Regular City Council Meeting
September 19, 2016

1. Agenda Only

   Documents:

   AGENDA ONLY 09-19-16.PDF

2. Agenda With Packet

   Documents:

   AGENDA AND PACKET 09-19-16.PDF

AGENDA
REGULAR CITY COUNCIL MEETING
SEPTEMBER 19, 2016

The Portland City Council will hold a regular 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:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

"Arts in the Chamber," Kate Beever, Singer/Songwriter, Maine Music & Health

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) **September 7, 2016, Special City Council Meeting Minutes**

PROCLAMATIONS:

Proc 10-16/17 (Tab 2) **Proclamation Welcoming the Arctic Council to Portland and Proclaiming the Week of October 2, 2016 Arctic Council Week in Portland – Sponsored by Mayor Ethan K. Strimling.**

APPOINTMENTS:

CONSENT ITEMS:

LICENSES:

Order 52-16/17 (Tab 3) **Order Granting Municipal Officers' Approval of Mark's Sports, LLC d/b/a Mark's Sports. Application for Entertainment without Dance at 50 Wharf St. - Sponsored by Michael Russell, Director of Permitting & Inspections Department.**

Application filed on 7/13/16. Applicant holds a current Class XI Restaurant/Lounge with Outdoor Dining on Private Property at 50 Wharf St.

Five affirmative votes are required for passage after public comment

Order 53-16/17 (Tab 4) **Order Granting Municipal Officers' Approval of Nosh LLC d/b/a Nosh Kitchen Bar. Application to Expand Existing Alcohol Service Area for One-day Event on September 25, 2016 at 551 Congress St. – Sponsored by Michael Russell, Director of Permitting & Inspections Department.**

Application filed on 8/19/16. Applicant currently holds Class XI FSE Restaurant/Lounge License with Outdoor Dining on Public Property. This event is entitled "Nosh Bow." A permit for use of the street will be forthcoming from the Public Services Event Office.

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Order 55-16/17 (Tab 6) **Order Granting Municipal Officers' Approval of Sodexo America, LLC d/b/a Sodexo America, LLC. Application for a Class I Qualified Caterer at 88 Bedford Street – Sponsored by Michael Russell, Director of Permitting and Inspections Department.**

Application filed on 8/19/2016. New City and State Applications. Current location of University of Maine System.

Five affirmative votes are required for passage after public comment.

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

UNFINISHED BUSINESS:

Order 37-16/17 (Tab 7) **Order Designating ImmuCell Corporation Municipal Development and Tax Increment Financing District – Sponsored by the Economic Development Committee, Councilor David Brenerman, Chair.**

The Economic Development Committee met on June 28, 2016, and voted unanimously (3-0) to forward this item to the City Council with a recommendation for approval.

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
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.

This item must be read on two separate days. It was given a first reading on August 1, 2016. At the September 7, 2016 City Council meeting, this item was postponed to this meeting.

Five affirmative votes are required for passage after public comment.

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This order is a companion Order to Order 37-16/17 above.

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Order 51-16/17 (Tab 9) **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. It was given a first reading on September 7, 2016. Five affirmative votes are required for passage after public comment.

ORDERS:

Order 56-16/17 (Tab 10) **Order Authorizing The City Manager to Negotiate an Agreement with Developers Collaborative Predevelopment LLC for the Purchase of Reed School – Sponsored by Councilor David Brenerman.**

A selection committee comprised of residents and staff is recommending that Developers Collaborative's proposal be selected for the sale and re-use of the Reed School property at 19 Libby Avenue in Riverton, in response to an RFP process that concluded in May of this year. Developer's Collaborative has proposed a new educational use for the site, including reuse of the existing structure and retention of community open space.

The RFP includes a requirement for an initial, substantial neighborhood engagement process before a development plan for the site or a purchase and sale agreement can be finalized.

The Council is requested to authorize the initiation of negotiations with Developers Collaborative as the selected party for redevelopment of the site. Details of the terms of transfer of the property will return to the Council concluding neighborhood engagement and refinement of the plan for the site.

Five affirmative votes are required for passage after public comment.

Order 57-16/17 (Tab 11) **Order Approving the Riverside Recycling Facility Agreement with CPRC Group, LLC – Sponsored by Jon P. Jennings, City Manager.**

The City's contract with CPRC Group to operate the Riverside Recycling Facility expires on September 30, 2016. In June, the City issued an RFP #7516 to solicit proposals for operating the facility beginning in October, 2016. Two firms responded, Pine Tree Waste (Casella) and CPRC Group. The review committee determined that CPRC Group's proposal was most responsive and provided the best value for the City. Staff has worked with them to negotiate a contract that will allow them to continue operating at Riverside Recycling and serving City operations and residents. The City

Council must authorize the City Manager to enter into and execute the agreement in order to move forward.

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

Order 58-16/17 (Tab 12)	**Order Approving Two-Party Agreement between the City of Portland and the Maine Department of Transportation Re: Forest Avenue and Dartmouth Street – Sponsored by Jon P. Jennings, City Manager.**

The Maine Department of Transporation (MDOT) has selected this project for federal assistance and inclusion in its 2016-2018 Work Plan. This project implements the Transforming Forest Avenue Study recommendation at this intersection to reduce the automobile-dependent design of the street by making significant pedestrian and streetscape enhancements. The study, which was overseen and then fully endorsed by a public advisory committee in 2010-2011, was adopted by the Planning Board & City Council as part of the Comprehensive Plan for Portland.

The estimated project costs are outlined below. The existing MDOT Quality CommunityProgram account (C14114) will be used to fund the required 20% local match.

Federal Share = $83,044 (80%)
Local Share = $20,761 (20%)
Upset Limit / Total Project
Estimate = $103,805

At its June 18, 2012 meeting, the City Council unanimously endorsed (9-0) this specific project as part of the package of Portland SRTS and TE applications. (See Order #222-11/12 included in the agenda backup.)

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Order 59-16/17 (Tab 13)	**Order Appropriating Funds from the Sale of City-Owned Bayside Property on Somerset Street – Sponsored by Jon P. Jennings, City Manager.**

In June 2016 the Federated Companies, LLC purchased parcels of property from the City in the Bayside neighborhood. This order appropriates these funds towards the move of Public Works out of the Bayside neighborhood to Canco Road and also towards the funding of RFP #5116 – Proposal for Public Administration Systems Software.

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Order 60-16/17 (Tab 14)	**Order Reappropriating Unspent Bond Proceeds Re: Moody-Wilson Storm Drain – Sponsored by Jon P. Jennings, City Manager.**

The Moody-Wilson project will add a new storm drain on the two streets and also replace the existing sewer lines. The new storm drain will separate stormwater from sewage and help reduce combined sewer overflows at the India Street CSO discharge. The design of the project indicated the need for storage due to pipe size constraints downstream of the project. The initial CIP request did not factor the storage units into the estimate so extra funds are needed. The project had a bid opening on August 2nd. Staff was hoping that the price would come in under the remaining funds, however, that was not the case. An additional $175, 000 is required.

A contractor is ready to perform the work, but an agreement cannot be signed until funds are available. If the contract is not signed soon, the work will be delayed.

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AMENDMENTS:

EXECUTIVE SESSION:

Executive Session Re: Bargaining Guidance for Pro Tech Pursuant to 1 M.R.S. Section 405(6)(D) - Sponsored by Jon P. Jennings, City Manager.

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AMENDMENTS:

EXECUTIVE SESSION:

Executive Session Re: Bargaining Guidance for Pro Tech Pursuant to 1 M.R.S. Section 405(6)(D) - Sponsored by Jon P. Jennings, City Manager.

BREAK FOR DINNER:

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

(Tab 1) 9-19-16

ROLL CALL: Mayor Strimling called the meeting to order at 5:00 P.M. (Councilors Mavodones and Costa arrived during the announcements).

ANNOUNCEMENTS:

Councilor Brenerman made an announcement that after many long months and much anticipation, the Burbank Branch reopened to the public on Tuesday, August 23, 2016. There will be an open house on Friday from 3:00 to 6:00.

Councilor Duson announced that the Housing Committee will be having a public hearing on September 28, 2016.

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Ray and seconded by Councilor Thibodeau to approve the minutes of the Regular City Council meeting and the Special City Council Meeting on August 1, 2016. Passage 9-0.

PROCLAMATIONS:

Proc 5-16/17 **Proclamation Recognizing Charcot-Marie-Tooth Disease Awareness Month - Sponsored by Mayor Ethan K. Strimling.**

Proc 6-16/17 **Proclamation Honoring Duane Currie, Public Works Department, as Employee of the Month for August 2016 – Sponsored by Mayor Ethan K. Strimling.**

Proc 7-16/17 **Proclamation Honoring Officer Brent Ross as Officer of the Month for July, 2016 – Sponsored by Mayor Ethan K. Strimling.**

Proc 8-16/17 **Proclamation Honoring Portland Little League Girls 8-10 All Star Softball Team – Sponsored by Mayor Ethan K. Strimling.**

Proc 9-16/17 **Proclamation Recognizing September as School Attendance Awareness Month - Sponsored by Mayor Ethan K. Strimling.**

APPOINTMENTS:

Order 41-16/17 **Order Appointing Mayor Ethan K. Strimling to the Policy Committee of the Portland Area Comprehensive Transportation System – Sponsored by Mayor Ethan K. Strimling.**

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

CONSENT ITEMS:

LICENSES:

Order 42-16/17 **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 – Sponsored by Michael Russel, Director of Permitting and Inspections Department.**

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

Order 43-16/17 **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 Avenue – Michael Russell, Director of Permitting and Inspections Department.**

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

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

UNFINISHED BUSINESS:

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 item was given first reading on August 1, 2016.**

Motion was made by Councilor Brenerman and seconded by Councilor Costa for passage.

Motion was made by Councilor Costa and seconded by Councilor Hinck to postpone Order 37 to September 19, 2016. Passage 9-0.

Order 38-16/17 **Order Approving Credit Enhancement Agreement with ImmuCell Corporation – Sponsored by the Economic Development Committee, Councilor David Brenerman, Chair. This item was given first reading on August 1, 2016.**

Motion was made by Councilor Brenerman and seconded by Councilor Hinck to postpone Order 38 to September 19, 2016. Passage 9-0.

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 item was given first reading on August 1, 2016.**

Motion was made by Councilor Hinck and seconded by Councilor Suslovic for passage. Passage 9-0.

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 item was given first reading reading on August 1, 2016.**

Motion was made by Councilor Suslovic and seconded by Councilor Hinck for passage. Passage 9-0.

ORDERS:

Order 44-16/17 **Order Authorizing an Extension of the Reporting Deadline of the Pesticide and Fertilizer Task Force – Sponsored by Councilor Nicholas M. Mavodones, Jr., Chair of the Pesticide and Fertilizer Task Force.**

Motion was made by Councilor Mavodones and seconded by Councilor Hinck. Passage 9-0.

Order 45-16/17 **Order Granting a Drainage Easement on Land Bank Land at 471 Danforth Street to William and Katherine Marshall – Sponsored by Jon P. Jennings, City Manager.**

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

Order 46-16/17 **Order Accepting a Bus Shelter Easement at 40 Auburn Street from Kenike LLC - Sponsored by Jon P. Jennings City Manager.**

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

Order 47-16/17 **Order Approving the Lease to Creative Portland Corporation for Office Space at 84 Free Street – Sponsored by Economic Development Committee, Councilor Brenerman, Chair.**

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

Order 48-16/17 **Order Approving License to India Newbury Residences LLC - – Sponsored by the Planning Board, Elizabeth Boepple, Chair.**

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

Order 49-16/17 **Order Approving the Interlocal Stormwater Agreement Re: Casco and Saco Bay Watershed Municipalities – Sponsored by Jon P. Jennings, City Manager.**

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

Order 50-16/17 **Order Approving the Three-Party Agreement between Portland Water District, Westbrook and Portland Re: Brighton Avenue Area – Sponsored by Jon P. Jennings, City Manager.**

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

Order 51-16/17 **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.**

This is its first reading.

EXECUTIVE SESSION:

Discussion and Consideraton 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.

This item will be heard on October 5, 2016.

EXECUTIVE SESSION:

Motion was made by Councilor Suslovic and seconded by Councilor Thibodeau to adjourn the Regular City Council meeting and move into Executive session. Passage 9-0, 8:25 P.M.

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.

Motion was made by Councilor Ray and seconded by Councilor Brenerman to come out of Executive Session. Passage 7-0, 10:00 P.M., (Councilor Thibodeau recused himself, Mayor Strimling absent.)

A TRUEY COPY.

Katherine L. Jones, City Clerk

Proc 10-16/17
Tab 2 9/19/16

PROCLAMATION
WELCOMING
THE ARCTIC COUNCIL TO PORTLAND, MAINE

****

WHEREAS, The Artic Council, Established in 1996, is the leading intergovernmental forum promoting cooperation, coordination, and interaction among the Arctic states, Artic indigenous peoples, and other inhabitants of the region on issues of common concern – including sustainable development, the environment and scientific cooperation, while also being at the forefront of researching global warming's effects on the region, and creating monitoring and research programs to continue to develop knowledge on the effects to ecosystems and wildlife; and

WHEREAS, The Artic Council also works on developing research on biodiversity and its maintenance, Arctic Ocean research and monitoring, and the health and well-being of the people living in the Arctic region today; and

WHEREAS, The following countries are members of the Arctic Council: Canada, the Kingdom of Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden, and the United States; and

WHEREAS, In addition to these countries, six organizations representing Arctic indigenous peoples have status as Permanent Participants, which include: the Aleut International Association, the Arctic Athabaskan Council, Gwich'in Council International, the Inuit Circumpolar Council, Russian Association of Indigenous Peoples of the North, and the Saami Council; and

WHEREAS, The U.S. Department of State selected Portland, Maine as the location for this high-level meeting in recognition of Maine's significant engagement in the Arctic region, including the Icelandic shipping company Eimskip choosing Portland, Maine in 2013 as its U.S. port of call, giving Maine a direct link to the North Atlantic region; and

WHEREAS, The City of Portland would like to officially welcome the Arctic Council to Portland, Maine for meetings October 4 to 6, 2016 and applauds its programs for the betterment of the future of the Arctic region – its peoples, wildlife and ecosystems; and

WHEREAS, The City is installing welcome banners on light poles throughout the Downtown and at transportation centers, providing walking tours of Portland's working waterfront, and showcasing the Arctic at the First Friday October Art Walk; and

WHEREAS, A number of activities are planned in Maine which showcase Arctic assets.

NOW, THEREFORE, BE IT RESOLVED, THAT I Ethan K. Strimling, Mayor of the City of Portland and members of the City Council do hereby welcome the Arctic Council to Portland, Maine.

Signed and sealed this 19th day of September, 2016

Ethan K. Strimling, Mayor
City of Portland, Maine

Order 52 - 16/17
Tab 3 9-19-16

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:

Mark's Sports, LLC d/b/a Mark's Sports. Application for Entertainment without Dance at 50 Wharf St.

RECEIVED
JUL - 6 2016
CITY CLERK

JULY, 5th, 2016

LETTER OF INTEND TO MAYER AND MEMBERS OF CITY COUNCILS

MY INTEND IS TO OPEN SEPT, 1ST, 2016.
A SPORTS BAR WITH MULTIPLES TV'S FIR VIEWING
ALL SPORTS AND PUP'S FOOD MENU.
FUN PLACE TO ENJOY ALL SPORTS GAMES.

SINCERELY
Mark Deane

Portland, Maine — Yes. Life's good here.

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

Supplemental Application for Dancing and Entertainment License

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

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

Business Information			
Business Name (d/b/a):	Marks sports	Phone:	2076533612
Location Address:	50 wharf street	Zip:	04101

About Your Establishment

Describe in detail the type and nature of the business and proposed entertainment: Band no amplified	
Will music be electric, acoustical, or both? (Circle)	
Will amplification be used?	Y/N
If yes, where and at what level? Below 92 db	
Will music by played (Circle all that apply): Inside Outside	
Will you permit dancing on the premises?	Y/N
Will you permit dancing after 1:00 a.m.?	Y/N
What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? 500 feet	
What is your targeted opening date? 9-1-16	
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):	

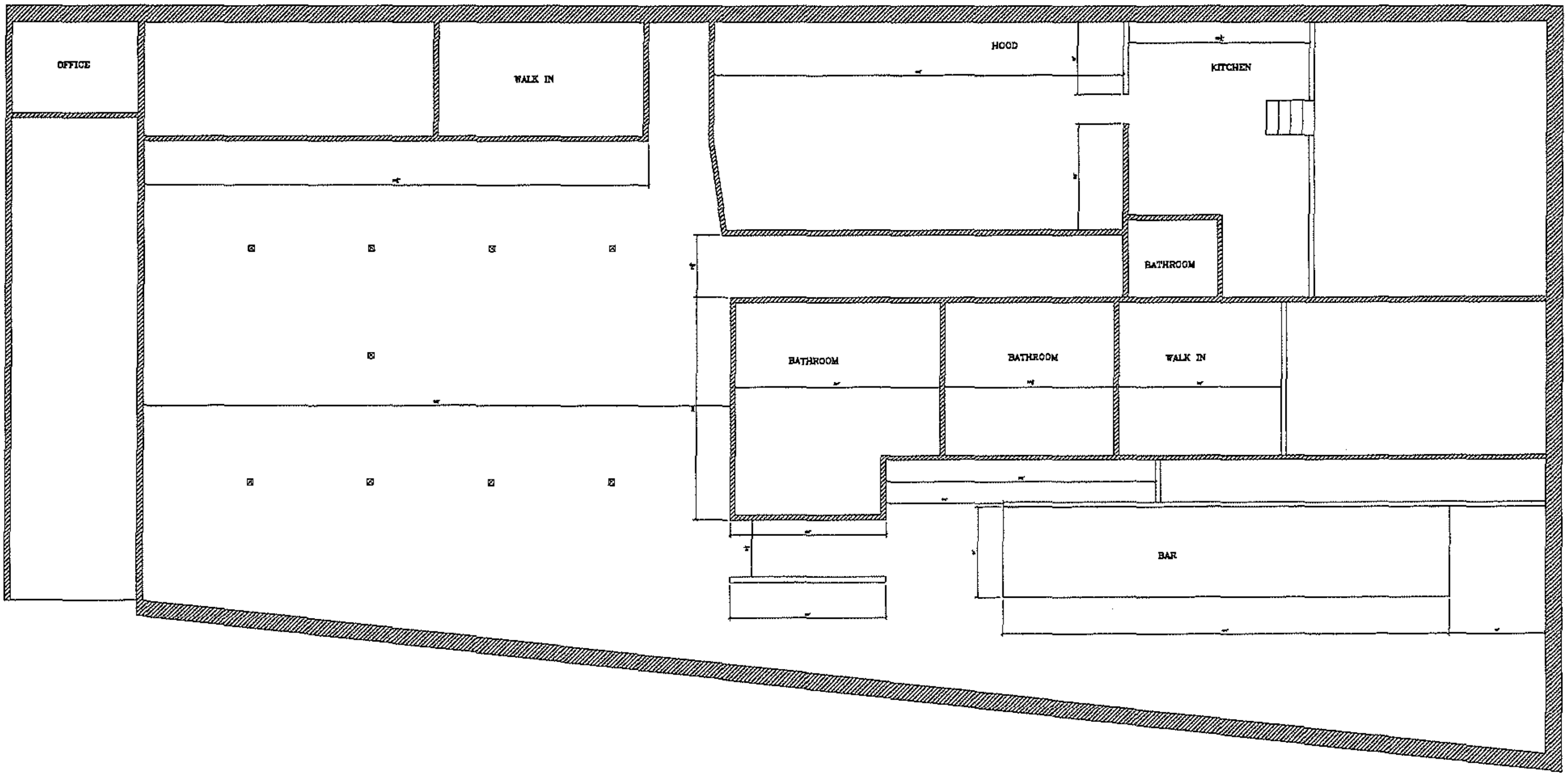
Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above license and further agrees that any misstatement of material fact may result in refusal of license or revocation, if one has been granted. Applicant agrees that all taxes and accounts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

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

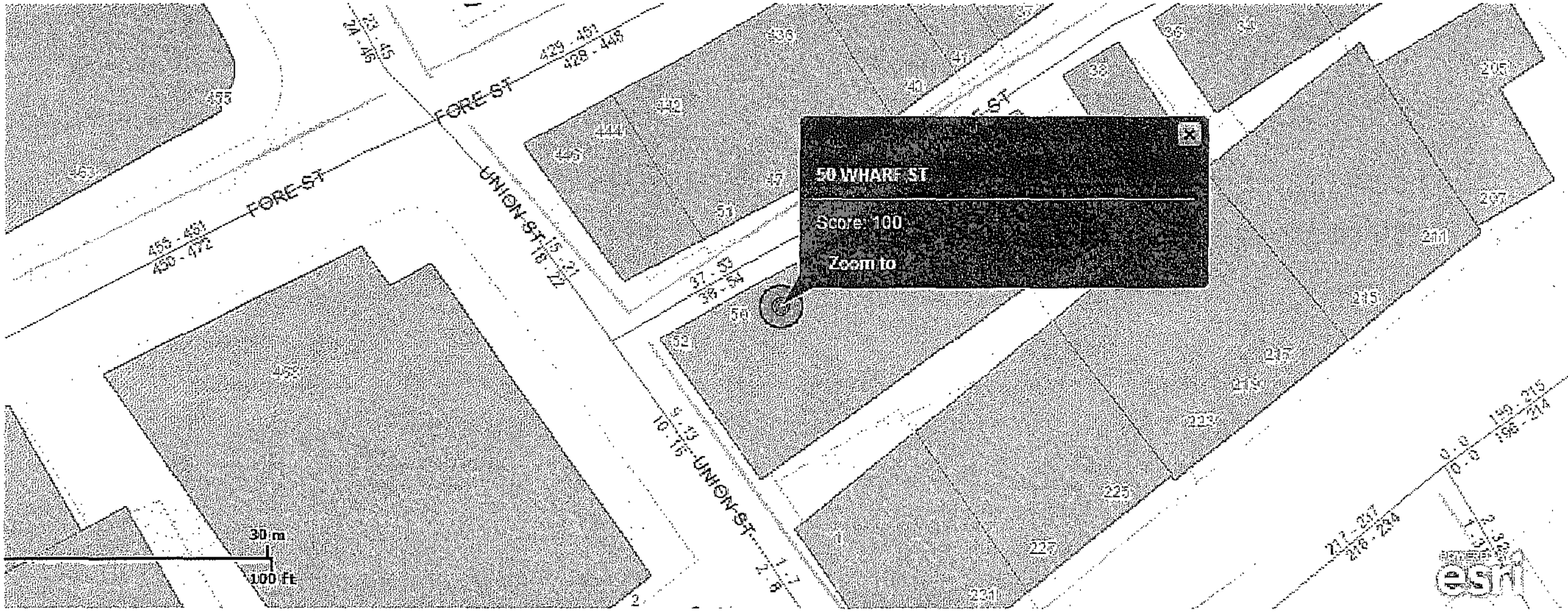
I/ We hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/ We hereby waive any rights to privacy with respect thereto.

