

# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: MONDAY, APRIL 3, 2023 TIME: 6:15PM

*Members of the public also have the option to join the meeting over Zoom, a unique meeting ID and password will be provided once you register. To register, click on the link below or copy and paste this into your web browser:*

[https://us06web.zoom.us/webinar/register/WN\\_9xn5-WpQTKSGcjheH71uLw](https://us06web.zoom.us/webinar/register/WN_9xn5-WpQTKSGcjheH71uLw)

**6:15PM - ANTICIPATED NON-PUBLIC SESSIONS ARE BEING HELD IN CONFERENCE ROOM A**

**1. CONSIDERATION OF LEGAL ADVICE – RSA 91-A:3, II (I)**

## AGENDA

*\*Regular portion of City Council meeting to begin at 7:00 p.m.*

- I. **WORK SESSION – THERE IS NO WORK SESSION THIS EVENING**
- II. **PUBLIC DIALOGUE SESSION [when applicable – every other regularly scheduled meeting] – N/A**
- III. **CALL TO ORDER [7:00 p.m. or thereafter]**
- IV. **ROLL CALL**
- V. **INVOCATION**
- VI. **PLEDGE OF ALLEGIANCE**

### PROCLAMATIONS

1. Volunteer Appreciation Month
2. Sexual Assault Awareness Month

**VII. ACCEPTANCE OF MINUTES – FEBRUARY 6, 2023; FEBRUARY 21, 2023; MARCH 6, 2023; AND MARCH 20, 2023**

**VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS**

- A. Mortimer Scholarship Funds
- B. \*Great Bay Community College Men's Basketball Team – United States Collegiate Athletic Association Final Four Appearance

**IX. PUBLIC COMMENT SESSION (*This session shall not exceed 45 minutes*) – (*participation may be in person or via Zoom*)**

**X. PUBLIC HEARINGS AND VOTE ON ORDINANCES AND/OR RESOLUTIONS**

### First Reading of Ordinance:

- A. First reading of Ordinance amending Chapter 1, Article IV, Section 1.411 – Cemetery Committee – Membership and Term (***Sample motion – move to pass first reading and schedule a public hearing and second reading at the April 17, 2023 City Council meeting***)

## Public Hearing/Second Reading of Ordinance:

- B. Public Hearing/Second reading of Ordinance amending Chapter 10 – Accessory Dwelling Unit, Section 10.43- - Use Regulations, Section 10.440 Table of Uses – Residential, Mixed Residential, Business and Industrial Districts, Section 10.814 – Accessory Dwelling Units, Article 11 – Site Development Standards, Section 10.1110 – Off-Street Parking, Article 15 – Definitions – Section 10.1530 – Terms of General Applicability (***Sample motion – move to postpone public hearing and second reading and schedule a Work Session for April 10, 2023. Further, for report back from the Legal Department regarding amendments to be considered at the City Council meeting of April 17, 2023***)

## XI. CITY MANAGER’S ITEMS WHICH REQUIRE ACTION

### A. CITY MANAGER CONARD

#### **City Manager’s Items Which Require Action:**

1. \*Request for Public Hearing Regarding Skateboard Park Additional Bond Authorization
2. License Agreement for Seacoast Eat Local/Farmers’ Market 2023
3. Acceptance of Easement for 170 Union Street
4. Acceptance of Easements for 160 Court Street
5. Acceptance of Easements for 2454 Lafayette Road
6. Acceptance of Easement for 201 Kearsarge Way
7. Acceptance of Easements and License for 444 Borthwick Avenue
8. Finalization of Easements and a License Amendment for West End Yards

## XII. CONSENT AGENDA

### ***(Proper Motion for Adoption of Consent Agenda – move to adopt the Consent Agenda)***

- A. Letter from Katie Johnson, Yoga in Action, requesting permission to use the Whale Statue lawn in Prescott Park for a one-hour class each Tuesday at Noon from June through August (***Anticipated action – move to refer to the City Manager with Authority to Act***)
- B. Letter from Richard Mason, Veterans Count, requesting permission to hold the Pack & Boots 5K Road Race at the Pease Tradeport on Tuesday, July 4, 2023 at 8:00 a.m. (***Anticipated action - move to refer to the City Manager with Authority to Act***)
- C. Letter from Bruce Hurley, Seacoast Half Marathon, requesting permission to hold the 18<sup>th</sup> Annual Seacoast Half Marathon on Sunday, October 29, 2023 (***Anticipated action - move to refer to the City Manager with Authority to Act***)

### **XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS**

- A. Email Correspondence (***Sample motion – move to accept and place on file***)
- B. Letter from Maggie Walsh, YMCA of the Seacoast, requesting permission to hold a 5K Fun Run on Saturday, June 24, 2023 (***Sample motion – move to refer to the City Manager with Authority to Act***)
- C. Letter from Julia Sinelnikova regarding PNH400 artwork (***Sample motion – move to place on file***)

### **XIV. MAYOR McEACHERN**

1. \*Appointments to be Voted:
  - Ernest Carrier appointment as alternate to the Planning Board
  - Daniel Main reappointment to the Portsmouth Housing Authority
  - Jacqueline Cali-Pitts reappointment to the Recreation Board
  - Richard Duddy reappointment to the Recreation Board
  - Lauren Krans reappointment to the Recreation Board
  - Jessica Blasko appointment to the Blue Ribbon Sustainability Committee
  - John Patrick Carty appointment to the Blue Ribbon Sustainability Committee
  - Jeffrey Mattson appointment as regular member to the Zoning Board of Adjustment
  - ML Geffert appointment as alternate to the Zoning Board of Adjustment
  - Jody Record appointment as alternate to the Zoning Board of Adjustment

### **XV. CITY COUNCIL MEMBERS**

#### **A. COUNCILOR TABOR**

1. Request for Update on the Public Engagement Report of July 22, 2022 and consideration of further public processes (***Sample motion – move to request an update on the Public Engagement Report of July 22, 2022***)

#### **B. COUNCILOR BAGLEY**

1. Parking & Traffic Safety Committee Action Sheet and Minutes of the March 15, 2023 meeting (***Sample motion – move to approve and accept the action sheet and minutes of the March 15, 2023 Parking & Traffic Safety Committee meeting***)

#### **C. COUNCILOR COOK**

1. City Council Donation Policy (***Sample motion – move to adopt the policy as presented***)

### **XVI. APPROVAL OF GRANTS/DONATIONS**

- A. Approval of Donation to the Fire Department from Shirley Van Aken for use at the Fire Department's Discretion - \$100.00 (***Sample motion – move to approve and accept the donation as presented***)
- B. Acceptance of Assistance to Firefighters Grant - \$333,294.54 (***Sample motion – move to approve and accept the grant as presented***)

- C. Acceptance of State Aid Grant Award (SAG) Peirce Island WWTF Upgrade (**Sample motion – move to approve and accept the State Aid Grant in the amount of \$35,031,456.00 payable over 30 years pursuant to amortization schedule**)
- D. Acceptance of 2023 Local Source Water Protection Program Grant (**Sample motion – move to authorize the City Manager to enter into a Grant Agreement with the State of New Hampshire Department of Environmental Services to accept up to \$25,000.00 from the NHDES Local Source Water Protection Program to assist with the purchase of a conservation easement on a parcel adjacent to the Bellamy Reservoir**)
- E. Approval of Donation from Piscataqua Savings Bank for lunch as part of Student Government Day (**Sample motion – move to accept the donation not to exceed \$1,000.00 for lunches as part of Student Government Day for the students, staff and City Council participating in the day**)
- F. Acceptance of InvestNH Municipal Demolition Grant Program - \$125,600.00 (**Sample motion – move to approve and accept the Grant as presented**)

**XVII. CITY MANAGER’S INFORMATIONAL ITEMS**

- 1. \*McIntyre Update
- 2. Rail Car Safety Update
- 3. Household Hazardous Waste Collection Day
- 4. \*Request for Work Session Regarding Indoor Sports Complex/Ice Rink

**XVIII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING**

**XIX. ADJOURNMENT [at 10:30 p.m. or earlier]**

*\*Indicates verbal report*

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

**The Council Chambers**  
**City Hall**  
**Portsmouth, New Hampshire**

**A Proclamation**

- Whereas:** National Volunteer Week was created in the 1940s to pay tribute to those who provided humanitarian services during the Second World War, saw a resurgence in 1974 and led to the creation of National Volunteer Month, recognized worldwide in 1990; and
- Whereas:** Presidents of the United States throughout the years have proclaimed National Volunteer Month to salute the unparalleled services of the volunteers who have given countless hours for the betterment of mankind, our communities, and the American way of life; and
- Whereas:** While Volunteer NH! a non-profit group was established in 2000 to promote volunteerism and community service, Portsmouth has created a long-standing culture of volunteerism, achieving unparalleled levels of volunteer service to the arts, education, churches, sports, social services and some of our most beloved institutions, thanks to the very capable, generous and unflagging support of literally thousands of volunteers who are fundamental to the success of our own non-profits and their missions; and
- Whereas:** Here in this state, the true “New Hampshire Advantage” is that citizens don’t wait for someone else to tackle big problems and big needs. Instead, residents rally to their community and organize grassroots efforts to provide assistance – sometimes until the ‘supply chain’ of resources can catch up like the groups who hand-made facemasks for the most vulnerable when the pandemic hit – and sometimes for the life of a cause the way Gather has fed hungry families since 1816; and
- Whereas:** We might take for granted the legions of volunteers who literally burnish the natural and built environment that is the foundation for what we call the ‘quality of life’ that puts Portsmouth at the top of so many lists of ‘best places’ to live, work and play; and
- Whereas:** With the same conviction that, as Mayor Mary McEachern Keenan said when she dedicated the fountain in Market Square in April 1986, “the spirit of volunteerism is the greatest resource of our community,”

Now, therefore, I, Deaglan McEachern, Mayor of the City of Portsmouth, on behalf of the members of the City Council and the citizens of Portsmouth, do hereby proclaim the month of April 2023 in Portsmouth, New Hampshire as

**Volunteer Appreciation Month**

and urge all citizens to celebrate the essential contributions of citizen volunteers to the past, present, and future of Portsmouth.

Given with my hand and the  
Seal of the City of Portsmouth,  
on this 3rd day of April 2023



Deaglan McEachern, Mayor of Portsmouth

**The Council Chambers**  
**City Hall**  
**Portsmouth, New Hampshire**

**A Proclamation**

- Whereas:** April is Sexual Assault Awareness Month (SAAM), a time that is set aside to raise awareness and draw attention to the prevalence of sexual violence in our state and across the nation; and
- Whereas:** HAVEN, the Southeastern New Hampshire's confidential support network for anyone impacted by sexual and domestic violence and stalking reminds us that in New Hampshire, sexual assault is a serious crime, where 1 in 4 women and 1 in 20 men have reported experiencing some form of sexual violence in their lifetimes; and
- Whereas:** We know that every 68 seconds someone in America is sexually assaulted, and that every nine minutes, that victim is a child; that 41% of the most recent sexual assaults reported in New Hampshire occurred when the victim was 18 or younger and 83% before they were 25; and one out of every six American women and one in 33 American men have been the victim of an attempted or completed rape in their lifetimes; and
- Whereas:** In the state of New Hampshire, just 13 out of 344 sexual assault offenders – 88% of whom were someone the victim knew or were even part of the victim's household – were convicted or pled guilty, while often scarring their victims for life; and
- Whereas:** According to the report from Research Committee of the Governor's Commission on Domestic and Sexual Violence in conjunction with the NH Coalition Against Domestic and Sexual Violence, New Hampshire lacks a consistent and uniform means of tracking sexual assault cases through the criminal justice system, and supports a public awareness campaign so that citizens recognize the realities of sexual assault in our state and are better prepared to advocate for its victims and for reforms; and
- Whereas:** Here in Portsmouth, our social services agencies such as Haven and Operation Blessing, our hospitals and our Police Department, struggle daily trying to help the victims of sexual assault pick up the pieces; and
- Whereas:** We take this opportunity to remind us all that confidential, local help is available, 24 hours a day, at the HAVEN Violence Prevention and Support Hotline: 603-994-SAFE.

Now, therefore, I, Deaglan McEachern, Mayor of the City of Portsmouth, on behalf of the members of the City Council and citizens of Portsmouth, do hereby proclaim April 2023 in Portsmouth as

**Sexual Assault Awareness Month**

and call upon the residents of Portsmouth to learn more about this problem, the help available to victims and how to be part of the solution to ending this tragedy.

Given with my hand and the  
Seal of the City of Portsmouth,  
on this 3<sup>rd</sup> day of April 2023



Deaglan McEachern, Mayor of Portsmouth

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: MONDAY, FEBRUARY 6, 2023

PORTSMOUTH, NH  
TIME: 7:00PM

**On a unanimous voice vote 9-0, Assistant Mayor Kelley moved to close the Non-Public Sessions and seal the minutes. Seconded by Councilor Bagley and voted.**

### **III. CALL TO ORDER**

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

### **IV. ROLL CALL**

PRESENT: Mayor McEachern, Assistant Mayor Kelley, Councilors Tabor (via zoom), Denton, Moreau, Bagley, Lombardi, Blalock, and Cook

### **V. INVOCATION**

Mayor McEachern asked for a moment of silent prayer.

### **VI. PLEDGE OF ALLEGINANCE**

Mayor McEachern led in the Pledge of Allegiance to the Flag.

### **PROCLAMATION**

1. Black History Month

Mayor McEachern read the Proclamation declaring February as Black History Month.

### **VII. ACCEPTANCE OF MINUTES – OCTOBER 24, 2022; NOVEMBER 1, 2022 AND NOVEMBER 14, 2022**

**Councilor Lombardi moved to accept and approve the minutes of the October 24, 2022; November 1, 2022 and November 14, 2022 City Council meetings. Seconded by Assistant Mayor Kelley and voted.**

### **VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS**

Mayor McEachern and the City Council recognized Department of Public Works staff; Public Works Director Rice; Firefighters; and Police Officers for responding and repairing the water main breaks on Green Street and Vaughan Street, directly affecting the AC Hotel during the extreme cold snap on February 4<sup>th</sup>.

Mayor McEachern and the City Council recognized the Fire Department who responded to a fire alarm on February 5<sup>th</sup> at Motel 6 on Gosling Road and found a water pipe break which left the entire property without heat, domestic water, and automatic sprinkler coverage. The City team of Firefighters; Fire Chief McQuillen; Police Officers and Welfare Director Ellen Tully successfully relocated a total of 100 people, 21 cats, 17 dogs, and 5 birds to other area hotels.

## **IX. PUBLIC COMMENT SESSION**

Roy Hesel said the City Council needs to think about development and how that has changed Portsmouth. He said we do not want to be known as little Boston.

Paige Trace spoke to the neighborhood meeting held at Sherburne School. She stated that she feels none of the Council listened, they presented. She said work force housing should not be at the expense of a neighborhood.

Erik Anderson said a dialogue meeting needs to be held for the Sherburne School neighborhood. He said the neighbors' thoughts and concerns need to be heard by the City Council. He said the overall picture is what is best use of the site.

Rubin Izaguirre said residents of Pannaway neighborhood want the City to acknowledge the rights and interests in the neighborhood. He stated he presented a petition with over 200 signatures for reconsideration of the reuse of the Sherburne School.

Sloane Muske spoke regarding the softball team and losing the field if work force housing is put in place at the Sherburne School.

Genevieve Becksted Muske said you need to consider the actions you make have an effect on the residents. She said the softball field is important to our youth and should remain in place and work force housing should be considered at another location.

Megan Corsetti thanked the City Council for listening to the residents at the Sherburne neighborhood meeting. She said it is important to hear from key stakeholders and she hopes that the Council learned from their mistake, and not invite a neighborhood to a meeting before a plan is brought forward.

Sue Polidura voiced her support for the Sherburne neighborhood. She spoke to 93 Pleasant Street and the wall that is on the property. She said the wall was to remain and should go back before the Historic District Commission now that it is being replaced.

Rick Becksted said the City Council needs to start asking the community what they want and not tell them what they can have. He spoke to the softball field at Sherburne School and how it is important to the youth and residents of Sherburne neighborhood.

Susan Sterry spoke to the application for the certification of a Municipal Government. She stated that the application was approved by the Historic District Commission and thanked everyone for putting the time and effort into the application process.

Madison Whitaker said that the softball field at Sherburne School needs to remain due to the impact it would have on her and her friends ability to play the game.

Petra Huda addressed the proposed motion by Councilor Tabor for a 4.5% increase in the budget. She spoke to the large numbers in the CIP and the effect it would have on the budget. She said the Council needs to bring forward a fair plan for outdoor dining.



Liza Hewitt said the Mayor plans to ask to move the matter of the Sherburne School to the Land Use Committee. She said this needs to be a fair and transparent process and should be referred to the Planning Board. She also stated that the Land Use Committee meetings should be held in the evening for residents to take part in.

Shawn Muske said he does not support the suggested plan for the Sherburne School. He said green space is important and constructing large buildings in their place takes away what little green space we have currently.

Peter Jones said the neighborhood heard about the Sherburne School reuse at the neighborhood meeting. He said why aren't other areas being looked at for work force housing. He stated work force housing should go out at Community Campus where you would not be shoehorning it at Sherburne School.

Peter Officer said he lives in the Sherburne School neighborhood and someone was recording the meeting and that tape needs to be made available to the public. He said having someone other than the City of Portsmouth record the meeting was misleading to the residents. He stated pushing such a project forward without input from the neighborhood is wrong. He said he would like more transparency moving forward, and that the opinions of the neighborhood be heard.

Dave Cosgrove said by putting work force housing at the Sherburne School would thrust high density on to the neighborhood. He appreciated the forum last week, but the field would need to be replaced at another location.

Esther Kennedy said she is concerned that we keep hearing from the City Council that we need a vibrant community. She said the Council needs to start considering what the residents want and their rights. She spoke regarding outdoor dining and that the Council did not deal appropriately with this matter. Ms. Kennedy encouraged the Council to consider holding neighborhood walks like the former City Council.

Sue Doyle said the neighborhood is not against anything happening, but there are great memories of Sherburne School. She said she does not feel that the Sherburne School matter has been handled appropriately.

Jacqueline Cali-Pitts, *via zoom*, said she attended the Sherburne School meeting and was glad to see people come out and speak. She is dismayed however, with how this has been portrayed. She said what happens in a neighborhood affects every resident. She stated you need participation from everyone.

Kate Fish thanked the City Council for listening at the Sherburne School Neighborhood meeting. She expressed concern that the vast majority of the neighborhood will change. She stated that the neighborhood should have been heard before this meeting was held. Ms. Fish said the city needs to build trust with the neighborhood.

Hersey Hirschkop spoke in support of the PRIDE event which will be the 9<sup>th</sup> annual celebration this year. She announced that over 100 vendors will be taking part in the event and it will be held on June 24<sup>th</sup>.

**Councilor Denton moved to suspend the rules and bring forward Item XIV. 5. – Report Back on the Neighborhood Meeting at Sherburne School. Seconded by Councilor Blalock and voted.**

**XIV. MAYOR McEACHERN**

5. Report Back on the Neighborhood Meeting at Sherburne School

Mayor McEachern reported on the meeting and said some of the major concerns centered around impact of traffic, green space, and the recreational field. He said we need to look at this collectively and together. He stated the city will look at all city land when considering work force housing. He said many of the 174 lots are unbuildable because of wetlands. He stated the video recording should be placed on our website, that was the expectation, and we will get there, but it will take a little longer. He would like this to go to the Land Use Committee next to look at why this would be ahead of other projects. Mayor McEachern reported that the August 31<sup>st</sup> deadline is not attainable.

**Councilor Tabor moved to refer to the Land Use Committee for a report back to the City Council on possible building locations for affordable housing and a list of pros and cons. Further the meeting would be hosted in the Chambers. Seconded by Assistant Mayor Kelley.**

Councilor Tabor said that the major questions have been identified. He spoke to the importance of a public process.

Councilor Bagley said he would like the work session held with the entire City Council and then referred to the Land Use Committee.

Mayor McEachern said a report could be generated by the Land Use Committee. He stated if there is a better location the neighborhood would like to know that.

Councilor Cook spoke to process because that is what we are discussing. She highlighted the City Council process and the presentation that was held by the Portsmouth Housing Authority. She said the City Council has not met to make a decision and she does not want there to be any confusion that the Council has made a decision.

Councilor Denton said having gone door to door he was not surprised by the neighborhood's reaction. He stated if we are referring this to the Land Use Committee for a list of potential locations should we hold off having another meeting at a different location. He would like to pursue affordable housing in the city.

Councilor Moreau said most of the sites have wetlands and probably won't work and she would put that information together and get back to the City Council.

Mayor McEachern said the goal is for the Land Use Committee to report back on buildable locations for affordable housing with a list of pros and cons.

Councilor Tabor said there are multiple views and not everyone is opposed to everything. He said we need to allow time for the neighborhood to deliberate.

Mayor McEachern said he appreciates everyone's comments, and that it is important to stay engaged. He stated we need to maintain some measure of affordability.

**Motion passed.**

At 8:20 p.m., Mayor McEachern called for a brief recess. At 8:25 p.m., Mayor McEachern called the meeting back to order.

