



ECONOMIC DEVELOPMENT COMMITTEE

DATE: June 19, 2018 (Tuesday)
TIME: 5:30 – 7:30 p.m.
LOCATION: Room 209
 Portland City Hall

1. **Review and accept Minutes of previous meeting held on June 5, 2018.**
2. **Verbal update regarding next steps related to the Maine State Pier Redevelopment Plan – Jon Jennings, City Manager**
3. **Portland Pier – Public hearing and vote to recommend to City Council the proposed Street Discontinuance/Public Access to Remain.**
 - a. See enclosed memo from Bill Needelman.
4. **Public Hearing and vote to recommend to City Council proposed amendments to the following Purchase and Sale Agreements related to establishing a new pedestrian easement between Parris and Hanover Streets along the Proposed 44 and 82 Hanover Street Property Line:**
 - a. **For City sale of 44 Hanover Street to Watson & Co. LLC; and**
 - b. **For City sale of 82 Hanover Street to Watson & Co. LLC**

See enclosed Memorandum from Greg Mitchell and back up material.
NOTE: Pursuant to 1 M.R.S.A. 405(6)(C), the Committee may go into executive session to discuss real estate negotiations and provide guidance to staff.
5. **Public Hearing and vote to recommend to the City Council Proposed Amendments to Bayside Tax Increment Financing District to remove Unit 2 (Proposed Project floors 2-7) located at 178 Kennebec Street in order for the above ground residential project to be an Affordable Housing Tax Increment Financing District**
 - a. See enclosed Memorandum from Greg Mitchell and back up material.
6. **Update and Discussion regarding proposed City Payment in Lieu/Service in Lieu of Taxes Policy related to non-profit organizations.**
 - a. See enclosed Memorandum from Brendan O'Connell and back up material
7. **Executive Session:** Pursuant to 1 M.R.S.A. 405(6)(C), the Committee will go into executive session to provide staff guidance related to the following:
 - a. Real estate negotiations related to a possible sale in the Portland Technology Park.

Councilor Justin Costa/Chair

NOTE: No public comment will be taken on non-action items.

Next Meeting: July 17, 2018

Minutes
Economic Development Committee
June 5, 2018

NOTE: These meetings are now live-streamed, which can be viewed at this link:

<http://www.portlandmaine.gov/1695/Economic-Development-Committee> These

Minutes provide a record of those in attendance, general discussion taking place, and motions made.

A meeting of the Economic Development Committee (EDC) of the Portland City Council was held on Tuesday, June 5, 2018 at 7:00 p.m. (originally scheduled to start at 6:30, but late in starting due to joint EDC and Housing Committee meeting running from 5:30 to 7:00 p.m.) in Room 209 of Portland City Hall. Present from the Committee was its Chair Councilor Justin Costa and members Councilors Nicholas Mavodones and Spencer Thibodeau. Also present from the City Council was Mayor Ethan Strimling. Present from the City staff were Senior Planner Nell Donaldson, Associate Corporation Counsel Michael Goldman, Economic Development Director Greg Mitchell, and Senior Executive Assistant Lori Paulette.

Chair Costa opened the meeting suggesting that items be taken out of order, namely Item #4 first, Item #3 second, and Item #2 last due to schedules of the EDC. The Committee concurred.

Item #1: Review and accept Minutes of previous meeting held on May 15, 2018.

A motion was made by Councilor Mavodones, seconded Councilor Thibodeau to accept the Minutes as presented. Chair Costa then asked for a vote on the motion and it passed unanimously.

Item #4: Public Hearing and vote to recommend to the City Council Third

Amendment to 178 Kennebec Street Purchase and Sale Agreement.

Mr. Mitchell said that 178 Kennebec Street is a gravel lot that has been used by Public Works, and this project was discussed earlier in the joint EDC/Housing Committee (HC) meeting. The proposed amendment regards the project scope. The project scope is proposed to be amended from 50 units of housing on the upper floors to 46 units of housing; from 1-, 2-, 3-bedroom apartments to all 1-bedroom apartments set aside for households whose head of household is aged 55+ with an income mix targeted at 22% market rate and 78% affordable (aimed at those at or below 60% of the area median income). The original proposal targeted an income mix at 35% market rate, and 65% affordable.

Chair Costa said that this is one of the six parcels the City is in the process of selling of former Public Works space, and then opened the meeting for public comment.

George Rheault, resident of the Bayside neighborhood, noted that this is not a small change of scope in that the prior scope provided for more diversity of residents which would also provide for more robust activity in Bayside. Families are very important to Bayside, and this would not provide for that opportunity. He also expressed dismay at no community input.

Seeing no further public comment, Chair Costa closed the public comment session.

Councilor Thibodeau made a motion to forward this to the City Council with a recommendation for approval; Councilor Mavodones seconded the motion.

Councilor Thibodeau said that this a good project. There are financial incentives for this kind of project – affordable housing for 55+ year olds.

Mayor Strimling said that he is okay with this change, although noted that he always wanted to have more housing. The 55+ age bracket does reduce diversity but understood the financial incentives involved to make this happen.

Councilor Mavodones said that he would support the change and understood that more diversity was preferable. However, financial feasibility for a project is beyond the City control. These are good developers and noted that it could lay fallow otherwise.

Chair Costa thanked the staff – Housing and Economic Development - for their continued work on these projects. This makes sense, considering the financial piece to make it happen. It is responsible to move forward.

A vote was taken on the motion and it passed unanimously.

Item #3: Public Hearing and vote to recommend to City Council authorizing discontinuance of Vehicular Easement and Retention of Pedestrian and Utility Easement along Lancaster Street between Parris Street and Hanover Street on the 82 Hanover Street Property and Accept a New Pedestrian Easement on 44 Hanover Street.

Mr. Mitchell handed out (copy attached) an updated redlined memo regarding this item. The existing easement of Lancaster Street right-of-way was discontinued years ago, with vehicular, pedestrian, and utility easements remaining – affecting both 82 Hanover Street and 44 Hanover Street. It is being proposed to discontinue vehicular and pedestrian access and maintain a utility easement for the entire street, which would result in visual open space. It is also being recommended to amend both Purchase and Sale Agreements (for 82 Hanover Street and 44 Hanover Street), at the next EDC meeting, to establish a 10-foot wide pedestrian easement parallel to the utility easement.

Chair Costa asked if actions would go to the City Council together, and Mr. Goldman said the discontinuance process is governed by statute, and noted that the City Council would have a first reading and vote to discontinue on June 18, followed by a public hearing and vote to discontinue on July 16. It is also anticipated the proposed amendments to the 82 Hanover PSA and 44 Hanover PSA would be on the July 16 Council Agenda for a vote.

Mr. Mitchell added that this schedule would allow for an August closing on the sale of these two properties.

There followed discussion on whether the 30-foot utility easement would allow public access. It was noted that the City does not own this property but would retain the utility easement in the property. As such, no permanent structures could be built on the 30-foot utility easement. It was noted, however, that the developer could rope off an area for customer use, while still allowing the public access through the 10-foot pedestrian easement. In addition, it was also noted that the utility easement area would not allow for parking or for vehicular access to property, and would be consistent with the Purchase and Sale Agreements and associated projects.

Chair Costa opened the meeting for public comment.

George Rheault, resident of Bayside, said this has changed since June 2017 where he was under the impression it would be park like. There has been vehicular access for quite a while, which was beneficial for emergency vehicles.

Seeing no further comments, Chair Costa closed the public comment session.

Councilor Mavodones made a motion to forward this item to the City Council with a recommendation for approval; Councilor Thibodeau seconded the motion.

Councilor Mavodones said that while he was not on this Committee last year when this was taken up, renderings do change. Vehicular access now is not needed and he supports this amendment, noting it was a good path forward and will provide for an open visual space and pedestrian easement.

Councilor Thibodeau said that he would support this, with a condition that there be a reciprocal easement, or restrictive covenant, that there will be no parking or vehicle access on the utility easement area. This should be included when the City Council votes on the item.

Councilor Thibodeau then made a motion to amend the main motion to include the reciprocal easement language or restrictive covenant language as noted above. Councilor Mavodones seconded the motion and it passed unanimously.

Chair Costa thanked staff for their work and agreed that this is a good direction and made sense.

Mayor Strimling noted that although the project is good, this is a step backward for public access.

Chair Costa asked for a vote on the main motion and it passed unanimously.

(Councilor Thiobdeau had to leave the meeting at this time.)

Item #2: Portland Impact Fee Study – update for Committee discussion. Presentation by TischlerBise – Impact Fee Consultant

Ms. Donaldson said that the Impact Fee study is being done by the City's consultant TischlerBise working with the Planning Department, Parks and Recreation, and Public Works. She noted that the Portland Comprehensive Plan had an element to explore ways to pay for development growth and impact fees are such a way and are done throughout the country, and a few municipalities in Maine have also adopted them. Impact Fees are a way to be predictable and equitable in development projects. This study is in the early stages compiling data, and at

the end of the study the Committee would be presented with draft fees, as would the Planning Board, for recommendations to the City Council. There have been stakeholders meetings in May, with more to follow. She then introduced Carson Bise of TischlerBise (TB).

Mr. Bise gave the Committee background on TB and projects they have undertaken. He went through the attached PowerPoint presentation, noting the Impact Fees (IF) are a one-time fee for a project, not a tax, for growth related infrastructure. IF cannot be used for operations, maintenance, or replacement. IF are more like a contractual arrangement to build infrastructure with three requirements: need, benefit, and proportionate.

After the presentation, Mr. Bise noted next steps included finalizing capital needs assessment, discuss methodological alternatives with staff, agree on likely fee calculation methodology, and second round of stakeholder outreach.

Chair Costa noted that the process should also consider/list projects that could be funding by the CIP and TIF Districts, as well as IF funding.

(Councilor Mavodones left the meeting, so there was no longer a quorum.)

Mayor Strimling asked why the development community would like this, and Ms. Donaldson said that it would provide consistency and clarity on their projects and associated costs.

Mayor Strimling asked if this would work with hotel linkage fees, currently being discussed and considered. Mr. Bison indicated that he was not aware of this.

Chair Costa thanked the consultant and staff for work to date and looked forward to it maturing.

The meeting then adjourned at 8:40 p.m.

Respectfully, Lori Paulette



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Economic Development Committee

FROM: Greg Mitchell

DATE: May 30, 2018
[REVISED June 5, 2018](#)

SUBJECT: Authorizing Discontinuance of ~~Vehicular~~ Public Easement and Retention of ~~Pedestrian and~~ Utility Easement along Lancaster Street between Parris Street and Hanover Street on the 82 Hanover Street Property

[Recommended Future Actions: and Amending P&S Agreements to Reserve Pedestrian easements over 82 and Accept a New Pedestrian Easement on 44 Hanover Street](#)

I. SUMMARY

The Planning Board approved the 82 Hanover Street Site Plan on May 17, 2018. The Site Plan proposed certain improvements to be located in the Lancaster Street right of way (located between Parris and Hanover Streets), which was discontinued as a public street in the 1980s, but still includes a public easement for vehicular and pedestrian access as well as a utility easement. The Planning Board approved the site plan, conditioning the proposed improvements in the Lancaster street right-of-way on the discontinuance of the easement and the ~~applicant providing~~ provision of a 10-foot wide public pedestrian easement to provide midblock pedestrian permeability. The 10-foot wide pedestrian easement will be located on the 82 and 44 Hanover Street property line – 5 feet on 82 Hanover Street and 5 feet on 44 Hanover Street. It is proposed that the City will reserve these easements when it sells the parcels. See attached drawing. The 30-foot wide utility easement will be retained and will restrict development activity within the utility corridor.

II. AGENDA DESCRIPTION

On October 2, 2017, the City Council approved the Purchase and Sale Agreement with Tom Watson Watson & Co., LLC ("Purchaser") for its purchase of approximately 1.25 acres of land located at 82 Hanover Street for the purchase price of \$2,350,000. See attached Purchase and Sale Agreement.

The Purchaser then submitted a Site Plan application to the Portland Planning Board, which was approved on May 17, 2018. All site plan improvements proposed for the Lancaster Street right-of-way were conditioned upon the discontinuance of the public easement and the ~~applicant providing provision of~~ a 10-foot wide public pedestrian easement to provide midblock permeability. The 10-foot wide pedestrian easement will be located on the 82 and 44 Hanover Street property line – 5 feet on 82 Hanover Street and 5 feet on 44 Hanover Street. See attached drawing. The 30-foot wide utility easement will be retained and will restrict development activity within the utility corridor.

The approved Site Plan and project includes adaptive reuse of the 1940's Department of Public Works building with retail, restaurant, bar/eatery, brewery, fitness center, office space, and the following improvements: 39 newly paved parking spaces with landscaping, new concrete sidewalks, street trees, and lights along Parris and Hanover Streets. The site plan also includes outdoor seating areas within the Lancaster Street right-of-way and a 10' wide public pedestrian easement to provide midblock permeability.

III. BACKGROUND

It has been the long-term goal to sell this and other Public Works Bayside properties per the Year 2000 Bayside Vision. To support these property sales, the City Council approved the acquisition of property along Canco Road which has been and continues to be redeveloped to support the relocation of Public Works operations from Bayside and other City Departments.

The subject property has been used for Public Works plowing operations.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result would be the discontinuance of vehicular ~~and pedestrian~~ access along this portion of the former Lancaster Street in order to allow for the development of the property as proposed by the developer. In order to effectuate the conditions placed on the site plan approval, a 10' pedestrian easement is also required. Because the City currently owns the property and can simply reserve those easements when it sells each parcel, it is proposed that the P&S Agreements be amended by agreement of the parties to authorize that reservation, and acceptance by the City of an easement that will retain pedestrian rights of access. The discontinuance and new pedestrian easement will help facilitate the sale of this property to support mixed use development in Bayside, while continuing to provide a pedestrian easement in this area. It also supports the Council's long-term goal to sell Public Works Bayside properties to support Public Works relocation out of Bayside.

V. FINANCIAL IMPACT

There is no financial impact on amending the right-of-way easement.

VI. STAFF ANALYSIS AND BACKGROUND

Staff supports ~~amending the right-of-way as the amendment would continue to provide discontinuing the pedestrian access public easement and retaining and the existing utility access easement.~~ Recommended future action includes amending the Purchase and Sale Agreements to retain two 5' pedestrian easements over 82 and 44 Hanover Street in order to ensure ongoing pedestrian permeability.

VII. RECOMMENDATION

Staff recommends that the EDC, pursuant to 23 M.R.S.A. 3026-A, recommend approval to the City Council to discontinue the public easement ~~and accept the new pedestrian easement~~ using the following process:

EDC Process

The EDC hold a public hearing on this matter at their June 5, 2018 meeting and vote to provide a recommendation to the City Council.

City Council Process

Discuss the proposed public easement ~~discontinuance (associated with 82 Hanover Street) and new pedestrian easement (associated with 44 Hanover Street)~~ at ~~their~~ its public meeting on June 18, 2018 and vote to order the discontinuance ~~and acceptance~~ of a public easement as outlined above. Because the discontinuance is only of the public easement, there are no current abutters other than the City, and this is being done at the request of the purchaser, no damages are needed.

If the Council so decides, an Order of Discontinuance must be voted on and then posted in the City Clerk's office for no fewer than 10 business days. Proposed Motions accomplishing this will be included in the back up materials.

Thereafter, on July 16, 2018 (which is more than the required 10 business days from the vote on the 18th), the Council would hold a public hearing, with opportunity for public comment, on the Order of Discontinuance. ~~If, on June 18th, the purchaser has provided an easement to be in held in escrow pending the sale of the property as recommended by the Planning Board, staff recommends that the Council approve the Order of discontinuance after the July 16, 2018 hearing. Staff further recommends that, at its July 16 public hearing, the Council authorize the amendment of the purchase and sale agreements for 82 and 44 Hanover Streets to reserve 5' wide pedestrian easements along Lancaster Street as depicted on the attached plan.~~ If the Council approves the Order of Discontinuance, the Clerk will record a certificate in the Cumberland County Registry of Deeds. The discontinuance will become effective on the day the certificate is recorded

VIII. LIST ATTACHMENTS

82 Hanover Street Purchase and Sale Agreement.

Drawing No. EX-01 showing the portion of the Lancaster Street Easement (between Parris and Hanover Street) and the proposed location for the new pedestrian easement.

Impact Fee Study Overview

Economic Development Committee Workshop
June 5, 2018

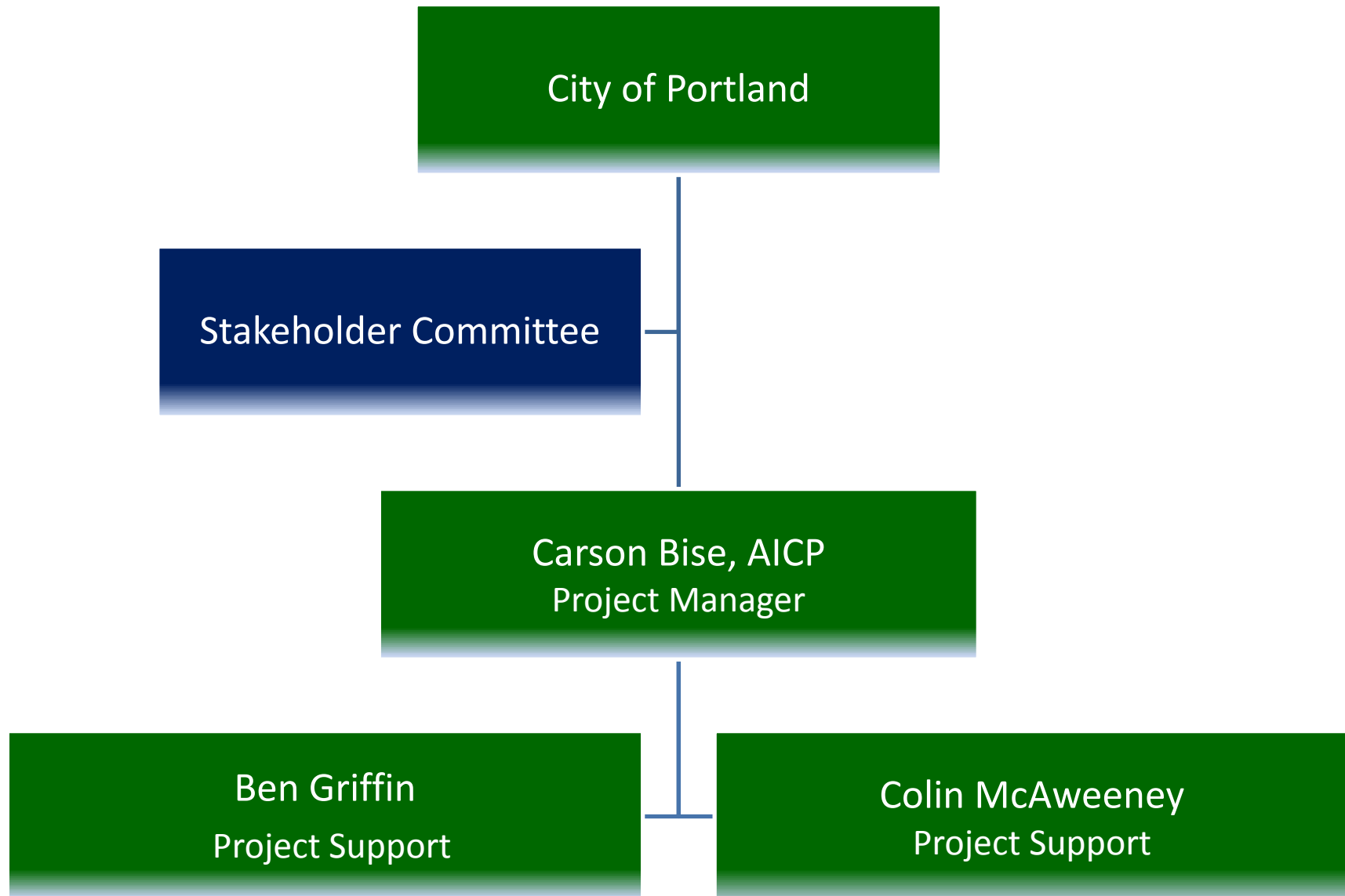


TischlerBise
FISCAL | ECONOMIC | PLANNING

- Impact fees/infrastructure financing strategies
- Fiscal/economic impact analyses
- Capital improvement planning
- Infrastructure finance/revenue enhancement
- Real estate and market feasibility



Project Organization



Impact Fee Fundamentals

- One-time payment for growth-related infrastructure, usually collected at the time buildings permits are issued
- Can't be used for operations, maintenance, or replacement
- Not a tax but more like a contractual arrangement to build infrastructure, with three requirements
 - Need (system improvements, not project-level improvements)
 - Benefit
 - Short range expenditures
 - Geographic service areas and/or benefit districts
 - Proportionate

Common Impact Fee Methods

- Cost Recovery (past)
 - Oversized and unique facilities
 - Funds typically used for debt service
- Incremental Expansion (present)
 - Formula-based approach documents level of service with both quantitative and qualitative measures
- Plan-Based (future)
 - Common for utilities but can also be used for other public facilities with non-impact fee funding

Eligible Costs

- Facilities/improvements required to serve new development - Yes
- Maintenance and repairs – No
- Operating costs - No
- Excess capacity in existing facilities – Yes
- Improvements required to correct existing deficiencies – Maybe
 - Unless there is a funding plan in place to correct the existing development base share

Why Impact Fees?

- Infrastructure capacity is essential to accommodate new development
- New growth pays its equitable share
- Encourages disciplined capital improvement planning
 - Earmarks money for capital improvements
- Promotes comprehensive planning and growth management
 - Helps ensure adequate public facilities
- Compared to negotiated agreements, streamlines approval process with known costs (predictability)
- Anti-growth pressure can be eased

Process

- Determine existing development base and project future growth/redevelopment
- Determine existing levels of service and capital needs due to new growth
- Determine appropriate indicators of demand
- Evaluate methodological alternatives
- Evaluate need for credits
- Calculate fees
- Evaluate impact on affordable housing, other city goals/values
- Meetings with Stakeholders
- Adoption process

Evaluate Need for Credits

○ Site specific

- Developer constructs a capital facility included in fee calculations

○ Debt service

- Avoid double payment due to existing or future bonds

○ Dedicated (earmarked) revenues

- (e.g., property tax, excise tax, gas tax)

○ What about the property tax generated?

- Property tax currently covers \$86.1 million of \$189.3 million (45%) in General Fund expenditures

Myths and Misconceptions

- Impact fees cover the entire cost of new facilities, negating the need for higher taxes
 - A “properly” designed fee may come close
 - Credits
 - How about the O&M costs?
- Impact fees should be based on planning standards, without concern for deficiencies
- Nonresidential fees can be “adjusted” for economic reasons
- Impact fees will cause growth to migrate to other communities
 - Little empirical evidence to support this claim

Myths and Misconceptions

- Impact fees negatively affect low/moderate income housing
 - Credits for affordable housing can mitigate impact
 - Fee not always passed-on in the price of the home; studies have shown that fees are often absorbed by others in the “food chain” depending on market conditions:
 - Land owner
 - Developer
 - Homebuilder
 - Home owner

Next Steps

- Finalize capital needs assessment
- Discussion of methodological alternatives with staff
- Agree on likely fee calculation methodology
- 2nd round of stakeholder outreach

Questions and Answers



Economic Development Department

Memorandum

To: Councilor Justin Costa, Chair, and members of the Economic Development Committee
From: Bill Needelman, Waterfront Coordinator
Date: June 13, 2018
Re: Portland Pier Right of Way
CC: Greg Mitchell, Economic Development Director
Kathy Alves, Ports and Public Buildings
Jennifer Thompson, Associate Corporation Counsel

Introduction

The Department of Economic Development and the Facilities Division request a hearing with the Economic Development Committee to discuss the potential discontinuance of a portion of public right of way at the southerly end of Portland Pier.

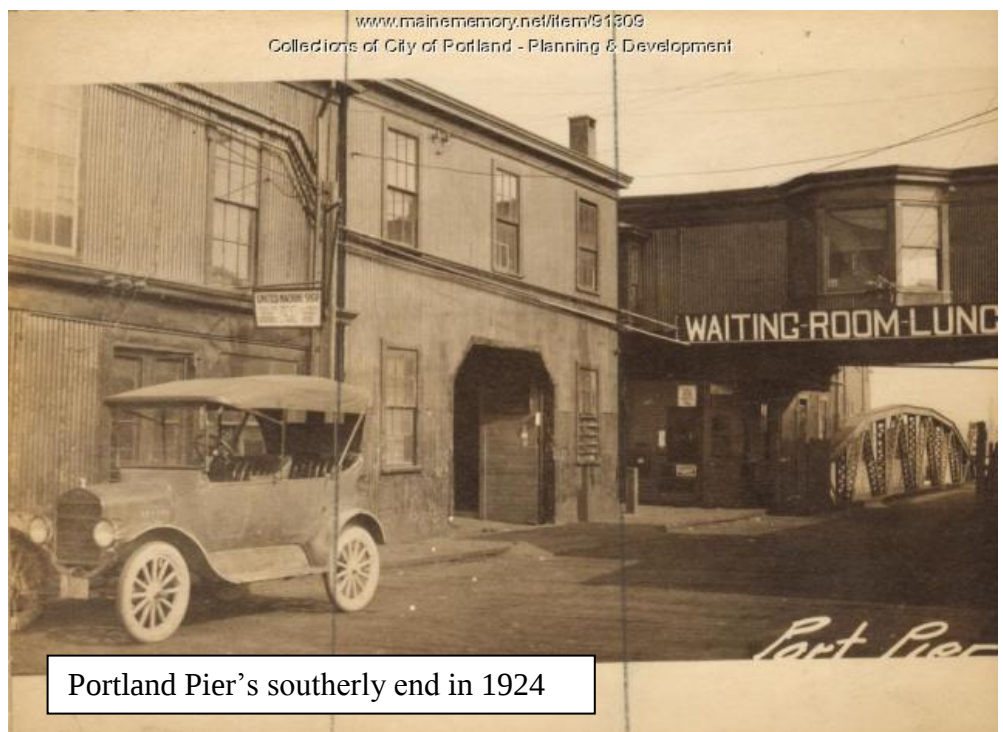
City staff recommends discontinuing only that portion of the right of way that serves a single property, 60 Portland Pier, Portland Pier Holdings, LLC.

Public access rights are to remain in effect for both commercial fishing and pedestrian access to the pier.

The Committee is requested to make a recommendation to the full Council at the June 19, 2018 meeting.

Background

Most piers on Portland's waterfront are private. Located between Custom House Wharf and Long Wharf (Dimillo's,) Portland Pier, is unique along Portland's Central Waterfront in that there is a public right of way down the center of the pier flanked by private parcels. Formerly the home of the Casco Bay Lines car ferry terminal, the southerly end of the Pier has been occupied by lobstering interests since the 1980's.



Portland Pier's southerly end in 1924

In addition to the subject property (the former New Meadow's Lobster pound,) the pier is home to J's Oyster, commercial offices, 40 and 50 Portland Pier Condominiums. Lobster boats berth on the easterly and southerly pier perimeter with Dimillio's yacht brokerage leasing berthing along much of the westerly edge.

By previous action of the City Council in 2014, the southerly most portion of the public right of way was sold to a previous owner (McAlleny's New Meadow's Lobster.) Public rights of access were retained in the 2014 transfer.

The portion of right of way considered for discontinuance serves only one property (60 Portland Pier, Portland Pier Holdings, LLC) and is in need of significant rehabilitation. The current owners are currently engaged in repairing adjacent private portions of the pier and are willing to take on the current rehabilitation needs and ongoing maintenance of the subject portion of the pier. Without repair, access to the pier will need to be restricted for safety. There is currently no City budget identified for repair.

Portland Pier Holdings, LLC plans to rehabilitate and restart the lobster pound operation, retain the current commercial berthing, and to establish a seafood restaurant specializing in lobster and seafood landed and processed on the pier. All of the current and proposed uses are planned to be consistent with the Waterfront Central Zone requirements. Public access and continued lobster operations are central to the redevelopment program.

The subject portion of right of way and the entirety of the 60 Portland Pier buildings and pier deck are supported by pilings over submerged lands. The property owners are currently conducting significant repair on the private portions of the pier. The City Manager has provided a license to Portland Pier Holdings, LLC to conduct work on the public portions of the pier to ensure that commercial fishing and access to berthed vessels can continue in the short term.

The sketch graphic attached to this memo shows approximate private parcel boundaries, the 2014 sale parcel, and areas of right of way to be retained and for potential discontinuance.

Waterfront Access

Since the 1980's, Portland Pier has provided access to berthing, commercial lobstering, and public views to the inner harbor for pedestrians. Maintenance of the pier is key to preserving these functions. The public right of way appears to reflect the historic use of the pier as a (private) car ferry terminal. In the transition from ferry terminal to lobster pound, the southerly end of the pier retained the public's right to use the pier, but functionally access to the water for active use was privatized. Promoting private commercial fishing access within the Central Waterfront was consistent with City policy in 2014 and remains so today. Private ownership of the remaining portion of right of way that is surrounded by 60 Portland Pier would promote continued maintenance of the infrastructure while preserving access for current and future commercial fishing and public pedestrian use.

Access to Private Properties

All other private properties on Portland Pier will retain their existing access rights to the pier right of way.

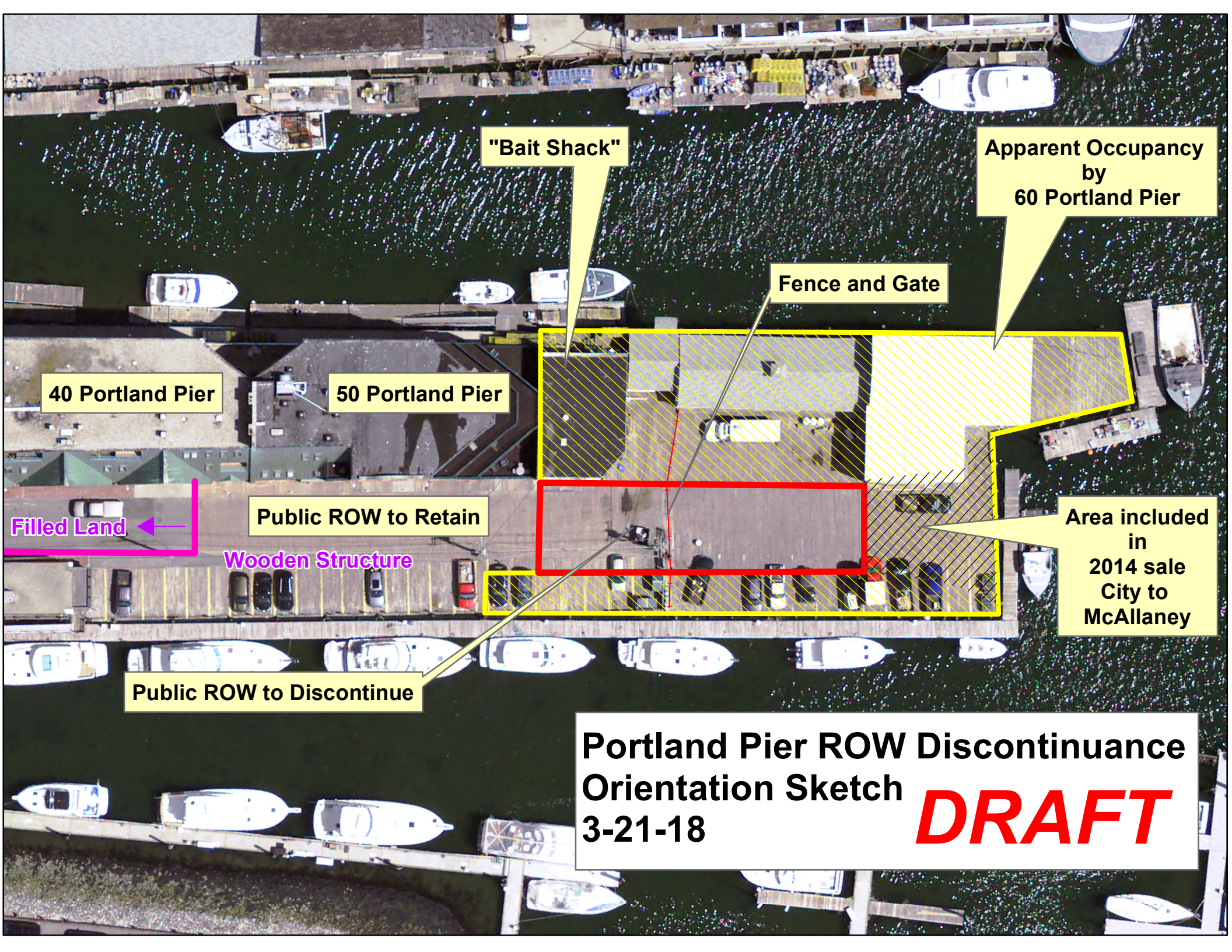
Intended Impact

The proposed discontinuance will allow for the private maintenance of pile supported pier while continuing commercial and public access to the southerly end of the pier. Functionally, users of the pier will see no change within the right of way post discontinuance.

Next Steps

Pending the recommendation of the Economic Development Committee, City staff will prepare discontinuance documents for review by the City Council.

Respectfully submitted.
WBN



"Bait Shack"

Apparent Occupancy
by
60 Portland Pier

Fence and Gate

40 Portland Pier

50 Portland Pier

Filled Land

Public ROW to Retain

Wooden Structure

Area included
in
2014 sale
City to
McAllaney

Public ROW to Discontinue

Portland Pier ROW Discontinuance
Orientation Sketch
3-21-18 **DRAFT**



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Economic Development Committee

FROM: Greg Mitchell, Economic Development Director

DATE: June 13, 2018

SUBJECT: Proposed First Amendment to 44 Hanover Street
Purchase and Sale Agreement

I. ONE SENTENCE SUMMARY

The proposed First Amendment to the Purchase and Sale Agreement for 44 Hanover Street will enable a new 10-foot wide pedestrian easement to be established, between Parris and Hanover Street along the proposed 44 and 82 Hanover Street property line.

II. BACKGROUND

The EDC previously voted to recommend to the City Council the discontinuance of vehicular and pedestrian rights (while retaining a utility easement) in the section of the former discontinued Lancaster Street right-of-way located between Parris and Hanover Street.

In order to be consistent with City Planning Board Site Plan approval for the 82 Hanover Street Redevelopment Project, staff propose amending the 44 and 82 Hanover Street Purchase and Sale Agreements to reserve in the deeds public pedestrian easements establishing a ten (10) foot wide new pedestrian area composed of 5 foot wide easements on either side of the property line.

It is noted that Tom Watson is the buyer for both the 44 and 82 Hanover Street properties.

III. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result is EDC and City Council approval of the attached First Amendment to the Purchase & Sale Agreement for 44 Hanover.

This supports the private redevelopment of the 44 and 82 Hanover Street properties formerly occupied by the City Public Works Department.

IV. FINANCIAL IMPACT

There is no financial impact related to this transaction.

V. STAFF ANALYSIS

In order to account for the loss of public access in the former Lancaster Street right of way and comply with Planning Board requirements, City staff negotiated the attached amendment with Tom Watson (buyer for both the 44 and 82 Hanover Street properties) to preserve public easements on both properties related to the new ten (10) foot wide pedestrian easement area between Parris and Hanover Streets along the boundary between 44 and 82 Hanover Street.

VI. RECOMMENDATION

Staff recommends the EDC vote to recommend, to the City Council, approval of the Draft First Amendment to the Purchase and Sale Agreement for 44 Hanover Street in substantially the form as attached.

VII. LIST ATTACHMENTS

- Proposed First Amendment to Purchase and Sale Agreement for 44 Hanover Street
- 44 Hanover Street Purchase and Sale Agreement

**FIRST AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 44 HANOVER STREET**

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the ____ day of July, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 (“Seller”) and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the “Buyer”).