Signature [signature] Title owner Date 7/13/16

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


OFFICE
WALK IN
HOOD
KITCHEN
BATHROOM
BATHROOM
BATHROOM
WALK IN
BAR

viark'~ Sports
;0 Wharf St.



Office of Permitting and Inspections
Michael A. Russell, MS

September 6, 2016

Mark's Sports
Attn: Mark Deane
34 Patricia Lane
Portland, ME 04103

Re: Mark's Sports, LLC d/b/a Mark's Sports. Application for Entertainment without Dance at 50 Wharf St.

Dear Mr. Deane,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, September 19th, at 5:00 p.m.,** for the review of your application for Entertainment without Dance at 50 Wharf St. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

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

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

Sincerely,

Melissa Caiazzo

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

Legal Advertisement
Notice of Public Hearing
City of Portland

A Public Hearing will be held on September 19^{th} at 5:00 P.M., in City Council Chambers, 389 Congress St., Mark's Sports, LLC d/b/a Mark's Sports. Application for Entertainment without Dance at 50 Wharf St. Sponsored by Michael A. Russell, Director of Permitting and Inspections.

Order 53 - 16/17
Tab 4 9-19-16

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:

Nosh LLC d/b/a Nosh Kitchen Bar. Application to expand existing alcohol service area for one-day event on September 25, 2016 at 551 Congress St.

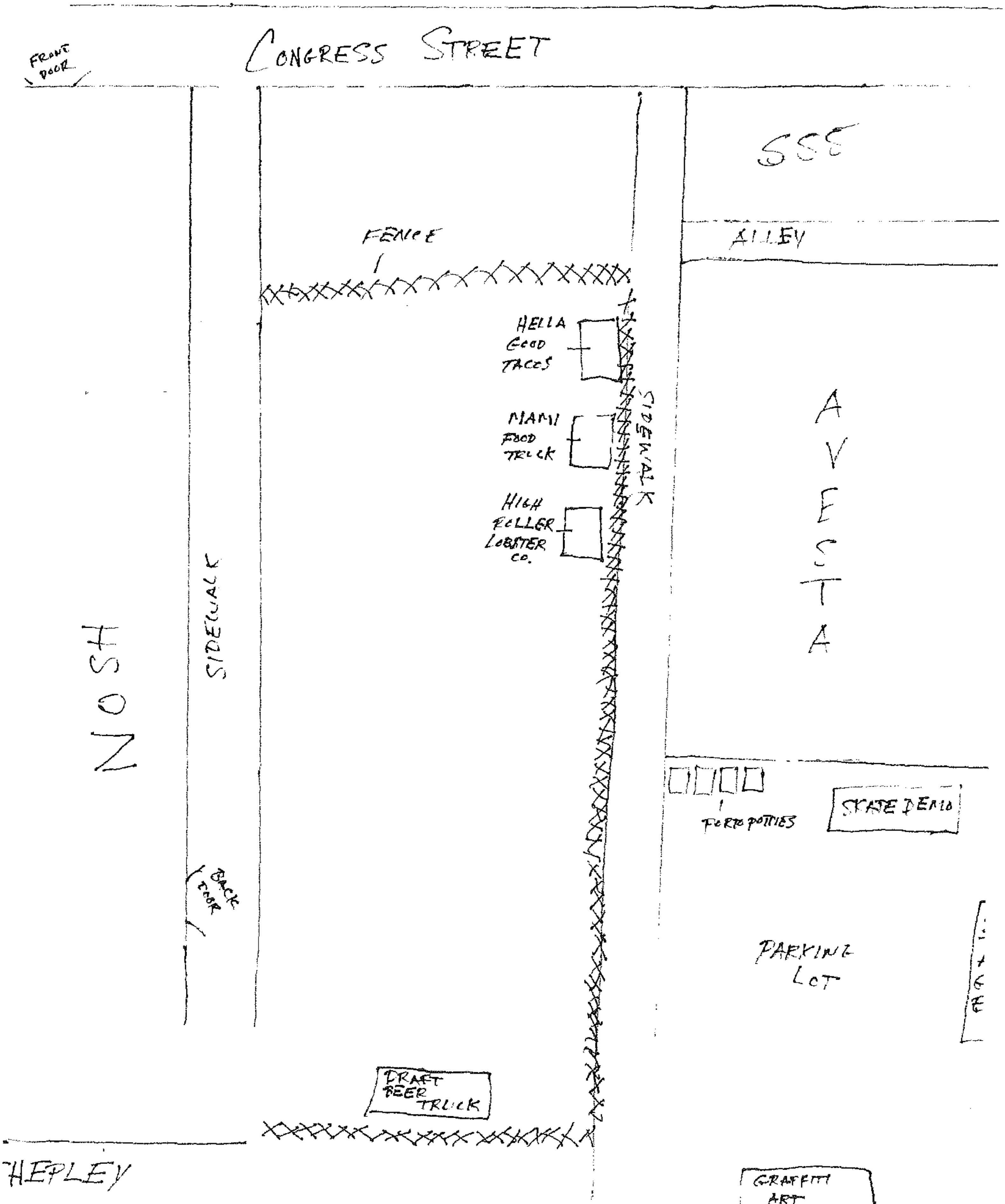
Dear Mayor Strimling and Council Members,

Greetings from Nosh! We are writing this letter to ask approval of you and the council to host our 4th annual NoshBow event on Oak St. on September 25th. Last year the event was a rousing success with support from the neighborhood and city. This year we are hoping to make the event bigger and better by getting more people involved. We have partnered with Oxbow Brewing company for the event and are bringing in local bands, djs and food vendors as well as local artists to do a live art demonstration. The attendance last year was over 1,000 people and we look to be closer to 1,500 this year throughout the day. We are asking to expand the footprint covered by our liquor license in order to accommodate the attendees. The requested area will be fenced in and monitored by our staff and also 2 Portland Police officers as well as a contracted security team. Thank you for your consideration in this matter and please feel free to contact us with any questions or concerns.

Sincerely,

Nosh Kitchen Bar

Matt Moran


CONGRESS STREET
FRONT DOOR
ALLEY
FENCE
HELLA GOOD TACOS
MAMI FOOD TRUCK
HIGH ROLLER LOBSTER CO.
SIDEWALK
AVESTA
NOSH
SIDEWALK
BACK DOOR
PORTO POTTIES
SKATE DEMO
PARKING LOT
DRAFT BEER TRUCK
HEPLEY
GRAFFITI

Portland, Maine Yes. Life's good here.

Department of Permitting and Inspections
Michael A. Russell, MS

September 6, 2016

Nosh Kitchen Bar
Attn: Matt Moran
551 Congress St.
Portland, ME 04101

Re: Nosh LLC d/b/a Nosh Kitchen Bar. Application to expand existing alcohol service area for one-day event on September 25, 2016 at 551 Congress St.

Dear Mr. Moran,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, September 19th, at 5:00 p.m.** for the review of your application to expand Nosh Kitchen Bar's existing alcohol service area for one-day event on September 25, 2016. 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

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 19th at 5:00 P.M., in City Council Chambers, 389 Congress St., Nosh LLC d/b/a Nosh Kitchen Bar. Application to expand existing alcohol service area for one-day event on September 25, 2016 at 551 Congress St. Sponsored by Michael A. Russell, Director of Permitting and Inspections.

Order 54 - 16/17
Tab 5 9-19-16

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:

The Miranda Group d/b/a Proper Charlies. Application for a Class A Lounge with Entertainment with Dance at 26 Exchange Street.

August 2016

Dear Mayor Strimling and Esteemed Council Members,

I was born and raised in Portland, Maine. After many years in New York City and Miami, my return to Portland has only cemented my belief of what a truly unique City this is. A veteran of 14 bar openings, I can bring a wealth of knowledge, experience and sophistication to the Old Port. Most recently, my imprint can be seen at the new Top of the East, Stroudwater Spirits at Thompson's Point and currently Glass Lounge inside the Hyatt Place Old Port. I've also opened several other Commonwealth Hotels nationwide.

"Proper Charlie's" hopes to appeal to Portland's more refined cocktail consumer and to fulfill a niche that seems to be missing in this area of Portland. While the Old Port is arguably the heart of the Portland night life, Lower Exchange Street is the center of the Old Port. Currently, Fuji restaurant is the only other full service bar on the street. "Proper Charlie's" wants to bring a modern interpretation of a classic cocktail bar to one of our City's more iconic thoroughfares. I aim to maintain the décor and theme of the surrounding buildings and pay homage to the history of fine bars that were here before.

With the knowledge of Portland's past and the experience of opening bars in larger markets, I strive to attract a more mature clientele back to the Old Port. I want to bring in a clientele that appreciates high end & local spirits, as well as fresh ingredients, contemporary techniques with a classic cocktail foundation in a chic, cosmopolitan atmosphere. This bar & lounge will complement the many fine restaurants and eateries that our City has become known for. This will be a place where one would feel proud to bring visitors to and say to their guest: "This is Portland!!"

I am applying for a Class A Lounge Liquor License, and Entertainment License with Dance in order to run a successful bar & lounge on Exchange St.

Thank you for your time.

Joshua Miranda

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):	PROPER CHARLIES	Phone: 207	318-7815
Location Address:	7 Fox CT / 26 Exchange St. Zip: 04101		
If new, what was formerly at this location:	LOVELL DESIGN		
Mailing Address:	PO BOX 4835 Zip: 04112		
Contact Person:	JOSHUA MIRANDA	Phone: 207	318 7815
Contact Person Email:	JMIRANDA556@AOL.COM		
Manager of Establishment:	JOSH MIRANDA	Phone: 207	318 7815
Owner of Premises (Landlord):	JOE SOLEY		
Address of Premises Owner:	10 Exchange St. Zip: 04101		

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

Name of Owner(s)	Date of Birth	Residence Address

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

Corporate Name	Corporate Mailing Address	
THE MIRANDA GROUP	PO BOX 4835	Zip: 04112
Contact Person: JOSH MIRANDA	Phone: 207	318-7815

Principal Officers	Title	Date of Birth	Residence Address
JOSH MIRANDA	Proprietor	8/20/72	16 William St. Portland

About Your Establishment

Class of Liquor License:	CLASS A LOUNGE
Type of food served:	SMALL PLATES / SANDWICHES
Please circle all that will be served:	Beer Wine Liquor
Projected percentage of sales:	Generated from Food: 15% Generated from Alcohol: 85%
Hours & days of operation:	4PM - 1AM DAILY

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: Kitchen open until midnight	
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: B. GOOD BURGER / FUJI RESTAURANT 100 ft plus	
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: 2 # of amusements: ____ # of pool tables: 2	
What is your targeted opening date? NOVEMBER 2016	
Does the issuance of this license directly or indirectly benefit any City employee(s)?	Y/N
If Yes, list name(s) of employee(s) and department(s):	
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?	Y/N
If Yes, please list business name(s) and location(s):	
Is any principal officer under the age of 21?	Y/N
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?	Y/N
If Yes, please explain: Poss scheduled substance 2001	

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

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

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

Signature [signature] Title Propietor Date 8/18/2016

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

Portland, Maine — Yes. Life's good here.

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

Supplemental Application for Dancing and Entertainment License

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

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

Business Information			
Business Name (d/b/a):	THE MIRANDA GROUP	Phone: ~~2~~ 207	318 7815
Location Address:	27 Fox ct / 26 Exchange St	Zip:	04101

About Your Establishment.

Describe in detail the type and nature of the business and proposed entertainment: THERE WILL ONLY BE DJ / iPOD MUSIC played	
Will music be electric, acoustical, or both? (Circle)	
Will amplification be used?	Y/N
If yes, where and at what level? BACKGROUND	
Will music by played (Circle all that apply): Inside Outside	
Will you permit dancing on the premises?	Y/N
Will you permit dancing after 1:00 a.m.?	Y/N
What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? 100 ft plus	
What is your targeted opening date? November 2016	
Does the issuance of this license directly or indirectly benefit any City employee(s)?	Y/N
If Yes, list name(s) of employee(s) and department(s):	

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

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

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

Signature [signature] Title Proprietor Date 8/18/2016

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

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)
- ☐ HOTEL-OPTINONAL FOOD (Class I-A)
- ☑ CLASS A LOUNGE (Class X)
- ☐ CLUB (Class V)
- ☐ TAVERN (Class IV)
- ☐ RESTAURANT/LOUNGE (Class XI)
- ☐ HOTEL (Class I,II,III,IV)
- ☐ CLUB-ON PREMISE CATERING (Class I)
- ☐ GOLF CLUB (Class I,II,III,IV)
- ☐ OTHER: ________

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

1. APPLICANT(S) –(Sole Proprietor, Corporation, Limited Liability Co., etc.) DOB:	2. Business Name (D/B/A) THE MIRANDA GROUP
THE MIRANDA GROUP DOB:	DBA PROPER CHARLIES
DOB:	Location (Street Address) 26 Exchange St.
Address PO BOX 4835	City/Town Portland State ME Zip Code 04101
Portland ME 04112 ?	Mailing Address PO BOX 4835
City/Town State Zip Code	City/Town Portland State ME Zip Code 04112
207 318 7815	
Telephone Number Fax Number	Business Telephone Number 207 318 7815 Fax Number
Federal I.D. #	Seller Certificate #

EMAIL ADDRESS: JMIRANDA556@AOL.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: JOSH MIRANDA
8. If business is NEW or under new ownership, indicate starting date: November 2016
   Requested inspection date: September Business hours: 4PM - 1AM
9. Business records are located at: 16 William St Portland, ME 04103
10. Is/are applicants(s) citizens of the United States? YES ✓ NO ☐
11. Is/are applicant(s) residents of the State of Maine? YES ✓ NO ☐

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

Name in Full (Print Clearly)	DOB	Place of Birth
JOSHUA MIRANDA	8/20/1973	Portland

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

13. Has/have applicant(s) or manager ever been convicted of any violation of the law, other then minor traffic violations, of any State of the United States? YES ✓ NO ☐
   Name: Josh MIRANDA Date of Conviction: 2001
   Offense: Poss. control substance Location: YORK COUNTY
   Disposition: Suspended sentence
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:
   JOE SOLEY 10 Exchange St
17. Describe in detail the premises to be licensed: (Supplemental Diagram Required)
   7 FOX Ct / 26 Exchange
18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?
   YES ☐ NO ✓ Applied for: 8/19/2016
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? 3/4 MILE Which of the above is nearest? Church
20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES ☐ NO ✓

   If YES, give details:

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

NOTE: "I understand that false statements made on this form are punishable by law. Knowingly supplying false information 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 $2,000 or both."

Dated at: Portland ME (Town/City, State) on 8/18/2016 (Date), 20 16

Joshua Miranda **Please sign in blue ink**

Signature of Applicant or Corporate Officer(s)

JOSHUA MIRANDA

Print Name

Signature of Applicant or Corporate Officer(s)

Print Name

NOTICE – SPECIAL ATTENTION

All applications for NEW or RENEWAL liquor licenses must contact their Municipal Officials or the County Commissioners i 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 Spirituous, 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 Spirituous, 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 Spirituous 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 Spirituous, Vinous and Malt (Clubs without Catering, Bed & Breakfasts) .... $ 495.00
CLASS V: Clubs without catering privileges.

Class X Spirituous, Vinous and Malt – Class A Lounge $2,200.00
CLASS X: Class A Lounge

Class XI Spirituous, 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 unorganize 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 maile to Bureau of Alcoholic Beverages and Lottery Operations, Division of Liquor Licensing and Enforcement, 8 State House Statio 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:
THE MIRANDA GROUP

2. Other business name for your entity (DBA), if any:
PROPER CHARLIE'S

3. Date of filing with the Secretary of State: August 2016

4. State in which you are formed: MAINE

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

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

Name	Address for Previous 5 years	Date of Birth	Ownership %
JOSH MIRANDA	Portland, ME	8/20/72	100

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

Yes ☐ No ☑

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

Name: ______________________ Agency: ______________________

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

Yes [✓] No [ ]

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

Name: JOSH MIRANDA

Date of Conviction: 2001

Offense: Possession controlled substance

Location of Conviction: YORK COUNTY

Disposition: SUSPENDED SENTENCE

Signature:

[signature]
Signature of Duly Authorized Person

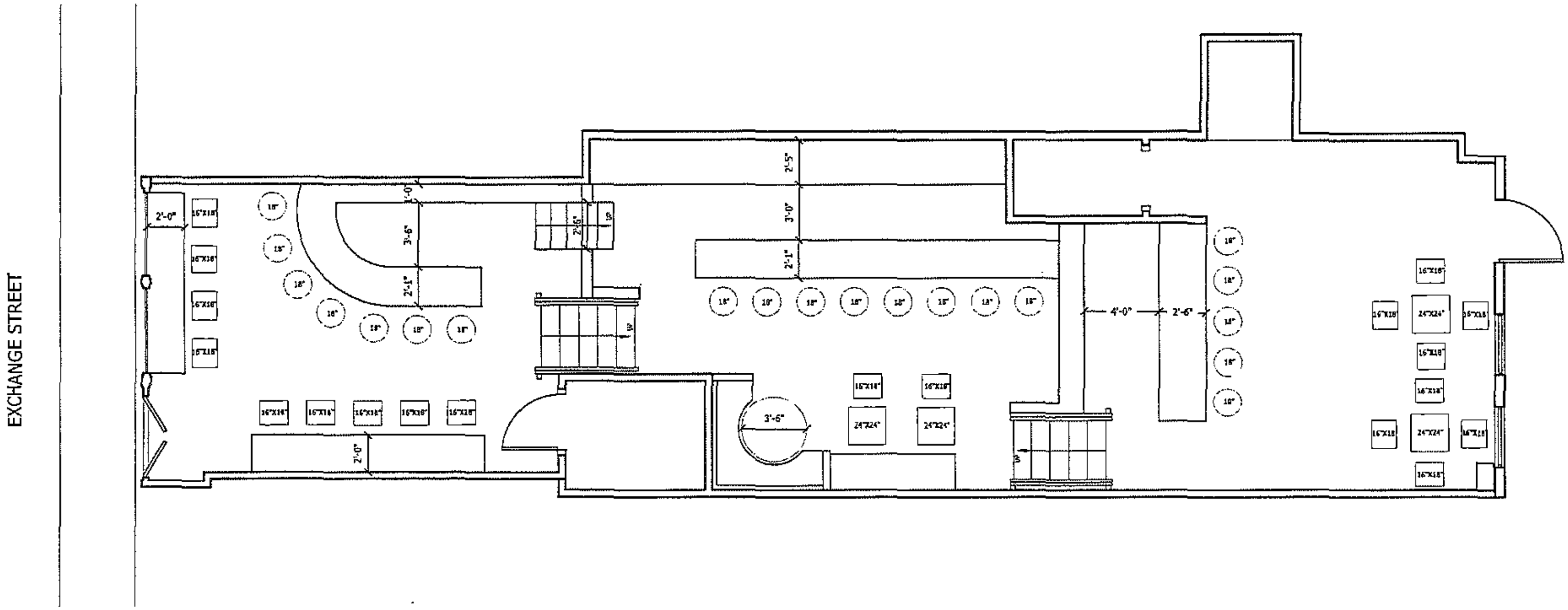
Date 8/19/2016

JOSHOA MIRANDA
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



1 PROPOSED ARCHITECTURAL PLAN
3/16" = 1'-0"

strong

Smoke & Glass Manhattan $12
Buffalo Trace Bourbon
Cocchi Vermouth di Torino,
Owl & Whale Cherry Bitters

The Great Gatsby $13
Hudson Manhattan Rye, Cynar,
Dolin Rouge, Chocolate-Citrus
Shrub, White Truffle Oil Sea Salt,
Scrappy Chocolate Bitters

The '59 Les Paul $12
Plymouth Navy Strength Gin,
Pearl Onion Infused Dolin Dry,
Rosemary, Bitter Truth Lemon
Bitters, Pickled Onion

Rum, Butter, Rum $11
Brown Buttered Appleton Rum,
Blackstrap Rum, Nutmeg, Butter-
scotch-Cream Ale, Bolivar Bitters,
Kaplan's Bitters

The Tennessee Williams $10
Dickel #12 Whiskey, Kaffir Lime
Ginger Beer, Bee Balm,
Owl & Whale Persimmon Bitters

bitter

Murder On the Orient Express $11
Sesame Infused Bombay Dry Gin,
Fino Sherry, Pernod Absinthe Mist,
Lemon, Honey, Sugar Snap Peas,
Elderflower Tonic

Left at Albuquerque $11
Milagro Reposado Tequila, Aperol,
Carrot, Orange, Celery Soda,
Brown Sugar, Sage,
Chesapeake Bay Bitters

Roman Holiday $11
Goral Master Vodka, Cappelletti,
Grapefruit Juice, Passion Fruit,
Bittermen's Hopped Grapefruit
Bitters

Sunset Boulevardier $12
Woodford's Bourbon,
Punt e Mes, Campari, Averna,
Kaplan's Redrum Bitters,
Flamed Orange

The Cary Grant $11
St. George Terroir Gin,
Society Fair Tonic Clarified Lime,
Maine Hemlock

wine

Whites
Zenato Pinot Grigio
$9/$36
Mahua Sauvignon Blanc
$9/$36
S.A Prum "Essence" Riesling
$11/$42
Licia Albarino
$12/$44
Marques De Caceres
Rioja Blanco
$8/$32
Clos Du Bois Chardonnay
$10/$40
Sonoma-Cutrer Chardonnay
$13/$48

Reds
Angeline Pinot Noir
$9/$36
Argyle Pinot Noir
$13/$48
Barosso Valley Estate Shiraz
$12/$44
Tinto Negro Malbec
$9/$36
Simi Merlot
$13/$48
Vitiano Rosso
$9/$36
Clayhouse Adobe Red Blend
$10/$40
Chateau St. Michelle
Cabernet Sauvignon
$12/$44
Caston Zinfindel
$13/$48

