

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, APRIL 4, 2016 TIME: 6:00 PM

AGENDA

- **6:00PM – WORK SESSION RE: DEER STREET GARAGE PROPERTY ACQUISITION, PURCHASE AND SALE AGREEMENT AND POST CLOSING OBLIGATIONS AGREEMENT**

The City Council may take one of the three following actions:

1. *The City Council could approve the Documents. In this situation, given that the documents are not complete due to the unavailability of numerous attachments, an appropriate motion might be:*

A. **MOVED:** *That the City Manager is hereby authorized to execute the Purchase and Sale Agreement and Post Closing Obligations Agreement with Deer Street Associates on behalf of the City regarding the City's acquisition of a potential site for a municipal parking garage on Deer Street (collectively, the "Documents") once the schedules of those Documents are in completed form and attached thereto. **BE IT FURTHER MOVED,** that the City Manager is authorized to negotiate and execute any amendments, exhibits or attachments to those Documents as are substantially consistent with the material terms of the Documents approved by the City Council and as he may deem appropriate.*

In the event that the foregoing Motion should pass, in order to comply with the provisions of the documents which were approved, it will be necessary for the City Council to also pass the following Motion:

B. **MOVED:** *That a public hearing be held before the City Council on May 2, 2016 pursuant to RSA 231:43 for the purpose of discontinuing any rights of the City or the public in:*

A certain triangular tract of land being located at the northwesterly corner of and within the intersection of the Deer Street and Bridge Street rights of way, and being approximately 1,717 square feet in size; and

A certain trapezoidal tract of land being located along the northerly boundary of said triangular tract of land, being approximately four (4) feet wide and being approximately 269 square feet in size,

And that at least fourteen (14) days prior to the public hearing written notice be given to all owners of property abutting the said areas.

2. *The City Council might determine to postpone consideration of the Documents. In this case an appropriate Motion might be:*

MOVED: *That the City Council postpone its decision with regard to the Purchase & Sale Agreement and Post Closing Obligations Agreement with Deer Street Associates until the Council meeting of April 18, 2016.*

If the Council should take such an action it would also be within the ability of the Council to specify whatever conditions it thought appropriate to be addressed during the postponement period. Such conditions might include:

- a. That the Documents be in complete form before they are brought back to the Council; or
- b. That the following issues be addressed:

[This is for additional issues that may be added by the City Council.]

3. The City Council could vote not to approve the documents. In such case an appropriate Motion might be:

MOVED: That the City Council **not** authorize the City Manager to execute the Purchase and Sale Agreement or the Post Closing Obligations Agreement with Deer Street Associates documents as presented.

- I. CALL TO ORDER
- II. ROLL CALL
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE

PRESENTATION

1. Recognition of Portsmouth High School Boys 2016 New Hampshire Basketball Division 2 New Hampshire State Champions

V. ACCEPTANCE OF MINUTES – MARCH 14, 2016

VI. PUBLIC COMMENT SESSION

VII. APPROVAL OF GRANTS/DONATIONS

- A. Portsmouth Police Department Donations in support of the Explorer Cadets as follows:
 - Donation of a \$30.00 Blitz Park gift card by the Police Commission to the Portsmouth Police Trading Card initiative as a program incentive prize
 - Donation of \$300.00 from Mr. Jason C. Page to provide 2 scholarships for the 2016 Explorer Cadet Academy
 - Donation of \$400.00 from Mr. & Mrs. David Brow to provide 2 scholarships for the 2016 Explorer Cadet Academy

(Sample motion – move to accept the donations to the Portsmouth Police Department, as presented)

- B. Portsmouth Police Department Grant in the amount of \$9,926.40 from the NH Office of Highway Safety for Sustained Traffic Enforcement Patrols (STEP) ***(Sample motion – move to approve and accept the Grant to the Portsmouth Police Department, as presented)***

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Proposed Ordinance amending Chapter 11, Article II, Section 11.216 – Sewer Use Charges/Records/Hook-up ***(Sample motion – move to pass first reading and schedule a public hearing and second reading of the proposed Ordinance as presented, at the April 18, 2016 City Council meeting)***

IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Requests for License to Install Projecting Sign:
 - Danielle Short, owner of Siren Salon, for property located at 49 Market Street ***(Anticipated action – move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreements for this request)***
- B. 2016 Omnibus Sidewalk Obstruction Renewals – See Attached Listings ***(Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Holly Tennent and Melissa Mikulski, Bottomline Technologies, requesting permission to hold annual 5K event to benefit Families First on September 17, 2016. ***(Anticipated action – move to refer to the City Manager with power)***
- D. Letter from Donna Hepp, Seacoast Century Co-coordinator, Granite State Wheelmen, Inc., requesting permission to hold 2016 Seacoast Century Ride on September 24-25, 2016. ***(Anticipated action – move to refer to the City Manager with power)***

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Ronald N. Cogliano, President, Merit Construction Alliance (mca) regarding proposed Union-only Project Labor Agreement on City of Portsmouth's Sewer Treatment Plant
- B. Letter from Edward Miller regarding opposition to Maplewood Ridge, LLC request to rezone property located at 678 Maplewood Avenue from Single Residence B to Business

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

City Manager's Items Which Require Action:

- 1. Deer Street Garage Property Acquisition, Purchase and Sale Agreement and Post Closing Obligations Agreement Options as result of Work Session:

The City Council may take one of the three following actions:

- 1. *The City Council could approve the Documents. In this situation, given that the documents are not complete due to the unavailability of numerous attachments, an appropriate motion might be:*

A. **MOVED:** That the City Manager is hereby authorized to execute the Purchase and Sale Agreement and Post Closing Obligations Agreement with Deer Street Associates on behalf of the City regarding the City's acquisition of a potential site for a municipal parking garage on Deer Street (collectively, the "Documents") once the schedules of those Documents are in completed form and attached thereto. **BE IT FURTHER MOVED,** that the City Manager is authorized to negotiate and execute any amendments, exhibits or attachments to those Documents as are substantially consistent with the material terms of the Documents approved by the City Council and as he may deem appropriate.

In the event that the foregoing Motion should pass, in order to comply with the provisions of the documents which were approved, it will be necessary for the City Council to also pass the following Motion:

B. **MOVED:** That a public hearing be held before the City Council on May 2, 2016 pursuant to RSA 231:43 for the purpose of discontinuing any rights of the City or the public in:

A certain triangular tract of land being located at the northwesterly corner of and within the intersection of the Deer Street and Bridge Street rights of way, and being approximately 1,717 square feet in size; and

A certain trapezoidal tract of land being located along the northerly boundary of said triangular tract of land, being approximately four (4) feet wide and being approximately 269 square feet in size,

And that at least fourteen (14) days prior to the public hearing written notice be given to all owners of property abutting the said areas.

2. The City Council might determine to postpone consideration of the Documents. In this case an appropriate Motion might be:

MOVED: That the City Council postpone its decision with regard to the Purchase & Sale Agreement and Post Closing Obligations Agreement with Deer Street Associates until the Council meeting of April 18, 2016.

If the Council should take such an action it would also be within the ability of the Council to specify whatever conditions it thought appropriate to be addressed during the postponement period. Such conditions might include:

- a. *That the Documents be in complete form before they are brought back to the Council; or*
- b. *That the following issues be addressed:*

[This is for additional issues that may be added by the City Council.]

3. The City Council could vote not to approve the documents. In such case an appropriate Motion might be:

MOVED: That the City Council **not** authorize the City Manager to execute the Purchase and Sale Agreement or the Post Closing Obligations Agreement with Deer Street Associates documents as presented.

2. Applications for Sidewalk Cafes providing Alcohol Service
 - a. State Street Saloon
 - b. Popovers on the Square
 - c. Ri Ra
 - d. The District
3. Applications for Sidewalk Cafes providing Alcohol Service – private sidewalk
 - a. British Beer Company
 - b. The BRGR Bar
4. Annual Renewal of Boarding House Permits
 - a. 278 Cabot Street
 - b. 350-352 Hanover Street
5. Request from Wright Avenue, LLC for Second Amendment to License for 57, 73 and 77 State Street
6. Downtown Parking Shuttle Recommendation for 2016
7. Greenleaf Recreation Center Lease Extension
8. Request to Establish a Public Hearing Re: Proposed Bonding of up to Five Million Dollars (\$5,000,000.00) for Little Harbour School Improvements

Informational items

1. Events Listing
2. Firm Selection for Prescott Park Master Plan
3. Report Back Re: Assistant Mayor Splaine's Request – Project Labor Agreement for the Peirce Island Wastewater Treatment Facility Upgrade
4. Water Country Traffic Study

B. MAYOR BLALOCK

1. Appointments to be Considered:
 - Reappointment of Amy Burns to Cable Television and Communications Commission
 - Reappointment of Robert Capone to Cable Television and Communications Commission
 - Reappointment of Cliff Lazenby to Citywide Neighborhood Steering Committee
 - Reappointment of Samantha Wright as alternate to the Conservation Commission
 - Reappointment of Kory Sirmaian to the Recreation Board

C. ASSISTANT MAYOR SPLAINE

1. Policy On Travel To North Carolina Re: That State's LGBTQ Discrimination Law

D. COUNCILOR DENTON

1. Commercial Property Assessed Clean Energy (C-PACE) (***Motion: move to have the City Manager or designee meet with the Jordan Institute to discuss administering a Commercial Property Assessed Clean Energy (C-PACE) energy efficiency and clean energy district in Portsmouth and then make a presentation back the City Council on how administering such districts in Portsmouth could work***)

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

XIV. ADJOURNMENT

**KELLI L. BARNABY, MMC, CMC, CNHMC
CITY CLERK**

**Indicates Verbal Report*

INFORMATIONAL ITEMS:


1. Notification that the approved minutes of the February 18, 2016 Planning Board meeting are now available on the City's website

NOTICE TO THE PUBLIC WHO ARE HEARING IMPAIRED: Please contact Dianna Fogarty at 603-610-7270 one-week prior to the meeting for assistance.

**CITY OF PORTSMOUTH
LEGAL DEPARTMENT
MEMORANDUM**

DATE: March 31, 2016

TO: JOHN P. BOHENKO, CITY MANAGER

FROM: DAVE ALLEN, DEPUTY CITY MANAGER
ROBERT P. SULLIVAN, CITY ATTORNEY 

RE: DEER STREET GARAGE PROPERTY ACQUISITION, PURCHASE
AND SALE AGREEMENT AND POST CLOSING OBLIGATIONS
AGREEMENT

After many months of negotiations, attached hereto are a Purchase & Sale Agreement as well as an integral Post Closing Obligations Agreement (the "Documents") containing the material terms by which the City might purchase certain property in the vicinity of Deer and Bridge Street from Deer Street Associates (DSA) for the purpose of constructing a municipal parking garage. It should be noted that these Documents will need to be completed by the negotiation and execution of their schedules, which we anticipate completing if City Council approves the two primary deal Documents, and before the P&S is signed. A brief description of each Document follows:

PURCHASE AND SALE AGREEMENT

1. The City would acquire approximately 1.24 acres of property from Deer Street Associates as shown on the "Disposition Plan" previously approved by the Council on September 21, 2015.¹
2. The City would pay a deposit of \$600,000.00 into escrow at the execution of the Purchase & Sale Agreement, and pay the balance of the \$5,100,000 purchase price at closing (items 2 and 3). The City would not sign the P&S or provide any deposit before it is satisfied with the status of title to the property, and satisfied with the amount of environmental escrow monies required from DSA in an escrow to address environmental concerns at the property. The City continues to address its due diligence with respect to title and environmental matters at present.

¹ The City will no longer be required as in earlier versions of the P & S to relocate the existing sewer line located beneath DSA property and the parking garage parcel as contemplated by the Disposition Plan. Instead, both the City and DSA will construct their projects over the existing sewer line.

3. The closing is currently scheduled in the draft of the P & S for May 25, 2016. However, the City may extend the closing date by payment to DSA of \$20,000.00 per month commencing on June 15th and continuing through July (item 5.1).
4. The City will assume an obligation to the Boston & Maine Railroad Corporation, "to construct and forever maintain an office... without any cost or expense to the railroad" for the benefit of the railroad. This agency office must be between and four hundred and five hundred (400 – 500) feet square and the City would be obligated to provide lights, heat, toilet facilities and a supply closet in perpetuity. This obligation actually attached to land of DSA which would not be acquired by the City, but DSA requires the City to accept the obligation as a condition of being allowed to purchase the garage property (Section 1.3). Relocation of the railroad office has been a long standing feature of the discussions between the City and DSA.
5. The City Council will be obligated to release any interest in certain City property located at the corner of Deer Street and Bridge Street to DSA (item 10.3 (c)). Releasing any City interest in this property, which consists of a small triangle parcel of land as well as a City sidewalk, has been a long standing feature of the discussions between the City and DSA.

The City will be obligated to acquire certain property from F A Gray to construct the Deer Street Extension contemplated by the Agreement. The negotiated price for this parcel is \$40,000.00.

Later in this memorandum certain other provisions will be discussed in the context of a discussion of the final stages of negotiation, which involved three (3) members of the City Council.

POST CLOSING OBLIGATION AGREEMENT

1. The PCOA is an integral part of the P & S, and the former will not be executed without execution and delivery of the latter.
2. The PCOA contains detailed provisions regarding the manner in which the City and DSA will cooperate during the preconstruction, design and approval phases of their respective projects (item 2). There is a detailed list of mandatory design plan criteria, all of which are essentially limitations on the City (item 3). Notably, an area of civic space intended to be conveyed at some point in the future from DSA to the City allows DSA to propose that it be partially covered by a parking garage connector structure (item 3 b).

3. The PCOA encourages cooperation between the City and DSA but does not give either party ultimate authority over approval of the other parties' project.
4. The parties agree to share in the cost of a traffic study and any improvements mandated by the Planning Board following that study. The City's share of these items is intended to be limited to \$15,000.00 for the traffic study and \$50,000.00 for the traffic improvements. There is no limitation of the DSA share of these costs (see item 5 c).
5. The PCOA provides that DSA and the City will share construction drawings and site plans and make reasonable efforts to correlate each parties' project with the other. However, as with respect to the site design phase each party retains ultimate authority to determine terms and conditions of its own project, subject to whatever land use approvals may be required.
6. The PCOA would obligate each party to grant to the other additional easements, leases or licenses encumbering their respective properties, in order to address items which may arise during the design, approval and construction process. The final terms of the provision are under discussion (item 7).
7. The PCOA contemplates a civic space (community space) of approximately 8,521 square feet to be located between the parking garage and DSA's project, on land to be provided to the City by DSA in addition to the municipal parking garage lot shown on the Disposition Plan. On or before the fourth anniversary of the date the City acquires the parking garage parcel, DSA is obligated to either transfer the civic space (community space) to the City or make a payment to the City in the amount of \$800,000.00 (item 9), which obligations will be secured by a mortgage on that portion of DSA property to be so conveyed as civic space.
8. If the City does not build the access road (referred to as Deer Street Extension) which is anticipated and required for the municipal parking garage within three (3) years of acquisition of the property from DSA then:
 - a. The City will lose its right to the civic space described previously;
 - b. DSA may build the road and the City will be required to reimburse DSA for seventy-five percent (75%) of the cost of building the road (item 8 b).

9. Similarly, if the City does not relocate the Railroad Agency Office in the new parking garage within the same time period, DSA shall have the right to construct and relocate the Railroad Agency Office as a freestanding building on a fifty-foot wide band of City property located along the existing railroad tracks. In constructing the freestanding building DSA would be subject to City regulatory, but not policy, approvals (item 8 (b) (c)).
10. The City will be obligated by contract to provide DSA with the permanent right to access up to one parking space less than ten percent (10%) of the total amount of spaces in the garage as well as what other number of spaces as may be necessary to reach a total of sixty-eight (68) parking spaces on City property. DSA would pay the going rate. The obligation will be in perpetuity (item 10 f).

Later in this memorandum certain other provisions will be discussed in the context of a discussion of the final stages of negotiation, which involved three (3) members of the City Council.

**APPOINTMENT BY MAYOR BLALOCK OF COUNCILORS
BRAD LOWN, REBECCA PERKINS AND ERIC SPEAR**

At the March 14, 2016 meeting of the City Council Mayor Blalock appointed Councilors, Brad Lown, Rebecca Perkins and Eric Spear (the Councilors) to assist City staff in attempting to complete negotiations for the Purchase & Sale Agreement and Post Closing Obligations Agreement. After reviewing those Documents the Councilors requested of City staff that the following issues be addressed in the further negotiation of the Documents:

1. The City would only pay the \$5.1 million dollars for a "clean" deal by which it is meant that all title and environmental issues be completely resolved.
2. That the amount to be held in escrow to address soil contamination issues be in an amount reasonably determined by the City.
3. That DSA agree to the provision which we have been requesting for some time to the effect that DSA reimburse the City for any costs associated with eminent domain necessary to clear any title issues, and that such obligation be secured by personal guarantees or some type of commercial security.
4. That the \$20,000 monthly payment to extend the closing date be eliminated.
5. That all section 8 warranties and representations survive the closing with no time limit.

6. That the City acquire the property by marketable title with title insurance acceptable to the City.
7. That DSA retain the responsibility for building and maintaining the railroad office and access.
8. That the City's obligation to build the Deer Street Extension (or else be responsible for default payments) be eliminated.
9. That a Purchase & Sale/PCOA incorporating the above be signed on behalf of DSA by noontime on April 4, 2016.

Based on the recommendations of the Councilors a final negotiation session was held on March 24, 2015. With regard to the issues raised by the Councilors that negotiation produced the following results:

1. DSA agrees that for its \$5.1 million dollars the City should get a "clean" deal for the purchase of its property, meaning that all title and environmental issues be resolved. Please note, however, that those issues are not resolved as of this writing, although active discussions continue. DSA appears willing to cover environmental remediation costs which are in excess of the cost of remediation of "urban fill", and remains open to resolving any title issues that the City may raise. Again, the P&S would not be signed until the City is satisfied with environmental and title conditions at the property.
2. DSA has conceptually agreed to placing a reasonable amount of funds in escrow at closing to pay for whatever costs the City might bear to clean up environmental issues above and beyond dealing with routine "urban fill". However, once again that agreement does not exist as of this writing, although discussions continue.
3. DSA still remains opposed to reimbursing the City for costs associated with eminent domain if necessary to clear title issues. DSA states that it opposes reimbursement, "in part because it is an extraordinary contract remedy unprecedented in prior City acquisitions, but mainly because the City has not identified any unresolvable title issues that would require such an approach". The City has yet to acquire a title commitment or a list of title exceptions from its title company.
4. While DSA will not agree with the Councilors' request to eliminate the \$20,000 monthly payment to extend the closing date if necessary, the first such payment would not be due until June 15, 2016 in the event the City could not meet a suggested closing date of May 25, 2016. If closing does not occur by the last day of July 2016, the City would forfeit its

\$600,000.00 deposit. However, we would advise the City Manager not to sign the P & S until there is reasonable assurance that it contains a proposed closing date which is realistic in light of the work required by the City to complete its due diligence and to perform the remainder of the work necessary for the City to be prepared to close on that date.

5. DSA will agree to extend its section 8 warranties and representations with no time limit if the City would do the same with its section 9 warranties and representations, which we believe is reasonable.
6. DSA agrees that the City should acquire the property by marketable title with title insurance acceptable to the City. However, as noted above marketable title has not yet been established nor is there a commitment for title insurance.
7. DSA rejects the proposal of the Councilors and insists that the City accept the responsibility for building and maintaining the railroad agency office and access to it. The position of DSA is that this has been a major point in negotiations throughout and DSA will simply not move on this issue. Moreover, the obligation to maintain the railroad office attaches to the parcel of land owned by DSA but which it is prepared to convey to the City at a later date for civic space purposes. DSA also objects to keeping the railroad office on its property because that concept is a recent change in the negotiations.
8. Similarly, DSA rejects the proposal of the Councilors and will not change its position on eliminating the City's obligation to build the Deer Street Extension or else be responsible for default payments to DSA. DSA notes that the obligation of the City to build the Deer Street Extension has always been a major point in its proposal and is necessary for both the City project and the DSA project.
9. DSA insists that it is impossible for there to be a Purchase & Sale Agreement/PCOA Agreement ready for execution by April 4, 2016. We agree with that observation because there are numerous schedules to be negotiated and executed prior to signing.

We expect that the City Council meeting of April 4, 2016 will commence with a Work Session during which the City Council will review and discuss the Documents. Subsequent to the work session, during the regular meeting agenda, the Documents will be put forward for action by the City Council. It would seem, given the circumstances, that the following actions are available to be taken by the Council with regard to the Documents:

1. The City Council could approve the Documents. In this situation, given that the documents are not complete due to the unavailability of numerous attachments, an appropriate motion might be:

- A. **MOVED:** That the City Manager is hereby authorized to execute the Purchase and Sale Agreement and Post Closing Obligations Agreement with Deer Street Associates on behalf of the City regarding the City's acquisition of a potential site for a municipal parking garage on Deer Street (collectively, the "Documents") once the schedules of those Documents are in completed form and attached thereto. **BE IT FURTHER MOVED,** that the City Manager is authorized to negotiate and execute any amendments, exhibits or attachments to those Documents as are substantially consistent with the material terms of the Documents approved by the City Council and as he may deem appropriate.

In the event that the foregoing Motion should pass, in order to comply with the provisions of the documents which were approved, it will be necessary for the City Council to also pass the following Motion:

- B. **MOVED:** That a public hearing be held before the City Council on May 2, 2016 pursuant to RSA 231:43 for the purpose of discontinuing any rights of the City or the public in the

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A certain trapezoidal tract of land being located along the northerly boundary of said triangular tract of land, being approximately four (4) feet wide and being approximately 269 square feet in size,

and that at least fourteen (14) days prior to the public hearing written notice be given to all owners of property abutting the said areas.

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- a. That the Documents be in complete form before they are brought back to the Council; or
- b. That the following issues be addressed:

[list issues]

- 3. The City Council could vote not to approve the documents. In such case an appropriate Motion might be:

MOVED: That the City Council **not** authorize the City Manager to execute the Purchase and Sale Agreement or the Post Closing Obligations Agreement with Deer Street Associates documents as presented.

attachments

REAL ESTATE PURCHASE AND SALE AGREEMENT

This REAL ESTATE PURCHASE AND SALE AGREEMENT made as of _____, 2016 (the "Effective Date") by and between CITY OF PORTSMOUTH, NEW HAMPSHIRE, a municipal corporation with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (hereinafter referred to as the "City") and DEER STREET ASSOCIATES, a New Hampshire limited partnership of P.O. Box 100, York Harbor, Maine 03911 (hereinafter referred to as the "Seller").

Recitals

WHEREAS, the Seller owns certain recently subdivided property located in the vicinity of Bridge and Deer Streets in the City of Portsmouth, County of Rockingham, State of New Hampshire;

WHEREAS, the City would like to acquire an approximately 1.24 +/- acre portion of Seller's property (see Parcel A on the Disposition Plan attached hereto as Schedule 1.12) and a small triangle of land from a third party (see Parcel C on the Disposition Plan), together with related easements, for the purpose of constructing a municipal parking garage of 600 or more spaces, with public access thereto, and to relocate certain existing municipal easements in connection therewith;

WHEREAS, subsequent to the transaction contemplated by this Agreement, the Seller may improve its remaining property and land to be acquired from the City pursuant to this Agreement (see Parcel B on the Disposition Plan) with buildings and related improvements, and as part of said process may transfer to the City approximately .2 +/- acres as open civic space in the form of a park (see Lot 2 on the Subdivision Plan attached hereto as Schedule 1.32);

WHEREAS, the City's and the Seller's respective projects remain in the design phase, but the Seller and the City intend to share design elements and features of their projects, including without limitation the aforesaid civic space which is intended to contain an at grade vehicular connection between the Seller's remaining property and the parking garage parcel; and

WHEREAS, the Seller and the City desire to collaborate post closing on the design of their respective projects, for their mutual benefit, as addressed in the Post Closing Obligations Agreement attached to this Agreement as Schedule 1.22.

NOW THEREFORE, for and in consideration of the mutual promises contained hereinbelow, the adequacy and sufficiency of which is hereby acknowledged, the Seller agrees to sell and convey, and the City agrees to buy, the Premises (defined below), together with any and all easements and appurtenances thereto, and the City Easements (defined below), all upon the following terms and conditions:

1. **Definitions.** In addition to those terms defined elsewhere in this Agreement, the following terms shall have the following meanings when used herein:

1.1 “**Affiliate**” means any individual, entity, association, or trust, including without limitation any corporation, limited liability company, or partnership, controlled by or under common control with the Seller.

1.2 “**Agreement**” means this Purchase and Sale Agreement and includes the following exhibits and schedules attached hereto:

<u>Schedule 1.3</u>	Amendment and Relocation Agreement
<u>Schedule 1.6</u>	City Temporary Building Encroachment Easement
<u>Schedule 1.7</u>	City Temporary Construction and Maintenance Easement
<u>Schedule 1.8</u>	City Triangle Parcel Legal Description
<u>Schedule 1.11</u>	Deer Street Extension Parcel Legal Description
<u>Schedule 1.12</u>	Disposition Plan
<u>Schedule 1.15</u>	Environmental Agreement
<u>Schedule 1.17</u>	Gray Trust Parcel Legal Description
<u>Schedule 1.22</u>	Post Closing Obligations Agreement/PCOA
<u>Schedule 1.32</u>	Subdivision Plan
<u>Schedule 2</u>	Terminated Sidewalk Easement Legal Description
<u>Schedule 5.2(i)</u>	Warranty Deed – Premises
<u>Schedule 5.2(vii)</u>	Title Affidavit
<u>Schedule 5.3(iv)</u>	Termination and Release of Sidewalk Easement
<u>Schedule 5.3(v)</u>	Release Deed – City Triangle Parcel
<u>Schedule 5.3(xi)</u>	Amendment to Municipal Sewer Easement
<u>Schedule 6</u>	Permitted Encumbrances
<u>Schedule 7.2</u>	Access and Indemnity Agreement
<u>Schedule 7.3</u>	Title Commitment
<u>Schedule 16.11</u>	Statutory Disclosures

1.3 “**Amendment and Relocation Agreement**” means an Amendment and Relocation Agreement modifying the Railroad Access Deed and the Railroad Agency Office Deed, and allowing for the relocation of the Railroad Agency Office and the Railroad Access to Lot 1 and other property of the City in accordance therewith, in form and substance set forth on Schedule 1.3 attached hereto.

1.4 “**City Easements**” means the City Temporary Building Encroachment Easement and the City Temporary Construction and Maintenance Easement.

1.5 “**City Project**” means: (a) the construction upon the Premises of the Parking Garage and related improvements as described in the PCOA, (b) the construction and opening of the Deer Street Extension Parcel as a public right-of-way, and (c) related improvements to the development of the Premises by the City as aforesaid.

1.6 “City Temporary Building Encroachment Easement” means a temporary easement granted to the City by the Seller at Closing for the continued encroachment by the Encroaching Building in the approximate location shown on page C2 of the Disposition Plan¹, which easement shall: (i) be subject to the rights of the existing tenant of the building labeled as “Building #165” on the Subdivision Plan relative to loading and existing structures; (ii) terminate upon removal of the Encroaching Building by the Seller; and (iii) be in form and substance set forth on Schedule 1.6.

1.7 “City Temporary Construction and Maintenance Easement” means a temporary construction and maintenance easement granted to the City by the Seller at Closing being ten (10) feet in width and located on Lot 2, having a westerly boundary running along the lot line shared between Lot 1 and Lot 2, which easement shall terminate no later than five (5) years following the Closing and be in form and substance set forth on Schedule 1.7.

1.8 “City Triangle Parcel” means the triangle shaped parcel of land, with improvements thereon, at the corner of Deer Street and Bridge Street shown as Area B on page C1 of the Disposition Plan, and as more particularly described on Schedule 1.8.

1.9 “Closing” means the ceremony at which the transactions contemplated by this Agreement are consummated.

1.10 “Closing Date” means the date on which the Closing takes place, and is set forth in Section 5.1 hereof.

1.11 “Deer Street Extension Parcel” means the parcel of land denoted as “Future Access” on the Disposition Plan, being a portion of Lot 1 and also including the Gray Trust Parcel, and as more particularly described on Schedule 1.11.

1.12 “Disposition Plan” means that certain plan of two pages (C1 – Disposition Plan Land Ownership, and C2 – Disposition Plan Easements) prepared by Ambit Engineering, Inc. and entitled “Proposed Parking Garage Project – Deer & Bridge Streets – Portsmouth, N.H.” dated July, 2015, and last revised on September 15, 2015, attached hereto as Schedule 1.12 and incorporated herein by reference.

1.13 “Effective Date” means the date first set forth in the preamble to this Agreement.

1.14 “Encroaching Building” means that certain existing building labeled on the Subdivision Plan as a “1 Story Building” and also shown on the Disposition Plan being primarily located on Lot 1 but encroaching onto Lot 2.

¹ See Proposed Easement 13 on page C2 of the Disposition Plan.

1.15 “Environmental Agreement” means the agreement to be executed and delivered by the Parties at Closing with respect to the Seller’s obligation to contribute to certain cost increases to the City for the development of the City Project resulting from environmental conditions discovered by the City prior to the Effective Date of this Agreement, in form and substance as set forth on Schedule 1.15.

1.16 “Escrow Agent” means Pierce Atwood LLP.

1.17 “Gray Trust Parcel” means the triangle shaped parcel of land, with improvements thereon, located within the Future Access shown and depicted on the Subdivision Plan and further shown as Area C on page C1 of the Disposition Plan, as more particularly described on Schedule 1.17.

1.18 “Lot” means a subdivided lot as shown on the Subdivision Plan.

1.19 “Municipal Sewer Easement” means that certain sewer easement taken by the City and referenced in Waiver of Boston & Maine R.R. dated October 8, 1957 and recorded in the Registry on October 19, 1957 at Book 1448, Page 0463.

1.20 “Parking Garage” means the municipal parking garage of no less than 600 spaces to be constructed by the City on the Premises post Closing.

1.21 “Parties” means, collectively, the City and the Seller. Each of the Parties is herein referred to as a “Party.”

1.22 “Post Closing Obligations Agreement” or “PCOA” means the agreement to be executed and delivered by the Parties at Closing with respect to the Parties’ collaboration on the City Project and the improvement of a portion of Seller’s Remaining Land, in form and substance as set forth on Schedule 1.22.

1.23 “Premises” means Lot 1 as shown on the Subdivision Plan, together with any and all buildings and improvements thereon and the Encroaching Building.

1.24 “Railroad Access” means that certain vehicular and pedestrian ingress and egress along the 20’ wide driveway on a portion of the DSA Property and City Property, all as more particularly described in the Railroad Access Deed, to be relocated to the Premises in accordance with the Amendment and Relocation Agreement.

1.25 “Railroad Access Deed” means that certain deed from Boston and Maine Corporation to the Seller dated May 8, 1986 and recorded in the Registry at Book 2602, Page 0569.

1.26 “Railroad Agency Office” means that certain railroad agency office having 400-500 square feet, together with lights, heat, toilet facilities and a supply closet, currently located on Lot 2 and referenced in the Railroad Agency Office

Deed, to be relocated to the Premises in accordance with the Amendment and Relocation Agreement.

1.27 “Railroad Agency Office Deed” means that certain deed from Robert W. Meserve and Charles W. Barrett, as Trustees of the Boston and Maine Corporation, Debtor, United States District Court for the District of Massachusetts, Docket No. 70-250-F, to John W. Goodwin dated December 19, 1972 and recorded in the Registry at Book 2199, Page 0434.

1.28 “Registry” means the Rockingham County Registry of Deeds.

1.29 “Seller Access Easement” means an easement encumbering the Deer Street Extension Parcel (other than the Gray Trust Parcel) to be retained by the Seller at Closing over and across the Deer Street Extension Parcel for the benefit of Seller’s Remaining Land adjacent thereto, for all purposes that a public street may be used (including without limitation the running of utilities), which easement shall: (i) be subject to interference which is reasonable and customary by the City with respect to and during the City’s construction of the City Project, and (ii) only terminate at the time that the Deer Street Extension Parcel is established and opened as a public right-of-way.²

1.30 “Seller’s Remaining Land” means Lots 2, 3, 4, 5 and 6 shown on the Subdivision Plan.

1.31 “Sidewalk Easement” means that certain public sidewalk easement described in Sidewalk Easement Deed from the Seller to the City dated September 16, 2005 and recorded in the Registry at Book 4550, Page 1885.

1.32 “Subdivision Plan” means that certain plan entitled “Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1” = 50’ ” dated July, 2015 and last revised 8/6/15, approved by the City Planning Board on August 20, 2015 and to be recorded at the Registry, and as attached hereto as Schedule 1.32.

2. Purchase Price. The purchase price to be paid to the Seller by the City for the Premises, any and all easements and appurtenances thereto, the City Temporary Building Encroachment Easement, and the City Temporary Construction and Maintenance Easement, shall be Five Million One Hundred Thousand and 00/100 Dollars (\$5,100,000.00)(the “Purchase Price”). As additional consideration: (i) the City shall transfer to the Seller at Closing by release deed all of its right, title and interest in and to the City Triangle Parcel, free and clear of any and all encumbrances (including without limitation the rights of the public); (ii) the Seller shall retain the Seller Access Easement; and (iii) the City shall terminate that portion of the Sidewalk Easement shown as the shaded portion of Existing Easement 3 on page C2 of the Disposition Plan, as more particularly described on Schedule 2, by instrument executed and delivered by the City at

² See Proposed Easement 12 on page C2 of Disposition Plan.

Closing and to be recorded at the Registry as part of the Closing, and shall have discontinued any and all rights of the public to the same prior to the Closing.

3. Payment of Purchase Price and Deposit Escrow Provisions. The City shall pay the Purchase Price to the Seller at Closing as follows:

3.1 Six Hundred Thousand and 00/100 Dollars (\$600,000.00) (the "Deposit") shall be paid by wire transfer to the Escrow Agent on or before the Effective Date.

3.2 On or before the Closing, the City shall cause to be delivered to Escrow Agent, for the benefit of Seller, the balance of the Purchase Price (plus any amounts paid by the City to the Seller out of the Deposit in accordance with Section 5.1) by wire transfer of immediately available funds to the account of Escrow Agent.

3.3 All such amounts delivered to the Escrow Agent in accordance with Section 3.1 and 3.2 above not otherwise disbursed in accordance with the terms of this Agreement shall be disbursed in accordance with the settlement statement mutually agreed to by the Parties at Closing upon recording of the warranty deed from the Seller to the City at the Registry, with Seller's proceeds delivered in accordance with wiring instructions to be provided by Seller to Escrow Agent.

3.4 The Deposit shall be held in a non-interest bearing account by the Escrow Agent and shall be paid to Seller or returned to the City in accordance with the terms and conditions of this Agreement. Escrow Agent agrees to hold, keep and deliver said Deposit and all other sums delivered to it pursuant hereto in accordance with the terms and provisions of this Agreement. Escrow Agent shall be liable to hold said sums and deliver the same to the Parties in accordance with the provisions of this Agreement. In the event of any disagreement between the Parties resulting in any adverse claims and demands being made in connection with or for the monies involved herein or affected hereby, Escrow Agent shall refuse to comply with any such claims or demands so long as such disagreement may continue; and in so refusing Escrow Agent shall make no delivery or other disposition of any of the monies then held by it under the terms of this Agreement, and Escrow Agent shall continue to refrain from acting until (a) the rights of the adverse claimants shall have been finally adjudicated in a court of competent jurisdiction of the monies involved herein or affected hereby, or (b) all differences shall have been adjusted by agreement between the Parties, and Escrow Agent shall have been notified in a writing signed by the Parties of the terms of such agreement. Escrow Agent shall not disburse any of the monies held by it under this Agreement unless in accordance with joint written instructions signed by the Parties. Escrow Agent shall have the right at all times to pay all sums held by it into any court of competent jurisdiction after a dispute between or among the Parties has arisen.

4. Transfer Taxes; Prorations. At the Closing, the City and Seller shall each pay their respective shares of all real property transfer taxes related to the purchase of the Premises and the other transactions contemplated hereby, as required by applicable law. Notwithstanding the foregoing, the Parties acknowledge and agree that as of the Effective Date, the sale of the Premises as contemplated by this Agreement is exempt from transfer taxes pursuant to RSA 78-B:2, I, and that barring any changes to applicable law, rule, or regulation effective prior to the Closing, the deed and any required

declarations of consideration shall so state. All property taxes and other fees, levies and assessments of any nature whatsoever related to the Premises shall be prorated between the City and the Seller as of the close of business on the Closing Date. Property taxes shall be prorated in accordance with the concept that taxes in the City of Portsmouth are collected in arrears with the tax bill due on December 1, 2015 applying to the first half of the municipal budget year commencing the previous July 1, 2015 and covering ownership of the Premises from July 1, 2015 through December 31, 2015; and the tax bill paid on June 1, 2015 covers a period of ownership of the Premises from January 1, 2015 to June 30, 2015.

