

AGENDA
SPECIAL CITY COUNCIL MEETING
APRIL 9, 2018

1. City Council Meeting Agenda

Documents:

[CITY COUNCIL MEETING AGENDA 2018-04-09.PDF](#)

2. City Council Meeting Agenda & Packet

Documents:

[CITY COUNCIL MEETING AGENDA AND PACKET 2018-04-09.PDF](#)

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

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

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SPECIAL CITY COUNCIL MEETING
APRIL 9, 2018

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

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS

Arts in the Chamber, Yellow Tulip Founder Julia Hansen

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) March 19, 2018 Draft Regular City Council Meeting Minutes

PROCLAMATIONS:

Proc 30-17/18 Proclamation Recognizing National Service Day 2018 – Sponsored
(Tab 2) by Councilor Pious Ali.

APPOINTMENTS:

Order 175-17/18 Order Appointing Wardens and Ward Clerks for the 2018
(Tab 3) – Sponsored by Katherine L. Jones, City Clerk.

Warden	Ward Clerk	District/ Precinct
Denise Shames	Anne Rand	1-1
Carol Morrissette	Frank Spring	1-2
Fred O'Keefe	Reta Morrill	1-3
Dennis Martin	Heather Tanguay	2-1
Susan Litchman		2-2
Elaine Spring	Helen Hogle	3-1
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Constance Reagan	Tim Whitney	4-1
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Barbara Harvey	Ginny Fischer	5-1
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Five affirmative votes are required for passage after public comment.

**Order 176-17/18
(Tab 4)**

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Title 21-A MRS §503 requires that the municipal officers appoint elections clerks representing the parties every two years (even numbered years). This must be done by May 1. When the Wardens choose their workers from now through all elections that occur prior to June 12, 2020, they must exhaust this list before calling people to work who are not on the approved list. While the law requires at least two clerks be appointed for each polling place more than that are used. For small elections, there are four or five clerks. For larger elections, six to nine clerks are needed.

Included in the agenda backup is one list in alphabetical order, representing Democrats, Republicans, Green Independents and un-enrolled voters. The list represents a combination of those who have worked the polls in the past and those who are new. The parties are supposed to nominate election clerks by April 1. Except for the un-enrolled voters, most of the names on the list were nominated by the parties. Added to the list are the names of people who applied after that process.

In the most recent Legislative Session, the law was amended to allow the City to hire election clerks residing outside the community, but within the county. This is especially important in Portland, where it is difficult to find enough Republicans to meet the balance of party workers required by Statute. Every effort will be made to hire from within the City Limits, but when necessary, those living outside of Portland will be asked to work.

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**Order 177-17/18
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1. Develop a community greenhouse gas (GHG) emissions inventory
2. Set near- and long-term targets to reduce emissions
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Staff has recommended a joint planning project with the City of South Portland to develop complementary climate action plans for each city. The first step in this process is to establish an emissions reduction goal to plan for. The Sustainability and Transportation Committee has recommended the City adopt a goal to reduce greenhouse gas emissions community wide 80% by 2050.

As a next step in the planning process, staff members from Portland and South Portland have identified a number of experts on a variety of key planning areas to provide feedback to staff and consultants during the climate action planning process. These include: energy, housing, transportation, land use, and adaptation. It is anticipated that the group will meet four to six times throughout the process at key points for check in and to review drafts of the climate action plan. The South Portland City Council is being asked to recommend this same list. The list of appointees is included in the agenda backup.

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The Greater Portland Council of Governments (GPCOG) has requested nominations to its Regional Voice Committee. The committee is tasked with developing an annual policy agenda for the region for adoption by the Greater Portland Council of Government's General Assembly. Councilor Belinda Ray has agreed to be nominated for this committee. Her nomination will be considered by the GPCOG Executive Committee.

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CONSENT ITEMS:

**Order 179-17/18
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Pursuant to 21-A M.R.S.A. §626, the hour of poll opening must be set by the municipal officers. This is done for every election; the polls open at 7:00 A.M. and close at 8:00 P.M.

Notices are then posted in each district and at City Hall.

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BUDGET ITEMS:

Order 180-17/18 (Tab 8) Order Receiving and Referring City Manager's Fiscal Year 2019 Municipal Budget to the Finance Committee and Setting Date of Public Hearing on the Fiscal Year 2019 Municipal Budget and Fiscal Year 2019 Appropriation Resolve – Sponsored by Jon P. Jennings, City Manager.

Under this order the City Council receives the City Manager's proposed budget and refers it to the Finance Committee for review. The Finance Committee will review the budget starting on April 12 at 5:30 p.m. in Room 209.

The City Manager will present an overview of the budget followed by the Mayor's comments as required in the City Charter.

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COMMUNICATIONS:

RESOLUTIONS:

Resolve 9-17/18 (Tab 9) Resolution Adopting a Goal to Reduce Greenhouse Gas Emissions Citywide by 80 Percent by 2050 – Sponsored by the Sustainability and Transportation Committee, Councilor Spencer Thibodeau, Chair.

The Sustainability and Transportation Committee met on March 21, 2018 and voted (3-0) to forward this item to the City Council with a recommendation for passage.

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UNFINISHED BUSINESS:

ORDERS:

**Order 181-17/18
(Tab 10)**

Order Approving the Third Amendment to the Amended and Restated Lease with Ready Seafood Co. for Space in the Portland Ocean Terminal – Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.

The Economic Development Committee met on March 20, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

The City and Ready Seafood Company have had a Lease Agreement at the Maine State Pier since 2009 when Ready Seafood first opened at the Pier. Since that time, Ready Seafood has been an excellent partner with the City and requested a Lease extension for an additional five years, as well as additional leased space.

Amended Lease Terms: The proposed Third Amendment to the Ready Seafood Company Amended and Restated Lease is for an additional five-years through December 30, 2022.

It also increases leased space from 19,000 sq. ft. to 27,500 sq. ft. in 2018 and reduces the space to 24,000 during years 2019-2022.

During 2018 and 2019, the proposed Third Amendment also has a cumulative rent credit of up to \$150,000 based on Ready's expenditures for pier improvements. Annual lease payments are as follows (exclusive of rent credit):

<u>Lease Year</u>	<u>Annual Rent</u>	<u>Monthly Payment</u>
1/1/2018-12/31/2018	\$188,650.00	\$15,720.83
1/1/2019-12/31/2019	\$167,040.00	\$13,920.00
1/1/2020-12/31/2020	\$169,440.00	\$14,120.00
1/1/2021-12/31/2021	\$172,080.00	\$14,340.00
1/1/2022-12/31/2022	\$174,480.00	\$14,540.00

Parking: The proposed Third Amendment provides for no off-site parking, which formerly provided 10 spaces at the Thames Street gravel parking lot at an annual rate of \$10,000. The proposed Third Amendment provides for five (5) on-pier parking spaces for customer turnover parking, and four (4) overnight box truck parking spaces are provided.

Five affirmative votes are required for passage after public comment.

**Order 182-17/18
(Tab 11)**

Order Approving the Third Amendment to the Amended and Restated Lease with Bay Ferries, Limited for Ocean Gateway – Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.

The Economic Development Committee met on March 20, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

Bay Ferries returned to the Port of Portland in 2016 to operate the CAT ferry service between Yarmouth, Nova Scotia and Portland, Maine. The 2016 lease was a two-year lease with a single one-year renewal option. This proposed Third Amendment to Amended and Restated Lease is for that one-year renewal option for the 2018 Ferry Season.

Items of note in the proposed Third Amendment include:

Term: A one-year renewal through 2018 is requested, with one additional one-year renewal through 2019 based upon mutually agreeable terms.

Rent/Fee Schedule: Staff is proposing no changes to the rent and fee schedule included in the Amended and Restated Lease, with the exception of deleting parking fees, due to investments to be made by Bay Ferries as noted below for Custom Border and Protection.

Parking: No employee parking will be provided at the City owned Thames Street parking lot with the proposed amendments.

Custom Border and Protection (CBP): CBP is requiring upgrades to Federal security equipment to continue ferry service in 2018.

The City and Bay Ferries are working with CBP and their preferred contractors to upgrade security equipment at Ocean Gateway. Bay Ferries will cover all costs associated with Federal security equipment investments, estimated in the six figures.

2018 Season Schedule: See Exhibit D in the agenda backup for the 2018 ferry season schedule.

Revenue expected to the City for the 2018 Ferry Season is estimated at approximately \$190,000, down from 2017 at \$200,000, primarily because of the late start to the season this year.

Five affirmative votes are required for passage after public comment.

**Order 183-17/18
(Tab 12)**

**Order Approving Airport Improvement Program Grant - Sponsored
by Jon P. Jennings, City Manager.**

The Federal Aviation Administration issues grants to fund eligible safety and capacity projects at airports nationwide through the Airport Improvement Program (AIP). This program is funded through federal taxes on commercial air fares and on aviation fuel taxes. The amount allocated to each airport is based on the annual number of enplaned commercial passengers the airport handled in the prior calendar year. This year the Portland International Jetport has AIP entitlement funding totaling \$3.88 million based upon 886,343 enplaned passengers in 2016. In federal Fiscal Year 2018 a single project has been planned which includes: the second phase of apron reconstruction at gate 1, construction of a new apron along the northwest end of the existing terminal apron, and construction of snow shoulders along the north end of Taxiway C. These items will be procured under a single construction contract with a total estimated cost for the project of \$4.313 million.

The AIP funding amount for this project of \$3.88 million is 90% of the total cost for the project. The balance is covered locally through the Jetport's operating budget and through state funding of up to 5% of project costs.

Five affirmative votes are required for passage after public comment.

**Order 184-17/18
(Tab 13)**

Order Rescinding Order 144-17/18, Authorizing Waterfront Concert Festivals Presented by Waterfront Concerts, LLC on the Maine State Pier – Sponsored by Danielle West-Chuhta, Corporation Counsel.

On February, 5, 2018, the City Council approved Order 144-17/18, which authorized Waterfront Concerts, LLC to use the Maine State Pier for summer concerts. Prior to this, Alexander Gray, Waterfront Concerts, LLC's owner and sole member/manager, was charged with and pleaded guilty to a charge of domestic violence assault.

On April 1, 2018, the victim of that assault emailed the City Manager to introduce herself and provide a link to an open letter describing her experience as a victim of the aforementioned domestic violence. As a result of this letter, members of the City Council requested that Corporation Counsel sponsor and prepare an Order Rescinding the Granting of Order 144-17/18 be added to the April 9, 2018 Council agenda for consideration.

In the alternative, the City Manager is recommending that, instead of being rescinded, Order 144 be amended to award the Waterfront Concerts Festival license to a different entity.

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

**Order 185-17/18
(Tab 14)**

Order Approving the Agreement between Portland and Maine Department of Transportation Re: Paving Valley Street between Park Avenue and St. John Street- Sponsored by Jon P. Jennings, City Manager.

This order approves a two-party agreement that allows the Maine Department of Transportation to undertake the Valley Street Cyclical Pavement Resurfacing (CPR) Project in 2018.

Approving and signing this agreement confirms the City's intent to construct this project and pay 43.8% of the total cost for paving Valley Street between Park Avenue and St. John Street,

The estimated total cost for this project is \$180,130.00. The City's share would be \$78,880.00. Maine Department of Transportation's share would be \$101,250.0.

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

**Order 186-17/18
(Tab 15)**

Order Approving the Agreement between Portland and Maine Department of Transportation Re: Paving Park Avenue between St. John Street and Interstate 295 – Sponsored by Jon P. Jennings, City Manager.

This order approves a two-party agreement that allows Maine Department of Transportation to undertake the Park Avenue Cyclical Pavement Resurfacing (CPR) Project in 2018.

Approving and signing this agreement would confirm the City's intent to construct this project and pay 71.6% of the total cost for paving Park Avenue between St. John Street and Interstate 295.

The estimated total cost for this project is \$123,800. The City's share would be \$88,700. Maine Department of Transportation's share would be \$35,100.

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

**Order 187-17/18
(Tab 16)**

Order Authorizing General Obligation Bonds to Finance a Portion of the City's Fiscal Year 2019 Capital Improvement Program in an Amount not to Exceed \$31,648,595 – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr. Chair.

The FY19-FY23 Capital Improvement Plan ("CIP") has been in development since summer 2017 and is being reviewed by the Finance Committee since their first meeting of 2018. The FY19 Capital Improvement Plan calls for \$15.5M of new bond authorization for general fund CIP projects and \$16.1M of new bond authorization for sewer and stormwater CIP projects.

Assuming recommendation of the FY19 CIP by the Finance Committee the CIP will be appearing for approval by the full City Council on April 18, 2018. Three orders are required, one authorizing the FY19 CIP bonds, a second appropriating the proceeds, and a third and final order appropriating excess fund balance for several projects. A complete listing of the projects being authorized is included in the agenda backup.

The City Charter requires the City Manager to prepare a five (5) year rolling capital improvement plan for annual presentation to the city council. Approval of these orders is a critical component of the one-year CIP. City staff is working towards earlier approval of the CIP (last year's CIP was approved in spring 2017).

Earlier CIP approval allows the City to get projects out to bid sooner before many of the best contractors have already filled calendars with spring, summer and fall work.

For the past several fiscal years, the CIP borrowings have been designed to ensure no increases to the overall City budget for debt service. Due to an escalating backlog of City capital maintenance, the City manager has pushed forward with a recommendation of an additional \$5M of general fund capital improvement borrowing in the FY19 CIP.

This additional general fund borrowing will trigger a 5 to 6 cent increase in the mil rate beginning in FY20, depending on the interest rates obtained when funds are borrowed in spring 2018.

Approval of the FY19 CIP will allow staff to move forward immediately with the included projects, including many City, School and Sewer/Stormwater projects which are slated to begin during 2018.

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

**Order 188-17/18
(Tab 17)**

Order Appropriating Bond Proceeds and Unassigned Fund Balance in an Amount not to Exceed \$34,703,595 for the City's Fiscal Year 2019 Capital Improvement Program – Sponsored by Jon P. Jennings, City Manager.

This is a companion order to Order 187-17/18 above.

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

AMENDMENTS:

**Order 189-17/18
(Tab 18)**

Amendment to Portland City Code Re: Bike Share Ordinance – Sponsored by the Sustainability and Transportation Committee, Councilor Spencer Thibodeau, Chair.

The Sustainability and Transportation Committee met on March 21, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

The draft Bike Share Ordinance proposes a framework to permit and regulate bike share systems in Portland. A tiered system of street occupancy permit fees is proposed to be tied to the number of bicycles within a bike share system and its configuration: Station-based or Stationless. Stationless systems can create more of a burden on enforcement so the per bike street occupancy permit fee is proposed to be higher than for Station-based systems, which provide more structured bicycle parking at specific locations. It is intended for the fees to be similar in total for each type of system for systems with a similar number of bicycles.

To mitigate the anticipated impact on public bicycle parking, it is proposed to have a Bicycle Parking Mitigation provision requiring Stationless system operators contribute to the amount of bicycle parking available in Portland (totaling 10% of the number of bicycles within their system).

The proposed Sidewalk and Street Occupancy Permit Fee structure is as follows:

Station-less Systems (or Hybrid systems not meeting 50% docking point threshold):

Initial Annual Permit Fee, per operator per calendar year:

Less than 250 bicycles	\$1500
251 to 500 bicycles	\$2500
More than 500 bicycles	\$ 500 per every additional 250 bicycles or fraction thereof

Annual Renewal Fee (Station-less Systems), per operator per calendar year:

Less than 250 bicycles	\$1000
251 to 500 bicycles	\$2000
More than 500 bicycles	\$ 250 per every additional 250 bicycles or fraction thereof

Station-based/Hybrid Systems (Station-based systems must provide at least 50% as many docking points as bikes):

Initial Annual Permit Fee, per operator per calendar year:

Less than 250 bicycles	\$ 500
251 to 500 bicycles	\$1000
More than 500 bicycles	\$ 250 per every additional 250 bicycles or fraction thereof

Plus \$50 per approved docking station.

Annual Renewal Fee, per operator per calendar year:

Less than 250 bicycles	\$ 500
251 to 500 bicycles	\$1000
More than 500 bicycles	\$ 250 per every additional 250 bicycles or fraction thereof

Plus \$25 per approved docking station.

Section 25-31 of the draft ordinance in its elements:

- defines Bike Sharing Systems;
- delegates the authority to develop regulations of the systems to the City Manager including setting insurance and bonding requirements, specifying where parking of bicycles as part of a system is allowed and not allowed and other provisions in sub-section (c) “to ensure the safe and effective operation of such a system”;
- allows the City Manager to set a cap on the number of systems operating within the city; and
- calls for annual review of the regulations
- establishes that operating a system without a permit is a violation of city ordinance.

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

REQUEST FOR EXECUTIVE SESSION:

**Discussion with Corporation Counsel Re: Legal Rights and Duties Re:
Waterfront Concerts Pursuant to 1 M.R.S. §405(6)(E) – Sponsored by
Danielle West-Chuhta, Corporation Counsel.**

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1/1/2018-12/31/2018	\$188,650.00	\$15,720.83
1/1/2019-12/31/2019	\$167,040.00	\$13,920.00
1/1/2020-12/31/2020	\$169,440.00	\$14,120.00
1/1/2021-12/31/2021	\$172,080.00	\$14,340.00
1/1/2022-12/31/2022	\$174,480.00	\$14,540.00

Parking: The proposed Third Amendment provides for no off-site parking, which formerly provided 10 spaces at the Thames Street gravel parking lot at an annual rate of \$10,000. The proposed Third Amendment provides for five (5) on-pier parking spaces for customer turnover parking, and four (4) overnight box truck parking spaces are provided.

Five affirmative votes are required for passage after public comment.

**Order 182-17/18
(Tab 11)**

Order Approving the Third Amendment to the Amended and Restated Lease with Bay Ferries, Limited for Ocean Gateway – Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair.

The Economic Development Committee met on March 20, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

Bay Ferries returned to the Port of Portland in 2016 to operate the CAT ferry service between Yarmouth, Nova Scotia and Portland, Maine. The 2016 lease was a two-year lease with a single one-year renewal option. This proposed Third Amendment to Amended and Restated Lease is for that one-year renewal option for the 2018 Ferry Season.

Items of note in the proposed Third Amendment include:

Term: A one-year renewal through 2018 is requested, with one additional one-year renewal through 2019 based upon mutually agreeable terms.

Rent/Fee Schedule: Staff is proposing no changes to the rent and fee schedule included in the Amended and Restated Lease, with the exception of deleting parking fees, due to investments to be made by Bay Ferries as noted below for Custom Border and Protection.

Parking: No employee parking will be provided at the City owned Thames Street parking lot with the proposed amendments.

Custom Border and Protection (CBP): CBP is requiring upgrades to Federal security equipment to continue ferry service in 2018.

The City and Bay Ferries are working with CBP and their preferred contractors to upgrade security equipment at Ocean Gateway. Bay Ferries will cover all costs associated with Federal security equipment investments, estimated in the six figures.

2018 Season Schedule: See Exhibit D in the agenda backup for the 2018 ferry season schedule.

Revenue expected to the City for the 2018 Ferry Season is estimated at approximately \$190,000, down from 2017 at \$200,000, primarily because of the late start to the season this year.

Five affirmative votes are required for passage after public comment.

**Order 183-17/18
(Tab 12)**

**Order Approving Airport Improvement Program Grant - Sponsored
by Jon P. Jennings, City Manager.**

The Federal Aviation Administration issues grants to fund eligible safety and capacity projects at airports nationwide through the Airport Improvement Program (AIP). This program is funded through federal taxes on commercial air fares and on aviation fuel taxes. The amount allocated to each airport is based on the annual number of enplaned commercial passengers the airport handled in the prior calendar year. This year the Portland International Jetport has AIP entitlement funding totaling \$3.88 million based upon 886,343 enplaned passengers in 2016. In federal Fiscal Year 2018 a single project has been planned which includes: the second phase of apron reconstruction at gate 1, construction of a new apron along the northwest end of the existing terminal apron, and construction of snow shoulders along the north end of Taxiway C. These items will be procured under a single construction contract with a total estimated cost for the project of \$4.313 million.

The AIP funding amount for this project of \$3.88 million is 90% of the total cost for the project. The balance is covered locally through the Jetport's operating budget and through state funding of up to 5% of project costs.

Five affirmative votes are required for passage after public comment.

**Order 184-17/18
(Tab 13)**

Order Rescinding Order 144-17/18, Authorizing Waterfront Concert Festivals Presented by Waterfront Concerts, LLC on the Maine State Pier – Sponsored by Danielle West-Chuhta, Corporation Counsel.

On February, 5, 2018, the City Council approved Order 144-17/18, which authorized Waterfront Concerts, LLC to use the Maine State Pier for summer concerts. Prior to this, Alexander Gray, Waterfront Concerts, LLC's owner and sole member/manager, was charged with and pleaded guilty to a charge of domestic violence assault.

On April 1, 2018, the victim of that assault emailed the City Manager to introduce herself and provide a link to an open letter describing her experience as a victim of the aforementioned domestic violence. As a result of this letter, members of the City Council requested that Corporation Counsel sponsor and prepare an Order Rescinding the Granting of Order 144-17/18 be added to the April 9, 2018 Council agenda for consideration.

In the alternative, the City Manager is recommending that, instead of being rescinded, Order 144 be amended to award the Waterfront Concerts Festival license to a different entity.

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

**Order 185-17/18
(Tab 14)**

Order Approving the Agreement between Portland and Maine Department of Transportation Re: Paving Valley Street between Park Avenue and St. John Street- Sponsored by Jon P. Jennings, City Manager.

This order approves a two-party agreement that allows the Maine Department of Transportation to undertake the Valley Street Cyclical Pavement Resurfacing (CPR) Project in 2018.

Approving and signing this agreement confirms the City's intent to construct this project and pay 43.8% of the total cost for paving Valley Street between Park Avenue and St. John Street,

The estimated total cost for this project is \$180,130.00. The City's share would be \$78,880.00. Maine Department of Transportation's share would be \$101,250.0.

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

**Order 186-17/18
(Tab 15)**

Order Approving the Agreement between Portland and Maine Department of Transportation Re: Paving Park Avenue between St. John Street and Interstate 295 – Sponsored by Jon P. Jennings, City Manager.

This order approves a two-party agreement that allows Maine Department of Transportation to undertake the Park Avenue Cyclical Pavement Resurfacing (CPR) Project in 2018.

Approving and signing this agreement would confirm the City's intent to construct this project and pay 71.6% of the total cost for paving Park Avenue between St. John Street and Interstate 295.

The estimated total cost for this project is \$123,800. The City's share would be \$88,700. Maine Department of Transportation's share would be \$35,100.

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

**Order 187-17/18
(Tab 16)**

Order Authorizing General Obligation Bonds to Finance a Portion of the City's Fiscal Year 2019 Capital Improvement Program in an Amount not to Exceed \$31,648,595 – Sponsored by the Finance Committee, Councilor Nicholas M. Mavodones, Jr. Chair.

The FY19-FY23 Capital Improvement Plan ("CIP") has been in development since summer 2017 and is being reviewed by the Finance Committee since their first meeting of 2018. The FY19 Capital Improvement Plan calls for \$15.5M of new bond authorization for general fund CIP projects and \$16.1M of new bond authorization for sewer and stormwater CIP projects.

Assuming recommendation of the FY19 CIP by the Finance Committee the CIP will be appearing for approval by the full City Council on April 18, 2018. Three orders are required, one authorizing the FY19 CIP bonds, a second appropriating the proceeds, and a third and final order appropriating excess fund balance for several projects. A complete listing of the projects being authorized is included in the agenda backup.

The City Charter requires the City Manager to prepare a five (5) year rolling capital improvement plan for annual presentation to the city council. Approval of these orders is a critical component of the one-year CIP. City staff is working towards earlier approval of the CIP (last year's CIP was approved in spring 2017).

Earlier CIP approval allows the City to get projects out to bid sooner before many of the best contractors have already filled calendars with spring, summer and fall work.

For the past several fiscal years, the CIP borrowings have been designed to ensure no increases to the overall City budget for debt service. Due to an escalating backlog of City capital maintenance, the City manager has pushed forward with a recommendation of an additional \$5M of general fund capital improvement borrowing in the FY19 CIP.

This additional general fund borrowing will trigger a 5 to 6 cent increase in the mil rate beginning in FY20, depending on the interest rates obtained when funds are borrowed in spring 2018.

Approval of the FY19 CIP will allow staff to move forward immediately with the included projects, including many City, School and Sewer/Stormwater projects which are slated to begin during 2018.

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

**Order 188-17/18
(Tab 17)**

Order Appropriating Bond Proceeds and Unassigned Fund Balance in an Amount not to Exceed \$34,703,595 for the City's Fiscal Year 2019 Capital Improvement Program – Sponsored by Jon P. Jennings, City Manager.

This is a companion order to Order 187-17/18 above.

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

AMENDMENTS:

**Order 189-17/18
(Tab 18)**

Amendment to Portland City Code Re: Bike Share Ordinance – Sponsored by the Sustainability and Transportation Committee, Councilor Spencer Thibodeau, Chair.

The Sustainability and Transportation Committee met on March 21, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

The draft Bike Share Ordinance proposes a framework to permit and regulate bike share systems in Portland. A tiered system of street occupancy permit fees is proposed to be tied to the number of bicycles within a bike share system and its configuration: Station-based or Stationless. Stationless systems can create more of a burden on enforcement so the per bike street occupancy permit fee is proposed to be higher than for Station-based systems, which provide more structured bicycle parking at specific locations. It is intended for the fees to be similar in total for each type of system for systems with a similar number of bicycles.

To mitigate the anticipated impact on public bicycle parking, it is proposed to have a Bicycle Parking Mitigation provision requiring Stationless system operators contribute to the amount of bicycle parking available in Portland (totaling 10% of the number of bicycles within their system).

The proposed Sidewalk and Street Occupancy Permit Fee structure is as follows:

Station-less Systems (or Hybrid systems not meeting 50% docking point threshold):

Initial Annual Permit Fee, per operator per calendar year:

Less than 250 bicycles	\$1500
251 to 500 bicycles	\$2500
More than 500 bicycles	\$ 500 per every additional 250 bicycles or fraction thereof

Annual Renewal Fee (Station-less Systems), per operator per calendar year:

Less than 250 bicycles	\$1000
251 to 500 bicycles	\$2000
More than 500 bicycles	\$ 250 per every additional 250 bicycles or fraction thereof

Station-based/Hybrid Systems (Station-based systems must provide at least 50% as many docking points as bikes):

Initial Annual Permit Fee, per operator per calendar year:

Less than 250 bicycles	\$ 500
251 to 500 bicycles	\$1000
More than 500 bicycles	\$ 250 per every additional 250 bicycles or fraction thereof

Plus \$50 per approved docking station.

Annual Renewal Fee, per operator per calendar year:

Less than 250 bicycles	\$ 500
251 to 500 bicycles	\$1000
More than 500 bicycles	\$ 250 per every additional 250 bicycles or fraction thereof

Plus \$25 per approved docking station.

Section 25-31 of the draft ordinance in its elements:

- defines Bike Sharing Systems;
- delegates the authority to develop regulations of the systems to the City Manager including setting insurance and bonding requirements, specifying where parking of bicycles as part of a system is allowed and not allowed and other provisions in sub-section (c) “to ensure the safe and effective operation of such a system”;
- allows the City Manager to set a cap on the number of systems operating within the city; and
- calls for annual review of the regulations
- establishes that operating a system without a permit is a violation of city ordinance.

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

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

REQUEST FOR EXECUTIVE SESSION:

**Discussion with Corporation Counsel Re: Legal Rights and Duties Re:
Waterfront Concerts Pursuant to 1 M.R.S. §405(6)(E) – Sponsored by
Danielle West-Chuhta, Corporation Counsel.**

Tab 1 - 4-9-18

Draft minutes pending City Council approval.

IN COUNCIL REGULAR MEETING MARCH 19, 2018 VOL.133 PAGE 195

ROLL CALL: Mayor Strimling called the meeting to order at 5:34 P.M. All Councilors were present.

ANNOUNCEMENTS:

RECOGNITIONS:

“Arts in the Chamber”, Kyle Dubay (Photographer/MECA – Raffi)

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Ray and seconded by Councilor Ali to approve the minutes of March 5, 2018 Regular City Council Meeting. In discussion Councilor Cook proposed the minutes be posted as “Draft” minutes until Council approval. Passage 9-0.

PROCLAMATIONS:

Proc 28-17/18 Proclamation Honoring Laurence Smith, Jr., Police Department, as Employee of the Month for February 2018 – Sponsored by Mayor Ethan K. Strimling.

Mayor Strimling entertained a motion to take up a non-agenda proclamation item. Motion was made by Councilor Ray and seconded by Councilor Costa to take up the non-agenda proclamation. Unanimous consent given.

Proc 29-17/18 Proclamation Recognizing and Celebrating The National Public Health Week, April 2-8, 2018– Sponsored by Mayor Ethan K. Strimling.

APPOINTMENTS:

CONSENT ITEMS:

Order 171-17/18 Order Declaring June 16, 2018 The Pride Portland! Parade and Festival – Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Costa and seconded by Councilor Batson for passage of consent item. Passage 9-0.

LICENSES:

Order 172-17/18 **Order Granting Municipal Officers' Approval of Definitive Brewing LLC dba Definitive Brewing Company. Application for a Brewery with Outdoor Dining on Private Property at 35 Industrial Way – Sponsored by Michael Russell, Director of Permitting and Inspections Department.**

Motion was made by Councilor Cook and seconded by Councilor Batson for passage. Passage 9-0.

Order 173-17/18 **Order Granting Municipal Officers' Approval of Portland Norwich Group LLC dba Hotel Portland. Application for a Class I-A Hotel 41+ Rooms with Outdoor Dining on Private Property at 158 Fore Street - Sponsored by Michael Russell, Director of Permitting and Inspections Department.**

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

BUDGET ITEMS:

COMMUNICATIONS:

UNFINISHED BUSINESS:

Mayor Strimling requested to take **Order 169-17/18** out of order. There was no objection by Council.

Order 169-17/18 **Order Amending Traffic Schedule Re: Unrestricted to Time-Restricted Parking on Kennebec Street – Sponsored by Jon P. Jennings, City Manager.**

Motion was made by Councilor Mavodones and seconded by Mayor Strimling to take up discussion.

Motion was made by Mayor Strimling and seconded by Councilor Mavodones to postpone until April 18, 2018 City Council meeting. Passage to postpone. 8-1 (Thibodeau).

IN COUNCIL REGULAR MEETING MARCH 19, 2018 VOL.133 PAGE 197

ORDERS:

Taken out of order.
Order 174-17/18 Order Authorizing Sale and City Lease Back of 44 Hanover Street – Sponsored by the Economic Development Committee, Councilor Justin Costa, Chair. First read.

Motion was made by Councilor Costa and seconded by Councilor Batson to postpone second read to April 18, 2018 City Council meeting.
Passage to postpone second read. 9-0.

AMENDMENTS:

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

RESOLUTIONS:

Resolve 8-17/18 Resolution Adopting the Fiscal Year 2019 Annual Action Plan Including Appropriations for Community Development Block Grant Program, HOME Program, and Emergency Solutions Grant Program and Certifications Pertaining Thereto – Sponsored by Jon P. Jennings, City Manager. First read.

Councilor Ali disclosed he served on the Greater Portland YMCA and has confirmed with City Corporation Counsel there is no conflict of interest based on CDBG rules; there will be further review to ensure participation in vote.

MAYOR'S COMENTS ON THE CONSOLIDATED HOUSING AND COMMUNITY DEVELOPMENT ANNUAL ACTION PLAN:

Motion was made by Councilor Ray and seconded by Councilor Costa to adjourn. Passage 9-0, 8:27 P.M.

A TRUE COPY.

Carolyn M. Dorr, Deputy City Clerk

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

*Proc 30-17/18
Tab 2 4-9-18*

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

**PROCLAMATION RECOGNIZING
NATIONAL SERVICE DAY 2018**

WHEREAS, service to others is a hallmark of the American character, and central to how we meet our challenges; and

WHEREAS, national service expands economic opportunity by creating more sustainable, resilient communities and providing education, career skills, and leadership abilities for those who serve; and

WHEREAS, AmeriCorps and Senior Corps participants serve in more than 50,000 locations across the country, bolstering the civic, neighborhood, and faith-based organizations that are so vital to our economic and social well-being; and

WHEREAS, national service participants increase the impact of the organizations they serve, both through their direct service and by managing millions of additional volunteers; and

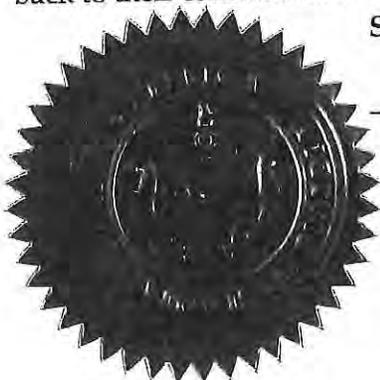
WHEREAS, national service represents a unique public-private partnership that invests in community solutions and leverages non-federal resources to strengthen community impact and increase the return on taxpayer dollars; and

WHEREAS, national service participants demonstrate commitment, dedication, and patriotism by making an intensive commitment to service, a commitment that remains with them in their future endeavors; and

WHEREAS, the Corporation for National and Community Service shares a priority with local leaders nationwide to engage citizens, improve lives, and strengthen communities; and is joining with the National League of Cities, the National Association of Counties, Cities of Service, and local leaders across the country for National Service Recognition Day on April 3, 2018.

THEREFORE, BE IT RESOLVED that I, Ethan K. Strimling, Mayor of the City of Portland, Maine and the members of the Portland City Council do hereby proclaim April 3, 2018, as National Service Recognition Day, and encourage residents to recognize the positive impact of national service in our community, to thank those who serve; and to find ways to give back to their communities.

Signed and sealed this 9th day of April 2018



Mayor Ethan Strimling
City of Portland Maine

*Order 195-17/18
Tab 3 4-9-18*

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER APPOINTING WARDENS AND WARD CLERKS FOR 2018

ORDERED, that the following persons are hereby appointed as Wardens and Ward Clerks for 2018:

Warden	Ward Clerk	District/Precinct
Denise Shames	Anne Rand	1-1
Carol Morrissette	Frank Spring	1-2
Fred O'Keefe	Reta Morrill	1-3
Dennis Martin	Heather Tanguay	2-1
Susan Litchman		2-2
Elaine Spring	Helen Hogle	3-1
Dale Kinney	Eurlene Stuart	3-2
Constance Reagan	Tim Whitney	4-1
Curtis Powers	Steve Kelly	4-2
Barbara Harvey	Ginny Fischer	5-1
George Smythe	Edmond Szalajeski	5-2

*Order 176-17/18
Tab 4 4-9-18*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

ORDER APPOINTING ELECTION CLERKS

ORDERED, that the persons on the attached list are hereby appointed as Election Clerks for a term beginning on May 1, 2018 and expiring April 30, 2020.



Office of the City Clerk
Katherine L. Jones, CCM

MEMORANDUM

TO: Mayor Strimling and Members of the Portland City Council
FROM: Katherine L. Jones, City Clerk
DATE: March 20, 2018
RE: Appointments of Election Clerks for 2018 – 2020

21-A MRSA § 503 requires that the municipal officers appoint election clerks representing the parties every two years (even numbered years). This must be done by May 1. When the Wardens choose their workers from now through all elections that occur prior to June 12, 2020, they must exhaust this list before calling people to work who are not on the approved list. While the law requires at least two clerks be appointed for each polling place, we use many more than that. For relatively small elections, we have four or five. For larger elections, six to nine are needed.

I am attaching one list in alphabetical order, representing Democrats, Republicans, Green Independents and Un-enrolled voters. The list represents a combination of those who have worked the polls in the past and those who are brand new. The parties are supposed to nominate election clerks by April 1. Except for the Un-enrolled voters most of the names on the attached lists were nominated by the parties, and I have added to those lists the names of people who applied after that process.

In the most recent Legislative Session, the law was amended to allow us to hire election clerks residing outside the community, but within the county. This is especially important in Portland, where it is difficult to find enough Republicans to meet the balance of party workers required by Statute. Every effort will be made to hire from within the City Limits, but when necessary, those living outside of Portland will be asked to work.