Bubbles
Maschio M "Spago" Prosecco
$9/$36
Juve y Camps Brut Rose
$11/$42
Chandon Sparkling Brut
$14/$50
Veuve Clicquot Brut
$25/$90

savory

Rosemary's Baby $11
Rosemary Infused Hendrick's
Gin, Clementine, Basil, Lemon,
Balsamic Reduction

Tequila Mockingbird $11
Del Maguey Vida Mezcal,
Cider, Cinnamon, Ginger Beer,
Cardamom, Baker's Style Bitters

Snow White's Poison $12
Calvados, Sparkling Cider,
Habanero-Ginger Gomme,
Apple-Coconut Foam

The Elizabeth Taylor $11
Goral Master Vodka, Crème Yvette,
Dolin Blanc, Dry Curaçao, Bubbles,
Scrappy Lavender Bitters

Some Like It Hot $10
Milagro Tequila Blanco, Ancho
Reyes Chili Liquor, Blood Orange,
Agave, Lime, San Pellegrino,
Sea Salt & Chili Rim

fresh

Garbo Talks
Tumeric Infused Vodka, White
Peppercorn, Lemon, Maple Bitters $10

American Graffiti $10
New Amsterdam Vodka, Apple, Pear,
Lemon, Cinnamon

Wong Collins $10
Bombay Sapphire East Gin,
Thai Basil & Lemongrass,
Vietnamese Peppercorn, Yuzu,
Cucumber, Dry Cucumber Soda

Rio Bravo $10
Bacardi Heritage, Agua Luca
Cachaca, Ginger, Prickly Pear, Lime

Pisco Punch $11
Pineapple Infused Barsol Pisco,
Pineapple Gomme, Grapefruit, Lime,
Lemon

Calypso $11
Bacardi 8, Applejack, Guava, Blue-
berry & Blackberry Granita, Almond,
Kaplan's Almond Bitters

beer

Allagash White $6
Allagash Saison $6
Atlantic Blueberry Ale $5
Atlantic Coal Porter $5
Bonded Horn Veridian IPA $6
Baxter Stowaway IPA $5
Baxter Tarnation Lager $5
Bunker Brewery (ask server) $6
Left Hand Milk Stout Nitro $6
Peak's Organic Fresh Cut $5
Rising Tide Ishmael $6
Rising Tide Zephyr $6
Shipyard Export Ale $5
Shipyard Seasonal $5
Woodchuck Cider $5
Wyder's Dry Pear Cider $5

spirits

SINGLE MALT (2oz.)
Ardbeg 10yr $12
Balvenie 12 yr $14
Glenfiddich 12 yr $12
Glenlivet 12 yr $12
Glenlivet Nadurra 16 yr $20
Glenmorangie 10 yr $12
Haig Club (single grain) $18
Highland Park 12 yr $13
Highland Park 18 yr $28
Lagovulin 16 yr $18
Laphroig 10 yr $12
Macallan 12 yr $14
Macallan 18 yr $48
Nikka Taketsuru $18
Oban 14 yr $18
Yamazaki $22

BLENDED
Chivas Regal 12 yr $10
Chivas Regal 18 yr $18
Cutty Sark Prohibition $8
Dewars 12 yr $10
Johnnie Walker Black $10
Johnnie Walker Blue $44
Johnnie Walker Double Black $10
Johnnie Walker Gold $20
Johnnie Walker Platinum $24

BOURBON
Angel's Envy $14
Baker's $11
Basil Hayden $11
Blanton $12
Bookers $14
Bulleit 10 yr $11
Bulleit $9
Calumet $12
Eagle Rare $9
EH Taylor Small Batch $18
EH Taylor Single Batch $14
Elijah Craig 12 year $8
Four Roses Single Barrel $12
Four Roses Small Batch $10
Hudson 4 Grain $18
Hudson Baby Bourbon $18
Jefferson's Reserve $14
Jefferson's Ocean Aged $18
Knob Creek $10
The Steward's Solera $12
Woodford Reserve $10
Woodford Double Oaked $12

RYE
Bulleit Rye $9
George Dickel $9
Gunpowder Rye $10
Hudson Manhattan Rye $18
Knob Creek Rye $10
James E. Pepper 1776 Rye $9
Pritchard's Rye $13
Sazerac 18yr $20
Sazerac Rye $8
Templeton Rye $12
Thomas Handy $18
Whistlepig $20

TEQUILA
Avion Silver $13
Casa Noble Blanco $10
Casa Noble Reposado $12
Casamigos Blanco $14
Casamigos Reposado $15
Casamigos Anejo $16
Corzo Silver $12
Del Maguey Mezcal Vida $9
Del Maguey Chichicpa $16
Don Julio Blanco $12
Don Julio Reposado $14
Don Julio Anejo $15
Don Julio 1942 $35
El Espolon Blanco $8
Herradura Silver $10
Milagro Silver $8
Milagro Reposado $9
Peligroso Silver $9

GIN
Alchemy Dry $8
Aviation American $8
Barr Hill Tom Cat $11
Beefeater 24 $8
Bimini $8
Bols Genever $8
Bombay Sapphire $8
Boodles $8
Death's Door $9
Hendrick's $10
Monkey 47 $18
Plymouth Gin $8
Plymouth Navy Strength $9
St George Terrier Gin $9
Tanquery 10 $9
The Botanist Gin $10

BRANDY
Barsol Pisco $9
Courvoisier VS $10
Courvoisier XO $38
Grappa Di Sassicaia $22
Hennessy VSOP $15
Hennessy XO $45
Pierre Ferrand 1840 $13
Remy Martin 1738 $18
Remy Martin VSOP $12
Remy Martin XO $38
St. Vivant Armagnac $10

RUM
Agua Luca Cachaca $8
Appleton Estate $8
Bacardi 8 $8
Bacardi Heritage $8
Barbancourt Estate $10
Clement Premier Rum $9
Eight Bells Rum $9
Leblon Cachaca $8
Meyer's Dark $8
Mt. Gay Black Barrel $8
Mt. Gay Eclipse Dark $8
Mt. Gay Silver $8
Pilar Blonde Rum $10
Pilar Dark Rum $11
Pusser's British Rum $8
Pyrat XO Reserve $12
Ron Matusalem Gran Reserva $10
Ron Zacapa 23 yr $12

VODKA
22 Vodka $8
Belvedere $9
Chopin $9
Ciroc (Flavors) $9
Cold River Blueberry $9
Doublecross $9
Goral Vodka $9
Grey Goose (Flavors) $10
Hanger One (Flavors) $9
Ketel One $9
Stolichanaya (Flavors) $8
Tito's $8

Smoked Cod Scotch Eggs $10

Cayenne Aioli • Green Beans

South Indian Spiced Beef $12

Pink Onion • Bay Leaf

Mackerel Pate $12

Pickled Cucumber

Gin & Tonic Cured Salmon $13

Dill Mayo • Cucumber • Soda Bread

Tuna Tartare $13

Curry Reduction

Meat & Cheese Board $18

Roast Beef • Baked Ham • Roasted Turkey

White Stiilton • English Double Gloucester • Drunken Goat

The Daily Slop $10

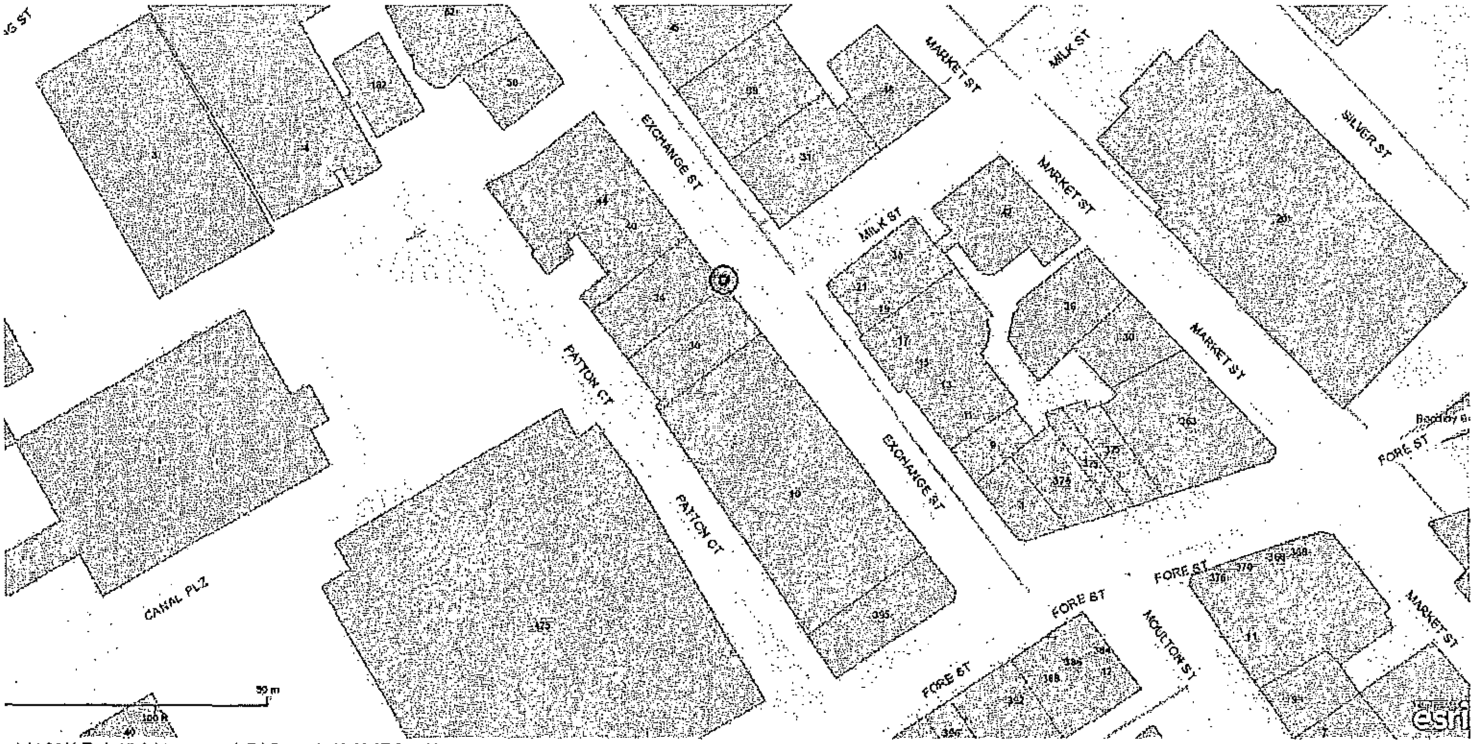
One Meat • One Starch • One Veggie

Pimm's Jelly $10

Cucumber Sorbet

Mini Trifle $10

Crisp Meringue • Fruit • Guilt


EXCHANGE ST
MARKET ST
MILK ST
SILVER ST
PATTON CT
CANAL PLZ
FORE ST
MOULTON ST
50 m
100 ft
esri

Portland Maine | Yes. Google's good here.

Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Re: Proper Charlies-26 Exchange Street

Gary Hutcheson <garyh@portlandmaine.gov> Sun, Sep 4, 2016 at 1:28 AM
To: Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Approved.

On Fri, Sep 2, 2016 at 11:55 AM, Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

Proper Charlies.pdf

Good Morning

For your approval:

The Miranda Group d/b/a Proper Charlies. Application for a Class A Lounge with Entertainment with Dance at 26 Exchange Street. They wish to go before council on 9/19/2016.

Owners:

Joshua Miranda DOB 8/20/1972

Contact:

Joshua Miranda 207-318-7815 or jmiranda556@aol.com

The application is attached. Please put feedback into UI.

Thank you Jess

Jessica B. Hanscombe
Business License Specialist
389 Congress Street Room 307
Portland, Maine 04101
207-874-8783
jhanscombe@portlandmaine.gov

--
Lt. Gary L Hutcheson
Portland Police Department
109 Middle St

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

JANICE GARDNER
389 CONGRESS STREET
ROOM 203
PORTLAND, ME 04101

Transaction Response #: MIQ99C587871

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2015-08-17) :

Inquiries Name(s) JOSHUA J MIRANDA (1972-08-20)

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

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

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

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

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

Identification

Subject Name/or potential Alias Name(s)

MIRANDA, JOSHUA

Subject Description (date information provided listed in parentheses)

State ID Number	**DOC Number**	
ME0077687	Unknown/NA	
Sex	**Race**	**Skin Tone**
Unknown/NA	Unknown/NA	Unknown/NA
Height	**Weight**	**Date of Birth**
Unknown/NA	Unknown/NA	1972-08-20
Hair Color	**Eye Color**	
Unknown/NA	Unknown/NA	
Scars, Marks, and Tattoos		
Unknown/NA		
Place of Birth	**Citizenship**	
Unknown/NA	Unknown/NA	

Residence

Residence as of	2004-10-25
Address	37 INERNESS ST PORTLAND, ME

Caution Information

Firearms Disqualified	D - Disqualified

Criminal History

Cycle 001

ATN/Tracking Number	317419A
Earliest Event Date	2001-07-30
Arrest/Charge	(Cycle 001)
Arrest/Charge Date	2001-07-30
Arresting/Charging Agency	MAINE DRUG ENFORCEMENT AGENCY PORTLAND; ME0032000
Subject Name(s)	MIRANDA, JOSHUA
Arrest Type	Adult
Charge 1	

Charge Number	317419A 001
Charge Tracking Number	317419A
Agency	MAINE DRUG ENFORCEMENT AGENCY PORTLAND; ME0032000
Offense Date	2001-07-30
Charge Description	UNLAWFUL TRAFFICKING IN SCHEDULED DRUGS (Charge Class B)
Statute	17-A MRSA SUBSECTION 1103(1)

State Sequence Code 2773
Severity Felony

Charge 2

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

Prosecutor Disposition No data supplied

Court Disposition (Cycle 001)
Court Case Number CR 2001-01157
Court Agency SUPERIOR COURT ALFRED; ME016015J

Charge 1

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

Charge 2

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

Sentencing (Cycle 001)
Sentencing Agency SUPERIOR COURT ALFRED; ME016015J

Court Case Number CR 2001-01157
Charge Number 317419A 001
Charge Sequence Number 1
Charge Tracking Number 317419A
Sentence 2002-07-11: INCARCERATED 2 years ALL SUSPENDED DEPARTMENT OF CORRECTIONS
2002-07-11: PROBATION 2 years STARTING DATE AFTER INCARCERATION

Sentencing (Cycle 001)
Sentencing Agency SUPERIOR COURT ALFRED; ME016015J

Court Case Number CR 2001-01157
Charge Number 317419A 002
Charge Sequence Number 2
Charge Tracking Number 317419A

Sentence	2002-07-11: INCARCERATED 364 days ALL SUSPENDED YORK COUNTY JAIL 2002-07-11: PROBATION 2 years STARTING DATE AFTER INCARCERATION
Corrections	No data supplied

Index of Agencies

Agency	SUPERIOR COURT ALFRED; ME016015J
Agency Telephone	207-324-5122
Address	PO BOX 160 ALFRED, ME 04002
Agency	MAINE DRUG ENFORCEMENT AGENCY PORTLAND; ME0032000
Agency Telephone	207-822-0370
Address	565 CONGRESS STREET SUITE 300 PORTLAND, ME 04101

Department of Permitting and Inspections
Michael Russell, MS.

September 2, 2016

Proper Charlies
Attn: Josh Miranda
PO Box 4835
Portland ME 04112

Re: The Miranda Group d/b/a Proper Charlies. Application for a Class A Lounge with Entertainment with Dance at 26 Exchange Street.

Dear Mr. Miranda,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, September 19th, at 5:00 p.m.**, for the review of your application for Class A Lounge with Entertainment with dancing at 26 Exchange 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, jhanscombe@portlandmaine.gov

Sincerely,

Jessica Hanscombe

Jessica Hanscombe
Business License Specialist
207-874-8783
jhanscombe@portlandmaine.gov

Legal Advertisement
Notice of Public Hearing
City of Portland

A Public Hearing will be held on September 19th at 5:00 P.M., in City Council Chambers, 389 Congress St., on The Miranda Group d/b/a Proper Charlies. Application for a Class A Lounge with Entertainment with Dance at 26 Exchange Street. Sponsored by Michael Russell, Director of Permitting and Inspections.

Order 55-16/17
Tab 6 9-19-16

CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

Sodexo America, LLC d/b/a Sodexo America, LLC. Application for a Class I Qualified Caterer at 88 Bedford Street.

SKENE LAW FIRM, P.C.

A NEW JERSEY PROFESSIONAL CORPORATION
2614 ROUTE 516, 2ND FLOOR • OLD BRIDGE, NEW JERSEY • 08857
PHONE: 732-727-5030 • FAX: 732-727-5028
WWW.SKENELAWFIRM.COM

ROBERT D. SKENE * +
RICHARD D. NASCA * +
LISA M. MILLER * + ^

* NEW JERSEY BAR ADMISSION
\+ NEW YORK BAR ADMISSION
^ PENNSYLVANIA BAR ADMISSION

JOHN F. VASSALLO, JR., OF COUNSEL
ANNE MARIE VASSALLO, OF COUNSEL

August 10, 2016

Mayor Ethan K. Strimling and
Members of the City Council
389 Congress Street
Portland, ME 04101

RECEIVED
AUG 19 2016
CITY CLERK

Re: *Application for Qualified Caterer's License*
Sodexo America, LLC
88 Bedford Street
Portland, ME 04103

To the Mayor and Members of the City Council:

Please be advised that we represent Sodexo America, LLC in its alcoholic beverage regulatory matters. At this time, we are submitting an application for a Qualified Caterer's License on behalf of our client to license the above premises which is located on the University of Southern Maine's Portland campus. Our client will be providing dining services, as well as retail and catering services for the campus. Please also note that our client currently holds Qualified Caterer's Licenses in the State of Maine at three educational institutions and has been in the hospitality business for over 25 years.

Upon your review of the application materials, we respectfully request that same be approved by the City Council. Should you require additional information or documentation, please do not hesitate to contact our office.

Sincerely,

SKENE LAW FIRM, P.C.

By: ______________________
Lisa M. Miller, Esq.

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

RECEIVED AUG 19 2016 CITY CLERK

Business Information			
Business Name (d/b/a):	Sodexo America, LLC	Phone:	
Location Address:	88 Bedford Street, Portland, ME	Zip: 04103	
If new, what was formerly at this location:			
Mailing Address:	9801 Washingtonian Blvd, 12th Fl. Suite 1255A Gaithersburg, MD 20878	Zip:	
Contact Person:	Danielle Notarmuzi	Phone: 732	727-5030
Contact Person Email:	Dnotarmuzi@skenelawfirm.com		
Manager of Establishment:	Tadd Stone	Phone:	
Owner of Premises (Landlord):	University of Maine System		
Address of Premises Owner:	16 Central Street, Floors 2-4, Bangor, ME	Zip: 04401	

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		
Sodexo America, LLC	9801 Washingtonian Blvd, 12th Fl. Ste. 1255A Gaithersburg, MD 20878 Zip:		
Contact Person:	Pamela Wright	Phone: 301	987-4454

Principal Officers	Title	Date of Birth	Residence Address
Lorna Donatone	President	11/1/57	1421 Blue Heron Road Virginia Beach, VA 23454
Thomas Morse	Vice President	4/29/58	152 Treehaven Street Gaithersburg, MD 20878
Scott Robins	Secretary	5/2/53	404 Nina Place Rockville, MD 20852

About Your Establishment

Class of Liquor License:	Class I
Type of food served:	Hot and cold dishes to satify catered events
Please circle all that will be served:	Beer X Wine X Liquor X
Projected percentage of sales:	Generated from Food&alcohol - $6595.00 Generated from Alcohol:
Hours & days of operation:	Monday - Sunday, 8am - 9pm

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 Y
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:	Y
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 N
If yes, please list: # of pinball machines: ______ # of amusements: ______ # of pool tables: ______	
What is your targeted opening date?	7/1/16
Does the issuance of this license directly or indirectly benefit any City employee(s)?	Y/N 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 Y
If Yes, please list business name(s) and location(s): Sodexo Operations, LLC Southern Maine Community College 2 Fort Rd. S. Portland, ME 04106	
Is any principal officer under the age of 21?	Y/N N
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?	Y/N N
If Yes, please explain:	

I Scott Robins 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 X [signature] Title Secretary Date 6/6/2016

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

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: X MALT X SPIRITUOUS X VINOUS

INDICATE TYPE OF LICENSE:

- ☐ RESTAURANT (Class I,II,III,IV)
- ☐ HOTEL-OPTINONAL FOOD (Class I-A)
- ☐ CLASS A LOUNGE (Class X)
- ☐ CLUB (Class V)
- ☐ TAVERN (Class IV)
- ☐ RESTAURANT/LOUNGE (Class XI)
- ☐ HOTEL (Class I,II,III,IV)
- ☐ CLUB-ON PREMISE CATERING (Class I)
- ☐ GOLF CLUB (Class I,II,III,IV)
- X OTHER: Class I Qualified Caterer

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

1. APPLICANT(S) –(Sole Proprietor, Corporation, Limited Liability Co., etc.) Sodexo America, LLC DOB:	2. Business Name (D/B/A) Sodexo America, LLC
DOB:	
DOB:	Location (Street Address) 88 Bedford Street
Address 9801 Washingtonian Boulevard	City/Town Portland State ME Zip Code 04103
Gaithersburg MD 20878	Mailing Address
City/Town State Zip Code	City/Town State Zip Code
Telephone Number Fax Number	Business Telephone Number Fax Number
Federal I.D. # 52-2208632	Seller Certificate #

EMAIL ADDRESS: dnotarmuzi@skenelawfirm.com

3. If premises is a hotel, indicate number of rooms available for transient guests: N/A
4. State amount of gross income from period of last license: ROOMS $ ______ FOOD $ ______ LIQUOR $ ______ N/A
5. Is applicant a corporation, limited liability company or limited partnership? YES X 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: Tadd Stone

8. If business is NEW or under new ownership, indicate starting date: 7/1/16

Requested inspection date: ________ Business hours: Monday- Sunday 8am-9pm

9. Business records are located at: licensed premises location

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

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

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

Name in Full (Print Clearly)	DOB	Place of Birth
Please see attached rider.		

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

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

Name: ________ Date of Conviction: ________

Offense: ________ Location: ________

Disposition: ________

14. Will any law enforcement official benefit financially either directly 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: University of Maine System, 16 Central St. Floors 2-4 Bangor, ME 04401

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) Catered events will take place in the basement of the Abromson Comm Ed Center.