5. Closing and Deliverables.

5.1 Closing. The Closing shall occur at the offices of Pierce Atwood LLP, One New Hampshire Avenue, Portsmouth, New Hampshire commencing at 10:00 a.m. local time on May 25th, 2016 (the "Closing Date"); provided, however, that the City may extend the Closing Date to the last business day of each successive month thereafter through and including August, 2016 by making a payment to the Seller in the amount of Twenty Thousand Dollars (\$20,000.00) on or before May 15th, 2016 and each subsequent fifteenth (15th) day of the month through August 15th, 2016. At the City's option, such payment may be made from the Deposit provided that the City directs and authorizes the Escrow Agent in writing on or before the applicable due date to pay the required funds to the Seller from the Deposit. In the event that the City fails to make the required payment on or before the later of the twentieth day of each successive month or the second business day following the City's receipt of notice from the Seller of the City's non-payment by the fifteenth of said month, the Closing Date shall be on the last business day of the month in which the City fails to timely make such payment.

5.2 Seller Deliverables. On the Closing Date, Seller shall deliver to City at the Closing the following documents and materials:

- (i) The warranty deed for the Premises but reserving the Seller Access Easement, duly executed, acknowledged and in substantially the same form and substance as set forth on Schedule 5.2(i) attached hereto;
- (ii) The City Temporary Building Encroachment Easement duly executed, acknowledged, and in substantially the same form and substance as set forth on Schedule 1.6 attached hereto;
- (iii) The City Temporary Construction and Maintenance Easement duly executed, acknowledged, and in substantially the same form and substance as set forth on Schedule 1.7 attached hereto;
- (iv) Duplicate originals of the Post Closing Obligations Agreement, duly executed by the Seller, and in substantially the same form and substance as set forth on Schedule 1.22 attached hereto;
- (v) A certificate duly executed by Seller to the effect that, as of the Closing Date, all representations and warranties by Seller set forth in this

Agreement remain true and correct to the same extent as if made on and as of the Closing Date and disclosing no material changes or qualifications reasonably objectionable to the City;

- (vi) A non-foreign status certification, duly executed by Seller under penalty of perjury, certifying that Seller is not a “foreign person,” pursuant to Section 1445 (as may be amended) of the Internal Revenue Code of 1986, as amended (“Section 1445”);
- (vii) A mechanic’s lien and parties in possession affidavit in favor of the City’s title company in substantially the same form and substance set forth on Schedule 5.2(vii) attached hereto duly executed by the Seller;
- (viii) Evidence reasonably satisfactory to the City and the City’s title company of Seller’s authority to execute and deliver all documents required to be delivered by Seller to the City at Closing and to perform all of Seller’s obligations hereunder, including a general partner certificate and a certificate of existence for Seller issued by the New Hampshire Secretary of State;
- (ix) A closing and disbursement statement duly executed by the Seller;
- (x) A property tax proration agreement consistent with Section 4 of this Agreement, duly executed by the Seller;
- (xi) Duplicate originals of the Environmental Agreement in substantially the same form and substance set forth on Schedule 1.15 attached hereto, duly executed by the Seller;
- (xii) If not previously recorded at the Registry, an original of the Amendment and Relocation Agreement in form and substance set forth on Schedule 1.3 attached hereto, duly executed and acknowledged by the parties thereto and in recordable form; and
- (xiii) Such other documents and instruments as are required by law and/or are those that the City may reasonably request consistent with the terms of this Agreement, including without limitation a CD-57-S, 1099-S, paid water and sewer bill, broker commission statement, payoff statement(s), and a compliance agreement.

5.3 **City Deliverables.** On the Closing Date, the City shall deliver to Seller at the Closing:

- (i) By wire transfer, the Purchase Price for the Premises;
- (ii) The Subdivision Plan, duly signed by the City’s Planning Board and otherwise in recordable form;

- (iii) A certificate duly executed by the City to the effect that as of the Closing Date, all representations and warranties by the City set forth in this Agreement remain true and correct to the same extent as if made on and as of the Closing Date and disclosing no material changes or qualifications reasonably objectionable to Seller;
- (iv) An instrument sufficient to terminate and release to Seller the portion of the shaded portion of the Sidewalk Easement shown as Existing Easement 3 on page C2 of the Disposition Plan and more particularly described on Schedule 2 attached hereto, duly executed by the City, acknowledged and in recordable form and in substantially the same form as set forth on Schedule 5.3(iv) attached hereto;
- (v) A release deed of the City Triangle Parcel, duly executed, acknowledged and in recordable form, in substantially the same form and substance as set forth on Schedule 5.3(v) attached hereto;
- (vi) Duplicate originals of the Post Closing Obligations Agreement, duly executed by the City, and in substantially the same form and substance as set forth on Schedule 1.22 attached hereto;
- (vii) Evidence reasonably satisfactory to Seller and Seller's title insurance company, if any, of City's authority to execute and deliver all documents required to be delivered by the City to Seller at Closing and to perform all of the City's obligations hereunder;
- (viii) A closing and disbursement statement duly executed by the City;
- (ix) A property tax proration agreement consistent with Section 4 of this Agreement, duly executed by the City;
- (x) Duplicate originals of the Environmental Agreement in substantially the same form and substance set forth on Schedule 1.15 attached hereto, duly executed by the City;
- (xi) An amendment to the Municipal Sewer Easement which specifically and expressly allows construction, maintenance, repair and replacement of buildings, structures and other improvements upon Seller's Remaining Land over the Municipal Sewer Easement, duly executed by the City, acknowledged and in recordable form and in substantially the same form as set forth on Schedule 5.3(xi) attached hereto; and
- (xii) Such other documents and instruments as are required by law and/or are those that Seller may reasonably request consistent with the terms of this Agreement, including without limitation a CD-57-P and a compliance agreement.

6. **Title and Deed.** At Closing, the Seller shall convey to the City, by warranty deed, with good and marketable title: (i) fee simple ownership interest in the Premises, and (ii) the City's Easements. Title shall be free and clear of any and all liens, mortgages, leases, tenancies, parties in possession, charges, security interest, conditions, covenants, servitudes, encumbrances, reservations, easements, rights of way, restrictions and claims of any kind or nature whatsoever, except for those matters set forth and identified on Schedule 6 of this Agreement ("Permitted Encumbrances"). Permitted Encumbrances shall not include a general omnibus exception which states the City's title to the Premises is "subject to all covenants, conditions, reservations, easements, encumbrances, rights of way, or restrictions of record," or other such similar language.

7. **Due Diligence.**

7.1 **Prior Due Diligence Period and Inspections.** City acknowledges and agrees that: (1) prior to the Effective Date, City has had access to the Premises for the purposes of conducting all inspections, studies, or analyses City may have wished to perform with respect to City's decision to enter into this Agreement and purchase the Premises and the City Easements on the terms hereof, including without limitation the Limited Subsurface Investigation – Proposed Deer Street Parking Garage – Deer and Bridge Streets – Portsmouth New Hampshire prepared by Ransom Environmental Consulting, Inc. for Mr. David Allen, City of Portsmouth Department of Public Works dated October 29, 2015, and (2) that City has not, is not, and will not rely on any information provided by the Seller or any representative or agent of the Seller except as expressly set forth in Section 8 or Section 11 of this Agreement.

7.2 **Access and Indemnity.** The Access and Indemnity Agreement executed by and between the Parties and attached hereto as Schedule 7.2: (i) is in full force and effect; (ii) is hereby ratified and confirmed by the Parties; and (iii) will survive the execution, delivery and termination of this Agreement, and the Closing.

7.3 **City's Owner's Title Insurance Commitment.** The City's obligation to proceed with the purchase of the Premises is subject to City receiving an ALTA Owners Title Insurance commitment from a reputable and national title insurance company, (reasonably acceptable to the City) subject to commercially reasonable requirements, for an owner's title policy to issue at Closing with respect to the Premises in the amount of the Purchase Price, subject to Permitted Encumbrances and standard exceptions and exclusions, in substantially the same form and substance as set forth on Schedule 7.3 attached hereto (the "Title Commitment").

8. **Representations and Warranties of Seller.** As an inducement to the City to enter into this Agreement and to consummate the transactions contemplated hereby, the Seller hereby represents and warrants Sections 8.1 through 8.11, inclusive, to City as of the Effective Date and the Closing Date, which representations and warranties shall survive Closing, that:

8.1 **Due Authorization.** Seller is a New Hampshire limited partnership, duly organized, validly existing, and in good standing under the laws of the State of New Hampshire and Seller has full power and authority to execute, deliver and carry out the

terms and provisions of this Agreement and each of the other agreements, instruments, and documents herein required to be made or delivered by Seller pursuant hereto and has taken all necessary action to authorize the execution, delivery, and performance of this Agreement and such other agreements, instruments and documents. The individuals executing this Agreement and all other agreements, instruments and documents herein required to be made or delivered by Seller pursuant hereto on behalf of Seller are and shall be duly authorized to sign the same on Seller's behalf and to bind Seller thereto. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Seller and this Agreement does in such documents constitute legal, valid and binding obligations of the Seller, enforceable against the Seller in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

8.2 No Conflict. The execution and delivery of, and consummation of the transactions contemplated by this Agreement are not prohibited by, and will not conflict with, constitute grounds for termination of, or result in the breach of any of the agreements or instruments to which Seller is now a party or by which it or the Premises is bound, or any order, rule or regulation of any court or other governmental agency or official.

8.3 Bankruptcy Matters. Seller has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, suffered the appointment of a receiver to take possession of substantially all of its assets, suffered the attachment or other judicial seizure of substantially all of its assets, admitted its inability to pay its debts generally as they come due, or made an offer of settlement, extension or composition to its creditors generally.

8.4 Legal Proceedings. To the Seller's knowledge, there are no pending legal proceedings, legal actions, suits, arbitrations, or other legal, administrative, or governmental investigations, inquiries or proceedings, pending, or threatened against or affecting any of the Premises or the Seller's interest therein.

8.5 Labor and Materials/Parties in Possession. There are no amounts due and owing to any person or entity on account of labor performed or materials provided to the Seller in connection with any construction or repair work to the Premises that would give rise to a mechanic's lien, other than amounts which will be paid in the ordinary course but no later than one hundred and twenty days following Closing. There are no parties in possession of the Premises that will remain in possession as of the Closing Date.

8.6 Default. Seller has not received written notice from: (i) any governmental authority of any violation of any applicable federal, state or local law, ordinance or rule or regulation (including without limitation those governing wetlands), except as have been provided to the City with respect to environmental conditions at the Premises

known by the City as a result of its due diligence, or (ii) any person entitled to enforce the same of any violations of covenants, conditions, restrictions, rights-of-way, or easements, in either case affecting any of the Premises and that remains uncured.

8.7 Fraudulent Transfer. In consummation of the transactions contemplated by this Agreement, the Seller has not made any transfer or incurred any obligations with the intent to disturb, delay, hinder or defraud either present or future creditors or partners.

8.8 No Conveyance. Following the Effective Date, Seller has not sold, leased, encumbered or otherwise transferred any part of the Premises, or any interest therein, or consented to any lien or encumbrance thereon, other than Permitted Encumbrances and other matters to be discharged by Seller at or prior to Closing.

8.9 No Agreements. Seller has not entered into any agreements with third parties regarding the Premises, other than Permitted Encumbrances, which will be binding on the City following the Closing.

8.10 Railroad Agency Office. The Railroad Agency Office is not located on Lot 1 as of the Effective Date, but may be so located pursuant to the Amendment and Relocation Agreement.

8.11 Encroaching Building. Seller has no actual knowledge of any facts which would prevent the removal of the Encroaching Building.

8.12 File Share Information. The City acknowledges and agrees that the City was provided certain information by the Seller through a file share or data room prior to the Effective Date (the "File Share Information"). The File Share Information was provided for informational purposes only to aid the City in its own due diligence and without warranty or representation of any kind whatsoever by Seller or any other person, including without limitation any representation or warranty as to the truth, accuracy or completeness thereof. At no time shall this paragraph relieve the Seller from any liability for fraud, or for any liability for warranties or representations expressly made by Seller in Section 8 of this Agreement.

9. Representations and Warranties of the City. City hereby represents and warrants to Seller as of the Effective Date and the Closing Date, which representations and warranties shall survive Closing, that:

9.1 Due Authorization. City is a New Hampshire municipal corporation, duly organized, validly existing, and in good standing under the laws of the State of New Hampshire, and City has full power to execute, deliver and carry out the terms and provisions of this Agreement and each of the other agreements, instruments, and documents herein required to be made or delivered by City pursuant hereto, and has taken all necessary action to authorize the execution, delivery, and performance of this Agreement and such other agreements, instruments and documents. The individuals executing this Agreement and all other agreements, instruments and documents herein required to be made or delivered by City pursuant hereto on behalf of City are and shall be duly authorized to sign the same on City's behalf and to bind City thereto. This

Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by City and this Agreement does in such documents constitute legal, valid and binding obligations of the City, enforceable against the City in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

9.2 No Conflict. The execution and delivery of, and consummation of the transactions contemplated by this Agreement are not prohibited by, and will not conflict with, constitute grounds for termination of, or result in the breach of any agreement or instrument to which City is now a party or by which it is bound, or, any order, rule or regulation of any court or other governmental agency or official.

9.3 Bankruptcy Matters. City has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, suffered the appointment of a receiver to take possession of substantially all of its assets, suffered the attachment or other judicial seizure of substantially all of its assets, admitted its inability to pay its debts as they come due, or made an offer of settlement, extension or composition to its creditors generally.

10. Conditions Precedent to the Parties' Obligations.

10.1 Mutual Conditions Precedent. The obligation of the Parties to purchase and sell the Premises is subject to the fulfillment prior to or at the Closing of each of the following conditions:

(a) Execution and delivery by the Parties at Closing of the Post Closing Obligations Agreement and the Environmental Agreement; and

(b) The Subdivision Plan and the Amendment and Relocation Agreement are recorded at the Registry, or will be recorded contemporaneously with the Closing.

10.2 City Conditions Precedent. The obligation of the City to purchase the Premises is subject to the fulfillment prior to or at the Closing of each of the following conditions:

(a) No material change in condition of the Premises between the Effective Date and the Closing, as may be confirmed by a walk through inspection of the Premises within twenty-four (24) hours of Closing;

(b) The Seller shall have performed its obligations under this Agreement in all material respects; and

(c) The warranties and representations of the Seller as set forth in this Agreement are true and correct in all material respects at and as of the Closing Date with the same effect as if made at and as of such time.

10.3 Seller Conditions Precedent. The obligation of the Seller to sell the Premises is subject to the fulfillment prior to or at the Closing of each of the following conditions:

(a) The warranties and representations of the City as set forth in this Agreement are true and correct in all material respects at and as of the Closing Date with the same effect as if made at and as of such time;

(b) The City shall have performed its obligations under this Agreement in all material respects;

(c) All public rights to the City Triangle Parcel and to the portion of the Sidewalk Easement shown as the shaded portion of Existing Easement 3 on page C2 of the Disposition Plan shall have been discontinued in accordance with all applicable laws, rules, regulations and ordinances;

(d) The release deed from the City to DSA of the City Triangle Parcel shall transfer marketable and insurable title thereto to DSA; and

(e) review of the local ordinances (with any proposed changes thereto) of the City applicable to Seller's Remaining Land for purposes of determination of suitability for redevelopment of the same in accordance with the Post Closing Obligations Agreement and otherwise as contemplated by the Seller as of the Closing Date.

10.4 Satisfaction of Conditions Precedent. The Seller may waive any of the conditions precedent set forth in Section 10.1 and 10.3 above and proceed to Closing, and in the event that Seller so proceeds and the Closing occurs each of said conditions precedent shall be deemed satisfied without further action, acknowledgment or documentation. The City may waive any of the conditions precedent set forth in Section 10.1 and 10.2 above and proceed to Closing, and in the event that the City so proceeds and the Closing occurs each of said conditions precedent shall be deemed satisfied without further action, acknowledgment or documentation.

11. Brokers and Finders. Each of the Parties represents and warrants to the other Party that neither the representing and warranting Party, nor any of its agents, have employed any broker or finder or incurred any liability for any brokerage fees, commissions or finders' fees in connection with the transactions contemplated hereby, except One Commercial Real Estate/Robert Marchewka of Portsmouth NH, who shall be paid a commission by Seller at Closing free and clear of any obligation of the City.

12. Risk of Loss. The risk of loss or damage to any of the Premises from fire or other casualty or cause shall be upon the Seller at all times prior to the Closing. Notwithstanding anything contained herein to the contrary, if at anytime prior to the Closing the Premises is destroyed or damaged by fire or other casualty or cause, Seller shall transfer to City at Closing any unused insurance proceeds, and all rights to the same,

in an amount not to exceed any net increase to the cost of the City Project resulting from the loss or damage, as reasonably estimated by the City.

13. Expenses. Except as otherwise specifically provided by this Agreement, the City and the Seller shall each pay all of their own costs incurred incident to the preparation, execution and delivery of this Agreement and the performance of their obligations hereunder, including, without limitation, the fees and disbursements of counsel, accountants and consultants, whether or not the transactions contemplated by this Agreement shall be consummated.

14. Default.

14.1 City's Default/Seller's Remedy. In the event City defaults in its obligation to consummate the Closing on and subject to the terms of this Agreement, then Seller, as its sole and exclusive remedy therefor, shall be entitled to terminate this Agreement and receive the Deposit from Escrow Agent and retain all sums paid to Seller to extend the Closing Date pursuant to Section 5.1 as reasonable liquidated damages. THE PARTIES HEREBY AGREE THAT THE AMOUNT OF THE DEPOSIT IS A FAIR AND REASONABLE ESTIMATE OF THE TOTAL DETRIMENT THAT SELLER WOULD SUFFER IN THE EVENT OF CITY'S FAILURE TO CONSUMMATE THE CLOSING IN BREACH HEREOF AND IS NOT A PENALTY. EXCEPT AS SET FORTH BELOW, SELLER IRREVOCABLY WAIVES THE RIGHT TO SEEK OR OBTAIN ANY OTHER LEGAL OR EQUITABLE REMEDIES, INCLUDING THE REMEDIES OF DAMAGES AND SPECIFIC PERFORMANCE FOR CITY'S FAILURE TO CONSUMMATE THE CLOSING IN BREACH HEREOF. Notwithstanding the foregoing, or any language to the contrary contained in this Agreement, following the Closing the aforesaid limitation of remedy shall not apply to, and Seller shall be entitled to all remedies at law or in equity on a non-exclusive, non-cumulative basis with respect to: (a) the indemnity and other obligations of City provided for in that certain Access and Indemnity Agreement executed by and between the Parties and attached hereto as Schedule 7.2, and (b) any other covenants, obligations, representations or warranties of the City contained in this Agreement that survive the Closing, or are contained in any document, certificate, instrument or Agreement of the City executed and delivered by the City at Closing, including without limitation the Post Closing Obligations Agreement. Seller shall not be entitled to special, consequential or incidental damages, including without limitation lost profits, under any circumstance.

14.2 Seller's Default/City's Remedy. In the event of Seller's default in the performance of its obligations under this Agreement, the City may elect to terminate this Agreement and receive the Deposit from the Escrow Agent together with all sums paid to Seller to extend the Closing Date pursuant to Section 5.1, or to bring an action for specific performance, which shall be City's sole remedies at law and in equity, provided that the foregoing limitation shall not apply to, and City shall be entitled to all remedies at law or in equity on a non-exclusive, non-cumulative basis with respect to, any other covenants, obligations, representations or warranties of the City contained in this Agreement that survive the Closing, or are contained in any document, certificate, instrument or Agreement of the Seller executed and delivered by the Seller at Closing, including without limitation the Post Closing Obligations Agreement. The City shall not be entitled to special, consequential or incidental damages, including without limitation

lost profits, under any circumstance.

15. Waiver of Jury Trial. Each Party hereby knowingly, intentionally and voluntarily waives trial by jury in any action or proceeding of any kind or nature, in any court in which an action may be commenced by or against the other party arising out of this agreement or the transactions contemplated hereby. Each Party acknowledges that such waiver is made with full knowledge and understanding of the nature of the rights and benefits waived hereby, and with the benefit of advice of counsel.

16. Miscellaneous Provisions.

16.1 Notices. All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed given when hand-delivered to the Party to be given such notice or other communication or on the business day following the day such notice or other communication is sent by overnight courier, to the following:

If to the City:	At the address set forth in the first paragraph of this Agreement, Attn: City Manager
with a copy to:	Robert P. Sullivan, City Attorney City of Portsmouth 1 Junkins Avenue Portsmouth, NH 03801
If to the Seller:	At the address set forth in the first paragraph of this Agreement, Attn: Kim S. Rogers
with a copy to:	Denis O. Robinson, Esq. Pierce Atwood LLP One New Hampshire Avenue, Suite 350 Portsmouth, New Hampshire 03801

or to such other address as the Parties may designate in writing.

16.2 Benefit and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors, assigns, heirs and legal representatives; provided, however, that the City's rights and obligations pursuant to this Agreement may not be assigned or assumed without the prior written consent of the Seller, in the Seller's sole and absolute discretion; and provided further that the Seller's rights and obligations pursuant to this Agreement may not be assigned or assumed prior to Closing without prior written notice to the City and except in the case of an assignment to an Affiliate of Seller, without the prior written consent of the City, in the City's sole and absolute but good faith discretion. Any assignment or assumption by Seller to an Affiliate of the Seller shall not relieve the Seller of its obligations pursuant hereto, and the Seller and said assignee shall be jointly and severally liable for the obligations of Seller, as seller hereunder.

16.3 Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same instrument, each of which counterpart shall be deemed to be an original, but all of which counterparts shall taken together constitute a single agreement.

16.4 Severability. Any provision hereof determined by a court of competent jurisdiction to be prohibited by or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be deemed ineffective and deleted herefrom without affecting any other provision of this Agreement. It is the intention and desire of the Parties hereto that this Agreement be enforced to the maximum extent permitted by law, and should any provision contained herein be held unenforceable, the Parties hereby agree and consent that such provision shall be reformed in as similar terms as possible to reflect the Parties' intent and to make it a valid and enforceable provision to the maximum extent permitted by law. The Parties agree that if any term, covenant, condition or restriction contained herein is held unenforceable, then the Parties hereby mutually agree and consent that such provision shall be reformed to make it a valid and enforceable provision to the maximum extent permitted by law. The Parties hereby intend that there shall be added as part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and valid and enforceable.

16.5 No Third Party Beneficiaries. The execution and delivery of this Agreement is not intended to, and shall not be deemed to, confer any rights upon, nor obligate any of the Parties hereto to, any person or entity other than the Parties hereto.

16.6 Waiver. No delay or omission by any Party hereto to exercise any right or power occurring upon any noncompliance or failure of performance by the other Party under the provisions of this Agreement shall impair any such right or power or be construed to be waiver thereof. A waiver by any Party hereto of any of the terms, covenants, conditions, or agreements hereof, to be performed by the other Party shall not be construed to be a waiver of any succeeding breach thereof, or of any other term, covenant, condition or waiver herein contained. This Agreement or any of its terms may not be waived, modified, or amended except by written instrument signed by both the Seller and City.

16.7 Headings. The headings to the various Sections and paragraphs of this Agreement have been inserted for convenient reference only, and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Agreement.

16.8 Construction. In this Agreement, where applicable, words used in the singular form shall be construed as though they also are used in the plural form, and vice versa, and the masculine gender shall include the feminine and neuter genders, and vice versa. Each Party hereto, and such Party's counsel have had the full opportunity to review and comment upon, and have reviewed and commented on, this Agreement, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

16.9 Entire Agreement. This Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter hereof, and supersedes

all prior and contemporaneous written or oral statements, promises, understandings or agreements with respect thereto, including without limitation that certain letter of intent by and between the Parties dated February 2, 2015 and executed and delivered prior to the Effective Date. The Parties agree and acknowledge that (a) this Agreement has not been entered into under undue time pressure, and that all Parties have had an adequate opportunity to review this Agreement with counsel, (b) no oral assurances have been given by any Party that this Agreement is an interim agreement or that a more comprehensive agreement is or will be forthcoming, (c) there are no oral conditions or promises that supplement or modify this Agreement, and (d) this Section 16.9 does not constitute “boilerplate”, but rather is a critical substantive provision of this Agreement.

16.10 Choice of Law. This Agreement shall be interpreted according to the laws of the State of New Hampshire.

16.11 State Law Disclosures. Seller disclosure forms required by applicable law are contained in Schedule 16.11 attached hereto.

16.12 Time is of the Essence. Time is of the essence with respect to performance and all deadlines and dates and time specified in this Agreement, whether or not “TIME IS OF THE ESSENCE” or words of similar import are used, including without limitation the Closing Date as the same may be extended by the City pursuant to Section 5.1.

16.13 Amendment. The provision of this Agreement may be modified or amended in whole or in part only with the consent of the Parties hereto, their successors and permitted assigns, in a written instrument duly executed and delivered.

16.14 Facsimile or DocuSigned Signatures. The Parties agree that a facsimile or DocuSigned transmission of any signature signed on the original Agreement (or copy thereof) constitutes an original and binding signature of that Party to this Agreement.

[Remainder of page blank – signature pages to follow]

In Witness Whereof we have herein set our hands and seals effective as of the Effective Date.

The CITY:

THE CITY OF PORTSMOUTH, NEW HAMPSHIRE

By: _____ Date: _____

Name:

Title:

See City Council Vote dated _____, 2016.

The SELLER:

DEER STREET ASSOCIATES

By its general partner

DSA Rogers, LLC

By its manager

G.L. Rogers & Co., Inc.

By: _____ Date: _____

Name:

Title:

Schedule 1.3 - Amendment and Relocation Agreement

Schedule 1.6 - City Temporary Building Encroachment Easement

Schedule 1.7 - City Temporary Construction and Maintenance Easement

Schedule 1.8- City Triangle Parcel Legal Description

Schedule 1.11 – Deer Street Extension Parcel Legal Description

Schedule 1.12 - Disposition Plan

Schedule 1.15 – Environmental Agreement

Schedule 1.17 - Gray Trust Parcel Legal Description

Schedule 1.22 – Post Closing Obligations Agreement

Schedule 1.32 - Subdivision Plan

Schedule 2 - Terminated Sidewalk Easement Legal Description

Schedule 5.2(i) – Warranty Deed (Premises)

Schedule 5.2(vii) – Title Affidavit

Schedule 5.3(iv) – Termination and Release of Sidewalk Easement

Schedule 5.3(v) – Release Deed (City Triangle Parcel)

Schedule 5.2(xi) – Amendment to Municipal Sewer Easement

Schedule 6 – Permitted Encumbrances

Schedule 7.2 - Access and Indemnity Agreement

Schedule 7.3 – Title Commitment

Schedule 16.11 – Statutory Notifications

The Seller hereby advises the City of the following with respect to the Premises:

RADON GAS: Radon gas, the product of decay of radioactive materials in rock may be found in some areas of New Hampshire. This gas may pass into a structure through the ground or through water from a deep well. Testing can establish its presence and equipment is available to remove it from the air or water.

LEAD PAINT: Before 1977, paint containing lead may have been used in structures. The presence of flaking lead paint can present a serious health hazard, especially to young children and pregnant women. Tests are available to determine whether lead is present.

WATER SUPPLY (well): public

Location:

Malfunctions (if any):

Date of Installation:

Date of most recent test:

Problems (if any):

SEWAGE DISPOSAL SYSTEM: public

Size of Tank:

Type of System:

Location:

Malfunctions (if any):

Age of System:

Name of Contractor who services system:

PUBLIC UTILITY TARIFF:

To the Seller's knowledge, no metered public utility services at the Premises that the Buyer may be responsible for paying as a condition of such utility service is provided under a tariff with unamortized or ongoing charges for energy efficiency or renewable energy improvements pursuant to RSA 374:61.

POST CLOSING OBLIGATIONS AGREEMENT

This POST CLOSING OBLIGATIONS AGREEMENT ("Agreement") is made as of _____, 2016 (the "Effective Date") by and between CITY OF PORTSMOUTH, NEW HAMPSHIRE (hereinafter referred to as the "City"), a municipal corporation with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (the "City") and DEER STREET ASSOCIATES, a New Hampshire limited partnership of P.O. Box 100, York Harbor, Maine 03911 ("DSA").

RECITALS

A. The City is the owner of certain property with improvements thereon mainly acquired from DSA on the Effective Date and further defined below as the "City Property", upon which the City intends to construct a municipal parking garage and a public right of way referred to herein as Deer Street Extension, and to construct related improvements.

B. DSA is the owner of certain property with improvements thereon adjacent to the City Property more particularly defined below as DSA Property, which DSA intends to improve.

C. The City and DSA desire to allow for the design and potential improvement of their properties in a mutually beneficial manner, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and DSA agree as follows:

1. **Definitions.** In addition to those terms defined elsewhere in this Agreement, the following capitalized terms shall have the following meanings when used herein:

1.1 "**Agreement**" has the meaning as set forth in the preamble of this document and means this Post Closing Obligations Agreement, and includes all Schedules attached hereto.

1.2 "**Amendment and Relocation Agreement**" means an Amendment and Relocation Agreement modifying the Railroad Access Deed and the Railroad Agency Office Deed, and allowing for the relocation of the Railroad Agency Office and the Railroad Access to Lot 1 and other property of the City in accordance therewith, recorded at the Registry on or prior to the Effective Date.

1.3 "**Anticipated City Improvements**" means: (i) the construction by the City of Deer Street Extension in accordance with the Design Plans; and (ii) the City's relocation of the Municipal Waterline Easement and the City's construction of all related lines and infrastructure in accordance with the Design Plans, which

shall be in accordance with applicable City ordinances and written administrative policies relative to relocation of utilities; and (iii) the City's construction of the relocated Railroad Agency Office and ingress and egress referenced in the Railroad Access Easement Covenant in accordance with the Design Plans.

1.4 "**City**" has the meaning as set forth in the preamble of this Agreement and means the City of Portsmouth, New Hampshire, and includes the successors and assigns of the City of Portsmouth, New Hampshire.

1.5 "**City Manager**" or "**Portsmouth City Manager**" means the then acting City Manager of the City, or the Deputy City Manager of the City, acting by and on behalf of the City in said capacity.

1.6 "**City Project**" means the construction upon the City Property of the Parking Garage and related improvements, including without limitation the construction and opening of the Deer Street Extension Parcel as a public right-of-way.

1.7 "**City Property**" means Lot 1, together with the Gray Trust Parcel.

1.8 "**Community Space**" means certain public community space to be maintained by the City on Lot 2 in the event that the same is transferred to the City, and designed by the Parties during the Pre-Construction Period.

1.9 "**Construction Drawing Design Phase**" means that portion of the Pre-Construction Period beginning at the conclusion of the Permitting Phase and continuing until Design Plans are agreed upon pursuant to Sections 4 and 6 of this Agreement, but no later than six (6) months following the conclusion of the Permitting Phase (as may be extended by Force Majeure).

1.10 "**Deer Street Extension**" means a public right of way to be constructed by the City within the Deer Street Extension Parcel providing access to the Parking Garage, and Lots 2, 3 and 6.

1.11 "**Deer Street Extension Parcel**" means the parcel of land denoted as "Future Access" on page C-2 of the Disposition Plan and further described on Schedule 1.11 attached hereto, being a portion of Lot 1 and also including the Gray Trust Parcel.

1.12 "**Deer Street Liner Building**" means a six (6) story+ building to be constructed by DSA on Lot 3, which building is intended to mask the Parking Garage from public view from the intersection of Deer Street and Bridge Street.

1.13 "**Design Plans**" means the design plans and construction drawings produced by the City and DSA during the Pre-Construction Period, as set forth in this Agreement.

1.14 "**Disposition Plan**" means that certain plan of two pages (C1 – Disposition Plan Land Ownership, and C2 – Disposition Plan Easements)

prepared by Ambit Engineering, Inc. and entitled "Proposed Parking Garage Project – Deer & Bridge Streets – Portsmouth, N.H." dated July, 2015, and last revised on _____, 2015, attached hereto as Schedule 1.14.

1.15 "**DSA**" is first referenced in the preamble of this Agreement and means Deer Street Associates, a New Hampshire limited partnership, and includes the successors and assigns of Deer Street Associates.

1.16 "**DSA Access Easement**" means an access easement over and across the Deer Street Extension Parcel for the benefit of DSA's Property adjacent thereto, for all purposes that a public street may be used (including without limitation the running of utilities), reserved to DSA in that certain Warranty Deed of Lot 1 from DSA to the City of near or even date herewith.

1.17 "**DSA Parking Garage Spaces**" means that number of parking spaces represented by the greater of fifty-eight (58) parking spaces or one space less than ten percent (10%) of the vehicular parking spaces constructed at the Parking Garage, which shall benefit Seller's Remaining Land at the then current public monthly or similar long term parking pass rate generally applicable to the Parking Garage on a non-discriminatory basis; provided, however, that if the Parking Garage is not completed on or before the Anticipated Completion Date, the number of spaces shall be fixed at fifty-eight (58) spaces and shall be located in an area on Lot 1 to be agreed to by the Parties during the Site Plan Review Phase. Any DSA Parking Garage Spaces located in the Parking Garage shall be floating and shall not be designated spaces, but rather the right to use a specified number of spaces utilizing a method chosen by the City to assure the continuous availability of those spaces on a 24/7 basis (subject to maintenance requirements). The rights and obligations of the Parties with respect to the DSA Parking Garage Spaces shall be set forth in the recorded agreement described in Section 10(f).

1.18 "**DSA Flex Parking Spaces**" means a total of no more than ten (10) paved vehicular parking spaces to be located on Lot 1 or Lot 2 in an area shown on the Design Plans. The total number of DSA Flex Parking Spaces shall be determined by subtracting from sixty-eight (68) the number of DSA Parking Garage Spaces. The rights and obligations of the Parties with respect to the DSA Flex Parking Spaces (to the extent any DSA Flex Parking Spaces are required) shall be set forth in the recorded agreement described in Section 10(f).

1.19 "**DSA Project**" means the construction by DSA of the Deer Street Liner Building, the Hill Street Building, and buildings on Lot 4 and Lot 5, including any and all related site work and improvements.

1.20 "**DSA Property**" means Lots 2, 3, 4, 5 and 6.

1.21 "**Force Majeure**" means a delay caused by fire, earthquake or other acts of God, strike, or other cause outside the applicable Party's reasonable control.

1.22 “**Governmental Entity**” means any court, arbitrational tribunal, administrative agency or commission or other governmental or regulatory authority or agency.

1.23 “**Gray Trust Parcel**” means the triangle shaped parcel of land, with improvements thereon shown as Area C on page C1 of the Disposition Plan, and further described on Schedule 1.23.

1.24 “**Gray Trust Parcel Access Easement**” means an access easement over and across the Gray Trust Parcel for the benefit of DSA’s Property adjacent thereto and adjacent to Deer Street Extension, for all purposes that a public street may be used (including without limitation the running of utilities).

1.25 “**Hill Street Building**” means a four (4) story+ building to be constructed by DSA on Lot 6, which building is intended to mask the Parking Garage from public view from Hill and Hanover Streets.

1.26 “**Joint Project**” means, collectively, the DSA Project and the City Project. Each of the DSA Project and the City Project is sometimes referred to as a “**Project**”.

1.27 “**Lot**” means a subdivided lot as shown on the Subdivision Plan, with Lot 1 referring to the lot shown and depicted as lot 1 on the Subdivision Plan, Lot 2 referring to the lot shown and depicted as lot 2 on the Subdivision Plan, and so on.

1.28 “**Municipal Waterline Easement**” means that waterline easement described in a Waterline Easement Deed from DSA to the City dated September 16, 2005 and recorded in the Registry on September 19, 2005 at Book 4550, Page 1887.

1.29 “**Parking Garage**” means the municipal public parking garage of no less than 590 spaces to be constructed by the City on Lot 1.

1.30 “**Parties**” means, collectively, the City and DSA. Each of the Parties is herein referred to as a “Party.”

1.31 “**Permitting Phase**” means that portion of the Pre-Construction Period beginning at the conclusion of the Site Plan Design Phase and continuing until Permits for the Projects are issued, but no later than twelve (12) months following the expiration of the Site Plan Design Phase (as may be extended by Force Majeure).

1.32 “**Permits**” means all necessary federal, state and local governmental permits, licenses and approvals of any type or nature required in connection with the development and operation of the Party’s respective project (the City Project with respect to the City, and the DSA Project with respect to DSA), including without limiting the generality of the foregoing, all necessary site plan, and other governmental permits, licenses, and approvals, of any type and from any necessary Governmental Entity.

1.33 “**Person**” means any individual, entity, association, or trust, including without limitation any corporation, limited liability company, or partnership, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so permits.

1.34 “**Pre-Construction Period**” means a period of time beginning on the Effective Date and continuing for a period of one (1) to two (2) years thereafter (as may be extended by Force Majeure) and comprised of three phases known as the Site Plan Design Phase, Permitting Phase, and Construction Drawing Design Phase.

1.35 “**Railroad Access**” means that certain vehicular and pedestrian ingress and egress along the 20’ wide driveway on a portion of the DSA Property and City Property, all as more particularly described in the Railroad Access Deed, to be relocated to the Premises in accordance with the Amendment and Relocation Agreement and the terms of this Agreement.

