e.g., Budget Committee, etc.), as appropriate. The District shall facilitate the meetings and ISWG shall operate based on consensus. The responsibilities of all Parties are addressed in Section F below.

C. Its purpose

The purpose of this Agreement is to allow the Municipalities to meet the General Permit's regulatory compliance requirements efficiently and cost-effectively, with minimal duplication of effort among the Municipalities. Formalizing the operation of ISWG under this Agreement allows the Municipalities to (1) collaborate regionally and cost-effectively to address all six MCM Requirements; and (2) utilize the District as a technical and education service provider to address and implement any or all of the MCM Requirements.

D. The manner of financing and establishing/maintaining a budget

On or by May 1 of each Permit Year, the ISWG Representatives, with District assistance, shall develop and adopt: (1) an "Annual Scope of Work" outlining the services to be provided by the District in the following Permit Year, and (2) a budget which shall state the "Total Sum," defined as the amount

required to fund the services in the Annual Scope of Work to be provided by the District in the following Permit Year, and the District shall provide each Municipality with a statement of its Annual Cost (defined below). Each Municipality shall pay the District an annual amount (the "Annual Sum") for each Permit Year for performing the services agreed upon by the Municipalities and the District through ISWG which are described in the Annual Scope of Work². The Annual Sum will be calculated and payable as follows:

- Each Municipality shall be obligated to pay as its Annual Sum an amount equal to one divided by the number of Municipalities that have entered into this Agreement or any Amendment thereto for that next Fiscal Year/Permit Year, multiplied by the Total Sum;
- The District shall invoice each Municipality on or by May 30th for the Annual Sum due for the next Fiscal Year;
- Each Municipality shall pay the invoiced Annual Sum by August 30th of each Fiscal Year/Permit Year; and
- Payments made after August 30th are subject to a 1.5% per month late service charge.

E. The method to terminate the Agreement and dispose of property upon termination; and

As stated in Section 2.A above, any Party may nonrenew or terminate its participation under this Agreement upon no less than eighteen (18) months' prior written notice provided to each Party (the District's Director and to each Municipality's ISWG Representative), with a copy to each Municipality's Manager or Administrator. Said notice of nonrenewal termination shall be provided to each party as referenced above, no later than December 31 of any year which at least 18 months prior expiration of the then-current General Permit or the termination date, which shall be the July 1 that is at least eighteen (18) months from the date of the notice of nonrenewal or termination. Notwithstanding a Party's nonrenewal or termination, the nonrenewing or terminating Party shall:

- Continue to be liable for its share of all costs incurred hereunder prior to the effective date of the terminating Party's termination until such liabilities are paid in full; and

² In cooperation with the ISWG representatives, the annual scope of work will be prepared by CCSWCD and presented in coordination with the annual budget. The annual sum to be paid to CCSWCD in a permit year will be discussed with the ISWG Budget Committee starting in February. A recommendation from the ISWG Budget Committee will be made to the larger group on or before the May ISWG meeting.

- Become wholly responsible for addressing and implementing all of the MCM Requirements within the Municipality.

No property is anticipated to be acquired by ISWG, therefore, disposal of property upon termination of this Agreement by all Parties is not anticipated at this time. However, in the event that capital equipment or property is acquired, the ISWG Representatives shall agree upon the disposal of all such property upon termination of this Agreement by all Parties.

F. Any other necessary and proper matters.

(1) ADDITIONAL MUNICIPALITIES: The Parties understand and agree that additional municipalities may wish to join this Interlocal Agreement. If the legislative body of an additional municipality approves its participation as a Party to this Agreement, the entering municipality must enter into an amendment to this Agreement by which the additional municipality shall agree to be bound by the provisions of this Agreement; and any such amendment shall become effective as of the first day of the Fiscal Year/Permit Year following the execution of that amendment, provided the additional municipality has paid its Annual Sum.

(2) ADDITIONAL WORK: The Parties understand and agree that any “Additional Work,” defined as stormwater-related services provided by the District to a Municipality outside of the Annual Scope of Work, will be under separate agreements negotiated and entered into between the District and the individual Municipality requesting the Additional Work.”

3. Because this Agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the following additional items apply:

A. Administrator or joint board responsible for administering the joint or cooperative undertaking.

All Municipalities shall identify one ISWG Representative as described in Section 2.B. The District shall facilitate and act as administrator for the meetings and coalition of Municipalities that operates through ISWG based on consensus.

B. Manner of acquiring, holding, disposing of real and personal property used in the join or cooperative undertaking

PROPERTY: No property is anticipated to be acquired by ISWG, therefore, acquisition, holding and disposal of property is not anticipated at this time. However, in the event that capital equipment or property is acquired, disposal is governed by Section 2.E above.

REVENUES: In the event of receipt of any grants, funds or a budget surplus, credit for such revenue shall be credited to each of the Municipalities on the same basis as provided for the sharing of Total Costs, after all District services for that Fiscal Year are paid.

4. **Responsibility.** This Agreement does not relieve any Municipality of its obligations or responsibility to comply with the General Permit. It is each Municipality's responsibility to submit appropriate documentation of actions and responsibilities required under the General Permit.

The responsibilities of each Party are as follows:

A. Obligations of the District:

- The District shall be responsible for providing services as outlined in the Annual Scope of Work and for compiling documentation for an annual report to the Municipalities on or by August 1st with a summary of completed services for the prior Permit Year.
- The District shall propose an Annual Scope of Work and budget³ for the ISWG Budget Committee to review starting in February of each permit year; revisions will be made and incorporated in agreement with the results of the ISWG Budget Committee meeting.
- The District shall invoice each Municipality on or by each May 30th.
- The District agrees to comply with the Federal Office of Management and Budget accounting standards continued in 2 CFR Chapter II Part 225 "Cost Principles for State, Local and Indian Tribal Governments" and with Uniform Administrative Requirements for Grants and cooperative agreements 40 CFR Part 31.

³ An annual scope of work and budget for ISWG is provided by CCSWCD, which includes facilitation and coordination of ISWG as a collective organization, implementation of collaborative MCM requirements for all regulated communities, and additional support on stormwater and other regulatory programs and developments, as needed/requested.

B. Obligations of each regulated municipality:

- Each Municipality shall select an ISWG Representative to be available for all meetings and consultations as necessary. A first and second alternate may also be identified by each Party. The ISWG Representative, appointed by the respective Municipal Manager or Administrator at the beginning of each Fiscal Year/Permit Year, will remain the same from year-to-year, unless ISWG and the District are otherwise notified by the Municipality.
- Each ISWG Representative will represent its respective Municipality and be authorized to act on its behalf within ISWG.
- Each Municipality shall be responsible for submitting any and all permit documents, including (but not limited to) annual reports and notices of intent to comply to federal, State and local regulatory agencies.
- Each Municipality shall remit payment of its Annual Sum to the District on or by each August 30th to CCSWCD Attention: District Program Manager, 35 Main Street, Windham, Maine 04062.

5. **Liability and Indemnification.** Each Party shall defend, indemnify and hold each and every other Party hereto harmless from any claim, cause of action, liability or expense, including without limitation, costs and reasonable attorney's fees, arising out of or resulting from the error, act or omission of the indemnifying Party's officers, agents or employees. This section shall not be interpreted to waive the monetary limits or substantive areas of immunity under the Maine Tort Claims Act (14 M.R.S.A. §1801 *et. seq.*) or any other immunities or defenses under that Act or other applicable law.

6. **Entire Agreement, Governing Law of the Agreement.** This Agreement constitutes the entire agreement among the Parties. If any clause, section or provision is held to be invalid or unenforceable, that shall not affect the validity of the remainder of Agreement and the Parties agree to meet and negotiate a new clause, section or provision. Amendments to this Agreement shall be in writing and executed by all Parties. This Agreement shall be governed solely by the laws of the State of Maine.

7. **Authority.** By executing this Agreement, each Party warrants that the representative signing below has been duly authorized by all appropriate actions of that Party's governing body to enter into and execute this Agreement, and that this Agreement represents a legal, valid and binding obligation of each Party, enforceable upon it in accordance with its terms and by application of equitable principles if equitable remedies are sought, except as enforceability may be limited by applicable bankruptcy or similar laws.

WITNESSETH, that this Interlocal Agreement is made this 1st day of July 2016 by and among the Municipalities and the District.

Authorized Representative for Cumberland County Soil & Water Conservation District

Signature: _____
Representative: Carol Anne Jordan
Title: Chair, Board of Supervisors
Date: July 1, 2016

Authorized Representatives for Municipalities (Signature pages for each Municipality are attached)

Signature: _____
Municipality: _____ (print name of municipality)
Representative: _____ (print name of signatory)
Title: _____ (print signatory's title)
Date: _____

*Order 50-16/17
Tab 20 9-7-16*

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 THE THREE-PARTY AGREEMENT
BETWEEN PORTLAND WATER DISTRICT,
WESTBROOK AND PORTLAND
RE: BRIGHTON AVENUE SEWER SERVICE AGREEMENT**

ORDERED, that the agreement between the Portland Water District, Westbrook and Portland for Westbrook to provide sewer treatment for sewage and waste water from a section of Brighton Avenue in Portland is hereby approved in substantially in the form attached; and

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

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan

FROM: Benjamin Pearson, Compliance Coordinator, Water Resources Division,
Department of Public Works

DATE: 7/28/2016

SUBJECT: Portland-Westbrook Intermunicipal Agreement – Brighton Avenue Area

SPONSOR: Jon P. Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading _____ Final Action ___/7/2016_____

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

Action can be taken another meeting if necessary, though not preferred.

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

No presentation planned unless requested. Benjamin Pearson, DPW –Water Resources, will attend the meeting should any questions arise.

I. ONE SENTENCE SUMMARY

This three party agreement between the City of Portland, City of Westbrook and the Portland Water District formalizes the sanitary sewer discharge from a small section of Brighton Avenue within Portland to the Westbrook sanitary sewer system.

II. AGENDA DESCRIPTION

An agreement between Portland, Westbrook, and the Portland Water District to formalize responsibilities and revenue terms for sanitary sewer discharges from a small area of Brighton Avenue. The properties in this area are within Portland but discharge sewage into a sewer system that flows into Westbrook for treatment. This agreement is modeled after the existing Intermunicipal Agreement with the same parties for the Riverside Street Sewer Service Area that also discharges to Westbrook.

III. BACKGROUND

In two areas of Portland, sanitary sewer is discharged into the sewer system that flows into Westbrook. Instead of being treated at Portland's East End Treatment Facility, this discharge is treated at the Westbrook Gorham Regional Treatment Plant. The two areas are both very close

to the Portland limits and are defined in Exhibit A. The Riverside Street Sewer Service Area, shown in Exhibit B, already has an Intermunicipal Agreement. This agreement is for the Brighton Avenue area, shown in Exhibit C, which consists of four parcels, including a soon to be redeveloped hotel.

The agreement formalizes responsibilities for all parties and cost sharing for sanitary discharge from the area. It also includes a mechanism in which the City of Portland and the City of Westbrook split the difference in excess sewer funds from the area.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

To formalize and cost and revenue sharing agreement with the City of Westbrook and the Portland Water District for the Brighton Avenue area of Portland that discharges sanitary sewer to the City of Westbrook.

V. FINANCIAL IMPACT

On an annual basis, the City of Portland will receive half of the excess sewer charges. The properties within the agreement will be charged Portland rates. From this, Westbrook will receive the amount of sewer charges that would have been charged to the properties at Westbrook's rate. Since Portland's rate are higher than the City of Westbrook's, there will be a difference. This difference will be split between Portland and Westbrook.

The agreement also requires Portland to share financial responsibility for plant upgrades in Westbrook if required. Westbrook must notify Portland of any upgrades with a two year written notice. At that point, Portland will have the option of:

- disconnecting from the Westbrook system,
- provide payment for the plant upgrade for the amount of sewer discharge from both areas defined in Exhibit A, or a minimum amount of 150,000 gallons up to a mutually agreed upon maximum amount
- negotiate an alternative agreement

Other potential costs may come from if flow monitoring is requested by any party. If requested, Portland would be responsible for providing flow monitoring data.

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

The following are terms of the agreement in summary:

- Discharge from the Brighton Avenue area, as defined by the attached Exhibit C, will not exceed 0.02 million gallons per day which may determined through the use of water use records or the installation of flow monitoring equipment.