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

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? .5 miles Which of the above is nearest? Levey Day 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: ________

Rider to Question 12.

Name	Date of Birth	Place of Birth	Residence Address for Last 5 Years
Lorna Donatone (Maiden Name-Tiemann), President	11/01/1957	Nebraska	1421 Blue Heron Road, Virginia Beach, VA 23454
Thomas Morse, Vice President	04/29/1958	Washington, D.C.	152 Treehaven Street, Gaithersburg, MD 20878
Scott Robins, Secretary	05/02/1953	New York	404 Nina Place, Rockville, MD 20852
Tadd Stone, Premises Manager	06/19/1980	Saint Albans, VT	July 2013-Present: 113 Pine Hill Circle, Waltham, MA 02451 August 2012-June 2013: 83 Church Street, Enosburg, VT 05450 March 2012-August 2012: Parishville, NY 13672 January 2009-March 2012: St. Albans, VT 05478

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: Gaithersburg, MD on 8/8, 20 16
Town/City, State — Date

Thomas R. Morse Please sign in blue ink

Signature of Applicant or Corporate Officer(s) — Signature of Applicant or Corporate Officer(s)

Thomas R. Morse

Print Name — 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	Spirituous, Vinous and Malt 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.	$ 900.00
Class I-A	Spirituous, Vinous and Malt, Optional Food (Hotels Only) CLASS I-A: Hotels only that do not serve three meals a day.	$1,100.00
Class II	Spirituous Only 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.	$ 550.00
Class III	Vinous Only 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.	$ 220.00
Class IV	Malt Liquor Only 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.	$ 220.00
Class V	Spirituous, Vinous and Malt (Clubs without Catering, Bed & Breakfasts) CLASS V: Clubs without catering privileges.	$ 495.00
Class X	Spirituous, Vinous and Malt – Class A Lounge CLASS X: Class A Lounge	$2,200.00
Class XI	Spirituous, Vinous and Malt – Restaurant Lounge CLASS XI: Restaurant/Lounge; and OTB.	$1,500.00

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

Dated at: ______________________ , Maine ______________________ ss
City/Town (County)

On: ______________________
Date

The undersigned being: ☐ Municipal Officers ☐ County Commissioners of the

☐ City ☐ Town ☐ Plantation ☐ Unincorporated Place of: ______________________ , Maine

Hereby certify that we have given public notice on this application and held public hearing thereon as required by Section 653 Title 28A, Maine Revised Statutes and herby approve said application.

______________________ ______________________

______________________ ______________________

______________________ ______________________

THIS APPROVAL EXPIRERS IN 60 DAYS

NOTICE – SPECIAL ATTENTION

§ 653. Hearings; bureau review; appeal

1. **Hearing.** The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, shall hold a public hearing for the consideration of applications for new on-premise licenses and applications for transfer of location of existing on-premise licenses. The municipal officers or county commissioners may hold a public hearing for the consideration of reqnests for renewal of licenses, except that when an applicant has held a license for the prior 5 years and a complaint has not been filed against the applicant within that time, the applicant may request a waiver of the hearing.
   - A. The bureau shall prepare and supply application forms. [1993, c.730, §27(amd).]
   - B. The municipal officers or the county commissioners, as the case may be, shall provide public notice of any hearing held under this section by causing a notice, at the applicant's prepaid expense, stating the name and place of hearing, to appear ou at least 3 consecutive days before the date of hearing in a daily newspaper having general circulation in the municipality where the premises are located or one week before the date of the hearing in a weekly newspaper having general circulation in the municipality where the premises are located. [1995, c.140, §4 (amd).]
   - C. If the municipal officers or the county commissioners, as the case may be, fail to take final action ou an application for a new on-premise license, for transfer of the location of an existing on-premise license or for renewal of an on-premise license within 60 days of the filing of an application, the application is deemed approved and ready for action by the bureau. For purposes of this paragraph, the date of filing of the application is the date the application is received by the municipal officers or county commissioners. This paragraph applies to all applications pending before municipal officers or county commissioners as of the effective date of this paragraph as well as all applications filed on or after the effective date of this paragraph. This paragraph applies to an existing on-premise license that has been extended pending renewal. The municipal officers or the county commissioners shall take final action on an on-premise license that has been extended pending renewal with 120 days of the filing of the application. [1999, c589, §1 (amd).]
2. **Findings.** In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied on one or more of the following grounds:
   - A. Conviction of the applicant of any Class A, Class B or Class c crime: [1987, c45, Pt.A§4 (new).]
   - B. Noncompliance of the licensed premises or its use with any local zoning ordinance or other land use ordinance not directly related to liquor control; [1987, c.45, Pt.A§4(new).]
   - C. Conditions of record such as waste disposal violations, health or safety violation or repeated parking or traffic violations on or in the viciuity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner; [1993, c.730, §27 (amd).]
   - D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises; [1989, c.592,§3 (amd).]
   - E. A violation of any provision of this Title; and [1989, c.592, §3 (amd).]
   - F. A determination by the municipal officers or county commissioners that the purpose of the application is to circumvent the provisions of section 601. [1989, c.592, §4 (new).]

[1993, c730, §27 (amd).]

3. **Appeal to bureau.** Any applicant aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the bureau within 15 days of the receipt of the written decision of the municipal officers or county commissioners. The bureau shall hold a public hearing in the city, town or unincorporated place where the premises are situated. In acting on such an appeal, the bureau may consider all licensure requirements and findings referred to in subsection 2.
   - A. [1993, c.730, §27 (rp).]
4. **No license to person who moved to obtain a license. (REPEALED)**
5. **(TEXT EFFECTIVE 3/15/01) Appeal to District Court.** Any person or governmental entity aggrieved by a bureau decision under this section may appeal the decision to the District Court within 30 days of receipt of the written decision of the bureau.

An applicant who files an appeal or who has an appeal pending shall pay the annual license fee the applicant would otherwise pay. Upon resolution of the appeal, if an applicant's license renewal is denied, the bureau shall refund the applicant the prorated amount of the unused license fee.

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:

Sodexo America, LLC

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

N/A

3. Date of filing with the Secretary of State: February 4, 2000

4. State in which you are formed: DE

5. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: February 4, 2000

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 %
Lorna Donatone, President	1421 Blue Heron Road Virginia Beach, VA 23454	11/1/1957	0%
Thomas Morse, Vice President	152 Treehaven Street Gaithersburg, MD 20878	4/29/1958	0%
Scott Robins, Secretary	404 Nina Place Rockville, MD 20852	5/2/1953	0%
Sodexo Management, Inc.	9801 Washingtonian Boulevard Gaithersburg, MD 20878	N/A	100%

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

Yes ☐ No ☒

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

Name: ______________________ Agency: ______________________

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

Yes ☐ No ☒

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

Name: ______________________

Date of Conviction: ______________

Offense: ______________________

Location of Conviction: ______________________

Disposition: ______________________

Signature:

x Scott Robins

Signature of Duly Authorized Person

6/6/2016

Date

Scott Robins

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

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:

   Sodexo Management, Inc.

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

   ____

3. Date of filing with the Secretary of State: July 29, 1986

4. State in which you are formed: NY

5. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: July 29, 1986

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 %
Lorna Donatone, President	1421 Blue Heron Road Virginia Beach, VA 23445	11/1/1957	0%
Thomas Morse, Vice President	152 Treehaven Street Gaithersburg, MD 20878	4/29/1958	0%
Scott Robins, Secretary	404 Nina Place Rockville, MD 20852	5/2/1953	0%
Sodexo Operations, LLC, ~~Sole Shareholder~~	9801 Washingtonian Boulevard Gaithersburg, MD 20878	N/A	100%

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

   Yes ☐ No ☒

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

   Name: ____________________ Agency: ____________________

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 [x]

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

Name: ______________________

Date of Conviction: ______________________

Offense: ______________________

Location of Conviction: ______________________

Disposition: ______________________

____

Signature:

Thomas R. Morse

Signature of Duly Authorized Person

July 1, 2016

Date

Thomas R. Morse

Print Name of Duly Authorized Person

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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

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:

   Sodexo Operations, LLC

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

   ____

3. Date of filing with the Secretary of State: December 22, 1999

4. State in which you are formed: DE

5. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: December 22, 1999

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 %
Lorna Donatone, President	1421 Blue Heron Road Virginia Beach, VA 23454	11/1/1957	0%
Thomas Morse, Vice President	152 Treehaven Street Gaithersburg, MD 20878	4/29/1958	0%
Scott Robins, Secretary	404 Nina Place Rockville, MD 20852	5/2/1953	0%
Sodexo, Inc., Sole Member	9801 Washingtonian Boulevard Gaithersburg, MD 20878	N/A	100%

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

   Yes ☐ No ☒

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

   Name: ____________________ Agency: ____________________

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 [X]

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

Name: ______________________

Date of Conviction: ______________________

Offense: ______________________

Location of Conviction: ______________________

Disposition: ______________________

____

Signature:

Thomas R Morse

Signature of Duly Authorized Person

July 1, 2016

Date

Thomas R. Morse

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.

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8 State House Station Augusta, Me 04333-0008
Telephone Inquiries: (207) 624-7220
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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:

Sodexo, Inc.

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

____

3. Date of filing with the Secretary of State: 02/22/1993

4. State in which you are formed: Delaware

5. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: 02/22/1993

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 %
Lorna Donatone, President	1421 Blue Heron Road Virginia Beach, VA 23454	11/1/1957	0%
Thomas Morse, Vice President	152 Treehaven Street Gaithersburg, MD 20878	4/29/1958	0%
Scott Robins, Secretary	404 Nina Place Rockville, MD 20852	5/2/1953	0%
Sodexo Alliance, S.A., Sole Shareholder	9801 Washingtonian Boulevard Gaithersburg, MD 20878	N/A	100%

* Please note Sodexo Alliance, S.A. is publicly traded on the Paris Stock Exchange.

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: ____________________

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 [X]

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

Name: ______________________________

Date of Conviction: ______________

Offense: ______________________________

Location of Conviction: ______________________________

Disposition: ______________________________

____

Signature:

Thomas R. Morse
Signature of Duly Authorized Person

July 1, 2016
Date

Thomas R. Morse
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.

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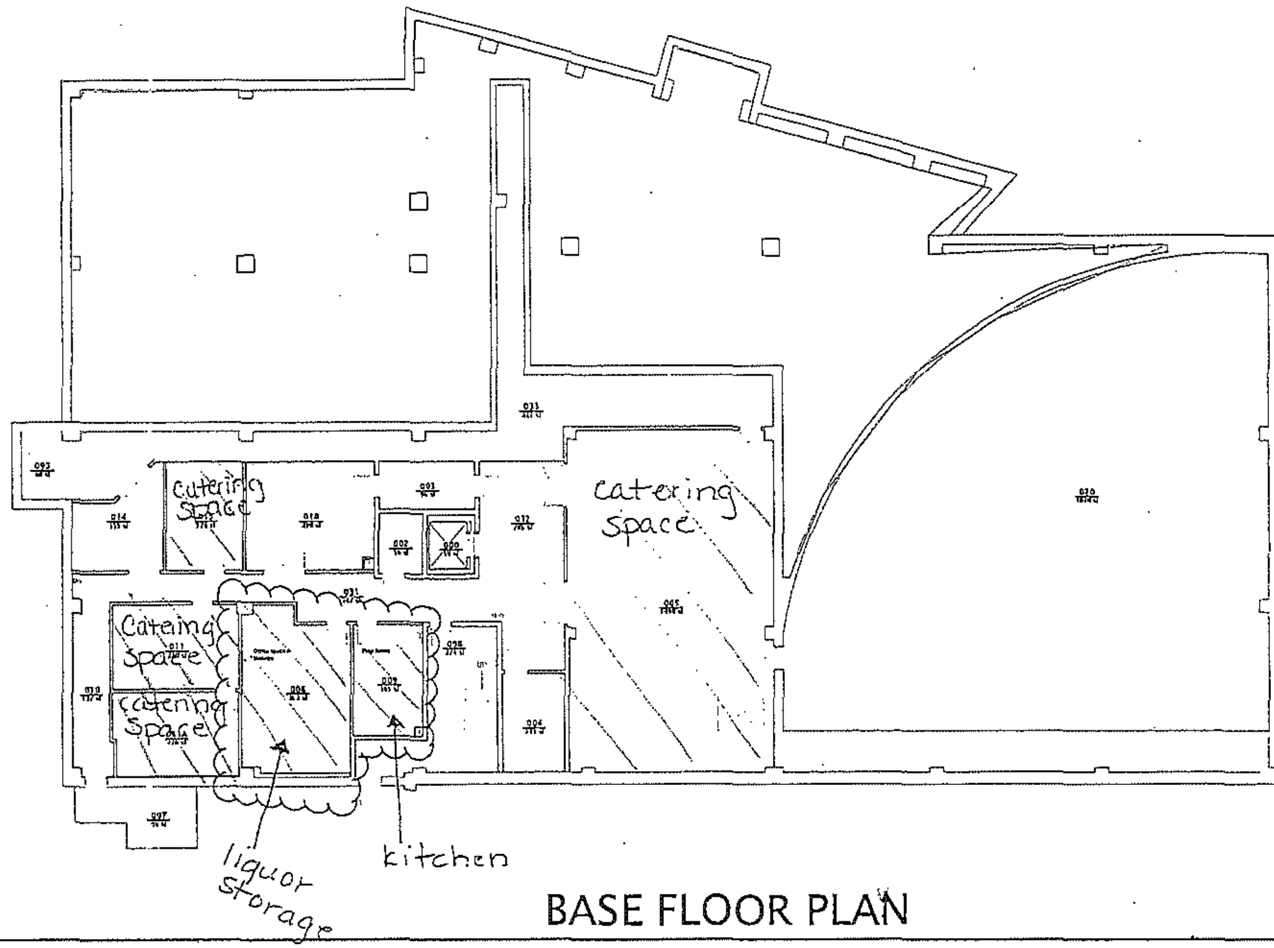


BASE FLOOR PLAN

*-See Chart For Additional Annotation

SCALE: 1" = 16'

UNIVERSITY OF SOUTHERN MAINE
PORTLAND • GORHAM • LEWISTON • ONLINE

ABROMSON COMM ED CTR

BASEMENT
BLDG #0061

Last Export: 6/29/1999

Report Date: 1/23/2015

Appendix B - 5 University of Maine [redacted]
Food Variety Specifications

Minimum Menu Variety Standards by Meal Period	
Base your pricing on meeting these standards	
Breakfast	
Entrees	Eggs to order including scrambled, fried, and omelets
	1 Egg entrée of the day to include Breakfast Burrito, Denver Scramble, quiches, benedicts etc. in some rotation
	1 starch entrée such as waffles, French toast, strata, pancakes in rotation
Meats	One in rotation weekdays (bacon, sausage links or patty, ham, turkey ham, corned beef hash, Canadian Bacon).
Potato/Starch	One choice daily, home fried, hash brown, grits, roasted
Cereals	1 hot, 4 sweetened, 4 unsweetened, 1 granola
Bakery	An assortment of bagels and muffins daily plus a rotation of buns, Danish, fruit breads.
Breads	Whole wheat, white, gluten free, English muffins daily.
	A rotation of 2 additional breads such as cinnamon raisin, rye, bran, oatmeal, etc.
Fruits	1 canned, water pack
	Whole bananas, apples or oranges every day.
	1 additional whole fruit daily (Kiwi, nectarines, grapes, berries, cherries, peaches, pears etc.)
	1 "prepared fresh fresh fruit of the day" such as grapefruit halves, melon slices, mixed fresh fruit, pineapple, etc.\
	Raisins, sunflower seed, soy nuts
Dairy	Yogurt, plain and one flavored each day
	Cottage Cheese
	Milk, 2% and skim, chocolate plus soy or almond milk.
Fruit Juices	Orange and apple daily plus 2 other juices (not juice drinks)
Other beverages	Regular and decaf coffee, hot regular and herbal tea and hot chocolate.
Condiments	Fruit toppings, whipped margarine, cream cheeses, syrup, brown sugar, jams and jellies, apple butter, peanut butter and one other nut spread such as Nutella, almond butter, etc. ; catsup.

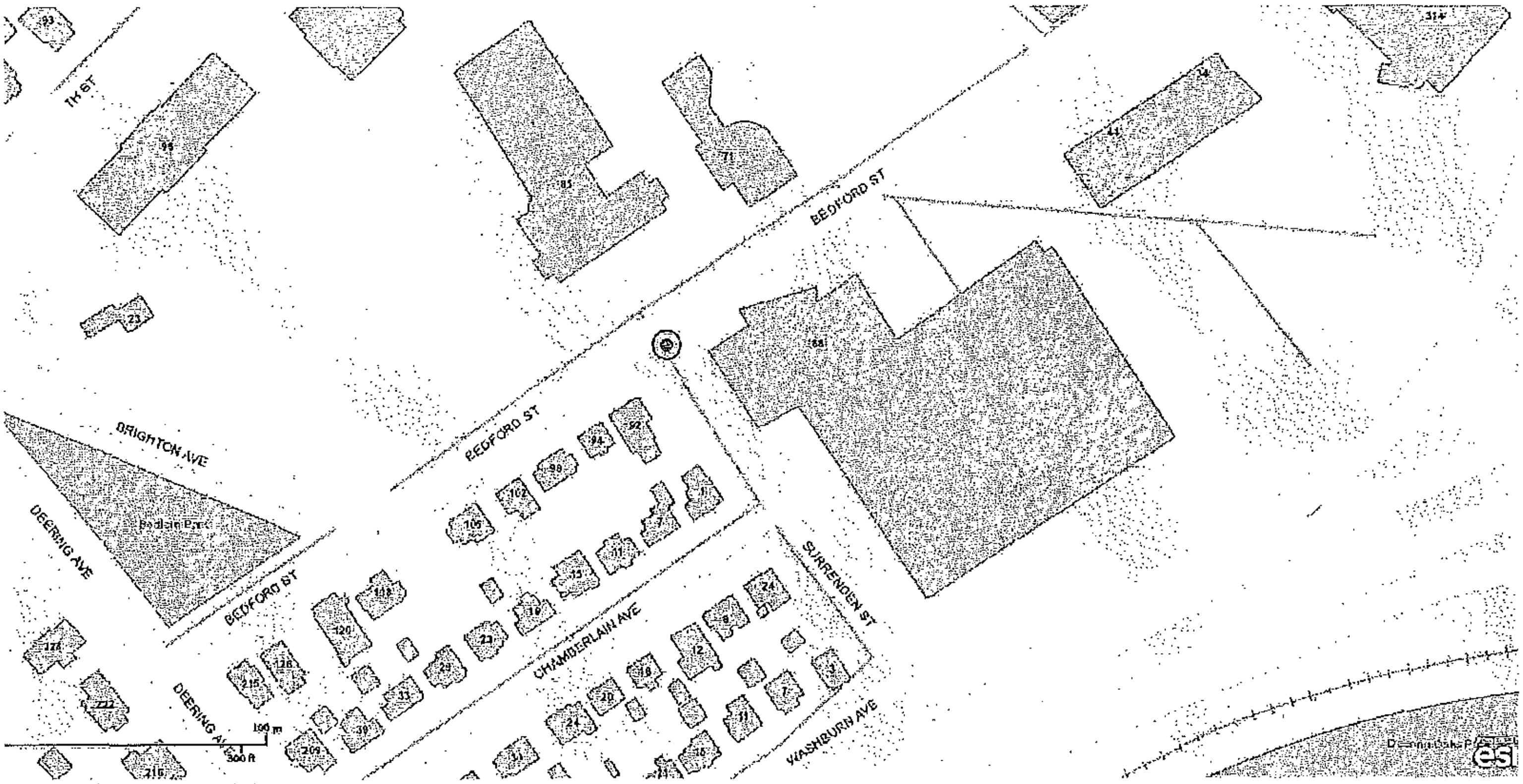
Minimum Menu Variety Standards by Meal Period	
Base your pricing on meeting these standards	
Lunch	
Entrees	Hamburgers and Vegetarian Burger daily;
	1 hot dog/sausage/brat daily;
	1 daily special grilled sandwich (cheese, Reuben, tuna melt etc.)
	1 panini special of the day
	Cheese and pepperoni pizza plus one rotating special.
	1 cooked to order stir fry, pasta dish or other entrée.
Salad Bar	Choices
	3 greens selection, one of which is spinach and one organic
	A selection of 8 raw vegetables such as carrot, celery, broccoli, radishes, tomatoes, cucumbers, zucchini, shredded kale, onion, green onion, scallions, cauliflower,
	A selection of 3 canned or frozen items such as peas, water chestnuts, bamboo shoots, artichoke hearts, olives etc.)
	2 dairy selections such as shredded cheese, cottage cheese
	3 proteins to include at least one legume (black beans, garbanzo beans, kidney beans etc.) 1 diced/chopped meat (chicken, ham, turkey, beef, tuna, etc.) and 1 vegan selection such as chopped eggs, tofu.
	1 prepared vegetable salad (slaw, multi-bean, Waldorf, Tuscan Bean, lentil, etc.)
	1 starch based such as potato salad, pasta salad, rice salad, tabbouleh, etc.
	croutons, sunflower seeds, bacon bits, parmesan cheese
	4 regular salad dressings, 3 low or non fat salad dressings, oil, white wine vinegar, balsamic vinegar
Soups	3 choices, 1 must be vegan/vegetarian
	Crackers plus any condiments appropriate to a particular soup (Parmesan for Minestrone, grated cheese for chili, etc.)
Vegetables	2 cooked (small batches) steamed, (sauces should be optional). At least one of the vegetables should be fresh, not previously frozen or canned.
Deli	3 sliced meat with sliced turkey one of the choices and the other two rotating amongst ham, chicken, roast beef, cured meats
	3 cheese, cheddar and Swiss or Jack plus one other rotating (provolone, pepper jack, havarti,) each meal/day
	1 prepared sandwich spread (egg salad, chicken salad, tuna salad,
	Whole wheat bread, white bread, hoagie/sub roll, at all times plus three specialty selections such as bagels, rye, pumpernickel, sour dough, etc.)

