

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, APRIL 18, 2016 TIME: 6:15PM

AGENDA

- **6:15PM – WORK SESSION RE: 165 DEER STREET**

- 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
- 2. Peter Michaud of the Division of Historical Resources Re: Update on Nomination of Downtown Properties to the National Register

- V. **ACCEPTANCE OF MINUTES – MARCH 21, 2016 AND APRIL 4, 2016**

- VI. **PUBLIC COMMENT SESSION**

- VII. **PUBLIC HEARINGS**

- A. ORDINANCE AMENDING CHAPTER 11, ARTICLE II, SECTION 11.216:B – SEWER USER CHARGES/RECORDS/HOOK-UP BY THE ELIMINATION OF IRRIGATION METERS
- B. ORDINANCE AMENDING CHAPTER 11, ARTICLE II, SECTION 11.216:B – SEWER USER CHARGES/RECORDS/HOOK-UP TO ALLOW AN APPROVED IRRIGATION SYSTEM AND A WATER METER AT A MONTHLY SERVICE FEE IN ADDITION TO THE CONSUMPTION CHARGE, SAID FEE TO BE DETERMINED BY THE CITY COUNCIL DURING ITS ANNUAL BUDGET PROCESS
- C. RESOLUTION AUTHORIZIING A BOND ISSUE AND/OR NOTES OF UP TO FIVE MILLION DOLLARS (\$5,000,000.00) FOR COSTS RELATED TO PHASE II OF ELEMENTARY SCHOOL FACILITY IMPROVEMENTS

- VIII. **APPROVAL OF GRANTS/DONATIONS**

(There are no items under this section of the agenda)

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second Reading of Ordinance amending Chapter 11, Article II, Section 11.216:B – Sewer User Charges/Records/Hook-Up by the Elimination of Irrigation Meters
- B. Second reading of Ordinance amending Chapter 11, Section II, Section 11.216:B – Sewer User Charges/Records/Hook-up to Allow an Approved Irrigation System and a Water Meter at a Monthly Service Fee in addition to the Consumption Charge, said Fee to be Determined by the City Council during its Annual Budget Process
- C. Adoption of Resolution Authorizing a Bond Issue and/or Notes of up to Five Million Dollars (\$5,000,000.00) for Costs Related to Phase II of Elementary School Facility Improvements

X. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Letter from Laurie Mantegari, Scarecrows of the Port Committee, requesting permission to place scarecrows in designated locations throughout the Portsmouth Downtown Area ***(Anticipated action – move to refer to the City Manager with power)***
- B. Letter from Jay Diener, Seacoast Half Marathon, requesting permission to hold the 11th Annual Seacoast Half Marathon on Sunday, November 13, 2016 ***(Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Sister Mary Agnes, St. Charles Children’s Home, requesting permission to hold the 20th Annual St. Charles Children’s Home 5K on Monday, September 5, 2016 ***(Anticipated action – move to refer to the City Manager with power)***
- D. Letter from Allan Scholtz, Portsmouth Professional Firefighters Local 1313, requesting permission to hold 2 boot drives this year, the first on Saturday July 9th, and the second on Saturday, August 20th for the Muscular Dystrophy Association in Market Square ***(Anticipated action – move to refer to the City Manager with power)***

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

(There are no items under this section of the Agenda)

XII. 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

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, as 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 16, 2016 pursuant to RSA 231:43 for the purpose of discontinuing any rights of the City or the public in the following two parcels of property:*

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 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. Portsmouth Public Media, Inc. Proposed Lease Renewal
3. Ratify Appointment of Nancy Colbert Puff to replace David Allen, Deputy City Manager on the Planning Board effective May 16, 2016
4. Request for Approval Re: Transfer of 2006 Fire Boat – Gilford, NH
5. Request to Schedule a Public Hearing for Refinancing Callable Bonds

Informational items

1. Events Listing
2. Reminder Re: FY17 Budget Schedule
3. Report Back Re: Communications Plan for Wastewater Facility Upgrade
4. Islington Street Corridor – Basement Utility Surveys

B. MAYOR BLALOCK

1. *Appointments to be Voted:
 - 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. COUNCILOR LOWN & DENTON

1. *Surfrider – Plastic Bag Ordinance (***Sample motion – move to have the City Attorney draft a letter from the City Council to the DES Commissioner and the DES Waste Division Director asking if DES believes 149-M gives municipalities the authority to: 1) ban single-use plastic shopping bags; and 2) establish the ten cents paper bag pass through that was part of the previous draft ordinance***)

D. COUNCILOR LOWN

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the April 7, 2016 meeting (***Sample motion – move to approve and accept the action sheet and minutes of the April 7, 2016 Parking and Traffic Safety Committee***)

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

XIV. ADJOURNMENT

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

**Indicates Verbal Report*

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: April 14, 2016

TO: JOHN P. BOHENKO, CITY MANAGER

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

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



This memorandum follows ours to you of the same title dated March 31, 2016. It is supplemental to that earlier document and is intended to be read in conjunction with it.

Subsequent to the City Council meeting of April 4, 2016, we engaged in further negotiations with Deer Street Associates (DSA). This memorandum will compare the state of Purchase and Sale and Post Closing Obligations Agreement (The Documents) negotiations as of April 4, 2016 and as they exist on the date of this memorandum. The format will be to list the open issues as of April 4, 2016 and describe the changes in the Documents with respect to those issues.

OPEN ISSUES AS OF APRIL 4, 2016

As described in detail at the City Council meeting of April 4, 2016 the status of the Documents at that time was defined by a series of issues highlighted by the City Council working group appointed by Mayor Blalock consisting of Councilors Brad Lown, Rebecca Perkins and Eric Spear (the Councilors). The issues raised by the Councilors, paraphrased for brevity, and the current state of the Documents in response to those issues are as follows:

1. **ISSUE:** That the transaction be a "clean" deal, meaning that all title and environmental issues be resolved.

Both the City and DSA are in agreement on this point. The device to be used to assure the desired result is that we will not recommend that the City Manager sign the Documents until the City is satisfied with the title being conveyed and with the title insurance. Neither will we recommend that the City Manager sign the Documents until there has been negotiated and executed an Environmental Agreement under which DSA will be obligated to escrow up to \$500,000.00 of its money at closing to pay for cost increases to the City for the development of the garage resulting from environmental conditions. See, Purchase and Sale Agreement, Section 1.15.

2. **ISSUE:** That DSA conceptually agree to placing a reasonable amount of funds in escrow for environmental clean-up costs.

The parties are in agreement on this point, see issue number 1 above.

3. **ISSUE:** That DSA reimburse the City for costs associated with eminent domain if necessary to clear title issues post-closing.

This is the one point to which the parties are not in agreement as of the date of this memorandum.

The DSA proposal on this point is to add the following language to Sections 5.2 (XIII) and 5.3 (XIII).

5.2 (XIII): An Agreement executed by the City, DSA and G.L. Rogers & Co., Inc., under which DSA and G.L. Rogers & Co., Inc. agree to indemnify the City for the costs of any eminent domain proceedings commenced by the City within four (4) years of the Closing Date to the extent that the said eminent domain proceedings are necessary to resolve any title issues regarding the Premises more specifically described in said Agreement, in an aggregate sum not to exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00).

4. **ISSUE:** That DSA eliminate the \$20,000.00 monthly payment to extend the closing date if necessary beyond May 25, 2016.

DSA has eliminated this \$20,000.00 per month payment. See, Purchase and Sale Agreement, Section 5.1.

5. **ISSUE:** That DSA agree to extend its Section 8 warranties and representations with no time limit.

DSA is in agreement on this point, as is the City. See, Purchase and Sale Agreement, Sections 8 and 9.

6. **ISSUE:** That the City acquire the property by marketable title with title insurance acceptable to the City.

DSA and the City are in agreement on this point. See issue #1 above.

7. **ISSUE:** That DSA retain the responsibility for building and maintaining the railroad office and access.

While DSA has not agreed to retain the responsibility for building and maintaining the railroad office and access, DSA has agreed to reduce the purchase price of the property from \$5,100,000.00 to \$4,900,000.00 based upon the agreement of the City to bear the burden of the railroad agency office and access. See, Purchase and Sale Agreement, Section 2.

8. **ISSUE:** That DSA agree to eliminate the City's obligation to build the Deer Street Extension or else be responsible for default payments to DSA.

DSA has agreed to eliminate the monetary penalty in the event that the City determines not to construct the Deer Street Extension as required by the PCOA. See, Post Closing Obligations Agreement, Section 8 b.

9. **ISSUE:** That DSA execute the Purchase and Sale Agreement by April 4, 2016.

For the reasons noted in the March 31, 2016 memorandum it was impossible for anyone to execute a Purchase and Sale Agreement by April 4, 2016.

FURTHER NEGOTIATION REGARDING DETAILS

If the City Council should determine to move forward with the Documents significant further negotiation would be necessary prior to closing on the property. The principal subject of this negotiation would be the numerous scheduled which need to be attached to the Documents, including such items as the easement deed to allow DSA to build a building over the City sewer line, the Environmental Agreement, the Agreement under which DSA would have a right to park cars in the municipal parking garage and the mortgage regarding the civic space. Additionally, some items in the Documents themselves require further discussion, including item 7 in the PCOA which relates to the circumstances under which the parties would be required to grant each other as yet undetermined easements, leases and licenses.

In the event that the City Council chooses to move forward with the Documents, we recommend that the Councilors be requested to remain involved in the process for assistance in negotiating these further agreements.

POTENTIAL CITY COUNCIL ACTIONS FOR APRIL 18, 2016

With all the foregoing in mind, and with the belief that the Council is not interested in any further postponement of its vote on whether or not to approve the Documents with DSA, it would seem that the potential actions which might be taken by the City Council on April 18, 2016 are as follows:

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 16, 2016 pursuant to RSA 231:43 for the purpose of discontinuing any rights of the City or the public in the following two parcels of property:

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 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

So that the City Council will have the most recent versions of the Documents for review prior to the April 18, 2016 City Council meeting attached hereto are redlined versions of the Purchase and Sale Agreement and the Post Closing Obligations Agreement. The redlines show changes in the Documents between the March 28, 2016 and March 29, 2016 drafts previously provided to the City Council for the April 4, 2016 Council meeting and the most current version of those Documents as described in this memorandum.

attachments

POST CLOSING OBLIGATIONS AGREEMENT

4-6-16

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").

4-6-16
(Compare Doc.
dated 3-29 to
CC & 4-5 DSA
submission)

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 [REDACTED], 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(12).

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(13).

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 "**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).

“**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.

“**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

(½) 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 (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:

- 1. Subdivision Plan on or before the Effective Date;
- 2. Mortgage on or before the Effective Date;
- 3. 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;
- 4. Termination of the Municipal Waterline Easement on or before the Anticipated Completion Date;
- 5. 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;
- 6. An agreement in recordable form between the City and DSA, their successors and assigns, attached hereto as Schedule 10() 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

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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.

- 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

|

Subdivision Plan

Schedule 9
Mortgage

|

Schedule 10()
DSA Parking Spaces Agreement

REAL ESTATE PURCHASE AND SALE AGREEMENT

4-6-16

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").

**4-6-16
(Compare
Doc. dated
3-28 to CC
& 4-5 DSA
submission)**

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 1.23</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 on the Subdivision 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.

1.15 "Environmental Agreement" means the agreement to be executed and delivered by the Parties at Closing with respect to the Seller's obligation to

¹ See Proposed Easement 13 on page C2 of the Disposition Plan.
(W4932767.1) 3

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, Five Hundred Twenty-Six Thousand in form and substance as set forth on Schedule 1.15.

1.16 "Escrow Agent" means Pierce Atwood LLP.