1.36 “**Railroad Access Deed**” means that certain deed from Boston and Maine Corporation to the Seller dated May 8, 1986 and recorded in the Registry at Book 2602, Page 0569.

1.37 “**Railroad Agency Office**” means that certain railroad agency office having 400-500 square feet, together with lights, heat, toilet facilities and a supply closet, currently located on Lot 2 and referenced in the Railroad Agency Office Deed, to be relocated to the Premises in accordance with the Amendment and Relocation Agreement and the terms of this Agreement.

1.38 “**Railroad Agency Office Deed**” means that certain deed from Robert W. Meserve and Charles W. Barrett, as Trustees of the Boston and Maine Corporation, Debtor, United States District Court for the District of Massachusetts, Docket No. 70-250-F, to John W. Goodwin dated December 19, 1972 and recorded in the Registry at Book 2199, Page 0434.

1.39 “**Registry**” means the Rockingham County Registry of Deeds.

1.40 “**Site Plan Design Phase**” means that portion of the Pre-Construction Period beginning at the Effective Date and continuing until Design Plans are produced pursuant to Sections 4(a) and 4(b) of this Agreement, but no later than six (6) months following the Effective Date (as may be extended by Force Majeure).

1.41 “**Subdivision Plan**” means that certain plan entitled “Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1” = 50’ ” dated July, 2015 and last revised 8/6/15, approved by the City Planning Board on August 20, 2015, and recorded in the Registry on or before the Effective Date, and as attached hereto as Schedule 1.41.

1.42 "**Substantially Completed**" or "**Substantial Completion**" means when the applicable construction work or portion of the Joint Project is completed in accordance with the Design Plans, is presently ready for use in accordance with its intended purpose, and only minor, punchlist items remain to be completed.

2. **Pre-Construction Period/Joint Design.** The City and DSA shall cooperate during the Pre-Construction Period to create Design Plans relative to Deer Street Extension, the DSA Flex Parking Spaces (to the extent any DSA Flex Parking Spaces are required), the Community Space, the relocation of the Railroad Agency Office, the relocation of the ingress and egress easement referenced in the Railroad Access Easement Covenant, and the relocation of the Municipal Waterline Easement. The location and final design shall be consistent with the terms of this Agreement. Construction of the Joint Project shall be consistent with the Design Plans.

3. **Certain Design Plan Criteria.**

- a. **Mandatory Design Plan Criteria.** The Design Plans shall include and reflect the following criteria, all subject to the approval of the City Planning Board during the Permitting Phase:
 - i. Deer Street Extension will be designed consistent with and include plans for: (a) the construction of a future sidewalk along the northerly boundary of the Deer Street Extension Parcel; (b) the construction of a future pedestrian connection from Deer Street along Deer Street Extension to Rock Street; and (c) such short-term public street parking spaces as the City shall deem advisable for customers and deliveries for commercial uses along Deer Street Extension.
 - ii. The Design Plans for Deer Street Extension will not include any public sidewalks located on DSA Property other than within two (2) feet of the boundary between Deer Street Extension and Lot 6.
 - iii. The Municipal Waterline Easement and related infrastructure, as relocated in accordance with applicable City ordinances and written administrative policies relative to relocation of utilities, shall continue to provide convenient access and service to DSA Property, but shall not be located on DSA Property except as provides exclusive service thereto. The Design Plans for the relocated Municipal Waterline Easement shall include, without limitation, locations and capacities of water and stormwater drainage lines and other facilities to provide border service to the DSA Property in locations and capacities reasonably specified by DSA, in accordance with applicable City ordinances and written administrative policies relative to relocation of applicable utilities.
 - iv. The Railroad Agency Office as redesigned and relocated shall be approximately 400-500 +/- square feet such that the same is located on the City Property in accordance with the Amendment and Relocation Agreement.
 - v. The ingress and egress easement referenced in the Railroad Access Easement Covenant shall be located in accordance with the Amendment and Relocation Agreement.

- vi. The Community Space shall not include any permanent buildings or structures within thirty (30) feet of the boundary line shared with Lot 2 and Lot 3 (other than a fence, if any, running along the northerly boundary of Lot 2 adjacent to railroad property), without the prior written consent of DSA (including the then owner of Lot 3), which consent shall not be unreasonably withheld, conditioned or delayed.
 - vii. The Community Space shall be dedicated for public use, qualify as unoccupied space and otherwise have qualities sufficient for purposes of meeting the requirements of Exception 1.2 of IBC-2009, Section 705.8.1, Exception 1.2.
- b. **Optional Design Plan Criteria.** The Design Plans may include and reflect the following criteria, all subject to the approval of the City Planning Board during the Permitting Phase:
- i. The Community Space may, by agreement of the Parties but without obligation of either Party, include a parking garage connector structure and/or parking spaces.

4. **Site Plan Design Phase.**

- a. **City Site Plans.** During the Site Plan Design Phase, the City shall prepare at its sole cost and expense, and submit to DSA for DSA's review, preliminary building design plans, utility plans and a site plan for its Project, including for Deer Street Extension, the DSA Flex Parking Spaces (to the extent any DSA Flex Parking Spaces are required), the DSA Parking Garage Spaces, the relocated Municipal Waterline Easement, the relocated Railroad Agency Office, the relocation of the ingress and egress easement referenced in the Railroad Access Easement Covenant, all consistent with the Design Plans and terms and conditions set forth in this Agreement. If DSA disapproves of any such plans, then DSA shall provide a reasonable basis supporting such disapproval and the City shall use commercially reasonable efforts to revise the applicable plans to incorporate all reasonable objections and conditions presented by DSA and said plans shall be resubmitted to DSA for review. DSA's agreement with any plans shall not be unreasonably withheld, conditioned or delayed, and shall be deemed granted if no written objection thereto is received by the City within fourteen (14) business days after DSA's receipt thereof. The Portsmouth City Manager shall have final authority to determine all City plans. The final plans shall be deemed "Design Plans" for purposes of this Agreement, and the Parties shall use commercially reasonable efforts to agree upon Design Plans for the foregoing that are sufficient for each Party to submit and utilize for purposes of obtaining Permits for its Project during the Permitting Phase.
- b. **DSA Site Plans.** During the Site Plan Design Phase, DSA shall prepare at its sole cost and expense, and submit to the Portsmouth City Manager for the Portsmouth City Manager's review, preliminary building design plans, utility plans and a site plan for its Project, all consistent with the Design Plans and the terms and conditions set forth in this Agreement. If the Portsmouth City Manager disapproves of any such plans, then the Portsmouth City Manager shall provide a reasonable basis supporting such disapproval and DSA shall use commercially reasonable efforts to revise the applicable plans to

incorporate all reasonable objections and conditions presented by the City and said plans shall be resubmitted to the Portsmouth City Manager for approval. The Portsmouth City Manager's agreement with any plans shall not be unreasonably withheld, conditioned or delayed, and shall be deemed granted if no written objection thereto is received by DSA within fourteen (14) business days after the Portsmouth City Manager's receipt thereof. DSA shall have the final authority to determine all DSA plans. The final plans shall be deemed "Design Plans" for purposes of this Agreement, and the Parties shall use commercially reasonable efforts to agree upon Design Plans for the foregoing that are sufficient for each Party to submit and utilize for purposes of obtaining Permits for its Project during the Permitting Phase.

- c. **Land Use Approvals.** Notwithstanding this provision, DSA must follow and comply with all applicable City and State land use regulations not otherwise waived or the subject of a variance, special exception, or similar relief granted by the relevant land use regulatory board. The Portsmouth City Manager's agreement with DSA plans does not indicate or mandate land use regulatory approvals.

5. **Permitting Phase.**

- a. **Permitting.** During the Permitting Phase, each Party shall, at its sole cost and expense, apply for and exercise commercially reasonable efforts to obtain its Permits.
- b. **Cooperation.** The Parties shall cooperate to the greatest extent possible in filing applications to the City Planning Board for the City Property and DSA Remaining Property consistent with the Design Plans and otherwise sufficient to qualify the DSA Project as part of an "overall development" which includes a municipally owned or operated covered parking facility for purposes of Section 10.1113.111 of the City's zoning ordinance.
- c. **Traffic and Improvements.** The City, at its initial cost and expense, will cause a traffic study to be performed by an appropriate third party professional with respect to the Joint Project reasonably acceptable to DSA and shall cause to be made such improvements as are recommended therein or otherwise recommended by the City Planning Board. In the event that a traffic signal or other improvements to public or intended public rights of way (other than Deer Street Extension) is required by the Planning Board or recommended in the traffic study in connection with either Project, either Party shall reimburse the other within sixty (60) days of written demand for its share of the reasonable out-of-pocket costs thereof, which costs shall be allocated between the Parties based on the Parties' pro-rata share of traffic generation determined in the traffic study; provided, however, that in no event shall the City's share of said costs exceed the sum of Fifty Thousand Dollars (\$50,000.00). DSA shall reimburse the City within sixty (60) days of written demand for: (i) one-half ($\frac{1}{2}$) of the first Thirty Thousand Dollars (\$30,000.00) of reasonable out-of-pocket cost incurred by the City with respect to the traffic study obtained by the City pursuant to this Section 5(c); plus (ii) all of the reasonable out-of-pocket costs incurred by the City with respect to the traffic study obtained by the City pursuant to this Section 5(c) in excess of Thirty Thousand Dollars (\$30,000.00). DSA's obligation to reimburse the City with

respect to (ii) above shall be conditioned upon DSA's prior written approval of the engagement and fees of the applicable professional(s), in the exercise of reasonable and good faith discretion.

- d. **Changes to Design Plans During Permitting Phase.** Either Party may make changes necessary to its Design Plans as may be required by City or State land use regulatory boards and agencies, but shall use commercially reasonable efforts to reduce any costs to be incurred by the other Party as a result of said change.
- e. **Termination.** If for any reason whatsoever other than the failure to exercise commercially reasonable efforts, either Party is unable to obtain all Permits having reasonably satisfactory conditions, with all appeal periods having expired without appeal (or any such appeal finally resolved), on or before the expiration of the Permitting Period, then the Party unable to so obtain its Permits may, in its sole discretion, terminate its obligation to obtain the same pursuant to this Agreement.

6. Construction Drawing Design Phase.

- a. **City Construction Drawings.** During the Construction Drawing Design Phase, the City shall prepare at its sole cost and expense, and submit to DSA for DSA's review, final construction drawings for its Project based upon the Design Plans, all consistent with the terms and conditions set forth in this Agreement. If DSA disapproves of any such plans, then DSA shall provide a reasonable basis supporting such disapproval and the City shall use commercially reasonable efforts to revise the applicable plans to incorporate all reasonable objections and conditions presented by DSA and said plans shall be resubmitted to DSA for review. DSA's agreement with any plans shall not be unreasonably withheld, conditioned or delayed, and shall be deemed granted if no written objection thereto is received by the City within fourteen (14) business days after DSA's receipt thereof. The Portsmouth City Manager shall have the final authority to determine all City plans. The final plans shall be deemed "Design Plans" for purposes of this Agreement, and the Parties shall use commercially reasonable efforts to agree upon Design Plans for the foregoing that are sufficient for each Party to obtain bids for construction of its Project.
- b. **DSA Site Plans.** During the Construction Drawing Design Phase, DSA shall prepare at its sole cost and expense, and submit to the Portsmouth City Manager for the Portsmouth City Manager's review, final construction drawings for its Project based upon the Design Plans, all consistent with the terms and conditions set forth in this Agreement. If the Portsmouth City Manager disapproves of any such plans, then the Portsmouth City Manager shall provide a reasonable basis supporting such disapproval and DSA shall use commercially reasonable efforts to revise the applicable plans to incorporate all reasonable objections and conditions presented by the City and said plans shall be resubmitted to the Portsmouth City Manager for review. The Portsmouth City Manager's approval of any plans shall not be unreasonably withheld, conditioned or delayed, and shall be deemed granted if no written objection thereto is received by DSA within fourteen (14) business days after the Portsmouth City Manager's receipt thereof. DSA shall have the

final authority to determine all DSA plans. The final plans shall be deemed "Design Plans" for purposes of this Agreement, and the Parties shall use commercially reasonable efforts to agree upon Design Plans for the foregoing that are sufficient for each Party to obtain bids for construction of its Project.

- c. **Land Use Approvals.** Notwithstanding this provision, DSA must follow and comply with all applicable City and State land use regulations not otherwise waived or the subject of a variance, special exception, or similar relief, or similar relief granted by the relevant land use regulatory board. The Portsmouth City Manager's agreement with DSA plans does not indicate or mandate land use regulatory approvals.

7. **Additional Easements, Licenses.** In the event that either Party reasonably determines at any time within six (6) years of the Effective Date that any easements, leases or licenses encumbering the other Party's property are necessary or convenient to its respective Project, then such Party may request that the other Party grant such an easement, lease or license which approval will not be unreasonably withheld, conditioned or delayed. The requesting Party shall be responsible for the costs to prepare and record any such easement, lease or license, including without limitation: (a) the costs associated with any required plans and surveys to design and locate the same; and (b) the reasonable costs and expenses reasonably incurred by the non-requesting Party in connection with the proposed easement, lease or license. Notwithstanding the foregoing, neither Party shall be required to approve any easement, lease or license: (i) which unreasonably interferes with the intended use of the Property of the non-requesting Party; (ii) for parking, access or building encroachments; (iii) which materially increases the cost of the Project of the non-requesting Party; or (iv) which materially alters the Project of the non-requesting Party.

8. **Construction of Projects.**

- a. **No Obligation to Construct.** Neither Party shall have any right or obligation to cause the construction of either Project, except that: (i) the failure of the City to construct certain portions of the City Project is provided for in Section 8(b) hereof; and (ii) if the Parking Garage is constructed by the City, the Railroad Agency Office shall be constructed and located therein in accordance with the Design Plans and the terms and conditions of this Agreement. In the event that the City determines to construct improvements on or within the vicinity of the City Property, such construction shall be done in a manner to reasonably minimize impact to existing tenants, occupants, guests and invitees of the DSA Property.
- b. **City Decision Not To Construct.** *If the City has not Substantially Completed the Anticipated City Improvements in accordance with the Design Plans on or before that date which is the three (3) year anniversary of the Effective Date (the "Anticipated Completion Date"), then:* (a) the Mortgage and all payment and performance obligations pursuant thereto shall be of no further force and effect and shall be discharged of record at the Registry at the City's sole cost and expense; (b) DSA shall have the right, but not the obligation, to complete all or a portion of Deer Street Extension and the relocation of the Municipal Waterline Easement and related infrastructure in accordance with the Design Plans, and the City shall cooperate and provide DSA with reasonable access to its rights and properties to accomplish the same, and shall

further reimburse DSA within sixty (60) days of written demand for seventy-five percent (75%) of the costs and expenses which the Portsmouth City Manager has approved in the exercise of reasonable and good faith discretion and in advance of construction, and which have actually been incurred by DSA with respect thereto; and (c) subject to approval by the City Engineer (which approval shall not be unreasonably withheld, conditioned or delayed), and the approval of the City Planning Board and any other applicable land use boards, DSA shall have the right at DSA's sole cost and expense, but not the obligation, to construct and relocate the Railroad Agency Office together with the ingress and egress referenced in the Railroad Access Easement Covenant to the City Property as a free standing building and otherwise in accordance with the Amendment and Relocation Agreement, and the City shall cooperate and provide DSA with reasonable access to its rights and properties to accomplish the same. The Anticipated Completion Date may, at the City's option, be extended by Force Majeure to a date not more than one (1) year subsequent to said date, upon DSA's receipt prior to said date of written notice of the extension to a date set forth therein (and consistent with the foregoing).

- c. **Acquisition of the Gray Trust Parcel.** The City shall acquire the Gray Trust Parcel prior to the expiration of the Site Plan Design Phase. Once acquired by the City, the DSA Access Easement shall be amended to include the Gray Trust Parcel Access Easement by an instrument in recordable form proposed by DSA and acceptable to the City in its reasonable discretion, and the City shall execute and deliver the same to DSA for recording at the Registry.
- d. **Municipal Waterline Easement.** The City shall not be required to remove any of the utility lines or related infrastructure for the existing Municipal Waterline Easement from DSA Property.
- e. **Relocated Railroad Agency Office.** In the event that the Parking Garage is constructed, the City shall be responsible at the City's sole cost and expense for the turn-key relocation and construction of: (i) the Railroad Agency Office within the Parking Garage, including without limitation interior design, fit and finish, and together with water, sewer, gas and electrical service lines and in substantially the same or better condition as exists as of the Effective Date, and (ii) the relocation and construction of the ingress and egress referenced in the Railroad Access Easement Covenant in substantially the same or better condition as exists as of the Effective Date, in both instances of (i) and (ii) using new materials and in accordance with all applicable laws, rules, regulations and ordinances and in accordance with the Amendment and Relocation Agreement. Upon Substantial Completion of the relocated Railroad Agency Office and the said ingress and egress (either by the City, or by DSA pursuant to Section 8(b) above), the City shall, and hereby does agree to, assume the Railroad Access Easement Covenant and all obligations of DSA set forth in the Railroad Deed or otherwise applicable to the Railroad Agency Office, including the Amendment and Relocation Agreement, and such agreement shall be memorialized by an instrument signed by the Parties and recorded at the Registry at DSA's sole cost and expense.

9. **Community Space.** On or before the fourth (4th) anniversary of the Effective Date, DSA shall, at DSA's option, cause either of the following to occur: (a) the

transfer of good and marketable title to Lot 2 by warranty deed to the City, subject to all matters of public record existing as of the Effective Date or subsequently jointly created or assented to by the Parties, and further subject to a restriction in said deed prohibiting permanent structures and/or buildings within thirty (30) feet of the lot line between Lot 2 and Lot 3; or (b) pay the City the sum of Eight Hundred Thousand Dollars (\$800,000.00); provided, however, that neither (a) nor (b) need occur if the City refuses for any reason to accept the Lot 2 warranty deed referenced in (a) and tendered by DSA within said four year period. The aforesaid date may, at DSA's option, be extended by Force Majeure to a date not more than two (2) years subsequent to said date, upon the City's receipt prior to said date of written notice of the extension to a date set forth therein (and consistent with the foregoing). The payment or performance obligation of DSA pursuant to this Section 9 shall be secured by a statutory power of sale mortgage encumbering Lot 2 in form and substance attached hereto as Schedule 9 (the "Mortgage") which Mortgage shall be recorded with the Registry on the Effective Date of this Agreement and contain a due on sale clause which excludes transfers to affiliates of DSA. In the event of a dedication or transfer of Lot 2 to the City pursuant to this Section 9, the City shall maintain the Community Space thereon as an attractive, park-like public community space that generally enhances and does not cause disruption to the neighborhood.

10. Recording of Subdivision Plan, Mortgage, Easements and Other Instruments. Each of the below referenced Subdivision Plan, Mortgage, easements and other instruments shall be executed and delivered in recordable form by the applicable Party on or before the following dates, and subsequently recorded at Registry with each Party being responsible for any transfer tax assessed against the Party with respect to said document, and the grantee or its equivalent responsible for recording fees and L-Chip costs required to be paid at the time of such recording:

- a. Subdivision Plan on or before the Effective Date;
- b. Mortgage on or before the Effective Date;
- c. Amendment of DSA Access Easement to include Gray Trust Parcel Access Easement on or before the earlier of the date the City acquires the Gray Trust Parcel or six (6) months from the Effective Date;
- d. Termination of the Municipal Waterline Easement on or before the Anticipated Completion Date;
- e. Assumption of relocated Railroad Agency Office obligations and Railroad Access Easement Covenant on or before Substantial Completion of the Parking Garage, or Substantial Completion of the relocated Railroad Agency Office on Lot 1 by DSA as contemplated by Section 8(e) of this Agreement;
- f. An agreement in recordable form between the City and DSA, their successors and assigns, attached hereto as Schedule 10(f) as shall be amended to cause the same to be sufficient to cause the DSA Parking Garage Spaces and the DSA Flex Parking Spaces (to the extent any DSA Flex Parking Spaces are required) to count toward any parking for the DSA Project required by the City's zoning ordinance, including without limitation to satisfy Section 10.1113.10 of the City's zoning ordinance relative to the Proximity to Principal Use of parking spaces with respect to DSA's Project, and in which the City will provide DSA with the DSA Parking Garage Spaces and the DSA Flex Parking Spaces (to the extent any DSA Flex Parking Spaces are required)

for an unlimited duration. Said agreement shall be recorded on or before Substantial Completion of the Parking Garage.

- g. Additional easements and notices of lease contemplated by Section 7 of this Agreement on or before a date which is reasonable under the circumstances of the easement or lease.

11. Removal of Encroaching Building. On or before the one hundred and twentieth (120th) day following the Removal Cost Approval Date (as defined below), DSA shall remove that certain existing building labeled on the Subdivision Plan as a "1 Story Building" and also shown on the Disposition Plan being primarily located on Lot 1 but encroaching onto Lot 2, as well as the three other buildings shown on said Subdivision Plan located on Lot 1. The City shall cooperate and provide DSA with reasonable access to its rights and properties to accomplish the same, and shall further reimburse DSA within sixty (60) days of written demand for the costs and expenses previously approved by the Portsmouth City Manager in the Portsmouth City Manager's reasonable and good faith discretion (the date of such approval being the "Removal Cost Approval Date") and actually incurred by DSA from time to time with respect thereto, including without limitation an amount not to exceed Ten Thousand Dollars (\$10,000.00) for the environmental demolition surveys and testing by DSA's consultant(s).

12. Default. In the event of either Party's default in the performance of its obligations under this Agreement, the non-defaulting Party shall be entitled to all remedies set forth in this Agreement or otherwise available, at law or in equity on a non-exclusive, non-cumulative basis; provided, however, that neither Party shall be entitled to consequential damages, including without limitation lost profits, under any circumstance.

13. Miscellaneous Provisions.

13.1 Notices. All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed given when personally delivered to the Party to be given such notice or other communication or on the business day following the day such notice or other communication is sent by overnight courier, to the following:

If to the Buyer:	At the address set forth in the first paragraph of this Agreement
with a copy to:	Robert P. Sullivan, City Attorney City of Portsmouth 1 Junkins Avenue Portsmouth, NH 03801
If to the Seller:	At the address set forth in the first paragraph of this Agreement
with a copy to:	Denis O. Robinson, Esq. Pierce Atwood LLP One New Hampshire Avenue, Suite 350 Portsmouth, New Hampshire 03801

or to such other address as the Parties may designate in writing.

13.2 *Benefit and Assignment.* This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors, assigns, heirs and legal representatives.

13.3 *Counterparts.* This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same instrument.

13.4 *Severability.* No determination that any provision of this Agreement or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other provision hereof, or (b) such provision in any circumstances not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed whenever possible as being consistent with, applicable law.

13.5 *Headings.* The headings to the various Sections and paragraphs of this Agreement have been inserted for convenient reference only, and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Agreement.

13.6 *Construction.* In this Agreement, where applicable, words used in the singular form shall be construed as though they also are used in the plural form, and vice versa, and the masculine gender shall include the feminine and neuter genders, and vice versa.

13.7 *Entire Agreement.* This Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous written or oral statements, promises, understandings or agreements with respect thereto. The Parties agree and acknowledge that (a) this Agreement has not been entered into under undue time pressure, and that all Parties have had an adequate opportunity to review this Agreement with counsel, (b) no oral assurances have been given by any Party that this Agreement is an interim agreement or that a more comprehensive agreement is or will be forthcoming, (c) there are no oral conditions or promises that supplement or modify this Agreement, and (d) this Section 13.7 does not constitute "boilerplate", but rather is a critical substantive provision of this Agreement.

13.8 *Choice of Law.* This Agreement shall be interpreted according to the laws of the State of New Hampshire.

13.9 *Amendment.* The provision of this Agreement may be modified or amended in whole or in part only with the consent of the Parties hereto, their successors and permitted assigns, in a written instrument duly executed and delivered.

[Remainder of page blank – signature pages to follow]

In Witness Whereof we have herein set our hands and seals to this Post Closing Obligations Agreement effective as of the Effective Date.

THE CITY OF PORTSMOUTH, NEW HAMPSHIRE

By: _____ Date: _____
Name:
Title:

DEER STREET ASSOCIATES
By its general partner

DSA Rogers, LLC
By its manager

G.L. Rogers & Co., Inc.

By: _____ Date: _____
Name:
Title:

Schedule 1.11
Deer Street Extension Parcel Legal Description

Schedule 1.14
Disposition Plan

Schedule 1.23
Gray Trust Parcel Legal Description

Schedule 1.41
Subdivision Plan

Schedule 9
Mortgage

Schedule 10(f)
DSA Parking Spaces Agreement

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, MARCH 14, 2016

PORTSMOUTH, NH
TIME: 7:00PM [or thereafter]

Recessed from the March 7, 2016 City Council meeting

Present: Mayor Blalock, Assistant Mayor Splaine, Councilors Perkins, Dwyer, Lown, Pearson, Spear (via conference call); Cyr and Denton

Mayor Blalock declared the meeting out of recess.

Councilor Lown moved to suspend the rules in order to take up Item IX A. – Adoption of Resolution authorizing a Bond Issue and/or Notes of the City under the Municipal Finance Act and/or Participation in the State Revolving Fund (SRF) Loan of up to Seventy Five Million Dollars (\$75,000,000.00) for Costs related for the Construction of the Peirce Island Wastewater Treatment Facility. Seconded by Councilor Pearson.

On a unanimous roll call vote 9-0, main motion passed.

IX. A. Adoption of Resolution Authorizing a Bond Issue and/or Notes of the City under the Municipal Finance Act and/or Participation in the State Revolving Fund (SRF) Loan of up to Seventy Five Million Dollars (\$75,000,000.00) for Costs related for the Construction of the Peirce Island Wastewater Treatment Facility

Councilor Lown moved to adopt a Resolution Authorizing a Bond Issue and/or Notes of the City under the Municipal Finance Act and/or Participation in the State Revolving Fund (SRF) Loan of up to Seventy Five Million Dollars (\$75,000,000.00) for Costs related for the Construction of the Peirce Island Wastewater Treatment Facility. Seconded by Councilor Pearson.

Assistant Mayor Splaine thanked the staff for answering the questions proposed regarding the Wastewater Treatment Facility.

Assistant Mayor Splaine moved to amend and remove the word Peirce Island from the Resolution. Seconded by Councilor Denton.

Assistant Mayor Splaine said we still have much to learn on this issue and we need to open the discussion a little longer over the next several weeks. He said there has been no discussion of Pease versus Peirce Island for another public hearing if the amendment was to pass.

Councilor Denton asked for an explanation of why the location could not be removed from the bond.

City Attorney Sullivan said the SRF is contingent upon building at the Peirce Island site as well as the City Consent Degree obligations do not allow for changes in the plan at this point there simply is not time.

Councilor Dwyer said she would vote no at this point and would like to have another motion to have discussion on the transportation options.

On a roll call vote 8-1, motion to amend ***failed*** to pass. Councilors Perkins, Dwyer, Lown, Pearson, Spear, Cyr, Denton and Mayor Blalock voted in favor. Assistant Mayor Splaine voted opposed.

Councilor Lown said that time is of the essence and we need to move now on this matter. He further stated that Pease is not a viable option.

Councilor Dwyer said some people think the plant will cover the island and that is a question that needs to be explained. She asked what is the process and how do we know it can stay in the foot print.

Water/Sewer Engineer Desmarais spoke to the BAF technology that will be used for the plant and the design of the plant keeps it within the fence line.

Councilor Pearson said there is a concern on the increase in houses and hotels and how that would effect the plant and if it could handle the additional capacity. Engineer Desmarais said the plant will handle on average 6.1 million gallons per day.

Assistant Mayor Splaine spoke to the future and concern with what additional requirements may come down from the EPA in 20-50 years. Engineer Desmarais said we can't predict the future but we have the option to reduce with sewer separation and that would be dealt with in the future. Assistant Mayor Splaine said can we agree that people have a point with the need to build out would be required in the future and there is a need for a discussion of a regional plant. Engineer Desmarais said he does not share Assistant Mayor Splaine's opinion.

Councilor Dwyer asked why other communities we approached made other decisions on a regional plant. Public Works Director Rice said a Committee was formed to study a regional plant and the project turned into an against growth discussion and the Conservation Law Foundation came forward and said every community needed to go their own way. He said the recommendation from the Committee did not support a regional approach.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said he does not vote on the wastewater treatment plant lightly. He said there will be some inconvenience during the construction but we need to stop violating the clean water act. He said if he thought it was going to ruin the island he would vote no. He indicated that the boat launch and the pool will all be accessible and the plant will remain in the fence line. Mayor Blalock said we are not taking anything away and we are going to try and bring in as much construction materials by barge. He said this is not an easy decision but feels we are making the right decision.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Assistant Mayor Splaine said he is looking towards the future and every day is a new beginning. He said we need to make better choices and maybe we are not doing the best job we can tonight. He said we need to do more things regionally and we will have to do something more at Peirce Island and Pease in the future.

Public Works Director Rice said it takes partnerships to move forward in that way and we have difficulty getting smaller communities to spend money.

Assistant Mayor Splaine said there will be impacts to the dog park at Peirce Island during construction. Public Works Director Rice said a Joint Work Session with the Council, Peirce Island Committee, Parking & Traffic Safety Committee, Recreation Board and Trustees of the Trust Fund will take place to address more details. He said we need to identify times when contractors can't work.

City Manager Bohenko said answers to the questions asked have been provided to the City Council and are available in the back of the room for members of the audience and they are also on the website for review.

Assistant Mayor Splaine said he is against the motion and said we need to preserve Peirce Island for the future. He said we do not know what the EPA will ask of us in the future and we need to find a way to work with the PDA for expansion of the plant at Pease and that it could be a regional plant in time. He further stated he wants to clean up the river and preserve the recreational areas at Peirce Island.

On a roll call 8-1, voted to adopt a Resolution Authorizing a Bond Issue and/or Notes of the City under the Municipal Finance Act and/or Participation in the State Revolving Fund (SRF) Loan of up to Seventy Five Million Dollars (\$75,000,000.00) for Costs related for the Construction of the Peirce Island Wastewater Treatment Facility. Councilors Perkins, Dwyer, Lown, Pearson, Spear, Cyr, Denton and Mayor Blalock voted in favor. Assistant Mayor Splaine voted opposed.

At 7:50 p.m., Mayor Blalock declared a brief recess.

Councilor Spear no longer participated in the meeting at 7:55 p.m. and ended the conference call.

At 8:00 p.m., Mayor Blalock called the meeting back to order.

Councilor Dwyer moved to direct the City Manager to develop one or more bid alts for the Peirce Island Wastewater Treatment Facility Upgrades for the delivery and removal of equipment and materials by water and further required a public hearing on the transportation alternatives when appropriate. Seconded by Councilor Lown.

Councilor Perkins said it is important to include the alternative transportation and make sure it is an option for the contractors because we don't want to disqualify the best contractor from the bid. She said she does not want the City to evaluate contracts on price alone. City Manager Bohenko said we would put bid alts as part of the bid document to make sure they meet all the requirements.

Councilor Dwyer said contingencies are built into the cost and if the price is much higher she would want to bring that back and have a public hearing on it. She said we have heard from people all over the community to move forward on the project.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said that this was a difficult decision. He said to come in by barge he feels we can mitigate much of the concerns.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Councilor Pearson said she has data for the area and the economic impact the cultural organizations bring into the City and will she be able to provide that information to the contractor and staff. City Manager Bohenko said he would work with Councilor Person on that and we will also have the same answers to everyone. He said there will be contractors that will send in questions as they prepare their bid and you send the answers to all bidders.

On a unanimous roll call vote 8-0, motion passed.

Councilor Lown said he is on the Parking & Traffic Safety Committee and saw the plans and many expressed concern on the number of trucks going into the south end and the length of the trucks was a concern as well as curb cuts. He said the individuals that spoke to the Committee made a difference and they will respond and do what they can to assist in the impacts.

Assistant Mayor Splaine said he would support the motion but wanted to make the motion contingent on 90% could be done by barge and appropriate the necessary funds needed. He said the City Council has been dealing with this for years and he wants to see a public hearing on mitigation. He said we should make a commitment on the funding needed.

Councilor Cyr said there is a perception from some of the community that we would not go through with barges. He said we should find a way to comment on it that is some what official. He said we have funds in a contingency and would like to move forward.

Assistant Mayor Splaine asked if there is a way to have it stated as the Council's intent that the City Manager assure through the application of bidding contract that most of the project would be done by marine. City Attorney Sullivan said it is not possible as there is no data to support it and it is too preliminary.

Councilor Dwyer said the intent of the motion is to accept an add alt that also was to move materials by barge.

Assistant Mayor Splaine moved that it is the intention of the City Council that in the bids 60%-90% of construction will be by barge or marine alts. Seconded by Councilor Dwyer.

Councilor Pearson said there are many that are 100% committed to this and the Council wants this to happen.

Councilor Lown said the motion has no meaning it is just a statement. He said we should not commit ourselves to a percentage as it is the hope to do this.

Councilor Perkins said she agrees we are all trying to do this but it is a serious amount of money and she would need more facts.

On a unanimous roll call vote 8-0, motion passed.

VII. PUBLIC HEARING

- B. RESOLUTION AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM UNASSIGNED FUND BALANCE FOR NECESSARY EXPENDITURES RELATED TO MIDDLE SCHOOL CONSTRUCTION OF UP TO SIX HUNDRED FIFTY THOUSAND (\$650,000.00) DOLLARS

Mayor Blalock read the legal notice, declared the public hearing open and called for speakers.

Paul Mandle spoke in favor of the Resolution and said that this has been a long process. He said Parrott Avenue was not the perfect choice but the one that was decided upon. He said that we are now reaching the original construction costs.

With no further speakers, Mayor Blalock closed the public hearing.

VIII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Police Department Grant in the amount of \$30,000.00 from the NH Department of Justice for the 2016 Violence Against Women Grant Program

Councilor Lown moved to approve and accept the grant to the Portsmouth Police Department. Seconded by Councilor Cyr and voted.

- B. Approval and Acceptance of Donation Re: Bench from Richard and Janice Trafton in memory of their daughter Catherine Trafton in the amount of \$2,000.00

Councilor Lown moved to approve and accept the donation for a memorial bench, as presented. Seconded by Councilor Perkins and voted.

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- B. Adoption of Resolution Authorizing a Supplemental Appropriation from Unassigned Fund Balance for Necessary Expenditures related to Middle School Construction of up to Six Hundred Fifty Thousand (\$650,000.00) Dollars

Assistant Mayor Splaine moved to adopt a Resolution authorizing a supplemental appropriation from Unassigned Fund Balance the sum of up to Six Hundred Fifty Thousand (\$650,000.00) Dollars for Necessary Expenditures Related to the Middle School Construction, as presented. Seconded by Councilor Lown.

Deputy City Attorney Woodland reported over the last two years the 1930 structure of the building has experienced settlement which is beyond what is acceptable. She said that we are providing another level of shoring and we want it to have a long term benefit.

Councilor Dwyer said we need to go out to bid while the kids are out of school. She said it is the intent to pay the funds back from the settlement the City receives.

On a unanimous roll call vote 8-0, motion passed.

X. CONSENT AGENDA

- A. Letter from Deidre Reynolds, NH Chapter Leader for Moms Demand Action requesting permission to hold a Mother's Day week Bridge Walk for Gun Sense and to honor victims of gun violence on May 14, 2016 **(Anticipated action – move to refer to the City Manager with power)**
- B. Letter from Molly Bolster, Executive Director and Matt Glenn, Captain, Gundalow Company requesting the use of Peirce Island launch ramp and related parking area for the Round Island Regatta on July 30, 2016 **(Anticipated action – move to refer to the City Manager with power)**
- C. Letter from Richard B. Wagner, Executive Director of AIDS Response Seacoast requesting permission to conduct the 20th Annual Seacoast AIDS Walk and Dog Walk on Sunday, May 1, 2016 **(Anticipated action – move to refer to the City Manager with power)**
- D. Request for Approval of Pole License to install 2 replacement poles located on Market and Bow Street intersection **(Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)**
- E. Request for Approval of Pole License to install 1 replacement pole with guy-wire located on Sagamore Avenue **(Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)**
- F. Request for Approval of Pole License to install 1 replacement pole and guy-wire located on Sherburne Avenue approximately 120' from Elwyn Avenue intersection **(Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)**

Councilor Lown moved to adopt the Consent Agenda. Seconded by Councilor Perkins and voted.

XI. PRESENTATION AND CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Joseph R. Russell, Attorney for Maplewood Ridge LLC, Re: Request for Zoning Amendment – 678 Maplewood Avenue Parcel One (Tax Map 220, Lot 89) Parcel Two (Tax Map 220, Lot 90)

Councilor Lown moved to refer to the Planning Board for report back. Seconded by Perkins.

Councilor Dwyer asked if this is the same item that the Council referred to the Planning Board in the past. Planning Director Taintor said this is the same area that came before the Council but this is a smaller parcel.