- Users within the Brighton Avenue area will comply with the Westbrook Sewer User Ordinance
- Portland is responsible to approve all new sewer connections and must notify all members of the agreement.
- Portland is responsible to administer the Industrial Pretreatment Program within this area.
- Portland will bill users within the area at Portland rates and give Westbrook the total amount of sewer charges
- In the case of delinquencies in payments within the area, the Portland Water District will give Westbrook payment and charge Portland in the annual assessment
- Portland must be notified if the Westbrook treatment facility is nearing capacity with a written two year notice. After notification, Portland has options on how to proceed as explained in the financial impact section of this request
- Portland will receive 50% of the excess credit for the area in questions as calculated by the following:

Excess Credit

Annual billable flow (hundreds of cubic feet) into Treatment Plant from
SERVICE AREA X PORTLAND rate.

Less Annual billable flow (hundreds of cubic feet) into Treatment Plant
from SERVICE AREA X WESTBROOK rate.

- Portland will be charged for any interceptor facilities within the area built by the Portland Water District
- Portland will be responsible to build any collector facilities required in the area
- The agreement is for a 10 year period

VII. RECOMMENDATION

City Council should approve this agreement to formalize the remaining area within Portland that discharges sanitary sewer to Westbrook.

VIII. LIST ATTACHMENTS

Portland-Westbrook Intermunicipal Agreement – Brighton Avenue Area with Exhibit A, Exhibit B, Exhibit C

Prepared by: Benjamin Pearson

Date: 2016-08/16

1. SEWER SERVICE AGREEMENT

THIS AGREEMENT is made this _____ day of _____ 2016, by and among the CITY OF PORTLAND, a municipal corporation existing under the laws of the State of Maine with a business address of 389 Congress Street, Portland, Maine ("PORTLAND"); the CITY OF WESTBROOK, a municipal corporation existing under the laws of the State of Maine, with a business address of 2 York Street, Westbrook, Maine ("WESTBROOK"); and the PORTLAND WATER DISTRICT, a quasi-municipal corporation existing pursuant to Chapter 84 of the Private and Special Laws of Maine of 1975, as amended, with a business address of 225 Douglas Street, Portland, Maine ("DISTRICT").

WHEREAS, there is a significant need for public sewage collection and treatment in the Brighton Avenue vicinity of Portland, which area is described on the plan attached as Exhibit A hereto (the "SERVICE AREA"); and

WHEREAS, the development of the sewer facilities will be enhanced and made more timely if DISTRICT provides the interception and treatment of the sewage using the existing Westbrook Gorham regional treatment plant; and

WHEREAS, the parties have previously entered into an agreement for the provision of sewerage services dated in September, 2012, to operate the sewerage services in the area of Riverside/Warren and Forest Ave in Portland, as defined in Exhibit B, in accordance with its terms; and

WHEREAS, the parties deem it appropriate and in the interests of the public health, safety and welfare to enter into an additional agreement to provide the sewerage services to the SERVICE AREA described herein, pursuant to the terms hereof.

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

1. The domestic and sanitary sewage and waste water from the SERVICE AREA, as specifically defined on the plan attached as Exhibit C, will be intercepted by WESTBROOK and delivered to the existing Westbrook Gorham Regional Treatment Plant for treatment. WESTBROOK agrees that Portland sewage treated at the Westbrook Gorham Plant will be allocated to the design capacity of the Plant as originally provided to Westbrook. The parties agree that the flow pursuant to this Agreement shall not exceed 0.02 million gallons per day computed as a monthly average flow. If requested by either party, PORTLAND shall install and maintain a flow measuring device that will be used solely to measure the flow of PORTLAND sewage into the WESTBROOK system. If a flow measuring device is installed, PORTLAND will be responsible for maintenance and providing flow information to WESTBROOK and the DISTRICT.

2. Sewer users in the SERVICE AREA will comply with use standards in the Westbrook Sewer User Ordinance as found in Chapters 26 and 27 of the City of Westbrook Ordinance.
3. PORTLAND shall approve all new sewer connections in the SERVICE AREA. All parties to this Agreement shall be notified in writing of all new sewer connections in the SERVICE AREA. PORTLAND will collect all sewer connection fees for the SERVICE AREA.
4. PORTLAND shall administer the Industrial Pretreatment Program in the SERVICE AREA. PORTLAND agrees to amend its Ordinance and/or rules and regulations as required, to make the Westbrook Industrial Pretreatment Program applicable to the SERVICE AREA. The DISTRICT reserves the right to audit PORTLAND's records related to the Program and to conduct on-site inspections on customers who require pretreatment. PORTLAND will collect all industrial pretreatment program fees for the SERVICE AREA.
5. Sewer users in the SERVICE AREA shall be billed the Portland sewer user rate, provided that said rate is higher than WESTBROOK's rate. In the event that the WESTBROOK sewer user unit rate (excluding minimum unit rate) becomes higher than PORTLAND's sewer user rate at any time in the future, this Agreement shall be renegotiated. Sewer user fees shall be billed and collected by the DISTRICT in accordance with the billing agreement between PORTLAND and DISTRICT. All fees collected from users in the SERVICE AREA shall be credited to WESTBROOK's annual sewer assessment.

PORTLAND shall retain the right to charge a ready to serve charge for properties in the area that are not connected to the sewer and shall retain all revenue associated with that charge.

6. In the event that sewer users in the SERVICE AREA do not pay their sewer assessments and the outstanding delinquent balance is included in the credit made by the DISTRICT to PORTLAND's assessment, the DISTRICT will credit to WESTBROOK's sewer assessment such delinquent balance and add such amount to PORTLAND's annual assessment.
7. WESTBROOK represents that it has sufficient capacity in the DISTRICT's treatment plant to accommodate the sewage generated in the SERVICE AREA.

WESTBROOK shall provide PORTLAND a two (2) year written notice in the event that the treatment plant is reaching its capacity. PORTLAND shall have the option of:

- a. Disconnecting its sewerage service from the treatment plant within the two (2) year period, without penalty; or

- b. May request DISTRICT and WESTBROOK to expand the DISTRICT's treatment plant capacity at PORTLAND's cost, in an amount equal to PORTLAND's annual flow volumes into the plant, in the minimum amount of 150,000 gallons per day up to a mutually agreed-upon maximum amount ; or
 - c. Negotiate an alternative agreement agreeable to all parties to this Agreement.
8. PORTLAND and WESTBROOK shall calculate, on an annual basis, an amount which shall be considered a credit to PORTLAND to be used in the event the Treatment Plant is expanded as provided in Paragraph 7(b). DISTRICT shall provide billing records reflecting billings in the Service Area to PORTLAND and WESTBROOK for the purposes of calculating such credit. The credit shall be calculated as follows:

PORTLAND shall receive as a credit 50% of:
Annual billable flow (hundreds of cubic feet) into Treatment Plant from
SERVICE AREA X PORTLAND rate.
Less Annual billable flow (hundreds of cubic feet) into Treatment Plant
from SERVICE AREA X WESTBROOK rate.

WESTBROOK and PORTLAND shall notify DISTRICT of the credit amount. DISTRICT shall create a fund and deposit into such fund said credit amount, which shall be utilized by PORTLAND solely for the costs of the expansion of the Treatment Plant, as provided in paragraph 7(b), should one occur. Any interest generated on funds in such escrow account shall be paid to WESTBROOK.

In the event that this Agreement is terminated or expires and is not renewed, and the Treatment Plant expansion, as provided in paragraph 7(b), has not occurred, any amount remaining in such escrow account shall be paid to WESTBROOK.

9. The DISTRICT shall construct all interception and treatment facilities necessary for providing the sewage services to the SERVICE AREA and shall apportion all such costs to PORTLAND, including the financing and operating and maintenance costs in accordance with the terms of its Charter.
10. PORTLAND shall construct all collector facilities constructed or to be constructed within the SERVICE AREA, which collector facilities shall remain the property and the responsibility of PORTLAND. PORTLAND shall deliver such sewage to the DISTRICT at the following locations: (1) the manhole located on Brighton Avenue, Portland, Maine, at Station 4+60, as shown on Plan Number 491/6, City of Portland, Engineering Archives.
11. This Agreement shall continue for a ten (10) year period unless terminated by two (2) years written notice of any party or pursuant to the terms of Section

7(a) of this Agreement. Upon termination, the interception and treatment of the sewage from the SERVICE AREA shall be performed by the DISTRICT in accordance with the terms of its Charter. In the event of termination, PORTLAND will notify its customers of any changes in the sewer service resulting from such termination. This Agreement may be renewed for an additional ten (10) year period upon agreement of all the parties.

12. The entire agreement among the parties relating to the subject matter hereof is contained herein, and no other terms or provisions and no representations or warranties of any of the parties not expressly set forth shall be of any force or effect. Each of the parties agrees to take whatever action and execute whatever document may be necessary to effectuate all the provisions of this Agreement. This Agreement may not be modified, altered or amended, except in writing, duly executed by all the parties.

13. In the event any inconsistency should arise between this Agreement and the DISTRICT's Charter, the Charter shall prevail.

IN WITNESS WHEREOF, the CITY OF PORTLAND, the CITY OF WESTBROOK and the PORTLAND WATER DISTRICT have caused this instrument to be signed and sealed in their respective names by their respective duly authorized officers the day and year first written above.