1.17 "Grav 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.

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1.29 "**Seller's Remaining Land**" means Lots 2, 3, 4, 5 and 6 shown on the Subdivision Plan.

1.30 "**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

1.31 "**Seller's Remaining Land**" means Lots 2, 3, 4, 5 and 6 shown on the Subdivision Plan.

1.32 "**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.

1.33 "**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 I.

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 _____ Million _____ Hundred Thousand and 00/100 Dollars (\$_____,000.00)(the "**Purchase Price**"). As additional consideration:

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

(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 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 ~~_____~~ Section 5 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.

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 Disposition 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 on the Record 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

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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.

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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 and Agreement 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 the Road 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 Remaning 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

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.

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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 _____, 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 ~~_____~~ _____.

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

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Schedule 1, [2019-2020](#) [Form 990](#)

|

 - 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.

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, MARCH 21, 2016

PORTSMOUTH, NH
TIME: 6:15PM [or thereafter]

An Anticipated “Non-Meeting” with Counsel was held regarding Negotiations – RSA 91-A:2, I (b).

I. CALL TO ORDER

Mayor Blalock called the meeting to order at 7:00 p.m.

II. ROLL CALL

Present: Mayor Blalock, Assistant Mayor Splaine, Councilors Perkins, Dwyer (joined via conference call at 8:20 p.m. until adjournment), Lown, Pearson, Spear, Cyr and Denton

III. INVOCATION

Mayor Blalock asked everyone to join in a moment of silent prayer.

IV. PLEDGE OF ALLEGIANCE

Councilor Perkins led in the Pledge of Allegiance to the Flag.

PRESENTATIONS

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

Mayor Blalock presented plaques in recognition of the players and coach of the Portsmouth High School Boys 2016 NH Division 2 Winter Track State Champions.

2. Music Hall Re: Chestnut Street Streetscape Improvements

Patricia Lynch and Ben Auger provided a presentation of the proposed Chestnut Street Streetscape Improvements and a 50/50 partnership with the City for the streetscape. Ms. Lynch stated that \$400,000.00 will be funded by The Music Hall with \$400,000.00 from the City’s Capital Improvement Plan & UDAG funds.

Assistant Mayor Splaine moved to refer this matter to Art-Speak per City Council policy to authorize The Music Hall to proceed with a project review by the Historic District Commission; Parking and Traffic Safety Committee; and Trees and Greenery Committee. Further, move to request the City Manager prepare a report back following these reviews (and Art-Speak referral) to the City Council prior to final project approvals by the City Council. Seconded by Councilor Lown and voted.

V. ACCEPTANCE OF MINUTES – FEBRAURY 1, 2016, FEBRUARY 16, 2016 AND MARCH 7, 2016

Councilor Lown moved to approve and accept the minutes of the February 1, 2016; February 16, 2016 and March 7, 2016 City Council meetings. Seconded by Councilor Pearson and voted.

VI. PUBLIC COMMENT SESSION

Tom Hersey requested that the City Council consider the project with a Project Labor Agreement (PLA) for the Wastewater Treatment Facility. He said you would have workers that have a connection with the seacoast. He said the rate of wages would be through David Baker Wages which would make sure people are paid accordingly. He announced that the Memorial Bridge and the Portsmouth Middle School had workers from a Project Labor Agreement. He said the use of a PLA would ensure that it is a successful project for the City.

Steven Burk said the Wastewater Treatment Facility is a large project and having skilled trained workers with a PLA would be a benefit to the City. He said skilled workers could handle all aspects of the project.

David LaFevers said many people live downtown and have to use the parking meter and run down to pay the meters. He said it would be better if people that visit should use the parking garage. He said he would like to see parking permits for people living on Congress Street.

Esther Kennedy said that people really want the City to look into using barges for the Peirce Island Wastewater Treatment Facility project. She stated she would like to make a Right-to-Know request which she handed to City Clerk Barnaby regarding Pease Development Authority and Pease wastewater treatment plant.

Mark Brighton said he finds behavior in the City Council to be insulting.

Nancy Brown said she is concerned that people from Portsmouth Listens on the West End Zoning are not present this evening to speak on the ordinance. Mayor Blalock announced that the public hearing will be recessed until May 2, 2016. She said she does not want to see the West End to be an extension of the downtown area. Ms. Brown said the quality of life and character of the West End needs to remain.

Assistant Mayor Splaine said he would like the PLA to be placed under his name for the next City Council meeting. Deputy City Manager Allen said the project bid will close at the end of May. Councilor Spear said we have only heard one side of the matter and would like to see staff come back at the next meeting with information outlining the issues.

VII. PUBLIC HEARING

- A. ORDINANCE AMENDING CHAPTER 10 – ZONING ORDINANCE DELETE THE EXISTING ARTICLE 5A – CHARACTER DISTRICTS IN ITS ENTIRETY AND INSERT IN ITS PLACE THE NEW ARTICLE 5A – CHARACTER DISTRICTS DATED JANUARY 11, 2016

AMEND ARTICLES 4, 5, 11, 12 & 15 OF THE ZONING ORDINANCE AS SET FORTH IN THE DOCUMENT TITLED “CONFORMING AMENDMENTS TO ZONING ORDINANCE” JANUARY 11, 2016

AMEND THE ZONING MAP AS SET FORTH IN THE FOLLOWING MAPS DATED JANUARY 11, 2016;

- (a) MAP 10.5A21A – CHARACTER DISTRICTS AND CIVIC DISTRICTS
- (b) MAP 10.5A21B – BUILDING HEIGHT STANDARDS;
- (c) MAP 10.5A21C – SPECIAL REQUIREMENTS FOR FAÇADE TYPES, FRONT LOT LINE BUILDOUT & USES

AMEND THE ZONING MAP BY CHANGING THE ZONING DESIGNATION OF 52 PARCELS AS SET FORTH IN THE DOCUMENT TITLED “PROPOSED ADDITIONAL WEST END ZONING CHANGES” DATED JANUARY 11, 2016 AND AS SHOWN ON THE MAP TITLED “ADDITIONAL WEST END ZONING CHANGES – FIRST READING – JANUARY 11, 2016
(Request to Recess Public Hearing until May 2nd City Council meeting)

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

Larry Lariviere said the gateway district is something that will happen at some point in time and it would be wise of the Planning Department to consider the gateway district into DD4W and plan now because it will happen.

Jerry Zelin said the City Council has in front of them the January version of the ordinance but the Planning Board has a version dated in March and asked why that is not before the Council. He said Portsmouth Listens commented on the first draft and Planning Board voted to continue their public hearing until April. He said you should not hold a public hearing on the January draft when the March draft is out there. He urged the City Council and Planning Board to unbundle the amendments. Mr. Zelin said the North End and West End are two different conversations and should not be on the same table.

City Attorney said there are two things in play. He said a public hearing has been noticed for a particular night and people should be entitled to speak. He said rather too many public hearings than too few.

Councilor Perkins said the Planning Board held a public hearing and voted to hold the public hearing open until April. She said they heard from 8 Portsmouth Listens groups who provided details. She said everyone will be able to comment on the new draft at the next public hearing and that this is a good public project.

Esther Kennedy said Portsmouth Listens worked hard and came from all aspects of the City. At 4:15 p.m. today there was an email on this public hearing this evening which really confused people. She said the Council needs to have Portsmouth Listens send another email out on when the next public hearing will be held. She said she feels a work session should be held on these matters.

Susan Denenberg said many people did not come out this evening because they did not know if there would be a public hearing on the ordinance. She said she opposes bigger buildings and people do not want a bigger Portsmouth.

Harold Whitehouse explained concerns with losing another part of the City and its history. He said the Council needs to give this great thought not to change the area too much. He spoke opposed to wide sidewalks and to leave the area natural.

Mike Tiel, Portsmouth business owner, said the process is very convoluted with much time and effort was spent by Portsmouth Listens. It feels like the process is going backwards. He said the foot print is of great concern and does not want to see it in the West End.

Mayor Blalock said the public hearing is being recessed until May 2, 2016.

Deputy City Manager Allen said Planning Director Taintor is here this evening to answer any questions. He said that the Planning Board is currently trying to incorporate some information received from Portsmouth Listens to develop it in a complex ordinance and they will continue to work on this matter. He said the City Council and Planning Board would like to have a work session on the ordinance.

Councilor Denton said a lot of effort went into this and asked how difficult would it be to break up the ordinance by districts or ends of the downtown. Planning Director Taintor said they're working to do that now and it is difficult to extract some things. He said there are currently 4 sections of the ordinance but there will be a 5th item coming forward.

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second reading Ordinance amending Chapter 10 – Zoning Ordinance Delete the existing Article 5A – Character Districts in its entirety and insert in its place the new Article 5A – Character Districts dated January 11, 2016

Amend Articles 4, 5, 11, 12 & 15 of the Zoning Ordinance as set forth in the document titled “Conforming Amendments to Zoning Ordinance” January 11, 2016

Amend the Zoning Map as set forth in the following maps dated January 11, 2016;

- (a) Map 10.5A21A – Character Districts and Civic Districts;
- (b) Map 10.5A21B – Building Height Standards;
- (c) Map 10.5A21C – Special Requirements for Façade Types, Front Lot Line Buildout & Uses

Councilor Spear moved to postpone second reading to the May 2, 2016 City Council meeting, as presented. Seconded by Councilor Perkins and voted.

X. CONSENT AGENDA

- A. Letter from Jess Dorr, Seacoast Outright requesting permission to hold the Portsmouth Pride community event on Saturday, June 25, 2016 in Market Square

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

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATION & PETITIONS

- A. Letter from Lilia Potter-Schwartz requesting to hold a Triathlon on Sunday, May 22nd or Sunday, May 29th beginning at Portsmouth High School

Councilor Lown moved to refer to the City Manager with power. Seconded by Councilor Spear and voted.

At 8:20 p.m., Councilor Dwyer called into the meeting to participate via conference call.

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

- 1. Proposed Ordinance Re: Irrigation Capacity Surcharge

Deputy City Manager Allen said 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. The ordinance before you will expand the allowance of irrigation meters to all customer classes. He requested to bring first reading of the ordinance forward at the April 4, 2016 City Council meeting.

Councilor Lown said he would like to have a presentation on this matter at the April 4, 2016 City Council meeting. He also asked if the increase use of meters will cause an increase in non meter users. Deputy Public Works Director Goetz said he would have to ask our consultant Mr. Hyder but the rates would be higher for sewer users. He said this would be phased in over time.

Councilor Denton said this is to allow meters for everyone and last time this was before the Sustainable Practices Committee it was indicated it creates more water usage. He said he would like to bring the old ordinance back with the new ordinance next to it to review changes.

Councilor Spear moved to authorize the City Manager to bring back for first reading the proposed ordinance, as presented, along with the previous ordinance at the April 4, 2016 City Council meeting. Seconded by Councilor Lown.

Councilor Perkins said she would like to understand the origin of the request and the history. Deputy City Manager Allen said the original ordinance was brought forward in 1997 for only single resident users.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said if you have the meters you would need to offer them to everyone.

Assistant Mayor Blalock returned the gavel to Mayor Blalock.

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

2. Second License Request from Green & Co. Real Estate for 275 Islington Street Project

Deputy City Manager said the applicant requests a new license for phased completion of individual dwelling units, including a license to encumber 2 parking spaces on Rockingham Street until July 30, 2016, 2 parking spaces on Cornwall Street until July 30, 2016, 2 parking spaces on Islington Street until April 30, 2016 and 2 parking spaces on Islington Street until May 30, 2016. He said the reason for the parking spaces is to accommodate subcontractors who require a mobile shop and to give homeowners access to their condominiums. He said the City will charge meter bag daily fees for the encumbered parking spaces.