Motion passed.

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Peirce Island Consent Decree Second Modification with Environmental Protection Agency (EPA) et al.

Deputy City Attorney Woodland spoke on the new schedule for mitigation. She said that we have a schedule appropriate for Peirce Island and there would not be a second and third shift or weekend work. She said when you have multiple shifts you could incur errors. She reported on expectant dates of completion of various aspects of the project. She indicated the project substantial completion date is May 2020. Deputy City Attorney Woodland spoke to chemically enhanced settling performance study. She said we are trying to get removal of nitrogen TN 8 mg/L over a 5 year period following start up. She addressed the stormwater project which is an investment of \$500,000.00 with a completion date targeted at three years. In addition, she said there will be a sewer extension project to address Sagamore Avenue low pressure sewer system with an estimated cost of \$2.5 million and completion date of June 2022. She also addressed the water quality/ecosystem health project that is a \$500,000 investment over 5 years.

Councilor Denton asked if any of the projects are part of the CIP. Deputy City Attorney Woodland said the projects have been identified for a number of years and we would recoup cost from people tying into the system. Councilor Denton said the stormwater project is the first project we would recoup funds from.

Councilor Cyr said there is a principal forgiveness of 5%. He said we have funds available and do we need to go through the CIP. City Manager Bohenko said the funds will come in as anticipated revenues.

Assistant Mayor Splaine asked if people need to buy in when connections are made on the street. City Manager Bohenko said the amount is based on their frontage and would give individuals 5-10 years to pay back.

Councilor Dwyer asked if it is voluntary tie in. City Manager Bohenko said it is voluntary as long as your septic system does not fail.

Councilor Lown moved to authorize the City Manager to execute the Consent Decree Second Modification relative to the Peirce Island Wastewater Treatment Facility Upgrade, as presented. Seconded by Councilor Perkins and voted.

2. Adoption of the Capital Improvement Plan (CIP) FY2017-2022

Councilor Lown moved to adopt the Capital Improvement Plan for FY 2017-2022. Seconded by Councilor Perkins.

At 8:50 p.m., Mayor Blalock called a brief recess. At 9:00 p.m., Mayor Blalock called the meeting back to order.

Councilor Lown moved to amend page 67 - Multi-Purpose Recreation Field (Former Stump Dump) by the addition of \$1,750,000.00 under the Bond/Lease Column and the addition of \$250,000.00 under the Public/Private Partnership Column. Seconded by Assistant Mayor Splaine.

Councilor Dwyer said she likes the idea of moving the project up but she is not sure that bonding is the way to go. She said she would like to use the Daniel Street Trust funds. City Manager Bohenko said when the project comes back he would provide an option for the City Council.

Motion passed.

Councilor Lown moved to amend page 63 – Reuse of Paul A Doble Army Reserve Center by deleting \$50,000.00. Seconded by Councilor Denton.

Councilor Lown said he is not in favor of accepting the Doble property and feels we should not pursue getting the property. He said it would result in a \$2,000,000.00 renovation and the cost to operate a Senior Center at the location.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said he would not vote in favor of the motion.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Assistant Mayor Splaine said he agrees with Mayor Blalock.

Councilor Dwyer said she would not support the motion.

Motion failed to pass on a 1-7 voice vote. Councilor Lown voted in favor. Assistant Mayor Splaine, Councilors Perkins, Dwyer, Pearson, Cyr, Denton and Mayor Blalock voted opposed.

Councilor Dwyer moved to amend page 64 – Park and Playground Improvements by the addition of \$50,000.00 for FY '18, FY '20 and FY '22. Seconded by Assistant Mayor Splaine.

Councilor Dwyer said she would like to see a playground at the Library and the Granite Street field. She said Councilor Spear is interested in a downtown playground.

Motion passed.

Councilor Dwyer moved to amend page 50 - Fire Station Three Renovations by moving the \$610,000.00 in funds out to FY '18. Seconded by Councilor Lown.

Assistant Mayor Splaine said he would like to see a work session after the budget session in June set up with the Fire Department and Police Department on how the future may look for both services.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said he would not vote to push out the funding beyond FY18.

City Manager Bohenko spoke to interim renovations that were done to Fire Station 3 which totaled \$110,000.00 and that this would be a bond item that would come back to the City Council.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Councilor Dwyer said everyone seems interested in campus style facilities.

Councilor Lown said Fire Station 3 has some structural draw backs and feels that the current location is the best location. He said he is conflicted on the decision.

Mayor Blalock passed the gavel to Assistant Mayor Blalock.

Mayor Blalock said he feels the funding should remain.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Councilor Cyr said by leaving the funding in the CIP and having a work session later we can still have a conversation on the matter.

City Manager Bohenko said we would bundle items 3-5 and vote and have a better view of what will happen when we look in the third quarter.

On a 1-7 voice vote motion failed to pass. Councilor Dwyer voted in favor. Assistant Mayor Splaine, Councilors Perkins, Lown, Pearson, Cyr, Denton and Mayor Blalock voted opposed.

Councilor Pearson moved to amend page 103 – Elwyn Park Sidewalks Phase I by moving the \$98,000.00 in funds up to FY '18. Seconded by Assistant Mayor Splaine.

City Manager Bohenko said we could look into this.

Public Works Director Rice said the area has been looked at and it is challenging to get sidewalks through. He said there are sidewalks in the area that do not function and are not connected.

Assistant Mayor Splaine asked for an update on the Peverly Hill Road and Banfield Road projects. Public Works Director Rice said Peverly Hill Road approval is at the State currently and we should hear from the Department of Transportation this week. He said that a traffic impact study would be done on Banfield Road and Water Country will share in the funding. He further stated we are waiting for the letter from Water Country regarding the sharing of the funding for the study.

Motion passed unanimously.

Councilor Pearson asked about the outdoor pool upgrade. City Manager Bohenko said we are doing the project this year because the liner and gutter need to be improved. Public Works Director Rice said the project would be done in the fall after the pool has closed.

Main motion passed to adopt the CIP, as amended.

City Manager's Informational Item

2. Report Back Re: Riverbrook Condos-Water and Sewer Billing and Trash Removal Costs

Councilor Dwyer asked about the water and sewer billing and trash removal requests. Deputy Public Works Director Goetz said most condos have a meter and a number of condos have wanted to go to their own meters and the tier billing. He said they reviewed this matter and while the consumption charges would be reduced because of more water being billed at the lower tier rate, the monthly service fees would go up.

B. MAYOR BLALOCK

1. Appointments to be Considered:
 - Richard Winstanley reappointment to the Cable Television & Communications Commission
 - Colby Gamester reappointment to the Planning Board
 - Todd Henley reappointment to the Recreation Board
 - Tristan Law reappointment to the Transportation Service Commission
 - Mike Merando appointment to the Transportation Service Commission

The City Council considered the appointments which will be voted on at the next City Council meeting.

Assistant Mayor Splaine said because the Transportation Services Commission is meeting this week could we suspend the rules to vote on the two appointments this evening.

Councilor Cyr said it would be fine to move the appointments forward this evening.

Assistant Mayor Splaine moved to suspend the rules in order to act on the appointments of Tristan Law and Mike Merando to the Transportation Service Commission. Seconded by Councilor Denton and voted.

Assistant Mayor Splaine moved to reappoint Tristan Law and appoint Mike Merando to the Transportation Service Commission until December 31, 2017. Seconded by Councilor Denton and voted.

2. *Working Group Re: Deer Street Property Negotiations
 - Councilor Perkins
 - Councilor Lown
 - Councilor Spear

Mayor Blalock announced he has appointed Councilors Perkins, Lown and Spear to a Working Group regarding Deer Street Property Negotiations.

C. ASSISTANT MAYOR SPLAINE

1. Request for an updated appraisal of the land considered for purchase for the parking garage

Assistant Mayor Splaine moved to request the City Manager to solicit an independent appraisal company to appraise the proposed Deer Street Parking Center. Seconded by Councilor Denton.

Assistant Mayor Splaine said he would like to have another appraisal of the land.

Councilor Dwyer said she would like this matter placed on the first agenda of the Working Group.

Assistant Mayor Splaine said he would accept a motion to table until the next Council meeting.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said the Working Group needs to have time to work. He said the land is worth what we are willing to pay for it. He said he would be in favor of an appraisal if it was part of eminent domain. He would like to give the group until April 4th to do some work and come back to the Council.

Councilor Lown said an appraisal does not advance the process at all.

Councilor Denton said he would like to see an appraisal because of the contaminated land. He said if we went ahead would that factor into our current deadlines for the property. City Attorney Sullivan said the seller is inpatient but there is no current deadline.

Councilor Dwyer moved to table the motion until we receive a report back from the Working Group at the April 4, 2016 City Council meeting. Seconded by Assistant Mayor Splaine.

Assistant Mayor Splaine said we need to know how much it is really worth. He said he is against eminent domain and the owner needs to know that is an option for the City Council.

Councilor Pearson said she wants to caution against more appraisals, more studies and more delays. She said there was a unanimous vote last spring by the Council to do the work that needs to be done. She said we had a free lot at the Worth Lot and now we need to pay and voting on a delay means no parking garage for a longer period of time.

Motion to table passed.

D. COUNCILOR LOWN

1. Parking & Traffic Safety Action Sheet and Minutes of the February 4, 2016 meeting

Councilor Cyr moved to approve and accept the action sheet and minutes of the February 4, 2016 Parking & Traffic Safety Committee meeting. Seconded by Councilor Dwyer and voted.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

XIV. ADJOURNMENT

At 9:45 p.m., Councilor Dwyer moved to adjourn. Seconded by Councilor Perkins and voted.



Kelli L. Barnaby, MMC, CMC, CNHMC
City Clerk

PORTSMOUTH POLICE DEPARTMENT

MEMORANDUM

RECEIVED

MAR 30 2016

CITY MANAGER
PORTSMOUTH, NH

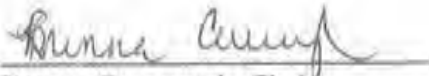
DATE: MARCH 22ND, 2016
TO: JOHN P. BOHENKO, CITY MANAGER
FROM: BRENNA CAVANAUGH, CHAIR, PORTSMOUTH POLICE COMMISSION
DAVID J. MARA, CHIEF OF POLICE
RE: GRANT & DONATIONS

At the March 22nd, 2016 monthly Police Commission meeting, the Board of Police Commissioners approved and accepted the following donations and grant:

1. Donations:
 - a.) Donations in support of the Explorer Cadets as follows:
 - 1.) Donation of a \$30 Blitz Park gift card by the Police Commission to the Portsmouth Police Trading Card initiative as a program incentive prize.
 - 2.) \$300 from Mr. Jason C. Page, to provide 2 scholarships for the 2016 Explorer Cadet Academy.
 - 3.) \$400 from Mr. & Mrs. David Brown to provide 2 scholarships for the 2016 Explorer Cadet Academy.
2. Grant:
 - a.) A Grant in the amount of \$9,926.40 from the NH Office of Highway Safety for Sustained Traffic Enforcement Patrols (STEP).

We submit the information to you pursuant to City Policy Memorandum #94-36, for the City Council's consideration and approval at their next meeting.

Respectfully submitted,



Brenna Cavanaugh, Chair
Board of Police Commissioners



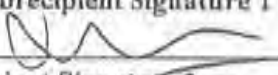
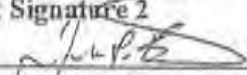
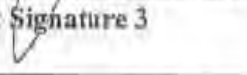
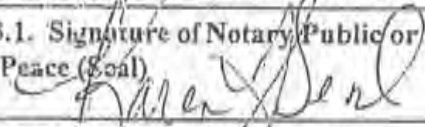

David J. Mara, Chief of Police

copies: Board of Police Commissioners
Finance Director Judie Belanger
Admin. Mgr. Karen Senecal
Business Assistant Tammie Perez

OFFICE OF HIGHWAY SAFETY GRANT AGREEMENT

The State of New Hampshire and the Subrecipient hereby
Mutually agree as follows:
GENERAL PROVISIONS

1. Identification and Definitions.

1.1. State Agency Name New Hampshire Department of Safety Office of Highway Safety		1.2. State Agency Address 33 Hazen Drive, Room 109A Concord, NH 03305	
1.3. Subrecipient Name Portsmouth Police Department		1.4. Subrecipient Address 3 Junkins Ave, Portsmouth, NH 03801	
1.4.1 Subrecipient Type (State Govt, City/Town Govt, County Govt, College/University, Other (Specify) City		1.4.2 DUNS 073976706	
1.5. Subrecipient Phone # 610-7572	1.6. Effective Date 10/01/15	1.7. Completion Date 09/30/16	1.8. Grant Limitation \$9,926.40
1.9. Grant Officer for State Agency LuAnn Speikers		1.10. State Agency Telephone Number 271-2197	
"By signing this form we certify that we have complied with any public meeting requirement for acceptance of this grant, including if applicable RSA 31:95-b."			
1.11. Subrecipient Signature 1 		1.12. Name & Title of Subrecipient Signor 1 DAVID J. MARA, Chief of Police (interim)	
Subrecipient Signature 2 		Name & Title of Subrecipient Signor 2 John P. Bohenko, City Manager	
Subrecipient Signature 3 		Name & Title of Subrecipient Signor 3 Chief 2/22/16	
1.13. Acknowledgment: State of New Hampshire, County of <u>Rockingham</u> , on <u>3/11/16</u> , before the undersigned officer, personally appeared the person(s) identified in block 1.12., known to me (or satisfactorily proven) to be the person(s) whose name is signed in block 1.11., and acknowledged that he/she executed this document in the capacity indicated in block 1.12.			
1.13.1. Signature of Notary Public or Justice of the Peace (Seal) 		1.13.2 Name & Title of Notary Public or Justice of the Peace KAREN A. SENECHAL, Admin. Mgr.	
1.14. State Agency Signature(s) 		1.15. Name & Title of State Agency Signor(s) John Barthelme, DOS Commissioner	
1.16. Approval by Attorney General (Form, Substance and Execution) (if G & C approval required)			
By:		Assistant Attorney General, On: / /	
1.17. Approval by Governor and Council (if applicable)			
By:		On: / /	

KAREN A. SENECHAL
Notary Public, State of New Hampshire
My Commission Expires June 10, 2020

2. SCOPE OF WORK: In exchange for grant funds provided by the State of New Hampshire, acting through the Agency identified in block 1.1 (hereinafter referred to as "the State"), pursuant to RSA 21-P:55-63, the Subrecipient identified in block 1.3 (hereinafter referred to as "the Subrecipient"), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT A (the scope of work being hereinafter referred to as "the Project").

New Hampshire Highway Safety Agency
 78 Regional Drive, Building 2
 Concord, NH 03301
 Telephone: 603-271-2131
hwvsafety@nhhsa.state.nh.us



Application Form
FFY 2016 Sustained Traffic Enforcement Patrol (STEP) Grant Program
Application Due: August 7, 2015

The following Enforcement Patrols are included as part of the overall traffic enforcement grant program: Speed Enforcement, Red Light Running, Operation Safe Commute, CPS Enforcement/Join the NH Clique, OHRV Patrols, School Bus Patrols, Distracted Driving

Part I Contact Information

Applicant Agency and Street Address Portsmouth NH Police Department 3 Junkins Ave. Portsmouth NH 03801	
Chief's First Name Stephen	Chief's Last Name DuBois
Chief's Telephone 603-610-7572	Chief's Email Address sdubois@cityofportsmouth.com
Grant Contact's First Name Frank	Grant Contact's Last Name Warchol
Grant Contact's Telephone 603-610-7630	Grant Contacts Email Address fwarchol@cityofportsmouth.com

Part II Department and Community Profile

Population of your city or town	21,500
Number of full-time officers in your city or town	62
Number of part-time officers in your city or town	22
Number of officers trained in the use of speed enforcement equipment	62
Did your department receive a grant in 2013 or 2014?	yes
If your department received a grant in 2013 or 2014, were all funds used? If not, please explain why.	No for both years....all details were not filled

Part III Local Crash and Enforcement Statistics

This section must be filled out completely for all project applications. If data is unavailable insert (N/A) for not available.

	2012	2013	2014	2015
Total Crashes	673	649	698	673
Injury Crashes	101	103	114	106
Fatal Crashes	0	0	0	0
Impaired Driving Fatal Crashes (Alcohol or Drugs)	0	0	0	0
Speed Related Fatal Crashes	0	0	0	0
Speed Related Crashes	7	11	8	9
Fatal Motorcycle Crashes	0	0	0	0
Motorcycle Crashes	12	16	7	12
Unbelted Fatalities	0	0	0	0
Unbelted Crashes	91	116	115	107
Unbelted Injuries	N/A	N/A	N/A	N/A

Part IV Total Number of Summonses

	2012	2013	2014	2015
All Traffic Summonses	360/1788w	299/1782w	314/2672w	324/2081w
Speed Summonses	89/685w	71/709w	82/1097w	81/830w
CPS/Occupant Restraint Violations*	1	0	3	1
DWI/DUI Arrests (Alcohol & Drugs)	54	57	49	53
Red Light Running Summonses	2	0	0	1
School Bus Violations	22	0	2	8

*Includes enforcement up to 18 years of age

Part V Problem Statement

Please describe the traffic safety (speeding, red light running, bus violations, etc.) problems in your city or town. Please provide specifics detailing the following:

- When the problem is taking place (month, day of week, time of day)
- Where (specific streets, neighborhoods, etc.)
- Who (demographics)
- What (speeding, red light running, bus violations, etc.)
- Other relevant information to your city or town (officer shortages, vacation destination, colleges in town, etc.)

Portsmouth has an incredible amount of motor vehicle activity for its size. There are many one way streets as well as large open areas for vehicles to travel. Nestled amongst those areas are very old neighborhoods as well as new developments which include a large amount of children. Speeding has always been the number 1 quality of life concern in the City of Portsmouth per recent surveys.

Over the last 3 years, our statistics have shown that speeding, red light running, etc are occurring for the majority from 0800hrs until 2100hrs during the week and are less frequent on weekends. The locations where most of the violations are occurring include but are not limited to Greenland Rd, Banfield Rd, Market St, Woodbury Ave, Peveryly Hill Rd, Lafayette Rd, Maplewood Ave, South St and the Route 1 By-Pass.

Part VI Proposed Solution

Please describe your proposed solutions for combatting the problem you described above. Solutions should be linked directly to the data you provided. Please be specific regarding:

- When patrols will take place (month, day of week, time of day)
- Where patrols will take place (specific streets, neighborhoods, etc.)
- What type of patrols will take place (focus on speeding, red light running, etc.)
- Estimated number of patrols hours

The Portsmouth Police Department will conduct 47 3-hour enforcement patrol details (141 hours) during those times when violations are most prevalent. The directed patrols will be implemented evenly between the aforementioned problem streets and times of year when there is an increase in child pedestrian traffic. This will be followed up with deployment of a speed-sign trailer as an additional proactive measure. **This campaign will occur between the hours of 0800-2100.**

Part VII Project Goals

Please provide your department's goals for this grant. Goals must be specific and measurable. For example, "Our department would like to reduce speed related crashes by 10% from 100 to 90 by September 2016."

Through strict enforcement initiatives, the Portsmouth Police Department would like to reduce overall car crashes in our city by 10% from 698 to approximately 630.

--

Part VIII Budget

Funding allocations for this grant are based on the population chart below. However, please see Part IX regarding how your city or town may qualify for additional funds.

Population based on estimated 2010 Census	Maximum award per Applicant
Less than 10,000	\$3,500
10,000-14,999	\$7,500
15,000-24,999	\$10,000
25,000-49,999	\$15,000
50,000-99,999	\$30,000
+100,000	\$50,000
Counties	\$5,000

Please provide a budget indicating how much you can realistically spend on this project. Budget should be based on your proposed number of hours and payroll deductions (Only FICA, Medicare, and retirement). Overtime rate does not need to be based on the maximum available rate.

Estimated Total # of Enforcement Hours	Estimated Average OT Hourly Rate	Estimated Payroll Deductions	Requested Award Amount for Enforcement
141	\$55.00	\$2,171.40	\$9,926.40

Please also provide the amount of matching funds you intend to contribute to this project. Matching funds are your department's contribution to this project. For example, additional enforcement patrols, fuel costs, administrative time, and supervisor's time that are not funded by this grant.

Item	Cost	Total

Part IX Additional Information

The NNHSA realizes that some police departments have the ability to spend more than the allocated amounts in Part VIII. If you believe your department falls in this category, please provide a justification below. This should include:

- A justification for a higher amount (for example, your population increases substantially during certain times of the year)
- A detailed description of how much your department was awarded in previous years and how much was spent
- A description of how additional funds will be spent.

From: Farinella, Deborah

Sent: Wednesday, March 09, 2016 9:27 AM

To: 'sdubois@cityofportsmouth.com'

Cc: Spelkers, Luann

Subject: Portsmouth Step Grant - Project #315-16A-024 Final Approval

It is my pleasure to inform you that the Office of Highway Safety has approved your attached highway safety Grant Agreement.

This approval obligates federal funds in the amount designated within your Grant Agreement. Your Grant Agreement has an effective date of **October 1, 2015**.

Please be aware that Enforcement patrol reimbursements along with match documentation are required to be made quarterly and are due as referenced in your Grant Agreement.

Equipment reimbursements shall be submitted with copies of the invoice(s) dated within the contract period and a copy of the cancelled check showing the equipment was paid in full. Requests for reimbursement shall be submitted 20 days after payment for equipment. **Equipment invoices shall include the serial number of purchased equipment.

We look forward to working with you to achieve the common goal to minimize potential crashes and the unnecessary deaths and injuries that occur on our New Hampshire roadways. Thank you.

Sincerely,

John Clegg
Program Manager

Debbie

Deborah Farinella
Administrative Supervisor
Office of Highway Safety
33 Hazen Drive, Room 109A
Concord, NH 03305
Telephone: 603-271-2132
Fax: 603-271-3790
email: deborah.farinella@dos.nh.gov

City of Portsmouth

Department of Public Works



MEMORANDUM

TO: John P. Bohenko, City Manager

FROM: Brian Goetz, Deputy Director of Public Works

DATE: March 16, 2016

SUBJECT: Irrigation Meter Ordinance

Chapter 11 Section 11.216:B of the City's Ordinance currently allows single-family residential water customers on the City's water and sewer system to have separate irrigation meters which are only billed for water usage:

Sewer user charges shall be based upon water use whenever possible. No allowance shall be made for watering lawns, watering gardens or washing cars, except for single residential customers who have installed at their cost a second meter, meeting the specifications determined by the Water Department to measure water use which is reasonably calculated not to be discharged into the sewer system. Where such second meters have been installed, a separate account will be established and no sewer charges will be applied to this usage. (Amended 11/17/97)

The issue of irrigation meters was brought forward to City Council last year. The proposal at that time was to eliminate the option of irrigation meters for all customers. That City Council took no action on that ordinance revision, therefore, it expired.

Through research and work of our Water/Sewer rate consultant, David Hyder, we have determined that the current practice in New England and throughout the rest of the country is to allow for irrigation meters for all customers. Mr. Hyder also added that communities that offer these meters, 1) take care in pricing irrigation water, and 2) maintain detailed ordinances that govern the use of irrigation meters. He also analyzed the projected water demand that increasing the availability of irrigation meters to these customers would have on our system and provided a recommendation that the tiered pricing structure of irrigation customers be increased to reflect the true cost of service for this water.

Therefore, the attached ordinance, drafted together with City Attorney Sullivan, expands irrigation meters to all customer classes. However, to address the impact that this policy would have on water system demand, especially during summer months, the ordinance prescribes the steps that new customers would be required to address with this water service. These include:

- City would approve only landscape irrigation systems designed and installed an EPA WaterSense Certified professional
- Requiring that in-ground irrigation systems include moisture sensors
- Restricting irrigation usage to specific days or periods of time
- Enable the City to restrict the use of irrigation meters during periods of drought

Currently, residential customers who have irrigation meters pay for water based on the second tiered rate (\$5.00/unit, or \$5.00 for 748 gallons of usage). Our consultant has calculated the true cost of service for these services and has proposed the following tiered rate:

Irrigation Rate Structure	O&M and Capital Rate per CCF	Capacity Use Charge per CCF	Total Irrigation Rate per CCF
0 to 5 Units ⁽¹⁾	\$5.00	-	\$5.00
5 to 15 Units	\$5.00	\$4.70	\$9.70
Over 15 Units ⁽²⁾	\$5.00	\$7.05	\$12.05

I am prepared to present additional information to the City Council at their April 4, 2016 meeting. Please let me know if you need anything more prior to that meeting.

ORDINANCE #
THE CITY OF PORTSMOUTH ORDAINS

That Chapter 11, Article II, Section 11.216 – SEWER USER CHARGES/RECORDS/HOOK-UP of the Ordinances of the City of Portsmouth be amended to read as follows (deletions from existing language ~~stricken in red~~; additions to existing language **bolded in red**; remaining language unchanged from existing):

Section 11.216: SEWER USER CHARGES/RECORDS/HOOK-UP

B.

The owner of any house, building, or property used for human occupancy, employment, recreation or other purposes which is connected to a public sewer shall pay a sewer user charge. The sewer user charge shall be established by the City from time to time to defray the cost of management, maintenance, operation and repair, including replacement, of the municipal waste water system. Sewer user charges shall be based upon water use whenever possible. No allowance shall be made for watering lawns, ~~or watering gardens or washing cars~~, except for ~~single residential~~ customers who have installed at their cost **a an approved irrigation system and a second water meter**, meeting the specifications determined by the Water Department to measure water use which is reasonably calculated not to be discharged into the sewer system. Where such second meters have been installed, a separate account will be established and no sewer charges will be applied to this usage. **A monthly service fee shall be charged for each irrigation meter in addition to the consumption charge, said fee to be determined by the City Council during its annual budget process. (Amended 11/17/97)**

Users of the City of Portsmouth's water system may request a permit for the installation of an irrigation system and irrigation meter. An application must be completed and submitted to the Water Department for the installation of an irrigation system and irrigation meter prior to the issuance of an irrigation permit. The Water Department may deny the issuance of a permit for an irrigation system or irrigation meter when the existing water main does not provide sufficient water volume/pressure to support the demands of an irrigation system without causing unacceptably low water pressure for other customers on the same water main.

Irrigation service lines and meters shall be installed not more than four feet from the prime meter and shall be installed parallel to the prime meter. Sewer charges shall not apply to water amounts measured by irrigation meters. Shut off valves are required ahead and behind the irrigation meter and must be within one foot of the meter. A back flow preventer (approved by the City) to protect against contamination of the water system must be installed behind the irrigation meter.

Only a landscape irrigation system designed and installed by an Environmental Protection Agency Watersense Certified Irrigator in accordance with the criteria set forth in this section shall be deemed to be in compliance with subparagraph

(a) of this section. The Certified Irrigator must certify in writing to the Water Division that the landscape irrigation system has been designed and installed in accordance with subparagraph (a) of this section. This certification shall be provided to the Water Division at the time of requesting final inspection of the system.

(a) Automatic irrigation systems shall:

- (1) Be maintained in compliance with the provisions of this section;**
- (2) Be rendered inoperative by or at the direction of the irrigation system owner or operator pending repairs if damaged in a manner that results in leakage or excessive discharge of water from broken components;**
- (3) Include rain sensors to be installed and maintained on all irrigation systems equipped with automatic irrigation controllers and set to render the irrigation system inoperative at ¼ inch of moisture or more;**
- (4) Include freeze sensors to be installed and maintained on all irrigation systems equipped with automatic irrigation controllers, which will render the system inoperative at 35 degrees Fahrenheit or higher;**
- (5) Be designed so that spray or rotary heads are at least four (4) inches inside from any curbing, sidewalk, fencing, or building;**
- (6) Be designed so that heads spray only towards pervious surface or landscaped area;**
- (7) Be designed to include a zonal irrigation system; and**
- (8) Be designed to include a master valve.**

(b) Operation of irrigation systems or devices.

From April 1 to September 30, landscape irrigation utilizing water, in whole or in part, obtained from the City water system, is prohibited except during the times between 6:00 p.m. and 10:00 a.m. The City Manager, or his or her designee, may further restrict landscape irrigation to specified days of the week or otherwise restrict the irrigation schedule as circumstances dictate.

If records of metered water use are not available or do not reasonable reflect the quantity of waste discharged into the sewage system, the sewer user charge shall be based upon estimated water use or on actual measurement of the volume of waste discharged into the sewer system. Sewer surcharges shall be levied upon users whose waste characteristics are found to be above normal strength. For the purpose of evaluating waste characteristics, the terms of the Report on the Proposed Rates and Charges for Sewer Services by the City of Portsmouth, prepared by Coffin and Richardson, dated June 15, 1976, are incorporated herein by reference.

The City Clerk shall properly alphabetize and/or re-number the ordinance as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon passage.

APPROVED:

Jack Blalock, Mayor

ADOPTED BY COUNCIL:

Kelli L. Barnaby, City Clerk

ORDINANCE #
THE CITY OF PORTSMOUTH ORDAINS

* 2015 Proposed Ordinance

That Chapter 11, Article II, Section 11.216 – SEWER USER CHARGES/RECORDS/HOOK-UP of the Ordinances of the City of Portsmouth be amended to read as follows (deletions from existing language ~~stricken in red~~; additions to existing language **bolded in red**; remaining language unchanged from existing):

Section 11.216: SEWER USER CHARGES/RECORDS/HOOK-UP

B.

The owner of any house, building, or property used for human occupancy, employment, recreation or other purposes which is connected to a public sewer shall pay a sewer user charge. The sewer user charge shall be established by the City from time to time to defray the cost of management, maintenance, operation and repair, including replacement, of the municipal waste water system. Sewer user charges shall be based upon water use whenever possible. ~~No allowance shall be made for watering lawns, watering gardens or washing cars, except for single residential customers who have installed at their cost a second meter, meeting the specifications determined by the Water Department to measure water use which is reasonably calculated not to be discharged into the sewer system. Where such second meters have been installed, a separate account will be established and no sewer charges will be applied to this usage.~~ (Amended 11/17/97)

If records of metered water use are not available or do not reasonable reflect the quantity of waste discharged into the sewage system, the sewer user charge shall be based upon estimated water use or on actual measurement of the volume of waste discharged into the sewer system. Sewer surcharges shall be levied upon users whose waste characteristics are found to be above normal strength. For the purpose of evaluating waste characteristics, the terms of the Report on the Proposed Rates and Charges for Sewer Services by the City of Portsmouth, prepared by Coffin and Richardson, dated June 15, 1976, are incorporated herein by reference.

The City Clerk shall properly alphabetize and/or re-number the ordinance as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon passage.

APPROVED:

Robert J. Lister, Mayor

MEMORANDUM

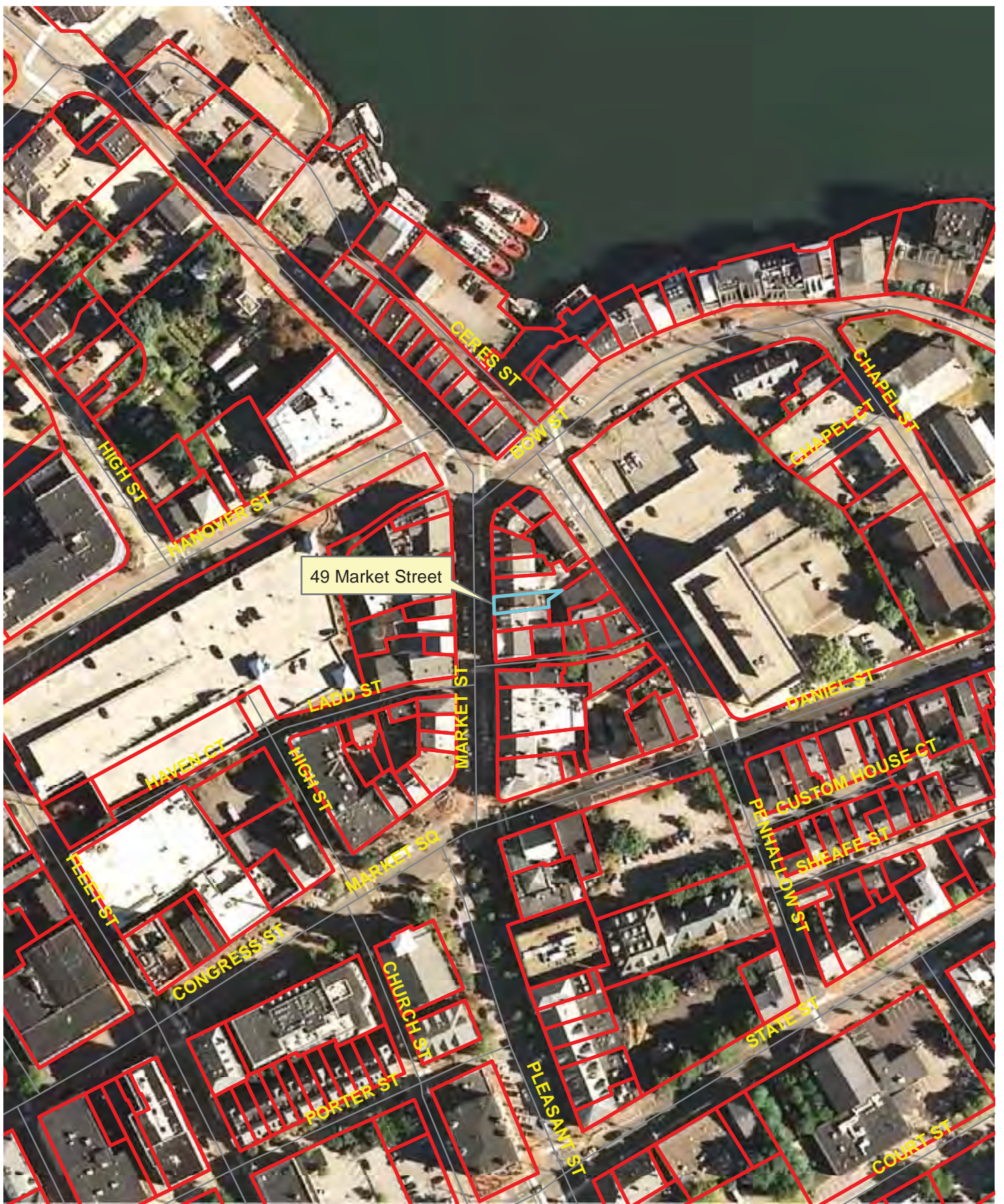
TO: John P. Bohenko, City Manager
FROM: Rick Taintor, Planning Director *RT.*
DATE: March 24, 2016
RE: City Council Referral – Projecting Sign
Address: 49 Market Street
Business Name: Siren Salon
Business Owner: Danielle Short

Permission is being sought to install a projecting sign on an existing bracket, as follows:

Sign dimensions: 24" x 48"
Sign area: 8.0 sq. ft.
Height from sidewalk to bottom of sign: 12'0"

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed. Therefore, I recommend approval of a revocable municipal license, subject to the following conditions:

1. The license shall be approved by the Legal Department as to content and form;
2. Any removal or relocation of the projecting sign, for any reason, shall be done at no cost to the City; and
3. Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.



Request for Projecting Sign License 49 Market Street

Siren Salon
49 Market St. #3
1 Projecting Sign





REVISION:
 All orders under \$250 include 1 revision only.
 All orders over \$250 include 3 revisions only.
 Additional revisions will be charged at \$25 per revision.

PLEASE NOTE:
 Designs are NOT actual size and color may vary depending on printer and/or monitor.

2/18/16

I understand this Order Form is the final production order and replaces all previous drawings, notes and verbal instructions to this job. Standard vinyl & paint colors will be used. Custom colors and specific matches to PMS colors will be an additional fee. I have carefully reviewed this form and verify that it contains all necessary specifications and represents my order. I authorize fabrication according to this approval.

RETURN SIGNED TO: service@portsmouthsign.com

Member of:
THE DOVER
 CHAMBER OF COMMERCE
 GREATER
PORTSMOUTH
 CHAMBER OF COMMERCE
the Greater
York Region
 Chamber of Commerce

SIGNATURE: _____

Date: _____

© COPYRIGHT 2015, BY PORTSMOUTH SIGN COMPANY. All designs and custom artwork remain the property of Portsmouth Sign Company until the order is complete and paid in full.

Shop Use Only

Qty: SS DS

Materials: _____
 Background Color: _____

Vinyl Color: _____
 HP Int

Other: _____

CY

Memo

Kelli L. Barnaby, CMC/CNHMC
City Clerk
1 Junkins Avenue
Portsmouth, NH 03801
603-610-7207
Fax: 603-427-1579
Klbarnaby@cityofportsmouth.com

To: Mayor Jack Blalock and City Council
From: Kelli L. Barnaby, City Clerk
Date: March 31, 2016
Re: 2016 Omnibus Sidewalk Obstruction Renewals

Please find attached the final listing of 2016 Omnibus sidewalk obstruction renewal applications without changes, submitted thus far and that have met the appropriate insurance and fee requirements.