Minimum Menu Variety Standards by Meal Period	
Base your pricing on meeting these standards	
Desserts	Whole bananas, apples or oranges every day.
	1 additional whole fruit daily (Kiwi, nectarines, grapes, berries, cherries, peaches, pears etc.)
	Frozen Yogurt (2 flavors)
	2 types of cookies
	1 baked specialty dessert (cake, pie, fruit crisp, baked apple, tarts, etc.)
	1 gelatin or pudding option
Beverages	Same selection as breakfast.
Appropriate Condiments	ketchup, mustard, mayonnaise, whipped margarine, cream cheeses, peanut butter, relish,
Other	Breakfast cereals per the breakfast standards.
Brunch:	Brunch time frames must include both lunch and breakfast options in every category. The split should be close to 50/50 breakfast and lunch.
Dinner	
Entrees	Hamburgers and Vegetarian Burger daily;
	Grilled Chicken Breast
	1 rotating hot dog/sausage/brat daily;
	1 Dinner grill special (not served at lunch)
	1 carved meat (ham, turkey, roast beef, pork loin, plus one other whole meat/seafood such as baked chicken parts, pork chops, Salisbury steak, baked fish, Any sauce or gravy with the carved meat should be optional. Meat loaf, meat balls can be served twice weekly to meet this requirement.
	Cheese and pepperoni pizza plus one rotating special.
	1 cooked to order stir fry, pasta dish or other made to order entrée. Available with seafood, poultry, beef, lamb, pork protein in rotation. Must be whole meat/seafood).


MEXICAN GRILL
QUESARITOS
1
2
3
4
5
6
Choose 1
Choose 2
Choose Any
Quesadilla
Taco Salad
Mexican
Chicken
Beef
Roasted Veggies
Cilantro Lime Rice
Black Beans
Pinto Beans
Shredded Lettuce
Shredded Cheese
Sauteed Peppers
Sauteed Onions
Red Onions
Black Olives
Salsa Verde
Pico de Gallo
Roasted Corn Salsa
Sour Cream
Chipotle Lime
Honey Habanero
Sauce
$6.99
Includes a side of Chips

You are to provide menus with portions and prices for the concepts that you		
Retail Prices & Portions		
	Portion Size	**Retail Price**
Hamburger	1/4 #	$ 2.79
Cheeseburger	1/4 # 1 oz. cheese	$ 3.09
French Fries	4 oz.	$ 1.49
Meat and Cheese Sandwich	2 oz. each meat & cheese	$ 4.89
Caesar Salad	2 c.	$ 4.29
Caesar Salad with Chicken	2 c. plus 4 oz. chicken	$ 5.99
Cup Soft Drink (cola)	16 oz.	$ 1.39
Brewed Coffee	12 oz.	$ 1.69
Latte	12 oz.	$ 2.79
Soup	12 oz.	$ 2.99
Slice of Cheese Pizza	1/8 slice of 12"	$ 0.99
Bean Burrito	12 oz.	$ 4.99
Bagel w/Cream Cheese	4" Diameter	$ 2.49
Blueberry Muffin	2" Diameter	$ 2.19
2 Egg Ham & Cheese Omelette	1 oz. each ham & cheese	$ 4.29
2% Milk	Pint	$ 1.59
Fresh Fruit Smoothie	16 oz.	$ 3.99
All Beef Hot Dog on a bun	4 oz. Hot Dog	$ 2.59
Roasted or Baked Chicken with 2 Sides	6 oz. chicken, 4 oz each side.	$ 6.19
Grab and Go Meat and Cheese Sandwich	3 oz. meat 1 oz. cheese	$ 4.49

odexo America LLC



Portland Maine | Yes. Google's good here.

Jessica Hanscombe <jhanscombe@portlandmaine.gov>

Re: Sodexo America LLC-88 Bedford Street

Gary Hutcheson <garyh@portlandmaine.gov> Sun, Sep 4, 2016 at 1:26 AM
To: Jessica Hanscombe <jhanscombe@portlandmaine.gov>

PD approves.

On Fri, Sep 2, 2016 at 11:59 AM, Jessica Hanscombe <jhanscombe@portlandmaine.gov> wrote:

> Good Morning
>
> For your approval:
>
> Sodexo America LLC d/b/a Sodexo America LLC. Application for a Class I Qualified Caterer at 88 Bedford Street. They wish to go before council on 9/19/2016.
>
> Owners:
>
> Sodexo America LLC
>
> Lorna Donatone 11/1/1957
>
> Thomas Morse 4/29/1958
>
> Scott Robins 5/2/1953
>
> Contact:
>
> Danielle Notarmuzi 732-727-5030 dnotarmuzi@skenelawfirm.com
>
> The application is attached. Please put feedback into UI.
>
> Thank you Jess
>
> **Sodexo America LLC.pdf**

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

JESSICA HANSCOMBE
389 CONGRESS ST
PORTLAND, ME 04101

Transaction Response #: MIQ99C981207

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2016-09-02) :

Inquiries Name(s) THOMAS MORSE (1958-04-29)

NO MATCH WAS FOUND FOR YOUR REQUEST.

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

JESSICA HANSCOMBE
389 CONGRESS ST
PORTLAND, ME 04101

Transaction Response #: **MIQ99C981200**

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2016-09-02) :

Inquiries Name(s)	TADD STONE (1980-06-19)

NO MATCH WAS FOUND FOR YOUR REQUEST.

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

JESSICA HANSCOMBE
389 CONGRESS ST
PORTLAND, ME 04101

Transaction Response #: MIQ99C981209

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2016-09-02) :

Inquiries Name(s) SCOTT ROBINS (1953-05-02)

NO MATCH WAS FOUND FOR YOUR REQUEST.

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

JESSICA HANSCOMBE
389 CONGRESS ST
PORTLAND, ME 04101

Transaction Response #: MIQ99C981195

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2016-09-02) :

Inquiries Name(s) LORNA DONATONE (1957-11-01)

NO MATCH WAS FOUND FOR YOUR REQUEST.

Department of Permitting and Inspections
Michael Russell, MS.

September 2, 2016

Sodexo America LLC
Attn: Danielle Notarmuzi
9801 Washington Blvd 12th Fl Suite 1255A
Gaithersburg MD 20878

Re: **Sodexo America, LLC d/b/a Sodexo America, LLC. Application for a Class I Qualified Caterer at 88 Bedford Street.**

Dear Ms. Notarmuzi,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, September 19th, at 5:00 p.m.**, for the review of your application for a Class I Qualified Caterer at 88 Bedford 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, jhanscombe@portlandmaine.gov

Sincerely,

Jessica Hanscombe

Jessica Hanscombe
Business License Specialist
207-874-8783
jhanscombe@portlandmaine.gov

Legal Advertisement
Notice of Public Hearing
City of Portland

A Public Hearing will be held on September 19th at 5:00 P.M., in City Council Chambers, 389 Congress St., on Sodexo America, LLC d/b/a Sodexo America, LLC. Application for a Class I Qualified Caterer at 88 Bedford Street. Sponsored by Michael Russell, Director of Permitting and Inspections.

Order 37 - 16/17
Tab 7 9-19-16

Portland, Maine Yes. Life's good here.

Jeff Levine, AICP
Director, Planning & Urban Development Department

MEMORANDUM

To: Portland City Council

From: Jeff Levine, Director, Planning & Urban Development

September 14, 2016

Re: Green Building Ordinance & the ImmuCell Tax Increment Finance Request

Councilor Hinck has submitted amendments to the TIF documents that would make the ImmuCell Tax Increment Finance (TIF) credit enhancement subject to the Green Building Code (Sections 6.165-172 of the Code of Ordinances.) Those amendments do not appear to be necessary as submitted, due to the categorical inclusion of the project under Section 6.172. Since the project involves a subsidy of over $200,000 and a building of over 10,000 square feet, the project is categorically subject to the City's Green Building Code.

The Green Building Code was originally approved in 2009, and significantly amended in 2012 and again in 2013. In response to a concern that many projects received waivers from the code, the 2013 amendments changed the exemption allowances for projects to limit the ability for the code to be waived. Since the last amendment, in 2013, there have been some affordable housing development that have met the new Code.

For private projects, the requirement is that a building must demonstrate a 30% improvement over baseline ASHRAE (energy efficiency) standards. There is a provision for a "partial exemption" from the Code. Criteria that may qualify a project include conditions creating "hardship or infeasibility" including lack of availability of green building materials and technologies; incompatibility of green building requirements with other government requirements and building standards; and if required alterations to an historic building would compromise its historic character. If a partial exemption is granted, the project must must "demonstrate all possible effort to maximize building performance according to the standards ... and shall indicate the maximum level of standards which are reasonably achievable for the building." The partial exemption process is administered by the Planning & Urban Development Director.

I have just received a request for a partial exemption from the ImmuCell project. While I have not yet had a chance to fully review their request, they are basing it on their statement that the federal standards for a facility such as theirs, as implemented through best practices in the biotech industry, do not permit the building to meet the full 30% reduction from ASHRAE standards.

In summary:

- The Green Building Code applies to this project;
- Councilor Hinck's amendment would not appear to change the application of the Green Building Code to this project;
- As with other portions of the building code, the code is administered by City staff as part of the implementation of a TIF agreement or another subsidy;
- There is allowance for a partial exemption from the code under certain circumstances;
- Staff has received a request for such a partial exemption but has not yet fully reviewed the request or made a determination thereon.

I hope this answers your questions about this TIF request and the Green Building Code.

Order 37-16/17
~~Tab 24 8-1-16~~
~~Tab 10 9-7-16~~
Tab 7 9-19-16

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 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 Statues, 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.

Section 2. Pursuant to Chapter 206 of Title 30-A of the Maine Revised Statues, 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.

Order 38-16/17
~~Tab 25 8-1-16~~
~~Tab 11 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)

Tab 8 9-19-16

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

TABLE OF CONTENTS

EXHIBITS:

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 1 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

<u>EXHIBIT B</u> 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:

Improvements	Actual Costs
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

M U N I C I P A L   T A X   I N C R E M E N T   F I N A N C I N G

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

A. Job Creation Goals			
*Occupational Cluster**	*Full-time*	*Part-time*	*Wage Level*
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
B. Job Retention Goals			
*Occupational Cluster**	*Full-time*	*Part-time*	*Wage Level*
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

{W5590892.3}

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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 District[1];
- Create ***employment opportunities*** for area residents;
- ***Improve the general economy*** of the City and the State of Maine.

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[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 resulted 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. <u>Financial Data</u>

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:	726
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

SUBJECT PROPERTY LOCATION MAP

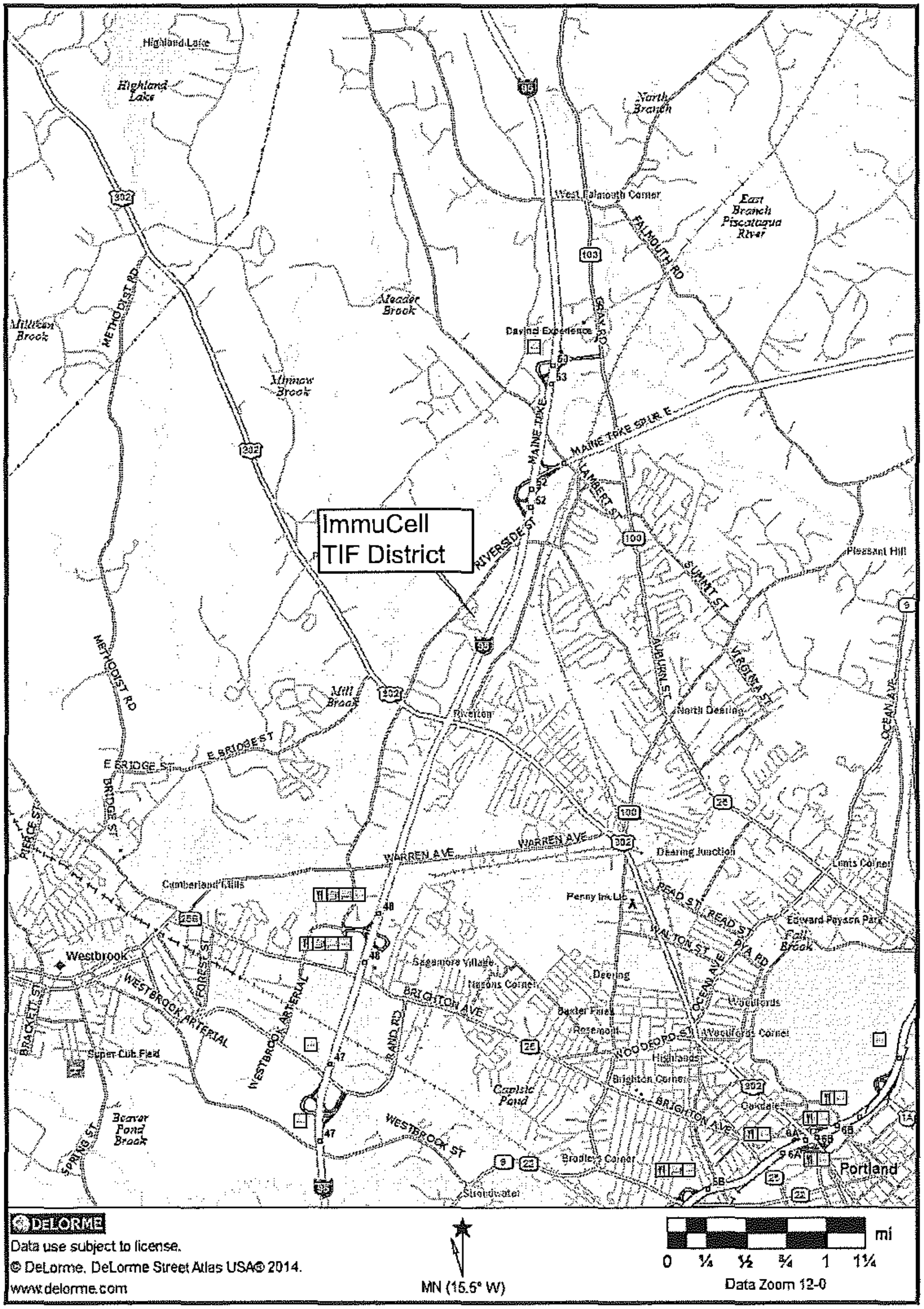
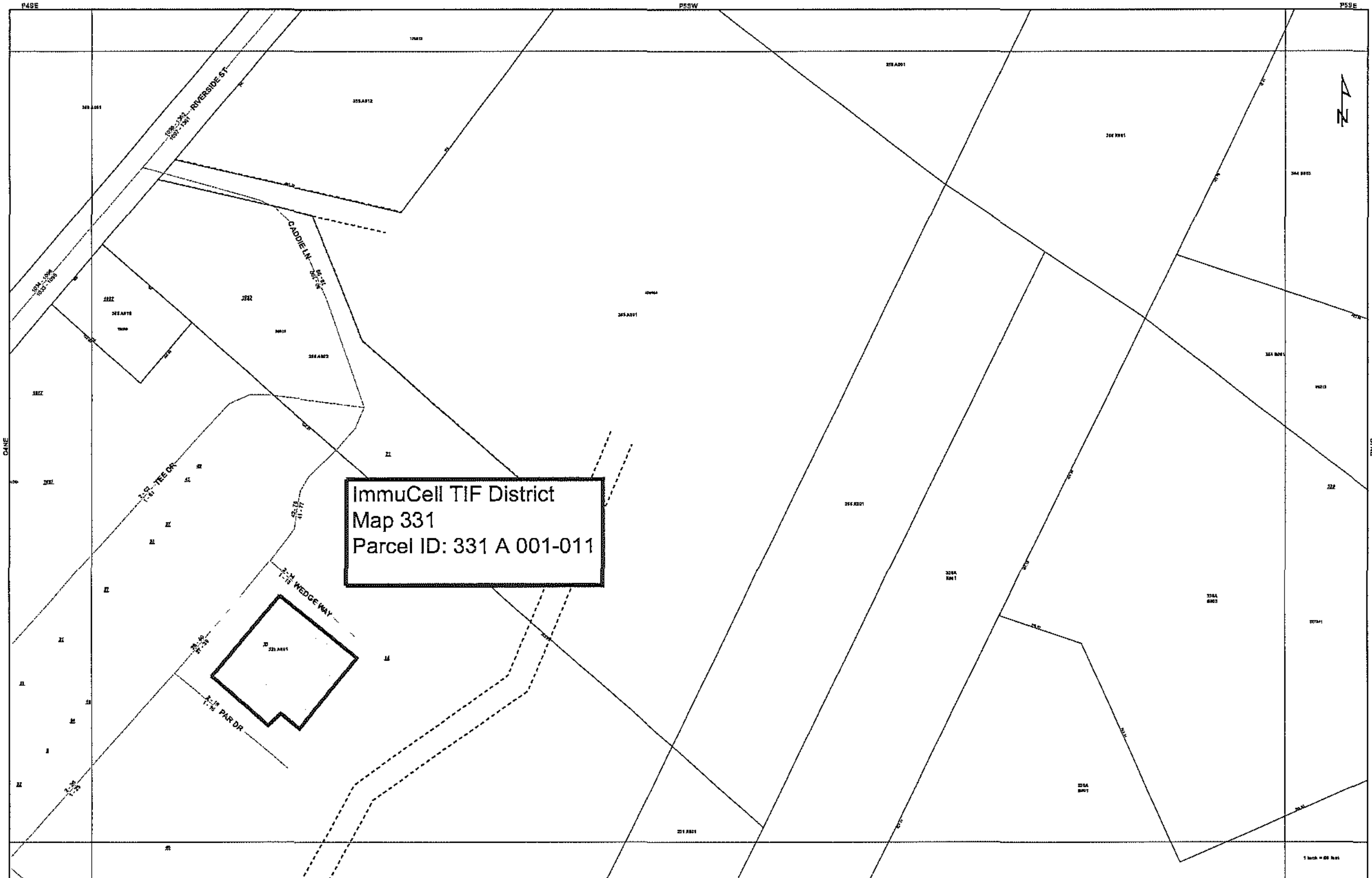


Exhibit B

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 - O5NW

Exhibit C

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

TIF PROJECTIONS & TAX SHIFT CALCULATIONS

City of Portland - TIF Model
ImmuCell Corporation

TIF Year	Assessing Date 1-Apr	Fiscal Year	A Estimated Taxable Value	B Increased Value	C Total New Taxes	D CAV % Retained	E Increased Value Retained as CAV	F Projected Mil Rate	G Total Tax Increment	H Tax Increment to Developer %	I $	J City General Fund Revenue $
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 Total	Education Shift	Rev. Sharing Shift	County Tax Shift
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

Exhibit G

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 WHEROF, this certificate has been executed as of this ___ day of ___________, 2016.

CITY ASSESSOR

By:___________________________
Richard W. Blackburn

Exhibit H

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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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 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:

Improvements	Actual Costs
Total:	

Date:____________________ By:______________________________

Name: ____________________________

Its: ______________________________

Exhibit I

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 existing/proposed 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 existing/proposed **Downtown** Municipal TIF district;			422
9. Acreage of all existing/proposed **Transit-Oriented Development** Municipal TIF districts:			30
10. Acreage of all existing/proposed **Community Wind Power** Municipal TIF districts:			0
11. Total acreage of all existing or proposed of all existing/proposed **Single Taxpayer/High Valuation**[6] Municipal TIF districts:			0
12. Acreage in all existing/proposed 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 existing/proposed Municipal TIF districts counted toward 5% limit;			148.982
14. **Percentage of total acreage [=A12÷A1]** of all existing/proposed 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] PTDZ 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** existing/proposed 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 existing/proposed **Downtown** Municipal TIF district;		$968,136,850
5. **Taxable OAV** of all existing/proposed **Transit-Oriented Development** Municipal TIF districts:		$4,970,470
6. **Taxable OAV** of all existing/proposed **Community Wind Power** Municipal TIF districts:		0
7. **Taxable OAV** of all existing/proposed **Single Taxpayer/High Valuation**[8] Municipal TIF districts:		0
8. **Taxable OAV** in all existing/proposed 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 existing/proposed Municipal TIF districts counted toward 5% limit;		$133,335,350
10. **Percentage of total taxable OAV [=B9÷B1]** of all existing/proposed 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	30.00	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	599.882		1,106,390,070
14	ImmuCell	1.11	0.009%	52,600
	TOTAL ACREAGE / OAV	600.992		1,106,442,670.00
	Excluded Acreage			
	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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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 <u>Exhibit A</u>.

"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. <u>Interpretation and Construction</u>.

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. <u>Pledge of Company TIF Account.</u>

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. <u>Perfection of Interest.</u>

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. <u>Further Instruments.</u>

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. <u>Liens.</u>

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. <u>Access to Books and Records.</u>

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

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

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

ARTICLE VII
ASSIGNMENT

Section 7.1. 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:

Improvements	Actual Costs

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:

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. <u>Interpretation and Construction.</u>

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. <u>Creation of Development Program Fund</u>.

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. <u>Deposits into Company TIF Account</u>.

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. <u>Use of Monies in Company TIF Account</u>.

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. <u>Monies Held in Trust</u>.

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. <u>Investments</u>.

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 journeyperson 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. <u>Pledge of Company TIF Account</u>.

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. <u>Perfection of Interest</u>.

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. <u>Further Instruments</u>.

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. <u>Liens</u>.

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. <u>Access to Books and Records</u>.

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. <u>Events of Default.</u>

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. <u>Remedies on Default.</u>

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

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

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

ARTICLE VII
ASSIGNMENT

Section 7.1. 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

<u>Exhibit A</u> 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%

<u>EXHIBIT C</u> 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:

Improvements	**Actual Costs**
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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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. <u>Definitions</u>.

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

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

"Agreement" shall mean this Credit Enhancement Agreement dated as of the date set forth above between the City and the Company, as such may be 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 <u>Exhibit A</u>.

"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 tthe 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. <u>Effective Date and Term.</u>

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

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

ARTICLE VII
ASSIGNMENT

Section 7.1. 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

<u>Exhibit A</u> to Credit Enhancement Agreement – ImmuCell Corporation Municipal Development and Tax Increment Financing District Development Program

<u>EXHIBIT B</u> 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:

Improvements	Actual Costs
Total:	________

Date:____________________

By:____________________
Name: ____________________
Its: ____________________

Order 51-16/17
~~Tab 21 — 9-7-16~~
~~Tab~~ 9 9-19-16

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

Internal Use Only
CT#:
CSN:
TEDOCS #:
PROGRAM: Bureau of Planning

MaineDOT

MAINE DEPARTMENT OF TRANSPORTATION
THREE-PARTY PARTNERSHIP AGREEMENT
CONGRESS STREET INTERSECTIONS
CITY OF PORTLAND

(Receivable)

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 it 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.