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated May 14, 2018 (the “Agreement”) with respect to certain real property located at or about 44 Hanover Street, Portland, Maine as more fully described in the Agreement; and

WHEREAS, Seller and Buyer wish to amend the description of the Premises in the P&S in order to clarify that Seller will reserve in the conveyance a public pedestrian access easement over a portion of the Premises

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Paragraph 3(f) of the Agreement is hereby deleted and replaced with the following:

Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer specifically acknowledges and agrees that in the deed, Seller will reserve for the benefit of the public a 5-foot-wide pedestrian access easement (the “Public Pedestrian Easement”) along the entire length of the common boundary between the Premises and 82 Hanover Street, which is also the northwesterly boundary line of the Premises, which easement shall run between Hanover and Parris Streets as approved by the City of Portland Planning Board on May 23, 2018 (the “Public Pedestrian Easement Area”). The Public Pedestrian Easement Area is generally depicted as the cross-hatched area on the diagram attached hereto as Exhibit A, which is incorporated herein by reference. The purpose of the Public Pedestrian Easement is to grant public pedestrian access on and over the Public Pedestrian Easement Area, which shall be an ADA compliant area for pedestrian, bicycle and similar non-motorized pedestrian uses. The Public Pedestrian Easement shall be subject to such rules or ordinances that the Seller may adopt from time to time in the interests of public safety, which are generally applicable to similar pedestrian easements, provided that Buyer does not waive any rights, and expressly reserves the right, to argue that any such future rules or ordinances do not apply to it on the basis that the existing

conditions of the Public Pedestrian Easement Area are grandfathered and/or that such rules or ordinances cannot be retroactively applied. Notwithstanding the foregoing, wheelchair and emergency vehicles as well as snow removal equipment shall be permitted in accordance with applicable federal and/or state laws regulating accessibility for such devices, vehicles or equipment. Maintenance and repair responsibilities within the Public Pedestrian Easement Area shall belong solely to the Buyer, its successors and assigns. Buyer shall be responsible for removal of snow and ice from the Public Pedestrian Easement Area and to otherwise comply with all laws, rules, regulations, and ordinances governing the removal of snow and ice. Seller shall have the right, but not the obligation, to repair or maintain the Public Pedestrian Easement Area, including, as reasonably necessary, any subsurface repairs or maintenance, or remove snow or ice therefrom, when Seller, in its sole discretion, deems such repairs, maintenance, or snow or removal necessary to ensure public safety and protect the public use and enjoyment of the Public Pedestrian Easement Area. No buildings or any kind of permanent structure will be erected in the Public Pedestrian Easement Area, and Buyer shall not use or authorize any use, condition or state of disrepair that would be contrary to or otherwise inhibit the public pedestrian uses of the Public Pedestrian Easement Area. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall become exempt from real and personal property taxes, by transfer, conversion, or otherwise, during the City's fiscal year that begins following the Closing or in the fiscal years thereafter, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a City PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

2. Except as specifically amended hereby, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement.

IN WITNESS WHEREOF, this First Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND

WITNESS

Jon P. Jennings
Its City Manager

TOM WATSON & CO., LLC

WITNESS

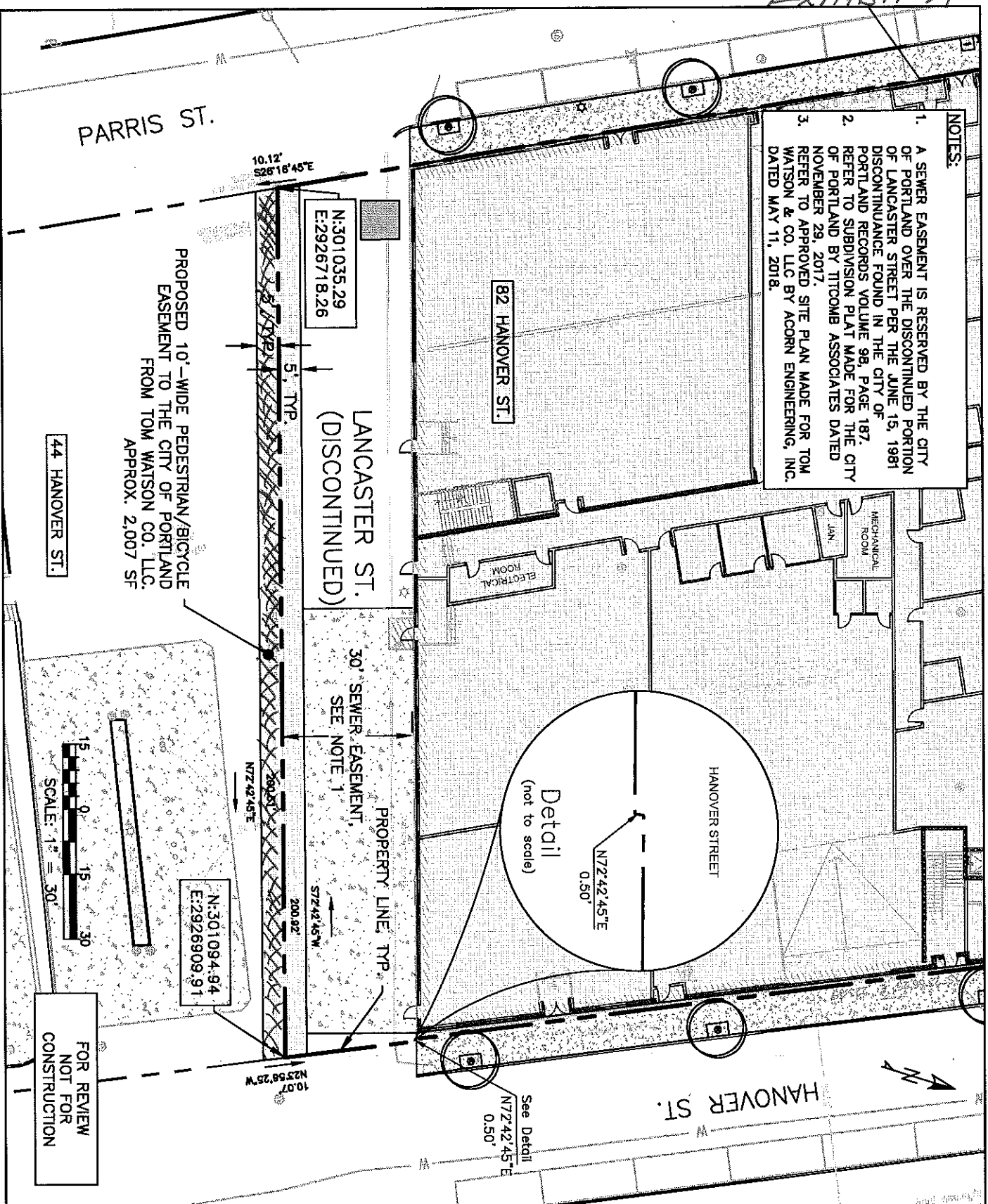
Printed Name: Thomas E. Watson
Its Manager

Approved as to Form:

Corporation Counsel's Office

EXHIBIT A

- NOTES:**
1. A SEWER EASEMENT IS RESERVED BY THE CITY OF PORTLAND OVER THE DISCONTINUED PORTION OF LANCASTER STREET PER THE JUNE 15, 1981 DISCONTINUANCE FOUND IN THE CITY OF PORTLAND RECORDS VOLUME 98, PAGE 187. REFER TO SUBDIVISION PLAT MADE FOR THE CITY OF PORTLAND BY TITCOMB ASSOCIATES DATED NOVEMBER 29, 2017.
 2. REFER TO APPROVED SITE PLAN MADE FOR TOM WATSON & CO. LLC BY ACORN ENGINEERING, INC. DATED MAY 11, 2018.
 - 3.



DRAWING NAME: LANCASTER PEDESTRIAN EASEMENT		ISSUED FOR: CITY REVIEW
PROJECT NAME: 82 HANOVER REDEVELOPMENT		DATE: 5/29/2018
CLIENT: TOM WATSON & CO. LLC		REV. DATE:
FILE: 1093 CIVIL DATE: 5/29/2018 JN: 1093 SCALE: 1"=30' DESIGN BY: SLL DRAWN BY: SLL CHECKED BY: WHS		
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM ACORN ENGINEERING, INC. ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO ACORN ENGINEERING, INC.		

ACORN ENGINEERING, INC.
 ACORN ENGINEERING, INC. P.O. BOX 3372
 PORTLAND, MAINE 04104 (207) 775-2655

DRAWING NO.

EX-01

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this 14th day of May, 2018 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "Seller" or "City"), and Tom Watson & Co., LLC, or assigns, a Maine limited liability company having a mailing address of 104 Grant Street, Portland, ME 04101 (hereinafter, collectively, referred to as "Buyer").

RECITALS

WHEREAS, the CITY is the owner of certain land and buildings located at or near 44 Hanover Street, Portland, Maine as generally depicted on the plan attached hereto as Exhibit A together with all buildings and other improvements located thereon (the "Premises") and incorporated herein; and

WHEREAS, Buyer desires to purchase the Premises, and the City desires to convey the Premises to Buyer subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE AND EFFECTIVE DATE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land and buildings located at or about 44 Hanover Street, Portland, Maine. This Agreement shall become effective after the City Council of the City approves it and after both Buyer and Seller have signed this Agreement. The date that the last of Buyer or City sign this Agreement shall be the effective date (the "Effective Date"), and the last signor shall insert that date in the first paragraph of this Agreement as the Effective Date. All deadlines and time periods set forth in this Agreement, including, without limitation, the Due Diligence Period, Financing Period and Closing Date (all as defined hereafter) shall be computed from the Effective Date.
2. **CONSIDERATION.** The purchase price for the Premises shall be One Million Two Hundred Seventy-Five Thousand Dollars (\$1,275,00.00) (the "Purchase Price"), subject to the following cost adjustments and conditions:
 - a. Buyer shall deposit the sum of Twenty-Five Thousand Dollars (\$25,000.00) (the "Deposit") within 3 business days after the Effective Date of this Agreement that the parties agree will be held in escrow in a non-interest bearing account with CBRE | The Boulos Company; the Deposit shall be fully refundable until the later of the expiration of the Due Diligence Period or the Financing Period, as both are described herein; after the expiration of both such Periods, the Deposit shall be non-refundable except as expressly set forth herein, including, without limitation in paragraphs 3 and 10; and

- b. The parties agree that the City will continue to occupy and lease the Premises from Buyer after Closing (as defined herein) until at least March 31, 2019 by entering into a lease agreement with Buyer or Buyer's successor or assigns, as Buyer shall elect, in substantially the form attached hereto as Exhibit C (the "Lease"); provided, however, that the City shall have the right to continue to occupy the Premises until September 30, 2019. The City hereby agrees to notify Buyer in writing on or before the date that is sixty (60) days after the Effective Date if it intends to occupy the Premises beyond March 31, 2019 or the City shall be limited to a lease ending on March 31, 2019 unless Buyer and City shall otherwise agree.

At Closing, Buyer shall receive a credit against (that is, a reduction of) the Purchase Price in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00) per month for the number of months remaining between the Closing Date and the end of the term of the Lease, which shall be no earlier than March 31, 2019 (the "Rent Credit"). If the first month which the City will occupy the Premises after Closing is less than a full month, the Rent Credit for that month shall be prorated. The Rent Credit shall serve as City's nonrefundable advance payment of rent for the Lease of the Premises to the City by the Buyer or the Buyer's successor or assigns, as Buyer shall elect. At Closing, the parties shall execute a Lease in substantially the form attached hereto as Exhibit C. Regardless of the length of the term of the Lease or the date that the City vacates the Premises, in no event shall the Rent Credit be less than \$75,000.00.

- c. The Buyer shall pay the remainder of the Purchase Price to the City after the Purchase Price is reduced by the full amount of the Rent Credit. Such payment shall be made by wire transfer (or as otherwise reasonably requested by the City) at Closing.

3. TITLE AND DUE DILIGENCE.

- a. Due Diligence Period. Subject to extension as set forth in Paragraph 3(b) and (d), Buyer will have from the Effective Date of this Agreement until 4:00 PM Portland, Maine time on the later of July 23, 2018 or the day that is sixty (60) days after the Effective Date of this Agreement (the "Due Diligence Period") to complete any survey, environmental review and title examinations, and to undertake such other investigations, testing or inspections as Buyer shall deem appropriate.
- b. Property Description. The property description contained in the deed will be a survey description based upon a Boundary Survey performed by a Maine Licensed Surveyor to be obtained by the City (the "Survey") which will more specifically describe the property shown on Exhibit A hereto (the "Premises Description") in form reasonably acceptable to the City and Buyer. The Premises Description will be distributed to the parties hereto at

least thirty (30) days prior to expiration of the Due Diligence Period. If the Premises Description is not received by City and Buyer at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period shall be extended to a date thirty (30) days after it is received. The parties will agree on the final Premises Description prior to closing. If the parties cannot agree upon the final Premises Description prior to closing, then Buyer shall have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement) or (2) waive the approval provision and close using a description to which the City will agree.

- c. Financing Contingency. Buyer shall have from the Effective Date of this Agreement until 4:00 PM Portland, Maine time on the day that is fifteen (15) days after the expiration of the Due Diligence Period (the “Financing Period”) to obtain a commitment for commercially reasonable financing acceptable to Buyer, provided, however, if the Due Diligence Period shall be extended, then the Financing Period shall be extended to expire on the date which is thirty (30) days after the expiration date of the Due Diligence Period. Buyer shall take timely and commercially reasonable steps to secure such financing. If Buyer does not obtain a financing commitment acceptable to Buyer within the Financing Period, Buyer may terminate this Agreement by notice in writing to City, or may elect to close under the Agreement despite the lack of such commitment. If Buyer so exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.
- d. Title, Survey and Environmental Objections. In addition to the Survey described above, the City agrees it has caused a Phase II Environmental study of the Premises to be performed. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters that Buyer determines materially affect insurability of title at standard rates, or the use of the Premises, the value of the Premises, the cost of development of or the cost or feasibility of construction on the Premises. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing, or utility easements discovered by Buyer, after the end of the Due Diligence Period may be made at any time prior to the closing. If the Survey and any environmental study (including, without limitation any Phase II Environmental study) are not completed and distributed to the parties at least thirty (30) days prior to the expiration of the Due Diligence Period,

the Due Diligence Period will be extended (without the need for further action by the parties hereto) to a date thirty (30) days after the date upon which the later of the Survey or any environmental study to be completed and received are completed and are received by Buyer and City.

e. Option to Cure.

(1) In the event of a title, Survey or environmental objection by Buyer, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's satisfaction, Buyer will have the option to:

(A) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement);

(B) waive the objection and close; or

(C) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so and the Closing Date shall be extended to a date ten (10) days after the expiration of such 60 day period); if Buyer determines it is not satisfied with the results of its own cure efforts, Buyer shall be entitled at any time prior to the expiration of the ten (10) day period following Buyer's sixty (60) day cure period set forth in this subsection (C) to terminate this Agreement as set forth in subsection (A) set forth above, or to waive its objection and close under this Agreement.

(2) In the event City shall elect not to cure any objection by Buyer, Buyer shall have until the later of the expiration date of the Due Diligence Period or fourteen (14) days after receipt by Buyer of the City's notice of election not to cure such Buyer's objection in which to make its choice and to notify City whether it elects option A, B or C set forth in the previous subparagraph. If the City does not timely respond to the Buyer's objection or if the City responds to Buyer's objection but does not state whether or not it elects to cure all of Buyer's objections, then Buyer shall have until the later of the expiration date of the Due Diligence Period or thirty (30) days after the date of Buyer's objection(s) in which to make its choice and to notify City whether it elects option A, B or C set forth in the previous subparagraph. In the event City shall elect to cure all of Buyer's objections, Buyer shall have until the later of the expiration date of the Due Diligence Period or fourteen (14) days following the end of the City's 60-day cure period to make its choice and to notify City whether it accepts

the City's cure with respect to all objections or whether it elects option A, B or C set forth in the previous subparagraph.

(3) Nothing contained in this subsection (e) is intended to, nor shall in any way limit, Buyer's right to terminate this Agreement prior to the expiration of the Due Diligence Period and obtain a refund of the Deposit.

- f. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall become exempt from real and personal property taxes, by transfer, conversion, or otherwise, during the City's fiscal year that begins following the Closing or in the fiscal years thereafter, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a City PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

3.1 TITLE DOCUMENTATION:

The City agrees to reasonably cooperate with Buyer's requests for documentation related to the title of the Premises or any tax taking of the Premises.

4. INSPECTIONS.

- a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments as Buyer shall deem appropriate or desirable, and (iii) do such other things as Buyer determines, in its sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.

- b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises, except those arising from labor or materials furnished at the City's request.
- c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.
- d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and general public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.
- e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as reasonably possible to its original condition after conducting the Inspections, or, at the City's option, reimburse the City for any material physical damage caused to the Premises in connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, nor any studies, tests (including test borings or pits), exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.
- f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections and other due diligence be acceptable to Buyer in its sole discretion. If the results of such Inspections or other due diligence are not acceptable to Buyer in its sole discretion Buyer may terminate this Agreement. If Buyer exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects

to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.

- 5. REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter except as provided in this Agreement and in the Lease. Because the Premises is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. In the event that the Parties agree to not execute the Lease and the City does not continue to occupy the Property after the Closing Date, any utilities for the Property shall be prorated as of the Closing Date. The Buyer's one half share of Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.
- 6. DEFAULT AND REMEDIES.** In the event that Buyer defaults hereunder for a reason other than the default of the City, City shall retain the deposit as liquidated damages as its sole remedy. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance and the City agrees it shall not invoke any sovereign immunity defense nor any defense based upon its status as a City, municipality, body politic or the like. Buyer at all times may elect in substitution for any other remedies available under this Agreement, as its sole remedy, the right to a return of its deposit.
- 7. RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement and receive a refund of the Deposit without interest, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement, or Buyer may elect to close hereunder and receive an assignment of any applicable insurance proceeds payable to the City relating to such loss or damage.
- 8. PROPERTY SOLD "AS IS, WHERE IS."** Buyer acknowledges that Buyer will have an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues (other than City's agreement to obtain subdivision approval as set forth in Paragraph 10 of this Agreement) or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and

obligation contained herein except as set forth in the Lease, if executed by the parties, and except as otherwise expressly set forth herein.

9. ENVIRONMENTAL INDEMNIFICATION. Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City's release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

Notwithstanding the foregoing, during the longer of the Lease term or the period in which the City occupies the Premises, the City shall be responsible for complying with all applicable state, federal and municipal environmental obligations, laws and regulations.

10. CONDITIONS PRECEDENT TO CLOSING. It is a condition precedent to Closing that:

- a. The City shall obtain subdivision approval by the City of Portland Planning Board, in order to obtain approval for the creation of the parcel which constitutes the Premises, unless the City as Seller and Buyer agree in writing, such subdivision approval is not required (hereinafter the "Subdivision Approval").
- b. In the event the City is unable to obtain the Subdivision Approval prior to the Closing Date, as defined below, then the Buyer may either (1) extend the Closing Date set forth in Paragraph 11 by a time period not to exceed one hundred eighty (180) days to permit the approvals to be obtained or (2) elect to terminate this Agreement prior to the later of the scheduled Closing Date or the expiration date of any extension period based on an extension as provided above. In the event Buyer shall elect to so extend the Closing Date, the City agrees to make reasonable efforts to pursue the Subdivision Approval.
- c. If Buyer shall elect to terminate this Agreement then the City shall refund the Deposit, if previously paid, without interest, and this Agreement shall be terminated and neither party shall have any further obligations or liabilities under this Agreement, unless the parties mutually agree to

extend this Agreement. Buyer acknowledges and agrees that the City is acting as Seller, and not in its regulatory capacity, in connection with this Agreement. The delivery to Buyer, and acceptance and recording by the Buyer of a deed to the Buyer of the Premises, will evidence conclusive and final consent by the Buyer to the waiver or completion of all these conditions.

11. CLOSING. Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of Buyer's counsel or Buyer's Lender's counsel at a time agreeable to the parties on or before the day that is the later of five months after the Effective Date of this Agreement or thirty (30) days after the later of (i) the expiration of the Due Diligence Period; (ii) the deadline for the City to resolve any title, Survey or environmental objections; or (iii) the date to which Buyer elects to extend the Closing Date under Paragraph 10 (the "Closing Date"). Notwithstanding the foregoing, City agrees to close on a date earlier than that specified above upon Buyer's request at least 10 days prior to Closing. At the Closing:

- a. City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good, insurable title to the Premises at standard rates, free and clear of all liens and encumbrances except as otherwise set forth herein.
- b. Buyer shall deliver the balance of the Purchase Price, subject to any adjustments set forth in section 2 of this Agreement, including, without limitation, reduction by the Rent Credit, to the City by wire transfer (or as otherwise reasonably requested by the City); and
- c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement, and for the Buyer to obtain owners and lenders title insurance at standard rates in form reasonably acceptable to Buyer and to Buyer's lender.
- d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting with respect to the Closing and executing documents on behalf of Buyer are authorized to do so.
- e. City shall deliver to Buyer a copy of all City Council Orders approving this Agreement and authorizing the City Manager or other City officials to execute this Agreement, the deed, the Lease, and any other documents necessary to effectuate the intent and purpose of this Agreement.
- f. Except as otherwise provided in section 2(b), the parties shall execute the Lease.

12. BUYER'S POST CLOSING OBLIGATIONS; ESCROW AGREEMENT. Buyer agrees as follows:

- a. Buyer agrees at Closing (and only upon Closing) to deposit \$50,000.00 to be held in escrow (the "Escrow Account") pursuant to an escrow agreement in form mutually acceptable to Buyer and City with a mutually acceptable escrow agent.
- b. Buyer agrees to commence development of a project at the Premises in substantially the form described in the portion of the plans depicting the Premises that are attached hereto as Exhibit B and incorporated herein by reference, and which project was presented to the City's Economic Development Committee on or about July 19, 2017 (the "Project"), within one (1) year after the later of the end of the term of the Lease or the last date of the City's occupancy of the Premises (the later of the two such dates hereinafter is referred to as the "City's End Date"). The Project shall be deemed to be "in substantially the form described in the portion of the plans depicting the Premises that are attached hereto as Exhibit B" if it proposes to include (or is constructed to include): (i) multiple separate spaces, which may have separate or shared access to the street; (ii) one large central space of a size and for a use to be determined; and (iii) an emphasis on rental affordability. The Project may also be modified in a manner that is reasonably necessary for Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval, and the Project, if otherwise "in substantially the form described in the portion of the plans depicting the Premises that are attached hereto as Exhibit B" shall, notwithstanding any such modifications, continue to be so considered. In addition, if Buyer determines that interest rates or community demand for the use of the Premises change such that Buyer wishes to make changes to the Project, or if Buyer wishes to make other changes to the Project, Buyer shall request the City's approval of such changes.
- c. Buyer's commencement of development of the Project shall be effected by Buyer or its successors, assigns, or transferees submitting a site plan review application (an "Application") for the Project within one (1) year after the City's End Date.
- d. If Buyer does not submit an Application for the Project (which Application may include modifications as described above) within one (1) year of the City's End Date, then \$10,000.00 shall be released from escrow to the City's Housing Trust Fund, and until an Application has been filed, an additional \$10,000.00 shall be released from escrow to the City's Housing Trust Fund each ninety (90) days thereafter.
- e. Within thirty (30) days after the submission of an Application for the Project, the remaining balance of the Escrow Account shall be released to Buyer. If no Closing takes place under this Agreement, the Buyer shall

not be required to fund the Escrow Account nor make any payment. Notwithstanding anything to the contrary above, in the event that a Closing on the sale of the Premises to Buyer under this Agreement takes place and Buyer fails to submit any Application for the Project within the later of 5 years from the Closing Date or 4 years after the City's End Date, the entire remaining balance of the Escrow Account shall be released to the City's Housing Trust Fund.

- f. City hereby agrees that despite the references in this Agreement to Buyer as the developer with respect to the Project, that the Project will be undertaken by a different Limited Liability Company ("LLC") to be formed, or corporation to be formed, which will be an assignee of Buyer, and the City hereby consents to the same and consents to Buyer's assignment of its rights and obligations under this Agreement to any such LLC or corporation, provided that Thomas Watson will be a manager or co-manager of any such LLC and President or Vice President of any such corporation.
- g. The provisions of this section shall survive closing.

13. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Premises hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

14. NON-WAIVER. No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

15. HEADINGS AND CAPTIONS. The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

16. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns, provided, however that this Agreement shall not be assigned by the City.

17. TIME. The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

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

invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

19. NOTICE. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery to the City Manager's office shall be effective as personal delivery to the City Manager on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City: City of Portland
ATTN: City Manager
389 Congress Street
Portland, ME 04101

With a copy to: The Office of the Corporation Counsel at the same address.

FOR Buyer: Mr. Thomas Watson
Tom Watson & Co., LLC
104 Grant Street
Portland, ME 04101

With a copy to: William H. Leete, Jr., Esq.
Leete & Lemieux, P.A.
511 Congress Street, Suite 502
Portland, ME 04101

20. SIGNATURES; MULTIPLE COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

21. BROKERS. The City shall be responsible for paying all its brokers, including CBRE | The Boulos Company, at closing. Buyer has no broker other than Joseph Porta of Porta & Co., who Buyer understands is to be compensated by CBRE | The Boulos Company. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, if applicable, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

22. RECITALS INCORPORATED BY REFERENCE. The recitals set forth above

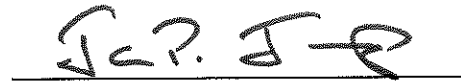
are incorporated herein by reference and made a part of this Agreement.

23. EXTENSIONS: Wherever this Agreement provides that a deadline will be extended, including without limitation any extension(s) which may be elected by Buyer or City as well as any extensions based upon the occurrence or non-occurrence of any event (such as, for example, the delivery of a survey or Phase II environmental report), then any such extension will be deemed to have automatically occurred, without the need for any additional action by Buyer or City.

IN WITNESS WHEREOF, the parties have hereunto have caused this instrument to be executed on their behalf by their duly authorized officers or representatives, as of the day and year first written above.

CITY OF PORTLAND

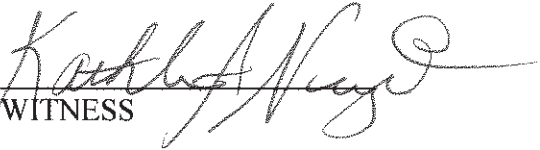

WITNESS


Jon P. Jennings
Its City Manager
Dated: May 14, 2018

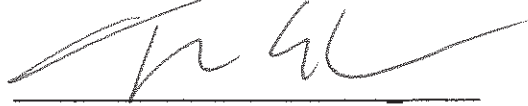
Approved as to Form:


Corporation Counsel's Office

Signature page for Tom Watson & Co., LLC follows.


WITNESS

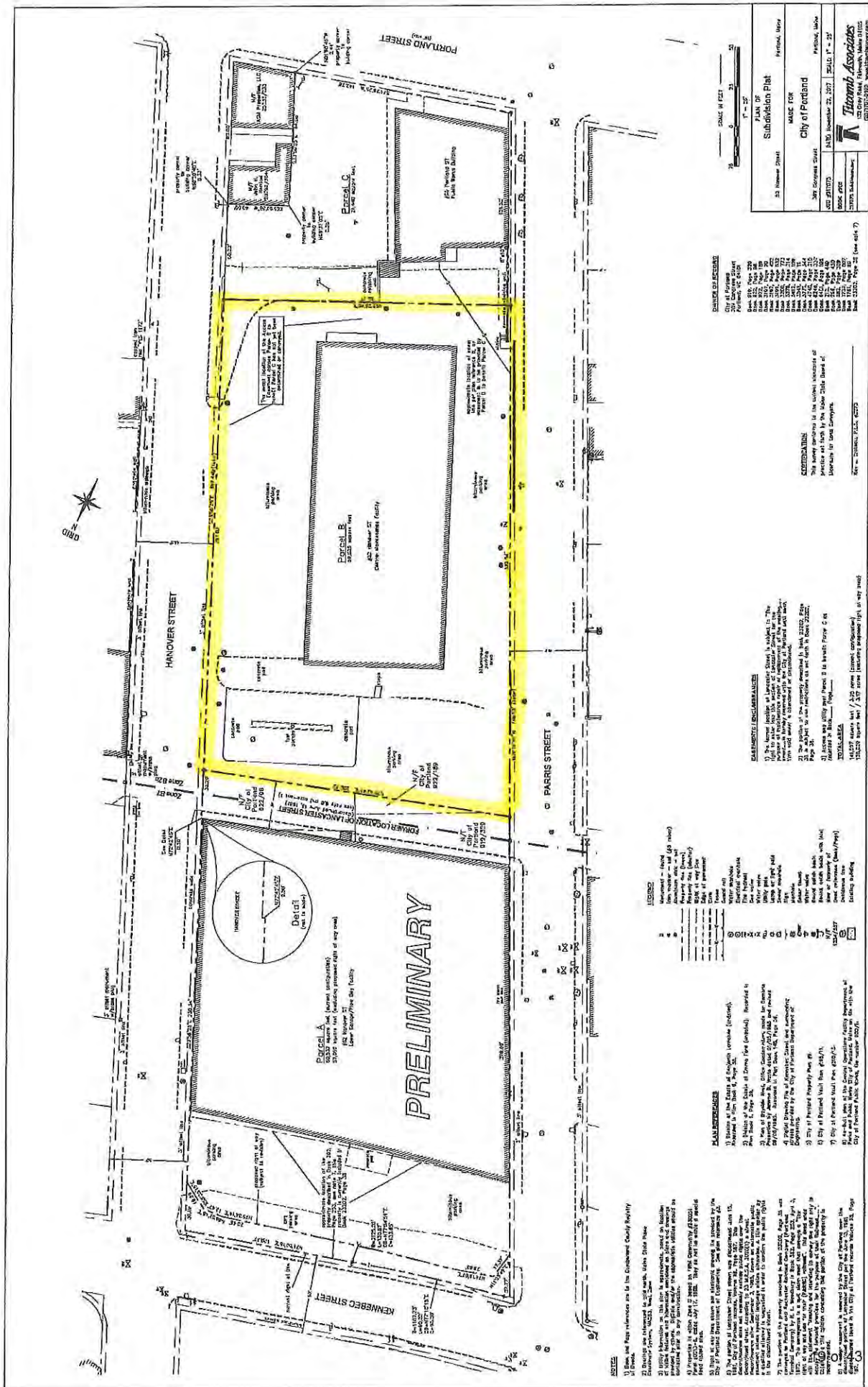
TOM WATSON & CO., LLC



Thomas E. Watson

Its Manager

Dated: 5.14.2018



DESCRIPTION OF INTENDED USE

82 Hanover

- o Relocate Port Property Management headquarters to 82 Hanover from 104 Grant Street in Parkside
- o Bring in retailers/partners who will contribute to the community as well as the economy
- o Open spaces/commons available for public use
- o Leverage large rooftop for decks and greenspace to add comfortable density to neighborhood
- o Creates opportunity for construction of 23 units on Grant Street and eliminates an office/warehouse that sits in the middle of the Parkside residential neighborhood

44 Hanover

- o 16 separate spaces all with autonomous access to the street.
- o One Central Space of over 3,500SF for a public/communal user like pub, café, eatery
- o Glass OHD to promote openness, and allow for artists and artisans to combine retail display space to their work space. Promote marketplace environment
- o Affordable/accessible to the creative community at under \$1,000/month.

Lancaster Court (between 82 Hanover & 44 Hanover)

- o Commons/courtyard space open to public for public use
- o Available for outdoor recreation including farmers market and small music venue for tenants and managers to promote work/events.
- Display and value public art and communal aesthetic enhancements
- Cobble stone street
- Trees/landscaping
- Fountain/water wall

56 Parris Street

- o 23 2 BR 2 Bath units
- Unique product to Portland
- Create product for families (2 bathrooms) or multiple roommates (making it affordable)
- At 23 units, 4 stories high it is scaled to the other buildings in the neighborhood

EXHIBIT B

BAYSIDE RFP - 44 HANOVER ST. -Rendering
PORTLAND, MAINE

MAY 15, 2017



1 VIEW LOOKING SOUTHEAST ON PARRIS STREET

FOR OFFICIAL USE ONLY

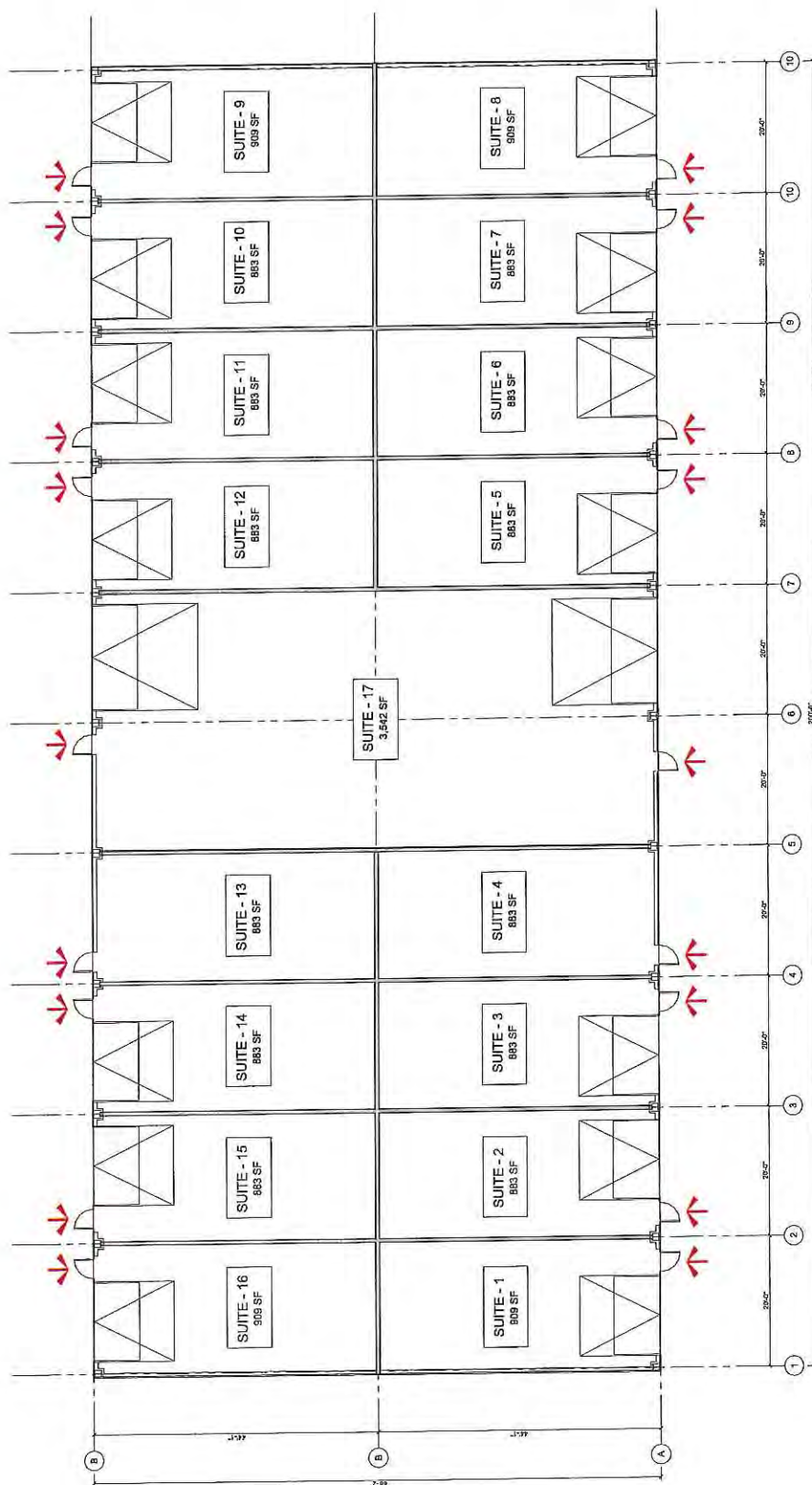
Port Property
MANAGEMENT

RYAN SENATORE **ARCHITECTURE**

MAY 15, 2017

BUILDING AREA		
FIRST FLOOR AREA		
SUITE - 1	909 SF	909 SF
SUITE - 2	483 SF	483 SF
SUITE - 3	828 SF	828 SF
SUITE - 4	863 SF	863 SF
SUITE - 5	863 SF	863 SF
SUITE - 6	863 SF	863 SF
SUITE - 7	909 SF	909 SF
SUITE - 8	909 SF	909 SF
SUITE - 9	909 SF	909 SF
SUITE - 10	863 SF	863 SF
SUITE - 11	863 SF	863 SF
SUITE - 12	863 SF	863 SF
SUITE - 13	863 SF	863 SF
SUITE - 14	863 SF	863 SF
SUITE - 15	863 SF	863 SF
SUITE - 16	909 SF	909 SF
SUITE - 17	3,442 SF	3,442 SF
BUILDING TOTAL *		37,714 SF

NOTE:
 ABOVE ARE PORTAGE CALCULATED USING OUTSIDE PERIMETER OF EXTERIOR WALLS AND CENTERLINE OF 3" THICK WALLS



1 FIRST FLOOR CONCEPT PLAN
1/8" = 1'-0"

PROGRESS PRINT ONLY
Not for Construction

RYAN SENATORE **ARCHITECTURE**

Port Property

M A N A G E M E N T

EXHIBIT C
LEASE AGREEMENT

This Lease Agreement, is made as of the _____ day of _____, 2018, by and between _____ with a mailing address of 104 Grant Street, Portland, Maine 04101 (hereinafter referred to as "Landlord") and the **CITY OF PORTLAND**, a Maine municipal corporation having its principal place of business at 389 Congress Street, Portland, Maine (hereinafter referred to as "Tenant").