If you should have any questions, please do not hesitate to contact me directly or via e-mail at klbarnaby@cityofportsmouth.com.

cc: John P. Bohenko, City Manager

2016 Sidewalk Obstruction Renewal Applications

<u>Business</u>	<u>LOCATION</u>	<u>FEE</u>	<u>Tables</u>	<u>Chairs</u>	<u>Bench</u>	<u>Planters</u>	<u>Sign</u>	<u>INSURANCE</u>
A Little Bit of Naples	130 Congress ST.	\$60.00					1	9/1/2016
Agave Mexican Bistro (Dos)	111 State St.	\$60.00					1	6/5/2016
Art with a Splash	222 State St.	\$60.00					1	10/1/2016
Bagel Works	9 Congress St.	\$324.00	4	12				12/26/2016
Breaking New Grounds	14 Market Sq.	\$1,194.00	15	42				9/25/2016
Bridge Street Bistrot and Wine Bar	64 Bridge St.	\$60.00					1	1/1/2017
Bull Moose Music	82-86 Congress St.	\$60.00					1	6/1/2016
Canine Cupboard	220 State St.	\$60.00					1	1/1/2017
Ceres Bakery	51 Penhallow St.	\$190.00	2	10				7/15/2016
Chamber of Commerce	500 Market St.	\$60.00					1	4/6/2017
Colby's Breakfast and Lunch	105 Daniel St.	\$60.00					1	10/1/2016
Corks & Curds	13 Commercial Ally	\$60.00					1	11/13/2016
Diversions Puzzles & Games	123 Congress St.	\$60.00					1	7/15/2016
Dos Amigos Burritos	107 State St.	\$148.00	2	4				9/25/2016
Fat Belly's	2 Bow St.	\$60.00					1	9/12/2016
Friends of the Music Hall	104 Congress St.	\$60.00					1	7/1/2016
Geno's Chowder and Sandwich Shop	177 Mechanic St.	\$60.00					1	4/1/2017
Helen Marks	42 Market St.	\$60.00					1	5/19/2016
Izzy's Frozen Yogurt	33 Bow St.	\$60.00					1	7/1/2016
Jumpin Jay's Fish Café	1 Middle St., Suite 1	\$60.00					1	9/25/2016
Kaffee Vonsolln	79 Daniel St.	\$148.00	2	4				8/15/2016
Kitchen on Islington, The	171 Islington St.	\$60.00					1	5/10/2016
Martingale Wharf	99 Bow St.	\$60.00					1	6/1/2016
Michelle's on Market Square	10 Market Sq.	\$208.00	2	4			1	9/1/2016
Moxy	106 Penhallow ST.	\$120.00			2			3/22/2017
North Church	355 Spinney Rd.	-					2	10/1/2016
Olde Port Properties	26 Congress St.	\$60.00					1	4/1/2017
Poco's	37 Bow St.	\$60.00					1	6/8/2016
Portsmouth Athenaeum	9 Market Sq.	\$60.00					1	8/26/2016
Portsmouth Brewery	56 Market St.	\$60.00					1	10/10/2016
Portsmouth Salt Cellar	7 Commercial Alley	\$60.00					1	1/18/2017

2016 Sidewalk Obstruction Renewal Applications

<u>Business</u>	<u>LOCATION</u>	<u>FEE</u>	<u>Tables</u>	<u>Chairs</u>	<u>Bench</u>	<u>Planters</u>	<u>Sign</u>	<u>INSURANCE</u>
RiRa Irish Pub and Restaurant	22 Market Sq.	\$60.00					1	5/15/2016
River House, The	53 Bow St.	\$120.00			2			4/22/2016
Rudi's Portsmouth	5 Congress/20 High St.	\$120.00					2	10/14/2016
Scallops	65 Daniel St.	\$60.00					1	9/11/2016
Second Time Around	19 Congress St.	\$60.00					1	9/22/2016
Serendipity	41 Pleasant St.	\$120.00					2	1/1/2017
Sheva Jewelry	16 Market Sq.	\$60.00					1	6/10/2016
Starbucks Coffee	One Market Sq.	\$240.00	4	8				10/1/2016
Studio 90	90 Fleet St.	\$60.00					1	3/1/2017
Ten Thousand Villages	75 Congress St.	\$60.00					1	11/15/2016
Tugboat Alley	47 Bow St.	\$60.00			1			10/25/2016
Water Monkey	33 Vaughan Mall	\$60.00					1	11/23/2016
Wear House	74 Congress St.	\$60.00					1	7/12/2016
Wentworth Lear Historic Houses	50 Mechanic St.	\$60.00					1	7/2/2016
Works Bakery Café	9 Congress St.	\$60.00					1	12/16/2016

March 28, 2016

Mr. John Bohenko
City Manager
1 Junkins Avenue
Portsmouth, NH 03801



Dear Mr. Bohenko –

We are writing today on behalf of Bottomline Technologies, located at 325 Corporate Drive, Portsmouth as we have received approval from the Pease Development Authority to host another 5K. Our beneficiary for the event is Families First. We have secured approval from the Pease Development Authority to host the event on September 17, 2015 at 9:00am, utilizing the same race route as last year. As one of the primary resources offering to coordinate the event, we'd like to gain your approval, and with that reach out to the Police Captain to get Police Detail scheduled. We would be more than happy to set up a meeting at your convenience to discuss this further.

Thank you in advance for your consideration and we look forward to hearing from you soon.

We can be reached via email/phone
mmikulski@bottomline.com or 603-501-5335
htennent@bottomline.com or 603-501-6653

Kind regards,

Holly Tennent and Melissa Mikulski



Granite State Wheelmen, Inc.

181 Leavitt Road
Belmont, NH 03220

March 26, 2016



Portsmouth Mayor Robert J. Lister and City Council
1 Jenkins Avenue
Portsmouth, NH 03801

To: Mayor Lister and Portsmouth City Council

On behalf of the Granite State Wheelmen bicycle club, please accept our thanks for the excellent support provided for the 2015 Seacoast Century Bicycle Ride. Thanks for including our 2016 Seacoast Century scheduled for September 24-25th on your City Event listings for this year.

We request approval to travel through Portsmouth on the same route as 2015. This is a bicycle ride not a race. There are no road closures. Riders will be traveling 25, 50, 63 and 100 mile routes starting at Hampton Beach and then cycle into Massachusetts and Maine. Over the weekend approximately 1400 participating cyclists will ride through Portsmouth. Riders will be traveling individually or in small groups since starts are staggered and they travel at different speeds. We draw experienced cyclists with most doing the full distance and returning year after year. Rider fees are used for event expenses and as a fund-raiser for bicycle safety and advocacy in New Hampshire.

Enclosed are a draft map and cue sheet for our proposed Seacoast Century route and a copy of the insurance rider covering Portsmouth. As in the past, we will work closely with your City Manager, Police Department and others to coordinate this event. We have talked with the Maritime Festival organizers and see no conflict with their event which is north of where our riders will be traveling. We will work with the Police Department on police detail requests. Based on our 2015 records only about 250 riders rode on Sunday last year. This may be a factor in determining if we need both police details on Sunday. Both are needed for Saturday.

Again, our thanks for your support and assistance in making the Seacoast Century a safe and successful event. I have sent a separate letter to your Police Chief to thank him for the assistance, and request police details. Let me know if you need any additional information.

Sincerely yours,


Donna L. Hepp
Seacoast Century Co-Coordinator
dhepp5@email.com
414-258-3287

cc: John Bohenko, City Manager

A New Hampshire club for men and women enthused with bicycling

Rider Hotline 603-926-3784

2018 SCC Final

1.	0.0	➡	Start of route	0.1
2.	0.1	←	R onto NH-1A N	0.1
3.	0.2	→	R to stay on NH-1A N	3.1
4.	3.4	→	Slight R to stay on NH-1A N	10.0
5.	13.4	➡	Quarter Century around	1.3
6.	14.7	↑	At the traffic circle, 1st exit and stay on NH-1A N	0.5
7.	15.1	→	R onto Wentworth Rd	2.3
8.	17.4	→	R onto Wentworth Rd	0.1
9.	17.5	←	Wentworth Rd turns slightly L and becomes Walbach St	0.1
10.	17.6	→	R onto Piscataqua St	0.3
11.	18.0	→	R onto NH-1B N	0.1
12.	18.0	→	R onto River Rd	0.2
13.	18.2	←	L onto Oliver St	0.1
14.	18.4	→	R onto NH-1B N	0.1

18.4 miles. +404/-392 feet

15.	18.5	←	Slight L to stay on NH-1B N	1.3
16.	19.8	←	R to stay on Marcy St	0.3
17.	20.1	←	L onto Court St	0.1
18.	20.2	→	R onto Atkinson St	0.0
19.	20.2	→	R onto State Street	0.0
20.	20.2	←	Slight L onto Dutton Ave	0.1
21.	20.3	↑	Continue onto Memorial Bridge	0.5
22.	20.7	→	R onto Water St	0.1
23.	20.8	←	Water St turns L and becomes Pleasant St	0.1
24.	20.9	→	R onto Government St	0.3
25.	21.2	→	Government St turns slightly L and becomes Wallingford Square	0.1
26.	21.2	↑	Continue onto Wentworth St	0.2
27.	21.4	→	R onto Whipple Rd	0.3
28.	21.7	→	R to stay on Whipple Rd	1.1
29.	22.8	↑	Continue onto Pepperrell Rd	0.6

4.4 miles. +236/-263 feet

30.	23.4	⊙	FT, McClary Rest Stop HALF CENTURY AROUND	0.9
31.	24.3	←	Slight L out of Ft, McClary onto Pepperrell Rd, Rt. 103	0.5
32.	24.8	←	L onto Gerrish Island Ln	0.2
33.	25.0	→	R onto Brave Boat Harbor Rd	2.3
34.	27.3	←	Bear L on to Lilac Lane Rt 103	1.9
35.	29.2	→	R onto York St	1.0
36.	30.3	→	R onto Norwood Farms Rd	0.3
37.	30.6	←	L to stay on Norwood Farms Rd	0.4
38.	31.0	←	Slight L onto Roaring Rock Rd	0.2
39.	31.1	→	METRIC CENTURY AROUND / or R onto York St to go to Nubble Light	0.9
40.	32.0	↑	Continue onto Long Beach Ave	1.4

9.2 miles. +431/-467 feet

41.	33.4	→	R onto Nubble Rd	0.5
42.	33.9	→	Slight R to stay on Nubble Rd	0.5
43.	34.3	→	R onto Sohler Park Rd	0.2
44.	34.5	→	ON LEAVING NUBBLE LIGHT R onto Nubble Rd	0.4
45.	34.8	↑	Continue onto Broadway St	0.2
46.	35.1	→	R onto Kendall Rd	0.1
47.	35.1	↑	Continue onto Ocean Avenue Extension	0.5
48.	35.6	→	R onto Ocean Ave	0.2
49.	35.8	→	R onto Country St	0.1
50.	35.9	→	R onto Beach St	0.2
51.	36.0	→	R onto Freeman St	0.4
52.	36.5	←	L onto Bay Haven Rd	0.3
53.	36.7	→	R onto Main St	0.0
54.	36.8	↑	Continue onto Cape Neddick Rd	0.7
55.	37.5	→	R onto Clark Rd	0.3

5.5 miles. +228/-201 feet

13.4 miles. +312/-241 feet

101	72.3	-	R onto W Rd	0.5
100	71.7	-	L onto South Rd	0.6
99	70.5	-	R onto Woodland Rd	1.2
98	70.1	-	R onto Maple Rd	0.4
97	69.6	-	R onto Chapel Rd	0.5
96	69.0	+	Continue onto Old Locke Rd	0.6
95	68.8	+	R onto Causeway Rd	0.1
94	68.4	+	L onto Central Rd	0.4
93	68.1	+	R onto Sea Rd	0.3
92	66.8	+	R onto NH-1A S	1.3
91	65.9	+	L onto Locke Rd	0.9
90	65.3	+	Slight L onto Central Rd	0.6
89	64.9	+	Continue on Wallis to Washington Rd	0.3
88	63.2	-	R onto Wallis Rd	1.7
87	62.4	-	L onto Brackett Rd	0.8
86	61.4	+	R onto Parsons Rd	1.0

11.2 miles. +418/-395 feet

71	48.7	-	L onto Haley Rd	0.5
70	45.4	+	Continue onto Bartlett Rd	3.3
69	45.0	-	R onto Southside Rd	0.4
68	45.0	+	Continue onto Seabury Rd	0.1
67	44.9	-	Slight L onto Organug Rd	0.1
66	44.2	-	L onto Lindsay Rd	0.8
65	43.8	-	R onto York St	0.4
64	43.6	-	L onto Moulton Ln	0.2
63	42.8	+	R onto Woodbridge Rd	0.8
62	41.6	+	Continue onto York St	1.2
61	39.9	+	R onto Long Beach Ave	1.6
60	39.7	+	Continue onto Church St	0.2
59	39.6	+	Continue onto Railroad Ave	0.2
58	38.9	-	L onto Main St	0.6
57	38.4	+	R onto Shore Rd	0.5
56	37.8	+	Slight R onto River Rd	0.6

11.5 miles. +180/-243 feet

102	72.8	-	R onto Garland Rd	0.9
103	73.7	+	R onto Grove Rd	0.6
104	74.2	+	R onto Central Rd	0.6
105	74.9	+	R onto Love Ln	0.8
106	75.7	+	R onto South Rd	0.1
107	75.8	-	L onto Woodland Rd	1.2
108	77.0	-	L onto Maple Rd	0.4
109	77.4	-	Slight L onto Chapel Rd	0.8
110	78.2	-	R onto Willow Ave	0.2
111	78.4	-	R onto NH-1A S	5.4
112	83.8	+	End of route	0.0

10.2 miles. +462/-518 feet

72	49.2	-	R onto Crockett Neck Rd	0.8
73	50.1	-	McCLARY REST STOP	0.0
74	50.1	-	L to continue on to Pepperill, Whipple and Wentworth (Rte 103)	2.4
75	52.5	-	R onto Walker St	0.1
76	52.6	+	L onto Otis Ave	0.1
77	52.7	+	R onto Government St	0.2
78	52.9	+	L onto Newmarch St	0.6
79	53.5	+	Cross bridge and bear R onto Scott Ave	0.1
80	53.5	+	Sharp R-U-Turn onto Daniel St/Harbour Pl	0.1
81	53.6	+	L onto Marcy St	0.3
82	54.0	-	L to stay on Marcy St	0.2
83	54.2	+	Continue onto New Castle/Wentworth Ave	4.2
84	58.4	-	L onto Sagamore Ave	0.5
85	58.9	+	Exit the traffic circle on 3rd exit NH-1A S	2.5

Granite State Wheelmen 2015 Seacoast Century

South Loop

Rider Hotline 603-926-3784

This South loop necessary for full century

From Hampton Beach State Park
Turn left onto MA-1A S

Continue onto MA-1A S 2.0 mi

Turn right onto Beach Rd 4.1 mi

Turn left onto Ferry Rd 6.1 mi

**Caution Event Congestion on
Ferry St**

Slight right onto March Rd 8.0 mi

Sharp left onto 1st St 8.3 mi

1st St turns slightly left and
becomes 2nd St 8.5 mi

2nd St turns slightly right and
becomes Ferry Rd 8.7 mi

Turn right onto Beach Rd 10.6
mi

Turn left onto North End Blvd 12.6
mi

Continue onto Ocean Blvd back to Hampton
Beach State Park 14.8 mi

Turn right Hampton Beach State Park 16.8 mi



© OpenStreetMap, ride with gps

Rider Hotline 603-926-3784

2015 SCC Final



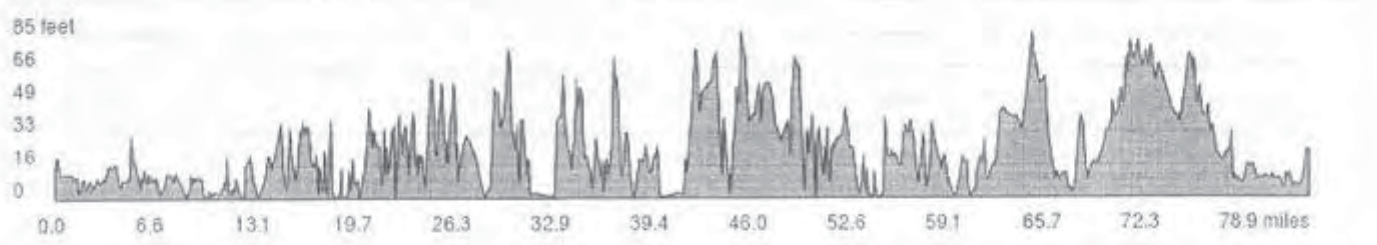
Change in York

- A. FORT McCLARY
- B. Nubble Light

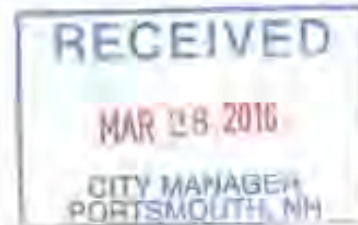
C. Hampton Beach St. Park



Total: 83.8 miles, + 2576 / - 2579 feet



March 24, 2016



Mr. John P. Bohenko
City Manager
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: Proposed Union-Only Project Labor Agreement on City of Portsmouth's Sewer Treatment Plant

Dear Mr. Bohenko:

I am writing to express my association's vehement opposition to the recent proposal by Assistant Mayor James Splaine to impose a costly and discriminatory union-only Project Labor Agreement (PLA) on the construction of Portsmouth's new sewer plant on Peirce Island.

The Merit Construction Alliance is a non-profit trade association comprised of merit shop (non-union) general contractor subcontractors and their employees located and working throughout New England. The MCA believes construction projects ought to be bid under the principles of fair and open competition, where all responsible, qualified contractors and workers - regardless of union affiliation - have an equal opportunity to participate.

PLAs are discriminatory

The imposition of a PLA on Portsmouth's sewer plant project will discriminate against the vast majority of New Hampshire's construction workers who are qualified to work on this project. PLAs are supported by organized labor because the agreements mandate the exclusive use of union labor, even though a paltry 7.7 percent of construction workers in New Hampshire belong to a construction union, according to the most recent government statistics. In other words, the proposal to impose a union-only work requirement on the city's sewer plant project will arbitrarily deny 9 out of 10 construction workers their right to work on a public construction project they are helping to pay for with their taxes.

PLAs indisputably increase costs

Study after study concludes that PLAs eliminate competition from the majority of the construction community, which results in project costs to spike by at least 20 percent.

Studies aside, real world experience serves as our best guide on this matter. In just one example, in 2012 the U.S. Department of Labor (DOL) imposed a PLA on construction of its Manchester, New Hampshire Jobs Corps Center. Under the PLA, the project attracted only three bidders, with bids ranging from \$37.8 million to almost \$41 million.

The DOL scrapped the PLA and put the project back out to bid under fair and open competition. The results were predictable: without a PLA, the project attracted nine bidders, with the lowest bidder submitting a price of \$31.6 million, saving taxpayers \$6 million.

This case is most interesting in that it unquestionably proves that costs rise sharply under a PLA. Indeed, after the PLA was rescinded on the Jobs Corps Center, the high bidder, Maron Construction dropped its price by \$5.4 million, while the low bidder, JT Construction dropped its price by \$3.6 million.

Numerous other real world examples exist that prove beyond the shadow of any doubt that PLAs increase project costs without providing any additional benefits to taxpayers. The cost increases are attributed to limited competition, outdated union work rules and other union-driven factors.

PLAs require all workers to be unionized - whether they want to or not

PLA proponents contend that a PLA does not require employers to become unionized and therefore do not prohibit merit shop contractors from bidding PLA projects.

This is an exercise in verbal acrobatics intended to obfuscate the issue.

As a practical matter, merit shop contractors typically will not bid projects that are governed by a PLA because the agreements call for trade unions to act as the sole and exclusive bargaining representative of all craft employees working on the project - meaning all workers must be union members and pay into the union dues and benefits system for the duration of a PLA project. A merit shop contractor will not bid on a project that prohibits them from utilizing their employees.

Alleged benefits under a PLA cannot withstand scrutiny

PLA supporters make other specious claims to support the union-only measure, including a long list of discredited justifications regarding compensation, training, performance and quality that collapse under scrutiny. Here are the facts:

- The lack of a PLA will not prohibit union contractors from bidding and will not prevent union members from working on the project. However, a PLA on the sewer plant will prevent merit shop workers from working on a project they are helping to pay for with their taxes.
- PLAs are illegal in most instances. In various states across the country where the imposition of PLAs has been litigated, courts have ruled that in most cases PLAs are unlawful. In neighboring Massachusetts, the state's Supreme Judicial Court determined that PLAs are inherently anti-competitive.
- The vast majority of public and private construction projects are completed without a PLA by merit shop employees and union members working together in harmony.
- Merit shop employees enjoy pay and benefits equal to, if not better than their union counterparts, including paying little or in some cases paying nothing for their health insurance; receive paid holidays, sick days and vacation time; and have a fully-funded 401(k) pension plan.
- Merit shop employees are responsible, qualified construction professionals who have the same training and take the same tests to become licensed in their trade as union members do, and they approach their craft with professionalism and pride.
- PLAs do not guarantee that projects will be delivered on-time, on-budget or will be of superior quality.
- PLAs contain language about preventing workplace disruptions in exchange for the use of only union labor, a practice that has been called "extortion" by some observers. However recent studies indicate the absence of a PLA on public projects has not resulted in union strikes or walkouts.

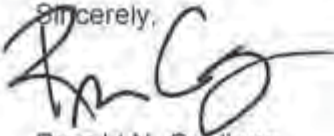
- Merit shop employees do not strike. They are employees of a company and do not come from a union hiring hall. Therefore, they have a strong measure of job security, allowing them to focus on providing high quality work with a keen eye toward budget, safety and schedule.
- PLAs fail to guarantee the hiring of minorities, women and local residents. By locking out 9 out of 10 construction workers, this project will not have access to the available workers necessary to meet those hiring goals, should they be adopted. Most recently, the City of New Bedford, Massachusetts, joined San Francisco, Philadelphia, Washington, D.C., New York and Baltimore in failing miserably to meet goals for hiring local residents, women and minorities on construction projects governed by a PLA.

The MCA believes that unionization among workers is a choice that should be recognized and respected. Equally as important, 9 out of 10 New Hampshire construction workers who prefer to work for merit shops should not be subject to employment discrimination simply because they choose not to join a union.

I will follow up with you to discuss this matter in further detail. In the meantime, if you have any questions, please do not hesitate to contact me at 781-585-5894.

Thank you for your time and thoughtful consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ron Cogliano', written over the word 'Sincerely,'.

Ronald N. Cogliano
President

CC: Portsmouth City Council

enclosures

An Apples-to-Apples Comparison of Bid Results for a Federal Project Bid With and Without a Government-Mandated Project Labor Agreement (PLA) Manchester, N.H., U.S. Department of Labor Job Corps Center					
Firm	Firm Location	With PLA 3/18/12 bids \$37,872,000	Without PLA 2/14/13 bids \$34,272,000	Difference	Difference
JT Construction Enterprises*	Clearwater, FL	\$37,872,000	\$34,272,000	-9.51%	-\$3,600,000
E. Amanti & Sons	Salem, MA	\$38,297,000	DNB		
Maron Construction	Providence, RI	\$40,987,000	\$35,558,000	-13.25%	-\$5,429,000
Eckman Construction	Bedford, NH	DNB	\$31,635,000		
Nauset Construction	Needham, MA	DNB	\$32,795,000		
Systems Contracting	Plymouth, MA	DNB	\$34,400,000		
KMK-DJI Joint Venture	Eliot, ME	DNB	\$34,488,276		
JCN Construction	Manchester, NH	DNB	\$36,746,000		
Anthony & Gordon Construction	Knoxville, TN	DNB	\$37,675,000		
WolfCreek Federal Services Inc.	Anchorage, AK	DNB	\$38,080,777		
Avg. With PLA (3 bidders)		\$39,052,000			
Avg. Without PLA (9 bidders)			\$35,072,228		
Avg. Percent Difference (2 bidders bid both)				-10.19%	
Avg. Difference (2 bidders bid both)					-\$3,979,772
Low Bidder With PLA		\$37,872,000			
Low Bidder Without PLA			\$31,635,000		
Percent Difference				-16.47%	
Amount Difference					-\$6,237,000
*Bid as FedConIV of Clearwater, FL in 2nd Round of bidding					
DNB = Did Not Bid					
All bid numbers obtained from DOL bid opening conference calls. DOL does not typically publish non-winning bid results on FBO.gov.					
Source:					
Sept. 2009 Solicitation Canceled (PLA mandate - no bids submitted due to bid protest): https://www.fbo.gov/spg/DOL/OASAM/Washington/DOL099RB20820/listing.html					
Jan. 2012 Solicitation Canceled (PLA mandate - 3 bids opened): https://www.fbo.gov/notices/b654f33ddb018dc03565ca9066c89f0					
Oct. 2012 Solicitation (No PLA mandate - 9 bids opened): https://www.fbo.gov/notices/7c93056721a053701c664ba3cb97006c					
Learn more at www.TheTruthAboutPLAs.com					



19 Mar 2016

Dear Members of the City Council, City of Portsmouth,

I am writing to you to express my continued, and ongoing, opposition to the efforts of "Maplewood Ridge, LLC", to re-zone the property located at 678 Maplewood Avenue from the current zoning of Single Residence B (SRB) to Business (B).

This is not the first attempt by the owner/applicant/developer of this residential parcel to seek either re-zoning or variance relief. I would submit to you that the very first thing that all members of the current board need to do is fully review the minutes and video of the previous applications made by the owner's with regard to changing the zoning of this parcel. The first attempt was made on March 21, 2013 before the City Council. The second attempt was made on February 16, 2016 in an application before the Board of Adjustment.

I realize that the city council membership has change since 2013, but I would like to take this opportunity to refresh your recollection of the decision that was made by the council in 2013 on a similar request to re-zone this parcel. The council voted unanimously to disapprove the request for re-zoning. I believe that their decision was based, in no small way, on the large turnout and substantial objection of abutting residents to such a change. It is important to note that not only did direct abutters show up and object to this project, but numerous residents from the larger neighborhood also came to express their opposition. While 13 speakers stepped forward to state their objections, many more than the 13 speakers were in attendance and ready to state their objections. It was an impressive display of sentiment on the part of the community that live in this unique part of the city. Their voice was heard. Any expansion of the business zone in this part of the city is detrimental to the character of our neighborhood and none of us want it to change.

In an unmitigated end-run around the city council, Maplewood Ridge, LLC, made an application before the Board of Adjustment on February 16th, 2016 asking for relief for a total of six variances that were "substantial" in their nature from the current SRB zoning. In short, the effort on the part of Maplewood Ridge, LLC, was

a brazen attempt at spot zoning. And, again, even with very short official notice of the application before the Board of Adjustment, the neighborhood turned-out to speak against the variances. The Board of Adjustment also voted against all six variances.

On March 13th, 2016, 15 residents from the neighborhood met adjacent to the parcel to meet with City Councilor Nancy Pearson. We met so we could afford her an opportunity to see and better understand why our community is so adamant about no expansion of the business zone. Also, we wanted to show our resolve against such a substantial over-development of the parcel at 678 Maplewood.

It is clear that the owners of Maplewood Ridge, LLC are only motivated by the opportunity to make a substantial profit from development of this site. It is also clear that the neighborhood is supportive of a more modest development of this parcel that would be more consistent with the SRB zoning...even if such development needed some relief from the Board of Adjustment. But the owner's desire to change the zoning to Business, which is the owner's only hope to substantially capitalize a large profit on his investment, would alter the fabric of our neighborhood forever. The owners of 678 Maplewood are essentially asking the current residents in this neighborhood to underwrite their return on investment while they would reside somewhere else and be completely disassociated with the impact on our community. The owners of 678 Maplewood Avenue had the opportunity to execute a conditional P&S with the former owners while they sought to seek variances or zoning changes. But, they choose to purchase the parcel zone SRB knowing full well the limitation of such zoning. It is not now the burden of the city or the existing resident to ensure them a profitable return on their investment by changing the zoning ordinances after-the-fact. The current parcel is suitable to the development of a couple of homes and needs little or no relief in order to do so.

It is also very coincidental that at the same meeting before the City Council in 2013, the Moretti's were in attendance seeking final approval on their sub-division for a parcel that is located on Myrtle behind the parcel owned by Maplewood Ridge, LLC. The City Council would be hypocritical in any move to approve such a re-zoning of the parcel on Maplewood after making the Moretti's comply with city zoning ordinances in the development of their parcel. It would appear very much out of character with, and inconsistent with city precedents set in this neighborhood with

respect to the Moretti's parcel. Please be sure to review this part of the official record as well when contemplating the appropriateness of the Maplewood avenue parcel.

In both meetings that I've attended concerning the Maplewood Ridge, LLC owner's efforts, I've heard three recurrent themes. The first theme is that because the parcel is located adjacent to the Interstate, "nobody wants to live there". The second theme is that since the parcel abuts a business zone, it makes sense to re-zone to join the two parcels to the same zone. The third theme is that this parcel could be used for "workforce" housing.

First, let me assure you that I and just about everyone else in our neighborhood is very happy to live where we live; and, we accept the existence of the Interstate as part of the fabric of this neighborhood. I purchased my home in 2002 from the daughter of the original builder. Her family lived three generations in their home. So too, many of my neighbors are long term residents. We all enjoy our community and proximity to Portsmouth.

I reviewed Google Earth imagery of the surrounding neighborhood, which includes, at a minimum, Maplewood on both the East and West side of I-95, Central, Emery, Myrtle, Cutts, Edmonds, and Rockingham streets. I counted at least 78 homes occupied by city residents who clearly enjoy living in and around the Interstate. If I count the three lots created by the Moretti sub-division, and the potential for a couple of new homes at the site of 678 Maplewood, there could be more than 83 homes in this area of the city. Some of these homes are two family homes, so the count is probably higher than what the rooftop count would indicate. If we add in those homes over on Leslie, Ashley, and Beechwood, we are more than likely over 100 homes and families who all chose to live next to the Interstate.

Second, let me express my sincere frustration over the mind-set that suggests that expanding a Business Zone in an otherwise residential area simply because there is a Business boundary line already there. It is an absurd use of logic. In every part of the City there is always someone who is adjacent to a business zone. Using this kind of criteria for decision making is overly simplistic and highly disingenuous by those who use it. In all of the meetings I've attended on this subject, those who might speak favorably of this project are always those persons who do not reside in our neighborhood; or they reference similar projects from states other than New

Hampshire, or are business owners seeking "work-force" housing to support their businesses, which, arguably, are not willing to pay a living wage.

Third, at the time I purchased my home in this neighborhood, it was priced in a range that was best described as being "affordable" in comparison to other parts of the city. There are several properties in the neighborhood that provide for "affordable" housing opportunities as rental properties where young adults team up and rent at reasonable rates. They are interspersed throughout the neighborhood and not concentrated high density developments like Maplewood Ridge. These properties help create character and community. A 30 unit property at 678 Maplewood is a fundamentally different shift in character and community. So, too, is an expansion in the business zone. Allowing for a change in the business zone boundary would open the door to "Any" use consistent with that zoning. Such a door being opened would leave an indelible mark on our neighborhood.

I would think that forward thinking community leaders and planners would have the foresight to recognize, that in our neighborhood, a shrinking of the business zone would make more sense. While our current business neighbors are, and should be grandfathered with their current business use, it would equally better serve the city interest to re-zone the business zone on Emery Street back to only those properties that have access directly to the By-Pass. Such a forward-thinking approach would strengthen our neighborhood and community and provide a pathway for additional housing in the city.

I also wish to simply make reference to the parcel located at the corner of Woodbury and Dennet. This is a parcel that has substantially more area than the parcel at Maplewood Ridge, LLC. Similarly, that parcel was located at the boundary of a Single Residences and a Business zone...one in which the business activity is more oriented to 24 hour uses; and is more directly located on the By-Pass and Traffic Circle interchange to I-95 and Route 16. Yet, the density of that development was substantially less than what Maplewood Ridge, LLC seeks.

I wish to reiterate my opposition to any expansion of the business zone in our neighborhood. I encourage you to review the official record from 2013 and 2016 and retain the zoning at 678 Maplewood as Single Residence B. I also ask that you add to the official record by adding strong language that will signal to the owners of Maplewood Ridge, LLC that the city leaders and planners; and its residents in this

part of the city are firmly committed to building communities and not reducing them to a simple profit and loss calculation for developers.


Very Respectfully,

A handwritten signature in black ink, appearing to read 'Edward Miller', with a long horizontal line extending to the right.

Edward Miller
5 Central Avenue
603-498-4365

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: March 31, 2016
To: Honorable Mayor Jack Blalock and City Council Members
From: John P. Bohenko, City Manager 
Re: City Manager's Comments on April 4, 2016 City Council Agenda

Work Session:

6:00 p.m.

1. **Deer Street Garage Property Acquisition, Purchase and Sale Agreement and Post Closing Obligations Agreement.** On Monday evening at 6:00 p.m., I am requesting that the City Council meet in a Work Session to discuss the [attached memorandum from City Attorney Robert Sullivan and Deputy City Manager Dave Allen](#) regarding Deer Street Garage Property Acquisition, Purchase and Sale Agreement and Post Closing Obligations Agreement. Further, under my name on the Agenda, I would ask the City Council to take one of the three following actions:
 1. *The City Council could approve the Documents. In this situation, given that the documents are not complete due to the unavailability of numerous attachments, an appropriate motion might be:*
 - A. **MOVED:** *That the City Manager is hereby authorized to execute the Purchase and Sale Agreement and Post Closing Obligations Agreement with Deer Street Associates on behalf of the City regarding the City's acquisition of a potential site for a municipal parking garage on Deer Street (collectively, the "Documents") once the schedules of those Documents are in completed form and attached thereto. **BE IT FURTHER MOVED,** that the City Manager is authorized to negotiate and execute any amendments, exhibits or attachments to those Documents as are substantially consistent with the material terms of the Documents approved by the City Council and as he may deem appropriate.*

In the event that the foregoing Motion should pass, in order to comply with the provisions of the documents which were approved, it will be necessary for the City Council to also pass the following Motion:

- B. *MOVED:*** *That a public hearing be held before the City Council on May 2, 2016 pursuant to RSA 231:43 for the purpose of discontinuing any rights of the City or the public in:*

A certain triangular tract of land being located at the northwesterly corner of and within the intersection of the Deer Street and Bridge Street rights of way, and being approximately 1,717 square feet in size; and

A certain trapezoidal tract of land being located along the northerly boundary of said triangular tract of land, being approximately four (4) feet wide and being approximately 269 square feet in size,

and that at least fourteen (14) days prior to the public hearing written notice be given to all owners of property abutting the said areas.

2. *The City Council might determine to postpone consideration of the Documents. In this case an appropriate Motion might be:*

MOVED: *That the City Council postpone its decision with regard to the Purchase & Sale Agreement and Post Closing Obligations Agreement with Deer Street Associates until the Council meeting of April 18, 2016.*

If the Council should take such an action it would also be within the ability of the Council to specify whatever conditions it thought appropriate to be addressed during the postponement period. Such conditions might include:

- a. *That the Documents be in complete form before they are brought back to the Council; or*
- b. *That the following issues be addressed:*

[This is for additional issues that may be added by the City Council.]

3. *The City Council could vote not to approve the documents. In such case an appropriate Motion might be:*

MOVED: *That the City Council **not** authorize the City Manager to execute the Purchase and Sale Agreement or the Post Closing Obligations Agreement with Deer Street Associates documents as presented.*

Presentation:

1. **Recognition of Portsmouth High School 2016 Division 2 Boys Basketball New Hampshire State Champions.** On Monday evening, Mayor Jack Blalock will recognize the Portsmouth High School 2016 Division 2 Boys Basketball New Hampshire State Champions.

Approval of Grants/Donations:

1. **Acceptance of Police Department Grant & Donations.** *Attached under Section VII of the Agenda is a memorandum*, dated March 22, 2016 from Brenna Cavanaugh, Chair of the Portsmouth Police Commissioners, and Police Chief David J. Mara, requesting that the City Council approve the following grant and donations:
 - a) Donations in support of the Explorer Cadets as follows:
 - Donation of a \$30.00 blitz Park gift card by the Police Commission to the Portsmouth Police Trading Card initiative as a program incentive prize.
 - \$300.00 from Mr. Jason C. Page, to provide 2 scholarships for the 2016 Explorer Cadet Academy.
 - \$400.00 from Mr. and Mrs. David Brown to provide 2 scholarships for the 2016 Explorer Cadet Academy.
 - b) Grant:
 - A Grant in the amount of \$9,926.40 from the NH Office of Highway Safety for Sustained Traffic Enforcement Patrols (STEP).

The Portsmouth Police Commission submits the information to the City Council pursuant to City Policy Memorandum #94.36, for the City Council's consideration and approval at their next meeting.

I recommend the City Council move to approve and accept the grant and donations to the Portsmouth Police Department. Action on this matter should take place under Section VII of the Agenda.

