AGENDA
SPECIAL CITY COUNCIL MEETING
MARCH 27, 2017

1. Agenda Only 2017-03-27.pdf

Documents:

Agenda Only 2017-03-27.pdf

2. Agenda and Packet 2017-03-27.pdf

Documents:

Agenda and Packet 2017-03-27.pdf

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)
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NICHOLAS M. MAVODONES, JR. (A/L)

AGENDA
SPECIAL CITY COUNCIL MEETING
MARCH 27, 2017

The Portland City Council will hold a Special City Council Meeting at 5:30 p.m. in City Council Chambers, City Hall. The Honorable Ethan K. Strimling, Mayor, will preside.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

CDBG Annual Allocation Committee Presentation
City Manager Presentation
Mayor's Comments as required by City Charter

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) March 20, 2017, Regular City Council Meeting Minutes

PROCLAMATIONS:

APPOINTMENTS:

CONSENT ITEMS:

LICENSES:

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

Resolve 5-16/17 (Tab 2)

Resolution Adopting the FY 2017-2018 Housing and Community Development Annual Action Plan Including Appropriations For Community Development Block Grant Program, Home Program, and Emergency Solutions Grant Program and Certifications Pertaining Thereto – Sponsored by Jon P. Jennings, City Manager.

This Resolution adopts the fiscal year 2018 annual action plan and appropriates funds to the identified programs.

The 2017/2018 Housing and Community Development Program will report in the Annual Action Plan to the Department of Housing and Urban Development (HUD) a total budget of $3,929,739 funded by a Community Development Block Grant (CDBDG) allocation of $1,791,448 plus $125,000 in program income, along with $110,000 in CDBG Housing Program Income; a HOME Consortium Program Grant allocation of $832,642; HOME Program income of $200,000; Lead Safe Housing Program Income of $170,866; local Housing Trust Funds of $468,551; and an Emergency Solutions Grant (ESG) Allocation of $161,232.

The CDBG Annual Allocation Committee, appointed by the City Council, reviewed each application and made funding recommendations. They are given an opportunity to make a presentation to the Council at this meeting, and citizens may comment on the City's plan for the use of CDBG, HOME and ESG funds. The City Manager also reviewed the Committee's recommendations and has submitted his own funding recommendations to the City Council.

As required by the City's citizen participation process, two (2) public hearings are held each spring to consider the City's Housing and Community Development Program proposal for the ensuing year. This year the first public hearing is being held at this meeting on March 27, 2017 and the second will be held on April 5, 2017. The public hearings allow an opportunity for citizens to comment on the City's Consolidated Annual Action Plan.

This item must be read on two separate days and two public hearings must be held in order to comply with federal regulations. The first reading and public hearing on this item is on March 27, 2017.

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

ORDERS:

Order 180-16/17 (Tab 3) **Order Approving Airport Improvement Program Grants - Sponsored by Jon P. Jennings, City Manager.**

The Federal Aviation Administration issues grants to fund eligible safety and capacity projects at airports nationwide through the Airport Improvement Program (AIP). This program is funded through federal taxes on commercial air fares and on aviation fuel taxes. The amount allocated to each airport is based on the annual number of enplaned commercial passengers the airport handled in the prior calendar year.

This year the Portland Jetport has AIP entitlement funding totaling $3.846 million based upon 858,649 enplaned passengers in 2015. In federal FY 2017 four projects have been planned by the Jetport with the following estimated costs:

- Gate 1 Aircraft Apron Reconstruction Phase 1 — $ 2,545,000
- Environmental Assessment and Permitting for Projects Phase 2 — $ 513,000
- Air Rescue and Firefighting Truck — $ 1,083,000
- Runway Incursion Warning System — $ 132,000

The AIP funding amount for each of these projects is 90% of the above listed total cost for each project. The balance is covered locally through the Jetport's operating budget and through state funding of up to 5% of project costs.

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

UNFINISHED BUSINESS:

Order 155-16/17 (Tab 4) **Order Approving Longfellow, Lyseth, Presumpscot and Reiche Elementary School Renovation Projects with Total Project Costs not to Exceed $64,260,000 and Authorizing General Obligation Bonds Therefore – Sponsored by the Finance Committee, Nicholas M. Mavodones, Jr., Chair.**

On February 23, 2017 the Finance Committee voted (2-0) to recommend a $64.26M proposal to substantially renovate four elementary schools.

The Finance Committee made their recommendations after an extensive process which included a Portland Public Schools Board of Education recommendation (6/21/16, 6-2 for a $70.59M bond), a School Facilities Ad-Hoc Committee amendment and recommendation (1/19/17, 7-1 for a $61M bond) and another Portland Public Schools Board of Education recommendation (1/31/17, 8-0 for a $61M bond). The schools and amounts included in the current Finance Committee recommendation are:

Presumpscot: Modulars eliminated and classroom space added. Separate gym and cafeteria created. Adequate OT, PT, ELL, music, art, library, kitchen and restroom space added. Improved security and sightlines for the entrance. More functional parent drop off/bus loop constructed. Upgraded learning technology, plumbing, electrical and sprinklers installed. LEED Certified. *Cost: $13,628,000*

Longfellow: Building made fully ADA compliant with new, more secure entrance. Full asbestos abatement. Separate gym and cafeteria created. Adequate reading, ELL, Gifted & Talented, music, art, library, and kitchen space. Upgraded learning technology, plumbing, electrical and sprinklers installed. LEED Certified. *Cost: $15,388,000*

Reiche: Acoustic and lighting problems corrected. Enclose classroom corridor walls and provide operable partitions. Maintain ability for open spaces for collaborative learning.

Appropriate health station created. Rightsize art, music and reading spaces. Pre-K, Title #1, OT, PT and Reading 180 spaces added. Upgraded learning technology, plumbing, electrical and sprinklers installed. Solar heater for the pool. LEED Certified. *Cost: $17,246,000*

Lyseth: Modulars eliminated and classroom space added. Pre-K, Kindergarten and Gifted & Talented space created. Adequate ELL, speech, art, music, library, nurse's station and social worker space added. Separate gym and cafeteria created. Upgraded learning technology, plumbing, electrical and sprinklers installed. LEED Certified. *Cost: $17,998,000*

It should be noted that the allocation for each school is an estimate and the Finance Director will have the flexibility to adjust amounts between schools as long as the total bond is not exceeded.

The proposal from the School Board did not recommend any specific order/ timing of school construction. The proposal does include an estimated timetable for construction from Oak Point Associates with School 1 estimated completion in fall 2020, School 2 in fall 2021, School 3 in fall 2023, and School 4 in fall 2024.

The proposal includes beginning design on the first school by the end of 2017 and therefore a 2017 referendum is required. It is important to note that any projects approved during a local referendum would become ineligible for State of Maine Department of Education Major Capital School Construction Funding.

Applications for a new round of State funding are due on April 14, 2017. Given the tight timeline and not knowing what action will be taken by the City Council, or ultimately might be taken by the voters, the School Department is applying for funding for these four schools. Sixteen projects were completed from the State's current priority list. Had the State continued with the list, Longfellow School and Reiche were #2 and #3. A preliminary priority list from this next funding round is expected in April 2018.

It is anticipated that the $64.26M would be borrowed over a six-year time period. This would result in an estimated $92M in debt service payments, principal and interest, spread over the next 26 years. The tax rate would rise an estimated 3.1% by FY24 due to these debt service payments.
For a taxpayer with an average home value ($240,000) there would be an estimated $2,707 of total additional taxes over the 26 year life of the bonds, an average of approximately $104 per year.

Additional details on the proposal including the presentation provided to the Finance Committee and all additional materials requested and considered by the Committee are included in the agenda backup.

Order 155-16/17 received a public hearing on March 20, 2017. It subsequently failed to pass by a vote of 6-3 (Mavodones, Duson, and Ray in opposition), short of the seven (7) affirmative votes required by the City Charter for passage of orders approving bonds. Pursuant to City Council Rule 19, this order automatically appears on the next City Council agenda as unfinished business.

This item was given a first reading on March 6, 2017. Seven affirmative votes are required for passage.

Order 156-16/17 (Tab 5) — **Order Appropriating $64,260,000 of Bond Proceeds – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair.**

This is a companion order to Order 155-16/17 above.

This order was postponed to March 27, 2017. Seven affirmative votes are required for passage. A public hearing for this item was held on March 20, 2017.

Order 157-16/17 (Tab 6) — **Order Submitting Elementary School Renovation Projects Bond Order to Referendum – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr., Chair.**

This is a companion order to Order 155 and Order 156 above.

This item was postponed to March 27, 2017. Five affirmative votes are required for passage. A public hearing for this item was held on March 20, 2017.

Order 176-16/17 (Tab 7) **Order Approving Agreement between Portland and Maine Department of Transportation Re: Franklin Street and Marginal Way Bayside Trail Enhancement – Sponsored by Jon P. Jennings, City Manager.**

This order authorizes the City Manager to sign the Municipal-State Agreement (WIN 18363.01) with the Maine Department of Transportation (MaineDOT) for up to $122,000 for enhancements to the Bayside Trail. Local match (20%, $24,400) will be provided from the Bayside Trail Endowment.

The council passed an order in 2013 that funded the preliminary design and right-of-way acquisition needed for the project by the MaineDOT.
This new agreement authorizes the final design, bid package preparation and construction. The project will widen the current sidewalk from 5' to create an 11' shared use pathway from the intersection and redesign the corner and curb ramps to achieve ADA accessibility.

This item must be read on two separate days. It was given a first reading on March 20, 2017. Five affirmative votes are required for passage after public comment.

Order 177-16/17 (Tab 8) **Order Approving Agreement between Portland and Maine Department of Transportation Re: Bayside Trail and Eastern Promenade Intersection Improvements – Sponsored by Jon P. Jennings, City Manager.**

This order authorizes the City Manager to sign the Municipal-State Agreement (WIN 18886.00) with the MaineDOT for up to $152,300 for enhancements to the Bayside Trail at its junction with the Eastern Promenade Trail. Local match (20%, $30,460) will be provided from the Bayside Trail Endowment.

The council passed an order in 2013 that funded the preliminary design of the junction. This new agreement authorizes the final design, bid package preparation and construction. The project will create an attractive trail junction, create a safe crossing of the driveway into the Portland Water District water treatment plant and correct the poor drainage in this vicinity.

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Order 179-16/17 (Tab 9)

Amendment to Portland City Code Chapter 6 and Chapter 14 Re: Short Term Rentals - Sponsored by the Housing Committee, Councilor Jill C. Duson, Chair.

On February 8, 2017, the Housing Committee voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

On February 28, 2017, the Planning Board voted unanimously (6-0) to amend Chapter 14 to revise the definition of "Dwelling" consistent with the Housing Committee's recommendation.

The Housing Committee is recommending revisions to Chapter 6 and Chapter 14 to register and regulate the emergence of Short Term Rentals (STRs) through websites such as Airbnb.

The proposed amendments would allow all property owners to rent out their primary residences as STRs. No non-owner occupied single family home or condominium would be allowed to be rented as STRs, except on the islands. Multi-family and mixed-use buildings will be required to register units at escalating registration fees with a cap on total number of STR units per building based on the charts outlined in the memo's attachments.

In an effort to reduce the potential impacts of STRs on Portland's long term housing stock, a cap of 300 non-owner occupied STR units will be enforced on Portland's mainland and a city-wide limit of no more than five STR units per person. A cap on non-owner occupied STR units on the islands may be examined at a later date.

Any problem STR properties will be subject to the Disorderly House Ordinance as it exists in Chapter 6

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<u>AMENDMENTS:</u>

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In an effort to reduce the potential impacts of STRs on Portland’s long term housing stock, a cap of 300 non-owner occupied STR units will be enforced on Portland’s mainland and a city-wide limit of no more than five STR units per person. A cap on non-owner occupied STR units on the islands may be examined at a later date.

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AMENDMENTS:

Resolve 5 - 16/17
Tab 2 3-27-17

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

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

RESOLUTION ADOPTING THE FY 2017-2018 HOUSING AND COMMUNITY DEVELOPMENT ANNUAL ACTION PLAN INCLUDING APPROPRIATIONS FOR COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, HOME PROGRAM, AND EMERGENCY SOLUTIONS GRANT PROGRAM AND CERTIFICATIONS PERTAINING THERETO

WHEREAS, the City of Portland, Maine has determined that there are pressing community and neighborhood needs for further federal assistance for housing and community development activities; and

WHEREAS, annual activities for the Consolidated Housing and Community Development Annual Action Plan have been recommended; and

WHEREAS, the City of Portland is anticipating an allocation from the United States Department of Housing and Urban Development (HUD) of $1,791,448 of Community Development Block Grant ("CDBG") Entitlement Funds, for the program year 2017-2018 under Title I of the Housing and Community Development Act of 1974 (Public Law 93-383) as amended from time to time; and the City has also received Community Development funds in the amount of $125,000 in program income, along with $110,000 in CDBG Housing Program Income, which is subject to the same regulations as the entitlement funds; a HOME Program Grant allocation of $832,642, HOME Program income of $200,000; Lead Safe Housing Program Income of $170,866; local Housing Trust Funds of $468,551; and $161,232 of Emergency Shelter Grant funds; and

WHEREAS, the City Council of the City of Portland, Maine, desires to utilize these funds to support housing and community development activities;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Portland, Maine, hereby adopts the FY 2017-2018 Consolidated Housing and Community Development Annual Action Plan; and the sums of $ 1,916,448 for the Community Development Block Grant Program, plus $110,000 in CDBG Housing Program funding; $1,032,642 for the HOME Program, $170,866 in Lead Safe Housing Program Income, $468,551 in local Housing Trust Funds and $161,232 for the Emergency Shelter Grant Program are hereby appropriated for the purposes approved in the attached Plan and budgets as recommended by the City Manager; and

BE IT FURTHER RESOLVED, that the City of Portland, Maine, possesses legal authority to apply for the above referenced Community Development Block Grant Program Funds, HOME Program funds and Emergency Shelter Grant Program funds for the Program Year 2017-2018; and

BE IT FURTHER RESOLVED, that the City Manager or his designee be authorized to:

1) Apply for, accept and expend the Community Development Block Grant Entitlement Funds of $1,791,448 and to expend $125,000 in program income and $110,000 in CDBG housing program income funds; $832,642 of HOME Program funds and to expend $200,000 of program income for a total of $1,032,642; $170,866 in Lead Safe Housing program income; $468,551 in local Housing Trust Funds; and $161,232 of Emergency Shelter Grant funds; and

2) Officially represent the City of Portland, Maine, in connection with the application, including the execution of contracts on behalf of the City; and

3) Act as the certifying officer for HUD environmental documents related to these grants and to execute said documents and any other related documents necessary or convenient to carry out the intent of said grants; and

4) Make adjustments to all proposed activities' budgets to be proportionately increased or decreased from the estimated funding levels to match actual allocation amounts; and

BE IT FURTHER RESOLVED, that the City of Portland, Maine certifies that it will comply with all of the attached assurances and provide such additional information as may be required by the U.S. Department of Housing and Urban Development; and

BE IT FURTHER RESOLVED, that the foregoing FY 2017-2018 Housing and Community Development Annual Action Plan funds are hereby appropriated pursuant to the Budget attached hereto.

Memorandum

Planning and Urban Development Department
Housing and Community Development Program

To:	Mayor Strimling and the Portland City Council
Cc:	Jeff Levine, Planning and Urban Development Director Mary Davis, Housing and Community Development Director
From:	Kristin Styles, HCD Program Manager
Date:	March 27, 2017
Re:	**HUD's Consolidated Annual Action Plan 2017-2018**

The Consolidated Annual Action Plan includes budgets for the Community Development Block Grant, HOME Program and the Emergency Solutions Grant. The total amount of funding the City of Portland is expected to allocate for the Consolidated Annual Action Plan is $3,929,739, which includes allocations from the Department of Housing and Urban Development, program income, and our local housing trust fund, detailed below:

1. CDBG

CDBG	$ 1,791,448	Expected HUD Allocation 2017-2018
	$ 22,000	CDBG Housing Program income for Administration
	$ 125,000	CDBG Program Income
	$ 70,000	CDBG Reprogrammed Funds
	$ 2,008,448	Total Expected CDBG funds to Allocate for 2017-2018

CDBG Funds by Category

$405,290	Administration and Planning
$626,625	Social Services
$976,533	Development Activity
$2,008,448	

Attached you will find a CDBG recommendation letter from the City Manager (1a City Manager Recommendations), a recommendation letters from the CDBG Allocation Committee (1b CDBG AC Recommendations), a spreadsheet summarizing the recommendations of the Allocation Committee and City Manager (1c Summary Sheet), and a memo from the Office of Mayor Strimling (1d Mayor Strimling Memo). There were no appeals this year. Please note an additional $100,000 in CDBG Program Income and $70,000 in reprogrammed funds was able to be added to the City Manager's recommendations that were not included with the Allocation Committee recommendations.

2. HOME

HOME	$ 832,642	Expected HUD Allocation 2017-2018
	$ 200,000	HOME Program Income 2016-2017
	$1,032,642	Total Expected HOME funds to Allocate for 2017-2018

Other Housing Funding

CDBG	$ 88,000	CDBG Housing Program Income Funds
LEAD	$ 170,866	Lead Safe Housing Program Income Funds
Trust	$ 468,551	Local Housing Trust Funds
	$ 727,417	

Attached you will find a Memo to the Mayor and City Council from Mary Davis explaining the Housing Budget (2 Housing Budget).

3. Emergency Solutions Grant:

$161,232 Expected HUD Allocation 2017-2018

Attached you will find the proposed Emergency Solutions Grant budget (3 ESG Budget).

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

Executive Department
Jon P. Jennings, City Manager

March 10, 2017

Members of the Portland City Council:

I am pleased to submit to you my recommendations for the Community Development Block Grant (CDBG) Program for the fiscal year beginning July 1, 2017 to June 30, 2018.

I would like to commend the CDBG Allocation Committee on their hard work and dedication to the City's Community Development Program. I have reviewed the Allocation Committee's recommendations and I acknowledge and commend the difficult scoring decisions that were made by the Committee. The recommendation letter from the Allocation Committee is attached. *[Committee Letter A1]*

The Allocation Committee is required to recommend full funding for applications according to score, which often results in the lowest funded applicant receiving partial funding. Set-asides are the exception to this scoring process. In the fall of 2015, the City Council approved a 60% Development Activities set-aside for Public Infrastructure, this set-aside along with previously approved $150,000 set-aside for Community Policing, remain in place this year. You will notice that my recommendations closely align with the recommendations of the Allocation Committee. Given their limitations on partial funding, I carefully considered all the recommendations outlined in the Allocation Committee's recommendation letter.

Before releasing my recommendations to the full council and the public, I met with City staff and Mayor Strimling to discuss these recommendations. After reviewing my recommendations, Mayor Strimling had some thoughts and suggestions which he shared in a memo. In the following sections, I will discuss my recommendations and explain where my recommendations differ from the Mayor's suggestions. I would like to thank the Mayor for his input in this process. A summary of my recommendations are reflected on the attached spreadsheet. *[City Manager Recommendations A2].*

1. *Social Services.* This year had a particularly strong set of social service applicants. I, as did the Allocation Committee, struggled greatly with this funding category. To put it simply, there are more deserving organizations than there are funds available. Before making my recommendations, I personally read each application, I considered the scores given to each applicant by the Allocation Committee, and I considered the role each of these programs will have on the health of the overall city.

The limited funding available in the social service category forced me to make some very difficult decisions. As you know, Portland is facing an opioid crisis, which takes a costly toll on our social service providers and emergency responders. The Amistad Peer Coaching Initiative was a CDBG funded pilot program in 2014 and has shown tremendous success at collaborating with our shelters and hospitals to serve the members of our community who have severe and persistent mental illness along with substance use issues and homelessness. From a social service and a budgetary standpoint, cutting funds to a program like this is just not a decision I am willing to make. Therefore, I am recommending a 10% cut from all non-set-aside social service activities to reallocate $51,946 to Amistad's Peer Coaching Initiative; it is my intention that a 10% cut is the fairest way to partially fund this program. I am also hopeful that Amistad will be able to raise the funds necessary to continue to run their Saturday services which falls just short of receiving CDBG funds this year.

I was disappointed to see that the Oxford Street Shelter –Housing Assistance for Long Term Stayers program did not score higher. This program plays a crucial role in providing the necessary follow up services to help our long term shelter stayers be successful once they move into a permanent home. I plan to work with the Health and Human Services Department in hopes of funding this program through other sources.

In Mayor Strimling's memo, he recommends funding Community Policing out of the City's operating budget instead of CDBG in future years. I can appreciate that the Mayor is a proponent of shifting funds used by the City back into the community's non-profit organizations, but I do not believe that should be the sole purpose of the CDBG program. Creating a set-aside for Community Policing was a decision made by the City Council out of necessity to provide stable funding for this program. CDBG funds are intended to provide cities with the necessary resources to address their unique community needs. It is our job as the City to make sure all of those community needs are being addressed. All across the country, programs like Community Policing would go unfunded if not for CDBG. Last year, $8.9 million dollars of CDBG funds were used across the U.S. for 'Crime Awareness and Prevention Programs' similar to our Community Policing program. By removing Community Policing from the City's CDBG applications, we run the risk of not being able to fully fund this essential program.

2. *Development Activities.* This year the CDBG Program has an additional $100,000 in program income and $70,000 in contingency funds available to 2017-2018 projects. Due to HUD imposed funding caps for social services and administration, these funds may only be applied to development activities. My recommendations align with the recommendations outlined in the Allocation Committee's letter with only one variation. This variation is the East Bayside Soccer Field Fencing and Futsal Court. The futsal court portion of this project has support from the East Bayside Neighborhood and the Portland Housing Authority. The futsal court is ADA accessible and would allow residents to play futsal or soccer in weather not suitable for grass. This project has the potential to have a very large community impact and therefore I would like to use the $70,000 in contingency funds plus $1,415 from program income to fund the futsal court portion of this project at $71,415. I met with staff from the Recreation Division and they were able to revise the budget to $115,000. They are confident that they can identify other resources for the remaining amount needed.

The 60% public infrastructure set-aside required the Allocation Committee to recommend $201,332 to the Marginal Way Streetscape project. Their score for this project showed that they did not feel this was a strong application. While I support the work that needs to be done along Marginal Way, other applications showed a stronger community need. Therefore, I am following the Allocation Committee's recommendations and putting that $201,332 into the next highest scoring projects; which include full funding for Youth and Family Outreach, and Catholic

Charities, and partial funding for Catherine Morrill Day Nursery. I am also using the majority of the $100,000 in program income funds to increase the Catherine Morrill allocation to $200,000; which is the minimum amount needed to complete the project. I would also like to keep with the Allocation Committee's recommendation that the remaining $12,800 in program income go toward the Bayside Neighborhood Community Garden. It is a comparatively small request with a potentially large community impact.

In the Mayor's memo, he suggests moving the $210,000 allocated to Oxford St/Bayside Sidewalk Improvements to partially fund the Iris Network and LearningWorks. The allocation committee scored Oxford Street higher than both of these projects. He suggests funding the Oxford Street project out of the City's CIP (Capital Improvements Plan) budget. As you know, Portland, like many other cities has a very tight operating budget and limited CIP funds; this is where CDBG comes into play. Last year, 34.9% or $1.14 billion of CDBG funds across the country were used for public improvements. We are far from the only city using our CDBG funds for public improvements. CDBG is a great tool to make sure our low to moderate income neighborhoods receive the much needed public infrastructure improvements that they deserve.

3. *Administration and Planning.* The Planning and Urban Development Department is required to submit a non-competitive application to the Allocation Committee. The Planning and Urban Development Department submitted a request of $444,571 with the understanding that no more than the HUD imposed administration cap of 20% could be recommended for funding. These funds are used to both administer the program as well as fund long range planning work for the department. The staff have adjusted their budget to meet the FY17-18 cap of $405,290; therefore I am recommending full funding to administer the program.

As of the date of this memo, HUD has not announced FY 17/18 allocation amounts for the CDBG, HOME and ESG Programs. The CDBG Program recommendations and the HOME and ESG Program budgets were created assuming that FY 17/18 allocations would remain at the same level as FY 16/17 allocations. We do not know when the FY 17/18 allocations will be announced. It is my recommendation that activities under the CDBG, HOME and ESG Programs be proportionately increased or decreased from the estimated funding levels to match the actual allocation amounts.

I thank you for the opportunity to share my recommendations. As I have stated earlier, all of the programs requesting funds are worthy, unfortunately there is not enough funds to support all of their efforts. I hope you accept my recommendations and join me in commending all of the good work being done in our city.

Sincerely,

Jon P. Jennings
City Manager

Portland, Maine Yes. Life's good here.

Planning & Urban Development Department

February 3, 2017

Jon P. Jennings, City Manager
City Hall
389 Congress Street
Portland, Maine 04101

Dear Mr. Jennings,

We are pleased to submit the CDBG Annual Allocation Committee's recommended budget allocations for Year 43 of the Community Development Block Grant (CDBG).

*On a national level, HUD has not released the 2017-2018 allocations, but we are hopeful that the funding will remain level with the previous year's funding.

CDBG ALLOCATION	*Year 43 FY 17-18
Planning and Administration Cap	$405,290
Social Service Cap	$626,625
Development Activities	$806,533
TOTAL	**$1,838,448**

As in past years, the need for CDBG funding continues to exceed the amount of funds available. The total funds requested are $3,897,332 resulting in a gap of $2,058,884 between CDBG funds available and project requests. As in prior years, we were faced with difficult choices in this year's recommendation process and struggled with which applications to recommend for funding. The Committee stayed focused on the scoring criteria and the information provided in each application in order to be fair to all applicants.

The following sections of this letter outline our funding recommendations. The first section explains the history and progress Portland's CDBG Program has undergone over the past several years. The second section provides a description of this year's process, how the applications were reviewed and scored, and finally our recommendations for funding.

HISTORY AND CURRENT STATUS OF THE CDBG PROGRAM

Over the last nine years, the CDBG program has undergone significant review. This review resulted in many changes to the allocation process. In 2008 the City Council established the CDBG Allocation Committee and a CDBG Priority Task Force. The Priority Task Force was asked to create a Ten Point Plan for improving the CDBG process. Over the next few years, a CDBG Working Group helped to implement the goals outlined in the Ten Point Plan. Additionally, the CDBG Working Group, CDBG

Allocation Committee, and City Staff continued to reviewed and update the CDBG process in order to continue the evolution of the CDBG Program. Some ideas, such as the creation of bonus points, grants for small businesses, set asides for basic needs, economic development, and childcare were introduced and then later removed. Other ideas, such as aligning with the City's purchasing ordinance, minimum and maximum grant requests for City projects as well as non-profits, and set-asides for community policing and public infrastructure have been effective and therefore remain in place. Though the Priority Task Force and CDBG Working Group have completed their tasks and no longer meet, the CDBG Allocation Committee, along with City Staff are continually looking for ways to improve the reach and efficiency of the CDBG program. A full list of program changes along dates and council order references are available on the City's CDBG website.

THE PROCESS AND REVIEW

CDBG Applications were made available on October 10, 2016. The mandatory applicant's meeting was held on October 11, 2016 at 5:30pm in the Merrill Auditorium Rehearsal Hall. All applications were due on Thursday, November 16, 2016 by 2:00pm.

We received seventeen (17) Development Activities applications and twenty (20) Social Service Applications, along with an Administration and Planning application, for a total of $3,897,332 in funding requests through our annual request process. There was a total of $2,278,961 in Development Activity requests with $806,533 available, and $1,173,800 in Social Service requests with $626,625 available.

The Allocation Committee Review and Funding Methods

Our Committee first met for this funding year on December 1, 2016. The Committee met seven (7) times to discuss Administration and Planning, Development Activities, and Social Service applications.

The Committee read each application individually prior to the meeting. At the meeting, the Committee would discuss each proposal. If questions arose, staff documented the questions and forwarded them to the applicant to answer. The answers were then shared with the Committee.

Applications were organized by score from the highest to the lowest within each category. The City Council has directed the Committee to recommend full funding based on request for all applications; therefore each applicant was awarded full funding, until the funding was exhausted.

RECOMMENDATIONS

Administration and Planning Funding

The Committee reviews information regarding Administration and Planning, but does not score the application competitively. Administration funding is essential for operating the CDBG program and reporting to HUD. The Planning & Urban Development Department submitted a budget of $444,571 with an understanding that the Committee can only recommend up to 20% of the entire CDBG budget be used for Administration and Planning. This year, we are anticipating the 20% cap to be $405,290.

Development Activities Funding

The Committee received seventeen (17) Development Activities applications including construction and economic development, requesting a total of $2,278,961 and only $806,533 is available. The City Council's *85% Rule for Development Activities* is still in place, which specifies that a maximum of 85% of the Development Activity funding can go to fund City applicants, the remaining 15% must go to outside requests. In addition to the *85% rule* a public infrastructure set aside was introduced last year and remains in effect. The Public Infrastructure set aside is up to 60% of the City's maximum 85% request. The Committee's recommendations fall within these guidelines. The following table outlines the highest scoring applications, their requests and the recommended allocation from the Committee.

Organization	Program	Request	Points	Comm. Recomm.
Coastal Enterprises Inc.	Portland Microenterprises Assistance Program	$45,000	89.25	$45,000
City of Portland - Economic Development Department	Business Assistance Program for Job Creation	$111,000	88.13	$111,000
YMCA of Southern Maine	Boiler Replacement for Men's Dormitory	$74,991	87.25	$74,991
Youth and Family Outreach	Life and Safety Upgrades	$204,182	82.75	$164,210
Public Infrastructure Set-Aside				
City of Portland Public Works (Public Infrastructure Set-aside)	Oxford Street/ Bayside Sidewalk Improvements	$210,000	81.00	$210,000
City of Portland Public Works (Public Infrastructure Set-aside)	Marginal Way Master Plan Streetscape Phase 2	$330,000	74.00	$201,332

Though the CDBG Allocation Committee strongly supports the use of CDBG funds for public infrastructure improvements, the Committee feels that all development activity applications should be scored equally and funded according to their score, regardless of the public infrastructure set-aside. For example, the Oxford Street Sidewalk Improvements application was able to demonstrate a strong community need and scored high enough to be funded regardless of the set-aside, on the other hand, the Marginal Way Streetscape application did not score well and would not be funded without the set-aside.

The CDBG Allocation Committee would like to recommend that all development activity funding, including any additional funds from program income and the contingency fund be allocated to the applications receiving the highest scores. Given that most development activity applications request large dollar amounts, the Committee would like to recommend any remaining funds be given to the Bayside Neighborhood Association's Community Garden project; the request of this project is small, yet it creates a sustainable community impact.

Social Service Funding

The Committee received twenty (20) Social Service applications, including a $150,000 request from Community Policing which will be funded through a set-aside. A total of $1,173,800 in Social Service requests were received with only with $626,625 available. The City Council's *45% Rule for Social Services* is still in place, which specifies that a maximum of 45% of the Social Service funding can go to fund City applicants, the remaining 65% must go to outside requests. This rule did not affect the Committee's recommendations this year. The following table outlines the highest scoring applications, their requests and the recommend allocation from the Committee.

Organization	Program	Request	Points	Comm. Recomm
Police Department	Community Policing	$150,000	Set-aside	$150,000
Wayside Food Programs	Direct Service Programs	$30,000	94.88	$30,000
Preble Street	Florence House Women's Shelter	$30,000	94.13	$30,000
Preble Street	Food Programs	$50,000	93.63	$50,000
Preble Street	Resource Center	$45,000	93.25	$45,000
Preble Street	Joe Kreisler Teen Shelter	$30,000	91.75	$30,000
Catherine Morrill Day Nursery	Portland CDBG Childcare Voucher Collaborative	$88,711	90.25	$88,711
City of Portland Social Services Department	Family Shelter- After Hours Program	$49,224	90.25	$49,224
Milestone Foundation	HOME Team and Medical Outreach	$130,000	90.25	$130,000
City of Portland Social Services Department	Portland Opportunity Crew	$18,931	86.38	$18,931
Amistad Inc.	Peer Coaching Initiative	$60,000	86.25	$4,759

The Committee feels that every application received this year is worthy of CDBG funding, but given the limited funds available, the committee dedicated a lot of time and thought to discussing and scoring of each application. In reviewing this year's scores, as well as the scores from last year, the Committee noticed a trend that the priority categories seem to lean toward services such as food and shelter which service a population that is chronically in need, rather than other types of services such as pilot programs and services for New Americans, or the striving population of the City. Given that there were four applications serving New Americans and none scored high enough to receive funding, the Committee would like to recommend that if funding is reallocated to include one of these programs, that LearningWorks receive that funding. The Committee plans to explore ways to adjust the scoring convention in future years to address this trend.

Funding Caps

In past years, the funding caps were set at \$150,000 for social service applicants and \$250,000 for development activities. This year, the funding caps remain the same, with the exception of public infrastructure projects.

SUMMARY

All projects that requested funding would be beneficial to our City, however due to limited dollars, not all were recommended for funding through this program. This is a competitive process; each applicant competed against all other applicants. The projects that are not being recommended for funding scored lower in each of the evaluation categories, and therefore in total points. A spread sheet is attached which provides all scores for each application.

As always, the Committee will continue to look for ways to improve the efficiency, effectiveness and transparency of the program. We welcome comments, suggestions, and feedback both from the Council and the public.

We thank you for your commitment to this program and your patience through its transitions. We hope you are satisfied with the results.

We are especially grateful for our appointments to the Annual Allocation Committee, providing us with the opportunity to participate in this program, and offer our recommendations for your consideration. We look forward to seeing you on February 23rd and hearing your response.