WITNESS

CITY OF PORTLAND

By _____
Jon Jennings
Its City Manager

WITNESS

CITY OF WESTBROOK

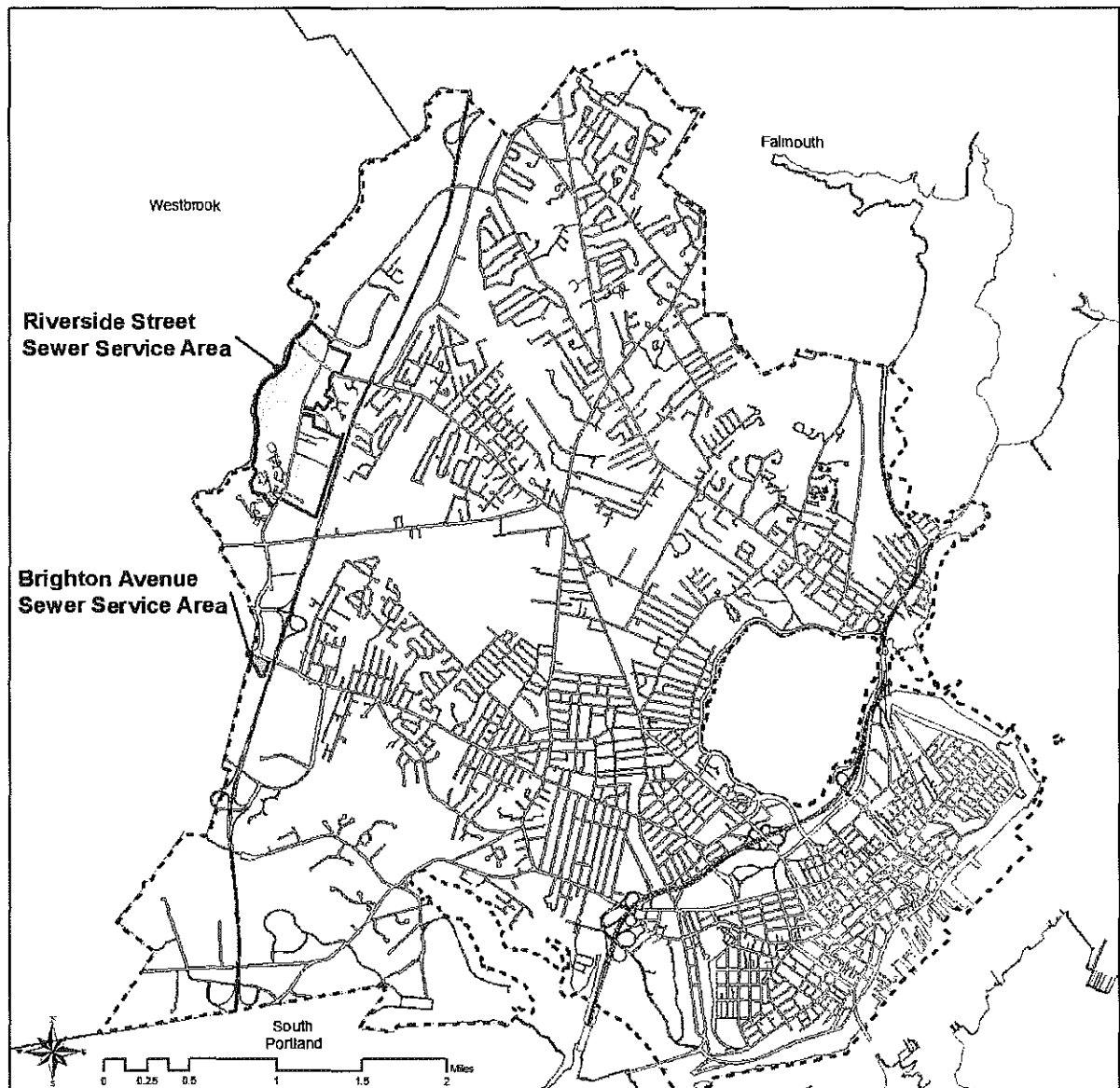
By _____
Colleen Hilton
Its Mayor

WITNESS

PORTLAND WATER DISTRICT

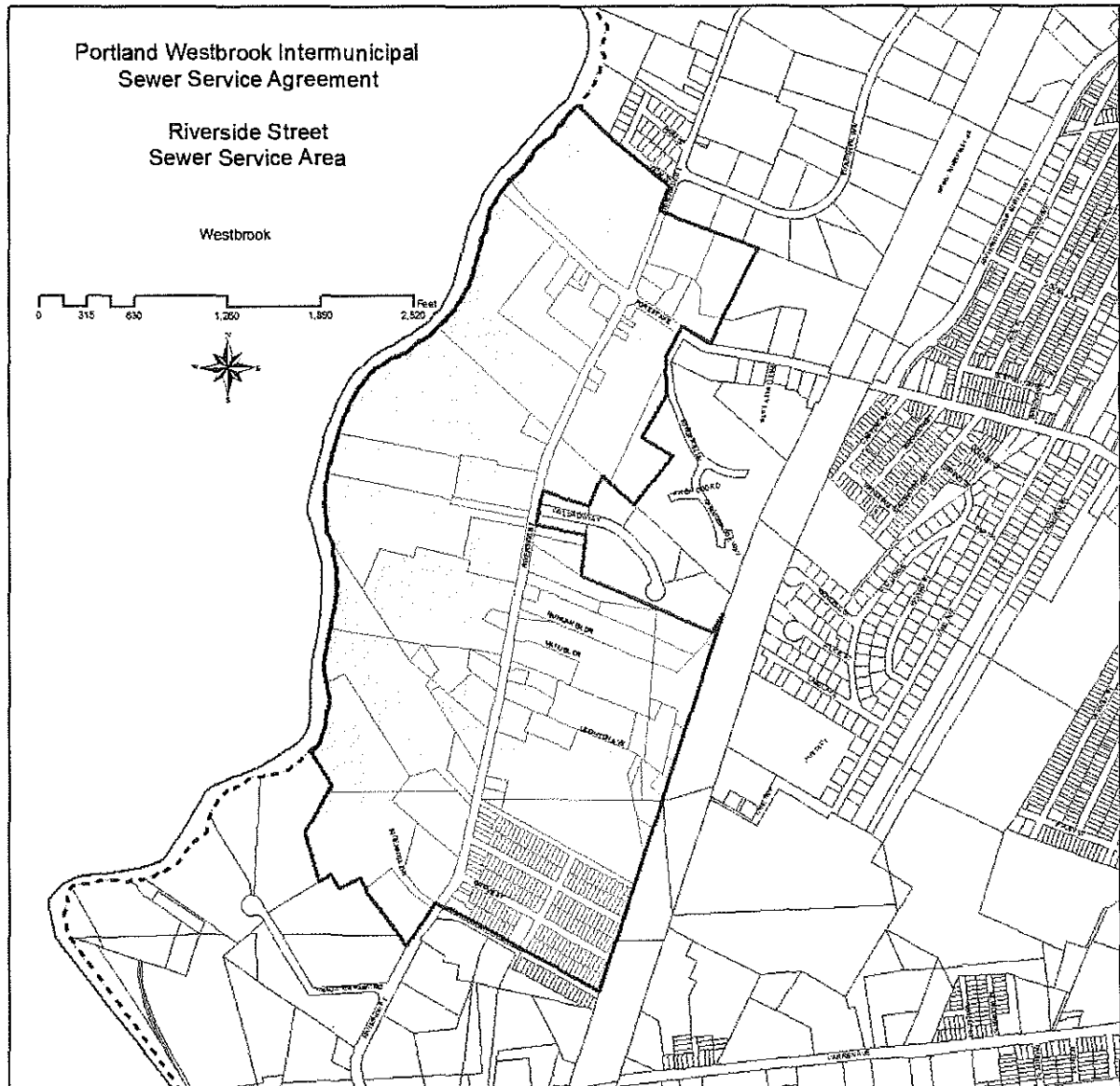
Ronald Miller
Its General Manager

Exhibit A Locus Map of Portland-Westbrook Intermunicipal Sewer Service Areas



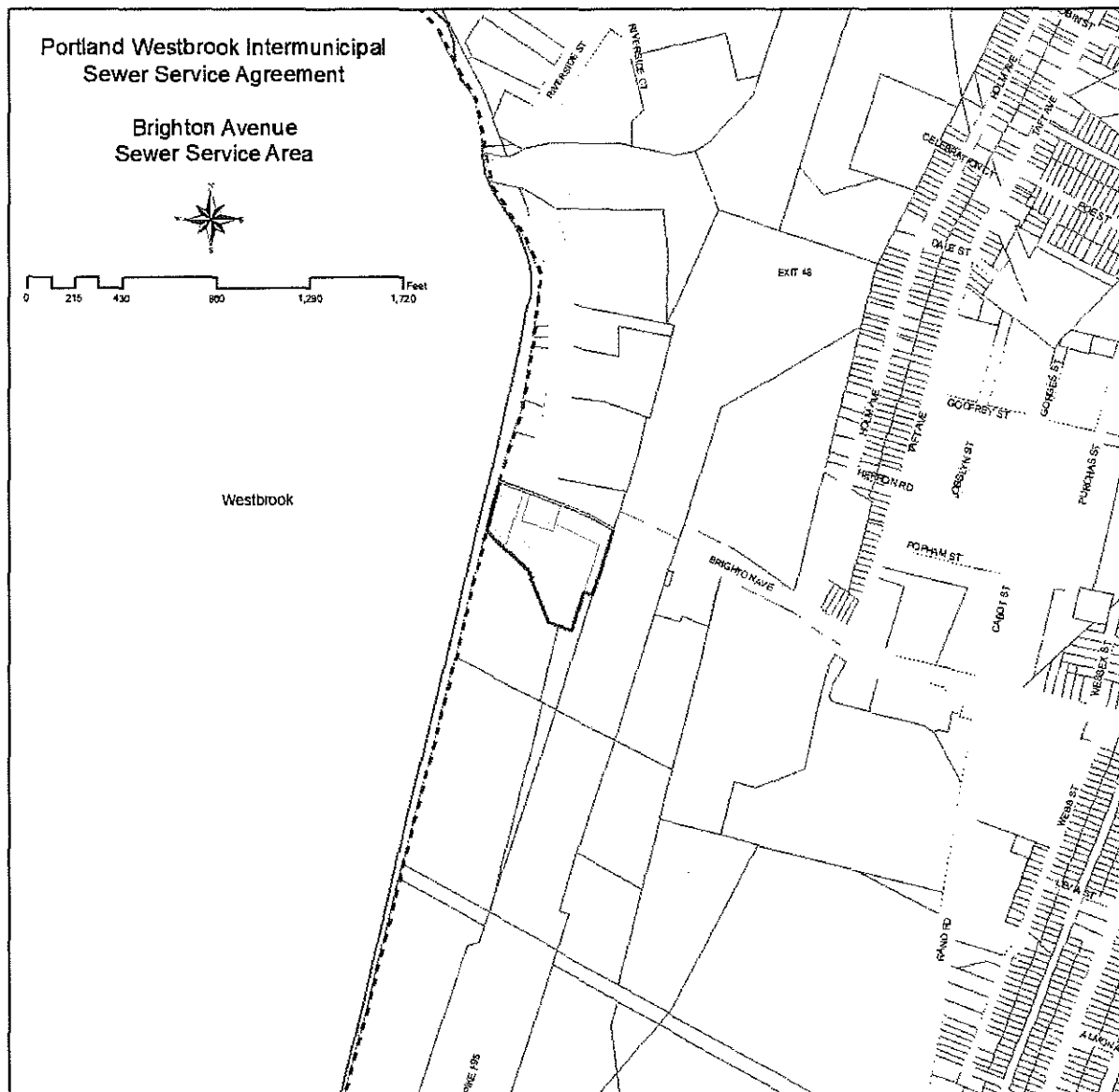
Map Prepared by the City of Portland's Department of Public Works February 2016

Exhibit B Map of Portland-Westbrook Intermunicipal Sewer Service Area



Map Prepared by the City of Portland's Department of Public Works July 2016

Exhibit C Map of Portland-Westbrook Intermunicipal Sewer Service Area



Map Prepared by the City of Portland's Department of Public Works July 2016

*Order 51-16/17
Tab 21 9-7-16*

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 AGREEMENTS BETWEEN PORTLAND, MAINE
DEPARTMENT OF TRANSPORTATION AND PORTLAND AREA
COMPREHENSIVE TRANSPORTATION SYSTEM
RE: WASHINGTON AVENUE AND CONGRESS STREET PROJECTS**

ORDERED, that the two three-party agreements for preliminary design reports ("reports") between the Portland Area Comprehensive Transportation System, the Maine Department of Transportation and Portland, for the projects below, are hereby approved:

Washington Avenue from Congress Street to Cumberland Street, and
Congress Street from State Street to Temple Street; and

BE IT FURTHER ORDERED, that the local share of the cost of the reports, \$43,900 for Washington Avenue and \$20,938 for Congress Street, is hereby appropriated; and

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

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: Jon Jennings, Ethan K. Strimling, Anita LaChance, Sonia Bean,
Danielle West-Chuhta, Nancy English, Julianne Sullivan,

FROM: Kathi Earley, Engineering Division Manager
Department of Public Works

CC: Christopher Branch, Director of Public Works
Jeff Levine, Director of Planning & Urban Development
Jeremiah Bartlett, Transportation Systems Engineer

DATE: August 22, 2016

SUBJECT: Request to enter into Three-Party Agreements re: 2019 PACTS projects

SPONSOR: Jon Jennings, City Manager.

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading Sept 7, 2016 **Final Action:** Sept 19, 2016

Can action be taken at a later date: No (If no why not?) PACTS and MaineDOT very recently established a Preliminary Design Report task & deadline requiring three-party agreements to be authorized in September 2016.

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

I. ONE SENTENCE SUMMARY

City Council endorsement of three-party agreements between the City of Portland, MaineDOT, and PACTS is required to begin the design process for projects being considered for the 2019 PACTS Transportation Improvement Plan (TIP).

II. AGENDA DESCRIPTION

As follow-up to a prior City Council Order (#202-15/16) endorsing applications to PACTS (Portland Area Comprehensive Transportation System); candidate projects for the 2019 TIP Program have been determined. Two of the candidates identified for Portland require a Preliminary Design Report (PDR); they are:

- Washington Avenue from Congress Street to just past Cumberland Avenue/7-11, which included street and sidewalk reconstruction, streetscape enhancements as well as traffic signal replacement; and

- Congress Street signal upgrades from State Street to Temple Street to better support outcomes from the Congress Street Bus Corridor, in addition to critical signal equipment modernization needs.

These projects can only progress towards a May 1, 2017 PDR deadline if there is City Council endorsement of the three party agreements prior to October 2016. These three-party agreements support only the design and ROW phases of these projects; future two-party agreements, Local Match funding, and City Council Order requests are necessary to proceed to construction in 2019.

III. BACKGROUND

(See Agenda Description, above.)

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Authorizing these agreements will support & commit Local funds to the necessary PDR process that may result in PACTS awarding 2019 TIP projects. If awarded, these projects will improve the street, sidewalk, streetscape and traffic signal conditions on Washington Avenue from Congress Street to just past Cumberland Avenue/7-11, as well as traffic signal system conditions and signal coordination on Congress Street from State Street to Temple Street.

A key goal of pursuing these Transportation projects thru PACTS is the highly leveraged outcome; typically the City will owe a 25% Local Match for major infrastructure system enhancements.