LAST NAME	FIRST NAME	POLITICAL PARTY
Abbott	Laura	Democrat
Abercrombie	Susan	Republican
Albert	Helene	Democrat
Albert	Linda	Democrat
Allen	Lisa	Democrat
Amabile	Donna	Independent
Amabile	Lisa	Republican
Amoroso	Marilyn	Republican
Anderson	Brenda	Republican
Anderson	Helen	Democrat
Anderson	Isabel	Democrat
Anderson	Mary	Democrat
Angelone	Jennifer	Democrat
Ardell	Randall	Democrat
Aron	Jean	Democrat
Atkinson	Donald	Democrat
Atkinson	Linda	Democrat
Baker	Harlan	Democrat
Banks	Patrick	Democrat
Barkley	Jill	Democrat
Barrieau	Therese	Republican
Benavides	Julie	Democrat
Beote	Amy	Independent
Berkman	Susan	Democrat
Berman	Ilene	Democrat
Blais	Andrew	Republican
Blais	James	Democrat
Blauvelt	Christine	Democrat
Boisvert	Doris	Democrat
Bore	Patrick	Republican
Borton	Cameron	Democrat
Borton	Joan	Democrat
Brockman	Lucille	Independent
Brogan	Helene	Republican
Brooks	Sandra	Republican

Brown	Christopher	Democrat
Bunn	Teresa	Democrat
Caiola	Jacqueline	Unenrolled
Carlson	James	Democrat
Carter	Rose	Republican
Cartwright	Corinne	Republican
Castle	Paul	Republican
Chalmers	Nancy	Democrat
Chandler	Anita	Democrat
Charles	Nora	Democrat
Chase	M. Bridget	Democrat
Chasse	Patricia	Democrat
Chesebro	Jane	Republican
Chesebro Jr	Robert	Republican
Chestnutt	Dylan	Unenrolled
Christian	Jennifer	Democrat
Clark	Diane	Republican
Clark	Robin	Republican
Coggins	Laurie	Democrat
Colby	Lynn	Republican
Cole	Jack	Democrat
Commerford	Darren	Democrat
Connolly	Marie	Republican
Conroy	Anne	Democrat
Cook	Wanda	Republican
Cote	Amanda	Unenrolled
Coyne	Jo	Democrat
Crabill	John (Harold)	Democrat
Cramton	Sarah	Republican
Crosby	Nancy	Republican
Croston	Patricia	Democrat
Curley	Ruth	Republican
Curley	William	Republican
Cyr	Elizabeth	Republican
Cyr	Louis	Democrat
Dacey	Beverly	Unenrolled
Dacey	Robert	Republican
Dahl	Claire	Democrat
Delay	Caroline	Democrat
Depoy		
Warren	Samantha	Republican

Desrochers	Rhonda	Republican	Green	Katherine	Republican
Dexter	Marcia	Republican	Guerin	Penny	Unenrolled
Diller	Claudia	Democrat	Haigh	Julia	Unenrolled
DiPaolo	Timothy	Democrat	Haley	Connie	Republican
Dongo	Geraldine	Democrat	Harding	Alicia	Democrat
Duddy	Elizabeth	Democrat			Green
Dulac	Josephine	Democrat	Harper	William	Independent
Duncan	Gayle	Unenrolled	Hartley	Kim	Democrat
Dunn	Mary	Democrat	Harvey	Barbara	Republican
Dyer Blake	Nanette	Democrat	Harvey	Denise	Republican
Edwards	Shirley	Democrat	Hatch	Clifford	Republican
Elliman	Tom	Republican	Hayden	Carol	Democrat
Erkkinen	Porter	Republican	Heal	Colleen	Unenrolled
Esposito	Sally	Democrat	Heal	Mary Jo	Democrat
		Green	Healy	Joan	Democrat
Estas	Judith	Independent	Higgins	Cheryl	Unenrolled
		Green	Hirsch	Geraldine	Democrat
Farr	Janet	Independent	Hirsch	Alan	Democrat
Farr	Marcia	Republican	Hochadel	Joseph	Democrat
Fazio	Joseph	Unenrolled	Hodson	Caroline	Democrat
Fecteau	Katherine	Unenrolled	Hoglund	Helen	Republican
Fernald	David	Republican	Holmes	Leslie	Republican
Fernald	Mary	Republican	Hoppin	Barbara	Democrat
Ferrante	Susan	Democrat	Hughes	Robert	Republican
Fieldsend	Vondelle	Unenrolled	Hunter	Leila	Democrat
Fineberg	Abraham	Democrat	Iezzi	Cynthia	Republican
Fischer	Virginia	Unenrolled	Ingraham	Sarah	Democrat
Fitzgerald	Matthew	Unenrolled	Innes	Margaret	Democrat
Foley	Rebecca	Republican	Intharakunh		
Frank	Halsey	Republican	a	Panithida	Unenrolled
Friedman	Karen	Democrat		Bessie	
Gallant	Francis	Republican	Johnson	(Betty)	Republican
Garfield	Susan	Democrat	Jones	Donna	Democrat
Getz	William	Democrat	Jones	Pamela	Republican
Giles	Amelia	Democrat	Jordan	Allyson	Republican
	Alex				Green
Gilmore	(Alexandra)	Democrat	Jordan	Brenda	Independent
Girard	Gabrielle	Republican	Jordan	Deborah	Democrat
Glass	Jane	Democrat		Wealthyan	
Glass	Joel	Unenrolled	Jordan	ne	Democrat
Goodwin	Lynne	Republican	Kachmar	James	Republican
Goss	Pauline	Republican	Kandolo	Arnold	Unenrolled
Gowen	William	Republican	Karatsanos	Michael	Republican
Graef	Rosanne	Unenrolled	Karp	Bobbette	Republican
Graffam	Robin	Democrat	Katsiaficas	Donna	Republican

Katsiaficas	James	Republican	Mercier	Elise	Democrat
Kellermann	Solange	Democrat	Mercier	Richard	Democrat
Kelly	Steven	Democrat	Michaud		
Kenny	Russell	Republican	Morin	Mary Ann	Democrat
Keppel	Barbara	Democrat	Miller	Carole	Democrat
Kimble	Chris	Republican	Miller	Elizabeth	Democrat
King	Phil	Unenrolled	Mitton	Shirley	Republican
King	Martha	Democrat	Mobley	Jazmin	Unenrolled
Knight	Joy	Democrat	Molloy	Rita	Republican
Koster	Jean	Unenrolled	Monsivais	Katherine	Democrat
Krementz	Elizabeth	Republican	Moody		
Kushner	Joan	Democrat	Roberts	Elise	Democrat
Lambert	Mary Jane	Democrat	Mooradian	Elizabeth	Republican
Lamontagne	Marcia	Republican	Mooradian	William	Democrat
Large	Suelle	Democrat	Moore	Sylvia Anne	Republican
Lemieux	Pamela	Democrat	Morin Sr	Gerald	Democrat
LeVasseur	Ingrid	Republican	Mulkern	Linda	Democrat
Lewis	Marina	Republican	Muro	Antoinette	Democrat
Lheureux	Estelle	Democrat	Murrell	Garison	Republican
Littlefield	Patricia	Democrat	Muzzy	Patsy	Democrat
Lovley	Pamela	Democrat	Myers	Janine	Democrat
Lufkin	John	Unenrolled	Naqui	Munira	Unenrolled
Lull	Stephanie	Democrat	Nelson	Pris	Democrat
Lunt	Sarah	Democrat		Normand	
MacIsaac	Kimberly	Unenrolled	Nelson Jr	(Tom)	Unenrolled
MacIsaac	Phyllis	Republican	Nicholas	James	Republican
Macisso	Joan	Democrat	Nzanana	Charlotte	Democrat
Mailman	Suzanne	Republican	OBrien	Johannah	Democrat
		Green	Oleary	Kathleen	Unenrolled
Makos	Elaine	Independent	Paakkonen	Zachary	Unenrolled
Malachowski	Rosemary	Democrat	Palmer	Christine	Democrat
Maloney	Ann	Republican	Parker	Nancy	Democrat
Manter	Sandra	Democrat	Pedro	Drusilla	Democrat
Markushewski	Lisa	Democrat	Pelletier	Brooke	Democrat
Marley	Parker	Democrat	Peloquin	Jodi	Democrat
Martin	Dennis	Republican	Perham	Carole	Democrat
McCarthy			Perkins	Lawrence	Republican
Marsden	Nancy	Democrat	Perrier	Patricia	Democrat
McCarty	Katherine	Democrat	Perry	Barbara	Democrat
McCloskey	Susan	Democrat			Green
McDermott	Arthur	Democrat	Piteau	John	Independent
McKenney	John	Unenrolled	Porter	Ron	Republican
McManamy	Jean	Democrat	Poulin	Jeannine	Democrat
					Green
			Powers	Curtis	Independent

Powers	Kathleen	Unenrolled	Alexander		
			Stankowicz	(Dave)	Democrat
Ramos	Edna	Unenrolled		Gwendlyn	
		Green	Stanley	(Wendy)	Democrat
Rand	Catherine	Independent	Stephens	Brian	Democrat
Randall	Theresa	Republican	Stevens	Kathleen	Democrat
Reef	Patricia	Democrat	Stickney	Holly	Democrat
Rich	Kimberly	Democrat	Stone	Helaine	Democrat
Rich	Penny	Democrat	Stuart	Erlene	Republican
Richards	Robert	Democrat	Stultz	Patricia	Republican
		Green	Stultz	Peter	Republican
Roberts	Jacqueline	Independent	Sullivan	Nancy	Democrat
Roberts	James	Republican	Swan	Deborah	Democrat
		Green	Szalajeski	Karen	Democrat
Robichaud	Richard	Independent	Szalajeski	Pamela	Republican
Rodney	Dorothy	Democrat	Talbot	Anita	Democrat
		Green	Tanguay	Eugene	Democrat
Rogers	Stephen	Independent	Therault	Jodi	Democrat
Ross	Melissa	Democrat	Toppi	Marion	Republican
Rozelle	Dorothy	Democrat	Towle	Terri	Democrat
Rumery	Carolyn	Republican	Trott	James	Democrat
Rummler	Kathleen	Republican	Trudeau	Deborah	Democrat
Russo	Patricia	Republican	Tucker	Robyn	Unenrolled
		Green	Turner	Corey	Democrat
Rynning	Virginia	Independent	Twombly	Lisa	Democrat
Salaam	Miniimah	Democrat	Valleau	Tom	Democrat
Salvatore	Raia	Republican	Valleau	Pat	Democrat
Sanborn	Eileen	Democrat	Vaughan	Caitlin	Unenrolled
Sargent	Jeffrey	Unenrolled	Veilleux	Carol	Democrat
Savage	Bruce	Republican	Vessy	Mary	Democrat
Savage	Gregory	Democrat	Vincent	David	Republican
Sbrega	Diane	Democrat	Wadsworth	Susan	Democrat
Schatz	Jon (Rob)	Republican	Walker	Donna	Republican
Scher	Reid	Democrat	Warren	Kyle	Republican
Scott	Aurelia	Democrat	Washburn	Patricia	Democrat
Sellers	Rorick	Democrat	Waterman	Beverly	Republican
Senore	Jesse	Republican	Webster		
Sheridan	Julia	Unenrolled	Querry	Barbara	Democrat
Sherwood	Paul	Republican	Whynot	Eileen	Democrat
Smith	Judith	Democrat	Wise	Amelia	Republican
Smith	Robert	Democrat	Wise	Richard	Democrat
Smyth	Craig	Republican	Witkowski	Robert	Republican
Somma	Rudolph	Republican	Witkowski	Samantha	Republican
Spinella	Christine	Unenrolled	Wysowski	Phillip	Republican
Spring	Katherine		Yonan	Edith	Democrat
Stais	Gladyce	Democrat			

York

Kathleen

Republican

Order 177-17/18
Tab 5 4-9-18

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER ESTABLISHING THE CLIMATE PLANNING PROCESS COMMITTEE
AND APPOINTING MEMBERS THERETO**

ORDERED, that the Climate Planning Process Committee is hereby established to study the effects of climate change and provide the Cities of Portland and South Portland with information on how best to plan for the impacts of climate change; and

BE IT FURTHER ORDERED, that the following people shall be appointed to the Climate Planning Process Committee:

Name:	Organization:	Target Area
Tim Schneider	Tilson Technology	Energy
Addy Smith-Reiman	Portland Society for Architecture	Buildings/Energy
David Lowe	Portland 2030 District	Buildings/Energy
Tex Haueser	South Portland Planning Department	Land Use/Transportation
Tyler Kidder	GrowSmart Maine/Climate Table	Land Use/Adaptation
Barry Woods	Revision Energy	Transportation/Energy
Kristina Egan	GPCOG/PACTS	Transportation
Cheryl Sessions	Portland Housing Authority	Housing
TBD	South Portland Economic Development	Land Use / Adaptation
William Needelman	Portland Economic Development/Waterfront	Land Use / Adaptation
Martha Shiels	New England Environmental Finance Center	Adaptation
Peter Slovinsky	Maine Geologic Survey	Adaptation

MEMORANDUM
City Council Agenda Item

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

FROM: Troy Moon, Sustainability Coordinator

DATE: March 26, 2018, 2018

SUBJECT: Appointing members of Steering Committee for Climate Planning Process

SPONSOR: Jon Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading _____ Final Action 4/9/2018

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

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

I. ONE SENTENCE SUMMARY

The order appoints members of a steering committee to provide feedback to City staff and consultants during the climate action planning process.

II. AGENDA DESCRIPTION

In June, 2017, the Portland City Council adopted a resolve to join the Mayors National Climate Agenda (Climate Mayors), pledging to take actions to reduce greenhouse gas emissions in a manner consistent with the goals outlined in the Paris Agreement. Specifically, signatory cities pledged to:

1. Develop a community greenhouse gas (GHG) emissions inventory
2. Set near- and long-term targets to reduce emissions
3. Develop a Climate Action Plan aligned with the City's targets

Staff has recommended a joint planning project with the City of South Portland to develop complementary climate action plans for each city. The first step in this process is to establish an emissions reduction goal to plan for. The Sustainability and Transportation Committee has recommended the City adopt a goal to reduce greenhouse gas emissions community wide 80% by 2050.

As a next step in the planning process, staff members from Portland and South Portland have identified a number of experts on a variety of key planning areas to provide feedback to staff and consultants during the climate action planning process. These include: energy, housing, transportation, land use, and adaptation. We anticipate the group to meet four to six times

throughout the process at key points for check in and to review drafts of the climate action plan. The South Portland City Council is being asked to recommend this same list.

III. BACKGROUND

The climate action planning process proposed by staff from Portland and South Portland includes a robust public outreach component to allow members of the public to provide meaningful input throughout the process. The purpose of the steering committee is to provide expert feedback in specific content areas during the planning process. Staff and consultants will reach out to other individuals, groups, and organizations as necessary.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The resolve establishes a greenhouse gas emission reduction target to guide the City's climate action planning process, which is a stated goal of the City Council.

V. FINANCIAL IMPACT

There is no cost to the City to appoint the steering committee. The City Manager has recommended that \$110,000 of the proceeds from the sale of the Hancock Street property be appropriated to fund the climate action planning process.

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

VII. RECOMMENDATION

Staff recommends appointment of the steering committee members.

VIII. LIST ATTACHMENTS

A list of the recommended members of the climate action steering committee.

Prepared by: Troy Moon

Date: March 26, 2018



Executive Department
Jon P. Jennings, City Manager

Recommended members of the joint Portland/South Portland steering committee for the climate action planning process.

Name:	Organization:	Target Area
Tim Schneider	Tilson Technology	Energy
Addy Smith-Reiman	Portland Society for Architecture	Buildings/Energy
David Lowe	Portland 2030 District	Buildings/Energy
Tex Haueser	South Portland Planning Department	Land Use/Transportation
Tyler Kidder	GrowSmart Maine/Climate Table	Land Use/Adaptation
Barry Woods	Revision Energy	Transportation/Energy
Kristina Egan	PACTS / GPCOG	Transportation
Cheryl Sessions	Portland Housing Authority	Housing
TBD	South Portland Economic Development	Land Use / Adaptation
William Needelman	Portland Economic Development/Waterfront	Land Use / Adaptation
Marth Shiels	New England Environmental Finance Center	Adaptation
Peter Slovinsky	Maine Geologic Survey	Adaptation

*Order 178-17/18
Tabb 4-9-18*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER NOMINATING COUNCILOR BELINDA RAY TO THE GREATER
PORTLAND COUNCIL OF GOVERNMENTS REGIONAL VOICE COMMITTEE**

ORDERED, that Portland City Councilor Belinda Ray is hereby nominated to serve on the
Greater Portland Council of Governments Regional Voice Committee.

MEMORANDUM
City Council Agenda Item

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

FROM: Jon P. Jennings, City Manager

DATE: April 4, 2018

SUBJECT: Nomination of City Councilor to the Regional Voice Committee of Greater Portland Council of Governments

SPONSOR: Jon P. Jennings, City Manager

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading _____ Final Action 4/9/2018

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

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

I. ONE SENTENCE SUMMARY

The Greater Portland Council of Governments has requested nominations to its Regional Voice Committee, and Councilor Belinda Ray has agreed to be nominated for this committee.

II. AGENDA DESCRIPTION

The Greater Portland Council of Governments (GPCOG) has requested nominations to its Regional Voice Committee. The committee is tasked with developing an annual policy agenda for the region for adoption by the Greater Portland Council of Government's General Assembly. Councilor Belinda Ray has agreed to be nominated for this committee. Her nomination will be considered by the GPCOG Executive Committee.

III. BACKGROUND

See attached.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Greater influence in policy making both statewide and nationally.

V. FINANCIAL IMPACT

None.

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

N/A

VII. RECOMMENDATION

City Manager Jon P. Jennings recommends approval of this nomination.

VIII. LIST ATTACHMENTS

Order Nominating Belinda Ray for the Greater Portland Council of Governments Regional Voice Committee

Prepared by: Nancy English

Date: April 4, 2018

*Order 179-17/18
Tab 7 4-9-18*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER SETTING TIME FOR OPENING
OF POLLS ON JUNE 12, 2018
RE: SCHOOL BUDGET REFERENDUM
AND PORTLAND WATER DISTRICT TRUSTEE**

ORDERED, that pursuant to 21-A M.R.S. Sec. 626, the polls shall open at 7:00 a.m. and close at 8:00 p.m. on Tuesday, June 12, 2018, for the School Budget Referendum and election of Portland Water District Trustee.



Office of the City Clerk
Katherine L. Jones, CMC

MEMORANDUM

TO: Mayor Strimling and Members of the
Portland City Council

FROM: Katherine L. Jones, City Clerk

DATE: March 20, 2018

RE: Setting the time for opening the polls on June 12, 2018 for the School
Budget Referendum and Portland Water District Seat

Pursuant to 21-A M.R.S.A. §626, the hour of poll opening must be set by the municipal officers. This is done for every election; the polls open at 7:00 A.M. and close at 8:00 P.M.

Notices are then posted in each district and at City Hall.

*Order 180 - 17/18
Tab 8 4-9-18*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER RECEIVING AND REFERRING
CITY MANAGER'S FISCAL YEAR 2019 MUNICIPAL BUDGET
TO THE FINANCE COMMITTEE
AND SETTING DATE OF PUBLIC HEARING ON THE
FISCAL YEAR 2019 MUNICIPAL BUDGET AND
FISCAL YEAR 2019 APPROPRIATION RESOLVE**

ORDERED, that the City Manager's Fiscal Year 2019 Municipal Budget is hereby received and referred to the Finance Committee for review; and

BE IT FURTHER ORDERED, that the City Council will hold a Public Hearing on the Fiscal Year 2019 Municipal Budget and on the Fiscal Year 2019 Appropriation Resolve on Monday, May 14, 2017, in City Council Chambers, 389 Congress Street, at 5:30 p.m.

*Resolve 9-17/18
Tab 9 4-9-18*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**RESOLUTION ADOPTING A GOAL TO REDUCE
GREENHOUSE GAS EMISSIONS CITYWIDE 80 PERCENT BY 2050**

- WHEREAS**, as a coastal, urban community, Portland is highly vulnerable to the impacts of climate change; and
- WHEREAS**, local sea level during the past two decades has been rising 130 percent faster than the historical rate and analysis in the recent Bayside Adapts report suggests the City should prepare to manage 8.8 feet of sea level rise by 2100; and
- WHEREAS**, waters in Casco Bay and the Gulf of Maine are warming at a rate 99% faster than the world's oceans, and will soon reach temperatures projected to shift marine species and disrupt traditional fisheries; and
- WHEREAS**, members of our community and others are already feeling the effects of climate change through increased temperatures, more extreme weather events, more frequent flooding, and other disruptions that also affect our economy, and way of life; and
- WHEREAS**, from 1895 to 2014, average annual temperatures in Portland warmed by four degrees Fahrenheit (F) and climate models for the Casco Bay watershed predict further increases from two to six degrees F by mid-century and three to 10°F by 2100; and
- WHEREAS**, current trends and projections show that Cumberland County can expect more frequent extreme precipitation events, categorized as coastal floods, flash floods, heavy rain and tropical storms, and increased months of drought as well; and
- WHEREAS**, these climate changes have cascading effects on the City's economy, infrastructure, public health and safety, and other critical systems; and
- WHEREAS**, the transition to a low-carbon community reliant on the efficient use of clean energy resources and electrified transportation will most likely improve air quality, enhance public health, increase national and energy security, create local green jobs, and reduce reliance on finite resources; and
- WHEREAS**, increasing energy efficiency and resilience may attract jobs and economic development opportunities to our community and improve our long-term economic competitiveness;

WHEREAS, the City of Portland has already demonstrated leadership in climate action and has implemented initiatives to reduce greenhouse gas emissions, including energy upgrades in municipal buildings, deployment of electric vehicles and charging infrastructure, an Energy Benchmarking Ordinance in 2016, the completion of a Municipal Climate Action Plan and the conversion of its streetlights to LED, a first for Maine; and

WHEREAS, national leaders met in Paris in December 2015 to negotiate a global agreement that endeavors to decrease greenhouse gas emissions to a level that could cap the average global temperature increase at two degrees above normal or lower; and

WHEREAS, in 2017 the City Council pledged that the City will run on 100% clean energy by 2040, joined the Mayors National Climate Action Agenda, and pledged to take action in accordance with the goals stated in the Paris Climate Agreement; and

WHEREAS, conservative estimates by the world's climate scientists state that to achieve climate stabilization and avoid cataclysmic climate change, emission of greenhouse gases must be brought to 80% below 1990 levels by 2050; and

WHEREAS, the City of Portland would be joining a growing coalition of cities around the world who are committed to an 80% reduction in greenhouse gas emissions by 2050 including Atlanta, Boston, Boulder, Chicago, Minneapolis, New York, Portland, Oregon, Providence, San Francisco, Seattle, and Washington, DC; and

NOW, THEREFORE, BE IT RESOLVED, that the Portland City Council and the Mayor hereby establish the goal of reducing citywide greenhouse gas emissions by 80 percent by the year 2050.

MEMORANDUM
City Council Agenda Item

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

FROM: Troy Moon, Sustainability Coordinator

DATE: March 26, 2018, 2018

SUBJECT: Resolution adopting a goal to reduce greenhouse gas emissions citywide 80% by 2050

SPONSOR: Sustainability and Transportation Committee
(The committee voted unanimously to recommend the resolution to the full Council on March 21, 2018.)

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading _____ Final Action 4/9/2018

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

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

I. ONE SENTENCE SUMMARY

The proposed resolution establishes a goal for the City as a whole to reduce greenhouse gas emissions 80% by 2050.

II. AGENDA DESCRIPTION

In June, 2017, the Portland City Council adopted a resolve to join the Mayors National Climate Agenda (Climate Mayors), pledging to take actions to reduce greenhouse gas emissions in a manner consistent with the goals outlined in the Paris Agreement. Specifically, signatory cities pledged to:

1. Develop a community greenhouse gas (GHG) emissions inventory
2. Set near- and long-term targets to reduce emissions
3. Develop a Climate Action Plan aligned with the City's targets

Staff has recommended a joint planning project with the City of South Portland to develop complementary climate action plans for each city. The first step in this process is to establish an emissions reduction goal to plan for.

Cities around the world have determined that reducing emissions by 80% by 2050 is the minimum reduction necessary to achieve the objective established by the Paris Climate Accords to keep global temperature rise to no more than 2 degrees Celsius (preferably no more than 1.5

degrees). The Sustainability and Transportation Committee discussed this during their meeting on March 21, 2018 and voted (3-0) to recommend this goal to the full Council.

III. BACKGROUND

In June, 2017, the Portland City Council adopted a resolve to join the Mayors National Climate Agenda (Climate Mayors), pledging to take actions to reduce greenhouse gas emissions in a manner consistent with the goals outlined in the Paris Climate Agreement. Specifically, signatory cities pledged to:

1. Develop a community greenhouse gas (GHG) emissions inventory
2. Set near- and long-term targets to reduce emissions
3. Develop a Climate Action Plan aligned with the City's targets

The Sustainability Office has been developing a strategy to meet this commitment. During this process, I met with my counterpart in South Portland – also a member of the Climate Mayors – to discuss our plans. We realized that by collaborating we could address climate issues on a regional level and reduce costs by sharing consulting expenses. Together, we developed a joint project centered on an ambitious long-term vision for deep emissions reductions. The key facets of our recommended strategy are:

1. Adopt a greenhouse gas reduction target compatible with the goals established by the Paris Climate Agreement.
2. Select a qualified consultant to assist with the development of a rigorous planning process that will identify actions necessary to achieve the targeted GHG reductions.
3. Establish a stakeholder group of experts in key areas to guide the planning process. (Key areas include energy, land use and transportation, waste reduction, and resilience.)
4. Conduct community meetings to engage citizens in the planning process

At the conclusion of this process each city will have a detailed plan describing concrete actions and measureable goals that will result in a less carbon intense and more resilient community.

During the formation of our strategy we were approached by a team consisting of the principals from Gridsolar and the leadership of the Maine Chapter of the Sierra Club. They proposed a project that would create parcel level maps of energy consumption in both cities and a map showing the location and capacity of key assets in the local electric grid. Together, this information would allow our cities to identify effective ways to deploy distributed energy resources such as solar panels, choose areas where micro-grids might make sense, and where it makes the most sense to build out electric vehicle charging infrastructure. These technologies will be vital parts of any effort to reduce GHG emissions and ensure our communities are resilient in the face of the unavoidable impacts of climate change. GridSolar and the Sierra Club view this project as a model for cities across the country and are offering to pilot it in our cities at no charge, although they ask that we help identify potential funders if possible.

With these pieces in place, Sustainability staff met with both City Managers to review our project and discuss funding. Conversation with colleagues in other cities and discussions with several consultants suggests a budget for our planning process should be approximately \$220,000. We proposed that South Portland and Portland both commit \$110,000 to the project.

Either city pursuing a planning process on its own would likely pay more than that. Additionally, partnering with GridSolar will provide access to research, mapping, and public outreach valued at \$400,000. Moving forward with this project will model collaborative regional climate action planning, minimize consulting costs, and leverage an innovative approach to energy modeling.

As a next step in this process we are asking the City Council to officially adopt the goal of reducing greenhouse gas emissions by 80% before 2050. The cities involved in the Climate Neutral Cities Alliance, which includes New York, Boston, Minneapolis, Seattle, San Francisco, as well as many international cities state:

Cities striving for carbon neutrality recognize that averting the worst impacts of climate change will require cutting GHG emissions by at least 80% by 2050. Because urban areas account for nearly three-quarters of humanity's emissions, reaching this goal will depend in large part on our ability to reimagine and reinvent cities in ways that promote economic prosperity, social equity, enhanced quality of life, and climate resilience.

The Paris Agreement was signed by 195 nations around the world who rallied around a shared objective of keeping global temperature rise to no more than 2 degrees Celsius, preferably no more than 1.5 degrees Celsius. As a member of the Climate Mayors, Portland has pledged to work toward this goal.

Adopting this goal aligns with the City Council's stated commitment to take meaningful action to address global climate change and to reduce its local impacts. It represents the first step toward developing a comprehensive climate action and adaptation plan for the City of Portland.

On March 21, The Sustainability and Transportation Committee voted unanimously to recommend adoption of this goal.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The resolve establishes a greenhouse gas emission reduction target to guide the City's climate action planning process, which is a stated goal of the City Council.

V. FINANCIAL IMPACT

The City of Portland's share of fees for a consultant to assist with the climate action planning process will be \$110,000. The City Manager has requested these funds be appropriated from the proceeds of the sale of 0 Hancock St.

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

VII. RECOMMENDATION

Staff recommends adoption of the resolution as it establishes a planning target in compliance with previously stated commitments of the City Council to reduce citywide greenhouse gas emissions in compliance with the Paris Accords.

VIII. LIST ATTACHMENTS

Resolution adopting a goal to reduce greenhouse gas emissions citywide 80% by 2050.

Prepared by: Troy Moon

Date: March 26, 2018

*Order 181-17/18
Tab 10 4-9-18*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER APPROVING THE THIRD AMENDMENT TO
THE AMENDED AND RESTATED LEASE
WITH READY SEAFOOD CO.
FOR SPACE IN THE PORTLAND OCEAN TERMINAL**

ORDERED, that the attached Third Amendment to the Amended and Restated Lease between Ready Seafood Co. and the City of Portland for space in the Portland Ocean Terminal is hereby approved, substantially in the form attached hereto; and

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



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

City Council Agenda Item

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

FROM: Greg Mitchell, Economic Development Director

DATE: March 23, 2018

SUBJECT: Order Authorizing City Manager to Execute Third Amendment to Amended and Restated Lease With Ready Seafood

SPONSOR: Economic Development Committee, Councilor Justin Costa/Chair; meeting held on March 20, 2018, and vote was unanimous (3-0) to recommend approval to the City Council.

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading and Final Action: April 9, 2018

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

PRESENTATION: Greg Mitchell/5 Minutes

I. ONE SENTENCE SUMMARY

Public hearing and vote to authorize the Proposed Third Amendment to the Ready Seafood Company Amended and Restated Lease.

II. AGENDA DESCRIPTION

The City and Ready Seafood Company have had a Lease Agreement at the Maine State Pier since 2009 when Ready Seafood first opened at the Pier. Since that time, Ready Seafood has been an excellent partner with the City and requested a Lease extension for an additional five years, as well as additional leased space.

Amended Lease Terms: The proposed Third Amendment to the Ready Seafood Company Amended and Restated Lease is for an additional five-year years through December 30, 2022. It also

increases leased space from 19,000 sq. ft. to 27,500 sq. ft. in 2018, and reduces the space to 24,000 during years 2019-2022. During 2018 and 2019, the proposed Third Amendment also has a cumulative rent credit of up to \$150,000 based on Ready’s expenditures for pier improvements. Annual lease payments are as follows (exclusive of rent credit):

<u>Lease Year</u>	<u>Annual Rent</u>	<u>Monthly Payment</u>
1/1/2018-12/31/2018	\$188,650.00	\$15,720.83
1/1/2019-12/31/2019	\$167,040.00	\$13,920.00
1/1/2020-12/31/2020	\$169,440.00	\$14,120.00
1/1/2021-12/31/2021	\$172,080.00	\$14,340.00
1/1/2022-12/31/2022	\$174,480.00	\$14,540.00

Parking: The proposed Third Amendment provides for no off-site parking, which formerly provided 10 spaces at the Thames Street gravel parking lot at an annual rate of \$10,000. The proposed Third Amendment provides for five (5) on pier parking spaces for customer turnover parking and four (4) overnight box truck parking spaces are provided.

III. BACKGROUND.

Ready Seafood Company has been a tenant in the Maine State Pier Ocean Terminal since 2009 under the terms of the Original and Amended and Restated Lease.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The 2017 Council Goal addressed is “Increase Utilization of Portland Ocean Terminal”.

The Ready Seafood Company has been a great partner with the City to promote Portland, and they have jointly invested in past pier improvements.

V. FINANCIAL IMPACT. Highlights of the Lease Amendment include:

Term: One five (5) year lease renewal.

Rent and Rent Credit: The 2018 Annual Lease rent is \$188,650 to lease 27,500 sq. ft., with rental square footage to decrease to 24,000 sq. ft. during years 2019-2022. The annual Lease amount in 2019 is \$167,040 (to reflect the square foot space reduction) with a two (2) percent annual increase. A cumulative Lease credit up to \$150,000 during 2018 and 2019 is available, based upon expenditure documentation, for pier improvements.

Parking: No off-site parking is provided with this Lease Amendment. Five (5) on pier parking spaces for customer turnover parking and four (4) overnight box truck parking spaces are provided.

VI. STAFF ANALYSIS

Staff researched lease rates for waterfront properties and is recommending the Proposed Third Amendment to the Ready Brothers Amended and Restated Lease, including Lease rent credit arrangement as a fair public-private partnership.

VII. RECOMMENDATION

The EDC reviewed this proposed Third Amendment at its March 20, 2018 meeting, and unanimously (3-0) recommended to the City Council approval of the proposed Third Amendment to the Ready Brothers Amended and Restated Lease, in substantial conformance as attached.

VIII. LIST ATTACHMENTS

- Proposed Third Amendment to Amended and Restated Lease, including its Exhibits A and B.
- 1st Amendment to Amended and Restated Lease
- 2nd Amendment to Amended and Restated Lease
- Amended and Restated Lease

THIRD AMENDMENT TO
AMENDED AND RESTATED LEASE AGREEMENT
PORTLAND OCEAN TERMINAL

THIS THIRD AMENDMENT is made as of the ____ day of _____, 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 (“Landlord” or “City”) and READY SEAFOOD CO., a Maine corporation with a mailing address of P.O. Box 17652, Portland, Maine 04112 (the “Tenant”).

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to a certain Amended and Restated Lease Agreement dated June 19, 2015, as amended by a First Amendment to Amended and Restated Lease Agreement dated December 12, 2017, and a Second Amendment to Amended and Restated Lease Agreement dated March ___, 2018 (collectively, the “Lease”), with respect to certain space at Landlord’s property known as the Portland Ocean Terminal (“POT”), where Tenant operates a wholesale seafood business; and

WHEREAS, Landlord and Tenant wish to further amend certain aspects of the Lease, as more fully described herein.

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

1. Section 1(a) of the Lease is hereby deleted in its entirety and replaced with the following:
 - (i) For the period commencing January 1, 2018 through December 31, 2018, Tenant will exclusively occupy 27,500 sq. ft. of space at the POT identified as “Interior Space” on the diagram labeled Exhibit A attached hereto and incorporated herein by reference. During 2018, references to the “Premises” in the Lease shall mean the Interior Space depicted on Exhibit A.
 - (ii) For the period commencing January 1, 2019 through December 31, 2022, Tenant will exclusively occupy the 24,000 sq. ft. of space at the POT identified as “Interior Space” on the diagram labeled Exhibit B attached hereto and incorporated herein by reference. From January 1, 2019 through December 31, 2022, or the earlier termination of the Lease, references in the Lease to the “Premises” shall mean the Interior Space depicted on Exhibit B.
 - (iii) Tenant shall have no authority to modify or make any changes to the Premises without the prior written consent of Landlord.

2. Section 1(b) is hereby deleted in its entirety and replaced with the following:

In addition to its use of the Premises, Tenant shall have non-exclusive use of the “Exterior Common Areas” identified on Exhibit A and B (the “Common Areas”) for purposes of pedestrian and vehicle access to, in common with others, the existing dock and the pier area located at the end of the POT. Vehicular access to the Common Areas shall be limited to short-term use for purposes of loading and unloading vehicles for Tenant’s business and for parking as described in paragraph 7 below.

3. The reference to December 31, 2017 in Section 2(a) of the Lease is hereby deleted and replaced with December 31, 2022, meaning and intending to change the termination date of the term of the Lease to December 31, 2022.

4. The second sentence of section 2(a) of the Lease is deleted in its entirety and replaced with the following:

“The term of this Lease may be renewed for one six (6) year term through December 31, 2028 upon mutual agreement of the Parties.

5. Section 2(b) of the Lease is deleted in its entirety.

6. Section 4 of the Lease is hereby deleted in its entirety and replaced with the following:

The annual rent, set forth in the schedule below, is due and payable in advance in twelve (12) monthly payments on the first day of each month of the term of this Lease. The rent set forth in this paragraph does not include utility charges, which are addressed in paragraph 5 of the Lease.

<u>Lease Year</u>	<u>Annual Rent</u>	<u>Monthly Payment</u>
1/1/2018-12/31/2018	\$188,650.00	\$15,720.83
1/1/2019-12/31/2019	\$167,040.00	\$13,920.00
1/1/2020-12/31/2020	\$169,440.00	\$14,120.00
1/1/2021-12/31/2021	\$172,080.00	\$14,340.00
1/1/2022-12/31/2022	\$174,480.00	\$14,540.00

Notwithstanding anything to the contrary in the Lease, Tenant shall be entitled to a cumulative rent credit of up to \$150,000 during 2018 and 2019 (the “Rent Credit”) for documented expenses for certain future repairs to the POT (the “Pier Repair Work”) which work will be subject to the prior written approval of the Landlord’s Director of Public Buildings (the “Director”). Tenant, with Landlord’s cooperation, will engage the services of a contractor or contractors to perform the Pier Repair Work in one or more projects. Tenant shall not commence any Pier Repair Work project without the Director’s prior written approval. At any time prior to, during, or after completion of a Pier Repair Work project, Tenant, at Landlord’s request, will provide Landlord with documentation related to the Pier Repair Work in form and substance satisfactory to the Director, including, without limitation, any related estimates, proposals, contracts, plans, specifications, diagrams, invoices, proof of payment of invoices, and mechanic’s lien

waivers from Tenant's contractors and subcontractors ("Pier Repair Work Documentation"). Upon review and approval of applicable Pier Repair Work Documentation, the City will apply the Rent Credit to rent due in the months following completion of a Pier Repair Work project until the Rent Credit has been fully applied. Nothing in this paragraph is intended to be, or shall be deemed a waiver of, the Landlord's right to enforce the Tenant's obligations to maintain, repair, and replace elements of the Premises, the Common Areas, and the POT as set forth in section 10 of the Lease.