**X. PUBLIC HEARINGS AND VOTE ON ORDINANCES AND/OR RESOLUTIONS**

**Public Hearing – Capital Improvement Plan (CIP):**

- A. CAPITAL IMPROVEMENT PLAN (CIP) FY 2024-2029
- **PRESENTATION** (*Presentation was held at the January 18, 2023 Work Session*)
  - **CITY COUNCIL QUESTIONS**
  - **PUBLIC HEARING SPEAKERS**
  - **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

Assistant Mayor Kelley asked Police Chief Newport regarding the proposed cost of \$38 million for a new station. She asked if we have narrowed down a proposed location. Police Chief Newport said there are several locations.

Councilor Cook asked Police Chief Newport about body cameras for the department. Police Chief Newport said they are working with unions on that issue, but the goal is to have them in place by FY26. He said we do, however hope to have them in place before FY26 but we need to negotiate with the unions.

Councilor Cook asked if there is a reason why we are pushing out the upgrades on Fleet Street and whether it will take two years to complete. Public Works Director Rice said the project will take a year and a half to complete. Councilor Cook inquired regarding the Bike Pedestrian Plan for Greenland Road. Public Works Director Rice said we worked with one of the former Planning Directors on this project and we want to focus on connectivity and revisit the schedule. Councilor Cook inquired regarding a number of projects and their timeline, Market Street, Market Square Upgrades and underground utilities, ADA playground for South Mill Pond, Prescott Park Master Plan Improvements. Discussion was held with Public Works Director Rice regarding these projects.

Councilor Tabor asked about relocating the Robert J. Lister Academy to Community Campus and whether the \$2 million dollar figure will hold. School Business Administrator Lunney responded that a number will be coming forward before requesting an appropriation.

Councilor Blalock inquired relative to outdoor recreational fields. He said the Portsmouth High School turf field is 19 years old and needs replacing now, we can't wait until 2029. Recreation Director Henley said currently the turf field is heavily used. He stated he would support moving this project forward.

Councilor Lombardi asked about the Russell/Market Street upgrade improvements and when they would take place. Public Works Director Rice reported that the intersection has not been finalized.

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

Dave Cosgrove spoke to the need for additional recreational fields and asked for more information on the bike path for Borthwick Avenue.

Paige Trace said the City is close to the 10% debt ceiling and residents are worried. She spoke to the need for a sound barrier at New Franklin School. She said the children at the school have difficulty hearing their teachers and we need to think of that before we make the sidewalks pretty. She also spoke to the Peirce Island Wastewater Plant.

Esther Kennedy said the Council needs to consider mental health in this city and look at resources for this matter. She spoke in support of funding for the Skateboard Park. She addressed drinking water and said that it should be front and foremost in the city.

Petra Huda posed questions regarding various projects outlined in the CIP – Ground Water Study, Community Campus, Greenland Road practice fields, Outdoor Aquatic Upgrades, Prescott Park, Financial Software, etc. She asked how long funds are available that have been previously appropriated for a project.

Dave Cosgrove spoke to the Greenland Recreational Facility services and public health services needed in the city.

Paige Trace asked if ARPA funds could be used for the construction of a sound barrier for New Franklin School.

Robin Husslage, *via zoom*, spoke in support of the Islington Street Improvement project.

Nancy Novelline Clayburgh, *via zoom*, School Board Chair, thanked the City Council for the \$2 million dollar allocation for creating a state-of-the-art space for alternative students at Community Campus.

Barbara McMillan, *via zoom*, spoke regarding land acquisition for open space and the need to preserve open space.

**Councilor Bagley moved to keep the CIP Public Hearing open until the next City Council meeting. Seconded by Assistant Mayor Kelley and voted.**

### **Public Hearing – Second Reading of Ordinance**

- B. Public Hearing/Second Reading of Ordinance amending Chapter 1, Article XVII, Section 1.1705 – Public Art Funds
- **PRESENTATION**  
*“Anticipated Amendment to Councilor Cook to amend section 1.1705(A) to add after “unless the City Council votes otherwise” the following additional language “to redirect the funds for other public art purposes.”*
  - **CITY COUNCIL QUESTIONS**
  - **PUBLIC HEARING SPEAKERS**
  - **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

**Councilor Cook moved to amend Section 1.1705(A) to add after “unless the City Council votes otherwise” the following additional language “to redirect the funds for other public art purposes” and pass second reading as amended. Seconded by Councilor Blalock.**

Mayor McEachern read the legal notice, declared the public hearing open and called for speakers. With no speakers, Mayor McEachern declared the public hearing closed.

**Motion passed.**

**Councilor Moreau moved to suspend the rules to bring forward third and final reading. Seconded by Assistant Mayor Kelley and voted.**

**Councilor Tabor moved to pass third and final reading of the Ordinance. Seconded by Councilor Cook and voted.**

## **XI. CITY MANAGER’S ITEMS WHICH REQUIRE ACTION**

### **A. CITY MANAGER CONARD**

1. Approval of Amendment to Memorandum of Understanding for Professional Services Between Coalition Communities 2.0 and an Update from the CC2 Joint Board

City Manager Conard said we are looking to update services between Coalition Communities 2.0 and an update from the CC2 Joint Board. She said changes made administratively in nature must be approved by the governing body for review and consideration. She reported that the previous lobbying firm has changed.

**Councilor Tabor moved to authorize the City Manager to negotiate and execute the amended MOU with the Coalition Communities 2.0 on behalf of the City in a form similar to the attachment in the City Council packet of February 6, 2022. Seconded by Councilor Blalock and voted.**

2. Request for Public Hearing Regarding Elderly & Disabled Exemptions

City Manager Conard said we are requesting a public hearing to update the Elderly and Disabled Exemptions.

**Councilor Lombardi moved to schedule a Public Hearing regarding these options at the February 21, 2023, City Council meeting. Seconded by Councilor Bagley.**

Councilor Bagley asked if a notice regarding the adoption of the exemptions could be printed on the water bills. Assessor Maurice-Lentz reported that notice is on the back of the tax bills.

**Motion passed.**

3. Request for Public Hearing Regarding All Veterans and Optional Veterans Tax Credit Re-Adoption and Increase from \$500.00 to \$750.00

City Manager Conard said a public hearing would be held at the next City Council meeting.

**Councilor Lombardi moved to schedule a Public Hearing regarding these options at the February 21, 2023 City Council meeting. Seconded by Councilor Denton.**

Councilor Denton said he spoke with a veteran that could not have lived in his home without the all veterans tax credit.

**Motion passed.**

## **XII. CONSENT AGENDA**

- A. Request from Diana Tranique, TresDiana, to install a Projecting Sign at 55 Congress 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 Agreement for this request)***

**Planning Director's Stipulations:**

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

- B. Letter from Cullen Madden, Millennium Running, requesting permission to hold the Eastern States 20 Miler & Half Marathon on Sunday, March 26, 2023 ***(Anticipated action – move to refer to the City Manager with Authority to Act)***
- C. Letter from Lindsay Gilbert, Cystic Fibrosis Foundation, requesting permission to hold the CF Cycle for Life on Saturday, July 15, 2023 ***(Anticipated action – move to refer to the City Manager with Authority to Act)***
- D. Letter from Rich Clyborne, Gundalow Company, requesting permission to hold the Round Island Regatta at the Robert P. Sullivan Boat Ramp area at Peirce Island on Saturday, August 19, 2023 from 1:00 p.m. to 5:00 p.m. ***(Anticipated action – move to refer to the City Manager with Authority to Act)***
- E. Letter from Nik Uhler, Portsmouth Little League, Inc., requesting permission to affix signage in the form of banners at the Plains and Hislop fields during the 2023 baseball season. Further, requesting permission to maintain signage to the rear of the Plains scoreboard ***(Anticipated action – move to refer to the City Manager with Authority to Act)***
- F. Letter from Hershey Hirschkop, Seacoast Outright, requesting permission to annual Portsmouth PRIDE Celebration on Saturday, June 24, 2023 ***(Anticipated action – move to refer to the City Manager with Authority to Act)***

**Assistant Mayor Kelley moved to adopt the Consent Agenda. Seconded by Councilor Blalock and voted.**

### **XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS**

- A. Email Correspondence

**Councilor Blalock moved to accept and place on file. Seconded by Moreau and voted.**

- B. Letter from Perry Silverstein regarding equitable cost for outdoor dining

**Councilor Blalock moved to accept and place on file. Seconded by Assistant Mayor Kelley and voted.**

### **XIV. MAYOR McEACHERN**

1. Ethics Committee Drawing by Lot

Councilor Denton's name was drawn by Lot to serve on the Ethics Committee.

2. Appointments to be Considered to the Public Arts Review Blue Ribbon Committee:
- Paul Burke
  - M. Christine Dwyer
  - Ellen Fineberg
  - Beth Hartnett
  - Jen Meister
  - Alyssa Murphy
  - Nancy Pearson
  - A. Robert Thoresen
  - Robert White
  - Mara Witzling

The City Council considered the appointments as listed above, which will be acted upon at the next City Council meeting.

3. Appointments to be Voted
- Appointment of Anna Howard to the Economic Development Commission, alternate
  - Appointment of Anne Hayes to the COVID Response Task Force Blue Ribbon Committee

**Councilor Bagley moved to appoint Anna Howard as an Alternate to the Economic Development Commission filling the unexpired term of Anne Weidman until October 1, 2023 and Anne Hayes to the COVID Response Task Force Blue Ribbon Committee. Seconded by Councilor Lombardi and voted.**

4. Acceptance of Resignations:
  - Tania Marino from the COVID Response Task Force
  - Franco DiRienzo as an Alternate from the Planning Board

**Councilor Moreau moved to accept with regret the resignations of Tania Marino from the COVID Response Task Force and Franco DiRienzo as an Alternate from the Planning Board and to send a letter of thanks for their service to the city. Seconded by Assistant Mayor Kelley and voted.**

6. Statewide Public Transportation Coalition Resolution (Not on Agenda)

**Councilor Cook moved to adopt the Resolution as presented. Seconded by Councilor Bagley.**

Mayor McEachern thanked Assistant City Attorney Ferrini and the Legal Department for preparing the Resolution.

**Motion passed.**

## **XV. CITY COUNCIL MEMBERS**

### **A. ASSISTANT MAYOR KELLEY**

1. EDC Update

Assistant Mayor Kelley reported that the Economic Development Commission recently completed a Retreat, where they reset their goals. The EDC also has received the results of the Business Retention Survey they conducted and a presentation will be coming forth at a future City Council meeting on the results of the survey.

### **B. COUNCILOR TABOR**

1. 4.5% increase in total budgeted expenditures as a guideline for FY23 budgeting process

**Councilor Tabor moved to adopt a figure of 4.5% increase in total operating expenditures as guidance for the FY24 budget, excluding IT ramp up costs. Seconded by Assistant Mayor Kelley**

Councilor Tabor said at times the City Council has provided guidance to the City Manager on budget guidelines and two numbers are important to be budgeted. He said we are facing a 6.5% inflation, but the Council is proposing a target that is less than inflation.

Councilor Moreau thanked Councilor Tabor for bringing this forward and she is happy to support it.

Councilor Blalock said we need to be conservative on increases to our tax rate.

Mayor McEachern said we are providing cost savings and investments in Informational Technology that will bring efficiencies.

**Motion passed.**



**C. COUNCILOR BAGLEY AND COUNCILOR COOK**

1. Outdoor Dining Policy Updates for Sidewalk Dining

**Councilor Cook moved to adopt the changes in your agenda packet to the newly adopted Outdoor Dining Policy. Seconded by Councilor Bagley.**

Councilor Cook said that this is the sidewalk section of the policy. She stated we made changes to the initial proposal such as the timeline, the flat fee, with an addition under section 5 that is still in place to continue the use of the sidewalk obstruction process.

Councilor Bagley said the hope is to finalize something tonight and if further adjustments are needed, they could be made during the summer.

Councilor Blalock said he is excited to see the fees being the same. He said the biggest concern he has is if we provide a 33% discount for composting and the enforcement of those participating in the program to receive the discount.

Councilor Moreau said she had more time to think on this and feels we need to simplify the process and said she does not want to see the city lose any revenue. She said she would support a fee of \$10.00 for any obstruction.

Councilor Bagley asked if the Council could make changes to a policy.

Deputy City Manager/Deputy City Attorney Woodland said it is only one vote and we try to provide more notice for changes.

Mayor McEachern spoke regarding equity for this process. He spoke to loading zones and the need to clarify these areas.

Councilor Bagley said that when the City proposed pricing the city looked at parking spaces and travel roadways.

Councilor Cook said we are not cutting the fee we are leaving it the same as last year.

Assistant Mayor Kelley said the pre-covid fees were more than \$5.00 a square foot.

Councilor Bagley said with a high rate we had less participation.

Councilor Cook said if we raise fees to \$10.00, we are going against the Fee Committee and previous discussions by the City Council.

Mayor McEachern said the thing that jumped off the page was a loading zone having a different fee. He said other restaurants did not pay the same amount. He said we have two separate fees for a loading zone.

Discussion followed regarding rates and making it more equitable for all.

**Councilor Moreau moved to suspend the rules to reconsider the Outdoor Dining previous vote of the City Council. Seconded by Councilor Blalock.**

**On a roll call vote 5-4, motion failed to pass. Assistant Mayor Kelley, Councilors Tabor, Moreau, Blalock and Mayor McEachern voted in favor. Councilors Denton, Bagley, Lombardi and Cook voted opposed. 6 votes required for reconsideration.**

**Councilor Tabor moved to raise the fee from \$5.00 to \$10.00. Seconded by Councilor Moreau.**

Discussion followed regarding the fee and the price per square foot.

*Councilor Tabor withdrew his motion and Councilor Moreau the second to the motion.*

Councilor Blalock said we are coming up on budget season and everything is going up. He said we need to listen to staff recommendations.

Mayor McEachern said outside dining comes at a cost. He said the Code Enforcement Officer needs to be sure that businesses are functioning under the codes. He said he hopes that we can clarify this at a future City Council meeting. He further stated that the Council ignored the recommendation of staff and our own recommendation.

Councilor Tabor said we should move to \$10.00 per square foot.

**On a roll call vote 3-6, motion to adopt the changes in your agenda packet to the newly adopted Outdoor Dining Policy failed to pass. Councilors Denton, Bagley and Cook voted in favor. Assistant Mayor Kelley, Councilors Tabor, Moreau, Lombardi, Blalock and Mayor McEachern voted opposed.**

## **XVI. APPROVAL OF GRANTS/DONATIONS**

- A. Acceptance of 2023 NH Moose Plate Grant - \$20,000.00

**Councilor Moreau moved to accept the New Hampshire State Conservation Committee funds and authorize the City Manager to enter into a contract with the New Hampshire State Conservation Committee, Department of Agriculture, Markets and Foods. Seconded by Councilor Denton and voted.**

- B. Application for Membership as a Certified Local Government

**Councilor Moreau moved to support the City submitting the application to the CLG Program administered by the Division of Historic Resources. Seconded by Councilor Blalock and voted.**

## **XVII. CITY MANAGER'S INFORMATIONAL ITEMS**

### 1. McIntyre Update

City Manager Conard reported city staff and the developer had its check-in with the General Services Administration and the National Park Service on January 31<sup>st</sup> and it went smoothly. She said we explained where we were in the process via milestones that we set forth in the project. She stated we have preliminary information from our construction cost estimator and financial consultant relative to understanding the project pro-forma. She said we have another check-in with the General Services Administration scheduled for February 28<sup>th</sup>. City Manager Conard said alongside advancing and getting a better understanding of those numbers, is what's to be negotiated relative to legal documents namely, the Development Agreement, the Contribution Agreement and the Ground Lease.

## **XVIII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING**

### 1. Citywide Neighborhood Committee Meeting – December 14, 2022, Minutes

**Councilor Tabor moved to accept the minutes. Seconded by Councilor Blalock and voted.**

Councilor Tabor congratulated Elaine Apatang and Peter Somssich for being elected as the new Co-Chairs of the Citywide Neighborhood Committee.

## **XIX. ADJOURNMENT**

**At 10:25 p.m., Councilor Moreau moved to adjourn. Seconded by Councilor Blalock and voted.**



KELLI L. BARNABY, MMC/CNHMC  
CITY CLERK

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: TUESDAY, FEBRUARY 21, 2023

PORTSMOUTH, NH  
TIME: 7:00PM

**On a unanimous voice vote 9-0, Assistant Mayor Kelley moved to close the Non-Public Sessions and seal the minutes. Seconded by Councilor Tabor and voted.**

### **III. CALL TO ORDER**

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

### **IV. ROLL CALL**

PRESENT: Mayor McEachern, Assistant Mayor Kelley, Councilors Tabor, Denton, Moreau, Bagley, Lombardi, Blalock, and Cook

Mayor McEachern spoke regarding a perpetrator that spray painted graffiti at multiple establishments including the Assistant Mayor's and the synagogue with hateful comments and swastikas. He said it's incredibly disturbing to wake up in the morning and hear from someone you know, who aside from being a great Assistant Mayor, is also a great friend, texting you a picture of a swastika on her business. He said she puts so much time and effort in her business as she does in the City Council serving the citizens. He said it's the act of, and not necessarily isolated, because there's been many incidents over the last few years. He said we were in this Chamber just a few weeks ago speaking about the Attorney General taking very seriously and pressing charges against members of a certified, you call them certified hate groups, for hanging a banner on the way to New Franklin school so that the bypass traffic would see it. He stated he doesn't know what drives folks to do that, but it drives him to do is to resolve to reject the ideology at any turn, to continue to fight to live up to the ideals of a racial justice municipality, and to press harder to become the city of the open door. He stated he wants to thank Police Chief Newport and the department for taking this incredibly seriously, for the community rising up against this, and for all of us as we stand in a few moments to recite the Pledge of Allegiance. He asked everyone to remember that it's one nation under God indivisible for liberty and justice for all. He said when we say those words tonight, I'd like us to think about what that means in Portsmouth.

Assistant Mayor Kelley said she received a text message very early in the morning by one of her ambitious young workers. She said she was awestruck, saddened and angry, like a lot of people were. She said as she walked around this afternoon and spoke to a lot of business owners, and to Temple members, it was very clear that our community will not be quiet in acts of hate. She said we've seen these things happen in our community before and we were not quiet, and we'll not be quiet again. She stated it is very important as a community that we do not take injustice like this in silence, what we have to do is make sure that people like this know they're not welcome in our city, they're not welcome in our community, and they're not welcome in our state and then we rally together at times when people that we love and that we care about feel oppressed. She said we rally around our community when people need us. Assistant Mayor Kelley said this is a time that these businesses and the Temple need us. She said it's her opinion that this was targeted, they went after people, people of color, people of different faith, people of a different sexuality, or gender origin. She said it's not one-offs and we have to make sure that we root out these people, out of our community, and that they know they're not welcome here. She asked everyone at home, everyone in our community, and everyone here this evening to not just take a moment of silence but to take a vow of action, to take a vow of unity, to stand up for who we are as a community, and what we know is right.

Assistant Mayor Kelley announced that there will be a gathering in Market Square on Friday afternoon, and thanks to a bunch of local florists we are calling the event “*love blooms here.*” She said there will be flowers that can be donated to each of the businesses, to support in solidarity, as a reminder in this community nobody stands alone.

## **V. INVOCATION**

Mayor McEachern asked for a moment of silent prayer.

## **VI. PLEDGE OF ALLEGINANCE**

Mayor McEachern led in the Pledge of Allegiance to the Flag.

## **PROCLAMATION**

### **1. Exemplary Public Servant**

Mayor McEachern presented Arthur Parrott with a Proclamation recognizing the exemplary public servant he has been for over 40 years, and proclaiming February 21, 2023 as Arthur Parrott Day in Portsmouth. Arthur accepted the Proclamation with thanks and appreciation.

## **VII. ACCEPTANCE OF MINUTES – NOVEMBER 16, 2022; DECEMBER 5, 2022 AND DECEMBER 2022**

**Councilor Lombardi moved to accept and approve the minutes of the November 16, 2022, December 5, 2022, and December 14, 2022 City Council meetings. Seconded by Councilor Moreau and voted.**

**Councilor Cook moved to suspend the rules to request a briefing from Police Chief Newport on the recent vandalism of businesses with hateful graffiti across the city, which occurred this morning. Seconded by Assistant Mayor Kelley and voted.**

Police Chief Newport reported that the incident happened between the hours of 2:00 a.m. – 4:00 a.m. and there is a person of interest. He said the department is working across the city looking for any potential subjects and targets.

## **IX. PUBLIC COMMENT SESSION**

George Remick spoke in support of the veterans tax credit and the all tax credit for veterans.

Shawn Musky spoke regarding the Sherburne School and the suggestion of turning that into work force housing. He addressed the impacts of traffic on the neighborhood by bringing more than 200-400 additional cars into the area. He said that the Council needs to consider that Liberty Mutual is bringing back employees to their building on Borthwick Avenue, which will create additional cars and traffic for the neighborhood. He also spoke to a survey being done of the land at Sherburne, which was paid for by Portsmouth Housing Authority who wants to build this project.