Councilor Spear moved to negotiate and enter into a second license with Green & Co. Real Estate for facilitate phased completion of individual dwelling units at 275 Islington Street. Seconded by Councilor Perkins.

Councilor Spear asked if these requests go through the Parking Traffic & Safety Committee or the Technical Advisory Committee. Deputy City Manager Allen said these requests are handled administratively.

Councilor Pearson asked if these are 24 hours or through the work hours. Deputy City Manager Allen said during working hours. Mr. Green responded the hours of work are from 7:00 a.m. to 6:00 p.m.

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

3. License Request for Conduit for 39 Dearborn Lane from owner Michael Brandsel Street

Deputy City Manager Allen reported that this request is to install underground conduit from the pole located on Dearborn Street under the City sidewalk along Dearborn Lane to the owner's home.

Councilor Lown moved to authorize the City Manager to negotiate and enter into a Petition and License for new electrical conduit with the Owner. Seconded by Councilor Spear.

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

4. Establish a Joint Work Session Re: Peirce Island Wastewater Treatment Facility Expansion Construction Impact Mitigation

Deputy City Manager Allen said this would be a Joint Work Session with the City Council, Parking and Traffic Safety Committee, Recreation Board, Peirce Island Committee, and the Trustees of the Trust Fund to discuss the Peirce Island Wastewater Treatment Facility expansion construction impact mitigation.

Councilor Spear moved to establish a Joint Work Session with the Parking and Traffic Safety Committee, Recreation Board, Peirce Island Committee, and the Trustees of Trust Funds on Monday, April 11, 2016 at 6:30 p.m. in the Eileen Dondero Foley Council Chambers regarding the Wastewater Treatment Facility expansion construction impact mitigation. Seconded by Councilor Spear.

Councilor Dwyer questioned whether this work session is premature at this time where we need to get pricing from bidders on the use of barges. Deputy City Manager Allen said the purpose is to find out all uses associated with this and make sure we flush out all issues.

Councilor Lown said he feels it is premature as well and does not feel we would have the information necessary by April 11th.

Councilor Perkins said she would like to see cost aspects for the April 11th work session.

Councilor Spear said the benefit to the work session he agrees is to ask the boards to report back with City staff to use the information in the bidding process.

Assistant Mayor Splaine said the work session is a good idea and we need to ensure transparency with the mitigation on this project. He said we could gather concerns at the work session and learn about the impact to the downtown.

Councilor Lown said it is not time well spent and we have heard people do not want trucks in the neighborhoods.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said he feels we need to have a work session with the board chairs around the table with the City Council. He said we may not know at the time of the work session the items to mitigate traffic.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Councilor Dwyer said she is not sure we're in a position to give preferences at this point; there may be preferred barges that are not realistic with the bid. She said some things might not be possible and we do not have enough information.

Deputy City Manager Allen said the Public Works Department gave a thorough presentation to the Parking Traffic & Safety Committee and the intent is to bring out some of the information to the collective group.

Assistant Mayor Splaine said we need to get as much information out now to the public and keep the process transparent.

Councilor Pearson said she echoes Assistant Mayor Splaine's comments that this is to explain the City narrative. She said it would bring points out and that is what is needed.

Councilor Cyr said he is in favor of the work session.

Councilor Lown said he would vote in favor of the work session if we hear from Geno Marconi on the barges. Deputy City Manager Allen said he would offer Geno the invitation to attend. Councilor Pearson said Charles Lassen could offer information that Geno would as well.

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

B. MAYOR BLALOCK

1. Appointments to be Voted:
 - Richard Winstanley reappointment to the Cable Television & Communications Commission
 - Colby Gamester reappointment to the Planning Board
 - Todd Henley reappointment to the Recreation Board

Councilor Spear moved to reappoint Richard Winstanley to the Cable Television & Communications Commission until April 1, 2019, reappoint Colby Gamester to the Planning Board until December 31, 2018 and reappoint Todd Henley to the Recreation Board until April 1, 2019. Seconded by Assistant Mayor Splaine.

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

2. Housing Working Group
 - Councilor Perkins, Chair
 - Councilor Dwyer
 - Councilor Spear
 - John Ricci, Planning Board Chair
 - David Witham, Zoning Board of Adjustment Chair
 - Mike Kennedy, Portsmouth Housing Authority
 - 3 Staff members to be appointed by City Manager Bohenko

Mayor Blalock announced the appointment of a Housing Working Group with Councilor Perkins, Chair; Councilor Dwyer, Councilor Spear as members and John Ricci, Planning Board Chair; David Witham, Zoning Board of Adjustment Chair; Mike Kennedy, Portsmouth Housing Authority representative as participants of the group and 3 staff members to be appointed by City Manager Bohenko.

C. COUNCILOR LOWN

1. Parking & Traffic Safety Committee Action Sheet and Minutes of March 3, 2016

Councilor Pearson moved to approve and accept the minutes if the March 3, 2016 Parking & Traffic Safety Committee meeting. Seconded by Councilor Perkins.

Assistant Mayor Splaine said he would vote against the motion because he does not support the Borthwick Forest Subdivision Roadway approval.

Councilor Pearson asked if there is a timeline on the traffic study to analyze alternative exit routes for Water Country. Councilor Lown said no but it would all happen in the near future.

On a roll call vote 8-1, motion passed. Councilor Perkins, Dwyer, Lown, Pearson, Spear, Cyr, Denton and Mayor Blalock voted in favor. Assistant Mayor Splaine voted opposed.

D. COUNCILOR SPEAR

1. Communication Plan for Peirce Island Wastewater Treatment Facility Construction

Councilor Spear said the Council talked about improved communication for the Peirce Island Wastewater Treatment Facility construction project. He said the project is so big it deserves its own communication person. He said he would like to see a more robust communication strategy for the next 4 years.

Deputy City Manager Allen said that this is important to City Manager Bohenko and staff. He said we have begun an outline on communication and we would have something for the next meeting on this matter.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

XIV. ADJOURNMENT

At 9:10 p.m., Councilor Lown moved to adjourn. Seconded by Councilor Spear and voted.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

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

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, APRIL 4, 2016

PORTSMOUTH, NH
TIME: 6:00PM

At 6:00PM, a Work Session was held Re: Deer Street Garage Property Acquisition, Purchase and Sale Agreement and Post Closing Obligations Agreement.

I. CALL TO ORDER

Mayor Blalock called the meeting to order at 7:15 p.m.

II. ROLL CALL

Present: Mayor Blalock, Assistant Mayor Splaine, Councilors Perkins, Dwyer, Lown, Pearson, Spear, Cyr and Denton

III. INVOCATION

Mayor Blalock asked everyone to join in a moment of silent prayer.

IV. PLEDGE OF ALLEGIANCE

Councilor Dwyer led in the Pledge of Allegiance to the Flag.

Mayor Blalock announced that the Presentation for the Recognition of Portsmouth High School Boys 2016 New Hampshire Basketball Division 2 New Hampshire State Champions will not be held this evening due to the snow.

V. ACCEPTANCE OF MINUTES – MARCH 14, 2016

Councilor Spear moved to approve and accept the minutes of the March 14, 2016 City Council meeting. Seconded by Councilor Lown and voted.

VI. PUBLIC COMMENT SESSION

Jim Warner said he owns the property abutting Deer Street Associates and supports the project. He said the property values to the north end will increase and that will be better for everyone. He also said that the north end would be a completely new neighborhood.

Tracey Kozak spoke in favor of the Deer Street Parking Garage and said it will provide benefits to the public. She said that this is within the north end vision plan and would be less intrusive construction. She said this could be the beginning of creating a Transportation HUB.

Tom Hersey spoke in support of a Project Labor Agreement (PLA) for the Wastewater Treatment Facility project. He stated the increase in funds that it would cost could be made up through the project. He said a PLA would level the playing field and urged the City to move in that direction as it would be best for the City.

Steven Burk spoke to the training and skills of PLA workers. He said the workers spend a great deal of time in classrooms for the training that is required. He stated they are licensed through the State.

Joe Casey spoke in favor of PLA workers for the Wastewater Treatment Facility. He spoke to workers other than PLA sometimes walk off jobs and are not as reliable.

Bob Shouse said the work session was informative and the City Manager and City Attorney offered good solutions for Deer Street Associates. He stated he does not support building a new parking garage at the Deer Street location but would support the building at the Bridge Street lot.

Judy Stadtman – urged the City Council to adopt a PLA for the Wastewater Treatment Facility. She said she has worked with residents and spoke on communities this would help. She said a PLA would ensure that all workers receive benefits and fair wages.

John Lyons, Attorney representing 20 property owners requested the Council pass first reading of the ordinance on irrigation meters. He said that the City would have control and be able to conserve water. He said it would be consistent with the Master Plan to increase property values. Attorney Lyons said that this is the right thing to do for the City Council.

Roy Helse spoke to the high wages of City employees. He said there are too many employees making over \$100,000.00 and residents can't continue to pay these kinds of wages.

Mark Holden spoke in favor of PLA for the Wastewater Treatment Facility. He said PLA allows contractors to use their own employees and to hire other personnel that may be necessary. He said there is not justification for not using PLA for the project.

Ron Cogliano said he could provide additional information on PLA's and how they would work. He said PLA's require you hire union only employees and would be beneficial for the City to use on this project.

Councilor Lown moved to suspend the rules in order to take up Item IX. A.1. – Deer Street Garage property Acquisition, Purchase and Sale Agreement and Post Closing Obligations Agreement Options as result of Work Session. Seconded by Councilor Spear and voted.

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

City Manager Bohenko said given the conversation at the work session it would be appropriate to postpone until April 18, 2016 meeting to take into account the changes brought forward by the Deer Street Associates and for the City Manager to reduce the items into writing.

Councilor Lown moved to postpone action until the April 18, 2016 City Council meeting to take into account the changes brought forward by Deer Street Associates and for the City Manager to have the City Attorney reduce the items into writing. Seconded by Councilor Spear.

Assistant Mayor Splaine said he does not want to give more money to an owner than is needed. He would like an updated appraisal done on the property. He said he would like to know what kinds of benefits we're giving to the sellers on parcels 3, 4, 5, and 6. Assistant Mayor Splaine said a benefit would be what the sellers could build on those parcels.

Councilor Lown said that time is of the essence and we need a parking garage. He said he is encouraged by the process and would move forward if we do not complete the purchase and sales on April 18th and make a motion to build a garage at the Bridge Street lot.

Motion passed.

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

Councilor Dwyer moved to accept the donations to the Portsmouth Police Department, as presented. Seconded by Councilor Spear and voted.

- 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)

Councilor Lown moved to approve and accept the Grant to the Portsmouth Police Department, as presented. Seconded by Councilor Pearson and voted.

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

Councilor Lown moved 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. Seconded by Councilor Pearson.

City Manager Bohenko had Deputy Public Works Director Goetz provide a presentation on the irrigation meter ordinance.