WHEREAS, Tenant has recently conveyed to Landlord certain property located at or about 44 Hanover Portland Street in Portland, Maine and wishes to continue to occupy and use such property; and

WHEREAS, Landlord has sufficient right, title and interest in and to the real property and has full power and authority to enter into this Agreement in respect thereto, and is willing to have Tenant occupy and use the 44 Hanover Street property on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Landlord and Tenant hereby mutually agree as follows:

1. Premises.

Tenant, as of the date of this Lease, exclusively occupies certain land and a building or buildings located at or about 44 Hanover Street, Portland, Maine (hereinafter the "Building") (the land and Building are referred to herein as the "Premises") as generally depicted on the plan attached hereto as Exhibit A. Landlord does hereby agree to lease, demise, and let the Premises unto Tenant, subject to the access and parking easement benefitting the owner of the property located at 55 Portland Street (the "Access Easement"), which easement is depicted on Exhibit A. Tenant shall have no authority to modify or make any substantial changes (whether cosmetic, structural or otherwise) to the Premises without the prior written consent of Landlord.

2. Term.

The initial term of this Lease shall commence _____, 2018 (the "Effective Date") and terminate _____, 2019 (the "Initial Term"), unless earlier terminated as provided herein, or extended as provided herein. The Initial Term together with any Renewal Term (as defined herein) are referred to collectively hereinafter as the "Term."

In the event Tenant shall continue in occupancy of the Premises after the expiration of the Initial Term or any Renewal Term (as defined herein), such occupancy shall not be deemed to extend or renew the terms of this Lease, but occupancy shall, at the option of the Landlord, continue as a tenancy at will from month to month upon covenants, provisions, and conditions herein contained, and at the rent in effect prior to the expiration of the Initial Term or Renewal Term (as

defined herein) whichever last occurred, increased by twenty five (25%) percent, prorated and payable month to month on the first day of each month for the period of such hold-over occupancy. This paragraph shall not be deemed or construed as giving the Tenant any right to hold over after the expiration of the Initial Term or any Renewal Term thereof.

2.1. Renewal.

Upon expiration of the Initial Term, at the request of the Tenant, the Term of this Lease may be renewed for one (1) three (3) month extension (which such extension hereinafter will be referred to as the "Renewal Term") subject to and conditioned upon Landlord's written consent, and provided that the Tenant is not in default of the terms of this Lease prior to the expiration of the Initial Term and provided that Tenant gives Landlord at least three (3) months' notice in writing of its request for a Renewal Term. Landlord's consent shall not be unreasonably withheld, delayed, or conditioned.

The Renewal Term shall commence the day following the expiration of the Initial Term of the Lease. If the Tenant exercises its option to renew Tenant agrees to pay to Landlord, or its designee, rent on the terms described in Paragraph 4 below at the new rental rate for the Renewal Term as set forth in Paragraph 4.

Tenant shall be responsible for all costs and expenses relating to the Premises during the entire period in which the Tenant occupies any part of the Premises (hereinafter the "Occupancy Period") including, without limitation, for the entire Term of this Lease (and any Renewal Term if applicable), all costs and expenses with respect to utilities as set forth in this Lease Agreement.

3. Permitted Uses.

The Premises may be used by Tenant for the current use of the Premises and for any other similar, lawful purposes. Tenant shall not use or occupy or permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises, in a manner which will in any way violate any applicable laws, ordinances or regulations of any municipal, State or other governmental authority.

4. Rent.

a. Rent Paid in Advance at Closing. The rent for the lease to the Tenant for the Initial Term shall be in the amount of _____ Dollars (\$_____.00). As stated in the related Purchase and Sale Agreement dated on or about _____, 2018 between the City of Portland, Maine and Landlord (the "Purchase and Sale Agreement") with respect to the Premises, the full Rent Credit (as that term is defined in the Purchase and Sale Agreement) for the Initial Term is to be paid at the closing by the City of Portland, Maine as seller upon Landlord's purchase of the Premises (the "Closing"), granting a credit to Buyer in the full amount of said Rent Credit against and reducing the purchase price for the Premises by that amount. Landlord, by its initials here: _____ acknowledges receipt of the Rent Credit in the amount of \$_____. Tenant agrees that the agreement to pay rent in advance is a substantial inducement for Landlord to purchase the Premises at the purchase price set forth in the Purchase and Sale Agreement, and

accordingly, all of the rent paid and credited at Closing, including, without limitation, the Rent Credit, shall be non-refundable.

b. Rent During Renewal Term. If there is a Renewal Term of this Lease, the rent during the Renewal Term of this Lease shall be in the amount of the greater of Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00) per month or the then market rate of rent for the Premises, as determined by an independent commercial real estate agent or appraiser chosen by the Landlord, from three qualified agents or appraisers with at least ten (10) years' experience in the profession proposed by the Tenant, at least two months prior to the date when this Lease would terminate if not renewed. If none of the agents or appraisers proposed by Tenant are acceptable to Landlord, Landlord may request an appraisal from Landlord's agent which shall be averaged with one from an agent or appraiser selected by Tenant from the three proposed by Tenant to determine the then market rental rate.

c. Renewal Term Rent Payments; When Due. Rent during the Renewal Term (and rent for any time period for which rent is not fully paid in advance at the Closing on the sale of the Premises) shall be payable in advance the first day of each and every calendar month during such Renewal Term (and any other applicable period during which rent is due) and rent payments shall be made to the Landlord's manager, Port Property Management, 104 Grant Street, Portland, ME 04101 or such other address as Landlord shall in writing direct. Any rent payment received by the Landlord after the 7th of the applicable month shall be subject to a 5% late fee.

d. Additional Rent. Tenant shall also pay as additional rent all expenses and costs relating to the Premises, including, without limitation, all taxes, utilities and insurance, and including, without limitation, those set forth in Paragraphs 5, 6, 7, 8, 10 and 10.1 of this Lease.

5. Taxes and Utilities.

a. Taxes. The Tenant shall be responsible for timely payment of all taxes of any kind due to the City of Portland, Maine as well as any other fees due to the City of Portland, Maine, including, without limitation, all municipal real property taxes on or assessed against the Premises during the Term of the Lease. Tenant shall also be responsible for timely payment of all personal property taxes with respect to all personal property on or about the Premises. In the event the Premises are determined to be tax exempt, either wholly or partially, Tenant shall be required to pay any and all amounts due to the City of Portland, Maine in lieu of or as a replacement for real and personal property tax payments, including, without limitation, all amounts specified in Paragraph 3(f) of the Purchase and Sale Agreement. Upon receipt of a tax bill from the City of Portland, Landlord shall notify Tenant of the amount due and Tenant shall pay said amount within 30 days of receipt of such notice. In the event that the Term of the Lease is due to expire prior to the end of the six month tax period that is the subject of such a tax bill, the amount Tenant is required to pay shall be prorated accordingly.

b. Utilities. Tenant shall also be responsible for paying all the costs of all utilities servicing the Premises during the Initial Term of this Lease and any Renewal Term, including but not limited to electrical, gas, water, sewer, heat and air conditioning (together with all other HVAC expenses), internet, cable and telephone. Tenant shall also be responsible for payment of all

stormwater fees and stormwater service charges due to the Portland Water District or City of Portland, as well as any other assessments or fees against the Premises by the City of Portland, Maine or the Portland Water District. Landlord is not responsible for payment of any such assessments or fees, nor for providing heat nor any other utilities to the Premises, nor for paying the costs of any such utilities, all of which are Tenant's sole responsibility.

6. Tenant to Plow and Remove Snow.

Tenant, at Tenant's expense, shall be responsible for plowing and removing snow and ice from the Premises in accordance with applicable City ordinances. Landlord shall have no obligation to remove snow or ice from the Premises.

7. Tenant to Remove Trash and Debris; Maintenance.

Tenant, at Tenant's expense, shall maintain the entire portion of the Premises in the same condition and repair as it is in as of the Effective Date, except only for reasonable wear and tear, and shall remove from the Premises all trash and debris which it shall create, which is located upon the Premises or which is otherwise attributable to Tenant. Tenant shall not do anything to cause nor permit the Premises nor the activities therein or thereon to violate any municipal, county, state or federal law, ordinance or requirement, and shall promptly act upon direction of any officer of competent authority.

8. Responsibility for Repairs and Maintenance; Tenant's Acceptance Of Premises In "As Is" Condition.

a. Maintenance and Repair. Tenant is currently in possession of the Premises and does hereby accept the Premises and Common Areas in their present "AS IS" condition as of the Effective Date. During the Term of the Lease, Tenant shall, at its sole expense, maintain and make any reasonably necessary repairs to the Premises at its sole expense.

b. Capital Repairs. Tenant hereby warrants and represents that it has inspected the Premises and that it knows of no capital repairs that are presently necessary. The term "Capital Repair" is agreed to mean the repair or replacement of a major component or structural part of the Premises and shall also include the rebuilding of a major component or structural part of the Premises after the end of its useful life. Based on the information acquired in its inspection, together with its historic use of the Premises, Tenant represents that it has no actual knowledge that any Capital Repairs will be required during the Initial Term or if the Lease is renewed, during any Renewal Term. In the event any Capital Repairs to the Premises are reasonably necessary during the Term and Tenant does not wish to make such Capital Repair at Tenant's sole expense, Tenant shall so advise Landlord in writing and Landlord may, in its sole discretion, elect to make, or not to make, such Capital Repair. Notwithstanding the foregoing, Tenant agrees that whenever it determines that it is reasonably possible to make a temporary repair or patch and defer the need for a Capital Repair, it shall make such temporary patch or replacement. In the event Landlord elects not to make any Capital Repairs, Tenant shall have the right, but not the obligation to make such repairs at its own expense. Tenant acknowledges and agrees that even if Tenant determines it is unable to occupy the Premises due to the condition of the Building or the

Premises, all of its rent payments shall continue to be non-refundable even if Tenant determines that it could occupy the Building or the Premises if a Capital Repair was made.

Notwithstanding the foregoing, Landlord and Tenant agree that in the event of a casualty loss or event (hereinafter "Casualty") causing material physical damage to the Premises or Building for which there is insurance coverage as determined by the insurer issuing the applicable policy of insurance, that subject to and conditioned upon any requirements or conditions imposed by Landlord's lender (including, without limitation, any restrictions or conditions on disbursement of insurance payments or proceeds), funds paid by an insurer with respect to such Casualty shall be released to fund the cost of a Capital Repair resulting from such Casualty, upon such terms as shall be reasonably acceptable to Landlord and provided that Landlord shall not be required to make any payment of any kind toward such Capital Repair.

8.1 Improvements/Alterations. No improvements or alterations to the Premises which materially change or alter the Premises shall be made without Landlord's written approval, which shall not be unreasonably withheld, delayed, or conditioned. Any request by Tenant for such approval shall be submitted with written specifications and drawings reasonably satisfactory to Landlord. All improvements made to the Premises by Tenant must be done in accordance with all local Building codes and ordinances and all applicable State and Federal statutes and regulations, and Tenant must obtain all necessary permits prior to commencing improvements. Tenant shall promptly pay for any and all trades furnishing services and/or alterations to the Leased Premises. With the exception of any of Tenant's removable property, including without limitation, all of its personal property and trade fixtures, any and all property left by Tenant in the Leased Premises shall become property of the Landlord at the expiration or termination of Tenant's tenancy. A list of trade fixtures which are owned and controlled exclusively by Tenant and which Tenant shall remove at the end of the Term or when Tenant vacates the Premises, whichever shall be earlier, is attached as Exhibit B.

9. Compliance with Laws.

Tenant shall, at its own cost and expense, promptly observe and comply with all applicable laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, and county and city government.

10. Insurance.

Prior to the execution of this Lease and continuing during the Term of the Lease or for such longer period during which Tenant shall occupy the Premises, Tenant shall obtain, maintain and pay for all the costs of the insurance listed in the following subsections:

- a. Tenant shall maintain occurrence based General Liability Insurance, which shall include liability insurance with respect to automobiles, trucks and other motor vehicles, in the amount of \$400,000 per occurrence for causes of action pursuant to the Maine Tort Claims Act, and the policy for such insurance shall name Landlord as an additional insured. Tenant shall provide Landlord with a certificate evidencing such General Liability Insurance coverage prior to execution of this Lease. Tenant

shall be responsible for covering its personal property with such property and casualty insurance as it deems reasonably necessary and shall provide Landlord with documentation of such policies of insurance or self-insurance prior to execution of this Lease. Landlord shall not be responsible for any damage to Tenant's personal property except for damage caused by Landlord. Claims brought by Landlord against Tenant for damage to the Premises, that are not covered by an insurance policy, and are the result of Tenant's use and/or negligence, and not resulting from the Landlord, its employees, subcontractors, or others using the Access Easement to access the property at 55 Portland Street, shall be Tenant's responsibility to repair or reimburse Landlord in an amount equal to that reasonably necessary to return the Premises, to substantially the same condition in which they were at the start of this Lease. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages, available to the Tenant under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the Tenant. For the purposes of this Lease, an insurance claim will be deemed to be "not covered by an insurance policy insuring Tenant" if such claim is denied by the insurer issuing the policy against which the claim is made.

- b. Glass. Tenant shall be solely responsible for the cleaning, maintenance and replacement of plate glass and other windows located within the Leased Premises and is advised to obtain insurance coverage with respect to damage thereto. Tenant agrees to repair promptly any damage to such glass and windows at its sole expense. Tenant shall not be responsible for damage to glass or windows caused by Landlord, its employees or subcontractors, or others using the Access Easement to access 55 Portland Street. Any such cleaning, maintenance and/or repairs shall be to return all glass and windows to substantially the same condition in which they were at the start of this Lease.
- c. Workers Compensation. Tenant self-insures for workers compensation coverage and shall provide Landlord with evidence of its self-insured status.
- d. Property and Casualty Insurance. Landlord shall procure and maintain such Property and Casualty insurance as it deems reasonably necessary in regard to the Premises, and Tenant shall pay Landlord upon execution of this Lease for annual premiums in an amount up to and including ten thousand dollars (\$10,000). Such coverage shall be in form and amount to coverage as commonly written for comparable buildings. In the event that the Term of this Lease exceeds the term of Landlord's Property and Casualty insurance policy, Tenant shall pay landlord for applicable premiums within 10 days of Landlord's request for such payment. Any deductibles and/or retentions in an amount higher than ten thousand dollars (\$10,000) shall be subject to approval by Tenant. Tenant shall be named an additional insured on such policy for coverage only in those areas where government immunity has been expressly waived by 14

M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the Tenant under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the Tenant.

- e. Pollution Liability Insurance. Tenant shall procure and maintain premises pollution liability insurance in form and content reasonably acceptable to Landlord considering Tenant's use of the Premises as a vehicle maintenance garage and fueling station in an amount not less than one million dollars (\$1,000,000) per occurrence, for the Term of this Lease, or if the Occupancy Period ends later than the end of the Term, then, for the entire Occupancy Period, naming Landlord as an additional insured thereon. The pollution liability insurance policy (hereinafter in this sub-paragraph referred to as the "Policy") shall provide at least such coverage as is commonly written for buildings comparable to the building(s) located on the Premises and uses comparable to Tenant's use of the Premises. The Policy shall provide liability coverage on a claims-made and reported basis which covers claims first made against or by an insured and reported to the Insurer, during the policy period. The Policy shall also provide coverage for remediation costs which covers pollution conditions first discovered and reported to the insurer during the policy period. Tenant shall include in the pollution coverage of the Policy, conditions emanating from storage tanks (including gas and oil tanks) on the Premises. Tenant additionally agrees to purchase a so-called "tail" or extended reporting period coverage (hereinafter "Tail Coverage") for at least a one-year term in form reasonably acceptable to Landlord that provides coverage for claims pursuant to said Policy. The Tail Coverage shall, at minimum, extend the period for reporting claims under the Policy for at least a year after the expiration of the Occupancy Period.

Tenant agrees to procure and submit for Landlord's review a certificate of insurance and binder for the Policy and Tail Coverage at least ten (10) days prior to the commencement of this Lease Agreement as well as such other documents detailing the proposed terms of coverage as Landlord shall reasonably request. Tenant further agrees that the Policy shall be in full force and effect upon commencement of the Term.

- f. Self-Insurance, Large Deductibles and/or Retentions. Tenant is solely responsible for all deductibles and or retentions on any insurance policies required by this Lease, and agrees to pay all deductibles and retentions with respect to any such policies. Any coverage required by this Lease for which Tenant chooses to self-insure shall be the responsibility of the Tenant, and Tenant agrees to pay any covered claims for which it chooses to self insure.
- g. Waiver of Subrogation. Tenant shall procure waiver of subrogation on any insurance policies required under this Lease in which it is able to do so. Tenant agrees that it shall waive subrogation with respect to any matters for which it self-insures,

including, without limitation, worker's compensation insurance. Landlord acknowledges and agrees that Tenant's general liability insurance coverage shall not include a waiver of subrogation. Landlord may choose to either waive subrogation or list the Tenant as a named insured in lieu of waiving subrogation under its property and casualty insurance policy.

- h. Notice. All of the insurance policies in which the Tenant or Landlord are an additional or named insured under the terms of this Lease shall, contain a clause that the insurer shall not cancel or reduce the coverage of the insurance without first giving Tenant, Landlord and any mortgagees of Landlord thirty (30) days' prior written notice.

10.1 Tenant's Responsibilities.

- a. To the fullest extent permitted by law, Tenant hereby agrees to assume all risk of injury, harm or damage to any person or property (any such injury, harm or damage hereinafter is referred to as a "Liability Event"), including but not limited to all risk of injury, harm or damage to Tenant's officers, agents, employees, contractors, customers and invitees (all of whom hereinafter are referred to as "Tenant's Affiliates" in the plural or as a "Tenant Affiliate" in the singular) or to any of their property, arising out of, during, or in connection with Tenant's lease of the Premises from Landlord, Tenant's occupancy of the Premises or any other use by Tenant of the Premises (all such risks are hereinafter collectively referred to as the "Assumed Risks"), but only to the extent (i) any such Liability Event is a result of actions or omissions by Tenant, one of Tenant's Affiliates or any other person or entity for whom Tenant may be liable and (ii) is a negligent act or omission, an intentional act which is not a discretionary function, or an act or omission for which Tenant is liable under the Maine Tort Claims Act. Such Assumed Risks do not include injury, harm, or damage caused by (1) any act or omission of Landlord, its officers, agents, employees, contractors or anyone else for whom Landlord may be liable except Tenant or a Tenant Affiliate, or (2) any act or omission of any third party who is not a Tenant Affiliate utilizing the Access Easement. Tenant's obligations hereunder are subject to and limited by the defenses, immunities and limitations of liability available to the Tenant under the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq, and other applicable law.
- b. Tenant and Landlord agree that, subject to Landlord's right to enforce the terms of this Lease and to terminate this Lease as provided herein, and except to the extent that the Access Easement is used by others, Tenant shall have during the Term until the later of the expiration of the Lease, the earlier termination of the Lease, or when Tenant vacates the Premises, full control over the Premises (including, without limitation, all buildings or structures located on the Premises, including, without limitation, the Building and any parking lot, or walkways or other grounds located on the Premises) and shall be solely responsible for all maintenance and repairs to the Building and Premises except as expressly set forth in this Lease.

- c. Covenant against liens: Tenant shall not cause nor permit any lien against the Landlord's property or the Premises or any improvements thereto to arise out of or accrue from any action, omission or use thereof by Tenant; provided, however, that Tenant may in good faith contest the validity of any alleged lien. In the event Tenant contests such lien, upon the request of the Landlord, Tenant shall post a bond approved by the court in which such lien claim is pending or if not yet pending, a court with jurisdiction over such lien, warranting payment of any such lien. If Tenant does not contest a lien, it shall pay off and cause the discharge of any such lien within twenty (20) days of its recording. If a court or other proceeding is commenced, Tenant shall cause such lien to be "bonded off" to Landlord's satisfaction within forty-five (45) days of commencement of such proceeding. Should Landlord be subjected to any claim(s), suit(s) or lien(s), including, without limitation, any claim(s), suit(s) or lien(s) relating to any mechanic's lien claim for any services or materials associated with Tenant's improvements or alterations to the Leased Premises, Tenant shall indemnify and hold harmless Landlord from all damages and costs (including any attorneys' fees incurred by Landlord) arising out of or relating to any such claim(s), suit(s) or lien(s), and shall pay any and all costs (including attorneys' fees) incurred by Landlord in defense or prosecution of such actions within ten (10) days of demand by Landlord. Tenant's failure to comply with the foregoing requirements regarding liens shall constitute a default under the terms of this Lease.

10.2 Environmental Compliance.

During the longer of the Term or the Occupancy Period, the Tenant shall be responsible for complying with all applicable state, federal and municipal environmental obligations, laws and regulations (hereinafter collectively "Environmental Laws") and taking all necessary steps to prevent any violation of any such Environmental Laws. In addition, Tenant shall be responsible for payment of the costs and expenses relating to any violation of Environmental Law regarding any Hazardous Material (as defined below), substance or waste which comes on, which comes from or affects, the Premises during the longer of the Term or the Occupancy Period, or which is hereafter placed upon or under the Premises at any time during the longer of the Term or the Occupancy Period (including, without limitation payment of all fines, penalties or the like, as well as the costs of removal and remediation) including, any and all losses, damages, suits, penalties, costs, liability and expenses (including but not limited to reasonable investigation, laboratory fees, environmental audit and legal expenses) arising out of any claim for loss or damage to any real or personal property or to person(s) including the Premises, injuries to or death of person(s), contamination of or adverse effects on the environment or any violation of statutes, ordinances, orders, rules or regulations of any governmental entity or agency, caused by or resulting from any Hazardous Material (as defined below), substance or waste which comes on, which comes from or affects, the Premises during the longer of the Term or the Occupancy Period, or which is hereafter placed upon or under the Premises at any time during the longer of the Term or the Occupancy Period. Tenant's obligations under this paragraph do not apply to any violation of Environmental Laws or claims resulting from the actions or omission of Landlord, its employees, subcontractors, or others using the Access Easement to access the

property at 55 Portland Street. This paragraph is only intended to govern Tenant's actions during the longer of the Term or the Occupancy Period of the Lease and does not apply to Tenant's ownership of the Premises.

The term "Hazardous Materials" or "Hazardous Material" as used in this Lease Agreement includes but is not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future State, Federal or municipal environmental law, regulation or ordinance including but not limited to any such law, regulation or ordinance relating to petroleum or petroleum products, asbestos or asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables or explosives.

Landlord acknowledges and agrees that nothing in section 10 of this Lease is intended to alter or does alter the rights and obligations of the parties under sections 8 and 9 of the Purchase and Sale Agreement.

11. Assignment/Subletting.

Tenant shall not sublet all or any portion of the Premises, nor sublease, transfer or assign this Agreement or the rights granted hereunder at any time during the Term of this Agreement without the prior written approval of Landlord, which may be granted or withheld in Landlord's sole discretion. No such assignment or subletting shall relieve Tenant of any obligations hereunder, all of which shall remain in full force and effect, including, without limitation, with respect to payment and any person accepting such assignment shall take the Agreement subject to all prior breaches and shall be liable therefore in the same manner as Tenant.

12. Casualty Damage.

a. If the Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty so that the same shall be thereby rendered unfit for use, then, and in such case: (i) if such fire or unavoidable casualty occurs during the Initial Term, then Tenant shall have the right to terminate this Lease; or (ii) if such fire or unavoidable casualty shall occur following the expiration of the Initial Term and during the Renewal Term or any other term, either Landlord or Tenant shall have the right to terminate this Lease. Such right of termination, if available, shall be exercised by giving the other party written notice of such termination within thirty (30) days after such damage or destruction, and upon the giving of such notice, the Term of this Agreement shall cease and come to an end as of the earlier of the date Tenant fully moves out of the Premises or the expiration or earlier termination of the then application term of the Lease. Upon the date Tenant fully moves out of the Premises, Tenant's obligation to pay utilities shall end, except for such charges for utilities as shall have accrued prior to the date of move-out. Notwithstanding anything else contained in this Lease Agreement, Tenant shall not receive any rent refund or credit for such early termination of the Lease or for any early move out, but Tenant shall not be obligated to continue to pay rent due if the Lease is so terminated during any Renewal Term. For avoidance of doubt, Landlord and Tenant hereby agree no rent shall be

refunded to Tenant upon such termination (or under any other circumstance) and that the Rent Credit shall be permanently retained by Landlord.

b. Tenant shall be responsible for covering its equipment and supplies with such property and casualty insurance as it deems necessary and Landlord shall have no responsibility therefor. Tenant assumes all risk of damage, loss or casualty to its property, equipment and/or supplies while located at the Premises, whether it is owned or leased by Tenant.

12.1 Condemnation. If the Premises or any part thereof are taken or condemned by a duly constituted public authority, this Lease shall, as to the part taken, terminate and all proceeds and awards shall be paid to the Landlord. Tenant shall have no claim against Landlord with respect to any such taking or condemnation. In the event that a substantial portion of the Premises itself is taken or condemned, both Landlord and Tenant shall have the right to terminate this Lease upon giving notice in writing ten (10) days in advance of proposed termination date. Notwithstanding any such condemnation, taking or termination, no rent shall be refunded to Tenant, and all rent shall be permanently retained by Landlord.

13. Default; Termination.

a. This Lease is made on the condition that if the Tenant shall fail to pay any rent or any other monetary obligation to Landlord within five (5) days of its due date, or fail to perform any other obligation to Landlord within thirty (30) days after written notice thereof, or in case of an obligation that cannot with due diligence be cured within said thirty (30) day period, fail to proceed within said thirty (30) day period to commence to cure the same and thereafter to prosecute the performance of such obligation with due diligence and within a period of time that under all prevailing circumstances shall be reasonable or if Tenant shall violate or fail to comply with any of the terms or provisions of this Lease and such failure to comply or violation of this Lease shall reoccur or continue after written notice of such violation from Landlord, or if the estate hereby created shall be taken on execution or other process of law, or if Tenant shall be declared bankrupt or insolvent according to law, or if Tenant shall file bankruptcy, or if an involuntary bankruptcy shall be filed against Tenant which shall not be dismissed within thirty (30) days, or if the Tenant shall hold over at the termination of the Lease as herein provided, then and in any of said cases, notwithstanding any license or any former breach of covenants or waiver or consent in former instances, the Landlord lawfully may, in addition to and not in derogation of any remedies for breach of covenant, immediately or at any time thereafter, without prior demand or prior notice whatsoever, (a) terminate this Lease by notice in writing which termination shall be effective immediately or at Landlord's election on a date stated in said notice; (b) with or without process of law, enter into and upon the leased Premises or any part thereof and repossess the same; and (c) expel the Tenant and those claiming through or under the Tenant and remove its effects (together with any third parties' property) without being deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or preventing a breach of covenant, and upon entry as aforesaid, all rights of Tenant hereunder shall terminate; and Tenant covenants that in case of such termination, Tenant will during the remainder of the then-current term or any Renewal Term pay to Landlord on the last day of each calendar month the difference, if any, between the rental, and other monetary obligations of Tenant, which would have been due for such month had there been no such termination and the sum of the amounts being received by the Landlord from occupants of the leased Premises, if

any. In addition, Tenant agrees to pay the Landlord, as damages for any above-described breach, all costs of reletting the Leased Premises including, without limitation, real estate commissions, costs of advertising, costs of damage repair, cleaning, costs of renovation of the Premises to suit a new tenant, and costs of moving and storing Tenant's personal and trade fixtures.

b. Legal Fees and Expenses.

- (i) Tenant further agrees to pay and indemnify the Landlord against all reasonable legal costs and charges, including, without limitation, all reasonable attorney's fees and expenses (hereinafter collectively referred to as "Legal Expenses") incurred by Landlord if Landlord prevails in a civil action to obtain possession of the leased Premises (including, without limitation, in any forcible entry and detainer or eviction action).
- (ii) Tenant shall pay to Landlord all such Legal Expenses within ten (10) days following the entry of a final judgment and the passing of any applicable appeals period in such civil action.

c. Surrender. Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in accordance with the provisions of this Lease. If this Lease is terminated, Tenant shall remain liable to Landlord for all Rent due under this Lease Agreement which has not yet been paid to Landlord. The Rent Credit shall remain nonrefundable and shall be permanently retained by Landlord. In no event shall either party be liable to the other for incidental, special, or consequential damages of any nature claimed as a result of the breach of any term of this Agreement or termination of this Agreement.

d. Termination for Convenience. Tenant may terminate this Lease for its convenience upon no less than thirty (30) calendar days' prior written notice to Landlord. If Tenant so terminates this Lease for its convenience, no rent shall be refunded to Tenant, and the Rent Credit shall be permanently retained by Landlord.

14. Access.

Landlord shall provide at least 24 hours advance notice of its intention to enter the Premises, except in the case of an emergency. Upon such notice, the Landlord and its representatives, agents, or employees, may enter the Premises.

15. Signs.

Tenant shall not erect, install or place any signage upon the interior or exterior of the Premises except with the written approval of Landlord, which approval Landlord agrees not to withhold unreasonably. Tenant shall pay any and all costs associated with any such signage approved by Landlord.

16. Zoning.

It is the responsibility of Tenant to determine all zoning information and secure all necessary or required permits and approvals of its proposed use of the subject Premises. Landlord makes no representations or warranties as to the suitability of, or the ability to obtain regulatory approval for, the subject Premises for Tenant's intended use.

17. Self-Help.

In the event of a dispute between Tenant and Landlord, Tenant shall not be permitted to withhold all or any part of the rental payment then due unless and until a forum of appropriate jurisdiction has so ruled. The acceptance of a check by the Landlord for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, to the effect that such lesser amount constitutes payment in full shall be given no effect and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

18. Miscellaneous Provisions.

Subject to the foregoing, the covenants and agreements of the Landlord and Tenant shall run with the land and be binding upon and inure to the benefit of them and their respective successors and assigns, but no covenant or agreement of Landlord, expressed or implied, shall be binding individually upon any LLC manager or member nor any fiduciary nor any trustee or beneficiary under any trust.

19. Subordination.

Tenant shall, from time to time, upon request of the Landlord, subordinate this Lease to any mortgage deed, and/or other security indenture hereafter placed upon the leased Premises, and to any renewal, modification, replacement or extension of such mortgage or security indenture, if, and only if, any mortgagee of Landlord and Landlord (if required by lender) execute (either before or after) such subordination agreement or subordination, non-disturbance and attornment agreement ("SNDA"). Landlord agrees to make reasonable efforts to negotiate with its lender with respect to the terms of any such SNDA, and shall advise such lender of any Tenant objections to such SNDA. Tenant hereby agrees it shall execute and deliver to Landlord within five (5) days of Landlord's request such subordination agreement or SNDA submitted to Tenant by Landlord or Landlord's lender.

20. Estoppel Certificates.

Tenant shall, within five (5) days after each and every request by Landlord execute, acknowledge and deliver to Landlord a statement in writing including any or all of the following as determined by Landlord: (a) certifying that the Lease is unmodified and in full force or effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), (b) specifying dates to which the annual rent has been paid, (c) stating whether or not Landlord is in default in performance or observance of its obligations under the Lease, and, if so, specifying each such default, (d) stating whether or not to the best of the knowledge of the Tenant, any event has occurred which, with giving of notice or passage of time, or both, would constitute a default by Landlord under Lease, and, if so, specifying each such event, and (e)

certifying that Tenant, as of the date of the statement, has no charge, lien or claim of offset under the Lease, or otherwise, against rents or other charges due or to become due thereunder. Any such statement delivered pursuant to this Article may be relied upon by any prospective assignee, transferee or mortgagee of the Leased Premises or any interest therein.

21. Return of Premises; Trade Fixtures.

Tenant at the expiration or termination of this Lease Agreement shall peaceably yield up to Landlord the Premises in broom clean condition, in good repair in all respects, reasonable use and wear and damage by fire and all other unavoidable casualties not caused by the acts or omissions of Tenant, its officers, employees, agents, invitees or contractors excepted. At such time, Tenant shall also remove all trade fixtures, equipment and other personal property installed or placed by it at its expense in, on or about the Premises, including, without limitation, those listed on Exhibit B. Should Tenant fail to remove its trade fixtures, equipment or other personal property within Thirty (30) days of a notice to do so from Landlord, ownership of such fixtures, equipment and property shall automatically be vested in Landlord and Landlord have the right to dispose of such fixtures, equipment and property in any manner it sees fit, and retain all proceeds therefrom.

22. Covenants.

Landlord covenants that it is the owner in fee of the Premises and can and will provide quiet enjoyment of the Premises during the Initial Term of this Agreement, or if applicable, any Renewal Term. Each party covenants that the Agreement is signed by a duly authorized individual.

23. Notices.

Any notice required to be given under this Lease shall be in writing and shall be hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the parties as stated below or such other address as either party may designate in writing to which its future notices shall be sent. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery at the addresses below shall be effective as personal delivery to the party specified on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

To Tenant: City of Portland
 ATTN: City MANAGER
 389 Congress Street
 Portland, ME 04101

With a copy to: The Office of the Corporation Counsel
 at the same address

To Landlord: Mr. Thomas Watson

104 Grant Street
Portland, ME 04101

With a copy to: William H. Leete, Jr., Esq.
Leete & Lemieux, P.A.
511 Congress Street, Suite 502
Portland, ME 04101

24. Amendment.

Both parties hereto acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties except such as are expressed herein. The terms of this Lease may be modified or amended by the mutual assent of the parties hereto; provided, however, that no such modification or amendment to this Lease shall be binding until in writing and signed by both parties.

25. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Maine.

26. Force Majeure.

Neither Tenant nor Landlord shall be deemed in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, acts of God, war, acts of superior governmental authority or other reason over which it has no control; provided, however, that the suspension of performance shall be no longer than that required by the force majeure and a suspension of performance shall only be permitted if the party prevented from performance has given written notice thereof to the other party.

27. Non-Waiver.

No waiver of any breach of any one or more of the conditions of this Lease by the Landlord or Tenant shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

28. Limitations of Liability. Tenant agrees to look solely to the Landlord's interest in 44 Hanover Street, for recovery of any judgment from Landlord, it being agreed that Landlord is not personally liable for any such judgment beyond its interest in 44 Hanover Street (except to the extent that insurance proceeds may be available to satisfy any such judgment).