Aaron Garganta spoke in support of the increase to the elderly exemption but said it does not go far enough. He addressed the level of assets and said there should be a graded approach for assets and allowance for higher income levels.

Jim Lee spoke in favor of the exemption and the sacrifices made by the people that made this country.

Paige Trace read an open letter to the vandals of last night. She said your ignorance spreads hate and we will not succumb to you. She said we love our city and protect our neighbors. She stated that we will not stand for this, and that they will have no effect on us or achieve anything, except for brings us closer as a city.

Ruben Yzaguirre spoke as a resident of Pannaway Manor, Sherburne neighborhood. He said the transfer represents a bad faith action against the neighborhood requests. He said we demand another use for this property. He asked if the Council does not work for the residents of Pannaway Manor, who do you work for. He stated the future of the neighborhood should represent the will and wants of its residents.

Kevin Dwyer said he is confused why the Council went back on fees for outside dining. He said the Council needs to have fees that are fair for the cost of the program. He stated we need to make the city competitive in the seacoast.

Dave Hurwitz said he is a new property owner in the city and supports the veterans tax exemption.

Petra Huda spoke from a letter written by Chris White. Mr. White urged the City Council to use the free services from your Audit Committee. It stated that the Council needs to look at the powers section of the Cable Commission where the Council gave the commission the powers to assist but denied that right for the Audit Committee.

Esther Kennedy said she is going to start her own neighborhood group for Mechanic Street. She said the Council needs to provide information regarding Lonza not making the investment in the wastewater treatment plant. She said the City Council needs to provide information to Pannaway Manor on the possibility of work force housing at Sherburne School. She stated, in terms of outside dining, everyone needs to pay their fair share. Ms. Kennedy said the Council needs to look at the infrastructure of the city.

Zeltia Morgan said what happened early this morning in the city has no place in our city. She spoke on affordable housing, the character of the city and putting more effort toward preserving the city.

Justin Richardson spoke on public safety enhancements by Public Works on Woodbury Avenue. He said please consider the impact on the entire city.

Christopher White spoke on the critical role of the Audit Committee. He said the Audit Committee played a key role in the contract with Melanson the first time in 26 years. He spoke to CLA and said they will look at city technology when looking at strengths and weakness.

Lisa Sweet, Rye, NH, offered support for community power. She said Rye is one of 10 communities ready to launch and provide lower rates. She stated costs of services are shared among communities and you can opt out. She said community power provides better pricing and more local control.

Lew Hitzrot, Exeter, NH, spoke to community power and urged the city to approve its plan. He spoke to the advantages of community power and how you can have a reserve fund.

Mayor McEachern said there will not be a transfer of property in March of the Sherburne School.

## **X. PUBLIC HEARINGS AND VOTE ON ORDINANCES AND/OR RESOLUTIONS**

### **Continued Public Hearing – Capital Improvement Plan (CIP):**

#### **A. \*CAPITAL IMPROVEMENT PLAN (CIP) FY 2024-2029**

- **PRESENTATION** (*Presentation was held at the January 18, 2023 Work Session*)
- **CITY COUNCIL QUESTIONS**
- **PUBLIC HEARING SPEAKERS**
- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

*(Action on CIP will take place at the March 6, 2023 City Council meeting)*

Mayor McEachern said this is a continuation of the public hearing on the Capital Improvement Plan.

City Manager Conard said at the back of the agenda there is information that we learned from Lonza that they do not require an expansion of the wastewater treatment plant. She said we are pleased to learn that news. She reported on page 57 of CIP shows no increase in FY24, in FY25 is a place holder we are working with consultants on upgrades for a phased approach.

Councilor Cook asked if we have estimated the changes to Community Campus. City Manager Conard said we will provide updated information at the March 6, 2023 City Council meeting.

Discussion followed regarding various projects and their costs.

Mayor McEachern announced that the Council will vote on the CIP at the March 6<sup>th</sup> meeting.

Mayor McEachern called anyone wishing to speak regarding the CIP to come forward.

Paige Trace asked about the funds for the Pease Plant and where those funds went or are they going to be used for other projects. She also inquired what is taking place on Mechanic Street.

Esther Kennedy said the entire project for the Skateboard Park should be done with the funds saved at Pease Wastewater Treatment Plant project. She expressed concerns with not seeing changes in the CIP from the reduction of \$30 million for plant upgrades. She spoke regarding a suit filed by CLF and asked what financially will be done to handle some of those concerns.

Petra Huda said we don't know what is happening on Mechanic Street and information needs to be provided to the residents. She addressed various projects such as the Lonza project which is no longer needed and the building out of Foundry garage.

Ruben Yzaguille submitted a petition from the Sherburne neighborhood containing 200 signatures.

**Councilor Tabor moved to extend the public hearing on the Capital Improvement Plan to the March 6, 2023 City Council meeting. Seconded by Councilor Bagley and voted.**

### **Public Hearing/Adoption of Resolutions:**

B. RESOLUTION PURSUANT TO RSA 72:39-b THE CITY HEREBY AMENDS THE ELDERLY EXEMPTION BASED ON ASSESSED VALUE FOR QUALIFIED TAXPAYERS, SUCH THAT THE EXEMPTION SHALL BE AVAILABLE ONLY WHEN QUALIFYING TAXPAYERS(S) HAVE A NET INCOME OF NOT MORE THAN

- **PRESENTATION**
- **CITY COUNCIL QUESTIONS**
- **PUBLIC HEARING SPEAKERS**
- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

#### **OPTION 1 is 8.7%**

Proposed increase of Elderly Exemption by the Social Security cost-of-living increase

Single	\$50,137 increase of \$4,013
Married	\$68,598 increase of \$5,490

#### **OPTION 2 is 2.55%**

Proposed increase of Elderly Exemption by the November to November consumer price index

Single	\$47,300 increase of \$1,176
Married	\$64,717 increase of \$1,609

#### **OPTION 3**

Proposed increase of Elderly Exemption

Do Nothing

The elderly exemption shall remain unchanged except as amended hereby.

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

Assessor Lentz provided a presentation reviewing the income and assets levels for exemption amounts. She spoke to the qualifying requirements and the median assessments and where they are today. She announced that you must file an application by April 15<sup>th</sup> to comply with the process for determining qualifications for an exemption.

Councilor Cook asked how residents were notified that they need to reapply for the exemption. Assessor Lentz said a letter was sent to all those who currently have exemptions.



Mayor McEachern asked if a widow receives compensation from a life insurance policy and draws funds from that how is that accounted for when applying for an exemption. Assessor Lentz said we don't count that in year 1 but then it is counted as an asset.

Esther Kennedy spoke in support of Option 1 and said we should have a goal to keep people in their homes. She spoke in support of the veterans' exemption and said she does not feel we support our elderly enough.

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

**Councilor Bagley moved to adopt Option 1 – Proposed increase of Elderly Exemption by the Social Security cost-of-living increase 8.7%. Seconded by Councilor Tabor and voted.**

- C. RESOLUTION PURSUANT TO RSA 72:39-b THE CITY HEREBY AMENDS THE DISABLED EXEMPTION BASED ON ASSESSED VALUE FOR QUALIFIED TAXPAYERS, SUCH THAT THE EXEMPTION SHALL BE BASED ON ASSESSED VALUE FOR QUALIFIED TAXPAYERS, SUCH THAT THE EXEMPTION SHALL BE AVAILABLE ONLY WHEN THE QUALIFYING TAXPAYER(S) HAVE A NET INCOME OF NOT MORE THAN
- **PRESENTATION**
  - **CITY COUNCIL QUESTIONS**
  - **PUBLIC HEARING SPEAKERS**
  - **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

**OPTION 1 is 8.7%**

Proposed increase of Disabled Exemption by the Social Security cost-of-living increase

Single	\$50,137 increase of \$4,013
Married	\$68,598 increase of \$5,490

**OPTION 2 is 2.55%**

Proposed increase of Disabled Exemption by the November to November consumer price index

Single	\$47,300 increase of \$1,176
Married	\$64,717 increase of \$1,609

**OPTION 3**

Proposed increase of Disabled Exemption

Do Nothing

The disabled exemption shall remain unchanged except as amended hereby.

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

Assessor Lentz spoke on the qualifications for the Disabled Exemption and that applications would need to be filed by April 15<sup>th</sup> to be considered for the exemption.

With no speakers, Mayor McEachern declared the public hearing closed.

**Councilor Lombardi moved to adopt Option 1 – Proposed increase of Disabled Exemption by the Social Security cost-of-living increase 8.7%. Seconded by Councilor Cook and voted.**

City Manager Conard advised the Council that according to Assessor Lentz the City Council would need to take action on the Option Veterans' Tax Credit Resolution before the All Veterans' Tax Credit.

**Councilor Denton moved to suspend the rules to bring forward Item X.E. – Optional Veterans' Tax Credit Resolution. Seconded by Assistant Mayor Kelley and voted.**

Councilor Lombardi stated he would be abstaining from the vote on the Resolution as he served in the military.

- E. RESOLUTION THAT PURSUANT TO 72:27-A, THE CITY OF PORTSMOUTH HEREBY READOPTS THE PROVISIONS OF THE OPTIONAL VETERANS; TAX CREDIT PURSUANT TO RSA 72:28,II IN THE AMOUNT OF \$750 ON THE TAXES DUE ON THE RESIDENTIAL REAL ESTATE OF ANY RESIDENT WHO IS A VETERAN AS DEFINED IN RSA 21:50 AND, SERVED NOT LESS THAN 90 DAYS ON ACTIVE SERVICE IN THE ARMED FORCES OF THE UNITED STATES IN ANY QUALIFYING WAR OR ARMED CONFLICT LISTED IN THIS SECTION, AND, CONTINUES TO SERVE OR WAS HONORABLY DISCHARGED OR, AN OFFICER WHO CONTINUES TO SERVE OR WAS HONORABLE SEPARATED FROM SERVICE OR, THE SPOUSE OF SURVIVING SPOUSE OF SUCH RESIDENT PROVIDED THAT TRAINING FOR ACTIVE DUTY BY A MEMBER OF THE NATIONAL GUARD OR RESERVE SHALL BE INCLUDED AS SERVICE UNDER THIS SUBPARAGRAPH, OR WHO WAS TERMINATED FROM THE ARMED FORCES BECAUSE OF SERVICE-CONNECTED DISABILITY OR, THE SURVIVING SPOUSE OF SUCH RESIDENT, OR THE SURVIVING SPOUSE OF ANY RESIDENT WHO SUFFERED A SERVICE-CONNECTED DEATH
- **PRESENTATION**
  - **CITY COUNCIL QUESTIONS**
  - **PUBLIC HEARING SPEAKERS**
  - **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

Assessor Lentz explained that this is required because of amendments to eligible veterans' benefits where they expand the eligibility to those currently serving. She indicated that the presentation will be on the Assessor's Department website for review as it is valuable information. She said that those wishing to apply would need to apply by April 15<sup>th</sup>.

Mayor McEachern read the legal notice, declared the public hearing open and called for speakers. With no speakers, Mayor McEachern declared the public hearing closed.

**Councilor Denton moved to adopt the Resolution as presented. Seconded by Councilor Bagley.**

Councilor Denton said he would qualify for this; however, he does not own property so he would not need to abstain from voting on this matter.

Mayor McEachern said this is the maximum limit by the State of New Hampshire and thanked Councilor Denton for bringing this credit forward.

**Motion passed. Councilor Lombardi abstained from voting on this matter.**

- D. RESOLUTION THAT PURSUANT TO 72:27-a, THE CITY OF PORTSMOUTH HEREBY READOPTS THE PROVISIONS OF THE ALL VETERANS' TAX CREDIT PURSUANT TO RSA 72:28,B, TO BE THE SAME AMOUNT AS THE OPTIONAL VETERANS' TAX CREDIT UNDER RSA 72:28, ON THE TAXES DUE ON THE RESIDENTIAL REAL ESTATE OF ANY RESIDENT WHO IS A VETERAN, AS DEFINED IN RSA 21:50, AND, SERVED NO LESS THAN 90 DAYS ON ACTIVE SERVICE IN THE ARMED FORCES OF THE UNITED STATES AND CONTINUES TO SERVE OR WAS HONORABLY DISCHARGED OR AN OFFICER WHO CONTINUES TO SERVE OR WAS HONORABLE SEPARATED FROM SERVICE; OF THE SPOUSE OF SURVIVING SPOUSE OF SUCH RESIDENT, PROVIDED THAT TRAINING FOR ACTIVE DUTY OR STATE ACTIVE DUTY BY A MEMBER OF THE NATIONAL GUARD OR RESERVE SHALL BE INCLUDED AS SERVICE UNDER THIS PARAGRAPH; PROVIDED HOWEVER THAT THE PERSON IS NOT ELIGIBLE FOR AND IS NOT RECEIVING A CREDIT UNDER RSA 72:28 or RSA 72:35

- **PRESENTATION**
- **CITY COUNCIL QUESTIONS**
- **PUBLIC HEARING SPEAKERS**
- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

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

Assessor Lentz said readoption is required for this credit and the amount will be the same as the optional tax credit. She stated that those in the reserves or national guard are now eligible to receive the credit. She announced applications must be filed by April 15<sup>th</sup> to be reviewed for approval.

**Assistant Mayor Kelley moved to adopt the Resolution as presented. Seconded by Councilor Denton.**

Councilor Denton said this now allows all veterans to receive the tax credit.

**Motion passed. Councilor Lombardi abstained from voting on this matter.**

At 9:10 p.m., Mayor McEachern called for a brief recess. At 9:20 p.m., Mayor McEachern called the meeting back to order.

**Councilor Denton moved to suspend the rules to bring forward Item XVI. B. – Approval of Emergency Management Performance Grant Agreement - \$79,910.00. Seconded by Councilor Moreau and voted.**

## **XVI. APPROVAL OF GRANTS/DONATIONS**

- B. Approval of Emergency Management Performance Grant Agreement - \$79,910.00

**Councilor Denton moved to accept the terms of the Emergency Management Performance Grant as presented in the amount of \$79,910.00 for Emergency Operations Center equipment. Furthermore, the City Council acknowledges that the total cost of this project will be \$79,910.00, in which the city will be responsible for a 50% match (\$39,955.00). Further, City Manager Conard, Mayor McEachern and Fire Chief McQuillen are authorized to sign all documents related to the grant. Seconded by Councilor Moreau.**

Fire Chief McQuillen reported that the funds were expended when the EOC facility was upgraded.

**Motion passed.**

## **XI. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION**

### **A. CITY MANAGER CONARD**

1. Approval of Proposed Memorandum of Agreement for Portsmouth School District Paraeducators and Portsmouth Police Civilian Employees Association – Newly Revised

City Manager Conard said that this is a revision to the agreement and the Memorandum of Agreement is effective January 1, 2023, which was not clear in the last agreement.

**Councilor Blalock moved approve the agreement as presented. Seconded by Assistant Mayor Kelley and voted.**

2. Approval of Collective Bargaining Agreement with Portsmouth Non-Supervisory Cafeteria Personnel

City Manager Conard said this is a three-year agreement.

**Councilor Blalock moved to approve the proposed agreement as presented. Seconded by Assistant Mayor Kelley and voted.**

2. Approval of Portsmouth Supervisory Management Alliance Memorandum of Understanding Re: Assistant Chief Plant Operator

City Manager Conard said that this request is to increase the position of Assistant Chief Plant Operator from Grade 13 to Grade 15. She said this was an oversight, and the position was a lower grade than the employees the operator would supervise.

**Councilor Blalock moved to approve the Memorandum of Understanding as presented. Seconded by Assistant Mayor Kelley and voted.**

4. Temporary Construction License for 89/99 Foundry Place

City Manager Conard explained the need for the temporary Construction License to use 60 square feet of pavement and 1,112 square feet of unimproved land that abuts the subject property along Foundry Plan for 550 days, from March 20, 2023 through September 19, 2024.

**Councilor Moreau moved to authorize the City Manager to execute and accept the temporary construction license for the term of March 20, 2023 through September 19, 2024. Seconded by Assistant Mayor Kelley and voted.**

## XII. CONSENT AGENDA

- A. Request from Tyler & Ryan McGill, Summer Sessions, to install a Projecting Sign at 82 Congress 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 Agreement for this request***)

**Planning Director's Stipulations:**

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

- B. Request from Tyler & Ryan McGill, Noa Café, to install a Projecting Sign at 86 Congress 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 Agreement for this request***)

**Planning Director's Stipulations:**

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

- C. Request from Lori Dennehy, Sea Love, to install a Projecting Sign at 60 State 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 Agreement for this request***)

**Planning Director's Stipulations:**

- ***The license shall be approved by the Legal Department as to content and form;***
  - ***Any removal or relocation of projecting sign, for any reason, shall be done at to the City; and***
  - ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***
- D. Letter from Phil von Hemert, Sail Portsmouth, requesting permission to hold the Sail Portsmouth Maritime Event on Thursday, July 27, 2023, the Parade of Sail and Friday, July 28, 2023 through Monday, July 31, 2023 for the touring of two ships, moored at the Commercial Fish Pier and the Prescott Park Marina (***Anticipated action – move to refer to the City Manager with Authority to Act***)

**Councilor Blalock moved to adopt the Consent Agenda. Seconded by Assistant Mayor Kelley and voted.**

### **XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS**

- A. Email Correspondence

**Assistant Mayor Kelley moved to accept and place on file. Seconded by Councilor Moreau and voted.**

- B. Letter from Perry Silverstein regarding outdoor dining rate structure

**Councilor Moreau moved to accept and place on file. Seconded by Councilor Blalock and voted.**

### **XIV. MAYOR McEACHERN**

1. Appointments to be Voted to the Public Arts Review Blue Ribbon Committee:
- Paul Burke
  - M. Christine Dwyer
  - Ellen Fineberg
  - Beth Hartnett
  - Jen Meister
  - Alyssa Murphy
  - Nancy Pearson

- A. Robert Thoresen
- Robert White
- Mara Witzling

**Councilor Cook moved to appoint Paul Burke, M. Christine Dwyer, Ellen Fineberg, Beth Hartnett, Jen Meister, Alyssa Murphy, Nancy Pearson, A. Robert Thorsen, Robert White and Mara Witzling to the Public Arts Review Blue Ribbon Committee. Seconded by Councilor Moreau and voted.**

## **XV. CITY COUNCIL MEMBERS**

### **A. COUNCILOR TABOR, COUNCILOR DENTON, COUNCILOR COOK**

1. Community Power – approve Energy Aggregation Plan to create a Community Power Program for Portsmouth

**Councilor Tabor moved to approve the Energy Aggregation Plan as developed by the Energy Advisory Committee contained in the February 21, 2023 City Council packet, and submit it to the Public Utilities Commission for approval. Seconded by Councilor Denton.**

Councilor Denton thanked Councilor Tabor and Councilor Cook for having him join in this motion. He said that this is a big step, and we started this work 5 years ago.

Councilor Cook thanked Councilor Tabor for his leadership, it is an honor to serve on this committee. She spoke in support of the plan and joining the Coalition.

Councilor Tabor said this is no cost to taxpayers and is voluntary and you could opt out. He reported that Exeter and Rye will go first, and we can see how it works for those communities before moving forward.

Councilor Blalock thanked the City Council for bringing this forward. He said he watched the work session from last week and this is really no risk and creates a fund for more green energy.

Councilor Moreau echoed comments made for the amount and flexibility and feels it is an easy decision.

Councilor Lombardi said cleaner energy and lower rates are a benefit.

Mayor McEachern said utilities were supposed to be flexible. He said it provides more control and you would need to opt in. He said he is impressed with the work of Councilor Tabor and former Councilor Lazenby, Councilor Denton and Councilor Cook on this program.

**Motion passed.**

### **B. COUNCILOR MOREAU**

1. Outdoor Dining Policy February Updates 2023

**Councilor Moreau moved to suspend the rules to bring forward the outdoor dining policy for action and discussion. Seconded by Councilor Blalock.**

**On a roll call vote 6-3, motion passed. Assistant Mayor Kelley, Councilors Tabor, Moreau, Lombardi, Blalock and Mayor McEachern voted in favor. Councilors Denton, Bagley and Cook voted opposed.**

**Councilor Moreau moved to change the policy based on updates attached in the February 21, 2023 City Council packet. Seconded by Councilor Tabor.**

Councilor Moreau said we need to make sure all businesses have a fair shot. She reported the fee would be \$10.00 per square foot and everything needs to be the same and equal across the board. She said in 2012 \$10.00 was the cost to administer the policy and make a level playing field for everyone.

Councilor Bagley said we have no requirements, we voted and approved it and now we rescind the vote. He said the Council is being penny wise and pound foolish. He outlined costs and restaurants that took advantage of the policy. He said in 2022 we had an increase in parking revenues and we are generating the best possible revenue for restaurants and stores.

Councilor Blalock said it is good parking revenues have increased. He said if you make a mistake, you correct it as soon as possible. He stated that this is more than fair to taxpayers and restaurants and shops. He said government must be for everyone and make equal opportunity for each business.

Councilor Cook said we are very unlikely to have more outdoor dining with doubling the rates. She said residents want outdoor dining and the policy was designed to be fair. She said she does not support the City Council reconsidering the policy.