Deputy Public Works Director Goetz reported under the current ordinance a single family residential customer may install a separate water service and irrigation meter and commercial properties cannot install similar meters. He addressed the irrigation meter options explored in 2015:

- Proposed Ordinance – Eliminate all irrigation meters (including existing)
- Grandfather existing irrigation meters and disallow any future irrigation meters
- Expand irrigation meters to all City customers

He stated that City Council took no action and the existing ordinance remains in place. He said expanding irrigation meters to all customers will increase water demand and over time, metered water revenue will increase and metered sewer revenue will decrease. He spoke to if irrigation meters are expanded:

- Increase the irrigation rate to pay for additional system capacity necessary to meet peak demands
- Customer with irrigation meter does not pay capital fee for use of capacity
- Capacity use charge per CCF reflects use of capacity not purchased when connecting to the City water system (current capacity charge for water is \$1,300.00 per equivalent dwelling unit, or 250 gallons per day)

He said if irrigation meters are expanded the following recommendations need to be considered:

- Encourage water efficiency through specific policies that govern how irrigation water can be used within the community. These policies would include such items as:
 - City approvals only landscape irrigation systems designed and installed an EPA Water Sense Certified professional
 - Require in-ground irrigation systems include moisture sensors
 - Restrict irrigation usage to specific days or periods of time
 - 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.
 - Enable the City to restrict the use of irrigation meters during periods of drought

Deputy Director Goetz reported that this would reduce sewer revenues over time. He said potential sewer rate impact if irrigation meters are expanded is an increase in sewer rates. He stated the current recommended FY17 rate increase is 4%; this would correspond to a 13.7% increase if all irrigation usage were through irrigation meters. He also stated that irrigation customers will pay more for their water use.

Councilor Denton stated he wanted to bring forth first reading of the previous ordinance from 2015 and pass first reading.

Mayor Blalock said we would have to have 2 public hearings.

Motion passed.

Councilor Denton move to have the 2015 proposed Ordinance regarding the Elimination of Irrigation Meters 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. Seconded by Assistant Mayor Splaine.

Councilor Denton said many people are in favor of keeping their meters but irrigation meters allow for more water to be used.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said he would not vote in favor of the motion because he feels it makes the process cumbersome.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Motion passed with Mayor Blalock voting opposed.

City Manager Bohenko said that we would advertise both public hearings.

Mayor Blalock said he would like to have a public hearing on the 2015 ordinance first then follow with the new ordinance.

IX. 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)***

Councilor Spear moved to adopt the Consent Agenda. Seconded by Councilor Pearson and voted.

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

Councilor Spear moved to accept and place the letter on file. Seconded by Councilor Lown and voted.

- 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

Councilor Pearson moved to refer to the Planning Board for report back. Seconded by Councilor Spear and voted.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

2. Applications for Sidewalk Cafes providing Alcohol Service

City Manager Bohenko explained the policy for sidewalk cafes providing alcohol service.

- a. State Street Saloon

Councilor Lown moved to 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. Seconded by Councilor Cyr and voted.

- b. Popovers on the Square

Councilor Lown moved to 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. Seconded by Councilor Cyr and voted.

- c. Ri Ra

Councilor Spear moved to 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. Seconded by Councilor Pearson and voted.

d. The District

Councilor Spear moved to 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. Seconded by Councilor Pearson and voted.

3. Applications for Sidewalk Cafes providing Alcohol Service – private sidewalk

a. British Beer Company

Councilor Spear moved 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. Seconded by Councilor Pearson and voted.

b. The BRGR Bar

Councilor Spear moved to enter into an Area Service Agreement with The BRGR Bar for outdoor Alcohol service for the 2016 season subject to City operating conditions contained in Council Policy No. 2012-02. Seconded by Councilor Pearson and voted.

Councilor Lown said that this is a great thing for the City and keeps the City interesting.

Mayor Blalock passed the gavel to Mayor Splaine.

Mayor Blalock said he is downtown a great deal and observes the cafes which create a vibrant atmosphere.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

4. Annual Renewal of Boarding House Permits

City Manager Bohenko said the Boarding Houses have been inspected and requested approval of the renewal permits.

a. 278 Cabot Street

Councilor Lown moved to approve the Boarding House permit for 278 Cabot Street for a one year permit to expire April 5, 2017. Seconded by Councilor Spear and voted.

b. 350-352 Hanover Street

Assistant Mayor Splaine moved to approve the Boarding House permit for 350-352 Hanover Street for a one year permit to expire April 5, 2017. Seconded by Councilor Pearson and voted.

5. Request from Wright Avenue, LLC for Second Amendment to License for 57, 73 and 77 State Street

City Manager Bohenko reported that this is a second amendment to the license due to a delay in construction caused by severe winter weather in 2015 and 2 major abutting projects being constructed at the same time.

Public Works Director Rice spoke regarding the electrical service to the property and the need to bury the utilities.

Councilor Dwyer moved to authorize the City Manager to negotiate and enter into a Second Amendment to the License Agreement for Wright Avenue, LLC. Seconded by Councilor Spear and voted.

6. Downtown Parking Shuttle Recommendation for 2016

City Manager Bohenko said we are recommending entering into a partnership with COAST.

Councilor Spear moved 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. Seconded by Councilor Cyr and voted.

7. Greenleaf Recreation Center Lease Extension

City Manager Bohenko said this is an agreement at Greenleaf Recreation Center with Operation Blessing. He spoke to the activities held by Operation Blessing.

City Manager Bohenko spoke to the Sons of Italy also using the Greenleaf Recreation Center for their monthly meetings instead of the Plains School. He said the Greenleaf Recreation Center would be beneficial due to the parking and it is handicap accessible. He further discussed the need for the Pontine Theatre to have a location for use other than performances and the Plains School is currently under utilize and would be entering into negotiations with Pontine to use the Plains School for various items such as rehearsal space, work shops and storage space.

Councilor Spear said he is pleased with the information provided by the City Manager for the use of Greenleaf Recreation Center and the Plains School to be further utilized.

Councilor Spear moved to authorize the City Manager to negotiate and enter into a Second Amendment to the License Agreement for Wright Avenue, LLC. Seconded by Councilor Lown and voted.

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

City Manager Bohenko said that this is to request a public hearing on a Resolution for Phase II Improvements to Little Harbour School. He said the public hearing and adoption would take place at the April 18, 2016 meeting.

Superintendent Zadavec said this will complete Phase II for improvements to Little Harbour School. He said that this is a comprehensive plan for the improvement for first floor classrooms, improvements to the gym and cafeteria.

Councilor Dwyer said that the School Board was going to provide a tour of Little Harbour School and would like to know when that could take place. City Manager Bohenko said that he would work with Superintendent Zadavec and Mayor Blalock on scheduling something in the near future.

Assistant Mayor Splaine asked if this would complete the asbestos removal. Superintendent Zadavec said that was done in Phase I of the improvements.

Mayor Blalock said the tour would take place after school hours.

Councilor Spear moved to establish a public hearing on Monday, April 18, 2016 for bonding of up to Five Million (\$5,000,000.00) Dollars for Phase II of the Little Harbour School Improvements. Seconded by Councilor Pearson and voted.

City Manager's Informational Items

2. *Firm Selection for Prescott Park Master Plan*

City Manager Bohenko reported that the firm of Weston & Sampson Engineers, Inc. was chosen. He said the cost of the contract services will be \$80,000.00 with \$40,000.00 from UDAG and the other \$40,000.00 will be funded with contingency funds. He stated the firm's work on this project will begin very shortly. City Manager Bohenko said updates on the project timeline; major milestones, public input opportunities and other information about the project will be forthcoming.

Councilor Dwyer said the Committee looked at 4 firms and everyone was impressed with Weston & Sampson Engineers, Inc. She said the Committee meetings are scheduled at 7:30 a.m. in the morning and are televised. She said that she will identify a short list of truisms and the first is the City owns the park.

Assistant Mayor Splaine asked about involvement of the public on this matter.

Councilor Dwyer said public input will happen in June and July and different kinds of involvement from family work shop days for conceptualizing in the park, town hall forums, etc.

3. *Report Back Re: Assistant Mayor Splaine's Request – Project Labor Agreement for the Peirce Island Wastewater Treatment Facility Upgrade*

City Manager Bohenko reported that the City staff does not recommend the incorporation of a Project Labor Agreement (PLA) into the existing bid process for the Peirce Island WWTF Upgrade. He said in short, a PLA requires the use of union labor for most tasks. He said a PLA is not in accord with the intent of the City's competitive bidding ordinances and is inconsistent with past bidding practices. He stated a PLA makes the process less competitive by excluding otherwise qualified bidders and, based on reports from other communities and agencies, increases prices. He said there is also 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. City Manager Bohenko said NH has a far greater proportion of non-union workers within the trades that are going to be employed on Peirce Island than union workers. He also said it is late in the Peirce Island WWTF current bidding process to add a PLA. In addition, 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 and a second firm might also withdraw.

Public Works Director Rice said the City Manager is correct and he said to do this now would affect the schedule and construction to start on July 1st.

Assistant Mayor Splaine said it would be difficult but not impossible. Public Works Director Rice said he does not believe so.

City Manager Bohenko said we need to have a process in place and have an ordinance in place. He said it is not part of our procurement process.

Councilor Dwyer said she would be concerned with competition. She said it is not just a schedule issue but this is a complicated issue and we should not take things lightly.

Councilor Spear said that the City Council should make the decision on a PLA in a less ad-hoc environment and does not feel this is the appropriate time or project. He said we could discuss this matter in summer in a Work Session.

Councilor Denton said he supports PLA's and would like to see this included in an ordinance for our procurement process.

Assistant Mayor Splaine said that this is the biggest project we have. He requested to have this matter on the agenda under his name for the April 18, 2016 City Council meeting. He stated he would like to have public input on the project.

Assistant Mayor Splaine moved to hold public comment on the value of a PLA for the Wastewater Treatment Facility at the April 18, 2016 meeting. Seconded by Councilor Denton.

Councilor Pearson said she would only agree if there was a guarantee that this would not affect the schedule.

Councilor Dwyer said she would not support the motion.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said we need to move the process along and would not vote in favor of the motion.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Assistant Mayor Splaine said that this is a good time to do this and the right thing to do.

On a roll call vote 3-6, motion failed to pass. Assistant Mayor Splaine, Councilors Cyr and Denton voted in favor. Councilors Perkins, Dwyer, Lown, Pearson, Spear and Mayor Blalock voted opposed.

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

The City Council considered the reappointments listed above which will be voted on at the April 18, 2016 City Council meeting.

C. ASSISTANT MAYOR SPLAINE

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

Assistant Mayor Splaine moved 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 the state's legislature and signed by Gov. Pat McCorory on March 23, 2016 allowing for discrimination against LGBTQ resident be repealed. Exempt from this request are meetings of an essential or emergency nature, those dealing with homeland security, or law-enforcement. Seconded by Councilor Denton.

Assistant Mayor Splaine said the time is right to discuss issues of discrimination. He said many States have voiced objection with what is happening in North Carolina.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said he agrees that discrimination is wrong and it angers him.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Councilor Dwyer said she would like to turn this into something. She said we try to make these types of motions meaningful for our residents and Seacoast Outright is not included in our budget as receiving annual funds from us under Social Services. She recommended our support go to our younger community and place money in the budget this year and ongoing years for Seacoast Outright.

Councilor Denton said if we vote on Assistant Mayor Splaine's motion he would vote against because many good people live in North Carolina and are fighting the law and feels that people would be negatively impacted. He said he does not feel this is the right message and the right message would be to send our staff to North Carolina.

Councilor Cyr said that the motion would not have likely any effect and would like to see Councilor Dwyer's suggestion placed within the motion which would have an effect.

Councilor Spear said he would oppose the motion because he feels it has no meaning to the City of Portsmouth but he would support Councilor Dwyer's because that would be impactful.

City Manager Bohenko said we would need to look at Councilor Dwyer's motion when we get to the budget and the Council could make an amendment.

Councilor Lown said there is no end to the really good causes we could weigh in on in the Country.

Assistant Mayor Splaine said this does affect the people of the City of Portsmouth and he likes Councilor Dwyer's point and would accept it as part of the motion.