Tenant understands that in any contract for any work on the POT, Tenant will include the following provisions:

Prior to the execution of this Agreement, the Contractor will procure and maintain occurrence-based Automobile Liability Insurance, Commercial General Liability Insurance (including completed operations coverage for at least 24 months after completion of the work), for bodily injury, death and property damage, and Pollution Liability Insurance coverage in amounts of not less than Two Million Dollars (\$2,000,000.00) per occurrence, naming the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law. With respect to the Automobile and Commercial General Insurance, the Contractor shall name the City as an additional insured 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 City 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 City. Prior to execution of this Agreement, the Contractor shall furnish the City and thereafter maintain certificates evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice to the City of termination of insurance from the insurance provider or agent. Contractor shall also provide a copy of any endorsement naming the City as additional insured. A certificate that merely has a box checked under "Addl Insr," or the like, or that merely states the City of Portland is named as an Additional Insured, will not be acceptable. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees. Contractor shall be responsible for any and all deductibles and/or self-insured retentions. City's acceptance or lack of acceptance of Contractor's Certificate of Insurance or other evidence of insurance shall not be construed as a waiver of the Contractor's obligation to obtain and maintain such insurance as required by this agreement.

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and attorney's fees arising out of or resulting from the performance of this Agreement, provided that any such claims, damage, loss or

expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use therefrom, and (2) is caused in whole or in part by any act or omission of the Contractor, anyone directly or indirectly employed by it, or anyone for whose act it may be liable. Such obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City which otherwise exists. The extent of the indemnification provision shall not be limited by the provision for insurance in this Agreement. Contractor's obligations under this paragraph shall survive termination of this Agreement.

7. Section 6 of the Lease is deleted in its entirety and replaced with the following:

Landlord shall provide Tenant, during the term of this Amended and Restated Lease Agreement, the use of five (5) angled passenger vehicle parking spaces and four (4) box truck parking spaces located on the west side of the wooden portion of the Common Areas. The five passenger vehicle parking spaces are for short-term/turnover use by Tenant, its customers, and vendors during the day and evening, and for Tenant employee parking at night. Further, Tenant agrees to cooperate with Landlord at any time to relocate any passenger vehicles and trucks to allow the Common Areas to service Compass Park activities and other City needs. The City reserves the right to re-locate all parking spaces to a reasonably convenient alternative location selected by the City at any time during the term of this Lease.

8. The following is added to the Lease as section 14(a)(iv): "Pollution Liability Insurance - \$2,000,000 per occurrence."
9. The following is added to the end of Section 14(c) of the Lease:

Contractor shall be responsible for any and all deductibles and/or self-insured retentions. City's acceptance or lack of acceptance of Contractor's Certificate of Insurance or other evidence of insurance shall not be construed as a waiver of the Contractor's obligation to obtain and maintain such insurance as required by this agreement.

10. Section 17(b) of the Lease is deleted in its entirety and replaced with the following:

In the event Landlord terminates this Agreement for its convenience prior to the Rent Credit being fully applied, the Landlord will reimburse Tenant for the outstanding balance of the Rent Credit provided that Tenant has provided documentation satisfactory to the Landlord for the Pier Repair Work.

11. Any and all terms of the Lease not herein amended shall remain in full force and effect for the duration of the Lease as amended hereby and are hereby ratified. In the event of any conflict between the terms of this Amendment and the terms of the Lease and any exhibits thereto, the terms of this Amendment shall govern and control so long as this Amendment is in effect.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Agreement to be executed by their duly authorized representatives or officers, as of the date first written above.

WITNESS:

CITY OF PORTLAND

By: _____

Jon P. Jennings
Its City Manager

WITNESS:

READY SEAFOOD CO.

By: _____

Printed Name: _____

Its: _____

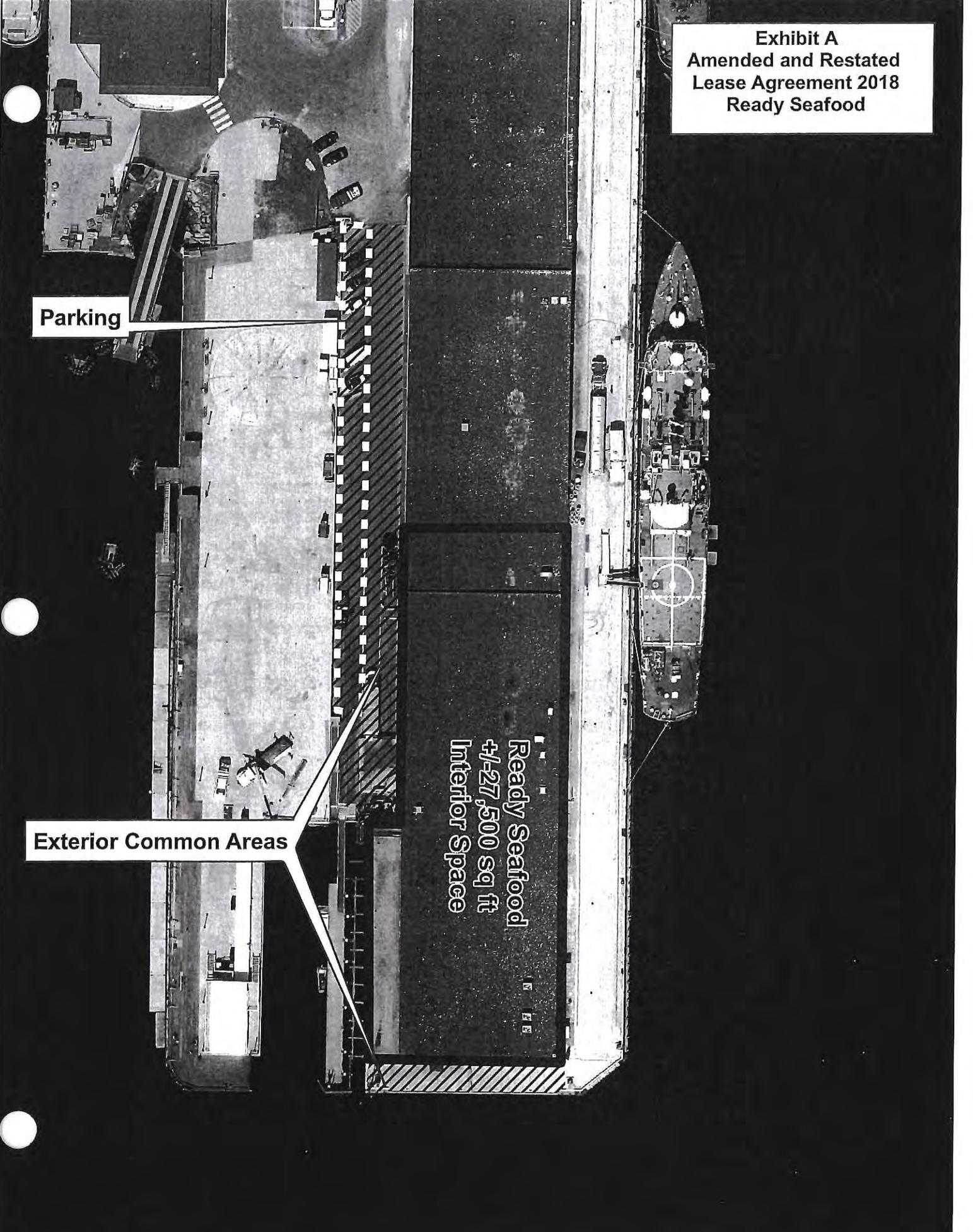
Approved as to Form:
Corporation Counsel's Office

Exhibit A
Amended and Restated
Lease Agreement 2018
Ready Seafood

Parking

Exterior Common Areas

Ready Seafood
+/-27,500 sq ft
Interior Space

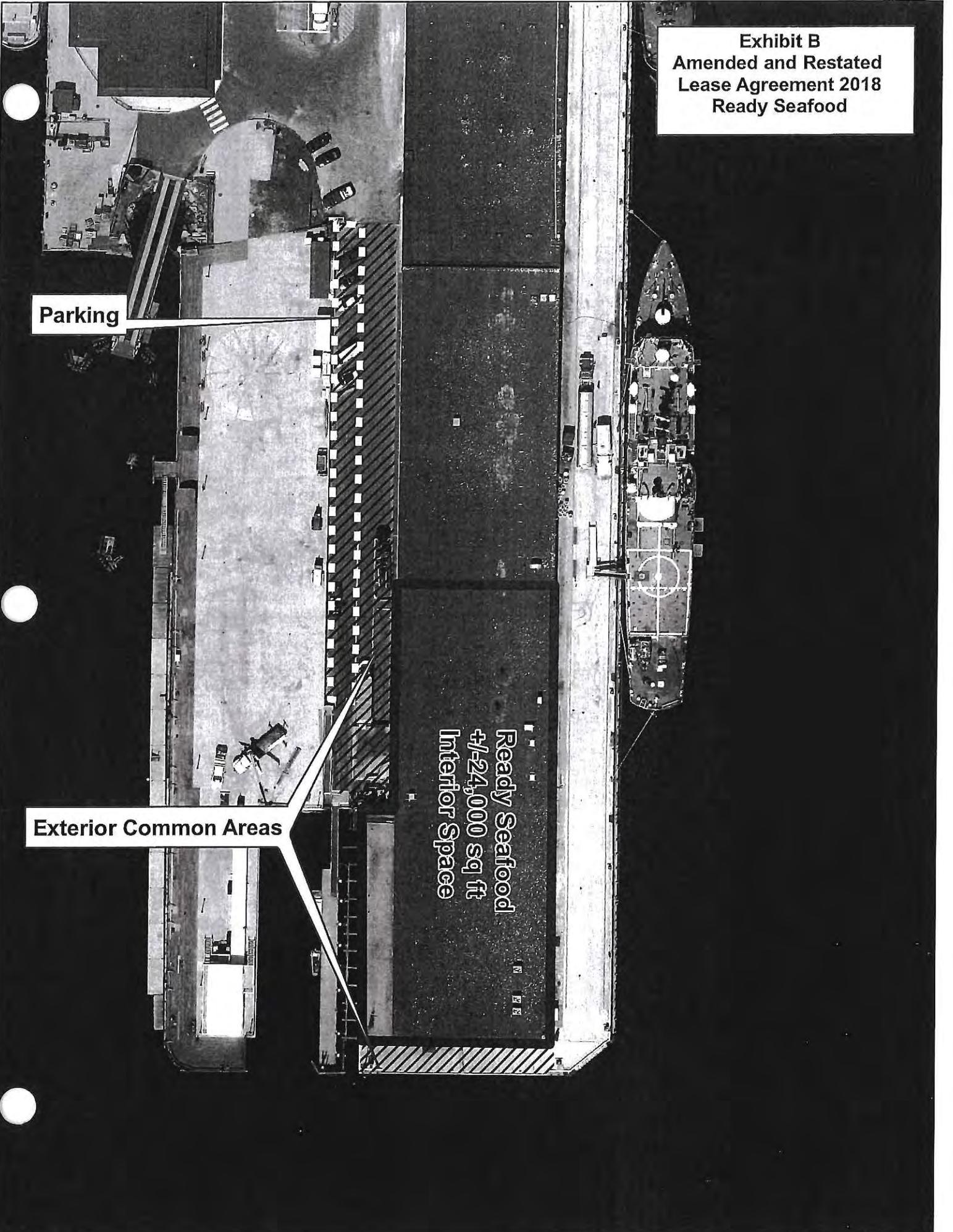


**Exhibit B
Amended and Restated
Lease Agreement 2018
Ready Seafood**

Parking

Exterior Common Areas

**Ready Seafood
+/-24,000 sq ft
Interior Space**



FIRST AMENDMENT TO
AMENDED AND RESTATED LEASE AGREEMENT
PORTLAND OCEAN TERMINAL

THIS FIRST AMENDMENT is made as of the 17th 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 ("Landlord") and READY SEAFOOD CO., a Maine corporation with a mailing address of P.O. Box 17652, Portland, Maine 04112 (the "Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into an Amended and Restated Lease Agreement dated June 19, 2015 (the "Lease") with respect to certain space at Landlord's property known as the Portland Ocean Terminal, where Tenant operates a wholesale seafood business; and

WHEREAS, the initial term of the Lease expires on December 31, 2017; and

WHEREAS, Landlord and Tenant are presently negotiating revisions to the Lease, including amendments to the leased premises, the amount of rent, the term, and other provisions; and

WHEREAS, Landlord and Tenant wish to extend the termination date of the Lease for a period of three months on its present terms to give the parties additional time to negotiate the terms and conditions for an amended or new lease.

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

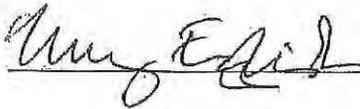
1. The reference to "December 31, 2017" in Section 2(a) of the Agreement is hereby deleted and replaced with "March 31, 2018," meaning and intending to extend until March 31, 2018 the termination date of the Lease.
2. Except as specifically amended hereby, the Lease shall remain in full force and effect, and the parties hereto ratify the terms and conditions of the Lease.

(Signature Page Follows)

IN WITNESS WHEREOF, Landlord and Tenant have caused this Agreement to be executed by their duly authorized representatives or officers, as of the date first written above.

WITNESS:

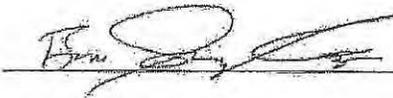
CITY OF PORTLAND



By: _____
Jon P. Jennings
Its City Manager

WITNESS:

READY SEAFOOD CO.



By: 
Printed Name: John READY
Its: JRS


Approved as to Form:
Corporation Counsel's Office

SECOND AMENDMENT TO
AMENDED AND RESTATED LEASE AGREEMENT
PORTLAND OCEAN TERMINAL

THIS SECOND AMENDMENT is made as of the ____ day of March, 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 (“Landlord”) and READY SEAFOOD CO., a Maine corporation with a mailing address of P.O. Box 17652, Portland, Maine 04112 (the “Tenant”).

WITNESSETH:

WHEREAS, Landlord and Tenant entered into an Amended and Restated Lease Agreement dated June 19, 2015 as amended by a First Amendment to Amended and Restated Lease Agreement dated December 12, 2017 (collectively, the “Lease”) with respect to certain space at Landlord’s property known as the Portland Ocean Terminal, where Tenant operates a wholesale seafood business; and

WHEREAS, the term of the Lease expires on March 31, 2018; and

WHEREAS, Landlord and Tenant are presently negotiating revisions to the Lease, including amendments to the leased premises, the amount of rent, the term, and other provisions; and

WHEREAS, Landlord and Tenant wish to extend the termination date of the Lease for a period of one month on its present terms to give the parties additional time to negotiate the terms and conditions for an amended lease.

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

1. The reference to “December 31, 2017” in Section 2(a) of the Agreement is hereby deleted and replaced with “April 30, 2018,” meaning and intending to extend until April 30, 2018 the termination date of the Lease.
2. Except as specifically amended hereby, the Lease shall remain in full force and effect, and the parties hereto ratify the terms and conditions of the Lease.

(Signature Page Follows)

IN WITNESS WHEREOF, Landlord and Tenant have caused this Agreement to be executed by their duly authorized representatives or officers, as of the date first written above.

WITNESS:

CITY OF PORTLAND

By: _____

Jon P. Jennings
Its City Manager

WITNESS:

READY SEAFOOD CO.

By: _____

Printed Name: _____

Its: _____

Approved as to Form:
Corporation Counsel's Office

AMENDED AND RESTATED LEASE AGREEMENT
PORTLAND OCEAN TERMINAL

This Amended And Restated Lease Agreement, made in triplicate original as of the 19th day of June, 2015, by and between the **CITY OF PORTLAND**, a Maine municipal corporation having its principal place of business at 389 Congress Street, Portland, Maine (hereinafter referred to as "Landlord") and **READY SEAFOOD CO.**, a Maine corporation with a mailing address of P.O. Box 17652, Portland, Maine 04112 (hereinafter referred to as "Tenant").

WHEREAS, Landlord and Tenant are parties to a Lease Agreement dated December 22, 2009 (the "Original Lease") for certain space at the Portland Ocean Terminal warehouse (the "POT") on the Maine State Pier (the "Pier"), which was amended by an Amendment To Lease Agreement dated February 27, 2012 (the "First Amendment") and a Second Amendment To Lease Agreement dated July 30, 2013 (the "Second Amendment") (the Original Lease as amended by the First and Second Amendments is referred to herein as the "Existing Lease"); and

WHEREAS, during the term of the Lease, Tenant has complied with the terms and conditions of the Lease as amended and has made substantial improvements to the leased premises; and

WHEREAS, in consideration of said improvements, Tenant has requested a reduction and reconfiguration of the leased premises and a reduction in rent; and

WHEREAS, after due consideration, Landlord is willing to reduce and reconfigure the leased premises and to reduce the rent; and

WHEREAS, in order to memorialize the above, Landlord and Tenant desire that the Existing Lease be substantially amended and restated to modify the Existing Lease.

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 that the Existing Lease be amended and restated as of the Effective Date (as defined in Section 2).

WITNESSETH:

1. **Premises; Security.**

- a. Tenant, as of the date of this Amended and Restated Lease, exclusively occupies 19,000 sq. ft. of space at the POT identified as "interior space" on the attached Exhibit A (the "Premises"), which Landlord does hereby continue to

lease, demise, and let unto Tenant. Tenant shall have no authority to modify or make any changes to the Premises without the prior consent of Landlord.

b. In addition to the Premises, Tenant shall have non-exclusive use of the common areas identified on Exhibit A as "Interior Common Area" and "Exterior Common Area" (collectively, the "Common Areas"). Tenant's right to use the Common Areas shall include: (i) shared access to and use of both the existing loading dock and the pier area located at the end of the Pier; and (ii) the right to expand the existing loading dock or construct one additional loading dock, subject to Planning Board approval and issuance of building permits, and with prior written consent of the Landlord.

c. Security Rules: Tenant shall comply with all safety and security requirements in its operations hereunder. All Tenant employees working at the POT shall obtain a Transit Worker Identification Credential (TWIC) and shall display such TWIC cards at all times when at the POT. Tenant further agrees that its officers, employees and agents shall abide by the provisions of the Landlord's Federal Facility Security Plan, and with any other security directives or policies that may be promulgated from time to time by the Landlord, the State of Maine or by agencies of the Federal Government during the term of this Agreement, and the Landlord agrees to provide Tenant with copies of the relevant portions of Landlord's Plan to permit Tenant to comply with their terms. If required by the US Coast Guard, Tenant shall create its own Facility Security Plan.

Tenant shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel fees, which may arise directly out of Tenant's (including its officers, volunteers and employees) failure to comply with the covenants of this paragraph, and such failure shall be deemed a default under this Agreement.

d. Access: Tenant shall be provided with access to the Premises and the Common Areas on a twenty-four (24) hour basis through the use of a key, and Tenant shall be responsible for ensuring that its employees understand the security requirements of POT and that only Tenant's authorized persons are provided access on Tenant's behalf.

2. Term.

(a) This Amended and Restated Lease shall be effective as of January 1, 2015 (the "Effective Date") and shall end on December 31, 2017, unless earlier terminated as provided herein, or extended as provided herein. The term of this Amended and Restated Lease may be renewed for one additional five (5) year term through December 31, 2022 upon mutual agreement of the Parties; and thereafter, for one additional six (6) year term through December 31, 2028, again upon mutual agreement of the Parties.

(b) Tenant's right to use parking spaces set forth in section 6 below shall have a different term. With respect to Tenant's parking rights only, the current term, which is for two (2) years, commenced December 22, 2013 and terminates December 21, 2015. The term of Tenant's parking rights shall automatically renew for successive two (2) year terms beginning December 22, 2015, unless either party hereto gives notice before December 1 of any year, of non-renewal. Notwithstanding anything to the contrary in this paragraph, Tenant's parking rights shall terminate upon termination of the term set forth in sub-paragraph (a) above.

3. Permitted Uses.

- a. **Tenant Uses:** Tenant may use the Premises and Common Areas for wholesale, storage, packaging, shipping and processing activities associated with Ready Seafood and Catch a Piece of Maine.
- b. Tenant may, upon receipt of written consent of Landlord, make physical improvements to Premises and Common Areas to support Tenant's use.
- c. **Landlord uses:** Landlord reserves the right to permit other parties to use the Common Areas and the remainder of the POT warehouse (other than the Interior Space) during the term of this Amended and Restated Lease and thereafter, so long as such use does not unreasonably interfere with the use of the Premises and Common Areas by Tenant as permitted or required by this Amended and Restated Lease.
- d. Tenant agrees to work with the Landlord to coordinate Tenant's use of the Premises and Common Areas with other tenants and users of the POT, and Pier.
- e. Nothing herein is intended to create, nor shall it be deemed to be, a joint venture between the parties.

4. Rent.

The annual rent, set forth in the schedule below, is due and payable in advance in twelve (12) equal monthly payments on the first day of each month of the term of this Amended and Restated Lease. The rent set forth in this paragraph does not include utility or parking charges, which are addressed in paragraphs 5 and 6 below.

	<u>Annual Rent</u>	<u>Monthly Payment</u>
1/1/15-12/31/15	\$125,256.00	\$10,438.00
1/1/16-12/31/16	\$127,761.12	\$10,646.76
1/1/17-12/31/17	\$130,316.34	\$10,859.70

5. Utilities.

The Landlord has provided, at Tenant's expense, separate electrical and water submeters to separate Tenant's electrical and water usage from that of Landlord and other users of the POT. Tenant shall continue to pay Landlord monthly for its water and electric usage. Landlord is not responsible for providing heat to the Premises.

6. Parking.

Landlord shall provide Tenant, during the term of this Amended and Restated Lease Agreement, the use of ten (10) parking spaces in the City-owned Thames Street parking lot at the annual rate of Ten Thousand Dollars (\$10,000.00) payable in advance on the first of each month in twelve monthly installments of \$833.33. The City reserves the right to re-locate these parking spaces to a reasonably convenient alternative location if the Thames Street parking lot is no longer available for this purpose. See Section 2 for the term of Tenant's right to use parking spaces.

7. Vessel Deliveries.

At Tenant's expense and with Landlord's approval, a device, such as a derrick shall be installed at the southern end of the Pier. Tenant shall accept deliveries of lobsters by vessel at the southern end of the Pier, utilizing the derrick or similar device.

The parties recognize that the southern end of the Pier represents the edge of the federal channel. Tenant shall insure that deliveries by vessel shall be expedient, such that delivery vessels are located at the southern end of the Pier for as short a period of time as possible during deliveries.

When cruise ships are docked at the Pier, Tenant shall not have access to the southern end of the Pier to accept deliveries. On said cruise ship days, Tenant shall accept deliveries in the embayment located to the west of the POT. Subject to review and approval by Landlord, Tenant may install a derrick or similar device and a float to assist with deliveries in the embayment.

Tenant shall not utilize the public landing located in the embayment for deliveries.

8. Tenant to Plow and Remove Snow.

Tenant, at Tenant's expense, shall be responsible for plowing and removing snow from the Exterior Common Areas to allow for year-round access to the loading dock.

9. Tenant to Remove Trash and Debris; Maintenance.

Tenant, at Tenant's expense, shall maintain the entire portion of the Premises and Common Areas 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 all trash and debris attributable to it from the Premises and Common Areas.

10. POT Building and Pier Infrastructure Responsibility for Repairs and Maintenance; Tenant's Acceptance Of Premises In "As Is" Condition.

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 Existing Lease, Tenant has, at its sole expense, maintained and made substantial repairs to the Premises, the Common Areas, Pier, and the portion of the POT building containing the Interior Space and the Interior Common Area. Tenant shall continue to maintain and repair, at its sole expense, the Premises, the Common Areas, and all interior, exterior, and structural portions of the POT building containing the Interior Space and the Interior Common Areas, including, without limitation, the plumbing, electrical, mechanical, heating, ventilation, and air conditioning systems in the building, but not including the roof or exterior walls. The Landlord shall be responsible for the maintenance and repair of said exterior walls and roof, and Tenant shall make no alteration to them without the prior written consent of the Landlord. Tenant, at Tenant's sole expense, may conduct such inspections as are necessary to evaluate the structural integrity of the POT building and Pier to support Tenant's use and shall report the results of any such inspections to Landlord. Tenant, at its sole expense, shall be responsible for maintaining, repairing, or replacing the Pier's structural elements, including, without limitation, its pile caps, stringers, and decking, in order to support so much of Tenant's use as is beyond those uses that would cause ordinary wear and tear. Landlord shall only be responsible for maintaining the structural integrity of the Pier to the extent that the structural integrity has been jeopardized due to normal wear and tear, and not from any of Tenant's operations causing greater than normal wear and tear. Landlord may enter any portion of the POT and Pier, including the Premises, to conduct inspections, maintenance, or repairs, but will only enter the Premises upon reasonable notice to Tenant at times and in a manner that will not unreasonably interfere with Tenant's on-going business activities.

11. Traffic Control.

Tenant shall be responsible for managing truck access over the Pier to the Premises and Common Areas. In doing so, Tenant will work cooperatively with other POT tenants and the Casco Bay Lines to manage traffic and pedestrian congestion. Landlord will assist Tenant by removing illegally parked vehicles on a timely basis when requested to do so by Tenant or by any signatory to a Maine State Pier Tenant Operational Agreement. Tenant agrees to participate and work cooperatively with other POT tenants and the Casco Bay Lines to create such an operational agreement.

12 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 governments, including the City Of Portland Facilities rules as they may be amended from time to time, and of all other governmental authorities, affecting the Premises or appurtenances thereto, while such laws or regulations are in force, regardless of when enacted. Tenant shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel fees, which may arise directly out of Tenant's failure to comply with the covenants of this Section, and such failure shall be deemed a default under this Agreement. Tenant shall be responsible for obtaining all necessary permits and licenses required for its use and occupancy of the POT at its own cost and expense.

13 Indemnification.

- a. General. To the fullest extent permitted by law, Tenant shall at its own expense defend, indemnify, and hold harmless the Landlord, its officers, agents, and employees from and against any and all liability, claims, damages, penalties, losses, expenses, or judgments, just or unjust, arising from injury or death to any person, or damage to property sustained by anyone (including but not limited to Landlord employees or property), including but not limited to claims based upon violation of any environmental law or regulation, except to the extent that such claims arise from a negligent act or omission of the Landlord, its officers, agents, servants or employees.

Tenant shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against Landlord or in which Landlord may be impleaded with others upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which Landlord is a party, Landlord shall have the right to participate at its own discretion and expense and no such suit or action shall be settled without prior written consent of Landlord. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to Landlord which would otherwise exist.

- b. Without limiting the foregoing, to the fullest extent permitted by law, Tenant hereby agrees to assume all risk of injury, harm or damage to any person or property (including but not limited to all risk of injury, harm or damage to Tenant's officers, agents, employees, contractors, customers or invitees or to their property) arising out of, during, or in connection with the rental or use of the POT warehouse property or any portion thereof and the activities hereunder which injury, harm or damage is alleged to be related to the presence of mold at or in the Premises, and to defend, indemnify and hold the Landlord harmless from any such liability, claims, damages, losses or expenses.
- c. Covenant against liens: Tenant shall not cause or permit any lien against the Landlord's property or any improvements thereto to arise out of or accrue from any action or use thereof by Tenant and shall hold the Landlord harmless therefrom; provided, however, that Tenant may in good faith contest the validity

of any alleged lien. Upon request of the Landlord, Tenant shall post a bond warranting payment of any such lien in the event Tenant contests such lien.

- d. Survival. The Terms of this Section shall expressly survive the expiration or termination of this Agreement.

14. Insurance.

- a. Amounts. Without expense to the Landlord, and with no lapse in coverage, Tenant shall procure and maintain, at its own cost, and show evidence to the Landlord of the following insurance to protect the Landlord from claims and damages which may arise from Tenant's operations under this Agreement, whether such operations shall be performed by the Tenant or by anyone directly or indirectly employed by it, in the types and minimum amounts set forth below:

<u>Description</u>	<u>Coverage</u>	<u>Each Occurrence</u>
(i) Commercial General Liability	B.I./P.D.	\$1,000,000
(ii) Automobile Liability Insurance		\$ 400,000
(iii) Worker's Compensation		Maine statutory amount

- b. Landlord protected. The Landlord shall be named as an additional insured under items (i) and (ii) above. Tenant shall provide evidence of Workers Compensation coverage in the statutory amounts.
- c. Notice to Landlord. All policies of insurance required herein shall be in a form and issued by a company or companies approved to do insurance business in the State of Maine. Each such policy shall provide that such policy may not be changed, altered or canceled by the insurer during its term without first giving thirty (30) days' notice in writing to the Landlord. Each liability policy required to be obtained hereunder shall be on an occurrence basis. In the event that policies are not available on an occurrence basis, Tenant shall purchase a "tail" which provides coverage hereunder for a minimum of six (6) years after termination of this Agreement.

All policies required hereunder shall be primary to any insurance or self-insurance which Landlord may maintain for its own benefit. Liability insurance coverage shall also extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, to the extent caused by, or resulting from negligent acts, operations, or omissions of Tenant, its officers, agents, employees, invitees, and/or contractors.

- d. Certificates. Certificates or other evidence of insurance coverages required of Tenant in this Section, in amounts no less than those stipulated herein or as may be in effect from time-to-time, shall be delivered to the Landlord prior to use of the Premises. Such certificate or certificates shall at all times while this Agreement is in effect provide Landlord with at least thirty (30) days prior written notice of any change or modification in insurance coverage or insurance carrier.

15. Assignment/Subletting.

Tenant shall not 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 discretion. No such assignment or subletting shall relieve Tenant of any obligations hereunder 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.

16. Casualty Damage.

- a. If the Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty so that the same shall be thereby rendered unfit for use, then, and in such case, the Rent hereinabove stated or a just and proportional part thereof, according to the nature and extent of injuries sustained, shall be suspended or abated, until the Premises shall have been put in proper condition for use by Tenant. Provided, however, in the event of such destruction or damage, either Landlord or Tenant shall have the right to terminate this Lease by giving the other party written notice of such termination within thirty (30) days after such damage or destruction, and upon the giving of such notice, the term of this Agreement shall cease and come to an end as of the date of such damage or destruction and any unearned rent shall be returned to Tenant.
- b. Tenant shall be responsible for covering the equipment and supplies with such property and casualty insurance as it deems necessary and Landlord shall have no responsibility therefor. Tenant assumes all risk of damage, loss or casualty to its property, equipment and/or supplies while located at the POT, even if the cause of such damage is the result of the negligent act or omission of Landlord, its officers or employees. Tenant shall defend, indemnify and hold the Landlord harmless from any claim based upon any damage, loss or casualty to its property, equipment and/or supplies while at the POT. Any casualty insurance obtained by Tenant for its property, equipment or supplies at POT shall include a waiver of subrogation against the Landlord.

17. Termination for Convenience or Cause.

- a. Either party may, in its discretion and for its convenience, terminate this Agreement upon no less than Thirty (30) days prior written notice to the non-terminating party. In the event of termination during a rental period, Landlord

will reimburse to Tenant the pro-rated amount paid in rent for any time period after the effective date of the termination; provided, however, that Tenant shall remain liable to pay any Rent accrued and owed for the time period prior to the effective date of termination.

- b. In the event Landlord terminates this Agreement for its convenience prior to the expiration date, the Landlord will reimburse Tenant for documented construction expenditures made by Tenant for the purposes of build-out, improvements, additions or installations to the Premises, made in 2013-2014 as part of the then expansion, but such reimbursement shall: (1) in no event shall exceed \$375,000; and (2) such reimbursement shall be reduced over ten (10) years, on a straight-line basis, from the date of installation.
- c. Either party may terminate this Agreement upon no less than Thirty (30) calendar days' prior written notice for failure of the non-terminating party to comply with the terms and conditions of this Agreement. In such event, the non-terminating party shall have the right to cure such default within the Thirty (30) day period, or in the case of default in any payment due hereunder, within Ten (10) calendar days of receipt of notice of such default. Such notice of default shall not be required to coincide with a rental period.
- d. Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in accordance with the provisions of Section 16 hereof. If this lease is terminated, Tenant shall remain liable to Landlord for all Rent accrued and unpaid up to the date of such termination. 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.

18. Return of Premises; Trade Fixtures.

Tenant at the expiration or termination of this Agreement shall peaceably yield up to Landlord the Premises in good repair in all respects, reasonable use and wear and damage by fire and all other unavoidable casualties not caused by Tenant, its officers, employees, agents, invitees or contractors excepted. Tenant shall remove all trade fixtures, equipment and other personal property installed or placed by it at its expense in, on or about the Premises; provided, however, all damage caused by or as a result of such removal shall be repaired by Tenant at its expense. Should Tenant fail to remove its fixtures, equipment or 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 dispose of such fixtures, equipment and property in any manner it sees fit, and retain all proceeds therefrom. Notwithstanding the foregoing, Tenant shall continue to be liable to Tenant for the costs of any such removal and disposal in excess of any such proceeds.

19. 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 term of this Agreement. Each party covenants that the Agreement is signed by a duly authorized individual.

20. Notices.

Any notice required to be given under this Lease shall be in writing and shall be hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the parties as stated below or such other address as either party may designate in writing to which its future notices shall be sent.

To Tenant:

Ready Seafood
ATTN: Brendan Ready, President
P.O. Box 17652
Portland, Maine 04112

To Landlord:

~~Sheila Hill-Christian~~ MICHAEL SAUSCHUCK
Acting City Manager
389 Congress Street
Portland, Maine 04101
cc: Director of Public Buildings

The Landlord's representative for administration of this Agreement shall be the Director of Public Buildings or his/her authorized designee.

21. 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.

22. Governing Law.

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

23. Force Majeure.

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

24. 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.

25. 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. 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.

26. Transition Provision.

Prior to the Effective Date, the rights and obligations of Landlord and Tenant are those described in the Existing Lease. On the Effective Date, the Existing Lease shall be deemed amended and restated so as to contain all of the terms of this Lease, and this Lease as amended and restated shall govern all future rights, obligations, duties and liabilities of the parties.

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

WITNESS:

John Rudy

READY SEAFOOD CO.

By: [Signature]
Name: Blenda Rudy
Its: Owner

WITNESS

Janice Bean

CITY OF PORTLAND

By: [Signature]
~~Sheila Hill-Christie~~ MICHAEL SOUSCHUCK
Its Acting City Manager

APPROVED AS TO FORM:

[Signature]
CORPORATION COUNSEL'S OFFICE

**EXHIBIT A
TO AMENDED AND RESTATED
LEASE AGREEMENT**

Interior Space

Interior Common Area

Exterior Common Area

READY SEAFOOD



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/19/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Cross Insurance-Portland 2331 Congress Street Portland ME 04102		CONTACT NAME: Hope Cote PHONE (A/C, No, Ext): (207) 780-1677 FAX (A/C, No): (207) 780-6377 E-MAIL ADDRESS: hcote@crossagency.com															
INSURED Ready Seafood Company, Inc. ; Maine Seafood Ventures, LLC PO Box 17652 Portland ME 04112		<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: The Netherlands Insurance Co.</td> <td>24171</td> </tr> <tr> <td>INSURER B: Peerless Insurance Co.</td> <td>24198</td> </tr> <tr> <td>INSURER C: Ohio Casualty Ins. Co.</td> <td>24074</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: The Netherlands Insurance Co.	24171	INSURER B: Peerless Insurance Co.	24198	INSURER C: Ohio Casualty Ins. Co.	24074	INSURER D:		INSURER E:		INSURER F:	
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COVERAGES CERTIFICATE NUMBER: CL1561741704 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:			CBP8109501	6/23/2015	6/23/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			BA8109459	6/23/2015	6/23/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Medical payments \$ 2,000
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CU8109566	6/23/2015	6/23/2016	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	Excess Umbrella			ECO (16) 56524647	6/23/2015	6/23/2016	Each Occurrence 3,000,000 Aggregate 3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Lease of space at Portland Ocean Terminal warehouse on the Maine State Pier. City of Portland is Additional Insured on a primary and non-contributory basis under general liability and auto liability. 30 day notice of cancellation applies except 10 days for non-payment of premium pursuant to Maine Law.