Assistant Mayor Kelley said the policy would not allow for picnic tables and some restaurants would need to pay more money for different tables and chairs. She said we could have a minimum of acceptable tables and chairs. She stated if you want this long term the question is what the rate will be.

Councilor Denton said the reason he voted against suspension of the rules at the last meeting and this evening is out of fairness for those businesses that are unaware the Council is looking at this. He said if we want to be fair we would create a set fee per square foot and the time for that would be during the ordinance process. He stated in the 2012 policy there is a \$2,000.00 threshold.

Councilor Cook said we are talking about doubling the fee for 30 out of 40 restaurants. She said this year it will cost us more and we try to keep fees what it costs to administer the program.

Mayor McEachern passed the gavel to Assistant Mayor Kelley.

Mayor McEachern said restaurants are dependent on outdoor dining and it has become a part of restaurant models. He said there are differences of opinion on how to create long lasting outdoor dining. He stated he does not think we have different costs for travel lanes and parking spots. He said we need to create a safe place to operate. He asked if this would be easier to go back to the previous year policy and create an ordinance later. Mayor McEachern said we should bring this forward in an ordinance conversation.

Councilor Moreau said she would like to postpone the conversation on fixing some of the items.



Assistant Mayor Kelley said we need to find common ground and make it workable for this year.

Councilor Cook said she is not in favor of moving forward with this. She said some restaurants have incorporated outdoor dining into their business model.

Assistant Mayor Kelley returned the gavel to Mayor McEachern.

Assistant Mayor Kelley said this is a good thing to send to the Economic Development Commission that has direct relations with businesses. She said we have not given restaurants the full options. She spoke in support of sending it to EDC for a report back.

Councilor Lombardi said we should leave things as they currently are and study this through the EDC for next year. He said we could come back with a policy that is supported by the business community.

Councilor Cook said in writing this policy we did so with residents in mind. She said we have some places very accessible but some that are difficult. She stated we need restaurants to be uniformed with its outdoor dining and that establishments are accessible.

Mayor McEachern said if this goes to EDC, we would not get this in place for this year. He stated he does not want to extract more from restaurants, and they need to be treated the same and not try to shoehorn a policy in place.

City Attorney Morrell advised the Council that if you do not pass what is on the floor, the Council would have the former prior policy passed in place.

Deputy City Manager/Deputy City Attorney Woodland said the 2012 policy is at \$10.00 a square foot and currently as it stands it is a hybrid.

*Councilor Moreau withdrew her motion and Councilor Tabor withdrew as the second to the motion.*

**Councilor Cook moved to suspend the rules to continue the meeting beyond 10:30 p.m. Seconded by Councilor Moreau and voted.**

Discussion followed and Councilor Bagley made a motion which he withdrew.

Mayor McEachern said the Council should go to the previous policy and refer to the EDC for report back with a proposed ordinance.

**Councilor Moreau moved to rescind the January 2023 outdoor dining policy and revert to the 2022 policy with a referral to the EDC. Seconded by Councilor Denton.**

**Assistant Mayor Kelley requested the following as a friendly amendment to include a time frame shall be May 1<sup>st</sup> through Indigenous People's Day and establishments may not conduct outdoor dining that reverses a travel lane; except on any street or way in which the traffic count is below 1,000 cars per day and with such additional or special conditions as the City Manager deems appropriate. In circumstances in which street closure will cause a burden to public safety operations, the City Manager has the Authority to deny the permit.**

In addition, refer the matter of outdoor dining to the Economic Development Commission for a report back about potential ordinance. Councilor Moreau and Councilor Denton accepted these changes as friendly amendments and to be part of the original motion.

Motion passed with Councilor Bagley opposed.

Motion passed is as follows:

**Voted to rescind the January 2023 outdoor dining policy and to readopt the 2022 outdoor dining guidance with the following amendments:**

- **Time frame shall be May 1<sup>st</sup> through Indigenous People's Day, and**
- **Establishments may not conduct outdoor dining that reverses a travel lane; except on any street or way in which the traffic count is below 1,000 cars per day and with such additional or special conditions as the City Manager deems appropriate.**
- **In circumstance in which street closure will cause a burden to public safety operations, the City Manager has the authority to deny the permit. In addition, refer the matter of outdoor dining to the Economic Development Commission for a report back about the creation of a potential ordinance.**

#### **C. COUNCILOR BAGLEY**

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the February 2, 2023 meeting

**Councilor Bagley moved to accept and approve the action sheet and minutes of the February 2, 2023 Parking and Traffic Safety Committee meeting. Seconded by Assistant Mayor Kelley and voted.**

#### **D. COUNCILOR COOK**

1. Report back from the Governance Committee on a proposed change to the Fee Study Committee

Councilor Cook provided a brief update on the Governance Committee's review to add an additional City Councilor to the Fee Study Committee, which they decided not to make a change at this time. If there is a need for a future Councilor on the Fee Study Committee the Mayor may make the appointment.

#### **XVI. APPROVAL OF GRANTS/DONATIONS**

- A. Approval of Donation for the Skateboard Park Lighting Fund - \$1,717.00

**Councilor Blalock moved to accept the donation for Skateboard Park Lighting Fund as presented. Seconded by Councilor Lombardi and voted.**

## **XVII. CITY MANAGER'S INFORMATIONAL ITEMS**

### 1. McIntyre Update

City Manager Conard reported the city continues to consult with our financial experts regarding cost estimates, the structure of our financial arrangement and design engineering. She said for transparency purposes all the contracts will be on-line tomorrow for review and for individuals to see with whom we're engaging. She stated that we expect final numbers from all parties by the end of this week. She advised that the City's next check-in with GSA is scheduled for Tuesday, February 28, 2023. City Manager Conard reported that we will have met our milestone schedule as of February 28, 2023 and the next milestone beyond that would be for our outside counsel to finalize the negotiation of the development agreement and begin negotiating our financial documents with the developers counsel.

### 2. Report Back on Expanded Study Area to Include Outdoor Dining for Market Square Master Plan Improvement Project *(In City Manager's Comments)*

Councilor Bagley spoke regarding a utility pole in front of Flat Bread and asked to have it reviewed.

### 3. Market Street and Commercial Alley Utility Code Compliance Project *(In City Manager's Comments)*

City Manager Conard spoke regarding the thorough memorandum contained in the packet regarding this matter. She reported that the roadway would be open Friday afternoons throughout weekends.

Councilor Blalock asked if the project could be delayed for a year. City Manager Conard responded that it could not be delayed. Councilor Blalock inquired regarding the work on Commercial Alley. City Manager Conard said the alley will have construction done but it will be restored at the completion of the project.

### 4. Pease Wastewater Treatment Facility – Update of CIP Element Sheet

City Manager Conard said we received word from Lonza regarding their water and wastewater treatment needs. She said staff has prepared a revised CIP element sheet relative to the upgrade of the Pease WWTF to reflect a modified course of improvements to the outdated facility. She stated that no expansion is reflected in this modified element sheet, but a course of replacements and upgrades that are needed due to aging equipment and updated regulatory requirements.

## **XVIII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING**

City Manager Conard announced Monte Bohanan, our new Director of Communication and Community Engagement will be starting on Monday, February 28, 2023.

**XIX. ADJOURNMENT**

**At 11:00 p.m., Assistant Mayor Kelley moved to adjourn. Seconded by Councilor Moreau 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/CNHMC  
CITY CLERK

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: MONDAY, MARCH 6, 2023

PORTSMOUTH, NH  
TIME: 7:00PM

**On a unanimous voice vote 8-0, Assistant Mayor Kelley moved to close the Non-Public Sessions and seal the minutes. Seconded by Councilor Tabor and voted.**

### **III. CALL TO ORDER**

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

### **IV. ROLL CALL**

**PRESENT:** Mayor McEachern, Assistant Mayor Kelley, Councilors Tabor, Denton, Bagley, Lombardi, Blalock and Cook

**ABSENT:** Councilor Moreau

Mayor McEachern recognized and thanked Joanna Diemer for her 20 years of service to the city which was celebrated on Friday. He said Joanna works in the City Manager's office and assists the Office of the Mayor. He said she provides support to the office and those calling into the Mayor's office with their concerns or requests.

### **V. INVOCATION**

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

### **VI. PLEDGE OF ALLEGIANCE**

Mayor McEachern led in the Pledge of Allegiance to the Flag.

### **PROCLAMATION**

1. Women's History Month

Mayor McEachern read the Proclamation declaring March as Women's History Month and urged all citizens to learn especially in our 400<sup>th</sup> year about the essential contributions of women to the past, present, and future of Portsmouth.

### **VII. ACCEPTANCE OF MINUTES – JANUARY 9, 2023 AND JANUARY 23, 2023**

**Assistant Mayor Kelley moved to accept and approve the minutes of the January 9, 2023 and January 23, 2023 City Council meetings. Seconded by Councilor Tabor and voted.**

### **VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS**

*(There are no Recognitions and Volunteer Committee Reports on the Agenda this evening)*

## IX. PUBLIC COMMENT SESSION

Irish Mike expressed his sadness with the hate crimes that recently took place in the city. He feels with the media attention given to this incident provides the perpetrators with a voice that they don't deserve.

Esther Kennedy spoke to the historic wall at 93 Pleasant Street and its removal. She said it is the job of the Council to save this historic significant wall in the city.

Mark Brighton made comments regarding Mayor McEachern and each City Councilor.

Matt Hester spoke on the need for indoor sports activities and an ice arena in the city.

John Pendleton, Assistant Coach to Boy's Ice Hockey Team, spoke in support for an arena in the city. He said currently the team needs to travel to other communities to get ice time to practice. He urged the Council to bring an ice arena to the city for the students and parents.

Joel Brown, Boy's Ice Hockey Coach, said he supports an indoor arena for the community. He stated it will benefit many in the city.

Sue Polidura spoke on the wall at 93 Pleasant Street and its historic value. She said back in 2021 there was a request for a variance and the proposal had a majority in favor of retaining the wall. She said the building was approved contingent on preserving the wall but last week the Historic District Commission granted the approval to remove the wall and build a new one.

Petra Huda said the City Manager's Informational Items are the only item that we get transparency on. She said the City Council authorize \$150,000.00 for the McIntyre project and according to website we have two contracts that are for less funding. She asked why we asked for \$150,000.00 when we didn't need that amount. She asked the City Manager to report on what took place at the February 28<sup>th</sup> meeting regarding McIntyre.

Paige Trace spoke to the proclamation read this evening by Mayor McEachern and expressed her disappointment that City Clerk Barnaby and Deputy City Manager/Deputy City Attorney Woodland were not mentioned as part of Women's History Month and their contributions to the City of Portsmouth. She also would have liked to see the proclamation mention the other women in the City that work or volunteer.

Dave Cosgrove spoke in support of the Recreational Needs Study. He said he supports building an arena in the city and there is a strong need for an ice rink here.

Lucas Patten said there is a real need for an ice rink in the city. He spoke to students having to drive twenty minutes to use the ice in other communities. He urged the City Council to have an ice arena in the city.

Caleb Pendleton spoke about youth hockey and the need for them to travel to Massachusetts to get ice time. He said he supports an ice rink for the city and said it will help kids wanting to play hockey to develop and improve their skills.

Calvin Rothstein spoke in support of an ice rink. He stated it is difficult not to have a rink in the city and the need for students to travel for ice time in other communities.

Chace Conklin, Rye, NH said the city would benefit having an ice rink. He said we need a rink to build for the youth wanting to learn the game and skills to play hockey.

Aidan Mamrocka spoke in support of an ice rink. He said driving to Dover to practice is difficult.

Kaden Goyette, Rye, NH said having an ice rink will benefit the community.

Travis Raynolds spoke to the disadvantages of the city not having an ice rink. He said having a rink will benefit the city. He spoke to the time and effort it takes students to drive to other communities to use their ice. He stated it is important that we have an ice rink in Portsmouth.

Ned Raynolds spoke in support of bringing an ice rink to the city. He said we need to have a rink and a multi-use sports complex in the city. He requested the city issue an RFP to show what a multi-use facility would look like in the city.

Scott Perkins, Greenland, NH Assistant for the Ice Hockey Team, spoke in support of an ice rink in the city. He stated that he plays more hockey now than when he was younger. He stated that a rink will benefit the community and make for a stronger hockey team in the city.

Ross Laorenza, Raymond, NH said he works three jobs and can no longer afford to live in the city and spoke to the need for affordable housing.

**Councilor Cook moved to suspend the rules to bring forward Items XV. C.1. – Portsmouth NH 400 Sculpture Announced and XIII. A. – Recreational Needs Study Final Report. Seconded by Councilor Blalock and voted.**

## **XV. CITY COUNCIL MEMBERS**

### **C. COUNCILOR MOREAU & COUNCILOR COOK**

#### **1. Portsmouth NH 400 Sculpture Announced**

Councilor Cook said together with Councilor Moreau, who is sad to have missed this meeting, where we would be announcing the artists chosen for the PortsmouthNH 400 Sculpture. Councilor Cook announced that artist Sijia Chen will be creating the first public art sculpture with a maritime theme that will be in the Bohenko Gateway Park. She reported that the project was chosen from 40 designs, and it will be stainless steel, 30 feet tall and called the “Endeavor.” She thanked Bob and Sue Thorsen, the largest contributors to the project for their generous and gracious contributions towards this project. She stated there will be cut out designs on the sculpture that the city will have input in.

Mayor McEachern said this is exciting and looks forward to the project.

### **XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS**

#### **A. Recreational Needs Study Final Report**

Alice Carey and Craig Peiera, Placework-Horsley Witten Group provided a detailed review of the Recreational Needs Study. Alice and Craig addressed the major items of the study which, is the need for more recreational fields, support for the indoor pool and a multi-purpose recreational center to include an ice rink for the city. A review of the guiding principles and framework was reviewed.

Craig addressed community engagement and the workshops that were held. He said one remark that we heard that is a concern for the community is for the city to improve what facilities that are currently in place before making new facilities.

Councilor Blalock thanked Alice and Craig for their hard work and all the members of the Recreation Board, Recreation Director Henley and Recreation Board Chair Diemer.

Mayor McEachern thanked Alice and Craig for the presentation and work they did on the study.

Councilor Cook said we have serious space limitations when looking at recreational needs. Craig spoke to looking at field and facility uses, as many sites are overused.

Councilor Tabor asked Alice and Craig if it would make sense to have a Parks and Recreation Department in the city. Craig said that is the decision of the city, but the city does need to coordinate better the use of facilities.

Mayor McEachern said the entire report is linked in the packet and requested the report be placed on the website and under the Recreation Department web page for the community to review.

At 8:40 p.m., Mayor McEachern called a brief recess. At 8:47 p.m., Mayor McEachern called the meeting back to order.

### **X. PUBLIC HEARINGS AND VOTE ON ORDINANCES AND/OR RESOLUTIONS**

#### **Continued Public Hearing – Capital Improvement Plan (CIP) / Adoption of CIP:** *(Continued Public Hearing that was held open per action of the City Council at the February 21, 2022 meeting)*

##### **A. CAPITAL IMPROVEMENT PLAN (CIP) FY 2024-2029**

- **PRESENTATION** *(Presentation was held at the January 18, 2023 Work Session)*
- **CITY COUNCIL QUESTIONS**
- **PUBLIC HEARING SPEAKERS**
- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

Mayor McEachern said that this is a continuation of the CIP Public Hearing.

Councilor Cook inquired regarding the Market Square Upgrades. City Manager Conard said the FY25 funding of \$50,000.00 could be moved up to FY24 to increase the funding to \$100,000.00. Councilor Cook asked about upgrades to the South Mill Pond Playground for ADA improvements.



Recreation Director Henley said we are looking at \$600,000.00 for the improvements and replacement of equipment. Councilor Cook said she would like to move the funding up to FY24. Councilor Cook asked if we have final numbers for the RJ Lister Academy improvements. School Business Administrator Lunney said nothing definitive regarding that item at this time, however it could be \$100,000.00 lower than expected. Councilor Cook asked about police body camera and if there is a chance funding could be moved to apply for the grant sooner. Deputy Police Chief Maloney said he would need to look at the timelines for the grant. Councilor Cook asked about updates regarding the Greenland Road Recreational fields project. City Manager Conard reports that overruns will be brought to the City Council for a supplemental appropriation.

Councilor Blalock asked if the Public Works Department could move the field up to FY24. Recreation Director Henley said the field could be lined for softball. Public Works Director Rice said you would need to configure in the design for the project.

Councilor Bagley suggested moving the Russell/Market Streets project to FY25.

Mayor McEachern opened the public hearing and called for speakers.

Tom Kozikowski spoke in support of an ice rink for the city. He said he is speaking as a resident and Athletic Director on the need for an ice rink. He spoke regarding his excitement surrounding the Recreational Needs Study and stated that the city needs to trust in the building model for an ice rink.

Heath Wilson spoke in support of building an ice rink in the city. He said he travels all over New England for his son to play ice hockey. He said his hockey budget is \$15,000.00 - \$20,000.00 per year for his son to play and spoke to the importance of having access to ice.

Carl Diemer, Recreation Board Chair, urged the City Council to review the entire Recreational Needs Study. He said now is the time to do something and move forward with an RFP and requested a work session with the City Council to discuss the study and moving forward. He thanked Councilor Denton for his work on the veteran's tax credits.

Petra Huda said she asked questions and still has no answers relative to items contained in the CIP. She spoke to the \$500,000.00 decrease in the CIP and that the residents should know where projects are going and what will be approved. She said in her opinion the CIP is just a wish list.

Esther Kennedy requested that the City Council fully fund the Skateboard Park. She spoke to how recreation can help with the mental health of our children. She said the City Council needs to think about the Great Bay and Little Bay as well as what Lonza is going to be doing.

Paige Trace spoke to sewer items related to second modifications of the consent decree. She said a long term control plan was part the decree and it was to happen in 2023 now it is out to 2029. She spoke to the McIntyre having zero funding.

With no further speakers, Mayor McEachern declared the public hearing closed.

Councilor Tabor said he serves on the Prescott Park Arts Festival and would be abstaining from votes related to Prescott Park.

Mayor McEachern asked Public Works Director Rice regarding the moving of the Shaw building. Public Works Director Rice spoke to the significant design efforts that have taken place but advised the Council that the design would need to be put on hold. Discussion followed regarding the drainage issues, raising Water Street, and moving the Shaw building. Mayor McEachern said when moving the building it needs to be ADA compliant. Public Works Director Rice said it would require code compliance. Councilor Bagley spoke regarding the need to slow things down and having a better path forward. Councilor Cook spoke in support of moving the building and complete restoration. Councilor Lombardi spoke in support of Councilor Cook's comments and said it is important to get the building moved and that it should not lay dormant.

### Capital Improvement Plan Votes:

#### Prescott Park Master Plan Implementation

**Councilor Cook moved to amend the CIP by moving the funding of \$1,750,000.00 for the Prescott Park Master Plan Implementation from FY24 to FY25. Seconded by Councilor Lombardi.**

Councilor Bagley asked how much funding would be needed to move forward. Public Works Director Rice said we estimate an additional \$4 million for the first phase of the Master Plan.

Assistant Mayor Kelley asked if the raising of Water Street could be done if the Shaw Building was moved. Public Works Director Rice said no.

Discussion followed regarding moving the Shaw building.

**Motion passed with Councilor Tabor abstaining from voting on this matter.**

#### Additional Outdoor Recreation Fields (formerly) New Outdoor Rec Fields

**Councilor Blalock moved to amend the CIP by moving the funding for Additional Outdoor Recreation Fields (formerly) New Outdoor Rec Fields up to FY24. Seconded by Councilor Tabor.**

Councilor Blalock said there is a real need for new outdoor fields and spoke to how our current fields are being overused.

Councilor Bagley said \$3 million is a large number to move from FY29 to FY24. Councilor Blalock said the fields are being overused and we need to stop kicking the can down the road.

Discussion followed regarding moving up the funds and the costs involved with the project.

*Councilor Blalock said he would accept the change to move \$100,000.00 to FY24 and \$3 million to FY25.*

**Motion to amend the CIP by moving the funding for Additional Outdoor Recreation Fields (formerly) New Outdoor Rec Fields of \$100,000.00 from FY28 to FY24 and \$3,000,000.00 from FY29 to FY25 passed.**

Market Square Upgrade

**Councilor Cook moved to amend the CIP by increasing the funding for the upgrades by \$50,000.00 in order to incorporate the additional cost of planning which the City Manager highlighted at the last City Council meeting and moving the funding from FY25 to FY24 for Market Square Upgrades. Seconded by Assistant Mayor Kelley.**

Planning/Sustainability Director Britz spoke to the Market Square project.

**Motion passed.**

Fit-up of Community Campus Space for Robert J. Lister Academy

**Councilor Cook moved to amend the CIP by reducing the funding of the Fit-up of Community Campus Space for Robert J. Lister Academy in FY24 from \$2,000,000.00 to \$1,800,000.00. Seconded by Assistant Mayor Kelley and voted.**

Russell/Market Intersection Upgrade

**Councilor Bagley moved to amend the CIP by moving the funding of \$2,200,000.00 for the Russell/Market Intersection Upgrade from FY24 to FY25. Seconded by Councilor Cook.**

**Assistant Mayor Kelley moved to suspend the rules to continue the meeting beyond 10:30 p.m. Seconded by Councilor Blalock and voted.**

**Russell/Market Intersection motion passed.**

Police Body Cameras

**Councilor Cook moved to amend the CIP by moving the funding of Police Body Cameras for \$113,250.00 from FY26 to FY25. Seconded by Assistant Mayor Kelley.**

Councilor Cook said she wants to have body cameras in place in a timely manner like other seacoast communities.