Internal Use Only
CT#:
CSN:
TEDOCS #:
PROGRAM: Bureau of Planning

MaineDOT

MAINE DEPARTMENT OF TRANSPORTATION
THREE-PARTY PARTNERSHIP AGREEMENT
WASHINGTON STREET RECONSTRUCTION
CITY OF PORTLAND

(Receivable)

Internal Use Only	
WIN #: 022134.00	**Agreement Maximum Amount:** $175,600
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 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

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 $175,600.00 (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	$ 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

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.
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   - 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 it 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

ortland 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:

lease 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. Unitil'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
'Jpdate 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

ease 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

. 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

oes 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 'th the rest of this part of Washington Ave (42'-44' wide). This will allow for the construction of ADA-compliant curb ramps at .ie 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 ·centive to patronize local businesses and encourage increased activity within the community. Washington Avenue is a Neighborhood ain 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.**

.elevant 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

ɔrtland 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:

.ease 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	
ıdorsement 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

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

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 ongress 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. We will not score the application if this requirement is not met. 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, S/W of Washington Ave: 9,550 ('13) Cumberland Ave, S/W 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 ɔadway 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

: 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 tersections within the project area. It will transform the roadway into a modern urban street to better serve all roadway users and usinesses 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

ɔrtland 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 ɔrridor project was the result of recommendations from both the Peninsula Traffic and Peninsula Transit Studies, in 2004 and ـ009 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 ıplementation of the Plan. Phase IA of the plan, which included taking signals at Congress at Casco and Brown out of ıegular 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.

/ork 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 ɛe: ☒ 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 studies for modernization within the 2016-2017 PACTS UPWP/RTMS workplan.

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

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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 ·owth in demand for urban living and creating a more desirable downtown atmosphere. 'Millennials' and retiring Baby Boomers .e 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 ıd be proactive for the *most likely* impacts of climate change. Make transportation improvements that use more energy efficient .ransportation 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.

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CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER AUTHORIZING THE CITY MANAGER TO NEGOTIATE AN AGREEMENT WITH DEVELOPERS COLLABORATIVE PREDEVELOPMENT LLC FOR THE PURCHASE OF REED SCHOOL

ORDERED, that the City Manager or his or her designees, in consultation with the Corporation Counsel, is hereby authorized to negotiate a purchase agreement with Developers Collaborative Predevelopment LLC for the sale and re-use of the Reed School property at 19 Libby Avenue, which agreement shall not become effective without subsequent review and approval by the City Council.

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan

FROM: Christine Grimando, Senior Planner

DATE: September 1, 2016

SUBJECT: RFP #6316, Sale and Re-Use of the Former Reed School Buildings and Property

SPONSOR: David Brenerman, District 5 Councilor

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading____9/19/2016______ Final Action____9/19/2016____

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)

I. ONE SENTENCE SUMMARY

Request to authorize negotiations with Developer's Collaborative for the sale and re-use of the former Reed School Buildings and property.

II. AGENDA DESCRIPTION

A selection committee comprised of residents and staff is recommending that Developers Collaborative's proposal be selected for the sale and re-use of the Reed School property at 19 Libby Avenue in Riverton, in response to an RFP process that concluded in May of this year. Developer's Collaborative has proposed a new educational use for the site, including reuse of the existing structure and retention of community open space.

The RFP includes a requirement for an initial, substantial neighborhood engagement process before a development plan for the site or a purchase and sale agreement can be finalized. The Council is requested to authorize the initiations of negotiations with Developers Collaborative as the selected party for redevelopment of the site. Details of the terms of transfer of the property will return to the Council concluding neighborhood engagement and refinement of the plan for the site.

III. BACKGROUND

Shortly after the Portland Board of Education transferred the Reed School property to the City of Portland in the summer of 2015, a Reed School Re-Use Advisory Task Force was established to guide redevelopment of the site. Since that time there has been extensive community engagement as well as the expression of significant neighborhood concern for future uses of the site. The unusual structure of the RFP, with its foregrounding of neighborhood engagement on site design and uses, reflects an extension of that process and an effort to arrive at a harmonious redevelopment of a site that has been an important presence in Riverton since the 1920s.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result of initiating a process with Developers Collaborative is for this currently vacant property to be transferred to a new owner and restored to an active site that is an asset to Riverton and the City of Portland.

V. FINANCIAL IMPACT

The final sale price of the property is not yet known, because the redevelopment plan for the property has not yet been finalized. Details of the terms of the property transfer will be brought to the City Council in the coming months. However, this site, as a vacant City-owned property, currently costs over $20,000 annually to heat and maintain. The longer the building is unoccupied and unimproved, the higher the potential financial burden for the City; beginning the process of transferring the building and grounds to a new owner will at a minimum remove these maintenance costs from the City's responsibility.

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

Full text of the Reed School RFP (#6316) and both submissions are available upon request.

VII. RECOMMENDATION

The RFP selection committee recommends that the City Council authorize negotiations to begin with Developers Collaborative for the sale and re-use of the former Reed School.

VIII. LIST ATTACHMENTS

- Memo to Matt Fitzgerald, Purchasing Manager

Prepared by: Christine Grimando
Date: September 1, 2016

To: **Matt Fitzgerald, Purchasing Manager Budget & Purchasing Department**

From: **Christine Grimando, Senior Planner, Planning Division**

Re: **RFP #6316 Sale and Re-Use of the Former Reed School Buildings and Property**

Date: **July 18, 2016**

On April 13, 2016 the City solicited proposals for the sale and re-use of the former Reed School buildings and property at 19 Libby Street. Proposals were due Thursday, May 19th.

Two proposals were received. Community Housing of Maine proposed a variety of potential housing scenarios for consideration. Developers Collaborative proposed an educational use in the existing building. Based on the final scoring of the criteria, outlined below, selection committee is recommending the Developers Collaborative proposal.

An RFQ issued in the fall of 2015 resulted in two proposals for reuse and preservation of the building, as well as additions, and preservation of open space. Both proposed affordable senior housing for the site, and both were in response to the Reed School Re-Use Advisory Task Force Recommendations (http://www.portlandmaine.gov/DocumentCenter/Home/View/11165). The surrounding neighborhood was extremely concerned with the high residential densities and the conceptual site designs included in the RFQ responses. In light of the considerable public opposition to the RFQ responses, a new process was initiated that placed emphasis on neighborhood engagement ahead of finalizing details of the development plan and site layout. Certain prescriptive elements – such as preservation of the original structure and preservation of community open space, were removed to allow an open discussion between the neighborhood and the future developer on the possibilities for the property. As a result, both proposals include a brief description of the intended use for the site, and a detailed overview of how each team would include the adjacent neighborhood in significant engagement on the future re-use of the site. This initial neighborhood engagement phase would be followed by a specific development plan and subsequent negotiation of the terms for purchase of the property before submission of an application for the required approvals for redevelopment.

The RFP review process states that: *a proposal review committee will review submissions and give the City Council a summary of the proposals, and* *recommendations on a preferred proposal for the Council's review and approval. The review committee's recommendations are advisory only. Upon agreement on a development plan for the site (after completion of the neighborhood engagement outlined in the proposal and before the submission of a Planning Board application), a purchase & sale agreement will be negotiated.*

Criteria of the RFP was set as follows:

- Neighborhood engagement plan that clearly outlines how the Development Team will engage the neighborhood on this project: **30%**
- Summary of intended redevelopment concept for the site broadly consistent with City Policies and/or the Final Recommendations and Report of the Reed School Re-Use Advisory Task Force: **20%**
- Developer Team qualifications and references: **20%**
- Applicant's ability to complete project, including readiness to initiate the project and ability to begin the application process in a timely manner: **15%**
- Responsiveness to submittal requirements: **15%**

The selection committee was comprised of:

1. Jeff Levine, Director, Planning and Urban Development Department
2. Christine Grimando, Senior Planner, Planning and Urban Development Department
3. Mark Johnson, Riverton Resident
4. Bill Knowles, Riverton Resident
5. Elisa Scala, Riverton Resident

The entire process was conducted with the oversight of Matt Fitzgerald, Purchasing Manager.

On June 7, 2016, the selection committee reviewed the two submissions in light of the above criteria:

- Community Housing of Maine
- Developers Collaborative

Developers Collaborative received the highest score by the selection committee by 2 points overall. They were both strong, well-qualified submissions, responsive to the Request for Proposals. Ultimately, the committee preferred the public engagement process of direct engagement with the prospective developer of the site, and also generally preferred the proposed institutional/educational use for the site, edging Developers Collaborative's proposal to a higher score.

SELECTION CRITERIA	DEVELOPERS COLLABORATIVE	CHOM
Neighborhood Engagement Plan (Total weight: 30)	24.8	24.6
Summary of Intended Redevelopment Concept (Total weight: 20)	16.2	13.6
Developer Team Qualifications and References (Total weight: 20)	17.8	19.2
Applicant's Ability to Complete Project (Total weight: 15)	14.0	13.4
Responsiveness to Submittal Requirements (Total Weight: 15)	14.0	13.6
TOTAL	**86.8**	**84.4**

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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 RIVERSIDE RECYCLING FACILITY AGREEMENT WITH CPRC GROUP, LLC

ORDERED, that the 10-Year Agreement between Portland and the CPRC Group, LLC for management and other services at its Riverside Recycling Facility 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: Troy Moon

DATE: 9/9/2016

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

SUBJECT: Order ...

SPONSOR: Jon Jennings, City Manager

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?)

The existing contract expires on September 30. Passage will allow the new contract to be executed before the existing one expires.

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

I. SUMMARY OF ISSUE (Agenda Description)

The City's contract with CPRC Group to operate the Riverside Recycling Facility expires on September 30, 2016. In June, the City issued an RFP #7516 to solicit proposals for operating the facility beginning in October, 2016. Two firms responded, Pine Tree Waste (Casella) and CPRC Group. The review committee determined that CPRC Group's proposal was most responsive and provided the best value for the City. Staff has worked with them to negotiate a contract that will allow them to continue operating at Riverside Recycling and serving City operations and residents. The City Council must authorize the City Manager to execute the agreement in order to move forward.

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

The City owns the Riverside Recycling Facility at 910 Riverside. It holds permits from the Maine Department of Environmental Protection Agency that allows it to operate as a transfer and processing facility for bulky waste, construction and demolition debris, and leaf and yard waste. Since 2005, CPRC Group has operated the facility under the oversight of City staff. They have received and processed acceptable waste from City operations, Portland residents, residents from other communities, small businesses, and commercial waste haulers. In June, the City issued an RFP to solicit proposals from firms that might be interested in operating the facility. Respondents were asked to offer creative, cost effective solutions for handling acceptable materials from City operations and residents. Two firms responded – Pine Tree Waste (Casella) and CPRC Group. A team of staff members reviewed the proposal and found the CPRC proposal to be the most responsive and to offer the best overall value to the City. In order to finalize the agreement the City Council must authorize the City Manager to execute the contract.

Under the terms of the proposed agreement, CPRC Group will retain the right to operate their business at Riverside Recycling. They will continue to receive and process acceptable waste from residential and commercial customers as well as from City residents and City operations. Revenues from tipping fees will continue to stay with them as they do under the current contract. As the facility owner, the contract provides the City with the following benefits:

- Disposal of up to 15,000 tons of residential (E-Card) material and material from City operations at **no charge**.
- Acceptance of residential electronic and universal waste from E-Card users at **no charge**.

If deliveries of materials by the City and E-Card holders exceed 15,000 tons, the City would be required to pay a tipping fee per ton that varies depending on the item. Fees would range from -\$20/ton for metal items to \$60/ton for non-recyclable and bulky waste. The 15,000 ton figure represents the average number of tons delivered by City crews and E-Card holders during the past 5 years.

The contract includes a provision that allows CPRC to upgrade the existing facilities at Riverside Recycling including buildings and related infrastructure in order to move elements of their existing Scarborough operation to Riverside. Any construction, site work, engineering, or other related costs for this would be at their expense. If they complete this work within seven years and relocate operations to the facility, their 10 year contract would be extended for a term to be negotiated by the City Manager but not to exceed 10 years. If they do not exercise this provision, the contract remains at 10 years. Under either scenario, the parties may negotiate a mutually agreeable extension for an additional term of not less than 5 years.

III. INTENDED RESULT

Approving the order will authorize the City Manager to enter into an agreement with CPRC Group that is substantially similar to the draft presented in the package.

IV. COUNCIL GOAL ADDRESSED

Financial savings and operational efficiencies.

V. FINANCIAL IMPACT

For the past ten years the City has paid CPRC Group approximately \$1,000,000 per year to receive and process materials generated by City operations and from the residential E-Card program. Under the terms of this agreement, the City will be able to dispose of up to 15,000 tons of material at Riverside Recycling for no charge. This represents a \$1,000,000 annual savings during the 10 year term of the contract. Should CPRC Group exercise its option to move its headquarters operation to the Riverside facility, this savings would continue for another 7 years for a total of 17 years.

VI. STAFF ANALYSIS

CPRC has run the Riverside Recycling Facility very effectively and has been a responsive partner to the City. They have maintained the facility in a neat and orderly manner, provided good customer service, and have operated within the bounds of their operation. At the beginning of their current contract they invested in significant upgrades that brought the facility to its current configuration. This includes adding the elevated residential drop off area, installing a new scale, extensive paving, and improving facilities for composting. Their successful track record gives us confidence that they will continue to be good partners for the City into the future.

II. RECOMMENDATION

We recommend approval of the order authorizing the City Manager to execute the agreement with CPRC Group

VIII. LIST ATTACHMENTS

Draft Contract

Prepared by: Troy Moon

Date: 9/9/2016

AGREEMENT BETWEEN THE
CITY OF PORTLAND
AND
CPRC GROUP, LLC

(This is a sample contract only and is subject to change prior to execution)

THIS AGREEMENT is entered into this __________ day of ____________, 2016, by and between the **CITY OF PORTLAND**, a body politic and corporate (hereinafter the "**CITY**"), and **COMPANY,** a Maine corporation with a mailing address of ________________ (hereinafter the "**CONTRACTOR**").

W I T N E S S E T H:

WHEREAS, the CITY did advertise a Request for Proposals #7516 entitled "Management and Operation of Construction and Demolition Recycling Center and Transfer Station," (hereinafter, the "Request for Proposals"), a copy of which is attached as Exhibit A and made a part hereof; and

WHEREAS, the CONTRACTOR has the requisite knowledge and technical ability to perform the required services and has submitted a proposal for the provision of such services dated __________________, (hereinafter, the "Proposal"), a copy of which is attached as Exhibit B and made a part hereof; and

WHEREAS, after due consideration of all the Proposals, the CITY did award this contract to the CONTRACTOR;

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The CONTRACTOR will furnish the services, materials, supplies, equipment and labor (hereinafter the "Work") in accordance with the specifications contained in the Request for Proposals issued to the Contractors under date of May 26, 2016 by the Purchasing Manager of the City of Portland, and also in accordance with the CONTRACTOR's Proposal. The restatement in this document of any term of the Request for Proposals or Proposal shall not be deemed to waive any term not so restated. If any disagreement is found between Request for Proposals or the Proposal and this document, then this document shall govern; and the Request for Proposals shall govern over the Proposal, to the extent they disagree; provided, however, that this document and its attachments shall be construed to be supplemental to one

another to the extent possible. Capitalized words in this Agreement shall have the same meaning set forth in the

2. MANAGEMENT AND OPERATION OF THE FACILITY

a. Assumption of operation. On the effective date of this Agreement, the CONTRACTOR shall begin Work at the Project Site. The CONTRACTOR shall operate and maintain the Project Site in accordance with this Agreement, all Applicable Laws, the Operations Manual and the specifications contained in the CITY's Requests for Proposal, and CONTRACTOR's PROPOSAL. The CITY shall own the Project Site

b. Regulatory compliance. The CONTRACTOR shall perform work in strict conformance with the provisions of all permits and Applicable Law (including the applicable requirements of all regulatory agencies). The CONTRACTOR shall be responsible for obtaining, maintaining and ensuring compliance with all Permits required, and for performing its operations consistent with the Operations Manual and Applicable Laws. In addition thereto, the CONTRACTOR shall comply with all orders, if any, of any governmental entity. CITY shall receive notice and may attend, at its option, any meetings with representatives of any governmental entity regarding compliance or failure to comply with Permits or Applicable Law. CITY and CONTRACTOR shall provide each other with any information it has or receives regarding any citations, notices of violation, enforcement actions, legal suits or emergency orders. The CONTRACTOR shall respond promptly to all citations, notices of violation, enforcement actions, legal suits, and emergency orders with respect to the CONTRACTOR's operations issued by any governmental entity with jurisdiction. In addition to the CONTRACTOR's indemnity provided elsewhere in this Agreement, the CONTRACTOR shall pay all costs, including, but not limited to, attorney's fees and costs, of responding to all such citations, notices of violation, enforcement actions, legal suits, and emergency orders and shall pay all costs, including, but not limited to, attorney's fees and cost, of correcting deficiencies and achieving compliance with all such citations, notices of violation, enforcement actions, legal suits, and emergency orders and shall pay any fines or penalties assessed as a result of non-compliance.

c. Employees, equipment and subcontractors. CONTRACTOR shall employ such employees as required to perform Work under this Agreement. CONTRACTOR shall provide all labor, including equipment operators, sorters, and incidental labor; and materials, equipment, tools, supplies and utilities required for Work performed at the Project Site and compliance with other terms and conditions of this Agreement. CONTRACTOR shall be responsible for any costs and other liabilities of its subcontractors at the Project Site.

d. Operating responsibility. The Project Site shall be open for the receipt of Acceptable Waste during the following hours: Monday – Saturday, 7AM – 4 PM. The CONTRACTOR may reduce hours during the winter months from 7:30 AM – 3:30 PM. If emergency conditions render it impractical to dispose of the resultant volume of Acceptable Waste within the normal operating hours of the Facility, the CONTRACTOR shall open the Facility on other days and times as reasonably requested by CITY without additional charge to CITY.

e. The CONTRACTOR shall, at its expense, perform Work at the Facility, including, but not limited to:

i. receive all Acceptable Waste delivered to the Project Site;
ii. inspect all waste delivered to the Project Site;
iii. reject all Unacceptable Waste delivered to the Project Site;
iv. sort all waste delivered to the Project Site;
v. recycle all Acceptable Waste which is capable of being recycled;
vi. process all Acceptable Waste delivered at the site, either through the use of its own personnel or through the procurement of services from firms who shall process the Acceptable Waste;
vii. transport and legally dispose of all waste which cannot be processed or recycled.
viii. transport and legally dispose of all Unacceptable Waste erroneously accepted at the Project Site;
ix. maintain all access roads at the Project Site and provide for access during all seasonal conditions;
x. market and sell recycled material which is generated from Acceptable Waste delivered to the Project Site;
xi. maintain communications with City to provide for the operation and maintenance of the Project Site in accordance with this Agreement and Applicable Law;

f. CONTRACTOR REPORTS. CONTRACTOR shall provide monthly reports to CITY no later than the tenth (10th) business day of each month. The monthly report shall contain the following information with respect to the previous month:

i. total tonnage of all waste delivered to the Project Site;
ii. of material processed and/or disposed of.
iii. record of any hazardous or special waste, if any, that was received at the Facility and its method and place of disposal;
iv. all reports and correspondence which may be necessary for permit compliance;
v. the dates of all regulatory agency inspections with the name of agency and inspector. A copy of any concurrent or subsequently written inspection report, notice of violation, or citation shall be supplied to CITY, upon receipt. A copy of any report submitted by CONTRACTOR to any governmental entity, whether in response to such notices of violation and/or citations or not, shall be supplied to CITY contemporaneously;
vi. copies of all inquiries, complaints, accidents, or incidents and a description of the resolution of same;
vii. all financial reports provided by CONTRACTOR shall be in accordance with generally accepted accounting principles.

g. Signage. CONTRACTOR shall be responsible for all signage in the Project Site. Prior to installing such signage, CONTRACTOR must receive the CITY's written consent, and all signage must comply with applicable laws, ordinances, rules and regulations.

h. Record keeping. The CONTRACTOR shall maintain on-site, readily retrievable for reference and in clean and usable condition, at least one copy each of approved construction drawings, specifications, reports, permits, Operations Manual and all prior months' operations reports and correspondence with CITY and all governmental entities.

i. Permitting; payment of operating expenses. CONTRACTOR shall be responsible for any costs or expenses associated with the permitting of the Facility subsequent to the effective date. Except as otherwise specifically provided herein, CONTRACTOR shall be solely responsible for and shall pay all costs and expenses incurred in the performance of its operating responsibilities.

j. Waste Deliveries. CONTRACTOR shall not accept waste deliveries of any kind at the Facility other than waste defined as Acceptable Waste in this Agreement.

k. The CONTRACTOR covenants and agrees that all Work performed and furnished hereunder shall be free from all defects, and that all Work shall be performed in a good workmanlike manner.

3. INSURANCE. Prior to the execution of this Agreement, the CONTRACTOR will procure and maintain insurance coverage in the following types and amounts:

a. Comprehensive General Liability. Coverage shall be in the minimum amount of $3,000,000 dollars combined single limit for bodily or personal injury, death and property damage. The City shall be named as additional insured.
b. Automobile Liability insurance in an amount of not less than one million dollars, including coverage for all owned, non-owned and hired vehicles. The City shall be named as additional insured.
c. Environmental or Pollution liability coverage in the minimum amount of $3,000,000 dollars protecting the Contractor and the City against claims arising from the abatement, clean up and disposal of Hazardous Waste, naming the City as additional insured.
d. Workers Compensation insurance including Employers Liability coverage, in compliance with Maine law. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees.
e. All subcontractors will also be required to carry the coverages set forth above.

With respect to the liability coverages, the CONTRACTOR will provide the CITY a certificate of insurance evidencing such coverage, in this way: certificate must say either: A) "the policy has been endorsed to name the City of Portland as an Additional Insured" and a copy of the endorsement must come to the City of Portland with the certificate, or B) "the policy already includes an endorsement, such as the General Liability Extension Endorsement, by which the City of Portland is automatically made an additional insured." A Certificate which merely has a box checked under "Addl Insr," or the like, or which merely states the City of Portland is named as an Additional Insured, will not be acceptable. The CONTRACTOR shall furnish the CITY and thereafter maintain certificates evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice to the CITY of termination of insurance from insurance provider or agent. The CONTRACTOR shall provide copies of all insurance policies upon request.
Work shall not commence under the Contract until the CONTRACTOR has obtained the insurance required under this section, nor shall the CONTRACTOR permit any subcontractor to commence work until the insurance required of the subcontractor has been obtained. The insurance coverage amounts required hereunder are subject to reasonable increases that the CITY may, in its reasonable discretion, require from time to time during the term of this Agreement.