Items Which Require Action Under Other Sections of the Agenda:

1. First Reading of Proposed Ordinance Amendments:

- 1.1 **First Reading of Proposed Ordinance amending Chapter 11, Article II, Section 11.216 – Sewer User Charges/Records/Hook-up.** As a result of the March 21, 2016 City Council meeting, under Section VIII of the Agenda, I am bringing back for first reading the [attached proposed Ordinance](#) amending Chapter 11, Article II, Section 11.216 – Sewer User Charges/Records/Hook-up, which expands the allowance of irrigation meters to all customer classes.

Through research with our Water/Sewer rate consultant, we have determined that the current practice in New England and throughout the rest of the country is to allow for irrigation meters for all customers. [Attached is a memorandum from Brian Goetz, Deputy Director of Public Works](#), that provides more detail regarding this matter.

Also at the meeting of March 21, 2016, there was a request by the City Council to bring back a copy of the proposed Ordinance that would eliminate the use of irrigation meters for all customers. I have [attached](#) a copy under Section VIII of the Agenda.

Brian Goetz will be making a short presentation prior to the vote on first reading.

I recommend the City Council move to pass first reading and schedule a public hearing and second reading on the proposed Ordinance, as presented, at the April 18, 2016 City Council meeting. Action on this item should take place under Section VIII of the Agenda.

Consent Agenda:

1. **Request for License to Install Projecting Sign.** [Attached under Section IX of the Agenda](#) is a request for a projecting sign license (see [attached memorandums from Rick Taintor, Planning Director](#)):

- Danielle Short, owner of Siren Salon for property located at 49 Market Street

I recommend the City Council move to approve the aforementioned Projecting Sign License as recommended by the Planning Director and, further, authorize the City Manager to execute this License Agreement for this request. Action on this item should take place under Section IX of the Agenda.

City Manager's Items Which Require Action:

1. **Deer Street Garage Property Acquisition, Purchase and Sale Agreement and Post Closing Obligations Agreement.** As a result of this evening's Work Session, I am asking the City Council to take action on one of the following three options regarding the Deer Street Garage Property Acquisition, Purchase and Sale Agreement and Post Closing Obligations Agreement:

1. *The City Council could approve the Documents. In this situation, given that the documents are not complete due to the unavailability of numerous attachments, an appropriate motion might be:*

- A. ***MOVED:*** *That the City Manager is hereby authorized to execute the Purchase and Sale Agreement and Post Closing Obligations Agreement with Deer Street Associates on behalf of the City regarding the City's acquisition of a potential site for a municipal parking garage on Deer Street (collectively, the "Documents") once the schedules of those Documents are in completed form and attached thereto. **BE IT FURTHER MOVED,** that the City Manager is authorized to negotiate and execute any amendments, exhibits or attachments to those Documents as are substantially consistent with the material terms of the Documents approved by the City Council and as he may deem appropriate.*

In the event that the foregoing Motion should pass, in order to comply with the provisions of the documents which were approved, it will be necessary for the City Council to also pass the following Motion:

- B. ***MOVED:*** *That a public hearing be held before the City Council on May 2, 2016 pursuant to RSA 231:43 for the purpose of discontinuing any rights of the City or the public in:*

A certain triangular tract of land being located at the northwesterly corner of and within the intersection of the Deer Street and Bridge Street rights of way, and being approximately 1,717 square feet in size; and

A certain trapezoidal tract of land being located along the northerly boundary of said triangular tract of land, being approximately four (4) feet wide and being approximately 269 square feet in size,

and that at least fourteen (14) days prior to the public hearing written notice be given to all owners of property abutting the said areas.

2. *The City Council might determine to postpone consideration of the Documents. In this case an appropriate Motion might be:*

MOVED: *That the City Council postpone its decision with regard to the Purchase & Sale Agreement and Post Closing Obligations Agreement with Deer Street Associates until the Council meeting of April 18, 2016.*

If the Council should take such an action it would also be within the ability of the Council to specify whatever conditions it thought appropriate to be addressed during the postponement period. Such conditions might include:

- a. *That the Documents be in complete form before they are brought back to the Council; or*
- b. *That the following issues be addressed:*

[This is for additional issues that may be added by the City Council.]

3. *The City Council could vote not to approve the documents. In such case an appropriate Motion might be:*

MOVED: *That the City Council **not** authorize the City Manager to execute the Purchase and Sale Agreement or the Post Closing Obligations Agreement with Deer Street Associates documents as presented.*

2. **Applications for Sidewalk Café providing Alcohol Service.** In 2012, the City Council adopted City Council Policy 2012-02 titled “Policy Regarding Use of City Property for Sidewalk Cafés providing Alcohol Service,” a copy of which is [attached](#). That policy allows restaurants to apply for an Annual Service Agreement to occupy a defined portion of City sidewalk space for the purpose of creating a sidewalk café with the ability to serve alcohol. The policy outlines the criteria for both the application and the operations of the sidewalk cafés and calls for a six month term, typically running from mid-April through mid-October. The policy limits the number of sidewalk cafés in the City to six (6).

Last year, four Area Service Agreements were issued for public Sidewalk occupancy. To date we have received applications for State Street Saloon, Popovers, Ri Ra and The District. City staff representatives from Police, Fire, Public Works, Building Inspection, Health, and Code Enforcement have reviewed those applications of and found the applications complete and recommend issuance of the Area Service Agreements in accordance with City Council Policy 2012-02.

The fee for the use of the public “Area” subject to the Area Service Agreement is \$10.00 per square foot, with a minimum season’s fee of \$2,000 and no proration of the fee. The Agreements may be suspended at the sole discretion of the City on an administrative basis and revoked in their entirety by vote of the City Council. Hours of operation are until 10:30

p.m. Monday through Saturday and until 10:00 p.m. on Sunday, with no smoking allowed in the “Area” at any time. Use of the “Area” may be precluded, modified or made subject to special conditions to accommodate municipal events. The sidewalk café Area will be separated from the public pedestrian space by black decorative metal fence.

The table below includes applications received to date along with the areas and associated fees:

Establishment	Location	Area	Fee
State Street Saloon	268 State Street	340	\$3,400
Popovers	8 Congress St	570	\$5,700
Ri Ra Portsmouth	22 Market Square	447	\$4,470
The District	103 Congress	467	\$4,670

- a) **Application for Sidewalk Café providing Alcohol Service from State Street Saloon.** I am bringing forward for City Council action the [attached](#) Area Service Agreement for State Street Saloon for the 2016 season. City staff has reviewed State Street Saloon’s application and are recommending its approval as presented. Please note that the “Area” to be used by State Street, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

5 4-top tables
 20 chairs
 Area: 340 square feet
 Area Service Fee: \$3,400

I recommend the City Council Authorize the City Manager to enter into an Area Service Agreement with State Street Saloon for outdoor Alcohol service on City land for the 2016 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.

- b) **Application for Sidewalk Café providing Alcohol Service from Popovers on the Square.** I am bringing forward for City Council action the [attached](#) Area Service Agreement for Popovers on the Square for the 2016 season. City staff has reviewed Popovers’ application and are recommending its approval as presented. Please note that the “Area” to be used by Popovers, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

10 4-top tables
1 outside container full enclosed for garbage and recycling
38 chairs
Area: 570 square feet
Area Service Fee: \$5,700

I recommend the City Council Authorize the City Manager to enter into an Area Service Agreement with Popovers on the Square for outdoor Alcohol service on City land for the 2016 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.

- c) **Application for Sidewalk Café providing Alcohol Service from Ri Ra.** I am bringing forward for City Council action the [attached](#) Area Service Agreement for Ri Ra for the 2016 season. City staff have reviewed Ri Ra’s application and are recommending its approval as presented. Please note that the “Area” to be used by Ri Ra, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

5 4-top tables
4 2-top tables
28 chairs
Area: 447 square feet
Area Service Fee: \$4,470

I recommend the City Council Authorize the City Manager to enter into an Area Service Agreement with Ri Ra for outdoor Alcohol service on City land for the 2016 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.

- d) **Application for Sidewalk Café providing Alcohol Service from The District.** I am bringing forward for City Council action the [attached](#) Area Service Agreement for The District located at 103 Daniel Street for the 2016 season. City staff has reviewed The District’s application and are recommending its approval as presented. Please note that the “Area” to be used by District, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

17 top tables
34 chairs
Area: 467 square feet
Area Service Fee: \$4,670

I recommend the City Council Authorize the City Manager to enter into an Area Service Agreement with The District for outdoor Alcohol service on City land for the 2016 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.

3. **Applications for Sidewalk Cafés providing Alcohol Service-private sidewalk.** The City has received two applications for sidewalk cafés that are proposed for private sidewalk that runs along Portwalk Way. While these proposed locations are completely contained on private property, they are adjacent to the sidewalk area that the City has an easement over. The operation of these areas requires review for health and life-safety compliance and it was therefore determined that the City should review and issue a license for the operation. Because the operation occurs on private property and not on City property, as the other Sidewalk Café licenses, there is no associated fee with this action.

- a) **Application for Sidewalk Café providing Alcohol Service from British Beer Company.** I am bringing forward for City Council action the [attached](#) Area Service Agreement for British Beer Company located at Portwalk Place for the 2016 season. City staff has reviewed British Beer Company’s application and are recommending its approval as presented. Please note that the “Area” to be used by British Beer Company, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

3 4-top tables
6 2-top tables
24 chairs
Area: 882 square feet

I recommend the City Council Authorize the City Manager to enter into an Area Service Agreement with British Beer Company for outdoor Alcohol service for the 2016 season subject to City operating conditions contained in Council Policy No. 2012-02.

b) **Application for Sidewalk Café providing Alcohol Service from The BRGR Bar.**

I am bringing forward for City Council action the [attached](#) Area Service Agreement for The BRGR Bar located at 34 Portwalk Place for the 2016 season. City staff has reviewed The BRGR Bar application and are recommending its approval as presented. Please note that the “Area” to be used by BRGR, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

8 4 top tables
4 2 top tables
40 chairs
Area: 440 square feet

I recommend the City Council Authorize the City Manager to enter into an Area Service Agreement with The BRGR Bar Company for outdoor Alcohol service for the 2016 season subject to City operating conditions contained in Council Policy No. 2012-02.

4. **Annual Renewal of Boarding House Permits.** As you are aware, annually, the City Council considers and takes action on the renewal of Boarding House Permits. The City currently has two active Boarding Houses, one at 278 Cabot Street and another at 350-352 Hanover Street. A third Boarding House located at 21 Brewster Street has been closed since August 2015.

a) **278 Cabot Street.** Pursuant to Article VIII: Boarding Houses, Section 9.804: Permit Renewal, I have [attached a draft Permit](#) for the boarding house located at 278 Cabot Street. This facility was inspected on March 18, 2016 by the Code Enforcement Officer and Health Officer and recommended for the reissue of the permit.

I recommend that the City Council move to approve the Boarding House permit for 278 Cabot Street for a one year permit to expire April 5, 2017.

b) **350-352 Hanover Street.** Pursuant to Article VIII: Boarding Houses, Section 9.804: Permit Renewal, I have [attached a draft Permit](#) for the boarding house located at 350-352 Hanover Street. This facility was inspected on March 18, 2016 by the Code Enforcement Officer and Health Officer and recommended for reissue of the permit.

I recommend that the City Council move to approve the Boarding House permit for 350-352 Hanover Street for a one year permit to expire April 5, 2017.

5. **Request from Wright Avenue, LLC for Second Amendment to License for 67, 73 and 77 State Street.** On January 7, 2016, Wright Avenue, LLC (“Owner”) requested a Second Amendment to the License Agreement for Wright Avenue, LLC dated March 11, 2014 and approved by vote of the City Council on February 18, 2014. This request for a Second Amendment extends the term of the license for Owner’s use of and payment for City parking spaces due to a delay in construction caused by severe winter weather in 2015 and two major abutting projects being constructed at the same time. (One of the abutters is 143 Daniel Street, LLC’s, the former Connie Bean (“Abutter”). Immediately prior to the Owner’s request for a Second Amendment, the Owner and Abutter entered into two separate agreements addressing their proportional share of the cost to restore and repave the Memorial Bridge Parking Lot. The Owner’s request for a Second Amendment to License Agreement was delayed several months because the City wanted the Agreement to address all pending issues regarding the Owner’s property, including but not limited to working with Eversource, the Owner and Abutter regarding the location of utilities for both properties and the Memorial Bridge Parking Lot, flaggers for future deliveries, Abutter’s access to its property and access to the alley between the two properties.

I recommend the City Council move to authorize the City Manager to negotiate and enter into a Second Amendment to the License Agreement for Wright Avenue, LLC.

6. **Downtown Parking Shuttle Service Recommendation for 2016.** City staff is recommending partnering with COAST to operate the downtown shuttle service for the 2016 season. COAST currently partners with the City to provide related public transit services in the City and throughout the region. As a quasi-public transit provider, COAST cannot compete directly with private service providers. Therefore, if the City decides to enter into a contract with COAST, City Council approval is required as this service will not be publicly bid as it was in 2014 and 2015. Partnering with Coast will consolidate public transit services and reduce costs. More details on this program are provided in the [attached memorandum from Juliet Walker, Transportation Planner](#).

I recommend the City Council move to authorize the City Manager to negotiate and enter into an agreement between COAST and the City of Portsmouth to operate the downtown parking shuttle for the 2016 season.

7. **Greenleaf Recreation Center Lease Extension.** For the past two years, Operation Blessing has operated the Greenleaf Recreation Center on Greenleaf Avenue as a teen center and community center open to the public. The agency has been very successful in reaching out to the community, including the children and families living in the adjacent 100-unit Wamesit Place Apartments as well as the broader community through partnerships with various organizations serving Portsmouth residents, including Friends in Action, Easter Seals, Families First, Seacoast Family Food Pantry, Boy Scouts, and other groups. Operation Blessing’s own programs include Seacoast Adopt-A-Block, a youth volunteer program and the Family Life Center as well as drop-in after-school programming, camps for children, leadership programs, a teen outreach program, and other activities and outings it organizes for families, including the popular weekly cook-out held

on the grounds of the Center. In addition to sponsoring successful and vibrant programming the organization has made improvements to the building exterior.

This City building was originally acquired through a public benefit conveyance from the National Park Service (NPS). Per the NPS Federal Lands-to-Parks program, the property must be utilized as a recreation facility open to the public. Please note that, due to a National Park Service regulations, the instrument for this type of arrangement is referred to a “concession agreement” as opposed to a lease agreement.

At this time, Operation Blessing is seeking to extend the existing concession agreement to April 2018 with all other terms remaining the same. In recognition of the record of performance and the great community benefits resulting from the agency’s programming, I would recommend the lease term be extended through April 2018, with all other lease terms remaining the same.

I recommend the City Council move to authorize the City Manager to enter into a concession agreement with Operation Blessing for the Greenleaf Recreation Center through to April 16, 2018.

8. **Request to Establish a Public Hearing Re: Proposed Bonding of up to Five Million (\$5,000,000) Dollars for Phase II Little Harbour School Improvements.** [Attached is a letter from Superintendent Steve Zadavec along with the proposed Resolution](#) requesting that the City Council establish a public hearing for April 18, 2016 regarding the authorization to bond up to Five Million (\$5,000,000) Dollars for the Phase II improvements to Little Harbour School. This item has been identified in the FY2017 Capital Improvement Plan. Superintendent Zadavec would like to receive authorization on this expenditure by the beginning of May in order to assure that materials can be ordered prior to the closure of school. This would allow for the construction improvements to be done during the summer months while the students are on break. This is similar to the way Phase I of the Little Harbour Project took place and has seemed to work out very well.

I recommend the City Council move to establish a public hearing on Monday, April 18, 2016 for bonding of up to Five Million (\$5,000,000) Dollars for Phase II of the Little Harbour School Improvements.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on March 21, 2016. In addition, this can be found on the City’s website.
2. **Firm Selection for Prescott Park Master Plan.** At its meeting on March 14, 2016, the Mayor’s Blue Ribbon Committee on the Prescott Park Master Plan recommended I enter into negotiations with its first choice firm for the Master Planning engagement, Weston & Sampson Engineers, Inc. At this time, the City will be contracting for these professional

services, which will cost \$80,000. Fifty percent (\$40,000) of the total cost will be funded with Urban Development Action Grant Funds and the other 50% (\$40,000) will be funded with contingency funds.

This selection process began with the issuance of a Request for Qualifications to which nine firms responded; later, four firms were invited to submit proposals. Weston & Sampson was recommended following an interview with City staff and representatives from the Blue Ribbon Committee. Weston & Sampson is a highly-respected engineering firm with a number of successful landscape architecture and engineering engagements in Portsmouth. In addition, Weston & Sampson brings extensive experience working across New England on municipally-owned public parks, including those in waterfront settings. [Attached is additional information](#) about the firm's relevant past experience and project team.

The firm's work on this project will begin very shortly. City staff, in coordination with the Blue Ribbon Committee on the Prescott Park Master Plan, will be carrying out this work. Updates about the project timeline, major milestones, public input opportunities and other information about the project will be forthcoming.

3. **Report Back Re: Assistant Mayor Splaine's Request – Project Labor Agreement for the Peirce Island Wastewater Treatment Facility Upgrade.** As you will recall, at the March 21, 2016 City Council meeting, Assistant Mayor Splaine requested a report back regarding a project labor agreement for the Peirce Island Wastewater Treatment Facility (PI WWTF) Upgrade.

City staff does not recommend the incorporation of a Project Labor Agreement (PLA) into the existing bid process for the Peirce Island Wastewater Treatment Facility Upgrade. In short, a PLA requires the use of union labor for most tasks.

First, the incorporation of a PLA into the bidding process is not in accord with the intent of the City's competitive bidding ordinances and is inconsistent with past bidding practices. This issue of requiring the use of union labor for a project has arisen before in the context of other municipal projects and been rejected. A PLA makes the process less competitive by excluding otherwise qualified bidders and, based on reports from other communities and agencies, increases prices.

Second, there is no objective, documented evidence that staff is aware of that supports the assertion that the quality of the work performed by a unionized workforce in the northeast region is better than non-union work forces. The City's own experience after completing over \$55 million in pipe work, rebuilding roads, and constructing several buildings in the last 15 years, is that union versus non-union worker has no bearing on quality or safety.

Third, New Hampshire has a far greater proportion of non-union workers within the trades that are going to be employed on Peirce Island than union workers. A PLA would likely exclude more New Hampshire workers than include.

Fourth, it is late in the PI WWTF current bidding process to add a PLA. The project is already out to bid and it is assumed that given the complexity of the project, it will take ten or more weeks for bids to be prepared by the firms. Of the five prequalified bidders, one firm has already signaled that it would withdraw from the bidding process if the PLA is required because its workforces are non-union. A second firm might also withdraw.

4. **Water Country Traffic Study.** For your information, Water Country has consented to pay half of a traffic study and the City will pay the other half. The total cost for the traffic study is \$10,300. We have funding available to complete this project.

CITY OF PORTSMOUTH
CITY COUNCIL POLICY No. 2012-02

POLICY REGARDING USE OF CITY PROPERTY FOR SIDEWALK CAFE'S
PROVIDING ALCOHOL SERVICE

WHEREAS, the City Council allowed the pilot use of City property by two sidewalk cafe's providing alcohol service during the 2011 summer season; and

WHEREAS, the City Council recognizes the benefit to residents, businesses, visitors and the City's economic vitality of allowing sidewalk cafe's with alcohol service on City property; and

WHEREAS, the City Council desires to balance said benefits of sidewalk cafe's with the safety, desires, and convenience of the public at large; and

WHEREAS, the City Council also recognizes that the City has the inherent authority to regulate any obstructions on City sidewalks and any intrusions into City sidewalks; and

WHEREAS, the City Council recognizes the authority of the State to regulate alcohol service.

NOW THEREFORE, the City Council adopts the following policies, criteria and standards with regard to the use of City property for sidewalk cafe's providing alcohol service:

1. Requests for use of City property for sidewalk cafe's providing alcohol service shall be made in writing to the City Council on an annual basis by May 1st with no expectation of continued year-to-year use of the sidewalk area on a continuing basis. The City Council shall allow no more than six (6) sidewalk cafe's with alcohol service in any season.
2. Such requests shall include a dimensioned site plan of the existing conditions, including a depiction of public infrastructure such as curb lines, light poles, bike racks, street trees, tree grates, manhole covers, meters, licensed A-frame signs, adjacent on-street parking and loading zones, adjacent accessible sidewalk curb cuts and the like. Such requests shall also include a dimensioned site plan depicting the proposed table/chair layout plan for the sidewalk café, dimensioned routes of travel within the sidewalk café area and on the adjoining public sidewalk, as well as detail sheets for the proposed enclosure system, tables, chairs, lighting, trash receptacles, and the like.
3. The terms and conditions of any such requests that are approved by the City Council in any given year shall be described in an annual Area Service Agreement, which includes a clear depiction of the area approved for sidewalk café use, with said Area Service Agreement to be signed by the City Manager and the party or parties making the request.
4. The term of the Area Service Agreement should be for no more than six (6) months and shall typically run mid-April thru mid-October.
5. Area Service Agreements shall not be assignable to other parties.

6. Use of the Area subject to the Area Service Agreement (the “Area”) may be precluded, modified or made subject to any such terms and conditions as may be determined by the City in order to accommodate special municipal events.
7. A ten dollar (\$10.00) per square foot fee will be charged for the Area subject to the Area Service Agreement and the fee shall be for the entire 6 month season with no proration of the fee. The minimum fee for the season shall be \$2,000 even if the size of the Area subject to the Agreement is less than 200 square feet. The fee shall be due and payable to the City of Portsmouth prior to authorization to use the Area.
8. The Area specified for sidewalk café use in the Area Service Agreement shall be restored upon termination of the Area Service Agreement at season’s end. Specifically, at season’s end, the enclosure system, tables, chairs and all other materials in their entirety shall be removed from the City-owned area with the area left in an unobstructed, undamaged, clean and sanitary condition at no cost to the City.
9. Sidewalk cafés on City property shall indemnify and hold harmless the City of Portsmouth and shall maintain and provide insurance of the types and amounts specified by the City’s Legal Department.
10. Sidewalk cafe’s shall not damage sidewalks, curbing, bike racks, street trees, light poles, trash containers, utilities or any other City amenities or infrastructure, or make same inaccessible for public use or maintenance purposes.
11. Sidewalk cafe’s may utilize the Area for authorized purposes during their normal business hours, except that all tables within the Area shall be cleared of all food and alcoholic beverages by 10:30 p.m. Monday through Saturday and by 10:00 p.m. on Sunday with no alcohol served within the Area subsequent to one-half hour before the foregoing closure times.
12. Sidewalk café operators shall agree at all times to comply with all laws, rules and regulations of the NH State Liquor Commission and all other local, state and federal laws. Approval of the Area Service Agreement by the State Liquor Commission is required. Alcoholic beverage violations shall be self-reported to the State Liquor Commission.
13. Sidewalk cafe’s shall only serve alcoholic beverages to patrons who are seated at a table and who are ordering a substantial meal with service at tables conducted by wait staff only.
14. Sidewalk café operators will agree that they shall be solely responsible for compliance with the Americans with Disabilities Act.
15. The Area Service Agreement may be suspended at the sole discretion of the City on an administrative basis.
16. The Area Service Agreement may be revoked in its entirety, excepting for indemnity provisions, by the City by vote of the City Council.

17. Sidewalk cafe's with alcohol service should meet the following site design standards:

- Be separated from the public pedestrian space on the adjacent municipal sidewalk by an enclosure system consisting of heavy duty black decorative metal materials or equivalent as approved by the City Manager or his designee; special attention shall be paid to the method used to support the enclosure system in order to avoid damage to public property and insure public safety; the minimum height of the enclosure system shall be 30 inches and the maximum height shall be 36 inches.
- Sidewalk cafe's shall have no audio or visual or entertainment of any type located outside, and no visual entertainment shall be situated on the inside of the building in such a manner that it is directed to patrons in the sidewalk café.
- Sidewalk café seating shall be appurtenant and contiguous to a doorway accessing the main restaurant facility with service provided within the Area approved by the City, and the adjacent public pedestrian way shall not be crossed in order to provide alcohol or food service to additional areas.
- The internal dimensions and table/chair layout of the sidewalk café Area must allow for the passage of customers and wait staff and shall, in any event, meet ADA requirements.
- Sidewalk cafe's must provide a 5-foot radius clearance from the center of restaurant doorways (exterior) and doorways shall be kept clear at all times and a 5-foot minimum clear pedestrian path in front of restaurant doorways (exterior) shall be maintained at all times.
- The enclosure system, tables and chairs shall be movable/non-permanent.
- In Market Square the minimum width for the pedestrian way adjacent to the Area shall be 10-feet to 12-feet depending on site conditions. In all other areas where sidewalk cafe's are allowed the width for the pedestrian way adjacent to the Area shall, at a minimum, be 5-feet and, in any event, meet ADA, but will depend on site conditions. The pedestrian way in both instances shall allow for and provide clear unimpeded passage and access along the Area. The pedestrian way shall be located entirely on the public sidewalk and shall meet criteria that ensure pedestrian safety, usability and ADA compliance. In no event shall the Area interfere with accessibility or public safety, including safe lines of site for drivers.
- Canopies over the sidewalk café shall not be allowed unless they are completely supported by hardware on the building structure, that is, there shall be no vertical supports in or around the sidewalk café; table umbrellas without logos are allowed, but must not extend beyond the Area.
- No advertising of any kind shall be allowed in the Area.
- No improvements or personal property located within the Area shall extend on or over any municipal property located outside the Area.

18. Smoking should not be allowed in the sidewalk café Area.

19. Sidewalk café operators shall agree at all times to comply with all local laws, rules regulations and orders including, but not limited to the following:
- Health Department to approve outdoor food service operations and cleaning operations, with the Area to be left in a clean and sanitary condition at all times and garbage contained at all times in covered receptacles. The Area shall be left in clean condition at close of business with all garbage removed in its entirety from the Area, and any ground debris swept up, at close of daily business. No food prep, grilling, service windows, service counters, wait stations, or bus buckets shall be allowed in the Area and no condiments, paper products or the like shall be stored on the tables in the Area. Health Department shall review/approve that kitchen facilities are sufficient to support additional seating.
 - Inspections Department shall review/approve that bathroom facilities are sufficient to support outdoor sidewalk café seating. Permits shall be sought from the Inspections Department for any proposed Area lighting.
 - A Place of Assembly inspection and updated Place of Assembly permit shall be required from the Fire Department and the Fire Department shall review/approve means of egress.
20. No Area Service Agreement should be approved by the City except in conformance with the foregoing.
21. The above are policy guidelines that will serve as the basis for Area Service Agreements, which may include other terms and conditions deemed by the City to be in the public interest.
22. The number and location of sidewalk cafe's on City sidewalks shall be at the sole unfettered discretion of the City Council acting in the public interest and no entitlement is created by this policy for any party to have a sidewalk café at any location.

This policy shall take effect upon the passage by the City Council.

Adopted by the Portsmouth City Council on March 19, 2012.

Kelli L. Barnaby, CMC/CNHMC
City Clerk

Roger's Café, Inc.
d/b/a State Street Saloon
268 State Street
Portsmouth, New Hampshire 03801

March 23, 2016

Portsmouth City Council
City of Portsmouth
1 Junkins Avenue
Portsmouth, New Hampshire 03801

Re: Application to Utilize City Property to Operate a Sidewalk Cafe

To the Portsmouth City Council:

Please accept this correspondence as my application to utilize City of Portsmouth property for a sidewalk café with alcohol service.

In support of this application I have attached the following documents:

- (a) A dimensioned site plan depicting the conditions now existing in front of my restaurant which is located at 268 State Street, Portsmouth, New Hampshire;
- (b) A dimensioned site plan documenting the planned use of the site;
- (c) The contract issued by GC/AAA Fence Company to fabricate the enclosure; and
- (d) A detail drawing depicting the "look" of the enclosure.

The lighting for the proposed use is pre-existing and is located behind the canopy which is attached along the length of the front of the State Street Saloon. There will be no trash receptacles within the proposed sidewalk café in that all trash will be disposed of in the same receptacles now used for the existing restaurant. As you are aware, I received a license to operate a sidewalk café for the 2014 season. The tables and chairs utilized for the 2014 season are the same tables and chairs which would be utilized for the proposed sidewalk café. By way of information, the tables stand 28.5 inches tall. The table tops are 30 inches square. The chairs are 34 inches tall, 18 inches deep and 22 inches wide. The enclosure system was fabricated for the 2013 season by GC/AAA Fence Company of Dover, New Hampshire and was approved by the City of Portsmouth. It would be my intention to utilize the same enclosure system in the same location as it was placed last year. I have attached a copy of the contract issued by GC/AAA Fences to construct the enclosure. As indicated, the enclosure is described

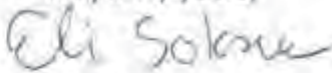
Portsmouth City Council
City of Portsmouth
1 Junkins Avenue
Portsmouth, New Hampshire 03801
Page Two

as a Black Regis Ornamental Fence. The enclosure was fabricated as a "free standing" structure whereby the free standing posts have aluminum plates attached to the bottom to create a stable platform. The enclosure is attached to the building by way of four end posts that do not have the aforementioned aluminum plates. The enclosure is 38 ½ inches tall. The free standing posts are 2 ½" by 2 ½". The pickets are ¾ inches by ¾ inches. The top and bottom rails are 1 ¼" by 1 ¼". I have also enclosed herein a detail drawing depicting the "look" of the completed enclosure.

In closing I would like to express my gratitude to the City Council for granting me approval for a license to operate a sidewalk café for the 2015 season. It was a pleasure to maintain the sidewalk café for my regular customers and for the many individuals who chose to visit the City of Portsmouth. I would greatly appreciate the opportunity to maintain the sidewalk café for the 2016 season.

Please note that I am available to discuss this application with the City of Portsmouth at the convenience of the City Council.

Thank you for your time and consideration in this matter.

Very truly yours,

Eli Sokorelis

enc.
cc: file



GC/AAA FENCE COMPANY 294 DURHAM ROAD
DOVER, NH 03820 603-742-0833

PROPOSAL/CONTRACT

Customer Information:

STATE STREET SALOON
268 STATE ST.
PORTSMOUTH, NH 03801
ATTN: ELI

Job Information:

OUTSIDE CAFE AREA

Furnish & Install

72' OF 3' HIGH REGIS ORNAMENTAL
BLACK ALUMINUM FENCE ON
SIDEWALK AS SPECIFIED. ALL
FREESTANDING POSTS WILL HAVE AN
ALUMINUM PLATE WELDED FOR
STABILITY. PANELS TO BE ATTACHED
TO POSTS WITH BRACKETS & BOLTS. 4
END POSTS WITHOUT PLATES TO BE
ATTACHED TO BUILDING FOR
STABILITY.
REGIS 4220 3' HIGH FENCE
LIMITED LIFETIME WARRANTY

COST BREAKDOWN:

MATERIAL COST:
9 ALUM. PLATES
LABOR
ADD 2 PLATES
CUSTOM HEIGHT

TOTAL:
COMP \$\$:

TOTAL DUE:

GC/AAA FENCE COMPANY agrees to guarantee above fence to be free from defects in materials and workmanship for three years.

GC/AAA FENCE COMPANY shall advise the customer as to local zoning regulations but responsibility for complying with said regulations and obtaining any required permits shall rest with the customer. GC/AAA FENCE COMPANY will assist the customer, upon request, in determining where the fence is to be erected, but under no circumstances does GC/AAA FENCE COMPANY assume any responsibility concerning property lines or to guarantee their accuracy. If property lines cannot be located it is recommended that the customer have the property surveyed.

GC/AAA FENCE COMPANY will assume the responsibility for having underground public utilities located and marked. However, GC/AAA FENCE COMPANY assumes no responsibility for unmarked sprinkler lines, or any other unmarked buried lines or objects. The customer will assume all liability for any damage caused by directing GC/AAA FENCE COMPANY to dig in the immediate vicinity of known utilities.

The final billing will be based on the actual footage of fencing built and the work performed. Partial billing for materials delivered to the jobsite and work completed may be sent at weekly intervals.

Adjustments for materials used on this job and adjustments for labor will be charged or credited at the currently established rates. Additional charges for any extra work not covered in this contract that was requested by the customer will also be added. The full amount of this contract along with any additional charges will become payable upon completion of all work whether or not it has been invoiced.

A finance charge of 1 1/2% per month (or a minimum of \$1.00), which is an annual percentage rate of 18%, shall be applied to accounts that are not paid within 10 days after completion of any work invoiced. All materials will remain the property of GC/AAA FENCE COMPANY until all invoices pertaining to this job are paid in full. The customer agrees to pay all interest and any costs incurred in the collection of this debt.

CONTRACT PRICE IS VALID FOR 14 DAYS.

Approved & Accepted for Customer:

Eh Sabon
Customer

Date

Sign and Return to GC/AAA FENCE COMPANY:

Gordon Clark
Salesperson

5-13-12

Date

Contract Amount:

Down Payment:

Balance Due:

NOTE:

DRAWING SHOWS 4' HI

PROJECT WILL BE 38 1/2" HI.

96"
On Center

1 1/4" x 1 1/2"
Rails

3/4" x 3/4"
Pickets

3.962"
Spacing

43 1/2", 49"

48 1/2", 54"

2"


Post Size

48 1/2" Tall	2 1/2" x 2 1/2" x 6 1/2"
54" Tall	2 1/2" x 2 1/2" x 7"

APPROVED BY:

DATE APPROVED:

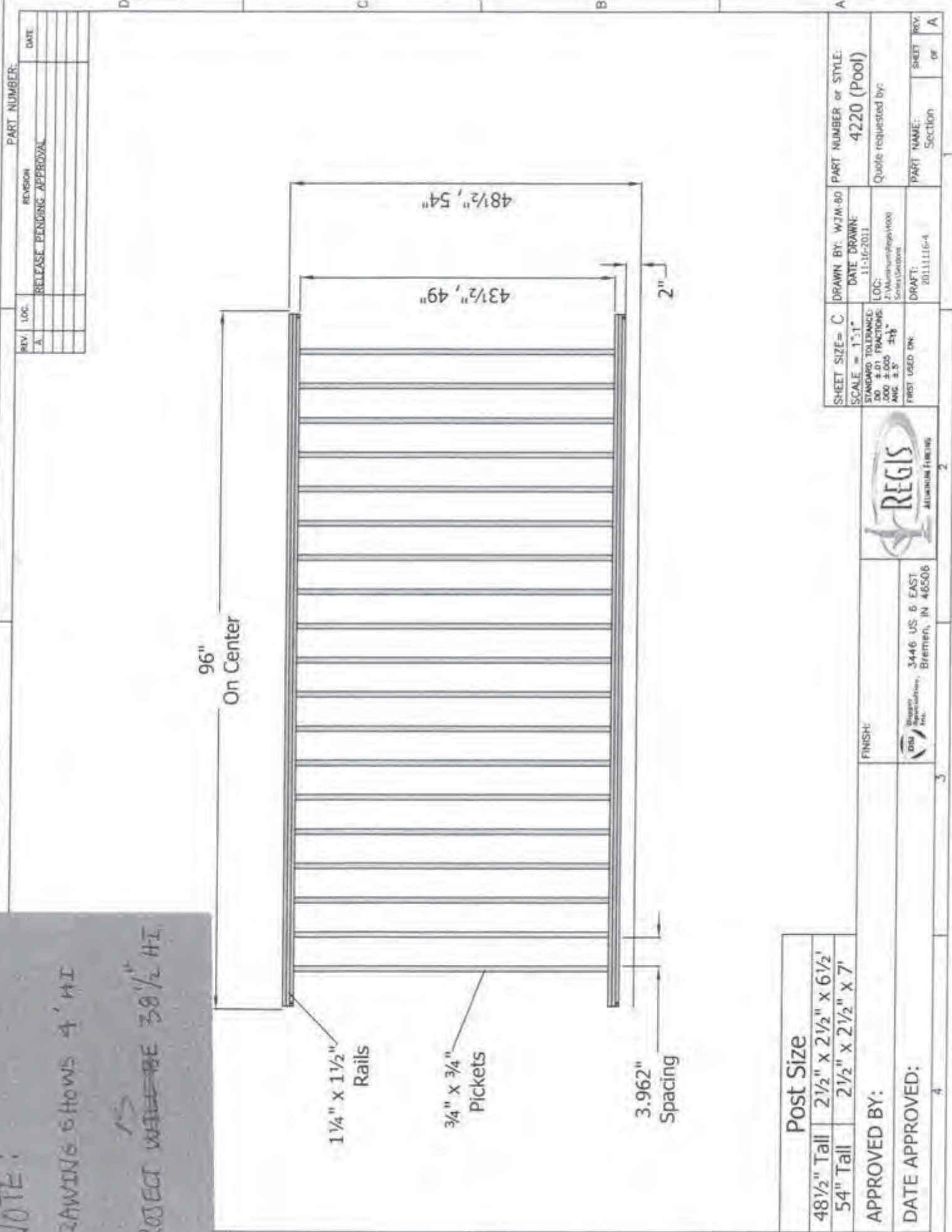
FINISH:

 D&S Manufacturing, Inc. 3446 US 6 EAST Bremen, IN 46506



SHEET SIZE = C	DRAWN BY: WJM-80	PART NUMBER or STYLE: 4220 (Pool)
SCALE = 1" = 1'-0"	DATE DRAWN: 11-16-2011	Quote requested by:
STANDARD TOLERANCE: ±.000 FRACTIONS ±.000 DECIMALS ±.000 ANGLES	LOC: 2-Victoria-um-1000 Series Database	
FIRST USED ON:	DRAFT: 20111116-4	PART NAME: Section
		SHEET or A

REV	LOC	REVISION	PART NUMBER:	DATE
A		RELEASE PENDING APPROVAL		



STATE STREET

PLEASANT STREET

CROSSWALK

CROSSWALK

LOADING ZONE



SRK

8.2'

EX. AWNING

EX. AWNING

15.6'

METAL COVER

HH

SIGNAL POST

LP

LP

LIGHT POST

GAS VALVE

DOORWAY (NOT USED)


STATE STREET SALOON
268 STATE STREET

CHECK BASIN

FREE GATE W/
INFILTRATION
SYSTEM

ENTRYWAY
STAIRS



 <p>131 COURT STREET, FARMINGTON, CT 06031 PHONE (860) 431-2225</p>		DATE: 3/28/12 SCALE: 1" = 5' DRAWING NUMBER: C-1	REV: Δ DRAWING REFERENCE: 4428SITE.DWG	TITLE: EXISTING CONDITIONS PLAN
JOB NAME: STATE STREET SALOON				

POPOVERS
ON THE SQUARE

8 CONGRESS STREET
PORTSMOUTH, NH 03801
(603) 431-1119

RECEIVED
MAR 11 2016

March 9, 2016

David S. Allen
City Manager
City of Portsmouth, NH
1 Junkins Avenue
Portsmouth, NH 03801

RE: Use of City Property for Sidewalk Cafes Providing Alcohol Service

Dear Mr. Allen,

Popovers is interested in attaining a permit for sidewalk usage of alcohol service for the 2016 season. We would like to start service on Friday, April 29, 2016. Our seating plan will be the same as the past year and during the 2014 season including 10 tables, 38 seats, and 1 outside container fully enclosed for garbage and recycling. We also plan to have at least one service person for the area during alcohol service times. The 570 square foot area would be surrounded by fencing 3-4 feet in height to surround the perimeter and would be portable so that it may be removed during the off-season for snow removal access. There would be no change to the grates or impact to the trees that are in the area.