**Motion passed.**

South Mill Pond Playground

**Councilor Cook moved to move the \$600,000.00 of the \$1,500,000.00 bonding for South Mill Pond ADA Playground in FY25 and leaving the \$900,000.00 bonding in FY29. Seconded by Councilor Bagley.**

Councilor Cook said the plan was to address the playground before FY29 and we need to honor the donation we received and create an ADA compliant playground.

Discussion followed regarding the project.

**Motion passed.**

*Water Master Plan Update*

Councilor Cook said she would like to know about the sewer plan. City Manager Conard said that was a citizen request and it was discussed. She further stated that the Water Department provides updates regularly on our efforts.

**Councilor Cook moved to remove the Water Master Plan Update from the CIP because it has no dollar amount attached to the item. Seconded by Councilor Bagley.**

Councilor Cook said the line item creates confusion and we are doing the work, therefore it should be removed.

Deputy City Manager/Deputy City Attorney Woodland said she would go toward clarity for the document.

**Motion passed.**

*Capital Improvement Plan (CIP) Adoption*

**Councilor Blalock moved to adopt the Capital Improvement Plan, as amended with the four adjusted element sheets included in the packet.**

- ***Self Contained Breathing Apparatus (SCBA) Replacement***
- ***Parking Lot Paving***
- ***Wayfinding System***
- ***Pease Wastewater Treatment Facility***

**Seconded by Councilor Lombardi.**

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

**Councilor Denton moved to suspend the rules to bring forward Item XVI. A. – Approval of Grant from the Bureau of Justice Assistance Patrick Leahy Bulletproof Vest Partnership - \$11,883.00. Seconded by Assistant Mayor Kelley and voted.**

**XVI. APPROVAL OF GRANTS/DONATIONS**

- A. Approval of Grant from the Bureau of Justice Assistance Patrick Leahy Bulletproof Vest Partnership - \$11,883.00

**Councilor Denton moved to approve and accept the Grant for the Police Department as presented. Seconded by Assistant Mayor Kelley and voted.**

**XII. CONSENT AGENDA**

- A. Letter from Latrice Smith, National Multiple Sclerosis Society, requesting permission to hold the annual Walk MS event on Saturday, April 22, 2023 (***Anticipated action – move to refer to the City Manager with Authority to Act***)

- B. Letter from Crystal Cronin, Portsmouth Babe Ruth, requesting permission to locate temporary signage at Leary Field during the 2023 baseball season (***Anticipated action – move to refer to the City Manager with Authority to Act***)
- C. Letter from Chris Maden, Portsmouth Maritime Folk Festival, requesting permission to hold the Maritime Folk Festival on Saturday, September 23, 2023 and Sunday, September 24, 2023 (***Anticipated action – move to refer to the City Manager with Authority to Act***)

**Assistant Mayor Kelley moved to adopt the Consent Agenda. Seconded by Councilor Blalock and voted.**

### **XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS**

- B. Email Correspondence

**Assistant Mayor Kelley moved to accept and place on file. Seconded by Councilor Blalock and voted.**

- C. Letter from Karin Barndollar, Portsmouth Climate Action, requesting permission to hold a gathering in Market Square for Earth Day and close off the section of Pleasant Street between State and Congress Streets to traffic on Saturday, April 22, 2023 between 11:00 a.m. and 3:00 p.m.

**Assistant Mayor Kelley moved to refer to the City Manager with Authority to Act. Seconded by Councilor Blalock and voted.**

### **XIV. MAYOR McEACHERN**

- 1. Resignation of Lori Waltz from the COVID Response Task Force

**Councilor Lombardi moved to accept with regret the resignation of Ms. Waltz and to send her a letter of thanks and gratitude for her service to the City. Seconded by Assistant Mayor Kelley and voted.**

#### **A. ASSISTANT MAYOR KELLEY**

- 1. Retreat Update to City Council Goals

Assistant Mayor Kelley announced the City Council met as a group on February 9<sup>th</sup> to review the City Council goals set in 2022. She reported the City Council would keep the seven established goals but there are two edits. Goal #2 the Council will be adding promotion surrounding business retention and sharing resources with the Chamber with all businesses similar to what we had done during the pandemic. Goal #6 add predictable to deliver a trusted, transparent, responsive process i.e., with meetings of the boards and commissions. Assistant Mayor Kelley said she will be bringing these edits to a future City Council meeting.

**B. COUNCILOR DENTON**

1. Proposed Million Air Project

Councilor Denton requested that City Manager Conard provide updates as this project progresses with the Pease Development Authority.

**D. COUNCILOR BAGLEY**

1. Anti-Discrimination Policy for City Property Usage

**Councilor Bagley moved to refer the policy included in the packet to the Legal Department for review and report back. Seconded by Assistant Mayor Kelley.**

Councilor Bagley said the Council needs to take a hard stance on this matter.

Discussion followed regarding this matter and public forum areas and first amendment rights.

**Motion passed.**

**E. COUNCILOR COOK**

1. Making Music and Art Lessons an Allowed Use in Residential Zoning

**Councilor Cook moved to request that the Land Use Committee make a recommendation to the City Council on changes to the zoning ordinance that would incorporate music and art lessons as an allowed home occupational use, and the drying of laundry outside by right, without special exception in any residential zoning district. Seconded by Councilor Denton.**

Councilor Cook said she is looking for a recommendation back from Land Use on these questions and what is appropriate for home occupational use 1 and 2.

**Motion passed.**

**XVII. CITY MANAGER'S INFORMATIONAL ITEMS**

1. McIntyre Update

City Manager Conard reported that a second check-in was held with the GSA on February 28<sup>th</sup> where we shared with them the progress we've made to date. She stated that the GSA is asking for an updated set of milestones, which the redevelopment partner and the City are working on right now. She said that the \$150,000.00 is all being spent toward understanding our financial due diligence about cost estimating and the pro-forma and will be for the two new contracts coming in, RKG as well as the remaining consultants on the design team whose work continues. She stated the costs are being shared 50/50 between our development partner and the city.

2. Conservation Law Foundation (CLF) Petition for Residual Designation

Deputy City Manager/Deputy City Attorney Woodland reported the petition would add another layer of regulation for the City and most of the communities in Strafford and Rockingham County. She stated we are reviewing what this might mean and what, if any, impacts this will have.

**XVIII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING**

Councilor Blalock informed the City Council that Student Government Day would be held on April 19<sup>th</sup>.

**Councilor Blalock moved to schedule a work session regarding the potential of an Indoor Sports Complex Rink. Seconded by Assistant Mayor Kelley and voted.**

Councilor Denton requested an update regarding the electric vehicle charger post ordinances from 10 months ago to be held soon.

**XIX. ADJOURNMENT**

**At 11:20 p.m., Councilor Denton moved to adjourn. Seconded by Councilor Blalock and voted.**



KELLI L. BARNABY, MMC/CNHMC  
CITY CLERK

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: MONDAY, MARCH 20, 2023

PORTSMOUTH, NH  
TIME: 7:00PM

**On a unanimous voice vote 9-0, Councilor Moreau moved to close the Non-Public Session and seal the minutes. Seconded by Assistant Mayor Kelley and voted.**

### **III. CALL TO ORDER**

Mayor McEachern called the meeting to order at 7:05 p.m.

### **IV. ROLL CALL**

**PRESENT:** Mayor McEachern, Assistant Mayor Kelley, Councilors Tabor, Denton, Moreau, Bagley, Lombardi, Blalock and Cook

### **V. INVOCATION**

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

### **VI. PLEDGE OF ALLEGIANCE**

Mayor McEachern requested Councilor Denton to lead the Pledge of Allegiance to mark the 20<sup>th</sup> anniversary of the invasion of Iraq, and his service to our Country during that war.

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

### **PROCLAMATION**

#### 1. Youth Art Month

Mayor McEachern read the Proclamation declaring March as Youth Art Month and urged all to celebrate the contributions of art educators and their students to the rich heritage of Portsmouth's past, present and future. Anna Nutall accepted the Proclamation with thanks and appreciation. She announced that the K-12 Exhibit is on display at the Library for the community to view.

Mayor McEachern said some of the art pieces can be viewed on the 4<sup>th</sup> floor of City Hall outside of the School Department offices.

### **VII. ACCEPTANCE OF MINUTES – MARCH 11, 2023 SPECIAL CITY COUNCIL MEETING**

**Assistant Mayor Kelley moved to accept and approve the minutes of the March 11, 2023 Special City Council meeting. Seconded by Councilor Lombardi and voted.**



## VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS

### A. Portsmouth Energy Advisory Committee – Kevin Charette and Peter Somssich

Mr. Charette provided a report regarding the Portsmouth Energy Advisory Committee. He advised the City Council that the Community Power Coalition has made great strides with 30 communities now participating as members. He stated that the Coalition has gone out for procurement with 10 communities which will be going live shortly. He announced that the default rate is 15.8 cents and represents a 20% reduction. Mr. Charette said if we remain on schedule, we go out for procurement on April 11<sup>th</sup> for the City. Mr. Somssich spoke to the legislation for community power. He said Portsmouth joining the Coalition was important for the city and will make an impact for the city to choose greener energy.

### B. Sijia Chen, Artist, PNH400 Legacy Project Sculpture Garden, Bohenko Gateway Park

Barbara Massar, PNH400 Sculpture Review Committee, introduced Sijia to the City Council and community.

Sijia spoke regarding the art she creates and stated that her work is driven by community engagement. She explained the sculpture she will be creating for Portsmouth has two sails joining together in a dance and the cutouts will be translated into maritime themes. She spoke to creating a website for the collaboration of her work with the people of Portsmouth.

Councilor Cook announced March 21, 2023 at the Library in the Levenson Room, Sijia is holding a free community engagement workshop to suggest the maritime themes she plans to incorporate in her design.

## IX. PUBLIC COMMENT SESSION

Roy Helse spoke to the city being at an impasse with the developer regarding the McIntyre project. He said the city should have moved forward with Bill Binnie as the developer. He also addressed community power and that the taxpayers have to opt out rather than in. He said the Council needs to consider the elderly having a voice on some of these items.

Mark Brighton spoke to ethical matters of the City Council.

Francis Cormier spoke regarding hate and how that disrupts people and communities.

Esther Kennedy spoke to the process for holding public sessions prior to non-public sessions. She spoke to the session held on Saturday regarding the McIntyre and not having a public comment session for residents.

Petra Huda said the meeting held on March 11<sup>th</sup> was the most transparency the public has seen regarding the McIntyre. She asked the City Manager announce the members of the negotiating team for the McIntyre. She also asked what is the percentage of the cost the city has committed residents and taxpayers to fund. Ms. Huda also addressed community power and asked why the cost sharing agreement is before the Council when authorization has not been given.

Peter Officer asked why the questions asked at the Sherburne School Neighborhood meeting have not been made available on the website. He spoke to the recording equipment coming from the Portsmouth Housing Authority and not the city. He also addressed the list of city land available as prepared by the Land Use Committee, and how he feels it is not a complete list. Mr. Officer suggested that the lower lot of City Hall should be used for work force housing.

Sue Polidura said discussion regarding the McIntyre should take place sooner in the agenda this evening. She spoke to there being no escape clause as part of the McIntyre contract. Ms. Polidura said that the City Council needs to keep the best interest of residents in mind when making a decision regarding McIntyre.

Liza Hewitt spoke against the lack of a public hearing before moving forward with community power. She asked who has reviewed the contracts and that she does not understand why residents should have to opt out of community power.

Zelita Morgan (via zoom), spoke to the condition of the pathway along the South Mill Pond. She spoke against emails residents have sent to the city being forwarded to various staff. She said that there should be a link on the website to send messages to the City Manager, Facilities Manager, and the Planning/Sustainability Director.

Jacqueline Cali-Pitts (via zoom), said she has concerns surrounding community power.

**Councilor Blalock moved to suspend the rules and bring forward City Manager's Informational Item regarding the McIntyre Update. Seconded by Assistant Mayor Kelley and voted.**

## **XVII. CITY MANAGER'S INFORMATIONAL ITEMS**

### **1. McIntyre Update**

City Manager Conard reported that we remain at an impasse with our development partner. She said we continue to communicate with our development partner in an attempt to move past the impasse. She stated we continue to collect and analyze data generated by our two outside consultants, Cummings and RKG. She reported that the negotiation team consists of herself and City Attorney Susan Morrell and any city staff that seem appropriate. City Manager Conard said there has been no commitment of funding for the project amount, as it is not defined in the Settlement Agreement. She stated there is no commitment made or will be made before a public hearing or some type of work session is held where we can hear from the public. She said we had a check-in with the General Services on March 13<sup>th</sup> and we apprised them of the impasse and they thanked us for the information and asked for a copy of the vote taken, which we provided and our next check-in with them will be on March 31<sup>st</sup>.

City Attorney Morrell reported that our impasse involves the Development Agreement, which in 2019 was signed by both parties and the previous plan. She stated in that Development Agreement it had termination rights that was signed by the developer and the City. She said when the new project and the Settlement Agreement was signed in April of last year the new project needed a new Development Agreement. She said we had every expectation that those termination rights would be in that agreement, however the developer has not signed a version of the Development Agreement with those termination rights in it and that is one of the reasons why we are at an impasse.

**X. PUBLIC HEARINGS AND VOTE ON ORDINANCES AND/OR RESOLUTIONS**

First Reading of Ordinance

1. First reading of Ordinance amending Chapter 10 – Accessory Dwelling Unit - Use Regulations, Accessory Dwelling Units, Site Development Standards and Terms of General Applicability

**Councilor Moreau moved to pass first reading and schedule a public hearing and second reading at the April 3, 2023 City Council meeting. Seconded by Councilor Lombardi.**

Councilor Moreau said a great amount of time has been spent on this by the Planning Board. She stated there are changes for administrative approvals in the ordinance.

Councilor Blalock thanked Councilor Moreau and the Planning Board for their work on this ordinance.

Councilor Bagley said there are more adjustments to be made to the ordinance which will take place at second reading.

Mayor McEachern requested if there are any amendments to bring forward at second reading that they be provided in the City Council packet for the Council and public to review.

**Motion passed.**

**Councilor Cook moved to suspend the rules to bring forward Item XV. B.2. – Changes to Cemetery Committee Ordinance. Seconded by Assistant Mayor Kelley and voted.**

**XV. CITY COUNCIL MEMBERS**

**B. COUNCILOR COOK**

2. Changes to Cemetery Committee Ordinance

**Councilor Cook moved to schedule first reading of the ordinance change at the April 3, 2023 City Council meeting. Seconded by Councilor Moreau.**

Councilor Cook said that these recommended changes are coming from the Cemetery Committee and the Chair of the committee is available via zoom to answer any questions this evening. She indicated that the number of members is being amended because the committee is having difficulty making a quorum.

Susan Sterry, Cemetery Committee Chair, via zoom, thanked the City Council for creating this committee which is made up of dedicated individuals. She asked the Council to approve the request to have a first reading of the ordinance at the next City Council meeting.

Mayor McEachern thanked Sue for her work and the work of the committee.

**Motion passed.**

## **XII. CONSENT AGENDA**

- A. Letter from Ken La Valley, Chair, Out of the Darkness, requesting permission to hold the Out of the Darkness Community Walk on Saturday, September 30, 2023 from 10:00 a.m. to Noon (***Anticipated action – move to refer to the City Manager with Authority to Act***)
- B. Letter from Annie Zampitella, Leukemia & Lymphoma Society, requesting permission to hold the 2023 Light the Night New Hampshire on Saturday, September 16, 2023 from 5:00 p.m. to 8:00 p.m. (***Anticipated action – move to refer to the City Manager with Authority to Act***)
- C. Letter from Peter Splaine, Worshipful Master, St. John's Lodge, requesting permission to hold the annual St. John's Sunday Parade on Sunday, June 25, 2023 (***Anticipated action – move to refer to the City Manager with Authority to Act***)
- D. Letter from JerriAnne Boggis, Executive Director, Black Heritage Trail Juneteenth celebration, requesting permission to hold a Reggae Festival, Saturday, June 17<sup>th</sup> from Noon to 10:00 p.m. at Strawberry Banke and the African Burying Ground Memorial on Monday June 19<sup>th</sup> from 11:00 a.m. to 1:00 p.m. The Healing Rhythm of the Drums (***Anticipated action – move to refer to the City Manager with Authority to Act***)

**Assistant Mayor Kelley moved to adopt the Consent Agenda. Seconded by Councilor Bagley and voted.**

## **XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS**

- A. Email Correspondence

**Assistant Mayor Kelley moved to accept and place on file. Seconded by Councilor Moreau and voted.**

- B. Letter from Courtney Perkins, Prescott Park Arts Festival, requesting an exception to the City/Prescott Park Arts Festival lease agreement, to add a special tribute performance outside of the season, celebrating seminal musicians in Portsmouth's musical history, the Shaw Brothers on Saturday, September 11, 2023 (*rain date – September 12, 2023*)

Assistant Mayor Kelley said that the event dates are incorrect and that it is taking place on Saturday, September 9<sup>th</sup> with a rain date of Sunday, September 10<sup>th</sup>.

**Assistant Mayor Kelley moved to approve. Seconded by Councilor Moreau and voted. Councilor Tabor abstained from voting on this request because he is Chair of the Prescott Park Arts Festival.**

- C. Letter from Robert McGuigan, Rolling Thunder NH, requesting establish a POW/MIA Chair of Honor program in Portsmouth

**Assistant Mayor Kelley moved to refer to the City Manager with Authority to Act. Seconded by Councilor Bagley.**

Councilor Denton said having a POW/MIA Chair of Honor program is very important and he would work with the city on this request.

**Motion passed.**

#### **XIV. MAYOR McEACHERN**

1. Appointments to be Considered:
  - Ernest Carrier appointment as alternate to the Planning Board
  - Daniel Main reappointment to the Portsmouth Housing Authority
  - Jacqueline Cali-Pitts reappointment to the Recreation Board
  - Richard Duddy reappointment to the Recreation Board
  - Lauren Krans reappointment to the Recreation Board
  - Jessica Blasko appointment to the Blue Ribbon Sustainability Committee
  - John Patrick Carty appointment to the Blue Ribbon Sustainability Committee
  - Jeffrey Mattson appointment as regular member to the Zoning Board of Adjustment
  - ML Geffert appointment as alternate to the Zoning Board of Adjustment
  - Jody Record appointment as alternate to the Zoning Board of Adjustment

The City Council considered the appointments outlined above, which will be voted upon at the next City Council meeting.

#### **XV. CITY COUNCIL MEMBERS**

##### **A. COUNCILOR TABOR**

1. Community Power

**Councilor Tabor moved that the Portsmouth City Council hereby authorizes the City Manager to enter into the Cost Sharing Agreement and Member Services Contract for the Complete Service Bundle with the Community Power Coalition of New Hampshire (CPCNH) with City Manager Karen Conard as the Authorized Officer and with elections on p. 19 of the Agreement being “yes”; and be it further moved, that the Portsmouth City Council hereby approves CPCNH’s Data Security and Privacy, Energy Portfolio Risk Management, Rates, and Financial Reserves Policies, as presented. Seconded by Councilor Cook.**

Councilor Tabor said Kevin Charette provided a great summary on this matter earlier this evening. He said this could be a game changer in putting us in a more sustainable position as a community. He asked City Attorney Morrell if the documents have been reviewed by the Legal Department. City Attorney Morrell stated that the Legal Department has reviewed the documents before the City Council this evening. Councilor Tabor said this would do a great deal of good for the residents. He said that the risks are low because any resident can exit the program at any time.

Councilor Denton spoke to the importance of this program and benefit to residents.

Councilor Bagley thanked Councilors Tabor, Denton, Cook and the Energy Committee. He said that the Council is doing this in the best optional way for residents.

Councilor Blalock said he thanked everyone for their work done. He said it is a great opportunity for residents to save some money.

Councilor Cook said it is a great honor to sit on this committee that is made up of great experts. She said the committee has met every month on this program and that there were two public hearings held on this matter and a work session with the Council. She indicated the Council is giving the City Manager authority to move forward and if everything remains on target we could have the program in place on April 11<sup>th</sup>.

Mayor McEachern said he would support this motion and we are looking at a 22% reduction in costs. He stated the worse that could happen with this is that we opt out of the program as a community.

Councilor Moreau asked if we would start with the basic plan.

Mayor McEachern stated that it is the City Council's responsibility to look at these types of issues and act. He said he feels it is in the best interest of the city.

**Motion passed.**

## **B. COUNCILOR COOK**

1. City Council Donation Policy

**Councilor Cook moved to bring forward the draft donation policy passed by the Governance Committee, included in the City Council packet. Seconded by Councilor Lombardi.**

Councilor Cook said this policy has been worked on since last fall. She said we started drafting a policy with a great deal of research being done by Deputy City Manager/Deputy City Attorney Woodland. She requested that this be moved forward for the next City Council meeting to take action.