CERTIFICATE HOLDER City of Portland 389 Congress Street Portland, ME 04101	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Hope Cote/HAC <i>Hope A. Cote</i>
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READSEA-01

RRUMPF

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/19/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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PRODUCER Clark Insurance 2385 Congress Street Portland, ME 04104	CONTACT NAME: PHONE (A/C, No, Ext): (207) 774-6257 FAX (A/C, No): (207) 774-2994 E-MAIL ADDRESS: info@clarkinsurance.com														
INSURED Ready Seafood Co. John Ready PO Box 17652 Portland, ME 04112	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A: Maine Employers Mutual</td> <td style="text-align: center;">11149</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Maine Employers Mutual	11149	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
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COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

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INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
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	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	1810084151	02/20/2015	02/20/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)							

CERTIFICATE HOLDER**CANCELLATION**

City of Portland 389 Congress Street Portland, ME 04101	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	---

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY EXTENSION ENDORSEMENT

This endorsement modifies insurance under the

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

The following endorsement provision does not apply when "X" is shown in the space provided below:

- Provision **C. PROPERTY DAMAGE – BORROWED EQUIPMENT** does not apply
- Provision **D. PROPERTY DAMAGE – CUSTOMERS' GOODS** does not apply
- Provision **G. MEDICAL PAYMENTS EXTENSION** does not apply
- Provision **I. ADDITIONAL INSUREDS – BY CONTRACT, AGREEMENT OR PERMIT** does not apply
- Provision **J. ADDITIONAL INSUREDS – VENDORS** does not apply
- Provision **K. BROAD FORM NAMED INSURED** does not apply
- Provision **L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES** does not apply
- Provision **M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT** does not apply

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement)

With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

A. NON-OWNED AIRCRAFT

Under paragraph 2. **Exclusions** of **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY (SECTION I)**, exclusion **g. Aircraft, Auto Or Watercraft** does not apply to an aircraft provided:

1. It is not owned by any insured;
2. It is hired, chartered or loaned with a trained paid crew;
3. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating her or him a commercial or airline pilot; and
4. It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

B. NON-OWNED WATERCRAFT

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Under paragraph 2. **Exclusions** of **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY (SECTION I)**, provision (2)(a) of exclusion g. **Aircraft, Auto Or Watercraft** is replaced by the following:

This exclusion does not apply to:

(2) A watercraft you do not own that is:

(a) Less than 51 feet long; and

C. PROPERTY DAMAGE - BORROWED EQUIPMENT

1. Under paragraph 2. **Exclusions** of **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY (SECTION I)**, provision (4) of exclusion j. **Damage To Property** does not apply to "property damage" to borrowed equipment while that equipment is not being used to perform operations at the job site.

2. Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, the following is added to Condition 4. **Other Insurance**, paragraph b. **Excess Insurance**:

The insurance afforded by provision C. in the Commercial General Liability Extension Endorsement is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is property insurance.

3. This endorsement provision C. does not apply when it is shown in the Schedule as not applicable.

D. PROPERTY DAMAGE – CUSTOMERS' GOODS

1. Under paragraph 2. **Exclusions** of **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY (SECTION I)**, provisions (3), (4) and (6) of exclusion j. **Damage To Property** do not apply to "property damage" to "customers' goods" while on your premises.

2. Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, the following is added to Condition 4. **Other Insurance**, paragraph b. **Excess Insurance**:

The insurance afforded by provision D. in the Commercial General Liability Extension Endorsement is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is property insurance.

3. The following is added to **SECTION V - DEFINITIONS**:

"Customers' goods" means property of your customer on your premises for the purpose of being worked on or used in your manufacturing process.

4. This endorsement provision D. does not apply when it is shown in the Schedule as not applicable.

E. PROPERTY DAMAGE LIABILITY – ELEVATORS

1. Under paragraph 2. **Exclusions** of **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY (SECTION I)**, provisions (3), (4) and (6) of exclusion j. **Damage To Property** do not apply if such "property damage" results from the use of elevators.

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2. The following is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, Condition 4. **Other Insurance**, paragraph b. **Excess Insurance**:

The insurance afforded by provision E. in the Commercial General Liability Extension Endorsement is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is property insurance.

F. DAMAGE BY FIRE, LIGHTNING, EXPLOSION, SMOKE OR LEAKAGE

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

1. Under subsection 2. **Exclusions** of **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY (SECTION I)**:

- a. The fourth from the last paragraph of exclusion j. **Damage To Property** is replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **SECTION III – LIMITS OF INSURANCE**.

- b. The last paragraph of subsection 2. **Exclusions** is replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in **SECTION III - LIMITS OF INSURANCE**.

2. Paragraph 6. under **SECTION III - LIMITS OF INSURANCE** is replaced by the following:

6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning, explosion, smoke, or leakage from automatic protection systems, while rented to you or temporarily occupied by you with permission of the owner. This limit is the greater of:

- a. \$300,000; or

- b. The amount shown in the Declarations for Damage To Premises Rented To You Limit.

3. The word "fire" is changed to "fire, lightning, explosion, smoke, or leakage from automatic fire protection systems" where it appears in:

- a. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Condition 4. **Other Insurance**, paragraph b. **Excess Insurance**, subparagraph (1)(b); and

- b. **SECTION V – DEFINITIONS**, paragraph 9.a.

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G. MEDICAL PAYMENTS EXTENSION

1. **SECTION III - LIMITS OF INSURANCE**, paragraph 7. is replaced by the following:

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C. for all medical expenses because of "bodily injury" sustained by any one person. The Medical Expense Limit is the greater of:

- a. \$15,000; or
- b. The Medical Expense Limit shown in the Declarations.

2. Under provision 1. **Insuring Agreement** of **COVERAGE C MEDICAL PAYMENTS (SECTION I)**, the second subparagraph (2) of paragraph a. is replaced by the following:

(2) The expenses are incurred and reported to us within three years of the date of the accident; and

3. This endorsement provision G. does not apply when:

- a. It is shown in the Schedule as not applicable; or
- b. **COVERAGE C. MEDICAL PAYMENTS (SECTION I)** is otherwise excluded from this Coverage Part.

H. EXTENSION OF SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

Under **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**:

1. Paragraph 1.b. is replaced by the following:

b. Up to \$2500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Paragraph 1.d. is replaced by the following:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$300 a day because of time off from work.

I. ADDITIONAL INSURED - BY CONTRACT, AGREEMENT OR PERMIT

1. Paragraph 2. under **SECTION II - WHO IS AN INSURED** is amended to include as an insured any person or organization when you and such person or organization have agreed in writing in a contract, agreement or permit that such person or organization be added as an additional insured on your policy to provide insurance such as is afforded under this Coverage Part. Such person or organization is an additional insured only with respect to liability arising out of:

- a. Your ongoing operations performed for that person or organization; or

b. Premises or facilities owned or used by you.

With respect to provision **1.a.** above, a person's or organization's status as an insured under this endorsement ends when your operations for that person or organization are completed.

With respect to provision **1.b.** above, a person's or organization's status as an insured under this endorsement ends when their contract or agreement with you for such premises or facilities ends.

2. This endorsement provision **I.** does not apply:

- a.** Unless the written contract or agreement has been executed, or permit has been issued, prior to the "bodily injury", "property damage" or "personal and advertising injury";
- b.** To "bodily injury" or "property damage" occurring after:
 - (1)** All work, including materials, parts or equipment furnished in connection with such work, in the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
 - (2)** That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project;
- c.** To the rendering of or failure to render any professional services including, but not limited to, any professional architectural, engineering or surveying services such as:
 - (1)** The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 - (2)** Supervisory, inspection, architectural or engineering activities;
- d.** To "bodily injury", "property damage" or "personal and advertising injury" arising out of any act, error or omission that results from the additional insured's sole negligence or wrongdoing;
- e.** To any person or organization included as an insured under provision **J.** of this endorsement;
- f.** To any person or organization included as an insured by a separate additional insured endorsement issued by us and made a part of this policy; or
- g.** When it is shown in the Schedule as not applicable.

J. ADDITIONAL INSURED – VENDORS

Paragraph **2.** under **SECTION II - WHO IS AN INSURED** is amended to include as an insured any person or organization (referred to below as "vendor") with whom you agreed, in a written contract or agreement to provide insurance such as is afforded under this policy, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

- 1.** The insurance afforded the vendor does not apply to:
 - a.** "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply

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to liability for damages that the vendor would have in the absence of the contract or agreement;

- b. Any express warranty unauthorized by you;
 - c. Any physical or chemical change in the product made intentionally by the vendor;
 - d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the course of business, in connection with the distribution or sale of the products;
 - f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
 - g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
 - h. To "bodily injury" or "property damage" arising out of any act, error or omission that results from the additional insured's sole negligence or wrongdoing.
2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
 3. This endorsement provision **J.** does not apply when it is shown in the Schedule as not applicable.

K. BROAD FORM NAMED INSURED

1. **SECTION II - WHO IS AN INSURED** is amended to include as an insured any legally incorporated entity of which you own more than 50 percent of the voting stock during the policy period.
2. Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, the following is added to Condition 4. **Other Insurance**, paragraph **b. Excess Insurance**:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is available to an insured solely by reason of ownership by you of more than 50 percent of the voting stock.

3. Paragraph 2. of this endorsement provision **K.** does not apply to a policy written to apply specifically in excess of this policy.
4. This endorsement provision **K.** does not apply when it is shown in the Schedule as not applicable.

L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES

1. Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, the following is added to Condition 6. **Representations**:

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Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

2. This endorsement provision L. does not apply when it is shown in the Schedule as not applicable.

M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

1. Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, the following is added to Condition 2. **Duties in the Event of Occurrence, Offense, Claim Or Suit:**

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under paragraph 1. of **SECTION II – WHO IS AN INSURED** or a person who has been designated by them to receive reports of occurrences, offenses, claims and "suits" shall have received such notice from the agent, servant or "employee".

2. This endorsement provision M. does not apply when it is shown in the Schedule as not applicable.

N. LIBERALIZATION CLAUSE

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state. This does not apply to provisions that are shown in the Schedule as not applicable.

O. BODILY INJURY REDEFINED

Under **SECTION V - DEFINITIONS**, definition 3. is replaced by the following:

3. "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

COVERAGE INDEX

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The following modifies insurance under the:
BUSINESS AUTO COVERAGE FORM

1. TEMPORARY SUBSTITUTE AUTO PHYSICAL DAMAGE

SECTION I - COVERED AUTOS, paragraph C. is changed by adding the following:

If Physical Damage Coverage is provided under the Business Auto Coverage Form for an "auto" you own, the Physical Damage coverages provided for that owned "auto" are extended to any "auto" you do not own while used with the permission of its owner as a temporary substitute for the covered "auto" you own that is out of service because of its breakdown, repair, servicing, "loss", or destruction.

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2. BROAD FORM INSURED

SECTION II - LIABILITY COVERAGE - WHO IS AN INSURED is amended to include as an insured:

1. Any legally incorporated entity of which you own more than 50 percent of the voting stock during the period for which this endorsement is effective, if there is no similar insurance available to that organization. However, the Named Insured does not include any organization:
 - a. that is a partnership or joint venture, or
 - b. that is an insured under any other policy, or has exhausted its Limit of Insurance under any other policy.
2. Paragraph 1. b. above does not apply to a policy written to apply specifically in excess of this policy.
3. Coverage for newly acquired or formed organizations is afforded only for 180 days from the date of acquisition or formation.
4. Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired that organization.

3. EMPLOYEES AS INSURED

SECTION II - LIABILITY COVERAGE - WHO IS AN INSURED is amended to include as an insured:

Any employee of yours while using a covered "auto" you do not own, hire or borrow in your business or your personal affairs.

4. ADDITIONAL INSURED BY CONTRACT, AGREEMENT OR PERMIT

SECTION II - LIABILITY COVERAGE - WHO IS AN INSURED is amended to include as an insured any person or organization with whom you have agreed in writing in a contract, agreement or permit, to provide insurance such as is afforded under this policy.

This provision 4. does not apply unless the written contract or agreement has been executed, or permit has been issued, prior to the "bodily injury" or "property damage."

5. SUPPLEMENTARY PAYMENTS

SECTION II - LIABILITY COVERAGE, 2.a. Supplementary Payments, items (2) and (4) are replaced by the following:

- (2) Up to \$2500 for cost of bail bonds (including bonds for related traffic violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the insured at our request, including actual loss of earnings up to \$300 a day because of time off from work.

6. AMENDED FELLOW EMPLOYEE EXCLUSION

SECTION II - LIABILITY, exclusion 5. FELLOW EMPLOYEE does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire.

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The insurance provided under this provision 6. is excess over any other collectible insurance.

7. HIRED AUTO PHYSICAL DAMAGE

SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE, is amended by adding the following:

If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes of Loss, or Collision coverage are provided under the Business Auto Coverage Form for any "auto" you own, then the Physical Damage coverages provided are extended to "autos" you hire, subject to the following limit and deductible:

The most we will pay for "loss" to any hired "auto" is \$50,000 or Actual Cash Value or Cost of Repair, whichever is smallest, minus a deductible.

The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning.

Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

Subject to a maximum of \$500 per "accident", we will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable, and the lessor incurs an actual financial loss.

The insurance provided under this provision 7. is excess over any other collectible insurance.

8. TOWING AND LABOR

SECTION III - PHYSICAL DAMAGE COVERAGE, A.2.Towing, is replaced by the following:

We will pay towing and labor costs incurred, up to the limits shown below, each time a covered "auto" classified and rated as a private passenger type, "light truck" or "medium truck" is disabled:

- a. For private passenger type vehicles or "light trucks" we will pay up to \$50 per disablement. "Light trucks" are trucks that have a gross vehicle weight (GVW) of 10,000 pounds or less.
- b. For "medium trucks" we will pay up to \$150 per disablement. "Medium trucks" are trucks that have a gross vehicle weight (GVW) of 10,001 - 20,000 pounds.

However, the labor must be performed at the place of disablement.

9. PHYSICAL DAMAGE- ADDITIONAL TRANSPORTATION EXPENSE COVERAGE

SECTION III - PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extension, is amended to provide a limit of \$50 per day and a maximum limit of \$1000.

10. RENTAL REIMBURSEMENT

SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE, is amended by adding the following:

We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of

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"accident" or "loss", other than theft, to a covered "auto". We will pay only for those expenses incurred after the first 24 hours following the "accident" or "loss" to the covered "auto."

The most we will pay for any one "accident" or "loss" is \$1000. No deductible applies to this coverage.

11. EXTRA EXPENSE - BROADENED COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

12. PERSONAL EFFECTS COVERAGE

A. SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE, is amended by adding the following:

If you have purchased Comprehensive Coverage on this policy for an "auto" you own and that "auto" is stolen, we will pay, without application of a deductible, up to \$600 for "personal effects" stolen with the "auto."

The insurance provided under this provision 12. is excess over any other collectible insurance.

B. SECTION V - DEFINITIONS is amended by adding the following:

"Personal effects" means tangible property that is worn or carried by an "insured". "Personal effects" does not include tools, jewelry, money or securities.

13. AIRBAG COVERAGE

SECTION III - PHYSICAL DAMAGE COVERAGE, B. EXCLUSIONS is amended by adding the following:

If you have purchased Comprehensive or Collision Coverage under this policy, the exclusion relating to mechanical breakdown does not apply to the accidental discharge of an air bag.

14. SOUND RECEIVING AND REPRODUCING EQUIPMENT - BROADENED COVERAGE

SECTION III - PHYSICAL DAMAGE COVERAGE, B. EXCLUSIONS is amended by adding the following:

The exclusion as it relates to sound receiving or reproducing equipment does not apply to sound receiving or reproducing equipment that is permanently installed in a covered "auto."

15. LEASE GAP

- A. SECTION III - PHYSICAL DAMAGE COVERAGE - LIMIT OF INSURANCE is amended by adding the following:

The most we will pay for a "total loss" in any one "accident" is the greater of the:

1. Balance due under the terms of the loan or lease to which the damaged covered "auto" is subject at the time of the "loss" less the amount of:
 - a. Overdue payments and financial penalties associated with those payments as of the date of the "loss",
 - b. Financial penalties imposed under a lease due to high mileage, excessive use or abnormal wear and tear,
 - c. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease,
 - d. Transfer or rollover balances from previous loans or leases,
 - e. Final payment due under a "Balloon Loan",
 - f. The dollar amount of any unrepaired damage which occurred prior to the "total loss" of a covered "auto",
 - g. Security deposits not refunded by a lessor,
 - h. All refunds payable or paid to you as a result of the early termination of a lease agreement or as a result of the early termination of any warranty or extended service agreement on a covered "auto",
 - i. Any amount representing taxes,
 - j. Loan or lease termination fees, or;
2. The actual cash value of the damaged or stolen property as of the time of the "loss".

An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of the "loss".

B. ADDITIONAL CONDITIONS

This coverage applies only to the original loan or lease written on a covered "auto".

- C. SECTION V - DEFINITIONS is changed by adding the following:

As used in this endorsement, "total loss" means a "loss" in which the cost of repairs plus the salvage value exceeds the actual cash value.

A "balloon loan" is one with periodic payments that are insufficient to repay the balance over the term of the loan, thereby requiring a large final payment.

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16. GLASS REPAIR - WAIVER OF DEDUCTIBLE

SECTION III - PHYSICAL DAMAGE COVERAGE is amended by adding the following to D. DEDUCTIBLE :

No deductible applies to glass damage if the glass is repaired rather than replaced.

17. DRIVE OTHER CAR FOR EXECUTIVE OFFICERS

A. This provision 17. changes only those coverages where a limit and premium is shown in the Declarations.

B. CHANGES IN LIABILITY COVERAGE:

Any "auto" you do not own, hire or borrow is a covered "auto" for Liability Coverage while being used by any of your "executive officers", except:

Any "auto" owned by that "executive officer" or a member of that person's household, or

Any "auto" used by that "executive officer" while working in a business of selling, servicing, repairing or parking "autos".

C. CHANGES IN AUTO MEDICAL PAYMENTS AND UNINSURED MOTORISTS AND UNDERINSURED MOTORISTS COVERAGE

The following is added to WHO IS AN INSURED:

Any individual "insured" and his or her "family members" are "insured" while "occupying" or while a pedestrian when being struck by any "auto" you do not own except:

Any "auto" owned by that individual or by any "family member".

D. CHANGES IN PHYSICAL DAMAGE COVERAGE:

Any private passenger type "auto" you do not own, hire or borrow is a covered "auto" while in the care, custody or control of any of your "executive officers" except:

Any "auto" owned by that individual or by any member of his or her household.

Any "auto" owned by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".

E. ADDITIONAL DEFINITIONS:

As used in this endorsement:

"Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and that person's spouse, while a resident of the same household.

"Family member" means a person related to an "executive officer" by blood, marriage or adoption who is a resident of the individual's household, including a ward or foster child.

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F. The insurance provided under this provision 17. will be:

Equal to the broadest of those coverages afforded any covered "auto", and
Excess over any other collectible insurance.

18. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

If you unintentionally fail to disclose any hazards or exposures existing as of the inception date of the Business Auto Coverage Part, the coverage afforded by this policy will not be prejudiced. However, you must report the undisclosed hazard or exposure as soon as practicable after its discovery, and we have the right to collect additional premium for same.

19. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT, OR "LOSS"

SECTION IV - BUSINESS AUTO CONDITIONS, paragraph A.2.a. is amended by adding the following:

You must give us notice of an "accident", claim, "suit" or "loss" only when it is known to:

1. You, if you are an individual,
2. A partner, if you are a partnership,
3. A member, if you are a limited liability company, or
4. An executive officer or the "employee" designated by the Named Insured to give such notice, if you are a corporation.

20. BODILY INJURY REDEFINED

Under SECTION V - DEFINITIONS, definition C. is replaced by the following:

"Bodily Injury" means physical injury, sickness or disease sustained by a person including mental anguish, mental injury, shock, fright or death resulting from any of these at any time.

21. EXTENDED CANCELLATION CONDITION

The COMMON POLICY CONDITIONS - CANCELLATION provision applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation. This provision 21. does not apply in those states which require more than 60 days prior notice of cancellation.

*Order 182-17/18
Feb-11 4-9-18*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER APPROVING THE THIRD AMENDMENT TO THE
AMENDED AND RESTATED LEASE
WITH BAY FERRIES LIMITED
FOR OCEAN GATEWAY FACILITY**

ORDERED, that the attached Third Amendment to the Amended and Restated lease with Bay Ferries Limited for Portland to Yarmouth, Nova Scotia ferry service from the Ocean Gateway facility is hereby approved, substantially in the form attached hereto; and

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



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

City Council Agenda Item

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

FROM: Greg Mitchell, Economic Development Director

DATE: March 23, 2018

SUBJECT: Order Authorizing City Manager to Execute Third Amendment to Amended and Restated Lease with Bay Ferries, Ltd.

SPONSOR: Economic Development Committee, Councilor Justin Costa/Chair; Meeting held on March 20, 2018, and vote was unanimous (3-0) to Recommend Approval to the City Council.

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading and Final Action: April 9, 2018

Can action be taken at a later date: ___ Yes ___ **X** No (If no why not?) With the 2018 Ferry Season fast approaching, staff is requesting that this be on the April 9, 2018, Council Agenda.

PRESENTATION: Greg Mitchell/5 Minutes

I. ONE SENTENCE SUMMARY

A one-year Lease renewal is being requested by Bay Ferries Limited for use of the Ocean Gateway facility for the 2018 season to support ferry service between Portland, Maine and Yarmouth, Nova Scotia.

II. AGENDA DESCRIPTION

Bay Ferries returned to the Port of Portland in 2016 to operate the CAT ferry service between Yarmouth, Nova Scotia and Portland Maine. The 2016 Lease was a two-year Lease with a single one-year renewal option. This proposed Third Amendment to Amended and Restate Lease is for that one-year renewal option for the 2018 Ferry Season.

Items of note included in the proposed Third Amendment include:

Term: A one-year renewal through 2018 is requested, with one additional one year renewal through 2019 based upon mutually agreeable terms.

Rent/Fee Schedule: Staff is proposing no changes to the rent and fee schedule included in the Amended and Restated Lease, with the exception of deleting parking fees, due to investments to be made by Bay Ferries as noted below for Custom Border and Protection.

Parking: No employee parking will be provided at the City owned Thames Street parking lot with the proposed amendments.

Custom Border and Protection (CBP): CBP is requiring upgrades to Federal security equipment to continue ferry service in 2018.

The City and Bay Ferries are working with CBP and their preferred contractors to upgrade security equipment at Ocean Gateway. Bay Ferries will cover all costs associated with Federal security equipment investments, estimated in the six figures.

2018 Season Schedule: See new Exhibit D for the 2018 ferry season schedule.

Revenue expected to the City for the 2018 Ferry Season is estimated at approximately \$190,000, down from 2017 at \$200,000 – primarily because of the late start to the season this year.

III. BACKGROUND

In 2016, Bay Ferries returned to the Port of Portland operating the CAT ferry service between Yarmouth, Nova Scotia and Portland, Maine. At that time, the City Council approved a lease with Bay Ferries Limited on May 2, 2016. The Lease was for a two-year term with a single one-year renewal option, which is the subject of the current request.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

City Council vote to approve the Third Amendment to the Amended and Restated Lease Agreement between the City of Portland and Bay Ferries Limited.

V. FINANCIAL IMPACT

During the 2016 sailing season, the Lease with Bay Ferries generated \$142,500 from space rent, parking, passenger/vehicle fees, and berthing fees.

During the 2017 sailing season, the Lease with Bay Ferries generated over \$200,000 from the same space rent, parking, passenger/vehicle fees, and berthing fees.

Estimates for 2018 are at \$190,000 due to the late start for the 2018 Season.

VI. STAFF ANALYSIS

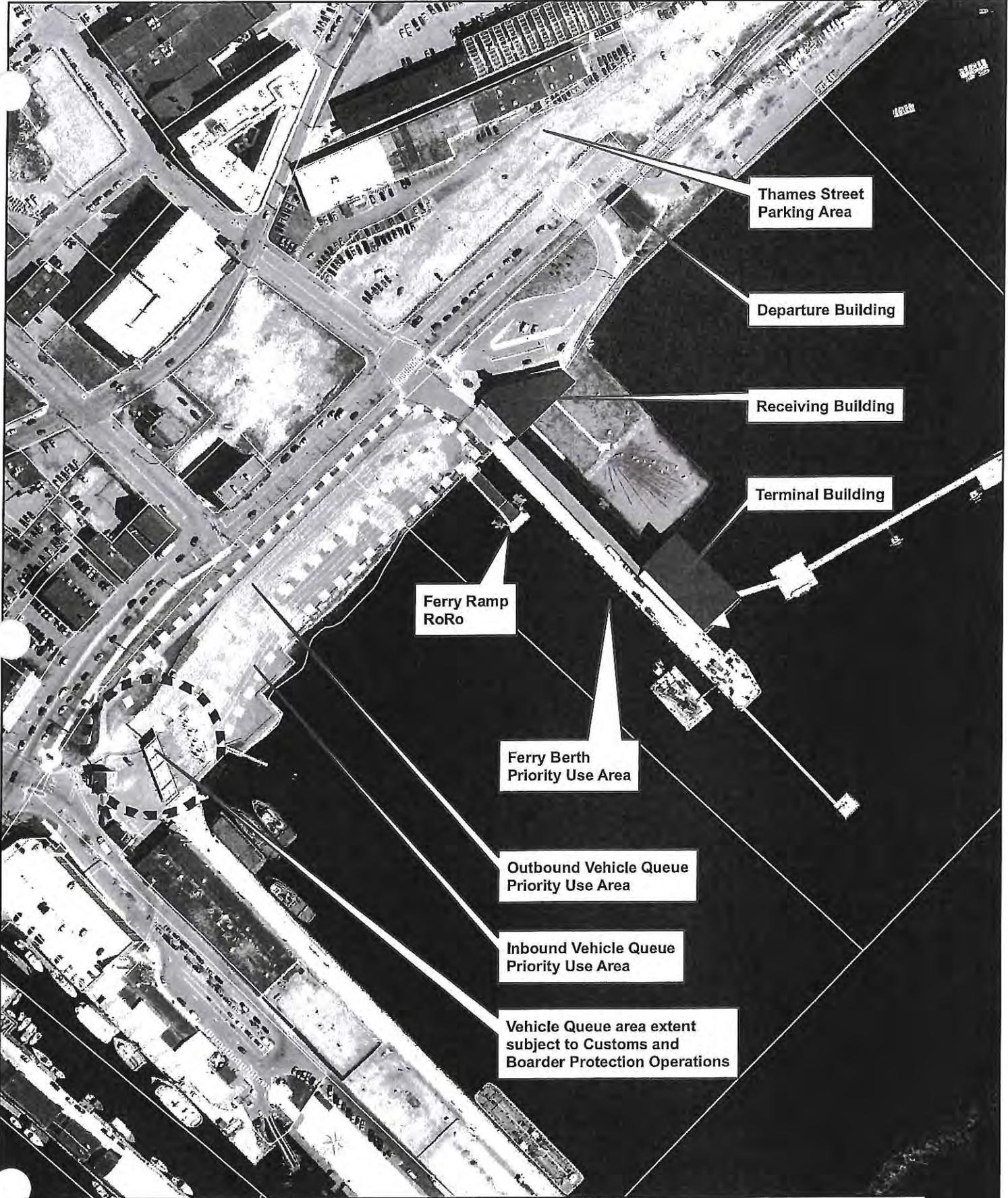
Staff has been working with Bay Ferries to prepare the attached proposed Third Amendment to the Amended and Restated Lease Agreement to address 2018 season needs and requirements.

VII. RECOMMENDATION

The EDC reviewed the proposed Third Amendment to Amended and Restated Lease and voted unanimously (3-0), to recommend to the City Council approval, in substantial conformance as attached.

VIII. LIST ATTACHMENTS

- Map of Ocean Gateway
- Proposed Third Amendment to Amended and Restated Lease Agreement
- Amended and Restated Lease Agreement
- First Amendment to Amended and Restated Lease Agreement
- Second Amendment to Amended and Restated Lease Agreement



Thames Street
Parking Area

Departure Building

Receiving Building

Terminal Building

Ferry Ramp
RoRo

Ferry Berth
Priority Use Area

Outbound Vehicle Queue
Priority Use Area

Inbound Vehicle Queue
Priority Use Area

Vehicle Queue area extent
subject to Customs and
Border Protection Operations

250 125 0 250 Feet



THIRD AMENDMENT TO
AMENDED AND RESTATED LEASE AGREEMENT BETWEEN
CITY OF PORTLAND AND BAY FERRIES LIMITED RE: OCEAN GATEWAY

THIS THIRD AMENDMENT is made as of the ____ day of _____, 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 (“Landlord”) and BAY FERRIES LIMITED, a Canadian registered corporation with a principal office at 94 Water Street, Charlottetown, Prince Edward Island, Canada C1A 7L3 (the “Tenant”).

WITNESSETH:

WHEREAS, Landlord and Tenant entered into an Amended and Restated Lease Agreement dated May 26, 2017, as amended by a First Amendment dated August 28, 2017, and a Second Amendment dated October 13, 2017 (collectively, the “Lease”) with respect to certain space at Landlord’s property known as Ocean Gateway, where Tenant operates an international ferry service between Portland, Maine and Yarmouth, Nova Scotia; and

WHEREAS, Landlord and Tenant wish to renew the Lease for the 2018 Operating Season subject to the terms and conditions set forth herein.

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

1. Section 1(c) of the Lease, Parking, is hereby deleted in its entirety and replaced with the following: “There shall be no parking included in this Lease.”
2. Section 2(a) of the Lease is hereby deleted and replaced with the following:

“Term. The Term of this Lease shall be from the date set forth above to November 15, 2018. Provided that Landlord, in its sole discretion, determines that Tenant is not in default of any term or condition of this Lease, Landlord may agree to renew this Lease for up to one additional year upon terms mutually agreeable to the parties. If Tenant desires to so renew this Lease, Tenant shall notify Landlord on or before October 15, 2018.

3. Section 2(b) of the Lease is hereby deleted and replaced with the following:

“Operating Season; Wind Up and Wind Down Seasons; Off Season. Tenant’s Operating Season shall be June 8, 2018 to October 8, 2018 (the “Operating Season”). The term “Wind Up Season” shall mean June 5-7, 2018. The term “Wind Down Season” shall be October 9-12, 2018, or the three (3) day period following the Operating Season if the Operating Season terminates before October 8, 2018. Tenant shall have no right to occupy, and shall vacate, the Queuing Area, the Berthing Area, the Ramp, the Exterior Common Areas, the Terminal Building, and any other City-owned property, other than the Departure Building, after October 21, 2018. Tenant shall vacate the Departure Building and surrender possession of it to the

Landlord in accordance with the terms of the Lease on or before November 15, 2018. The term "Off Season" shall mean from the date first set forth above until June 4, 2108. In the event that Landlord agrees to renew this Lease as set forth above, the term "Off Season" shall also mean the period between the end of the 2018 Wind Down Season and commencement of the 2019 Wind Up Season"

4. Section 5(b) is hereby deleted in its entirety and replaced with the following:

"In the event Tenant wishes to make any improvements to any portion of the Premises, including any improvements required by CBP, it shall obtain the written approval of Landlord prior to undertaking any such improvements, which approval shall not be unreasonably withheld. All such improvements shall be at Tenant's sole cost and expense."

5. The following language is added to the Lease as section 7(t):

"On or before May 1, 2018, Tenant shall present Landlord with a licensed engineer's plan ("Plan") satisfactory to the City's Waterfront Manager, to mitigate future damage to the Seawall or any other part of the City's property which shall include installation of riprap by Cross Excavation at the quoted cost of \$15,698. Prior to the commencement of the 2018 Operating Season, Tenant shall complete construction of any required facilities described in said Plan, up to a maximum expenditure cap of \$20,000 (inclusive of the \$15,698 referred to above), to the Waterfront Manager's satisfaction. Compliance with this paragraph shall not relieve Tenant of any responsibility otherwise existing for any damage to, or its obligation to maintain or repair, the Premises or other City property."

6. The following is added to the Lease as section 28:

"**28. USCBP 2018 Security Equipment Requirements:** U.S. Customs and Border Protection ("CBP") requires that a series of equipment and operational changes (the "CBP Requirements") be made to the Premises as a prerequisite to CBP providing inspection services for the 2018 Operating Season. The details and exact terms of the CBP Requirements are being discussed on an ongoing basis between CBP, the Tenant, and the Landlord. The parties acknowledge and agree that without such inspection services, Tenant cannot operate its ferry service. Accordingly, notwithstanding anything to the contrary in the Lease, in the event that CBP, at any time, decides to terminate its international inspection services for Tenant's ferry service, the Lease shall automatically terminate. Within 5 days after the date of CBP's decision to terminate such inspection services, Tenant shall vacate the Queuing Area, the Berthing Area, the Ramp, the Exterior Common Areas, the Terminal Building, and any other City-owned property, other than the Departure Building; and within 30 days after CBP's decision to terminate the inspection services, Tenant shall vacate the Departure Building and all other portions of the Premises not previously vacated.

Tenant acknowledges and agrees that it shall be solely responsible for all of the costs associated with the CBP Requirements, including, without limitation, all costs associated with the initial

assessments undertaken by third party contractors, all costs associated with the purchase and installation of equipment required by CBP, and all other costs associated with complying with, and maintaining, any CBP Requirements for approval of the Premises for Tenant's operation of its international ferry service (the "CBP Improvements Costs"). It is the intent of the parties that the Landlord shall incur no expense in connection with obtaining CBP's approval of the Premises for Tenant's operation of its international ferry service and maintaining that approval during the term of the Lease, and the Landlord shall not be responsible for any portion of the CBP Improvements Costs.

It is understood that the contracts for the most significant elements of the CBP Improvements (the "CBP Improvement Contracts") may be entered into with Battelle Memorial Institute, Pacific Northwest Division, UNISYS, or other contractors (collectively the "CBP Contractors"). If permitted by the CBP Contractors, Tenant will enter into any CBP Improvement Contracts with the CBP Contractors. The CBP Improvement Contracts shall be subject to the Landlord's approval, but Landlord shall not be liable for any expenses, costs, losses, damages, or claims incurred under such contracts. Should it become necessary that Landlord, as owner of the Premises, be a party to any CBP Improvement Contracts, the Landlord's execution of such contracts shall be conditioned upon Tenant first paying to Landlord all amounts due to the contractors under such contracts, or, at Landlord's option, providing some other financial security in form and amount satisfactory to Landlord, acting reasonably, which is reflective of Landlord's financial exposure pursuant to the terms of the CBP Improvement Contract(s). Notwithstanding the foregoing, in the event that Landlord incurs any costs related to the CPB Requirements, Tenant shall pay Landlord for such costs within five days of Landlord's demand for same, failing which the Lease shall automatically terminate.

Provided that Tenant has paid for all costs associated with the CBP Requirements as set forth herein, Landlord will not assert any ownership or other interest in any goods or equipment installed pursuant to or as a result of the CBP Requirements. Landlord will not object to any subsequent removal of any such goods or equipment to another location upon termination of this Lease.

Tenant further agrees that to the fullest extent permitted by law, it shall defend, indemnify, and hold harmless Landlord, its officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and attorney's fees arising out of or resulting from the performance of any and all CBP Improvement Contracts, provided that any such claims, damage, loss damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use therefrom. Such obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Landlord that otherwise exists. The extent of the indemnification provision shall not be limited by the provision for insurance in Lease. Tenant's obligations under this paragraph shall survive termination of the Lease.

7. The following language in Exhibit B attached to the Lease is hereby deleted: "Daily Parking per space, per month \$75.00."
8. Exhibit D (2017 CAT Schedule) attached to the Lease is hereby deleted in its entirety and replaced with Amended Exhibit D (2018 CAT Schedule), which is attached hereto and made a part hereof.
9. Any and all terms of the Lease not herein amended shall remain in full force and effect for the duration of the Lease as amended hereby and are hereby ratified. In the event of any conflict between the terms of this Amendment and the terms of the Lease and any exhibits thereto, the terms of this Amendment shall govern and control so long as this Amendment is in effect. Except as amended hereby, any capitalized terms herein shall have the meanings set forth in the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Agreement to be executed by their duly authorized representatives or officers, as of the date first written above.

WITNESS:

CITY OF PORTLAND

By: _____
 Jon P. Jennings
 Its City Manager

WITNESS:

BAY FERRIES LIMITED

By: _____
 Mark MacDonald
 Its: Chairman and CEO

 Approved as to Form:
 City Corporation Counsel's Office

 Approved as to Funds:
 City Finance Director

AMENDED EXHIBIT D



Tentative CAT Ferry Operating Schedule 2018*

www.ferries.ca/TheCAT

Departure Times						
Yarmouth, NS: 8:30 AM (Atlantic)						
Portland, ME: 2:30 PM (Eastern)						
(Atlantic Time is <u>one hour ahead</u> of Eastern Time)						
Passengers must check in 1-1.5 hours before departure.						
Passports are required for entry to Canada and USA.						