Sincerely,

The CDBG Annual Allocation Committee for Program Year 2017-2018

Annette Rogers, Chair
Matthew Purington, Vice Chair
Maxwell Chikuta
Reverend Kenneth Lewis
Lucinda Pyne
D. Kelley Young
Amy Regan
Shima Kabirigi

Attachments: CDBG Allocation Committee Funding Recommendations 2017-2018 (spreadsheet)

CDBG Recommendations 2017-2018

Administration and Planning

#	Type	Priority	Organization	Program/ Project	Request	Priority Impact/ Goal 33 pts	Guiding Principles 30 pts	Capacity to Deliver 25 pts	Partner/ Collabor 12 pts	Total	Committee Recommendation	City Manager Recommendation	Council Allocation
1	AP	All	Planning & Urban Dev Dept.	CDBG Admin and Planning	$444,571						$405,290	$405,290	
				Total Admin & Planning Available	$405,290					***Subtotal:***	***$405,290***	***$405,290***	***$0***

Development, Economic Development and Construction

#	Type	Priority	Organization	Program/ Project	Request	33 pts	30 pts	25 pts	12 pts	Total	Committee Recommendation	City Manager Recommendation	Council Allocation
4	SET	NI	COP Public Works	Oxford St/ Bayside Sidewalk Improvements	$210,000	29.75	25.88	18.13	7.25	81.00	$210,000	$210,000	$0
3	SET	NI	COP Public Works	Marginal Way Master Plan Streetscape Phase 2	$330,000	27.50	21.75	20.50	4.25	74.00	$201,332		$0
2	SET	NI	COP Public Works	High Street Sidewalk Improvements	$250,000	23.00	20.13	17.63	3.38	64.13			$0
18	ED	EO	Coastal Enterprises Inc. (CEI)	Portland Microenterprises Assistance Program	$45,000	30.13	26.75	22.00	10.38	89.25	$45,000	$45,000	$0
17	ED	EO	COP Economic Dev. Dept.	Business Assistance Program for Job Creation	$111,000	29.25	26.25	22.25	10.38	88.13	$111,000	$111,000	$0
15	CON	NI	YMCA of Southern Maine	Boiler Replacement for the Men's Dormitory	$74,991	26.50	27.13	22.88	10.75	87.25	$74,991	$74,991	$0
16	CON	NI	Youth and Family Outreach	Life and Safety Upgrades	$204,182	26.25	26.00	19.63	10.88	82.75	$164,210	$204,182	$0
7	CON	NI	Catholic Charities	Energy Efficiency Upgrades - Support and Recovery Services	$47,145	24.71	24.29	21.29	10.14	80.43		$47,145	$0
6	CON	EO	Catherine Morrill Day Nursery	Toddler Classroom Expansion Project	$235,156	25.63	25.00	19.00	10.38	80.00		$200,000	$0
14	CON	NI	Preble Street	Resource Center Rehabilitation Project	$125,103	24.25	26.13	18.63	10.50	79.50			$0
8	CON	NI	The Iris Network	Dormitory Accessibility for the Blind	$157,500	23.38	21.63	22.00	10.88	77.88			$0
5	CON	NI	Bayside Neighborhood Assoc.	Bayside: A Livable Neighborhood Community Garden	$12,800	25.25	23.75	20.00	8.00	77.00		$12,800	$0
9	CON	EO	Learning Works	Renovation of Historic 181 Bracket Phase 2	$73,759	23.63	23.00	19.38	10.50	76.50			$0
12	CON	NI	COP Parks, Rec, and Facilities	East Bayside Soccer Field Fencing and Futsal Court	$152,700	26.75	25.13	17.38	5.13	74.38		$71,415	$0
13	CON	NI	Port Resources	70/72 Emery Street Bathrooms and Roof Renovations	$79,350	23.13	21.88	18.13	7.38	70.50			$0
10	CON	NI	Mayo Street Arts	ADA Accessibility for Mayo Street Arts	$113,075	21.63	22.75	18.13	3.63	66.13			$0
11	CON	NI	COP Parks, Rec, and Facilities	Cliff Island School Playground	$57,200	19.50	15.75	16.63	6.50	58.38			$0
				Total Development, Econ Dev. & Construction Requests	$2,278,961								
				Total HUD Allocated Development Funds Available	*$806,533*					*Subtotal:*	*$806,533*		
				Total Funds Available to City Manager and Council (HUD Funds + Program Income + Contingency)	*$976,533*					*Subtotal:*		*$976,533*	*$0*

Social Service

#	Type	Priority	Organization	Program/ Project	Request ($621,866)	Priority Impact/ Goal 33pts	Guiding Principles 30 pts	Capacity to Deliver 25 pts	Partner/ Collaboration 12pts	Total	Committee Recommendation	City Manager Recommendation	Council Allocation
19	SET	NI	Police Department	Community Policing	$150,000						$150,000	$150,000	$0
38	SS	ANGHP	Wayside Foods Program	Direct Services Programs	$30,000	31.75	28.88	23.25	11.00	94.88	$30,000	$27,000	$0
34	SS	ANGHP	Preble Street	Florence House Women's Shelter	$30,000	31.75	27.88	23.38	11.13	94.13	$30,000	$27,000	$0
35	SS	ANGHP	Preble Street	Food Programs	$50,000	31.50	28.25	23.25	10.63	93.63	$50,000	$45,000	$0
37	SS	ANGHP	Preble Street	Resource Center	$45,000	30.75	28.50	23.25	10.75	93.25	$45,000	$40,500	$0
36	SS	ANGHP	Preble Street	Joe Kreisler Teen Shelter	$30,000	31.25	26.75	22.88	10.88	91.75	$30,000	$27,000	$0
24	SS	EO	Catherine Morrill Day Nursery	Portland CDBG Childcare Voucher Collaborative	$88,711	30.75	26.63	22.13	10.75	90.25	$88,711	$79,840	$0
27	SS	ANGHP	COP- Social Services Dept.	Family Shelter- After Hours Program	$49,224	30.50	27.13	21.38	11.25	90.25	$49,224	$44,302	$0
31	SS	ANGHP	Milestone	HOME Team & Medical Outreach	$130,000	30.75	26.75	21.88	10.88	90.25	$130,000	$117,000	$0
29	SS	EO	COP- Social Services Dept.	Portland Opportunity Crew	$18,931	32.63	27.50	20.75	5.50	86.38	$18,931	$17,038	$0
21	SS	ANGHP	Amistad Inc.	Peer Coaching Initiative	$60,000	29.13	24.38	22.00	10.75	86.25	$4,759	$51,946	$0
22	SS	ANGHP	Amistad Inc.	Peer Support and Recovery Center	$35,000	28.88	25.50	22.63	8.00	85.00			$0
30	SS	EO	LearningWorks	English Language Program	$60,000	27.88	25.38	21.13	10.50	84.88			$0
28	SS	ANGHP	COP- Social Services Dept.	Oxford Shelter- Housing Assistance- Long Term Stayers	$51,541	26.00	25.50	20.63	11.25	83.38			$0
32	SS	ANGHP	The Opportunity Alliance	Homeless Prevention Program (HPP)	$54,000	29.88	24.88	20.38	8.25	83.38			$0
33	SS	EO	Portland Adult Education	New American Skilled Professional Enhanced Services	$75,379	27.88	23.50	20.13	11.25	82.75			$0
25	SS	NI	Catholic Charities	Immigrant Legal Services	$52,151	24.86	23.14	20.71	7.86	76.57			$0
26	SS	NI	Catholic Charities	Independent Living Support Services	$78,463	24.14	23.86	18.29	7.71	74.00			$0
23	SS	NI	Bayside Neighborhood Assoc.	Programming to accompany Community Garden	$10,400	21.38	21.75	19.75	8.00	70.88			$0
20	SS	EO	Alpha One	Indep. Living for Portland New Americans w/ Disabilities	$75,000	21.13	21.25	17.88	4.25	64.50			$0
				Total Social Services	$1,173,800								*$0*
				Total Social Services Available	*$626,625*					*Subtotal:*	*$626,625*	*$626,625*	
				ALL CDBG REQUESTS TOTAL	***$3,897,332***					***Allocation Total:***	***$1,838,448***	**$2,008,448**	$0

Portland, Maine Yes. Life's good here.

Office of the Mayor, Ethan K. Strimling

MEMORANDUM

To: Jon Jennings, City Manager
cc: Anita LaChance, Deputy City Manager
From: Ethan K. Strimling, Mayor
Date: March 2, 2017
Re: FY'18 CDBG Feedback

Once again, thank you for having staff meet with Jason and me to explain the FY'18 CDBG budget, the committee recommendations and your suggested changes. The meeting was very informative.

In regard to the particulars of your recommendations, overall I support the changes you discussed with me, especially in regard to "Social Services." Trying to more fully capture the Amistad Peer Coaching Initiative makes sense and your recommendation to reduce the allocation by 10% to other recipients strikes an appropriate balance. As we discussed, I share your concern that three programs which received funding last year are not going to receive any funding this year, so if there is a way to fulfill their requests, even partially, I would certainly support it.

In the future, I do believe we should explore transferring Community Policing to our operating budget. The importance and efficacy of this program cannot be overstated and I don't feel comfortable leaving it to the whim of a federal program that could be eliminated or redesigned (especially under the current administration and Congress). Additionally, having it in our annual budget will free up CDBG funds for many other worthy programs (such as the three that are being eliminated this year) and will also give our police chief more control in terms of how to operate the program.

In regard to "Development, Economic Development and Construction," I also support your recommendation to reallocate the Phase 2 Marginal Way allocation and to use the contingency and program income to fully fund the proposals from Catholic Charities and the Bayside Neighborhood Association, and partially fund Catherine Morrill and the Futsol Court in East Bayside. I have long been a proponent of shifting funds absorbed by the city back out into the community (as I suggest above with Community Policing) and the programs you suggest are more than worthy.

That said, it is a bit awkward to not honor the committee process and skip three agencies that the committee scored better than two of the above and leave them with no funding. To that end, the one change I would recommend is to find a way to pay for the Oxford Street/Bayside Sidewalk Improvements in this year's CIP (or whatever other path you suggest) and reallocate those funds down the list of those that scored highest.

My understanding from Preble Street (I received an email from them confirming this) is that they are no longer interested in receiving the possible funds for their building as they are actively looking to relocate and the restrictions placed on receiving CDBG funds would be too prohibitive. That would allow for $157K to be allocated to The Iris Network for their accessibility needs and $53K to partially fund LearningWorks for Phase 2 of the renovation of their facility, the next two on the list. It would also mean that 10 of the 14 applications would be funded (with one opting out).

One issue I want to address is the Iris Network and their need. One reason they didn't score higher is because it was said that they don't serve a lot of Portland residents in the dorm. While many of the clients who stay in the dorm are from outside the city when they enter the program, (as also true for the YMCA and Preble Street) a number choose to stay here as they seek employment. Having their building fully accessible will ensure that their services are open to more people and that Portland becomes a more welcoming place. This is certainly a goal which I believe you, I, and many on the Council all share.

One note for next year's CDBG process, as I mentioned during the process for CIP and as I recommend for the FY'18 budget, is that I would request to be included earlier in the development of your policy choices. This would better meet the intent and letter of the charter's language requiring you to "consult with and incorporate" my guidance as you prepare budgets for Council approval.

Once you have had an opportunity to review my guidance (please let me know if you have any questions), I look forward to reviewing your final recommendations so that I can compile my public comments to be given upon your presentation to the Council.

Once again, nice work. Your initial recommendations are strong and clearly well thought out. Thank you again.

Portland, Maine Yes. Life's good here.

Mary Davis
Division Director, Housing & Community Development Division

TO: City Council

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

DATE: March 20, 2017

SUBJECT: 2017-2018 Housing Program Budget

SUMMARY OF ISSUE – Council approval of the 2017-2018 Housing Program Budget is required. At their February 8, 2017 meeting, the Housing Committee voted 3-0 to forward this item to the City Council for passage.

INTENDED RESULT - HOME Program: The Home Investments Partnerships Program (HOME) was established by Congress in 1992. Since 1992, the City of Portland and the Cumberland County HOME Consortium have received over $18.9 million dollars in HOME funding. In 2009 the City became the lead entity in the Cumberland County HOME Consortium (CCHC). The Consortium is a partnership of the communities in Cumberland County that administers HOME Program funds in Cumberland County. The creation of the consortium expanded the financial resources for affordable housing activities in the region. The City retains independent operation of its HOME program. Because the City serves as the "Lead Entity" and City staff administers the County portion of the funding, all administrative funds are retained by the City. The County's Municipal Oversight Committee controls the allocation of the County's portion of the HOME funds.

When the Consortium was formed in 2009, it included a "hold harmless" clause to ensure that the City, as an existing HOME grantee, would continue to receive funding equal to its allocation prior to the formation of the consortium. The "hold harmless" formula was based on a comparison ratio to the HOME funding for the Lewiston/Auburn (L/A) Consortium. The formula identified Portland's "hold harmless" amount at 118% of the HOME allocation for the L/A Consortium. The Cumberland County HOME Agreement did allow for adjustments to be made if the current level of funding to the L/A HOME Consortium varied from historic levels. Over the years the L/A allocation has decreased which has resulted in the Portland "hold harmless" amount to decrease. As a result, by agreement with the other members of the CCHC, the annual allocation is divided with 57% of allocation, after the administrative set-aside, to the City and 43% of the funding to the County.

Mary Davis
Division Director, Housing & Community Development Division

As a point of reference, if the City were a stand-alone grantee, the estimated HOME allocation for Portland (using a HUD HOME Allocation estimated calculation) would be approximately $429,000. Of that amount 10% would be set aside for administrative costs ($42,900) leaving $386,100 for program funding. Under the current consortium agreement, the city receives the administrative set-aside along with approximately $427,000 in program funds. Participation in the HOME consortium benefits Portland as well as the county as a whole.

HUD has not announced the allocation amount for FY 2017-2018. As we have done in the past, we are estimating the HUD HOME allocation at the same level as the previous year which is $832,642. $322,233 of this amount is reserved for County projects. The budget proposal was developed after a historical review of HOME funding allocations, previous year's budget allocations, program expenditures and program income (loan repayments) received. Currently, the City's HOME Program is divided into four funding categories:

1. Administration
2. Housing Rehabilitation
3. Tenant Based Rental Assistance (TBRA)
4. Affordable Housing Development [including the required Community Housing Development Organization (CHDO) set-aside mandated by HUD]

CDBG/Housing Development Fund: Housing and Community Development Division did not request funding in the FY 17/18 CDBG process. Staff and housing program costs normally funded through CDBG, are being funded through the Housing Development Fund (HDF). HDF is the program income account funded by CDBG housing loan repayments. Currently, the HDF fund is divided into two funding categories, administration and housing rehabilitation.

Lead Safe Housing Program Income: These funds result from repayment of loans given through prior Lead Hazard Control Grants from the U.S. Department of Housing and Urban Development and must be used to create additional lead-safe units.

Housing Trust Fund: The current balance in the Housing Trust Fund is primarily a result of fees generated by the Housing Replacement Ordinance. The balance of the Housing Trust Fund is $468,551. While staff anticipates increases in revenue in the Housing Trust Fund as a result of the Inclusionary Zoning Ordinance and other sources being considered by the City Council, those anticipated resources are not included in this budget.

Mary Davis
Division Director, Housing & Community Development Division

FINANCIAL IMPACT – As of the date of this memo, the U.S. Department of Housing and Urban Development has not announced FY 17/18 allocation amounts for the CDBG and HOME Programs. This budget was created assuming that FY 17/18 allocations would remain at the same level as FY 16/17 allocations along with HDF Program Income Account, Lead Safe Housing Program Income Account and the Housing Trust Fund.

STAFF ANALYSIS AND RECOMMENDATION – The City Manager has recommended that the proposed Housing Program Budget be proportionately increased or decreased from the estimated funding levels to match actual HUD allocation amounts. This budget is being forwarded to the full City Council for two Public Hearings, as part of the overall HCD budget. The final budget allocations and Annual Action Plan are submitted to HUD on May 15 for the fiscal year beginning July 1, 2017.

At this time staff is requesting City Council approval of the FY 17/18 Housing Program Budget as outlined in the attachment. If the HUD allocation amount is different from the estimate used in this budget, program budgets will be adjusted proportionately.

FY 17/18 Housing Program Budget – Attached

Prepared by: Mary P. Davis, HCD Division Director March 20, 2017

2017-2018 HOUSING PROGRAM BUDGET HUD Final Allocation Date:

Draft 02.03.17

Recommended by HC (3-0) February 8, 2017
Approved by Council (date)

Total HUD HOME Entitlement Allocation	832,642
Portland Portion	427,145
County Portion	322,233

REVENUES- Housing Programs	*HOME*	*CDBG*	*HDF***	*LEAD Safe Housing Program Income****	*Housing Trust Fund****	***TOTAL BUDGET***
2017-18 HOME Consortium Admin (10% of allocation)	83,264					*83,264*
2017-18 HOME Consortium Programming	427,145					*427,145*
2016-17 HOME Program Income	200,000					*200,000*
Re-Allocated HOME Funds (funding from previous years)						*0*
2017-18 CDBG Administration						*0*
2017-18 CDBG Programming						*0*
2017-2018 Housing Trust Fund					468,551	*468,551*
2016-17 HDF Program Income			362,113			*362,113*
2016-17 Lead Safe Housing Program Income				170,866		*170,866*
REVENUE TOTALS (Portland)	710,409	0	362,113	170,866	468,551	***1,711,939***

EXPENDITURES SUMMARY= Housing Programs	*HOME*	*CDBG*	*HDF***	*LEAD Safe Housing Program Income****	*Housing Trust Fund****	***TOTAL BUDGET***
Administration						*133,612*
HOME Admin Allocation (2017-18)	83,264					
HDF/CDBG Housing Staff (2017-18)			50,348			
Programming						*1,578,327*
HOME Consortium (2017-18)	427,145					
HOME Program Income (2016-17)	200,000					
Re-Allocated HOME Funds						
CDBG Programming (2017-18)						
Housing Trust Fund (2017-18)					468,551	
HDF Program Income (2016-17)			311,765			
EAD SAFE HOUSING Program Income (2016-17)				170,866		
EXPENDITURES SUMMARY TOTALS (Portland)	710,409	0	362,113	170,866	468,551	***1,711,939***

2017-18 HOUSING Budget by Activity (Portland)	*HOME*	*CDBG*	*HDF***	*LEAD Safe Housing Program Income****	*Housing Trust Fund****	***TOTAL BUDGET***
Administration PL1801/QS1801	103,264		50,348			*153,612*
Housing Rehabilitation (30 Units @ $15,000/unit) QM1800/QB1800	150,000		311,765			*461,765*
Homeownership Assistance QJ1800	0					*0*
Tenant-Based Rental Assistance QT1801	130,000					*130,000*
Affordable Housing Development QK1800/IN1114	255,954				468,551	*724,505*
CHDO QL1800	71,191					*71,191*
Lead Safe Housing PLL036	0			170,866		*170,866*
	710,409	0	362,113	170,866	468,551	***1,711,939***

** Balance of Previously Budgeted Amounts + New Revenue

*** Balance of Previously Budgeted Amount

2017-18 HOME Consortium COUNTY - approved by MOC on (date)

County HOME Program budget provided for reference only;

Allocation of County funds is done by the County's Municipal Oversight Committee

REVENUES- Housing Programs	*HOME Consortium*
2017-18 HOME Consortium Non-Portland Programming	322,233
2016-17 HOME County Program Income	
	322,233

-18 HOUSING Budget by Activity	*HOME County*
Housing Rehabilitation (15 projects @ $15,000/project) QP1800	103,295
Home Ownership QQ1800	
Affordable Housing Development QD1800	165,233
CHDO QR1800	53,705
	322,233

Emergency Solutions Grant 2013-2018

	ESG Budgeted Funding Amount by Fiscal Year					
Program	FY 12-13	FY 13-14	FY 14-15	**FY 15-16**	**FY 16-17**	**FY 17-18**
Operations: Homeless Health	$37,582	$28,993	$35,391	**$0**	**$0**	**$0**
Essential Services: Family Shelter	$28,327	$21,853	$26,675	**$28,327**	**$28,327**	**$28,327**
Homeless Prevention: Family Shelter	$28,326	$21,853	$26,675	**$52,369**	**$52,369**	**$52,369**
Homeless Prevention: Oxford Street	$12,242	$8,972	$10,952	**$13,800**	**$13,244**	**$13,244**
Rapid Rehousing: Oxford Street	$48,966	$35,888	$43,807	**$55,200**	**$55,200**	**$55,200**
Administrtation and HMIS	$12,603	$5,600	$6,838	**$12,138**	**$12,092**	**$12,092**
Total (Actual)	*$168,046*	*$123,159*	*$150,338*	*$161,834*	*$161,232*	$161,232
Admin/HMIS cap	*$12,603*	*$9,237*	*$11,275*	*$12,138*	*$12,092*	$12,092.40

Explanation

Operations: Homeless Health	This program is no longer administered by the City of Portland
Essential Services: Family Shelter	Funds pay for staff who provides housing assistance by seeking affordable units, applying for eligible subsidies and accessing transitional housing opportunities and follow-up case management services by assisting with budgets, tenant/ landlord negotiations, and connecting to area resources.
Homeless Prevention: Family Shelter	Funds pay for staff who assist in preventing family homelessness. Services include advocating with their town of residency, landlord/tenant negotiations and family reunifications.
Homeless Prevention: Oxford Street Shelter	Funds pay for staff who assist in preventing individuals from becoming homeless and providing necessary case management and referrals.
Rapid Rehousing: Oxford Street Shelter	Funds pay for staff who assist persons who have become homeless by quickly moving them into permanent hosuing and providing the ncessary case management and referrals the individual needs.
Administration and HMIS	Funding goes to pay for licenses to use HUD's Homeless Management and Information System. Licenses are provided by Maine Housing.

Order 180-16/17
Tab 3 3-27-17

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER APPROVING AIRPORT IMPROVEMENT PROGRAM GRANTS

ORDERED, that the following project grants from the Federal Aviation Administration (FAA) Airport Improvement Program (AIP) are hereby approved for the Portland International Jetport (Jetport):

- Gate 1 Aircraft Apron Reconstruction Phase 1 ($2,545,000);
- Environmental Assessment and Permitting for Projects Phase 2 ($513,000);
- Air Rescue and Firefighting Truck ($1,083,000); and
- Runway Incursion Warning System ($132,000); and

BE IT FURTHER ORDERED, that the funds for said projects are hereby appropriated from federal and state grant funding, and the local share of the projects shall be appropriated as part of the Jetport's budget; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the Director of the Jetport to be the official representative for these AIP grants, as required by the FAA, and to execute grant documents and any other related documents necessary or convenient to carry out the intent of said documents.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Paul Bradbury, Airport Director

DATE: March 15, 2017

DISTRIBUTION: Jon Jennings, City Manager; Mayor Strimling; Danielle West-Chuhta, Corporation Counsel; Sonia Bean; Nancy English; Julie Sullivan

SUBJECT: Approval of FAA Airport Improvement Program Federal Fiscal Year 2017 Entitlement Grants totaling $3,827,253 and naming the Airport Director as the City's official representative for the grants.

SPONSOR: Jon Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: March 27, 2017 **Final Action:** April 5, 2017

Can action be taken at a later date: X **Yes** ____ **No (If no why not?)**
Action can be taken at a later date, but must be taken prior to May 1, 2017. The FAA's deadline for Federal Fiscal Year 2017 grants is May 1, 2017.

I. SUMMARY OF ISSUE (Agenda Description)

The Federal Aviation Administration issues grants to fund eligible safety and capacity projects at airports nationwide through the Airport Improvement Program (AIP). This program is funded through federal taxes on commercial air fares and on aviation fuel taxes. The amount allocated to each airport is based on the annual number of enplaned commercial passengers the airport handled in the prior calendar year. This year the Portland Jetport has AIP entitlement funding totaling $3.846 million based upon 858,649 enplaned passengers in 2015. In federal FY 2017 four projects have been planned by the Jetport with the following estimated costs:

• Gate 1 Aircraft Apron Reconstruction Phase 1	$ 2,545,000
• Environmental Assessment and Permitting for Projects Phase 2	$ 513,000
• Air Rescue and Firefighting Truck	$ 1,083,000
• Runway Incursion Warning System	$ 132,000

The AIP funding amount for each of these projects is 90% of the above listed total cost for each project. The balance is covered locally through the Jetport's operating budget and through state funding of up to 5% of project costs.

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

The FAA requires approval of AIP Grants and the AIP Grant Assurances by the airport sponsors governing body, which for the Jetport is the Portland City Council. Additionally, it requires the governing body to name the official representative for those grants, which for the Portland Jetport is the Airport Director.

The projects being proposed for FFY 2017 are included and scheduled within the 20 year capital program developed as part of the Jetport's Sustainable Airport Master Plan that was accepted by the Council in November 2016.

III. INTENDED RESULT

The approval of these grants will allow the Portland International Jetport to proceed with the aforementioned projects outlined in more detail below.

1. Gate 1 Apron Reconstruction Phase 1: The current gate 1 apron is bituminous and prone to rutting by aircraft nose gear especially in hot summer months. Gate 1 is the last section of bituminous paving on our main terminal aircraft parking apron. This project will replace approximately 64,500 square feet of this apron with concrete.
2. Environmental Assessment Phase 2: The environmental assessment and permitting project being proposed is needed to accommodate aircraft hold and deicing pads being planned in fiscal years 2019 – 2021.
3. Air Rescue Fire Fighting (ARFF) Truck: This new 1,500 gallon capacity truck will replace a 1989 Oshkosh T300 fire truck for which key components such as the main pump assembly are no longer available.
4. Runway Incursion Warning System: This is a GPS based system providing real time position information and warning notifications for vehicles approaching a runway.

IV. COUNCIL GOAL ADDRESSED

The Portland International Jetport provides a robust connection for the region to the national air transportation system and in doing so plays an important role in supporting the City Council's economic development goals. Approval of these grants allows the Portland Jetport to invest in needed infrastructure.

V. FINANCIAL IMPACT

If approved, the Portland International Jetport will receive $3,845,984 in federal funding that will fund 90% of the project costs which total $4,273,316. The $427,332 that is not covered by the federal AIP grants will be covered equally by the Jetport's operating budget and the State in the amount of $213,666 each. Approval of these grants has no impact to the City of Portland's general fund or the tax rate.

VI. STAFF ANALYSIS

Approval of these grants will provide for needed infrastructure investment in the Portland International Jetport, consistent with the Jetport's Sustainable Airport Master Plan.

VII. RECOMMENDATION

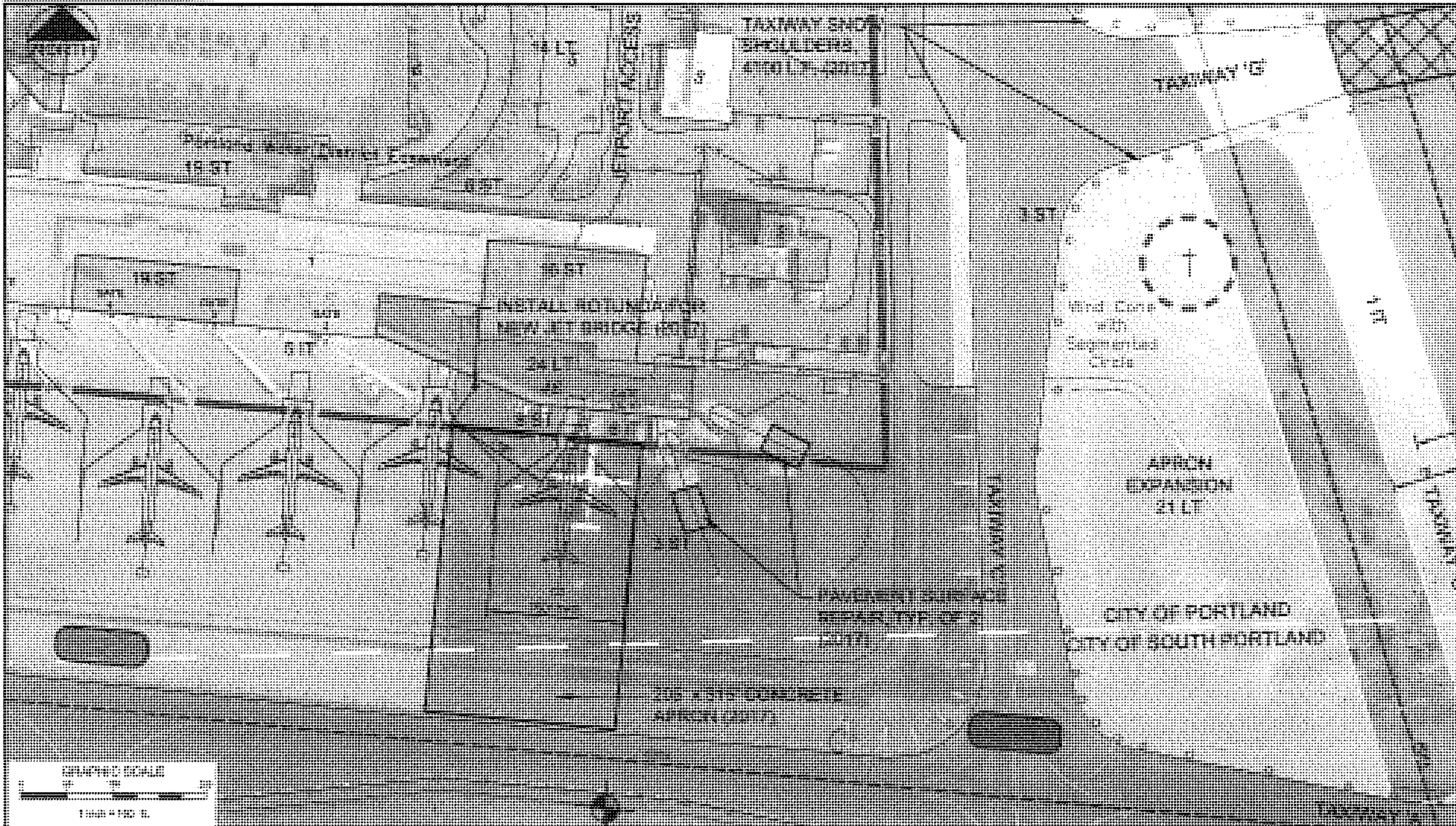
Jetport staff recommends the City Council approve this request for FFY 2017 AIP Grants totaling $3,845,984 in federal funding.

VIII. LIST ATTACHMENTS

1. Gate 1 Aircraft Apron Reconstruction Phase 1 plan
2. Airport Improvement Program Grant Assurances document dated March 2014.

Signature

March 15, 2017
Date



STANTEC CONSULTING SERVICES INC.

Stantec

PORTLAND INTERNATIONAL AIRPORT	GATE 1 APRON RECONSTRUCTION AND SNOW SHOULDER FOR TAXIWAY C NORTH, PHASE 1	1

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FAA
Airports

ASSURANCES

Airport Sponsors

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

   The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

   The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

   Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.**

   It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

a. Title 49, U.S.C., subtitle VII, as amended.
b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.[1]
c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
d. Hatch Act – 5 U.S.C. 1501, et seq.[2]
e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.[1 2]
f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).[1]
g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.[1]
h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
i. Clean Air Act, P.L. 90-148, as amended.
j. Coastal Zone Management Act, P.L. 93-205, as amended.
k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.[1]
l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
n. 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);
o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.[1]
s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.[1]
t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.[1]
u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.[1]
w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.[2]
y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

Executive Orders

a. Executive Order 11246 - Equal Employment Opportunity[1]
b. Executive Order 11990 - Protection of Wetlands
c. Executive Order 11998 – Flood Plain Management
d. Executive Order 12372 - Intergovernmental Review of Federal Programs
e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction[1]
f. Executive Order 12898 - Environmental Justice

Federal Regulations

a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].[4, 5, 6]
c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
d. 14 CFR Part 13 - Investigative and Enforcement Procedures14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
e. 14 CFR Part 150 - Airport noise compatibility planning.
f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
h. 29 CFR Part 1 - Procedures for predetermination of wage rates.[1]
i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.[1]
j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).[1]
k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).[1]
l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.[3]
m. 49 CFR Part 20 - New restrictions on lobbying.
n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.[1 2]
q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.[1]
s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

Specific Assurances

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

Footnotes to Assurance C.1.

[1] These laws do not apply to airport planning sponsors.

[2] These laws do not apply to private sponsors.

[3] 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

[4] On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

[5] Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

[6] Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. **Responsibility and Authority of the Sponsor.**

   a. Public Agency Sponsor:

   It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

   b. Private Sponsor:

   It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. **Sponsor Fund Availability.**

   It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. **Good Title.**

   a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

   b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. **Preserving Rights and Powers.**

   a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.

d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.

g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. **Consistency with Local Plans.**

   The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. **Consideration of Local Interest.**

   It has given fair consideration to the interest of communities in or near where the project may be located.

8. **Consultation with Users.**

   In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. **Public Hearings.**

   In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. **Metropolitan Planniug Organization.**

    In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. **Pavement Preventive Maintenance.**

    With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. **Terminal Development Prerequisites.**

    For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. **Acconnting System, Audit, and Record Keeping Requirements.**

    a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

    b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. **Minimum Wage Rates.**

    It shall include, in all contracts in excess of $2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. **Veteran's Preference.**

    It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. **Conformity to Plans and Specifications.**

    It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. **Construction Inspection and Approval.**

    It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. **Planning Projects.**

    In carrying out planning projects:

    a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.

    b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.

    c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

    d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

    e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

    f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.

    g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.

    h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. **Operation and Maintenance.**

    a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

1) Operating the airport's aeronautical facilities whenever required;
2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. **Hazard Removal and Mitigation.**

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. **Compatible Land Use.**

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. **Economic Nondiscrimination.**

a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.

g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. **Exclusive Rights.**

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and

b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. **Fee and Rental Structure.**

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. **Airport Revenues.**

a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:

1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or

operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.