V. FINANCIAL IMPACT

Projects awarded by the PACTS TIP Program are typically financed with 75% federal and State funds and 25% local funds. The estimated costs of Preliminary Design Report (PDR) and right-of-way determination phases for these specific projects are as follows:

Project Name	Estimated PDR and ROW cost	Local Share (25%)
Washington Avenue	\$175,600	\$43,900
Congress Street Signals	\$83,750	\$20,938
	Total = \$259,350	Total = \$64,838

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

This newly required PDR & ROW process is intended to prepare a thorough analysis of potential project costs prior to capital plan decision-making. This should prevent 'cost creep' and ensure that the City's financial obligation is clearly defined before any formal construction commitments are made.

Assuming we enter into these agreements, MaineDOT will administer the PDR process and we believe PACTS will determine 2019 TIP awards by July 2017.

VII. RECOMMENDATION

DPW staff recommends that the City Council endorse the three-party agreements for this design work to keep these 2019 candidate projects on schedule for potential award.

VIII. LIST ATTACHMENTS

- 1.) **PENDING** Three-Party agreement for Washington Avenue signals & streetscape
- 2.) **PENDING** Three-Party agreement for Congress St signals

Prepared by: Jeremiah Bartlett/Kathi Earley/Bruce Hyman
Date: 8/16/2016

Bean/agendarequestmemo/rev 11/2015



**MAINE DEPARTMENT OF TRANSPORTATION
THREE-PARTY PARTNERSHIP AGREEMENT
CONGRESS STREET INTERSECTIONS
CITY OF PORTLAND**

(Receivable)

Internal Use Only

CT#: _____

CSN: _____

TEDOCS #: _____

PROGRAM: Bureau of Planning

Internal Use Only

WIN #: 022132.00

Agreement Maximum Amount: \$83,750

N/M MPO Id#: PACTS

Agreement Begin Date: Begin Date

N/M Municipality Id#: Portland

Agreement End Date: End Date

This agreement (“**Agreement**”) is entered into by the State of Maine Department of Transportation (“**MaineDOT**”), the Municipality of Portland (“**Municipality**”), and the Portland Area Comprehensive Transportation System, the designated Metropolitan Planning Organization for the Portland Urbanized Area (“**PACTS**”), jointly hereinafter referred to as the “**Parties**”.

Whereas, the project that is the subject of this Agreement consists of traffic signal improvements along Congress Street from Myrtle Street to High Street (hereafter referred to as the “**Project**”), and as further described in the attached Project Identification Form; and

Whereas, PACTS has programmed the Project for inclusion in the MaineDOT Annual Work Plan for CY16-18, using Federal capital improvement funding allocated by MaineDOT; and

Whereas, the Municipality supports the decision by PACTS to program the Project; and

Whereas, the Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the budget programmed, using a process that maximizes communication and cooperation; and

Whereas, PACTS cannot commit federal transportation funding without a formal adoption of a Transportation Improvement Program (“**TIP**”) or TIP amendment including all required public involvement processes, this Agreement does not constitute a commitment of federal funding under Title 23 Part 630; and

Whereas, the purpose of this Agreement is to identify the Parties’ individual responsibilities during the Preliminary Engineering and Right of Way (“**ROW**”) phases of the Project through completion of the Preliminary Design Report (“**PDR**”) and Preliminary Plans, and to identify the intended financial allocations between the Parties through the Preliminary Engineering phase of the Project if and when the parties formally approve and commit financial resources for the Project; and

Whereas, the Parties anticipate that as the Project development process progresses and the Project scope is more fully defined, modifications to this Agreement will be necessary. All such modifications to this Agreement shall be in writing signed by all parties.

Now therefore, in consideration of the forgoing, the Parties hereby establish and agree to the following terms and conditions:

The following Appendix is hereby incorporated into this Agreement by reference

- Appendix A - Project Identification Form

Project Cost:

The total estimated cost of the Project through the Preliminary Engineering and ROW phases is \$83,750 (the “**Project Estimate**”), and the Parties agree to share in and allocate the associated costs of each phase as outlined in this section:

Work Phase	Estimated Federal Share	Estimated State Share	Estimated Municipal Share	Estimated Total Cost
Preliminary Engineering	\$ 59,062.50	\$ -	\$ 19,687.50	\$ 78,750.00
Right of Way	\$ 3,750.00	\$ -	\$ 1,250.00	\$ 5,000.00
Construction	TBD	\$ -	TBD	TBD
Construction Engineering	TBD	\$ -	TBD	TBD
Total Project Share	\$ 62,812.50	\$ -	\$ 20,937.50	\$ 83,750.00

1. Estimated allocations are further identified as follows:
 - a. **Federal share** (through PACTS) - 75% of federally participating costs, up to a maximum of \$62,812.50.
 - b. **State share** (through PACTS) - 0% of federally participating costs, up to a maximum of \$0.00.
 - c. **Municipal share** (through the Municipality) - 25% federally participating costs, which is estimated at \$20,937.50, plus 100% of any additional costs incurred in accordance with Section 2. below.
2. The Municipality shall be fully responsible for any and all Project costs exceeding \$83,750.00, unless otherwise agreed to in writing by the Parties through a modification to this Agreement.
3. If the actual Project cost is less than the Project Estimate the amounts owed will be adjusted according to the percentages.
4. If the Project Estimate or associated financial allocations are adjusted to reflect updated costs, MaineDOT will consult with PACTS and the Municipality before such adjustments are approved and implemented.
5. After the PDR is completed, MaineDOT will invoice the Municipality for that portion of the Project.

MaineDOT Agrees:

1. To complete, or cause to be completed, preliminary design which includes roadway design up to a fifty to sixty percent (50-60%) completion level in accordance with MaineDOT's standards and procedures; and
2. Perform ROW investigations in order to determine whether there may be a need to acquire temporary and/or permanent rights to develop the Project; and
3. To coordinate utility work, which includes identification of utility locations and/or relocation for design for Project as describe in the scope of work; and
4. To share information about the status of the Project with staff from PACTS and the Municipality at the following milestones:
 - Project kickoff/initial team meeting/formal public contact.
 - Horizontal/Vertical Alignment Complete ("HVAC").
 - Preliminary public meeting.
 - Preliminary Design Report (PDR).
 - Changes in the Project Schedule or Engineer's Estimate.

Future Phases of Work:

Should the Parties agree to move forward with future phases of the Project:

1. MaineDOT will prepare, or cause to be prepared, construction plans and specifications for the Project within the scope of work identified in the PDR, using MaineDOT's standard project development process to ensure adherence to federal and state regulations.
2. After the final Plans, Specifications and Estimate ("PS&E") package is prepared, MaineDOT and the Municipality will execute a Municipal/State Project Agreement covering Project advertisement, award, construction and construction engineering. Said Municipal/State Agreement will carry the financial terms outlined in the Project Cost section of this Agreement, as well as a schedule for collection of the Municipality's share of the remaining Project costs.
3. MaineDOT will share information about the status of the Project with staff from PACTS and the Municipality at the following milestones:
 - Formal public meeting.
 - Plan Impacts Complete ("PIC").
 - Plans, Specifications and Estimate (PS&E) complete.
 - Changes in the Project Schedule or Engineer's Estimate.

Miscellaneous Provisions:

1. The Parties will participate as partners in any public meetings held to discuss the Project.

2. MaineDOT will consult with PACTS and the Municipality before implementing any adjustments to the Project, and PACTS and the Municipality will, likewise, notify MaineDOT of any proposed changes they wish to implement.
3. If MaineDOT withdraws from the Project before it has been advertised for construction, and that action was not directed by PACTS and the Municipality, MaineDOT will be responsible for all Project costs incurred to date.
4. If the Municipality withdraws its financial support for the Project as described in the Project Cost section of this Agreement, leading MaineDOT to cancel the Project before it has been advertised for construction, the Municipality shall reimburse MaineDOT fully for any and all Project costs incurred in reliance on the Municipality commitment documented in this Agreement, including, but not limited to, reimbursement of all federal funds expended to date.
5. Anything herein to the contrary notwithstanding, the Municipality and PACTS acknowledge that, although the execution of this Agreement by MaineDOT 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 its federal partners and the Maine Legislature and, therefore, this Agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
6. The Municipality represents that its governing body has taken all steps necessary and lawful to approve the Project and the Municipality's entry into this Agreement, has appropriated or authorized the use of any necessary funds in connection with the Municipality's participation, and has further authorized the undersigned Municipal representative to execute this Agreement on the Municipality's behalf.
7. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off monies due the Municipality under a specific Project Contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other Agreement/Contract, any other Agreement/Contract with any State Department or Agency, including any Agreement/Contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller.
8. To the extent permitted by law, the Municipality and the MPO shall indemnify and hold harmless MaineDOT, its agents and employees from all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by the Municipality, its consultants or contractors. Nothing herein shall waive any defense immunity or limitation of liability that may be available under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. ***This provision shall survive any termination or expiration of this Agreement.***
9. With the exception of the provisions so noted, all provisions of this Agreement shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.

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

Date _____

John Duncan, Director
Portland Area Comprehensive Transportation System

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.

Date _____

Jon Jennings, City Manager
Municipality of Portland

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.

Date _____

Herb Thomson, Director, Bureau of Planning
Maine Department of Transportation

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.



**MAINE DEPARTMENT OF TRANSPORTATION
THREE-PARTY PARTNERSHIP AGREEMENT
WASHINGTON STREET RECONSTRUCTION
CITY OF PORTLAND**

(Receivable)

Internal Use Only

WIN #: 022134.00

N/M MPO Id#: PACTS

N/M Municipality Id#: Portland

Agreement Maximum Amount: \$175,600

Agreement Begin Date: Begin Date

Agreement End Date: End Date

This agreement (“**Agreement**”) is entered into by the State of Maine Department of Transportation (“**MaineDOT**”), the Municipality of Portland (“**Municipality**”), and the Portland Area Comprehensive Transportation System, the designated Metropolitan Planning Organization for the Portland Urbanized Area (“**PACTS**”), jointly hereinafter referred to as the “**Parties**”.

Whereas, the project that is the subject of this Agreement consists of highway reconstruction on Washington Street from Congress Street to Cumberland Avenue with traffic signal improvements at Congress Street and Cumberland Avenue intersections (hereafter referred to as the “**Project**”), and as further described in the attached Project Identification Form; and

Whereas, PACTS has programmed the Project for inclusion in the MaineDOT Annual Work Plan for CY16-18, using Federal capital improvement funding allocated by MaineDOT; and

Whereas, the Municipality supports the decision by PACTS to program the Project; and

Whereas, the Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the budget programmed, using a process that maximizes communication and cooperation; and

Whereas, PACTS cannot commit federal transportation funding without a formal adoption of a Transportation Improvement Program (“**TIP**”) or TIP amendment including all required public involvement processes, this Agreement does not constitute a commitment of federal funding under Title 23 Part 630; and

Whereas, the purpose of this Agreement is to identify the Parties’ individual responsibilities during the Preliminary Engineering and Right of Way (“**ROW**”) phases of the Project through completion of the Preliminary Design Report (“**PDR**”) and Preliminary Plans, and to identify the intended financial allocations between the Parties through the Preliminary Engineering phase of the Project if and when the parties formally approve and commit financial resources for the Project; and

Internal Use Only

CT#: _____

CSN: _____

TEDOCS #: _____

PROGRAM: Bureau of Planning

Whereas, the Parties anticipate that as the Project development process progresses and the Project scope is more fully defined, modifications to this Agreement will be necessary. All such modifications to this Agreement shall be in writing signed by all parties.

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The following Appendix is hereby incorporated into this Agreement by reference

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Project Cost:

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Work Phase	Estimated Federal Share	Estimated State Share	Estimated Municipal Share	Estimated Total Cost
Preliminary Engineering	\$ 124,200.00	\$ -	\$ 41,400.00	\$ 165,600.00
Right of Way	\$ 7,500.00	\$ -	\$ 2,500.00	\$ 10,000.00
Construction	TBD	\$ -	TBD	TBD
Construction Engineering	TBD	\$ -	TBD	TBD
Total Project Share	\$ 131,700.00	\$ -	\$ 43,900.00	\$ 175,600.00

1. Estimated allocations are further identified as follows:
 - a. **Federal share** (through PACTS) - 75% of federally participating costs, up to a maximum of \$131,700.00.
 - b. **State share** (through PACTS) - 0% of federally participating costs, up to a maximum of \$0.00.
 - c. **Municipal share** (through the Municipality) - 25% federally participating costs, which is estimated at \$43,900.00, plus 100% of any additional costs incurred in accordance with Section 2. below.
2. The Municipality shall be fully responsible for any and all Project costs exceeding \$175,600.00, unless otherwise agreed to in writing by the Parties through a modification to this Agreement.
3. If the actual Project cost is less than the Project Estimate the amounts owed will be adjusted according to the percentages.
4. If the Project Estimate or associated financial allocations are adjusted to reflect updated costs, MaineDOT will consult with PACTS and the Municipality before such adjustments are approved and implemented.
5. After the PDR is completed, MaineDOT will invoice the Municipality for that portion of the Project.