JUNE						
Su	Mo	Tu	We	Th	Fr	Sa
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
1	2	3	4	5	6	7

JULY						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31	1	2	3	4
5	6	7	8	9	10	11

AUGUST						
Su	Mo	Tu	We	Th	Fr	Sa
29	30	31	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	1
2	3	4	5	6	7	8

SEPTEMBER						
Su	Mo	Tu	We	Th	Fr	Sa
26	27	28	29	30	31	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	1	2	3	4	5	6

OCTOBER						
Su	Mo	Tu	We	Th	Fr	Sa
30	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31	1	2	3
4	5	6	7	8	9	10

Service Dates are shaded in the calendars above. Non-service dates are white.

**AMENDED AND
RESTATED LEASE
AGREEMENT BETWEEN
CITY OF PORTLAND AND
BAY FERRIES
LIMITED RE:
OCEAN
GATEWAY**

THIS AMENDED AND RESTATED LEASE AGREEMENT dated this 26th day of May, 2017 is by and between the City of Portland, Maine, Maine municipal corporation with a principal office at 389 Congress Street, Portland, Maine 04101 (the "Landlord"), and Bay Ferries Limited, a Canadian registered corporation with a principal office at 94 Water Street, Charlottetown, Prince Edward Island, Canada, C1A 7L3 (the "Tenant").

WHEREAS, Landlord and Tenant are parties to a Lease Agreement dated June 1, 2016 (the "Original Lease") for certain space at the Landlord's property known as Ocean Gateway where Tenant operates an international ferry service between Portland, Maine and Yarmouth, Nova Scotia (the "Ferry Service") on a ferry vessel known as "Alakai" (commercially branded as "The Cat"), 106.5 meters in length (the "Vessel"); and

WHEREAS, Landlord and Tenant desire to make substantial amendments to the terms and conditions of the Original Lease and wish to enter into an amended and restated lease agreement to address those amendments; and

NOW THEREFORE, in consideration of the mutual covenants and considerations herein contained, the sufficiency of which is hereby acknowledged, Landlord and Tenant hereby mutually agree that the Original Lease be amended and restated as of the Effective Date (as defined in Section 2 below).

1. Premises; As-Is Condition; Permitted Uses.

Landlord does hereby lease, demise and let unto Tenant, to have and to hold on the terms herein, subject to the reservations and conditions below, the premises identified herein and shown on Exhibit A, attached hereto and incorporated herein. Tenant agrees to accept the premises in "as-is" condition without representation or warranty by Landlord as to its condition or fitness for a particular purpose.

a. **Spaces for exclusive use at certain times.** The following spaces are available for the Exclusive use of Tenant for the hours stated during the Operating Season (as defined below):

i. **Queuing Areas.** The sole areas to be used for marshalling inbound and outbound vehicles and processing of passengers by U.S. Customs and Border Protection ("CBP") are the areas labeled "Outbound Queuing Area" and "Inbound Queuing Area" on Exhibit A (collectively the "Queuing Areas"), as may be

modified to meet CBP requirements. The Outbound Queuing Area is to be used for vehicles and passengers preparing to depart from Portland. The Inbound Queuing Area is to be used for vehicles and passengers arriving in Portland. Said Queuing Areas are to be used by Tenant on a non-exclusive but priority basis during the Operating Season to accommodate its sailing schedule, as outlined below. During the Operating Season, the Inbound Queuing area will only be available to the Tenant for its exclusive use, between the hours of 1:15 P.M. and 3:15 P.M., only on the Service Dates listed on Exhibit D attached hereto (the "Service Dates"), and the Outbound Queuing area will be available to the Tenant for its exclusive use between the hours of 12:00 P.M. (or earlier, if permitted by the City of Portland's Director of Facilities Management or his/her designee (the "Director") and 3:00 P.M. only on the Service Dates. The Queuing Areas may be reduced temporarily by mutual agreement of the Director and the Tenant. Tenant may place in the Queuing area any trailers or other facilities or improvements required by CPB with the prior approval of the Landlord, which may not be unreasonably withheld, and subject to any applicable permits, licenses or approvals required federal, state, and municipal laws, rules, and regulations. No tractor trailer trucks, or other trucks or vehicles with trailers exceeding a total of fifty (50) feet in length, shall be allowed to transit on the Ferry Service or be present in the Queuing Areas.

ii. **Berthing Area.** During the Operating Season, the Berthing Area depicted on Exhibit A will be available to the Tenant for its exclusive use between the hours of 1:30 P.M. and 3:00 P.M., only on the Service Dates. In the event Tenant desires unscheduled berthing, Tenant shall request such berthing with as much advance notice as possible. Landlord shall grant such requests if berthing is available. When off-schedule berthing is not available, the Landlord shall use reasonable efforts to assign a secondary berth to Tenant. Tenant shall be solely responsible for the cost of moving its vessel to off-schedule secondary berthing, including but not limited to any security costs, and Landlord shall have no responsibility for such moving, security or related costs. During the Operating Season, as that term is defined below, Tenant's use of the Berthing Area shall at all times include the exclusive use of the "roll-on, roll-off ramp facilities at the OG Terminal (the "Ramp") (as depicted on Exhibit A) for vehicle and passenger loading and unloading. During the "Wind Up and Wind Down" Seasons, as those terms are defined below, if Tenant desires unscheduled use of the Ramp, Tenant shall request such use with as much advance notice as possible. It is understood that Tenant may require some, although not exclusive, daytime and nighttime use of the ramp in the Wind Up Season for training and preparation purposes and Landlord and Tenant agree to work cooperatively to schedule such usage, if available, and to also enable Landlord's continued generation of berthage revenue from other parties. Tenant's use of the Ramp is at Tenant's sole risk. Unless otherwise agreed to by Landlord, Tenant shall have no right to use the Berthing Area at any time during the Off Season, as that term is defined below. It is further understood between the parties as follows:

- (a) On those days during the Operating Season when there is no cruise ship berthed at the Portland Ocean Terminal, and otherwise no operating restrictions within the Port, Tenant shall be free to berth earlier than 1:30 P.M.; and

(b) On those days within the Operating Season when there is a cruise ship berthed at the Portland Ocean Terminal, the Vessel may be secured at the berthing area prior to 1:30 P.M. provided passengers and vehicles are not released prior to 1:30 P.M. and provided such does not otherwise impede port operations. The parties intend there to be close collaboration and communication at all times so as to facilitate the most efficient operations for all parties.

iii. **Departure Building.** Tenant will have the exclusive use of the Departure Building (depicted on Exhibit A) for the term of this Lease for ticketing, processing of passengers, passenger waiting area, restrooms, and related uses.

iv. **Terminal Building:** The Tenant shall have the right to access the inbound Customs processing facility in the Terminal Building depicted on Exhibit A for processing inbound pedestrian passengers, who shall be moved by the Tenant from the Vessel to the Terminal Building by means acceptable to CBP and the Landlord. Such processing shall be limited to the hours of 1:30 p.m. and 3:00 p.m. on the Service Dates.

- b. **Exterior Common Areas.** The following spaces are available for the non-exclusive use of Tenant during the Operating, Wind Up, and Wind Down Seasons: The walkways, driveways and roadways at the Ocean Gateway may be used by Tenant on a non-exclusive basis, in common with others. However, during hours that another vessel (such as a cruise ship) or scheduled event is using the Ocean Gateway Terminal, the Tenant and its passengers will only use the area for dropping off of customers and passenger ticketing, and Tenant will cooperate with Landlord to adequately place personnel for incoming customers and passengers to be aware of this use restriction. No outboard queuing is allowed in the Receiving Building parking lot or any area other than the Outbound Queuing Area.
- c. **Parking.** Landlord will assign a maximum of 10 parking spaces to Tenant for employee parking in the City-owned Thames Street parking lot as generally depicted on Exhibit A (the "Parking Area") during the Operating, Wind Up and Wind Down Seasons of each year of the term of this Lease or any renewal term. No overnight parking will be allowed. Landlord reserves the right at any time during the term of this Lease to assign different parking spaces to Tenant. Landlord will not provide any customer parking. Employee vehicles parked in the Receiving Building Lot (as depicted on Exhibit A) are subject to ticketing if parked beyond posted limits.
- d. **Landlord's Right to Relocate Premises.** The Queuing Areas, Berthing Area, the Ramp, the Departure Building, the Parking Area, and the Exterior Common Areas may be collectively referred to herein as the "Premises". Except for the Departure Building, Landlord reserves the right to change particular locations of the Premises, subject to the condition that such re-location(s) will not unreasonably burden the operations of Tenant. The intent of this reserved right to re-locate is to allow Landlord to continue the ongoing development and enhanced utilization of its limited waterfront real estate in coordination with other parties using or desiring to use nearby locations.

- e. **Use of Premises for Ferry Service.** During the term of this Lease, Tenant is permitted to use the Premises for the sole purpose of conducting an international Ferry Service between Portland, Maine and Yarmouth, Nova Scotia via the Vessel. Tenant agrees to provide four (4) to seven (7) days of service per week during the Operating Season, subject to normal exigencies of the ferry business, including weather and mechanical breakdown, lack of consumer demand, and other events beyond Tenant's control. Should sailings be fewer than seven (7) days per week during the Operating Season, monthly berthage payment shall not be reduced. Sailings shall be only on Service Dates with arrivals at 1:30 p.m. and departures before 3:00 p.m. Should Tenant wish to reduce its schedule of service, Tenant will provide as much notice as reasonably practicable and will provide best efforts to give notice at least fifteen (60) days in advance. Tenant acknowledges that no trade or occupation shall be conducted on or from the Premises or use made thereof that would be unlawful, improper, or offensive, or contrary to any law or any municipal by-law or ordinance.

There shall be no additional charge to the Tenant for overnight berthing in the Berthing Area during the Wind Up and Wind Down seasons, provided, however, that the Berthing Area will not be available overnight on Fridays during those periods.

- f. **Service Dates.** Tenant may only use the Berthing Area, the Terminal Building, and the Queuing Area on the Service Dates.
- g. **Landlord's Right to Relocate.** This Lease Agreement is non-exclusive, and nothing herein shall prevent or prohibit the Landlord from leasing other available space at either the Ocean Gateway or any other facility owned or operated by Landlord, to another Tenant for any purposes Landlord deems suitable, including but not limited to the operation of a similar ferry service. In no event, however, is the Landlord permitted to impair in any way the operations by Tenant. Tenant's use of the Queuing area and all other areas to be used by passengers is subject to any reduction in size or configuration or availability as may be required, at any time, by any security agencies having jurisdiction with respect to such areas.

2. **Term: Seasons.**

- a. **Term.** Except as provided below, the Term of this Lease shall be from June 1, 2016 (the "Effective Date") through October 15, 2017. Provided that Landlord, in its sole discretion, first determines that Tenant is not in default of any term or condition of this Lease, Landlord, in its sole discretion, may renew this Lease for up to one (1) additional year upon terms mutually agreeable to the parties. If Landlord desires to renew this Lease, Landlord shall so notify Tenant on or before September 15, 2017.
- b. **Operating Season; Wind Up and Wind Down Seasons; Off-Season.** Tenant's Operating Season shall be May 31, 2017 to October 15, 2017 (the "Operating Season"). The term "Wind Up Season" shall mean May 26, 2017

to May 30, 2017. The term "Wind Down Season" shall mean October 16, 2017 to October 19, 2017, or the three (3) day period following the Operating Season if that Season terminates before October 15, 2017. In the event that Landlord agrees to renew this lease as set forth above, the term "Off Season" shall mean the period between the end of the 2017 Wind Down Season and commencement of the 2018 Wind Up Season.

3. **Rent; Fees; Security Deposit.**

Tenant shall pay all rent and fees, when due, as provided below and on Exhibit B, attached hereto and incorporated herein.

4. **Payment; Statements.**

a. On or before the fifteenth (15th) day of each month, Tenant shall pay to Landlord the per-passenger and per-vehicle fees on Exhibit B that were incurred in the previous month. Such payment shall be made without the need for an invoice from Landlord and shall be accompanied by Tenant's statement as provided below.

b. Fees due during the Operating Season in paragraph a. above shall begin as of the first day of the month of said Operating Season. Tenant shall be responsible for payment of personal property taxes which may be payable on their trade fixtures and equipment, and for payment of any federal, state or local fees or taxes which may apply to their operations hereunder.

c. **Late payment:** Tenant shall make prompt and timely payment of all rentals, fees, and other charges due hereunder as the same may from time to time come due. In the event that any such payment is not made within thirty (30) days of the invoice due date, a penalty of one percent (1%) per month 12% per annum) shall be assessed and paid on all such amounts outstanding.

d. **Address:** All payments hereunder shall be written to the City of Portland and sent to the attention of: Public Assembly Facilities, Accounting Office, Portland Exposition Building, 239 Park Avenue, Portland, Maine 04102 or such other place as the Director may designate in writing from time to time.

Any invoices shall be sent to Tenant at the following address: Bay Ferries Limited, 94 Water Street, PO Box 634, Charlottetown, Prince Edward Island, Canada, C1A 7L3, Attn: Danny Bartlett, Vice President, Finance and Administration, or such other person or address as Tenant may designate in writing from time to time.

e. **Tenant Statements:** Tenant shall submit its official manifest or other official documentation (or electronic equivalent) showing the number of passengers and vehicles transported by Tenant both to and from the City of Portland each month when it submits its per passenger and per vehicle fees under

Exhibit B. No amount shall be payable to the City of Portland in respect of passengers or vehicles transported by the Tenant on a complimentary basis.

- f. Landlord reserves the right to conduct an audit of Tenant's traffic records, upon reasonable notice and during regular business hours, to determine the accuracy of amounts paid hereunder. In the event such audit discloses an underpayment to Landlord of more than Five Percent (5%) in any year, Tenant shall pay to Landlord, in addition to the amount owed and any applicable late charges, the reasonable cost to Landlord of its audit, including legal, accounting, and consulting fees unless the underpayment shall have been the result of a bona fide mistake or miscalculation.

5. **Condition of Premises; Improvements to Premises.**

- a. "As is." Tenant has had the full opportunity to inspect the Premises prior to execution of this Lease and takes all such space, specifically including the Ramp, "as is," except as specifically provided herein. Should Tenant's Vessel require modifications to, improvements or replacement of the Ramp, such modifications or replacement shall be solely at Tenant's cost and expense, and subject to all required reviews and permits for such structure, including but not limited to approval of the Director which shall not be unreasonably withheld. Should Tenant require modification or improvements to the Queuing Areas, such modifications or improvements shall be solely at Tenant's cost and expense, and subject to all required reviews and permits for such improvements or modifications, including but not limited to approval of the Director, which shall not be unreasonably withheld.
- b. In the event Tenant wishes to make any improvements to any portion of the Premises, it shall obtain the written approval of Landlord prior to undertaking any such improvements, which approval shall not be unreasonably withheld. All such improvements shall be at Tenant's sole cost and expense, provided, however, that upon submission by Tenant and approval by Landlord of documented expenses for improvements to the Departure Building, Tenant shall be entitled to a credit against rent in the amount of twenty-four thousand dollars (\$25,000.00) for improvements to the Departure Building. Such credit shall be provided in two \$12,500.00 increments against rent due in June and July 2016.
- c. Notwithstanding the foregoing, Landlord agrees that Tenant may install, at Tenant's expense, only at particular locations approved in advance by the Director, its security camera system in order to monitor the docking basin, vehicle inspection or processing booth and waiting areas for security and operational issues; subject to the condition, however, that Tenant will share access with the Landlord to the 'live feed' from such cameras, as well as any recordings from such cameras if and when requested.

6. **Obligations of Landlord: Maintenance, Utilities.**

Except as otherwise provided herein, the Landlord shall provide for the 'landside' facilities only, at its expense, the following:

- a. Except as otherwise provided in this Lease, Tenant acknowledges and agrees that this Lease is a 'net lease', for the Landlord, and that the Landlord shall not be responsible for any costs, charges, expenses or the like whatsoever arising from or related to the leased Premises or rights, or the business carried on or related to said Premises or rights, and Tenant shall pay all costs, charges, expenses or the like of every nature and kind whatsoever relating to the leased premises or rights, including any passenger or vehicle ramps, unless specifically agreed to in advance in writing by Landlord.
- b. Landlord will provide heat and sewer services to the Departure Building. In addition, Landlord will provide water (including potable water) to the Vessel, at the Rates in Exhibit B.
- c. Landlord shall ensure that the roof, exterior walls, and structure of the Departure Building are secure, water-tight, and allow the Departure Building to be occupied as offices and a public sales facility. Landlord shall also maintain and repair the marine infrastructure (i.e., the passenger bridge, security fencing, and fendering, in the same condition as they are in at the commencement of the term of this Lease or as they may be put in during the term of this Agreement; reasonable wear and tear, damage by fire and other casualty only excepted, unless such maintenance or repair is made necessary by fault or neglect of Tenant or the employees, contractors, agents or invitees of Tenant, in which case such maintenance or repair shall be at the expense of the Tenant and Tenant shall pay all costs therefor.
- d. Maintenance and reasonable cleaning of the Exterior Common Areas, Queuing Area, and Parking Areas available for use by Tenant, its employees and invitees, including snow and ice removal.
- e. After Tenant reconfigures and repaints the travel lanes in the Queuing Areas as set forth below, Landlord may, in its discretion, repaint the lines for the travel lanes, but it has no obligation to do so.
- f. Access to washroom facilities in the Ocean Gateway on an escorted basis (if permitted by CBP) for outbound customers waiting in the Outbound Queuing Areas.

7. **Obligations of Tenant.**

Tenant covenants that it shall, at its expense:

- a. Provide four (4) to seven (7) days of service per week during the Operating Season in accordance with the schedule set forth in Exhibit D, subject to normal

exigencies of the ferry business, including weather and mechanical breakdown, lack of consumer demand, and other events beyond Tenant's control. Any suspension of operation of the vessel in excess of ten (10) consecutive days during the Operating Season, for reasons other than major mechanical failure of the Vessel, shall, at Landlord's option, be deemed to be a default and termination of this Lease. During any period of suspension, Tenant shall continue to be liable for any rent or utility payments.

- b. Keep Landlord informed of any unavoidable changes to sailing times sufficiently in advance so that Landlord can accommodate its berthing needs, if possible; however, Landlord does not guarantee that any revised sailing times can be accommodated. But for such notice, Landlord may presume the Vessel will arrive at approximately 1:30 P.M. and depart between 2:30 P.M. and 3:00 P.M. on the Service Dates, during the Operating Season;
- c. Pay when due, all Rent, Fees and other charges or assessments hereunder;
- d. Pay all costs associated with the ferry operation (except as otherwise stipulated herein), including but not limited to, office and ticketing staff, provision of all office and ticketing equipment, and direct Vessel costs including but not limited to fuel, water, electricity, stevedoring, screening and security staff, staff to direct and supervise vehicle traffic and queuing, trash removal and pilotage. Tenant shall be responsible for the repair, maintenance and cost of its own Vessel and fueling system subject to all applicable federal, state and local regulations.
- e. Be directly and solely responsible for all expenses for electricity, water, sewer, natural gas, heating oil, HVAC, telephone, internet and any other utility or communications services. The rent does not include any utility expenses. Landlord shall install a submeter as needed for electrical service, for which Tenant shall pay Landlord monthly.
- f. Utilize full service stevedores licensed by the City for line handling, loading and unloading luggage and baggage;
- g. Pay all expenses for all installation and periodic charges associated with communications systems, including but not limited to phone systems and services, computer systems and communication services, television and cable access, satellite services, and security and video equipment and services within the exclusive use areas and used, except as provided herein, solely by the Tenant;
- h. Maintain the Premises in such repair as on the commencement of this Agreement, except only for reasonable wear and tear and damage caused by fire or other unavoidable casualty not the fault of Tenant, its employees, contractors, agents or invitees. Tenant shall not injure or deface the Premises or any other property nor permit anyone else to do so. Tenant agrees to report to Landlord promptly, but in any case within 24 hours of when it knew or reasonably should have known of any substantial damage to the Premises or the Ocean Gateway facilities that poses any potential health or safety issue, including but not limited to any water damage or intrusion;

ML

- i. Be solely responsible for all repairs, maintenance, modifications, and replacement of the Ramp, which shall only be undertaken pursuant to a stamped drawing by an appropriately qualified professional engineer. In no event is Tenant responsible for damage of any kind attributable to the non-exclusive use of premises by others in privity with Landlord;
- j. Properly contain and dispose of all trash and garbage from its operations, including but not limited to all vessel trash and garbage, in containers suitable for pickup by Tenant or Tenant's contractor. Landlord shall provide regular trash pickup for the Exterior Common Areas only;
- k. Maintain in full force and effect the insurance coverage required below, and such fire and extended coverage or business interruption insurance for its own property or benefit as it may deem to be appropriate. Tenant shall hold its property, including fixtures, furniture, equipment and the like, or that of any other owner, on the Premises at Tenant's own risk;
- l. Notify the Landlord in advance of any proposed alterations to the Premises, including but not limited to posting of signage by Tenant. All such alterations are subject to the prior written approval of the Director, which approval shall not be unreasonably withheld;
- m. Pay and discharge punctually all generally applicable taxes and governmental assessments on any of Tenant's activities or property. The parties understand and agree that there are no real estate property taxes to be assessed against the Premises leased hereunder and chargeable to Tenant, but Tenant shall be responsible for payment of any personal property taxes which may be assessed. Tenant reserves the right to contest the imposition or amount of any such taxes or assessments by any means provided by law;
- n. Permit Landlord at reasonable times to inspect the Premises and to permit Landlord to make, at its own expense, repairs, alterations, additions and improvements, structural or otherwise, in or to said Premises or any part thereof, and during such operations to take into and through said Premises or any part of the Premises all materials required, Landlord agreeing, however, that it will carry out such work in a manner which will cause Tenant minimum inconvenience;
- o. Not permit any employee, agent, contractor or invitee of Tenant to violate any covenant or obligation of Tenant hereunder nor create a nuisance at the Premises or any City owned property;
- p. Keep the Premises equipped with all safety appliances required by law or any public authority to the extent such results from the exclusive use made by the Tenant of the Premises;
- q. Provide all security personnel, and any CPB facilities, utility connections and utilities services for the same, together with any required traffic control, at Tenant's cost

and expense, as may be required by, or for compliance with, CPB or the United States Coast Guard operations, and such additional security personnel as may be deemed reasonably necessary by Tenant. It is the mutual intent of the parties that all such requirements be identified prior to the entry into this Lease. All such required facilities and improvements shall be property of Landlord at the end of the lease term;

- r. Should any maintenance or repair of the Premises, the Ocean Gateway terminal building and pier, or the systems serving those facilities require repair or replacement as a result of the negligence or willful act of the Tenant or the Tenant's invitees, agents or contractors, Tenant shall be responsible for the timely repair or replacement of same. Any damage caused to such facilities including but not limited to waiting areas, hallways, stairwells, and restrooms, caused by any of Tenant's employees, contractors, agents or invitees, may be repaired by Landlord, in its sole discretion, and the cost of such repair shall be billed to Tenant at Landlord's cost, and shall be paid by Tenant as additional rent with the next due Rent payment; or, alternatively, taken from any security deposit being held by the Landlord, in which case the Tenant shall replenish that security deposit within ten (10) days of being informed in writing that this is necessary.
- s. After reconfiguring the travel lanes in the Queuing Areas, Tenant shall, at its expense, paint or repaint the lines for the travel lanes to accommodate the Ferry Service.

8. Certain Rights Reserved to the Landlord.

The Landlord reserves the following rights:

- a. To retain and use in appropriate instances keys to all doors within and into the Premises and to change the locks to the Premises if Landlord deems it advisable. No lock shall be changed by Tenant without the prior written consent of Landlord. Landlord shall have the right to access the utility rooms through Tenant's exclusive use space as reasonably necessary;
- b. On reasonable prior notice to Tenant, to exhibit the Premises to prospective Tenants or users of the Ocean Gateway facilities and to others having a legitimate interest at any time during the term;
- c. To adopt reasonable rules and regulations relating to the Premises and the Ocean Gateway facilities from time to time during the Term; provided, however, such rules and regulations shall not materially interfere with Tenant's permitted use of the Premises. Tenant agrees to comply with reasonable rules and regulations from and after the fifteenth (15th) day after Tenant's receipt thereof, unless earlier required by law;
- d. To remove from the Premises, at Tenant's expense, any improvements, alterations, additions, signs, awnings, or the like, not consented to in writing by the Director; and
- e. Landlord reserves the right, in its sole discretion, to berth vessels of any type

at and otherwise make use of and allow events at the Ocean Gateway facilities, subject to Tenant's rights under this Lease.

9. Signage.

Tenant shall have the right to have signage on the Premises, including but not limited to outdoor signage, which signage shall be approved by the Director and shall be at Tenant's sole cost. It is the intent of the parties to prominently promote Tenant's Ferry Service. Tenant may also display flags referencing, as applicable, Tenant, the Vessel, the Tenant's Ferry Service, and the Province of Nova Scotia. Installation of such signage and flags may be done by the Landlord, or by the Tenant by a contractor acceptable to the Landlord, at Tenant's expense. All signage and flags shall be installed and maintained in accordance with all applicable local and state governmental codes. Subject to Landlord's approval which shall not be unreasonably withheld, Tenant may, at its expense, place murals and/or photographs and/or graphics on interior and exterior walls of the Departure Building for promotion of the Ferry Service.

Subject to applicable local and state governmental laws and codes, Landlord and Tenant shall cooperate to ensure prominent directional signage within the City of Portland to direct customers to the Ferry Service and to request the State of Maine to provide appropriate signage on its interstate highway system. Tenant acknowledges and agrees that the City of Portland is acting as landlord, and not in its regulatory capacity, in connection with this Lease.

10. Compliance with Laws.

Tenant agrees to comply with all present and future laws, ordinances, orders, rules, regulations and requirements of the federal, state and local governments or any of their departments, bureaus, boards, commissions and officials thereof (collectively, the "Laws") with respect to Tenant's use or occupancy of the Premises, including without limitation, all Laws relating to (i) air emissions, (ii) water discharges, (iii) noise emissions, (iv) air, water or ground pollution, or (v) any other environmental and health matter during the Term in connection with its use and occupancy of the Premises. Tenant shall not be responsible for any compliance attributable to the obligations of Landlord hereunder nor to any event, condition, act, or omission which occurred prior to the execution date or after the expiration date of this Lease Agreement, unless caused by the error or omission of Tenant, its officers, agents, employees, contractors or invitees.

11. Security Rules.

- a. Tenant shall comply with all safety and security requirements in its operations hereunder. Tenant further agrees that its officers, employees and agents shall abide by the provisions of the Water Access Security/Safety Restrictions attached hereto as Exhibit C and incorporated herein, and with any other security directives or policies that may be promulgated from time to time by the Landlord, the State of Maine or by agencies of the Federal Government during the term of this Agreement. The Landlord agrees to provide Tenant with copies of the relevant portions of Landlord's Plan to permit Tenant to comply with its terms.

- b. Tenant shall comply with the lawful directions of the City's Facility Security Officer's directions and commands, with respect to its operations at the OG Terminal and berthing area. Tenant shall designate a particular person, who must be readily available, as its Security Contact Person, for the purposes of emergency and other communications to, from and with the City's Facility Security Officer.
 - c. Tenant shall, to the extent required by law or any agency with jurisdiction, prepare and file its own Facility Security Plan, which shall then become an amendment to Landlord's Facility Security Plan, for Tenant's operations and its use of Landlord's Facilities, and provide a copy of such Plan and amendment to the Landlord.
 - d. Transportation Workers Identification Credential Requirement: All persons requiring unescorted access to the secure areas of vessels, facilities, and OCS facilities regulated by parts 104, 105, and 106 of 33 CFR (Code of Federal Regulations) must, to the extent required by law and applicable authorities, possess a TWIC (Transportation Workers Identification Credential) before such access will be granted. A TWIC must be obtained via the procedures established by TSA (Transportation Security Administration) in 49 CFR part 1572.
 - e. In addition, Tenant employees working at the OG Facilities shall have Landlord- approved identification badges, including BIW identity badges, displayed at all times when at the OG Facilities, whether within the Premises or the common use space.
 - f. In the event that Tenant fails to provide adequate security, Tenant shall pay all reasonable costs and expenses for additional security, associated with the Tenant's use of the facilities, in accordance with the rates set forth in Article 4 Rent and Fees.
 - g. In addition, Tenant shall pay all reasonable security costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel fees, which may arise directly out of Tenant's failure to comply with the covenants of this paragraph, and such failure shall be deemed a default under this Agreement. Tenant shall be responsible for obtaining all necessary permits and licenses required for its use and occupancy of the OG Facilities at its own cost and expense.
12. **Indemnification.**
- a. **General.** To the fullest extent permitted by law, Tenant shall at its own expense defend, indemnify, and hold harmless the Landlord, its officers, agents, and employees, from and against any and all liability, claims, damages, penalties, losses, expenses, including costs of investigation and attorneys' fees, or judgments, just or unjust, arising from injury or death to any person, or damage to, or loss of use of, property sustained by anyone (including but not limited to Landlord's

employees or property) and arising, in whole or in part, out of Tenant's use, activities at or on, or occupancy of the OG Facilities, except that such obligation of indemnification shall not include indemnification for claims to the extent such claim is caused by (i) the acts or omissions of Landlord, its officers, agents, employees or contractors, (ii) the acts or omissions of third parties (including but not limited to other users of the Premises), or (iii) a breach by Landlord of its obligations under this Lease. Tenant shall include Tenant, its officers, agents, employees, contractors, subcontractors and/or invitees.

Tenant shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against Landlord or in which Landlord may be impleaded with others upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which Landlord is a party, Landlord shall have the right to participate at its own discretion and expense and no such suit or action shall be settled without prior written consent of Landlord. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to Landlord which would otherwise exist.

- b. **Covenant against Liens:** Tenant shall not cause nor permit any lien against the Landlord's property or any improvements thereto to arise out of or accrue from any action or use thereof by Tenant and shall hold the Landlord harmless therefrom; provided, however, that Tenant may in good faith contest the validity of any alleged lien. Upon request of the Landlord, Tenant shall post a bond warranting payment of any such lien, or provide other security acceptable to Landlord, in the event Tenant contests such lien.
- c. As used in this Lease, "Environmental Condition" shall mean any material adverse condition relating to surface water, ground water, drinking water supply, land, surface or subsurface strata or the ambient air, and includes, without limitation, air, land and water pollutants, noise, vibration, light and odors, which may result in a claim of liability under the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), or the Resource Conservation and Recovery Act ("RCRA"), or any claim of violation of the Clean Air Act, the Clean Water Act, the Toxic Substance Control Act ("TSCA"), or any claim of liability or of violation under any federal statute hereafter enacted dealing with the protection of the environment or with the health and safety of employees or members of the general public, or under any rule, regulation, permit or plan under any of the foregoing, or under any law, rule or regulation now or hereafter promulgated by the state in which the Premises are located, or any political subdivision thereof, relating to such matters (collectively, "Environmental Laws"). "Hazardous Materials" shall include, but shall not be limited to, substances requiring investigation, removal or remediation under any federal, state or local statute, regulation, ordinance or policy including substances defined as "hazardous substances" in CERCLA; "toxic substances" TSCA; "hazardous wastes" in RCRA; or radon, asbestos and petroleum products.
- 

Tenant shall, at all times during the term, comply with all environmental laws applicable to the Premises and Tenant's use and occupancy thereof. Except to the

extent caused by Landlord or any other tenant at the Premises or attributable in whole or in part to a preexisting environmental condition, Tenant will defend, indemnify and save harmless Landlord and its directors, officers, shareholders, employees and agents from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees and expenses) of whatever kind or nature, contingent or otherwise, known or unknown, incurred or imposed, based upon any Environmental Laws or resulting from any Environmental Condition on or about the Premises which is caused by Tenant during the Term of this Lease, which indemnity, in the case of an Environmental Condition caused by Tenant shall include costs incurred by Landlord to remediate such Environmental Condition to clean-up or remediation standards consistent with Tenant's use of the Premises specified in this Lease. In case any action, suit or proceeding is brought against any of the parties indemnified herein by reason of any occurrence described in this section Tenant will, at Tenant's expense, by counsel reasonably approved by Landlord, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended.

- d. **Survival.** The Terms of this section shall expressly survive the expiration or termination of this Lease.

13. Insurance.

- a. Amounts. Without expense to the Landlord, and with no lapse in coverage, Tenant shall procure and maintain, at its own cost, and show evidence to the Landlord of the following insurance to protect the Landlord from claims and damages which may arise from Tenant's operations under this Agreement, whether such operations shall be performed by the Tenant or by anyone directly or indirectly employed by it in the types and minimum amounts set forth below:

<u>Description</u>	<u>Coverage</u>	<u>Each Occurrence</u>
(i) Commercial General Liability, including Broad Form Property Damage	B.I./P.D./ Death	\$5,000,000
(ii) Vehicle Liability, including owned, hired, or non-owned	B.I./P.D./ Death	\$2,000,000
(iii) Workers' Compensation, Including U.S. Longshoremen and Harbor Workers' Coverage, as Applicable	B.I./Death	Statutory
(iv) Protection & Indemnity Insurance Including Federal Maritime and Jones Act Coverage		\$5,000,000

- | | |
|--|-------------|
| (v) Pollution coverage/Sea to Sea/
Land to Sea/Land to Land | \$5,000,000 |
| (vi) Employers Liability
B.I./P.D. including U.S. Longshoremen
& Harbor Workers, as applicable | \$1,000,000 |

b. **Landlord protected.** The Landlord shall be named as an additional insured under items (i) and (ii) above. Item (iii) shall include a waiver of subrogation against Landlord. To the extent that Tenant has any employees who are not covered by the Longshoremen & Harbor Workers, Federal Maritime and Jones Act coverages, Tenant shall provide evidence of Workers Compensation coverage in the statutory amounts, including a waiver of subrogation against Landlord.

c. Notice to Landlord. All policies of insurance required herein shall be in a form and issued by a company or companies approved to do insurance business in the State of Maine. Each such policy shall provide that such policy may not be changed, altered or canceled by the insurer during its term without first giving thirty (30) days' notice in writing to the Landlord. Each liability policy required to be obtained hereunder shall be on an occurrence basis. In the event that policies are not available on an occurrence basis, Tenant shall purchase a "tail" which provides coverage hereunder for a minimum of six (6) years after termination of this Agreement.

All policies required hereunder shall be primary to any insurance or self-insurance which Landlord may maintain for its own benefit. Liability insurance coverage shall also extend to damage, destruction, and injury to Landlord-owned or Landlord-leased property and Landlord personnel, to the extent caused by, or resulting from negligent acts, operations, or omissions of Tenant, its officers, agents, employees, invitees, and/or contractors.

d. **Certificates.** Certificates or other evidence of insurance coverages required of Tenant in this Section, in amounts no less than those stipulated herein or as may be in effect from time-to-time, shall be delivered to the Landlord prior to use of the Premises. Such certificate or certificates shall at all times while this Lease Agreement is in effect provide Landlord with at least thirty (30) days prior written notice of any change or modification in insurance coverage or insurance carrier.

e. **Tenant Property Insurance.** Tenant shall procure and maintain, at its option and election, such all risks fire and casualty insurance covering its property on the Premises as it deems necessary.

f. Landlord reserves the right to require a commercially reasonable increase in the minimum insurance limits hereunder at the commencement of any Renewal Term of this Lease.

14. **Assignment/Subletting.**

- a. **By Tenant.** Tenant shall not 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 discretion; except, however, Tenant may, if required by written agreement written agreement between Tenant and the Province of Nova Scotia, assign this Agreement and the rights granted hereunder to the Province of Nova Scotia in the event the Tenant is itself unable to continue operating the Service, in which case the Province of Nova Scotia will assume all of the obligations of Tenants herein, as well as the rights of Tenant herein. No such assignment or subletting shall relieve Tenant of any obligations hereunder and any person accepting such assignment shall take the Agreement subject to all prior breaches and shall be liable therefor in the same manner as Tenant.
- b. **By Landlord.** Landlord reserves the right to assign this Lease to a quasi-municipal or State entity, provided, however, that in such event such entity shall agree to assume all of the terms and obligations of the Landlord under this Lease. Landlord shall not assign this Lease to a private party without the prior written approval of Tenant, which may be granted or withheld in Tenant's discretion.

15. **Casualty Damage.**

- a. If the Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use, then, and in such case, the Rent hereinabove stated or a just and proportional part thereof, according to the nature and extent of injuries sustained, shall be suspended or abated, until the Premises shall have been put in proper condition for use by Tenant; provided, however, in the event of such destruction or damage, either Landlord or Tenant shall have the right to terminate this Lease by giving the other party written notice of such termination within thirty (30) days after such damage or destruction, and upon the giving of such notice, the term of this Agreement shall cease and come to an end as of the date of such damage or destruction and any unearned rent shall be returned to Tenant.
- b. Landlord and Tenant each hereby waive any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the property of either party, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. Landlord and Tenant shall each be responsible for maintaining such casualty insurance on its property as it deems necessary and such policies shall waive any right of subrogation thereunder against the other party.