Assistant Mayor Splaine said he would support adding "those boycotting in North Carolina" to the beginning of the main motion. Councilor Denton as the second to the motion agreed and the motion now will read as follows:

Moved in support of those boycotting in North Carolina 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 the state's legislature and signed by Gov. Pat McCrory on March 23, 2016 allowing for discrimination against LGBTQ resident be repealed. Exempt from this request are meetings of an essential or emergency nature, those dealing with homeland security, or law-enforcement.

Assistant Mayor Splaine moved to amend the motion to have the City Manager report back during the budget process his recommendation or thoughts of providing funding for Seacoast Outright. Seconded by Councilor Dwyer and voted. Councilors Lown, Spear and Denton voted opposed.

Main motion passed, as amended. Councilors Lown and Denton voted opposed.

D. COUNCILOR DENTON

1. Commercial Property Assessed Clean Energy (C-PACE)

Councilor Denton moved 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 to the City Council on how administering such districts in Portsmouth could work. Seconded by Councilor Lown.

Councilor Denton spoke to the letter from the Sustainable Practices Committee in support of this. He said a presentation would be held on how to administer such districts. He further stated he would like to see what our role would be as a City Council by meeting with the Jordan Institute.

City Manager Bohenko said this would allow us to put liens on properties and he would need to review this matter further.

Councilor Lown said it is a good idea and if someone wants to put a solar area on their roof and then sell the property before the end of the loan there would be a lien on the tax bill for the new property owner to pay the remaining balance of the loan.

Motion passed.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

XIV. ADJOURNMENT

At 9:25 P.M., Councilor Lown moved to adjourn. Seconded by Councilor Spear and voted.



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

City of Portsmouth

Department of Public Works



MEMORANDUM

TO: John P. Bohenko, City Manager

FROM: Brian Goetz, Deputy Director of Public Works

CC: Peter Rice, Director of Public Works
Judie Belanger, Finance Director
Robert Sullivan, City Attorney

DATE: April 12, 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)

In 2015, the City Council explored the option of eliminating residential irrigation meters. They did not vote on that option, and the ordinance proposal expired. The current City Council is interested in revisiting this option.

There are approximately 300 residential irrigation meters in our water system. These customers paid the cost to re-plumb their irrigation systems from their existing water plumbing to provide a separate water line for this usage. They also paid the City for the meter, radio and labor to install the meter, at a total cost of \$258.00 (based on a 5/8 inch meter) per customer. If Council votes to eliminate irrigation meters from the system, it is recommended that each customer be reimbursed \$300.00 for the cost they paid to the City for the installation. The meter would not be removed from the property but that metered consumption would be combined with the domestic meter use

and they would then be billed for water and sewer usage. Only one monthly meter service fee would be charged per customer.

The other irrigation meter option before City Council is to expand irrigation meters to all customer classes. This most recent proposal also includes additional water rate tiers to properly bill these customers for the additional capacity needed to meet anticipated peak summer irrigation demands. The tiers would also promote efficient water use because as they use more water their rates increase.

Memorandums and presentations have previously been given to City Council for both options. I am prepared to present a brief summary of them during the April 18, 2016 City Council meeting.

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, April 18, 2016 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH on an Ordinance amending Chapter 11, Article II, Section 11.216:B - Sewer User Charges/Records/Hook-Up by the Elimination of Irrigation Meters. The complete Ordinance is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

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

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Kelli L. Barnaby, MMC, CMC, CNHMC
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

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

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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 4/17/97~~)

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

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, April 18, 2016 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH on a Resolution Authorizing a Bond Issue and/or Notes of up to Five Million Dollars (\$5,000,000.00) for Costs related to Phase II of Elementary School Facility Improvements. The complete Ordinance is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

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PM-00189856

**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**

April 7, 2016



City Manager
John Bohenko
1 Junkins Avenue
Portsmouth New Hampshire 03801

Dear Mr. Bohenko,

On behalf of the Scarecrows of the Port Committee, I am writing to request permission to place scarecrows in designated locations throughout the Portsmouth Downtown Area.

We are excited to continue the tradition once again this year for the Scarecrows of the Port for the 9th season. We remain a grassroots committee that is working to continue this annual event where retailers and different downtown business associations can collaborate to decorate their stores in a festive manner to attract visitors and locals to the downtown.

At this time we are anticipating 45 scarecrows that would be on City Property. We would like to erect the scarecrows on Thursday, October 6th and take them down on Tuesday, November 1st. The Scarecrows of the Port Committee volunteers will be responsible for placement and removal.

As always we appreciate any assistance from DPW. As in the past we will supply you with our insurance coverage information.

Thank you for your continued support, we are very grateful.

Sincerely,

Laurie A. Mantegari
Committee Member
Scarecrows of the Port

SEACOAST HALF MARATHON

Caring for the coast, one step at a time



March 29, 2016



Mayor Blalock and the Portsmouth City Council
Portsmouth City Hall
1 Junkins Ave
Portsmouth, NH 03801

Dear Honorable Mayor Blalock and the City Council,

This is to request your approval to hold the 11th annual Seacoast Half Marathon on Sunday, November 13, 2016.

The Seacoast Half Marathon is a fund-raiser road race, benefitting a different local non-profit organization each year. Past beneficiaries include New Heights, Cross Roads House, Womenade, Great Bay Services, Big Brothers Big Sisters of the Greater Seacoast, Families First, Sexual Assault Support Services/Child Advocacy Center, Chase Home for Children, and the Seacoast Mental Health Center. In the first 10 years of the race, we contributed over \$750,000 to the race beneficiaries. This year's beneficiary is the Seacoast Family Food Pantry. The SFFP will use the monies from this year's race to expand their efforts to provide food and personal-care items for people in need; the Summer Meals4Kids educational program; and the Meals4Seniors assistance program. Our goal this year is to raise and donate a minimum of \$85,000 to support these necessary programs. In addition to our beneficiary, other local non-profit organizations have staffed our 'water stops,' and those enthusiastic groups each receive \$500 for their efforts on race day.

The Seacoast Half Marathon has sold out every year. And each year, the race attracts runners and walkers from 16-20 states across the nation, plus a small handful of people from outside the country. So local hotels, retailers and restaurants also benefit from the people who visit Portsmouth for this road race on Veteran's Day weekend.

We expect to have 1,200 participants on race day. 'Competitive walkers' will start at 8:00am, and the runners will start at 8:30. The 13.1 mile course travels through Rye and New Castle, as well as parts of Portsmouth. We avoid the 'downtown' area of Portsmouth to help minimize traffic interruptions. Each year, we work with the Police departments in Portsmouth, Rye and New Castle to minimize the impact of the race on local communities, and to maximize the safety for the racers. We are planning to use the same race course that we have used for 9 of the past 10 years.

We thank your office and the Council for your support of the Seacoast Half Marathon in past years, and hope that you will provide your support again for this year's race.

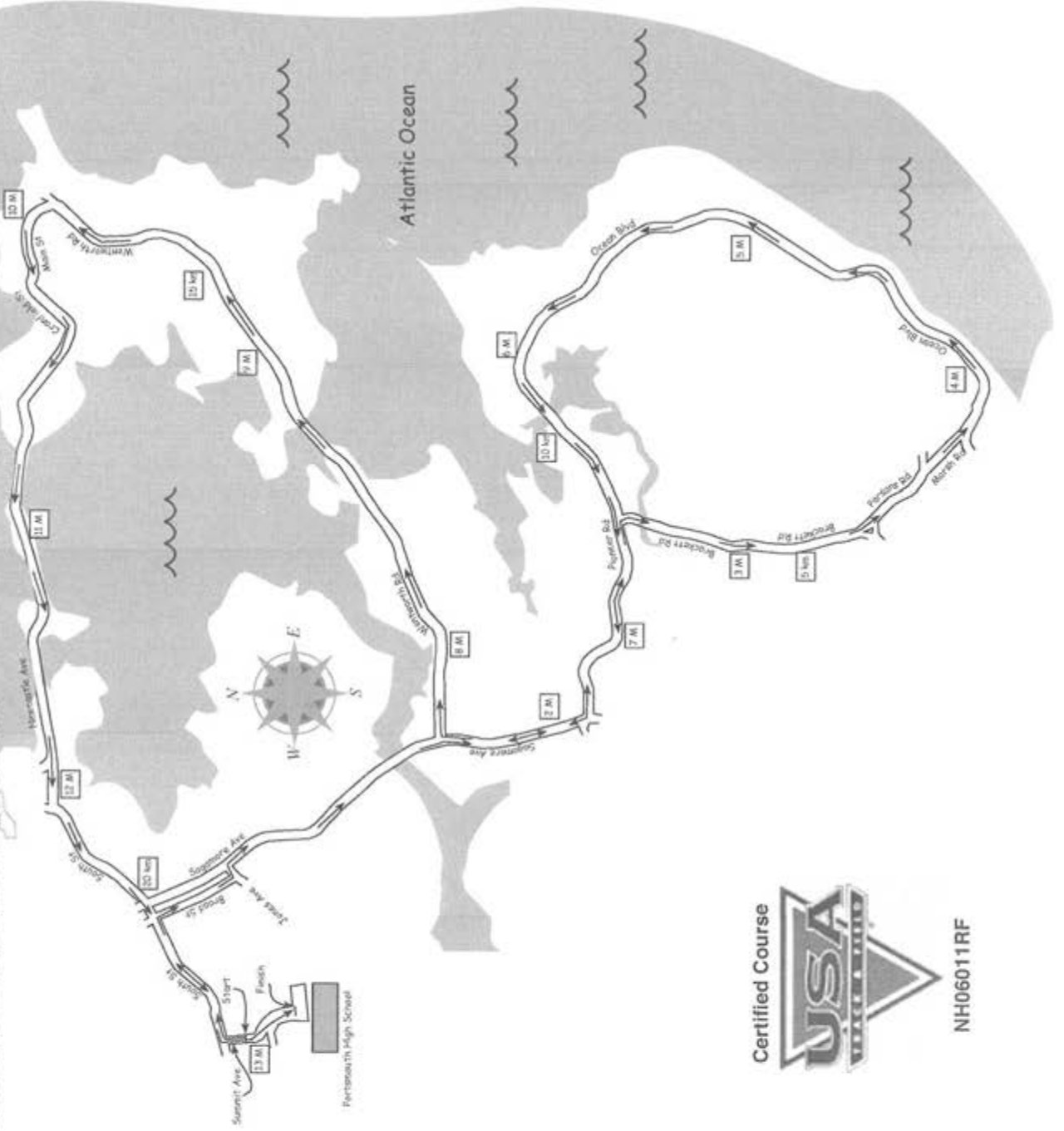
Sincerely,

A handwritten signature in blue ink, appearing to read "Jay Diener".

Jay Diener
Co-race director, Seacoast Half Marathon
206 Woodland Rd
Hampton, NH 03842
603.758.1177
shmracedirector@gmail.com

SEACOAST HALF-MARATHON

PORTSMOUTH, NEW HAMPSHIRE



NH06011RF



Run with the Cause

ST. CHARLES CHILDREN'S HOME 5K
P. O. Box 1705 • Rochester, NH 03866



March, 28, 2016

John Bohenko
City Manager
1 Junkins Ave.
Portsmouth, NH 03801

Dear Mr. Bohenko:

The 20th Annual St. Charles Children's Home 5K held on Labor Day at the Pease International Tradeport, would like to ask your permission once again to hold the St. Charles Children's Home 5K Road Race at Pease International Tradeport on September 5, 2016 at 9:00 a.m.

As in the past, we will communicate and obtain the required insurance for the City of Portsmouth, as well as Martin's Point Healthcare and the Pease Development Authority. We also will be hiring the Portsmouth Police department to provide coverage and secure an EMT to cover medical needs. Our large pool of volunteers will make sure the event runs smoothly and that the area is left spotlessly clean by 1:00 PM.