3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.

b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. **Reports and Inspections.**

It will:

a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;

c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:

1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. **Use by Government Aircraft.**

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. **Land for Federal Facilities.**

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. **Airport Layout Plan.**

a. It will keep up to date at all times an airport layout plan of the airport showing

1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;

2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and

roads), including all proposed extensions and reductions of existing airport facilities;

3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and

4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. **Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.

b. Applicability

1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.

2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, 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.

c. Duration.

The sponsor agrees that it is obligated to this assurance 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 sponsor, or any transferee for the longer of the following periods:

1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or

2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"The **(Name of Sponsor)**, 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 and airport concession disadvantaged business enterprises will be afforded full and fair 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."

e. Required Contract Provisions.

1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.

2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.

3) It will insert non-discrimination contract clauses 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 sponsor.

4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a

covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor 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.

f. It will provide for such methods of administration for the program as are found by the Secretary 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.

g. It 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.

31. **Disposal of Land.**

a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(c) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. **Engineering and Design Services.**

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. **Foreign Market Restrictions.**

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. **Policies, Standards, and Specifications.**

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated ____________ (the latest approved version as of this grant offer) and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

35. **Relocation and Real Property Acquisition.**

    a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
    b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
    c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. **Access By Intercity Buses.**

    The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. **Disadvantaged Business Enterprises.**

    The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

38. **Hangar Construction.**

    If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. **Competitive Access.**

a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-

   1) Describes the requests;

   2) Provides an explanation as to why the requests could not be accommodated; and

   3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.

b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

Tab 4 3-27-17

Order 155-16/17
Public Hearing held March 20, 2017
Failed: 6-3 (Mavodones, Duson, Ray) on 3/20/2017

ETHAN K. STRIMLING (MAYOR) BELINDA S. RAY (1) SPENCER R. THIBODEAU (2) BRIAN E. BATSON (3) JUSTIN COSTA (4)	**CITY OF PORTLAND** IN THE CITY COUNCIL	DAVID H. BRENERMAN (5) JILL C. DUSON (A/L) PIOUS ALI (A/L) NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROVING LONGFELLOW, LYSETH, PRESUMPSCOT AND REICHE ELEMENTARY SCHOOL RENOVATION PROJECTS WITH TOTAL PROJECT COSTS NOT TO EXCEED $64,260,000 AND AUTHORIZING GENERAL OBLIGATION BONDS THEREFORE

FOLLOWING a public hearing of the City Council of the City of Portland, Maine, held upon due notice pursuant to Article VII, Section 9 of the City Charter, IT IS HEREBY

ORDERED THAT:

There be and hereby is authorized and approved the renovation, furnishing and equipping of Longfellow, Lyseth, Presumpscot and Reiche elementary school with total project costs not to exceed $64,260,000 (the "Elementary School Projects"), as follows:

Longfellow Elementary	**$15,388,000**
Lyseth Elementary	**17,998,000**
Presumpscot Elementary	**13,628,000**
Reiche Elementary	**17,246,000**
Total	**$64,260,000**

and that there be and hereby is authorized the issue and sale of the City's general obligation bonds in the aggregate principal amount not to exceed $64,260,000 to finance the costs of such Project.

BE IT FURTHER ORDERED

1. That the Director of Finance be and hereby is authorized to prepare, issue, and sell such bonds in the name of and on behalf of the City, in the aggregate amount of $64,260,000 (the "Bonds") at one time, or from time to time, as one or more separate bond issues, and to determine the date, form, minimum denomination, interest rates (as term bonds or serial bonds or some combination thereof), maturities (with the last maturity not to exceed the maximum term permitted by law) and all other details, terms and provisions, not inconsistent herewith, including the form and manner of their sale and award as he may approve, such approval to be conclusively evidenced by the execution thereof;

2. That the Director of Finance be and hereby is authorized to borrow money in anticipation of said Bonds by the issuance and sale of one or more notes or renewal notes in anticipation of said Bonds ("BANs"), and to determine the date, form, minimum denominations, interest rate, maturities (with the last maturity of any BAN not to exceed 3 years from its date of issuance) and all other details of each

Exhibit A

Question __: Shall the Order entitled "ORDER APPROVING LONGFELLOW, LYSETH, PRESUMPSCOT AND REICHE ELEMENTARY SCHOOL RENOVATION PROJECTS WITH TOTAL PROJECT COSTS NOT TO EXCEED $64,260,000 AND AUTHORIZING GENERAL OBLIGATION BONDS THEREFORE", with provisions for early redemption as set forth in said Order be Approved?

issue of BANs, including the form and manner of their sale and award, subject to the provisions of the law, the City Charter and this Order;

3. That the Director of Finance be and hereby is authorized to provide that any of the Bonds and BANs hereinbefore authorized be made subject to call for redemption, with or without premium, prior to their stated dates of maturity, as provided in 30-A M.R.S.A. §5772(6), as amended;

4. That any Bond or BAN issued hereunder shall be signed by the Director of Finance and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof;

5. That the Director of Finance is authorized to negotiate, execute, and deliver, in the name of and on behalf of the City such contracts, agreements, and other documents, including leases, instruments and certificates as may be necessary or appropriate as determined and approved by the Director of Finance in connection with the financing of the Elementary School Projects, which documents shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Director of Finance such approval to be conclusively evidenced by his execution thereof;

6. That the Director of Finance be and hereby is authorized to select the underwriter for the Bonds or BANs heretofore authorized and the Director of Finance be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith;

7. That the Director of Finance be and hereby is authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement for use in the offering and sale of the Bonds or BANs heretofore authorized, such Preliminary Official Statement and Official Statement to be in such form and contain such information as may be approved by the Director of Finance, with the advice of the bond counsel for the City, and that the use and distribution of the Preliminary Official Statement and the Official Statement in the name of and on behalf of the City in connection with offering the Bonds or BANs for sale be and hereby is approved;

8. That the Director of Finance be and hereby is authorized to select the registrar, paying agent and transfer agent (the "Transfer Agent") for the Bonds or BANs heretofore authorized and to execute and deliver such contracts and agreements as may be necessary or appropriate to secure their services;

9. That the Bonds or BANs heretofore authorized shall be transferable only on the registration books of the City kept by the Transfer Agent, and said principal amount of the bonds of the same maturity (but not of other maturity) in minimum denominations of $5,000 and any integral multiple in excess thereof upon surrender thereof at the principal office of the transfer agent, with a written instrument of transfer satisfactory to the transfer agent duly executed by the registered owner or his attorney duly authorized in writing. Upon each exchange or transfer of a bond the City and the Transfer Agent shall make a charge sufficient to cover any tax, fee or any other governmental charge required to be payable with respect to such exchange or transfer, and with respect to such exchange or transfer, and subsequent to the first exchange or transfer, the cost of preparing new bonds upon exchanges or transfer thereof to be paid by the person requesting the same;

10. That the Director of Finance be and hereby is authorized to undertake all acts necessary to provide for the issuance and transfer of such Bonds or BANs heretofore authorized in book-entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraph above regarding physical transfer of Bonds or BANs, and the Director of Finance be and hereby is authorized and empowered to enter into a Letter of Representation or any other contract, agreement or understanding necessary or, in his opinion, appropriate in order to qualify the Bonds or BANs for and participate in the Depository Trust Company Book-Entry Only System;

11. That the Director of Finance and Mayor from time to time shall execute such Bonds or BANs as may be required to provide for exchanges or transfers of Bonds or BANs as heretofore authorized, all such Bonds or BANs to bear the original signature of the Director of Finance and Mayor, and in case any officer of the City whose signature appears on any Bond or BAN shall cease to be such officer before the delivery of said Bond or BAN, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery thereof;

12. That if the Bonds or BANs, or any part of them, are issued on a tax exempt basis, the Director of Finance be and hereby is authorized and directed to covenant and certify on behalf of the City that no part of the proceeds of the issue and sale of the Bonds or BANs authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such Bonds or BANs to be "arbitrage bonds" or "private activity bonds" within the meaning of Sections 148 and 141 of the Internal Revenue Code of 1986, as amended;

13. That if the Bonds or BANs, or any part of them, are issued on a tax exempt basis, the officers or officials executing the Bonds or BANs be and hereby are individually authorized to covenant and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports and take any other action that may be necessary to insure that interest on the notes will remain exempt from federal income taxation, and that the City will refrain from any action that would cause interest on the Bonds or BANs to be subject to federal income taxation;

14. That the officers executing the Bonds or BANs be and hereby are individually authorized to covenant, certify and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to insure that the disclosure requirements imposed by Rule 15c2-12 of the Securities and Exchange Commission, if applicable, are met;

15. That any or all of the Bonds or BANs issued hereunder may be consolidated with and become a part of any other issue of temporary notes or general obligation bonds authorized to be issued by any previous or subsequent order of the City Council of the City of Portland;

16. That the term "cost" or "costs" as used herein and applied to the Elementary School Projects, or any portion thereof, includes, but is not limited to (1) the cost to design, acquire, construct, renovate, improve, furnish and equip the Elementary School Projects, or any portion thereof; (2) the cost of land, easements and other real property interests, landscaping and site preparation, including demolition and environmental remediation work on any existing building or structure and on the property where the Elementary School Projects is located, utility extensions and site improvements, and all appurtenances and other fixtures, facilities, buildings and structures either on, above, or under the ground which are used or usable in connection with the Elementary School Projects; (3) the cost of feasibility studies, surveys, environmental studies and assessments, engineering, plans and specifications, legal and other professional services associated with the Elementary School Projects; (4) issuance costs, including

premiums for insurance, capitalized interest and other fees and expenses relating to the financing transaction.

17. That if the actual cost of any Elementary School Project differs from the estimated cost set forth herein, whether due to completion, delay or abandonment of said Elementary School Project for any other reason, the Director of Finance is authorized, in his discretion to allocate or reallocate proceeds of the Bonds to any other listed Elementary School Project;

18. That the Director of Finance, Mayor and Clerk and other proper officials of the City be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds or BANs hereinabove authorized;

19. That if any of the officers or officials of the City who have signed or sealed the Bonds shall cease to be such officers or officials before the Bonds or BANs so signed and sealed shall have been actually authenticated or delivered by the City, such Bonds or BANs nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds or BANs had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed on behalf of the City by those persons who, at the actual date of the execution of such Bonds or BANs, shall be the proper officers and officials of the City, although at the nominal date of such Bonds or BANs any such person shall not have been such officer or official;

20. That if the Director of Finance, Mayor or Clerk are for any reason unavailable to approve and execute the Bonds or BANs or any other documents necessary or convenient to the issuance, execution and delivery of the Bonds or BANs, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had performed such act.

21. That the Bonds or BANs authorized by this Order are in addition to any bonds or notes previously authorized for the same or similar purposes;

22. That to the extent not payable from other funds, an amount sufficient for the payment of the annual payments of principal and interest on the Bonds or any BANs issued hereunder shall be included in the tax levy of each year until the debt represented by said Bonds or BANs is extinguished.

23. That during the term any of the Bonds (or bonds issued to refund such Bonds) are outstanding, the Director of Finance be and hereby is authorized to issue and deliver refunding bonds to refund some or all of the Bonds then outstanding, and to determine the date, form, interest rate, maturities and all other details of such refunding bonds, including the form and manner of their sale and award. The Director of Finance be and hereby is further authorized to provide that any of such refunding bonds hereinbefore authorized be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond issued hereunder shall be signed by the Director of Finance and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Brendan T O'Connell – Finance Director

DATE: March 1, 2017

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

SUBJECT: $64M Finance Committee Recommendation on School Capital Renovations – Three Orders

SPONSOR: Finance Committee, Nicholas M. Mavodones, Jr., Chair

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading _____3/6/17________ Final Action____3/20/17____

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

PRESENTATION: (Brendan T O'Connell – Finance Director – 5 minutes)

I. SUMMARY OF ISSUE (Agenda Description)

On February 23, 2017 the Finance Committee voted to recommend a $64.26M proposal to substantially renovate four elementary schools (2-0). The Finance Committee made their recommendations after an extensive process which included a Portland Public Schools Board of Education recommendation (6/21/16, 6-2 for a $70.59M bond), a School Facilities Ad-Hoc Committee amendment and recommendation (1/19/17, 7-1 for a $61M bond) and another Portland Public Schools Board of Education recommendation (1/31/17, 9-0 for a $61M bond). The schools and amounts included in the current Finance Committee recommendation are:

Presumpscot: Modulars eliminated and classroom space added. Separate gym and cafeteria created. Adequate OT, PT, ELL, music, art, library, kitchen and restroom space added. Improved security and sightlines for the entrance. More functional parent drop off/bus loop constructed. Upgraded learning technology, plumbing, electrical and sprinklers installed. LEED Certified. *Cost: $13,628,000*

Longfellow: Building made fully ADA compliant with new, more secure entrance. Full asbestos abatement. Separate gym and cafeteria created. Adequate reading, ELL, Gifted & Talented, music, art, library, and kitchen space. Upgraded learning technology, plumbing, electrical and sprinklers installed. LEED Certified. *Cost: $15,388,000*

Reiche: Acoustic and lighting problems corrected. Enclose classroom corridor walls and provide operable partitions. Maintains ability for open spaces for collaborative learning. Appropriate health station created. Rightsize art, music and reading spaces. Pre-K, Title1, OT, PT and Reading 180 spaces added. Upgraded learning technology, plumbing, electrical and sprinklers installed. Solar heater for the pool. LEED Certified. *Cost: $17,246,000*

Lyseth: Modulars eliminated and classroom space added. Pre-K, Kindergarten and Gifted & Talented space created. Adequate ELL, speech, art, music, library, nurse's station and social worker space added. Separate gym and cafeteria created. Upgraded learning technology, plumbing, electrical and sprinklers installed. LEED Certified. *Cost: $17,998,000*

It should be noted that the allocation for each school is an estimate and the Finance Director will have the flexibility to adjust amounts between schools as long as the total bond is not exceeded.

The proposal from the School Board did not recommend any specific order / timing of school construction. The proposal does include an estimated timetable for construction from Oak Point Associates with School 1 estimated completion in fall 2020, School 2 in fall 2021, School 3 in fall 2023, and School 4 in fall 2024 The proposal includes beginning design on the first school by the end of 2017 and therefore a 2017 referendum is required. It is important to note that any projects approved during a local referendum would become ineligible for State of Maine Department of Education Major Capital School Construction Funding. Applications for a new round of State funding are due on April 14, 2017. Given the tight timeline and not knowing what action will be taken by the City Council, or ultimately might be taken by the voters, the School Department is applying for funding for these four schools. Sixteen projects were completed from the State's current priority list. Had the State continued with the list, Longfellow School and Reiche were #2 and #3. A preliminary priority list from this next funding round is expected in April 2018.

Additional details on the proposal including presentation provided to the Finance Committee and all additional materials requested and considered by the Committee are attached.

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

Article VII, Section 16(a)(1) of the City Charter, states that any orders or resolves "authorizing the issuance of general obligation securities of the city in a principal amount greater than five one-hundredths of one (1) percent of the last certified state valuation of the city for a single capital improvement" must be submitted for voter referendum. Based on the City's most recent State Valuation, this limit is approximately $3.99M and therefore three orders must be approved by City Council in order for this item to move forward. A bond order (requires seven votes for approval), an appropriation order (requires five votes for approval) and an order sending the bond order to referendum (requires five votes for approval).

III. INTENDED RESULT

Achieve substantial renovations at Longfellow, Lyseth, Presumpscot and Reiche.

IV. COUNCIL GOAL ADDRESSED

The City Council has a stated goal of "Question on the ballot regarding elementary school renovations."

V. FINANCIAL IMPACT

It's anticipated that the $64.26M would be borrowed over a six year time period. This would result in an estimated $92M in debt service payments, principal and interest, spread over the next 26 years. The tax rate would rise an estimated 3.1% by FY24 due to these debt service payments. For a taxpayer with an average home value ($240,000) there would be an estimated $2,707 of total additional taxes over the 26 year life of the bonds, an average of approximately $104 per year.

VI. STAFF ANALYSIS

No staff recommendation has been requested on the proposal.

VII. RECOMMENDATION

None requested

VIII. LIST ATTACHMENTS

1) $64M Bond Recommendation from Finance Committee – Backup Materials for 3-6 and 3-20

$64M Bond Proposal Backup Materials - Finance Committee questions from 2/16/17 (updated) and 2/23/17 with *responses in italics*

PPS Presentation from 2/16 plus 2/23 amendment also attached (F)

1. **What would an alternative proposal to address the elementary school needs while not sacrificing our best chances at State funding look like?**

Based on the condition assessment recently performed on school facilities by Lavallee Brensinger Architects, the following schools were rated as having the best individual chances at state funding:

1. *Reiche (72)*
2. *Longfellow (69)*
3. *PATHS (63)***
4. *Lyseth (63)*
5. *Portland High (62)*
6. *Presumpscot (59)*

This preliminary scoring is based only on the portions of the application dealing with the physical condition of the buildings, not those dealing with enrollments and program, which were beyond the scope of the assessment.

Applications for State funding are due to the Department of Education on April 14, 2017. Given the tight timeline and not knowing what action will be taken by the City Council, or ultimately might be taken by the voters, the school department is moving forward with applications on all 6 schools.

*If any of the schools are put to referendum **and** approved by the voters, they will no longer be eligible for state funding.*

*The State's proposed timeline for consideration of applications is attached **(Attachment A)**. We would be notified of our positions on the State's priority list by April of 2018 and the list will be finalized in the summer. Recent history of priority list rankings is attached (**Attachment A-1**).*

***NOTE – Although no specific score was provided, Lavallee Brensinger recommended that 1) a joint PATHS / Casco Bay application should be submitted for State Funding along with 2) Reiche, 3) Longfellow, 4) Portland High School, 5) Lyseth*

2. **Have there been any significant changes in the scoring for the applications in the current ratings cycle that would improve or detract from our chances to move up the State list??**

In general there have been no significant changes to the State DOE's criteria for Major Capital School reconstruction. Response from State DOE website FAQ included below noting that only "slight" changes have been made scoring criteria:

http://www.maine.gov/doe/facilities/construction/faqs2017-18ratingcyclequestionsanswers.html

*"A large volume of interest has been expressed throughout the State for this new rating cycle leading us to believe that there will be an extensive application pool. It is not possible to predict any school's rating on the list until all applications have been received and scored. In each new rating cycle there are always new applicants and some could demonstrate greater or less need than any applicant from a previous rating cycle. Each rating cycle generates its own priority list; previous placement on the list does not dictate one's placement on the new list. However, **unless there have been significant changes aligned with the scoring system in a building, repeat applications typically fall within similar scoring ranges on the new proposed priority list compared with their placement on the previous priority list. After the 2010 – 2011 rating cycle slight changes to the scoring system occurred through the major substantive process. Those changes are listed below.***

Changes to Scoring on the Major Capital Improvement Application

Eliminated "other" in all categories – no longer in Chapter 61

Priority A: Buildings and Grounds – total possible points from 85 to 90
Obsolete, Insufficient, and/or Unsuitable – 30 to 35 points
Group 1: Program Related Facility Deficiencies and Inefficiencies - 21 to 20 points
Group 2: Mechanical & Building System Deficiencies - 9 to 15 points

Priority B: School Population – total possible points 50 to 45
Overcrowding – 30 to 27 points
Group 1: Instructional Areas – 15 to 14 points
Group 2: Program Scheduling – 15 to 13 points
Enrollment Estimates and Population Shifts – 20 to 18 points
Group 1: Enrollment Estimates – 12 to 10 points
Group 2: Population Shifts – same (8 points)

Priority C: Program and Planning – same possible 65 points"

3. **Can we obtain estimates of construction start and completion dates for each of the elementary schools included in the School Board recommendation and also prepare an "apples to apples" comparison of these dates with a two school referendum leaving open the possibility for potential state aid for two of the elementary schools?**

Staff reached out to Oak Point for assistance with this request. The first scenario in the attached schedule ***(Attachment B)*** *shows the schedule going forward for Hall School plus the proposed start/end dates for each of the four schools included in the referendum. The schedule was designed so that no more than two schools were in the design-construction cycle at any one time. Although this is not as fast as originally proposed, it is still an ambitious schedule.*

Also noted on the schedule, in yellow, is the date for release of the State priority list which would occur during the design process for the first school.

The second scenario is the "apples to apples" comparison of a two school referendum plus waiting to see where the City places on the State DOE priority list. There are no major differences in potential school completion dates when comparing a 2017 four school referendum vs a 2017 two school referendum. <u>The City would be able to retain the same construction timeline for Schools 1 and 2 (Presumpsot and Lyseth as presented by Oak Point) regardless of whether a four school referendum occurs in 2017 or a two school referendum occurs in 2017 with two more schools paid for by the State DOE or via second local referendum.</u> The State DOE timeline has indicated a Summer 2018 release date of the Final Priority List. Under the "four schools in one referendum" scenario, we would not begin third school (Reiche) design until November 2020 and fourth school (Longfellow) design until November 2021. If we took the "wait and see" approach, and if Reiche and/or Longfellow schools are not deemed to be high enough on the new State funding list a second referendum could take place anytime between fall 2018 and spring 2020 and we'd still be on the same schedule as if all four schools had been in a single referendum. If one of the two rated well on the state list, it would also be possible to fund one additional school locally and meet the original schedule for 4 schools.

4. **Question: Could we have staff prepare details on the financial impact of the bond, i.e what is the total impact to the operating budget / tax levy of the life of the bonds? These calculations should reflect Mayor Strimling's amendments to include everything not currently in the CIP.**

Cost of a $64M Bond to fund four schools – Executive Summary from Finance Director
*The bond package (as amended) will rise to $64M+ after amendments. A $64 million bond package would increase the mil rate by approximately 69 cents by 2024. Including principal and estimated interest, the total fixed costs added to the overall City tax levy would be approximately **$92 million** over the life of the bonds. As a property owner, the estimated impact to your tax bill can most easily be calculated using your property valuation. For every $100,000 of property you own, your taxes will go up by approximately $1,128 over the life of the bonds. If you own a $500,000 home, the impact would be 5x larger, and your taxes would increase by approximately $5,639 over the life of the bonds. As of early 2017, the average property value within Portland is approximately $240,000, so for an average homeowner the bond would increase taxes by $2,707 over the bond life. For complete details please see the attached memo **(Attachment C)** which includes more details of the estimated impact and tax increases by fiscal year.*

5. **Could we get an update on the Pension Obligation Bond?**

*Response from Finance Director: See **Attachment D**, a debt service schedule for our Pension Obligation Bond. The FY18 budget will include $13.6M of debt service related to the pension obligation bond, and this number increases by approximately $900M annually until FY26 when our final debt service payments of $22.3M are due.*

6. **Could we get a high level overview of our debt management policy and applicable State limits?**

*Response from Finance Director: See **Attachment E**, a summary memo from our Bond Adviser detailing our State and local debt limitations. In summary even if we borrowed $64M to fund four elementary school constructions we wouldn't be at risk of violating any State or local rules around debt limits. Although we are not pushing up against any of our current limits there is a very low likelihood we could ever borrow to capacity due to the detrimental impact on the tax rate. An additional page has been added showing "capacity" before hitting each limit.*

7. **Why is the $61M School Board recommendation on these four elementary schools not being included along with the City FY18-FY22 Capital Improvement Plan and measured against all of the other capital needs of the entire City?**

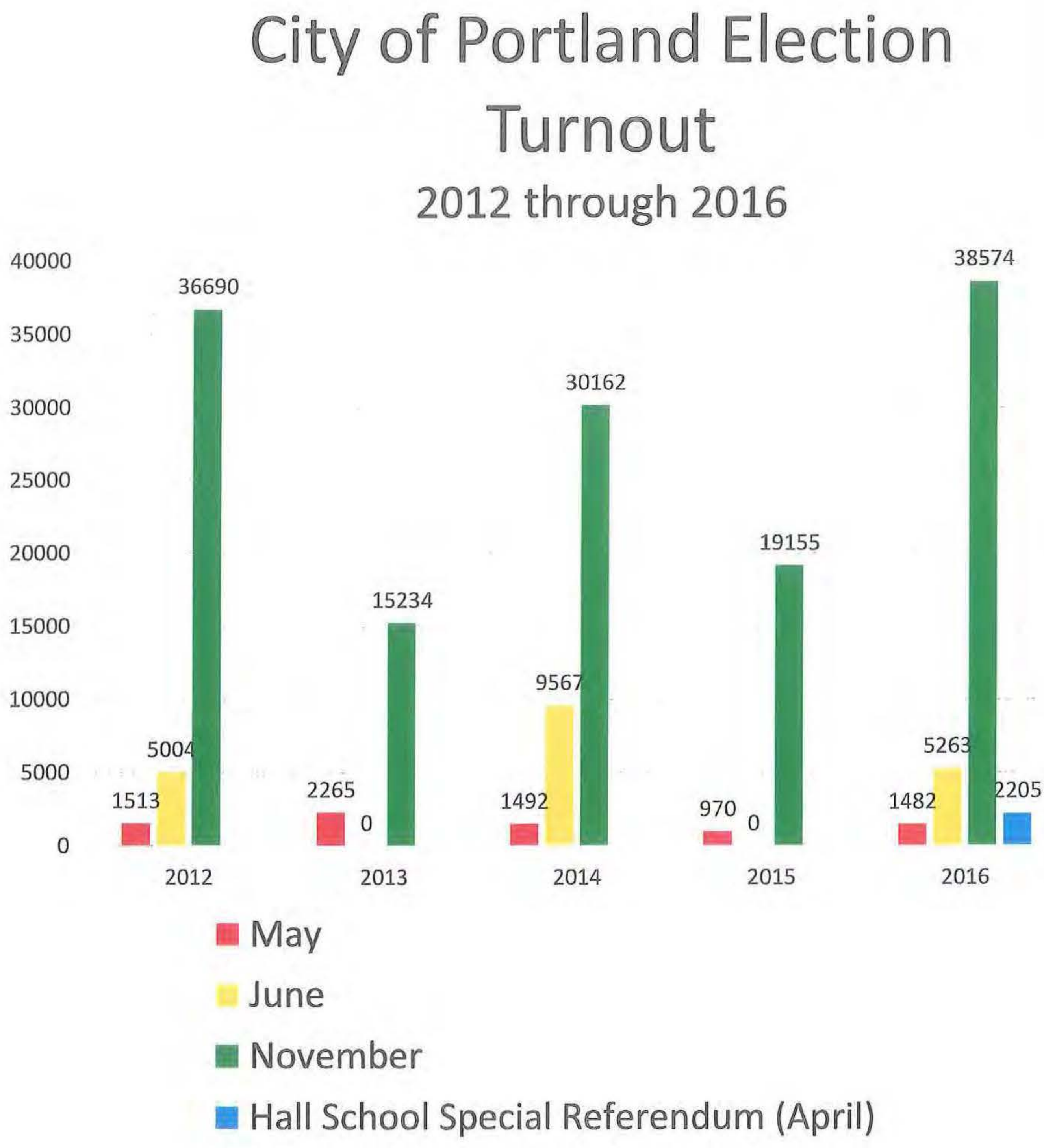
Response from Mayor Strimling: The school bond isn't included in the 5-year CIP because it will have to be voted upon by the electorate. Any borrowing for a specific item that is over (approximately $3-4M) must be sent to the voters. This is the same process as was used in 1993 when $15M, and then an additional $1.2M, was allocated to rebuild our Middle Schools. However, all borrowing ultimately comes from the same pot, so City side needs and School side needs should be weighed together. That is why both are in front of the Finance Committee."

8. How much of the $61M in projects as recommended by the School Board were deemed to be immediate / Year 1-5 needs in the November 2016 "Facilities Assessment of School Buildings" as performed by Sebago Technics and Lavalee/Brensinger? Which other items / schools in the "immediate / Year 0-5" needs are not being included in the proposed School Bond and potentially being "crowded out" of City debt borrowings?

Excerpt from the facilities assessment noting Year 0-5 needs is attached below. As noted by the external engineers, only approximately $0.89M of work is recommended at Presumpscot in the next five years compared to $13.63M as proposed by the School Board. Approximately $1.94M is being recommended by the external engineers at Lyseth over the next five years compared to $17.98M as proposed by the School Board. For Reiche, $2.38M is being recommended by the engineers over the next five years compared to $17.25M as proposed by the School Board. For Longfellow, $2.92M is being recommended by the engineers over the next five years compared to $15.39M as proposed by the School Board. Although staff cannot state with certainty which other projects may be crowded out by the large bonding being proposed, the schedule below approximates all Year 0-5 needs at each City school.

	Immediate Recommendations Year 0 2017	Short Term Recommendations Years 1 - 5 2018 - 2022	Years 0-5 TOTAL 4 Schools in $64M bond
Elementary Schools			
Cliff Island	$78,260	$184,923	
East End Community	$59,600	$394,626	
Longfellow	$132,597	$2,789,969	$2,922,566
Lyseth	$6,023	$1,936,873	$1,942,896
Ocean Avenue	$0	$96,241	
Peaks Island	$88,795	$675,474	
Presumpscot	$755	$888,701	$889,456
Reiche	$33,905	$2,347,145	$2,381,050
Riverton	$940	$1,215,099	
Elementary Schools Subtotal	**$400,875**	**$10,529,051**	**$8,135,968**
Middle Schools			
King	$276,125	$1,377,356	
Lincoln	$40,859	$1,824,068	
Moore	$0	$1,324,115	
Middle Schools Subtotal	**$316,984**	**$4,525,539**	
High Schools			
Portland Arts & Technology (PATHS)	$169,702	$6,480,694	
Deering	$93,210	$3,776,921	
Portland	$491,480	$2,882,423	
High Schools Subtotal	**$754,392**	**$13,140,038**	
Other Buildings			
District Office / Bayside Learning	$20,000	$577,336	
Central Kitchen	$0	$100,621	
Subtotal	**$20,000**	**$677,958**	
General District Items			
General District Items (from PPS 5-yr CIP)	$0	$6,337,065	
TOTAL	**$1,492,251**	**$35,209,651**	

9. **Can staff provide details of voter turnout in recent elections (5 year history is fine). Which elections have traditionally produced the highest levels of participation from the community?**
See below for election turnout by month. If letting the voters decide by maximizing voter turnout is a desired outcome, a November 2017 election date should be selected. Spring elections have produced poor turnout amongst Portland voters. <u>As noted previously by Oak Point, the school construction on the first school in the $64M bond proposal would not begin until February 2018 so there is adequate time for a November 2017 referendum.</u> A June referendum (assuming no State ballot questions) also adds significant unbudgeted costs to the City budget.



Attachment A

Maine Department of Education

op

2017-2018 Rating Cycle Timeline
Major Capital School Construction Program
Division of School Facilities

2017-2018 Rating Cycle Proposed Timeline

Identification of Need – School District

↓

Apply to Department of Education (DOE), Needs Based Application – School District

Applications Available October 2016
Application Deadline April 14, 2017

↓

Application Review/Site Evaluation – DOE

May 2017 thru December 2017

↓

Compilation of all Evaluation Scores –DOE

January thru March 2018

↓

Development of Proposed Priority List and notification of All Applicants – DOE

March thru April 2018

↓

Presentation of Final Priority List by the Commissioner to the State Board of Education (SBE)

Summer 2018

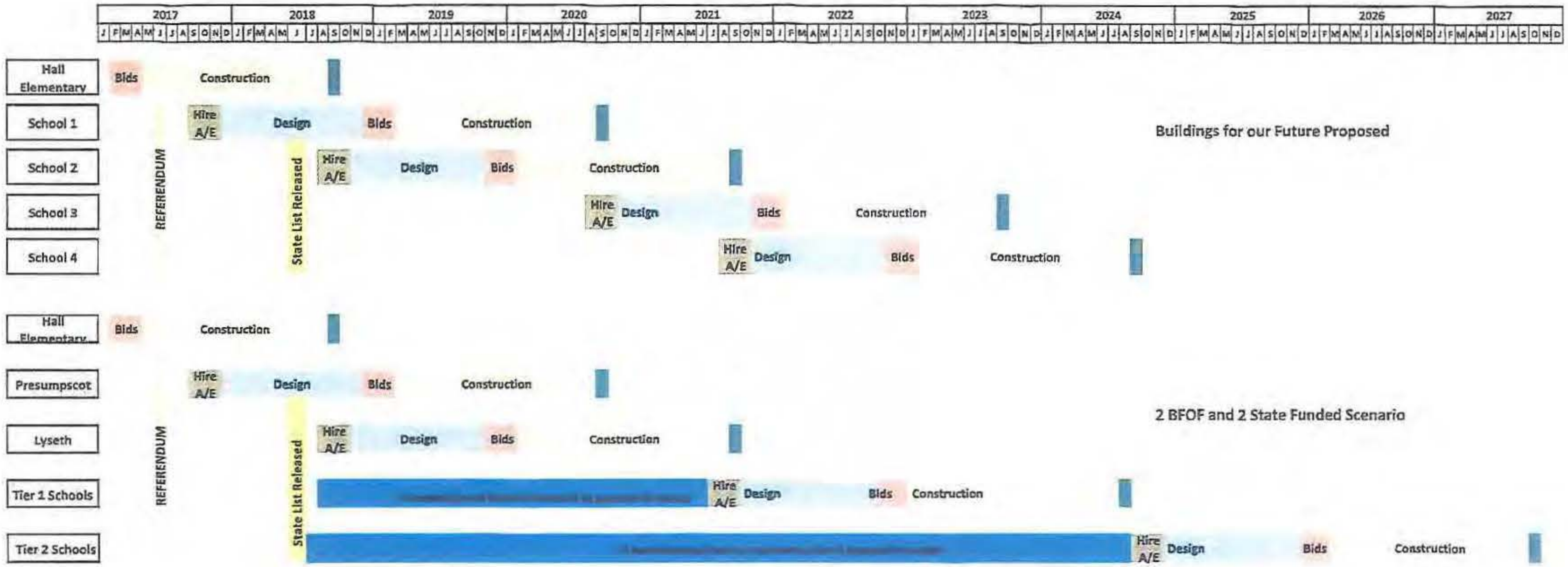
Major Capital Improvement Program
Summary of Last Three State Rating Cycles

	2001-2002	2004-2005	2010-2011	
Projects Evaluated	92	66	71	
Scoring Rubric - Total Points	180	200	200	
# of Funded Projects	12	20	16	
Highest Score	139.13	136.7	144.67	
Lowest Funded Score	122.72	116.72	125.02	
Priority Ranking # (Rubric Score)				
Hall Elementary	58 (83.1)	55 (90.86)	12 (128.73)	
Longfellow Elementary	73 (70.24)	48 (95.08)	18 (124.06)	(up to #2 on priority list)
Lyseth Elementary	51 (88.64)	53 (91.52)	43 (104.90)	
Presumpscot Elementary	62 (79.09)	61 (85.39)	33 (117.50)	
Reiche Elementary	67 (76.37)	23 (115.24)	21 (123.39)	(up to #3 on priority list)

Attachment A-1

Scenario #1
All 4 Schools
in single
$64M local
referendum

cenario #2
Schools, 2 in
32M 2017
eferendum,
tate funds for
ther schools
R 2nd
eferendum



The City would be able to retain the same construction timeline for Schools 1 and 2 (Presumpsot and Lyseth as presented by Oak Point) regardless of whether a four school referendum occurs in 2017 or a two school referendum occurs in 2017 with two more schools paid for by the State DOE or via second local referendum. The State DOE timeline has indicated a Summer 2018 release date of the Final Priority List. Under the "four schools in one referendum" scenario, we would not begin third school design until November 2020 and fourth school design until November 2021. If we took the "wait and see" approach, and if Reiche and/or Longfellow schools are not deemed to be high enough on the new State funding list a second referendum could take place anytime between fall 2018 and spring 2020 (a two year period) and we'd still be on the same schedule as if all four schools had been in a single referendum. If one of the two rated well on the state list, it would also be possible to fund one additional school locally and meet the original schedule for 4 schools.