29. Brokers.

Landlord and Tenant each represent and warrant to the other that it has not dealt with any agents, brokers or finders in connection with this Agreement, other than the related purchase transaction for the Premises between Landlord and Tenant, and Tenant hereby warrants and represents that its broker [CBRE | The Boulos Company] has been paid in full for its services rendered in connection with that transaction and is not entitled to any compensation with respect to this Lease. Each party agrees to hold and indemnify the other harmless from and against any losses, damages, costs or expenses (including attorneys' fees) that either party may suffer as a result of claims made or suits brought by any broker in connection with this transaction, the obligated party hereunder to be the party whose conduct gives rise to such claim or whose statement contained in this Paragraph 29 shall be untrue.

30. Tenant agrees that its obligations to Landlord under this Lease Agreement are contractual and are not subject to any defenses available under the Maine Tort Claims Act and Tenant further agrees not to seek to invoke any such defenses.

31. Memorandum of Lease.

Landlord and Tenant agree that this Lease shall not be recorded but each party hereto agrees, on request of the other, to execute a Memorandum of Lease in recordable form and mutually satisfactory to the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed the day and year first above written.

WITNESS:

LANDLORD

By: _____
Thomas E. Watson
Its Manager

WITNESS

CITY OF PORTLAND

By: _____
Jon P. Jennings
Its City Manager

Approved as to Form:

Corporation Counsel's Office

EXHIBIT A
(Plan of Premises to be inserted closing)

EXHIBIT B
Tenant's Property To Be Removed At End Of Term

Lifts –

- 2 Post Forward model DP15SN000M, 15,000 lb, 230 volt – Pickup Bay
- 2 Post Forward model DP10A2, 10,000 lb, 230 volt – Police Bay 2
- 2 Post Forward model 110N000M, 10,000 lb, 230 volt – Police Bay 1
- 4 post Rotary model SM18N000, 18,000 lb, 230 volt – Medcu Bay
- (4) sets of 4 Stertil Koni mobile column lifts, 18,000 lb each post, 230 volt, 3 phase

Tire Machines –

- Atlas tire changer – 110 volt
- Accuturn tire balancer – 110 volt
- Brunick tire spreader – 110 volt
- Old tire changer

Crane

- Demag 10 ton.

Air Compressor – Replace with new

- Champion 3 phase, 230 volt compressor, circa 1992, with air drier 110 volt

Misc Shop Equipment 110 volt

- 2 ac machines, 110 volt
- 1 transmission service machine – 110 volt
- 110 welders for mechanics (2)
- Diesel transfer tank 110 volt
- Multiple waste oil transfer tanks 110 volt

Machine Shop

- Shop press, 110 volt
- Fume extraction – 110 – 220 volt depending on size.
- Millermatic 252 mig welder, 220 volt (work bay)
- Older mig welder, 220 volt (work bay)
- Tig welder – 220 volt (work bay)
- Plasma cutter, 220 volt (work bay)
- Jet bandsaw – 110 volt (in machine shop)
- Vertical bandsaw, 220 volt, 3 phase (machine shop)
- Ironworker, Scotchman, 110 volt (machine shop)
- Lathe, 220 volt, 3 phase (machine shop)
- Milling machine, 220 volt, 3 phase (machine shop)
- Large drill press, 220 volt, 3 phase (machine shop)
- Small drill press, 110 volt (machine shop)

Other/Misc Equipment

- (2) Generators (Admin and Fleet)
- Misc hose / cord / wiring reels
- Tire bay water tank
- Spring compressor – wall mounted in Fire bay
- Bulk fluid tanks
- Paint mix room
- Newer floor body shop lights
- 2 new Fleet building dumpsters
- Misc shelving



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Economic Development Committee

FROM: Greg Mitchell, Economic Development Director

DATE: June 13, 2018

SUBJECT: Proposed Fourth Amendment to 82 Hanover Street
Purchase and Sale Agreement

I. ONE SENTENCE SUMMARY

The proposed Fourth Amendment to the Purchase and Sale Agreement for 82 Hanover Street will enable a new 10-foot wide pedestrian easement to be established, between Parris and Hanover Street along the proposed 44 and 82 Hanover Street property line and restrict parking in the 30-foot wide Lancaster Street right of way area.

II. BACKGROUND

The EDC previously voted to recommend to the City Council the discontinuance of vehicular and pedestrian rights (while retaining a utility easement) in the section of the former discontinued Lancaster Street right-of-way located between Parris and Hanover Street.

In order to be consistent with City Planning Board Site Plan approval for the 82 Hanover Street Redevelopment Project, staff propose amending the 44 and 82 Hanover Street Purchase and Sale Agreements to reserve in the deeds public pedestrian easements establishing a ten (10) foot wide new pedestrian area composed of 5 foot wide easements on either side of the property line. Following guidance from the EDC, the amendments to the Purchase and Sale Agreement for 82 Hanover will also require a covenant in the deed restricting parking in the 30-foot wide portion of the property currently encumbered by the public easement in the former Lancaster Street right of way. It is noted that Tom Watson is the buyer for both the 44 and 82 Hanover Street properties.

III. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result is EDC and City Council approval of the attached Fourth Amendment to the Purchase and Sale Agreement for 82 Hanover.

This supports the private redevelopment of the 44 and 82 Hanover Street properties formerly occupied by the City Public Works Department.

IV. FINANCIAL IMPACT

There is no financial impact related to this transaction.

V. STAFF ANALYSIS

In order to account for the loss of public access in the former Lancaster Street right of way and comply with Planning Board requirements and EDC recommendations, City staff negotiated the attached Fourth Amendment with Tom Watson (buyer for both the 44 and 82 Hanover Street properties) to preserve public easements on both properties related to the new ten (10) foot wide pedestrian easement area between Parris and Hanover Streets along the boundary between 44 and 82 Hanover Street and to restrict parking in the former Lancaster Street right of way.

VI. RECOMMENDATION

Staff recommends the EDC vote to recommend approval, to the City Council, of the Draft Fourth Amendment to the Purchase and Sale Agreement for 82 Hanover Street in substantial conformance as attached.

VII. LIST ATTACHMENTS

- Proposed Fourth Amendment to Purchase and Sale Agreement for 82 Hanover Street
- 3rd Amendment to Purchase and Sale Agreement
- 2nd Amendment to Purchase and Sale Agreement
- 1st Amendment to Purchase and Sale Agreement
- 82 Hanover Street Purchase and Sale Agreement

**FOURTH AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 82 HANOVER STREET**

THIS FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the ____ day of July, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 (“Seller”) and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the “Buyer”).

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about October 24, 2017, as amended by that certain First Amendment dated December 22, 2017, that certain Second Amendment dated February 28, 2018, and that certain Third Amendment dated May 14, 2018 (hereinafter collectively the “Agreement”) with respect to certain real property located at or about 82 Hanover Street, Portland, Maine as more fully described in the Agreement;

WHEREAS, Seller and Buyer wish to amend the description of the Premises in the P&S in order to clarify that Seller will reserve in the conveyance a public pedestrian access easement over a portion of the Premises and to include a restrictive covenant governing parking in a portion of the Premises as set forth in greater detail below.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Paragraph 3(f) of the Agreement is hereby deleted and replaced with the following:

Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer specifically acknowledges and agrees that in the deed, Seller will reserve for the benefit of the public a 5-foot-wide pedestrian access easement as approved by the City of Portland Planning Board on May 23, 2018 (the “Public Pedestrian Easement”) along the entire length of the common boundary between the Premises and 44 Hanover Street, which is also the southeasterly boundary line of the Premises, which easement shall run between Hanover and Parris Streets (the “Public Pedestrian Easement Area”). The Public Pedestrian Easement Area is generally depicted as the cross-hatched area on the diagram attached hereto as Exhibit A, which is incorporated herein by reference. The purpose of the Public Pedestrian Easement is to grant public pedestrian access on and over the Public Pedestrian Easement Area, which shall be an ADA compliant area for pedestrian, bicycle and similar non-motorized pedestrian uses. The Public Pedestrian Easement shall be

subject to such rules or ordinances that the Seller may adopt from time to time in the interests of public safety, which are generally applicable to similar pedestrian easements, provided that Buyer does not waive any rights, and expressly reserves the right, to argue that any such future rules or ordinances do not apply to it on the basis that the existing conditions of the Public Pedestrian Easement Area are grandfathered and/or that such rules or ordinances cannot be retroactively applied. Notwithstanding the foregoing, wheelchair and emergency vehicles as well as snow removal equipment shall be permitted in accordance with applicable federal and/or state laws regulating accessibility for such devices, vehicles or equipment. Maintenance and repair responsibilities within the Public Pedestrian Easement Area shall belong solely to the Buyer, its successors and assigns. Buyer shall be responsible for removal of snow and ice from the Public Pedestrian Easement Area and to otherwise comply with all laws, rules, regulations, and ordinances governing the removal of snow and ice. Seller shall have the right, but not the obligation, to repair or maintain the Public Pedestrian Easement Area, including, as reasonably necessary, any subsurface repairs or maintenance, or remove snow or ice therefrom, when Seller, in its sole discretion, deems such repairs, maintenance, or snow or removal necessary to ensure public safety and protect the public use and enjoyment of the Public Pedestrian Easement Area. No buildings or any kind of permanent structure will be erected in the Public Pedestrian Easement Area, and Buyer shall not use or authorize any use, condition or state of disrepair that would be contrary to or otherwise inhibit the public pedestrian uses of the Public Pedestrian Easement Area.

Buyer further acknowledges and agrees that the deed will include a restrictive covenant governing parking in the area on Exhibit A marked "Lancaster Street (Discontinued)," which area is approximately 30 feet wide and extends from Parris Street to Hanover Street (the "Restricted Parking Area"). Buyer, its successors and assigns shall prohibit parking in the Restricted Parking Area at all times, provided, however, that Buyer may allow brief stopping and standing in the Restricted Parking Area for vehicles loading or unloading people or goods at the Premises. Such covenants and restrictions are intended to be and shall be considered covenants that run with the Premises and shall bind all subsequent owners of the Premises. Such covenants and restrictions shall survive a sale, transfer, foreclosure or transfer of title in lieu of foreclosure, or other disposition of the Premises and shall be enforceable by Seller as a contract and shall inure to the benefit of and be enforceable by Seller, its successors, transferees and assigns. The covenants restrictions may be amended or modified in whole or in part only by written agreement of Seller and Buyer.

Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall become exempt from real and personal property taxes, by transfer, conversion, or otherwise, during the City's fiscal year that begins following the Closing or in the fiscal years thereafter, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a City PILOT policy that may be in effect at the time taxes are due on

such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

2. Except as specifically amended hereby, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement.

IN WITNESS WHEREOF, this First Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND

WITNESS

Jon P. Jennings
Its City Manager

TOM WATSON & CO., LLC

WITNESS

Printed Name: Thomas E. Watson
Its Manager

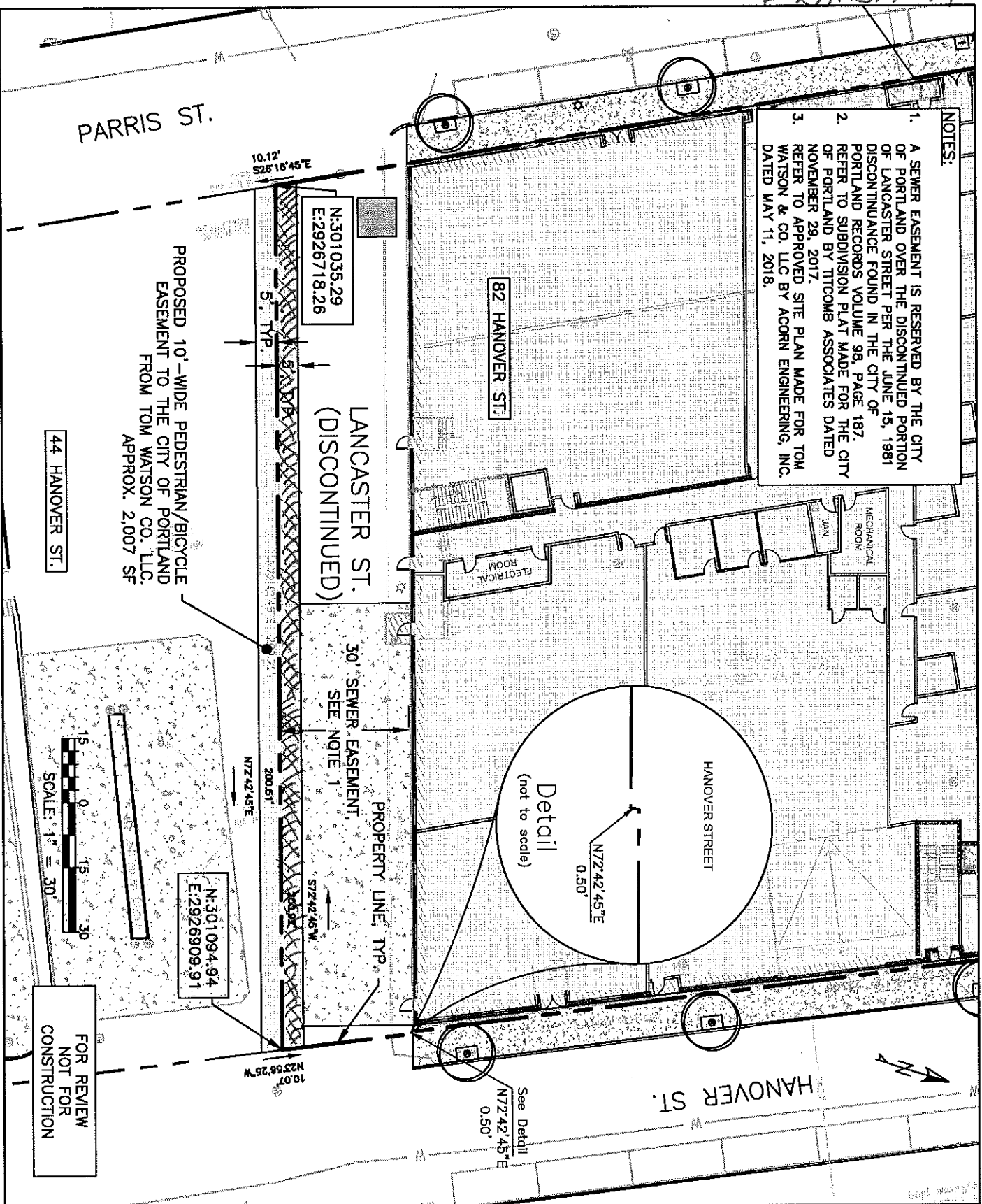
Approved as to Form:

Corporation Counsel's Office

EXHIBIT A

NOTES:

1. A SEWER EASEMENT IS RESERVED BY THE CITY OF PORTLAND OVER THE DISCONTINUED PORTION OF LANCASTER STREET PER THE JUNE 15, 1981 DISCONTINUANCE FOUND IN THE CITY OF PORTLAND RECORDS VOLUME 98, PAGE 187.
2. REFER TO SUBDIVISION PLAT MADE FOR THE CITY OF PORTLAND BY TITCOMB ASSOCIATES DATED NOVEMBER 29, 2017.
3. REFER TO APPROVED SITE PLAN MADE FOR TOM WATSON & CO. LLC BY ACORN ENGINEERING, INC. DATED MAY 11, 2018.



ACORN ENGINEERING, INC. ACORN ENGINEERING, INC. P.O. BOX 3372 PORTLAND, MAINE 04104 (207) 775-2855	FILE: 1093 CIVIL DATE: 5/29/2018 JN: 1093 SCALE: 1"=30' DESIGN BY: SIL DRAWN BY: SIL CHECKED BY: WHS	DRAWING NAME: LANCASTER PEDESTRIAN EASEMENT PROJECT NAME: 82 HANOVER REDEVELOPMENT CLIENT: TOM WATSON & CO. LLC	ISSUED FOR CITY REVIEW DATE BY
	THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM ACORN ENGINEERING, INC. ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO ACORN ENGINEERING, INC.	EX-01	DRAWING NO.

**THIRD AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 82 HANOVER STREET**

THIS THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 14th day of May, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about October 24, 2017, as amended by that certain First Amendment dated December 22, 2017 and that certain Second Amendment dated February 28, 2018 (hereinafter collectively the "Agreement") with respect to certain real property located at or about 82 Hanover Street, Portland, Maine as more fully described in the Agreement;

WHEREAS, the prior amendments to the Agreement provided, among other things, that the Due Diligence Period and the Financing Period, as those terms are defined in the Agreement were extended, the most recent amendment extending those expiration dates to May 15, 2018 or such later date as may be set forth in the Agreement (the "Due Diligence and Financing Period Expiration Date"); and

WHEREAS, Seller and Buyer wish to further amend the Agreement to further extend the Due Diligence Period and Financing Period Expiration Date and to amend the "Option to Cure" and other provisions of Section 3(e) of the Agreement, all as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting the reference to May 15, 2018 as the expiration date of the Due Diligence Period in the first sentence of Section 3(a) of the Agreement (the First Amendment replaced "sixty (60) days after the Effective Date of this Agreement" with "March 1, 2018," and the Second Amendment replaced it with "May 15, 2018"), and replacing it with a reference to "July 23, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Due Diligence Period to 4pm Portland, Maine time on July 23, 2018.

2. The Agreement is hereby further amended by deleting the reference to May 15, 2018 as the expiration date of the Financing Period in the first sentence of Section 3(c) of the Agreement (The First Amendment replaced "sixty (60) days after the Effective Date of this Agreement" with "March 1, 2018" and the Second Amendment replaced it with "May 15, 2018"), and replacing it with a reference to "July 23, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Financing Period to 4pm Portland, Maine time on July 23, 2018.

3. Without limiting the general nature of the extensions described above, Seller and Buyer further agree that by virtue of extending the deadline of the expiration date of the Due Diligence Period they also intend, and hereby agree to (and hereby do) extend to July 23, 2018, the deadline for any objections to title, environmental or survey matters and including, without limitation, any objections to any other matters listed in Paragraph 3(d) of the Agreement.

4. Seller and Buyer further agree that due to certain automatic extension provisions in the Agreement, that both the Due Diligence Period and the Financing Period may be automatically extended to a date later than July 23, 2018 and it is the parties' intent that both such periods be extended to the later of July 23, 2018 or such later date as is provided in the Agreement.

5. Buyer and Seller further agree that any deadlines in the Agreement that are set to occur at the expiration of, or a specified number of days after, the Due Diligence Period shall continue to occur at the expiration of, or after the Due Diligence Period, as applicable and shall be calculated based upon the expiration date of the Due Diligence Period as amended hereby.

6. The Agreement is hereby further amended by deleting Paragraph 3(e) of the Agreement in its entirety and replacing it with the following:

e. Option to Cure.

(1) In the event of a title, Survey or environmental objection by Buyer, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's satisfaction, Buyer will have the option to:

(A) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement);

(B) waive the objection and close; or

(C) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so and the Closing Date shall be extended to a date ten (10) days after the expiration of such 60 day period); if Buyer determines it is not satisfied with the results of its own cure efforts, Buyer shall be entitled at any time prior to the expiration of the ten (10) day period following Buyer's sixty (60) day cure period set forth in this subsection (C) to

terminate this Agreement as set forth in subsection (A) set forth above, or to waive its objection and close under this Agreement.

(2) In the event City shall elect not to cure any objection by Buyer, Buyer shall have until the later of the expiration date of the Due Diligence Period or fourteen (14) days after receipt by Buyer of the City's notice of election not to cure such Buyer's objection in which to make its choice and to notify City whether it elects option A, B or C set forth in the previous subparagraph. If the City does not timely respond to the Buyer's objection or if the City responds to Buyer's objection but does not state whether or not it elects to cure all of Buyer's objections, then Buyer shall have until the later of the expiration date of the Due Diligence Period or thirty (30) days after the date of Buyer's objection(s) in which to make its choice and to notify City whether it elects option A, B or C set forth in the previous subparagraph. In the event City shall elect to cure all of Buyer's objections, Buyer shall have until the later of the expiration date of the Due Diligence Period or fourteen (14) days following the end of the City's 60-day cure period to make its choice and to notify City whether it accepts the City's cure with respect to all objections or whether it elects option A, B or C set forth in the previous subparagraph.

(3) Nothing contained in this subsection (e) is intended to, nor shall in any way limit, Buyer's right to terminate this Agreement prior to the expiration of the Due Diligence Period and obtain a refund of the Deposit.

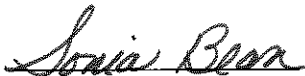
7. The Agreement is hereby further amended by deleting Paragraph 3(f) of the Agreement in its entirety and replacing it with the following:

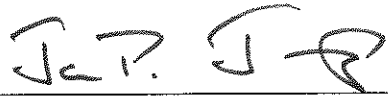
Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall become exempt from real and personal property taxes, by transfer, conversion, or otherwise, during the City's fiscal year that begins following the Closing or in the fiscal years thereafter, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a City PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

8. Except as specifically amended hereby and by the First and Second Amendments, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement, as amended.

IN WITNESS WHEREOF, this Third Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND


WITNESS


Jon P. Jennings
Its City Manager

Approved as to Form:


Corporation Counsel's Office

Signature page for Tom Watson & Co., LLC follows.


WITNESS

TOM WATSON & CO., LLC


Printed Name: Thomas E. Watson
Its Manager

**SECOND AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 82 HANOVER STREET**

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 28th day of February, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about October 24, 2017 (the "Agreement") with respect to certain real property located at or about 82 Hanover Street, Portland, Maine as more fully described in the Agreement; and

WHEREAS, on December 22, 2017, Seller and Buyer entered into a First Amendment to Purchase and Sale Agreement for 82 Hanover Street ("First Amendment"), which amended the Agreement and provided, among other things, that the Due Diligence period and the Financing Period, as those terms are defined in the Agreement, were extended to March 1, 2018 or such later date as may be set forth in the Agreement, (the "Due Diligence and Financing Period Expiration Date");

WHEREAS, Seller and Buyer wish to amend the Agreement to further extend the Due Diligence Period and Financing Period Expiration Date as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting the reference to March 1, 2018 as the expiration date of the Due Diligence Period in the first sentence of Section 3(a) of the Agreement (the First Amendment replaced "sixty (60) days after the Effective Date of this Agreement" with "March 1, 2018"), and replacing it with a reference to "May 15, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Due Diligence Period to 4pm Portland, Maine time on May 15, 2018.

2. The Agreement is hereby further amended by deleting the reference to March 1, 2018 as the expiration date of the Financing Period in the first sentence of Section 3(c) of the Agreement (The First Amendment replaced "sixty (60) days after the Effective Date of this Agreement" with "March 1, 2018"), and replacing it with a reference to "May 15, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Financing Period to 4pm Portland, Maine time on May 15, 2018.

3. Without limiting the general nature of the extensions described above, Seller and Buyer further agree that by virtue of extending the deadline of the expiration date of the Due

Diligence Period they also intend, and hereby agree to (and hereby do) extend to May 15, 2018, the deadline for any objections to title, environmental or survey matters and including, without limitation, any objections to any other matters listed in Paragraph 3(d) of the Agreement.

4. Seller and Buyer further agree that due to certain automatic extension provisions in the Agreement, that both the Due Diligence Period and Financing Period may be automatically extended to a date later than May 15, 2018 and it is the parties' intent that such periods be extended to the later of May 15, 2018 or such later date as is provided in the Agreement.

5. Buyer and Seller further agree that any deadlines in the Agreement that are set to occur at the expiration of, or a specified number of days after, the Due Diligence Period shall continue to occur at the expiration of, or after the Due Diligence Period, as applicable and shall be calculated based upon the expiration date of the Due Diligence Period as amended hereby.

6. Except as specifically amended hereby and by the First Amendment, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement, as amended.

IN WITNESS WHEREOF, this Second Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND


WITNESS


Jon P. Jennings
Its City Manager


WITNESS

TOM WATSON & CO., LLC


Printed Name: Thomas E. Watson
Its Manager

Approved as to Form:


Corporation Counsel's Office

**FIRST AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 82 HANOVER STREET**

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 22nd day of December, 2017, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated October 24, 2017 (the "Agreement") with respect to certain real property located at or about 82 Hanover Street, Portland, Maine as more fully described in the Agreement; and

WHEREAS, the Due Diligence period and the Financing Period, as those terms are defined in the Agreement, were to expire sixty (60) days after the date of the Agreement, (the "Due Diligence and Financing Period Expiration Date") but under the terms of the Agreement have been automatically extended by at least thirty (30) days because certain due diligence items, such as a Phase II Environmental study, have not yet been provided to Buyer;

WHEREAS, Seller and Buyer wish to amend the Agreement to extend the Due Diligence Period and Financing Period Expiration Date as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting the reference to "sixty (60) days after the Effective Date of this Agreement" in the first sentence of Section 3(a) of the Agreement, and replacing it with a reference to "March 1, 2018," meaning and intending hereby to extend the deadline of the Due Diligence Period to 4pm Portland, Maine time on March 1, 2018.

2. The Agreement is hereby further amended by deleting the reference to "sixty (60) days after the Effective Date of this Agreement" in the first sentence of Section 3(c) of the Agreement, and replacing it with a reference to "March 1, 2018," meaning and intending hereby to extend the deadline of the Financing Period to 4pm Portland, Maine time on March 1, 2018.

3. Seller and Buyer further agree that due to certain automatic extensions provisions in the Agreement, that both the Due Diligence Period and Financing Period may be automatically extended to a date later than March 1, 2018 and it is the parties' intent that such periods be extended to the later of March 1, 2018 or such later date as is provided in the Agreement.

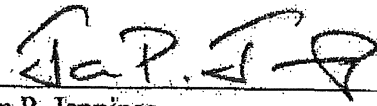
4. Buyer and Seller further agree that any deadlines in the Agreement that are set to occur at the expiration of, or a specified number of days after, the Due Diligence Period shall continue to occur at the expiration of, or after the Due Diligence Period, as applicable and shall be calculated based upon the expiration date of the Due Diligence Period as amended hereby.

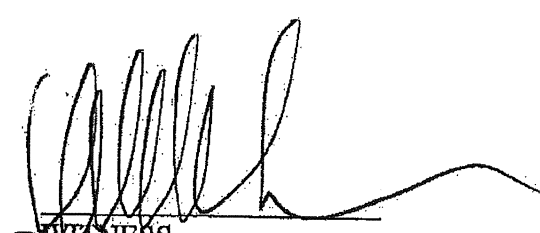
5. Except as specifically amended hereby, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement.

IN WITNESS WHEREOF, this First Amendment has been executed and delivered as of the day and year first above written.

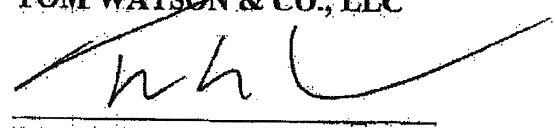
CITY OF PORTLAND


WITNESS

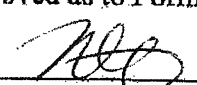

Jon P. Jennings
Its City Manager


WITNESS

TOM WATSON & CO., LLC


Printed Name: Thomas E. Watson
Its Manager

Approved as to Form:


Corporation Counsel's Office

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this 24th day of October, 2017 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "Seller" or "City"), and Tom Watson & Co., LLC, or assigns, a Maine limited liability company having a mailing address of 104 Grant Street, Portland, ME 04101 (hereinafter referred to as "Buyer").

RECITALS

WHEREAS, the CITY is the owner of approximately 1.25 acres of land at or near 82 Hanover Street, Portland, Maine as generally depicted as Parcel 4 on the plan attached hereto as Exhibit A together with all buildings and other improvements located thereon (the "Premises") and incorporated herein; and

WHEREAS, Buyer desires to purchase the Premises, and the City desires to convey the Premises to Buyer;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE AND EFFECTIVE DATE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land and buildings located at or about 82 Hanover Street. This Agreement shall become effective following the occurrence of both of the following: approval of this Agreement by the City Council of the City in substantially this form, and the City Manager's execution of this Agreement. The first calendar day after which both such events have occurred is hereinafter referred to as the "Effective Date". All deadlines and time periods set forth in this Agreement, including, without limitation, the Due Diligence Period, Financing Period and Closing Date shall be computed from the Effective Date.
2. **CONSIDERATION.** The purchase price for the Premises shall be Two Million Three Hundred Fifty Thousand (\$2,350,000) (the "Purchase Price"), subject to the following cost adjustments and conditions:
 - a. Buyer shall deposit the sum of Twenty-Five Thousand Dollars (\$25,000.00) (the "Deposit") within 3 business days after the Effective Date of this Agreement that the parties agree will be held in escrow in a non-interest bearing account with CBRE | The Boulos Company; the Deposit shall be fully refundable until the later of the expiration of the Due Diligence Period or the Financing Period, as both are described herein; after the expiration of both such Periods, the Deposit shall be non-refundable except as expressly set forth herein, including, without limitation in paragraphs 3 and 10; and

- b. The Buyer shall pay the remainder of the Purchase Price to the City by wire transfer (or as otherwise reasonably requested by the City) at closing.

3. TITLE AND DUE DILIGENCE.

- a. Due Diligence Period. Subject to extension as set forth in Paragraph 3(b) and (d), Buyer will have from the Effective Date of this Agreement until 4:00 PM Eastern Standard Time on the day that is sixty (60) days after the Effective Date of this Agreement (the “Due Diligence Period”) to complete any survey, environmental review and title examinations, and to undertake such other investigations, testing or inspections as Buyer shall deem appropriate.
- b. Property Description. The property description contained in the deed will be a survey description based upon a Boundary Survey performed by a Maine Licensed Surveyor to be obtained by the City (the “Survey”) which will more specifically describe the property shown on Exhibit A hereto (the “Premises Description”) in form reasonably acceptable to the City and Buyer. The Premises Description will be distributed to the parties hereto at least thirty (30) days prior to expiration of the Due Diligence Period. If the Premises Description is not received by City and Buyer at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period shall be extended to a date thirty (30) days after it is received. The parties will agree on the final Premises Description prior to closing. If the parties cannot agree upon the final Premises Description prior to closing, then Buyer shall have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement) or (2) waive the approval provision and close.
- c. Financing Contingency. Buyer shall have from the Effective Date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is sixty (60) days after the Effective Date of this Agreement (the “Financing Period”) to obtain a commitment for commercially reasonable financing acceptable to Buyer, provided, however, if the Due Diligence Period shall be extended, then the Financing Period shall be extended to expire on the same date as the expiration of the Due Diligence Period. Buyer shall take timely and commercially reasonable steps to secure such financing. If Buyer does not obtain a financing commitment acceptable to Buyer within the Financing Period, Buyer may terminate this Agreement by notice in writing to City, or may elect to close under the Agreement despite the lack of such commitment. If Buyer so exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.

- d. Title, Survey and Environmental Objections. In addition to the Survey described above, the City agrees it has caused a Phase II Environmental study of the Premises to be performed. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters that Buyer determines materially affect insurability of title at standard rates, or the use of the Premises, the value of the Premises, the cost of development of or cost or feasibility of construction on the Premises. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing. If the Survey and any environmental study (including, without limitation any Phase II Environmental study) are not completed and distributed to the parties at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period will be extended to a date thirty (30) days after the date upon which the later of the Survey or any environmental study to be completed and received are completed and are received by Buyer and City.
- e. Option to Cure. In the event of a title, Survey or environmental objection by Buyer, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).
- f. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a city-wide PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement

and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

4. INSPECTIONS.

- a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.
- b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises, except those arising from labor or materials furnished at the City's request.
- c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.
- d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and general public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.
- e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as reasonably possible to its original condition after conducting the Inspections, or, at the City's option, reimburse the City for any material physical damage caused to the Premises in connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, nor any studies, tests (including test borings or pits), exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or

take any other action with respect to any pre-existing environmental contamination disturbed thereby.

- f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion Buyer may terminate this Agreement. If Buyer exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.

5. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Premises is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Buyer's one half share of Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.
6. **DEFAULT AND REMEDIES.** In the event that Buyer defaults hereunder for a reason other than the default of the City, City shall retain the deposit as its sole remedy. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance and the City agrees it shall not invoke any sovereign immunity defense nor any defense based upon its status as a City, municipality, body politic or the like, but Buyer at all times may elect in substitution therefor, as its sole remedy, the right to a return of its deposit.
7. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement and receive a refund of the Deposit without interest, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement, or Buyer may elect to close hereunder and receive an assignment of any applicable insurance proceeds payable to the City relating to such loss or damage.
8. **PROPERTY SOLD "AS IS, WHERE IS."** Buyer acknowledges that Buyer will have an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." City, and its agents, make

no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues (other than City's agreement to obtain subdivision approval as set forth in Paragraph 10 of this Agreement) or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and obligation contained herein except as expressly set forth herein.

9. ENVIRONMENTAL INDEMNIFICATION. Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City's release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

10. CONDITIONS PRECEDENT TO CLOSING. It is a condition precedent to Closing that:

- a. The City shall obtain in form reasonably acceptable to Buyer the removal of the restrictions limiting development of or use of the Premises or otherwise burdening the Premises (hereinafter the "Deed Restrictions") stated or described in the deed to the City from the State of Maine dated September 26, 2005 and recorded in the Cumberland County Registry of Deeds in Book 23202, Page 38.
- b. The City shall obtain Subdivision approval by the City of Portland Planning Board, in order to obtain approval for the creation of the parcel which constitutes the Premises, unless the City as Seller and Buyer agree, such Subdivision approval is not required (hereinafter the "Subdivision Approval").

In the event the City is unable to obtain Subdivision Approval and the removal of all the above Deed Restrictions prior to the Closing Date, as defined below, then the Buyer may either (1) extend the Closing Date set forth in Paragraph 11 by a time period not to exceed one hundred eighty (180) days to permit the removal of the Deed Restrictions and the approvals to be obtained or (2) elect to terminate this Agreement either prior to the scheduled Closing Date or prior to the expiration of any extension period based on an

extension as provided above. In the event Buyer shall elect to so extend the Closing Date, the City agrees to pursue the removal of the Deed Restrictions and Subdivision Approval.

If Buyer shall elect to terminate this Agreement then the City shall refund the Deposit, if previously paid, without interest, and this Agreement shall be terminated and neither party shall have any further obligations or liabilities under this Agreement, unless the parties mutually agree to extend this Agreement. Buyer acknowledges and agrees that the City is acting as Seller, and not in its regulatory capacity, in connection with this Agreement. The delivery to Buyer, and acceptance and recording by the Buyer of a deed to the Buyer of the Premises, will evidence conclusive and final consent by the Buyer to the waiver or completion of all these conditions.

11. CLOSING. Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of Buyer's counsel at a time agreeable to the parties on or before the day that is the later of five months after the Effective Date of this Agreement or thirty (30) days after the later of (i) the expiration of the Due Diligence Period; (ii) the deadline for the City to resolve any title, Survey or environmental objections; or (iii) the date to which Buyer elects to extend the Closing Date under Paragraph 10 (the "Closing Date"). At the Closing:

- a. City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good, and insurable title (at standard rates) to the Premises, free and clear of all liens and encumbrances except as otherwise set forth herein.
- b. Buyer shall deliver the balance of the Purchase Price to the City by wire transfer (or as otherwise reasonably requested by the City); and
- c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement, and for the Buyer to obtain owners and lenders title insurance in form reasonably acceptable to Buyer and to Buyer's lender.
- d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting with respect to the Closing and executing documents on behalf of Buyer are authorized to do so.

12. BUYER'S POST CLOSING OBLIGATIONS; ESCROW AGREEMENT. Buyer agrees as follows:

- a. Buyer agrees at Closing to deposit \$115,000.00 to be held in escrow (the "Escrow Account") pursuant to an escrow agreement in form mutually acceptable to Buyer and City with a mutually acceptable escrow agent.