As requested for approval, I have enclosed two documents, one that displays the current exterior area of Popovers and the other that displays our proposal for a sidewalk café. Please let me know if there is any additional information you need.

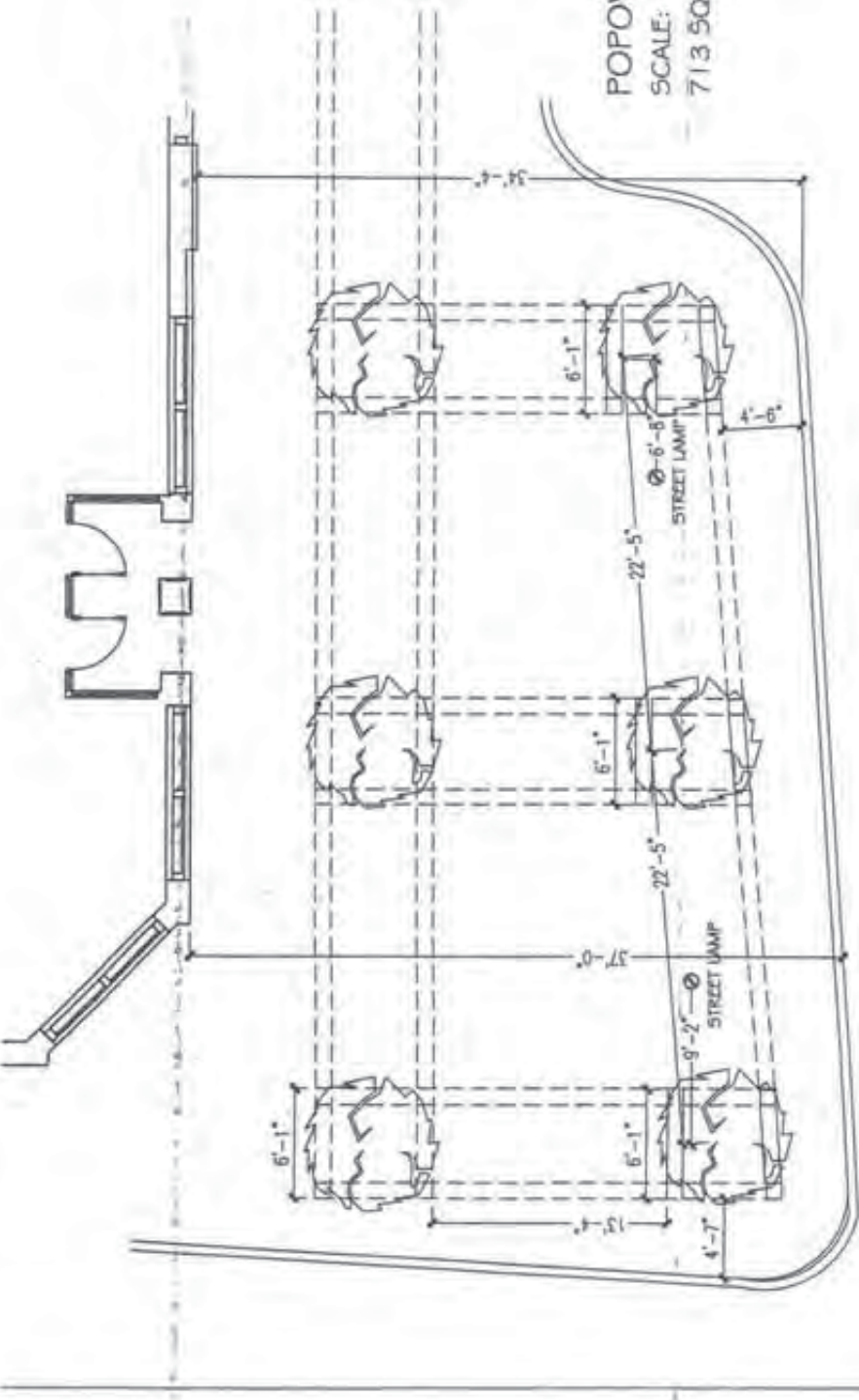
Respectfully,



John Tinios
Popovers on the Square

Enclosure

POPOVERS SITE PLAN
SCALE: 1/8" = 1'-0"
713 SQ FT / 38 SEATS



Ri-Ra Portsmouth, LLC



Portsmouth City Council
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

21 March 2016

RE: Written Request to city council for Ri-Ra to be considered as a site for a 2016 sidewalk café.

Dear Portsmouth Council,

Please consider this letter as a formal request from Ri-Ra Portsmouth, LLC to be considered for a 2016 sidewalk café permit/license. After great success over the last few years we would like the opportunity in front of the City Council to show our proposed sidewalk café and to demonstrate how it would be a good addition to the city landscape again this year.

Per the Portsmouth legal department's request regarding this subject, please review the attached site plan and let us know if you have any questions of concerns. We have read the outline of the City Councils policy and understand full compliance is needed to make this work for the City of Portsmouth. We have a strong track record of compliance and acting with goodwill in all our previous agreements with City of Portsmouth and hope to have a favorable response from the council to this request.

We look forward to your response.

Sincerely,

Gary Haugh
General Manager
Ri-Ra Portsmouth, LLC.
(603) 319-1682

CC: Angela Grogan / Rich Ortiz



103 Congress St.
(603) 501-0586
www.thedistrictnh.com

MAR - 1 2010

To whom it may concern,

March 1, 2010

District Restaurant Group, Inc. (DBA the District) is formally writing to receive permission to operate a sidewalk café on city property on Vaughn Mall. Will have the same black fence as last year (36" high) and operate 30-35 seats on the Vaughn Mall side with an additional 25 seats on our existing patio for a maximum of 60 seats for our entire outdoor patio. Our fence will once again be lined with flower pots. We have included our site design map that depicts all necessary tables, chairs, fence, city property and curb lines and flower pots etc.

Any and all questions please do not hesitate to contact me.

Thank you,

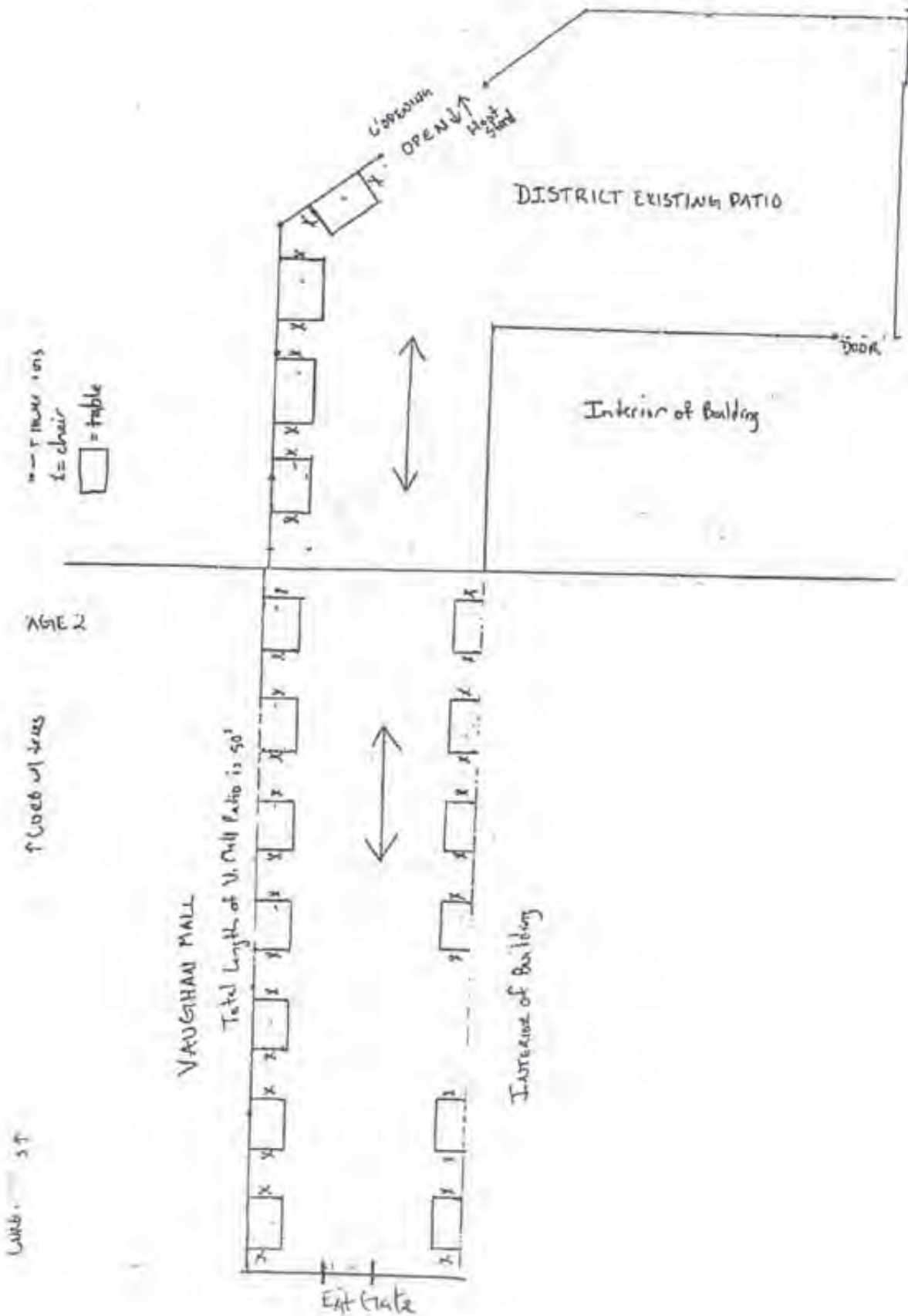
David Takis II
District Restaurant Group, Inc.
103 Congress St
Portsmouth, NH 03801
603-501-0586

4" = 1'

CONGRESS ST

W

EXHIBIT A





February, 28 2016

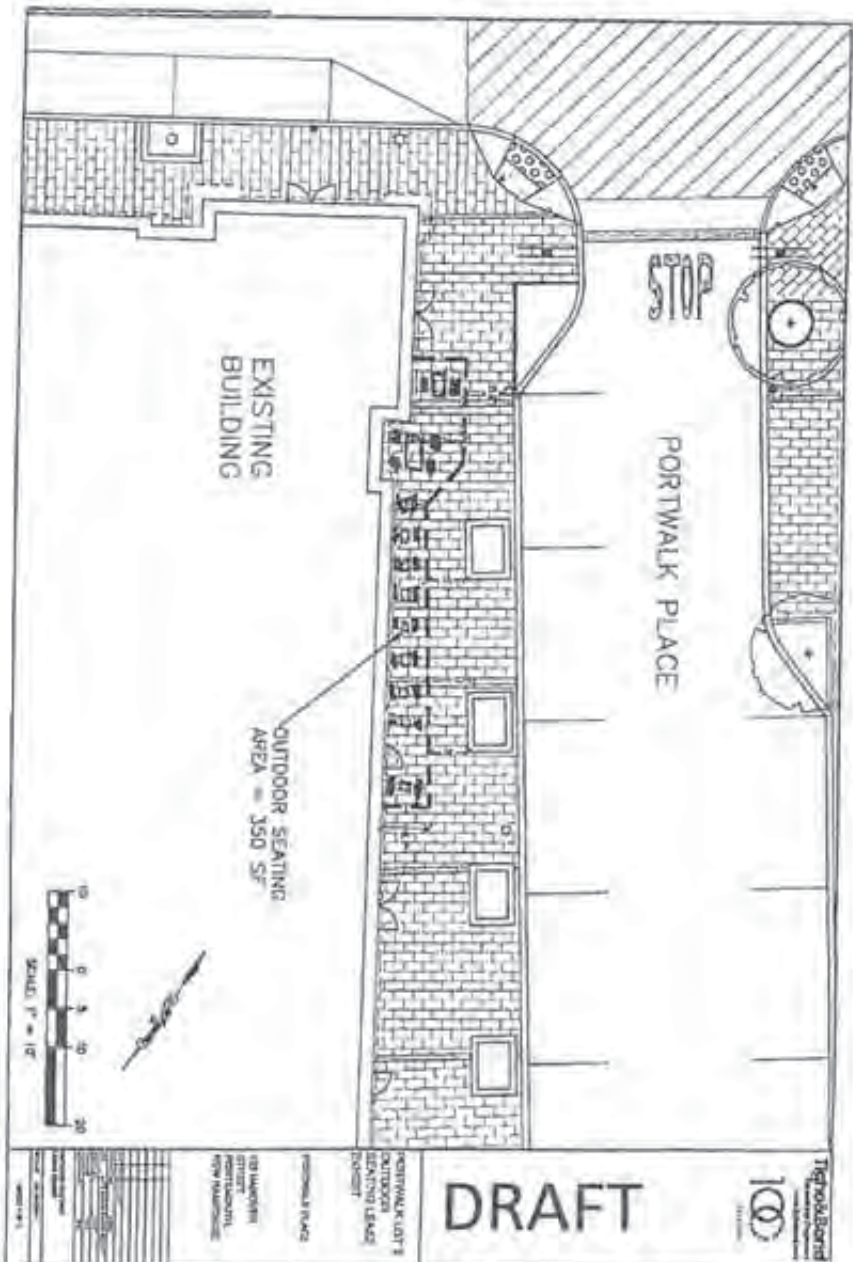
Jack Blalock, Mayor
City Council
City of Portsmouth
Portsmouth City Hall
1 Jenkins Avenue
Portsmouth, NH 03801

Honorable Mayor Jack Blalock and City Council,

Please allow this letter to serve as a formal request for the renewal of our Area service Agreement for the use of the outdoor space adjacent to the British Beer Company.

Thank you for your consideration.

Respectfully submitted,
Gary Simon
British Beer Company



EXISTING BUILDING

OUTDOOR SEATING AREA = 350 SF

STOP

PORTWALK PLACE

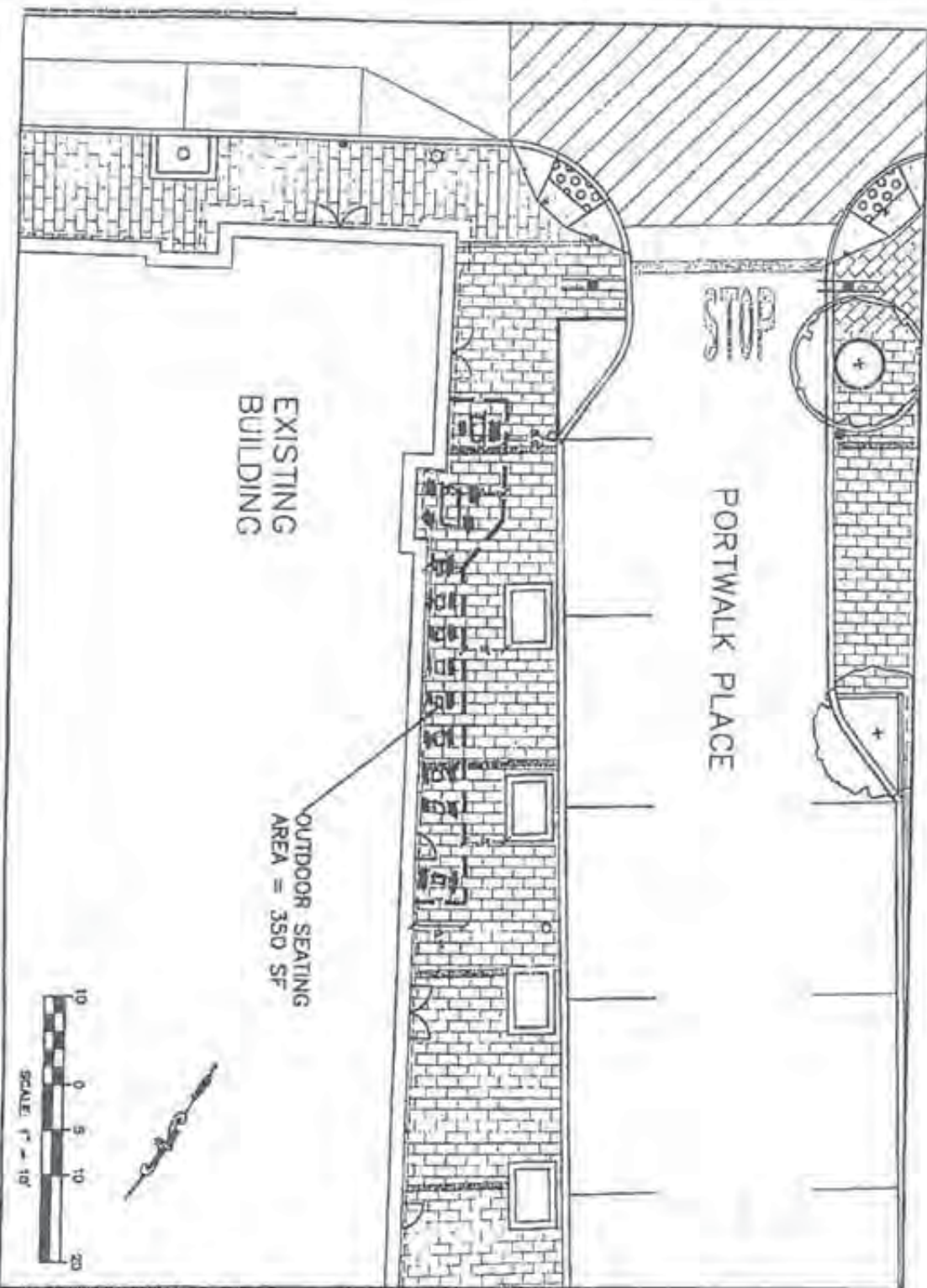


DRAFT



PORTWALK LOT 1
OUTDOOR SEATING LEASING
PROJECT

PROFESSIONAL PLANS
BY LANDMARK
GROUP ARCHITECTS
AND PLANNERS



EXISTING BUILDING

OUTDOOR SEATING AREA = 350 SF

PORTWALK PLACE



DRAFT



<p>125 HANOVER STREET PORTSMOUTH, NEW HAMPSHIRE</p> <p>PORTWALK PLACE</p> <p>PORTWALK LOT 2 OUTDOOR SEATING LEASE EXHIBIT</p>	<p>Tipton & Bond Professional Engineers 100 EST. 1910</p>
---	---

EXHIBIT A

March 1st, 2016

Jack Blalock
City Council
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH

Honorable Mayor Blalock and City Council.

Please allow this letter to serve as a formal request for favorable consideration of an area service agreement for tables and chairs upon a city sidewalk, adjacent to BRGR BAR restaurant as shown on attached plan.

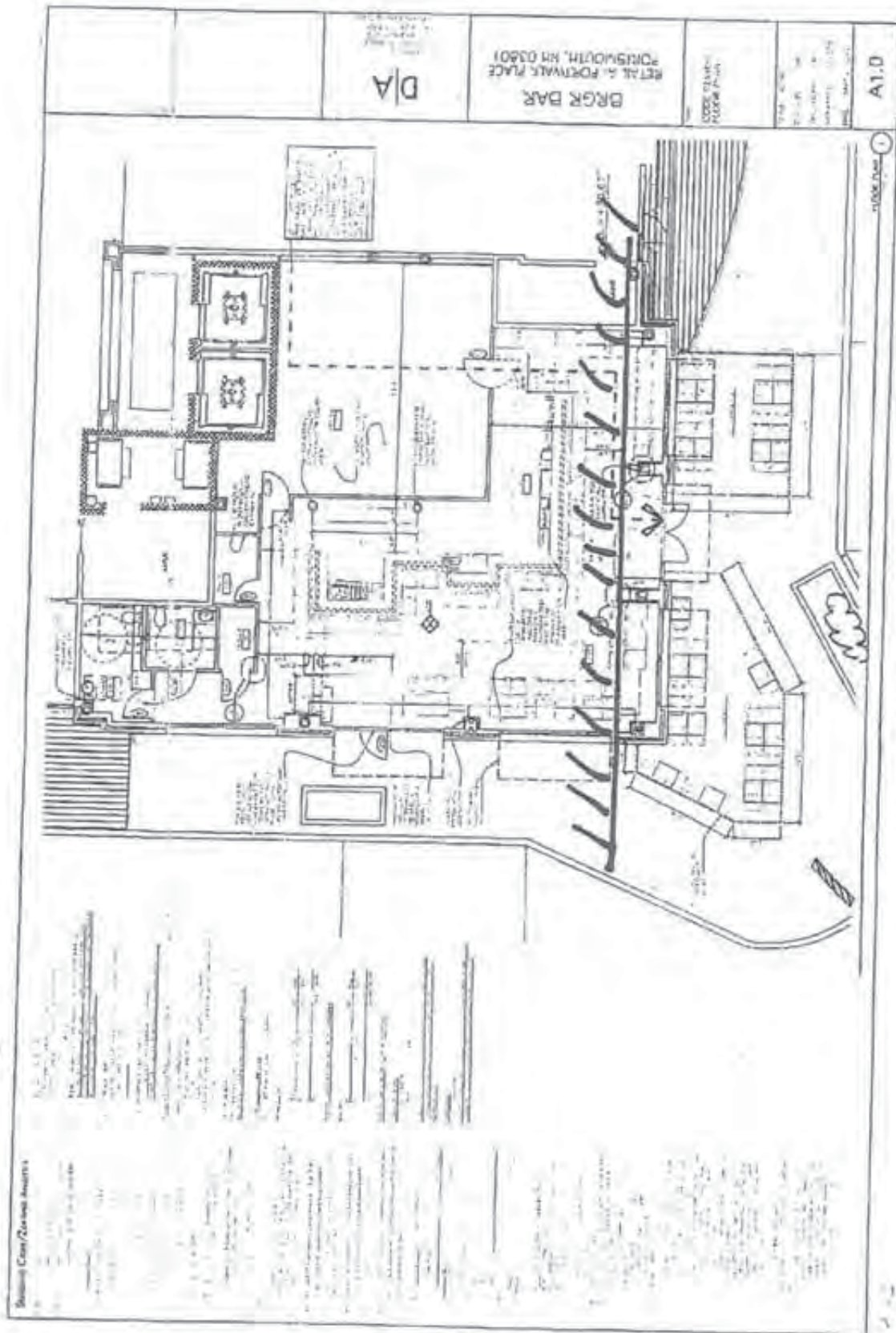
We look forward to reviewing this request with you at an upcoming regularly scheduled meeting.

Respectfully submitted,

Phelps Dieck
BRGR BAR.

A handwritten signature in black ink, appearing to read 'Phelps Dieck', with a long horizontal flourish extending to the right.

CC: Carolyn Gregory , General Manager, BRGR BAR



||||| - SIGN

☁ - TREE

BOARDING HOUSE PERMIT

CITY OF PORTSMOUTH, NEW HAMPSHIRE

Permit Number: 2016-02

Date: April 5, 2016

BE KNOWN, that Janet L. White-Nay and Paul H. White, Trustee, P.O. Box 1325 Portsmouth, NH 03802-1325 is licensed to operate a boarding house located at 278 Cabot Street within the City of Portsmouth, NH for the following number of rooms:

Number of Rooms: 12

The boarding house complies with City Ordinance Chapter 9, Article VIII, Sections 9.801 – 9.805 at the date of issuance of permit.

The following condition shall be met:

1. Correction of all deficiencies from the annual inspection prior to permit issuance.

This permit will expire: April 5, 2017

Attest:

Kelli L. Barnaby, City Clerk
OFFICE OF THE CITY CLERK

BOARDING HOUSE PERMIT

CITY OF PORTSMOUTH, NEW HAMPSHIRE

Permit Number: 2016-01

Date: April 5, 2016

BE KNOWN, that G. Edward Gowen, Jr., 355 Great Bay Road Greenland, NH 03840 is licensed to operate a boarding house located at 350-352 Hanover Street within the City of Portsmouth, NH for the following number of rooms:

Number of Rooms: 12

The boarding house complies with City Ordinance Chapter 9, Article VIII, Sections 9.801 – 9.805 at the date of issuance of permit.

The following condition shall be met:

1. Correction of all deficiencies from the annual inspection prior to permit issuance.

This permit will expire: April 5, 2017

Attest:

Kelli L. Barnaby, City Clerk
OFFICE OF THE CITY CLERK



MEMORANDUM

TO: JOHN P. BOHENKO, CITY MANAGER
FROM: JULIET T.H. WALKER, TRANSPORTATION PLANNER *JTW*
SUBJECT: DOWNTOWN PARKING SHUTTLE SERVICE RECOMMENDATION FOR 2016
DATE: MARCH 29, 2016

For the 2016 season, staff is recommending operating the downtown parking shuttle Friday through Sunday beginning the first weekend in July through Labor Day. Staff also recommends providing additional shuttle service for special event days (Market Square Day, Halloween Parade, Holiday Parade, and First Night).

This year, City staff is recommending partnering with COAST to operate this service for the City. The regional public transit system that COAST operates is funded in part from contributions from the communities it serves, including Portsmouth. In addition to the regional system, COAST operates the Route 40 and 41 Trolleys which operate within Portsmouth city limits as well as the Vintage Christmas Trolley which operates on weekends in December. As a quasi-public transit provider, COAST cannot compete directly with private service providers and, therefore, was unable to respond to the previous request for bids for operation of this service in 2014 and 2015. At the City's request, COAST has provided an estimate for operating a comparable parking shuttle using their existing fleet vehicles and commercial drivers. Partnering with COAST would result in an estimated 6-7% reduction in anticipated operating costs compared to contracting with a private operator.

Estimated Parking Shuttle Operation Costs for 2016 Season

Service Period	Service Hours	<i>Weekly Cost 2015</i>	Weekly Cost 2016	Total Costs 2016
7/1 – 9/4 (10 weeks)	Friday 12pm-1am (13 hrs) Saturday 12pm-1am (13 hrs) Sunday 1pm-11pm (10 hrs)	\$2,808	\$2,594	\$25,940
Special Events: <ul style="list-style-type: none"> • Market Square Day • Halloween Parade • Holiday Parade • First Night 	Market Square Day (13 hrs) Halloween Parade (7 hrs) Holiday Parade (9 hrs) First Night (9 hrs)			\$2,907
				\$28,847



PORTSMOUTH SCHOOL DEPARTMENT

OFFICE OF THE SUPERINTENDENT OF SCHOOLS

STEPHEN ZADRAVEC
SUPERINTENDENT OF SCHOOLS

GEORGE SHEA
ASSISTANT SUPERINTENDENT

STEPHEN T. BARTLETT
BUSINESS ADMINISTRATOR

March 29, 2016

Portsmouth City Hall
1 Junkins Avenue
Portsmouth, New Hampshire 03801

Attention: Mr. John P. Bohenko, City Manager

Subject: Elementary School Upgrades

Dear John,

The Portsmouth School Board's Elementary Facilities Committee has reviewed the continuation of work at Little Harbour School scheduled for the summer of 2017. Phase I, completed last summer, included a complete renovation of the main office area and second floor classroom spaces, including the installation of sprinklers and other key infrastructure upgrades. Phase II, scheduled for this summer, will include the same upgrades throughout the first floor classroom spaces, gymnasium, cafeteria, and kitchen.

The School Board is requesting approval from the City Council for the \$5,000,000 scheduled for FY 17 in the Capital Improvement Plan to complete Phase II of the Little Harbour project as well as design work for Dondero School. The School Department would be happy to host a tour of Phase I improvements at LHS. We thank you and the City Council, in advance, for your support of this capital project.

Sincerely,

Stephen Zadravec, Superintendent

cc: Ms. Judie Belanger, Finance Director
Mr. Stephen T. Bartlett, Business Administrator

"THE PURPOSE OF THE PORTSMOUTH SCHOOLS IS TO EDUCATE ALL STUDENTS BY CHALLENGING THEM TO BECOME THINKING, RESPONSIBLE, CONTRIBUTING CITIZENS WHO CONTINUE TO LEARN THROUGHOUT THEIR LIVES."

**CITY OF PORTSMOUTH
TWO THOUSAND SIXTEEN
PORTSMOUTH, NEW HAMPSHIRE**

RESOLUTION # – 2016

**A RESOLUTION AUTHORIZING A BOND ISSUE AND/OR
NOTES OF UP TO FIVE MILLION DOLLARS (\$5,000,000) FOR
COSTS RELATED TO PHASE II OF ELEMENTARY SCHOOL
FACILITY IMPROVEMENTS.**

RESOLVED:

THAT, the sum of up to **Five Million Dollars (\$5,000,000)** is appropriated for Phase II of Elementary School Facility Improvements;

THAT, to meet this appropriation, the City Treasurer, with the approval of the City Manager, is authorized to borrow, on a competitive or negotiated basis, up to **Five Million Dollars (\$5,000,000)** through the issuance of bonds and/or notes of the City under the Municipal Finance Act;

THAT, the expected useful life of the projects is determined to be at least twenty (20) years, and;

THAT, this Resolution shall take effect upon its passage.

APPROVED:

JACK BLALOCK, MAYOR

ADOPTED BY CITY COUNCIL

**KELLI BARNABY, CMC/CNHMC
CITY CLERK**

Run: 3/31/16
10:27AM

Event Listing by Date

Page: 1

Starting Date: 3/21/2016

Ending Date: 1/31/2017

Start End	Type Description	Location	Requestor	Vote Date
3/26/2016 3/26/2016	ROAD RACE Donald Allison is the contact for this event. He can be reached at (617) 835-2378. This race begins at Traip Academy in Kittery and travels through Portsmouth.	Through Portsmouth	Eastern States 20 Mile	11/16/2015
4/ 3/2016 4/ 3/2016	RACE Contact: Todd Hanson, Race Director	Pease Tradeport	St. Paddy's 5 Miler	12/21/2015
4/ 9/2016 4/ 9/2016	RACE Robert L. Sutherland, Jr. is the contact for this event. This event begins at 8:00 a.m.	St. John's Lodge	St. John's Lodge	1/25/2016
4/16/2016 4/16/2016	WALK Emily Christian, Development Manager is the contact for this event. Telephone number 781-693-5154	Little Harbour School - start and finish	National Multiple Sclerosis So	4/16/2016
4/16/2016 4/16/2016	WALK Contact: Adriane Wallace Active Heroes and Annies Angels will be rucking (walking with weighted backpacks) through a portion of Portsmouth from the rail trail to Prescott Park.	Walk from rail trail to Prescott Park	Active Heroes/Carry The Fallen	3/ 2/2016
4/30/2016 4/30/2016	WALK Jenelle Dolan, Community Director is the contact. jdolan@marchofdimes.com Tel. 978-729-5849 Time: 6:00 am. to 12:00 p.m.	Little Harbour School	March of Dimes	10/ 5/2015
5/ 1/2016 5/ 1/2016	FAIR Barbara Massar, Executive Director is the contact for this event. This event is Pleasant Street - State Street to Market Square; no parking on Market Street - Bow Street to Isle Shoals Steam Co. entrance. This event is from Noon to 4:00 p.m.	Downtown	Children's Day	8/ 3/2015
5/ 1/2016 5/ 1/2016	RIDE Contact: Melissa Walden, Associate of Development 207-624-0306 Cycle the Seacoast - First riders leaving Redhook Brewery at 7:00 a.m. and the last rider will be in around 3:00 p.m.		American Lung Association	8/17/2015
5/ 7/2016 5/ 7/2016	ROAD RACE Carolyn Ostrom, NH Community Relations Specialist is the contact for this event. The event begins on Peirce Island and ends at Strawberry Banke Starting time is 9:00 a.m.	Peirce Island	Susan G. Koman	8/17/2015
5/14/2016 5/14/2016	WALK Deidre Reynolds is the contact for this event. Her contact information: dede40@comcast.net or 236-9616 This event gathers at Prescott Park at 11:00 a.m. then process to walk across Memorial Bridge and back. The full name of this event: Moms Demand Action Tri State Meet Up and Bridge Walk for Gun Sense.	Prescott Park	Moms Demand Action Tri State M	3/14/2016
5/29/2016 5/29/2016	RACE Jeanine Sylvester is the contact for this event. This event is at Pease Tradeport. Event begins at 11:00 a.m.	Pease Tradeport	Runner's Alley	1/25/2016

Run: 3/31/16
10:27AM

Event Listing by Date

Page: 2

Starting Date: 3/21/2016

Ending Date: 1/31/2017

Start End	Type Description	Location	Requestor	Vote Date
6/11/2016 6/11/2016	FESTIVAL Barbara Massar is the contact for this event. This event begins at 9:00 a.m. to 4:00 p.m.	Market Square Day - 39th	Pro Portsmouth	8/ 3/2015
6/11/2016 6/11/2016	RACE Barbara Massar, Executive Director is the contact for this event. This is 5K Road Race that begins in Market Square.	Market Square Road Race	Pro Portsmouth	8/ 3/2015
6/18/2016 6/18/2016	RACE Nicole McShane is the contact for this event. Her contact number is 430-1140 ex. 2407 Raindate for this event is Sunday, June 19th.	Pleasant Street	Big Brother Big Sisters of New	10/19/2015
6/25/2016 6/25/2016	MUSIC Barbara Massar, Executive Director is the contact for this event. This event begins at 5:00 p.m. to 9:30 p.m.	Pleasant Street - Summer in the Street Music Serie	Pro Portsmouth	8/ 3/2015
6/25/2016 6/25/2016	PRIDE Contact: Jess Dorr, Executive Director 603-552-5824, Portsmouth Pride Community Event with Six Walks into Market Square	Market Square	Seacoast Ouright	3/21/2016
7/ 2/2016 7/ 2/2016	MUSIC Barbara Massar, Executive Director is the contact for this event. This event begins at 5:00 p.m. to 9:30 p.m.	Pleasant Street - Summer in the Street Music Serie	Pro Portsmouth	8/ 3/2015
7/ 4/2016 7/ 4/2016	RACE David Hampson is the contact for this event. Telephone No. 334-3032 Race Start: 9:00 a.m. Registration: 7:30 a.m.	Strawbery Banke, Marcy Street	Easter Seals Veteran's Count	12/ 7/2015
7/16/2016 7/16/2016	BIKE TOUR Contact: Chris Vlangas 1-800-757-0203 Event begins at 7:30 a.m. from Shapleigh Middle School in Kittery.	From Kittery, ME to Route 1B to Rye back to Kitter	Cystic Fibrosis Foundation	1/25/2016
7/16/2016 7/16/2016	MUSIC Barbara Massar is the contact for this event. This event begins at 5:00 to 9:30 p.m.	Pleasant Street - Summer in the Street Music Serie	Pro Portsmouth	8/ 3/2015
7/23/2016 7/23/2016	MUSIC Barbara Massar is the contact for this event. This event begins at 5:00 p.m. to 9:30 p.m.	Pleasant Street - Summer in the Street Music Serie	Pro Portsmouth	8/ 3/2015
7/30/2016 7/30/2016	MUSIC Barbara Massar, Executive Director This event is from 5:00 to 9:30 p.m.	Pleasant Street - Summer in the Street Music Serie	Pro Portsmouth	8/ 3/2015

Event Listing by Date

Starting Date: 3/21/2016

Ending Date: 1/31/2017

Start End	Type Description	Location	Requestor	Vote Date
8/ 4/2016 8/ 4/2016	RACE Justin Finn is the contact for this event. Race Start: 6:00 p.m. Registration: 4:30 p.m.	Portsmouth High School Cross Country Track	Portsmouth Rotary Club	12/ 7/2015
9/17/2016 9/17/2016	WALK Contact: Ken La Valley, Chair - Out of Darkness Walk on Saturday, September 17, 2016 Registration: 8:30 a.m. Walk Duration 10:00 a.m. - Noon Peirce Island - Begin and end. Proposed Walk route 2.3 miles	Peirce Island	American Foundation for Suicid	1/11/2016
9/18/2016 9/18/2016	RACE Wendy McCoolle is the contact for this event. Telephone #603-759-5640 Race Start: 9:00 a.m. Registration: 7:30 a.m.	Portsmouth Middle School	Celebrate Pink	12/ 7/2015
9/24/2016 9/25/2016	BIKE TOUR Donna Hepp is the contact for this event. Tel. 414-258-3287	Through Portsmouth	Grante State Wheelmen	12/ 7/2015
9/24/2016 9/25/2016	FESTIVAL David Hallowell is the contact for this event. This is a 2-day event starting at 8:00 a.m. to 6:00 p.m.	Pleasant Street	Portsmouth Maritime Folk Festi	1/25/2016
9/24/2016 9/25/2016	TOUR Caroline Amport Piper is the contact. Tel. (603) 686-4338 Location of this event is to be determined. This event begins each day at 11:00 a.m. to 3:00 p.m.	To Be Determined	Friends of the South End	12/ 7/2015
10/ 9/2016 10/ 9/2016	ROAD RACE Contacts: Catherine Edison at CE Edison@communitycampus.org (Date changed to October 9, 2016 instead of October 8th) Ben Anderson - ben@prescottpark.org Angela Greene - angela@prescottpark.org Race Start: 10:00 a.m. Registration: 8:00 a.m.	Memorial Bridge Portsmouth	Memorial Bridge Road Race	12/ 7/2015
10/22/2016 10/22/2016	WALK Contact Susan von Hemert Annual Memorial Bridge Walk walking across Memorial Bridge to Prescott Park	Memorial Bridge Walk to Prescott Park	Seacoast Rotary	3/ 3/2016
11/24/2016 11/24/2016	ROAD RACE Matt Junkin, Race Director is the contact for this event. This is the Thanksgiving Day Turkey Trot which begins at Peirce Island and ends at Strawberry Banke. Registration begins at 7:00 a.m. Race commences at 8:30 a.m.	Peirce Island is the start - Strawberry Banke is th	Seacoast Rotary Turkey Trot 5K	11/16/2015
12/11/2016 12/11/2016	ROAD RACE Thomas M. Bringle is the contact for this event. Tel. 603-724-6080 tbringle@arthritis.org. Registration begins at 9:00 a.m. Race start time: 10:00 a.m.	Little Harbour School	Arthritis Foundation - Jingle	1/25/2016

Run: 3/31/16
10:27AM

Event Listing by Date

Page: 4

Starting Date: 3/21/2016

Ending Date: 1/31/2017

Start End	Type Description	Location	Requestor	Vote Date
1/ 1/2017 1/ 1/2017	RACE Michael Rennebu is the contact for this event. Cell #603-969-9783 Race Start: 11:00 a.m. Registration: 9:00 a.m.	Portsmouth Middle School	Great Bay Services	12/ 7/2015

ROSTER OF FIRMS AND FIRM EXPERIENCE

To meet the diverse needs of our clients, Weston & Sampson offers extensive in-house capabilities in dozens of areas, including many areas that are crucial to this project (in color):

- Historic Landscape Planning & Restoration
- Landscape Architecture & Urban Design
- Transportation & Traffic Engineering
- Infrastructure Design & Construction
- Commercial & Residential Land Development
- Site/Civil Development
- Architecture
- Public Facilities Planning & Design
- Geotechnical & Structural Engineering
- Watershed & Stormwater Management
- Wastewater Collection & Treatment
- Wetlands Replication & Restoration
- Peer Review
- Land Surveying
- Master Planning
- Recreational Area and Athletic Field/Complex Design
- Renewable Energy
- Environmental Site Assessment/Demolition/Remediation
- Environmental Compliance/Permitting
- Regulatory & Enforcement Assistance
- Hydrology & Hydraulics
- Solid Waste Planning, Design & Management
- Water Supply Development & Treatment
- Water Supply Pumping & Distribution
- Construction Inspection, Oversight & Management
- GIS & Digital Mapping
- Operation, Maintenance, and Repair of Water & Wastewater Systems

Weston & Sampson has completed hundreds of successful landscape architecture design and open space projects for communities in New Hampshire and throughout New England. We help our clients envision successful futures for their parks, waterfronts, playgrounds, athletic fields, open space, and urban design projects. Spurr's creative designers consistently complete thoughtful, pragmatic, and cost-effective master plans; park, streetscape, and bike/pedestrian path designs; environmental and historical restorations; and open space projects.