Attachment B

Impact of $64M Buildings for our Future on Tax Rate (includes proposed amendment from 2/23/17)

	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024
Valuation (as projected)	7,780,000,000	7,800,000,000	7,830,000,000	7,860,000,000	7,890,000,000	7,920,000,000	7,950,000,000	7,980,000,000
City Tax Levy (as projected)	83,862,689	87,116,012	90,998,732	94,299,153	99,247,580	104,707,427	107,805,150	110,038,220
City Tax Rate (as projected)	$10.78	$11.17	$11.62	$12.00	$12.58	$13.22	$13.56	$13.79
Rate Increase		0.39	0.45	0.38	0.58	0.64	0.34	0.23
% Increase		3.6%	4.1%	3.2%	4.8%	5.1%	2.6%	1.7%
School Tax Levy (as projected)	80,331,376	84,516,375	89,774,725	94,947,212	99,517,935	103,530,735	108,914,333	114,577,878
School Tax Rate (as projected)	$10.33	$10.84	$11.47	$12.08	$12.61	$13.07	$13.70	$14.36
Rate Increase		0.51	0.63	0.61	0.53	0.46	$0.63	$0.66
% Increase		4.9%	5.8%	5.4%	4.4%	3.6%	4.8%	4.8%
Total Tax Rate (as projected)	$21.11	$22.00	$23.09	$24.08	$25.19	$26.29	$27.26	$28.15
Rate Increase		0.89	1.08	0.99	1.11	1.10	0.97	0.89
% Increase		4.2%	4.9%	4.3%	4.6%	4.4%	3.7%	3.3%
Cumulative increase related to BFOF	$ -	$ -	$ 0.12	$ 0.24	$ 0.36	$ 0.47	$ 0.58	$ 0.69
Cumulative % increase related to BFOF			0.6%	1.1%	1.6%	2.2%	2.7%	3.1%
Increased Annual Taxes per $100,000 of property value			$ 12.41	$ 24.46	$ 36.14	$ 47.45	$ 58.42	$ 69.02
Estimated Total Amount of Additional Taxes per $100,000 of property value due to BFOF over life of the bonds								$ 1,128

(If your home value was $200,000, the impact to you would be 2x the numbers above. If your home value was $500k, the impact would be 5x the above)

	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024
Increased Annual Taxes on $240,000 home (per tax year)			$ 29.79	$ 58.70	$ 86.73	$ 113.89	$ 140.20	$ 165.65
Estimated Total Amount of Additional Taxes on a $240,000 home due to BFOF over the life of bonds								$ 2,707

*Assumes no additional borrowing other than the $64M BFOF project, included to illustrate the tax rate impact of the project

Attachment C

Attachment D

City of Portland, Maine
Multi-Modal Taxable General Obligation Bonds
Debt Service Schedule as of 07/17/2001

	Date	Principal	Coupon	Interest	Debt Service	Annual Interest	Annual Debt Service	UAAL	Savings	Balance Outstanding
	7/19/01									
	12/1/01	-	4.919%	2,016,462	2,016,462	-	-	-	-	111,800,000
	6/1/02	-	4.919%	2,749,721	2,749,721	4,766,183	4,766,183	5,717,120	950,937	111,800,000
	12/1/02	-	4.664%	2,607,176	2,607,176	-	-	-	-	111,800,000
	6/1/03	-	4.664%	2,607,176	2,607,176	5,214,352	5,214,352	6,060,148	845,796	111,800,000
	12/1/03	-	4.989%	2,788,851	2,788,851	-	-	-	-	111,800,000
	6/1/04	-	4.989%	2,788,851	2,788,851	5,577,702	5,577,702	6,423,756	846,054	111,800,000
	12/1/04	-	5.334%	2,981,706	2,981,706	-	-	-	-	111,800,000
	6/1/05	-	5.334%	2,981,706	2,981,706	5,963,412	5,963,412	6,809,182	845,770	111,800,000
	12/1/05	-	5.610%	3,135,990	3,135,990	-	-	-	-	111,800,000
	6/1/06	100,000	5.610%	3,135,990	3,235,990	6,271,980	6,371,980	7,217,732	845,752	111,800,000
	12/1/06	-	6.003%	3,352,676	3,352,676	-	-	-	-	111,700,000
	6/1/07	100,000	6.003%	3,352,676	3,452,676	6,705,351	6,805,351	7,650,796	845,445	111,700,000
	12/1/07	-	6.419%	3,581,802	3,581,802	-	-	-	-	111,600,000
	6/1/08	100,000	6.419%	3,581,802	3,681,802	7,163,604	7,263,604	8,109,844	846,240	111,600,000
	12/1/08	-	6.862%	3,825,565	3,825,565	-	-	-	-	111,500,000
	6/1/09	100,000	6.862%	3,825,565	3,925,565	7,651,130	7,751,130	8,596,436	845,306	111,500,000
	12/1/09	-	7.331%	4,083,367	4,083,367	-	-	-	-	111,400,000
	6/1/10	100,000	7.331%	4,083,367	4,183,367	8,166,734	8,266,734	9,112,222	845,488	111,400,000
	12/1/10	-	7.829%	4,356,839	4,356,839	-	-	-	-	111,300,000
	6/1/11	100,000	7.829%	4,356,839	4,456,839	8,713,677	8,813,677	9,658,954	845,277	111,300,000
	12/1/11	-	8.357%	4,646,492	4,646,492	-	-	-	-	111,200,000
	6/1/12	100,000	8.357%	4,646,492	4,746,492	9,292,984	9,392,984	10,238,492	845,508	111,200,000
	12/1/12	-	8.903%	4,945,617	4,945,617	-	-	-	-	111,100,000
	6/1/13	115,000	8.903%	4,945,617	5,060,617	9,891,233	10,006,233	10,852,800	846,567	111,100,000
	12/1/13	-	8.903%	4,940,497	4,940,497	-	-	-	-	110,985,000
	6/1/14	775,000	8.903%	4,940,497	5,715,497	9,880,995	10,655,995	11,503,968	847,973	110,985,000
	12/1/14	-	8.903%	4,905,998	4,905,998	-	-	-	-	110,210,000
	6/1/15	1,535,000	8.903%	4,905,998	6,440,998	9,811,996	11,346,996	12,194,206	847,210	110,210,000
	12/1/15	-	8.903%	4,837,668	4,837,668	-	-	-	-	108,675,000
	6/1/16	2,400,000	8.903%	4,837,668	7,237,668	9,675,335	12,075,335	12,925,858	850,523	108,675,000
	12/1/16	-	8.903%	4,730,832	4,730,832	-	-	-	-	106,275,000
	6/1/17	3,390,000	8.903%	4,730,832	8,120,832	9,461,663	12,851,663	13,701,410	849,747	106,275,000
FY18	12/1/17	-	8.903%	4,579,926	4,579,926	-	-	-	-	102,885,000
	6/1/18	4,515,000	8.903%	4,579,926	9,094,926	9,159,852	13,674,852	14,523,494	848,642	102,885,000
	12/1/18	-	8.903%	4,378,941	4,378,941	-	-	-	-	98,370,000
	6/1/19	5,790,000	8.903%	4,378,941	10,168,941	8,757,881	14,547,881	15,394,904	847,023	98,370,000
	12/1/19	-	8.903%	4,121,199	4,121,199	-	-	-	-	92,580,000
	6/1/20	7,230,000	8.903%	4,121,199	11,351,199	8,242,397	15,472,397	16,318,598	846,201	92,580,000
	12/1/20	-	8.903%	3,799,355	3,799,355	-	-	-	-	85,350,000
	6/1/21	8,850,000	8.903%	3,799,355	12,649,355	7,598,711	16,448,711	17,297,714	849,004	85,350,000
	12/1/21	-	8.903%	3,405,398	3,405,398	-	-	-	-	76,500,000
	6/1/22	10,675,000	8.903%	3,405,398	14,080,398	6,810,795	17,485,795	18,335,578	849,783	76,500,000
	12/1/22	-	8.903%	2,930,200	2,930,200	-	-	-	-	65,825,000
	6/1/23	12,725,000	8.903%	2,930,200	15,655,200	5,860,400	18,585,400	19,435,712	850,312	65,825,000
	12/1/23	-	8.903%	2,363,747	2,363,747	-	-	-	-	53,100,000
	6/1/24	15,025,000	8.903%	2,363,747	17,388,747	4,727,493	19,752,493	20,601,856	849,363	53,100,000
	12/1/24	-	8.903%	1,694,909	1,694,909	-	-	-	-	38,075,000
	6/1/25	17,600,000	8.903%	1,694,909	19,294,909	3,389,817	20,989,817	21,837,966	848,149	38,075,000
	12/1/25	-	8.903%	911,445	911,445	-	-	-	-	20,475,000
FY26	6/1/26	20,475,000	8.903%	911,445	21,386,445	1,822,889	22,297,889	23,148,244	850,355	20,475,000
	Total	111,800,000		180,578,566	292,378,566	180,578,566	292,378,566	313,666,990	21,288,424	

In FY27, the City operating budget will no longer have any debt service related to the Pension Obligation Bond. The final debt service payments of $22.2M represents an overall debt principal reduction of $20.4M and the complete $111.8M POB will have been repaid. This debt reduction could be replaced with new debt, the annual debt service could be moved into an operating account for capital maintenance paid with operating funds (instead of debt), or the City could choose not to replace the expenditure and simply reduce the mil rate by approximately $2.87. These decisions and many others, including potential restructuring of the bonds, will be investigated over the next several fiscal years.

PIERCE ATWOOD LLP

Attachment E

Merrill's Wharf
254 Commercial Street
Portland, ME 04101
207-791-1100

Memo

To: Brendan O'Connell, Director of Finance
Anita R. LaChance, Deputy City Manager

From: Jim Saffian, Bond Counsel

Date: October 27, 2016

Re: School Debt Issues

This memorandum discusses the following issues pertaining to the Portland School Department's proposed "Buildings for Our Future" school projects (the "Proposed School Projects") with an estimated requested bond authorization of $70.5 million (the "Bonds").

- Bond Debt Limit
- Referendum Requirements
- Impact of Local Referendum
- Timing Issues
- Local Funding vs. State School Construction Subsidy
- Form of Referendum Question / Bonding Flexibility

I. <u>Bond Debt Limit</u>

- *<u>Debt Limit – State Law</u>*

Title 30-A, Section 5702[1] of the Maine Revised Statutes establishes various municipal debt limits, including a limitation for schools, based on a municipality's then-current state valuation, as certified by the Secretary of State. The City's current (2016) state valuation is $7,996,350,000. Based on this, the City is subject to the following debt limitations under Section 5702:

1. School debt limit: $799,635,000 (10% of State Valuation)

---

[1]Note that Title 30-A, Section 5703 excludes certain types of debt from the Section 5702 debt limit, including but not limited to State subsidized school debt and revenue bonds (such as the revenue bonds issued for the Jetport) issued under Chapter 213 of Title 30-A.

2.	Sewer debt limit:	$599,726,250 (7.5%)
3.	Water/airport/special purpose district debt limit:	$239,890,500 (3%)
4.	Other debt limit:	$599,726,250 (7.5%)
5.	Total debt limit:	$1,199,452,500 (15%)

As of June 30, 2015, the City had $36,050,000[2] of school debt outstanding. Thus, under the State law debt limit, this leaves the City with $734,670,000 of school project bonding capacity.

- *Debt Limit – City Debt Management Policy*

In addition to the State law debt limit, the City's Debt Management Policy (the "Policy") adopted in 2011, establishes a separate debt limit and other debt issuance requirements. While the Policy confirms that City will comply with the above-discussed State law debt limit under Title 30-A, the Policy also establishes a more restrictive debt limit, stating that the City's total debt should not exceed 5% of the City's state valuation. This more restrictive debt limit limits the City's total debt outstanding to $399,817,500. As of June 30, 2016, the City's total debt outstanding was $294,405,698.

In addition, the Policy requires that the City evaluate each bond issue under the following criteria: Demand, Capacity, Affordability, Term and Payment Structure.

1. *Demand*— evaluates the need for borrowing, measured by the City's Capital Plan and other capital investment opportunities.

2. *Capacity*— evaluates the maximum amount to borrow, based on (a) current and projected annual debt service level, (b) current outstanding debt, (c) market conditions (including opportunities to participate in low interest programs) and (d) economic conditions, including cost of construction.

3. *Affordability*—evaluates the fiscal impact, based on a projection of annual debt service impact including both budgetary impact and tax impact. This element lists the following debt service metrics:
    a. Net debt service[3] should not exceed 15% of general fund expenditures. Currently the City's net debt service is $27,518,651, 9.49% of FY17 general fund expenditures.
    b. Net debt service should not exceed 1.5% of per capita income. Currently the City's net debt service is 0.9% of per capita income.
    c. Net debt per capita should not exceed the "moderate" range by Moody's (currently $5,000). Currently the City's debt per capita is $3,174.

---

[2]This amount includes the City's Ocean Avenue School Bonds, which were approved for State school construction subsidy. Thus a portion of this debt ($10,650,000 principal amount outstanding as of June 30, 2015) need not be included in the State law debt limit calculation.

[3]Net of Enterprise Funds and State reimbursed School Debt Service.

4. *Term*—establishes the goal of the shortest economically feasible payback period.

5. *Payment Structure*—establishes a preference for level principal amortization.

II. Referendum Requirements

- *Referendum Requirements*

City Charter: Article VII, Section 16(a) of the City Charter, states that:

(a) The city council shall submit the following to voter referendum:

(1) Orders or resolves authorizing the issuance of general obligation securities of the city in a principal amount greater than five one-hundredths of one (1) percent of the last certified state valuation of the city for a single capital improvement or item of capital equipment; or

Based on the City's current 2016 state valuation, a bond order in the amount of $3,998,175 or more for a single capital improvement or item of capital equipment, unless excepted under Article VII, Section 16(b), triggers the referendum requirement.

Article VII, Section 16(b) provides for the following three exceptions to the referendum requirement: (i) refunding bonds, (ii) street, storm water and sewer bonds and (iii) bonds for a declared emergency.

(b) The provisions of this section shall not be applicable to any order or resolve authorizing (i) the refunding of any securities or other obligations of the city; (ii) the issuance of general obligation securities, or other direct or indirect obligations, of the city for streets, sidewalks, or storm or sanitary sewers; or (iii) any construction or financing of improvements or equipment needed as a result of fire, flood, disaster or other declared emergency. For purposes of this section, the city council may by vote of at least seven (7) of its members adopt emergency orders or resolves authorizing construction or financing of improvements or equipment needed as a result of fire, flood, disaster or other emergency and such orders or resolves shall contain a section in which the emergency is set forth and defined; provided, however, that the declaration of such emergency by the city council shall be conclusive.

Thus, the proposed school Bonds would need to be submitted to a referendum vote unless the City Council were to determine that the Proposed School Projects were so critical that emergency circumstances existed. In that event, the proposed school Bonds would be exempt from the Charter referendum requirement and could be authorized in the usual process by City Council action.

State Law Referendum Requirement for School Construction Projects: There is no requirement under the general Maine statutes that municipal bond questions be submitted to a referendum vote. However, State law does establish a referendum vote in some specific circumstances. One such circumstance applies to school construction projects that have been approved for State subsidy. If any or all of the Proposed School Projects are approved for State subsidy, then the project must comply with the specific approval and referendum requirements under Title 20-A, Section 15904(1) of the Maine Revised Statutes. Please also note, that Title 20-A imposes a variety of approval steps and requirements on a State subsidized project. Thus, if any of the Proposed School Projects are approved for State subsidy, that project would need to be submitted to a referendum vote on a stand-alone basis and not as part of a larger aggregated, bond referendum question.

III. Impact of Local Referendum

Based on conversations with the Department of Education, if a school construction project obtains a local funding approval, it is not eligible for inclusion on the Department's State subsidy Approved Projects List. This has been the State's policy for the last decade. No application will be reviewed and, if the project is already on the list, it will be removed.

Therefore, if the City obtains referendum approval for the Longfellow and Reiche School Projects (currently on the Approved Projects List), this will cause the State to remove those projects from the Approved Projects List and end the possibility of obtaining State subsidy for those projects. Thus, proceeding to a local referendum now would remove the possibility of State school construction subsidy approval for any of the Proposed School Projects, including those already on the list.

IV. Timing Issues

Once a non-State subsidized project is approved by the voters, there is no specific time limit in which the authorized bonds must be issued. If the Bond Order or referendum question does not establish an "issue by" date, the authority to issue the Bonds remains in effect for an indefinite period of time. As long as the project has not been abandoned (a non-specific term of art), the authority will remain in place. For example, if all four Proposed School Projects were approved at referendum, it would be reasonable to assume that those projects would be constructed over some extended period of time. There would be no issue with issuing the authorized over this time frame.

Conversely, a State subsidized project is built off of the date the State has approved for when the debt subsidy will start. So, for example, if the State approves a project for State school construction subsidy, with the debt service subsidy to start in the fall of 2019, then the bonds for that project must be issued in either the spring or the fall of 2018. The Rules impose various other time-requirements. I've attached a pro-forma project schedule that assumes a fall 2019 bond issue.

V. Local Funding vs. State School Construction Subsidy

As discussed above under the "State Law Referendum Requirement" paragraph, State law imposes its own referendum requirement on a State subsidized project. In addition, the State School Construction Rules lay out a detailed project schedule that sets out various project benchmarks (design approval, public hearings, straw votes, funding approval, etc.) that do not apply to non-State subsidized debt. These involve design review and approval, approval by the State Board of Education and final funding approval by the Commissioner of the Department of Education. The School Construction Rules also establish various time requirements for the project approvals to be put in place.

VI. Form of Referendum Question / Bonding Flexibility

For non-State subsidized projects, the City has a great deal of flexibility in framing the referendum question. The scenarios run the gamut from (a) each project getting its own referendum question to (b) all the projects being submitted in a single question but each with its own bonding amount to (c) all projects begin submitted at once with a single aggregate, lump-sum bonding amount that can then be allocated among the various projects at an City administrative level. The underlying Bond Order adopted by the City Council (and submitted to the voters) would specify who has the authority to allocate bonds among the various Proposed School Projects.

In contrast, a State subsidized project must be submitted as a stand-alone question. In addition, the question must be presented in a form established by State law and must be framed to establish: (i) approval of the project and location, (ii) total project costs, (iii) total state subsidized costs and local costs, and (iv) total bonding amount.

I hope this information is helpful to you as you complete your planning for the Proposed School Projects. Please do not hesitate to contact me if you have any further questions.

Debt Management Policy - As of June 30, 2016

	Target	Current	Status	Capacity until Limit Reached
1. Net debt service* payments should not exceed 15% of general fund expenditures	15%	9.49%	OK	$15.9M of additional debt service
2. Net debt service* payments(should not exceed 1.5% of per capita income**	1.5%	0.89%	OK	$18.8M of additional debt service
3. Net Debt per capita should not exceed the "moderate" range by Moody's, currently at $5,000	$5,000	$3,174	OK	$120.8M of borrowing capacity
4. Total outstanding debt should not exceed 5% of the State equalized valuation of the City	5%	2.63%	OK	$189.6M of borrowing capacity
A. Comply with State law (limits long term debt outstanding to 15% of state equalized valuation)	15%	2.63%	OK	$989.2M of borrowing capacity

*Net Debt Service equals budgeted debt service net of Enterprise Funds and State reimbursed School DebtService

**Per Capita Personal Income, as published by the U.S. Bureau of Economic Analysis (BEA), Bearfacts, forPortland-South Portland-Biddeford region.

Attachment F

School Facilities Ad Hoc Committee Official Proposal 2/16/17

On January 19th, after eight public meetings including tours of all four schools and two public hearings, the School Facilities Ad Hoc Committee (SFC), consisting of the Mayor, three Councilors and four School Board Members, formally endorsed a modified school bond to renovate Presumpscot, Longfellow, Reiche and Lyseth. The proposal addresses significant deferred maintenance at all four schools, creates equity and modernizes learning environments. The vote was 7-1 (Mavodones opposed). On Jan. 31, the school board, after a public hearing, unanimously endorsed the same. The vote was 9-0, plus the three HS reps.

The SFC proposal trims the original package of $70,967,00 by just over 14% to $60,958,164. While the specific borrowing schedule will undoubtedly shift, the projected cumulative tax increase from the proposed bond is 3% phased in over six years. On an average ($225,000) home, the total tax increase would be $148.11 over the six years, or around $25 (.5%) per year. For the projected life of the borrowing (27 years), the cost would be $2,406 or $89 a year on an average home.

The modified proposal upgrades the four schools in the following ways (highlights):

Presumpscot: Modulars eliminated and over 9,000ft^2 of classroom space added. Separate gym and lunchrooms created. Adequate OT, PT, ELL, music, art, library, kitchen and restroom space added. Improved security and sightlines for the entrance. More functional parent drop off/bus loop constructed. Upgraded learning technology, plumbing, electrical and sprinklers installed. Significant deferred maintenance addressed. LEED Certified. *Cost: $13,628,178*

Longfellow: Building made fully ADA compliant with new, more secure entrance. Full asbestos abatement. Separate gym and lunchrooms created. Adequate reading, ELL, Gifted & Talented, music, art, library, and kitchen space. Upgraded learning technology, plumbing, electrical and sprinklers installed. Significant deferred maintenance addressed. LEED Certified. *Cost: $13,783,644*

Reiche: Acoustic and lighting problems corrected. Enclose classroom corridor walls and provide operable partitions. Maintains ability for open spaces for collaborative learning. Appropriate health station created. Rightsize art, music and reading spaces. Pre-K, Title1, OT, PT and Reading 180 spaces added. Upgraded learning technology, plumbing, electrical and sprinklers installed. Solar heater for the pool. Significant deferred maintenance addressed. LEED Certified. *Cost: $17,246,276*

2/16/17

Lyseth: Modulars eliminated and classroom space added. Pre-K, Kindergarten and Gifted & Talented space created. Adequate ELL, speech, art, music, library, nurse's station and social worker space added. Separate gym and lunchrooms created. Upgraded learning technology, plumbing, electrical and sprinklers installed. Significant deferred maintenance addressed. LEED Certified. *Cost: $16,300,065*

Proposed Changes From the Original Package

The modifications from the original Buildings for Our Future proposal were developed in concert with school principals to ensure that the schools are maximizing learning environments, while making budget adjustments that did not have an adverse impact on the educational experience for future students. The modifications are:

- Realize savings through bulk purchasing of movable and built-in equipment.
- Reduce gyms to elementary size and remove locker rooms (Lys, Pre, Long).
- Eliminate playground upgrades and outdoor learning improvements.
- Shift some site and electrical work to state application or CIP.
- Add full time Project Coordinator to each school to lead renovation.
- Add operable partitions for collaborative instruction as appropriate.
- Eliminate 2nd floors from Lyseth and Presumpscot (retain ability for future additions).

OAK POINT ASSOCIATES
architecture
engineering
planning

Buildings for Our Future

Committee Co-Chair Four School Proposal

January 19, 2017

	Longfellow	[illegible]	Presumpscot	Reiche	Total
A CONSTRUCTION					
1 Construction Estimate					
Renovation/Reconfiguration					
Structural/Architectural	$2,347,330	[illegible]	$1,194,543	$3,357,532	$8,583,964
Mechanical/Plumbing/Sprinkler	$2,162,112	[illegible]	$883,160	$3,469,776	$8,120,946
Electrical	$1,342,928	[illegible]	$599,972	$2,417,551	$5,823,618
Renovation non-equity model	$1,639,264	[illegible]	$424,113	$2,691,906	$5,438,785
New Construction/Addition	$3,232,078	[illegible]	$7,500,983	$1,235,521	$19,701,998
Demolition	$0	[illegible]	$0	$0	$80,744
Built-in Equipment	$699,444	[illegible]	$570,678	$487,236	$2,395,565
Site Development	$1,135,151	[illegible]	$1,319,436	$804,796	$5,515,600
Elevator (CIP Project)	$0	$0	$0	$800,000	$800,000
Subtotal	$12,558,306	[illegible]	$12,493,085	$13,658,517	[illegible]
B ADMINISTRATIVE COSTS & RESERVES					
2 Land Purchase and Related Costs	$0	$0	$0	$0	$0
3 Moveable Equipment	$1,028,084	[illegible]	$1,005,628	$1,180,835	$4,412,839
4 Advertising and Legal	$55,000	[illegible]	$55,000	$55,000	$220,000
5 Percent for Art	$0	$0	$0	$0	$0
6 Project Reserves	$35,000	[illegible]	$35,000	$35,000	$140,000
7 Project Contingency	$1,255,831	[illegible]	$1,249,309	$1,365,852	[illegible]
Subtotal	$2,373,915	[illegible]	$2,344,937	$2,636,687	$10,216,962
C FEES AND SERVICES					
8 Architect / Engineer Basic Services	$1,112,237	[illegible]	$999,315	$1,286,989	[illegible]
9 Architect / Engineer Additional Services	$10,000	$10,000	$10,000	$10,000	$40,000
10 Architect / Engineer Reimbursables	$39,400	[illegible]	$39,400	$39,400	$157,600
11 Site Selection	$0	$0	$0	$0	$0
12 Permitting & Approvals	$18,760	[illegible]	$18,760	$18,760	[illegible]
13 Survey and Soils	$39,500	[illegible]	$39,500	$39,500	$164,000
14 Construction Testing	$15,000	$15,000	$15,000	$15,000	$60,000
15 PPS/City Project Manager	$125,000	$125,000	$125,000	$125,000	$500,000
16 Clerk of the Works	$84,000	$84,000	$84,000	$84,000	$336,000
17 Commissioning	$65,000	[illegible]	$60,000	$60,000	$265,000
18 Other Professional Services	$0	$0	$0	$0	$0
Subtotal	$1,508,897	[illegible]	$1,390,973	$1,698,329	[illegible]
D TOTAL PROJECT COST	$15,441,119	[illegible]	$16,229,001	$17,993,533	[illegible]
E PROPOSED ADJUSTMENTS FROM BFOF					
19 Proposed adjustments (see individual project budgets)	-$2,657,474	[illegible]	-$2,600,822	-$747,256	-$10,010,065
F PROPOSED TOTAL PROJECT COSTS	$13,783,644	[illegible]	$13,628,178	$17,246,276	[illegible]

2/14/17

Proposed amendment to the Buildings for Our Future (BFOF) bond:

2/23/17

Adding $1,080,484 for installation of an elevator and $524,000 for masonry restoration, to the Longfellow School project for a new total of $15,388,128, and

Adding $1,697,489 for site improvements to the Lyseth project, for a new total of $17,997,554.

Bringing the new total for the BFOF project to $64,260,000

Passed 2-0 at Finance Committee on 2/23/17 (Mavodones absent)

Councilor Ray Amendment
(amends and replaces original bond order)

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER APPROVING LYSETH ELEMENTARY SCHOOL RENOVATION PROJECT AND OTHER MISCELLANEOUS IMPROVEMENTS AT REICHE, OCEAN AVENUE, PEAKS ISLAND AND RIVERTON ELEMENTARY SCHOOLS, LYMAN MOORE AND KING MIDDLE SCHOOLS, AND DEERING HIGH SCHOOL WITH TOTAL PROJECT COSTS NOT TO EXCEED $24,000,000 AND AUTHORIZING GENERAL OBLIGATION BONDS THEREFORE

FOLLOWING a public hearing of the City Council of the City of Portland, Maine, held upon due notice pursuant to Article VII, Section 9 of the City Charter, IT IS HEREBY

ORDERED THAT:

There be and hereby is authorized and approved the renovation, furnishing and equipping of Lyseth elementary school and other miscellaneous school improvements with total project costs not to exceed $24,000,000 (the "School Projects"), as follows:

Lyseth	**Substantially renovated and rehabilitated**	**$16,362,275**
Lyseth	**Bus Loop, Field Work, and Drainage Issues**	**$1,450,000**
Lyseth & Lyman Moore	**Moore Parking Improvements**	**$247,489**
Lyman Moore	**Fire Alarm Installation and Upgrades**	**$270,000**
King	**Fire Alarm Installation and Upgrades**	**$270,000**
Ocean Avenue	**Four Classrooms**	**$1,500,000**
Reiche Elementary	**New Brackett Street Entrance**	**$2,400,106**
Peaks Island & Riverton	**Energy Efficiency Upgrades (Peaks: ceiling & lighting upgrades; Riverton: heat piping in new wing, replace original rooftop AC)**	**$170,000**
Deering High	**Sprinklers & Fire Alarm Installation and Upgrades**	**$1,330,130**
	TOTAL:	**$24,000,000**

and that there be and hereby is authorized the issue and sale of the City's general obligation bonds in the aggregate principal amount not to exceed $24,000,000 to finance the costs of such Project.