- b. Buyer agrees to commence development of the residential project generally depicted on the plans that are attached hereto as Exhibit B and incorporated herein by reference, and which project was presented to the City's Economic Development Committee on July 19, 2017, and which shall specifically include at least twenty-three (23) new dwelling units at Buyer's property at 104 Grant Street (The "Residential Project"), within twelve (12) months after closing; provided, however, that Buyer shall be entitled to modify the Residential Project by increasing the number of residential units, modifying the size and layout of such units, or minor, non-substantive changes. Buyer shall also be entitled to modify the Residential Project in a manner deemed reasonably necessary by Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval; provided, however, that such modifications shall not reduce the number of new dwelling units below 23 unless the City's land use ordinance only permits a smaller number without material modifications to the Residential Project as proposed, in which case the Residential Project shall include the maximum number of dwelling units allowed at 104 Grant Street without material modifications to the Residential Project as proposed.
- c. Buyer's commencement of the Residential Project development shall be effected by Buyer or its successors, assigns, or transferees submitting a site plan review application (an "Application") for the Residential Project within 12 months after the Closing under this Agreement.
- d. Buyer agrees to commence development of a commercial project at the Premises in substantially the form depicted on the plans that are attached hereto as Exhibit C and incorporated herein by reference, and which project was presented to the City's Economic Development Committee on July 19, 2017 (the "Commercial Project"), within twelve (12) months after closing. the Commercial Project shall be deemed to be "substantially in the form depicted on the plan attached as Exhibit C" if it proposes to include (or is constructed to include) a) multiple commercial tenant(s) which may be of varied types including retailers and others, b) rooftop decks, and c) if reasonably feasible within the existing space available, open spaces/common areas available for public use. The Commercial Project may also be modified in a manner deemed necessary by Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval and the Commercial Project, if otherwise "substantially in the form depicted on the plan attached as Exhibit C" shall, notwithstanding any such modifications, continue to be so considered.
- e. Buyer's commencement of the Commercial Project shall be effected by Buyer or its successors, assigns, or transferees submitting an Application for the Commercial Project within 12 months after the Closing under this Agreement.
- f. If Buyer does not submit Applications for the Commercial Project and the Residential Project (including any modifications as described above) within one (1) year of Closing under this Agreement, then \$10,000.00 shall be released

from escrow to the City's Housing Trust Fund, and until both Applications have been filed, an additional \$10,000.00 shall be released from escrow to the City's Housing Trust Fund each ninety (90) days thereafter.

- g. Additionally, Buyer shall commence construction of the Residential Project and the Commercial Project by the later of the date that is thirty-six (36) months after Closing under this Agreement or one hundred eighty (180) days after final approval of the Projects (including, without limitation, final decisions in all applicable municipal or judicial proceedings) and the expiration of all applicable appeal periods (the "Construction Start Date"). Buyer agrees to diligently pursue all approvals for both Projects. If Buyer fails to commence construction of the Residential Project and the Commercial Project by the later of the Construction Start Date, then \$10,000.00 shall be released from escrow and to the City's Housing Trust Fund, and until construction on both Projects is commenced, an additional \$10,000.00 shall be released from escrow to the City's Housing Trust Fund each ninety (90) days thereafter. Within thirty (30) days after the commencement of construction of both Projects, the remaining balance of the Escrow Account shall be released to Buyer. If no Closing takes place under this Agreement, the Buyer shall not be required to fund the Escrow Account nor make any payment. Notwithstanding anything to the contrary above, in the event that Buyer fails to commence construction of both Projects within 5 years from the Closing Date, the entire remaining balance of the Escrow Account shall be released to the City's Housing Trust Fund.
- h. City hereby agrees that despite the references in this Agreement to Buyer as the developer with respect to the Residential Project and the Commercial Project, that the two projects will be undertaken by two different Limited Liability Companies ("LLCs") to be formed or corporations to be formed which will be assignees of Buyer, and the City hereby consents to the same and to Buyer's assignment of its rights and obligations under this Agreement to any such LLC's or corporations, provided that Thomas Watson will be a manager or co-manager of any such LLCs and President or Vice President of any such corporations.
- i. The provisions of this section shall survive closing.

13. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Premises hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

14. NON-WAIVER. No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

15. HEADINGS AND CAPTIONS. The headings and captions appearing herein are for

the convenience of reference only and shall not in any way affect the substantive provisions hereof.

- 16. BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.
- 17. TIME.** The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.
- 18. GOVERNING LAW.** This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.
- 19. NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery to the City Manager's office shall be effective as personal delivery to the City Manager on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City: City of Portland
ATTN: City Manager
389 Congress Street
Portland, ME 04101

With a copy to: The Office of the Corporation Counsel at the same address.

FOR Buyer: Mr. Thomas Watson
Tom Watson & Co., LLC
104 Grant Street
Portland, ME 04101

With a copy to: William H. Leete, Jr., Esq.
Leete & Lemieux, P.A.
511 Congress Street, Suite 502
Portland, ME 04101

- 20. SIGNATURES; MULTIPLE COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and

all of which together shall constitute one and the same agreement.

21. **BROKERS.** The City shall be responsible for paying all its brokers, including CBRE | The Boulos Company, at closing. Buyer has no broker other than Joseph Porta of Porta & Co., who Buyer understands is to be compensated by CBRE | The Boulos Company. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

22. **RECITALS INCORPORATED BY REFERENCE.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto have caused this instrument to be executed on their behalf by their duly authorized officers or representatives, as of the day and year first written above.

CITY OF PORTLAND


WITNESS

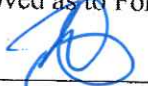

Jon P. Jennings
Its City Manager

TOM WATSON & CO., LLC


WITNESS


Printed Name: Thomas E. Watson
Its Manager

Approved as to Form:


Corporation Counsel's Office

Parcel Map

EXHIBIT A

- 1 55 Portland Street
- 2 44 Hanover Street
- 3 56 Parris Street
- 4 82 Hanover Street
- 5 65 Hanover Street
- 6 178 Kennebec Street

PARCEL 5

PARCEL 2 PARCEL 1

PARCEL 4

PARCEL 3

PARCEL 6

EXHIBIT B

BAYSIDE RFP
TOM WATSON & COMPANY
PROPOSAL FOR THE DEVELOPMENT OF A 23
UNIT APARTMENT BUILDING AT
104 GRANT STREET, PORTLAND MAINE

104 Grant St- Current Use
PORTLAND, MAINE



BAYSIDE RFP - 104 GRANT STREET
PORTLAND, MAINE

JUNE 01, 2017



1 VIEW LOOKING WEST ON GRANT STREET
N.T.S.

BAYSIDE RFP - 104 GRANT STREET
PORTLAND, MAINE

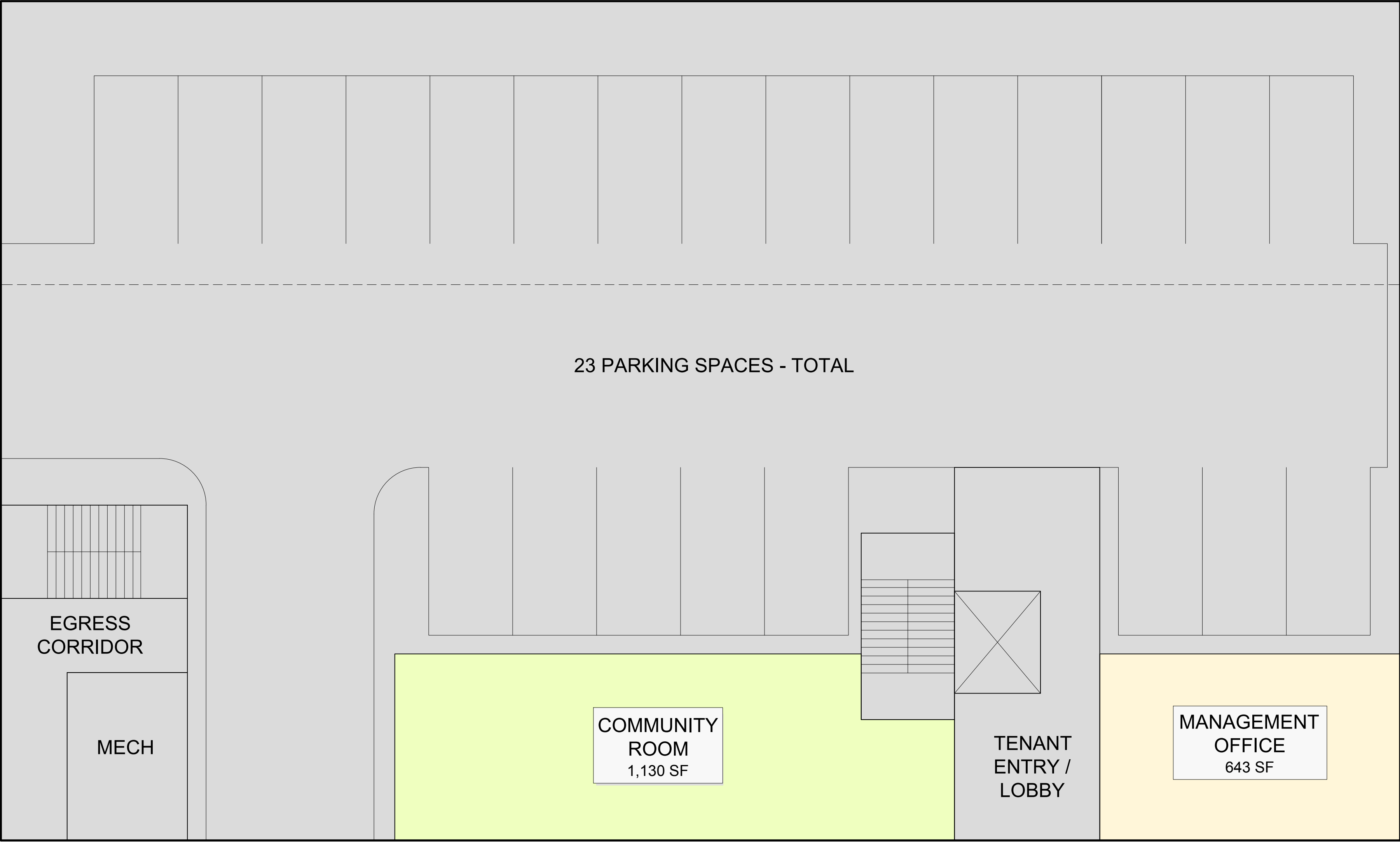
JUNE 01, 2017



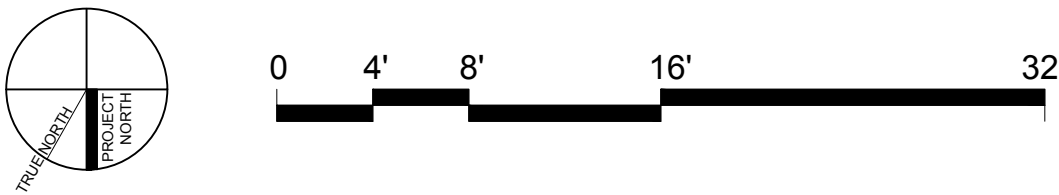
1 104 GRANT STREET - SOUTH ELEVATION
N.T.S.

BAYSIDE RFP - 104 GRANT STREET
PORTLAND, MAINE
1st Floor

JUNE 01, 2017

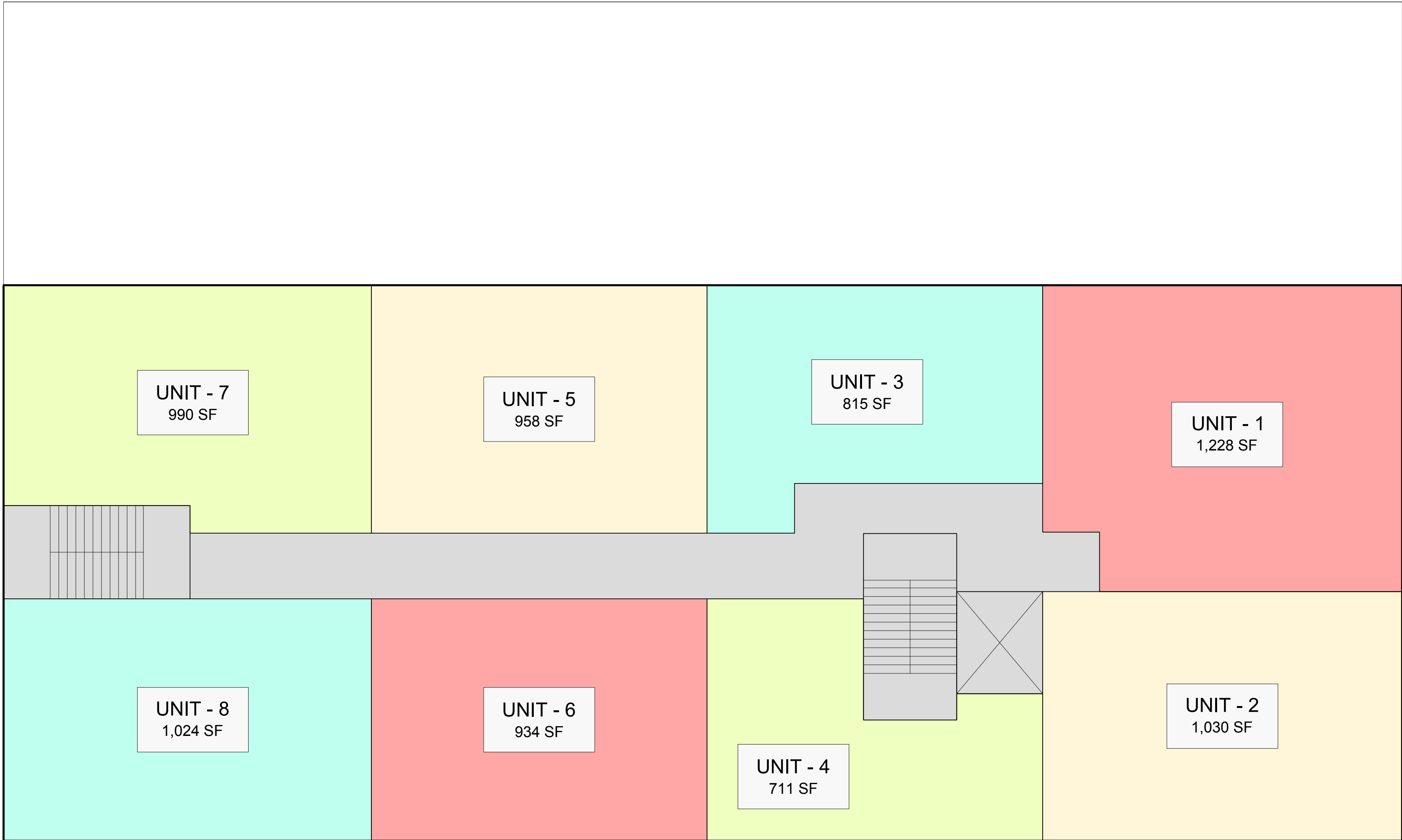


104 GRANT STREET	
BUILDING AREA	
FIRST FLOOR AREA	(13,500 SF)
COMMUNITY ROOM	1,130 SF
MANAGEMENT OFFICE	643 SF
SECOND FLOOR AREA	(8,775 SF)
UNIT - 1	1,228 SF
UNIT - 2	1,030 SF
UNIT - 3	815 SF
UNIT - 4	711 SF
UNIT - 5	958 SF
UNIT - 6	934 SF
UNIT - 7	990 SF
UNIT - 8	1,024 SF
SECOND FLOOR AREA	(8,775 SF)
UNIT - 9	1,228 SF
UNIT - 10	1,030 SF
UNIT - 11	815 SF
UNIT - 12	711 SF
UNIT - 13	958 SF
UNIT - 14	934 SF
UNIT - 15	990 SF
UNIT - 16	1,024 SF
FOURTH FLOOR AREA	(8,775 SF)
UNIT - 17	1,228 SF
UNIT - 18	1,030 SF
UNIT - 19	815 SF
UNIT - 20	1,645 SF
UNIT - 21	958 SF
UNIT - 22	1,024 SF
UNIT - 23	990 SF
BUILDING TOTAL = 40,320 SF	
NOTE: ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS	

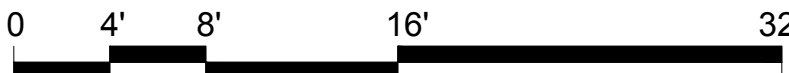
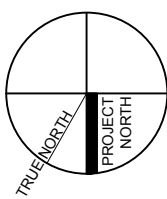


BAYSIDE RFP - 104 GRANT STREET
PORTLAND, MAINE
2nd Floor

JUNE 01, 2017

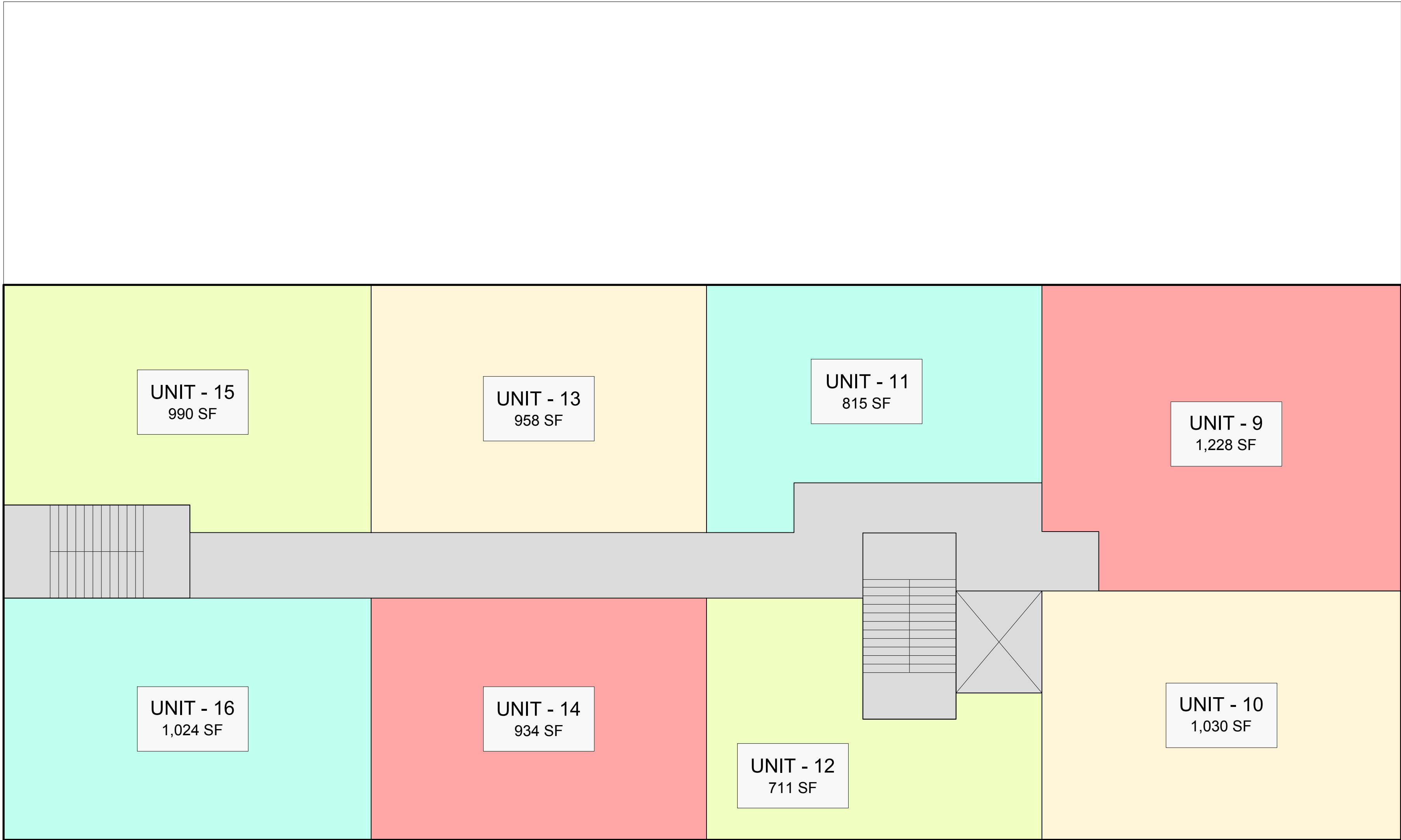


104 GRANT STREET	
BUILDING AREA	
FIRST FLOOR AREA	(13,500 SF)
COMMUNITY ROOM	1,130 SF
MANAGEMENT OFFICE	643 SF
SECOND FLOOR AREA	(8,775 SF)
UNIT - 1	1,228 SF
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UNIT - 21	958 SF
UNIT - 22	1,024 SF
UNIT - 23	990 SF
BUILDING TOTAL = 40,320 SF	
NOTE: ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS	

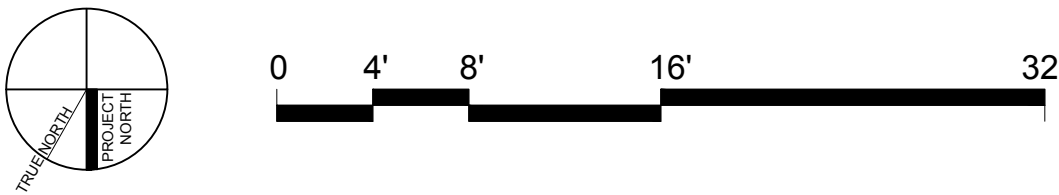


BAYSIDE RFP - 104 GRANT STREET
PORTLAND, MAINE
3rd Floor

JUNE 01, 2017

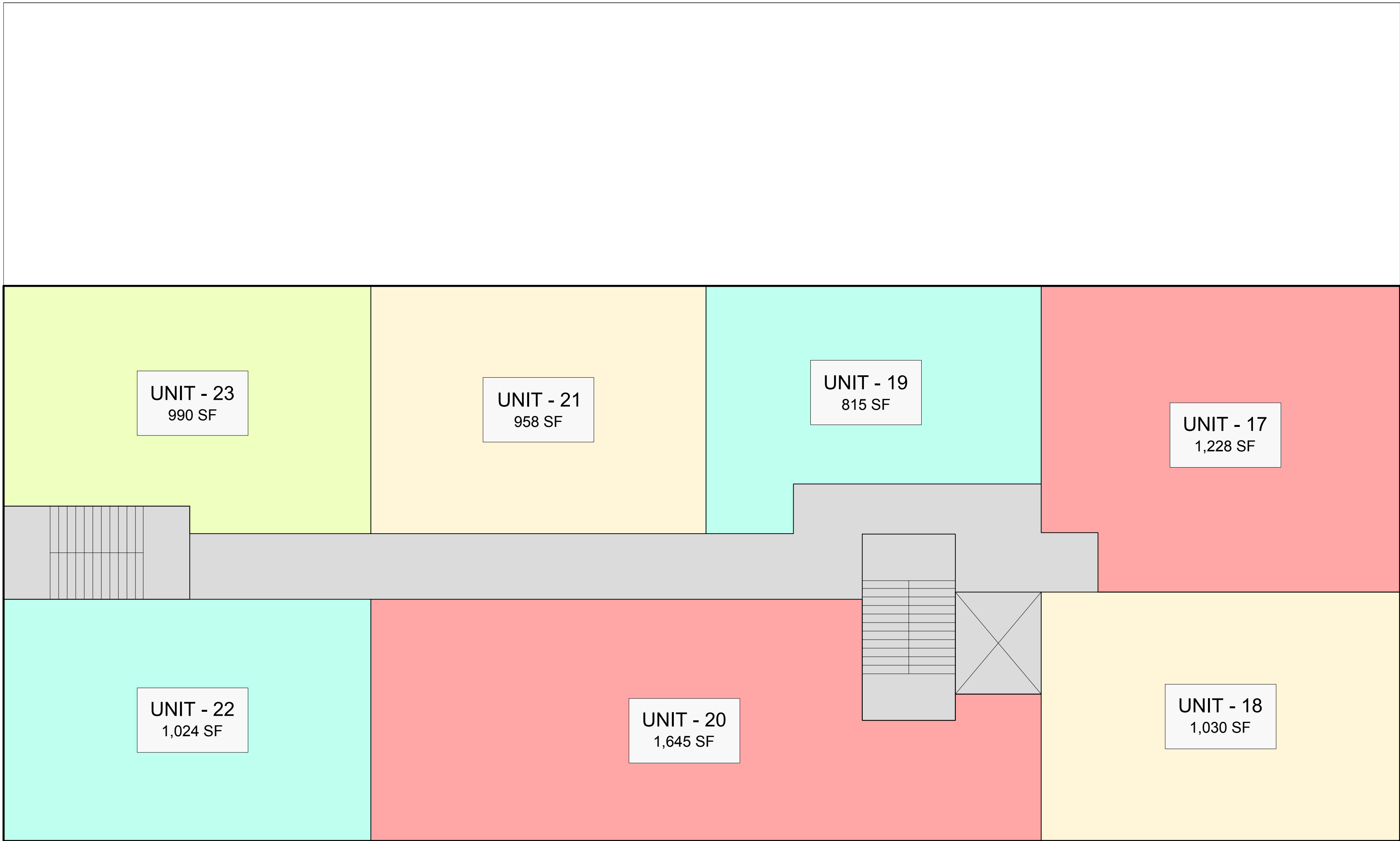


104 GRANT STREET	
BUILDING AREA	
FIRST FLOOR AREA	(13,500 SF)
COMMUNITY ROOM	1,130 SF
MANAGEMENT OFFICE	643 SF
SECOND FLOOR AREA	(8,775 SF)
UNIT - 1	1,228 SF
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UNIT - 18	1,030 SF
UNIT - 19	815 SF
UNIT - 20	1,645 SF
UNIT - 21	958 SF
UNIT - 22	1,024 SF
UNIT - 23	990 SF
BUILDING TOTAL =	40,320 SF
NOTE: ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS	



BAYSIDE RFP - 104 GRANT STREET
PORTLAND, MAINE
4th Floor

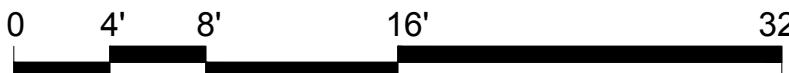
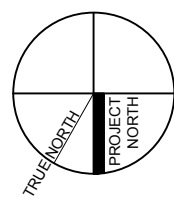
JUNE 01, 2017



104 GRANT STREET	
BUILDING AREA	
FIRST FLOOR AREA	(13,500 SF)
COMMUNITY ROOM	1,130 SF
MANAGEMENT OFFICE	643 SF
SECOND FLOOR AREA	
(8,775 SF)	
UNIT - 1	1,228 SF
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UNIT - 18	1,030 SF
UNIT - 19	815 SF
UNIT - 20	1,645 SF
UNIT - 21	958 SF
UNIT - 22	1,024 SF
UNIT - 23	990 SF
BUILDING TOTAL =	
40,320 SF	
NOTE:	
ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS	



1 104 GRANT STREET - FOURTH FLOOR PLAN
1/8" = 1'-0"



RYAN SENATORE **ARCHITECTURE**

PROGRESS PRINT ONLY
Not for Construction

**CITY OF PORTLAND BAYSIDE PROPERTIES
TOM WATSON LETTER OF INTENT TO PURCHASE**

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DESCRIPTION OF INTENDED USE

82 Hanover

- o Relocate Port Property Management headquarters to 82 Hanover from 104 Grant Street in Parkside
- o Bring in retailers/partners who will contribute to the community as well as the economy
- o Open spaces/commons available for public use
- o Leverage large rooftop for decks and greenspace to add comfortable density to neighborhood
- o Creates opportunity for construction of 23 units on Grant Street and eliminates an office/warehouse that sits in the middle of the Parkside residential neighborhood

44 Hanover

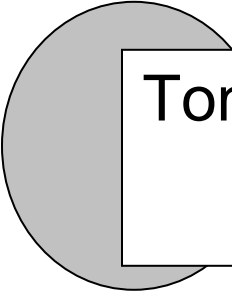
- o 16 separate spaces all with autonomous access to the street.
- o One Central Space of over 3,500SF for a public/communal user like pub, café, eatery
- o Glass OHD to promote openness, and allow for artists and artisans to combine retail display space to their work space. Promote marketplace environment
- o Affordable/accessible to the creative community at under \$1,000/month.

Lancaster Court (between 82 Hanover & 44 Hanover)

- o Commons/courtyard space open to public for public use
- o Available for outdoor recreation including farmers market and small music venue for tenants and managers to promote work/events.
 - Display and value public art and communal aesthetic enhancements
 - Cobble stone street
 - Trees/landscaping
 - Fountain/water wall

56 Parris Street

- o 23 2 BR 2 Bath units
 - Unique product to Portland
 - Create product for families (2 bathrooms) or multiple roommates (making it affordable)
 - At 23 units, 4 stories high it is scaled to the other buildings in the neighborhood



Tom Watson & Company



Thomas Watson
(207) 252-0358

June 22, 2017

Thomas Watson founded Port Property Management in 1993 with his father Jack who later sold his half of the business to Russell Pierce (Tom's brother-in-law). Tom and Russ have had a successful partnership for the last 17 years and currently employ 41 full time employees, most of whom call Portland their home.

Port Property manages over 1,300 apartments and commercial spaces in Portland and South Portland, the bulk of which are on the Portland peninsula. All of the properties are owned by Port Property related companies.

Tom graduated with a B.A. from Stanford University in 1985 and received an MBA from Boston University in 1992.

He lives in Portland with his wife Judy and their 3 children, all of whom attend Portland Public Schools.

BAYSIDE RFP
TOM WATSON & COMPANY
PROPOSAL FOR THE DEVELOPMENT OF
82 HANOVER STREET, PORTLAND MAINE

82 Hanover Street- Streetscape, #1
PORTLAND, MAINE



BAYSIDE RPF-82 Hanover Street- Street Scape, #2
PORTLAND, MAINE

JUNE 16, 2017



1 VIEW LOOKING SOUTH EAST ON PARRIS STREET
NTS

BAYSIDE RFP - 82 HANOVER STREET-Rendering
PORTLAND, MAINE

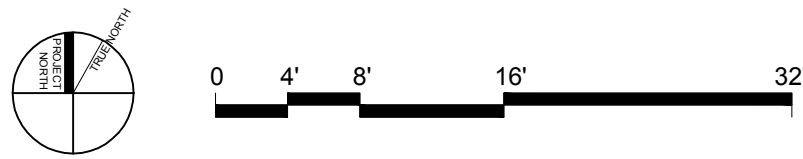
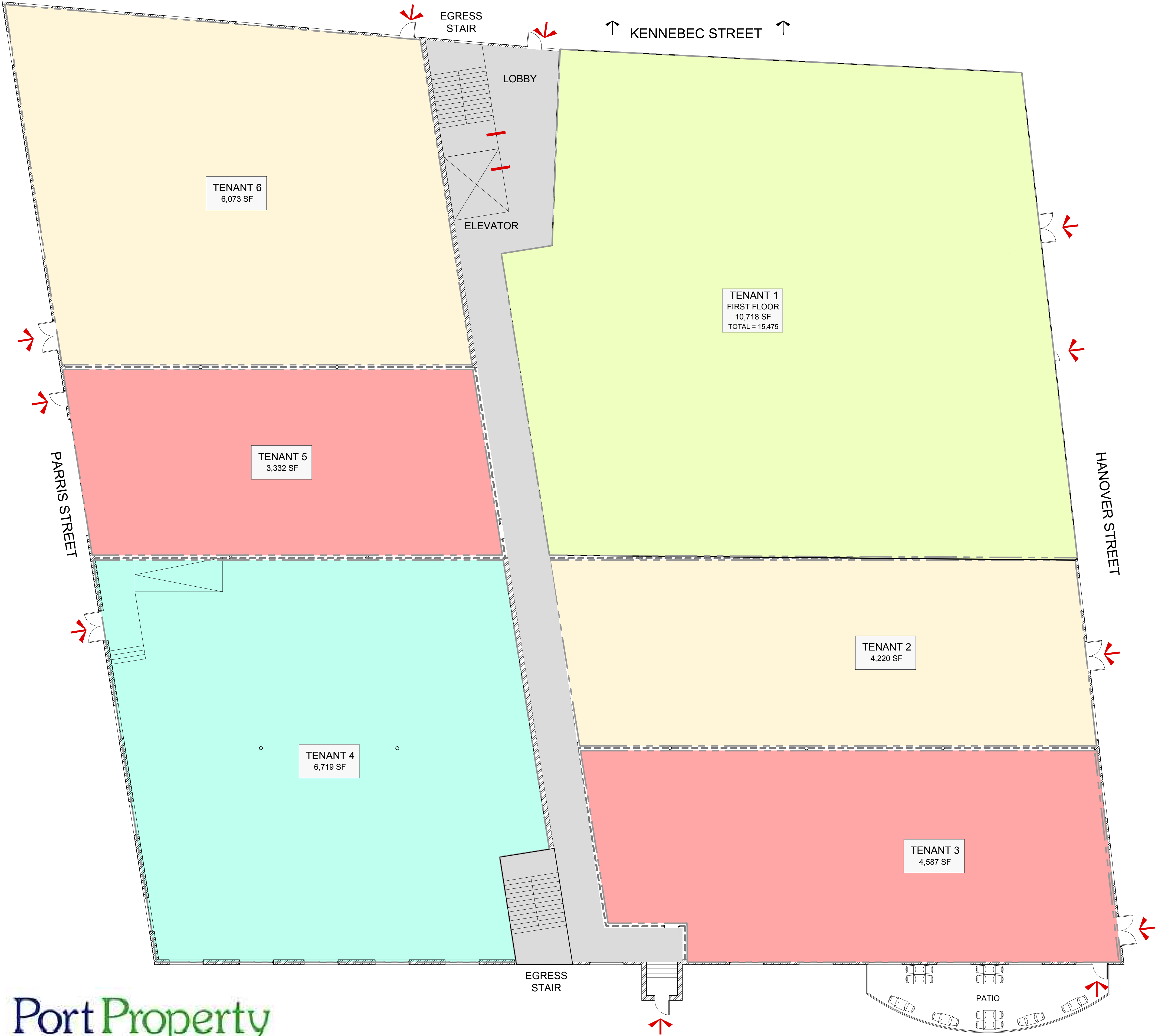
MAY 11, 2017



1 VIEW LOOKING SOUTH ON HANOVER STREET
N.T.S.

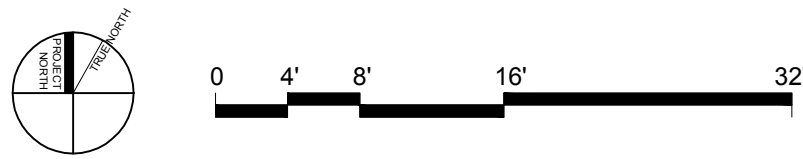
BAYSIDE RFP - 82 HANOVER STREET-First Floor
PORTLAND, MAINE

JUNE 12, 2017



BAYSIDE RFP - 82 HANOVER STREET- Second Floor
PORTLAND, MAINE

JUNE 12, 2017



BAYSIDE RFP - LANCASTER COURT
PORTLAND, MAINE

JUNE 21, 2017



1 VIEW LOOKING NORTH ON PARRIS STREET
N.T.S.



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Economic Development Committee

FROM: Greg Mitchell, Economic Development Director

DATE: June 12, 2018

SUBJECT: Proposed Amendment to the Bayside TIF District to support establishment of an Affordable Housing District for the 178 Kennebec Street Elderly Affordable Housing Project

I. ONE SENTENCE SUMMARY

Amending the Bayside Tax Increment Financing (TIF) District is proposed to support the establishment of an Affordable Housing District for an elderly affordable housing project located at 178 Kennebec Street.

II. BACKGROUND

The sale of City owned 178 Kennebec Street property (former City Public Works property) to Ross Furman with his development partner, the Szanton Company, will result in taxable property with ground level commercial space and an elderly affordable housing project located on the upper floors. The proposed project is a two-unit condominium, including ground level commercial space (Unit 1) and upper floor affordable residential units (Unit 2).

The ground level Condominium Unit 1 is proposed to remain in the existing City Council approved Bayside TIF District and Unit 2 (upper floor affordable elderly affordable housing project) is proposed to be included in an Affordable Housing TIF District. The affordable housing project is the subject of an affordable housing TIF District proposal.

City Council approval is required to amend the Bayside TIF District to establish an Affordable Housing District for the 178 Kennebec Street elderly affordable housing project.

III. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result is approval of the Bayside TIF District Amendments to support establishment of an Affordable Housing District for the 178 Kennebec Street elderly affordable housing project.

The City goal is to expand the supply of affordable housing.