Thank you for your time and attention toward making this a safe and successful event.

Sincerely,

Sister Mary Agnes, DMML, MBA
Administrator



PORTSMOUTH PROFESSIONAL FIRE FIGHTERS

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1313

P.O. BOX 207 • PORTSMOUTH, NH 03802-0207

TEL: 603-427-1515

portcityfire.com

March 15, 2016

Mayor Jack Blalock and City Council
Portsmouth City Hall
1 Junkins Ave.
Portsmouth, NH 03801

Honorable Mayor Blalock and members of the City Council:

The International Association of Firefighters (IAFF) is the largest contributor to the Muscular Dystrophy Association (MDA) nationwide. The Portsmouth Professional Firefighters Local 1313 membership are proud members of the IAFF and have annually supported the MDA with their fundraising efforts for many years. Last year the members of Local 1313 raised over \$9,000 through our Fill-the-Boot campaign.

The Fill-the-Boot Drive is a voluntary "toll booth", which has been traditionally located at Market Square. During the event, firefighters collect donations for the MDA from passing motorists and pedestrians. Our Fill-the-Boot campaign has been so successful in the past because of the support of the City Council.

Once again, we are asking for the City Council to support our efforts in assisting the MDA. We respectfully request permission to hold two boot drives this year, the first on Saturday, July 9th, and the second on Saturday, August 20th. We would collect donations between the hours of 8am to 5 pm. We would like to continue to utilize the Market Square location as it has been very successful for us in the past.

The Portsmouth Professional Firefighters began its fundraising efforts for MDA over 14 years ago. Each year the money collected has benefited afflicted children from Portsmouth, the surrounding seacoast, and across the State of New Hampshire. This year our goal is to raise \$10,000 for this worthy cause, and with the City Council's support we believe we can achieve this.

The Portsmouth Professional Firefighters look forward to working with you on this, and would like to thank you for your continued support in our efforts to help the MDA. If there are any questions or concerns, please feel free to contact Firefighter Jim O'Brien at 603-380-5343.


Sincerely,

Allan Scholtz, Secretary

Portsmouth Professional Firefighters Local 1313

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: April 14, 2016
To: Honorable Mayor Jack Blalock and City Council Members
From: John P. Bohenko, City Manager 
Re: City Manager's Comments on April 18, 2016 City Council Agenda

Work Session:

6:15 p.m.

1. **Work Session Re: 165 Deer Street.** On Monday evening at 6:15 p.m., the City Council will hold a Work Session regarding the acquisition of the 165 Deer Street property. Please see the [attached memorandum from City Attorney Robert Sullivan and Deputy City Manager David Allen regarding this matter.](#)

Subsequent to the Work Session, under the City Manager's Action Items on the Agenda, I am requesting the City Council take action on one of the two options regarding the Deer Street Garage Property Acquisition.

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.
2. **Presentation from Peter Michaud of the Division of Historical Resources Re: Update on Nomination of Downtown Properties to the National Register.** On Monday evening, Peter Michaud of the New Hampshire Division of Historical Resources will give an update to the City Council on the Nomination of Downtown Properties to the National Register.

Items Which Require Action Under Other Sections of the Agenda:

1. Public Hearing/Second Reading of Proposed Ordinance Amendments:

- 1.1 **Public Hearing/Second Reading of Proposed Ordinance amending Chapter 11, Article II. Section 11.216 – Sewer User Charges/Records/Hook-up – Elimination of Meters.** As a result of the April 4th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the [attached proposed Ordinance](#) amending Chapter 11, Article II, Section 11.216 – Sewer User Charges/Records/Hook-up for the elimination of meters.

[Attached is a memorandum from Brian Goetz, Deputy Director of Public Works,](#) that provides more detail regarding this matter.

Brian Goetz will be making a short presentation regarding this matter.

The City Council may move one of the following motions:

1) Move to pass second reading and schedule a third and final reading on the proposed Ordinance, as presented, at the May 2, 2016 City Council meeting. Action on this item should take place under Section IX of the Agenda

or

2) Move not to approve the proposed Ordinance, as presented.

Action on this matter should take place under Section IX of the Agenda.

- 1.2 **Public Hearing/Second Reading of Proposed Ordinance amending Chapter 11, Article II. Section 11.216 – Sewer User Charges/Records/Hook-up – Addition of All Customers.** As a result of the April 4th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second 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.

[Attached is a copy of a memorandum from Brian Goetz, Deputy Director of Public Works,](#) regarding this matter.

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.

Brian Goetz will be making a short presentation regarding this matter.

The City Council may move one of the following motions:

1) Move to pass second reading and schedule a third and final reading on the proposed Ordinance, as presented, at the May 2, 2016 City Council meeting. Action on this item should take place under Section IX of the Agenda

or

2) Move not to approve the proposed Ordinance, as presented.

Action on this matter should take place under Section IX of the Agenda.

2. Public Hearing and Adoption of Proposed Bonding Resolution:

2.1 Public Hearing and Adoption of Proposed Bonding Resolution of up to Five Million (\$5,000,000) Dollars for Phase II Little Harbour School Improvements.

As a result of the April 4th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing the [attached proposed Bonding Resolution](#) of up to Five Million (\$5,000,000) Dollars for Phase II of the Little Harbour School Improvements.

[Attached is a letter from Superintendent Steve Zdravec regarding this matter.](#) This item has been identified in the FY2017 Capital Improvement Plan. Superintendent Zdravec 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.

A representative of the School Department will be present on Monday evening to answer any questions that you may have regarding this matter.

I recommend the City Council move to adopt the Bonding Resolution of up to Five Million (\$5,000,000) Dollars for Phase II of the Little Harbour School Improvements. Action on this matter 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 Options as a result of Work Session.** As a result of the April 4th City Council meeting, I am bringing back for City Council action the following two options regarding the Deer Street Garage Property Acquisition.

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 16, 2016 pursuant to RSA 231:43 for the purpose of discontinuing any rights of the City or the public in the following two parcels of property:*

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 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. **Portsmouth Public Media, Inc. Proposed Lease Renewal.** The City of Portsmouth leases the South Meeting House at 280 Marcy Street to Portsmouth Public Media, Inc. (PPM). The current lease, which was for a five-year period and began on May 5, 2011 expires on May 4, 2016. Recently, I met with PPM representatives who requested an extension for another five-year period.

Portsmouth Public Media, Inc. is a non-profit organization whose organizational mission is “To make the sharing of local news, views, information, arts and entertainment readily accessible to residents, and nonprofit and business organizations of the greater Portsmouth area.” The primary source of funding for the organization is an allocation from the City’s Cable Television Public Access Charitable Trust, which is funded through the Franchise Fee paid to the City of Portsmouth per the Cable Franchise Agreement. Because the existing Franchise Agreement expires in 2018, PPM has requested the new lease include a clause which releases it from its obligations under the lease if their primary funding source is not continued as a result of new Cable agreement. In requesting an extension, no other changes to the lease terms are proposed or requested.

There are several public benefits associated with the organization’s use of this building. In the existing lease, the organization committed to the expenditure of funds for capital improvements in an amount not less than would otherwise be due to the City in real estate taxes on the premises. As a result of this lease provision, many significant capital improvements in the building have been made since 2011 and the investments have totaled over \$112,000. These improvements including extensive life safety upgrades such as a new fire panel, fire pull stations, security lighting, and a second floor sprinkler system; HVAC and plumbing upgrades; electrical repairs and upgrades; and various cosmetic improvements as well as fit-up improvements to the space including an editing area and studio spaces that are critical to the agency’s public mission.

In addition, the building has been made available to the neighborhood organization Friends of the South End and other community entities have also benefited from the space. PPM also winds and maintains the clock in the clock tower.

If the lease extension for the building is acceptable to the City Council, I will work with the City Attorney’s Office to renew the lease for the five-year term with the change described above. In addition, I will work with PPM on the identification of capital improvements to the building moving forward.

I recommend the City Council move to authorize the City Manager to enter into a Lease Agreement with Portsmouth Public Media, Inc. for the South Meeting House at 280 Marcy Street from May 5, 2016 to May 4, 2021.

3. **Ratify Appointment of Nancy Colbert Puff to replace David Allen, Deputy City Manager on the Planning Board.** In accordance with City of Portsmouth Ordinance Chapter 1, Section 1.303: Planning Board, I am requesting that the City Council ratify my appointment of Nancy Colbert Puff to replace David Allen, Deputy City Manager on the Planning Board effective May 16, 2016.

I recommend the City Council move to ratify the appointment of Nancy Colbert Puff to replace David Allen, Deputy City Manager on the Planning Board effective May 16, 2016.

4. **Request for Approval Re: Transfer of 2006 Fire Boat – Gilford, New Hampshire.** Attached is a memorandum from Fire Chief Steven Achilles requesting approval to dispose of the Fire Department's 2006 Fire Boat that was secured through a 2005 New Hampshire Security Grant. As the memorandum indicates, the Fire Department is working with the Gilford, New Hampshire Fire Department on Lake Winnepesaukee as the agency that will receive the fire boat. Please note that because the fire boat was purchased in its entirety with federal funds the City cannot sell this boat, but must offer it to another local agency.

I recommend the City Council move to approve the disposal of the Fire Department's 2006 Fire Boat, as presented.

5. **Request to Establish a Public Hearing for Refinancing Callable Bonds.** In reviewing the City's debt schedule, there are existing bond issues eligible for Advanced Refunding (refinancing) which will result in total future interest savings. The original bond terms included a call provision which allows the issuer the option to pay off bonds prior to the maturity date by issuing another bond at a lower interest rate.

The original bonds issued that are eligible for advanced refunding are:

1. Bond issue on 6/15/2008 for:
 - Fire Station 2 Land Acquisition
 - Fire Station 2 Construction
2. Bond issue on 6/15/2009 for:
 - Fire Station 2 construction phase II
 - Madbury Treatment Plant upgrades

The average coupon rate (interest) for the remaining life of these bonds is 4.2%. Keeping in mind that interest rates are subject to change, the City, by opting to refinance these bonds in the current market, could experience savings in excess of \$970,000 net of all issuance costs, over the remaining life of the bonds.

I am requesting the City Council move to establish a public hearing at the May 2, 2016 City Council meeting for an Advanced Refunding Bond Resolution of up to Thirteen Million (\$13,000,000) to refinance the remaining portion of the aforementioned callable bonds and all related costs. The refunding resolution requires a public hearing with two-thirds vote of the City Council.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on April 4, 2016. In addition, this can be found on the City's website.
2. **Reminder Re: FY17 Budget Schedule.** Just a reminder of the following key budget dates for the FY17 Budget:
 - a) On Friday, April 29th, I will have the FY17 Budget delivered to you.
 - b) Saturday, May 7th from 8:00 a.m. to 2:30 p.m., in the Levenson Room, at the Library – An “All Day” Work Session with Departments (e.g., Police, Fire, Schools and General Government). Agenda to follow.
 - c) Wednesday, May 11th at 7:00 p.m., FY17 Budget Public Hearing.
 - d) Wednesday, May 18th at 6:30 p.m., City Council Work Session - Water and Sewer Proposed FY17 Budget.
 - e) Monday, May 23rd at 6:30 p.m., City Council Budget Work Session - Budget Review FY17.
 - f) Wednesday, June 1st at 6:30 p.m., City Council Budget Review (if necessary).
 - g) Monday, June 6th at 7:00 p.m. – The goal is to have the FY17 Budget adopted at this meeting.

All meetings are held in the Eileen Dondero Foley Council Chambers unless otherwise noted.