Our capabilities and specialized services include:

- Master planning, feasibility studies, and site analysis and redevelopment
- Passive and active recreation facilities design and construction, including conservation land management and historic landmark restoration
- Comprehensive community involvement and participation, including charrettes/websites and volunteer coordination
- Rail-to-trail, greenway, and recreational corridor master planning/design/construction
- Transportation, traffic, and parking planning as well as highway, bridge, and railroad/transit systems
- Environmental permitting and restoration/ coordination with local, state, and federal agencies
- Existing conditions inventory/mapping, soil assessments/remediation
- Streetscape design, including street/sidewalk restoration
- Waterfront and recreation design and construction
- Sustainable designs and resiliency planning
- Stormwater management
- High-quality illustrative graphics, renderings, and photo-realistic designs
- Interpretive signage and wayfinding systems
- ADA/AAB-related design services and compliance



ROSTER OF FIRMS AND FIRM EXPERIENCE

Weston & Sampson provides public and private sector clients throughout New England with cost-effective and innovative solutions to their planning, infrastructure improvement, and environmental challenges. The majority of work completed by Weston & Sampson is focused on assisting communities in developing and implementing improvements as they relate to public open space, streetscapes/roadways, ADA compliance, drainage, and utilities.

Specifically, our projects have included waterfront parks, town and city commons, veterans' memorials, multi-generational neighborhood parks and playgrounds, riverwalks and multi-use trails, dog parks, and a wide variety of other open space and recreation types. All of our designs ensure ADA accessibility/compliance and useful and compelling recreation programming for users aged 0 to 102. **In addition, we have experience working successfully within historical commission guidelines and respecting the archaeological nature of the site on many of our projects.** Our projects involving archaeologically sensitive sites include our work for the communities of Boston, Chatham, Newburyport, Norton, Rowley, and Worcester, Massachusetts.

Weston & Sampson in general and our proposed project team, specifically, has significant local knowledge and project awareness through our past work in the City of Portsmouth. As you





know, Weston & Sampson is currently providing design services for South Mill Pond Tennis Courts and Leary Field lighting upgrades. In addition, our firm has provided high-quality engineering services for many other projects in Portsmouth in recent years, including our landscape architecture and design work on the recreational field at the city's stump dump property, Plains Park, Pine Street Playground, and Ceres Street projects; peer review services for the Alumni-Wentworth Ball Field project at the Portsmouth Middle School; and our extensive water/wastewater/ environmental engineering work. Through these opportunities, we have developed an in-depth knowledge of your existing facilities and related recreational programming needs.





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The matrix on the following pages summarizes our experience in your project's primary areas of focus.




ROSTER OF FIRMS AND FIRM EXPERIENCE

EXPERIENCE MATRIX					
PROJECTS	Site-Specific Master Planning in Urbanized Settings	Waterfront Parks	Historic Preservation & Cultural Resource Planning	Landscape Architecture	Facilities Planning
<p>Various Park & Streetscape Improvements – Portsmouth, New Hampshire</p> <p>Ceres Street</p> <ul style="list-style-type: none"> ▪ historic waterfront location ▪ improved public and service access to the waterfront and nearby businesses ▪ streetscape and park improvement plan that addressed accessibility, traffic, drainage, and pedestrian access ▪ significant community involvement/process <div style="display: flex; justify-content: space-around;">   </div> <p>Plains Park</p> <ul style="list-style-type: none"> ▪ master plan including streetscape/park edge improvements, defined park entrances, improved accessible pedestrian circulation, a perimeter walking path, a new tot lot, new parking areas, and a reinforced turf beyond the ball field fence to accommodate overflow parking ▪ park/recreational area improvement <div style="text-align: center;">  </div> <p>Pine Street Playground</p> <ul style="list-style-type: none"> ▪ overall park/recreational area improvement plan included improved edge definition, handicapped accessibility throughout the site via a new pedestrian circulation network, improved drainage conditions, and an overall upgrade to issues compromising safety and play value ▪ extensive community process ▪ phased approach to the work <div style="text-align: center;">  </div>	X	X	X	X	X

ROSTER OF FIRMS AND FIRM EXPERIENCE

EXPERIENCE MATRIX					
PROJECTS	Site-Specific Master Planning in Urbanized Settings	Waterfront Parks	Historic Preservation & Cultural Resource Planning	Landscape Architecture	Facilities Planning
<p>Mayor Thomas M. Menino Park – Charlestown, Massachusetts Boston Redevelopment Authority</p> <ul style="list-style-type: none"> ▪ master planning for redevelopment of this post-industrial parcel ▪ landscape architecture; site/civil/stormwater management, permitting, and structural/electrical engineering ▪ environmental remediation, structural and civil engineering ▪ historic waterfront location ▪ accessibility/inclusion – areas for multi-generational play, physical therapy, and reflection ▪ successfully completed site remediation and cleanup, design, bidding and construction in accordance with a highly compressed and expedited schedule ▪ commitment to the project and its tight schedule ▪ public open space design ▪ robust public outreach program 	X	X	X	X	X
<p>LoPresti Park Master Plan – Boston, Massachusetts Boston Parks & Recreation Department</p> <ul style="list-style-type: none"> ▪ waterfront location ▪ varying elements of play ▪ full refurbishment of an important park and open space resource in an urban area ▪ inclusive design that accommodates all park users regardless of age or ability ▪ sea-level rise mitigation measures researched for shoreline treatment 	X	X	X	X	X

ROSTER OF FIRMS AND FIRM EXPERIENCE

EXPERIENCE MATRIX					
PROJECTS	Site-Specific Master Planning in Urbanized Settings	Waterfront Parks	Historic Preservation & Cultural Resource Planning	Landscape Architecture	Facilities Planning
<p>Boston Common & Public Garden – Boston, Massachusetts</p> <ul style="list-style-type: none"> ▪ historical preservation ▪ design and construction administration services for the restoration of the historic Parkman Bandstand brick pathways, which were originally designed by the Olmsted Brothers (Ca. 1911), and surrounding lawn area ▪ design and construction administration services for the reconstruction of Oliver Wendell Holmes Mall ▪ park-wide inventory of areas in need of drainage and pavement improvements / resolved historic drainage problems ▪ design and installation of a complete underground irrigation system ▪ achieved accessibility in all areas 	 	X	X	X	X
<p>Worcester Common – Worcester, Massachusetts</p> <ul style="list-style-type: none"> ▪ historical preservation ▪ comprehensive community participation process ▪ coordinated with multiple stakeholders on a variety of downtown development initiatives ▪ led feasibility and design efforts related to the establishment of an outdoor skating oval and bike/skate pavilion support building within the common ▪ investigation and management of the pavement design tasks ▪ conducting extensive forensic engineering tasks to identify and rectify various failures in public infrastructure ▪ four primary phases of construction making use of funds from National Park Service, local, MassDOT, and federal highway funds ▪ construction management and owner's representative services for all phases of work 		X	X	X	X
<p>Dozens of other similar and applicable projects. Information to be furnished upon request.</p>	X	X	X	X	X

PROJECT TEAM

DESIGN TEAM & PROJECT MANAGEMENT

PROJECT MANAGEMENT

Our management team offers the city more than just design expertise; we understand the practical realities of those seeking to find the support, funding, and phasing strategies to achieve meaningful improvements once the planning process is concluded and others who seek to maintain all property assets in high order. This team includes registered landscape architects with stellar design talent, a body of park and open space work, and impressive community outreach and public participation skills. These seasoned professionals work seamlessly together on many of our complex, multi-disciplinary, and high-profile projects. Their vast experience in blending and leveraging the appropriate team skills and experience to ensure project success will prove essential in coordinating the capabilities and responsibilities of the professionals who comprise our proposed project team.

Our principal-in-charge, **Eugene Bolinger, RLA**, and project manager, **Cheri Ruane, RLA**, have focused their careers on improving the public realm through the design and management of signature and award-winning park and open space improvement projects. In addition, both have significant experience in the City of Portsmouth. **Cheri Ruane, RLA**, our project manager will draw on her extensive project management experience and delegate/assign tasks and responsibilities for each aspect of your project to the appropriately qualified professionals. **Cheri will be available and tenaciously committed throughout the duration of this project.** Ultimate responsibility for the soundness of the design will fall to our dynamic project management team, detailed below.



Eugene Bolinger, RLA, Vice President at Weston & Sampson and integral member of Spurr, Weston & Sampson's Design Studio, will serve as the principal-in-charge and will ensure that your project remains a priority within our firm. As the senior point of contact and a stakeholder in our firm, he will have overall responsibility and accountability for project execution. Gene will maintain close contact with Cheri, our proposed project manager, to assure that your project is progressing according to schedule and budget. By virtue of his position, he will review staff assignments as necessary to complete tasks or to facilitate the availability of support staff within Weston & Sampson. **Gene has more than 30 years of experience in the planning, design, and implementation of open space and recreational improvement projects throughout New England.** He has successfully managed a multitude of projects involving successful master planning, final design, and construction administration efforts for the reconstruction or restoration of open space properties, city and town commons, parks, playgrounds, athletic facilities, and urban design/streetscape corridors. Gene is currently leading efforts related to park and open space master planning in nearly a dozen communities.

During his career, Gene has led many of our firm's efforts on programs with significant community input and outreach components, helping multiple stakeholders work together to develop long-term solutions to community planning needs. **His recent project experience includes his work on BRA's highly successful redevelopment of Parcel 5 into the new Mayor Thomas M. Menino Park in Charlestown, Massachusetts.** This project required an accelerated schedule and included ADA accessibility/compliance as well as an extensive public engagement component.

Gene's project experience with the City of Portsmouth includes the Ceres Street improvement project, the recreational field at the city's stump dump property, the Plains Park Improvements project, the Pine Street Playground project, and the current South Mill Pond and Leary Ball Field.

PROJECT TEAM

PROJECT MANAGEMENT



Cheri Ruane, RLA, Vice President at Weston & Sampson and, like Gene, one of the founding members of Spurr, will serve as the **project manager/team leader and primary contact with the City of Portsmouth and will maintain the lead in terms of contract management**. Cheri will direct the day-to-day performance of the project team, ensure technical quality, and monitor personnel assignments and allocations. Cheri is a **New Hampshire Registered Landscape Architect** with 20 years of experience in multi-disciplinary project management, construction administration, site analysis, and public design. Cheri has managed the design and construction of complex public improvement projects at waterfront parks, playgrounds, schoolyards and other open space system assets throughout New England, including more than two dozen current projects.

Her **project experience in the City of Portsmouth includes the Ceres Street improvement project, the recreational field at the city's stump dump property, the Plains Park improvements project, the Pine Street Playground project, and the current tennis court/lighting project**. Her recent work also includes similar projects for the communities of Boston, Lowell, Somerville, Woburn, and Worcester. Through her experience, Cheri has developed a thorough understanding of and appreciation for the City of Portsmouth, state-of-the-art design technologies, and accessibility and historic guidelines. Her direct experience includes placemaking projects with significant open space, pedestrian access, and park components.

In addition, Cheri has **special expertise in facilitating the community engagement/participation process**. The combination of managing the public process from the perspective of the owner, as well as supporting the public sector from the perspective of the consultant, has given Cheri a unique understanding of how best to manage public projects and work in close coordination with municipalities. Cheri is passionate about engaging the full cross-section of the community and understands that public landscapes require a creative and collaborative approach to successful design, from coordinating various stakeholders' goals and concerns for their open space to choosing appropriate construction materials.

She has managed the design and construction of more than \$40 million in public improvements to urban open spaces, including her work at **Mayor Thomas M. Menino Park** with its accelerated schedule, accessible and inclusive design elements, environmental remediation/compliance issues, and significant public engagement component. Through her vast project management experience, Cheri has also developed valuable working relationships with state and federal regulatory agencies involved in her projects, which have included, to varying degrees, permitting challenges and wide-ranging regulatory requirements.



CITY OF PORTSMOUTH, N.H.
BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information
Please submit resume' along with this application

Committee: Public TV + Community Affairs **Renewing applicant**

Name: Amy E Burns Telephone: 617 694 8624

Could you be contacted at work? YES/NO - If so, telephone # _____

Street address: 57B Albarque Way Portsmouth NH 03801

Mailing address (if different): _____

Email address (for clerk's office communication): burnswarda@gmail.com

How long have you been a resident of Portsmouth? 7 years

Occupational background:

Senior Financial Analyst; Partners
Healthcare, Boston. Negotiate contractual
agreements, conduct financial impact
studies, oversee process improvement projects

Would you be able to commit to attending all meetings? YES/NO

Reasons for wishing to continue serving: I have enjoyed my
first term on the Commission & the
work done



Please list any organizations, groups, or other committees you are involved in:

None at this time

Please list two character references not related to you or city staff members:

(Portsmouth references preferred)

1) Lisa Willich - PT Portsmouth resident (732) 320-5695
Name, address, telephone number

2) Anthony C. Cauterucci - Allamore Way (202) 657-3129
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

1. This reappointment application is for consideration and does not mean you will necessarily be reappointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature:  Date: 3/1/16

CITY CLERK INFORMATION ONLY:

New Term Expiration Date: 9-1-2019
Annual Number of Meetings: 5 Number of Meetings Absent: 0
Date of Original Appointment: 10-6-2015

Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801

2014_A_Burns_Resume.docx

Open with

Amy E. Burns
 57B Albacore Way
 Portsmouth, NH 03801
 603.694.8624
burns_woods@gmail.com

Profile:

Health care professional with over twenty-five years experience in revenue cycle management activities. Strong knowledge of market trends from both the provider and payer perspective including reimbursement methodologies, contracting strategies, payer policies and system implementation dependencies. Successful relationship manager with excellent analytical, interpersonal and project management skills.

Professional Experience:

- | | |
|--|------------------------------|
| <p>Senior Analyst – Payer Operations – Finance
 Partners HealthCare System</p> | <p>2009 – Present</p> |
| <ul style="list-style-type: none"> • Chair of several operational workgroups with national and local health plans focused on improving revenue cycle performance and resolving contractual disputes (i.e. financial settlements) • Act as a liaison to payer contractual negotiations to draft and secure terms to maximize cash collection, reduce AR days and minimize provider write-offs • Administrator for a government audit database, conduct testing for new releases with US and database vendor, respond to audit requests for assistance, compile and distribute financial reporting of \$30 million in revenue to Sr. Leadership • Corporate medical in Massachusetts Collaborative, a consortium of payers and providers working on initiatives to simplify the administration of healthcare | |
| <p>Team Lead – Payer Management – eCare Program
 Partners HealthCare System</p> | <p>2007 – 2009</p> |
| <ul style="list-style-type: none"> • Oversight of system of business and applications analysts, charged with designing and implementing a single set of patient administrative systems across Partners HealthCare System • Collaborate with business process and external IS consultants to accomplish project goals and timelines • Develop functional requirements, test cases and training modules to support the system implementation plan • Interpret current contractual terms to build accurate expected reimbursement calculations in the contract management application | |
| <p>Corporate Manager – Payer Operations – Finance
 Partners HealthCare System</p> | <p>2005 – 2007</p> |
| <ul style="list-style-type: none"> • Managed a team of five analysts supporting revenue enhancement initiatives for non-academic medical centers and their affiliated physician organizations • Presented key payer performance indicators to the Partners Contract Strategy group including Chief Financial Officer, Vice-President of Contracting, Chief Medical Officer and Chief Legal Counsel • Developed and managed project plans to study strategic initiatives aimed at improving the payment cycle | |
| <p>Analyst – Revenue Operations – Finance
 Partners HealthCare System</p> | <p>2000 – 2005</p> |
| <ul style="list-style-type: none"> • Identified and resolved payment issues including pre-billing edits, claim rejections and underpayments • Led a cross management team to reduce an unpaid inventory of \$21 million and implemented reporting and procedures to accelerate future revenue recovery efforts • Insured proposed contract terms were compliant with government regulations, internal policies and procedures and could be implemented in multiple registration and billing platforms | |



CITY OF PORTSMOUTH, N.H. BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information
Please submit resume' along with this application

MAR 28 2016

Committee: Cable Television and Communications Commission **Renewing applicant**

Name: Robert Capone Telephone: 603.436.1978

Could you be contacted at work? YES/ NO - If so, telephone # 603.380.8078 (cell)

Street address: 34 Harrison Ave, Portsmouth

Mailing address (if different): (same)

Email address (for clerk's office communication): rob.capone@werbor.com

How long have you been a resident of Portsmouth? 16 years

Occupational background:

Over 15 years experience in Information Technology, working for an architecture & engineering firm as a "one-man IT department," which has required me to cover many diverse aspects of IT and required me to develop a broad knowledge on a variety of technical subjects & areas.

Would you be able to commit to attending all meetings? YES/ NO

Reasons for wishing to continue serving: I feel my technical experience, coupled with over 16 years as a Portsmouth resident, will continue to be an asset to the Commission. I also feel my more technical background meshes well with the experience and skills of the other Commission members.

OVER
➔

Please list any organizations, groups, or other committees you are involved in:

Water Registration (Local, State & National Elections)

Please list two character references not related to you or city staff members:

(Portsmouth references preferred)

1) Lynne Langley, 84 Porpoise Way, Portsmouth, 603.343.3982 (cell)
Name, address, telephone number

2) Eric Weinrieb, 9 Middle Road, Portsmouth, 603.427.5105 (land line)
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

1. This reappointment application is for consideration and does not mean you will necessarily be reappointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature:  Date: 28 March 2016

CITY CLERK INFORMATION ONLY:

New Term Expiration Date: 9/1/19

Annual Number of Meetings: 5 Number of Meetings Absent: 0
2015

Date of Original Appointment: 8/19/2015

Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801



CITY OF PORTSMOUTH, N.H.
BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information
Please submit resume' along with this application

Committee: CITYWIDE NEIGHBORHOODS COMMITTEE Renewing applicant

Name: CLIFF LAZENBY Telephone: 603-978-4725 (cell)

Could you be contacted at work? YES NO - If so, telephone # 603-559-2295 [REFER LOW ↑]

Street address: 303 MCKINLEY RD., PORTSMOUTH, NH

Mailing address (if different): SAME

Email address (for clerk's office communication): cliff.lazenby@gmail.com

How long have you been a resident of Portsmouth? 12 YEARS

Occupational background:
IT DIRECTOR - OCEAN PROPERTIES, LTD. (HOTEL/NGMT)

Would you be able to commit to attending all meetings? YES NO

Reasons for wishing to continue serving: PORTSMOUTH NEIGHBORHOODS ARE A VITAL PART OF OUR CITY AND THERE IS AN IMPORTANT ROLE TO ENGAGE RESIDENTS WITH ALL PARTS OF PORTSMOUTH GOVERNMENT AND COMMUNITY. I ENJOY HELPING ADVOCATE FOR THESE CAUSES AND BELIEVE I CAN HELP THESE RELATIONSHIPS FLOURISH.

OVER
➔

Please list any organizations, groups, or other committees you are involved in:

SELECTMAN, WARD 4 (CURRENT)

Please list two character references not related to you or city staff members:
(Portsmouth references preferred)

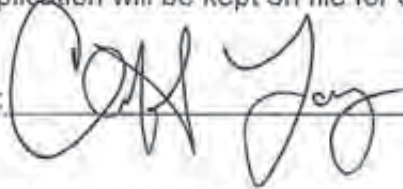
1) RANDY HOLT, 390 FW HARTFORD DR, PORTSMOUTH 603-436-8899
Name, address, telephone number

2) CRISTY CAROSO, ATLANTIC HEIGHTS, PORTSMOUTH 603-512-3634
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

1. This reappointment application is for consideration and does not mean you will necessarily be reappointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
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5. Application will be kept on file for one year from date of receipt.

Signature: _____



Date: _____

3/11/2016

CITY CLERK INFORMATION ONLY:

New Term Expiration Date: 07/01/2019

Annual Number of Meetings: 6 Number of Meetings Absent: 1

Date of Original Appointment: 3/3/2015

Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801



CITY OF PORTSMOUTH, N.H. BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information
Please submit resume' along with this application

Committee: Conservation Commission **Renewing applicant**

Name: Samantha ~~Wright~~ ^{Wright} Telephone: 603-828-7643

Could you be contacted at work? YES NO - If so, telephone # same ↑

Street address: 820 Middle Rd., Portsmouth, NH

Mailing address (if different): _____

Email address (for clerk's office communication): samantha.c.wright@gmail.com

How long have you been a resident of Portsmouth? 4 years

Occupational background:

Environmental consultant with a small consulting firm,
Truslow Resource Consulting, in downtown Portsmouth.

Would you be able to commit to attending all meetings? YES NO

Reasons for wishing to continue serving: Enjoy being informed with
the projects impacting Portsmouth's environment and
being able to influence aspects of those projects to minimize
environmental impacts + better the projects for the
community.

OVER
➔

Please list any organizations, groups, or other committees you are involved in:

Port City Artisans

Please list two character references not related to you or city staff members:
(Portsmouth references preferred)

- 1) ~~John Formella~~ John Formella 603-373-2010 Portsmouth
Name, address, telephone number
- 2) Lauren O'Brien 603-303-8161 Portsmouth (The Peders)
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

- 1. This reappointment application is for consideration and does not mean you will necessarily be reappointed to this Board/Commission; and
- 2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
- 3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
- 4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
- 5. Application will be kept on file for one year from date of receipt.

Signature: [Signature] Date: 3/27/16

CITY CLERK INFORMATION ONLY:

New Term Expiration Date: 4/1/2019
 Annual Number of Meetings: 8 Number of Meetings Absent: 1
 Date of Original Appointment: 5/18/15

Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801



CITY OF PORTSMOUTH, N.H.
BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information
Please submit resume' along with this application

MAY 23 2016

Committee: RECREATION BOARD **Renewing applicant**

Name: KORY JOHN SIRMAIAN Telephone: 603-828-2253 CELL

Could you be contacted at work? YES/NO- If so, telephone# SAME TELEPHONE # AS CELL

Street address: 1133 WOODBURY AVENUE

Mailing address (if different): _____

Email address (for clerk's office communication): KSIRMAIAN@EMS.COM

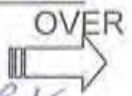
How long have you been a resident of Portsmouth? 16 YEARS

Occupational background:

- DISTRICT MANAGER, EASTERN MOUNTAIN SPORTS
- DISTRICT MANAGER, BOB'S STORES CLOTHING AND FOOTWEAR
- VICE PRESIDENT, MACY'S
- PARTNER, NOONE & SIRMAIAN, CPAs

Would you be able to commit to attending all meetings? YES NO

Reasons for wishing to continue serving: To continue supporting the effort for more fields and gymnasiums for our youth and our adults. During my tenure, we built the Connie Bean Center and the Wentworth - Alumni Softball field but these only replaced eliminated properties.



OUR RECREATION BOARD HAS MORE WORK TO DO TO IMPROVE ACTIVE RECREATION IN OUR CITY.

Please list any organizations, groups, or other committees you are involved in:

MAYOR'S BLUE RIBBON COMMITTEE ON SAGAMORE CREEK LAND
SENIOR SUB-COMMITTEE OF THE RECREATION BOARD
PORTSMOUTH BABE RUTH BASEBALL COACH
PORTSMOUTH COUNTRY CLUB MEMBER

Please list two character references not related to you or city staff members:
(Portsmouth references preferred)

- 1) CARL Diemer, Recreation Board CHAIRMAN,
Name, address, telephone number 603-427-4517
- 2) RUS Wilson, Athletic Director, 603-817-9480
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

- 1. This reappointment application is for consideration and does not mean you will necessarily be reappointed to this Board/Commission; and
- 2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
- 3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
- 4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
- 5. Application will be kept on file for one year from date of receipt.

Signature: Woy J. Simons Date: 3/16/16

CITY CLERK INFORMATION ONLY:

New Term Expiration Date: 9/01/19
Annual Number of Meetings: 3 (2015) Number of Meetings Absent: Ø
Date of Original Appointment: 11/22/10

Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801

**Policy On Travel To North Carolina, re:
That State's LGBTQ Discrimination Law**

To Portsmouth City Councilors,

I have asked that this item be placed on the City Council Agenda for the Monday, April 4th meeting.

Every now and then, there is an issue on which our local government should take a stand even though on its face it may not directly or immediately affect our community. In this case it is clear that this is something about which we should speak out. Yes, there are many other vital issues on which we have to focus, but standing up and speaking out for equality is foremost among them, when needed.

The North Carolina State Legislature recently passed a law that provides for a state policy preventing city and town governments from passing anti-discrimination ordinances for gay, lesbian, and transgender residents. The state's non-discrimination laws cover race, religion, color and national origin, but not sexual orientation or gender identity.

That state's legislative action was in response to the City of Charlotte prohibiting discrimination for their LGBTQ residents, who are not covered by statewide protections.

In response, a large number of corporations, businesses and organizations, along with states and cities throughout the nation, have voiced objection to the law, and said they will not do business in North Carolina until the new law is repealed. Some states and cities have issued travel bans for non-essential government activities or conferences held in North Carolina. The American Civil Liberties Union is suing against the law, and the North Carolina Attorney General has been quoted as saying his state's new law is "a national embarrassment."

Through the years, Portsmouth has been a leader in the cause of equality for our LGBTQ community. In 1993, ours was the first community in New Hampshire to discuss an ordinance to prevent discrimination. That effort resulted in a public hearing with the Council Chambers filled with people on both sides of the issue. Although that ordinance failed, it laid groundwork for eventually successful statewide efforts when in 1997 Governor Jeanne Shaheen signed an anti-discrimination law for gays and lesbians that made our state just the 11th at that time to provide protections in housing, services, and employment.

In 2007, all of Portsmouth's legislators supported Civil Unions, and in 2009, all supported the gay marriage law that since then has resulted in nearly 5,000 marriages, many of them in Portsmouth. Three years ago the City Council unanimously supported the fight to appeal to the U.S. Supreme Court to declare marriage equality as a constitutional right. Two years ago the City Council unanimously adopted a policy of non-discrimination for transgender employees in city employment.

Nothing on this planet is more important than the way we treat one another. Nothing. And, whenever we see discrimination against the LGBTQ community, we should join the cause to speak out. As we watch the ups and downs of national politics, we are reminded that none of our rights are forever guaranteed -- and a change in political climate could at any time eliminate rights to which we have become accustomed. We have to engage the fight for the cause of equality whenever discriminatory practices rear their ugly heads, from whichever sources.

Bringing voice and support to equality elsewhere is one of the things that the Portsmouth City Council can do. And the reality is, laws like those passed in North Carolina could well continue to sweep the nation and could be proposed in New Hampshire. Making our position known now is important, in part to discourage other states, including our own, from enacting such legislation, and also because taking such a position against discrimination is the right thing to do.

I propose a simple statement of policy: ***"That the Portsmouth City Council expresses to the City Manager its position that no public employees attend any conference or event to be held in the State of North Carolina until the law passed by that state's legislature and signed by Gov. Pat McCrory on March 23, 2016 allowing for discrimination against LGBTQ residents be repealed. Exempt from this request are meetings of an essential or emergency nature, those dealing with homeland security, or law-enforcement."***

I am providing this memo so that I don't need to say much on this issue during the City Council meeting on Monday, April 4th, hoping that it will not become a controversial or lengthy discussion. But I believe that adding our voice to the national outcry over the North Carolina action is important.

"Injustice anywhere is a threat to justice everywhere."
Martin Luther King, Jr. Letter from Birmingham Jail,
April 16, 1963

Thank You,

Jim Splaine
City Councilor

Commercial Property Assessed Clean Energy (C-PACE)

Background: The Mayor's Blue Ribbon Committee on Sustainable Practices received a Commercial Property Assessed Clean Energy (C-PACE) briefing from the Jordan Institute's Executive Director, Laura Richardson, on September 24, 2015. The Committee endorsed C-PACE on March 3, 2016, and then sent a letter on March 29 to the City Council recommending the adoption of a C-PACE Ordinance to establish one or more energy efficiency and clean energy districts.

Commercial buildings account for 19% of the energy consumed in the United States, however, comprehensive energy projects for commercial buildings are infrequent. C-PACE is an innovative and nationally recognized financing model that encourages private investment in energy efficiency and renewable energy projects. 31 states have adopted PACE financing and by adopting RSA 53-F the City Council will make Portsmouth the first locality in New Hampshire to establish C-PACE energy efficiency and clean energy districts.

Currently, investments in clean energy projects are rarely cash-positive because to account for building owners selling their properties every 5-7 years, lenders reduce their risk with large down payments, short term loans, and high interest rates. C-PACE "loans" are tied to the property through a lien that is junior to existing mortgages, not the property owner, so the next owner makes subsequent payments. Further, under New Hampshire's C-PACE statute, such investments do not require a down payment and allows terms up to 30 year loans for qualifying projects.

For projects to qualify for C-PACE, they must be comprehensive enough for the energy cash savings to be greater than the loan/lien repayment. Comprehensive projects can include any combination of air sealing and insulation for energy efficiency, biomass for heat, and solar for electricity or hot water. Building owners of non-public buildings, such as office buildings, hotels, convention centers, retail, and apartment buildings with five or more units, can participate to reduce energy costs, address deferred maintenance, and increase property values.

No municipal bonds or tax payer funds are used to finance projects. Quality control steps will be included before, during, and after each project, including an energy audit to determine baseline energy use and energy-project viability. Building commissioning and inspections will ensure proper installation of energy measures and energy monitoring will verify that projected energy and cost savings are met.

RSA-53F allows localities to enter into an agreement with a public or private entity to administer a C-PACE Program. The Jordan Institute is an entity ready to administer C-PACE in New Hampshire. Staff from Dover, Keene, and Hanover have already meet with Staff from the Jordan Institute on administration.

The goal of this motion is for the City Council to begin the process of adopting a C-PACE Ordinance establishing one or more energy efficiency and clean energy districts in Portsmouth. In addition, the more widely these technologies are used, the more affordable they will become for Portsmouth homeowners. Finally, C-PACE districts becoming successful in localities throughout New Hampshire may encourage the legislature to extend PACE to residential properties.

To:
Mayor Blalock
City Council Members
City Manager Bohenko

Recommendation from the Blue Ribbon Committee on Sustainable Practices
regarding C-PACE ordinance



Portsmouth Committee on Sustainable Practices
Policy Recommendation Form

Policy Item: C-PACE Ordinance

Date: 3/29/16

Submitted by: Blue Ribbon Committee on Sustainable Practices

The Mayor's Blue Ribbon Committee on Sustainable Practices recommends the City Council adopt a C-PACE Ordinance. Commercial Property Assessed Clean Energy (C-PACE) is an innovative and voluntary program that helps Commercial property owners access affordable, cash-positive, long-term financing for energy upgrades. Financing is tied to the property through a special assessment lien on the tax bill in municipalities that have adopted the program. The committee has been researching this program since last summer and has found it to be fully in line with the city's status as an Eco-Municipality and the 2005 Master Plan goal of becoming more sustainable. The ordinance itself is required to establish one or more clean energy districts where this unique financing program can be available to commercial property owners.

C-PACE is an innovative and nationally recognized financing model that encourages private investment in energy efficiency and renewable energy projects. 31 states have adopted PACE financing. Last year the state legislature adopted RSA 53-F enabling local municipalities to make this program available to their commercial property owners.

Commercial buildings account for 19% of the energy consumed in the United States, however, comprehensive energy projects for commercial buildings are infrequent. Currently, investments in clean energy projects are difficult because such measures often have a life expectancy of 50 years while owners plan on 5-7 years. This is compounded by traditional financing programs that do not take projected performance into account. C-PACE addresses these situations by tying financing to the assessed value of the building, requiring front end energy audits and through use of models and experts designing plans that are cash flow positive for the owner right away while being solidly underwritten.

Adopting a C-Pace ordinance now will make Portsmouth the first locality in New Hampshire to establish C-PACE energy efficiency and clean energy districts.

Thank you for your consideration.

Bert Cohen,

Chair Blue Ribbon Committee on Sustainable Practices