VV. FINANCIAL IMPACT

The proposed sale of City owned (tax exempt) property will result in taxable property which will include ground level commercial space and upper floor residential affordable units. The estimated municipal taxable value of the ground level commercial space is \$550,000 (which would bring in \$11,907 at the FY18 mil rate), and the estimated municipal taxable value of the upper floor residential project is \$4.3 million.

V. STAFF ANALYSIS

The proposed approach includes amending the Bayside TIF District to allow the commercial portion of the 178 Kennebec Street Project to remain in the Bayside TIF District and support the establishment of an Affordable Housing TIF District on the upper floor residential portion of the project.

VI. RECOMMENDATION

Staff recommends the approval of the Proposed Bayside TIF District Amendments in substantial conformance as presented.

VII. LIST ATTACHMENTS

- Proposed Amendments to the Bayside TIF District are attached:
 - o In Marked Revision Format; and,
 - o Clean Format

City of Portland

Bayside Economic Redevelopment Program and Tax Increment Financing Program

Prepared by:

The City of Portland Economic Development Department

Enacted by the Portland City Council March 17, 2003

Amendment #1 from MDECD Includes City Council Actions on:

July 6, 2005 – Expand Footprint and Amend OAV;
November 21, 2005 – Reduce Footprint for Pearl Place Affordable Housing TIF;
June 5, 2006 – Authorizing Credit Enhancement Agreements (CEA) with Capital
LLC; and, Southern Maine Student Housing, LLC

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amended public projects.

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Amendment #5 from MDECD Includes City Council Action on:

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Amendment #6 from MDECD Includes City Council Action on:

November 17, 2014 Expanding Bayside TIF Area

Amendment #7 from MDECD Includes City Council Action on:

July 20, 2015 Amending Bayside TIF District for expanded Municipal
allowable uses for TIF Revenue Investments

Proposed Amendment #8 to City Council 7/16/2018 for Amended District Regarding
178 Kennebec Street

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2. Revised Tax Shift Models
- ³3. Area Map Showing Site location
- ³4. 3(A) – Area Map Show Site Location of Amended TIF District
4. 4(A) – Site map showing tax map location of Amended District
5. Credit Enhancement Agreements (Approved as of 11/17/2014)
6. Statutory Thresholds and Limits
7. Portland TIF Policy of 2/4/2013
8. Notice of Public Hearing
9. City Council Minutes
10. City Council Order
11. Original Assessed Values/Assessor's Certificate

I. Introduction/Updated ~~2014~~2018

East and West Bayside continue to be gateways to Portland's peninsula. A lot of changes to East and West Bayside have occurred since the Bayside (West) TIF District was adopted by the City Council on March 17, 2003. Relocation of one scrap yard and the addition of new medical office buildings, new housing for college students, ~~planned market rate housing and commercial space associated with the Federated Midtown Project~~, two new grocery stores, pharmacies, and financial institutions have transformed West Bayside's industrial heritage to a more compact urban development pattern, which extends the Central Business District to I-295. Additionally, City Council approval during 2017 and 2018, of the sale of six Bayside properties formerly occupied by the Public Works Department will continue to support area wide economic revitalization.

-East Bayside has been experiencing its own transformation with new coffee shops, artist studios, and new housing. Continued attention to the West Bayside TIF District is needed to fulfill the *Bayside Vision*.

History

In 1996, the process began when the City of Portland obtained funding from the Environmental Protection Agency (EPA) to undertake a Brownfield's Pilot Project in Bayside. The City designated a ten-lot, 14-acre parcel between Oxford Street and Marginal Way as the Bayside Brownfield's Project Area and has since created a \$500,000 loan fund for the express purpose of cleaning up the site to clear the way for future development. The study area was subsequently enlarged to incorporate the area from Congress Street to I-295, and from Franklin Arterial to Forest Avenue, which is approximately 129 acres.

Since 1996, the City of Portland has been working with a team of consultants on planning for opportunities for the reuse of the Bayside land. An extensive public participation process, which involved hundreds of participants, produced a plan entitled "A New Vision for Bayside". The Bayside plan identifies the following eleven development principles and five critical actions in order to transform this area into a vital, productive and diverse urban neighborhood:

Development Principles

- Urban Gateway
- Economic and Employment Opportunities
- A Walkable District
- A Critical Mass of Dwellings
- Transit Oriented Development
- Multi-level Parking Structures
- A Neighborhood Center
- Recreation and Open Space
- A Social Service Network
- Environmental Remediation
- Scrap yard Redevelopment

Critical Actions

- Acquire the Railroad Property
- Redevelop the Scrap yard Parcels

- Build More Housing
- Create Transit Oriented Development
- Secure the Future of Portland's Social Service Network

Public participation continues to be an ongoing aspect of the Plan's implementation. The Bayside Neighborhood Association and the Bayside Community Development Corporation include neighborhood property owners, residents, commercial owners and tenants.

Since adopting the Bayside Vision Plan in December 1999 as a part of the Comprehensive Plan, the City has moved forward on several of the identified critical actions. After several years of complex negotiations with Guilford Transportation and the Maine Department of Transportation, the City purchased the Railroad property. Using Housing and Urban Development ("HUD") and Economic Development Administration ("EDA") funding, this 6+ acre parcel made the City a major property owner in the area of Bayside slated primarily for commercial redevelopment.

EDA and City Capital Improvement Funds have been used to rebuild the sewer system along Somerset Street, adjacent to the railroad parcel, as well as to extend Chestnut Street from Somerset Street to Marginal Way. These improvements were key infrastructure investments for new development in Bayside. The City continues to be committed to investing in Bayside as funding becomes available, but clearly a variety of financing mechanisms have been and will continue to be needed.

With these first actions completed, attention has been focused on the need for structured parking associated with the Federated Midtown Project. At meeting after meeting, then Bayside Development Committee (BDC) members stated unequivocally that the Bayside Plan cannot be implemented to its fullest without structured parking; and that the entire redevelopment plan hinges upon the relocation of the scrap metal recycling facilities. Furthermore, it is clear that the private sector cannot afford to make new investments in Bayside that include the cost of creating structured parking, nor can the market alone bear the cost of relocating the scrap metal recycling facilities.

The first such private development project which included constructing garages occurred on property that was sold by the City to two private developers (Capital, LLC and Southern Maine Student Housing, LLC) who planned a then estimated \$38,400,000 in new taxable commercial investment. The project consisted of a 72,000 sq. ft. office building, perched upon a 430 space parking garage with ground floor retail, alongside a 405 bed student housing facility with a 130 space parking garage. The cost of constructing the structured parking added more costs to the project than market rents could support, so financing relief was sought through the use of Credit Enhancement Agreements (Exhibit 5) so that the project moved forward with the density sought for Bayside. This entire investment occupies just over 3 acres by reducing the footprint and allowing for vertical expansion.

Amendment #7 Approved by MDECD March 28, 2016

The purpose of this Amendment #7 to this TIF application is to amend the Development Program to include municipal use of TIF funds for costs of public transportation improvement projects – including traffic signals, costs associated with environmental site assessment and remediation work to support commercial development, costs associated with environmental sea level adaptation planning and public infrastructure to support commercial development, as well as other development principles and critical actions items contained in the *Bayside Vision Report I and II*

The public benefits associated with an amended Bayside TIF District include:

- Provide support for Portland's **continued economic development**;
- Help increase the **vibrancy and stability of the Bayside neighborhood**;
- Create **employment opportunities** for area residents;
- Produce **tax shift benefits** averaging an estimated savings to the City of \$680,307 annually;
- Improve the general economy of Portland and the State of Maine;
- Improved public transportation infrastructure investment;
- Clean up contaminated property to support commercial development;
- Planning for environmental sea level adaptation, and public infrastructure to support commercial development.

Amendment #8 Proposed to Portland City Council/MDECD

Amendment #8 includes a single property in the Expanded Bayside TIF District located at 178 Kennebec Street, Assessor Chart, Block, and Lot Number 034 F001001. The City is in the process of selling this property to a private developer. This developer proposes an elderly affordable housing project on that property with two condominium units. Unit 1 would be ground level commercial space and Unit 2 (air rights above Unit 1) is proposed to be an elderly affordable housing project. Unit 2 is proposed to be an Affordable Housing TIF District.

II. Amended Development Program

A. The Amended Project

With this amended and restated Development Program, the City of Portland seeks to amend the Bayside Redevelopment Tax Increment Financing District to allow for 178 Kennebec Street, Condominium Unit 1 on the ground level/commercial space to remain in the Bayside TIF District; and, Condominium Unit 2, floors above the ground level commercial space, to be an Affordable Housing TIF District~~add additional m~~

Municipal uses of TIF revenue consistent *Bayside Vision Plans I and II* as detailed in Table 1 in Section II(D) below.

The success of these efforts will enhance the City's ability to attract new investment to Bayside, leading to a densely developed commercial district, which will create new taxable value and provide expanded opportunities for employment and housing.

The City's Economic Development Department will continue to market ~~other~~the City's land as potential building sites to prospective businesses and developers, in addition to promoting Bayside as a whole.

B. The Development District

Properties that are to be designated as part of the TIF District are shown on the attached map (Exhibit 4), containing approximately 129.18 acres with an original assessed value as shown on Exhibit 11 as \$122,318,180

The TIF District will apply to only new value generated within the District and will not affect the current property tax base.

C. The Amended Development Program

The City of Portland, by designating the Amended Bayside Redevelopment TIF District, will ~~potentially~~ capture all new investments made within the Amended District. The City is projecting to capture up to 100% of the new assessed value over the original assessed value, and retain from the district the new tax revenues generated from that captured assessed value. These revenues will be allocated to the Project Cost Account for the purposes described in II.A. above and further detailed in Section II(D) below. Each year, the City Council may adjust the specific amount to be captured and retained for purposes of this Amended TIF, based upon the needs of the Amended District, and the commitments made through Credit Enhancement Agreements, collateral for loan or bond repayment, and the like.

D. The Projects

The City of Portland seeks authorization to utilize the revenues generated from the Amended Bayside TIF District to support economic development in Bayside, all as more detailed in Table 1 below: See Table 1 Below for Municipal Use of TIF Revenues, Statutory Citation, and Cost Estimates – Citations all refer to Title 30-A, Chapter 206, Section 5225.

Table 1

Municipal Use of TIF Revenues	Statutory Citation	Cost Estimate
In District: Create Additional Parking Structures	(1)(A)	\$10,000,000
In District: Existing Credit Enhancement Agreements; others as negotiated, executed with public process per Section II A	(1)(A)	\$6,000,000 over life of TIF District for existing CEAs
In District: Relocate one remaining scrap metal recycling facility and acquisition of scrap metal yard site	(1)(A)	T/B/D
In District: Infrastructure (roadway, sidewalk, and transportation improvement projects) located in District	(1)(A)	T/B/D
In District: Pledging TIF revenue as a repayment source to HUD or any other agency or entity that finances public Bayside investment	(1)(A)	\$6,000,000 over life of TIF District
In District: Public infrastructure improvements for both pedestrians and transit, lighting, and open space/trails	(1)(A)	T/B/D
In District: Funding the Economic Development Department, including salaries, to market and prepare for Bayside Redevelopment	(1)(A)	\$500,000
In and out of District: a.) Cover the City's Economic Development Department costs, including salaries*; b.) Environmental site assessment and remediation to support commercial development; c.) Environmental sea level adaptation planning and public infrastructure to support commercial development	(1)(A) and (1)(C)(1) (1)(C)(2) (1)(C)(2)	\$250,000/annual or \$4,500,000 over life of TIF District \$150,000 T/B/D
Total:		\$27,150,000

*This item is not unique to this TIF District; it is also included in the Riverwalk TIF District and the Waterfront TIF District.

E. Operational Components

1. Public Facilities

The City will invest in projects to further goals of the *Bayside Vision*, as outlined in Table 1 above.

2. Uses of Private Property

The Amended Bayside Economic Redevelopment Program and TIF District includes both public and private property. The funds generated from this district will be used to support commercial investment on both public and private land, the latter through the use of CEA as noted II.(D) above.

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

Though not contemplated at this point, any possible relocation costs of displaced persons resulted from one or more City projects funded through this Amended Development Program shall be covered by the City as required.

4. Transportation Improvements

A description of the transportation-related improvements to be financed through this Amended Development Program is set forth above in Table 1 of the Development Program Section II(D).

5. Environmental Controls

The Amended Development Program proposes improvements that will comply with all federal, state and local rules and regulations and applicable land use requirements.

6. Plan of Operation of Amended District

During the life of the Amended Tax Increment Financing District, the City of Portland, City Council, or their designee, will be responsible for the administration of the District.

III. Physical Description

As noted previously, properties that are to be designated as part of the Amended TIF District are shown on the attached map (Exhibit 4), totaling 129.18 acres. The statutory threshold limits addressing the conditions for approval mandated by 30-A M.R.S.A. Section 5223(3) are set forth in Exhibit 6.

[Proposed Amendment #8 does not change the acreage numbers for the Bayside TIF District because the 178 Kennebec Street Unit 1 \(ground level commercial space\) will remain in the Bayside TIF District and Unit 2 \(affordable residential units located in the upper floors\) is proposed to be an Affordable Housing TIF District.](#)

Enclosed municipal maps:

1. Area map showing site location of the Amended TIF District in relation to geographic location of municipality ([see new Exhibit 3\(A\)](#)).
2. Site map showing tax map locations of the Amended TIF District ([see new Exhibit 4\(A\)](#)).

IV. Financial Plan

A. Costs and Sources of Revenues

With Amendment #6 to this TIF District, the acreage was increased to 129.18 acres, with an associated OAV set at \$122,318,180 as set forth in Exhibit 11. Exhibit 11 details the OAV from the inception of the Bayside TIF District, to its 1st expansion via Amendment 1, and 2nd expansion via Amendment 6. Exhibit 4 is the map which highlights the District encompassing the entire 129.18 acres.

The Amended Development Program provides for the new tax revenues generated by the increase in assessed value of the District to be captured and designated as TIF Revenues. The City will apply the retained revenues to the economic development activities described in the Amended Development Program. To date, these activities are included in Table 1, Section II(D) above.

The attached [Exhibit 1](#) details the projections of retained revenues based upon the anticipated assessed value increases within the District. [Exhibit 1](#) is a projection based upon best available information and is included for demonstration purposes only. No assurances are provided as to the results reflected therein.

B. Development Program Account

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

The Bayside TIF Development Program Account is established consisting of a project cost account (“Project Cost Account”) pledged to, and charged with, payment of project costs. The Project Cost Account shall consist of Company Cost Subaccounts (Company Cost Subaccount), pledged to and charged with payment to authorized companies under the terms of an approved Credit Enhancement Agreement for reimbursements for eligible project costs, and a City Cost Subaccount (the “City Cost Subaccount”) pledged to, and charged with, payment to the City for the cost of approved economic development expenses.

C. *Financing Plan*

The original TIF District comprised an area of approximately 11 acres of real and personal property. The value of the real and personal property within the district as of March 31, 2002 was established as the original assessed value. With the subsequent expansion (Amendment 1), the value of the additional real and personal property within the district expansion as of March 31, 2007 was established as the original assessed value, with that value being \$44,066,380. With the additional expansion via Amendment 6 from 62.18 to add 67 acres to the District, for a total of 129.18 acres, the value of real property within the expanded District of 67 acres has a March 31, 2014 date established as the original assessed value, or \$78,251,800 as detailed in Section IV.A. above, for a total OAV of the District at \$122,318,180.

The developments within the described Amended Bayside TIF District will add significant new taxable value in the City of Portland. TIF revenues will be allocated as described on Exhibit 1 to finance the costs described in the Amended Development Program. Actual payments to the Project Cost Account will be adjusted based upon the applicable annual percentage retained, or a specific amount to be retained within the Amended District, and the actual annual assessed value within the Amended District, to be determined by the City Council on a yearly basis.

V. **Amended Financial Data (See Statutory Requirements & Thresholds, Exhibit 6)**

- A. Estimate of increased assessed value by year after implementation of the development program: See Exhibit 1
- B. Percentage of increased assessed value to be applied to the development program fund: See Exhibit 1
- C. Estimated annual tax increment: \$1,717,654 (Average)
- D. Total average annual value of development program fund: \$1,717,654 (Average)
- E. Annual principal and interest payment of bonded indebtedness: N/A at this time
- F. Financial assumptions and safeguards: The City of Portland is under no obligation to repay any bonds that would involve a pledge of the City's full faith and credit.

VI. **Tax Shifts (See Exhibit 2)**

A. *Average Annual Amount:*

General Purpose Aid to Education Tax Shift: \$593,812

Municipal Revenue Sharing Tax Shift: \$47,751

County Tax Shift: \$38,745

Total Average Annual Savings: \$680,307

VII. Municipal Approvals

A. Public Hearing Notice

The City of Portland did give proper Notice of Public Hearing in accordance with the requirements of 30-A M.R.S.A. §5253. The notice was published on July ~~5, 2018~~^{7, 2015}, in a newspaper of general circulation (see new Exhibit 8).

B. Public Hearing

A Public Hearing at which the proposed Amended Bayside Municipal Tax Increment Financing District was discussed was held on July ~~16, 2018~~^{20, 2015}, in the Portland City Council Chambers. A copy of the minutes of that meeting is included as new Exhibit 9.

C. Authorizing Votes

An attested copy of the resolution of the Portland City Council designating the Amended Municipal TIF district created for the implementation of the Bayside Redevelopment Program is included as new Exhibit 10.

D. Assessor's Certification

An attested copy of the certification by the City of Portland Tax Assessor as to the revised Original Assessed Value of the expanded Bayside Municipal Tax Increment Financing District is included as Exhibit 11.



Note: Islands not shown to improve map legibility.

PROPOSED
DISTRICT

Exhibit 4(A)-Site Map showing tax map location of Amended TIF District.



*Only Unit 1 of the Furman at Bayside Condominium Association is part of this Amended District.

City of Portland

Bayside Economic Redevelopment Program and Tax Increment Financing Program

Prepared by:

The City of Portland Economic Development Department

Enacted by the Portland City Council March 17, 2003

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- Scrap yard Redevelopment

Critical Actions

- Acquire the Railroad Property
- Build More Housing
- Redevelop the Scrap yard Parcels

- Create Transit Oriented Development
- Secure the Future of Portland's Social Service Network

Public participation continues to be an ongoing aspect of the Plan's implementation. The Bayside Neighborhood Association and the Bayside Community Development Corporation include neighborhood property owners, residents, commercial owners and tenants.

Since adopting the Bayside Vision Plan in December 1999 as a part of the Comprehensive Plan, the City has moved forward on several of the identified critical actions. After several years of complex negotiations with Guilford Transportation and the Maine Department of Transportation, the City purchased the Railroad property. Using Housing and Urban Development ("HUD") and Economic Development Administration ("EDA") funding, this 6+ acre parcel made the City a major property owner in the area of Bayside slated primarily for commercial redevelopment.

EDA and City Capital Improvement Funds have been used to rebuild the sewer system along Somerset Street, adjacent to the railroad parcel, as well as to extend Chestnut Street from Somerset Street to Marginal Way. These improvements were key infrastructure investments for new development in Bayside. The City continues to be committed to investing in Bayside as funding becomes available, but clearly a variety of financing mechanisms have been and will continue to be needed.

With these first actions completed, attention has been focused on the need for structured parking associated with the Federated Midtown Project. At meeting after meeting, then Bayside Development Committee (BDC) members stated unequivocally that the Bayside Plan cannot be implemented to its fullest without structured parking; and that the entire redevelopment plan hinges upon the relocation of the scrap metal recycling facilities. Furthermore, it is clear that the private sector cannot afford to make new investments in Bayside that include the cost of creating structured parking, nor can the market alone bear the cost of relocating the scrap metal recycling facilities.

The first such private development project which included constructing garages occurred on property that was sold by the City to two private developers (Capital, LLC and Southern Maine Student Housing, LLC) who planned a then estimated \$38,400,000 in new taxable commercial investment. The project consisted of a 72,000 sq. ft. office building, perched upon a 430 space parking garage with ground floor retail, alongside a 405 bed student housing facility with a 130 space parking garage. The cost of constructing the structured parking added more costs to the project than market rents could support, so financing relief was sought through the use of Credit Enhancement Agreements (Exhibit 5) so that the project moved forward with the density sought for Bayside. This entire investment occupies just over 3 acres by reducing the footprint and allowing for vertical expansion.

Amendment #7 Approved by MDECD March 28, 2016

The purpose of this Amendment #7 to this TIF application is to amend the Development Program to include municipal use of TIF funds for costs of public transportation improvement projects – including traffic signals, costs associated with environmental site assessment and remediation work to support commercial development, costs associated with environmental sea level adaptation planning and public infrastructure to support commercial development, as well as other development principles and critical actions items contained in the *Bayside Vision Report I and II*

The public benefits associated with an amended Bayside TIF District include:

- Provide support for Portland's **continued economic development**;
- Help increase the **vibrancy and stability of the Bayside neighborhood**;
- Create **employment opportunities** for area residents;
- Produce **tax shift benefits** averaging an estimated savings to the City of \$680,307 annually;
- Improve the general economy of Portland and the State of Maine;
- Improved public transportation infrastructure investment;
- Clean up contaminated property to support commercial development;
- Planning for environmental sea level adaptation, and public infrastructure to support commercial development.

Amendment #8 Proposed to Portland City Council/MDECD

Amendment #8 includes a single property in the Expanded Bayside TIF District located at 178 Kennebec Street, Assessor Chart, Block, and Lot Number 034 F001001. The City is in the process of selling this property to a private developer. This developer proposes an elderly affordable housing project on that property with two condominium units. Unit 1 would be ground level commercial space and Unit 2 (air rights above Unit 1) is proposed to be an elderly affordable housing project. Unit 2 is proposed to be an Affordable Housing TIF District.

II. Amended Development Program

A. The Amended Project

With this amended and restated Development Program, the City of Portland seeks to amend the Bayside Redevelopment Tax Increment Financing District to allow for 178 Kennebec Street, Condominium Unit 1 on the ground level/commercial space to remain in the Bayside TIF District; and, Condominium Unit 2, floors above the ground level commercial space, to be an Affordable Housing TIF District

Municipal uses of TIF revenue consistent *Bayside Vision Plans I and II* as detailed in Table 1 in Section II(D) below.

The success of these efforts will enhance the City's ability to attract new investment to Bayside, leading to a densely developed commercial district, which will create new taxable value and provide expanded opportunities for employment and housing.

The City's Economic Development Department will continue to market other City land as potential building sites to prospective businesses and developers, in addition to promoting Bayside as a whole.

B. The Development District

Properties that are to be designated as part of the TIF District are shown on the attached map (Exhibit 4), containing approximately 129.18 acres with an original assessed value as shown on Exhibit 11 as \$122,318,180

The TIF District will apply to only new value generated within the District and will not affect the current property tax base.

C. The Amended Development Program

The City of Portland, by designating the Amended Bayside Redevelopment TIF District, will capture all new investments made within the Amended District. The City is projecting to capture up to 100% of the new assessed value over the original assessed value, and retain from the district the new tax revenues generated from that captured assessed value. These revenues will be allocated to the Project Cost Account for the purposes described in II.A. above and further detailed in Section II(D) below. Each year, the City Council may adjust the specific amount to be captured and retained for purposes of this Amended TIF, based upon the needs of the Amended District, and the commitments made through Credit Enhancement Agreements, collateral for loan or bond repayment, and the like.

D. The Projects

The City of Portland seeks authorization to utilize the revenues generated from the Amended Bayside TIF District to support economic development in Bayside, all as more detailed in Table 1 below: See Table 1 Below for Municipal Use of TIF Revenues, Statutory Citation, and Cost Estimates – Citations all refer to Title 30-A, Chapter 206, Section 5225.

Table 1

Municipal Use of TIF Revenues	Statutory Citation	Cost Estimate
In District: Create Additional Parking Structures	(1)(A)	\$10,000,000
In District: Existing Credit Enhancement Agreements; others as negotiated, executed with public process per Section II A	(1)(A)	\$6,000,000 over life of TIF District for existing CEAs
In District: Relocate one remaining scrap metal recycling facility and acquisition of scrap metal yard site	(1)(A)	T/B/D
In District: Infrastructure (roadway, sidewalk, and transportation improvement projects) located in District	(1)(A)	T/B/D
In District: Pledging TIF revenue as a repayment source to HUD or any other agency or entity that finances public Bayside investment	(1)(A)	\$6,000,000 over life of TIF District
In District: Public infrastructure improvements for both pedestrians and transit, lighting, and open space/trails	(1)(A)	T/B/D
In District: Funding the Economic Development Department, including salaries, to market and prepare for Bayside Redevelopment	(1)(A)	\$500,000
In and out of District: a.) Cover the City's Economic Development Department costs, including salaries*; b.) Environmental site assessment and remediation to support commercial development; c.) Environmental sea level adaptation planning and public infrastructure to support commercial development	(1)(A) and (1)(C)(1) (1)(C)(2) (1)(C)(2)	\$250,000/annual or \$4,500,000 over life of TIF District \$150,000 T/B/D
Total:		\$27,150,000

*This item is not unique to this TIF District; it is also included in the Riverwalk TIF District and the Waterfront TIF District.

E. Operational Components

1. Public Facilities

The City will invest in projects to further goals of the *Bayside Vision*, as outlined in Table 1 above.

2. Uses of Private Property

The Amended Bayside Economic Redevelopment Program and TIF District includes both public and private property. The funds generated from this district will be used to support commercial investment on both public and private land, the latter through the use of CEA as noted II.(D) above.

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

Though not contemplated at this point, any possible relocation costs of displaced persons resulted from one or more City projects funded through this Amended Development Program shall be covered by the City as required.

4. Transportation Improvements

A description of the transportation-related improvements to be financed through this Amended Development Program is set forth above in Table 1 of the Development Program Section II(D).

5. Environmental Controls

The Amended Development Program proposes improvements that will comply with all federal, state and local rules and regulations and applicable land use requirements.

6. Plan of Operation of Amended District

During the life of the Amended Tax Increment Financing District, the City of Portland, City Council, or their designee, will be responsible for the administration of the District.

III. Physical Description

As noted previously, properties that are to be designated as part of the Amended TIF District are shown on the attached map (Exhibit 4), totaling 129.18 acres. The statutory threshold limits addressing the conditions for approval mandated by 30-A M.R.S.A. Section 5223(3) are set forth in Exhibit 6.

Proposed Amendment #8 does not change the acreage numbers for the Bayside TIF District because the 178 Kennebec Street Unit 1 (ground level commercial space) will remain in the Bayside TIF District and Unit 2 (affordable residential units located in the upper floors) is proposed to be an Affordable Housing TIF District.

Enclosed municipal maps:

1. Area map showing site location of the Amended TIF District in relation to geographic location of municipality (see new Exhibit 3(A)).
2. Site map showing tax map locations of the Amended TIF District (see new Exhibit 4(A)).

IV. Financial Plan

A. Costs and Sources of Revenues

With Amendment #6 to this TIF District, the acreage was increased to 129.18 acres, with an associated OAV set at \$122,318,180 as set forth in Exhibit 11. Exhibit 11 details the OAV from the inception of the Bayside TIF District, to its 1st expansion via Amendment 1, and 2nd expansion via Amendment 6. Exhibit 4 is the map which highlights the District encompassing the entire 129.18 acres.

The Amended Development Program provides for the new tax revenues generated by the increase in assessed value of the District to be captured and designated as TIF Revenues. The City will apply the retained revenues to the economic development activities described in the Amended Development Program. To date, these activities are included in Table 1, Section II(D) above.

The attached Exhibit 1 details the projections of retained revenues based upon the anticipated assessed value increases within the District. Exhibit 1 is a projection based upon best available information and is included for demonstration purposes only. No assurances are provided as to the results reflected therein.

B. Development Program Account

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

The Bayside TIF Development Program Account is established consisting of a project cost account (“Project Cost Account”) pledged to, and charged with, payment of project costs. The Project Cost Account shall consist of Company Cost Subaccounts (Company Cost Subaccount), pledged to and charged with payment to authorized companies under the terms of an approved Credit Enhancement Agreement for reimbursements for eligible project costs, and a City Cost Subaccount (the “City Cost Subaccount”) pledged to, and charged with, payment to the City for the cost of approved economic development expenses.

C. *Financing Plan*

The original TIF District comprised an area of approximately 11 acres of real and personal property. The value of the real and personal property within the district as of March 31, 2002 was established as the original assessed value. With the subsequent expansion (Amendment 1), the value of the additional real and personal property within the district expansion as of March 31, 2007 was established as the original assessed value, with that value being \$44,066,380. With the additional expansion via Amendment 6 from 62.18 to add 67 acres to the District, for a total of 129.18 acres, the value of real property within the expanded District of 67 acres has a March 31, 2014 date established as the original assessed value, or \$78,251,800 as detailed in Section IV.A. above, for a total OAV of the District at \$122,318,180.

The developments within the described Amended Bayside TIF District will add significant new taxable value in the City of Portland. TIF revenues will be allocated as described on Exhibit 1 to finance the costs described in the Amended Development Program. Actual payments to the Project Cost Account will be adjusted based upon the applicable annual percentage retained, or a specific amount to be retained within the Amended District, and the actual annual assessed value within the Amended District, to be determined by the City Council on a yearly basis.

V. Amended Financial Data (See Statutory Requirements & Thresholds, Exhibit 6)

- A. Estimate of increased assessed value by year after implementation of the development program: See Exhibit 1
- B. Percentage of increased assessed value to be applied to the development program fund: See Exhibit 1
- C. Estimated annual tax increment: \$1,717,654 (Average)
- D. Total average annual value of development program fund: \$1,717,654 (Average)
- E. Annual principal and interest payment of bonded indebtedness: N/A at this time
- F. Financial assumptions and safeguards: The City of Portland is under no obligation to repay any bonds that would involve a pledge of the City's full faith and credit.

VI. Tax Shifts (See Exhibit 2)

A. *Average Annual Amount:*

General Purpose Aid to Education Tax Shift: \$593,812

Municipal Revenue Sharing Tax Shift: \$47,751

County Tax Shift: \$38,745

Total Average Annual Savings: \$680,307

VII. Municipal Approvals

A. Public Hearing Notice

The City of Portland did give proper Notice of Public Hearing in accordance with the requirements of 30-A M.R.S.A. §5253. The notice was published on July 5, 2018, in a newspaper of general circulation (see new Exhibit 8).

B. Public Hearing

A Public Hearing at which the proposed Amended Bayside Municipal Tax Increment Financing District was discussed was held on July 16, 2018, in the Portland City Council Chambers. A copy of the minutes of that meeting is included as new Exhibit 9.

C. Authorizing Votes

An attested copy of the resolution of the Portland City Council designating the Amended Municipal TIF district created for the implementation of the Bayside Redevelopment Program is included as new Exhibit 10.

D. Assessor's Certification

An attested copy of the certification by the City of Portland Tax Assessor as to the revised Original Assessed Value of the expanded Bayside Municipal Tax Increment Financing District is included as Exhibit 11.



Note: Islands not shown to improve map legibility.

PROPOSED
DISTRICT

Exhibit 4(A)-Site Map showing tax map location of Amended TIF District.



*Only Unit 1 of the Furman at Bayside Condominium Association is part of this Amended District.

City of Portland - TIF Values - For Expanded Area Only of Bayside TIF for TIF remaining years of FY16 to FY33; UPDATED 6/2018 to include IAV for 178 Kennebec St. Com'l Condo Unit #1 beginning 4/1/2019 - Estimated at \$550,000

2nd Expanded Area:

67 acres

OAV a/o 3/31/2014:

\$78,251,800

Model Assumes:

- 1) 1% Yearly Increase in Valuation;
- 2) 2% Yearly Increased in Tax Rate;
- 3) 100% Yearly Capture Rate;
- 4) Model Includes IAV for 178 Kennebec Street Com'l Condo Unit #1 Estimated at \$550,000 Beginning 4/1/2019;
- 5) OAV for 178 Kennebec Street is \$0.

City of Portland- Expanded Bayside TIF Projection Table; Updated 6/2018 for 178 Kennebec St.										
TIF Year	Tax Year- April 1	City Fiscal Year	Increased Assessed Value Real Prop. At 1%/Yr.	% of Value Captured	Captured Valuation	Projected Mill Rate (inc. 2%/Yr)	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non- Captured General Fund Revenues
13	2015	2015/2016	\$782,518	100.00%	\$782,518	20.20	\$15,804	\$0	\$15,804	\$0
14	2016	2016/2017	\$1,572,861	100.00%	\$1,572,861	20.60	\$32,401	\$0	\$32,401	\$0
15	2017	2017/2018	\$2,371,108	100.00%	\$2,371,108	21.01	\$49,822	\$0	\$49,822	\$0
16	2018	2018/2019	\$3,177,337	100.00%	\$3,177,337	21.43	\$68,097	\$0	\$68,097	\$0
17	2019	2019/2020	\$4,541,628	100.00%	\$4,541,628	21.86	\$99,284	\$0	\$99,284	\$0
18	2020	2020/2021	\$5,369,563	100.00%	\$5,369,563	22.30	\$119,731	\$0	\$119,731	\$0
19	2021	2021/2022	\$6,205,776	100.00%	\$6,205,776	22.74	\$141,144	\$0	\$141,144	\$0
20	2022	2022/2023	\$7,050,352	100.00%	\$7,050,352	23.20	\$163,560	\$0	\$163,560	\$0
21	2023	2023/2024	\$7,903,373	100.00%	\$7,903,373	23.66	\$187,016	\$0	\$187,016	\$0
22	2024	2024/2025	\$8,764,925	100.00%	\$8,764,925	24.14	\$211,551	\$0	\$211,551	\$0
23	2025	2025/2026	\$9,635,092	100.00%	\$9,635,092	24.62	\$237,205	\$0	\$237,205	\$0
24	2026	2026/2027	\$10,513,961	100.00%	\$10,513,961	25.11	\$264,018	\$0	\$264,018	\$0
25	2027	2027/2028	\$11,401,619	100.00%	\$11,401,619	25.61	\$292,034	\$0	\$292,034	\$0
26	2028	2028/2029	\$12,298,153	100.00%	\$12,298,153	26.13	\$321,298	\$0	\$321,298	\$0
27	2029	2029/2030	\$13,203,653	100.00%	\$13,203,653	26.65	\$351,853	\$0	\$351,853	\$0
28	2030	2030/2031	\$14,118,207	100.00%	\$14,118,207	27.18	\$383,749	\$0	\$383,749	\$0
29	2031	2031/2032	\$15,041,907	100.00%	\$15,041,907	27.72	\$417,034	\$0	\$417,034	\$0
30	2032	2032/2033	\$15,974,844	100.00%	\$15,974,844	28.28	\$451,757	\$0	\$451,757	\$0
18 Year TIF Total			\$149,926,879		\$149,926,879		\$3,807,357	\$0	\$3,807,357	\$0
18 Year Averages							\$211,519.81		\$211,519.81	

City of Portland - TIF Tax Shifts For Expanded Area Only of Bayside TIF for TIF remaining years of FY16 to FY33; UPDATED to Include IAV for 178 Kennebec Com'l Condo Unit #1 beginning 4/1/2019, Estimated at \$550,000

**2nd Expanded Area:
OAV a/o 3/31/2014:**

**67 acres
\$78,251,800**

Model Assumes:

- 1) 1% Yearly Increase in Valuation;
- 2) 2% Yearly Increased in Tax Rate;
- 3) 100% Yearly Capture Rate;
- 4) Model Includes IAV for 178 Kennebec Street Com'l Condo Unit #1 Estimated at \$550,000 Beginning 4/1/2019;
- 5) OAV of 178 Kennebec Street is \$0.