Just a reminder that the City Council has until the end of June in accordance with the Charter to adopt the budget. If the City Council needs more time, other meetings can be scheduled, if deemed appropriate by the Mayor, keeping in mind that the budget needs to be adopted by June 30th.

3. **Report Back Re: Communications Plan for Wastewater Facility Upgrade.** In anticipation to the construction at the Peirce Island Wastewater Treatment Facility, [attached is a communication outline](#) that the City will be following to inform residents of ongoing activities.

4. **Islington Street Corridor – Basement Utility Surveys.** The City has hired a consultant team to develop the preliminary redesign of the Islington Street corridor between Maplewood Avenue and the Route 1 Bypass Bridge. The design work includes improvements to the sewer, water and drain lines under the street. To identify all existing connections to sewer and water lines along the corridor, workers will be going door to door to conduct a survey of each building basement to determine the location, number and characteristics of each utility connection. The [attached letter](#) will be hand delivered to each property owner along Islington Street to inform them of the upcoming work, tentatively scheduled to begin the week of April 25, 2016 and to ask them for their cooperation and support. The survey personnel will be from the firm of Crew Two, Inc., out of Taunton, Massachusetts. They will all be wearing ID badges issued by the City.



Portsmouth Fire Department

Administration

To: City Manager John Bohenko

From: Fire Chief Steven Achilles

Date: 4/11/2016

Re: Transfer of 2006 Fire Boat

The department is seeking approval to dispose of our 2006 Fire Boat that was secured through a 2005 NH Homeland Security Grant. This grant and the cost of the vessel was for \$353,000.00. According to the Grant Administrator we can transfer the vessel to another agency "to be utilized in the same capacity". However, no profit can be gained by our department or the city, of any kind, during this "surrender process".

At this time we have identified and are working with the Gilford, NH Fire Department on Lake Winnepesaukee as the agency that will receive the fire boat. If this process is approved by both the city and the Grant Administrator, we will move to transfer the boat within the month. We would also be looking at funds to immediately provide basic water response capabilities as we evaluate long-term options.

Thank you for your time and consideration.

Department Memorandum

Event Listing by Date

Starting Date: 4/ 4/2016

Ending Date: 2/28/2017

Start End	Type Description	Location	Requestor	Vote Date
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 walking with weighted backpacks through a portion of Portsmouth from the rail trail to Prescott Park.	THIS EVENT IS CANCELLED	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.	Peirce Island	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
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

Event Listing by Date

Starting Date: 4/ 4/2016

Ending Date: 2/28/2017

Start End	Type Description	Location	Requestor	Vote Date
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	BOAT Molly Bolster is the contact for this event. This event begins at 9:00 a.m. to 3:00 p.m. Raindate: 7/31/16	Peirce Island	Round Island Regatta	3/14/2016
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
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

Event Listing by Date

Starting Date: 4/ 4/2016

Ending Date: 2/28/2017

Start End	Type Description	Location	Requestor	Vote Date
9/17/2016 9/17/2016	RACE Holly Tennent and Melissa Mikulski mmikulski@bottomline.com 501-5335 htennent@bottomline.com 501-6653 This event begins at 9:00 a.m.	Pease Tradeport	Bottomline Technologies	4/ 4/2016
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: (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 acorss 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: 4/14/16
11:06AM

Event Listing by Date

Page: 4

Starting Date: 4/ 4/2016

Ending Date: 2/28/2017

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

2016 Wastewater Facility Upgrade Communications

I. Objectives

- a. Provide an official and consistent voice for this project – one that is current, proactive and factual.
- b. Develop ongoing communication and public outreach that results in a better informed community relative to the wastewater treatment program.
- c. Generate relationships and open communication between City representatives and concerned residents.

II. Proposed Communication Tools

- a. Public Meetings
 - i. Schedule quarterly update presentations to give to the City Council.
 - ii. Separate from City Council meetings, schedule monthly public meetings for residents in the Council Chambers that will also be filmed. This will include City staff and/or key members of the construction team to offer updates and field resident questions and concerns.
- b. Media Relations
 - i. Provide news releases to summarize construction schedules, project milestones, public meeting details, etc.
 - ii. Use public access television (PPMTV)/webcasts to provide information about water/wastewater issues to the community.
 - iii. Issue a quarterly newsletter on what's happening at Peirce Island and provide an update on milestones, status, new construction, best practices and key points or issues of concern.
 - iv. Send email notifications to those who subscribe on the Wastewater Website.
- c. Social Media
 - i. Continuous posts through Portsmouth Public Works' Twitter page: @PortsmouthDPW
 - ii. Posts will include a range of info such as quick facts, notifications of meetings, recent articles and construction updates; introduce hashtag #PortWastewater to link all related information/posts.
- d. Website: www.portsmouthwastewater.com
 - i. The Wastewater Website will continuously post added resources, such as:
 - Construction schedules
 - Construction plans
 - Fact sheets/Q&A's
 - Best available projections on traffic impacts (scale from low, moderate, high that week)
 - Monthly Consent Decree reports
 - ii. Key stakeholders and interested residents will be able to sign up for email notifications for all Peirce Island WWTF-related news.
 - iii. All meeting presentations and YouTube videos of monthly public meetings on the Public Information Materials section of the website.
 - iv. Webcam footage of construction site will be provided, as well as periodic time lapse videos for both website and social media content.
 - v. Provide contact information appropriate City staff.



PUBLIC WORKS DEPARTMENT

CITY OF PORTSMOUTH

680 Peverly Hill Road
Portsmouth N.H. 03801
(603) 427-1530 FAX (603) 427-1539

April 14, 2016

<Property Owner>
<Islington Street>
Portsmouth, NH 03801

NOTICE TO ISLINGTON STREET PROPERTY OWNERS **Sewer/Water Survey Work Planned**

Dear Property Owner:

The purpose of this letter is to inform property owners along and adjacent to Islington Street that the City is planning for sewer, water and roadway improvements. The project limits extend from Maplewood Avenue to the NH Rte. 1 Bypass. Preliminary planning involves investigations into building and basement plumbing. The purpose of these investigations is to locate important sewer, water and drain information on the properties so new infrastructure can be properly designed to accommodate the existing building plumbing.

Building and basement plumbing surveys will be performed by Crew Two, Inc. out of Taunton, Massachusetts. The surveys will be conducted Monday through Saturday between 10 a.m. and sundown. Building surveys will begin the week of April 25, 2016. Crew Two personnel will carry City of Portsmouth issued photo identification. Individual visits will be conducted door to door and should take less than 15 minutes. In the event that no one is home, Crew Two personnel will leave a "Sorry We Missed You..." card on the door, so that a more convenient time for plumbing surveys can be arranged. Crew Two will make a second and third attempt to visit residential properties if access is not possible on the first visit. In the event that access to buildings is not achieved after the third visit, the individual property plumbing survey for that location will be abandoned.

This project is a large undertaking for the City and we greatly appreciate your cooperation in helping in the design process. We ask that you give the Crew Two surveyors the same courtesy and access privileges that a City employee would have. Thanks again for your cooperation and support.

Questions can be directed to Eric Eby (ebeby@cityofportsmouth.com, tel. 766-1415) or Terry Desmarais (tldesmarais@cityofportsmouth.com, tel. 766-1755)

Very truly yours,

Eric B. Eby, P.E.
Parking and Transportation Engineer

SORRY WE MISSED YOU....

We are conducting a House/Building Survey for the City of Portsmouth. Our field crew stopped by today but unfortunately, no one was home. We will make a return call in the next few days. The inspection should take less than 5 minutes and we'll be on our way.

If you need to schedule a visit during a more convenient time, please feel free to contact us at 508-272-6820.

Crew Two, Inc.

ACTION ITEMS AND MINUTES
PARKING and TRAFFIC SAFETY COMMITTEE MEETING

8:00 A.M. – April 7, 2016
City Hall – Eileen Dondero Foley Council Chambers

Action Items requiring an immediate ordinance during the next Council meeting: none

Temporary Action Items requiring an ordinance during the annual omnibus:

Remove two parking spaces on High Street.

Remove one parking space on Hanover Street.

ACTIONS:

[1] Accepted and placed on file the minutes of the Parking and Traffic Safety Committee Meeting held on March 3, 2016.

[2] Accepted and placed on file the Financial Report dated February 29, 2016.

[3 (VI.A.)] **Action Item:** Downtown Parking Utilization Study – **No action item.**

[4 (VI.B.)] **Action Item:** Court Street at Washington Street. Request by resident to remove STOP signs on Court Street approaches to the intersection - **VOTED** to table action item.

[5 (VI.C.)] **Action Item:** High Street and Hanover Street - **VOTED** to remove two parking spaces on High Street and remove one parking space on Hanover Street and Fleet Street to allow crosswalk improvements and a motorcycle parking space.

[6 (VI.D.)] **Action Item:** Miller Avenue speed limit - **VOTED** to refer to City staff for further evaluation and report back.

[7 (VII.A.)] **Action Item:** Motorcycle parking on sidewalks - **VOTED** to refer to City staff for report back at a future meeting. Based on comments during the public comment period, staff will review all suggestions, to include, but not limited to, banning all gasoline-powered vehicles from parking on sidewalks, and/or allowing only mopeds with a moped license plate to park on sidewalks.

I. CALL TO ORDER:

Chairman Lown called the meeting to order at 8:00 a.m.

II. ROLL CALL:

Members Present:

Councilor, Brad Lown
City Manager, John Bohenko
Public Works Director, Peter Rice
Deputy Fire Chief, James Heinz
Acting Deputy Police Chief, Frank Warchol
Member, Ted Gray
Member, Ron Cypher
Member, Harold Whitehouse
Member, Shari Donnermeyer
Alternate Member, Mary Lou McElwain

Staff Advisors Present:

Parking Manager, Joey Giordano
Parking and Transportation Engineer, Eric Eby
Transportation Planner, Juliet Walker
Construction Project Coordinator, Ryan Flynn

III. ACCEPTANCE OF THE MINUTES:

Harold Whitehouse motioned to accept the March 3, 2016, meeting minutes.
Ted Gray seconded.

Motion passed 9-0.

IV. FINANCIAL REPORT:

Harold Whitehouse motioned to accept the February 29, 2016, financial report.
Ron Cypher seconded.

Motion passed 9-0.

V. PUBLIC COMMENT:

Beth Margeson, 24 Marcy Street, opposed removing the stop signs on Court Street and Washington Street because of public safety.

Joe Almeida, 33 Blossom Street and property owner of 101, 103, 105 High Street, expressed support for the removal of two parking spaces on High Street.

Richard Smith, 93 High Street, opposed the removal of two parking spaces on High Street. He requested a sidewalk coating be applied to the bricks to help prevent falls in the winter or an alternate type of paver be used, and requested a narrow snowplow be used on the existing sidewalks.

VI. NEW BUSINESS:

A. Downtown Parking Utilization Study – John Burke, CAPP, Independent Consultant, presented the 2015 Parking Utilization Study Downtown Portsmouth to the Committee. The presentation is available on the City's website under Meetings Calendar 2016, April 7, 2016, Parking and Traffic Safety Committee. Mr. Burke's technical report was included in the packet and can be located at the website mentioned above.