MaineDOT Agrees:

1. To complete, or cause to be completed, preliminary design which includes roadway design up to a fifty to sixty percent (50-60%) completion level in accordance with MaineDOT's standards and procedures; and
2. Perform ROW investigations in order to determine whether there may be a need to acquire temporary and/or permanent rights to develop the Project; and
3. To coordinate utility work, which includes identification of utility locations and/or relocation for design for Project as describe in the scope of work; and
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1. The Parties will participate as partners in any public meetings held to discuss the Project.

2. MaineDOT will consult with PACTS and the Municipality before implementing any adjustments to the Project, and PACTS and the Municipality will, likewise, notify MaineDOT of any proposed changes they wish to implement.
3. If MaineDOT withdraws from the Project before it has been advertised for construction, and that action was not directed by PACTS and the Municipality, MaineDOT will be responsible for all Project costs incurred to date.
4. If the Municipality withdraws its financial support for the Project as described in the Project Cost section of this Agreement, leading MaineDOT to cancel the Project before it has been advertised for construction, the Municipality shall reimburse MaineDOT fully for any and all Project costs incurred in reliance on the Municipality commitment documented in this Agreement, including, but not limited to, reimbursement of all federal funds expended to date.
5. Anything herein to the contrary notwithstanding, the Municipality and PACTS acknowledge that, although the execution of this Agreement by MaineDOT 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 its federal partners and the Maine Legislature and, therefore, this Agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
6. The Municipality represents that its governing body has taken all steps necessary and lawful to approve the Project and the Municipality's entry into this Agreement, has appropriated or authorized the use of any necessary funds in connection with the Municipality's participation, and has further authorized the undersigned Municipal representative to execute this Agreement on the Municipality's behalf.
7. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off monies due the Municipality under a specific Project Contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other Agreement/Contract, any other Agreement/Contract with any State Department or Agency, including any Agreement/Contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller.
8. To the extent permitted by law, the Municipality and the MPO shall indemnify and hold harmless MaineDOT, its agents and employees from all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by the Municipality, its consultants or contractors. Nothing herein shall waive any defense immunity or limitation of liability that may be available under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. ***This provision shall survive any termination or expiration of this Agreement.***
9. With the exception of the provisions so noted, all provisions of this Agreement shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.

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

Date _____

John Duncan, Director
Portland Area Comprehensive Transportation System

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.

Date _____

Jon Jennings, City Manager
Municipality of Portland

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.

Date _____

Herb Thomson, Director, Bureau of Planning
Maine Department of Transportation

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.

PACTS

Portland Area Comprehensive Transportation System



2019 Road Rebuild and Intersection Application

Section 1 – Project Overview

Set Aside Category: Road Rebuild

Project Name: Washington Avenue Reconstruction Ph 1: Congress Street to Cumberland Avenue

Section 2 – Project Location, Description and Justification

Municipality: Portland

Route Number/Street Name: Washington Avenue/Rt 26

Description of Project Location: Washington Av from Congress Street past Cumberland Avenue to 7-11 (this is a companion project to the Washington Avenue Intersection application)

Federal Functional Classification: Minor Arterial

MaineDOT Corridor Priority: 3

(<http://www.maine.gov/mdot/about/assets/search/>)

NHS: ☐ Yes ☒ No
(PACTS staff to indicate)

AADT: 9,220
(13); 10,110
(10)

LAP?: ☒ Yes ☐ No

Is the proposed project in an identified PACTS Congestion Management Process area? (see CMP map and descriptions):

☐ Yes ☒ No

If so, describe any congestion mitigation benefits of the proposed project:

Please state the detailed purpose and need(s) and how the project will address those needs: The Purpose of the project is to reconstruct and modernize Washington Avenue as a modern Neighborhood Main Street (street type) in the East End Neighborhood. Its Needs include:

- Roadway reconstruction due to failing pavement
- Access management to improve safety and operations for all users
- Reconstruct and widen sidewalks and construct ADA-compliant curb ramps to improve pedestrian accessibility and safety and accessibility to transit
- Add shared lane pavement markings and Bikes May Use Full Lane signs to enhance conditions for cyclists
- Modernize the street to help spur further economic development in this revitalizing neighborhood activity center
- Address poor streetscape aesthetics
- Replace/modernize aging traffic signals (companion funding request: Washington Avenue Intersection project).

This section of Washington Av was last paved in 1985 and in 2011 the Pavement Condition Index was 15 considered "Serious" though the rating increased to 36 in 2014 due to a drag shim that was applied to a short section. The roadway has been overlaid to the point of no curb reveal and sidewalks cannot be raised due to the elevation of building fronts on the street line. This project will be the first step in improving the full segment between I295 and Congress St, improving the intersection at Cumberland and Congress to set the tone for the rest of the corridor. The plan of this project is to reconstruct the street to improve drainage and to provide upgraded pedestrian elements. With the replacement of surface and base, we will restore the integrity of the infrastructure to the appropriate level of service for a minor arterial. This street rebuilding project will improve accessibility by rebuilding/installing ADA compliant ramps and crossings and shared use bike facilities. Improvements to the infrastructure will support the many modes of travel within and through this diverse area. Until's cast iron gas main was replaced in 2015. Portland Water District will plan to replace their infrastructure in conjunction with the street reconstruction.

Describe the proposed scope of work:

Box cut to reshape roadway for improved drainage

Update underground utilities to limit future pavement cuts

Reset/install granite curb, narrowing roadway by 8' total, and reconstruct and widen sidewalks on both sides

Enhance pedestrian features including ADA compliant sidewalk, curb ramps and crosswalks

Driveway modifications for access management purposes

Intersection: upgrade/replace traffic signal system (companion project)

Section 3 – Municipal Contact Information

Please provide the following information about the sponsoring municipality (for joint applications, please attach additional contact information):

Municipality or municipalities if joint application: Portland

Primary Contact : Katherine Earley, P.E.

Title: Engineering Services Manager/City Engineer

Mailing Address: 55 Portland Street

City: Portland

Zip Code: 04101

Phone Number: 874-8830

E-mail Address: kas@portlandmaine.gov

Section 4 – Municipal Endorsement

Is this project endorsed? ☒ Yes ☐ No

Endorsement Type (examples: ACE Team, Bike and Pedestrian Committee, City Council, etc.): City Manager – full endorsement of council with project selection

Date: 1/22/16

Section 5 – Project Application Details

Has this project been reviewed and submitted in conjunction with other projects in the area, either under design or construction?

☒ Yes ☐ No ☐ N/A

If yes, please specify the projects: This is a companion application to the Washington Avenue Intersection 2019 TIP Application

Is the proposed project part of a public-private partnership or eligible for multi-municipal bonus points?

☐ Yes ☒ No ☐ N/A

If yes, please explain and attach the neighboring council resolution(s):

Multimodal aspects and safety for all users: Has this project been reviewed with an emphasis on pedestrian/bicycle accommodations, improvements or safety and/or transit use:

☒ Yes ☐ No ☐ N/A

If yes, please explain: Project is looking at improved pedestrian/bicycle facilities and enhancing transit use (better crosswalks and wider sidewalks and transit shelter serving METRO Routes 7 and 9B). Safety will be improved through access management measures. New traffic signals will include new detection that detects bicyclists improving bicyclist mobility.

Multimodal Components

Will the project include new (not rebuilt) sidewalks or include aspects that will improve bicycle access or safety?

☒ Yes ☐ No ☐ N/A

If yes, please explain: The project will improve bicyclist safety through access management measures; it will include Shared Lane Bikeway pavement markings and Bikes May Use Full Lane signs. It will improve pedestrian safety and accessibility by upgrading deficient sidewalks and curb ramps within the project area. The upgraded signal systems will include bicycle detection for better bicyclist accommodation.

Will the project include a new or improved sidewalk AND is in a location within 1,000 feet of two of these five land uses: a store, a school, a church, ten or more housing units or a non-retail business?

☒ Yes ☐ No ☐ N/A

If yes, please explain: The project includes modernizing the street and streetscape for this Neighborhood Main Street at the intersection of two thriving neighborhoods: Munjoy Hill and East Bayside. There are many long-time businesses within 1000 feet (7-11, Big Apple, Coffee By Design and Sillys) as well as many new businesses and residential units (Oxbow Brewing, Maine Mead Works and Thomas Heights).

Does the project include pedestrian improvements such as the addition of a new or improved traffic signal with a pedestrian phase or construction of ADA ramps or a pedestrian refuge island?

☒ Yes ☐ No ☐ N/A

If yes, please explain: The project will widen deficient sidewalks and narrow the roadway for the project's extent to construct ADA-compliant curb ramps. Sidewalks will be widened from 5' to 8'-10'. The companion intersection project will replace an aging traffic signal system at the two signalized intersections within the project area (Congress Street and Cumberland Avenue).

Is the project for a location in a land development zone in which a local ordinance allows mixed-use development and shows promise for reduction in travel demand or is part of a Travel Demand Management (TDM) plan or project??

☒ Yes ☐ No ☐ N/A

If yes, please explain: This section of Washington Avenue intersects with Congress Street, the main commercial/retail street in downtown Portland. Washington Avenue is a Neighborhood Main Street (street type) which encourages and has many mixed use buildings with retail and office first floor uses and residential uses on upper floors. It is zoned for neighborhood businesses and medium density residential mixed use development.

Is the project on an existing transit route?

☒ Yes ☐ No ☐ N/A

If yes, please explain: Washington Avenue serves 3 METRO bus routes: 7, 9A and 9B; transfers to bus route 1 are accessed at the Congress Street end of the project area.

Is the project on a primary truck route?

☐ Yes ☒ No ☐ N/A

If yes, please explain:

Does the project enhance direct freight access to abutting commercial or industrial properties?

☐ Yes ☐ No ☒ N/A

If yes, please explain:

Safety, Capacity and Other Improvements

Does the project address a MaineDOT high crash location or other safety concerns?

☒ Yes ☐ No ☐ N/A

If yes, please explain: The segment of Washington Avenue from Cumberland Avenue to Oxford Street is a MaineDOT HCL. There are many very wide and redundant driveways and access management measures are included in the project.

MaineDOT node numbers: 18819, 19042, and 18936

Total Accidents: 36

Critical Rate Factor (CRF): 19.4

Percent of accidents with personal injury: To Be Provided

Contact MaineDOT's Greg Costello at greg.costello@maine.gov or 624-3618 for assistance.

If applicable, for intersections, what is the current volume-to-capacity ratio and how will the project address this need?

☐ N/A

Please explain: The companion project will replace and modernize the traffic signal system, allowing for improved traffic operations.

For intersection improvements that require new signals where none currently exist, attach a warrant analysis approved by the MaineDOT. We will not score the application if this requirement is not met. (The existing traffic signals to be replaced by companion project).