BE IT FURTHER ORDERED

1. That the Director of Finance be and hereby is authorized to prepare, issue, and sell such bonds in the name of and on behalf of the City, in the aggregate amount of $24,000,000 (the "Bonds") at one time, or from time to time, as one or more separate bond issues, and to determine the date, form,

minimum denomination, interest rates (as term bonds or serial bonds or some combination thereof), maturities (with the last maturity not to exceed the maximum term permitted by law) and all other details, terms and provisions, not inconsistent herewith, including the form and manner of their sale and award as he may approve, such approval to be conclusively evidenced by the execution thereof;

2. That the Director of Finance be and hereby is authorized to borrow money in anticipation of said Bonds by the issuance and sale of one or more notes or renewal notes in anticipation of said Bonds ("BANs"), and to determine the date, form, minimum denominations, interest rate, maturities (with the last maturity of any BAN not to exceed 3 years from its date of issuance) and all other details of each issue of BANs, including the form and manner of their sale and award, subject to the provisions of the law, the City Charter and this Order;

3. That the Director of Finance be and hereby is authorized to provide that any of the Bonds and BANs hereinbefore authorized be made subject to call for redemption, with or without premium, prior to their stated dates of maturity, as provided in 30-A M.R.S.A. §5772(6), as amended;

4. That any Bond or BAN issued hereunder shall be signed by the Director of Finance and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof;

5. That the Director of Finance is authorized to negotiate, execute, and deliver, in the name of and on behalf of the City such contracts, agreements, and other documents, including leases, instruments and certificates as may be necessary or appropriate as determined and approved by the Director of Finance in connection with the financing of the School Projects, which documents shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Director of Finance such approval to be conclusively evidenced by his execution thereof;

6. That the Director of Finance be and hereby is authorized to select the underwriter for the Bonds or BANs heretofore authorized and the Director of Finance be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith;

7. That the Director of Finance be and hereby is authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement for use in the offering and sale of the Bonds or BANs heretofore authorized, such Preliminary Official Statement and Official Statement to be in such form and contain such information as may be approved by the Director of Finance, with the advice of the bond counsel for the City, and that the use and distribution of the Preliminary Official Statement and the Official Statement in the name of and on behalf of the City in connection with offering the Bonds or BANs for sale be and hereby is approved;

8. That the Director of Finance be and hereby is authorized to select the registrar, paying agent and transfer agent (the "Transfer Agent") for the Bonds or BANs heretofore authorized and to execute and deliver such contracts and agreements as may be necessary or appropriate to secure their services;

9. That the Bonds or BANs heretofore authorized shall be transferable only on the registration books of the City kept by the Transfer Agent, and said principal amount of the bonds of the same maturity (but not of other maturity) in minimum denominations of $5,000 and any integral multiple in

excess thereof upon surrender thereof at the principal office of the transfer agent, with a written instrument of transfer satisfactory to the transfer agent duly executed by the registered owner or his attorney duly authorized in writing. Upon each exchange or transfer of a bond the City and the Transfer Agent shall make a charge sufficient to cover any tax, fee or any other governmental charge required to be payable with respect to such exchange or transfer, and with respect to such exchange or transfer, and subsequent to the first exchange or transfer, the cost of preparing new bonds upon exchanges or transfer thereof to be paid by the person requesting the same;

10. That the Director of Finance be and hereby is authorized to undertake all acts necessary to provide for the issuance and transfer of such Bonds or BANs heretofore authorized in book-entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraph above regarding physical transfer of Bonds or BANs, and the Director of Finance be and hereby is authorized and empowered to enter into a Letter of Representation or any other contract, agreement or understanding necessary or, in his opinion, appropriate in order to qualify the Bonds or BANs for and participate in the Depository Trust Company Book-Entry Only System;

11. That the Director of Finance and Mayor from time to time shall execute such Bonds or BANs as may be required to provide for exchanges or transfers of Bonds or BANs as heretofore authorized, all such Bonds or BANs to bear the original signature of the Director of Finance and Mayor, and in case any officer of the City whose signature appears on any Bond or BAN shall cease to be such officer before the delivery of said Bond or BAN, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery thereof;

12. That if the Bonds or BANs, or any part of them, are issued on a tax exempt basis, the Director of Finance be and hereby is authorized and directed to covenant and certify on behalf of the City that no part of the proceeds of the issue and sale of the Bonds or BANs authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such Bonds or BANs to be "arbitrage bonds" or "private activity bonds" within the meaning of Sections 148 and 141 of the Internal Revenue Code of 1986, as amended;

13. That if the Bonds or BANs, or any part of them, are issued on a tax exempt basis, the officers or officials executing the Bonds or BANs be and hereby are individually authorized to covenant and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports and take any other action that may be necessary to insure that interest on the notes will remain exempt from federal income taxation, and that the City will refrain from any action that would cause interest on the Bonds or BANs to be subject to federal income taxation;

14. That the officers executing the Bonds or BANs be and hereby are individually authorized to covenant, certify and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to insure that the disclosure requirements imposed by Rule 15c2-12 of the Securities and Exchange Commission, if applicable, are met;

15. That any or all of the Bonds or BANs issued hereunder may be consolidated with and become a part of any other issue of temporary notes or general obligation bonds authorized to be issued by any previous or subsequent order of the City Council of the City of Portland;

16. That the term "cost" or "costs" as used herein and applied to the School Projects, or any portion thereof, includes, but is not limited to (1) the cost to design, acquire, construct, renovate, improve,

furnish and equip the School Projects, or any portion thereof; (2) the cost of land, easements and other real property interests, landscaping and site preparation, including demolition and environmental remediation work on any existing building or structure and on the property where the School Projects is located, utility extensions and site improvements, and all appurtenances and other fixtures, facilities, buildings and structures either on, above, or under the ground which are used or usable in connection with the School Projects; (3) the cost of feasibility studies, surveys, environmental studies and assessments, engineering, plans and specifications, legal and other professional services associated with the School Projects; (4) issuance costs, including premiums for insurance, capitalized interest and other fees and expenses relating to the financing transaction.

17. That if the actual cost of any Elementary School Project differs from the estimated cost set forth herein, whether due to completion, delay or abandonment of said Elementary School Project for any other reason, the Director of Finance is authorized, in his discretion to allocate or reallocate proceeds of the Bonds to any other listed Elementary School Project;

18. That the Director of Finance, Mayor and Clerk and other proper officials of the City be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds or BANs hereinabove authorized;

19. That if any of the officers or officials of the City who have signed or sealed the Bonds shall cease to be such officers or officials before the Bonds or BANs so signed and sealed shall have been actually authenticated or delivered by the City, such Bonds or BANs nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds or BANs had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed on behalf of the City by those persons who, at the actual date of the execution of such Bonds or BANs, shall be the proper officers and officials of the City, although at the nominal date of such Bonds or BANs any such person shall not have been such officer or official;

20. That if the Director of Finance, Mayor or Clerk are for any reason unavailable to approve and execute the Bonds or BANs or any other documents necessary or convenient to the issuance, execution and delivery of the Bonds or BANs, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had performed such act.

21. That the Bonds or BANs authorized by this Order are in addition to any bonds or notes previously authorized for the same or similar purposes;

22. That to the extent not payable from other funds, an amount sufficient for the payment of the annual payments of principal and interest on the Bonds or any BANs issued hereunder shall be included in the tax levy of each year until the debt represented by said Bonds or BANs is extinguished.

23. That during the term any of the Bonds (or bonds issued to refund such Bonds) are outstanding, the Director of Finance be and hereby is authorized to issue and deliver refunding bonds to refund some or all of the Bonds then outstanding, and to determine the date, form, interest rate, maturities and all other details of such refunding bonds, including the form and manner of their sale and award. The Director of Finance be and hereby is further authorized to provide that any of such refunding bonds hereinbefore authorized be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond issued hereunder shall be signed by the Director of Finance and by

the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof.

$24 Million School Bond Proposal *sponsored by Councilor Belinda Ray*

Facility	Description of Work	Amount
Lyseth Elementary	Modulars eliminated and classroom space added. Pre-K, Kindergarten and Gifted & Talented space created. ELL, speech, art, music, library, nurse's station, and social worker space added. Separate gym and cafeteria created. Upgraded learning technology, plumbing, electrical, and sprinklers installed.	$16,362,275
Lyseth	Bus Loop, Field Work, and Drainage Issues	$1,450,000
Lyseth & Lyman Moore	Moore Parking Improvements	$247,489
Lyman Moore	Engineering for Fire Alarm + Fire Alarm Install	$270,000
King	Engineering for Fire Alarm + Fire Alarm Install	$270,000
Ocean Avenue	Four Classrooms	$1,500,000
Reiche	New Brackett Street Entrance (Engineering & Construction)	$2,400,106
Peaks Island & Riverton	Energy Efficiency Upgrades (Peaks: ceiling & lighting upgrades; Riverton: heat piping in new wing, replace original rooftop AC)	$170,000
Deering High	Sprinklers & Fire Alarm Upgrades	$1,330,130
	TOTAL BOND PROPOSAL	**$24,000,000**

Tax Impact over life of bonds: 1.2% increase (vs. 3.1% increase for $64 million bond)

Tax Increase on $240,000 property over life of bonds: $1010 (vs. $2707 for $64 million bond)

Overall Cost (Principal + Interest): $34 million (vs. $92 million for $64 million bond)

Q & A on the $24 Million School Bond Proposal

Q: Why Lyseth?

A: Multiple reasons.

1. **Of the four elementary schools being proposed for renovations, Lyseth is the least likely to qualify for state funding.** This was true in the 2010-2011 application cycle when it placed 43rd on the state list—last of the five school applications Portland submitted—and it is true according to the most recent analysis completed by Sebago Technics, in which Lyseth placed 4th of the four elementary schools that were scored.

   The schools that were deemed to have the best chance of receiving state funding by Sebago Technics are as follows (in order of points earned):

   1. Reiche & Longfellow Elementary (tied at 56 points)
   3. Presumpscot Elementary (54)
   4. Lyseth Elementary (53)
   5. PATHS (52)
   6. Portland High School (51)
   7. Casco Bay High School (46)
   8. Deering High School (44)

   By working on Lyseth first, we will preserve the possibility of obtaining state funding for one or more of the other three elementary schools being considered in the larger bond.

2. As city operations staff have pointed out, the **site plans and permitting for Lyseth are at 65% completion.** With this preliminary work already underway, construction could start in early spring of 2018.

3. **Lyman Moore, which is situated on the same campus as Lyseth, has the capacity to create a 5th grade wing during the construction project**, so we have a place to put the students without great disruption.

4. The completion of Lyseth will add capacity and **eliminate the use of modulars** at the school.

Q: Ocean Ave is relatively new. Why would we add classrooms there?

A: As is State practice, Ocean Avenue was designed in such a way that four classrooms could easily be added at a later date if the extra capacity became necessary. It is necessary now.

The construction of these four classrooms must take place before we can begin construction on the other elementary schools.

At present, with the $64 million bond, there is no plan for housing students dislocated by the construction—and students will be displaced by the construction. So before construction can begin on the other elementary schools, swing space must be added within the district. With these four classrooms added, that swing space will be created.

The engineering has already been done for this work, which means it can be completed very quickly.

Again, without this added swing space in the system, we cannot begin renovating the other elementary schools without serious disruption to the educational programs of their students.

Additionally, with this added capacity in the system, schools which are at or above capacity can find some relief through enrollment management.

* Hall School is being designed with the ability to add eight classrooms at a future date.

Q: You're including a new entry at Reiche. Won't that make it ineligible for state funding?

A: No. This project will not affect Reiche's application for state funding.

While the state would not consider an application for a school that has been locally bonded for large scale renovations or capital construction, there is a hold harmless clause in the law that assures school districts they will not lose points in the application process if they do work that relates to the health and safety of the students.

The Reiche ramp on the Brackett Street side of Reiche represents such a project. It is in need of repair, and it doesn't make sense to wait several years to address this issue.

For this project, the ramp will come down and a new entrance and staircase will be installed. The second story will be enclosed, further separating the community from the school.

When this plan was explained to Scott Brown, who oversees the Major School Capital Construction application process, he said he didn't hear anything that would cause concern.

Q: How did you choose the other projects to include in this bond proposal?

A: The other projects included in this bond address short-term needs identified by both the 20-Year Draft Capital Plan created by Sebago Technics and city staff. They address basic safety, energy, and structural concerns at multiple buildings.

Q: If we adopt this bond proposal, when will we get to Reiche, Longfellow, and Presumpscot? Or for that matter, Peaks, Cliff, Casco Bay, PATHS, Portland High, and other buildings that need work?

A: This bond makes great strides toward tackling immediate needs at 8 schools: Lyseth, Lyman Moore, Ocean Avenue, Reiche, Peaks Island, Riverton, and Deering High. Passing this bond will put us in an excellent position to continue addressing the pressing needs at our other school facilities through our annual Capital Improvement Plan.

By the summer of 2018, we'll know which of our schools will receive state funding, and once we have that information, we can create a plan that makes the best use of local tax dollars and state funding to address our system's longer term needs, including large scale renovations at some schools.

The system wide facilities analysis that was drafted in November of 2016, and which is nearing completion now after several rounds of back and forth between Sebago Technics engineers and city operations staff, will be incredibly helpful as we make this plan. It will lay out for us year by year what we must tackle in order to keep our buildings safe, healthy, and structurally sound, so that we can continue prioritizing and completing projects.

It is likely that in order to complete the necessary work at all of our schools, we will have to seek a second bond package at some point in the future. But it would be premature (and fiscally irresponsible) to bond the schools that have the best chance for state funding when we know that our system wide needs are so great.

Q: Why are you so focused on state funding? I've heard there's no chance we're going to get any.

A: That is not true. We have an excellent chance of getting one or more schools funded in this application cycle.

In December, Superintendent Xavier Botana testified before the State Board of Education that Reiche and Longfellow both stood an excellent chance at receiving state funding in the current application cycle (2017-2018).

Superintendent Botana was before the State Board of Education in an attempt to obtain a guarantee of state funding for Longfellow and Reiche in advance of the new application cycle. He included the following statements in his testimony. (Superintendent Botana's full testimony is appended to the end of this document as Attachment 1.)

> "Past history suggests that the chances are good for schools in Longfellow and Reiche's position to receive state funding in the next round. A review of the 2001 list shows that out of the 5 schools just below the funding cut off, 3 of those schools received funding in the subsequent round. Of the remaining two schools, Peru Elementary School was consolidated with another school in Canton and SAD 28, Rockport came off the list because it became a locally funded project. Of the 5 schools just below the funding cut off for the 2004 list, 4 out of the 5 received funding in the 2010 round."
>
> "In other words, it is reasonable to expect that these schools, given their past trajectory and given the pressing needs (remember: 21 million in the next 10 years) as determined by our recent engineering report, will likely be funded in the next round."
>
> "In short, Portland is not asking the state to relieve it of its own obligations. On the contrary, Portland stands ready to invest tens of millions of local dollars to our elementary school renovations. All we ask is that the State help provide the certainty to allow us to pick a path and move forward. But no responsible stewards of public funds could finalize plans without knowing whether they needed to stretch available resources over 4 projects or concentrate on 2. And no responsible planners could forego the opportunity to advocate for State support knowing that history suggests a high likelihood that our projects will soon be funded by the state, knowing that there may not be enough local funds available to fully address the needs of 4 separate schools without state funding."

Q: The state will never fund more than one school in a single district. Shouldn't we just apply for the high schools and take care of the elementary schools locally?

A: No. First, the state funds schools according to their scores—not by town or region. And yes, sometimes that results in more than one school being funded in a single town or district.

- In the 2004-05 funding cycle, both Mallett Elementary ($14.5 million) and Mt. Blue High School/Foster Vocational Center ($56.6 million) were fully funded by the state. Both schools are in the Mt. Blue Regional School District.
- In the 2010-2011 funding cycle, three Sanford schools were chosen for funding by the state: Sanford High/Vocational Center ($100.2 million), Emerson Elementary School, and Lafayette Elementary School (bond figures not yet determined).
- In the 2010-2011 funding cycle, two Newport schools were funded: Nokomis High School and Newport Elementary School ($69 million for both schools).

Second, we don't know which of our schools will be the best candidate for state funding.

Our schools have occasionally shifted in terms of which of them have placed highest on the state list from year to year (Figure 1, next page), so we don't always know which school will be ranked highest on the list.

Despite this "internal shifting," however, it is important to note that our schools have consistently moved up on the state list (Figure 2, next page), getting closer and closer to state funding with each cycle.

Fig. 1: *A history of our schools' positions on the state list. The highlighted schools received state funding.*

	1st	2nd	3rd	4th	5th	6th	7th
2001-2002	Jack Elementary (9th)	Nathan Clifford (31st)	Lyseth (51st)	Hall (58th)	Presumpscot (62nd)	Reiche (67th)	Longfellow (73rd)
2004-2005	Nathan Clifford (1st)	Reiche (23rd)	Longfellow (48th)	Lyseth (53rd)	Hall (55th)	Presumpscot (61)	
2010-2010	Hall School (12th)	Longfellow (18th)	Reiche (21st)	Presumpscot (33rd)	Lyseth (43rd)		

If we eliminate the schools that received funding in this time period, you can see that in 2001, Lyseth presented our best chance for receiving state funding, followed by Presumpscot. In 2004 and 2010, Reiche and Longfellow ranked highest, although in 2004, Reiche was ahead of Longfellow on the list, and in 2010, Longfellow was three places ahead of Reiche.

Because we can't be sure which school will rank highest, we must apply for as many of the recommended schools as possible, so that we can take advantage of the maximum amount of state funding.

Fig. 2: *Rankings on the state list by school, by year. As you can see, they continue to move up the list.*

	Jack	Nathan Clifford	Hall	Reiche	Longfellow	Presumpscot	Lyseth
2001-2002	9th	31st	58th	67th	73rd	62nd	51st
2004-2005		1st	55th	23rd	48th	61st	53rd
2010-2011			12th	21st	18th	33rd	43rd

Despite their jockeying for position on the list, our schools have continued to move up the list each year, getting closer and closer to receiving state funding.

Q: But we can't wait! Our schools are crumbling. Don't we need to address the "significant deferred maintenance" I keep hearing about?

A: As Deputy City Manager Anita La Chance wrote:

There is no doubt that the four elementary schools included in the BFOF plan have deferred maintenance, as is the case with virtually every City and School asset.

However, Oak Point Associates, who developed the BFOF [Buildings For Our Future plan for the four elementary schools being considered for a $64 million bond], identified a little under $5.5 million in deferred maintenance in the four schools. That accounts for around 8.5% of the $64 million project.

To add weight to that data, the recently completed school facilities assessment identified less than $175,000 in immediate needs at the four schools and $8.1 million over the next 5 years. It is very clear that deferred maintenance is NOT driving the BFOF proposal.

In fact, Superintendent Botana requested that Emily Figdor, a leader of Protect Our Neighborhood Schools, stay away from the "significant deferred maintenance" language when they were working together to craft the flyer that went home in students backpacks earlier this year. In an email* commenting on a draft of the flyer Figdor had provided, he wrote:

I would prefer to eliminate the language about "significant investments" not being made. "Significant" is fairly subjective. At both Presumpscot and Lyseth the principals went out of their way to talk about the many improvements in their physical plant in recent years (mechanics, new windows, etc.).

[...]

Note that we just received a facility assessment for all of our buildings and the four schools have differing levels of needs (i.e., Reiche has large needs, Presumpscot not so much) and non-BFOF schools have much larger needs than most of the BFOF schools. So, focusing on delayed investments in those four schools begs the question about the other delayed investments. So, I would prefer to steer away from the delayed needs/upkeep and focus on the 21st Century Learning needs.

So while there is maintenance to be performed at all of our schools, the depiction that they are crumbling or that the $64 million bond must be passed in order to address deferred maintenance is false.

*This email is appended to the end of this document as Attachment 2.

ATTACHMENT 1:

Remarks by Xavier Botana, Portland Public Schools Superintendent to the Maine State Board of Education Construction Committee
December 2, 2016

Mr. Geiger, members of the State Board of Education Construction Committee, my name is Xavier Botana and I am the Superintendent of the Portland Public Schools. I am grateful for the opportunity to speak to you today about the district's request for approval of the construction projects for the Longfellow and Reiche elementary schools.

First, a little bit of background... The Portland Public Schools has 15 schools, including 9 elementary schools, three middle schools and three high schools. Last Spring, after years of consideration and planning, the Portland Board of Public Education advanced a proposal to the Portland City Council to have 4 elementary schools, Longfellow and Reiche, along with Lyseth and Presumpscot schools updated to 21st Century learning standards at an estimated cost of just over $70 million. The intent was for the Portland Council to approve a voter referendum for these projects.

This past summer, a week into my tenure, the City Council created an adhoc committee in collaboration with the Board to review all of the four schools' needs, project details, and overall financial impact to make a recommendation to move these schools forward. It became apparent early in the committee's work that while everyone understands the dire circumstances at these schools, as stewards of the public trust, our elected officials hesitate to take on these projects when the possibility exists for state funding for at least two of the schools. In fact, as you know, Longfellow and Reiche stand at #2 and #3 on the list of schools that have not been funded from the 2010-2011 state approved construction project list.

In September DOE announced that they would no longer fund projects from that list and that they would proceed with the development of a new list of projects. Based on the projected timeline for the development of a new list, new projects would be approved no earlier than Fall of 2018. With customary design and reviews, the earliest any project would break ground would likely be the Spring of 2022.

We realize that the September decision was a well-intended effort to address the projected shortfall in room under the state's debt ceiling in 2022. Given those projections (which, I believe are accurately reflected in our October 26th letter to DOE and November 9th letter to the State Board) it made sense for the DOE to determine it was time to develop a new list. After all, DOE could not recommend additional schools; and, as time has gone by in the six year's since that list was developed, schools throughout the state, including in Portland, that were not on the 2010 list have developed urgent needs and the relative position of schools on the list may have changed.

So, then, you may ask, why did we take the unusual step that brings us here today?

Portland's needs are acute. I have with me a recent facilities assessment commissioned by the City and district to review the current state of all of our buildings. As you can see, this is an extensive document. It projects 20 year capital needs in the neighborhood of 300 million—over 140 million in the next ten years. I have included with my packet, a copy of the summary of those needs. As you can see, the two schools we are proposing you approve—Reiche and Longfellow—are estimated to require nearly $5 million in repairs in the next 5 years and over $21 million in the next 10 years. It is important to note that these estimated costs are just for repairs to existing plant and systems and <u>not</u> for bringing those schools up to 21st Century Learning standards.

Reiche and Longfellow have been on State Construction lists for over 15 years. In 2001, Longfellow was #73 of 92 and Reiche #67 of 92. In the 2004 list, Longfellow was 48 of 66 and Reiche 23 of 66. In this past list, as you know, they were 18 and 21 respectively.

Past history suggests that the chances are good for schools in Longfellow and Reiche's position to receive state funding in the next round. A review of the 2001 list shows that out of the 5 schools just below the funding cut off, 3 of those schools received funding in the subsequent round. Of the remaining two schools, Peru Elementary School was consolidated with another school in Canton and SAD 28, Rockport came off the list because it became a locally funded project. Of the 5 schools just below the funding cut off for the 2004 list, 4 out of the 5 received funding in the 2010 round. Only Portland's Reiche didn't get funded, in spite of having improved its position from the previous list.

In other words, it is reasonable to expect that these schools, given their past trajectory and given the pressing needs (remember: 21 million in the next 10 years) as determined by our recent engineering report, will likely be funded in the next round.

So, you might ask, why not wait our turn?

Portland's situation is fairly unique. As I noted at the beginning, we are engaged in a process to undertake a large infrastructure project—Buildings for our Future-- to bring our aging elementary schools to 21st Century learning standards. Knowing that you added these two schools to the Approved Projects List — with or without the interest only financing component— will enable the adhoc committee to move forward with the renovations of our other two schools, Lyseth and Presumpscot. Our community can continue the dialogue about having great schools, befitting a great city, knowing that they will not have to pit the needs of one school community against the other. Rather, we can move forward assured that the vision for high quality 21st Century learning settings in all of Portland's elementary schools can come to fruition.

I would now like to ask Dick Spencer to discuss the value added proposition that we advanced using the Interest Only Interim Local Financing process.

Dick Spencer

I want to be clear that we believe our proposal is a creative option that can be a bonus for the taxpayers at the state and district level. I also feel confident assuring you that Portland Public Schools would be satisfied with being added to the Approved Projects List, even with a delayed implementation of the State's funding obligation so that Portland can proceed with the planning and implementation for the rest of its capital needs. The assurance of future funding, would influence the order in which we tackle our four projects, but would still allow us to move forward with locally funded projects at the remaining two schools while we wait for state funding for Longfellow and Reiche. It will allow us to bring a viable proposal to Portland's taxpayers that includes the assurance that all four projects will get done.

In short, Portland is not asking the state to relieve it of its own obligations. On the contrary, Portland stands ready to invest tens of millions of local dollars to our elementary school renovations. All we ask is that the State help provide the certainty to allow us to pick a path and move forward. But no responsible stewards of public funds could finalize plans without knowing whether they needed to stretch available resources over 4 projects or concentrate on 2. And no responsible planners could forego the opportunity to advocate for State support knowing that history suggests a high likelihood that our projects will soon be funded by the state, knowing that there may not be enough local funds available to fully address the needs of 4 separate schools without state funding.

Chris Hall, President of the Portland Regional Chamber wanted to be here to speak on our behalf. Chris, better than anyone, understands the importance of great schools to the viability of Portland. He also understands the importance of smart stewardship of taxpayers' resources and the impact of escalating local tax rates. Chris could not be here today because he is attending Glenn Cummings' installation as President at USM. He provided the letter which I've included in your packet and which he asked me to read for the record.

Read Chris' letter

In closing, I would like to thank you for taking the time to listen to our request and consider its merits. We understand that this is an unusual request and believe that we are offering a compelling win-win proposition. I look forward to answering your questions.

ATTACHMENT 2: Email exchange between Superintendent Xavier Botana and Emily Figdor

On December 15, 2016 at 9:25:54 PM, Xavier Botana (botanx@portlandschools.org) wrote:

I would prefer to eliminate the language about "significant investments" not being made. "Significant" is fairly subjective. At both Presumpscot and Lyseth the principals went out of their way to talk about the many improvements in their physical plant in recent years (mechanics, new windows, etc.).

I would prefer to focus on the fact that in 40-60 years, how schools are structured has changed greatly. Students have more differentiated needs which requires frequent regrouping a small group instruction, teachers are asked to collaborate with each other, we place a premium on presentations and other exhibitions of student performance... none of the four schools can accommodate that.

Note that we just received a facility assessment for all of our buildings and the four schools have differing levels of needs (i.e., Reiche has large needs, Presumpscot not so much) and non-BFOF schools have much larger needs than most of the BFOF schools. So, focusing on delayed investments in those four schools begs the question about the other delayed investments. So, I would prefer to steer away from the delayed needs/upkeep and focus on the 21st Century Learning needs.

Beyond that, I'm comfortable with the examples you provide and with the overall approach. Please share the final copy so that I can give principals the heads up that their PTO is going to come with the flyer for distribution in backpacks.

Thanks,

Xavier

——————

On Fri, Dec 16, 2016 at 2:57 PM, Emily Figdor <emilyjfigdor@gmail.com> wrote:

Terrific, thank you! I made the edits you suggested, and the final is attached. I'm coordinating with the PTOs at the four schools.

Also, is the facility assessment a public document? If so, I'd love to see it.

Thanks for all you're doing, and good to work with you on this!

Best,

Emily
Emily Figdor
c: 207-408-0295
Gchat: emilyjfigdor
Skype: emilyfigdor

Councilor Mavodones/Councilor Duson Amendments
(amends and replaces original bond order)

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER APPROVING LYSETH AND PRESUMPSCOT ELEMENTARY SCHOOL RENOVATION PROJECTS WITH TOTAL PROJECT COSTS NOT TO EXCEED $31,626,000 AND AUTHORIZING GENERAL OBLIGATION BONDS THEREFORE

FOLLOWING a public hearing of the City Council of the City of Portland, Maine, held upon due notice pursuant to Article VII, Section 9 of the City Charter, IT IS HEREBY

ORDERED THAT:

There be and hereby is authorized and approved the renovation, furnishing and equipping of Lyseth and Presumpscot elementary schools with total project costs not to exceed $31,626,000 (the "Elementary School Projects"), as follows:

Lyseth Elementary	**$17,998,000**
Presumpscot Elementary	**13,628,000**
Total	**$31,626,000**

and that there be and hereby is authorized the issue and sale of the City's general obligation bonds in the aggregate principal amount not to exceed $31,626,000 to finance the costs of such Elementary School Projects.

BE IT FURTHER ORDERED

1. That the Director of Finance be and hereby is authorized to prepare, issue, and sell such bonds in the name of and on behalf of the City, in the aggregate amount of $31,626,000 (the "Bonds") at one time, or from time to time, as one or more separate bond issues, and to determine the date, form, minimum denomination, interest rates (as term bonds or serial bonds or some combination thereof), maturities (with the last maturity not to exceed the maximum term permitted by law) and all other details, terms and provisions, not inconsistent herewith, including the form and manner of their sale and award as he may approve, such approval to be conclusively evidenced by the execution thereof;

2. That the Director of Finance be and hereby is authorized to borrow money in anticipation of said Bonds by the issuance and sale of one or more notes or renewal notes in anticipation of said Bonds ("BANs"), and to determine the date, form, minimum denominations, interest rate, maturities (with the last maturity of any BAN not to exceed 3 years from its date of issuance) and all other details of each issue of BANs, including the form and manner of their sale and award, subject to the provisions of the law, the City Charter and this Order;

3. That the Director of Finance be and hereby is authorized to provide that any of the Bonds and BANs hereinbefore authorized be made subject to call for redemption, with or without premium, prior to their stated dates of maturity, as provided in 30-A M.R.S.A. §5772(6), as amended;

4. That any Bond or BAN issued hereunder shall be signed by the Director of Finance and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof;

5. That the Director of Finance is authorized to negotiate, execute, and deliver, in the name of and on behalf of the City such contracts, agreements, and other documents, including leases, instruments and certificates as may be necessary or appropriate as determined and approved by the Director of Finance in connection with the financing of the Elementary School Projects, which documents shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Director of Finance such approval to be conclusively evidenced by his execution thereof;

6. That the Director of Finance be and hereby is authorized to select the underwriter for the Bonds or BANs heretofore authorized and the Director of Finance be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith;

7. That the Director of Finance be and hereby is authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement for use in the offering and sale of the Bonds or BANs heretofore authorized, such Preliminary Official Statement and Official Statement to be in such form and contain such information as may be approved by the Director of Finance, with the advice of the bond counsel for the City, and that the use and distribution of the Preliminary Official Statement and the Official Statement in the name of and on behalf of the City in connection with offering the Bonds or BANs for sale be and hereby is approved;

8. That the Director of Finance be and hereby is authorized to select the registrar, paying agent and transfer agent (the "Transfer Agent") for the Bonds or BANs heretofore authorized and to execute and deliver such contracts and agreements as may be necessary or appropriate to secure their services;

9. That the Bonds or BANs heretofore authorized shall be transferable only on the registration books of the City kept by the Transfer Agent, and said principal amount of the bonds of the same maturity (but not of other maturity) in minimum denominations of $5,000 and any integral multiple in excess thereof upon surrender thereof at the principal office of the transfer agent, with a written instrument of transfer satisfactory to the transfer agent duly executed by the registered owner or his attorney duly authorized in writing. Upon each exchange or transfer of a bond the City and the Transfer Agent shall make a charge sufficient to cover any tax, fee or any other governmental charge required to be payable with respect to such exchange or transfer, and with respect to such exchange or transfer, and subsequent to the first exchange or transfer, the cost of preparing new bonds upon exchanges or transfer thereof to be paid by the person requesting the same;

10. That the Director of Finance be and hereby is authorized to undertake all acts necessary to provide for the issuance and transfer of such Bonds or BANs heretofore authorized in book-entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraph above regarding physical transfer of Bonds or BANs, and the Director of

Finance be and hereby is authorized and empowered to enter into a Letter of Representation or any other contract, agreement or understanding necessary or, in his opinion, appropriate in order to qualify the Bonds or BANs for and participate in the Depository Trust Company Book-Entry Only System;

11. That the Director of Finance and Mayor from time to time shall execute such Bonds or BANs as may be required to provide for exchanges or transfers of Bonds or BANs as heretofore authorized, all such Bonds or BANs to bear the original signature of the Director of Finance and Mayor, and in case any officer of the City whose signature appears on any Bond or BAN shall cease to be such officer before the delivery of said Bond or BAN, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery thereof;

12. That if the Bonds or BANs, or any part of them, are issued on a tax exempt basis, the Director of Finance be and hereby is authorized and directed to covenant and certify on behalf of the City that no part of the proceeds of the issue and sale of the Bonds or BANs authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such Bonds or BANs to be "arbitrage bonds" or "private activity bonds" within the meaning of Sections 148 and 141 of the Internal Revenue Code of 1986, as amended;

13. That if the Bonds or BANs, or any part of them, are issued on a tax exempt basis, the officers or officials executing the Bonds or BANs be and hereby are individually authorized to covenant and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports and take any other action that may be necessary to insure that interest on the notes will remain exempt from federal income taxation, and that the City will refrain from any action that would cause interest on the Bonds or BANs to be subject to federal income taxation;

14. That the officers executing the Bonds or BANs be and hereby are individually authorized to covenant, certify and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to insure that the disclosure requirements imposed by Rule 15c2-12 of the Securities and Exchange Commission, if applicable, are met;

15. That any or all of the Bonds or BANs issued hereunder may be consolidated with and become a part of any other issue of temporary notes or general obligation bonds authorized to be issued by any previous or subsequent order of the City Council of the City of Portland;

16. That the term "cost" or "costs" as used herein and applied to the Elementary School Projects, or any portion thereof, includes, but is not limited to (1) the cost to design, acquire, construct, renovate, improve, furnish and equip the Elementary School Projects, or any portion thereof; (2) the cost of land, easements and other real property interests, landscaping and site preparation, including demolition and environmental remediation work on any existing building or structure and on the property where the Elementary School Projects is located, utility extensions and site improvements, and all appurtenances and other fixtures, facilities, buildings and structures either on, above, or under the ground which are used or usable in connection with the Elementary School Projects; (3) the cost of feasibility studies, surveys, environmental studies and assessments, engineering, plans and specifications, legal and other professional services associated with the Elementary School Projects; (4) issuance costs, including premiums for insurance, capitalized interest and other fees and expenses relating to the financing transaction.

17. That if the actual cost of any Elementary School Project differs from the estimated cost set forth herein, whether due to completion, delay or abandonment of said Elementary School Project for any other reason, the Director of Finance is authorized, in his discretion to allocate or reallocate proceeds of the Bonds to any other listed Elementary School Project;

18. That the Director of Finance, Mayor and Clerk and other proper officials of the City be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds or BANs hereinabove authorized;

19. That if any of the officers or officials of the City who have signed or sealed the Bonds shall cease to be such officers or officials before the Bonds or BANs so signed and sealed shall have been actually authenticated or delivered by the City, such Bonds or BANs nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds or BANs had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed on behalf of the City by those persons who, at the actual date of the execution of such Bonds or BANs, shall be the proper officers and officials of the City, although at the nominal date of such Bonds or BANs any such person shall not have been such officer or official;

20. That if the Director of Finance, Mayor or Clerk are for any reason unavailable to approve and execute the Bonds or BANs or any other documents necessary or convenient to the issuance, execution and delivery of the Bonds or BANs, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had performed such act.

21. That the Bonds or BANs authorized by this Order are in addition to any bonds or notes previously authorized for the same or similar purposes;

22. That to the extent not payable from other funds, an amount sufficient for the payment of the annual payments of principal and interest on the Bonds or any BANs issued hereunder shall be included in the tax levy of each year until the debt represented by said Bonds or BANs is extinguished.

23. That during the term any of the Bonds (or bonds issued to refund such Bonds) are outstanding, the Director of Finance be and hereby is authorized to issue and deliver refunding bonds to refund some or all of the Bonds then outstanding, and to determine the date, form, interest rate, maturities and all other details of such refunding bonds, including the form and manner of their sale and award. The Director of Finance be and hereby is further authorized to provide that any of such refunding bonds hereinbefore authorized be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond issued hereunder shall be signed by the Director of Finance and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof.