16. Default.

- a. Tenant shall be determined to be in default hereunder if it shall fail to perform any obligations or comply with any terms or conditions stated herein within fifteen (15) days after receipt of notice of such failure from the other party or (if the default is of such nature that it cannot be cured within such period) if it shall fail to commence to cure the default within such period and thereafter diligently prosecute the cure to completion within a reasonable time. Upon such default and failure to cure, Landlord shall have the right, at its option, and in addition to any other remedies, to terminate this Lease by giving the party in default written notice thereof and upon the giving of such notice, this Lease and the term hereof shall cease. Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Demised Premises in accordance with the provisions of this Lease. Further, upon any termination of this Lease, Tenant shall remain liable to Landlord for all rent and fees accrued and unpaid up to the date of such termination. Tenant shall pay all reasonable costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel and consultant fees, incurred by Landlord on account of Tenant's failure to comply with any of the terms of this lease, holding-over, and/or as a result of Tenant's default under this Lease.
- b. 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 the termination of this Lease.

17. Return of Premises; Holding Over.

- a. At the expiration or earlier termination of this Lease, Tenant shall promptly ensure that all vessels with which it is in any way affiliated are removed from the Premises and all of Landlord's berthing areas, and will also promptly quit and surrender the Premises to Landlord broom clean and in good order and condition, ordinary wear excepted, and free from debris, trash and waste, and shall cease its operations from the Premises. Tenant shall, if, and only if, so requested by Landlord, remove all trade fixtures, equipment and other personal property installed or placed by it at its expense in, on or about the Premises; provided, however, all damage caused by or as a result of such removal shall be repaired by Tenant at its sole expense. All trade fixtures, equipment, furniture, furnishings and personal effects not removed by Tenant within thirty (30) days after expiration or termination of this Lease shall, at Landlord's option, be deemed to have been conveyed to Landlord in fee title, and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without obligation to account therefor, or, at Landlord's option, Landlord can have such trade fixtures and items removed and the cost of any such removal and the expense of any repair necessitated by such removal shall be borne by Tenant.
- b. If Tenant or any party claiming through or under Tenant shall remain or continue to be in possession of the Premises or any part thereof after the termination of the Lease or any renewal thereof, without Landlord's consent, then, at Landlord's option, Tenant or such party or both shall be deemed to be illegally retaining possession or, at Landlord's option, shall be deemed to be a

month-to-month Tenant of the Premises and subject to all the terms and conditions of this Lease except that the monthly rent hereunder shall be One Hundred and Fifty Percent (150%) of the rent payable during the month prior to such termination. This section shall not be construed as giving Tenant any right to hold over after the expiration of the Term or to limit Landlord's rights to obtain possession of the Premises upon termination by any lawful means available to Landlord if Landlord does not elect to treat the continued possession by Tenant or any party claiming through or under Tenant as a month-to-month tenancy.

- c. Landlord lawfully may upon termination of this Lease Agreement, enter into and upon the said Premises or any part thereof in the name of the whole, and repossess the same as of its former estate, and expel Tenant, and those claiming through or under Tenant, by any lawful means, and remove its or their effects 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 preceding breach of covenant.

18. Quiet Enjoyment.

So long as Tenant shall observe and perform the covenants and agreements binding on it hereunder, Tenant shall at all times during the term herein granted peacefully and quietly have and enjoy possession of the Premises without any encumbrance or hindrance by, from or through the Landlord.

19. Notices.

Any notice required to be given under this Lease shall be in writing and shall be hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the parties as stated below or such other address as either party may designate in writing to which its future notices shall be sent:

To Tenant: Mark MacDonald
Bay Ferries Limited
Suite A201
5855 Spring Garden Road
Halifax, Nova Scotia
Canada B3H 4S2

With a copy to: Danny Bartlett
Bay Ferries Limited
94 Water Street
PO Box 634
Charlottetown, Prince Edward Island
Canada C1A 7L3

To Landlord: Jon P. Jennings, City Manager
City of Portland
389 Congress Street
Portland, Maine 04101

With a copy to: Corporation Counsel
City of Portland
389 Congress Street
Portland, ME 04101

20. Amendment; Authority.

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.

Each party warrants that this Lease Agreement has been signed by a representative duly authorized to bind that party to this Lease Agreement.

21. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Maine. Tenant warrants to Landlord that it is licensed to do business in the State of Maine and has an agent authorized to accept service of process in said State. Tenant shall provide such information upon request to Landlord.

22. Force Majeure.

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

23. 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.

24. Maritime Rights Preserved

Nothing in this Lease is intended by Landlord to waive any rights or claims it may have against *The Cat*, or any other vessel utilized by Tenant in performing the Ferry Service, either in rem or in personam, arising under the maritime law of the United States, including, without limitation, rights under The Maritime Lien Act, 46 USC 31341 *et. seq.*,

The Suits in Admiralty Act, 46 USC 30901 and 30903 *et seq.*, and/or The Public Vessels Act, 46 USC 781 *et. seq.*

25. 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. 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.

26. Special Right of Termination

In the event of termination or discontinuance of the Ferry Service, or any other material adverse event impacting the Ferry Service, Tenant shall have the right to terminate this Lease without penalty upon providing six (6) months' notice in writing to Landlord. Tenant's obligations applicable to termination of the Lease as set forth herein shall continue to apply.

27. Transition Provision.

Prior to the Effective Date, the rights and obligations of Landlord and Tenant are those described in the Original Lease. On the Effective Date, the Existing Lease shall be deemed amended and restated so as to contain all of the terms of this Lease, and this Lease as amended and restated shall govern all future rights, obligations, duties and liabilities of the parties.

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

WITNESS:

R. Latta
R. Latta

BAY FERRIES LIMITED

By: Mark MacDonald
Mark MacDonald
Its Chairman and CEO

CITY OF PORTLAND

By: Jon P. Jennings
Jon P. Jennings
Its City Manager

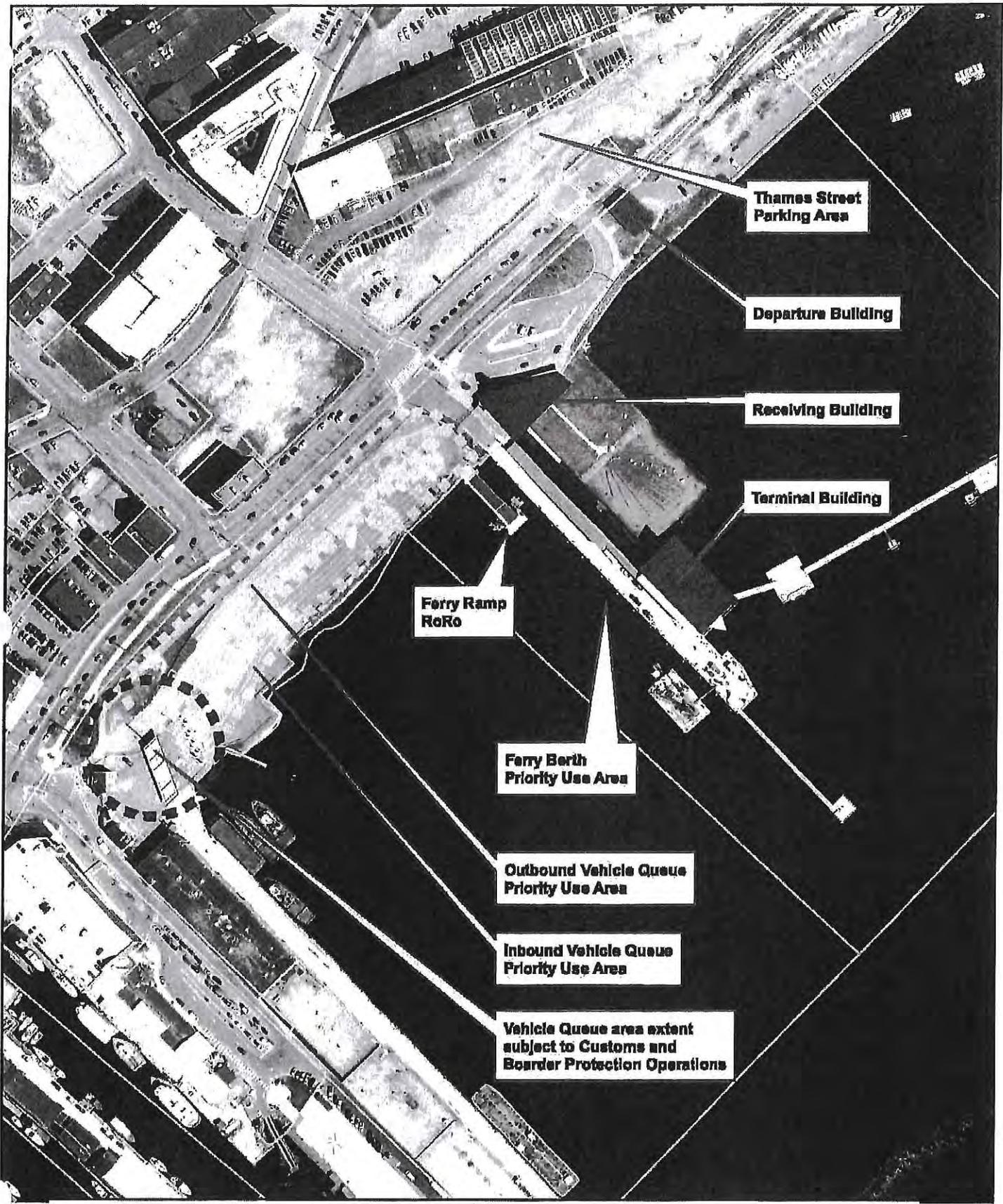
APPROVED AS TO FORM:

[Signature]
CORPORATION COUNSEL'S OFFICE

Brent T. O'Connell
Finance Director

EXHIBIT A
DIAGRAM OF PREMISES





**Thames Street
Parking Area**

Departure Building

Receiving Building

Terminal Building

**Ferry Ramp
RoRo**

**Ferry Berth
Priority Use Area**

**Outbound Vehicle Queue
Priority Use Area**

**Inbound Vehicle Queue
Priority Use Area**

**Vehicle Queue area extent
subject to Customs and
Boarder Protection Operations**

250 125 0 250 Feet



Ocean Gateway Site and Facilities
Bay Ferries, Limited
Lease Exhibit A

Ap12016

Exhibit B
Schedule of Rent and Fees

Monthly Rent

May 31, 2017 – September 30, 2017

- Tenant shall make monthly rental payments for the Premises in advance on the 1st day of each month for the period from May 31, 2017 – September 30, 2017 in the amount of **\$16,629.60**; October 1, 2017 – October 15, 2017 monthly rent will be at **\$8,314.80**.

October 1, 2016 – May 30, 2017 and October 16, 2017 – May 30, 2018 (if renewed)

- Tenant shall make monthly rental payments for the Departure Building in advance on the 1st day of each month for the period from October 1, 2016 – May 30, 2017, and October 16, 2017 – May 30, 2018 (if renewed) in the amount of **\$4,000.00**.
- If Tenant requires parking or berthing during this period, it shall be provided, if available, at the rates set forth below.

Passenger and Vehicle Fees

On or before the fifteenth (15th) day of each month, Tenant shall pay to Landlord the following per-passenger and per-vehicle fees that were incurred in the previous month. Such payment shall be made without the need for an invoice from Landlord and shall be accompanied by Tenant's statement as provided below.

• Passenger (the first 60,000 per Operating Season)	\$ 2.00
• Passenger (over 60,000)	\$ 3.50
• Bicycle	\$ 0.50
• Motorcycle	\$ 1.00
• Passenger Vehicle (the first 60,000 per Operating Season)	\$ 3.00
• Passenger Vehicle (over 60,000)	\$ 5.00
• Passenger Vehicle with Camper/Utility Trailer	\$ 5.00
• Recreational Vehicles/Motor Homes	\$ 5.00
▪ Straight Trucks	\$10.00
• Tour Busses/Motor Coaches	\$20.00

Other Fees

• Fuel License, per season	\$100.00
• Daily Parking per space, per month	\$75.00
• Fresh Water, per metric ton	\$ 4.00
• Security Badges, each	\$ 2.50
• Security Badges, replacement, each	\$25.00
• Berthing (other than the exclusive use of the Berthing Area as allowed in section 1(a)(ii))	\$1.00/ft/day
▪ Electrical Service – sub-meter monthly actual usage charges apply.	

Exhibit C

Waterfront Access Security/Safety Restrictions

All visitors must check in with the Facility Security Officer ("FSO") or designee upon arrival. All visitors must provide photo identification or a Transportation Workers Identification Credential ("TWIC") card prior to accessing the facility. Vessel must provide an expected visitor list to on site security. All those not on the list will be denied access or Non TWIC'd personal must be escorted by a TWIC'd person. A single TWIC'd person can provide access for up to 5 Non TWIC'd personal, or otherwise directed by the FSO.

Crew must check in with on site security and provide photo identification.

Vessel must provide a crew and/or passenger manifest to the FSO or on site security.

A form of communication between vessel and on site security must be determined upon arrival.

A declaration of security must be signed upon arrival if deemed necessary by the FSO.

All deliveries, packages, crates, etc., must be accompanied by a manifest per US Federal Standards. All items including personal vehicles are subject to random search. All delivery drivers must provide photo identification upon arrival. A list of vendors will need to be provided prior to accepting deliveries.

All passenger buses are subject to a search prior to entering the facility.

No explosive devices, weapons, or open fires will be allowed within the facility at any time.

All fuel transfers must be done in accordance within DEP, EPA, OSHA, Coast Guard regulations. This applies to any quantity of gasoline, diesel, oil etc.

All employees working in or around the facility must meet all OSHA regulations.

"Hot Work" permits are required for work on the pier or vessel. These permits are issued through the Port Director or FSO. Permit costs apply. (\$125.00 each)

At no time will vehicles be left overnight within the facility without prior authorization from the Port Director or FSO.

Emergency vehicles must have a clear pathway at all times to service the entire pier. No objects or vehicles are to be left unattended at any time. Objects and vehicles must be able to be removed immediately upon notice of emergency personnel needing access to the pier.

Vessels must use "Bits and Bollards" only for vessel tie up. No lines are to be laid around steel piles.

No work is to be performed on the vessel's hull without prior authorization by the Port Director or FSO.

No dumping of gray water while alongside of the berth.



All small vessels performing maintenance, security, etc. for a berthed vessel must have prior authorization to do so from the Port Director or FSO.

All gates are to remain locked or staffed by facility trained security personal.



EXHIBIT D

2017 The CAT Schedule

Departing from Yarmouth, Nova Scotia to Portland, Maine

2017 SERVICE DATES	DAYS	TIMES (Atlantic Time Zone)
MAY 31 - JUNE 28	MON, WED, FRI, SAT, SUN	8:30
JUNE 29 - JULY 27	MON, TUE, THU, FRI, SAT, SUN	8:30
JULY 28 - SEPT 2	MON, TUE, WED, THU, FRI, SAT, SUN	8:30
SEPT 3 - OCT 2	MON, WED, THU, FRI, SAT	8:30
OCT 3 - OCT 15	MON, FRI, SAT, SUN	8:30

Departing from Portland, Maine to Yarmouth, Nova Scotia

2017 SERVICE DATES	DAYS	TIMES (Eastern Time Zone)
MAY 31 - JUNE 28	MON, WED, FRI, SAT, SUN	14:30
JUNE 29 - JULY 27	MON, TUE, THU, FRI, SAT, SUN	14:30
JULY 28 - SEPT 2	MON, TUE, WED, THU, FRI, SAT, SUN	14:30
SEPT 3 - OCT 2	MON, WED, THU, FRI, SAT	14:30
OCT 3 - OCT 15	MON, FRI, SAT, SUN	14:30



FIRST AMENDMENT
TO
AMENDED AND RESTATED LEASE AGREEMENT BETWEEN
CITY OF PORTLAND AND BAY FERRIES LIMITED RE: OCEAN GATEWAY

THIS FIRST AMENDMENT is made as of the 28th day of Aug., 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 ("Landlord") and BAY FERRIES LIMITED, a Canadian registered corporation with a principal office at 94 Water Street, Charlottetown, Prince Edward Island, Canada C1A 7L3 (the "Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into an Amended and Restated Lease Agreement dated May 26, 2017 (the "Lease") with respect to certain space at Landlord's property known as Ocean Gateway where Tenant operates an international ferry service between Portland, Maine and Yarmouth, Nova Scotia; and

WHEREAS, Landlord and Tenant wish to amend the Lease solely 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, Landlord and Tenant hereby agree as follows:

1. The reference to "September 15, 2017" in Section 2(a) of the Agreement is hereby deleted and replaced with "October 13, 2017," meaning and intending to extend until October 13, 2017 the deadline for Landlord to notify the Tenant of Landlord's desire to renew the Lease.
2. Except as specifically amended hereby, the Lease shall remain in full force and effect, and the parties hereto ratify the terms and conditions of the Lease.

(Signature Page Follows)

IN WITNESS WHEREOF, Landlord and Tenant have caused this Agreement to be executed by their duly authorized representatives or officers, as of the date first written above.

WITNESS:

CITY OF PORTLAND

Louis J. Roselatto

By: _____
for Jon P. Jennings
Its Landlord Manager

WITNESS:

BAY FERRIES LIMITED

[Signature]

By: [Signature]
Mark MacDonald
Its: Chairman and CEO

[Signature]
Approved as to Form:
Corporation Counsel's Office

**SECOND AMENDMENT TO
AMENDED AND RESTATED LEASE AGREEMENT BETWEEN
CITY OF PORTLAND AND BAY FERRIES LIMITED RE: OCEAN GATEWAY**

THIS SECOND AMENDMENT is made effective as of the 13th day of October, 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 ("Landlord") and BAY FERRIES LIMITED, a Canadian registered corporation with a principal office at 94 Water Street, Charlottetown, Prince Edward Island, Canada C1A 7L3 (the "Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into an Amended and Restated Lease Agreement dated May 26, 2017, as amended by a First Amendment dated August 28, 2017 (collectively, the "Lease") with respect to certain space at Landlord's property known as Ocean Gateway, where Tenant operates an international ferry service between Portland, Maine and Yarmouth, Nova Scotia; and

WHEREAS, the term of the Lease expires on October 15, 2017 unless Landlord notifies Tenant of its desire to renew the Lease by October 13, 2017; and

WHEREAS, Landlord requires additional time to consider whether to renew the Lease; and

WHEREAS, Landlord and Tenant wish to amend the Lease solely 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, Landlord and Tenant hereby agree as follows:

1. The deadline for the Landlord to notify Tenant of Landlord's desire to renew the Lease, which, pursuant to the First Amendment, is October 13, 2017, is hereby extended until "December 29, 2017."
2. Notwithstanding anything to the contrary in the Lease, upon execution of this Amendment, Tenant may continue to occupy the Departure Building, but no other parts of the Premises, subject to all terms and conditions of the Lease, including, without limitation, the obligation to pay monthly rental payments of \$4,000.00, and any other applicable fees described in the Lease, subject to the following conditions:
 - a. In the event that Landlord notifies Tenant that Landlord desires to renew the lease, and the parties reach an agreement on mutually acceptable terms for such renewal, the parties shall execute an amendment to renew the Lease on



such terms, and in such event, Tenant may continue to occupy the Departure Building in accordance with the terms and conditions of that amendment.

- b. In the event that Landlord decides, prior to December 29, 2017, not to renew the Lease, Landlord shall so notify Tenant, and Tenant shall vacate the Departure Building within 30 calendar days of the date of such notice (such 30th day being the effective date of termination of the Lease), and the Lease shall terminate according to its terms as of the effective date of termination.
 - c. In the event that Landlord has not notified Tenant, by December 29, 2017, that Landlord desires to renew the Lease or to further extend the deadline to notify Tenant of Landlord's desire to renew the Lease, the Lease shall terminate according to its terms on January 31, 2017, and Tenant shall vacate the Departure Building on or before that date.
 - d. Landlord may, in its sole discretion, in writing, extend the December 29, 2017 deadline to a later date as determined by the Landlord.
3. Any and all terms of the Lease not herein amended shall remain in full force and effect for the duration of the Lease as amended hereby and are hereby ratified. In the event of any conflict between the terms of this Amendment and the terms of the Lease and any exhibits thereto, the terms of this Amendment shall govern and control so long as this Amendment is in effect. Except as amended hereby, any capitalized terms herein shall have the meanings set forth in the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Agreement to be executed by their duly authorized representatives or officers, as of the date first written above.

(Signature page follows)



WITNESS:

Lou J. Pezotte

CITY OF PORTLAND

By: _____
Jon P. Jennings
Its Landlord Manager

WITNESS:

Rhonda Hether
Rhonda Hether

BAY FERRIES LIMITED

By: Mark MacDonald
Mark MacDonald
Its: Chairman and CEO

[Signature]
Approved as to Form:
Corporation Counsel's Office

*Order 183-17/18
Feb 12 4-9-18*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

ORDER APPROVING AIRPORT IMPROVEMENT PROGRAM GRANT

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

- Second Phase of Apron Reconstruction at Gate 1, construction of a new apron along the northwest end of the exiting terminal apron, and construction of snow shoulders along the north end of Taxiway C (\$3,880,000);

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

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

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council
FROM: Paul Bradbury, Airport Director
DATE: March 26, 2018

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

SUBJECT: Approval of Federal Aviation Administration Airport Improvement Program Federal Fiscal Year 2018 Entitlement Grants totaling \$3,882,246 and naming the Airport Director as the City's official representative for the grants.

SPONSOR: Jon Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading: April 9, 2018 **Final Action:** April 9, 2018

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

Action can be taken at a later date, but must be taken prior to May 1, 2018; the FAA's deadline for Federal Fiscal Year 2018 grants.

I. SUMMARY OF ISSUE (Agenda Description)

The Federal Aviation Administration issues grants to fund eligible safety and capacity projects at airports nationwide through the Airport Improvement Program (AIP). This program is funded through federal taxes on commercial air fares and on aviation fuel taxes. The amount allocated to each airport is based on the annual number of enplaned commercial passengers the airport handled in the prior calendar year. This year the Portland International Jetport has AIP entitlement funding totaling \$3.88 million based upon 886,343 enplaned passengers in 2016. In federal FY 2018 a single project has been planned which includes: the second phase of apron reconstruction at gate 1, construction of a new apron along the northwest end of the existing terminal apron, and construction of snow shoulders along the north end of Taxiway C. These items will be procured under a single construction contract with a total estimated cost for the project of \$4.313 million.

The AIP funding amount for this project of \$3.88 million is 90% of the total cost for the project. The balance is covered locally through the Jetport's operating budget and through state funding of up to 5% of project costs.

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

The FAA requires approval of AIP Grants and the AIP Grant Assurances by the airport sponsor's governing body, which for the Jetport is the Portland City Council. Additionally, it requires the

governing body to name the official representative for those grants, which for the Portland International Jetport is the Airport Director.

All elements of the project being proposed for federal FY 2018 were included and scheduled within the 20 year capital program developed as part of the Jetport's Sustainable Airport Master Plan that was accepted by the Council in November 2016.

III. INTENDED RESULT

The approval of this grant will allow the Portland International Jetport to proceed with the aforementioned project.

IV. COUNCIL GOAL ADDRESSED

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

V. FINANCIAL IMPACT

If approved, the Portland International Jetport will receive \$3,882,000 in federal funding that will fund 90% of the project costs which total \$4,314,000. The \$432,000 that is not covered by the federal AIP grant will be covered equally by the Jetport's operating budget and the State in the amount of \$216,000 each. Approval of these grants has no impact to the City of Portland's general fund or the tax rate.

VI. STAFF ANALYSIS

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

VII. RECOMMENDATION

Jetport staff recommends the City Council approve this request for a federal FY 2018 AIP Grant totaling \$3,882,000 in federal funding.

VIII. LIST ATTACHMENTS

1. Airport Improvement Program Grant Assurances document dated March 2014.



Signature

March 26, 2018

Date



FAA
Airports

ASSURANCES

Airport Sponsors

A. General.

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

B. Duration and Applicability.

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

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

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

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

3. Airport Planning Undertaken by a Sponsor.

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

C. Sponsor Certification.

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

1. General Federal Requirements.

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

Federal Legislation

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act - 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1,2}
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et seq.¹
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

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

Executive Orders

- a. Executive Order 11246 - Equal Employment Opportunity¹
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 - Environmental Justice

Federal Regulations

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

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

Specific Assurances

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

Footnotes to Assurance C.1.

- ¹ These laws do not apply to airport planning sponsors.
- ² These laws do not apply to private sponsors.
- ³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- ⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

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

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

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

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

b. Private Sponsor:

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

3. Sponsor Fund Availability.

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

4. Good Title.

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

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

5. Preserving Rights and Powers.

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

- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. Consistency with Local Plans.

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

7. Consideration of Local Interest.

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

8. Consultation with Users.

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

9. Public Hearings.

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

10. Metropolitan Planning Organization.

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

11. Pavement Preventive Maintenance.

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

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and

has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

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

15. Veteran's Preference.

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

16. Conformity to Plans and Specifications.

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

specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. Construction Inspection and Approval.

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

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal,

state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- 1) Operating the airport's aeronautical facilities whenever required;
 - 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

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

21. Compatible Land Use.

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

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or

to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
 - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
 - e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
 - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
 - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
 - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
 - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

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

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

24. Fee and Rental Structure.

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

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or

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

- 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
 - 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
 - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

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

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

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

29. Airport Layout Plan.

- a. It will keep up to date at all times an airport layout plan of the airport showing
 - 1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 - 2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and

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

- 3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and
 - 4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

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

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
 - 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 - 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

- 3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2) So long as the sponsor retains ownership or possession of the property.

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

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

e. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a

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

- a) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

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

eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

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

32. Engineering and Design Services.

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

33. Foreign Market Restrictions.

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

34. Policies, Standards, and Specifications.

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

with applicable state policies, standards, and specifications approved by the Secretary.

35. Relocation and Real Property Acquisition.

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

36. Access By Intercity Buses.

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

37. Disadvantaged Business Enterprises.

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

38. Hangar Construction.

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

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
 - 1) Describes the requests;
 - 2) Provides an explanation as to why the requests could not be accommodated;
and
 - 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

*Order 184-17/18
Tab 13 4-9-18*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER RESCINDING ORDER 144-17/18 AUTHORIZING WATERFRONT
CONCERT FESTIVALS
PRESENTED BY WATERFRONT CONCERTS, LLC
ON THE MAINE STATE PIER**

ORDERED, that Order 144-17/18 is hereby rescinded and the authorization for Waterfront Concert Festivals on Maine State Pier by Waterfront Concerts, LLC is hereby revoked; and

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

MEMORANDUM
City Council Agenda Item

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

FROM: Danielle West-Chuhta, Corporation Counsel

DATE: April 3, 2018

SUBJECT: Order Rescinding Order 144-17/18 Authorizing Waterfront Concert Festivals Presented by Waterfront Concerts, LLC

SPONSOR: Danielle West-Chuhta, Corporation Counsel

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

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading _____ Final Action 4/9/2018 or 4/18/2018

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

This is because, the City Council has requested immediate inclusion on the 4/9/2018 agenda.

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

I. ONE SENTENCE SUMMARY

The City Council is considering an order to rescind the authorization it granted in February 2018 to Waterfront Concerts, LLC for the concerts it holds during the summer on the Maine State Pier.

II. AGENDA DESCRIPTION

On February, 5, 2018, the City Council approved Order 144-17/18, which authorized Waterfront Concerts, LLC to use the Maine State Pier for summer concerts. Prior to this, Alexander Gray, Waterfront Concerts, LLC's owner and sole member/manager, was charged with and pleaded guilty to a charge of domestic violence assault.

On April 1, 2018, the victim of that assault emailed the City Manager to introduce herself and provide a link to an open letter describing her experience as a victim of the aforementioned domestic violence. As a result of this letter, members of the City Council requested that Corporation Counsel sponsor and prepare an Order Rescinding the Granting of Order 144-17/18 be added to the April 9, 2018 Council agenda for consideration.

In the alternative, the City Manager is recommending that, instead of being rescinded, Order 144 be amended to award the Waterfront Concerts Festival license to a different entity.

III. BACKGROUND

On February 5, 2018, the City Council approved Order 144 (pursuant to its authority outlined in Chapter 19, section 19-22), which authorized Waterfront Concerts, LLC to use the Maine State Pier for concerts this upcoming summer season. This Order also authorized City staff to enter into a contract with Waterfront Concerts, LLC for the same reasons. To date this contract has not yet been finalized or signed by either party. Despite this lack of finalization, it is our understanding that Waterfront Concerts, LLC has already confirmed several shows/talent and has additional offers out for the summer season.

Under Robert's Rules the Council (which applies pursuant to Council rule 32) is entitled to rescind the granting and/or Approval of Order 144. (See Robert's Rules pp. 305-306). This Motion needs to be seconded; can be moved by any member of the Council (whether or not he/she voted for or against the initial item); would be open for public comment; and is debatable (re: the merits of the underlying Order) by the Council. It is important to note that if the Order Rescinding Order 144 is a two-read item (i.e. notice provided), only a majority of the Council members present would be needed to pass the Order. If, however, such notice is not provided (i.e. it is only a one-read item), then 2/3rds of those present will be required to pass the Order.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Although not specifically listed in its 2018 goals, the City Council has passed Resolves addressing the domestic violence in the past, including but not limited to, Resolve 13-05/06, Resolution Supporting Portland's 25th Annual Take Back the Night March, Rally and Speak Out Against Sexual Violence.

V. FINANCIAL IMPACT

The City would lose revenue gained by the use of Maine State Pier for summer concerts by Waterfront Concerts, LLC. In 2017, the City received approximately \$54,000 dollars in revenue from 17 Maine State Pier concerts.

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

See above analysis provided in the section about the background of the item.

VII. RECOMMENDATION

The Order is approved as to form by Corporation Counsel.

VIII. LIST ATTACHMENTS

Order Rescinding the Granting of Order 144-17/18, Authorizing Waterfront Concerts Presented by Waterfront Concerts, LLC on Maine State Pier;

Order 144-17/18 Authorizing Waterfront Concerts Presented by Waterfront Concerts, LLC on Maine State Pier;

Open letter from Erica Cole; and

Waterfront Concerts, LLC Articles of Organization and Annual Report.

Prepared by: Nancy English

Date: April 2, 2018

Bean/agendarequestmemo/rev 11/2015

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Erica Cole  17 hours ago 4 min read

LETTER FROM THE VICTIM OF ALEX GRAY, OWNER OF WATERFRONT CONCERTS

Updated: 7 hours ago

[ERICA COLE](#)[SERVICES](#)[ABOUT](#)[ADVOCACY](#)[BLOG](#)[CONTACT](#)

Note: Below is an open letter to Portland, Maine's City Manager, Jon Jennings, from Erica Cole. The City of Portland recently renewed a contract with Waterfront Concerts, a company owned and operated by Alex Gray, who plead guilty to domestic violence against the author. Alex Gray is still currently living under conditions set forth by the state during his deferred disposition of his plea related to this case.

Dear Mr. Jennings,

I am writing to you as a former citizen of Portland. I had to move to out of the beautiful city of Portland, where I've lived for ten years, to Boston. I moved because a man whom you've chosen to do business with assaulted me. My name is Erica Cole, former girlfriend and domestic violence victim of Alex Gray, Owner and President of Waterfront Concerts.

Last month, based on the information in your memo, Portland City Council voted unanimously to resume business with Waterfront Concerts. City Council had previously chosen to not renew their contract two months after Alex's arrest for domestic violence assault—coincidentally when the story was plastered all over the news.

I appreciate the enthusiasm to continually collect new business, large and small, into our community. My concern is that city council members wholly ignored the fact that Waterfront Concerts President, Owner, and Operator, Alex Gray, pleaded guilty to domestic violence less than six months ago, and is currently living under conditions set forth by the state.

I'm sure that you are aware that the city of Bangor signed a ten-year deal with Waterfront Concerts before Alex's scheduled trial and is now considering an additional extension. I'm assuming they were blinded by the \$25 Million that the company generated in 2016 and, collectively, \$106 Million since 2010.

The Bangor City Council members couldn't say no to the money and are now expressing queasiness over the renewal of the contract. Council Chair Ben Sprague publicly gave Gray back his small campaign donation, denouncing his behavior, but now just months later is seemingly his biggest champion in City Hall. How convenient it must be to have morals that come and go with the tide of public backlash.

Mr. Jennings, you were quoted in the Portland Press Herald saying: "The City [of Portland] netted \$54,000 on the concert series last year, and [Alex Gray] also reimburses the cost of city staff." I ask that you reassess the strong values of our community and consider the 13,437 people last year who used services by the Maine Coalition to End Domestic Violence. Even with a low crime rate, Maine ranks 9th nationally in rate of women killed by men.

In the courtroom, Alex stated "we fundamentally disagree what's on the police report". After pleading guilty in court, Alex proceeded to defend his innocence outside of the courthouse, saying: "If I hit someone's head five-to-ten times, I would not be here for a deferred dismissal, I'd be here for a murder charge." The truth is that I didn't even write my own statement. A Portland police officer recorded a statement on my behalf, as I shook uncontrollably on a hospital bed.

The officer took my statement at Maine Medical Center, where an ambulance brought me by request of the police and paramedics. According to the police report, they were concerned of a "closed head injury, and a fractured jaw" after observing redness and swelling to the right side of my head. Since being assaulted, I've undergone dental work on my right side because of my now offset bite. My dental work, along with my ambulance and emergency room bills, still weigh on me financially as I write this letter.

I spent weeks after the assault homeless, washing my one outfit and only pair of underwear in a sink. I slept on a couch for seven months, unable to provide myself with even the necessities. Over the past year, I've started from scratch to rebuild a life, and I'm proud of everything I've accomplished in that time.

The physical injuries have healed, but the emotional trauma will long be something I need to overcome. I never imagined that one day something like a slamming door could cause me to collapse to the floor in a panic attack—terrified—hardly able to breathe through my sobbing. My ego doesn't want me to admit these things, but it's important for you to hear

them.

As part of his plea deal, Alex has to abide by twenty-two conditions until returning to court later this year. One of the requirements of his agreement was the delivery of my belongings still in his possession. He was allotted 60 days to give me my belongings back—in addition to the seven months that I had gone without them.

This means I was left without basic items like my clothing and my computer that contained my life's work and source of my income. When I finally received my password-protected computer back, it had been wiped clean of any documents not deemed appropriate by my abuser.

I wish that I could share with you the true extent of what I've endured both leading up to, and after, this criminal case. I fear more attempts by my abuser to legally and financially exhaust me, so I'm careful only to mention things already included in public records.

I'm writing to you in hopes that you'll find some understanding in whom you've selected to conduct business with. By continuing to do business with Alex Gray and his companies, you are sending a message that domestic violence is acceptable in Portland. You are also setting an example for young men and women that—in the city of Portland—money trumps morality.

I'm asking you to reconsider your decision to continue doing business with Alex Gray and Waterfront Concerts. I hope that one day I feel safe moving back to the city I love and make a life knowing that **our community does not tolerate domestic violence.**

Sincerely,

Erica Cole



20,312 views

2

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Order 144-17/18

Motion to separate Order 144-17/18 from Consent Calendar: 9-0 on 2/5/2018

Passage: 9-0 on 2/5/2018

Effective 2/15/2018

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

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

ORDERED, that Waterfront Concert Festivals on Maine State Pier are hereby declared as a series of Festivals in 2018 to be presented by Waterfront Concerts, LLC on behalf of event beneficiaries, which will be non-profit organizations; and

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

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

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

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

- Under no circumstances may alcoholic beverages be sold or consumed on City of Portland right-of-ways during each of the approved Festivals, other than to persons 21-years-old and older in designated areas with security provided by

staff from the Portland Department of Parks, Recreation and Facilities and/or Waterfront Concerts.