☐ Yes ☐ No ☒ N/A

For intersections, please provide PM peak hour turning movement volumes that are no older than two years. Please attach. (see companion project)

☐ Yes ☐ No ☒ N/A

For Road Rebuilds, what is the current Pavement Condition Rating (PCR) value?
Value(s): 3.4 in 2012 (PCI 36 in 2014)

Will the project change the road's horizontal or vertical alignment?	☒ Yes ☐ No ☐ N/A
If yes, please describe: Yes, the project will realign the horizontal alignment by narrowing the roadway by 8'-10' to better match in with the rest of this part of Washington Ave (42'-44' wide). This will allow for the construction of ADA-compliant curb ramps at the two intersections and widen sidewalks to provide better pedestrian safety and accessibility. Narrowing the roadway to eliminate unnecessary width will reduce pavement life-cycle costs.	
Are there any right-of-way impacts?	☐ Yes ☒ No ☐ N/A
If yes, please identify them and explain the impacts:	
Has this project been reviewed for potential environmental impacts?	☐ Yes ☒ No ☐ N/A
If yes, please explain:	
Will the project meet clear zone requirements?	☒ Yes ☐ No ☐ N/A
If no, please explain:	
Will the project require or result in, design exceptions (vertical and horizontal alignment, shoulder/lane widths, clear zones and/or others)?	☐ Yes ☒ No ☐ N/A
If yes, please explain:	
Will the project require historical and/or environmental review?	☐ Yes ☒ No ☐ N/A
If yes, please explain:	
For a Road Rebuild is a licensed and registered PE stamped document attached?	☐ Yes ☒ No
If no, please explain: Design has not been completed	
For roadway segments, please provide proposed roadway cross-section(s). ☐ N/A (west side) 8'/10' sidewalk-8' parking lane-13' travel lane-13' travel lane-8' parking lane-10' sidewalk (east side)	

Section 6 – Estimated Costs by Phase and Scheduling

Phase		Estimate	Requested Delivery Year
☐	Preliminary Engineering	\$ 42000	2019
☐	Right-of-Way	\$ 0	2019
☐	Construction	\$ 440000	2019
☐	Construction Engineering	\$ 21000	2019
Total Estimated Cost		\$ 503000	

Source of the estimate and contact information: Gretel Varney, P.E. (grv@portlandmaine.gov)

Multi-year Project: Is the request for only PE and RW in the first year (2019) of a multi-year project?

☐ Yes ☒ No ☐ N/A

Please Explain:

Section 7 – Destination Tomorrow Section

1. How is the project important to the region? Please list regional benefits of the project.

Relevant Policy: Policy 1: Regional Focus

– Prioritize a regional approach to transportation and land use planning and decision making founded on effective communication and management of regional resources in agreement with our other policies.

Answer: This section of Washington Av is the northerly gateway to the Portland peninsula and downtown from I-295 and a link connecting to the Eastern Prom, downtown and the waterfront connecting other Portland neighborhoods and northern suburbs to tens of thousands of jobs and residences. This project will improve the bicycle and pedestrian link of the new Washington Ave shared use pathway connecting Eastern Prom to the Bayside Trail and Back Cove as well as vehicular and transit efficiency along this corridor. This portion of Washington Avenue serves 3 METRO bus routes (7, 9A and 9B). It is a Minor Arterial and a Priority 3 Corridor. Washington Avenue is a major bicycle and pedestrian transportation route for accessing neighborhoods, jobs, shops, services and schools, connecting the peninsula to the Back Cove Trail and the East Coast Greenway.

2. How would the project maintain or improve the existing transportation system? Please list infrastructure improvements and services the project proposes to accommodate all transportation modes.

Relevant Policy: Policy 2: Maintaining and Transforming the Transportation System

– Maintain and improve Mobility, Safety, and Accessibility of existing infrastructure while improving and completing infrastructure and services to accommodate non-motorized vehicular modes in the appropriate places.

Answer: This project is proposed to reconstruct the roadway, separate sanitary and storm sewer, install underdrain, reset existing and install new granite curb, and reconstruct and widen sidewalks with ADA-compliant ramps. The gas main has been upgraded and the water district is planning to renew their system in this area. Rebuilding this section of roadway will improve travel for all modes of transportation including pedestrian, bicycle, transit, and personal and commercial vehicles. A companion project will modernize/replace the aging two aging traffic signal systems allowing better signal coordination between these closely spaced intersections within the project area. It will transform the roadway into a modern urban street to better serve all roadway users and businesses and residences.

3. How would the project enhance existing businesses, employment and economic development opportunities? Please list benefits to businesses and how the project furthers development opportunities with a mix of uses and connects jobs and housing by walking, biking or transit.

Relevant Policy: Policy 3: Economic Development

– Enhance regional prosperity through support for the economic vitality of existing business and for economic development opportunities that are efficiently located based on the availability of transportation in mixed use and compactly developed areas.

Answer: With a good and growing mix of residential, business, and commercial use, this area will benefit greatly from improved travel surfaces and updates to all modes of travel. With the addition of shared use lanes through pavement markings and signs and improved pedestrian access, residents will have greater, safer access between existing housing and businesses. Improved access may provide incentive to patronize local businesses and encourage increased activity within the community. Washington Avenue is a Neighborhood Main Street with many long-time established businesses and is seeing extensive redevelopment and infill development of underutilized or vacant parcels along its length.

- 4. How would the project improve the transportation-land-use connection? Please list benefits to (1) transportation choice (density), (2) accessibility in terms of ease of travel between points (distance), (3) variety of compatible uses and services made available (diversity); and (4) overall design. Design may include geometry, interconnections, access management, streetscape, and preservation of community character.**

Relevant Policy: Policy 4: Transportation-Land Use Connection

– Strengthen the connection between land use, transportation and community livability in the planning process.

Answer: (1) Density: This project will encourage more foot and bicycle traffic in the area with safer facilities as well as access to existing transit services. Numerous properties are seeing redevelopment and infill development of underutilized or vacant parcels adding to job and residential density. (2) Distance: Ease of travel will be increased by designated shared bike facilities and improved ramps and sidewalks to provide a consistently safe direct route through the area. This section of Washington Avenue is the connecting roadway between two revitalizing neighborhoods: Munjoy Hill and East Bayside. (3) Diversity: The increased comfort provided by the upgrades will encourage exploration of the variety of activities within the area and connection beyond the immediate neighborhood. Many new retail and service businesses and residential mixed use properties are being redeveloped or constructed. (4) Overall Design: This project will improve the infrastructure that has begun to fail and re-establish some confidence in the safety of traveling on the roadway and sidewalks. Sidewalks will be widened to better serve pedestrian access to businesses and to create a more aesthetic and dynamic streetscape. Driveways will be reduced/reconfigured to create a better pedestrian experience.

- 5. How does the proposed project promote the use of energy efficient transportation and improve the human and natural environment? Please list benefits in terms of energy use, energy savings; and benefits to natural resources such as air, water, and land; and cultural benefits such as places preserved.**

Relevant Policy: Policy 5: Environmental Quality and Energy Conservation

– Protect and improve the human and natural environments including natural and cultural resources, air and water quality, and prepare and be proactive for the *most likely* impacts of climate change. Make transportation improvements that use more energy efficient transportation options, low and non-polluting modes such as transit, and/or reduce harmful pollutants associated with transportation.

Answer: This and its companion intersection project strongly facilitates more use of foot, bicycle, and transit modes along the corridor by improving the safety and accessibility of these travel modes. It also improves the efficiency of vehicles by providing a travel surface that does not cause delays and damage that would require additional fuel and repairs. A companion project will replace the traffic signals with more energy efficient traffic signal systems and allow better signal coordination between the two closely spaced intersections in the project area.

PACTS

Portland Area Comprehensive Transportation System



2019 Road Rebuild and Intersection Application

Section 1 – Project Overview

Set Aside Category: Intersection

Project Name: Washington Avenue Intersection: Congress Street to Cumberland Avenue

Section 2 – Project Location, Description and Justification

Municipality: Portland

Route Number/Street Name: Washington Ave/Rt 26(?)

Description of Project Location: The two intersections of Washington Avenue at Congress Street and Cumberland Avenue

Federal Functional Classification: Minor Arterial

MaineDOT Corridor Priority: 3

(<http://www.maine.gov/mdot/about/assets/search/>)

NHS: ☐ Yes ☒ No
(PACTS staff to indicate)

AADT: 9,220
(^{'13}); 10,110
(^{'10})

LAP?: ☒ Yes ☐ No

Is the proposed project in an identified PACTS Congestion Management Process area? (see CMP map and descriptions):

☐ Yes ☒ No

If so, describe any congestion mitigation benefits of the proposed project:

Please state the detailed purpose and need(s) and how the project will address those needs: The Purpose of the project is to replace and modernize two aging traffic signal systems to allow for more efficient traffic operations. Its Needs include:

- Replacement of aging/deficient traffic signal systems
- Access management to improve traffic safety and operations for all users
- Reconstruct and widen sidewalks and construct ADA-compliant curb ramps to improve pedestrian accessibility and safety and accessibility to transit
- Add shared lane pavement markings and Bikes May Use Full Lane signs to enhance conditions for cyclists
- Modernize the street to help spur further economic development in this revitalizing neighborhood activity center
- Address poor streetscape aesthetics.

Describe the proposed scope of work:

Replace two traffic signal systems including signal controllers, signal heads, pedestrian signals, convert from span wire to mast arms)

Construct ADA-compliant curb ramps

Reconstruct/widen sidewalks

Access management at the two intersections and within the roadway segments.

Section 3 – Municipal Contact Information

Please provide the following information about the sponsoring municipality (for joint applications, please attach additional contact information):

Municipality or municipalities if joint application: City of Portland

Primary Contact : Katherine Earley, P.E.

Title: Engineering Services Manager/City Engineer

Mailing Address: 55 Portland Street

City: Portland

Zip Code: 04101

Phone Number: 874-8830

E-mail Address: kas@portlandmaine.gov

Section 4 – Municipal Endorsement

Is this project endorsed? ☒ Yes ☐ No

Endorsement Type (examples: ACE Team, Bike and Pedestrian Committee, City Council, etc.): City Manager with council endorsement to follow

Date: 1/22/16

Section 5 – Project Application Details

Has this project been reviewed and submitted in conjunction with other projects in the area, either under design or construction? ☒ Yes ☐ No ☐ N/A

If yes, please specify the projects: This is a companion application to the Washington Avenue Road Rebuild 2019 TIP Application

Is the proposed project part of a public-private partnership or eligible for multi-municipal bonus points? ☐ Yes ☒ No ☐ N/A

If yes, please explain and attach the neighboring council resolution(s):

Multimodal aspects and safety for all users: Has this project been reviewed with an emphasis on pedestrian/bicycle accommodations, improvements or safety and/or transit use? ☒ Yes ☐ No ☐ N/A

If yes, please explain: Project is looking at improved pedestrian/bicycle facilities and enhancing transit use (better crosswalks and wider sidewalks and transit shelter serving METRO Routes 7 and 9B). Safety will be improved through access management measures. New traffic signals will include new detection that detects bicyclists improving bicyclist mobility.

Multimodal Components

Will the project include new (not rebuilt) sidewalks or include aspects that will improve bicycle access or safety? ☒ Yes ☐ No ☐ N/A

If yes, please explain: The companion road rebuild project will improve bicyclist safety through access management measures; it will include Shared Lane Bikeway pavement markings and Bikes May Use Full Lane signs. It will improve pedestrian safety and accessibility by upgrading deficient sidewalks and curb ramps within the project area. The upgraded signal systems will include bicycle detection for better bicyclist accommodation.

Will the project include a new or improved sidewalk AND is in a location within 1,000 feet of two of these five land uses: a store, a school, a church, ten or more housing units or a non-retail business? ☒ Yes ☐ No ☐ N/A

If yes, please explain: The project includes modernizing the street and streetscape for this Neighborhood Main Street at the intersection of two thriving neighborhoods: Munjoy Hill and East Bayside. There are many long-time businesses within 1000 feet (7-11, Big Apple, Coffee By Design and Sillys) as well as many new businesses and residential units (Oxbow Brewing, Maine Mead Works and Thomas Heights).

Does the project include pedestrian improvements such as the addition of a new or improved traffic signal with a pedestrian phase or construction of ADA ramps or a pedestrian refuge island? ☒ Yes ☐ No ☐ N/A

If yes, please explain: The project will widen deficient sidewalks and narrow the roadway for the project's extent to construct ADA-compliant curb ramps. Sidewalks will be widened from 5' to 8'-10'. The companion intersection project will replace an aging traffic signal system at the two signalized intersections within the project area (Congress Street and Cumberland Avenue). The narrower roadway will reduce pedestrian crossing distances.

Is the project for a location in a land development zone in which a local ordinance allows mixed-use development and shows promise for reduction in travel demand or is part of a Travel Demand Management (TDM) plan or project?? ☒ Yes ☐ No ☐ N/A

If yes, please explain: This section of Washington Avenue intersects with Congress Street, the main commercial/retail street in downtown Portland. Washington Avenue is a Neighborhood Main Street (street type) which encourages and has many mixed use buildings with retail and office first floor uses and residential uses on upper floors. It is zoned for neighborhood businesses and medium density residential mixed use development.