Mayor McEachern said this allows a second look before voting on this matter.

Discussion followed on the process for donations.

**Motion passed.**

## **XVII. CITY MANAGER'S INFORMATIONAL ITEMS**

### **2. Pease Development Authority Update**

City Manager Conard reported that she attended her first PDA meeting last week. She outlined the various committees that she sits on as part of the appointment to the PDA. She informed the Council that Director Ferrini pointed out at the meeting that when the Millionaire Project comes forward all information be made available one week in advance.

## **XVIII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING**

Councilor Moreau announced that the Land Use Committee meeting held on March 10<sup>th</sup> narrowed down the properties to 9 and staff is now looking at those parcels with boots on the ground.

Councilor Blalock said the meeting of the Land Use Committee was three hours and part of the meeting voiced why we need work force housing in the city.

## **XIX. ADJOURNMENT**

**At 8:40 p.m., Councilor Moreau moved to adjourn. Seconded by Assistant Mayor Kelley and voted.**



KELLI L. BARNABY, MMC/CNHMC  
CITY CLERK

**TRUSTEES OF TRUST FUNDS  
CITY OF PORTSMOUTH NH  
ONE JUNKINS AVENUE – RM S310  
PORTSMOUTH, NH 03801**

March 22, 2023

The Honorable Mayor Deaglan K. McEachern  
and Members of the Portsmouth City Council  
City Hall  
One Junkins Avenue  
Portsmouth NH 03801

Re: Significant Addition to the Scholarship Portfolio Managed by the Trustees of the Trust Funds

Dear Mayor and Council:

This community has a strong tradition of supporting its public school students, beyond tax dollars, through private donations in the form of scholarships. As early as 1834, a Portsmouth resident, Mary Clark, endowed a scholarship for deserving children in public school. The community is known for supporting the education of its young adults after graduation from high school with numerous scholarships providing financial assistance for college and career training, particularly for those students whose families' financial circumstances may limit their educational opportunities.

To exemplify that tradition, we call your attention to a recent gift to the scholarship funds we manage on the City's behalf, both because of its significance and its inspiring example of the philanthropic generosity that so many residents over the years have shown in the interest of providing for the education of Portsmouth youth once they graduate.

Many of you may remember William "Bill" Mortimer, a well-known and widely admired former member of the Portsmouth Police Department. Bill came to Portsmouth in 1952 after service in the Navy in World War II. He dedicated his thirty-five year and seven month career to public service in the Portsmouth Police Department, retiring on March 1, 1988 as Police Commander - Chief of Detectives. Bill was a 1974 graduate of the FBI National Academy, and over time served as President of the FBI National Academy Associates, the Portsmouth Police Relief Association, and the New Hampshire Criminal Investigators Association. He was a life member of the Rockingham County Law Enforcement Association. Following retirement, Bill was elected to the Portsmouth Police Commission in 1998 and served four years as Commissioner, two as Chair. The Portsmouth Police Department dedicated "The William D. Mortimer Conference Room" in honor of his service to the community.

Throughout his time in Portsmouth, Bill went out of his way to connect with and mentor young people. He believed they were the key to a bright future for this country. He believed in the value of a good education, and dedicated many volunteer hours to the Portsmouth Futures Program, both as a longtime member of the Futures Board and, for many years, a mentor and advisor to 8<sup>th</sup> to 12<sup>th</sup> grade students enrolled in the program. The Futures Board established a scholarship in his name when he retired.



In 2006 and 2015, Bill established two scholarship funds, the William and Irene Mortimer Scholarship Fund I and the William and Irene Mortimer Scholarship Fund II, providing for multi-year scholarships awarded annually. These Funds were endowed with more than \$50,000, a very generous gift in support of education. Bill passed away in 2019. Recently, the Trustees of Trust Funds received another \$911,827.36 from Bill's estate, to be divided equally between the Mortimer Scholarship Funds.

Bill's scholarship fund gifts – a nearly 10 percent increase in the \$9.2 million in scholarship funds the Trustees manage – resounds among the others; but should not eclipse the fact that many in our community have donated and continue to donate to scholarship resources. There are currently 29 named scholarships funds, including the William and Irene Mortimer Funds; and, since 2019, we have invited residents and businesses to contribute, if they choose, to five Community Scholarship Funds focused on pursuit of further education in the fields of Arts, Athletics, STEM, Higher Education and Career Tech/Trades.

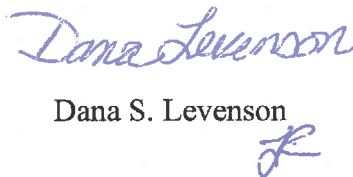
As our high school seniors prepare for graduation in June and plan the next steps in their futures, we want to call your attention to the many ways Portsmouth supports our students, our future citizens. For more information on the scholarships available to graduating students who live in Portsmouth and the funds residents can support, please visit:

<https://www.cityofportsmouth.com/city/trustees-trust-funds-scholarships>

Respectfully,



Thomas R. Watson  
Trustees of the Trust Funds



Dana S. Levenson



Peter G. Weeks

CC: Elizabeth A. Angerman

P.S. The Trustees of the Trust Funds also wish to inform you that we have just finalized a Scholarship Policy Statement [posted on the City's website: [https://www.cityofportsmouth.com/sites/default/files/2023-03/2Scholarship%20Policy%20February%2015%2C%202023\\_1.pdf](https://www.cityofportsmouth.com/sites/default/files/2023-03/2Scholarship%20Policy%20February%2015%2C%202023_1.pdf)] to answer questions and guide prospective donors in creating or donating to scholarship funds in the name of relatives, business associates or others they wish to memorialize.

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That Chapter 1, Article IV, Section 1.411 – **CEMETERY COMMITTEE** of the Ordinances of the City of Portsmouth be amended as follows (deletions from existing language **stricken**; additions to existing language **bolded**; remaining language unchanged from existing):

**ARTICLE IV: COMMISSIONS/AUTHORITIES**

**Section 1.411: CEMETERY COMMITTEE**

- A. Membership and Term: The Cemetery Committee shall consist of not less than ~~twelve (12)~~**seven (7)** or more than ~~eighteen (18)~~**eleven (11)** regular members. The members shall be appointed by the Mayor subject to the approval of the City Council ~~for a term of two (2) years, coterminous with the City Council term. The first four (4) members appointed after adoption of this ordinance shall be appointed to terms of three (3) years commencing as of the date of completed appointment. Thereafter, all appointments shall be for terms of two (2) years. All appointments to fill vacancies shall serve the remainder of the vacant term. A quorum shall be a majority of the existing appointed members at any given time.~~
- B. Powers and Duties: The Committee shall provide advice and recommendations to the City Manager and the City Council with respect to all issues affecting municipal cemeteries, including the solicitation and acceptance of grants; the expenditure of any funds for specific improvements; and any expenditures from the Cemetery Trust Fund. Nothing herein shall limit the power of the City Council or City Manager to take immediate action in the event of exigent circumstances.
- C. It shall be the responsibility of the Cemetery Committee to encourage the restoration, preservation, and safeguarding of Portsmouth's historic cemeteries and their history for future generations.

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

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

This ordinance shall take effect upon its passage.

Be it further ordained that on the adoption of this amendment, the terms of all existing members of the Cemetery Committee shall be terminated. The Mayor shall thereafter re-appoint the members to the Committee with City Council approval until all existing members have been offered the opportunity for reappointment.

APPROVED:

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Deaglan McEachern, Mayor

ADOPTED BY COUNCIL:

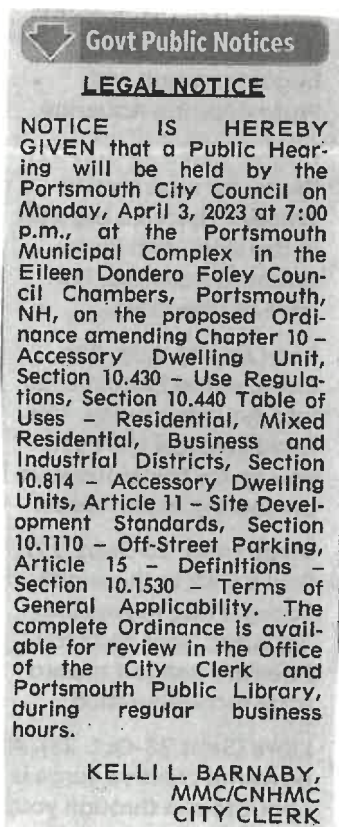
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Kelli L. Barnaby, City Clerk

## LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, April 3, 2023 at 7:00 p.m., at the Portsmouth Municipal Complex in the Eileen Dondero Foley Council Chambers, Portsmouth, NH, on the proposed Ordinance amending Chapter 10 – Accessory Dwelling Unit, Section 10.430 – Use Regulations, Section 10.440 Table of Uses – Residential, Mixed Residential, Business and Industrial Districts, Section 10.814 – Accessory Dwelling Units, Article 11 – Site Development Standards, Section 10.1110 – Off-Street Parking, Article 15 – Definitions – Section 10.1530 – Terms of General Applicability. 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/CNHMC  
CITY CLERK



## Section 10.430 Use Regulations

- 10.431 All **buildings** or **structures** hereafter erected, reconstructed, altered, enlarged or moved, and all **uses** hereafter established, shall be in conformity with the provisions of this Zoning Ordinance.
- 10.432 No **building, structure,** or land shall be used for any purpose or in any manner other than that which is permitted in the district in which it is located.
- 10.433 **Buildings, structures** and land owned or leased by the City of Portsmouth shall be exempt from all provisions of this Ordinance except Article 10, Environmental Protection Standards. Nevertheless, the City is urged to comply with all relevant land **use** controls whenever possible and feasible.
- 10.434 The **use** regulations for all zoning districts are listed in Section 10.440 (Residential, Mixed Residential, Business and Industrial Districts), Section 10.450 (Pease/Airport Districts) and Section 10.460 (Municipal and Conservation Districts).
- 10.434.10 The following key applies to the Tables of Uses in Sections 10.440, 10.450 and 10.460:

<b>Symbol</b>	<b>Meaning</b>
<u>AP</u>	<b><u>use is permitted through Administrative Approval</u></b>
P	<b>use</b> is permitted in the district
S	<b>use</b> is allowed in the district upon the granting by the Board of Adjustment of a special exception
CU	<b>use</b> is allowed in the district upon the granting by the Planning Board of a conditional use permit
N	<b>use</b> is prohibited in the district

P = Permitted AP = Administrative Approval S = Special Exception CU = Conditional Use Permit N = Prohibited

**Section 10.440 Table of Uses – Residential, Mixed Residential, Business and Industrial Districts**

P = Permitted AP = Administrative Approval S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	WI	Supplemental Regulations
<b>1. Residential Uses</b>																		
1.10 <b>Single family dwelling</b>	P	P	P	P	N	P	P	P	NP	N	P	P	N	N	N	N	N	

P = Permitted AP = Administrative Approval S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	WI	Supplemental Regulations
<b>1.20 Accessory dwelling unit</b>																		10.814 (Accessory Dwelling Units)
<b>1.21 Attached accessory dwelling unit (AADU)</b>																		
<u>1.211 Up to 750 sq. ft. GLA and entirely within an existing single-family dwelling</u>	<del>AP</del> <del>CU</del>	<del>AP</del> <del>CU</del>	<del>AP</del> <del>CU</del>	<del>AP</del> <del>CU</del>	N	<del>AP</del> <del>CU</del>	<del>AP</del> <del>CU</del>	<del>AP</del> <del>CU</del>	CU	N	CU	CU	N	N	N	N	N	
<u>1.212 Up to 750 sq. ft. GLA and in an expansion of an existing single-family dwelling</u>	CU	CU	CU	<del>CU</del> N	N	<del>CU</del> N	<del>CU</del> N	<del>CU</del> N	N	N	<del>CU</del> N	<del>CU</del> N	N	N	N	N	N	



P = Permitted AP = Administrative Approval S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	WI	Supplemental Regulations
<b>1.22 Detached accessory dwelling unit (ADU)</b>																		
<u>1.221 Up to 600 sq. ft. GLA and entirely within an existing accessory building that conforms with the dimensional requirements of this Ordinance.</u>	CU	CU	AP	AP	N	AP	AP	AP	N	N	N	N	N	N	N	N	N	
<u>1.222 Up to 600 sq. ft. GLA in an existing accessory building that does not conform with the dimensional requirements of this Ordinance or includes the expansion of the existing accessory building</u>	CU	CU	CU	CU	N	CU	CU	CU	N	N	N	N	N	N	N	N	N	
<u>1.223 Up to 750 sq. ft. GLA on a lot and in a new building that complies with all lot and building dimensional standards of this Ordinance for a single-family dwelling</u>	CU	CU	CU	CU	N	CU	CU	CU	N	N	N	N	N	N	N	N	N	
<del>1.25 Garden Cottage</del>	<del>CU</del>	<del>CU</del>	<del>CU</del>	<del>CU</del>	<del>N</del>	<del>CU</del>	<del>CU</del>	<del>CU</del>	<del>CU</del>	<del>N</del>	<del>N</del>	<del>N</del>	<del>N</del>	<del>N</del>	<del>N</del>	<del>N</del>	<del>N</del>	<del>10.815 (Garden Cottages)</del>
<b>1.30 Two-family dwelling</b>	N	N	P	P	P	P	P	P	P	N	P	P	N	N	N	N	N	10.640 (Downtown Overlay district)

## 10.814 Accessory Dwelling Units

### 10.814.10 Purpose and Eligibility

10.814.11 ~~The purpose of this section is to provide for additional **dwelling units** within **single-family neighborhoods** in order to: increase the supply of **smaller, more affordable housing units** with less need for more **municipal infrastructure** or further **land development**; contribute to **local housing needs**; and provide opportunities for adapted reuse of existing **accessory structures**. The standards in this section are intended to integrate more **housing options** into the community with minimal impact on the surrounding neighborhood.~~

10.814.12 ~~One, and only one, **Only one accessory dwelling unit (ADU)** shall be allowed on any **lot** containing a **single-family dwelling**. An **accessory dwelling unit** shall not be allowed under this Section 10.814 on a **lot** that contains more than one **dwelling unit**.~~

10.814.13~~20~~ Except as provided elsewhere in this Section 10.814, in order for a **lot** to be eligible for an **accessory dwelling unit**, the **lot** and all proposed **structures** and additions to existing **structures** shall conform to all zoning regulations as follows:

10.814.21~~131~~ Any municipal regulation applicable to **single-family dwellings** shall also apply to the combination of a **principal dwelling unit** and an **accessory dwelling unit** ~~including, but not limited to, **lot area, yards, open space, off-street parking, building coverage, and building height**~~. However, an **accessory dwelling unit** shall be allowed without additional requirements for **lot area, lot area per dwelling unit, or frontage** beyond those required for a **single family dwelling** without an **ADU** in the same zoning district.

10.814.22~~132~~ An **attached accessory dwelling unit** is permitted on existing **nonconforming lots** and within an existing **nonconforming buildings** as long as there is provided no increased or new nonconformity is created. ~~in **building height** or **building footprint** for any portion of the existing **building** and no increase to the nonconformity.~~

10.814.23~~133~~ Newly constructed **detached accessory dwelling units** shall be governed by the provisions of this Ordinance and the **side and rear yard requirements** for the applicable zoning or Character District.

~~A **detached accessory dwelling unit** is not an **accessory building** or **structure** for the purposes of this Ordinance, and therefore shall be governed by the applicable minimum **yard** dimensions in Section 10.521 for a **principal building**~~

~~or structure and not by the side yard and rear yard standards applicable to an accessory building.~~

~~10.814.14 Notwithstanding all of the above provisions, an accessory building existing on the effective date of this ordinance may be converted to a detached accessory dwelling unit as provided in this Ordinance.~~

#### 10.814.20 Standards for All Accessory Dwelling Units

~~10.814.30~~ All **accessory dwelling units** shall comply with the following standards:

~~10.814.321~~ The **principal dwelling unit** and the **accessory dwelling unit** shall not be separated in ownership (including by condominium ownership).

~~10.814.322~~ Either the **principal dwelling unit** or the **accessory dwelling unit** shall be occupied by the owner's ~~of the dwelling as his or her~~ principal place of residence. The owner shall provide documentation demonstrating compliance with this provision to the satisfaction of the City, ~~that one of the units is his or her principal place of residence.~~

~~10.814.3221~~ When the property is owned by an entity, one or more trusts, one of the **dwelling units** shall be the principal place of residence of one or more principals of that entity, such as the a member or beneficiary (ies) of the trust(s).

~~10.814.23~~ **Accessory dwelling units** shall not have more than two bedrooms.

~~10.814.2433~~ Neither the **principal dwelling unit** nor the **accessory dwelling unit** shall be used for any business, except that the property owner may have a **home occupation** use in the unit that he or she occupies as allowed or permitted elsewhere in this Ordinance.

~~10.814.2534~~ Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.

~~10.814.26~~ 1 off-street parking space shall be provided for an **ADU** in addition to the spaces that are required for the principal **single-family dwelling**.

#### 10.814.30 Additional Standards for Attached Accessory Dwelling Units

~~10.814.40~~ An **attached accessory dwelling unit (AADU)** shall comply with the following additional standards:

10.814.431 An interior door shall be provided between the **principal dwelling unit** and the **AADU accessory dwelling unit**.

10.814.432 The **AADU accessory dwelling unit** shall not ~~have more than two bedrooms and shall not~~ be larger than 750 sq. ft. **in gross living area (GLA).** ~~gross floor area~~. For the purpose of this provision, **the gross floor living area of the AADU** shall not include ~~existing~~ storage space, shared entries, or other spaces not exclusive to the **AADU accessory dwelling unit**.

10.814.433 The **AADU** shall be subordinate to the **principal dwelling unit** in scale, height and appearance, as follows:

~~10.814.331~~ Any exterior changes to the **single-family dwelling** shall maintain the appearance of a **single-family dwelling**. If there are two or more doors in the front of the **principal dwelling unit**, one door shall be designed as the principal entrance and the other doors shall be designed to appear to be secondary.

~~10.814.44~~ No portion of the **AADU** shall be closer to the **front lot line** than the existing front wall of the **principal dwelling unit**.

~~10.814.45~~ An **AADU** that is attached to the **single-family dwelling** (i.e., created by an expansion of the existing **structure**) shall comply with the following:

~~10.814.451~~ An exterior wall of the **AADU** that faces a **street** on which the **lot** has **frontage** shall comprise no more than 40 percent of the total visible **façade** area of the **dwelling** as seen from that **street**.

10.814.45332 An addition to or expansion of an existing **building** for the purpose of creating an **AADU** shall be recessed or projected at least 18 inches from the existing front wall of the **principal dwelling unit**. Where the addition includes the construction of an attached, street-facing garage, it shall be set back at least 10 feet from the front wall of the **principal dwelling unit**.

~~The addition to or expansion of the existing **single-family dwelling** may include an increase in **building height** only as an upward expansion of the existing **principal building** with no increase in building footprint.~~

10.814.45333 The **building height** of any addition or expansion that includes an increase in **building footprint** shall be ~~less than the **building height** of the existing principal building, no~~ greater than 75% of the height of the existing **building**. In the case of a **single-story building**, an addition or expansion

may include either an additional story to the existing building or a single-story addition at the same height as the existing building.

~~10.814.454~~—The **AADU** shall be architecturally consistent with the existing **principal dwelling** through the use of similar materials, detailing, roof pitch, and other **building** design elements.

#### **10.814.40 Additional Standards for Detached Accessory Dwelling Units**

~~10.814.50~~ A **detached accessory dwelling unit (DADU)** shall comply with the following additional standards:

~~10.814.51~~—In a General Residence district, the combination of the **principal dwelling** and the **DADU** shall comply with the minimum **lot area per dwelling unit** specified for the district. (For example, the required **lot area** for a **single-family dwelling** with a **DADU** in the GRA district is 7,500 sq. ft. per **dwelling unit** multiplied by 2 **dwelling units**, or 15,000 sq. ft.) In a Single Residence or Rural district, a lot with a **DADU** shall comply with the minimum **lot area** for the district, but need not comply with the minimum **lot area per dwelling unit**.

10.814.4152 The **DADU** shall not have more than two bedrooms and shall not be larger than 750 sq. ft. in gross living floor area, except that the maximum **gross floor area** shall be 1,000 sq. ft. if the **lot area** is 2 acres or more.

10.814.4153 A **DADU** that is created from an existing **accessory building** that does not comply with its minimum **yard requirements** shall not exceed 600 sq. ft. in **gross living area**.

The **DADU** shall be clearly subordinate to the principal **single-family dwelling** in scale, height and appearance.

~~10.814.531~~—The façade area of the **DADU** that faces a **street** on which the **lot** has **frontage** shall be no more than 40 percent of the combined visible façade areas of the principal **single-family dwelling** and the **DADU** facing the same **street**.