- Waterfront Concerts, LLC shall indemnify the City and hold it harmless from and against all claims arising out of activities during all said Festivals/events approved hereunder, and shall take out and maintain general and liquor liability insurance coverage in the amount of at least \$1,000,000 per occurrence for personal or bodily injury, death, or property for said purposes. Waterfront Concerts, LLC shall provide the City with a certificate showing evidence of such insurance and showing the City as an additional insured on said insurance. With respect to the Commercial General Liability Insurance, the CONTRACTOR shall name the CITY as an additional insured 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 CITY 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 CITY;
- All conditions for use of grounds, specified in each permit for all Festivals approved hereunder issued from the Public Assembly Facilities Division, shall be adhered to;
- Waterfront Concerts, LLC shall have sole authority over participating vendors at the events and may charge a fee to vendors for the opportunity to vend at all of the approved Festivals;
- City permit fees and license fees, a fee per ticket sold and a percentage of revenue from sales of food, beverages and merchandise for events, as well as costs for city staff assistance will be paid by Waterfront Concerts, LLC; and

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

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

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

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

Maine Secretary of State



**2017 Annual Report
Electronic Filing Acknowledgment**

For Limited Liability Companies on file as of December 31, 2016

Charter Number: 20103607DC
DCN Number: 2176019093204
Legal Name: WATERFRONT CONCERTS, LLC

Registered Agent's Name and Address:

SARAH S. ZMISTOWSKI
PO BOX 1210
BANGOR, ME 04402-1210

Brief statement of the character of the business:

TO PROMOTE ENTERTAINMENT AND ALL ACTIVITIES RELATED THERETO

Name and Address of Members, Managers or other Authorized Persons:

ALEXANDER GRAY, MANAGER
275 FOURTH ST., OLD TOWN, ME 04468

Date of Filing: March 30, 2017

Name and Capacity of Authorizing Party:

SARAH S. ZMISTOWSKI, REGISTERED AGENT

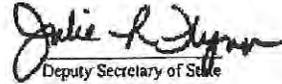
DOMESTIC
LIMITED LIABILITY COMPANY

STATE OF MAINE

ARTICLES OF ORGANIZATION

Filing Fee \$175.00

File No. 20103607DC Pages 3
Fee Paid \$ 175
DCN 2101791900043 LTLC
FILED
06/28/2010


Deputy Secretary of State

A True Copy When Attested By Signature

Deputy Secretary of State

Pursuant to 31 MRSA §622, the undersigned executes and delivers the following Articles of Organization:

FIRST: The name of the limited liability company is

Waterfront Concerts, LLC

(The name must contain one of the following: "Limited Liability Company", "L.L.C." or "LLC" - see 31 MRSA §603-A 1)

SECOND: (Check only if applicable)

This is a professional limited liability company* formed pursuant to 13 MRSA Chapter 22-A to provide the following professional services:

(Type of professional services)

THIRD: The Registered Agent is a. (select either a Commercial or Noncommercial Registered Agent)

Commercial Registered Agent

CRA Public Number _____

(name of commercial registered agent)

Noncommercial Registered Agent

Sarah S. Zmistowski

(name of noncommercial registered agent)

80 Exchange Street, Bangor, Maine 04401

(physical location, not P.O. Box - street, city, state and zip code)

P.O. Box 1210, Bangor, Maine 04402-1210

(mailing address if different from above)

FOURTH: Pursuant to 5 MRSA §108 3, the registered agent as listed above has consented to serve as the registered agent for this limited liability company.

Form No. MLLC-6 (1 of 3)

FIFTH: (Check one box only)

A The management of the company is vested in a member or members

B 1. The management of the company is vested in a manager or managers

The minimum number shall be 1 managers and the maximum number shall be 5 managers

2. If the initial managers have been selected, the name and business, residence or mailing address of each manager is:

* Do not complete this list of Managers if Item A (member managed) is selected above*

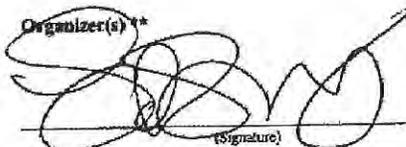
Names of Managers

Address

Alexander Gray 275 Fourth Street, Old Town, Maine 04472

Names and addresses of additional managers are attached as Exhibit _____ and made a part hereof

SIXTH: Other provisions of these Articles, if any, that the members determine to include are set forth in the attached Exhibit _____ and made a part hereof

Organizer(s) **

(Signature)

Dated June 25, 2010

Sarah S. Zmistowski
(Type or print name)

(Signature)

(Type or print name)

(Signature)

(Type or print name)

For Organizer(s) which are Entities**

Name of Entity _____

By _____
(Authorized signature) (Type or print name and capacity)

Name of Entity _____

By _____
(Authorized signature) (Type or print name and capacity)

Name of Entity _____

By _____
(Authorized signature) (Type or print name and capacity)

*Examples of professional service limited liability companies are accountants, attorneys, chiropractors, dentists, registered nurses and veterinarians (This is not an inclusive list – see 13 MRSA §723 7)

- **Articles **MUST** be signed by:
- (1) all organizers OR
 - (2) any duly authorized person

The execution of this certificate constitutes an oath or affirmation under the penalties of false swearing under 17-A MRSA §453.

Please remit your payment made payable to the Maine Secretary of State.

Submit completed form to **Secretary of State**
Division of Corporations, UCC and Commissions
101 State House Station
Augusta, ME 04333-0101
Telephone Inquiries: (207) 624-7752 Email Inquiries: CEC.Corporations@Maine.gov

Form No. MLLC-6 (3 of 3) Rev 7/1/2008

*Order 185-17/18
Tab 14 4-9-18*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER APPROVING THE AGREEMENT BETWEEN PORTLAND
AND MAINE DEPARTMENT OF TRANSPORTATION
RE: PAVING VALLEY STREET BETWEEN PARK AVENUE AND ST. JOHN STREET**

ORDERED, that the Agreement between the City of Portland and the Maine Department of Transportation for pavement preservation on Valley Street from Park Avenue to St. John Street, with the MDOT identification number of 023410.00, is hereby approved in substantially the form attached hereto; and

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

MEMORANDUM
City Council Agenda Item

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

FROM: Michael Farmer, Senior Engineer, Department of Public Works

DATE: March 23, 2018

SUBJECT: Maine Department of Transportation
Municipal/State Agreement
Proposed Improvements to Valley Street from Park Avenue to Saint John Street, WIN 023410.00

SPONSOR: Jon P. Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading: 4/9/2018

Final Action: 4/18/2018

Can action be taken at a later date: ___ Yes ___ **X** No (If no why not?) Prompt action is required to avoid delays in scheduling and bidding this project.

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

Not Applicable

I. ONE SENTENCE SUMMARY

The City Council is being asked to approve the attached two-party agreement, which would allow MaineDOT to undertake the Valley Street Cyclical Pavement Resurfacing (CPR) Project in 2018.

II. AGENDA DESCRIPTION

Approving and signing this agreement would confirm the City's intent to construct this project and pay 43.8% of the total project cost for paving Valley Street between Park Avenue and Saint John Street.

The estimated total cost for this project is \$180,130.00. The City's share would be \$78,880.00. MaineDOT's share would be \$101,250.00.

III. BACKGROUND

The scope of work for this project is mill and fill.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

This project will improve the pavement surface and ride quality in the project area.

V. FINANCIAL IMPACT

Funding by MaineDOT under the CPR program is limited to \$135,000 per mile of roadway. The Valley Street project length is 0.75 miles. Thus, MaineDOT's contribution is capped at \$101,250. The City's contribution for this project amounts to all costs over and above \$101,250. As indicated above, the City's contribution would be \$78,880.

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

Valley Street is classified by MaineDOT as a minor arterial street and a priority 3 highway corridor. As such, Valley Street qualifies for the Cyclical Pavement Resurfacing Program.

The City's estimated project cost of \$78,880 includes \$6,000 for sewer manhole adjustments. The DPW request for the FY2019 CIP included \$72,400 under CIPID 194939 for costs related to paving and sidewalk ramp improvements on the Valley Street project. The DPW request for the FY2019 CIP also included \$127,500 for sewer system modifications on MPI and CPR paving projects (CIPID 184372).

VII. RECOMMENDATION

The Department of Public Works recommends approving and signing the subject Two-Party Agreement to allow MaineDOT and City staff to proceed with the Valley Street CPR project.

VIII. LIST ATTACHMENTS

- A. Two-Party Agreement for WIN # 023410.00
- B. Project Location Map.

Prepared by: Michael Farmer

Date: March 23, 2018



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

**MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
PROPOSED IMPROVEMENTS TO VALLEY STREET**

<i>(MaineDOT Use Only)</i>	
Project Location: <u>Portland</u>	Estimated Municipal Share: <u>\$78,880.00</u>
State WIN #: <u>23410.00</u>	Vendor Customer #: <u>17A12144</u>
Federal Aid Project #: <u>N/A</u>	Agreement Begin Date: _____
	Agreement End Date: <u>(5 years from the date last signed below)</u>

This Agreement is entered into between the Maine Department of Transportation (hereafter the MaineDOT) and the Municipality of Portland, a municipal corporation located in the County of Cumberland (hereafter the "Municipality") (collectively hereinafter the "Parties").

RECITALS

- A. The scope of work that is the subject of this Agreement consists of making improvements to Valley Street, in Portland, Maine, (hereafter the "Project").
- B. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.
- C. This Agreement is intended to cover the roles and responsibilities of the Parties during the design, permitting and right-of-way phases of Project development from Project inception through completion of the Project's Plans, Specifications and Estimate (PS&E). This Agreement is further intended to establish the financial obligations of each Party, including that of full Project development through construction.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing, the Parties agree as follows:

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

- Appendix A – Project scope, cost sharing, and payment schedule
- Appendix B – Perpetual Bicycle/Pedestrian Facility Maintenance
- Appendix B – Perpetual Drainage Maintenance
- Appendix B – Perpetual Landscape Maintenance
- Appendix B – Perpetual Operation and Maintenance of Lighting/Flashing Beacon and/or signage with associated light(s)
- Appendix B – Perpetual Traffic Signal Operation and Maintenance
- Appendix B – Perpetual Bridge Lighting/Approach Lighting Maintenance & Snow Plowing
- Appendix C – Additional work requested by Municipality

E. Agreement Administration:

1. MaineDOT agrees to procure and administer a contract to construct the Project in accordance with the plans and specifications developed by MaineDOT. This would include any additional plans, specifications and estimates furnished by the Municipality and approved by MaineDOT. Please refer to Appendix A of this Agreement for the outline of the scope, limits of work and cost sharing.
2. MaineDOT shall be the sole administrator of the contract to construct the Project. MaineDOT will pay all Project costs, subject to cost sharing by the Municipality, when applicable, as specified in this Agreement. Neither MaineDOT nor its contractors will be required to pay for inspections and permits from the Municipality.
3. Upon acceptance of plans, specifications and estimates (PS&E), MaineDOT shall solicit competitive bids for the Project. Upon acceptance of the lowest acceptable responsive, responsible bid to construct the Project and fulfillment of all terms set forth herein, MaineDOT will submit the information to the Municipality, who will have up to five (5) business days to review the information and notify MaineDOT of any questions or concerns. If MaineDOT is not presented with any questions or concerns in the time allotted all decisions pertaining to the acceptance of the bids, the award and administration of the contract and all payments thereunder shall be the sole discretion of MaineDOT.

F. Changes to Project Scope:

4. The Municipality, at its election, may request that changes be made or work added to the Project during the period of construction, provided the Municipality agrees in writing to pay any additional cost plus an amount not to exceed ten (10%) percent of such construction cost to cover all necessary engineering, inspection and administrative costs associated therewith, unless specified otherwise. All such requests shall be subject to MaineDOT approval. In the event that the cost of these changes or work are approved for federal participation, the Municipality's additional cost may be reduced by the amount of the federal contribution.

G. Traffic Control:

5. The Municipality agrees to allow MaineDOT's contractor to control all traffic through the work areas in accordance with the Traffic Control Plan approved by MaineDOT. The development of the Traffic Control Plan will follow the process outlined below:
 - i. MaineDOT's Project Manager (PM) will, when possible, submit the Project for Traffic Analysis and Movement Evaluation (TAME), approximately one year prior to advertisement. Once the results are received, the PM/Regional Traffic Engineer will discuss the proposed Project with the Municipality (scope, limits, day or night work, work window, etc).
 - ii. The Municipality will comment on their concerns/issues related to the Traffic Control Plan within two (2) weeks of receipt.
 - iii. MaineDOT's PM & Designer will incorporate these comments where practical based on engineering judgment.

- iv. If the Municipality desires, a meeting will be held prior to PS&E to review the Project design, Special Provision 105 – Limitations of Operations, Special Provision 107 - Time, etc.

H. Utilities

6. The Municipality will, at no cost to MaineDOT, assure proper adjustment, relocation, or repair of any portion of a utility service, whether above or below ground, that is located within the limits of the highway right-of-way and connected to any municipal utility, which might become necessary to permit construction of the Project. The Municipality agrees to hold MaineDOT harmless from any claims for damages occurring as a result thereof.
7. The Municipality agrees that during and after construction it will apply the requirements of the most recent version of MaineDOT's "Utility Accommodation Rules" as the minimum guidelines not withstanding any municipal rules that are more lenient.
8. To the extent that it is statutorily responsible therefore, the Municipality agrees to provide utilities, and to maintain all improvements and fixtures constructed, installed or furnished as a part of the Project in such a manner as necessary to preserve the use and function thereof for the expected period of their normal useful life as determined by accepted engineering and/or industry standards. To the extent any warranty exists for said improvements or fixtures, said warranty shall be first relied on by MaineDOT to address maintenance and/or repairs described in this paragraph.

I. Governing Law:

9. The Municipality agrees that except for an emergency, or as allowed in 23 M.R.S.A. § 3351-A, it will prohibit the excavation of the highway within the limits of the Project for a period of at least five (5) years after completion of the Project, and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any municipal government under the provisions of 23 M.R.S.A. § 3351. Thereafter, all future excavations within the right-of-way of the Project shall be regulated and controlled in the manner specified by MaineDOT in its most recent "Utility Accommodation Rules", which is incorporated herein and made a part hereof by reference.
10. The Parties agree to: comply with and abide by all applicable State and Federal laws, statutes, rules, regulations, standards and guidelines, including the MUTCD and OSHA standards, and Agreement provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.

J. Municipality's Responsibility:

11. The Municipality agrees to alter, move, relocate or remove, or cause to be, at no cost to the Project, any municipal property, including all fixtures, facilities or monuments, located on, under or above the ground, as necessary to permit construction of the Project, which has not otherwise been provided for during the development of the Project. Any work necessary to do so during the period of construction shall be coordinated with the contractor for the Project.
12. The Municipality will be responsible to keep new or replaced/rehabilitated pedestrian facilities in usable condition including snow and ice control.

13. The Municipality agrees to keep the right-of-way of the Project inviolate from all encroachments and agrees to remove, or cause to be removed, anything that may encroach thereon.
14. When applicable, the Municipality agrees to regulate all entrances to the highway within the limits of the Project in accordance with the provisions of 23 M.R.S.A. § 704.
15. When applicable, the Municipality agrees to limit all on-street parking to the parking spaces as designed and constructed under the Project.

K. Termination:

16. MaineDOT reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. MaineDOT also reserves the right to terminate all provisions pertaining to work requested by the Municipality at any time prior to the award of a contract to construct the Project due to failure by the Municipality to comply with any of the conditions and stipulations set forth in this Agreement.
17. MaineDOT may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Municipality and in no event shall any such action be deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by MaineDOT or specifically as the result of any failure by the Municipality to perform any of the services required under this Agreement to MaineDOT's satisfaction.

In the event of Project termination, all provisions of this Agreement shall become null and void except for those *provisions that by their very nature are intended to survive*.

L. Miscellaneous Provisions:

18. **Debarment.** The Municipality certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. If the Municipality is unable to certify to this statement, it shall attach an explanation to this Agreement. The Municipality shall promptly notify MaineDOT if it or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
19. All provisions of this Agreement, *except those that by their very nature are intended to survive*, shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.
20. **Non-Appropriation.** Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees that although the execution of this agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
21. **Assignment.** No assignment of this agreement is contemplated, and in no event shall any assignment be made without the express written permission of MaineDOT.

22. **Notice.** Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Alternatively, communication may be sent via email and shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Said communications, requests or notices shall be sent to the other party as follows:

MaineDOT: Maine Department of Transportation
 16 State House Station
 Augusta, ME 04333-0016
 Attn.: Robert Betz
 Email: robert.k.betz@maine.gov

Municipality: City of Portland
 389 Congress St
 Portland, ME 04101
 Attn.: Jon Jennings
 Email: citymanager@portlandmaine.gov

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

MUNICIPALITY OF PORTLAND

MAINE DEPARTMENT OF TRANSPORTATION

By: _____
 Jon Jennings, City Manager

By: _____
 William A. Pulver, Director
 Bureau of Project Development

(Date Signed)

(Date Signed)

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

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

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO VALLEY STREET

FEDERAL AID PROJECT NO. N/A

STATE PROJECT IDENTIFICATION NUMBER (WIN) 23410.00

Project Scope:

Mill and Fill beginning at the intersection of Valley Street and St. John street and extending north 0.75 of a mile to the intersection of Valley Street and Park Avenue.; CPR funding. State share is capped at \$101,250.

Funding Outline:

The Total Project Estimated Cost is \$ 180,130.00 , and the Parties agree to share costs through all stages of the Project under the terms outlined below.

Work Element	Municipal Share		Project Share				Total Cost
			Federal	Portion	MaineDOT (State) Portion		
	%	\$	%	\$	%	\$	\$
Preliminary Engineering	0.0%	\$ -		\$ -	100.0%	\$ 3,000.00	\$ 3,000.00
Right of Way	0.0%	\$ -		\$ -	100.0%	\$ -	
Construction	0.0%	\$ -		\$ -	100.0%	\$ 95,850.00	\$ 95,850.00
Construction Engineering	0.0%	\$ -		\$ -	100.0%	\$ 2,400.00	\$ 2,400.00
PROJECT SHARES		\$ -		\$ -		\$ 101,250.00	\$ 101,250.00
Total Cost of Additional Work Requested by Municipality (Below)	100.0%	\$ 78,880.00					
TOTAL ESTIMATED MUNICIPAL SHARE (Receivable Amount)		\$ 78,880.00					

(Check if applicable)

Additional Work as outlined in Appendix C to this Agreement.

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

Additional Work	Cost: 100% Municipal Share	
Portland Share, expenses above \$135,000 / Mile	\$	72,880.00
Adjust Sewer Manhole - Unit Price/\$1,000 ea.; Quantity: 6	\$	6,000.00
TYPE OF WORK	\$	-
TOTAL COST OF ADDITIONAL WORK REQUESTED BY MUNICIPALITY	\$	78,880.00

Payment:

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

1. Prior to award of the contract for Project construction, the Municipality will be invoiced a portion of its share of the cost of the Project. Invoicing will include the following:
 - a. 100% of the local share of the Preliminary Engineering and Right of Way costs; plus
 - b. Fifty percent (50%) of the local share of the Construction and Construction Engineering cost based on the total bid price of the Project; plus
 - c. 100% of all additional work requested by the Municipality.

2. Final Voucher Payment to the Contractor. A final bill will be created following MaineDOT's final voucher payment to the Contractor, after all quantities are verified, and any required adjustments have been made. The cost of the work for which MaineDOT will bill the Municipality shall be determined by the contract prices and the completed quantities of the work items or, in the event of termination, the local share of Project development cost to the point of termination as stipulated above. The final invoice will include the Municipality's share of any remaining costs.

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

Municipality Name	Receivable Amount	Estimated Invoice Date
Portland	\$39,440.00	5/1/2018
Portland	\$39,440.00	12/1/2018
Portland	Remaining Balance if Any	12/1/2019
Total Receivable Amount:	\$78,880.00	

Project Information

Municipality Name: Portland
Federal Aid Project #: N/A
WIN: 23410.00

APPENDIX C

ADDITIONAL WORK

MAINE DEPARTMENT OF TRANSPORTATION
Transportation Improvement Project

1. Description of Work Being Added to Project by the Municipality:
Highway resurfacing on Valley Street and sewer items.

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

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

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

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

*Order 186-17/18
Tab 15 4-9-18*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER APPROVING THE AGREEMENT BETWEEN PORTLAND
AND MAINE DEPARTMENT OF TRANSPORTATION
RE: PAVING PARK AVENUE BETWEEN ST. JOHN STREET AND INTERSTATE 295**

ORDERED, that the Agreement between the City of Portland and the Maine Department of Transportation (MDOT) for pavement preservation on Park Avenue from St. John Street to Interstate 295, with the MDOT identification number of 023408.00, is hereby approved in substantially the form attached hereto; and

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

MEMORANDUM
City Council Agenda Item

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

FROM: Michael Farmer, Senior Engineer, Department of Public Works

DATE: March 23, 2018

SUBJECT: Maine Department of Transportation
Municipal/State Agreement
Proposed Improvements to Route 22/Park Avenue from Saint John Street to I-295, WIN 23408.00

SPONSOR: Jon P. Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: 4/9/2018 **Final Action:** 4/18/2018

Can action be taken at a later date: ___ Yes X No (If no why not?) Prompt action is required to avoid delays in scheduling and bidding this project.

PRESENTATION: (List the presenter(s), type and length of presentation)
Not Applicable

I. ONE SENTENCE SUMMARY

The City Council is being asked to approve the attached two-party agreement, which would allow MaineDOT to undertake the Route22/Park Avenue Cyclical Pavement Resurfacing (CPR) Project in 2018.

II. AGENDA DESCRIPTION

Approving and signing this agreement would confirm the City's intent to construct this project and pay 71.6% of the total project cost for paving Park Avenue between Saint John Street and I-295.

The estimated total cost for this project is \$123,800. The City's share would be \$88,700. MaineDOT's share would be \$35,100.

III. BACKGROUND

The scope of work for this project is mill and fill.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

This project will improve the pavement surface and ride quality in the project area.

V. FINANCIAL IMPACT

Funding by MaineDOT under the CPR program is limited to \$135,000 per mile of roadway. The Park Avenue project length is 0.26 miles. Thus, MaineDOT's contribution is capped at \$35,100. The City's contribution for this project amounts to all costs over and above \$35,100. As indicated above, the City's contribution would be \$88,700.

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

The City's estimated project cost of \$88,700 includes \$8,000 for sewer manhole adjustments. The DPW request for the FY2019 CIP included \$83,000 under CIPID 194910 for costs related to paving and sidewalk ramp improvements on the Park Avenue paving project. The DPW request for the FY2019 CIP also included \$127,500 for sewer system modifications on MPI and CPR paving projects (CIPID 184372).

VII. RECOMMENDATION

The Department of Public Works recommends approving and signing the subject Two-Party Agreement to allow MaineDOT and City staff to proceed with the Park Avenue CPR project.

VIII. LIST ATTACHMENTS

- A. Two-Party Agreement for WIN # 023408.00
- B. Project Location Map.

Prepared by: Michael Farmer
Date: March 23, 2018



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

**MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
PROPOSED IMPROVEMENTS TO ROUTE 22/PARK AVENUE**

<i>(MaineDOT Use Only)</i>	
Project Location: <u>Portland</u>	Estimated Municipal Share: <u>\$86,700.00</u>
State WIN #: <u>23408.00</u>	Vendor Customer #: <u>17A12144</u>
Federal Aid Project #: <u>N/A</u>	Agreement Begin Date: _____
	Agreement End Date: <u>(5 years from the date last signed below)</u>

This Agreement is entered into between the Maine Department of Transportation (hereafter the MaineDOT) and the Municipality of Portland, a municipal corporation located in the County of Cumberland (hereafter the "Municipality") (collectively hereinafter the "Parties").

RECITALS

- A. The scope of work that is the subject of this Agreement consists of making improvements to Route 22/Park Avenue, in Portland, Maine, (hereafter the "Project").
- B. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.
- C. This Agreement is intended to cover the roles and responsibilities of the Parties during the design, permitting and right-of-way phases of Project development from Project inception through completion of the Project's Plans, Specifications and Estimate (PS&E). This Agreement is further intended to establish the financial obligations of each Party, including that of full Project development through construction.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing, the Parties agree as follows:

- D. The following checked appendices are hereby incorporated into this Agreement by reference:
 - Appendix A – Project scope, cost sharing, and payment schedule
 - Appendix B – Perpetual Bicycle/Pedestrian Facility Maintenance
 - Appendix B – Perpetual Drainage Maintenance
 - Appendix B – Perpetual Landscape Maintenance
 - Appendix B – Perpetual Operation and Maintenance of Lighting/Flashing Beacon and/or signage with associated light(s)
 - Appendix B – Perpetual Traffic Signal Operation and Maintenance
 - Appendix B – Perpetual Bridge Lighting/Approach Lighting Maintenance & Snow Plowing
 - Appendix C – Additional work requested by Municipality

E. Agreement Administration:

1. MaineDOT agrees to procure and administer a contract to construct the Project in accordance with the plans and specifications developed by MaineDOT. This would include any additional plans, specifications and estimates furnished by the Municipality and approved by MaineDOT. Please refer to Appendix A of this Agreement for the outline of the scope, limits of work and cost sharing.
2. MaineDOT shall be the sole administrator of the contract to construct the Project. MaineDOT will pay all Project costs, subject to cost sharing by the Municipality, when applicable, as specified in this Agreement. Neither MaineDOT nor its contractors will be required to pay for inspections and permits from the Municipality.
3. Upon acceptance of plans, specifications and estimates (PS&E), MaineDOT shall solicit competitive bids for the Project. Upon acceptance of the lowest acceptable responsive, responsible bid to construct the Project and fulfillment of all terms set forth herein, MaineDOT will submit the information to the Municipality, who will have up to five (5) business days to review the information and notify MaineDOT of any questions or concerns. If MaineDOT is not presented with any questions or concerns in the time allotted all decisions pertaining to the acceptance of the bids, the award and administration of the contract and all payments thereunder shall be the sole discretion of MaineDOT.

F. Changes to Project Scope:

4. The Municipality, at its election, may request that changes be made or work added to the Project during the period of construction, provided the Municipality agrees in writing to pay any additional cost plus an amount not to exceed ten (10%) percent of such construction cost to cover all necessary engineering, inspection and administrative costs associated therewith, unless specified otherwise. All such requests shall be subject to MaineDOT approval. In the event that the cost of these changes or work are approved for federal participation, the Municipality's additional cost may be reduced by the amount of the federal contribution.

G. Traffic Control:

5. The Municipality agrees to allow MaineDOT's contractor to control all traffic through the work areas in accordance with the Traffic Control Plan approved by MaineDOT. The development of the Traffic Control Plan will follow the process outlined below:
 - i. MaineDOT's Project Manager (PM) will, when possible, submit the Project for Traffic Analysis and Movement Evaluation (TAME), approximately one year prior to advertisement. Once the results are received, the PM/Regional Traffic Engineer will discuss the proposed Project with the Municipality (scope, limits, day or night work, work window, etc).
 - ii. The Municipality will comment on their concerns/issues related to the Traffic Control Plan within two (2) weeks of receipt.
 - iii. MaineDOT's PM & Designer will incorporate these comments where practical based on engineering judgment.

- iv. If the Municipality desires, a meeting will be held prior to PS&E to review the Project design, Special Provision 105 – Limitations of Operations, Special Provision 107 - Time, etc.

H. Utilities

6. The Municipality will, at no cost to MaineDOT, assure proper adjustment, relocation, or repair of any portion of a utility service, whether above or below ground, that is located within the limits of the highway right-of-way and connected to any municipal utility, which might become necessary to permit construction of the Project. The Municipality agrees to hold MaineDOT harmless from any claims for damages occurring as a result thereof.
7. The Municipality agrees that during and after construction it will apply the requirements of the most recent version of MaineDOT's "Utility Accommodation Rules" as the minimum guidelines not withstanding any municipal rules that are more lenient.
8. To the extent that it is statutorily responsible therefore, the Municipality agrees to provide utilities, and to maintain all improvements and fixtures constructed, installed or furnished as a part of the Project in such a manner as necessary to preserve the use and function thereof for the expected period of their normal useful life as determined by accepted engineering and/or industry standards. To the extent any warranty exists for said improvements or fixtures, said warranty shall be first relied on by MaineDOT to address maintenance and/or repairs described in this paragraph.

I. Governing Law:

9. The Municipality agrees that except for an emergency, or as allowed in 23 M.R.S.A. § 3351-A, it will prohibit the excavation of the highway within the limits of the Project for a period of at least five (5) years after completion of the Project, and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any municipal government under the provisions of 23 M.R.S.A. § 3351. Thereafter, all future excavations within the right-of-way of the Project shall be regulated and controlled in the manner specified by MaineDOT in its most recent "Utility Accommodation Rules", which is incorporated herein and made a part hereof by reference.
10. The Parties agree to: comply with and abide by all applicable State and Federal laws, statutes, rules, regulations, standards and guidelines, including the MUTCD and OSHA standards, and Agreement provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.

J. Municipality's Responsibility:

11. The Municipality agrees to alter, move, relocate or remove, or cause to be, at no cost to the Project, any municipal property, including all fixtures, facilities or monuments, located on, under or above the ground, as necessary to permit construction of the Project, which has not otherwise been provided for during the development of the Project. Any work necessary to do so during the period of construction shall be coordinated with the contractor for the Project.
12. The Municipality will be responsible to keep new or replaced/rehabilitated pedestrian facilities in usable condition including snow and ice control.

13. The Municipality agrees to keep the right-of-way of the Project inviolate from all encroachments and agrees to remove, or cause to be removed, anything that may encroach thereon.
14. When applicable, the Municipality agrees to regulate all entrances to the highway within the limits of the Project in accordance with the provisions of 23 M.R.S.A. § 704.
15. When applicable, the Municipality agrees to limit all on-street parking to the parking spaces as designed and constructed under the Project.

K. Termination:

16. MaineDOT reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. MaineDOT also reserves the right to terminate all provisions pertaining to work requested by the Municipality at any time prior to the award of a contract to construct the Project due to failure by the Municipality to comply with any of the conditions and stipulations set forth in this Agreement.
17. MaineDOT may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Municipality and in no event shall any such action be deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by MaineDOT or specifically as the result of any failure by the Municipality to perform any of the services required under this Agreement to MaineDOT's satisfaction.

In the event of Project termination, all provisions of this Agreement shall become null and void except for those *provisions that by their very nature are intended to survive*.

L. Miscellaneous Provisions:

18. **Debarment.** The Municipality certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. If the Municipality is unable to certify to this statement, it shall attach an explanation to this Agreement. The Municipality shall promptly notify MaineDOT if it or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
19. All provisions of this Agreement, *except those that by their very nature are intended to survive*, shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.
20. **Non-Appropriation.** Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees that although the execution of this agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
21. **Assignment.** No assignment of this agreement is contemplated, and in no event shall any assignment be made without the express written permission of MaineDOT.

22. **Notice.** Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Alternatively, communication may be sent via email and shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Said communications, requests or notices shall be sent to the other party as follows:

MaineDOT: Maine Department of Transportation
 16 State House Station
 Augusta, ME 04333-0016
 Attn.: Robert Betz
 Email: robert.k.betz@maine.gov

Municipality: City of Portland
 389 Congress St
 Portland, ME 04101
 Attn.: Jon Jennings
 Email: citymanager@portlandmaine.gov

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

MUNICIPALITY OF PORTLAND

MAINE DEPARTMENT OF TRANSPORTATION

By: _____
Jon Jennings, City Manager

By: _____
William A. Pulver, Director
Bureau of Project Development

(Date Signed)

(Date Signed)

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

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

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO ROUTE 22/PARK AVENUE

FEDERAL AID PROJECT NO. N/A

STATE PROJECT IDENTIFICATION NUMBER (WIN) 23408.00

Project Scope: Mill and Fill beginning at the intersection of Route 22 and St. John Street and extending west 0.26 of a mile.; CPR funding. State share is capped at \$35,100.

Funding Outline: The Total Project Estimated Cost is \$ 123,800.00 , and the Parties agree to share costs through all stages of the Project under the terms outlined below.

Work Element	Municipal Share		Project Share				Total Cost
			Federal	Portion	MaineDOT (State) Portion		
	%	\$	%	\$	%	\$	\$
Preliminary Engineering	0.0%	\$ -		\$ -	100.0%	\$ 3,000.00	\$ 3,000.00
Right of Way	0.0%	\$ -		\$ -	100.0%	\$ -	
Construction	0.0%	\$ -		\$ -	100.0%	\$ 30,300.00	\$ 30,300.00
Construction Engineering	0.0%	\$ -		\$ -	100.0%	\$ 1,800.00	\$ 1,800.00
PROJECT SHARES		\$ -		\$ -		\$ 35,100.00	\$ 35,100.00
Total Cost of Additional Work Requested by Municipality (Below)	100.0%	\$ 88,700.00					
TOTAL ESTIMATED MUNICIPAL SHARE (Receivable Amount)		\$ 88,700.00					

(Check if applicable)

Additional Work as outlined in Appendix C to this Agreement.

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

Additional Work	Cost: 100% Municipal Share	
Portland Share, expenses above \$135,000 / Mile	\$	80,700.00
Adjust Sewer Manhole - Unit Price/\$1,000 ea.; Quantity 8	\$	8,000.00
TYPE OF WORK	\$	-
TOTAL COST OF ADDITIONAL WORK REQUESTED BY MUNICIPALITY	\$	88,700.00

Payment:

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

1. Prior to award of the contract for Project construction, the Municipality will be invoiced a portion of its share of the cost of the Project.

Invoicing will include the following:

- a. 100% of the local share of the Preliminary Engineering and Right of Way costs; plus
- b. Fifty percent (50%) of the local share of the Construction and Construction Engineering cost based on the total bid price of the Project; plus
- c. 100% of all additional work requested by the Municipality.

2. Final Voucher Payment to the Contractor. A final bill will be created following MaineDOT's final voucher payment to the Contractor, after all quantities are verified, and any required adjustments have been made. The cost of the work for which MaineDOT will bill the Municipality shall be determined by the contract prices and the completed quantities of the work items or, in the event of termination, the local share of Project development cost to the point of termination as stipulated above. The final invoice will include the Municipality's share of any remaining costs.

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

Municipality Name	Receivable Amount	Estimated Invoice Date
Portland	\$44,350.00	5/1/2018
Portland	\$44,350.00	12/1/2018
Portland	Remaining Balance if Any	12/1/2019
Total Receivable Amount:	\$88,700.00	

Project Information

Municipality Name: Portland

Federal Aid Project #: N/A

WIN: 23408.00

APPENDIX C

ADDITIONAL WORK

MAINE DEPARTMENT OF TRANSPORTATION

Transportation Improvement Project

1. Description of Work Being Added to Project by the Municipality:

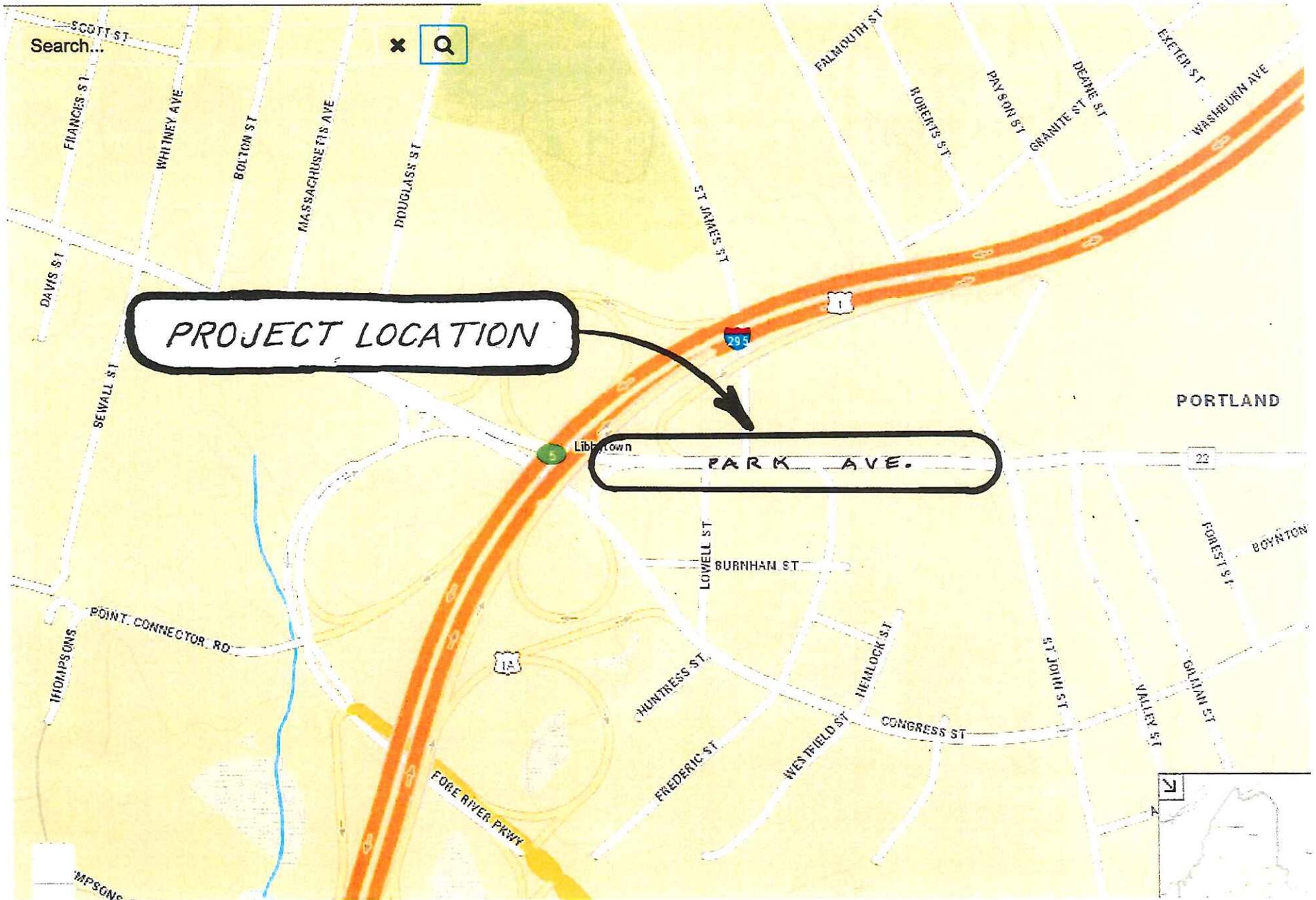
Highway resurfacing on Park Avenue and sewer items.