Is the project on an existing transit route?	☒ Yes ☐ No ☐ N/A
If yes, please explain: Washington Avenue serves 3 METRO bus routes: 7, 9A and 9B; transfers to bus route 1 is accessed at the Congress Street end of the project area.	
Is the project on a primary truck route?	☐ Yes ☒ No ☐ N/A
If yes, please explain:	
Does the project enhance direct freight access to abutting commercial or industrial properties?	☐ Yes ☒ No ☐ N/A
If yes, please explain:	
Safety, Capacity and Other Improvements	
Does the project address a MaineDOT high crash location or other safety concerns?	☐ Yes ☐ No ☐ N/A
If yes, please explain: The segment of Washington Avenue from Cumberland Avenue to Oxford Street is a MaineDOT HCL. There are many very wide and redundant driveways and access management measures are included in the project. MaineDOT node numbers: 18819, 19042, and 18936 Total Accidents: 36 Critical Rate Factor (CRF): 3.74 Percent of accidents with personal injury: 19.4 Contact MaineDOT's Greg Costello at greg.costello@maine.gov or 624-3618 for assistance.	
If applicable, for intersections, what is the current volume-to-capacity ratio and how will the project address this need? Please explain: To be determined.	☐ Yes ☐ No ☐ N/A
For intersection improvements that require new signals where none currently exist, attach a warrant analysis approved by the MaineDOT. <u>We will not score the application if this requirement is not met.</u> This project will replace/modernize two aging existing traffic signal systems.	☐ Yes ☐ No ☒ N/A
For intersections, please provide PM peak hour turning movement volumes that are no older than two years. Please attach. Turning movement counts will be determined at a later date. AADT values for the project area are as follows:	
Congress St, SW of Washington Ave: 9,550 ('13) Cumberland Ave, SW of Washington Ave: 5,100 ('13) Washington Ave, S of Cumberland Ave: 8,260 ('10) Washington Ave, N of Cumberland Ave: 10,110 ('10) and 9,220 ('13)	☒ Yes ☐ No ☐ N/A
For Road Rebuilds, what is the current Pavement Condition Rating (PCR) value? Value(s):	

Will the project change the road's horizontal or vertical alignment? ☒ Yes ☐ No ☐ N/A
 yes, please describe: Yes, the companion roadway rebuild project will realign the horizontal alignment by narrowing the roadway by 8'-10' to better match in with the rest of this part of Washington Ave (42'-44' wide). This will allow for the construction of ADA-compliant curb ramps at the two intersections and widen sidewalks to provide better pedestrian safety and accessibility. Narrowing the roadway to eliminate unnecessary width will reduce pavement life-cycle costs.

Are there any right-of-way impacts? ☐ Yes ☒ No ☐ N/A
 If yes, please identify them and explain the impacts:

Has this project been reviewed for potential environmental impacts? ☐ Yes ☒ No ☐ N/A
 If yes, please explain:

Will the project meet clear zone requirements? ☒ Yes ☐ No ☐ N/A
 If no, please explain:

Will the project require or result in, **design exceptions** (vertical and horizontal alignment, shoulder/lane widths, clear zones and/or others)? ☐ Yes ☒ No ☐ N/A
 If yes, please explain:

Will the project require historical and/or environmental review? ☐ Yes ☒ No ☐ N/A
 If yes, please explain:

For a Road Rebuild is a licensed and registered PE stamped document attached? ☐ Yes ☐ No
 If no, please explain:

For roadway segments, please provide proposed roadway cross-section(s). ☒ N/A

Section 6 – Estimated Costs by Phase and Scheduling

Phase		Estimate	Requested Delivery Year
☐	Preliminary Engineering	\$ 39,500	
☐	Right-of-Way	\$ 0	
☐	Construction	\$ 392,500	
☐	Construction Engineering	\$ (incl w const)	
	Total Estimated Cost	\$ 432,000	

Source of the estimate and contact information: Jeremiah Bartlett, City Transportation Engineer, 207-874-8891

Multi-year Project: Is the request for only PE and RW in the first year (2019) of a multi-year project? ☐ Yes ☒ No ☐ N/A
 Please Explain:

Section 7 – Destination Tomorrow Section

1. How is the project important to the region? Please list regional benefits of the project.

Relevant Policy: Policy 1: Regional Focus

– Prioritize a regional approach to transportation and land use planning and decision making founded on effective communication and management of regional resources in agreement with our other policies.

Answer: This section of Washington Av is the northerly gateway to the Portland peninsula and downtown from I-295 and a link connecting to the Eastern Prom, downtown and the waterfront connecting other Portland neighborhoods and northern suburbs to tens of thousands of jobs and residences. This project will improve the bicycle and pedestrian link of the new Washington Ave shared use pathway connecting Eastern Prom to the Bayside Trail and Back Cove as well as vehicular and transit efficiency along this corridor. This portion of Washington Avenue serves 3 METRO bus routes (7, 9A and 9B). It is a Minor Arterial and a Priority 3 Corridor. Washington Avenue is a major bicycle and pedestrian transportation route for accessing neighborhoods jobs, shops, services and schools, connecting the peninsula to the Back Cove Trail and the East Coast Greenway.

2. How would the project maintain or improve the existing transportation system? Please list infrastructure improvements and services the project proposes to accommodate all transportation modes.

Relevant Policy: Policy 2: Maintaining and Transforming the Transportation System

– Maintain and improve Mobility, Safety, and Accessibility of existing infrastructure while improving and completing infrastructure and services to accommodate non-motorized vehicular modes in the appropriate places.

Answer: This companion road rebuild project is proposed to reconstruct the roadway, separate sanitary and storm sewer, install underdrain, reset existing and install new granite curb, and reconstruct and widen sidewalks with ADA-compliant ramps. The gas main has been upgraded and the water district is planning to renew their system in this area. Rebuilding this section of roadway will improve travel for all modes of transportation including pedestrian, bicycle, transit, and personal and commercial vehicles. This project will modernize/replace the aging two aging traffic signal systems allowing better signal coordination between these closely spaced intersections within the project area. It will transform the roadway into a modern urban street to better serve all roadway users and businesses and residences.

3. How would the project enhance existing businesses, employment and economic development opportunities? Please list benefits to businesses and how the project furthers development opportunities with a mix of uses and connects jobs and housing by walking, biking or transit.

Relevant Policy: Policy 3: Economic Development

– Enhance regional prosperity through support for the economic vitality of existing business and for economic development opportunities that are efficiently located based on the availability of transportation in mixed use and compactly developed areas.

Answer: With a good and growing mix of residential, business, and commercial use, this area will benefit greatly from improved travel surfaces and updates to all modes of travel. With the addition of shared use lanes through pavement markings and signs and improved pedestrian access, residents will have greater, safer access between existing housing and businesses. Improved access may provide incentive to patronize local businesses and encourage increased activity within the community. Washington Avenue is a Neighborhood Main Street with many long-time established businesses and is seeing extensive redevelopment and infill development of underutilized or vacant parcels along its length.

4. How would the project improve the transportation-land-use connection? Please list benefits to (1) transportation choice (density), (2) accessibility in terms of ease of travel between points (distance), (3) variety of compatible uses and services made available (diversity); and (4) overall design. Design may include geometry, interconnections, access management, streetscape, and preservation of community character.

Relevant Policy: Policy 4: Transportation-Land Use Connection

– Strengthen the connection between land use, transportation and community livability in the planning process.

Answer: (1) Density: This project will encourage more foot and bicycle traffic in the area with safer facilities as well as access to existing transit services. Numerous properties are seeing redevelopment and infill development of underutilized or vacant parcels adding to job and residential density. (2) Distance: Ease of travel will be increased by designated shared bike facilities and improved ramps and sidewalks to provide a consistently safe direct route through the area. This section of Washington Avenue is the connecting roadway between two revitalizing neighborhoods: Munjoy Hill and East Bayside. (3) Diversity: The increased comfort provided by the upgrades will encourage exploration of the variety of activities within the area and connection beyond the immediate neighborhood. Many new retail and service businesses and residential mixed use properties are being redeveloped or constructed. (4) Overall Design: This project will improve the infrastructure that has begun to fail and re-establish some confidence in the safety of traveling on the roadway and sidewalks. Sidewalks will be widened to better serve pedestrian access to businesses and to create a more aesthetic and dynamic streetscape. Driveways will be reduced/reconfigured to create a better pedestrian experience.

5. How does the proposed project promote the use of energy efficient transportation and improve the human and natural environment? Please list benefits in terms of energy use, energy savings; and benefits to natural resources such as air, water, and land; and cultural benefits such as places preserved.

Relevant Policy: Policy 5: Environmental Quality and Energy Conservation

– Protect and improve the human and natural environments including natural and cultural resources, air and water quality, and prepare and be proactive for the *most likely* impacts of climate change. Make transportation improvements that use more energy efficient transportation options, low and non-polluting modes such as transit, and/or reduce harmful pollutants associated with transportation.

Answer: This and its companion roadway rebuild project strongly facilitates use of foot, bicycle, and transit modes along the corridor by improving the safety and accessibility of these travel modes. It also improves the efficiency of vehicles by providing a travel surface that does not cause delays and damage that would require additional fuel and repairs. This project will replace the traffic signals with more energy efficient traffic signal systems and allow better signal coordination between the two closely spaced intersections in the project area.

PACTS

Portland Area Comprehensive Transportation System



2019 Road Rebuild and Intersection Application

Section 1 – Project Overview

Set Aside Category: Intersection

Project Name: Congress Street Bus Priority Corridor, Phase II

Section 2 – Project Location, Description and Justification

Municipality: Portland

Route Number/Street Name: Congress Street

Description of Project Location: Various Congress Street Corridor Locations, from Myrtle Street to State Street.

Federal Functional Classification: Minor Arterial

MaineDOT Corridor Priority: Priority 3

(<http://www.maine.gov/mdot/about/assets/search/>)

NHS: ☐ Yes ☒ No
(PACTS staff to indicate)

AADT:
8,000-12,750

LAP?: ☒ Yes ☐ No

Is the proposed project in an identified PACTS Congestion Management Process area? (see CMP map and descriptions):

☒ Yes ☐ No

If so, describe any congestion mitigation benefits of the proposed project:

A portion of the project limit falls within the CMP network (Congress from High to State Streets). The Congress Street Bus Corridor project was the result of recommendations from both the Peninsula Traffic and Peninsula Transit Studies, in 2004 and 2009 respectively, as a way to encourage transit use and reduce peak hour traffic volumes.

Please state the detailed purpose and need(s) and how the project will address those needs:

The Purpose of the project is to replace, modernize and coordinate the traffic signal system on Congress Street in Portland's Downtown as Phase II of the implementation of the Congress Street Bus Priority Corridor project to complement the hardscape, in-line bus stop, bus shelter and ADA accessibility modifications in Phase I.

The Need for the project includes:

- The aging traffic signal system currently in place causing increasing staff and maintenance costs/repairs
- Lack of traffic signal coordination as envisioned by the Regional Traffic Management System (RTMS) program
- Lack of capability for transit signal priority and emergency vehicle pre-emption with current equipment
- Lack of ADA-compliance of traffic and pedestrian signal systems and equipment
- Lack of transit priority and emergency pre-emption capabilities with the current equipment.

Although the portions of the Congress Street Bus Corridor Plan constructed in 2015 and to be completed in 2016 will accomplish some basic outcomes of the study process, such as conversion to in-line stops, there remain several barriers to accommodating riders with physical challenges as well as ensuring the reliable operations of bus service. The provision of Phase II funding will address this and provide a coherent pedestrian and bus environment in the core of the priority corridor.

Describe the proposed scope of work:

In 2013, the Final Plan was approved by the City Council, and a CIP account for \$330,000 was approved for FY14. Since that time, the City has worked with an engineering firm to prepare construction plans and specifications for the implementation of the Plan. Phase IA of the plan, which included taking signals at Congress at Casco and Brown out of regular operation, curb modifications to Congress at Two Monument Square, and shifting METRO operations to in-line, is now complete. Phase IB of the plan, which includes curb modifications and several shelters, will be completed in 2016.

Since the time of original approval and during the course of design, it became clear that achieving the full course of recommended changes in the Original Plan would require additional funding above and beyond the funding available in the FY14 CIP account.

Work has yet to be finalized for a shelter near City Hall, and traffic signals from High Street to Preble Street are in need of updating.

There is also a desire to provide additional ADA compliance in the core of the priority corridor from State Street to Myrtle Street, and the need to change curb ramps and redesign portions of sidewalk along Congress Street is significant.

Specifically, the additional funding would accomplish ADA needs and sidewalk modifications to the following areas not currently funded in the current plan:

Congress west of High: Provide a mast arm and directional signage to eliminate confusion entering the High Street intersection.