10.814.42 A **DADU** that is created from an existing **accessory building** that does not comply with its minimum **yard requirements** shall comply with the following additional requirements:

- 10.815.421 The existing **accessory building** shall not be expanded either vertically or horizontally, other than through the addition of a front entry not to exceed 50 sq. ft., or a side or rear deck not to exceed 300 sq. ft.; except that the Planning Board may grant a conditional use permit to allow the **gross living area** of the **accessory building** to be expanded up to a total of 600 sq. ft. as provided in this Ordinance.
- 10.815.422 A **DADU** that is within a required **side yard** or **rear yard** setback for the zoning district shall not have any windows, balconies, or doors higher than eight feet above grade facing adjacent property.

10.814.43 The **DADU** shall be **clearly** subordinate to the principal **single-family dwelling** in scale, height and appearance **as follows:-**

~~10.814.532~~ The **building height** of the **DADU** shall be less than the **building height** of the principal **single-family dwelling**.

~~10.814.533~~ The **DADU** shall be architecturally consistent with the **principal dwelling** through the use of similar materials, detailing, and other **building design elements**.

~~10.814.54~~ The **DADU** shall be separated from the **single-family dwelling** by at least 20 feet.

10.814.431~~55~~ The front wall of ~~the a~~ **DADU** ~~that is not created within an existing accessory building~~ shall be **set back** at least 10 feet further from the **front lot line** than the existing front wall of the **principal single-family dwelling unit**.

10.814.432 The **building height** of the **building containing** the **DADU** shall be **no greater than 22 feet**.

10.814.433 When the **building containing** the **DADU** is taller than the **principal building**, its required setback from all **property lines** shall be increased by the difference in **building height** between the **DADU** and the **principal building**.

10.814.434 The **building footprint** of the **building containing** the **DADU** shall be no greater than 750 sq. ft.

10.814.435 The **gross floor area** of the **building containing** the **DADU** shall be no greater than 1,600 sq. ft. **gross floor area** or 75 percent of the **gross floor area** of the **principal dwelling unit**, whichever is less.

10.814.436 The **DADU** may include roof dormers provided they are located outside the required setbacks from all property lines and occupy no greater than 33% of any individual roof plane.

10.814.437 The **DADU** shall comply with the drainage requirements of this Ordinance.

10.814.438 The **DADU** shall comply with the lighting requirements of this Ordinance.

10.814.44 A newly constructed **DADU** shall be separated no less than 5 feet from the principal structure or as required by the Building Code, whichever is greater.

~~10.814.56~~ No portion of the **DADU** shall be located in any required front yard, regardless of the location of the single-family dwelling.

#### **10.814.50 Architectural Design Standards**

Where the creation of an **accessory dwelling unit** involves the construction of a new **building** or an addition to or expansion of an existing **building**, the exterior design shall be architecturally consistent with or similar in appearance to the **principal building** using the following design standards:

10.814.51 The new **building**, addition or expansion shall be architecturally consistent with or similar in appearance to the existing **principal building** with respect to the following elements:

- Massing, including the shape and form of the **building footprint**, roof or any projecting elements;
- Architectural style, design, and overall character;
- Roof forms, slopes, and projections;
- Siding material, texture, and profile;
- Window spacing, shapes, proportions, style and general detailing;
- Door style, material and general detailing;
- Trim details, including window and door casings, cornices, soffits, eaves, dormers, shutters, railings and other similar design elements;
- Exposed foundation materials and profiles.

~~10.814.60~~ Before granting a conditional use permit for an **attached or detached ADU**, the Planning Board shall make the following findings:

10.814.52 If provided, the following elements shall be architecturally consistent with or similar in appearance to the corresponding elements on the **principal building** in terms of proportions, materials, style and details:

- Projections such as dormers, porticos, bays, porches and door canopies;
- Chimneys, balconies, railings, gutters, shutters and other similar design elements.

10.814.53 If provided, all street-facing garage doors shall be limited to 9 feet in width.

~~10.814.61~~ Exterior design of the **ADU** is consistent with the existing **principal dwelling on the lot.**

~~10.814.62~~ The site plan provides adequate and appropriate **open space, landscaping and off-street parking** for both the **ADU** and the primary **dwelling.**

~~10.814.63~~ The **ADU** will maintain a compatible relationship to **adjacent** properties in terms of location, design, and **off-street parking** layout, and will not significantly reduce the privacy of **adjacent** properties.

~~10.814.64~~ The **ADU** will not result in excessive noise, traffic or parking congestion.

### 10.814.60 **Review and Approval Process**

10.814.61 When Section 10.440 indicates that an **attached or detached ADU** is permitted by administrative approval (“AP”), the following shall apply:

10.814.611 For a period of at least 30 days following the date of application to the City, the applicant shall post a notice, in the form of a sign provided by the city, that describes the proposed **ADU** application subject to the following:

- (1) Such sign(s) shall be located on the perimeter of the **lot** where it can easily be viewed and readable from all abutting public ways.
- (2) The applicant shall also provide the sign notice information to the City. The City shall send by certified mail to all owners of any property located within 100 feet of the **lot.**

10.814.612 Any person may submit written comments on the **ADU** application. In order to be considered by the Planning Director, such comments shall be submitted to the Planning Director within the 30-day notice period.



10.814.613 The determination as to whether the **ADU** complies with all requirements shall be made as an administrative review by the Planning Director. If the Planning Director determines that the application is not appropriate for an AP, the application may be denied or may require a conditional use permit.

10.814.64 The Planning Director shall not approve an application for an **ADU** until the conclusion of the 30-day notice period.

10.814.62 ~~Before granting~~ When Section 10.440 requires a conditional use permit for an **attached** or **detached ADU**, the Planning Board shall make the following findings ~~before granting approval~~:

10.814.621 The **ADU** complies with all applicable standards of this Section 10.814 or as may be modified by the conditional use permit.

10.814.622 The ~~E~~ exterior design of the **ADU** is architecturally consistent with or similar in appearance to the existing principal dwelling on the lot.

10.814.623 The site plan provides adequate and appropriate **open space and landscaping** for both the **ADU** and the ~~primary dwelling-principal dwelling unit~~, and complies with the ~~off-street parking~~ requirements of Section 10.814.26.

10.814.624 The **ADU** will maintain a compatible relationship ~~to-with~~ the character of adjacent and neighborhood properties in terms of location, design, and **off-street parking** layout, and will not significantly reduce the privacy of **adjacent** properties.

10.814.6370 In granting a conditional use permit for an **accessory dwelling unit**, the Planning Board may modify a specific standard set forth in Sections 10.814.2640 and ~~or~~ 10.814.3052 through 10.814.506 ~~(except the size and height of any ADU)~~, including requiring additional or reconfigured **off-street parking** spaces, provided that the **Board** finds such modification will be consistent with the required findings in Section 10.814.629.

### 10.814.70 **Post-Approval Requirements**

10.814.7180 Documentation of the conditional use permit approval shall be recorded at the Rockingham County Registry of Deeds, ~~together with an affidavit that either the principal dwelling unit or the accessory dwelling unit will be~~

occupied by the owner of the **dwelling** as the owner's principal place of residence, as required by Section 10.814.22.

10.814.7290 A certificate of use issued by the Planning Department is required to verify compliance with the standards of this Section, including the owner-occupancy and principal residency requirements. Said certificate shall be issued by the Planning Department upon issuance of a certificate of occupancy by the Inspection Department ~~and shall be renewed annually upon submission of such documentation as the Planning Department may require to verify compliance.~~ A certificate of use shall not be issued prior to recording of documentation as required by this Ordinance 10.814.80.

10.814.73 The certificate of use shall be renewed annually upon submission of such documentation as the Planning Department may require to verify continued compliance with the standards of this Section. Failure to comply with this requirement shall be deemed a violation of the ordinance and may be enforced as provided in Article 2.

## ~~10.815—~~Garden Cottages

~~An **accessory building** existing on the effective date of this ordinance may be converted to a **garden cottage** through a conditional use permit granted by the Planning Board, subject to the following provisions and limitations.~~

~~10.815.10— One **garden cottage**, and only one, shall be allowed on any **lot** containing a **single-family dwelling**.~~

~~10.815.20— Relationship to other provisions of this Ordinance:~~

~~10.815.21— No **garden cottage** shall be allowed on the same **lot** as an **accessory dwelling unit** authorized under this Ordinance.~~

~~10.815.22— The establishment of a **garden cottage** results in two **dwelling units** on the property and thus makes the property ineligible to establish an **accessory dwelling unit** under RSA 674:72-73 and this Ordinance. As a condition of receiving a conditional use permit for a **garden cottage**, the property owner shall waive all rights under RSA 674:72 and RSA 674:73.~~

~~10.815.23— A **garden cottage** that complies with the standards of this section is exempt from the residential density standards of the Zoning Ordinance. A second **dwelling unit** on a **lot** that does not comply with the standards of this section shall be considered to be either a second primary **dwelling** or an **accessory dwelling unit** and shall comply with the applicable standards and provisions of the Ordinance.~~

~~10.815.30 — Garden cottages shall comply with the following standards:~~

~~10.815.31 — The existing **accessory building** shall not be expanded either vertically or horizontally, other than through the addition of a front entry not to exceed 50 sq. ft., or a side or rear deck not to exceed 300 sq. ft.~~

~~10.815.32 — A **garden cottage** shall not be larger than 600 sq. ft. **gross floor area**.~~

~~10.815.33 — A **garden cottage** that is within a required **yard** for the zoning district shall not have any windows or doors higher than eight feet above grade facing the **adjacent** property.~~

~~10.815.34 — The **principal dwelling unit** and the **garden cottage** shall not be separated in ownership (including by condominium ownership); and either the **principal dwelling unit** or the **garden cottage** shall be occupied by the owner of the property. The owner shall provide documentation demonstrating to the satisfaction of the City that one of the units is his or her principal place of residence.~~

~~10.815.341 — When the property is owned by one or more trusts, one of the **dwelling units** shall be the principal place of residence of the beneficiary(ies) of the trust(s).~~

~~10.815.35 — Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.~~

~~10.815.40 — Before granting a conditional use permit for a **garden cottage**, the Planning Board shall make the following findings:~~

~~10.815.41 — Exterior design of the **garden cottage** is consistent with the existing **single-family dwelling** on the lot.~~

~~10.815.42 — The site plan provides adequate and appropriate **open space, landscaping, and off-street parking** for both the **garden cottage** and the primary **dwelling**.~~

~~10.815.43 — The **garden cottage** will maintain a compatible relationship to **adjacent** properties in terms of location and design, and will not significantly reduce the privacy of **adjacent** properties.~~

~~10.815.44 — The **garden cottage** will not result in excessive noise, traffic or parking congestion.~~

~~10.815.50~~ In granting a conditional use permit for a **garden cottage**, the Planning Board may modify a specific dimensional or parking standard set forth in Section 10.815.30, including requiring additional or reconfigured **off-street parking** spaces, provided that the Board finds such modification will be consistent with the required findings in Section 10.815.40.

~~10.815.60~~ Documentation of the conditional use permit approval shall be recorded at the Rockingham County Registry of Deeds.

~~10.815.70~~ A certificate of use issued by the Planning Department is required to verify compliance with the standards of this Section, including the owner-occupancy and principal residency requirements. Said certificate shall be issued by the Planning Department upon issuance of a certificate of occupancy by the Inspection Department and shall be renewed annually upon submission of such documentation as the Planning Department may require to verify compliance. A certificate of use shall not be issued prior to recording of documentation as required by 10.815.60.

# Article 11 Site Development Standards

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## Section 10.1110 Off-Street Parking

### 10.1113.20 Location of Parking Facilities on a Lot

Required **off-street parking** spaces shall not be located in any required **front yard**, or between a **principal building** and a **street** (including on a **corner lot**). This restriction shall not apply to required **off-street parking** for a **single-family dwelling** (including the combination of a **single-family dwelling** and an **accessory dwelling unit**) -or **two-family dwelling**.

**Article 15 Definitions**

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**Section 10.1530 Terms of General Applicability**

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**A**

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**Accessory building or structure**

A subordinate **building** located on the same **lot** with the principal **building**, occupied by or devoted to an **accessory use**. Where an **accessory building** is attached to the main **building** in a substantial manner, as by a wall or roof, such **accessory building** shall be considered part of the main **building**. For the purpose of this Ordinance, a **detached accessory dwelling unit that is not created within an existing accessory building** is not an **accessory building or structure**.

**Accessory dwelling unit (ADU)**

An **attached or detached dwelling unit** that is constructed on the same **lot** as a **single-family dwelling** and complies with the standards for **accessory dwelling units** set forth in this Ordinance.

**Attached accessory dwelling unit (AADU)**

An **accessory dwelling unit** that is constructed within or attached to a **single-family dwelling**. For the purpose of this definition, “attached” means:

- (a) located within the **dwelling** and separated from the **principal dwelling unit** either horizontally or vertically, or
- (b) sharing a common wall for at least 25 percent of the length of the side of the **single-family dwelling**.

“Attached” does not include connection to the **single-family dwelling** solely by an unenclosed **structure** (such as a breezeway) or by an enclosed but unconditioned space.

**Detached accessory dwelling unit (DADU)**

An **accessory dwelling unit** that is constructed within an ~~accessory~~ **detached building** on a **lot** containing one **single-family dwelling**. A detached accessory dwelling unit may be connected to the **single-family dwelling** by an unenclosed **structure** (such as a breezeway) or by an unconditioned space.

**Accessory use**

A **use** that is incidental and subordinate to the **principal use** and located on the same **lot** with such **principal use** or **building**.

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# G

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## **Garden cottage**

~~A **dwelling unit** that is constructed through conversion of an **accessory building** on the same lot as a **single-family dwelling** and complies with the standards for **garden cottages** set forth in the Ordinance.~~

## **Gross floor area (GFA)**

The sum of the areas of the several floors of a **building** or **buildings** as measured by the exterior faces of the walls, but excluding the areas of fire escapes, unroofed porches or terraces, and areas such as basements and **attics** exclusively devoted to **uses** accessory to the operation of the **building**. If the exterior walls are greater than 6 inches thick, then the **gross floor area** shall be adjusted to a maximum of a 6-inch thick wall.

## **Gross living area (GLA)**

The total area of finished residential space in an accessory **dwelling unit**, including all conditioned living space, but excluding unconditioned space such as decks, porches, garages, or other such spaces that have not been converted into living space. **GLA** is calculated by measuring the interior perimeter of the **accessory dwelling unit**.



Karen S. Conard  
City Manager

## CITY OF PORTSMOUTH

City Hall, One Junkins Avenue  
Portsmouth, New Hampshire 03801  
kconard@cityofportsmouth.com  
(603) 610-7201

**Date:** March 30, 2023

**To:** Honorable Mayor McEachern and City Council Members

**From:** Karen S. Conard, City Manager *KSC*

**Re:** City Manager's Comments on City Council Agenda of April 3, 2023

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### ***X. Public Hearings and Votes on Ordinances and/or Resolutions:***

**A. First Reading of Ordinance Amending Chapter 1, Article IV, Section 1.411 – Cemetery Committee – Membership and Term:**

Attached please find an amendment to Chapter 1, Article IV, Section 1.411 – Cemetery Committee – Membership and Term.

*I recommend that the City Council move to pass first reading, and schedule a public hearing and second reading on this proposed amendment at the April 17, 2023 City Council meeting.*

**B. Public Hearing and Second Reading of Ordinance Amending Chapter 10 – Accessory Dwelling Unit, Section 10.43 – Use Regulations, Section 10.440 Table of Uses – Residential, Mixed Residential, Business and Industrial Districts, Section 10.814 – Accessory Dwelling Units, Article 11 – Site Development Standards, Section 10.1110 – Off-Street Parking, Article 15 – Definitions – Section 10.1530 – Terms of General Applicability:**

Attached please find an amendment to Chapter 10 – Accessory Dwelling Unit, Section 10.43 – Use Regulations, Section 10.440 Table of Uses – Residential, Mixed Residential, Business and Industrial Districts, Section 10.814 – Accessory Dwelling Units, Article 11 – Site Development Standards, Section 10.1110 – Off-Street Parking, Article 15 – Definitions – Section 10.1530 – Terms of General Applicability.

*I recommend that the City Council move to postpone the public hearing and second reading, and schedule a work session on April 10, 2023. Further, for a report back from the Legal Department regarding amendments to be considered at the City Council meeting of April 17, 2023.*



## *XI. City Manager's Items Which Require Action:*

### 1. **Request for Public Hearing Regarding Skateboard Park Additional Bond Authorization:**

Bids for the construction of the Skateboard Park are due at 10:30 a.m. on Friday, March 31st. City staff is expecting that bid prices will show that additional funding is needed for the project to proceed. Consequently, after bid opening, staff will promptly evaluate the bids and submit for inclusion on the April 3<sup>rd</sup> Agenda a proposed Resolution for additional bond authorization. We will coordinate with the City Clerk to have the proposed bond authorization added promptly to the City Council packet.

*I recommend that the City Council move to schedule a public hearing on the bond authorization for the Skateboard Park at the April 17, 2023 City Council meeting.*

### 2. **License Agreement for Seacoast Eat Local/Farmers' Markets 2023:**

Attached please find a [License Agreement](#) between the City of Portsmouth and Seacoast Eat Local, manager of the Farmers' Market in Portsmouth.

*I recommend that the City Council move to authorize the City Manager to execute the License Agreement as presented, allowing Seacoast Eat Local to operate a Farmers' Market at the Municipal Complex on Saturdays from May 6, 2023 through November 4, 2023, and that the City Manager is further authorized to negotiate and execute any amendment to the Agreement that she deems consistent with its purpose.*

### 3. **Acceptance of Easement for 170 Union Street:**

At its regularly scheduled meeting on February 27, 2020, the Planning Board granted Site Plan Review approval to LCSG, LLC to merge two lots and construct a new single family residence and separate building with a four-bay garage and an apartment above on a site where a duplex existed. As a condition of approval, the Planning Board recommended the City accept an access easement for water services. This project is largely complete, and this access easement will permit City staff to access 170 Union Street for the purposes of leak detection and valve access.

The form of this easement is attached, and has been reviewed and approved by the Planning and Legal Departments. Public Works recommends acceptance of this easement.

*I recommend that the City Council move to authorize the City Manager to accept and record an access easement for water services in substantially similar form to the easement deed from LCSG, LLC contained in the agenda packet.*

4. **Acceptance of Easements for 160 Court Street:**

At its regularly scheduled meeting on August 21, 2018, the Planning Board granted Site Plan Review approval to Portsmouth Housing Authority to construct a four-story workforce housing structure located at 160 Court Street. As a part of that approval, the Planning Board recommended the City Council accept a sewer line easement securing an existing City sewer line crossing 160 Court Street. The proposed easement is 1,492 square feet in area.

The form of this easement is attached and has been reviewed and approved by the Planning and Legal Departments. Public Works recommends acceptance of this easement. The location of the sewer line and easement are depicted on the attached drawing.

*I recommend that the City Council move to authorize the City Manager to accept and record sewer line easement in substantially similar form to the easement deed from Portsmouth Housing Authority contained in the agenda packet.*

5. **Acceptance of Easements for 2454 Lafayette Road:**

At its regularly scheduled meeting on December 30, 2021, the Planning Board granted certain approvals to 2422 Lafayette Road Associates, LLC to construct a five-story structure with 95 condominium units at 2454 Lafayette Road. This project contemplates the demolition of the former Cinemagic building, to be replaced with a residential development.

Specifically, the Planning Board granted two Conditional Use Permits, one for increased housing density and one for increased building height as allowed by Section 10.5B72.10 and Section 105B72.20 of the Zoning Ordinance, along with Site Plan Review to demolish the existing structure and construct a five story structure with 95 condominium units with 20% designated as workforce housing units and provide 21,896 square feet of community space. The community space areas are shown on the attached drawing, and the workforce housing units are to be distributed evenly throughout the structure.

Therefore, the Planning Board recommended the City Council accept a community space easement and a workforce housing covenant from 2422 Lafayette Road Associates, LLC. The form of these easements has been reviewed and approved by the Planning and Legal Departments. As is consistent with past practices, Portsmouth Housing Authority has agreed to assist the City as it ensures future compliance with the terms of the Workforce Housing Covenant.

*I recommend that the City Council move to authorize the City Manager to accept and record a Community Space Easement and a Workforce Housing Covenant in substantially similar form to the easement deeds from 2422 Lafayette Road Associates LLC contained in the agenda packet.*

6. **Acceptance of Easement for 201 Kearsarge Way:**

At its regularly scheduled meeting on October 20, 2022, the Planning Board granted conditional subdivision approval to Richard Fusegni to create three new lots at 201 Kearsarge Way. As a part of that approval, the Planning Board recommended the City Council accept a 1,492 square foot access easement over Lot 2 of the subdivision. This new easement will supplement an existing access easement over 201 Kearsarge Way, and will be used for plowing, turnaround, and general maintenance of the adjacent, existing public way known as Birch Street.

The form of this easement is attached, and has been reviewed and approved by the Planning and Legal Departments. Public Works recommends acceptance of this easement. The area of the existing easement and the proposed additional access easement are depicted on the attached drawing.