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

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

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

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



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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

*Order 189-17/18
Tab 16 4-9-18*

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

**ORDER AUTHORIZING GENERAL OBLIGATION BONDS
TO FINANCE A PORTION OF THE CITY'S FISCAL YEAR 2019 CAPITAL
IMPROVEMENT PROGRAM IN AN AMOUNT NOT TO EXCEED \$31,648,595**

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

There be and hereby is authorized and approved the incurring of indebtedness by the City of Portland and the issue and sale of general obligation bonds and notes in anticipation thereof in the aggregate principal amount not to exceed Thirty-One Million Six Hundred Forty-Eight Thousand Five Hundred Ninety-Five Dollars (\$31,648,595) to finance the items identified in the City's 2019 Capital Improvement Program attached hereto as Exhibit A and all other costs (as defined herein) related and ancillary thereto (the "Projects").

BE IT FURTHER ORDERED:

1. That the Finance Director be and hereby is authorized to prepare, issue, and sell such bonds in the name of and on behalf of the City, in the aggregate amount of \$31,648,595 (the "Bonds") at one time, or from time to time, as one or more separate bond issues, and to determine the date, form, minimum denomination, interest rates (as term bonds or serial bonds or some combination thereof), maturities (with the last maturity not to exceed the maximum term permitted by law) and all other details, terms and provisions, not inconsistent herewith, including the form and manner of their sale and award as he may approve, such approval to be conclusively evidenced by the execution thereof;

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

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

4. That the Bonds and BANs issued hereunder shall be signed by the Finance Director and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such

terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof;

5. That the Finance Director is authorized to negotiate, execute, and deliver, in the name of and on behalf of the City such contracts, agreements, instruments and other documents and certificates as may be necessary or appropriate, as determined and approved by the Finance Director, in connection with the financing of the Projects, including a loan agreement in usual and customary form with the Maine Municipal Bond Bank (the "Bond Bank"), to the extent any of the Bonds or BANs authorized herein are issued pursuant to the State of Maine Clean Water Revolving Loan Fund (CWSRF) program established under 30-A M.R.S.A. §6006-A and administered by the Department of Environmental Protection, which contracts, agreements, loan agreements, instruments and other documents and certificates shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Finance Director, such approval to be conclusively evidenced by his execution thereof;

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

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

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

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

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

or any other contract, agreement or understanding necessary or, in his opinion, appropriate in order to qualify the Bonds or BANs for and participate in the Depository Trust Company Book-Entry Only System;

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

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

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

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

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

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

17. That if the actual cost of any Project differs from the estimated cost on the attached Exhibit A, whether due to completion, delay or abandonment of the Project for any other reason, the Finance Director is authorized, in his discretion, to reallocate proceeds of the Bonds to any other listed Project on the attached Exhibit A, or to any other project or improvement that the City Council has approved or may in the future approve as part of the City's annual capital improvement plan;

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

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

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

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

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

23. That the following resolutions required by Section C(4)(e) of the State of Maine Revolving Loan Fund Rules, Chapter 595, Department of Environmental Protection and Maine Municipal Bond Bank (the "SRF Regulations"), and governing the loan to be made to the City under the State Revolving Loan Fund Program be and hereby are adopted:

- a. That a Project Account shall be created for the Projects which shall be separate from all other accounts of the City. If operating revenues are to be used to retire the debt, a sub-account will be established;
- b. That the Project Account shall be maintained in accordance with standards set forth by the Bond Bank and in accordance with generally accepted government account standards;
- c. That a final accounting shall be made to the Bond Bank of the total cost of each Project upon completion of the Project performance certification as set out in Section G(3) of the

SRF Regulations and the City acknowledges that the Bond Bank reserves the right at its sole discretion to be provided with a cost certification of the Project as built;

- d. That an annual audit of the City, prepared by a certified public accountant or licensed public accountant be provided to the Bond Bank for the term of the loan;
- e. That the City shall maintain insurance coverage on the Projects in an amount adequate to protect the Bond Bank's interest for the term of the loan with the Bond Bank named as loss payee;
- f. That the City will comply with any special conditions specified by the Department of Environmental Protection's environmental determination until all financial obligations to the State have been discharged;
- g. That the City certify to the Bond Bank that it has secured all permits, licenses and approvals necessary and that it has a dedicated source of revenue for repayment;
- h. That the City establish a rate, charge or assessment schedule in order to pay principal and interest. Such rate change or schedule shall provide total operations and debt service coverage at a level at which the coverage for the Bond Bank is sufficient;
- i. That the City must demonstrate the ability to pay reasonably anticipated costs of operating and maintaining the financed Project;
- j. That the City abide by the SRF Regulations, as revised and amended and relevant State statutes of the State of Maine; and

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

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Brendan T O'Connell – Finance Director (submitting on behalf of Finance Committee)

DATE: 3/27/18

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

SUBJECT: Orders Authorizing and Appropriating the FY19 Capital Improvement Plan Funds

SPONSOR: Nick Mavodones, Finance Committee Chair

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading 4/9/18 Final Action 4/18/17

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

PRESENTATION: None

I. SUMMARY OF ISSUE (Agenda Description)

The FY19-FY23 Capital Improvement Plan (“CIP”) has been in development since summer 2017 and is being reviewed by the Finance Committee since their first meeting of 2018. The FY19 Capital Improvement Plan calls for \$15.5M of new bond authorization for general fund CIP projects and \$16.1M of new bond authorization for sewer and stormwater CIP projects. Assuming the recommendation of the FY19 CIP by the Finance Committee the CIP will be appearing for approval by the full City Council on April 18, 2018. Three orders are required, one authorizing the FY19 CIP bonds, a second appropriating the proceeds, and a third and final order appropriating excess fund balance for several projects. A complete listing of the projects being authorized is included within the orders.

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

The City Charter requires the City Manager “To prepare a five (5) year rolling capital improvement plan for annual presentation to the city council”. Approval of these orders is a critical component of the one year CIP. City staff is working towards earlier approval of the CIP (last year’s CIP was approved in spring 2017). Earlier CIP approval allows the City to get projects out to bid sooner before many of the best contractors have already filled calendars with spring, summer and fall work.

III. INTENDED RESULT

Approval of the FY19 CIP will allow staff to move forward immediately with the include projects, including many City, School and Sewer/Stormwater projects which are slated to begin during 2018.

IV. COUNCIL GOAL ADDRESSED

As noted previously, the CIP is a requirement of the City Charter and a duty of the City Manager. These actions will trigger compliance with the City Charter requirements.

V. FINANCIAL IMPACT

For the past several fiscal years, the CIP borrowings have been designed to ensure no increases to the overall City budget for debt service. Due to an escalating backlog of City capital maintenance, the City manager has pushed forward with a recommendation of an additional \$5M of general fund capital improvement borrowing in the FY19 CIP. This additional general fund borrowing will trigger a 5 to 6 cent increase in the mil rate beginning in FY20, depending on the interest rates obtained when funds are borrowed in spring 2018.

VI. STAFF ANALYSIS

The Capital Improvement Plan is a comprehensive process which began back in summer 2017. Each Department (including the School Department) performs a comprehensive analysis of their capital needs over the upcoming five or ten years. Each Department then ranks their needs based on priority and submits each project. The complete list of City wide needs is then reviewed as a whole, compared to available funding, and a one and five year CIP recommendation is produced. The current FY19 CIP represents the City Manager's recommended CIP after review and presentation of all Department submissions and consideration of input submitted by elected officials.

VII. RECOMMENDATION

We recommend approval of the three FY19 CIP orders.

VIII. LIST ATTACHMENTS

Two City Council orders (a bond order and an appropriation order), each including an Exhibit A containing the detailed list of FY19 projects

	<u>Exhibit A</u>	
	<u>FY19 CIP - General Fund</u>	
	<u>Bonded Amount</u>	<u>Other Funding</u>
Transportation		
<i>PACTS/Match/Other Leveraged Funds</i>		
PACTS RTMS - Traffic Signals	\$ 270,000	\$ -
MPI PACTS Paving - Allen Avenue (Yale-Pennell)	203,400	-
PACTS Washington Avenue Road & Signals	150,000	-
PACTS Collector Paving - Allen Avenue	106,250	-
PACTS USM Roundabout	100,000	-
<i>Traffic Signals / Lights</i>		
Traffic Signals Upgrade Program	480,000	20,000
<i>Streets/Sidewalks</i>		
Woodford's Corner Project - Supplemental Funding	878,241	-
Pavement Preservation Program	750,000	-
CSO Compliance - SRF Ineligibles	600,000	-
MPI DOT Paving - Washgtn Ave(Ocean - Allen)	550,000	-
Street Rehabilitation Program	250,000	-
Arterial Street Ped Crossings	100,000	-
Andrew Square Rehabilitation	100,000	-
Park Ave Protected Bike Lanes	100,000	-
CPR Paving - Park Avenue	83,000	-
CPR Paving - Valley St (entire)	72,400	-
RR Quiet Zone Compliance Program	25,000	-
Franklin Street Design Completion and Construction	-	250,000
Sidewalk Rehabilitation/Accessibility	400,000	100,000
<i>Other</i>		
Neighborhood Byway Network Implementation	100,000	-
Congress Square Redesign	15,000	-
Transportation Total	\$ 5,333,291	\$ 370,000
Facilities		
<i>Buildings/Garages</i>		
Barron Center - Generator Replacement	\$ 430,000	\$ -
Barron Center - Expansion of walk in cooler and freezer FY19	90,628	-
Fire Station Rehabilitation and Upgrades	100,000	-
Temple St Garage Cond. Appraisal Rrs Concrete & S/W 1	290,000	-
Continued Course Improvements at Riverside Golf Course	50,000	-
Sanitation office/ crew space	200,000	-
<i>Marine</i>		
Ocean Avenue Landfill Remediation and Pre-Solar Array Work	250,000	-
On going pile/pier work at OG and P.O.T	150,000	-
Replace Ocean Gateway Plaza Sidewalk	100,000	-
Utility Upgrades	500,000	-
<i>School Facilities</i>		

Lincoln School ADA accessibility and secure entry vestibule	712,126	-
King School - Boiler Replacement	500,000	-
School District ADA compliance upgrades	338,198	-
Moore School - Fire Alarm System Replacement - Engineering and Installation	270,000	-
King School - Fire Alarm System Replacement - engineering and installation	270,000	-
DHS - Fire Sprinkler System Installation	255,130	1,000,000
PHS - Roof Replacement - Engineering	130,000	-
School Energy Management Control Upgrades	50,000	-
DHS Kitchen Remodel/Upgrade	50,000	-
Facilities Total	\$ 4,736,082	\$ 1,000,000
Parks, Fields, Trails		
<i>Parks, Fields, Trails</i>		
Memorial Field Artificial Turf Replacement	\$ 672,772	\$ -
Lincoln Park Fence	100,000	-
Dougherty Skate Park Expansion	50,000	-
Parks, Fields, Trails Total	\$ 822,772	\$ -
Equipment and Vehicles		
<i>Equipment</i>		
Barron Center - Replace Patient Call System Phase II	\$ 48,000	\$ -
Barron Center - Domestic Hot Water Heaters	46,400	-
Upgrade Network switches	150,000	-
Hadlock Field - Lighting Upgrades	550,000	-
Observatory Flagpole and Lightning Protection Replacement	45,000	-
109 Middle Street - Replace Boiler #2	40,000	-
Traffic Signal Upgrades with Paving Programs	400,000	100,000
District Phone System	335,000	-
Records Management System	-	600,000
Virtualization, Storage and Redundancy Upgrade	100,000	-
Phone System Upgrade	100,000	-
Police - Patrol Full Body Cameras	-	400,000
<i>Vehicles</i>		
School Bus Replacements	97,000	-
Trash and Recycling Trucks	770,000	-
Police Cruisers (7)) Replacement - Police	266,000	-
Grader Replacement - Winter 5096	225,000	-
Loader DPS 5116	210,000	-
TA Dump Truck Replacement - Districting 3096	210,000	-
SA Dump Truck Replacement - Peaks 3114	170,000	-
SA Dump Truck Replacement - Winter 3115	170,000	-
Wheel Loader Replacement - Trades 5006	135,000	-
1 Ton Dump Truck Replacement - Peaks 2508	70,000	-
1 Ton Dump Truck Replacement - Parks 3101	65,000	-
Replace Utility Truck - DPW Traffic 2515	62,000	-
Mower Hill Climber 10' Replacement - Parks 7158	60,000	-
3/4 Ton Pickup - PRF Ballfields - 2199	40,000	-
3/4 Ton Pickup - PRF Parks - 2202	40,000	-

3/4 Ton Pickup Replacement - Parks 2203	40,000	-	
Car 7 & Service Truck 2 Replacement - Fire	40,000	-	
3/4 Ton Pickup - PRF - Rangers - 2037	38,000	-	
Compact Pickup DPW Engineers 2051	25,000	-	
3/4 Ton Utility Van Replacement - Trades 2006	25,000	-	
3/4 Ton Utility Van Replacement - Trades 2045	25,000	-	
Compact Pickup Replacement - PRF Ballfields	15,000	-	
Equipment and Vehicles Total	\$ 4,612,400	\$ 1,100,000	
Sub-Total FY19 CIP (General Fund)	\$ 15,504,545	\$ 2,470,000	
<u>FY19 CIP - Sewer Fund</u>			
Sewer / Stormwater			
Bedford Street Sewer Separation Project	\$ 8,500,000	\$ -	
CMOM - Pump Station Rehabilitation	670,000	-	
CMOM - Inflow and Infiltration Program	790,000	-	
CMOM - Sewer System Renewal	1,100,000	-	
CSO - Close CSO #42	100,000	-	
Warren - Hicks to Hemingway Sewer Separation	400,000	-	
Forest - Avalon to Warren Sewer Separation	250,000	-	
Integrated Planning LTCP and Post Construction Monitoring Program	400,000	-	
Brighton - Dorset to Lomond Sewer Separation	1,000,000	-	
Thames St Stormwater Outfall	150,000	-	
Thames St Sewer / Stormwater Extension	225,000	-	
Pavement Preservation Program - Utility costs	200,000	-	
MPI/CPR Paving Programs - Utility costs	127,050	-	
Street Rehab Program - Utility costs	800,000	-	
PACTS Paving - ineligible Utility costs	30,000	-	
Pump Station at 109 District Road	120,000	-	
Stormwater Retrofits on Riverside Street	185,000	-	
Bell Street Sewer Replacement	350,000	-	
Stormwater Infrastructure Improvements	272,000	-	
Street Sweepers Replacement	270,000	-	
Catch Basin Cleaning Vehicle Replacement - Sewer 3127	145,000	-	
Service Truck - DPW Water Resources	60,000	-	
Sewer / Stormwater Total (Sewer Fund)	\$ 16,144,050	\$ -	
TOTAL CIP (General Fund & Sewer Fund)	\$ 31,648,595	\$ 2,470,000	\$ 34,118,595
Citywide property revaluation	\$ -	\$ 1,055,000	
TOTAL CIP & Revaluation	\$ 31,648,595	\$ 3,525,000	
Reallocated Bond Proceeds		\$ (470,000)	
Total Appropriation	\$ 31,648,595	\$ 3,055,000	\$ 34,703,595

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

CITY OF PORTLAND
IN THE CITY COUNCIL

Order 188-17/18
Tab 17 4-9-18
KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROPRIATING BOND PROCEEDS AND UNASSIGNED FUND BALANCE IN
AN AMOUNT NOT TO EXCEED \$34,703,595 FOR
THE CITY'S FISCAL YEAR 2019 CAPITAL IMPROVEMENT PROGRAM**

IT IS HEREBY ORDERED THAT:

1. The sum of \$34,703,595 be and hereby is appropriated to finance the projects more particularly described in the project list for the City's 2019 Capital Improvement Program attached hereto as Exhibit A (the "2019 CIP Projects"), as follows:
 - a. Subject to paragraph 2 and 3 below, an amount not to exceed \$31,648,595 is appropriated from the proceeds of the City's general obligation bonds to be authorized by the City Council and issued to finance a portion of the costs of the 2019 CIP Projects; and
 - b. An amount not to exceed \$3,055,000 is appropriated from the City's Unassigned Fund Balance to finance a portion of the costs of a Citywide property revaluation and certain other vehicles, equipment and improvements included in the 2019 CIP Projects, as listed on Exhibit A;
2. The appropriation set forth in paragraph 1(a) above is and shall be contingent upon the approval by the City Council of general obligation bonds for such purposes (the amount appropriated in said paragraph 1(a) to be adjusted to reflect the principal amount of bonds so authorized) and the issuance and delivery of such bonds (or notes in anticipation thereof) for such purposes. The foregoing appropriations shall also be applied to issuance costs for such bonds (or notes in anticipation thereof).
3. That if the actual cost of any 2019 CIP Project differs from the estimated cost on the attached Exhibit A, whether due to completion, delay or abandonment of the Project or for any other reason, the Director of Finance is authorized, in his discretion, to reallocate proceeds of the bonds issued therefore or the funds appropriated from the Unassigned Fund Balance Funds therefore to any other project listed on the 2019 CIP Project List or to any other project or improvement that the City Council has approved or may in the future approve as part of the City's annual capital improvement plan.

<u>FY19 CIP - General Fund</u>		<u>Exhibit A</u>	
	<u>Bonded Amount</u>	<u>Other Funding</u>	
Transportation			
<i>PACTS/Match/Other Leveraged Funds</i>			
PACTS RTMS - Traffic Signals	\$ 270,000	\$ -	
MPI PACTS Paving - Allen Avenue (Yale-Pennell)	203,400	-	
PACTS Washington Avenue Road & Signals	150,000	-	
PACTS Collector Paving - Allen Avenue	106,250	-	
PACTS USM Roundabout	100,000	-	
<i>Traffic Signals / Lights</i>			
Traffic Signals Upgrade Program	480,000	20,000	
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Pavement Preservation Program	750,000	-	
CSO Compliance - SRF Ineligibles	600,000	-	
MPI DOT Paving - Washgtn Ave(Ocean - Allen)	550,000	-	
Street Rehabilitation Program	250,000	-	
Arterial Street Ped Crossings	100,000	-	
Andrew Square Rehabilitation	100,000	-	
Park Ave Protected Bike Lanes	100,000	-	
CPR Paving - Park Avenue	83,000	-	
CPR Paving - Valley St (entire)	72,400	-	
RR Quiet Zone Compliance Program	25,000	-	
Franklin Street Design Completion and Construction	-	250,000	
Sidewalk Rehabilitation/Accessibility	400,000	100,000	
<i>Other</i>			
Neighborhood Byway Network Implementation	100,000	-	
Congress Square Redesign	15,000	-	
Transportation Total	\$ 5,333,291	\$ 370,000	
Facilities			
<i>Buildings/Garages</i>			
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Traffic Signal Upgrades with Paving Programs	400,000	100,000
District Phone System	335,000	-
Records Management System	-	600,000
Virtualization, Storage and Redundancy Upgrade	100,000	-
Phone System Upgrade	100,000	-
Police - Patrol Full Body Cameras	-	400,000
<i>Vehicles</i>		
School Bus Replacements	97,000	-
Trash and Recycling Trucks	770,000	-
Police Cruisers (7)) Replacement - Police	266,000	-
Grader Replacement - Winter 5096	225,000	-
Loader DPS 5116	210,000	-
TA Dump Truck Replacement - Districting 3096	210,000	-
SA Dump Truck Replacement - Peaks 3114	170,000	-
SA Dump Truck Replacement - Winter 3115	170,000	-
Wheel Loader Replacement - Trades 5006	135,000	-
1 Ton Dump Truck Replacement - Peaks 2508	70,000	-
1 Ton Dump Truck Replacement - Parks 3101	65,000	-
Replace Utility Truck - DPW Traffic 2515	62,000	-
Mower Hill Climber 10' Replacement - Parks 7158	60,000	-
3/4 Ton Pickup - PRF Ballfields - 2199	40,000	-
3/4 Ton Pickup - PRF Parks - 2202	40,000	-

3/4 Ton Pickup Replacement - Parks 2203	40,000	-	
Car 7 & Service Truck 2 Replacement - Fire	40,000	-	
3/4 Ton Pickup - PRF - Rangers - 2037	38,000	-	
Compact Pickup DPW Engineers 2051	25,000	-	
3/4 Ton Utility Van Replacement - Trades 2006	25,000	-	
3/4 Ton Utility Van Replacement - Trades 2045	25,000	-	
Compact Pickup Replacement - PRF Ballfields	15,000	-	
Equipment and Vehicles Total	\$ 4,612,400	\$ 1,100,000	
Sub-Total FY19 CIP (General Fund)	\$ 15,504,545	\$ 2,470,000	
<u>FY19 CIP - Sewer Fund</u>			
Sewer / Stormwater			
Bedford Street Sewer Separation Project	\$ 8,500,000	\$ -	
CMOM - Pump Station Rehabilitation	670,000	-	
CMOM - Inflow and Infiltration Program	790,000	-	
CMOM - Sewer System Renewal	1,100,000	-	
CSO - Close CSO #42	100,000	-	
Warren - Hicks to Hemingway Sewer Separation	400,000	-	
Forest - Avalon to Warren Sewer Separation	250,000	-	
Integrated Planning LTCP and Post Construction Monitoring Program	400,000	-	
Brighton - Dorset to Lomond Sewer Separation	1,000,000	-	
Thames St Stormwater Outfall	150,000	-	
Thames St Sewer / Stormwater Extension	225,000	-	
Pavement Preservation Program - Utility costs	200,000	-	
MPI/CPR Paving Programs - Utility costs	127,050	-	
Street Rehab Program - Utility costs	800,000	-	
PACTS Paving - ineligible Utility costs	30,000	-	
Pump Station at 109 District Road	120,000	-	
Stormwater Retrofits on Riverside Street	185,000	-	
Bell Street Sewer Replacement	350,000	-	
Stormwater Infrastructure Improvements	272,000	-	
Street Sweepers Replacement	270,000	-	
Catch Basin Cleaning Vehicle Replacement - Sewer 3127	145,000	-	
Service Truck - DPW Water Resources	60,000	-	
Sewer / Stormwater Total (Sewer Fund)	\$ 16,144,050	\$ -	
TOTAL CIP (General Fund & Sewer Fund)	\$ 31,648,595	\$ 2,470,000	\$ 34,118,595
Citywide property revaluation	\$ -	\$ 1,055,000	
TOTAL CIP & Revaluation	\$ 31,648,595	\$ 3,525,000	
Reallocated Bond Proceeds		\$ (470,000)	
Total Appropriation	\$ 31,648,595	\$ 3,055,000	\$ 34,703,595

Order 189-17/18
Tab 18 4-9-18

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**AMENDMENT OF PORTLAND CITY CODE CHAPTER 25.
STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES
ARTICLE II. OBSTRUCTIONS, ENCUMBRANCES AND AUTHORIZED EVENTS
Re: BIKE SHARE ORDINANCE**

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

1. That Chapter 25, Article II, Obstructions, Encumbrances and Authorized Events. Section 25-27 and 25-31 of the Portland City Code is hereby amended to read:

Sec. 2527. Fees and fines.

(a) The following fees are hereby established for the issuance of a revocable street and sidewalk occupancy permit:

- (1) Objects other than portable signs, including but not limited to tables, chairs, barricades and bollards, eighty-eight dollars (\$88.00) for one (1) fiscal year or any portion thereof;

...

- (7) Location of dumpster on city-owned property, except as part of a street festival or other special event declared by the city council, two hundred twenty-five dollars (\$225.00) per fiscal year or any portion thereof.

- (8) Operation of a bike sharing system (as defined in 25-31 below,) according to the following fee schedule:

Station-less Systems (or Hybrid systems not meeting 50% docking point threshold):

Initial Annual Permit Fee, per operator per calendar year:

Less than 250 bicycles \$1,500

251 to 500 bicycles \$2,500

More than 500 bicycles \$500 per every additional 250 bicycles or fraction thereof

Annual Renewal Fee (Station-less Systems), per operator per calendar year:

Less than 250 bicycles \$1,000

251 to 500 bicycles \$2,000

More than 500 bicycles \$ 250 per every additional 250 bicycles or fraction thereof

Bicycle Parking Mitigation: To help mitigate the increased bicycle parking demands of a Station-less Bike Sharing System, the operator will either: 1) provide and have installed within the public right-of-way bicycle parking sufficient to accommodate the equivalent of 10% of the number of bicycles deployed in the operator's fleet with approved bicycle racks in approved locations or 2) make a financial contribution to the Sustainable Transportation Fund for the purchase and installation by the City of bicycle parking sufficient to accommodate the equivalent to 10% of the number of bicycles deployed in the operator's fleet.

Station-based/Hybrid Systems (Station-based systems must provide at least 50% as many docking points as bikes):

Initial Annual Permit Fee, per operator per calendar year:

Less than 250 bicycles \$500

251 to 500 bicycles \$1,000

More than 500 bicycles \$250 per every additional 250 bicycles or fraction thereof

Plus \$50 per approved docking station.

Annual Renewal Fee, per operator per calendar year:

Less than 250 bicycles \$500

251 to 500 bicycles \$1,000

More than 500 bicycles \$250 per every additional 250 bicycles or fraction thereof

Plus \$25 per approved docking station.

Within one year following the issuance of the first permit for a bike sharing system, the fee schedule above is to be re-assessed.

Should the number of bicycles be increased during any calendar year requiring additional fees, the difference in permit fees paid to date will be payable and a revised permit application is to be filed before their deployment. A reduction in bicycles in any one calendar year will not trigger a refund of permit fees paid.

(b) The following fees are hereby established for the issuance of a revocable outdoor dining permit:

...

25-31 ~~Reserved.~~ Bike Sharing Systems

(a) A "bike sharing system" is defined as a system of bicycles, electric bicycles, helmets, or similar bike-share-related merchandise that is made available for rent for general public use, generally for short periods of time, and may include docks or stations for storing bicycles when not in use.

(b) Bike sharing systems require annual revocable street occupancy permits pursuant to this section and section 25-27(a)(8), above.

(c) The City Manager or her/his designee is hereby authorized to develop regulations to further delineate reasonable rules for operation of a bike sharing system, including limits on the number of bikes (including per operator), where bikes and other bike-share-related merchandise may be stored or parked on public ways, requirements for insurance, indemnity and bonding, the conduct and responsiveness of bike share operators, requirements for data sharing and reporting, restrictions on advertising and signage, and other relevant factors to ensure safe and effective operation of such a system. The rules will be submitted to the City's

Sustainability & Transportation Committee for review and comment prior to adoption and, following adoption, shall undergo an annual review by the Committee of the rules' effectiveness.

(d) The City Manager may set a cap on the number of bike sharing systems that may operate in the city at one time. If such a limit is set, the City shall determine operators through a competitive bidding process.

(e) In addition to the street occupancy permit fees outlined in 25-27 above, in the event that any installation, reinstallation, relocation, repair or maintenance of any existing or future improvements owned by, constructed by or on behalf of the City is made costlier by virtue of a bike sharing system, the operator of that bike sharing system shall pay to the City an amount equal to such additional cost as reasonably determined by the City Manager or the City Manager's duly authorized representatives.

(f) It shall be considered a violation of the City Code to park, leave standing, or leave unattended a bicycle that is part of a bike sharing system, as defined in Sect 25-31(a), on any sidewalk, street, or public right-of-way except as authorized under a valid street occupancy permit. Bicycles parked, left standing, or left unattended constitute a public nuisance subject to abatement and removal by duly designated authorities by the City Manager. Failure to obtain a street occupancy permit as required by this section, parking or leaving unattended a bicycle in an unauthorized location, and any other violations of this Section or the Rules and Regulations governing bike sharing systems shall be subject to the fines outlined in Section 1-15 of the City Code.

MEMORANDUM
City Council Agenda Item

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

FROM: Bruce Hyman, Transportation Program Manager

DATE: April 2, 2018

SUBJECT: DRAFT Bike Share Ordinance

SPONSOR: Councilor Spencer Thibodeau
Sustainability and Transportation Committee, March 21, 2018, 3-0 unanimous

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading April 9, 2018 **Final Action** April 18, 2018

Can action be taken at a later date: Yes No
Enough time is needed to develop appropriate regulations in anticipation of spring/summer 2018 bike share operator pilot programs.

PRESENTATION: Councilor Thibodeau, intro., Bruce Hyman (5 minutes total max.)

I. ONE SENTENCE SUMMARY

There are currently no provisions within the City Ordinance to define, permit the operation of and regulate bike share systems; this draft ordinance and subsequent regulations would provide a regulatory framework to do so.

II. AGENDA DESCRIPTION

The proposed draft Bike Share Ordinance proposes a framework to permit and regulate bike share systems in Portland. A tiered system of street occupancy permit fees is proposed to be tied to the number of bicycles within a bike share system and its configuration: Station-based or Stationless. Stationless systems can create more of a burden on enforcement so the per bike street occupancy permit fee is proposed to be higher than for Station-based systems which provide more structured bicycle parking as specific locations. It is intended for the fees to be similar in total for each type of system for systems with a similar number of bicycles. To mitigate the anticipated impact on public bicycle parking, it is proposed to have a Bicycle Parking Mitigation provision requiring Stationless system operators contribute to the amount of bicycle parking available in Portland (totaling 10% of the number of bicycles within their system).

Section 25-31 of the draft ordinance in its elements:

- defines Bike Sharing Systems
- delegates the authority to develop regulations of the systems to the City Manager including setting insurance and bonding requirements, specifying where parking of

bicycles as part of a system is allowed and not allowed and other provisions in subsection (c) “to ensure the safe and effective operation of such a system”

- allows the City Manager to set a cap on the number of systems operating within the city
- calls for annual review of the regulations
- establishes that operating a system without a permit is a violation of city ordinance.

III. BACKGROUND

Interest has been shown for several years for the launch of one or more pilot programs of a bike share system in Portland. Bike share is a system of bicycles and associated equipment and web-based applications that enable the short term rental and use of bicycles typically for point-to-point bicycle trips. Systems can be: ‘Station-based’, using a system of docking stations to park and ‘check out/check in’ bicycles; ‘Stationless’, relying on bicycle racks to lock the bikes or self-locking mechanisms on the bike itself; or, a hybrid of the two systems.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The Sustainability and Transportation Committee has established the short-term goal of adoption of a bike share ordinance and accompanying regulations for 2018.

V. FINANCIAL IMPACT

Not promulgating regulations leaves the city exposed to not being able to recoup potential unknown costs of managing and enforcing bike share operations that create safety hazards and nuisances by their operations.

The street occupancy permit fees are meant to provide a base level of fees for modest management of bike share operations. For station-less bike share systems, the bike parking mitigation provision requires the operators to address the cost of a portion of the bike parking demand their system will create.

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

A regulatory framework is needed to permit the operation of bike share systems and to ensure the safe and effective operation of those systems Through these regulations, the City will be better able to monitor and control the introduction of a greater number of bicycles to the City’s streets in order to facilitate an exciting new service while also working to ensure that those bicycles do not overwhelm existing infrastructure or create a public nuisance.

VII. RECOMMENDATION

Planning staff and Corporation Counsel recommend the adoption of the proposed draft ordinance.

VIII. LIST ATTACHMENTS

- A. Background memo
- B. Draft Bike Share Ordinance

Prepared by: Bruce Hyman, Transportation Program Manager
Date: April 2, 2018

Bean/agendarequestmemo/rev 1/23/2017

The proposed Sidewalk and Street Occupancy Permit Fee structure is as follows:

Station-less Systems (or Hybrid systems not meeting 50% docking point threshold):

Initial Annual Permit Fee, per operator per calendar year:

Less than 250 bicycles	\$1500
251 to 500 bicycles	\$2500
More than 500 bicycles	\$ 500 per every additional 250 bicycles or fraction thereof

Annual Renewal Fee (Station-less Systems), per operator per calendar year:

Less than 250 bicycles	\$1000
251 to 500 bicycles	\$2000
More than 500 bicycles	\$ 250 per every additional 250 bicycles or fraction thereof

Station-based/Hybrid Systems (Station-based systems must provide at least 50% as many docking points as bikes):

Initial Annual Permit Fee, per operator per calendar year:

Less than 250 bicycles	\$ 500
251 to 500 bicycles	\$1000
More than 500 bicycles	\$ 250 per every additional 250 bicycles or fraction thereof

Plus \$50 per approved docking station.

Annual Renewal Fee, per operator per calendar year:

Less than 250 bicycles	\$ 500
251 to 500 bicycles	\$1000
More than 500 bicycles	\$ 250 per every additional 250 bicycles or fraction thereof

Plus \$25 per approved docking station.



Planning & Urban Development Department

TO: Mayor Strimling and Members of the City Council

FROM: Bruce Hyman, Transportation Program Manager

DATE: April 2, 2018

SUBJECT: Draft Bike Share Ordinance

CC: Jon Jennings, City Manager
Jeff Levine, Planning and Urban Development Director
Jennifer Thompson, Associate Corporation Counsel

Introduction:

The City of Portland has been looking at the possibility of a bike share system since at least 2012. In 2013, the City received technical assistance from the Environmental Protection Agency and completed a feasibility study that outlined some opportunities and challenges. A non-profit called Portland Bikeshare was created, based on the recommendations of that study, but lacked funding to launch a service. In the past year, the City has received inquiries from several potential bike share operators of various types, including for-profit and non-profit operators during the last several years. These providers may work in conjunction with Portland Bikeshare if feasible.

However, there are no current ordinance provisions defining or governing bike share systems or enabling their regulation. Based on experiences in other cities, there are significant opportunities in bike share in mid-sized cities. However, without a set of rules to govern operations, there is a risk for public safety hazards and costs for City staff. The draft ordinance being presented to the City Council is intended to fill that void in the city ordinance and delegate the development of bike share regulations to the City Manager.

On March 21st, the Sustainability and Transportation Committee voted unanimously (3-0) to forward the draft ordinance to the full City Council for their consideration with 2 amendments pertaining to: 1) bike parking mitigation for station-less bike share operators and 2) annual review of the regulations for their effectiveness.

Draft Ordinance:

The draft ordinance is based on a review of ordinances and other materials from other municipalities and bike share operators and organizations from around the country.

Section 25-27(8) of the draft ordinance proposes a Street Occupancy Permit fee structure governing both Station-less and Station-based/Hybrid Bike Share Systems. It attempts to be

neutral in terms of the overall amount of the fee to be paid between the two types of systems of similar size. Station-less system permit fees are proposed to be solely based on the number of bicycles deployed but include bike parking mitigation which, in contrast to station-based systems, they do not include. The Station-based/Hybrid system (using docks for bike parking) permit fees are based on combination of the number of bikes and the number of docks deployed but require at least bike parking at docks for a minimum of 50% of the deployed fleet.

Section 25-31 of the draft ordinance in its elements:

- defines Bike Sharing Systems
- proposes delegating the authority to develop regulations of the systems to the City Manager including setting insurance and bonding requirements, specifying where parking of bicycles as part of a system is allowed and not allowed and other provisions in sub-section (c) "to ensure the safe and effective operation of such a system"
- allows the City Manager to set a cap on the number of systems operating within the city
- calls for annual review of the regulations
- establishes that operating a system without a permit is a violation of city ordinance.

Potential Regulatory Framework:

A similar review of bike share system regulations from other municipalities and guidance from the bike share industry/organizations has many common elements. These elements include:

- Safety/Equipment - what minimum national safety standards with which the bicycles need to conform including front and rear lights
- Parking - where parking of station-less and station-based system bicycles are allowed focusing on maintaining adequate sidewalk clearance for bicycles parked there, how users will be educated on proper parking and enforcement mechanisms
- Fleet Size and Service Area - minimum and maximum fleet size and where the system is allowed to operate within the city
- Signage/Advertising/Contact Information - requirements for company contact information on each bicycle and limitations on advertising
- Maintenance/Operations - sets requirements for local responsiveness for customer service requests/complaints, removal of bicycles that are improperly located/parked and maintenance of bicycles.
- Insurance/Bonding/Indemnity - establishes insurance and bonding minimum requirements and requires the operator indemnify the city and employees
- Data Sharing/Reporting - sets requirements for the type and frequency of data sharing and surveying/reporting from each operator. (Adapted from NABSA 'Dockless Bikeshare Regulation Preliminary Guidance, Version 1', January 2018)

The development of the regulations by the City Manager would follow soon after the adoption of the Bike Share ordinance by the City Council. The hope is that, should there be support for the concept, timing may allow for a pilot program this summer.