4. INDEMNIFICATION

a. General. The CONTRACTOR shall indemnify, defend and hold harmless CITY, its officers, employees, representatives and agents, from and against any and all claims, actions, losses, damages, injuries, liabilities, costs and expenses of whatsoever kind or nature (including, but not by way of limitation, attorney's fees and court costs) arising out of injury to persons, including death, or damage to property relating to or incidental to CONTRACTOR's operation of the Facility, or CONTRACTOR's performance of any other obligations under this Agreement, whether by the CONTRACTOR or anyone directly or indirectly employed by it, its subcontractors, or anyone else for whose act it may be liable, on or after the effective date of this Agreement, but excluding any and all claims, actions, losses, damages, injuries, liabilities, costs and expenses of whatsoever kind or nature (including, but not by way of limitation, attorney's fees and court costs) arising out of injury to persons, including death, and damage to property related to CITY's operation of the Facility prior to the effective date or that result from the City's sole negligence. At its option, the indemnified party shall have the right to actively participate in the defense of any action in which damages are sought which might be its ultimate responsibility. If the indemnified party elects to exercise said right, it shall bear all of its defense costs, including attorney's fees and court costs.

b. As used in this Agreement, “Environmental Condition” shall mean any adverse condition relating to surface water, ground water, drinking water supply, land, surface or subsurface strata or the ambient air, and includes, without limitation, air, land and water pollutants, noise, vibration, light and odors, which may result in a claim of liability under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (“CERCLA”), or the Resource Conservation and Recovery Act (“RCRA”), or any claim of violation of the Clean Air Act, the Clean Water Act, the Toxic Substance Control Act (“TSCA”), or any claim of liability or of violation under any federal statute hereafter enacted dealing with the protection of the environment or with the health and safety of employees or members of the general public, or under any rule, regulation, permit or plan under any of the foregoing, or under any law, rule or regulation now or hereafter promulgated by the state in which the Premises are located, or any political subdivision thereof, relating to such matters (collectively, “Environmental Laws”). “Hazardous Materials” shall include, but shall not be limited to, substances requiring investigation, removal or remediation under any federal, state or local statute, regulation, ordinance or policy including substances defined as “hazardous substances” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 1802; the Resource Conservation Recovery Act, 42 U.S.C. Section 6901, et. seq.; radon, asbestos and petroleum products; or those substances defined as "hazardous wastes" in applicable codes in the State and in the regulations adopted and publications promulgated to such codes. CONTRACTOR shall, at all times during the term, comply with all environmental laws applicable to the facility and CONTRACTOR’s use thereof. Except to the extent caused by CITY or attributable to an environmental condition existing prior to the effective date of this Agreement, CONTRACTOR will defend, indemnify and save harmless the CITY and its directors, officers, shareholders, employees and agents from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees and expenses) of whatever kind or nature, contingent or otherwise, known or unknown, incurred or imposed, based upon any Environmental Laws or resulting from any Environmental Condition on or about the Premises which is caused by CONTRACTOR during the Term of this Agreement, which indemnity, in the case of an

Environmental Condition caused by Tenant shall include costs incurred by CITY to remediate such Environmental Condition to clean-up or remediation standards consistent with CONTRACTOR's use of the Premises specified in this Agreement. In case any action, suit or proceeding is brought against any of the parties indemnified herein by reason of any occurrence described in this section CONTRACTOR will, at CONTRACTOR's expense, by counsel reasonably approved by CITY, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended.

c. Patent and copyright indemnity. The CONTRACTOR shall obtain any licenses or other authorizations that may be necessary to lawfully use any process, materials or services that are subject to patent, copyright, trademark, trade secret, or other intellectual property restriction or laws. The CONTRACTOR shall indemnify, defend and hold harmless CITY, its officers, employees, representatives and agents, from and against any and all claims, actions, losses, damages, injuries, liabilities, costs and expenses of whatsoever kind or nature (including, but not by way of limitation, attorney's fees and court costs) arising out of infringement of any patent, copyrighted or uncopyrighted work, secret process, trade secret, unpatented invention, article, appliance, or otherwise.

d. CONTRACTOR's obligations under this Agreement shall survive termination of this Agreement and shall not be limited by the availability of insurance.

5. Prior to any payment, the CITY reserves the right to require Waivers of Lien for materials and labor from the CONTRACTOR and its subcontractors and suppliers guaranteeing One Hundred Percent (100%) performance, free and clear from all liens and encumbrances. Any mechanic's lien or any other lien which may be filed against the premises which are the subject of this Agreement by reason of the Work described herein shall be defended (by counsel reasonably acceptable to the CITY) and promptly discharged by the CONTRACTOR at its own expense. The CITY may require the CONTRACTOR to provide a bond satisfactory to the CITY to indemnify it against any lien and as a substitution in place of a lien. If the CONTRACTOR should fail either to defend the CITY against the lien or to discharge it, then the CITY may do so at the CONTRACTOR's expense. In the event of such an undertaking by the CITY, the CONTRACTOR will promptly reimburse the CITY for all its costs and expenses in so doing, including, but not limited to, reimbursement of the CITY's reasonable counsel fees, as well as costs which may be incurred by it in substituting a bond in place of a lien. CONTRACTOR's obligations under this paragraph shall survive termination of this Agreement.

6. The CONTRACTOR shall perform the work to the satisfaction of the responsible CITY official who will have the right of inspection at all times, and whose approval and acceptance of the work will be a condition precedent to payments by the CITY under this Contract. CITY inspectors will have the authority to stop work in progress if such work is being done contrary to the plans, specifications or engineering practice.

7. Time is of the essence in the performance of this Agreement. Upon receipt of executed contracts and insurance as required, the CITY will promptly send an executed CITY contract to the CONTRACTOR, which will commence work. CONTRACTOR shall commence work hereunder on October 1, 2016 (the "Effective Date") Unless this Agreement is sooner terminated hereunder, this Agreement shall terminate September 30, 2026. This Agreement may be extended for an additional term not to exceed 10 years on the terms set forth herein if the CONTRACTOR executes the site and building improvements at the site described in Exhibit _____, attached hereto before September 30, 2023. Site and building improvements are subject to review and approval by the City Manager or his or her designee prior to CONTRACTOR's making of such improvements. This agreement may be renewed upon mutual agreement of the CONTRACTOR and CITY for one additional five (5) year period on the terms and conditions set forth herein.

8. In the event of any dispute as to the amount, nature or scope of the work required under this Contract, the design and judgment of the Director of Public Works (hereinafter, the "Director") will be final and binding.

9. Each year the City shall be able to deliver 15,000 tons of acceptable material generated through City operations and by residents using the E-Card program, or other program substituted by the City, at no charge. Electronic and Universal Waste generated by E-card holders and City operation may be delivered to the facility free of charge. Material in excess of 15,000 tons shall be assessed tipping fees on the following schedule:

Material	Fee/(credit)
Brush	(-$2.00/ton)
Demo Wood	$55.00/ton
Yard Waste	$12.50/ton
Drywall	$55.00/ton
Shingles	$35.00/ton
Non-Recyclables	$55.00/ton
Metals	(-$20.00/ton)
Inert	$8.50/ton
Stumps	$40.00/ton
Catch Basin Grit	$45.00/ton
Sweeper Sand	$20.00/ton
Heavy Furniture	$68.00/ton
Light Furniture	$68.00/ton
Heavy Lawn Equipment	(-$20.00/ton)
Light Lawn Equipment	(-$20.00/ton)
Bicycles	(-$20.00/ton)
Chilren's Equipment	$68.00/ton
Gas Grill	(-$20.00/ton)
Mattress or Box Spring	$68.00/ton
Appliances (non-Freon)	(-$20.00/ton)
Grass	$17.50/ton
Leaves	$15.00/ton

10. The CONTRACTOR shall keep accurate records of all services performed under this Agreement and shall submit such information to the CITY on a monthly basis. Payment for such Work shall be made to the CONTRACTOR not more than thirty (30) days after receipt of an invoice for work completed the preceding month and acceptance of the Work by the Director.

11. TERMINATION

   a. The CITY may terminate this Agreement for cause by written Notice to the CONTRACTOR. In the event of such termination, the CONTRACTOR shall not be entitled to any further payment under this Agreement from the date of receipt of said Notice.

b. The CITY shall have the right to terminate this Agreement at any time for its convenience on thirty (30) days' prior written Notice to the CONTRACTOR. If the Agreement is terminated by the CITY for convenience, the CITY shall pay the CONTRACTOR for all Work performed and all materials purchased pursuant to this Agreement prior to receipt of such Notice.

c. In the event that this Agreement is terminated pursuant to this section, the CONTRACTOR shall continue operations for an interim period of up to one hundred twenty (120) calendar days if requested to do so by CITY in order to allow CITY to obtain the services of a successor contractor or to make arrangements to undertake operation of the Facility with its own forces. The CONTRACTOR shall be paid for its services during said interim period at the rates and factors set forth in the last payment schedule in effect prior to issuance of written final notice of termination.

d. Non-Performance: CONTRACTOR agrees that upon the non-performance by it of any of the covenants, hereinbefore or hereinafter mentioned, by it to be kept and performed; upon the filing of a voluntary petition in bankruptcy; the making of any general assignment for the benefit of creditors; or upon the occurrence of any act which operates to deprive it permanently of the rights, powers, and privileges necessary for the proper conduct and operation of the exclusive rights granted herein; or upon the abandonment and discontinuance of its operations, the CITY may, at its election, cancel this Agreement and enter and take possession of said premises. CONTRACTOR hereby waives any notice of such election, notice to quit possession of the premises or any demand for payment of the amounts agreed upon as the same become due, or for the performance of any covenants herein, or any demand for the possession of said premises; provided, however, that the failure of the CITY to declare this Agreement and exclusive privilege terminated upon default of CONTRACTOR for any of the reasons above set out shall not operate to bar, abridge, or destroy the right of the CITY to declare this Agreement null and void and at end upon any subsequent violation of the terms of this Agreement.

12. Out of concern for the public, CITY employees and the CONTRACTOR's employees, all work performed by the CONTRACTOR shall be in conformance with pertinent OSHA, local, state and federal government, laws, rules, and regulations.

13. NOTICES. Notices of conditions or situations affecting the Work to be performed under this Agreement shall be given in writing between designated operating personnel of the CONTRACTOR and CITY. All other notices shall be given in writing, to be delivered by certified mail, to the parties at their respective addresses as set forth below:

If to the CONTRACTOR, at:________

If to CITY, at: City of Portland
389 Congress Street
Portland, Maine 04101
Attn: City Manager, with a copy to
Public Works Director and Corporation Counsel

14. CONTRACTOR may not assign this contract without the written consent of the CITY. Subject to such consent, the terms and conditions of this Agreement shall be binding upon, and inure to the benefit of, the assignor's successors and assigns.

15. This Agreement may be amended only by written instrument specifically referring to this Agreement and executed with the same formalities as this Agreement.

16. In the event that one or more of the provisions contained in this Agreement shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

17. The CONTRACTOR hereby agrees it is an independent contractor, and that no person supplied by it in the performance of the Agreement shall be any employee of CITY and further agrees that no rights of CITY's rules accrue to any such person. The CONTRACTOR shall have the total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other benefits and taxes and premiums appurtenant thereto of its employees in the performance of this Agreement.

18. Nothing in this document constitutes a waiver of any defense, immunity or limitation of liability that may be available to the CITY, or its officers, agents or employees under the Maine Tort Claims Act (Title 14 M.R.S.A. 8101 et. seq.), and shall not constitute a waiver of other privileges or immunities that may be available to the CITY.

19. No waiver of any breach of any one or more of the conditions of this Agreement by the CITY be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

20. This Agreement is an operating agreement for the Project Site and no provision hereof shall be construed as conveying an easement or other estate in land. CONTRACTOR acquires no other rights in and to the Project Site, except as set forth herein.

21. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court.

22. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a pdf or electronic document shall be considered the equivalent of an original signature.

23. CITY and CONTRACTOR each warrant and represent to the other that they have the full right and authority to enter into this Agreement, that there is no impediment that would inhibit their ability to perform their respective obligations under this Agreement, and that the person signing this Agreement on behalf of each party has the authority to do so.

IN WITNESS WHEREOF, the said CITY OF PORTLAND has caused this Agreement to be signed and sealed by Jon P. Jennings, its City Manager, thereunto duly authorized,

______________ has caused this Agreement to be signed and sealed by __________________, its

____________________________, thereunto duly authorized, the day and date first above written.

WITNESS:

____

CITY OF PORTLAND

By: ____________________________
Jon P. Jennings
Its City Manager

WITNESS:

____

CONTRACTOR

By:____

_________________________________ _____________
Name
Its (title)

Approved as to form:

____
Corporation Counsel's Office

Approved as to funds:

____
Finance Director

Order 58- 16/17
Tab 12 9-19-16

CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER APPROVING TWO-PARTY AGREEMENT BETWEEN THE CITY OF PORTLAND AND THE MAINE DEPARTMENT OF TRANSPORTATION RE: FOREST AVENUE AND DARTMOUTH STREET

ORDERED, that the City Manager is authorized to enter into the two-party partnership agreement between the City of Portland and the Maine Department of Transportation, in substantially the form attached, for improvements to the intersection of Forest Avenue and Dartmouth Street; and

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

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan

FROM: Jennifer Ladd, Project Engineer
Department of Public Works - Engineering

DATE: September 2, 2016

SUBJECT: Request to authorize two-party agreement with MaineDOT for ADA Improvements at Forest Avenue and Dartmouth Street

SPONSOR: Jon Jennings
(If sponsored by a Council committee, include the date the committee met, the results of the vote, and the meeting minutes.

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading___Sept 19th, 2016__________ **Final Action**____Oct 5th, 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) N/A

I. ONE SENTENCE SUMMARY –

City Council approval of this agreement is needed in order to build ADA Improvements at Forest Avenue and Dartmouth Street.

II. AGENDA DESCRIPTION -

MaineDOT has selected the project for federal assistance and inclusion in its 2016-2018 Work Plan. This project implements the Transforming Forest Avenue Study recommendation at this intersection to reduce the automobile-dependent design of the street by making significant pedestrian and streetscape enhancements. The study, which was overseen and then fully endorsed by a public advisory committee in 2010-2011, was adopted by the Planning Board & City Council as part of the Comprehensive Plan for Portland. At its June 18, 2012 meeting, the City Council unanimously endorsed (9-0) this specific project as part of the package of Portland SRTS and TE applications. (See Order #222-11/12)

III. BACKGROUND -

(See Agenda Description above)

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED -

The intended result is to initiate this agreement and begin the project by holding a joint kick-off meeting. The MaineDOT Locally Administered Project program provides key transportation outcomes by matching local dollars with three dollars of Federal and State money. This program provides us with maximum benefit at a minimum cost and provides significant improvements to our vital Transportation system.

V. FINANCIAL IMPACT -

The estimated project costs are outlined below. The existing MDOT Quality Community Program account (C14114) will be used to fund the required 20% local match.

Federal Share = $83,044 (80%)
Local Share = $20,761 (20%)
Upset Limit / Total Project Estimate = $103,805

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

The project costs above are based on estimates prepared in 2012. The intent is to design and build the project within this budget. Current target construction year is 2017.

VII. RECOMMENDATION –

DPW recommends approval of this agreement between MaineDOT and the City of Portland.

VIII. LIST ATTACHMENTS

1. MaineDOT Agreement for a Federal-aid Locally Administered Project, "Pedestrian Safety Improvements at Forest/Dartmouth: WIN 018887.00"

Prepared by: Jennifer Ladd
Date: September 2, 2016

Order 222-11/12
Passage: 9-0 6/18/12

CITY OF PORTLAND

IN THE CITY COUNCIL

ORDER APPROVING PROJECT APPLICATIONS RE: MAINE DOT QUALITY COMMUNITY PROGRAM

ORDERED, that the thirteen project applications for grants from the Maine DOT Quality Community Program as described in the attached memorandum from DPS Director Michael Bobinsky are hereby approved for submission to the Maine Department of Transportation.

MaineDOT

MaineDOT use only	
AMS ID:	
CSN:	
TEDOCS	#:
PROGRAM: Multimodal (OUC 57000)	

MAINE DEPARTMENT OF TRANSPORTATION Agreement for a Federal-aid Locally Administered Project With the City of Portland
Regarding
Pedestrian Safety Improvements at Forest/Dartmouth: WIN 018887.00

MaineDOT use only

Total Agreement Amount: $103,805	Federal Project #: TAP-1888(700)
Federal Share: $83,044	Federal Authorization Date: 05/26/15
Municipal Share: $20,761	City's Vendor ID: VC1000073476
Effective Date:	City's DUNS® Number: 07-174-7802
Expiration Date:	CFDA #20.205: Highway Planning & Construction

This Agreement for a Federal-aid Project to make ADA improvements at the intersection of Forest Avenue and Dartmouth Street in Portland ("the **Project**") is between the Maine Department of Transportation, an agency of the State of Maine with headquarters at 24 Child Street in Augusta, Maine ("**MaineDOT**") and the City of Portland, a body corporate and politic with its primary offices at 389 Congress Street in Portland, Maine ("the **City**").

This Agreement contains the following attachments:

☒ Federal Funding Accountability and Transparency Act Form (signature required);
☒ Federal Title VI Assurances (signature required).

WHEREAS, **MaineDOT** selected the **Project** described herein for federal assistance through its Quality Community Program and for inclusion in its 2016-2018 Work Plan; and

WHEREAS, the **City** shall deliver the **Project** as a Locally Administered Project, subject to **MaineDOT** oversight to ensure that all federal requirements are met.

NOW, in consideration of the previous statements, **MaineDOT** and the **City** ("the **Parties**") establish and agree to the following terms and conditions:

ARTICLE 1. ROLES AND RESPONSIBLITIES

1A. ROLE OF CITY. The **City** shall assign a full-time qualified employee with Local Project Administration ("LPA") Certification from **MaineDOT** to manage the **Project** and carry out the **City**'s responsibilities under this Agreement. This Local Project Administrator shall abide by the guidance in the latest edition of **MaineDOT**'s *Local Project Administration Manual & Reference Guide* ("LPA Manual.") If the certified administrator leaves the **City** or ceases to oversee the **Project**, the **City** shall stop work and notify the **MaineDOT** Project Manager. **MaineDOT** will evaluate the situation and determine a course of action.

- ☐ The following municipal employee shall serve as Local Project Administrator:
  Name: Jennifer Ladd, Project Engineer
  Email Address: jwl@portlandmaine.gov
  Phone Number: (207) 874-8894

1B. ROLE OF MAINEDOT. **MaineDOT** will assign a Project Manager to carry out the State's responsibilities under this Agreement. This person or designee will have the authority to request design changes to meet applicable laws and design standards; accept and reject invoices; review construction activities to ensure compliance with contract documents; and take all other action needed to ensure proper performance of this Agreement.

- ☐ **MaineDOT** has assigned the following individual to serve as Project Manager:
  Name: John Rodrigue, Project Manager
  Email Address: john.rodrigue@maine.gov
  Phone Number: (207) 592-0428

ARTICLE 2. PROJECT FINANCES

2A. UPSET LIMIT. The estimated cost of all phases of the **Project** – preliminary engineering, right-of-way, construction and construction engineering – is **$103,805** (the "Upset Limit.") **Project** costs eligible for federal financial participation shall not exceed this Upset Limit without **MaineDOT**'s written approval, through an executed modification to this Agreement.

2B. FEDERAL SHARE. **MaineDOT**, using funding from the Federal Highway Administration ("FHWA"), will share in all costs eligible for federal participation through all phases of the **Project** at the rate of **80%**, up to a maximum contribution at this rate of **$83,044**.

2C. LOCAL SHARE. The **City**, with local funding, shall share in all costs eligible for federal participation through all phases at the rate of **20%**, or an estimated **$20,761**. The **City** shall be responsible in full for all expenditures:

1. Exceeding the Upset limit of this Agreement set forth in Article 2A above;
2. Incurred before the date of notice to proceed, as set forth in Article 3B, "Authorization";
3. Deemed ineligible for federal financial participation.

2D. REIMBURSEMENT. **MaineDOT** will reimburse the **City** for federally eligible costs incurred on the **Project** at the rate in Article 2B, "Federal Share." The **City** shall bill **MaineDOT** no more than monthly and no less than quarterly, subject to these conditions:

1. The **City** shall submit Invoices in the format of Communication 4 of the LPA Manual.
2. The **City** shall provide with each invoice documentation of charges incurred and proof of payment, with sufficient detail to satisfy the **MaineDOT** Project Manager.
3. Each invoice shall include a progress report for the service period of the invoice.
4. Each invoice shall show **MaineDOT**'s and the **City**'s portion of **Project** costs, including a running total of costs incurred to date.
5. The **City** must certify that amounts claimed are correct and not claimed previously.
6. Payment of the final invoice from the **City** shall be contingent upon a final inspection of the completed **Project** to determine the acceptability of the work.

2E. MAINEDOT COSTS. Costs that **MaineDOT** incurs for work on the **Project** shall be paid for out of the **Project**. The **City** shall share in these costs at the rate in Article 2C, "Local Share." **MaineDOT** will reconcile these costs upon completion of the **Project** and deduct the City's share from the final invoice payment.

2F. FINAL COST. If the final cost of the **Project** is less than the Upset Limit shown in Article 2A, **MaineDOT's** reimbursement to the **City** will be capped at the percentage of actual costs in Article 2B, "Federal Share." The **City** shall refund any overpayment to **MaineDOT**.

2G. REPAYMENT. If the **City** withdraws from the **Project**, leading to termination of this Agreement for cause, the **City** shall refund all invoice payments from **MaineDOT** and reimburse **MaineDOT** fully for costs incurred for work in the **Project.**

2H. SET-OFF. **MaineDOT** will have the option to exercise its common law, equitable and statutory rights of set-off to recover payment made to the **City** for work later deemed ineligible for federal funding. These rights will include, but will not be limited to, **MaineDOT**'s option to withhold money owed to the City under this Agreement and any other agreement with **MaineDOT** or any other agency of the State of Maine, including any contract starting before the effective date of this Agreement.

ARTICLE 3. PROJECT DEVELOPMENT

3A. SCOPE OF WORK. This Agreement shall apply to a **Project** consisting of sidewalk improvements at the intersection of Forest Avenue and Dartmouth Street that are necessary to comply with the Americans with Disabilities Act. Any substantial change to this scope of work shall require **MaineDOT**'s written approval to be eligible for financial assistance from **MaineDOT**.