BE IT FURTHER ORDERED THAT if this Order is approved and becomes effective as provided in the foregoing paragraph and either or both of Longfellow and Reiche Elementary Schools (the "Additional Elementary Schools") are not included in the Department of Education's State subsidy Approved Projects List for school construction projects, expected to be finalized in 2018, such that such school construction projects, in the reasonable judgment of the City Council, would have a high likelihood of being completed by 2025, then the City Council will make good faith efforts to submit the question of school construction projects for the Additional Elementary Schools to the voters.

Tab5 3-27-17

Order 156-16/17
Public Hearing held March 20, 2017
Postponed to March 27, 2017: 9-0 on 3/20/2017

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER APPROPRIATING $64,260,000 OF BOND PROCEEDS

IT IS HEREBY ORDERED THAT:

1. Subject to paragraph 2 below, the sum of $64,260,000 hereby is appropriated to finance the renovation, furnishing and equipping of Longfellow, Lyseth, Presumpscot and Reiche elementary school with total project costs not to exceed $64,260,000 (the "Elementary School Projects"), as follows:

Longfellow Elementary	$15,388,000
Lyseth Elementary	17,998,000
Presumpscot Elementary	13,628,000
Reiche Elementary	17,246,000
Total	$64,260,000

2. The appropriation set forth in paragraph 1 above is and shall be contingent upon the approval by the City Council (and, as necessary, the voters of the City of Portland) of general obligation bonds for such purpose (the amount appropriated to be adjusted to reflect the principal amount of bonds so authorized) and the issuance and delivery of such bonds or notes in anticipation thereof for such purposes. The foregoing appropriations shall also be applied to issuance costs for such bonds (or notes in anticipation thereof).

3. That if the actual cost of any Elementary School Project differs from the estimated cost set forth herein, whether due to completion, delay or abandonment of said Elementary School Project for any other reason, the Director of Finance is authorized, in his discretion to allocate or reallocate proceeds of the Bonds to any other listed Elementary School Project.

{W6030256.1}

Councelor Ray Amendment
(amends and replaces original appropriation order)

ETHAN K. STRIMLING (MAYOR) BELINDA S. RAY (1) SPENCER R. THIBODEAU (2) BRIAN E. BATSON (3) JUSTIN COSTA (4)	**CITY OF PORTLAND** IN THE CITY COUNCIL	DAVID H. BRENERMAN (5) JILL C. DUSON (A/L) PIOUS ALI (A/L) NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROPRIATING $24,000,000 OF BOND PROCEEDS

IT IS HEREBY ORDERED THAT:

1. Subject to paragraph 2 below, the sum of $24,000,000 hereby is appropriated to finance the renovation, furnishing and equipping of Lyseth elementary school and other miscellaneous improvements at Reiche, Ocean Avenue, Peaks Island and Riverton Elementary Schools, Lyman Moore and King Middle Schools and Deering High School with total project costs not to exceed $24,000,000 (the "School Projects"), as follows:

Lyseth	Substantially renovated and rehabilitated	$16,362,275
Lyseth	Bus Loop, Field Work, and Drainage Issues	$1,450,000
Lyseth & Lyman Moore	Moore Parking Improvements	$247,489
Lyman Moore	Fire Alarm Installation and Upgrades	$270,000
King	Fire Alarm Installation and Upgrades	$270,000
Ocean Avenue	Four Classrooms	$1,500,000
Reiche Elementary	New Brackett Street Entrance	$2,400,106
Peaks Island & Riverton	Energy Efficiency Upgrades (Peaks: ceiling & lighting upgrades; Riverton: heat piping in new wing, replace original rooftop AC)	$170,000
Deering High	Sprinklers & Fire Alarm Installation and Upgrades	$1,330,130
	TOTAL:	$24,000,000

2. The appropriation set forth in paragraph 1 above is and shall be contingent upon the approval by the City Council (and, as necessary, the voters of the City of Portland) of general obligation bonds for such purpose (the amount appropriated to be adjusted to reflect the principal amount of bonds so authorized) and the issuance and delivery of such bonds or notes in anticipation thereof for such purposes. The foregoing appropriations shall also be applied to issuance costs for such bonds (or notes in anticipation thereof).

3. That if the actual cost of any School Project differs from the estimated cost set forth herein, whether due to completion, delay or abandonment of said School Project for any other reason, the Director of Finance is authorized, in his discretion to allocate or reallocate proceeds of the Bonds to any other listed School Project.

Councilor Mavodones/Councilor Duson Amendment
(amends and replaces original appropriation order)

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER APPROPRIATING $31,626,000 OF BOND PROCEEDS

IT IS HEREBY ORDERED THAT:

1. Subject to paragraph 2 below, the sum of $31,626,000 hereby is appropriated to finance the renovation, furnishing and equipping of Lyseth and Presumpscot elementary school with total project costs not to exceed $31,626,000 (the "Elementary School Projects"), as follows:

Lyseth Elementary	$17,998,000
Presumpscot Elementary	13,628,000
Total	$31,626,000

2. The appropriation set forth in paragraph 1 above is and shall be contingent upon the approval by the City Council (and, as necessary, the voters of the City of Portland) of general obligation bonds for such purpose (the amount appropriated to be adjusted to reflect the principal amount of bonds so authorized) and the issuance and delivery of such bonds or notes in anticipation thereof for such purposes. The foregoing appropriations shall also be applied to issuance costs for such bonds (or notes in anticipation thereof).

3. That if the actual cost of any Elementary School Project differs from the estimated cost set forth herein, whether due to completion, delay or abandonment of said Elementary School Project for any other reason, the Director of Finance is authorized, in his discretion to allocate or reallocate proceeds of the Bonds to any other listed Elementary School Project.

Tabb 3-27-17

Order 157-16/17
Public Hearing held March 20, 2017
Postponed to March 27, 2017: 9-0 on 3/20/2017

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER SUBMITTING ELEMENTARY SCHOOL RENOVATION PROJECTS BOND ORDER TO REFERENDUM

WHEREAS, contemporaneously herewith the City Council adopted an order authorizing the the renovation, furnishing and equipping of Longfellow, Lyseth, Presumpscot and Reiche elementary school with total project costs not to exceed $64,260,000 (the "Elementary School Projects"), and further authorizing issuance of the City's bonds in an amount not to exceed $64,260,000 to finance the costs of the Project (the "Elementary School Order") and

WHEREAS, Article VII, Section 16 of the City Charter requires that the Elementary School Order be submitted to the voters of the City following a public hearing;

WHEREAS, the City Council held a public hearing on the Elementary School Order at its regular meeting held March 20, 2017;

NOW, THEREFORE, BY THE CITY COUNCIL OF THE CITY OF PORTLAND BE IT HEREBY ORDERED:

THAT the question of whether the voters approve and ratify Elementary School Order be submitted to the voters of the City of Portland in accordance with Article VII, Section 16 of the City Charter, at a municipal election to be held on June 13, 2017, substantially in the form attached hereto as Exhibit A.

THAT the City Manager, Director of Finance and Clerk be and hereby are authorized and directed to undertake all action necessary or appropriate to finalize the form of the referendum question, with such other information as may be required by law or, in the discretion of the Director of Finance, as may be permitted by law, and to place said Elementary School Order before the voters at such election.

Exhibit A

Question __: Shall the Order entitled "ORDER APPROVING LONGFELLOW, LYSETH, PRESUMPSCOT AND REICHE ELEMENTARY SCHOOL RENOVATION PROJECTS WITH TOTAL PROJECT COSTS NOT TO EXCEED $64,260,000 AND AUTHORIZING GENERAL OBLIGATION BONDS THEREFORE", with provisions for early redemption as set forth in said Order be Approved?

Councilor Ray Amendment
(replaces original referendum order)

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER SUBMITTING ELEMENTARY SCHOOL RENOVATION PROJECTS BOND ORDER TO REFERENDUM

WHEREAS, contemporaneously herewith the City Council adopted an order authorizing the the renovation, furnishing and equipping of Lyseth elementary school and other miscellaneous school improvements with total project costs not to exceed $24,000,000 (the "School Projects"), and further authorizing issuance of the City's bonds in an amount not to exceed $24,000,000 to finance the costs of the School Projects (the "School Order") and

WHEREAS, Article VII, Section 16 of the City Charter requires that the School Order be submitted to the voters of the City following a public hearing;

WHEREAS, the City Council held a public hearing on the School Order at its meeting held ____________, 2017;

NOW, THEREFORE, BY THE CITY COUNCIL OF THE CITY OF PORTLAND BE IT HEREBY ORDERED:

THAT the question of whether the voters approve and ratify the School Order be submitted to the voters of the City of Portland in accordance with Article VII, Section 16 of the City Charter, at a municipal election to be held on June 6, 2017, substantially in the form attached hereto as Exhibit A.

THAT the City Manager, Director of Finance and Clerk be and hereby are authorized and directed to undertake all action necessary or appropriate to finalize the form of the referendum question, with such other information as may be required by law or, in the discretion of the Director of Finance, as may be permitted by law, and to place said School Order before the voters at such election.

Exhibit A

Question __: Shall the Order entitled "ORDER APPROVING LYSETH ELEMENTARY SCHOOL RENOVATION PROJECT AND OTHER MISCELLANEOUS IMPROVEMENTS AT REICHE, OCEAN AVENUE, PEAKS ISLAND AND RIVERTON ELEMENTARY SCHOOLS, LYMAN MOORE AND KING MIDDLE SCHOOLS, AND DEERING HIGH SCHOOL WITH TOTAL PROJECT COSTS NOT TO EXCEED $24,000,000 AND AUTHORIZING GENERAL OBLIGATION BONDS THEREFORE", with provisions for early redemption as set forth in said Order be Approved?

Councilor Mavodones/Councilor Duson Amendment
(replaces original referendum order)

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER SUBMITTING ELEMENTARY SCHOOL RENOVATION PROJECTS BOND ORDER TO REFERENDUM

WHEREAS, contemporaneously herewith the City Council adopted an order authorizing the the renovation, furnishing and equipping of Lyseth and Presumpscot elementary schools with total project costs not to exceed $31,626,000 (the "Elementary School Projects"), and further authorizing issuance of the City's bonds in an amount not to exceed $31,626,000 to finance the costs of the Project (the "Elementary School Order") and

WHEREAS, Article VII, Section 16 of the City Charter requires that the Elementary School Order be submitted to the voters of the City following a public hearing;

WHEREAS, the City Council held a public hearing on the Elementary School Order at its meeting held ____________, 2017;

NOW, THEREFORE, BY THE CITY COUNCIL OF THE CITY OF PORTLAND BE IT HEREBY ORDERED:

THAT the question of whether the voters approve and ratify the Elementary School Order be submitted to the voters of the City of Portland in accordance with Article VII, Section 16 of the City Charter, at a municipal election to be held on June 6, 2017, substantially in the form attached hereto as Exhibit A.

THAT the City Manager, Director of Finance and Clerk be and hereby are authorized and directed to undertake all action necessary or appropriate to finalize the form of the referendum question, with such other information as may be required by law or, in the discretion of the Director of Finance, as may be permitted by law, and to place said Elementary School Order before the voters at such election.

Exhibit A

Question __: Shall the Order entitled "ORDER APPROVING LYSETH AND PRESUMPSCOT ELEMENTARY SCHOOL RENOVATION PROJECTS WITH TOTAL PROJECT COSTS NOT TO EXCEED $31,626,000 AND AUTHORIZING GENERAL OBLIGATION BONDS THEREFORE", with provisions for early redemption as set forth in said Order be Approved?

Order 176-16/17
~~Tab 2 1 3-20-17~~
Tab 7 3-27-17

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER APPROVING AGREEMENT BETWEEN PORTLAND AND MAINE DEPARTMENT OF TRANSPORTATION RE: FRANKLIN STREET AND MARGINAL WAY BAYSIDE TRAIL ENHANCEMENT

ORDERED, that the two-party agreement between the Maine Department of Transportation and the City of Portland, for design and construction of the Franklin Street and Marginal Way Bayside Trail Enhancement is hereby approved in substantially the form attached hereto; and

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

MEMORANDUM
City Council Agenda Item

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

FROM: Bruce Hyman, Transportation Program Manager

DATE: March 6, 2017

SUBJECT: Municipal State Agreement (WIN 18364.01) – Planet Dog/Franklin-Marginal Pathway Enhancement

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

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading___3/20/17_________ Final Action___3/27/17_____

Can action be taken at a later date: ____ Yes __X__ No (If no why not?)
Bidding the project in late May/early June for construction in 2017 necessitates having up to two full months (April and May) for design and bid package preparation.

PRESENTATION: (List the presenter(s), type and length of presentation)
None anticipated.

I. ONE SENTENCE SUMMARY

This project will construct a pathway enhancement to increase the usability and attractiveness of the Bayside Trail along Planet Dog at the Marginal Way/Franklin Street intersection using disbursements from the Bayside Trail Endowment Fund for the 20% ($24,400) local match of federal and MaineDOT funding (80%, $97,600).

II. AGENDA DESCRIPTION

Passage of the council order authorizes the City Manager to sign the Municipal-State Agreement (WIN 18364.01) with the MaineDOT for up to $122,000 for enhancements to the Bayside Trail. Local match (20%, $24,400) will be provided from the Bayside Trail Endowment.

III. BACKGROUND

The council passed an order in 2013 that funded the preliminary design and right-of-way acquisition needed for the project by the MaineDOT. This new agreement authorizes the final design, bid package preparation and construction. The project will widen the current sidewalk from 5' to create an 11' shared use pathway from the intersection and redesign the corner and curb ramps to achieve ADA-accessibility.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

This projects will significantly improve the usability and attractiveness of the Bayside Trail along Planet Dog at the Marginal Way/Franklin Street intersection, implementing activities that will help achieve the city's livability and sustainability goals.

V. FINANCIAL IMPACT

The local match (up to $24,400) will be drawn from non-general revenue funds in the Bayside Trail endowment. The Bayside Trail Endowment was established in 2011 with $500,000 in funds from the Trust for Public Land and is administered by the Maine Community Foundation. The City gets an annual disbursement of approximately $21,000 with the current balance of the funds that have been disbursed to the city for its use totaling approximately $71,000.

The endowment fund's proceeds are "... for the exclusive purposes of
(i) operating, maintaining, repairing, replacing and/or enhancing that certain 1.2 mile greenway commencing at the junction of the Back Cove, Eastern Prom and Loring Memorial Trails ("the current Bayside Trail") …. and/or
(ii) designing, constructing, installing, operating, maintaining, repairing, replacing and/or enhancing any future extension of the Bayside Trail which would connect said trail to Deering Oaks Park….".

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

This projects will significantly improve the functionality and attractiveness of this important pedestrian-way and bikeway location on the Bayside Trail. The current crossing is poorly configured and is not ADA-compliant.

VII. RECOMMENDATION

Staff recommend approval of the Municipal State Agreement.

VIII. LIST ATTACHMENTS

#1. Planet Dog at Marginal Way- Franklin Street-Bayside Trail enhancement preliminary design graphic by Ransom Consulting.

Prepared by: Bruce Hyman, Transportation Program Manager, Dept. of Planning and Urban Development
Date: March 6, 2017

MaineDOT

MaineDOT use only
AMS ID: ______
CSN: ______
TEDOCS #: ______

MAINE DEPARTMENT OF TRANSPORTATION
Agreement for a Federal-aid Locally Administered Project
With the
City of Portland
Regarding
Improvements to the Bayside Trail: WIN 018364.01

Upset Limit: $122,000	Federal Project #: TAP-1836(401)
Federal Share: $97,600	Federal Award Date: August 22, 2016
Municipal Share: $24,400	Portland's Vendor ID: VC1000073476
Effective Date:______	Portland's DUNS® #: 07-174-7802
Expiration Date:______	CFDA #20.205: Highway Planning & Construction

This Agreement for a Federal-aid Project to connect the Bayside Trail to a crosswalk at Marginal Way in Portland, Maine ("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, preliminary engineering and right-of-way work necessary for the **Project** were performed under a separate agreement – CTM20130711000000000045 / CSN 31851; 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 current Local Project Administration ("LPA") certification from **MaineDOT** to manage the **Project** and carry out its 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 employee of the **City** shall serve as Local Project Administrator:

Name: Bruce Hyman, Transportation Program Manager
Phone: (207) 874-8717
Email: bhyman@portlandmaine.gov

1B. ROLE OF MAINEDOT. **MaineDOT** will assign a Project Manager to the **Project** to carry out the State of Maine's responsibilities under this Agreement. This person or a 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
  Email Address: john.rodrigue@maine.gov
  Phone Number: (207) 592-0428

ARTICLE 2. PROJECT FINANCES

2A. UPSET LIMIT. The estimated total cost of the **Project** is **$122,000** ("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**, with Transportation Alternatives funding from the Federal Highway Administration ("FHWA"), will share in all **Project** costs eligible for such federal participation at the rate of **80%**, up to a maximum contribution at this rate of **$97,600**.

2C. LOCAL SHARE. The **City,** with funding other than from the U.S. Department of Transportation, shall share in all **Project** costs eligible for federal participation at the rate of **20%**, or an estimated $**24,400**. The **City** shall be fully responsible 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. 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.

2E. 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, in 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.

2F. FINAL COST. If the final cost of the **Project** is less than the Upset Limit in Article 2A, 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 final design, construction and construction engineering work for pedestrian safety improvements to connect the Bayside Trail to a crosswalk at Marginal Way. Any substantial change 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 on the **Project** under this Agreement.

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

3D. 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 selection 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 <u>ineligible</u> 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."

3E. 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 the final plans, specifications and estimate (PS&E) to **MaineDOT** for review and acceptance.

2. The **City** shall address to **MaineDOT**'s satisfaction all changes requested or concerns expressed 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.**

3F. ENVIRONMENTAL REVIEW. The National Environmental Policy Act ("NEPA") process was completed under WIN 018364.00, and that work was part of a separate contract, CTM20130711000000000045 / CSN 31851.

3G. 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.**

3H. 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.

3I. RIGHT OF WAY. All right-of-way acquisitions required for the **Project** were completed under MaineDOT WIN 018364.00, and that work was part of a separate contract, CTM20130711000000000045 / CSN 31851.

3J. SOLICITATION OF BIDS. Upon written authorization from **MaineDOT**, the **City** shall advertise for competitive 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 **Project** contract book contains the following documents:
   a. Davis-Bacon prevailing wage rates;
   b. Form FHWA 1273 (Appendix A to Division 100: Section 1, Bidding Provisions); and
   c. Signed Title VI Assurances.

3K. 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.**

3L. 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.

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.*
5. If applicable, provide **MaineDOT** with a set of revised as-built plans within 90 days of completion of construction.

3M. 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.

3N. 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 address all defaults within this cure period, **MaineDOT** may terminate this Agreement for cause, with these conditions:

1. **MaineDOT** shall recover from the **City** all reimbursements made and costs incurred for work on the terminated **Project**.
2. **MaineDOT** shall be held harmless against any claim of breach of contract filed against the **City** by any third party in accordance with Article 6B, "Indemnification."
3. 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. Takes any action that renders the **Project** ineligible for federal-aid funding; or
3. Uses **Project** funds for a purpose not authorized by this Agreement; or
4. Misrepresents or falsifies of any claim for reimbursement; or
5. 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. Additionally, the **Parties** shall comply with all federal regulations that apply to the **Project**, 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 construction cost 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. 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.

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

6G. 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.

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. By signing this Agreement, the **City** certifies to the best of its knowledge and belief that it and its principals 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 its principals 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. The **City** agrees that no person or entity 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 the **City** and such officer, employee or person has not participated in such acquisition for and on behalf of the **City.**

8C. The **City** agrees that 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 the **City** before the person or entity enters 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 **three (3) years** from the final day of the month in which this Agreement was executed, whichever occurs first, except as follows:

1. Article 3N, "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

By: ______________________________
Jon Jennings, City Manager

Date: _________________

Maine Department of Transportation

By: ____________________________
William A. Pulver, P.E., Director,
Bureau of Project Development

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, Maine** (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.

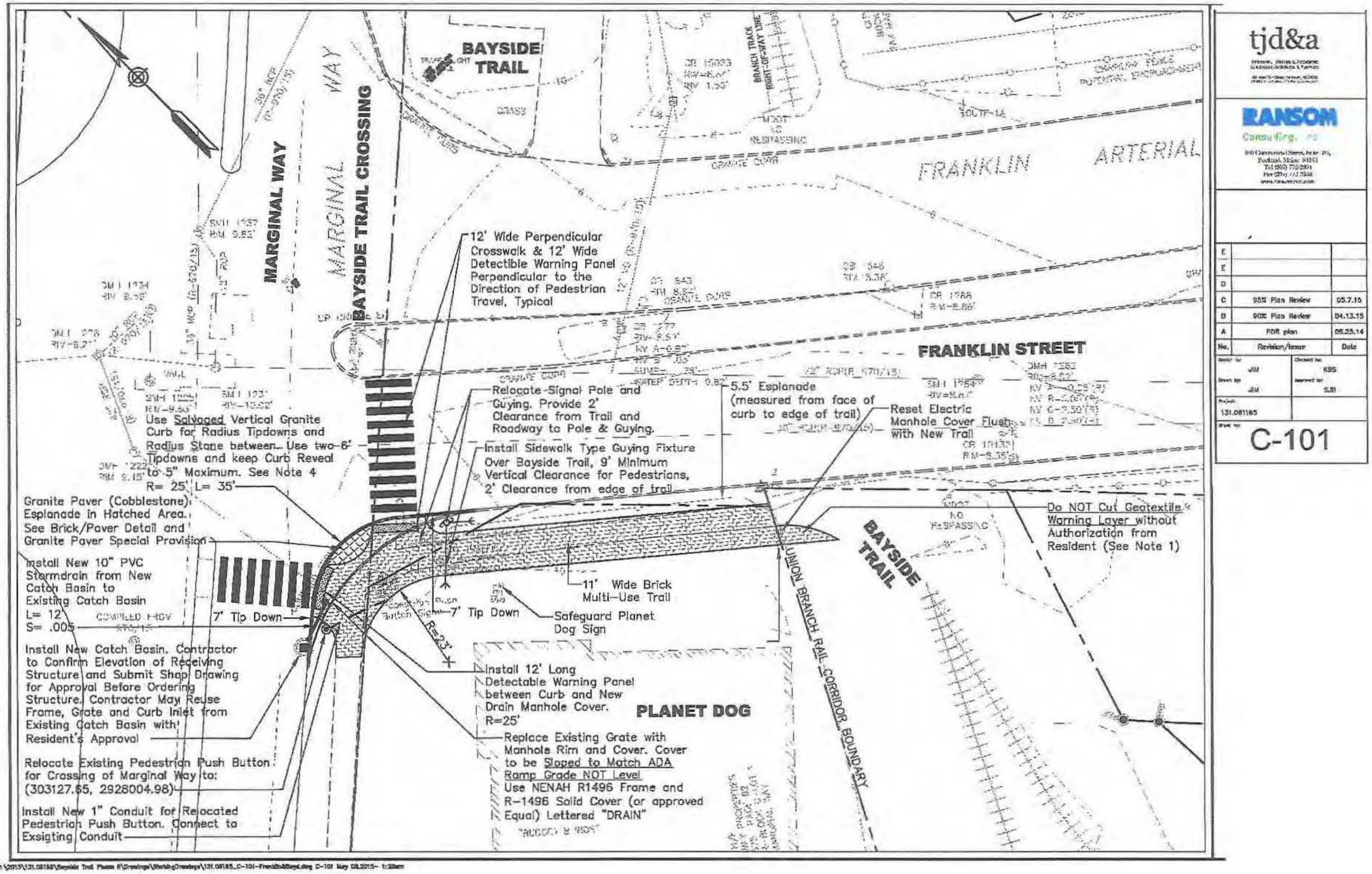
APPENDIX E TO THE TITLE VI ASSURANCES

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.).

Planet Dog – Marginal/Franklin Trail Enhancement Project (WIN 18364.01)



Preliminary Design, 2015

Order 177-16/17
~~Tab 22 3-20-17~~
Tab 8 3-27-17

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER APPROVING AGREEMENT BETWEEN PORTLAND AND MAINE DEPARTMENT OF TRANSPORTATION RE: BAYSIDE TRAIL AND EASTERN PROMENADE INTERSECTION IMPROVEMENTS

ORDERED, that the two-party agreement between the Maine Department of Transportation and the City of Portland, for design and construction of the Bayside Trail and Eastern Promenade Intersection Improvements is hereby approved in substantially the form attached hereto; and

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

MEMORANDUM
City Council Agenda Item

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

FROM: Bruce Hyman, Transportation Program Manager

DATE: March 6, 2017

SUBJECT: Municipal State Agreement (WIN 18886.00) – Bayside Trail-Eastern Prom Trail Junction Enhancement Project

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

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading___3/20/17__________ Final Action___3/27/17_____

Can action be taken at a later date: ____ Yes __X__ No (If no why not?)
Bidding the project in late May/early June for construction in 2017 necessitates having up to two full months (April and May) for design and bid package preparation.

PRESENTATION: (List the presenter(s), type and length of presentation)
None anticipated.

I. ONE SENTENCE SUMMARY

This project will construct a pathway enhancement to increase the usability and attractiveness of the Bayside Trail at its junction with the Eastern Promenade Trail using disbursements from the Bayside Trail Endowment Fund for the 20% ($30,460) local match of federal and MaineDOT funding (80%, $97,600).

II. AGENDA DESCRIPTION

Passage of the council order authorizes the City Manager to sign the Municipal-State Agreement (WIN 18886.00) with the MaineDOT for up to $152,300 for enhancements to the Bayside Trail at its junction with the Eastern Prom Trail. Local match (20%, $30,460) will be provided from the Bayside Trail Endowment.

III. BACKGROUND

The council passed an order in 2013 that funded the preliminary design of the junction. This new agreement authorizes the final design, bid package preparation and construction. The project will create an attractive trail junction, create a safe crossing of the driveway into the PWD water treatment plan and correct the poor drainage in this vicinity.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

This projects will significantly improve the usability and attractiveness of the Bayside Trail at its junction with the Eastern Prom Trail, implementing activities that will help achieve the city's livability and sustainability goals.

V. FINANCIAL IMPACT

The local match (up to $30,460) will be drawn from non-general revenue funds in the Bayside Trail endowment. The Bayside Trail Endowment was established in 2011 with $500,000 in funds from the Trust for Public Land and is administered by the Maine Community Foundation. The City gets an annual disbursement of approximately $21,000 with the current balance of the funds that have been disbursed to the city for its use totaling approximately $71,000.

The endowment fund's proceeds are "... for the exclusive purposes of
(i) operating, maintaining, repairing, replacing and/or enhancing that certain 1.2 mile greenway commencing at the junction of the Back Cove, Eastern Prom and Loring Memorial Trails ("the current Bayside Trail") .... and/or
(ii) designing, constructing, installing, operating, maintaining, repairing, replacing and/or enhancing any future extension of the Bayside Trail which would connect said trail to Deering Oaks Park....".

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

This projects will significantly improve the functionality and attractiveness of this important pedestrian-way and bikeway location on the Bayside Trail at its junction with the Eastern Prom Trail.

VII. RECOMMENDATION

Staff recommend approval of the Municipal State Agreement.

VIII. LIST ATTACHMENTS

#1. Trail Junction Preliminary Design of the Bayside Trail-Eastern Prom Trail Junction by TJD&A/Ransom Consulting.

Prepared by: Bruce Hyman, Transportation Program Manager, Dept. of Planning and Urban Development
Date: March 6, 2017

MaineDOT

MaineDOT use only
AMS ID: ________
CSN: ________
TEDOCS #: ________

MAINE DEPARTMENT OF TRANSPORTATION
Agreement for a Federal-aid Locally Administered Project
With the
City of Portland
Regarding
Intersection of Bayside Trail and Eastern Promenade Trail: WIN 018886.00

Total Agreement Amount: $152,300	Federal Project #: TAP-1888(600)
Federal Share: $121,840 (80%)	Federal Award Date: March 5, 2015
Municipal Share: $30,460 (20%)	Portland Vendor ID: VC1000073476
Effective Date: ________	Portland DUNS® #: 07-174-7802
Expiration Date: ________	CFDA #20.205: Highway Planning & Construction

This Agreement for a federal-aid project to improve the intersection of the Bayside Trail and the Eastern Promenade Trail in Portland, Maine ("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, the **City** performed preliminary engineering work on the **Project** under a separate agreement: CTM20130711000000000045 / CSN 31851; 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 current Local Project Administration ("LPA") certification from **MaineDOT** to manage the **Project** and carry out its 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 employee of the **City** shall serve as Local Project Administrator:
Name: Bruce Hyman, Transportation Program Manager
Phone: (207) 874-8717
Email: bhyman@portlandmaine.gov

1B. ROLE OF MAINEDOT. **MaineDOT** will assign a Project Manager to the **Project** to carry out the State of Maine's responsibilities under this Agreement. This person or a 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
  Email Address: john.rodrigue@maine.gov
  Phone Number: (207) 592-0428

ARTICLE 2. PROJECT FINANCES

2A. UPSET LIMIT. The estimated total cost of the **Project** is **$152,300** (the "Upset Limit.") **Project** costs eligible for federal participation shall not exceed this Upset Limit without **MaineDOT**'s written approval, through an executed modification to this Agreement.

2B. FEDERAL SHARE. **MaineDOT**, with funding from the Federal Highway Administration ("the FHWA"), will share in all **Project** costs eligible for such federal participation at the rate of **80%**, up to a maximum contribution at this rate of **$121,840.**

2C. LOCAL SHARE. The **City,** with funding other than from the U.S. Department of Transportation, shall share in all **Project** costs eligible for federal participation at the rate of **20%**, or an estimated $**30,460**. The **City** shall be fully responsible 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. 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.

2E. 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 prepare Invoices on letterhead and in the format provided in 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.

2F. FINAL COST. If the final cost of the **Project** is less than the Upset Limit in Article 2A, 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 final design, construction and construction engineering work for improvements to the intersection of the Bayside Trail and the Eastern Promenade Trail. Any substantial change shall require **MaineDOT**'s written approval to be eligible for financial assistance from **MaineDOT**.

3A. AUTHORIZATION. The **City** shall receive written notice to proceed from **MaineDOT** before starting any reimbursable work on the **Project** under this Agreement.

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

3C. 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 selection 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 <u>ineligible</u> 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."

3D. 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 the final plans, specifications and estimate (PS&E) to **MaineDOT** for review and acceptance.

2. The **City** shall address to **MaineDOT**'s satisfaction all changes requested or concerns expressed 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**.

3E. ENVIRONMENTAL REVIEW. The National Environmental Policy Act ("NEPA") process was completed under WIN 018364.00, and that work was part of a separate contract, CTM20130711000000000045 / CSN 31851.

3F. 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 <u>Communication 12</u> of the LPA Manual, as part of the final PS&E package for the **Project.**

3G. 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 <u>Communication 13</u> of the LPA Manual, as part of the final PS&E package. MaineDOT's Utility Accommodation Rules (2014) shall apply to required utility relocations.

3H. RIGHT OF WAY. Acquisition of rights-of-way is not necessary for the **Project.**

3I. SOLICITATION OF BIDS. Upon written authorization from **MaineDOT**, the **City** shall advertise for competitive 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 **Project** contract book contains the following documents:
   a. Davis-Bacon prevailing wage rates;
   b. Form FHWA 1273 (Appendix A to Division 100: Section 1, Bidding Provisions); and
   c. Signed Title VI Assurances.

3J. 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.**

3K. 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.

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.*

5. If applicable, provide **MaineDOT** with a set of revised as-built plans within 90 days of completion of construction.

3L. 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.

3M. 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 address all defaults within this cure period, **MaineDOT** may terminate this Agreement for cause, with these conditions:

1. **MaineDOT** shall recover from the **City** all reimbursements made and costs incurred for work on the terminated **Project**.

2. **MaineDOT** shall be held harmless against any claim of breach of contract filed against the **City** by any third party in accordance with Article 6B, "Indemnification."

3. 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. Takes any action that renders the **Project** ineligible for federal-aid funding; or

3. Uses **Project** funds for a purpose not authorized by this Agreement; or

4. Misrepresents or falsifies of any claim for reimbursement; or

5. 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. Additionally, the **Parties** shall comply with all federal regulations that apply to the **Project**, 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 construction cost 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. 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.

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

6G. 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.

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. By signing this Agreement, the **City** certifies to the best of its knowledge and belief that it and its principals 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 its principals 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. The **City** agrees that no person or entity 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. The **City** agrees that 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 the **City** before the person or entity enters 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 **three (3) years** from the final day of the month in which this Agreement was executed, whichever occurs first, except as follows:

1. Article 3N, "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

By: ______________________________
Jon Jennings, City Manager

Date: ________________

Maine Department of Transportation

By: ______________________________
William A. Pulver, P.E., Director,
Bureau of Project Development

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, Maine** (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.