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: TIF Projection Model								
TIF Year	Tax Year- April 1	City Fiscal Year	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation			
					Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
13	2015	2015/2016	\$782,518	\$782,518	\$6,338	\$510	\$414	\$7,262
14	2016	2016/2017	\$1,572,861	\$1,572,861	\$12,740	\$1,024	\$833	\$14,597
15	2017	2017/2018	\$2,371,108	\$2,371,108	\$19,206	\$1,544	\$1,255	\$22,006
16	2018	2018/2019	\$3,177,337	\$3,177,337	\$25,736	\$2,070	\$1,682	\$29,488
17	2019	2019/2020	\$4,541,628	\$4,541,628	\$36,787	\$2,958	\$2,404	\$42,149
18	2020	2020/2021	\$5,369,563	\$5,369,563	\$43,493	\$3,497	\$2,842	\$49,833
19	2021	2021/2022	\$6,205,776	\$6,205,776	\$50,267	\$4,042	\$3,285	\$57,594
20	2022	2022/2023	\$7,050,352	\$7,050,352	\$57,108	\$4,592	\$3,732	\$65,432
21	2023	2023/2024	\$7,903,373	\$7,903,373	\$64,017	\$5,148	\$4,183	\$73,348
22	2024	2024/2025	\$8,764,925	\$8,764,925	\$70,996	\$5,709	\$4,639	\$81,344
23	2025	2025/2026	\$9,635,092	\$9,635,092	\$78,044	\$6,276	\$5,099	\$89,419
24	2026	2026/2027	\$10,513,961	\$10,513,961	\$85,163	\$6,848	\$5,564	\$97,576
25	2027	2027/2028	\$11,401,619	\$11,401,619	\$92,353	\$7,426	\$6,034	\$105,813
26	2028	2028/2029	\$12,298,153	\$12,298,153	\$99,615	\$8,010	\$6,508	\$114,134
27	2029	2029/2030	\$13,203,653	\$13,203,653	\$106,950	\$8,600	\$6,987	\$122,537
28	2030	2030/2031	\$14,118,207	\$14,118,207	\$114,357	\$9,196	\$7,471	\$131,024
29	2031	2031/2032	\$15,041,907	\$15,041,907	\$121,839	\$9,798	\$7,960	\$139,597
30	2032	2032/2033	\$15,974,844	\$15,974,844	\$129,396	\$10,405	\$8,453	\$148,255
18 Year TIF Total			\$149,926,879	\$149,926,879	\$1,214,408	\$97,655	\$79,344	\$1,391,407
18 Year TIF Averages					\$67,467.10	\$5,425.26	\$4,408.02	\$77,300.38



To: Members of the Economic Development Committee
From: Brendan T. O'Connell – Finance Director
Re: Next Steps on Proposed Payment / Services in Lieu of Tax Policy
Date: June 15, 2018

Members of the Economic Development Committee:

At the November 28, 2018 meeting a proposed Payment in-lieu of Taxes (PILOT) policy was presented (attached as Appendix A). There was general support for the direction of the proposed policy but the Committee wanted to further discuss the “Services in-lieu of Taxes” (SILOT) credit section to further tailor the criteria for the City of Portland. At the June 19, 2018 meeting of the Economic Development Committee staff will listen to additional Committee discussion on the current criteria (listed below) and incorporate any additional comments into the draft policy. To assist the Committee in their discussions I have included a variety of exhibits as appendices to this document.

Current SILOT Criteria per City of Portland draft PILOT Policy:

Participation in City Initiatives

Targeted scholarships for Portland residents
Summer Job Creation / Youth Employment
Set Up Initiative Health Disparities Initiative

Policy Based Collaborations

Public/Community Health Initiatives
Partnerships with Local Schools
Job Training Initiatives
Direct support on City Council Goals / participation on Task Forces

Other Direct Contributions

Real Estate Taxes on Property Used for Institutional Purposes
Donations to City capital projects or initiatives
Donations in kind (i.e. real estate, personal property)
Provision of services otherwise provided by the City (i.e. snow removal on public right of way, maintenance of a public facility, security services provided in public areas)

Good Neighbor Activities

Volunteer Efforts of Students/Employees
Sponsorships of local organizations

Appendices:

Appendix A: CITY OF PORTLAND, MAINE PROPOSED PAYMENT IN LIEU OF TAXES POLICY (PILOT) (with 11/14/17 introductory letter from Finance Director Brendan T. O’Connell)

Appendix B: Community Benefits Presentations / Slide Decks – City of Boston PILOT Task Force

Appendix C: Sample Community Benefits Submissions from City of Boston FY2017

Appendix D: List of Exempt Organizations in City of Portland with over \$2M of property value

Portland, Maine



Yes. Life's good here.

Finance Department
Brendan T O'Connell, Director

MEMORANDUM

TO: Members of the Economic Development Committee

FROM: Brendan T O'Connell, CPA – Finance Director

DATE: November 14, 2017

SUBJECT: **Introduction to Payment in-lieu of Taxes (PILOT) Policy**

(A) Summary

One of the Economic Development Committee Goals for 2017 was to study a new payment in-lieu of taxes ("PILOT") policy for the City of Portland. Staff researched PILOT policy types and alternatives and presented them to the Economic Development Committee on September 5. After taking Committee input at the September meeting a draft policy has been developed for presentation at the November 14th meeting. The proposed policy takes into account the community benefits provided by each exempt organization and includes guidance for City staff on opportunities to solicit participation in the PILOT.

(B) Background: Currently Exempt Property in Portland and Current PILOT Practice

According to the City Tax Assessor, the amount of tax exempt real estate within the City of Portland has risen to approximately \$2 billion dollars as of June 30, 2017 and this amount may be understated. This represents nearly 21% of the total City valuation. Even after deducting the total valuation related to City owned property (approximately 4% of overall total) the remaining exempt property represents a very high percentage when compared to other municipalities nationwide (see Exhibit A). The rise in exempt valuation has put increasing pressure on the remaining property owners (referred to hereafter as "non-exempt property" owners) to fully fund the broad spectrum of services offered to residents and visitors to Portland.

The City currently has no formal PILOT policy. Agreements are negotiated with exempt property owners on very limited case by case basis, with little to no solicitation of new or extended PILOT agreements. The PILOT agreements and payments are typically negotiated to offset the cost of "basic" services in the City, loosely defined as public safety services and core

public works services. Currently 10 formal PILOT request letters are sent to nonprofit organizations annually, with a very limited number of other agreements in place with other non-exempt property owners. In total \$570,000 of revenue was estimated within the FY18 budget from PILOT payments. Actual collections in FY17 were slightly higher than budgeted, due in part to certain PILOT agreements based on profits.

It is important to note that nationwide there are no laws which require PILOT payments. The current City PILOT payments are voluntary and any future PILOT payments or agreements would remain voluntary.

(C) Goals of the PILOT Policy

As noted by the Lincoln Institute of Land Policy, *PILOTs are a tool to address two problems with the property tax exemption provided to nonprofits. First, the exemption is poorly targeted, since it mainly benefits nonprofits with the most valuable property holdings, rather than those providing the greatest public benefits. Second, a geographic mismatch often exists between the costs and benefits of the property tax exemption, since the cost of the exemption in terms of forgone tax revenue is borne by the municipality in which a nonprofit is located, but the public benefits provided by the nonprofit often extend to the rest of the state or even the whole nation.*¹ PILOT policies are becoming an increasingly common way to solicit contributions from nonprofits to help offset the cost of services they consume. See Exhibit A on page 4 for a nationwide comparison of charitable nonprofit organizations registered with the IRS by type as well as their assets and liabilities.

The PILOT policy will have several goals and objectives. Above all, a uniform policy must be developed to be applied to the exempt properties within the City. A PILOT policy would provide clarity to exempt organizations who wish to locate in Portland and create a more even playing field within exempt property owners. An added benefit will be a more equitable distribution of cost of services between exempt and non-exempt property owners, although actual increases in property tax revenues from formal PILOT policies vary significantly from municipality to municipality.

As part of this uniform policy, guidelines for City staff may be included. For example, when a nonprofit expands holdings within the City, there should be protocol for initiation of a conversation around PILOT payments to offset the cost of conversion of non-exempt property to exempt property. This was recently done by the Planning Department when approving a recent development which included exempt property.

A secondary goal of the PILOT will be to review the population of exempt properties in more detail, to fully understand the organizations receiving the most value from their exemptions. It is best practice to review the benefits provided by exempt organizations during PILOT policy development.

¹ Kenyon and Langley - *Payments in Lieu of Taxes - Balancing Municipal and Nonprofit Interests*, 2010

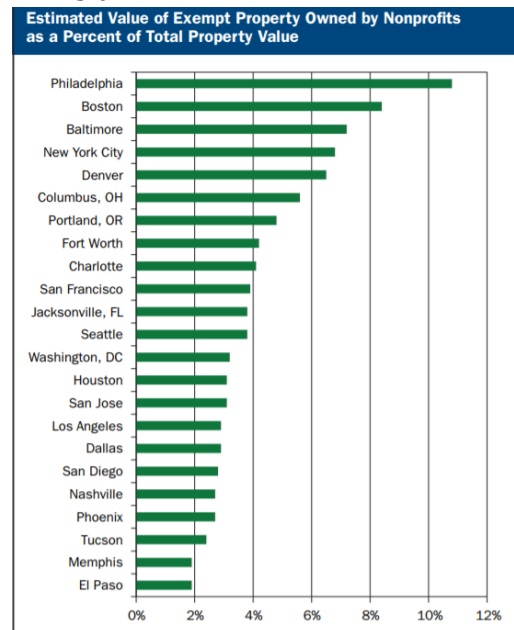
(D) Arguments for Strong PILOT Policy

- With an increasing percentage of exempt property within City, nonprofits should share in the cost of basic services which benefit them. Police and fire protection and road maintenance are the costs most frequently allocated to exempt property owners in other municipalities.
- A strong PILOT policy has the potential to help ease the tax burden on non-exempt property owners, and create a more equitable distribution of the tax levy across those who consume core City services.
- PILOT policies can help address inequities created by the charitable tax exemption (i.e. the greatest tax savings goes to organizations who have the most valuable property holdings).
- PILOT policies can reduce inefficient location decisions made by nonprofits (i.e. exempt status creates an incentive for nonprofits to locate in cities where the tax savings are higher).

(E) Components of the Draft PILOT Policy

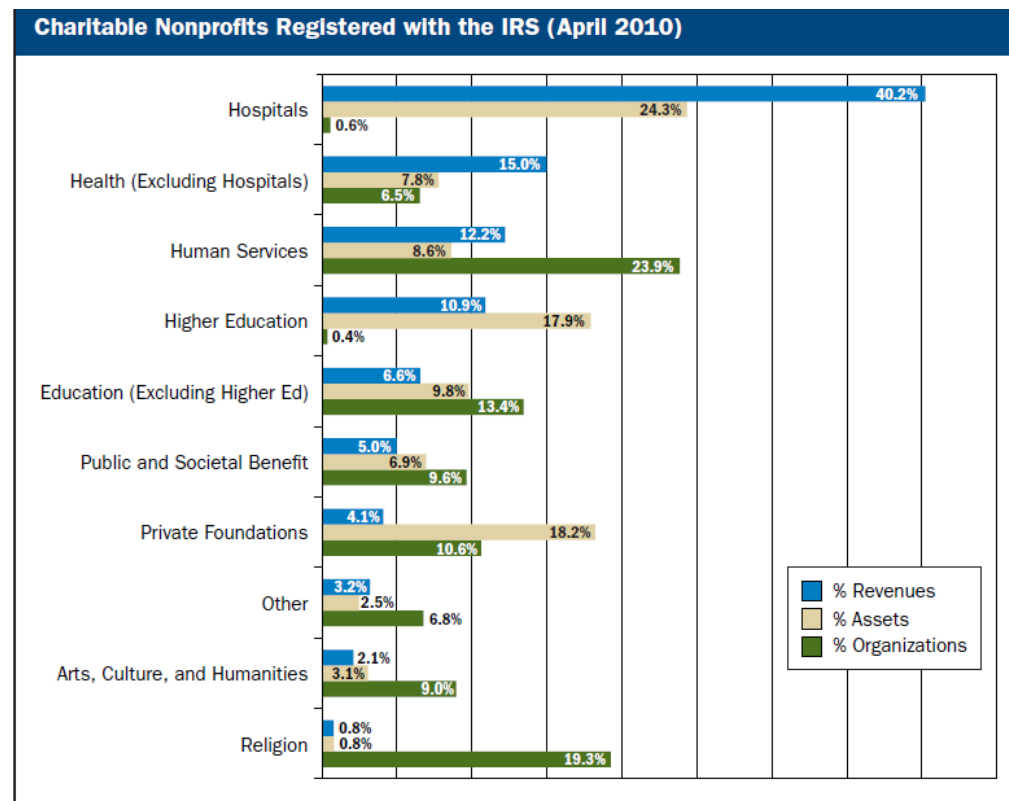
During the meeting on November 14th the draft PILOT policy (attached) will be reviewed with the Economic Development Committee and Public Comment will be taken. Committee members will have the opportunity to vote on the current draft or suggest revisions to the policy for presentation at the November 28th meeting.

Exhibit A



Note: These statistics should be viewed as rough estimates. Policy makers should exercise caution when drawing conclusions from these data, because the quality of assessments of exempt property is wide-ranging and often unreliable (Lipman 2006b).

Source: Lipman (2006a).



Note: Religious congregations are not required to register with the IRS; nonprofits with gross receipts under \$25,000 and religious congregations are not required to file IRS Form 990 with financial information. The number of organizations includes all 501(c)(3) charitable nonprofits registered with IRS (1,138,289), but revenues and assets for each subsector only include charities that filed IRS Form 990 (598,110).

Source: National Center for Charitable Statistics (2010).

CITY OF PORTLAND, MAINE
PAYMENT IN LIEU OF TAXES POLICY (PILOT)



Revised: October 31, 2017

Effective: January 1, 2019

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1. PURPOSE

In order to maintain the high standard of municipal services that Portland has historically provided, the City Council has established a policy for PILOT (Payment In Lieu of Tax) contributions from tax-exempt property owners (referred to hereafter as “exempt property” owners). The purpose of this PILOT policy document is to summarize the uniform policy to be applied to the exempt properties within the City. The policy is intended to provide clarity to exempt organizations who wish to locate in Portland. The policy includes monetary payments and consideration of other services provided by exempt organizations. The policy also provides guidance for City staff when approached with questions about PILOT policy requirements.

2. THE NEED FOR A FORMAL PILOT POLICY

According to the City Tax Assessor, the amount of tax exempt real estate within the City of Portland has risen to approximately \$2 billion dollars as of June 30, 2017 and this amount may be understated. This represents nearly 21% of the total City valuation, a very high percentage when compared to other municipalities. The rise in exempt valuation has put increasing pressure on the remaining property owners in Portland (referred to hereafter as “non-exempt property” owners) to fully fund the broad spectrum of services offered to residents and visitors to Portland.

The City recognizes that non-profit organizations contribute directly to the quality of life within the community and welcomes these organizations. Portland has historically been recognized as leader in Maine the area of higher education, arts and culture, public health and religious freedom, and have encouraged non-profits to organize in the City to enrich the quality of life of its residents. The City’s location, status as the economic engine of Northern New England, located just under 2 hours north of Boston, with easy access via major highway, bus, rail, and jetport, makes it attractive for non-profit institutions. This demand for land and buildings to operate non-profit organizations has absorbed significant amounts of taxable property within

the City in recent years. A continuing shift in tax burden to a diminishing tax base will have a negative impact on residents, local businesses and the overall Greater Portland community. In order to maintain the financial health of the community as a whole and to as to continue to provide a range of quality services, the City must set an objective to maintain its existing tax base and expand it where reasonably possible. Strong PILOT policies have been used in municipalities nationwide to achieve this objective. Several key reasons noted for adoption of strong PILOT policies are listed below.

- With an increasing percentage of exempt property within a City, nonprofits should share in the cost of basic services which benefit them. Police and fire protection and road maintenance are the costs most frequently allocated to exempt property owners in other municipalities.
- A strong PILOT policy has the potential to help ease the tax burden on non-exempt property owners, and create a more equitable distribution of the tax levy across those who consume core City services.
- PILOT policies can help address inequities created by the charitable tax exemption (i.e. the greatest tax savings goes to organizations who have the most valuable property holdings).
- PILOT policies can reduce inefficient location decisions made by nonprofits (i.e. exempt status creates an incentive for nonprofits to locate in cities where the tax savings are higher).

3. FIVE BASIC PRINCIPLES OF THE PILOT POLICY

I. Participation in the PILOT Program is voluntary

Consideration was given to seeking an ordinance change to require PILOT payments and ensure more uniform participation. However any attempt to impose a legal or statutory requirement would face significant opposition and runs counter to the spirit of partnership between the City and its local institutions that a successful PILOT program would provide.

II. PILOT should be applied equally to all current and future non-profit groups in Portland

All non-profit institutions should participate in the PILOT program. While significant focus has been placed on the City's medical and educational institutions, the City's museums, cultural facilities, and other significant non-profits share a similar interest in the City.

However, while broad participation is essential to the program's success, the City has determined that an exception should be made for smaller nonprofits which may lack the resources to fully engage in the PILOT process. Normally, a threshold of **\$2 million** in assessed value would meet this goal. An exemption of this amount will be applied to all organizations under this policy, eliminating the PILOT completely for the smaller institutions, while mitigating the financial impact of PILOT payments on institutions just beyond this threshold.

III. PILOT contributions should offset cost of basic City services: 25% of full tax levy

PILOT contributions should be based on the value of real estate owned by an institution. This approach both reflects the size and quality of the institution's real estate holdings and is consistent with the approach taken for taxable properties. PILOT policies nationwide set contribution levels at an amount designed to cover the portion of the tax levy related to basic and core City services. For purposed of this PILOT, those services have been designated as public safety services (police and fire) and basic public works services including snow removal. This amount has remained at approximately 25% of the City's tax levy over many years and this level has been deemed to be appropriate for the current policy.

IV. PILOT policy includes a SILOT (Services In Lieu of Taxes) deduction up to 50%

Community benefits are an important aspect of an institution's contribution to the City. Institutions should receive up to a 50% PILOT deduction for qualifying community programs and services that uniquely benefit Portland residents. In the case of exceptional opportunities for partnership, the 50% cap may be exceeded. Institutions should also receive a credit on their PILOT in the amount of real estate taxes paid on properties that would ordinarily qualify for a tax exemption based on use and a credit for costs paid which would otherwise be paid. Section X of this document contains more detail on criteria for the SILOT deduction.

V. The new PILOT formula should be phased in over a 5-year period starting in FY 2019

While the payments currently made by some institutions approach the levels indicated by the program levels recommended above, most institutions fall below the recommended amounts. Institutions will require time to make the necessary adjustments in their budget and financial plans to accommodate increased PILOT

amounts. To ensure a smooth transition, the Task Force recommends that the new formula be phased in over a time period of not less than 5 years.

4. IS THE PILOT POLICY APPLICABLE TO MY ORGANIZATION?

All tax exempt organizations are encouraged to participate in the PILOT policy. As noted previously an exemption amount of \$2M will be applied to all organizations under this policy, eliminating the PILOT completely for the smaller institutions, while mitigating the financial impact of PILOT payments on institutions just beyond this threshold.

5. CALCULATION OF PILOT PAYMENT DUE

PILOT contributions are based on the value of real estate owned by an institution. The initial PILOT payment calculation is determined by multiplying the property assessed value less the exemption amount of \$2M, times the tax rate times 25%, and then subtracting any available SILOT credit applicable to the exempt organization.

$$\left(\begin{array}{l} \text{Property} \\ \text{Assessed} \\ \text{Value}^* \end{array} \times \begin{array}{l} \text{Tax} \\ \text{Rate} \end{array} \times 25\% \right) - \begin{array}{l} \text{Available} \\ \text{SILOT} \\ \text{Credit} \end{array}$$

* Less \$2M of exemption amount

The assessor's office determines your assessed value and the City Council sets the tax rate each spring with the passage of the city budget. The assessed valuation is reduced by the \$2M exemption, and PILOT payments due are then reduced to only 25% of the amount which would

have normally been due from a similarly valued non-exempt property. The 25% represents the cost of the City's "core" services which are public safety (Police and Fire Department) and basic street maintenance / winter operations. The PILOT payment due is subtracted by any available SILOT (Services-in-lieu-of-taxes) credit which has been applied to the exempt organization by the City. SILOT credits are not guaranteed to every organization and are calculated on a case by case basis by the City. The SILOT credit may not exceed 50% of the total amount of the PILOT due. See the SERVICES IN LIEU OF TAXES (SILOT) CREDIT section for complete details on SILOT criteria and calculation.

6. SERVICES IN LIEU OF TAXES (SILOT) CREDIT

In consideration of the community benefits of the exempt organization within the City, the PILOT policy includes a deduction for services provided. A list of items which WOULD qualify for SILOT credit are listed below. An exempt entity will have an opportunity on an annual basis to outline their SILOT contributions via a standard form distributed with the estimated PILOT bill.

Participation in City Initiatives

- Targeted scholarships for Portland residents
- Summer Job Creation / Youth Employment
- Set Up Initiative Health Disparities Initiative

Policy Based Collaborations

- Public/Community Health Initiatives
- Partnerships with Local Schools
- Job Training Initiatives
- Direct support on City Council Goals / participation on Task Forces

Other Direct Contributions

- Real Estate Taxes on Property Used for Institutional Purposes

- Donations to City capital projects or initiatives
- Donations in kind (i.e. real estate, personal property)
- Provision of services otherwise provided by the City (i.e. snow removal on public right of way, maintenance of a public facility, security services provided in public areas)

Good Neighbor Activities

- Volunteer Efforts of Students/Employees
- Sponsorships of local organizations

A non-comprehensive listing of items which would NOT qualify for SILOT credit is below:

- Real Estate Taxes on Property used for Non-institutional Purposes
- Linkage Payments
- Permits Inspection Fees
- Student Spending
- Salaries Paid to Employees
- Construction Costs
- Purchase of Goods, Services
- Grants Received / Outside Money
- Operating Support for Community Health Clinics
- Free Care (Safety Net Care)
- Unreimbursed Medicare or Medicaid

7. ANNUAL BILLING AND FIVE-YEAR PHASE IN (FY20-FY24)

Annual Billing

The annual billing for the PILOT will be performed by City staff. PILOT bills will be sent on a semiannual basis on a schedule similar to regular property tax billing – typically PILOT bills will be sent in July of each fiscal year. A SILOT credit application will also be enclosed with the PILOT bill and each exempt organization will have 30 days to complete and return form. The City will review the forms and notify each organization of SILOT credits received – including a

revised PILOT bill for the current fiscal year. PILOT payments will be due on the regular property tax payment dates – typically the second Friday in September and March of each year.

Five Year Phase In – New PILOT Agreements

For any exempt organizations impacted by this policy, who currently exist in the City and are remaining in their existing locations, a five year phase in is permitted. The amounts due in the first five tax years of the new program are as follows:

FY20 – 10% of the normal PILOT amount

FY21 – 20% of the normal PILOT amount

FY22 – 30% of the normal PILOT amount

FY23 – 40% of the normal PILOT amount

FY23 – 50% of the normal PILOT amount

For any NEW exempt organizations seeking to locate within the City or Portland the full PILOT amount is due in FY20. For exempt organizations who currently exist within the City and are seeking to expand their footprint within the City, the full PILOT policy would be due on any new property acquired.

8. GUIDANCE FOR CITY STAFF – ENCOURAGING PARTICIPATION IN THE PILOT PROGRAM

Several common transactions should be used as opportunities for City staff to inform exempt organizations about the PILOT policy and in some cases strongly encourage participation.

Property Sale – Where conversion to exempt property	Strongly encourage signing of a new PILOT agreement, present policy along with standard agreement.
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Building Permit – Where conversion to exempt property	Strongly encourage signing of a new PILOT agreement, present policy along with standard agreement.
Zoning Amendment Request	Strongly encourage signing of a new PILOT agreement, present policy along with standard agreement.
Site Plan Review	Inform of PILOT policy – present copy of document
Passage of Formal Pilot Policy / Amendments to PILOT Policy	Notify all potentially impacted exempt organizations

Fiscal Year 2016 Payment in Lieu of Tax (PILOT) Program Results

Educational Institutions	FY11	Total	If Taxable	FY16 PILOT	Less Community	Cash PILOT	1st Half	2nd Half	FY16
	PILOT	Exempt Value		(Year 5)	Benefits Credit		PILOT Contribution	PILOT Contribution	Total PILOT Contribution
Berklee College	\$ 151,331	\$ 149,334,523	\$ 4,635,344	\$ 904,351	\$ (452,175)	\$ 452,175	\$ 113,911	\$ 113,911	\$ 227,822
✓ Boston Architectural College	\$ -	\$ 19,056,500	\$ 591,514	\$ 31,478	\$ (15,739)	\$ 15,739	\$ 7,870	\$ 7,870	\$ 15,739
Boston College	\$ 297,571	\$ 526,217,533	\$ 16,333,792	\$ 3,447,088	\$ (1,723,544)	\$ 1,723,544	\$ 331,479	\$ -	\$ 331,479
Boston College High School	\$ -	\$ 27,176,500	\$ 843,559	\$ 94,490	\$ (47,245)	\$ 47,245	\$ -	\$ -	\$ -
Boston Conservatory	\$ -	\$ 29,053,500	\$ 901,821	\$ 109,055	\$ (54,528)	\$ 54,528	\$ -	\$ -	\$ -
Boston University	\$ 5,082,079	\$ 1,999,421,324	\$ 62,062,038	\$ 15,165,223	\$ (7,582,612)	\$ 7,582,612	\$ 3,050,000	\$ 3,050,000	\$ 6,100,000
Catholic Memorial	\$ -	\$ 16,753,071	\$ 520,015	\$ 13,604	\$ (6,802)	\$ 6,802	\$ -	\$ -	\$ -
Emerson College	\$ 141,591	\$ 240,541,000	\$ 7,466,393	\$ 1,750,198	\$ (875,099)	\$ 875,099	\$ 70,796	\$ 70,796	\$ 141,592
Emmanuel College	\$ -	\$ 194,556,700	\$ 6,039,040	\$ 1,393,360	\$ (696,680)	\$ 696,680	\$ 75,000	\$ 75,000	\$ 150,000
Fisher College	\$ -	\$ 44,638,499	\$ 1,385,579	\$ 229,995	\$ (114,997)	\$ 114,997	\$ -	\$ -	\$ -
Harvard University	\$ 2,109,293	\$ 1,512,947,591	\$ 46,961,893	\$ 11,607,145	\$ (5,803,573)	\$ 5,803,573	\$ 1,378,009	\$ 1,845,457	\$ 3,223,466
✓ Mass College of Pharmacy	\$ 242,252	\$ 109,297,000	\$ 3,392,579	\$ 731,745	\$ (365,872)	\$ 365,872	\$ 182,936	\$ 182,936	\$ 365,872
✓ NE College of Optometry	\$ -	\$ 25,065,500	\$ 778,033	\$ 78,108	\$ (39,054)	\$ 39,054	\$ 19,527	\$ 19,527	\$ 39,054
New England Conservatory	\$ -	\$ 31,627,000	\$ 981,702	\$ 129,026	\$ (64,513)	\$ 64,513	\$ -	\$ -	\$ -
Northeastern University	\$ 30,571	\$ 1,338,469,314	\$ 41,546,088	\$ 9,592,952	\$ (4,796,476)	\$ 4,796,476	\$ 550,000	\$ 550,000	\$ 1,100,000
Roxbury Latin School	\$ -	\$ 52,829,300	\$ 1,639,821	\$ 293,555	\$ (146,778)	\$ 146,778	\$ -	\$ -	\$ -
✓ Showa Institute	\$ 123,084	\$ 42,694,600	\$ 1,325,240	\$ 214,910	\$ (107,455)	\$ 107,455	\$ 53,728	\$ 53,728	\$ 107,455
Simmons College	\$ 15,000	\$ 139,730,000	\$ 4,337,219	\$ 967,905	\$ (483,952)	\$ 483,952	\$ -	\$ -	\$ -
Suffolk University	\$ 378,979	\$ 194,390,200	\$ 6,033,872	\$ 1,392,068	\$ (696,034)	\$ 696,034	\$ 219,475	\$ 219,475	\$ 438,950
✓ Tufts University	\$ 232,975	\$ 158,300,662	\$ 4,913,653	\$ 1,112,013	\$ (556,007)	\$ 556,007	\$ 278,003	\$ 278,003	\$ 556,007
Wentworth Institute of Tech. ¹	\$ 31,504	\$ 208,240,568	\$ 6,463,787	\$ 1,499,547	\$ (749,773)	\$ 749,773	\$ 299,403	\$ -	\$ 299,403
Wheelock College	\$ -	\$ 54,656,000	\$ 1,696,522	\$ 307,731	\$ (153,865)	\$ 153,865	\$ -	\$ -	\$ -
Winsor School	\$ -	\$ 41,283,900	\$ 1,281,452	\$ 203,963	\$ (101,982)	\$ 101,982	\$ -	\$ -	\$ -
TOTAL	\$ 8,836,231	\$ 7,156,280,785	\$ 222,130,956	\$ 51,269,510	\$ (25,634,755)	\$ 25,634,755	\$ 6,630,136	\$ 6,466,702	\$ 13,096,838

¹ Wentworth Institute of Technology received a \$50,000 exceptional opportunity credit for the donation of land for the construction of housing for seniors in Mission Hill

✓ = Institution contributed a cash PILOT and qualifying community benefits in the amount requested by the City

Fiscal Year 2016 Payment in Lieu of Tax (PILOT) Results

	FY11 PILOT	Total Exempt Value	If Taxable	FY16 PILOT (Year 5)	Less Community Benefits Credit	Cash PILOT	1st Half PILOT Contribution	2nd Half PILOT Contribution	FY16 Total PILOT Contribution
Medical Institutions									
✓ Beth Israel Deaconess	\$ 167,000	\$ 813,129,901	\$ 25,239,552	\$ 6,193,488	\$ (3,096,744)	\$ 3,096,744	\$ 1,548,372	\$ 1,548,372	\$ 3,096,744
✓ Boston Children's Hospital ²	\$ 111,921	\$ 660,688,500	\$ 20,507,771	\$ 3,248,521	\$ (2,436,391)	\$ 812,130	\$ 420,318	\$ 391,812	\$ 812,130
✓ Boston Medical Center	\$ 137,625	\$ 279,568,600	\$ 8,677,809.34	\$ 2,024,379	\$ (1,518,284)	\$ 506,094.76	\$ 254,375	\$ 251,720	\$ 506,095
✓ Brigham and Women's Hosp.	\$ 1,538,506	\$ 794,517,135	\$ 24,661,812	\$ 6,049,053	\$ (3,024,526)	\$ 3,024,526	\$ 1,512,263	\$ 1,512,263	\$ 3,024,526
✓ Dana Farber Cancer Institute	\$ 99,972	\$ 248,137,603	\$ 7,702,191	\$ 1,809,148	\$ (904,574)	\$ 904,574	\$ 452,287	\$ 452,287	\$ 904,574
✓ Faulkner Hospital	\$ -	\$ 161,926,400	\$ 5,026,195	\$ 1,140,149	\$ (570,074)	\$ 570,074	\$ 285,037	\$ 285,037	\$ 570,074
Franciscan Hospital	\$ -	\$ 50,402,000	\$ 1,564,478	\$ 274,720	\$ (137,360)	\$ 137,360	\$ -	\$ -	\$ -
✓ Harvard Vanguard	\$ 294,886	\$ 109,848,200	\$ 3,409,688	\$ 736,022	\$ (368,011)	\$ 368,011	\$ 184,006	\$ 184,005	\$ 368,011
Hebrew Rehabilitation Ctr	\$ -	\$ 42,544,000	\$ 1,320,566	\$ 213,741	\$ (160,306)	\$ 53,435	\$ -	\$ -	\$ -
Joslin Diabetes Center	\$ -	\$ 86,293,700	\$ 2,678,556	\$ 553,239	\$ (276,620)	\$ 276,620	\$ -	\$ -	\$ -
✓ Mass Eye & Ear Infirmary	\$ -	\$ 116,908,100	\$ 3,628,827	\$ 790,807	\$ (395,403)	\$ 395,403	\$ 197,702	\$ 197,702	\$ 395,403
✓ Mass General Hospital	\$ 2,668,355	\$ 1,786,908,729	\$ 55,465,647	\$ 13,750,012	\$ (6,875,006)	\$ 6,875,006	\$ 3,437,503	\$ 3,437,503	\$ 6,875,006
New England Baptist Hosp.	\$ -	\$ 134,481,973	\$ 4,174,320	\$ 927,180	\$ (463,590)	\$ 463,590	\$ 185,436	\$ 185,436	\$ 370,872
Shriners Hospital	\$ -	\$ 106,097,400	\$ 3,293,263	\$ 706,916	\$ (353,458)	\$ 353,458	\$ -	\$ -	\$ -
✓ Spaulding Rehab Hospital	\$ 78,919	\$ 153,933,900	\$ 4,778,108	\$ 1,078,127	\$ (539,064)	\$ 539,064	\$ 269,532	\$ 269,532	\$ 539,064
Tufts Medical Center	\$ 910,720	\$ 401,044,500	\$ 12,448,421	\$ 2,995,705	\$ (1,497,853)	\$ 1,497,853	\$ 424,396	\$ 641,286	\$ 1,065,682
TOTAL	\$ 6,007,904	\$ 5,946,430,641	\$ 184,577,207	\$ 42,491,207	\$ (22,617,264)	\$ 19,873,943	\$ 9,171,227	\$ 9,356,954	\$ 18,528,181

² Half of the hospital's cash PILOT was a direct cash contribution to the Boston Public Schools and Boston Public Health Commission as an exceptional opportunity credit according to program guidelines

	FY11 PILOT	Total Exempt Value	If Taxable	FY16 PILOT (Year 5)	Less Community Benefits Credit	Cash PILOT	1st Half PILOT Contribution	2nd Half PILOT Contribution	FY16 Total PILOT Contribution
Cultural Institutions									
Bayridge Center	\$ 17,884	\$ 29,788,000	\$ 924,620	\$ 114,755	\$ (57,377)	\$ 57,377	\$ 9,526	\$ 9,526	\$ 19,051
✓ Boston Symphony Orchestra	\$ 84,976	\$ 29,178,062	\$ 905,687	\$ 110,022	\$ (55,011)	\$ 55,011	\$ 27,505	\$ 27,505	\$ 55,011
Children's Museum	\$ -	\$ 31,029,000	\$ 963,140	\$ 124,385	\$ (62,193)	\$ 62,193	\$ -	\$ -	\$ -
✓ Gardner Museum	\$ -	\$ 27,868,501	\$ 865,038	\$ 79,888	\$ (39,944)	\$ 39,944	\$ 19,972	\$ 19,972	\$ 39,944
Inst. of Contemporary Art	\$ -	\$ 37,162,500	\$ 1,153,524	\$ 171,981	\$ (85,991)	\$ 85,991	\$ -	\$ -	\$ -
✓ MASCO	\$ 133,778	\$ 50,947,000	\$ 1,581,395	\$ 278,949	\$ (139,474)	\$ 139,474	\$ 69,737	\$ 69,737	\$ 139,474
Museum of Fine Arts	\$ 66,220	\$ 282,450,999	\$ 8,767,279	\$ 2,062,784	\$ (1,031,392)	\$ 1,031,392	\$ 32,133	\$ 36,787	\$ 68,920
Museum of Science	\$ -	\$ 34,903,500	\$ 1,083,405	\$ 154,451	\$ (77,226)	\$ 77,226	\$ -	\$ -	\$ -
New England Aquarium	\$ -	\$ 70,176,100	\$ 2,178,266	\$ 428,167	\$ (214,083)	\$ 214,083	\$ -	\$ -	\$ -
✓ WGBH	\$ -	\$ 49,902,500	\$ 1,548,974	\$ 270,843	\$ (135,422)	\$ 135,422	\$ 67,711	\$ 67,711	\$ 135,422
TOTAL	\$ 302,858	\$ 643,406,162	\$ 19,971,327	\$ 3,796,224	\$ (1,898,112)	\$ 1,898,112	\$ 226,584	\$ 231,238	\$ 457,822
GRAND TOTAL	\$ 15,146,992	\$ 13,746,117,588	\$ 426,679,490	\$ 97,556,941	\$ (50,150,131)	\$ 47,406,810	\$ 16,027,947	\$ 16,054,894	\$ 32,082,841

✓ = Institution contributed a cash PILOT and qualifying community benefits in the amount requested by the City

Appendix B

***City of Boston
Community Benefits
Presentations***



Incorporating Community Benefits into Boston's PILOT Program

*PILOT Task Force Meeting
June 11, 2009*

www.cityofboston.gov/pilot

Draft – For Policy Making Purposes Only

Task Force Goals



The Task Force is challenged with completing the following tasks:

1. Set a standard level of contributions – in programs and payments – to be met by all major nonprofit land holders in Boston.
2. Develop a standard methodology for valuing the community partnerships made by tax-exempt institutions.
3. Propose a structure for a consolidated program and payment negotiation system, which will allow the City and its tax-exempt institutions to structure longer term, sustainable partnerships focused on improving services for Boston's residents.
4. Clarify the costs associated with providing City services to tax-exempt institutions.
5. If necessary, provide recommendations on legislative changes needed at the City or state level.