3B. AUTHORIZATION. The **City** shall receive written notice to proceed from **MaineDOT** before starting any reimbursable work or executing any service contract under this Agreement. This notice shall be contingent upon **MaineDOT** receiving authorization for federal financial participation in the **Project** and executing this Agreement.

3C. KICKOFF. The **Parties** shall hold a project kickoff to go over the scope of work, estimated cost, schedule, and legal requirements <u>before</u> any work begins.

3D. PROGRESS REPORTS. The **City** shall provide **MaineDOT** with regular progress reports at intervals established by **MaineDOT**'s Project Manager.

3E. CORRESPONDENCE. <u>Communication 1</u> through <u>Communication 20</u> of the LPA Manual shall be used to correspond with **MaineDOT**.

3F. CONSULTANT SERVICES. If the **City** intends to contract for consultant services under this Agreement, the **City** shall:

1. Use a qualifications-based selection method and <u>not</u> the lowest price. Using price as a section factor will render consultant work on the **Project** <u>ineligible</u> for federal funding.
2. Obtain the **MaineDOT** Project Manager's written approval before awarding a contract.
3. Incorporate "Consultant General Conditions for Local Public Agencies" into contracts.

4. Obtain **MaineDOT**'s written approval before modifying a contract. Work that is performed on a consultant contract outside of the original scope of work without an approved and executed modification in place shall be ineligible for reimbursement.
5. Evaluate the performance of its consultant upon completion of the contract in accordance Section 2.10 of the LPA Manual, "Consultant Evaluations."

3G. DESIGN WORK. Design plans, specifications, estimates and contract documents for the **Project** shall be developed in accordance with **MaineDOT**'s *Engineering Instructions, Highway Design Guide*, *Standard Specifications* and *Standard Details*, as applicable.

1. The **City** shall submit a preliminary design report, a set of design plan impacts, and the final plans, specifications and estimate (PS&E) to **MaineDOT** for review and approval.
2. The **City** shall address to **MaineDOT's** satisfaction all changes requested or concerns expressed by **MaineDOT** before **MaineDOT** will authorize the **City** to advertise for construction bids. Advertising for bids or proceeding to the construction stage without **MaineDOT's** written authorization shall render the entire **Project** *ineligible* for federal funding.
3. **MaineDOT's** acceptance of the final PS&E package shall not relieve the Engineer of Record, whether a **Municipal** employee or consultant, of responsibility for the quality of the engineering documents for the **Project**.

3H. PUBLIC PARTICIPATION. The **City** shall afford the public and all abutters the opportunity to learn about and comment on the **Project**, using a public participation process that is appropriate for the scope of work and acceptable to MaineDOT's Project Manager. The **City** shall provide **MaineDOT** with a public process certification, using the format shown in Communication 10 of the LPA Manual, as part of the **Project**'s environmental package.

3I. ENVIRONMENTAL PROCESS. **MaineDOT** will prepare and submit to the FHWA all documentation required under the National Environmental Policy Act ("NEPA"). The **City** shall provide **MaineDOT** with Communication 11 of the LPA Manual and the completed NEPA Documentation Checklist to assist with this work.

3J. PERMITS. The **City** shall obtain all approvals, permits and licenses for the **Project.** The **City** shall provide **MaineDOT** with copies of all such documents and an environmental certification in the format shown in Communication 12 of the LPA Manual, as part of the final PS&E package for the **Project.**

3K. UTILITIES. The **City** shall coordinate the **Project** with any utility and railroad that may be affected. The **City** shall provide **MaineDOT** with a utility certification in the format shown in Communication 13 of the LPA Manual, as part of the final PS&E package. MaineDOT's Utility Accommodation Rules (2014) shall apply to required utility relocations.

3L. RIGHT OF WAY. The **Parties** will coordinate acquisition of rights-of-way as follows:

1. **MaineDOT** will carry out the right-of-way process for sections of the **Project** that are located along Forest Avenue.
2. The **City** shall carry out the right-of-way process if the **Project** for sections of the **Project** located along Dartmouth Street. In doing so, the **City** shall:

a. Follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("Uniform Act") and the MaineDOT "Right of Way LPA Manual."

b. Provide a right-of-way map or similar plan meeting **MaineDOT**'s standards that shows all rights obtained for the **Project.**

c. Provide **MaineDOT** with a right-of-way certification in the format shown in Communication 14 of the LPA Manual, as part of the final PS&E package.

3. The **City** shall dedicate permanently to the **Project** for public use any municipal property needed for the **Project**.

3M. FORCE ACCOUNT. If the **City** intends to build the **Project** with municipal labor using a "Force Account" process, the **City** shall obtain written authorization from **MaineDOT** before proceeding with any work. If so authorized, the **City** shall comply with federal regulations 23 CFR, sections 635.201 to 635.205: "Force account construction."

3N. SOLICITATION OF BIDS. The **City** shall use competitive bidding to hire a construction contractor unless **MaineDOT** authorizes Force Account work. Upon written authorization from **MaineDOT**, the **City** shall advertise for bids, as follows:

1. The **City** shall follow the procedures in MaineDOT's Standard Specifications (November 2014 Edition), Section 102, "Bidding."
2. The **City** shall submit bid tabulations to **MaineDOT** for review and shall obtain MaineDOT's written approval before awarding a contract.
3. The **City** shall ensure that the following are part of the contract book for the **Project**:
   a. "Buy America" requirements;
   b. Davis-Bacon prevailing wage rates;
   c. Form FHWA-1273 or other applicable federal provisions; and
   d. Signed Title VI Assurances.

3O. CONTRACT AWARD. Upon receiving **MaineDOT**'s written approval, the **City** shall award a contract for the **Project** to the lowest responsive and responsible bidder in accordance with MaineDOT's *Standard Specifications* (November 2014 Edition), Section 103, "Award and Contracting." The **City** shall administer the contract for the duration of the **Project**.

3P. CONSTRUCTION. During construction of the **Project**, the **City** shall:

1. Provide a Project Resident who is either a qualified municipal employee with LPA certification or a consultant hired through a qualifications-based selection method, in order to ensure that the **Project** is completed according to the final design plans, construction specifications, special provisions and terms of the contract.
2. Hold a pre-construction / pre-utility meeting with **MaineDOT**, the contractor, utilities and any other parties involved in the construction work before any work begins.
3. Coordinate materials testing necessary to meet the Minimum Testing Requirements that **MaineDOT** established for the **Project**.
4. Submit contract modifications to **MaineDOT** for review and comment before they are executed. ***MaineDOT** reserves the right not to reimburse the **City** for work under a contract modification executed without **MaineDOT's** review and approval.*

3Q. MAINEDOT OVERSIGHT. **MaineDOT** will inspect construction activities, test materials and review documentation to ensure compliance with the **Project** specifications and terms of the construction contract. **MaineDOT** may reject work or materials out of compliance and withhold reimbursement to the **City** for such work or materials.

3R. MAINTENANCE. The **City** shall maintain the completed **Project** year-round for its standard useful life or 20 years, whichever is longer. Maintenance work shall consist of upkeep and repairs needed to maintain a firm, stable and slip-resistant surface, including snow removal. Maintenance shall not be delegated to any other party without specific, written approval from **MaineDOT**, which shall be attached to this Agreement.

ARTICLE 4 – TERMINATION

4A. FOR CAUSE. **MaineDOT** will have just cause to terminate this Agreement in the event of default by the **City**, as defined in Article 4B. **MaineDOT** will afford the **City** a cure period of fourteen (14) calendar days, effective on the **City**'s receipt of Notice of Default. If the **City** fails to make a good-faith effort to address all defaults within this cure period, **MaineDOT** will terminate this Agreement for cause, with these conditions:

1. **MaineDOT** will recover from the **City** all reimbursements made and costs incurred for work on the terminated **Project**.
2. The **City** shall forfeit all federal funds remaining in the terminated **Project**.

4B. DEFAULT. **MaineDOT** shall send the **City** a Notice of Default if the **City:**

1. Withdraws its support for the **Project**; or
2. Makes inadequate progress within 18 months of execution of this Agreement; or
3. Takes any action that renders the **Project** ineligible for federal-aid funding; or
4. Uses **Project** funds for a purpose not authorized by this Agreement; or
5. Misrepresents or falsifies of any claim for reimbursement; or
6. Fails to meet standards of performance outlined in this Agreement.

4C. FOR CONVENIENCE. The **Parties** may terminate this Agreement for convenience by mutual consent for any reason not defined as "default," as follows:

1. In case of Termination for Convenience, **MaineDOT** will reimburse the **City** for federally eligible work performed under this Agreement until the effective termination date. The **City**'s share of **MaineDOT**'s costs for work on the **Project** shall be deducted from the final invoice amount owed to the **City**.
2. **MaineDOT** will reprogram for other purposes all federal funds remaining in the **Project**.

ARTICLE 5 – RECORDS & AUDIT

5A. **Project** records are printed or electronic plans, specifications, contracts, reports, notes, or other documents prepared by or for the **City**. The **City** shall retain all such records for at least **5 years** from the date either of **MaineDOT**'s acceptance of the final invoice for the **Project** or the termination of this Agreement. If any litigation, claim, negotiation or audit has begun before the end of this **5-year** period, all **Project** records shall be kept at least until all issues arising from any such action are resolved.

5B. The **City** and any consultant or contractor working on its behalf shall allow authorized representatives of the Federal Government and the State of Maine to inspect and audit **Project** records at reasonable times. Copies shall be furnished at no cost to the Federal Government or to the State of Maine.

5C. Audits shall be performed in accordance with generally accepted government auditing standards and federal regulation 2 CFR, Section 200, Subpart F - "Audit Requirements."

ARTICLE 6. GENERAL PROVISIONS

6A. GOVERNING LAW. The laws of the State of Maine shall govern this Agreement. Since this Agreement covers a **Project** using federal-aid funds, the **Parties** shall perform all activities under this document in accordance with applicable federal regulations, including but not limited to 23 CFR, "Highways"; 49 CFR, "Transportation"; and 2 CFR, Section 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

6B. CONFIDENTIALITY. The **City** shall protect the confidentiality of right-of-way negotiations, property appraisals, and engineering estimates of the cost to construct the **Project** in accordance with the provisions of Title 23 of the Maine Revised Statues Annotated (MRSA), Section 63: "Confidentiality of Records."

6C. INDEMNIFICATION. To the extent allowed by law, the **City** shall indemnify, defend and hold harmless **MaineDOT**, its officers, agents and employees from all claims, suits or liabilities arising from negligent or wrongful act, error or omission by the **City**, its officers, employees, agents, consultants or contractors. Nothing in this article shall waive any defense, immunity or limitation of liability that may be available to either party under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or other privileges or immunities provided by law. *Any other provision of this Agreement to the contrary notwithstanding, this provision shall survive the termination or expiration of this Agreement.*

6D. INDEPENDENT CAPACITY. The **City**, its employees, agents, representatives, consultants and contractors *shall not* act as officers, employees or agents of **MaineDOT**.

6E. FLOW DOWN. Contracts between the **City** and all third parties shall contain or incorporate by reference applicable provisions of this Agreement.

6F. BINDING EFFECT. The **Parties** shall be bound by the terms of this Agreement, which shall apply to its executors, their successors, administrators and legal representatives.

6G. EQUAL EMPLOYMENT OPPORTUNITY. The **City** and all consultants and contractors hired pursuant to this Agreement shall not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, sexual orientation or disability unless related to a bona fide occupational qualification. The **City** and all consultants and contractors hired pursuant to this Agreement shall take affirmative action to ensure that all such applicants are employed and that all such employees are treated regardless of their race, color, religious creed, sex, national origin, ancestry, age, sexual orientation or disability during any period of employment under this Agreement.

6H. ENTIRE AGREEMENT. This document represents the entire Agreement between the **Parties**. Neither **MaineDOT** nor the **City** shall be bound by any statement, correspondence, agreement or representation not expressly contained in this Agreement.

ARTICLE 7. DEBARMENT

7A. The **City** certifies to the best of its knowledge and belief that it and its officers, agents and employees associated with the **Project** are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by the Federal Government. If the **City** cannot certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the **City** shall notify **MaineDOT** promptly if it or any officer, agent or employee associated with the **Project** is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by the Federal Government.

7B. The **City** agrees that it shall not hire an outside entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by the Federal Government.

ARTICLE 8. CONFLICT OF INTEREST

8A. No person with a direct or indirect financial or personal interest in any contract or subcontract for the **Project** shall negotiate, make, accept or approve any such contract or subcontract.

8B. The **City** shall refrain from hiring any engineer, lawyer, appraiser, inspector or other professional to provide services for **Project** who has a direct or indirect financial or other personal interest in any contract or subcontract for the **Project**, other than the person's employment or retention by the **City.** No officer or employee of any such engineer, lawyer, appraiser, inspector or other professional retained by the **City** to work on the **Project** shall have a direct or indirect financial or other personal interest in any real property acquired for the **Project** unless such interest is openly disclosed to **MaineDOT** and such officer, employee or person has not participated in such acquisition for and in behalf of the **City**.

8C. No person or entity entering into a contract for the **Project** may have a direct or indirect financial or other interest in the **Project** or its outcome – other than the performance of the contract. This prohibition includes, without limitation: a.) any agreement with, or other interest involving, third parties having an interest in the outcome of the **Project** that is the subject to the contract; b.) any agreement providing incentives or guarantees of future work on the **Project** or related matters; and c.) any interest in real property acquired for the **Project** unless such interest is disclosed to **MaineDOT** before the person or entity entered into the contract.

ARTICLE 9. EXPIRATION

This Agreement shall expire upon **MaineDOT**'s payment of the final invoice from the **City** for the **Project** or **five (5) years** from the final day of the month in which this Agreement was executed, whichever occurs first, except as follows:

1. Article 3R, "Maintenance," shall be enforced for at least twenty (20) years.
2. Article 5, "Records & Audit," shall remain in place until all activity pursuant to this provision is completed.
3. Article 6B, "Confidentiality," shall remain in effect until negated by law.
4. Article 6C, "Indemnification," shall remain in place until specifically terminated by the **Parties** or negated by law.

ARTICLE 10. AGREEMENT APPROVAL

The undersigned municipal representative assures that the **City**'s legislative body has approved the **City**'s entry into this Agreement, has appropriated or authorized use of required matching funds, and has authorized the representative to sign this Agreement.

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

City of Portland	**Maine Department of Transportation**
By: ______________________________	By: ______________________________
Jon Jennings, City Manager	**William A. Pulver, P.E., Director,** Bureau of Project Development
Date: _________________	Date: _________________

I certify that the foregoing signature is true and accurate. I further certify – pursuant to 10 M.R.S.A. §9407 and §9502 – that the signature, if electronic: (a) is intended to have the same force as my LPA Manual signature; (b) is unique to me; (c) is capable of verification; and (d) is under my control.

Federal Funding Accountability and Transparency Act

The **City of Portland, Maine** and its contractors may be subject to the provisions of the Federal Funding Accountability and Transparency Act of 2006 as amended and any regulations, policies, procedures and guidance documents adopted pursuant thereto or in connection therewith.

If the Federal portion of the **Project** exceeds $25,000, an authorized representative from the **City** shall sign this document under (B) below and return it with the **Project** Agreement. Additionally, the **City** shall provide the following information, *if applicable*:

A) The total compensation and names of the top five officers if:

- More than 80% of the **City**'s annual gross revenues are from the U.S. Federal Government; and
- Those revenues are greater than $25 million annually; and
- Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).

B) Legal name and DUNS® number on file with the Central Contractor Registration (CCR):

City of Portland, Maine 07-174-7802
Sign and Print Legal CCR Name DUNS® Number

Authorized Representative: ______________________________
Jon Jennings, City Manager

U.S. Department of Transportation (U.S. DOT)

Federal Highway Administration – Standard Title VI / Nondiscrimination Assurances

DOT Order No. 1050.2A

The **City of Portland** (the "Recipient") **AGREES THAT**, as a condition of receiving Federal financial assistance from the U.S. Department of Transportation (U.S. DOT) through the Federal Highway Administration (FHWA), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq*., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory citations hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, " for which the Recipient receives Federal financial assistance from the U.S. DOT, including the FHWA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its federally assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal Highway Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

The City of Portland, Maine, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. **The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or Agreement subject to the Acts and the Regulations.**
4. If applicable, the Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. If applicable, the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
   a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
   b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
   a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
   b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. You must keep records, reports, and submit the material for review upon request to the FHWA, or their designees in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in it programs. The person signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

DATED ______________________________

By ____
Jon Jennings, City Manager
City of Portland, Maine

Encl.: Appendices A and E

APPENDIX A TO THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, **Federal Highway Administration**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the **Federal Highway Administration**, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the **Federal Highway Administration**,, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the **Federal Highway Administration**, may determine to be appropriate, including, but not limited to:

    a. withholding payments to the contractor under the contract until the contractor complies; and/or
    b. cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the **Federal Highway Administration**, may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E TO THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. §324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating of sex in education programs or activities (20 U.S.C. 1681 et seq.).

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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 APPROPRIATING FUNDS FROM THE SALE OF CITY-OWNED BAYSIDE PROPERTY ON SOMERSET STREET

ORDERED, that $1,000,000 from the sale of city-owned Bayside property on Somerset Street is hereby appropriated for use in the relocation of the Department of Public Works operations from Bayside to 212 and 250 Canco Road and any costs related and ancillary thereto; and

BE IT FURTHER ORDERED, that $1,000,000 from the sale of city-owned Bayside property on Somerset Street is hereby appropriated for use in the City's replacement of public administration software and any costs related and ancillary thereto.

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan

FROM: **Finance**

DATE: **9/19/2016**

SUBJECT: APPROPRIATION OF MIDTOWN SALE PROCEEDS

SPONSOR: Jon Jennings
(If sponsored by a Council committee, include the date the committee met, the results of the vote, and the meeting minutes.

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading______9/19_______ Final Action___10/5____

Can action be taken at a later date: No

Action is required immediately as funds are needed for relocation of Public Works facilities out of the Bayside neighborhood and funds are required for RFP #5116

PRESENTATION: Brendan T O'Connell, under 5 minutes

I. ONE SENTENCE SUMMARY

Earlier this calendar year sale of property in the Bayside neighborhood occurred to the Federated Companies, LLC and the sales proceeds need to be appropriated by City Council.

II. AGENDA DESCRIPTION

In June 2016 the Federated Companies, LLC purchased parcels of property from the City in the Bayside neighborhood. This order appropriates these funds towards the move of Public Works out of the Bayside neighborhood to Canco Road and also towards the funding of RFP #5116 – Proposal for Public Administration Systems Software.

III. BACKGROUND

Same as I above.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

It has long been a City goal to relocate Public Works out of the Bayside neighborhood so those properties could be redeveloped for housing and businesses. The City has acquired land at 212 and 250 Canco Road and those properties will be the new home base for a variety of City operations currently housed a Bayside including Traffic Operations, Fleet Management, and more.

Several other City Council goals will be addressed if the City can successfully complete and implement the results of RFP #5116 – Proposal for Public Administration Systems Software. The last Public Administration Systems Software RFP occurred in **1996** so City staff is working with software technology that in some cases is 20 years old. Over the years piecemeal solutions have been purchased, or home grown solutions have been implemented. The goal of this RFP is to increase efficiencies within all departments by implementing public administration software which brings our systems into the 21st century.

V. FINANCIAL IMPACT

The recommended appropriation will be $1,000,000 for relocation of Public Works to Canco Road and $1,000,000 for RFP #5116.

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

None

VII. RECOMMENDATION

Move passage

VIII. LIST ATTACHMENTS

None

Prepared by: Finance Department
Date: 9/8/16

Order 60-16/17
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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 REAPPROPRIATING UNSPENT BOND PROCEEDS RE: MOODY-WILSON STORM DRAIN

WHEREAS, the City of Portland previously issued its $15,418,000 2013 General Obligation Bonds dated February 1, 2013 (the "2013 Bonds") to finance a Deering Street wastewater project approved as part of the City's 2013 Capital Improvement Program (the "2013 Wastewater Project"); and

WHEREAS, the 2013 Wastewater Project has been completed with project costs less than estimated and there remain unspent proceeds from the 2013 Bonds; and

WHEREAS, the City Council now desires to reappropriate a portion of the unspent balance in the project account for the 2013 Wastewater Project to the Moody-Wilson Storm Drain wastewater project approved as part of the City's 2009 Capital Improvement Program;

NOW, THEREFORE, by the City Council of the City of Portland, be it hereby **ORDERED, THAT** $175,000.00 of unspent proceeds of the 2013 Bonds issued for the 2013 Wastewater Project be and hereby are reallocated and re-appropriated to fund a portion of the costs of the Moody Wilson Storm Drain wastewater project.

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan

FROM: **Water Resources, Finance**

DATE: **9/19/2016**

SUBJECT: REALLOCATION OF SEWER CIP FUNDING

SPONSOR: Jon Jennings
(If sponsored by a Council committee, include the date the committee met, the results of the vote, and the meeting minutes.

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading______9/19_______ Final Action___10/5____

Can action be taken at a later date: No

Action is required immediately as funds are needed to award a contract for the Moody Wilson project. Existing fund request was inadequate.

PRESENTATION: Brendan T O'Connell, under 5 minutes

I. ONE SENTENCE SUMMARY

The Moody-Wilson stormwater project has some additional needs which were not anticipated in original Water Resources funding request and there are existing sewer funds in a 2009 CIP which can be reallocated by City Council to complete the project.

II. AGENDA DESCRIPTION

The Moody-Wilson project is a project that will add a new storm drain on the two Streets and also replace the existing sewer lines. The new storm drain will separate stormwater from Sewage and help reduce combined sewer overflows at the India Street CSO discharge. The design of the project indicated the need for storage due to pipe size constraints down stream of the project. The initial CIP request did not factor the storage units into the estimate, thus is why the extra funds are needed. The project had a bid opening on August 2nd, and we were hoping that a price would come in under the remaining funds, however that was not the case.

We have a contractor ready to perform the work but we cannot sign until funds are available. If the contract is not signed soon the work will be delayed.

III. BACKGROUND

Same as I above.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Completion of the Moody-Wilson project.

V. FINANCIAL IMPACT

Reallocation of $175,000.00 from C13501 (Deering Street Wastewater) to C09502 (Moody-Wilson Storm Drain). There are excess funds in C09502.

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

None

VII. RECOMMENDATION

Move passage

VIII. LIST ATTACHMENTS

None

Prepared by: Finance Department
Date: 9/8/16