City Hall: Improve curb ramps to meet ADA compliance, finalize bus shelter requirements.

Miscellaneous: Signal adjustments, equipment modifications, and connections to provide for efficient traffic/bus flow.

Section 3 – Municipal Contact Information

Please provide the following information about the sponsoring municipality (for joint applications, please attach additional contact information):

Municipality or municipalities if joint application: City of Portland

Primary Contact: Katherine Earley, P.E.

Title: Engineering Services Manager/City Engineer

Mailing Address: 55 Portland Street

City: Portland

Zip Code: 04101

Phone Number: 207-874-8830

E-mail Address: kas@portlandmaine.gov

Section 4 – Municipal Endorsement

Is this project endorsed? ☒ Yes ☐ No

Endorsement Type (examples: ACE Team, Bike and Pedestrian Committee, City Council, etc.): City Manager Approved (Master Plan approved by PACTS and City Council)

Date: 2016

Section 5 – Project Application Details

Has this project been reviewed and submitted in conjunction with other projects in the area, either under design or construction?

☒ Yes ☐ No ☐ N/A

If yes, please specify the projects:

Yes, this is the second phase of a larger project. Phase I is fully funded by the City of Portland.

Additional analysis to be provided by a MaineDOT Ancillary Structures survey, expected completion early 2017, and an anticipated PACTS funded Portland Signal Study, expected completion late 2017.

Is the proposed project part of a public-private partnership or eligible for multi-municipal bonus points?

☐ Yes ☒ No ☐ N/A

If yes, please explain and attach the neighboring council resolution(s):

Multimodal aspects and safety for all users: Has this project been reviewed with an emphasis on pedestrian/bicycle accommodations, improvements or safety and/or transit use:

☒ Yes ☐ No ☐ N/A

If yes, please explain:

The purpose of this project is to improve bus service, efficiency, accessibility, pedestrian safety, and ADA compliance throughout the Congress Street corridor between Myrtle and State Street, with an emphasis between Elm and High Street.

Multimodal Components

Will the project include new (not rebuilt) sidewalks or include aspects that will improve bicycle access or safety?

☒ Yes ☐ No ☐ N/A

If yes, please explain: The project will improve bicycle accessibility and mobility by replacement of outdated signal and signal detection with improved signal coordination that will improve bicyclist flow/reduce delay on Congress Street as well as bicycle detection that will reduce bicyclist delay

Will the project include a new or improved sidewalk AND is in a location within 1,000 feet of two of these five land uses: a store, a school, a church, ten or more housing units or a non-retail business?

☒ Yes ☐ No ☐ N/A

If yes, please explain: The Congress Street Corridor readily meets all of these thresholds being within 1,000 feet of many stores, offices, schools, churches, housing units and businesses and this project proposes several locations for improved pedestrian infrastructure within the Corridor.

Does the project include pedestrian improvements such as the addition of a new or improved traffic signal with a pedestrian phase or construction of ADA ramps or a pedestrian refuge island?

☒ Yes ☐ No ☐ N/A

If yes, please explain: Curb ramps at or near bus stops will be improved to comply with ADA standards at the following intersections – Congress at Park, Forest, Oak, Casco, Brown and Elm Streets. Traffic signal phasing will be upgraded to improve pedestrian flows on Congress Street. Many locations now are exclusive pedestrian phases and/or require pedestrian activation of pedestrian signals. These elements will be studied for modernization within the 2016-2017 PACTS UPWP/RTMS workplan.

Is the project for a location in a land development zone in which a local ordinance allows mixed-use development and shows promise for reduction in travel demand or is part of a Travel Demand Management (TDM) plan or project??

☒ Yes ☐ No ☐ N/A

If yes, please explain: Congress Street is in Zone B3, where mixed-use development is allowed and encouraged. This project is part of the Transportation Master Plan approved by City Council, as the result of a PACTS UPWP study. Larger projects within the project area are required to develop TDM/trip reduction plans.

Is the project on an existing transit route?

☒ Yes ☐ No ☐ N/A

If yes, please explain: Yes, the Congress Street corridor is a primary bus route in Portland. All 8 of the METRO bus routes traverse this portion of Congress Street, as do buses from South Portland Bus, BSOOB, and the Shuttlebus ZOOM service.

Is the project on a primary truck route?

☐ Yes ☒ No ☐ N/A

If yes, please explain: The project is not on a primary truck route.

Does the project enhance direct freight access to abutting commercial or industrial properties?

☐ Yes ☒ No ☐ N/A

If yes, please explain:

Safety, Capacity and Other Improvements

Does the project address a MaineDOT high crash location or other safety concerns?

☒ Yes ☐ No ☐ N/A

If yes, please explain: This project encompasses three areas with safety concerns: Congress at Avon St, Congress at Forest Ave and Congress St at Pearl St. The Avon Street intersection is currently being updated thru nearby development and is under construction. Forest Ave had left and right turn lanes added, approaching Congress Street, in 2013. This appears to have

reduced red-light running and angle collisions. Left turn lanes from Congress to Pearl Street were added in late 2013 and should be reducing rear end collisions on Congress Street. The recent safety improvements may not be fully reflected in the attached crash data (2012-2014). Numerous locations within the project area have also been subject to bicycle and pedestrian crashes with motor vehicles (see attached map).

MaineDOT node numbers: Element 3106842, Element 3129249 and Node 18813

Total Accidents: 8, 8, 14

Critical Rate Factor (CRF): 1.90, 2.52, 1.16

Percent of accidents with personal injury: 25%, 50%, 35.7%

Contact MaineDOT's Greg Costello at greg.costello@maine.gov or 624-3618 for assistance.

If applicable, for intersections, what is the current volume-to-capacity ratio and how will the project address this need?

☒ N/A

Please explain:

For intersection improvements that require new signals where none currently exist, attach a warrant analysis approved by the MaineDOT. We will not score the application if this requirement is not met.

☐ Yes ☐ No ☒ N/A

For intersections, please provide PM peak hour turning movement volumes that are no older than two years. See attached.

☒ Yes ☐ No ☐ N/A

For Road Rebuilds, what is the current Pavement Condition Rating (PCR) value?
Value(s): N/A

Will the project change the road's horizontal or vertical alignment?

☐ Yes ☒ No ☐ N/A

yes, please describe:

Are there any right-of-way impacts?

☐ Yes ☒ No ☐ N/A

If yes, please identify them and explain the impacts:

Has this project been reviewed for potential environmental impacts?

☐ Yes ☒ No ☐ N/A

If yes, please explain: The project area is within a locally designated historic district.

Will the project meet clear zone requirements?

☒ Yes ☐ No ☐ N/A

If no, please explain:

Will the project require or result in, **design exceptions** (vertical and horizontal alignment, shoulder/lane widths, clear zones and/or others)?

☐ Yes ☒ No ☐ N/A

If yes, please explain:

Will the project require historical and/or environmental review?

☐ Yes ☒ No ☐ N/A

If yes, please explain: The project area is within a locally designated historic district.

For a Road Rebuild is a licensed and registered PE stamped document attached?

☐ Yes ☐ No

If no, please explain: N/A

or roadway segments, please provide proposed roadway cross-section(s).

☒ N/A

Section 6 – Estimated Costs by Phase and Scheduling

Phase		Estimate	Requested Delivery Year
☒	Preliminary Engineering	\$ 40,000	2019
☐	Right-of-Way	\$ 0	
☒	Construction	\$ 397,000	2019
☐	Construction Engineering	\$ (incl in const)	
	Total Estimated Cost	\$ 437,000	2019

Source of the estimate and contact information: Jeremiah Bartlett, City Transportation Engineer, 207-874-8891

Multi-year Project: Is the request for only PE and RW in the first year (2019) of a multi-year project?

Please Explain: No. This is not envisioned to be a multi-year project; therefore all funds are being requested in 2019.

Section 7 – Destination Tomorrow Section

1. How is the project important to the region? Please list regional benefits of the project.

Relevant Policy: Policy 1: Regional Focus

– Prioritize a regional approach to transportation and land use planning and decision making founded on effective communication and management of regional resources in agreement with our other policies.

Answer: The Congress Street Bus Priority Corridor project is one piece of a regional effort to encourage transit use in the greater Portland area. Nearby studies or initiatives such as the Portland North Small Starts Study, the Gorham East-West Corridor study, the Western Maine AMTRAK extension study and the now operational AMTRAK extension to Brunswick will rely on excellent transit service in Portland in order to be successful. Transit routes from all of the regional fixed route bus providers converge on Congress Street within the project area. The project will further enhance transit access within the region, contributing to desired vehicle trip and congestion reduction.

2. How would the project maintain or improve the existing transportation system? Please list infrastructure improvements and services the project proposes to accommodate all transportation modes.

Relevant Policy: Policy 2: Maintaining and Transforming the Transportation System

– Maintain and improve Mobility, Safety, and Accessibility of existing infrastructure while improving and completing infrastructure and services to accommodate non-motorized vehicular modes in the appropriate places.

Answer: This project will improve the overall experience for transit riders traveling to and from Congress Street, but also to the entire METRO system as almost all bus routes (from all regional fixed route providers) rely on Congress Street at some point. The addition of new bus shelters and ADA compliant ramps and sidewalks will improve accessibility for bus riders and Congress Street pedestrians. Traffic signal and signage improvements will make travel thru the corridor easier for buses, trucks, cars, bicycles and emergency services.

3. How would the project enhance existing businesses, employment and economic development opportunities? Please list benefits to businesses and how the project furthers development opportunities with a mix of uses and connects jobs and housing by walking, biking or transit.

Relevant Policy: Policy 3: Economic Development

Enhance regional prosperity through support for the economic vitality of existing business and for economic development opportunities that are efficiently located based on the availability of transportation in mixed use and compactly developed areas.

Answer: This project is part of a long standing desire by PACTS and the City of Portland to improve transit along the Congress

Street Corridor. A more efficient, accessible transit system will encourage increased ridership, which in turn decreases reliance on single occupancy vehicles. For Portland's peninsula, this could mean lower parking demand, increased foot traffic between bus stops, business growth in areas served by transit, better commuting options for workers that can't or choose not to drive, a growth in demand for urban living and creating a more desirable downtown atmosphere. 'Millennials' and retiring Baby Boomers are increasingly shedding motor vehicles or choosing not to own motor vehicles. A robust, modern transit system is essential to the region's competitiveness to attract and retain these key markets for transit use.

- 4. How would the project improve the transportation-land-use connection? Please list benefits to (1) transportation choice (density), (2) accessibility in terms of ease of travel between points (distance), (3) variety of compatible uses and services made available (diversity); and (4) overall design. Design may include geometry, interconnections, access management, streetscape, and preservation of community character.**

Relevant Policy: Policy 4: Transportation-Land Use Connection

– Strengthen the connection between land use, transportation and community livability in the planning process.

Answer: Portland's Congress Street runs thru the heart of the City, with lots of new and proposed development just a short walk away. The Phase II of this project is designed to build on the infrastructure improvements of Phase I and encourage denser land use. Primary reliance on single occupancy vehicles is not a sustainable mode of transportation nor is providing structured or surface parking the highest and best land use, given future growth of Portland's downtown. Therefore, improving the transit system in terms of both efficiency and accessibility will provide an easier and more reliable transportation choice for people who live, shop, recreate and/or work in Portland. The less reliance on motor vehicles, the less space required to store parked motor vehicles which enhances community character.

- 5. How does the proposed project promote the use of energy efficient transportation and improve the human and natural environment? Please list benefits in terms of energy use, energy savings; and benefits to natural resources such as air, water, and land; and cultural benefits such as places preserved.**

Relevant Policy: Policy 5: Environmental Quality and Energy Conservation

– Protect and improve the human and natural environments including natural and cultural resources, air and water quality, and prepare and be proactive for the *most likely* impacts of climate change. Make transportation improvements that use more energy efficient transportation options, low and non-polluting modes such as transit, and/or reduce harmful pollutants associated with transportation.

Answer: The energy, space requirements and time associated with moving (and storing via parking) 40 people by car versus 40 people riding a bus are significant. This project will foster use of the existing transit system by improving its efficiency. Modifying traffic signals along Congress Street to give transit priority will encourage less stopping and idling by busses and shorter travel time by riders, encouraging increased ridership. Additionally, METRO bus service has and continues to use alternative fuels to power its bus fleet, including electricity, natural gas and clean diesel. Increasing ridership will help encourage the further use of sustainable and renewable energy sources and lower emissions.