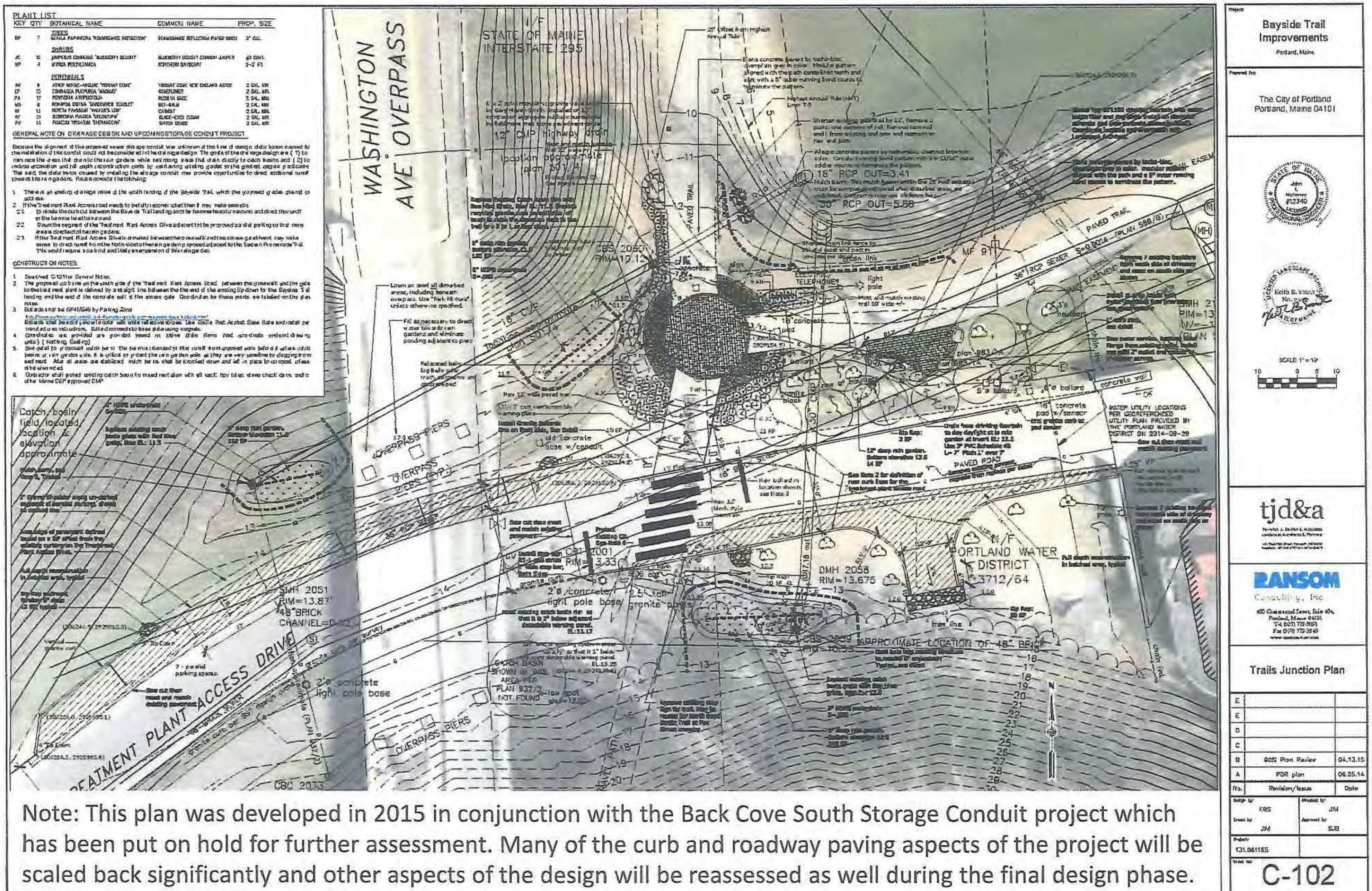
APPENDIX E TO THE TITLE VI ASSURANCES

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.).

Bayside Trail – Eastern Prom Trail Junction Enhancement Project (WIN 18886.00)



Note: This plan was developed in 2015 in conjunction with the Back Cove South Storage Conduit project which has been put on hold for further assessment. Many of the curb and roadway paving aspects of the project will be scaled back significantly and other aspects of the design will be reassessed as well during the final design phase.

Preliminary Design, 2015

Order 179-16/17
~~Tab 24 3-20-17~~
Tab 9 3-27-17

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

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

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6 AND CHAPTER 14
Re: Short Term Rentals

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

1. *That Chapter 6, Article VI., Sections 6-150 to 6-157 of the Portland City Code is hereby amended as follows:*

ARTICLE VI. ~~DISCLOSURE OF BUILDING OWNERSHIP~~RESIDENTIAL RENTAL UNIT REGISTRATION REQUIREMENTS

Sec. 6150. Purpose.

The proliferation of real estate proprietorships, partnerships, and trusts having undisclosed, anonymous or otherwise unidentifiable principals, owning large numbers of residential rental properties, sometimes managed through unresponsive property management companies, has impeded the proper enforcement of this chapter, chapter 12 and other ordinances of the city. This article is intended to require the disclosure of the ownership of such property, the regulation of renting of property within the City, and to make owners and persons responsible for the maintenance of property more accessible and accountable with respect to the premises, and to ensure that owners and tenants comply with chapters 6 and 10 of the City Code.

Sec. 6150.1. Definitions.

The definitions in 6-106 apply to this Article. The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

Island Short Term Rental shall mean a short term rental located on one of the following islands in the City of Portland: Peaks Island, Great Diamond Island, Cushing Island, Little Diamond Island, House Island, and/or Cliff Island.

Long Term Rental shall mean the letting of a rental unit in whole or in part for thirty (30) days or more.

Mainland Short Term Rental shall mean a short term rental located within the limits of the City of Portland, but not on Peaks Island, Long Island, Great Diamond Island, Cushing Island, Little Diamond Island, House Island and/or Cliff Island.

Multi-Unit shall mean a single, detached building in common ownership interest containing more than one (1) residential or commercial unit, as determined by the Director of the Permitting and Inspections Department.

Owner-Occupied shall mean a rental unit owned and occupied by the registrant as his or her primary residence.

Owner shall mean each individual person or entity including, without limitation, all partners, officers, or trustees of any real estate trust; all members or managers of a limited liability company; and all officers and directors of a corporation; that is the record owner of a building or property.

Primary Residence shall mean the dwelling in which a person resides as his or her legal residence for more than one half of a year and registers as his or her address for tax and government identification purposes.

Registrant shall mean the owner of a rental unit, or a tenant, with permission from the owner, seeking to register a rental unit.

Rental unit is a portion of any residential structure that is rented or available for rent to any individual or individuals for any length of time. Any portion of a Single-Family Home, Condominium, or Apartment that is rented or available to be rented to an individual or individuals who are not the owner or owners shall be considered a *rental unit*. *Dwelling units* and *rooming units* as defined in §6-106 are, without limitation, *rental units*. A Single-Family Home, Condominium, or Apartment that is occupied by the owner or owners, and of which no portion is rented or available for rent, is not a *rental unit*.

Short Term Rental is the letting of a rental unit, in whole or in part, for less than thirty (30) days.

Single Family Home shall mean a detached residential dwelling or a single condominium unit containing one dwelling unit.

Tenant-Occupied shall mean a rental unit in which the registrant is not the record owner of the rental unit, but lawfully occupies the rental unit as his or her primary residence.

Sec. 6151. Registration required.

~~(a) For purposes of this Article, a *rental unit* is a portion of any residential structure that is rented or available for rent to any individual or individuals for any length of time. A Single-Family Home, Condominium, or Apartment that is occupied by the owner or owners, and of which no portion is rented or available for rent, is not a *rental unit*. Any portion of a Single-Family Home, Condominium, or Apartment that is rented to or available to be rented to an individual or individuals who are not the owner or owners is a *rental unit*. *Dwelling units* and *rooming units* as defined in §6-106 are, without limitation, *rental units*.~~

(a) *Registration of Ownership.*

1. Rental units must be registered in accordance with this Article by January 1st of each year. Registration must be renewed annually, on or before January 1st, including updating all changes in previously submitted registration information.

2. If a rental unit is rented as both a short term and long term rental, it must be separately registered for each type of rentals.

3. Each owner, manager, or person/entity otherwise responsible for the rental unit, such as a property manager, shall be obligated under this Article. Any new owner, manager, or responsible person/entity must register within thirty (30) days of purchase of the rental unit or transfer of management or responsibility.

4. A rental unit shall not be considered registered until all information and fees are provided to the satisfaction of the City's Permitting and Inspections Department or its designee.

5. As a condition of registration, all owners must allow

onsite inspections of their property including, without limitation, all rental units.

(b) *Information/Documentation Required.* Registration must be completed on forms supplied by the City's Permitting and Inspections Department or their designee and must provide, at a minimum, the following information:

1. The street address of the building;

2. The unit number of the rental unit;

3. The tax assessor's chart, block and lot of the property on which the building is located;

4. The owner of the property, including the owners' name, address, telephone number, and email address. If the owner is anything other than a natural person, the following information must also be included:

    a. Each individual person that has an ownership interest in any entity that is the record owner. This includes, without limitation, all partners, officers, or trustees of any real estate trusts; any members or managers of a limited liability company; and all officers and directors of a corporation; and

    b. The residential street address, e-mail address and home phone number of at least one (1) such individual person;

5. The manager of the property or the person or persons responsible for its regular maintenance or repair, as well as a name, address, telephone number, and email address for that person or entity.

6. The person designated as the agent of the owner or owners for the service of notices and civil process by the city, as well as their name, address, telephone number, and e-mail address. Service of notice and process upon the person so designated shall be deemed conclusive service upon the owner or owners.

(c) *Additional Information Required for Short Term Rentals.* A short term rental shall not be considered registered unless and until the registrant has submitted a complete application together with all information required by this article, paid the fee required by Sec 6-153, and a registration number has been issued.

In addition to the information required in Section 6-152(5)(b), a Short Term Rental registrant must provide at a minimum the following information and any other information requested by the City's Permitting and Inspections Department or their designee::

1. A short term rental application;
2. Whether the rental unit is owner-occupied, tenant-occupied, or non-owner occupied;
   a. For Short Term Rental units that are owner-occupied, the registrant must provide a notarized primary residence affidavit, on forms provided by the City.
   b. For Short Term Rental units that are tenant-occupied, the registrant must provide a notarized primary residence affidavit, a notarized statement of permission by his/her landlord, both on forms supplied by the City.

3. The address and tax assessor's chart, block, and lot number of all other short term rentals in the City in which the registrant has an ownership interest;

(d) *Display of Short Term Rental Registration Number Required.* Once registration is approved by the City, each short term rental shall be given a registration number, which much be displayed in the rental unit and in any and all advertisements for the rental unit.

(e) Upon request by the City, at any time, all registrants and/or agents of short term rental units must provide the City with their registration information, rental history, and upcoming reservation information. Failure of short term rental unit owners, tenants, and/or their representatives to adequately respond to inquiries by the City within a forty-eight (48) hour period shall be considered a violation under this ordinance.

~~(b) *Registration of ownership.* The owner or owners of all buildings containing one (1) or more rental units within the city shall register their ownership interest, address, telephone number, and e-mail address, as well as the name, address and telephone number of the person or entity responsible for managing the property with a housing safety official designated by the city manager as provided in section 6152 by January 1, 2016 or within thirty (30) days of purchase of the property and/or building, whichever occurs later.~~

~~(c) *Fee for Registration.* The owner or owners shall pay to a housing safety official designated by the city manager a fee of $35 per rental unit at the time of registration. Failure to pay this fee by January 1, 2016 shall constitute a violation pursuant to section 6-153.~~

~~(d) *Annual Renewal and Fee.* The owner or owners shall renew their registration annually by updating the information provided in their initial registration and by payment to the City through a housing safety official designated by the City Manager of a fee of $35 per rental unit. Failure to update information or pay the annual renewal fee by January 1 shall constitute a violation pursuant to section 6-153.~~

~~(e) *Registration of management companies.* Any individual, firm, corporation or purchaser under a land installment contract pursuant to Title 13 M.R.S.A. § 481 et seq. as may be amended from time to time, managing property subject to the registration requirements of subsection (a) shall register with the building authority its management responsibility by January 1, 2016 or within thirty (30) days of assuming management responsibility. Any filing shall be updated, at least annually, if there are any changes whatsoever with regard to the information supplied. Failure to register management responsibility or update the information supplied regarding such management responsibility shall constitute a violation pursuant to section 6-153.~~

~~(f) *Registration and Renewal Fee Discounts.* In recognition that there are certain actions that owners of rental units may take that reduce the safety risk and decrease the financial burden upon the City, the following discounts to the registration fee and renewal fee are available:~~

> ~~(1) $10 discount for each rental unit within a fully-sprinkled building as verified by a testing report, maintenance report or a maintenance~~

~~contract, which shall be provided at the time of registration and upon each renewal;~~

~~(2) $7.50 discount for each rental unit within a building with a centrally-monitored fire alarm as verified by Fire Department logs or an alarm contract, which shall be provided at the time of registration and upon each renewal;~~

~~(3) $5.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Housing Quality Standard (HQS) inspection within the preceding year as verified by the HQS inspection report, which shall be provided at the time of registration and upon each renewal;~~

~~(4) $10.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Uniform Physical Condition Standard (UPCS) inspection within the preceding year as verified by the UPCS inspection report, which shall be provided at the time of registration and upon each renewal;~~

~~(5) $2.50 for a rental unit that is subject to a signed lease which prohibits smoking by tenants as verified by a copy of the current lease, which shall be provided at the time of registration and upon each renewal. The existence of and enforcement of such provision may also be verified through inspections or upon spot checks of the rental unit.~~

~~The total amount of discounts from the annual registration or renewal fee as described above shall not exceed $20.00, and the minimum annual fee for registration or renewal shall be $15.00 per unit.~~

6-152. ~~Registration form; information.~~Registration Fees.

~~A housing safety official designated by the city manager shall provide forms to be completed by the owners and managers of properties subject to registration under this article and shall maintain a file containing all registrations made under this article.~~

~~(a) The registration form for owners shall include, at a~~

~~minimum, the following:~~

~~1. The street address of the building;~~

~~2. The assessor's chart, block and lot of the property on which the building is located;~~

~~3. The names, addresses, telephone numbers, and e-mail addresses of all individual persons having any ownership interest in the property including, without limitation, all partners, all officers or trustees of any real estate trusts; and including the residential street address, e-mail address and home phone number of at least one (1) such individual person;~~

~~4. The name, address and telephone number of the manager of the property or the person or persons responsible for its regular maintenance or repair;~~

~~5. The name, address, and e-mail address of a person designated as the agent of the owner or owners for the service of notices and civil process by the city. Service of notice and process upon the person so designated shall be deemed conclusive service upon the owner or owners designating that person in any litigation pertaining to the premises.~~

~~(b) The registration form for managers of property shall include, at a minimum, the following:~~

~~1. The name, address, e-mail address and local telephone number of the management company and of at least one (1) such individual, including the residential street address, e-mail address and home telephone number of that individual; and~~

~~2. A list of all buildings for which the person or firm is responsible, including the street address and chart, block and lot description of the property and the name of the owner of that building.~~

(a) *Annual Registration Fee.* Upon initial registration and by January 1st of each year, registrants shall pay the City a registration fee for each rental unit, in the amounts set forth below. A rental unit shall not be considered registered unless and until this fee is paid in full.

(b) *Long Term Rental Registration Fee.* The registrant of a long term rental shall pay thirty five dollars ($35.00) to the City by January 1st of each year.

(c) *Short Term Rental Registration Fee Structure.* The registrant of a short term rental shall pay the fee specified in the chart below. All fees will be cumulative and will increase based on the number of total units registered by the owner. The fee total will accumulate first by counting any short term rental units operating in a single family home or owner occupied multi-family buildings and then fees will be attributed at the higher rate for any units located in non-owner occupied buildings. If an owner registers units in both owner occupied and non-owner occupied buildings then the owner occupied fees will be considered the first unit under the fee structure starting with the 1st unit fee as described in the chart below regardless of the order in which the units are registered.

Owner Occupied Single Family Home , or Tenant Occupied	$100
Multi-Unit Owner Occupied Building Island Short Term Rentals	1st Unit - $100 2nd Unit - $250 3rd Unit - $500 4th Unit - $1,000 5th Unit - $2,000
Multi-Unit Non-Owner Occupied Building	1st Unit - $200 2nd Unit - $500 3rd Unit - $1,000 4th Unit - $2,000 5th Unit - $4,000

(d) *Registration and Renewal Fee Discounts.* The following discounts shall apply to the registration and renewal fees:

(1) $10 discount for each rental unit within a fully-sprinkled building as verified by a testing report, maintenance report or a maintenance

contract, which shall be provided at the time of registration and upon each registration renewal;

(2) $7.50 discount for each rental unit within a building with a centrally-monitored fire alarm as verified by Fire Department logs or an alarm contract, which shall be provided at the time of registration and upon each registration renewal;

(3) $5.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Housing Quality Standard (HQS) inspection within the preceding year as verified by the HQS inspection report, which shall be provided at the time of registration and upon each registration renewal;

(4) $10.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Uniform Physical Condition Standard (UPCS) inspection within the preceding year as verified by the UPCS inspection report, which shall be provided at the time of registration and upon each registration renewal;

(5) $2.50 for a rental unit that is subject to a signed lease which prohibits smoking by tenants as verified by a copy of the current lease, which shall be provided at the time of registration and upon each registration renewal. The existence of and enforcement of this provision may be verified through an inspections of each rental unit.

The total amount of discounts from the annual registration or renewal fee as described above shall not exceed $20.00, and the minimum annual fee for registration or renewal shall be $15.00 per unit.

Sec. 6153. ~~Violations.~~Limitations on Short Term Rentals.

(a) ~~Any person business entity or other organization failing to timely file the required registration or failing to timely pay, in full, the registration fee or annual renewal fee, or failing to timely file any required update to the registration shall be in violation of this Article for which a fine of $100.00 per day each day the violation continues shall be~~

~~assessed.~~

(b) ~~Any person providing false information with respect to registration shall be in violation of this article for which a fine of $1,000.00 shall be assessed.~~

(c) ~~It shall be a violation of this article for which a fine of $100.00 per day each day the violation continues shall be assessed for any owner or manager to rent any apartment or other portion of any building subject to registration, not registered under this article, or to permit the occupancy of such premises.~~

~~(d) No certificate of occupancy shall be issued for property subject to the registration requirements which is not registered in accordance with this article.~~

(d) *Occupancy Limit.* Overnight short term rental guest occupancy in each rental unit will be limited to two (2) guests per bedroom plus no more than two (2) additional guests.

(e) *Limitation on Total Number of Short Term Rentals.* No more than 300 non-owner occupied mainland short term rental units shall be registered in any one calendar year.

(f) *Limitations on number of Short Term Rentals an Individual or Entity May Register.* An individual or entity may only register up to five (5) short term rentals in the City, including the Islands, in any one (1) calendar year. For purposes of this section, short term rentals registered by an entity in which the registrant has an ownership interest shall be counted towards this limit.

(g) No individual or entity may register a short term rental in any single family home unless it is owner-occupied; tenant-occupied with permission of the owner; or located on an Island.

(e) The number of short term rental units that may be operated in a multi-unit building are as follows:

Total # of Units in a Building	**# of Short Term Rental Units Allowed in a Building**	
	Owner Occupied	**Non-Owner Occupied**
2	2	1
3	3	2
4	4	2
5	5	2
6-9	5	4
10+	5	5

Tenant-occupied units, where the tenant is the registrant, shall not be counted towards these limits.

Sec. 6-154. ~~Reserved.~~Allocation of Short Term Rentals.

The limitations on the allocation of short term rental units identified in section 6-154(b) shall be allocated each year on a first come, first registered basis. Once the total number of units identified in section 6-154(b) has been reached a waitlist will be formed to help gauge market demand. The City Manager or his/her designee, may institute a lottery process at his/her discretion.

Sec. 6155. ~~Reserved.~~Violations.

Specific violations of this article, subject to the provisions of § 6-1, include, but are not limited to:

(a) Any person, business entity, or other organization failing to timely register a rental unit, including providing all required information and paying the required registration fee.

(b) Any person, business entity, or other organization providing false information with respect to registration. Notwithstanding the provisions of § 6-1, the penalty for such violation shall be $1,000.00.

(c) Any person, business entity, or other organization renting any rental unit that is not registered under this article, or to permit the occupancy of such premises without registration.

(d) Failure of short term rental unit owners, tenants, and/or their representatives to adequately respond to inquiries by the City pursuant to 6-152(e) within a forty-eight (48) hour period.

(e) Any person business entity or other organization failing to timely file the required registration or failing to timely pay, in full, the registration fee or annual renewal fee, or failing to timely file any required update to the registration shall be in violation of this Article for which a fine of $100.00 per day each day the violation continues shall be assessed.

(f) Any person providing false information with respect to registration shall be in violation of this article for which a fine of $1,000.00 shall be assessed.

(g) It shall be a violation of this article for which a fine of $100.00 per day each day the violation continues shall be assessed for any owner or manager to rent any apartment or other portion of any building subject to registration, not registered under this article, or to permit the occupancy of such premises.

~~(d) No certificate of occupancy shall be issued for property subject to the registration requirements which is not registered in accordance with this article.~~

Sec. 6-156. ~~Reserved.~~Enforcement.

(a) The building authority as defined in section 6-1 or his/her designee is authorized to institute, or cause to be instituted by and through the office of the corporation counsel, in the name of the city, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this article.

(b) No certificate of occupancy shall be issued for property that is subject to the registration requirements of this article, but is not registered in accordance with this article.

(c) Any short term rental at a property that is designated by the City as a disorderly house and fails to meet the requirements of section 6-202, shall, at the discretion of the City Manager or this/her designee, have its registration revoked and be ineligible for registration for a period of twelve (12) months. Any registration after revocation shall be considered a new registration and not a renewal.

(d) Fines may be attributed to Property Management firms found operating short term rental units in violation of this article. These fines may be in addition to fines levied against owners of property.

Sec. 6-157. ~~Reserved.~~Revenue Allocation.

Notwithstanding §6-1(b), all revenue generated from short term rental registration fees and penalties shall be used to first fund short term rental related administrative costs. Any remaining revenue shall be deposited in the Housing Trust Fund, as defined in Sec. §14-489.

2. *That Chapter 14, Sections 14-47 of the Portland City Code is hereby amended as follows:*

Sec. 1447. Definitions.

The following words shall be defined as set forth below for use in this article. Definitions set forth in the building code of the city shall apply to words not herein defined:

Accessory uses: Uses which are customarily incidental and subordinate to the location, function and operation of permitted uses.

...

Drive-through features: Features associated with drive-throughs including but not limited to designated travel or stacking lanes, intercom systems, menu boards, service windows, kiosks, mechanical devices, etc.

Dwelling: A building or portion thereof used exclusively for residential occupancy, including singlefamily, twofamily and multifamily dwellings, but not including hotels, lodging houses, sheltered care group homes or tourist homes. Occupancy of dwellings for periods of less than thirty (30) days are subject to the requirements of Portland City Code Chapter 6, Article VI.

Dwelling, onefamily: A detached building used exclusively for occupancy by one (1) family.

...

Use: The purpose for which land or structures thereon is designed, arranged or intended to be occupied or used, or for which it is occupied, maintained, rented or leased. <u>The use of a property is not altered solely as the result of the property being rented, leased, or let, on a transient or long-term basis, by an idividual or entity other that the owner, for purposes of engaging in the same use.</u>

Utility substation: Any sewage or water pumping station, electric power substation, transformer station, telephone equipment enclosures, or other similar structures owned or operated by a public utility.

MEMORANDUM
City Council Agenda Item

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

FROM: Jeff Levine, Director of Planning and Urban Development
Tyler Norod, Housing Planner

DATE: February 14, 2017

SUBJECT: Short Term Rentals

SPONSOR: Housing Committee; February 8th, 2017, Voted 3-0 in favor

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: March 20, 2017 Final Action: March 26, 2017

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

PRESENTATION: Director of Planning & Urban Development, Jeff Levine & Housing Planner, Tyler Norod – brief oral presentation

I. ONE SENTENCE SUMMARY

Amendment to Portland City Codes Chapter 6 Buildings & Building Regulations, Article VI, and Chapter 14 Land Use, Article III Re: Residential Rental Unit Registration Requirements for Short Term Rentals.

II. AGENDA DESCRIPTION

The Housing Committee is recommending revisions to Chapter 6 and Chapter 14 to register and regulate the emergence of Short Term Rentals (STRs) through websites such as Airbnb.

The proposed amendments would allow all property owners to rent out their primary residences as STRs. No non-owner occupied single family home or condominium would be allowed to be rented as STRs, except on the islands. Multi-family and mixed-use buildings will be required to register units at escalating registration fees with a cap on total number of STR units per building based on the charts outlined in the memo's attachments.

In an effort to reduce the potential impacts of STRs on Portland's long term housing stock, a cap of 300 non-owner occupied STR units will be enforced on Portland's mainland and a city-wide limit of no more than 5 STR units per person. A cap on non-owner occupied STR units on the islands may be examined at a later date.

Any problem STR properties will be subject to the Disorderly House Ordinance as it exists in Chapter 6. Additional details of the proposed amendments can be found in the attached regulatory framework and proposed ordinance language.

III. BACKGROUND

On February 8, 2017, the Housing Committee met and voted unanimously, 3-0 to forward this item to the City Council with a recommendation for passage. On February 28, 2017, the Planning Board met and voted 6-0 with a recommendation for passage of the definition amendments for Dwelling and Use in Chapter 14.

The Housing Committee met seven times between October 2016 and February 2017 to craft the regulatory language presented within this memorandum. The attached framework was developed through extensive discussions by Committee members. At the direction of the Committee, staff drafted the attached proposed ordinance amendments in Chapter 6 and Chapter 14.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

To provide clarity to existing City regulations regarding the letting of residential space within the context of the emerging sharing economy.

V. FINANCIAL IMPACT

The enforcement of regulations governing STRs will be complex and will require additional attention from the City. STRs also have the potential to negatively distort the long term housing market in Portland. As such any revenue collected in the form of registration fees or penalties are recommended to be allocated specifically to covering administrative costs for overseeing residential rental regulations. Any remaining revenue would be allocated to Portland's Housing Trust Fund.

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

The Committee's discussion around STRs largely revolved around the attached framework outlining the goals and regulatory provision for the proposed amendments to the City Code.

VII. RECOMMENDATION

The Housing Committee recommends the Council adopt the proposed amendments to Chapter 6 and Chapter 14 to clarify regulations for Short Term Rentals in Portland.

VIII. LIST ATTACHMENTS

Attachment A: STR Regulatory Framework

Attachment B: Amendments to Chapter 14, Article III definition of Dwelling and Use

Attachment C: Amendments to Chapter 6, Article VI Residential Rental Unit Registration Requirements

Prepared by: Tyler Norod, Housing Planner
Date: February 14, 2017

Attachment A – STR Regulatory Framework

Draft STR Regulatory Framework: Updated February 1, 2017

1. A Short Term Rental (STR) is a dwelling unit or rooming unit for transient guests for less than 30 days;

2. Property owners and their agents (Hosts) may not operate an STR without annually registering with the Housing Safety Office each unit or rooming unit;

3. The City will reevaluate the STR policy six months after registration begins and annually thereafter to understand the STR market impact on Portland's housing stock;

4. A cap of 300 units will be made available for all STR units that are not located on the islands and are not a host's primary residence. No cap for non-owner occupied units will initially be set for the islands.
   a. Once caps have been reached a wait list will be formed to help gauge market demand;
   b. The City will reevaluate the STR cap for both the islands and mainland six months after registration begins and annually thereafter to understand the STR market impact on Portland's housing stock and whether adjustments should be made to either cap;

5. Regardless of ownership structure, individuals shall not be allowed to register more than five (5) STR units across any buildings in Portland in which they have a financial interest;

6. Due to accountability and effective enforcement concerns only property owners will be able to register STRs, with the exception that a renter may register one apartment provided that:
   a. The apartment is their primary dwelling and the tenant submits a primary residence affidavit and associated documents;
   b. Along with their registration application and fee tenants must provide a notarized copy of the city drafted landlord-tenant STR permission letter signed by their landlord. The letter will include:
      i. Landlord and tenant's contact information;
      ii. A notarized statement of permission by landlord allowing tenant to rent apartment as STR including an acknowledgment by the owner of their liability under the Disorderly House Ordinance, inspections, and any fees or code violations;

7. A violation of the Disorderly House Ordinance will, at the discretion of the City Manager or their designee, result in an immediate revocation of the registration and 12 month suspension from registering again;

8. All Island rentals will continue to register with the Housing Safety Office. Because these rentals are typically rented seasonally the registration fee structure will follow the registration fees for owner-occupied multi-family buildings. Also, given the type of housing stock on the islands non-owner occupied single family homes shall be allowed to operate as STRs so long as they meet all other requirements;

9. Under the STR regulations condominiums will be considered single family homes subject to the same fees and STR limitations as outlined in the chart below;

   a. For clarity, the City's STR regulations will not supersede condominium bylaws pertaining to subletting or offering STR and each condominium association may enforce its own STR restrictions as the association deems appropriate;

10. STR will be addressed similarly to all other applicable building and land use violations as described under Section 6.1 of the City Code and the Disorderly House Ordinance;

11. All registration fees and penalties associated with STRs will be allocated to administrative costs for regulating STRs. Once the administrative needs have been met any remaining revenue will be allocated to the Housing Trust Fund.

12. Property management firms found operating STR's without proper registration may be fined. These fines may be in addition to fines levied against the property owner;

13. Where applicable, hosts must sign an affidavit that the registered unit is their primary residence and provide copies of documents approved by the City demonstrating compliance with this residency requirement, including government ID's, Homestead Exemption, voter registration, current business license, and/or any other documents deemed appropriate by City staff;

14. Hosts must complete the Owner's Pre-Inspection Checklist or similar document provided by the Housing Safety Office as part of the registration process;

15. As a condition of registration, STR's must allow onsite inspections, as well as upon request present their registration information, rental history and upcoming reservations;

16. A registration number will be given to each host per dwelling unit; this registration number shall be displayed in the dwelling unit and be featured in ads;

17. Failure of hosts or their representatives to adequately respond to inquiries by the City within a 48 hour period shall be considered a violation of these regulations and be subject to penalties under Section 6.1;

18. Overnight STR guest occupancy will be limited to two guests per bedroom plus no more than two additional guests who may utilize other sleeping space in another area of the dwelling unit such as a pullout couch. For example, a one bedroom dwelling unit could be rented for a total of four guests, whereas a two bedroom dwelling unit could be rented to a total of six guests; and

19. The number of STR units that may be operated in a building and their associated registration fees will depend on whether or not the building is owner occupied as further detailed in the chart on the next page.
    a. Fees will be cumulative and will increase based on the number of total units and each unit fee will relate to whether or not it is in an owner occupied or non-owner occupied building.
    b. Fees will be calculated by first using any STRs operating in single family homes or owner occupied multi-family buildings and then fees will be attributed at a higher rate for any units in non-owner occupied buildings. It will not matter what order the units are registered in as money owed will be adjusted accordingly to accurately reflect the

total registration fee due based on the number of total units and building typology represented.

i. If a property owner registers STRs in more than one building the registration fees will escalate based on the total number of STR's that they register rather than resetting the escalating fees for each building. For example, if a person owns two non-owner occupied three unit buildings and can register two units in each building the registration fee charged would be a total of $3,700 as fees rise even if registered STR units are not in the same building. If an owner also operates STRs in an owner occupied multi family or single family building the registration fees will accumulate the owner occupied unit first, no matter the timing of registration and the fee for the number of STR units in non-owner occupied buildings will start in a step above the number of STR units operated in a single family home or owner occupied multifamily building.

ii. If we look at the example above where an owner has two three unit properties -- one of which is owner occupied -- and chooses to register two STRs in each building, the STRs in the owner occupied building would be calculated first for a total of $350. The two units in the non-owner occupied building would trigger higher fees of $1,000 and $2,000 because they are the third and fourth STR units registered under that owner and these units are in a non-owner occupied building. In this scenario the total registration fee for both buildings would be $3,350.

iii. The order of units registered will not affect the total fee that is required as part of registration. The fees owed will be adjusted as units are registered to reflect the correct total amount. Owner occupied single family homes and units in owner occupied multifamily homes will always be tallied as the first units even if registered at a later date from units in non-owner occupied buildings. For example, if an owner registers two units in a non-owner occupied building for $700 and then a month later returns to register two units in a owner-occupied building the fee calculated will consider the units in the owner occupied buildings to be at the first and second unit rates and the units in the non-owner occupied building will be considered the third and fourth units for higher fees resulting in a total registration cost of $3,350. The previously paid amount of $700 will act as a credit towards the $3,350 owed and at the time of the second registration the owner would owe the remaining balance of $2,650.

Attachment B - Chapter 14 Ordinance Language

Chapter 14 LAND USE*

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*Cross reference(s)--Buildings and building regulations, Ch. 6; parks, recreation and public buildings, Ch. 18; sewers, Ch. 24; streets, sidewalks and other public places, Ch. 25; vegetation, Ch. 29.

State law reference(s)--Planning, zoning and development, 30 M.R.S.A. Sec. 4501 et seq.

Day care facility: A facility which provides a regular program of care and protection for children under the age of sixteen (16), for consideration, for any part of the day.

Drinking establishment: Means and includes any establishment required to be licensed to sell alcoholic beverages for on-premises consumption, which is not regularly used for the purpose of providing full-course meals, as defined in Title 28-A of the Maine Revised Statutes, on the premises.

Drive-through facility: A commercial facility which provides a service directly to a motor vehicle occupant and where the customer drives a motor vehicle onto the premises and to a window or mechanical device through or by which the customer is served with or without exiting the vehicle. Drive-throughs do not include major or minor auto service stations.

Drive-through features: Features associated with drive-throughs including but not limited to designated travel or stacking lanes, intercom systems, menu boards, service windows, kiosks, mechanical devices, etc.

Dwelling: A building or portion thereof used exclusively for residential occupancy, including single-family, two-family and multifamily dwellings, but not including hotels, lodging houses, sheltered care group homes or tourist homes. Occupancy of dwellings for periods of less than 30 days are subject to the requirements of Chapter 6, Article XI.