Draft – For Policy Making Purposes Only

Materials Gathered



The Task Force requested materials from the eight largest tax-exempt land-owning institutions

- Harvard University
- Boston University
- Boston College
- Northeastern University
- Massachusetts General Hospital
- Brigham and Women's Hospital
- Beth Israel Hospital
- Children's Hospital

Materials provide a sample of community benefits accounting practices across our key non-profit sectors (hospitals and universities)

Draft – For Policy Making Purposes Only

How Community Benefits are Currently Incorporated in PILOT Program



Institutions Can Contribute a Portion of their PILOT Payment through Community Services

- Up to 25% of PILOT payment can be made through community services
- Applies only to new services or contributions performed above and beyond what was provided prior to the execution of the PILOT agreement
- Credit applied to negotiated PILOT amount, not 25% of taxable value
- Approximately one-half of PILOT-contributing organizations take advantage of community service deductions
- Community service deductions are reviewed regularly by the Assessing Department.

Draft – For Policy Making Purposes Only

Types of Community Activities Noted in Submissions



Contributions to PILOT Program

PILOT Payments

Other Cash Transfers

Real Estate Taxes
Linkage Payments
Permits, Inspection Fees

Employment/Economic Impact Benefits

Student Spending
Salaries Paid to Employees & Multiplier Effect
Across Economy
Construction Costs
Purchase of Goods, Services
Grants Received / Outside Money Leveraged

Participation in Mayoral Initiatives

Scholarships
Summer Job Creation / Youth Employment
Step Up Initiative
Mayor's Health Disparities Initiative

Provision of Public Services

Snow Removal / Street Cleaning
Construction / Maintenance of a Public Facility
Public Use of Facilities

Policy Based Collaborations

Public/Community Health Initiatives
Partnerships with Local Schools
Job Training Initiatives

Medical Care

Operating Support for Community Health Clinics
Free Care (Safety Net Care)
Unreimbursed Medicare or Medicaid

'Good Neighbor' Activities

Volunteer Efforts of Students/Employees
Donations to Neighborhood Assns. / Main Streets
Corporate Leadership, Sponsorships

Other Efforts

Housing Initiatives / Neighborhood Development
Cultural Programs (e.g. Arts Initiatives, etc.)
Outreach Programs or Community Education

Draft – For Policy Making Purposes Only

Discussion



Draft – For Policy Making Purposes Only

City of Boston Priorities in Community Services



▪Methodology which is:

- Consistent
- Transparent
- Accepted by our institutional partners
- Quantifiable, allowing for reliable administration

▪Services and collaborations that:

- Directly benefit City of Boston residents
- Support the City's mission
- Address the highest needs of the community
- Leverage the skills and capacities of our institutional partners

▪Investments which are:

- Above and beyond what is currently provided for IMP negotiations, Article 80 negotiations, Determination of Need procedures, etc.
- Unique from activities for which an institution receives reimbursement



Incorporating Community Benefits into Boston's PILOT Program (Cont.)

www.cityofboston.gov/pilot

July 20, 2009

Draft – For Policy Making Purposes Only

Types of Community Activities Noted in Submissions



Contributions to PILOT Program

PILOT Payments

Other Cash Transfers

Real Estate Taxes
Linkage Payments
Permits, Inspection Fees

Employment/Economic Impact Benefits

Student Spending
Salaries Paid to Employees & Multiplier Effect
Across Economy
Construction Costs
Purchase of Goods, Services
Grants Received / Outside Money Leveraged

Participation in City Initiatives

Scholarships
Summer Job Creation / Youth Employment
Step Up Initiative
Mayor's Health Disparities Initiative

Provision of Public Services

Snow Removal / Street Cleaning
Construction / Maintenance of a Public Facility
Public Use of Facilities

Policy Based Collaborations

Public/Community Health Initiatives
Partnerships with Local Schools
Job Training Initiatives

Medical Care

Operating Support for Community Health Clinics
Free Care (Safety Net Care)
Unreimbursed Medicare or Medicaid

'Good Neighbor' Activities

Volunteer Efforts of Students/Employees
Donations to Neighborhood Assns. / Main Streets
Corporate Leadership, Sponsorships

Other Efforts

Housing Initiatives / Neighborhood Development
Cultural Programs (e.g. Arts Initiatives, etc.)
Outreach Programs or Community Education

Draft – For Policy Making Purposes Only

Review of Community Benefit Suggestions Made at June Task Force Meeting



Qualifies for PILOT Credit

Contributions to PILOT Program

PILOT Payments

Participation in City Initiatives

Scholarships
Summer Job Creation / Youth
Employment
Step Up Initiative
Health Disparities Initiative

Policy Based Collaborations

Public/Community Health
Initiatives
Partnerships with Local Schools
Job Training Initiatives

Requires Further Clarification:

Provision of Public Services

Snow Removal / Street Cleaning
Construction / Maintenance of a
Public Facility
Public Use of Facilities

'Good Neighbor' Activities

Volunteer Efforts of
Students/Employees
Donations to Neighborhood Assns. /
Main Streets
Corporate Leadership, Sponsorships

Doesn't Qualify for PILOT Credit

Other Cash Transfers

Real Estate Taxes
Linkage Payments
Permits, Inspection Fees

Employment/Economic Impact Benefits

Student Spending
Salaries Paid to Employees &
Multiplier Effect Construction Costs
Purchase of Goods, Services
Grants Received / Outside Money
Leveraged

Medical Care

Operating Support for Community
Health Clinics
Free Care (Safety Net Care)
Unreimbursed Medicare or Medicaid

Draft – For Policy Making Purposes Only

Participation in City Initiatives & Policy Based Collaborations



Discussion Topics

Participation in City Initiatives

Scholarships
Summer Job Creation / Youth
Employment
Step Up Initiative
Health Disparities Initiative

Policy Based Collaborations

Public/Community Health
Initiatives
Partnerships with Local Schools
Job Training Initiatives

Providing Guidance to Institutions Wishing to Participate in City Initiatives/Policy Based Collaborations

Mayor's State of the City Address
(January)



Guidance on City Priorities Issued to PILOT-Eligible
Institutions (mid-February)



Notice of Plans to Participate Submitted to City (mid-
March)



Contributions Reflected in City's Proposed Budget
(April)

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Provision of Public Services



Discussion Topics

Provision of Public Services

Snow Removal / Street Cleaning
Construction / Maintenance of a
Public Facility
Public Use of Facilities

'Good Neighbor' Activities

Volunteer Efforts of
Students/Employees
Donations to Neighborhood Assns. /
Main Streets
Corporate Leadership, Sponsorships

Snow Removal / Street Cleaning

Basic Maintenance Activities raises questions of who determines whether this is needed and to whom the benefit accrues?

Construction / Maintenance of a Public Facility

In order to qualify for PILOT credit, it must be a City of Boston facility, not simply one that is accessible to the public

Public Use of Facilities

Should be incorporated into 'Good Neighbor' Activities

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Provision of Public Services



Discussion Topics

Provision of Public Services

Snow Removal / Street Cleaning
Construction / Maintenance of a
Public Facility

'Good Neighbor' Activities

Volunteer Efforts of
Students/Employees
Donations to Neighborhood Assns. /
Main Streets
Corporate Leadership, Sponsorships

Public Use of Facilities

'Good Neighbor' contributions to be recognized through separate awards program administered by the Mayor's Office.

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Other Methodology Questions



Contributions to PILOT Program

PILOT Payments

Other Cash Transfers

Real Estate Taxes
Linkage Payments
Permits, Inspection Fees

Employment/Economic Impact Benefits

Student Spending
Salaries Paid to Employees & Multiplier Effect
Across Economy
Construction Costs
Purchase of Goods, Services
Grants Received / Outside Money Leveraged

Participation in City Initiatives

Scholarships
Summer Job Creation / Youth Employment
Step Up Initiative
Mayor's Health Disparities Initiative

Provision of Public Services

Snow Removal / Street Cleaning
Construction / Maintenance of a Public Facility
Public Use of Facilities

Policy Based Collaborations

Public/Community Health Initiatives
Partnerships with Local Schools
Job Training Initiatives

Medical Care

Operating Support for Community Health Clinics
Free Care (Safety Net Care)
Unreimbursed Medicare or Medicaid

'Good Neighbor' Activities

Volunteer Efforts of Students/Employees
Donations to Neighborhood Assns. / Main Streets
Corporate Leadership, Sponsorships

Other Efforts

Housing Initiatives / Neighborhood Development
Cultural Programs (e.g. Arts Initiatives, etc.)
Outreach Programs or Community Education

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PILOT Programs in Other Areas



- **St. Paul, MN:** Non-profits and commercial property owners both charged a "Right of Way Assessment Fee" to pay for street maintenance (rate per linear foot of curb space)
- **Burlington, VT:** PILOTs based on square footage, with increases taking effect when institution expands.
- **Hanover, NH:** Dorms and kitchens are taxable (collected \$3 million in 2007 from Dartmouth College in property taxes alone).
- **New Haven, CT:** Payment calculated by multiplying # of beds (hospital or college) and full-time employees by \$250, with escalation rate based on changes in the Consumer Price Index.
- **Ann Arbor, MI:** University of Michigan conducts its own snow removal and owns and pays associated costs for a fire station building on its campus.

Draft – For Policy Making Purposes Only

City of Boston Priorities in Community Services



▪Methodology which is:

- Consistent
- Transparent
- Accepted by our institutional partners
- Quantifiable, allowing for reliable administration

▪Services and collaborations that:

- Directly benefit City of Boston residents
- Support the City's mission
- Address the highest needs of the community
- Leverage the skills and capacities of our institutional partners

▪Investments which are:

- Above and beyond what is currently provided for IMP negotiations, Article 80 negotiations, Determination of Need procedures, etc.
- Unique from activities for which an institution receives reimbursement

PILOT Task Force

Community Benefit Criteria



Qualifies for PILOT Credit

Contributions to PILOT Program

PILOT Payments

Participation in City Initiatives

Targeted scholarships for Boston residents

Summer Job Creation / Youth

Employment

Set Up Initiative

Health Disparities Initiative

Policy Based Collaborations

Public/Community Health Initiatives

Partnerships with Local Schools

Job Training Initiatives

Other Cash Transfers

Real Estate Taxes on Property used for Institutional Purposes

Requires Further Clarification:

Provisions of Public Services

Snow Removal / Street Cleaning

Construction Maintenance of a Public Facility

Public Use of Facilities

'Good' Neighbor' Activities

Volunteer Efforts of

Students/Employees

Donations to Neighborhood Assns./ Main Streets

Corporate Leadership, Sponsorships

Doesn't Qualify for PILOT Credit

Other Cash transfers

Real Estate Taxes on Property used for Non-institutional Purposes

Linkage Payments

Permits Inspection Fees

Employment/Economic Impact Benefits

Student Spending

Salaries Paid to Employees &

Multiplier Effect Construction Costs

Purchase of Goods, Services

Grants Received / Outside Money

Leverage

Medical Care

Operating Support for Community Health Clinics

Free Care (Safety Net Care)

Unreimbursed Medicare or Medicaid

Appendix C

***Sample Community
Benefits Submissions
City of Boston FY17***

INSTITUTION NAME:

Boston University

FINANCIAL YEAR:

FY 2012

Program Name	Brief Program Description	Amount (\$)	Cash, In-Kind, or Both ¹	1-time or Ongoing ²	Who is Served ³	Program Initiator ⁴	Partners ⁵
Boston High School Scholarships	Every year, Boston University provides approximately 25 full-tuition, four-year scholarships to students who graduate from Boston public high schools.	\$3,179,010	In-Kind	Ongoing since 1973	Graduates from Boston public high schools		
Boston High School Scholars Orientation & Retention	Boston University offers a one-week academic orientation to the Boston High School Scholars in advance of their freshman year. Retention support for enrolled Scholars is provided through extensive advising services.	\$36,632	In-Kind	Ongoing since 2001 (for one-week residential program) 1986 for orientation programming for this target population	Boston High School Scholars		
BU Community Service Awards	Established to meet, without loans, the full calculated financial eligibility of any admitted Boston Public High School graduate. After the first academic semester, recipients must perform 25 hours of community service per semester.	\$6,073,940	In-Kind	Ongoing since 2009	Graduates from Boston public high schools		
Boston City Employee Scholarships	Awarded to full-time city of Boston employees taking part-time classes	\$280,596	In-Kind	Ongoing	City of Boston employees		
Boston Teacher Scholarships	Awarded to city of Boston teachers for enrollment in one class	\$17,440	In-Kind	Ongoing	City of Boston teachers		
SUBTOTAL: Scholarships Available to Residents of City of Boston Only:		\$9,587,618					
STEP UP Initiative	Step UP is a city-wide project that directs key resources from Boston University and four other top universities to ten Boston Public Schools. The goal is to give Boston students the best education possible and to help them reach their full potential.	\$141,391	In-Kind	Ongoing since FY 2008	Boston Public Schools		
Boston Public Schools Collaborative	This collaborative program provides a variety of services and access to University resources for selected Boston public schools.	\$50,620	In-Kind	Ongoing since 1976	Boston Public Schools		
Donated Use of Athletic Facilities	Use of Boston University's Track and Tennis Center and Walter Brown Arena	\$5,100	In-Kind	Ongoing	Boston Public Schools and Boston Police		

INSTITUTION NAME:		Boston University			FINANCIAL YEAR:		
		Cash, In-Kind, or Both ¹			FY 2012		
Program Name	Brief Program Description	Amount (\$)	1-time or Ongoing ²	Who is Served ³	Program Initiator ⁴	Partners ⁵	
Summer Camp Initiative	Sports camp scholarships awarded to Boston residents	\$8,550	In-Kind	Ongoing since 2012	Boston residents		
The Consortium (Boston Cluster)	Funded by the Boston University School of Education, this program offers the purchase of supplemental books for classrooms, support for field trips, software programs for teaching, and professional development, including conference attendance.	\$16,000	In-Kind	Ongoing	Boston Public Schools		
Upward Bound and Upward Bound Math/Science	These programs serve low-income, first generation college-going high school students. Although this six-week summer program is federally funded, the federal grant does not provide sufficient funding to cover the costs of room and board at the University. The amount includes the funds that BU provides to cover the residence hall and dining expenses.	\$55,804	In-Kind	Ongoing	Boston residents		
Subtotal: Additional Benefits Offered to Residents of City of Boston only:		\$277,465					
TOTAL		\$9,865,083					

¹Does the institution's support for the program include a cash outlay, non-cash contributions (ex: use of property, equipment, supplies, etc), or a mixture of the two? If a mixture, please provide the approximate % of cash vs. in-kind.

²Is the program a one-time expenditure by the institution or is it part of multi-year commitment? If multi-year, please indicate the length of the commitment.

³Who is the target beneficiary of the program (ex: Boston youths with asthma)? Please be specific.

⁴Who started the program (i.e. institution, Mayor, Police Commissioner, School Superintendent, etc)? Please be specific.



Museum of Fine Arts Boston

February 25, 2013

Mr. Matthew Englander
Tax Policy Unit
Assessing Department
Boston City Hall Room 301
Boston, MA 02201

Dear Mr. Englander:

In relation to the letter on October 1, 2012, please realize the following in relation to the community service credit portion of the PILOT agreement between the Museum of Fine Arts and the City of Boston dated 1988.

The Museum of Fine Arts is a Massachusetts, charitable corporation, whose mission is for the advancement of art and education. The City of Boston is one of the original incorporators of the Museum and the Mayor, Superintendent of Schools and a delegate from the Boston Public Library Foundation all are Trustees of the Museum.

The Museum outreaches on many levels to the people of the city of Boston through the following:

- The Museum is open on Wednesday nights to all free of charge in FY12. On average, approximately 1,195 visitors per night attend the museum on these nights. If admission were to be charged, this would generate approximately \$1,243,000 of revenue per year.
- The Museum has a number of free days (Martin Luther King Day, Memorial Day, and Columbus Day, etc.) during which no admission is charged. In FY 2012, there were over 22,000 free days admissions. If admission were to be charged, this would generate approximately \$443,000 of revenue for the year ended June 30, 2012.
- The Museum maintains the landscaping, including tree maintenance, and snow removal of a variety of properties near the Museum which are owned by the City of Boston. These properties include land between The Fenway and the Museum, the park on which the Endicott Memorial is located, Huntington Avenue.
- In addition, the Museum, under its agreement with the Boston Redevelopment Authority, contributes approximately \$42,000 each year over a twelve year period to the Housing Exaction Program.

Community Benefits Report City of Boston – Fiscal Year 2017

Beth Israel Deaconess Medical Center

BIDMC Fiscal Year: FY 2016 (Oct. 1, 2015 – Sept 30, 2016)

Program Name	Brief Program Description	FY16 Amount (\$)*	Cash, In-kind, or Both	1-time or Ongoing	Who is Served	Program Initiator	Partners
The Dimock Center's Women's Renewal Clinical Stabilization Services	Provide funding to allow The Dimock Center to provide intensive clinical services to address the complex needs of women in early recovery from substance use. Support women who have ongoing issues with substance use.	\$10,000	Cash	Year 2 of 2-year commitment	Boston residents	Institution	The Dimock Center
Victims of Violence	Provide advocacy and counseling services to empower and assist adults and youth and/or their families who have experienced violence (sexual, domestic, community violence, homicide bereavement).	\$806,900	In-kind	Ongoing	Boston residents	Institution	Boston Area Rape Crisis Center, SANE (Sexual Assault Nurse Examiner Program), Boston Public Health Commission, Violence Intervention Programs of BMC, BWH, and MGH, CHA's Homicide Bereavement Program, Louis D. Brown Peace Institute, Bowdoin Street Health Center, Equal Justice Legal Fellow in conjunction with Casa Myrna
Domestic Violence and Sexual Assault Victim Assistance	Provide emergency overnight stays for battered and/or sexually assaulted patients without safe shelter or home.	\$51,000	In-kind	Ongoing	Boston residents	Institution	Boston Area Rape Crisis Center, LGBTQ Domestic Violence Project, Jane Doe, Inc., The Network/La Red

*All amounts have been rounded to the nearest \$100

Program Name	Brief Program Description	FY16 Amount (\$)*	Cash, In-kind, or Both	1-time or Ongoing	Who is Served	Program Initiator	Partners
Advocate Education and Support Project	Provide support and education to advocates working with victims of domestic violence, sexual assault, and other forms of violence who themselves suffer from secondary traumatic stress.	\$50,000	In-kind	Ongoing	Boston-based advocates working with victims of violence	Institution	Eastern Bank, MA Office for Victim Assistance
Fenway Health Violence Recovery Program	Provide funding for counseling, support groups, advocacy, and referral services for Lesbian, Gay, Bisexual and Transgender (LGBT) victims of bias crime, domestic violence, sexual assault, and police misconduct.	\$5,000	Cash	One-time	Boston's LGBT community	Institution	Fenway Health
Bowdoin Street Health Center Office-Based Opioid Treatment	Begin planning to enable Bowdoin Street Health Center to link primary care and substance use treatment to support patients with ongoing substance use issues.	\$15,000	In-kind	One-time	Boston residents	Institution	Bowdoin Street Health Center
Youth Leadership Program	Develop program to empower youth from Bowdoin/Geneva neighborhood to develop leadership skills, prevent violence and create change in their community.	\$5,500	In-kind	Year 2 of 2- year pilot	Residents of Bowdoin/Geneva neighborhood	Institution	Bowdoin Street Health Center

*All amounts have been rounded to the nearest \$100

Program Name	Brief Program Description	FY16 Amount (\$)*	Cash, In-kind, or Both	1-time or Ongoing	Who is Served	Program Initiator	Partners
Youth and Adult Employment Programs	Summer employment and enrichment program for Bowdoin-Geneva neighborhood youth as part of Violence Intervention and Prevention Program. Provide Boston youth with paid summer jobs and internships at BIDMC. Host Boston Public School (BPS) students for job shadowing. Host adults in training internships and assist community-based organizations in coaching job applicants. Host Learn and Earn program at Bunker Hill Community College.	\$224,900	Cash & In-kind	Ongoing	Boston youth (BPS high school students and out-of-school youth) and adults seeking employment	Mayor/Institution	BPS, Boston Public Health Commission, Boston Youth Fund, St. Mary's Center for Women and Children, International Institute of Boston, Bottom Line, Career Collaborative, YMCA Training Inc., Sociedad Latina, ABCD, Boston Private Industry Council, Bowdoin Street Health Center, Bunker Hill Community College
Racially and Ethnically Diverse Leadership Development	Facilitate career growth and networking for multicultural professionals in Boston.	\$16,000	Cash & In-kind	Ongoing	Boston residents, including BIDMC employees	Institution	The Partnership

*All amounts have been rounded to the nearest \$100.

Program Name	Brief Program Description	FY16 Amount (\$)*	Cash, In-kind, or Both	1-time or Ongoing	Who is Served	Program Initiator	Partners
Access to Preventive Primary Care for Medically Underserved Communities	Provide outreach grants to community health centers to enable them to address identified community health needs and health disparities. The grants support education and programs for low-income, racially, ethnically, and linguistically diverse, and medically vulnerable Boston residents. Partner with community health centers to increase access to quality patient-centered medical homes that include primary care, mental health, substance use treatment, and oral health for individuals who are low-income, uninsured, and underinsured.	\$2,582,100	Cash	Ongoing	Low-income Boston residents. Particular focus on individuals who face barriers in health care access due to race, ethnicity, sexual orientation, gender identity, immigration status, and linguistic and literacy limitations.	Institution	Bowdoin Street Health Center, Charles River Community Health, The Dimock Center, Fenway Health, Sidney Borum Jr. Health Center, South Cove Community Health Center
Kit Clark Senior Services	Provide outreach, support, and care coordination for elderly residents of Dorchester.	\$45,000	In-kind	Ongoing	Low-income, vulnerable seniors in Dorchester	Institution	Bay Cove Human Services (Kit Clark Senior Services), Evercare
Wellness Center at Bowdoin Street Health Center	Provide staffing and support for health programs at the Wellness Center which includes an exercise studio, weight room, and demonstration kitchen. Promote healthy lifestyles and make physical activity and healthy eating more accessible in the Bowdoin/Geneva neighborhood.	\$29,100	In-kind	Ongoing	Residents of the Bowdoin/Geneva neighborhood	Institution	Bowdoin Street Health Center
Healthy Lives	Collaborate to keep Dorchester residents with complicated physical and behavioral health issues stable and in their community.	\$1,000	In-kind	Ongoing	Residents of Bowdoin/Geneva neighborhood	Institution/ Brookline Community Mental Health Center	Bowdoin Street Health Center, Brookline Community Mental Health Center

*All amounts have been rounded to the nearest \$100.

Program Name	Brief Program Description	FY16 Amount (\$)*	Cash, In-kind, or Both	1-time or Ongoing	Who is Served	Program Initiator	Partners
The Live and Learn Project	Provide funding to promote positive behavior change through education and the elimination of barriers to adopting healthier lifestyles by proactively reaching out to diabetic patients who are overdue for diabetes care services.	\$30,000	Cash	Ongoing	Boston residents, especially residents of Allston/Brighton	Institution	Charles River Community Health, Joslin Diabetes Center
Transgender Support Group	Provide a safe and supportive setting in which transgender individuals can work on voice modification as well address the psychological and social aspects of transitioning.	\$5,000	In-kind	Ongoing	Boston residents who identify as transgender or gender-variant	Institution	Butterfly Music Transgender Chorus of Boston
HIV Support Group	Provide support for individuals living with HIV and AIDS making difficult decisions regarding health insurance, housing, and more.	\$39,600	In-kind	Ongoing	Boston residents with HIV and AIDS	Institution	Atrius Heath, Massachusetts HIV Drug Assistance Program, Ryan White Dental Program, Mass Insurance Commission, Community Servings, AIDS Action Committee, AIDS Support Group of Cape Cod and Justice Resource Institute
Sobremesa: Symposium for bilingual, bicultural mental health clinicians	Host a quarterly symposium for Boston-based bilingual, bicultural mental health clinicians serving the Latino community to share resources and research and learn from experts in Cultural Psychiatry.	\$11,500	In-kind	Ongoing	Boston-based bilingual, bicultural mental health clinicians who work with Latino clients	Institution	Network of bilingual, bicultural mental health clinicians and outreach workers who serve the Latino community.

*All amounts have been rounded to the nearest \$100.

Program Name	Brief Program Description	FY16 Amount (\$)*	Cash, In-kind, or Both	1-time or Ongoing	Who is Served	Program Initiator	Partners
The Walking Club	Provide education on the health benefits of walking and walking kits with pedometers to Boston Public Schools (BPS). Thousands of BPS students, school staff, and adult residents of Boston are enrolled in the Walking Club.	\$29,400	In-kind	Ongoing	Boston residents with a focus on BPS students, their families, and teachers at the following schools: Bridge Boston, Brooke Curley, Dearborn STEM, Dorchester High, Edwards, Ellis Mendell, Excel Orient Heights, Frederick, Gardner Pilot, Hernandez, Hurley, Irving, Jackson/Mann, Kennedy, King, Lee, KIPP, Mario Umana, Match, McCormack, McKay, Ohrenberger, Orchard Gardens, Ostiguy, Perkins, Prescott, Roosevelt Upper, TechBoston, Timilty, UP Academy Holland, UP Academy Boston, Warren	Institution	Boston Public Schools, Boston Public Health Commission, Boston Red Sox, American Heart Association
Healthy Dorchester	Address racial and ethnic health disparities related to obesity and lack of access to affordable, healthy food by supporting farmers markets throughout Boston, engaging youth in urban gardening, and collaborating with corner store owners to stock fresh foods. Support community health center programs that provide Boston residents with nutrition education, access to healthy foods, and opportunities for physical activity.	\$50,000	In-kind	Ongoing	Boston residents, especially low-income residents, children, and racial/ethnic minorities. Farmers markets located in Allston, Allston Village, Jamaica Plain, Dorchester (Bowdoin-Geneva and Codman Square), Mattapan, East Boston, Roxbury (Dudley Square and Mission Hill), West Roxbury, Roslindale, and South Boston.	Institution/ Boston Public Health Commission	Boston Public Health Commission, Bowdoin Street Health Center, Ward's Berry Farm, The Food Project, Trustees of Reservations, Urban Farming Institute of Boston, Mayor's Office of Food Initiatives, Dorchester North WIC Office, Dorchester Community Food Co-op, Bowdoin Geneva Main Streets, Teen Center at St. Peter's, Gertrude E. Townsend Head Start, Dorchester Neighborhood Service Center, Dorchester Cares, The Williams Agency, Northwest Atlantic Marine Alliance, Healthcare Without Harm, Boston Farmers Markets

*All amounts have been rounded to the nearest \$100.

Program Name	Brief Program Description	FY16 Amount (\$)*	Cash, In-kind, or Both	1-time or Ongoing	Who is Served	Program Initiator	Partners
Active Living, Healthy Eating	Provide funding to spread creative, evidence-based practices at Charles River Community Health to increase the number of children, youth, and adults who are physically active and consume a healthy, balanced diet.	\$5,000	Cash	Ongoing	Boston residents, especially residents of Allston/Brighton	Institution	Charles River Community Health Center, Charlesview Apartments
Cancer Patient Navigator Network	Host a quarterly meeting of a city-wide Patient Navigator Network to support their work assisting cancer patients to obtain services.	\$900	In-kind	Ongoing	Cancer patient navigators in the city of Boston and patients	Institution	Boston Medical Center, Dana Farber Cancer Institute, Massachusetts General Hospital, Mattapan Community Health Center, MGH Chelsea, Neponset Health Center, Cambridge Health Alliance
Cancer Screening and Prevention	Provide funding to expand preventive cancer screenings for cervical, breast, and colorectal cancers.	\$5,000	Cash	One-time	Boston residents, especially residents of Allston/Brighton	Institution	Charles River Community Health

*All amounts have been rounded to the nearest \$100.

Program Name	Brief Program Description	FY16 Amount (\$)*	Cash, In-kind, or Both	1-time or Ongoing	Who is Served	Program Initiator	Partners
Boston Emergency Medical Services Station No. 16	Boston EMS Station No. 16, the base station and quarters for Ambulance #16 and Paramedic Unit #16, is located in facilities owned and maintained by BIDMC. Station facilities include garage, storage/mechanical rooms, and office/kitchen/living quarters to house Boston EMS equipment and personnel. Station No. 16's strategic location allows Boston EMS to reduce response times for medical emergencies and enhances its ability to protect the safety and health of Boston residents.	\$203,200	In-kind	Ongoing	Boston residents, especially residents of Longwood, Fenway, Mission Hill, and Roxbury	Institution	Boston Emergency Medical Services
Maintenance of Joslin Park and Public Bus Stops	Maintenance and upkeep of Joslin Park and five public bus stops adjacent to BIDMC Longwood campus.	\$32,800	In-kind	Ongoing	Boston residents	Institution	
BIDMC Enhanced Public Safety Investments	Collaborate with the Boston Police Department and State and Federal authorities to significantly enhance public safety on the BIDMC campus for Boston residents, in surrounding neighborhoods, and at the Bowdoin Street Health Center. These investments in highly trained law enforcement personnel and enhanced technology proactively and significantly reduce the risk of public safety threats, ensure swift diffusion of immediate threats, and provide heightened readiness.	\$1,073,700	In-kind	Ongoing	BIDMC community including patients, visitors, staff, and Boston residents in neighborhoods near BIDMC facilities	Institution	Boston Police Department, Massachusetts State Police, Suffolk County Sheriff's Department
Emergency Preparedness and Management	Provide trainings for Boston-based hospitals. Conduct emergency preparedness drills at BIDMC. The BIDMC emergency management team supported two major, planned events (Boston's July 4th celebration and Boston Marathon) and collaborated in twenty-one exercises or events which included city, state and/ or federal partners.	\$79,700	In-kind	Ongoing	Boston residents, neighborhoods, and hospitals	Institution/ Boston Public Health Commission	Boston Public Health Commission, MA Department of Public Health, Boston Police, Boston Fire, Boston Emergency Medical Services, Mayor's Office of Emergency Management, MASCO, Medical Intelligence Center, Bowdoin Street Health Center

*All amounts have been rounded to the nearest \$100.

Program Name	Brief Program Description	FY16 Amount (\$)*	Cash, In-kind, or Both	1-time or Ongoing	Who is Served	Program Initiator	Partners
Infectious Disease Screening, Treatment and Prevention	Provide funding for weekly infectious disease consultation in the community on HIV/HCV co-infection and care, with an emphasis on access to care, initiation and completion of HCV therapy.	\$10,000	Cash	Year 4 of 5-year commitment	Boston residents with HIV	Institution	Dimock Center, Liver Center
Community-Based Programs in Boston	Provide funding to community-based organizations for various community programs that benefit Boston residents, particularly those who are low-income, persons with disabilities, and racially and ethnically diverse communities.	\$49,500	Cash	Ongoing	Boston residents with a focus on those who are low-income, persons with disabilities, and racially and ethnically diverse communities.	Institution	ABCD, AIDS Action Committee, Boston Center for Independent Living, Community Servings, Faith-Based Cancer Disparities Network, Fenway Community Development Corporation, Fenway Health, GLAD, Greater Boston Food Bank, Greater Boston Interfaith Organization, Health Care for All, Health Care Without Harm, Hyde Square Task Force, Louis D. Brown Peace Institute, Mass League of Community Health Centers, Mission Hill Health Movement, Pine Street Inn, Sociedad Latina, YWCA Boston

*All amounts have been rounded to the nearest \$100.

Total: \$5,466,800*

*Based on rounded individual financial totals

MAINE MEDICAL CENTER	\$	300,989,720	
PORTLAND WATER DISTRICT			\$ 135,612,240
UNIVERSITY OF MAINE			\$ 97,185,500
CUMBERLAND COUNTY OF			\$ 70,727,890
PORTLAND HOUSING AUTHORITY	\$	58,908,580	
ECOMAINE	\$	56,191,010	
UNITED STATES GOVERNMENT			\$ 46,234,440
MERCY HOSPITAL	\$	45,318,560	
UNIVERSITY OF NEW ENGLAND	\$	38,259,900	
STATE OF MAINE			\$ 33,998,680
AFRICAN METHODIST EPIS ZION	\$	22,583,410	
PORTLAND MUSEUM OF ART	\$	20,637,080	
JHA ASSISTED LIVING INC	\$	18,569,700	
MAINE COLLEGE OF ART	\$	14,971,220	
THE PARK-DANFORTH	\$	12,828,400	
WAYNFLETE SCHOOL	\$	11,844,700	
ST IGNATIUS RESIDENCE OF THE	\$	11,236,700	
DIOCESAN BUREAU OF HOUSING	\$	10,816,800	
HFA HUD PROPERTIES LLC	\$	10,205,500	
COUNCIL INTERNATIONAL STUDY	\$	9,102,700	
HOME FOR AGED WOMEN	\$	8,798,450	
HOME FOR THE AGED	\$	8,454,700	
SHALOM HOUSE INC	\$	7,822,250	
CEDARS NURSING CARE	\$	7,766,500	
YOUNG MENS CHRISTIAN ASSOC OF	\$	6,601,400	
AVESTA HOUSING DEVELOPMENT	\$	6,409,600	
SALVATION ARMY THE	\$	6,352,250	
ST JOSEPH'S MANOR	\$	6,018,300	
SPURWINK SCHOOL	\$	5,083,260	
MASONIC TRUSTEES OF PORTLAND	\$	4,866,900	
PORTLAND VOA ELDERLY	\$	4,461,400	
GOODWILL INDUSTRIES OF MAINE	\$	3,989,000	
ALLEN AVENUE UNITARIAN	\$	3,866,000	
PREBLE STREET RESOURCE	\$	3,551,300	
BREAKWATER SCHOOL	\$	3,522,400	
MAINE HISTORICAL SOCIETY	\$	3,487,900	
GULF OF MAINE PROPERTIES INC	\$	3,463,900	
PORTLAND BOYS CLUB ASSOC	\$	3,291,200	
APOSTOLIC FAITH ASSEMBLY	\$	3,100,100	
EMC AFFORDABLE HOUSING	\$	3,017,100	
THE JEWISH COMMUNITY	\$	2,974,480	
BETH HACNESES ANSHE SFARD	\$	2,874,260	
BRACKETT MEMORIAL METHODIST	\$	2,805,560	
CHILDREN'S MUSEUM OF MAINE	\$	2,719,200	
ST JOSEPH'S CONVENT &	\$	2,398,700	
ROMAN CATHOLIC BISHOP OF	\$	2,385,700	
CATHOLIC CHARITIES MAINE	\$	2,355,100	
AMERICAN NATIONAL RED CROSS	\$	2,319,400	
IRISH HERITAGE CENTER	\$	2,296,100	
CENTRAL SQUARE BAPTIST CHURCH	\$	2,289,730	
FLORENCE HOUSE HOUSING	\$	2,283,100	
THE IRIS NETWORK	\$	2,133,200	
CHARISMATIC EPISCOPAL CHURCH	\$	2,018,000	
	\$	778,240,420	
	\$	16,856,687	Full Tax (if non-exempt)
	\$	4,214,172	25% of regular levy

Appendix D

List of City of Portland Nonprofits with Property Valuations above \$2M