The presentation included the study background, parking survey objectives, parking survey methodology, parking occupancy survey, duration-of-stay/turnover survey, and study recommendations. The study recommendations included:

- In regards to future rate adjustments: consider widening the pricing gap between the HOM Zone (\$1.75/hr.) and standard meter zone (\$1.25/hr.) to incentivize parkers to use lower-cost parking outside the HOM Zone.
- Change time limits on Deer & Russell Streets from 4 to 3 hours.
- Meter Islington Street between Bridge and Summer Streets. Change the 2-hour time limit on Islington Street, and 4-hour time limit on Bridge Street, to 3 hours for consistency.
- Replace all remaining coin-only parking meters with credit card-enabled meters in the \$1.25 meter zone.
- Eliminate the six parking meters on outer State Street just east of Summer Street.
- Offer discounted monthly parking in the underutilized 90-space Vaughan Street Lot. Install 3-hour metered parking on the 90+ on-street spaces on Vaughan Street, Raynes Avenue and Maplewood Avenue. They are primarily being used for all-day employee parking.
- Continue to actively promote the limited available long-term parking that exists in the South Mill Pond and Masonic Parking Lots, and on outer State and Middle Street.
- Continue to investigate the feasibility of implementing a more dynamic, demand-based pricing system.

The Committee complimented Mr. Burke on the technical report's completeness. Mr. Burke defined long-term parking as all-day parking. Mary Lou McElwain expressed support for keeping the combo (coin and credit card) meters. She also addressed the inconsistencies regarding parking time designations and pricing in areas of the City. She also recommended that the available parking at parking lots be publicized on business websites.

Harold Whitehouse expressed concern over making sweeping changes. Mr. Burke concurred that changes should not be implemented that will affect long-term parking until additional parking supply is established.

City Manager Bohenko stated that the new parking garage is the long-term parking supply being discussed. He stated that before moving forward with a residential parking program, a long-term parking solution needs to be in place. He added that there are diminishing fiscal returns because of lack of parking. This is occurring at the present time.

Mr. Burke discussed the underutilization of the Vaughn Street Lot. He discussed how customer visitation can be re-established on certain streets once the new garage is operational.

Harold Whitehouse discussed decal parking for 32 spaces on Parrott Avenue and Junkins Avenue to Pleasant Street. He has presented the idea in the past, but it has not been discussed.

Deputy Fire Chief Heinz asked about street parking impacts due to bike lanes.

Ted Gray motioned to suspend the rules to allow for public comment. Harold Whitehouse seconded. **Vote 9-0, to suspend the rules.**

Marc Stettner, 91 Fairview Avenue, advised the Committee to be careful when considering increasing fees as an incentive for parking turnover. He stated it would disenfranchise customers who want to park for a short time. He stated it would negatively affect the downtown and patrons on limited incomes.

City Manager Bohenko stated staff would use a phased approach to recommendations relative to the study beginning at the next meeting. He stated the formal process will be followed. All recommendations must be approved by the City Council.

No action item.

B. Court Street at Washington Street. Request by resident to remove STOP signs on Court Street approaches to the intersection – Harold Whitehouse stated that an on-site meeting was conducted at the location. Harold Whitehouse motioned to approve staff recommendation to remove the two STOP signs on Court Street at Washington Street. Public Works Director Rice seconded. Harold Whitehouse suggested replacing the STOP signs with signs alerting drivers of congestion area ahead.

Eric Eby evaluated the area utilizing traffic volumes and other factors warranting all-way STOP signs at the location. He stated the traffic volumes on both streets are low. Court Street carries less than 200 vehicles during the summer peak hour, while Washington Street carries less than 60 vehicles during the same time. He stated based on volume alone, this location does not warrant an all-way STOP. The reason for the all-way STOP signs is the limited sight lines on Washington Street looking up Court Street. However, when a driver pulls forward to see through the intersection, the vehicle is not sticking out into Court Street traffic. Based on these factors,

Mr. Eby stated an all-way STOP is not required. He recommended if the Court Street STOP signs were removed, that signs be placed under the Washington Street STOP signs alerting drivers that cross traffic does not stop. He also suggested monitoring speed on Court Street with a traffic counter. Drivers tend to speed up when an all-way STOP is not needed. He also stated that the intersection could be monitored to determine congestion. He will assess issues as needed.

Ted Gray inquired about the number of accidents at the intersection. Acting Deputy Police Chief Warchol stated it was very low, but he would investigate.

Ron Cypher stated he noticed that there are signs under the STOP signs on West Street at the intersection of Campus Drive that alerts drivers to the changes made at the intersection.

Mary Lou McElwain stated she is an active pedestrian in the area and does not want the STOP signs removed because of safety issues.

Chairman Lown asked why this issue was presented to the Committee. Eric Eby stated that a citizen complained about the traffic noise as a result of vehicles, especially trucks, braking and then accelerating at the intersection.

City Manager Bohenko requested the Police Department review the number of accidents at the intersection and that staff contact the citizen initiating the request by the next meeting for further details.

City Manager Bohenko requested that the action item be tabled. Public Works Director Rice seconded. **Vote 9-0, to table action item.**

C. High Street and Hanover Street – City Manager Bohenko motioned to accept the staff recommendation to remove parking spaces: two on High Street and one on Hanover Street at Fleet Street. Public Works Director Rice seconded.

Ryan Flynn, Public Works Construction Project Coordinator, provided background on the project. It began when Eversource identified electrical deficiencies in the area. In order to upgrade the system, the City approached Eversource about burying the utilities. The Public Works Department is spearheading the sidewalk redesign.

Ryan Flynn stated that on the easterly side of High Street and Hanover Street, Eversource is installing electrical and communications utilities under the sidewalks. He stated on average the sidewalks being redesigned are currently 5 feet. The design standard is 7 feet. The redesign will maintain adequate travel lane widths on the roadways. However, widening the sidewalk to design standards would eliminate two parking spaces on the narrowest section of High Street.

In addition, one parking space would be removed on Hanover Street at Fleet Street to make room for the sidewalk extension, and the crosswalk, which was approved by the Committee in July 2015. Because of a large underground electrical vault at the intersection of Hanover Street

and Fleet Street, the required tip down ramp cannot be constructed within the existing sidewalk. The sidewalk bump-out would require one parking space be removed. A street light, a bump-out island and ADA compliant tip down ramp for the new crosswalk location is proposed.

Deputy Fire Chief Heinz asked if the Garden Way bump-out could have a beveled edge at the corner. Public Works Director Rice agreed.

The Committee discussed the sidewalk widths, design standards, and the City Council directive regarding brick sidewalks in the historic district.

The Committee agreed to allow the remaining portion of the removed parking space at Hanover Street and Fleet Street to be used as a motorcycle parking space.

Vote 9-0, to remove two parking spaces on High Street and remove one parking space on Hanover Street and Fleet Street to allow crosswalk improvements and a motorcycle parking space.

D. Miller Avenue speed limit – Eric Eby stated a resident frequently traveling Miller Street expressed concern about vehicle speeds. The current speed limit signs are incorrect. They are posted at 25mph. Based on state law and city ordinance, the speed limit should be 30mph. Eric Eby collected vehicle speed data. The 85th percentile speed is approximately 30-33mph. He stated he would gather speed data on Miller Avenue near Middle and review sight line issues before making a recommendation to the Committee.

City Manager Bohenko motioned to refer to City staff for further evaluation and report back. Public Works Director Rice seconded. **Vote 9-0, to refer to City staff for further evaluation and report back.**

VII. OLD BUSINESS:

A. Motorcycle parking on sidewalks – A revised letter submitted by Marc Stettner, dated March 25, 2016, was distributed to the Committee at the meeting. Eric Eby stated that staff would be reviewing moped parking on sidewalks. He stated a parking policy for bicycles, mopeds and motorcycles needs to be established. The question to be reviewed by staff is if mopeds are legally permitted to park on sidewalks. Currently, state law defines a moped based on the license plate. Motorcycles are defined as motor vehicles and are not allowed to park on sidewalks per state law. The Committee motioned to refer to City staff for report back at a future meeting. **Vote 9-0, to refer to City staff for report back at a future meeting.**

VIII. PUBLIC COMMENT:

Marc Stettner, 91 Fairview Avenue, informed the Committee that Maine does not designate mopeds by license plate. He stated that the city policy regarding mopeds treats Maine residents different from New Hampshire residents. He stated his 150cc unit is the same size

as those under 50cc. He expressed concern about parking on the street. Mr. Stettner requested a legal review of the policy. He stated his intent is to maximize the downtown parking. He expressed disappointment that the letter was not part of the packet. He requested the agenda action item title reflect the intent of the topic. The Committee apologized to Mr. Stettner regarding the absence of the letter in the packet. City Manager Bohenko confirmed that the action item is still in review. Ron Cypher suggested that all gasoline-powered vehicles be banned from parking on sidewalks (mopeds, scooters, and motorcycles).

City Manager Bohenko motioned to refer back to City staff for further review of suggestions to include, but not limited to, banning all gasoline-powered vehicles from sidewalks and/or allowing only mopeds with moped license plates to park on sidewalks. Harold Whitehouse seconded. **Vote 9-0, to refer back to City staff for further review of suggestions, to include, but not limited to, banning all gasoline-powered vehicles from parking on sidewalks, and/or allowing only mopeds with a moped license plate to park on sidewalks.**

Doug Roberts, 247 Richards Avenue, representing PS21, spoke to the Committee. The organization is working on a project called Walkable West End. The project would involve a temporary short-term makeover of a section on Islington Street. The organization received a grant from the New Hampshire Charitable Foundation and other sponsors. The idea is to inform the long-term redesign of Islington Street with temporary measures. It is a community driven process. They are working with Mike Lydon, author of Tactical Urbanism. Dates and locations will be determined at a future date. Mr. Roberts stated that this process might encourage a wider range of participation by the citizenry.

Marc Stettner, 91 Fairview Avenue, requested his adamant opposition be noted in the minutes allowing ONLY New Hampshire licensed mopeds to park on sidewalks. City Manager Bohenko clarified the action item will be referred back to City staff to review all options.

IX. INFORMATIONAL:

A. Traffic calming policies and procedures – Juliet Walker informed the Committee that in the near future, she will be returning with policies and procedures related to the numerous requests received from neighborhoods looking for traffic calming measures, speed reduction options, traffic controls and other safety measures. The goal would be to have a clear process (step by step), a toolkit of traffic calming measures that could be considered, and the types of analysis that needs to be done in each situation.

B. Water Country traffic study update – Eric Eby stated a written commitment was received from Water Country to fund half of the traffic study looking at alternate exit routes from Water Country. The consultant has the traffic data and is analyzing it now. They should

have recommendations to staff by the end of the month and staff will be reporting the findings to the Committee.

C. Proposed private parking lot app by Brian Slovenski – Chairman Lown met with Mr. Slovenski. City Manager Bohenko motioned to suspend the rules to allow for public comment. Ted Gray seconded. **Vote 9-0, to suspend the rules.**

Brian Slovenski, 175 Grant Avenue, provided a handout to the Committee about an app developed to guide the public to private parking spaces for a fee through the application. The app is called Spare Spott. He provided a map of public and private parking spaces. He stated the mutual goal is to increase or allow access for the public to those private parking spaces and increase the parking inventory in the City of Portsmouth. He is asking the City to potentially assist in incentivizing the owners of the private parking lots to participate in the program by potentially offering services such as plowing, striping, and resurfacing. He stated his business would be responsible for advertising.

Ted Gray asked how private parking would be discovered and what benefit would this service bring to the City. Mr. Slovenski stated he has done his own research. He stated that having more parking would benefit both the City of Portsmouth and the businesses.

Chairman Lown and City Manager Bohenko requested a formal proposal from Mr. Slovenski. It should be sent to the Public Works Department with a copy sent to the City Manager.

D. City Council Joint Work Session with Parking & Traffic Safety Committee, Recreation Board, Trustees of the Trust Fund and Peirce Island Committee on April 11, 2016 - Chairman Lown requested Committee members send questions to him prior to the work session.

X. ADJOURNMENT – At 9:36 a.m., voted to adjourn.

Respectfully submitted by:

Amy Chastain
Secretary of the Committee