Dwelling, one-family: A detached building used exclusively for occupancy by one (1) family.

Dwelling, two-family: A single building containing two dwelling units used exclusively for occupancy by two (2) families living independently of each other.

Dwelling, multifamily: A building or portion thereof containing three (3) or more dwelling units.

Dwelling unit: One (1) or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit.

Earth moving activity means any removal or placement, excavation, filling, stockpiling or grading of soil, earth, vegetation but such vegetation is dominated by woody stems that are six (6) meters approximately.

Use: The purpose for which land or structures thereon is designed, arranged or intended to be occupied or used, or for which it is occupied, maintained, rented or leased. The use of a property is not altered solely as the result of the property being rented, leased, or let, on a transient or long-term basis, by an individual or entity other than the owner, for purposes of engaging in the same use.

Utility substation: Any sewage or water pumping station, electric power substation, transformer station, telephone equipment enclosures, or other similar structures owned or operated by a public utility.

Vegetation: All live trees, shrubs, ground cover, and other plants including, without limitation, trees both over and under four (4) inches in diameter, measured at four and one-half (4 1/2) feet above ground level.

Warehousing: The storage of goods, wares and merchandise in a warehouse.

Water body: Any river or stream.

Watercourse: Any natural or artificial stream, river, creek, ditch, channel, swale, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows in a definite direction or course, either continuously or intermittently, or which has a definite channel, bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or floodwater.

Water-dependent uses: Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and which cannot be located away from these waters.

Wetlands associated with shoreland zones: a freshwater or coastal wetland.

Wetlands: Those areas which have two (2) or more of the following:

(a) A water table at or near the surface during the

Chapter 14 LAND USE*

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*Cross reference(s)--Buildings and building regulations, Ch. 6; parks, recreation and public buildings, Ch. 18; sewers, Ch. 24; streets, sidewalks and other public places, Ch. 25; vegetation, Ch. 29.

State law reference(s)--Planning, zoning and development, 30 M.R.S.A. Sec. 4501 et seq.

Day care facility: A facility which provides a regular program of care and protection for children under the age of sixteen (16), for consideration, for any part of the day.

Drinking establishment: Means and includes any establishment required to be licensed to sell alcoholic beverages for on-premises consumption, which is not regularly used for the purpose of providing full-course meals, as defined in Title 28-A of the Maine Revised Statutes, on the premises.

Drive-through facility: A commercial facility which provides a service directly to a motor vehicle occupant and where the customer drives a motor vehicle onto the premises and to a window or mechanical device through or by which the customer is served with or without exiting the vehicle. Drive-throughs do not include major or minor auto service stations.

Drive-through features: Features associated with drive-throughs including but not limited to designated travel or stacking lanes, intercom systems, menu boards, service windows, kiosks, mechanical devices, etc.

Dwelling: A building or portion thereof used exclusively for residential occupancy, including single-family, two-family and multifamily dwellings, but not including hotels, lodging houses, sheltered care group homes or tourist homes. Occupancy of dwellings for periods of less than 30 days are subject to the requirements of Chapter 6, Article XI.

Dwelling, one-family: A detached building used exclusively for occupancy by one (1) family.

Dwelling, two-family: A single building containing two dwelling units used exclusively for occupancy by two (2) families living independently of each other.

Dwelling, multifamily: A building or portion thereof containing three (3) or more dwelling units.

Dwelling unit: One (1) or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit.

Earth moving activity means any removal or placement, excavation, filling, stockpiling or grading of soil, earth, vegetation; or where the soils support the growth of wetland vegetation but such vegetation is dominated by woody stems that are six (6) meters approximately.

Use: The purpose for which land or structures thereon is designed, arranged or intended to be occupied or used, or for which it is occupied, maintained, rented or leased.The use of a property is not altered soley as the result of the property being rented, leased, or let, on a transient or long-term basis, by an individual or entity other than the owner, for purposes of engaging in the same use.

Utility substation: Any sewage or water pumping station, electric power substation, transformer station, telephone equipment enclosures, or other similar structures owned or operated by a public utility.

Vegetation: All live trees, shrubs, ground cover, and other plants including, without limitation, trees both over and under four (4) inches in diameter, measured at four and one-half (4 1/2) feet above ground level.

Warehousing: The storage of goods, wares and merchandise in a warehouse.

Water body: Any river or stream.

Watercourse: Any natural or artificial stream, river, creek, ditch, channel, swale, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows in a definite direction or course, either continuously or intermittently, or which has a definite channel, bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or floodwater.

Water-dependent uses: Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and which cannot be located away from these waters.

Wetlands associated with shoreland zones: a freshwater or coastal wetland.

Wetlands: Those areas which have two (2) or more of the following:

Attachment C - Chapter 6 Ordinance Language

ARTICLE VI. ~~DISCLOSURE OF BUILDING OWNERSHIP~~Residential Rental Unit Registration Requirements

Sec. 6-150. Purpose.

The proliferation of real estate proprietorships, partnerships, and trusts having undisclosed, anonymous or otherwise unidentifiable principals, owning large numbers of residential rental properties, sometimes managed through unresponsive property management companies, has impeded the proper enforcement of this chapter, chapter 12 and other ordinances of the city. This article is intended to require the disclosure of the ownership of such property, the regulation of renting of property within the City, and to make owners and persons responsible for the maintenance of property more accessible and accountable with respect to the premises, and to ensure that owners and tenants comply with chapters 6 and 10 of the City Code.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

Sec. 6-151. Definitions.

The definitions in 6-106 apply to this Article. The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

Island Short Term Rental shall mean a short term rental located on one of the following islands in the City of Portland: Peaks Island, Great Diamond Island, Cushing Island, Little Diamond Island, House Island, and/or Cliff Island.

Long Term Rental shall mean the letting of a rental unit in whole or in part for thirty (30) days or more.

Mainland Short Term Rental shall mean a short term rental located within the limits of the City of Portland, but not on Peaks Island, Long Island, Great Diamond Island, Cushing Island, Little Diamond Island, House Island and/or Cliff Island.

Multi-Unit shall mean a single, detached building in common ownership interest containing more than one (1) residential or commercial unit, as determined by the Director of the Permitting and Inspections Department.

Owner-Occupied shall mean a rental unit owned and occupied by the registrant as his or her primary residence.

Owner shall mean each individual person or entity including, without limitation, all partners, officers, or trustees of any real estate trust; all members or managers of a limited liability company; and all officers and directors of a corporation; that is the record owner of a building or property.

Primary Residence shall mean the dwelling in which a person resides as his or her legal residence for more than one half of a year and registers as his or her address for tax and government identification purposes.

Registrant shall mean the owner of a rental unit, or a tenant, with permission from the owner, seeking to register a rental unit.

Rental unit is a portion of any residential structure that is rented or available for rent to any individual or individuals for any length of time. Any portion of a Single-Family Home, Condominium, or Apartment that is rented or available to be rented to an individual or individuals who are not the owner or owners shall be considered a *rental unit*. *Dwelling units* and *rooming units* as defined in §6-106 are, without limitation, *rental units*. A Single-Family Home, Condominium, or Apartment that is occupied by the owner or owners, and of which no portion is rented or available for rent, is not a *rental unit*.

Short Term Rental is the letting of a rental unit, in whole or in part, for less than thirty (30) days.

Single Family Home shall mean a detached residential dwelling or a single condominium unit containing one dwelling unit.

Tenant-Occupied shall mean a rental unit in which the registrant is not the record owner of the rental unit, but lawfully occupies the rental unit as his or her primary residence.

Sec. 6-152~~1~~. Registration required.

~~(a) For purposes of this Article, a *rental unit* is a portion of any residential structure that is rented or available for rent to any individual or individuals for any length of time. A Single-Family Home, Condominium, or Apartment that is occupied by the owner or owners, and of which no portion is rented or available for rent, is not a *rental unit.* Any portion of a Single-Family Home, Condominium, or Apartment that is rented to or available to be rented to an individual or individuals who are not the owner or owners is a *rental unit.* *Dwelling units* and *rooming units* as defined in §6-106 are, without limitation, *rental units.*~~

(a) *Registration of Ownership.*

1. Rental units must be registered in accordance with this Article by January 1st of each year. Registration must be renewed annually, on or before January 1st, including updating all changes in previously submitted registration information.

2. If a rental unit is rented as both a short term and long term rental, it must be separately registered for each type of rentals.

3. Each owner, manager, or person/entity otherwise responsible for the rental unit, such as a property manager, shall be obligated under this Article. Any new owner, manager, or responsible person/entity must register within thirty (30) days of purchase of the rental unit or transfer of management or responsibility.

4. A rental unit shall not be considered registered until all information and fees are provided to the satisfaction of the City's Permitting and Inspections Department or its designee.

5. As a condition of registration, all owners must allow onsite inspections of their property including, without limitation, all rental units.

(b) *Information/Documentation Required.* Registration must be completed on forms supplied by the City's Permitting and Inspections Department or their designee and must provide, at a minimum, the following information:

1. The street address of the building;

2. The unit number of the rental unit;

3. The tax assessor's chart, block and lot of the property on which the building is located;

4. The owner of the property, including the owners' name, address, telephone number, and email address. If the owner is anything other than a natural person, the following information must also be included:

   a. Each individual person that has an ownership interest in any entity that is the record owner. This includes, without limitation, all partners, officers, or trustees of any real estate trusts; any members or managers of a limited liability company; and all officers and directors of a corporation; and

   b. The residential street address, e-mail address and home phone number of at least one (1) such individual person;

5. The manager of the property or the person or persons responsible for its regular maintenance or repair, as well as a name, address, telephone number, and email address for that person or entity.

6. The person designated as the agent of the owner or owners for the service of notices and civil process by the city, as well as their name, address, telephone number, and e-mail address. Service of notice and process upon the person so designated shall be deemed conclusive service upon the owner or owners.

(c) *Additional Information Required for Short Term Rentals.* A short term rental shall not be considered registered unless and until the registrant has submitted a complete application together with all information required by this article, paid the fee required by Sec 6-153, and a registration number has been issued.

In addition to the information required in Section 6-152(5)(b), a Short Term Rental registrant must provide at a minimum the following information and any other information requested by the City's Permitting and Inspections Department or their designee::

1. A short term rental application;
2. Whether the rental unit is owner-occupied, tenant-occupied, or non-owner occupied;
   a. For Short Term Rental units that are owner-occupied, the registrant must provide a notarized primary residence affidavit, on forms provided by the City.
   b. For Short Term Rental units that are tenant-occupied, the registrant must provide a notarized primary residence affidavit, a notarized statement of permission by his/her landlord, both on forms supplied by the City.

3. The address and tax assessor's chart, block, and lot number of all other short term rentals in the City in which the registrant has an ownership interest;

(d) *Display of Short Term Rental Registration Number Required.* Once registration is approved by the City, each short term rental shall be given a registration number, which much be displayed in the rental unit and in any and all advertisements for the rental unit.

(e) Upon request by the City, at any time, all registrants and/or agents of short term rental units must provide the City with their registration information, rental history, and upcoming reservation information. Failure of short term rental unit owners, tenants, and/or their representatives to adequately respond to inquiries by the City within a forty-eight (48) hour period shall be considered a violation under this ordinance.

~~(b) *Registration of ownership.* The owner or owners of all buildings containing one (1) or more rental units within the~~

~~city shall register their ownership interest, address, telephone number, and e-mail address, as well as the name, address and telephone number of the person or entity responsible for managing the property with a housing safety official designated by the city manager as provided in section 6-152 by January 1, 2016 or within thirty (30) days of purchase of the property and/or building, whichever occurs later.~~

~~(c) *Fee for Registration*. The owner or owners shall pay to a housing safety official designated by the city manager a fee of $35 per rental unit at the time of registration. Failure to pay this fee by January 1, 2016 shall constitute a violation pursuant to section 6-153.~~

~~(d) *Annual Renewal and Fee*. The owner or owners shall renew their registration annually by updating the information provided in their initial registration and by payment to the City through a housing safety official designated by the City Manager of a fee of $35 per rental unit. Failure to update information or pay the annual renewal fee by January 1 shall constitute a violation pursuant to section 6-153.~~

~~(e) *Registration of management companies*. Any individual, firm, corporation or purchaser under a land installment contract pursuant to Title 13 M.R.S.A. § 481 et seq. as may be amended from time to time, managing property subject to the registration requirements of subsection (a) shall register with the building authority its management responsibility by January 1, 2016 or within thirty (30) days of assuming management responsibility. Any filing shall be updated, at least annually, if there are any changes whatsoever with regard to the information supplied. Failure to register management responsibility or update the information supplied regarding such management responsibility shall constitute a violation pursuant to section 6-153.~~

6-153. Registration Fees.

(a) *Annual Registration Fee.* Upon initial registration and by January 1st of each year, registrants shall pay the City a registration fee for each rental unit, in the amounts set forth below. A rental unit shall not be considered registered unless and until this fee is paid in full.

(b) *Long Term Rental Registration Fee.* The registrant of a long term rental shall pay thirty five dollars ($35.00) to the City by January 1st of each year.

(c) *Short Term Rental Registration Fee Structure.* The registrant of a short term rental shall pay the fee specified in the chart below. All fees will be cumulative and will increase based on the number of total units registered by the owner. The fee total will accumulate first by counting any short term rental units operating in a single family home or owner occupied multi-family buildings and then fees will be attributed at the higher rate for any units located in non-owner occupied buildings. If an owner registers units in both owner occupied and non-owner occupied buildings then the owner occupied fees will be considered the first unit under the fee structure starting with the 1st unit fee as described in the chart below regardless of the order in which the units are registered.

Owner Occupied Single Family Home , or Tenant Occupied	$100
Multi-Unit Owner Occupied Building Island Short Term Rentals	1st Unit - $100 2nd Unit - $250 3rd Unit - $500 4th Unit - $1,000 5th Unit - $2,000
Multi-Unit Non-Owner Occupied Building	1st Unit - $200 2nd Unit - $500 3rd Unit - $1,000 4th Unit - $2,000 5th Unit - $4,000

(d~~f~~) *Registration and Renewal Fee Discounts.* ~~In recognition that there are certain actions that owners of rental units may take that reduce the safety risk and decrease the financial burden upon the City, the~~ The following discounts shall apply to the registration ~~fee~~ and renewal fees ~~are available~~:

(1) $10 discount for each rental unit within a fully-sprinkled building as verified by a testing report, maintenance report or a maintenance contract, which shall be provided at the time of registration and upon each registration renewal;

(2) $7.50 discount for each rental unit within a building with a centrally-monitored fire alarm as verified by Fire Department logs or an alarm contract, which shall be provided at the time of registration and upon each registration renewal;

(3) $5.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Housing Quality Standard (HQS) inspection within the preceding year as verified by the HQS inspection report, which shall be provided at the time of registration and upon each registration renewal;

(4) $10.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Uniform Physical Condition Standard (UPCS) inspection within the preceding year as verified by the UPCS inspection report, which shall be provided at the time of registration and upon each registration renewal;

(5) $2.50 for a rental unit that is subject to a signed lease which prohibits smoking by tenants as verified by a copy of the current lease, which shall be provided at the time of registration and upon each registration renewal. The existence of and enforcement of ~~such~~ this provision may ~~also~~ be verified through an inspections ~~or upon spot checks~~ of ~~the~~ each rental unit.

The total amount of discounts from the annual registration or renewal fee as described above shall not exceed $20.00, and the minimum annual fee for registration or renewal shall be $15.00 per unit.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. No. 246-97, 4-9-97; Ord. 298-14/15, 7-6-2015; Ord. 69-15/16, 10/5/2015)

Sec. 6-154. Limitations on Short Term Rentals.

(a) *Occupancy Limit.* Overnight short term rental guest occupancy in each rental unit will be limited to two (2) guests per bedroom plus no more than two (2) additional guests.

(b) *Limitation on Total Number of Short Term Rentals.* No more than 300 non-owner occupied mainland short term rentals units shall be registered in any one calendar year.

(c) *Limitations on number of Short Term Rentals an Individual or Entity May Register.* An individual or entity may only register up to five (5) short term rentals in the City, including the Islands, in any one (1) calendar year. For purposes of this section, short term rentals registered by an entity in which the registrant has an ownership interest shall be counted towards this limit.

(d) No individual or entity may register a short term rental in any single family home unless it is owner-occupied; tenant-occupied with permission of the owner; or located on an Island.

(e) The number of short term rental units that may be operated in a multi-unit building are as follows:

Total # of Units in a Building	**# of Short Term Rental Units Allowed in a Building**	
	Owner Occupied	**Non-Owner Occupied**
2	2	1
3	3	2
4	4	2
5	5	2
6-9	5	4
10+	5	5

Tenant-occupied units, where the tenant is the registrant, shall not be counted towards these limits.

Sec. 6-155. Allocation of Short Term Rentals.

The limitations on the allocation of short term rental units identified in section 6-154(b) shall be allocated each year on a first come, first registered basis. Once the total number of units identified in section 6-154(b) has been reached a waitlist will be formed to help gauge market demand. The City Manager or his/her designee, may institute a lottery process at his/her discretion.

Sec. 6-156. Violations.

Specific violations of this article, subject to the provisions of § 6-1, include, but are not limited to:

(a) Any person, business entity, or other organization failing to timely register a rental unit, including providing all required information and paying the required registration fee.

(b) Any person, business entity, or other organization providing false information with respect to registration. Notwithstanding the provisions of § 6-1, the penalty for such violation shall be $1,000.00.

(c) Any person, business entity, or other organization renting any rental unit that is not registered under this article, or to permit the occupancy of such premises without registration.

(d) Failure of short term rental unit owners, tenants, and/or their representatives to adequately respond to inquiries by the City pursuant to 6-152(e) within a forty-eight (48) hour period.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

~~Sec. 6-152. Registration form; information.~~

~~A housing safety official designated by the city manager shall provide forms to be completed by the owners and managers of properties subject to registration under this article and shall maintain a file containing all registrations made under this article.~~

~~(a) The registration form for owners shall include, at a minimum, the following:~~

~~1. The street address of the building;~~

~~2. The assessor's chart, block and lot of the property on which the building is located;~~

~~3. The names, addresses, telephone numbers, and e-mail addresses of all individual persons having~~

~~any ownership interest in the property including, without limitation, all partners, all officers or trustees of any real estate trusts; and including the residential street address, e-mail address and home phone number of at least one (1) such individual person;~~

~~4. The name, address and telephone number of the manager of the property or the person or persons responsible for its regular maintenance or repair;~~

~~5. The name, address, and e-mail address of a person designated as the agent of the owner or owners for the service of notices and civil process by the city. Service of notice and process upon the person so designated shall be deemed conclusive service upon the owner or owners designating that person in any litigation pertaining to the premises.~~

~~(b) The registration form for managers of property shall include, at a minimum, the following:~~

~~1. The name, address, e-mail address and local telephone number of the management company and of at least one (1) such individual, including the residential street address, e-mail address and home telephone number of that individual; and~~

~~2. A list of all buildings for which the person or firm is responsible, including the street address and chart, block and lot description of the property and the name of the owner of that building.~~

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

Sec. 6-153. Violations.

~~(a)~~ (e) Any person business entity or other organization failing to timely file the required registration or failing to timely pay, in full, the registration fee or annual renewal fee, or failing to timely file any required update to the registration shall be in violation of this Article for which a fine of $100.00

per day each day the violation continues shall be assessed.

~~(b)~~ (f) Any person providing false information with respect to registration shall be in violation of this article for which a fine of $1,000.00 shall be assessed.

~~(c)~~ (g) It shall be a violation of this article for which a fine of $100.00 per day each day the violation continues shall be assessed for any owner or manager to rent any apartment or other portion of any building subject to registration, not registered under this article, or to permit the occupancy of such premises.

(d) No certificate of occupancy shall be issued for property subject to the registration requirements which is not registered in accordance with this article.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

Sec. 6-157. Enforcement.

(a) The building authority as defined in section 6-1 or his/her designee is authorized to institute, or cause to be instituted by and through the office of the corporation counsel, in the name of the city, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this article.

(b) No certificate of occupancy shall be issued for property that is subject to the registration requirements of this article, but is not registered in accordance with this article.

(c) Any short term rental at a property that is designated by the City as a disorderly house and fails to meet the requirements of section 6-202, shall, at the discretion of the City Manager or this/her designee, have its registration revoked and be ineligible for registration for a period of twelve (12) months. Any registration after revocation shall be considered a new registration and not a renewal.

(d) Fines may be attributed to Property Management firms found operating short term rental units in violation of this article. These fines may be in addition to fines levied against owners of property.

Sec. 6-158. Revenue Allocation.

Notwithstanding § 6-1(b), all revenue generated from short term rental registration fees and penalties shall be used to first fund short term rental related administrative costs. Any remaining revenue shall be deposited in the Housing Trust Fund, as defined in Sec. 14-489.

~~**Sec. 6-154. Reserved.**~~
~~**Sec. 6-155. Reserved.**~~
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~~**Sec. 6-157. Reserved.**~~
~~**Sec. 6-158. Reserved.**~~
Sec. 6-159. Reserved.
Sec. 6-160. Reserved.
Sec. 6-161. Reserved.
Sec. 6-162. Reserved.
Sec. 6-163. Reserved.
Sec. 6-164. Reserved.

ARTICLE VI. Residential Rental Unit Registration Requirements

Sec. 6-150. Purpose.

The proliferation of real estate proprietorships, partnerships, and trusts having undisclosed, anonymous or otherwise unidentifiable principals, owning large numbers of residential rental properties, sometimes managed through unresponsive property management companies, has impeded the proper enforcement of this chapter, chapter 12 and other ordinances of the city. This article is intended to require the disclosure of the ownership of such property, the regulation of renting of property within the City, and to make owners and persons responsible for the maintenance of property more accessible and accountable with respect to the premises, and to ensure that owners and tenants comply with chapters 6 and 10 of the City Code.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

Sec. 6-151. Definitions.

The definitions in 6-106 apply to this Article. The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

Island Short Term Rental shall mean a short term rental located on one of the following islands in the City of Portland: Peaks Island, Great Diamond Island, Cushing Island, Little Diamond Island, House Island, and/or Cliff Island.

Long Term Rental shall mean the letting of a rental unit in whole or in part for thirty (30) days or more.

Mainland Short Term Rental shall mean a short term rental located within the limits of the City of Portland, but not on Peaks Island, Long Island, Great Diamond Island, Cushing Island, Little Diamond Island, House Island and/or Cliff Island.

Multi-Unit shall mean a single, detached building in common ownership interest containing more than one (1) residential or commercial unit, as determined by the Director of the Permitting and Inspections Department.

Owner-Occupied shall mean a rental unit owned and occupied by the registrant as his or her primary residence.

Owner shall mean each individual person or entity including, without limitation, all partners, officers, or trustees of any real estate trust; all members or managers of a limited liability company; and all officers and directors of a corporation; that is the record owner of a building or property.

Primary Residence shall mean the dwelling in which a person resides as his or her legal residence for more than one half of a year and registers as his or her address for tax and government identification purposes.

Registrant shall mean the owner of a rental unit, or a tenant, with permission from the owner, seeking to register a rental unit.

Rental unit is a portion of any residential structure that is rented or available for rent to any individual or individuals for any length of time. Any portion of a Single-Family Home, Condominium, or Apartment that is rented or available to be rented to an individual or individuals who are not the owner or owners shall be considered a *rental unit*. *Dwelling units* and *rooming units* as defined in §6-106 are, without limitation, *rental units*. A Single-Family Home, Condominium, or Apartment that is occupied by the owner or owners, and of which no portion is rented or available for rent, is not a *rental unit*.

Short Term Rental is the letting of a rental unit, in whole or in part, for less than thirty (30) days.

Single Family Home shall mean a detached residential dwelling or a single condominium unit containing one dwelling unit.

Tenant-Occupied shall mean a rental unit in which the registrant is not the record owner of the rental unit, but lawfully occupies the rental unit as his or her primary residence.

Sec. 6-152. Registration required.

(a) *Registration of Ownership.*

1. Rental units must be registered in accordance with this Article by January 1st of each year. Registration must be renewed annually, on or before January 1st, including updating all changes in previously submitted registration information.

2. If a rental unit is rented as both a short term and long term rental, it must be separately registered for each type of rentals.

3. Each owner, manager, or person/entity otherwise responsible for the rental unit, such as a property manager, shall be obligated under this Article. Any new owner, manager, or responsible person/entity must register within thirty (30) days of purchase of the rental unit or transfer of management or responsibility.

4. A rental unit shall not be considered registered until all information and fees are provided to the satisfaction of the City's Permitting and Inspections Department or its designee.

5. As a condition of registration, all owners must allow onsite inspections of their property including, without limitation, all rental units.

(b) *Information/Documentation Required.* Registration must be completed on forms supplied by the City's Permitting and Inspections Department or their designee and must provide, at a minimum, the following information:

1. The street address of the building;

2. The unit number of the rental unit;

3. The tax assessor's chart, block and lot of the property on which the building is located;

4. The owner of the property, including the owners' name, address, telephone number, and email address. If the owner is anything other than a natural person, the following information must also be included:

a. Each individual person that has an ownership interest in any entity that is the record owner. This includes, without limitation, all partners, officers, or trustees of any real estate trusts; any members or managers of a limited liability company; and all officers and directors of a corporation; and

b. The residential street address, e-mail address and home phone number of at least one (1) such individual person;

5. The manager of the property or the person or persons responsible for its regular maintenance or repair, as well as a name, address, telephone number, and email address for that person or entity.

6. The person designated as the agent of the owner or owners for the service of notices and civil process by the city, as well as their name, address, telephone number, and e-mail address. Service of notice and process upon the person so designated shall be deemed conclusive service upon the owner or owners.

(c) *Additional Information Required for Short Term Rentals.* A short term rental shall not be considered registered unless and until the registrant has submitted a complete application together with all information required by this article, paid the fee required by Sec 6-153, and a registration number has been issued.

In addition to the information required in Section 6-152(5)(b), a Short Term Rental registrant must provide at a minimum the following information and any other information requested by the City's Permitting and Inspections Department or their designee::

1. A short term rental application;
2. Whether the rental unit is owner-occupied, tenant-occupied, or non-owner occupied;
   a. For Short Term Rental units that are owner-occupied, the registrant must provide a

notarized primary residence affidavit, on forms provided by the City.

b. For Short Term Rental units that are tenant-occupied, the registrant must provide a notarized primary residence affidavit, a notarized statement of permission by his/her landlord, both on forms supplied by the City.

3. The address and tax assessor's chart, block, and lot number of all other short term rentals in the City in which the registrant has an ownership interest;

(d) *Display of Short Term Rental Registration Number Required.* Once registration is approved by the City, each short term rental shall be given a registration number, which much be displayed in the rental unit and in any and all advertisements for the rental unit.

(e) Upon request by the City, at any time, all registrants and/or agents of short term rental units must provide the City with their registration information, rental history, and upcoming reservation information. Failure of short term rental unit owners, tenants, and/or their representatives to adequately respond to inquiries by the City within a forty-eight (48) hour period shall be considered a violation under this ordinance.

6-153. Registration Fees.

(a) *Annual Registration Fee.* Upon initial registration and by January 1st of each year, registrants shall pay the City a registration fee for each rental unit, in the amounts set forth below. A rental unit shall not be considered registered unless and until this fee is paid in full.

(b) *Long Term Rental Registration Fee.* The registrant of a long term rental shall pay thirty five dollars ($35.00) to the City by January 1st of each year.

(c) *Short Term Rental Registration Fee Structure.* The registrant of a short term rental shall pay the fee specified in the chart below. All fees will be cumulative and will increase based on the number of total units registered by the owner. The fee total will accumulate first by counting any short term rental units operating in a single family home or owner occupied multi-family buildings and then fees will be attributed at the higher rate for any units located in non-owner occupied buildings. If an owner registers units in both owner occupied and non-owner occupied buildings then the owner occupied fees will be considered the first unit under the fee structure starting with the 1st unit fee as described in the chart below regardless of the order in which the units are registered.

Owner Occupied Single Family Home , or Tenant Occupied	$100
Multi-Unit Owner Occupied Building Island Short Term Rentals	1st Unit - $100 2nd Unit - $250 3rd Unit - $500 4th Unit - $1,000 5th Unit - $2,000
Multi-Unit Non-Owner Occupied Building	1st Unit - $200 2nd Unit - $500 3rd Unit - $1,000 4th Unit - $2,000 5th Unit - $4,000

(d) *Registration and Renewal Fee Discounts.* The following discounts shall apply to the registration and renewal fees:

(1) $10 discount for each rental unit within a fully-sprinkled building as verified by a testing report, maintenance report or a maintenance contract, which shall be provided at the time of registration and upon each registration renewal;

(2) $7.50 discount for each rental unit within a building with a centrally-monitored fire alarm as verified by Fire Department logs or an alarm contract, which shall be provided at the time of registration and upon each registration renewal;

(3) $5.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Housing

Quality Standard (HQS) inspection within the preceding year as verified by the HQS inspection report, which shall be provided at the time of registration and upon each registration renewal;

(4) $10.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Uniform Physical Condition Standard (UPCS) inspection within the preceding year as verified by the UPCS inspection report, which shall be provided at the time of registration and upon each registration renewal;

(5) $2.50 for a rental unit that is subject to a signed lease which prohibits smoking by tenants as verified by a copy of the current lease, which shall be provided at the time of registration and upon each registration renewal. The existence of and enforcement of this provision may be verified through an inspections of each rental unit.

The total amount of discounts from the annual registration or renewal fee as described above shall not exceed $20.00, and the minimum annual fee for registration or renewal shall be $15.00 per unit.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. No. 246-97, 4-9-97; Ord. 298-14/15, 7-6-2015; Ord. 69-15/16, 10/5/2015)

Sec. 6-154. Limitations on Short Term Rentals.

(a) *Occupancy Limit.* Overnight short term rental guest occupancy in each rental unit will be limited to two (2) guests per bedroom plus no more than two (2) additional guests.

(b) *Limitation on Total Number of Short Term Rentals.* No more than 300 non-owner occupied mainland short term rental units shall be registered in any one calendar year.

(c) *Limitations on number of Short Term Rentals an Individual or Entity May Register.* An individual or entity may only register up to five (5) short term rentals in the City, including the Islands, in any one (1) calendar year. For purposes of this section, short term rentals registered by an entity in which the registrant has an ownership interest shall be counted towards this limit.

(d) No individual or entity may register a short term rental in any single family home unless it is owner-occupied; tenant-occupied with permission of the owner; or located on an Island.

(e) The number of short term rental units that may be operated in a multi-unit building are as follows:

Total # of Units in a Building	**# of Short Term Rental Units Allowed in a Building**	
	Owner Occupied	**Non-Owner Occupied**
2	2	1
3	3	2
4	4	2
5	5	2
6-9	5	4
10+	5	5

Tenant-occupied units, where the tenant is the registrant, shall not be counted towards these limits.

Sec. 6-155. Allocation of Short Term Rentals.

The limitations on the allocation of short term rental units identified in section 6-154(b) shall be allocated each year on a first come, first registered basis. Once the total number of units identified in section 6-154(b) has been reached a waitlist will be formed to help gauge market demand. The City Manager or his/her designee, may institute a lottery process at his/her discretion.

Sec. 6-156. Violations.

Specific violations of this article, subject to the provisions of § 6-1, include, but are not limited to:

(a) Any person, business entity, or other organization failing to timely register a rental unit, including providing all required information and paying the required registration fee.

(b) Any person, business entity, or other organization providing false information with respect to registration. Notwithstanding the provisions of § 6-1, the penalty for such violation shall be $1,000.00.

(c) Any person, business entity, or other organization renting any rental unit that is not registered under this article, or to permit the occupancy of such premises without registration.

(d) Failure of short term rental unit owners, tenants, and/or their representatives to adequately respond to inquiries by the City pursuant to 6-152(e) within a forty-eight (48) hour period.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

Sec. 6-153. Violations.

(e) Any person business entity or other organization failing to timely file the required registration or failing to timely pay, in full, the registration fee or annual renewal fee, or failing to timely file any required update to the registration shall be in violation of this Article for which a fine of $100.00 per day each day the violation continues shall be assessed.

(f) Any person providing false information with respect to registration shall be in violation of this article for which a fine of $1,000.00 shall be assessed.

(g) It shall be a violation of this article for which a fine of $100.00 per day each day the violation continues shall be assessed for any owner or manager to rent any apartment or other portion of any building subject to registration, not registered under this article, or to permit the occupancy of such premises.

(d) No certificate of occupancy shall be issued for property subject to the registration requirements which is not registered in accordance with this article.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

Sec. 6-157. Enforcement.

(a) The building authority as defined in section 6-1 or his/her designee is authorized to institute, or cause to be instituted by and through the office of the corporation counsel, in the name of the city, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this article.

(b) No certificate of occupancy shall be issued for property that is subject to the registration requirements of this article, but is not registered in accordance with this article.

(c) Any short term rental at a property that is designated by the City as a disorderly house and fails to meet the requirements of section 6-202, shall, at the discretion of the City Manager or this/her designee, have its registration revoked and be ineligible for registration for a period of twelve (12) months. Any registration after revocation shall be considered a new registration and not a renewal.

(d) Fines may be attributed to Property Management firms found operating short term rental units in violation of this article. These fines may be in addition to fines levied against owners of property.

Sec. 6-158. Revenue Allocation.

Notwithstanding § 6-1(b), all revenue generated from short term rental registration fees and penalties shall be used to first fund short term rental related administrative costs. Any remaining revenue shall be deposited in the Housing Trust Fund, as defined in Sec. 14-489.

Sec. 6-159. Reserved.
Sec. 6-160. Reserved.
Sec. 6-161. Reserved.
Sec. 6-162. Reserved.
Sec. 6-163. Reserved.
Sec. 6-164. Reserved.