*I recommend that the City Council move to authorize the City Manager to accept and record an access easement in substantially similar form to the easement deed from Richard Fusegni contained in the agenda packet.*

7. **Acceptance of Easements and License for 444 Borthwick Avenue:**

At its regularly scheduled meeting on August 18, 2022, the Planning Board granted conditional site plan approval to HCA Realty Inc., for the construction of a 501-space, satellite parking lot to be located at 444 Borthwick Avenue. This parking lot with associated on-site improvements is designed to support the existing hospital facilities currently serviced by 783 parking spaces.

As a part of that site plan approval, the Planning Board recommended the City Council accept a stormwater easement from, and grant a sidewalk maintenance license to, HCA Realty, Inc. HCA Realty, Inc. has agreed to construct certain stormwater infrastructure on 444 Borthwick Avenue which will better manage the stormwater runoff from Borthwick Avenue. The Department of Public Works recommends accepting this easement and the infrastructure contained therein. HCA Realty, Inc. will also accept maintenance of the new sidewalk, a portion of which will be constructed on City property.

The location of 444 Borthwick Avenue, and the locations of the stormwater easement and the sidewalk license area are depicted on the drawing included within the agenda packet. A draft deed and a draft license agreement are also included within the agenda packet.

*I recommend that the City Council move to authorize the City Manager to accept and record a stormwater easement, and grant a sidewalk maintenance license in substantially similar form to the easement deed from and the license agreement to HCA Realty, Inc. contained in the agenda packet.*

8. **Finalization of Easements and a License Amendment for West End Yards:**

Attached please find a memorandum from Assistant City Attorney Jane Ferrini regarding the proposed finalization of easements and a license amendment for West End Yards.

*In lieu of five individual motions, I recommend that the City Council move to authorize the City Manager to accept and record the multiple deeds and license amendment in substantially similar form as set forth in the memorandum from Attorney Ferrini.*

***XVI. Approval of Grants/Donations:***

A. **Approval of Donation to the Fire Department - \$100:**

Attached please find a donation form requesting acceptance of \$100 for the Fire Department from Shirley Van Aken.

*I recommend that the City Council move to approve and accept the donation as presented.*

B. **Acceptance of Fire Department Grant - \$333,294.54:**

Attached please find a memorandum from Fire Chief McQuillen regarding a Federal Department of Homeland Security's FY 2021 Assistance to Firefighters Grant Program.

*I recommend that the City Council move to approve and accept the grant as presented.*

C. **Acceptance of State Aid Grant Award (SAG) Peirce Island WWTF Upgrade - \$35,031,456:**

Attached please find a memorandum from the Public Works Department regarding a State Aid Grant Award (SAG) for the Peirce Island Wastewater Treatment Facility (WWTF) Upgrade.

*I recommend that the City Council move to approve and accept the State Aid Grant in the amount of \$35,031,456 payable over 30 years pursuant to the amortization schedule.*

D. **Acceptance of Grant from NHDES Local Source Water Protection Program - \$25,000:**

The City has been awarded a grant for \$25,000 from the NHDES Local Source Water Protection Program for assistance with the purchase of a 45-acre conservation easement adjacent to the Bellamy Reservoir. Attached please find the Award Letter and Grant Agreement.

*I recommend that the City Council move to authorize the City Manager to enter into a Grant Agreement with the State of New Hampshire Department of Environmental Services to accept up to \$25,000 from the NHDES Local Source Water Protection Program to assist with the purchase of a conservation easement on a parcel adjacent to the Bellamy Reservoir.*

E. **Approval of Donation from Piscataqua Savings Bank for Lunch as Part of Student Government Day:**

Attached please find a piece of correspondence from Piscataqua Savings Bank offering to pay for lunches for the City's Student Government Day on April 19, 2023.

*I recommend that the City Council move to accept the donation for Student Government Day for students, staff and City Council members participating, not to exceed \$1,000.*

F. **InvestNH Municipal Demolition Grant Program - \$125,600:**

A State of New Hampshire InvestNH Program Demolition Grant in the amount of \$125,600 has been awarded to the City as supplemental funds to support the Woodbury Avenue Cooperative Water-Sewer and Site Improvement project, which is funded in part and administered by the Portsmouth Community Development Block Grant Program. The InvestNH Demolition Grant will be used toward demolition and abatement expenses associated with the above-named project and administered by the City's Community Development staff.

*I recommend that the City Council move to approve and accept the grant as presented.*

***XVII. City Manager's Informational Items:***

1. **McIntyre Update:**

City Attorney Susan Morrell and I will provide an update on the McIntyre Redevelopment Project at this evening's meeting.

2. **Rail Car Safety Update:**

In response to the Ohio Train Derailment that occurred in February, Fire Chief McQuillen and Deputy City Manager Woodland have prepared a memorandum outlining the City's safety training regarding this type of incident.

3. **Household Hazardous Waste Collection Day:**

Attached please find a press release announcing Spring's Household Hazardous Waste Collection Day on April 29<sup>th</sup>.

4. **Request for Work Session Regarding Indoor Sports Complex/Ice Rink:**

I will provide a verbal report back regarding the request for a work session regarding the Indoor Sports Complex/Ice Rink.

## LICENSE AGREEMENT

The City of Portsmouth, a municipal corporation with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (hereinafter "City") and Seacoast Eat Local, a non-profit of individual vendors (hereinafter sometimes "Vendors" or "SEL") with a principal place of business and a mailing address at 2 Washington Street, Suite 331, Dover, New Hampshire 03820, and hereby agree as follows:

1) Seacoast Eat Local ("SEL") is licensed by the Portsmouth City Council to operate a Farmers' Market on Saturday mornings between **May 6, 2023 through November 4, 2023** pursuant to the conditions enumerated below.

2) Each individual Vendor of SEL, as well as SEL itself, jointly and severally agree to the following conditions relative to permission to use the designated locations by SEL as granted by the City.

### **A. LOCATION:**

This Agreement addresses the **Upper Municipal Lot** at the Municipal Complex (the Lot), 1 Junkins Avenue, Portsmouth, New Hampshire, as shown in the attached **Exhibit A**.

### **B. SITE CONDITIONS:**

1. The City Hall Municipal Lot will be reserved for use by SEL as shown in the attached **Exhibit A**. (The Market Area)
2. SEL is authorized to cover the existing handicap parking signs in the Market Area and to utilize the spaces otherwise designated as handicap spaces during the hours in which the Farmers' Market is authorized.
3. SEL shall immediately remove the coverings from the handicap parking space signs at the end of the authorized period.
4. There shall be no use by SEL of Lot B as shown on the attached **Exhibit A**.
5. Parking on grassy areas prohibited.
6. Market Area to be left in broom-clean condition one hour after closing.
7. All trash generated by the market shall be removed by SEL upon closing of the Farmers' Market and the Market Area shall be maintained in a clean, neat condition at all times.
8. SEL shall implement any temporary marking of Vendor spaces which may be directed by the City.

9. SEL shall provide police coverage from 8:00 a.m. to 12:00 p.m. as may be directed by the Police Chief, at its own expense, to control traffic and monitor parking during the hours when the Farmers' Market is in operation.
10. SEL agrees to operate the Farmers' Market on a "CARRY IN – CARRY OUT" basis.
11. SEL agrees to operate the Farmers' Market under the Distribution of Single Use Disposables Ordinance, as shown on attached **Exhibit B**.
12. SEL shall reserve a stall at each market in a location agreeable to the City for City use as directed by the City Manager, including but not limited to municipal and Portsmouth Library utilization.
13. The City shall place trash receptacles for use during the Farmers' Market in the type and number which it deems appropriate. SEL shall remove and dispose of the trash from the receptacles at the close of each Market.

**C. HOURS AND TIME OF MARKET:**

1. Hours of operation will be 8:00 a.m. until 12:00 p.m.
2. Set up and breakdown time will be two hours before and one hour after operation hours.

**D. SALE OF ITEMS:**

1. Products which may be sold at the Seacoast Eat Local farmers' market shall follow the guidelines and definitions outlined within the Farmers' Market Policies (a copy of which is attached hereto as **Exhibit C**).
2. Prior to the commencement of the market season, SEL shall provide the City with a list of approved market Vendors.
3. After the commencement of the season, new food vendors may only be added to the Farmers' Market on two dates to be predetermined by the Health Officer.

**E. HEALTH REQUIREMENTS:**

The Health Officer will have the authority to shut down the entire market if any single Vendor fails to comply with any Health Officer's directive to cure any situation creating a public health concern. The Health Officer shall make reasonable efforts to notify the Executive Director of Seacoast Eat Local or his/her assignee(s) at the time a warning is issued. Specific health requirements include, but are not limited to the following:

1. Vendors shall be excepted from the general City requirement of obtaining a Hawkers & Peddlers License (\$250.00). The following license fee schedule payable to the City shall apply to Farmers' Market Vendors:

- (a) Fruit and vegetable vendors at the Farmers' Market pay no fee.
  - (b) Non-produce/Non-food vendors at the Farmers' Market pay no fee.
  - (c) Prepared food vendors (anything other than non-prepared fruits and vegetables) and sellers of potentially hazardous agricultural products pay a seasonal fee of \$140.00 per season.
2. Non-recycled farm fresh eggs may be sold provided that they are stored at proper temperature (at or below forty-one (41) degrees Fahrenheit) during transport to and while displayed at the Farmers' Market.
3. Baked goods sold at the Farmers' Market must be individually or collectively wrapped while displayed and sold and baked in a licensed facility.
4. Any Vendor who sells Potentially Hazardous Foods[Time/Temperature Controlled for Safety (TCS)] (which includes any perishable food or food product which consists in whole or in part of milk or any other ingredient capable of supporting rapid and progressive growth of infectious and toxigenic microorganisms including, but not limited to, cream fillings and pies, cakes and pastries, custard products, meringue-topped baked goods or butter-cream type fillings in bakery products, meats and poultry) shall take appropriate measures to ensure that such products are transported, stored, and displayed in refrigerated or ice-cooled containers to maintain temperature of such products at 41 degrees Fahrenheit or below at all times to prevent spoilage or contamination. Any Vendor who sells cooked/hot TCS foods shall ensure that such products are cooked to required product temperatures as described in the Food Code or reheated to 165 degrees Fahrenheit for 15 seconds, and transported, stored and displayed in hot holding units at 135 degrees Fahrenheit or above at all times to prevent spoilage or contamination.
5. All animals are prohibited within the Farmers' Market with the exception of hearing ear dogs, guide dogs and service dogs as they are defined in RSA 167-D:1.
6. The above items do not eliminate or supersede other areas of compliance set by ordinance or regulations or within the grant of authority by the Portsmouth City Council.
7. In addition to the foregoing, each Vendor of Seacoast Eat Local shall comply with all applicable Federal, State and Municipal laws, regulations and ordinances.
8. No vendor shall provide fruit or vegetables to be sampled onsite unless a three bay sink is provided, to properly wash-rinse-sanitize all equipment and utensils used for sampling (knife, cutting board, colander, etc.). The



colander is then used for washing fruits and vegetables to be sampled. A potable water source must be provided to wash fruits or vegetables prior to service.

9. On-site food preparation and equipment are limited to simple grilling, reheating/hot holding, dispensing and assembling of foods and beverages.
10. No combustion-powered electrical generators are to be used at the market.

**F. OTHER CONDITIONS:**

1. Seacoast Eat Local shall maintain the City with a current list of board members with appropriate contact information.
2. Seacoast Eat Local agrees to indemnify and hold the City of Portsmouth harmless for any and all claims of liability, (including bodily injury or property damage) of any type or kind arising out of SEL's operation or use of this license agreement. This provision shall survive termination of this agreement.
3. Additionally, Seacoast Eat Local shall maintain general liability insurance in the amount of Two Million Dollars (\$2,000,000.00) naming the City of Portsmouth as an additional insured in a form approved by the City. A certificate demonstrating this insurance shall be kept on file with the City Clerk of the City at all times relevant to the operation of SEL under this agreement.
4. The City hereby approves the sale and tastings as allowed by the New Hampshire State Liquor commission of the following alcohol products at the Farmers' Market by SEL members:

Auspicious Brew  
 Throwback Brewery  
 Cathedral Ledge Distillery (Spirits)

Further alcohol sales or possession is allowed as may be approved in writing by the City Manager.

There shall be no open containers or consumption of alcoholic beverage on municipal premises unless sampling has been approved by the State Liquor Commission for the specific vendor and is done in accordance with Commission rules and regulations. All alcoholic beverage sales must be conducted in strict accordance with state law and any rules adopted pursuant thereto by the State of New Hampshire Liquor Commission. This provision of the license agreement with SEL may be revoked immediately and without cause if that action is determined to be appropriate by the City.

5. For the purpose of operating the Farmers' Market on the property of the City of Portsmouth it is understood that a Homestead License issued by the

State of New Hampshire, a Home Food Processors License issued by the State of Maine, or a Residential/Wholesale Kitchen license issued by the State of Massachusetts are not recognized or confer any benefit to the Vendor.

- 6. This agreement may be terminated at the sole discretion of the City of Portsmouth in the event that:
  - (a) Seacoast Eat Local or any Vendor fails to abide by the terms of this agreement.
  - (b) It is determined that the City of Portsmouth has a paramount need for the area which would otherwise be utilized by Seacoast Eat Local.
- 7. The City reserves the right to modify any provision in this agreement in the event that such modification is made necessary by any change in state or federal law.

**CITY OF PORTSMOUTH**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Karen S. Conard, City Manager  
Pursuant to vote of the City Council on  
\_\_\_\_\_.

**SEACOAST EAT LOCAL**

Dated: 3/24/2023

By:  \_\_\_\_\_  
Shawn Menard, Executive Director

**ACCESS EASEMENT FOR WATER SERVICES**

KNOW ALL MEN BY THESE PRESENTS, that LCSG, LLC a limited liability company with an address of 750 Brackett Road, Rye, New Hampshire (collectively, "Grantor"), for consideration received, grants to the City of Portsmouth, a municipal body politic having a mailing address of 1 Junkins Avenue, Portsmouth, County of Rockingham and State of New Hampshire 03801 ("Grantee") an easement over, below, along, and across the premises described herein, located at 160 & 168-170 Union Street, Portsmouth, County of Rockingham, State of New Hampshire, (Tax Assessor's Map No. 135, Lot 29), and being more particularly described as follows:

A certain tract or parcel of land with the buildings therein situated on Tax Assessor's Map No. 135, Lot 29 and measured at 9,346 square feet in area, as shown on the recorded plan D-42277, dated March 19, 2020 on record at the Rockingham County Registry of Deeds.

Meaning and intending to convey an easement over the premises conveyed to the within grantor by Deed of Mathew D. Goyette dated April 15, 2005 and recorded in the Rockingham County Registry of Deeds at Book 5613, Page 2372.

Purpose and Rights: The Grantee shall have a perpetual, permanent uninterrupted and unobstructed nonexclusive easement for the purpose of enabling the City of Portsmouth to access private water infrastructure including mains, water shutoffs, and valves for the limited purpose of leak detection and similar infrastructure inspection services and for access to valves for purposes of turning on and shutting off municipal water service. Grantee shall have no responsibility for installation, maintenance, operation, or replacement of the water infrastructure.

Retained Rights: Grantor retains the right to freely use and enjoy its interest in the easement area insofar as the exercise thereof does not interfere with the purpose of this instrument.

Easement To Run With Land: All rights and privileges, obligations and liabilities created by this instrument shall inure to the benefit of, and be binding upon, the heirs, devisees, administrators, executor, successors and assignees of the Grantee and of the Grantor, the parties hereto and all subsequent owners of the Premises and shall run with the land.

This is an exempt transfer per R.S.A. 78-B:2(I).

IN WITNESS WHEREOF, the parties have executed this document on the \_\_\_\_ day of \_\_\_\_\_, 2023.

**LCSG, LLC**

Witness: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

Personally appeared the above-named Matthew Goyette, in his capacity as Principal of LCSG, LLC and acknowledged the foregoing instrument to be his free act and deed executed for the purposes contained therein.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My commission expires: \_\_\_\_\_

Return To:  
 Legal Department  
 City Hall  
 1 Junkins Ave.  
 Portsmouth, NH 03801

## SEWER EASEMENT DEED

**Portsmouth Housing Authority**, a body corporate and politic, having an address of 245 Middle Street, Portsmouth, New Hampshire 03801, hereinafter “Grantor,” for consideration paid, grants to the **CITY OF PORTSMOUTH**, a municipal body politic, having a mailing address of 1 Junkins Avenue, Portsmouth, New Hampshire 03801, hereinafter, "Grantee," with QUITCLAIM COVENANTS, the following easements with respect to Grantor's real property situate on the Easterly side of Court Street in the City of Portsmouth, State of New Hampshire :

1. **Permanent Easement Area**: A permanent easement for the purpose of a sewage pipe over the land of GRANTOR as shown on a plan entitled, “Sewer Easement Plan, Tax Map 116 – Lot 38, dated January, 2023 To City of Portsmouth”, by Ambit Engineering, Inc., (hereinafter "the Plan"). The Plan to be recorded herewith. The “Easement Area” is depicted as “Proposed 20’ Sewer Easement” on the Plan, and is more particularly bounded and described on the Plan as follows:

Beginning at an iron rod at the southeast corner of land of the Grantor at land of the State of New Hampshire; thence running along land of the State of New Hampshire S 62°43'23" W a distance of 23.95 feet to a point; thence running across land of the Grantor the following courses: N 74°54'57" W a distance of 36.46 feet to a point; S 61°33'16" W a distance of 88.49 feet to a point; N 28°15'49" W a distance of 20.00 feet to a point; N 61°33'16" E a distance of 81.25 feet to a point; N 28°27'51" W a distance of 26.23 feet to a point at land of the City of Portsmouth; thence running along land of the City of Portsmouth N 65°15'53" E a distance of 20.04 feet to a point; thence running across land of the Grantor the following courses; thence S 28°27'51" E a distance of 29.53 feet to a point; and S 74°54'57" E a distance of 51.95 feet to a point at land of the City of Portsmouth; thence running along land of the City of Portsmouth S 27°16'21" E a distance of 5.22 feet to the point of beginning, the above described area containing 3,385 square feet, more or less.

2. **Purpose and Rights**: The Grantee shall have a permanent and non-exclusive easement and right of way in, under, across and over the Permanent Easement Area for the purpose of installing, maintaining, inspecting, removing, repairing, and replacing a sewer line

with its associated pipes, manholes, and appurtenances. The Grantee shall have the right to remove obstructions including pavement, curbing, trees, bushes, undergrowth and other obstructions interfering with the activities authorized herein and to take such other actions as may be necessary, useful or convenient for the enjoyment of the easement rights herein granted. The Grantee agrees to preserve access to any driveways and parking areas to the extent reasonably practicable.

- 3. **Grantee's Responsibility to Restore:** Disturbed areas within the Permanent Easement Area and the Temporary Easement Area shall be back-filled and restored at the Grantee's expense. Paving and curbing and similar materials shall also be restored at the Grantee's expense.
- 4. **Grantor's Retained Rights:** Grantor retains the right to freely use and enjoy its interest in the Permanent Easement Area and the Temporary Easement Area insofar as the exercise thereof does not endanger or interfere with the purpose of this instrument. Grantor shall not, however, erect any building, shed, deck or other structure within the Permanent Easement Area, substantially change the grade or slope, or install any pipes in the Permanent Easement Area without prior written consent of the Grantee.
- 5. **Personal Property.** It is agreed that the pipes, manholes, and appurtenances related to the public sewer main installed within the easement area, whether fixed to the realty or not, shall be and remain the property of the Grantee. Pipes, manholes and appurtenances related to any drain lines are the responsibility of the Grantor.
- 7. **Easement to Run with Land:** All rights and privileges, obligations and liabilities created by this instrument shall inure to the benefit of, and be binding upon, the heirs, devisees, administrators, executor, successors and assignees of the Grantee and of the Grantor, the parties hereto and all subsequent owners of the Premises and shall run with the land.

MEANING AND INTENDING to convey an easement over a portion of the premises conveyed to the within Grantor by deed of PHA Development, Ltd., dated November 5, 2020 and recorded in Book 6193, Page 2655 and deed dated September 9, 2020 recorded at Book 6163, Page 807 of the Rockingham County Registry of Deeds.

This is an exempt transfer per RSA 78-B:2(I).

DATED this \_\_\_\_\_ day of February, 2023.

The Portsmouth Housing Authority

By: \_\_\_\_\_  
Craig Welch, Executive Director

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

February \_\_\_\_, 2023

Personally appeared before me, the above-named Craig Welch, Executive Director of the Portsmouth Housing Authority, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed same for the purposes therein contained. In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

**SUBORDINATION OF MORTGAGE**

BankProv, formerly known as The Provident Bank, a savings bank with an address of 5 Market Street, Amesbury, MA 01913, being the holder of a Leasehold Mortgage Deed, Security Agreement and Financing Statement given by Court Street Workforce Housing Limited Partnership, which mortgage is dated November 5, 2020 and recorded in the Rockingham County Registry of Deeds at Book 6193, Page 2684 does hereby subordinate the mortgage to the easement conveyed by Portsmouth Housing Authority to THE CITY OF PORTSTMOUTH, pursuant to the foregoing Sewer Easement Deed.

Except as subordinated herein, the mortgage shall remain in full force and effect.

BankProv

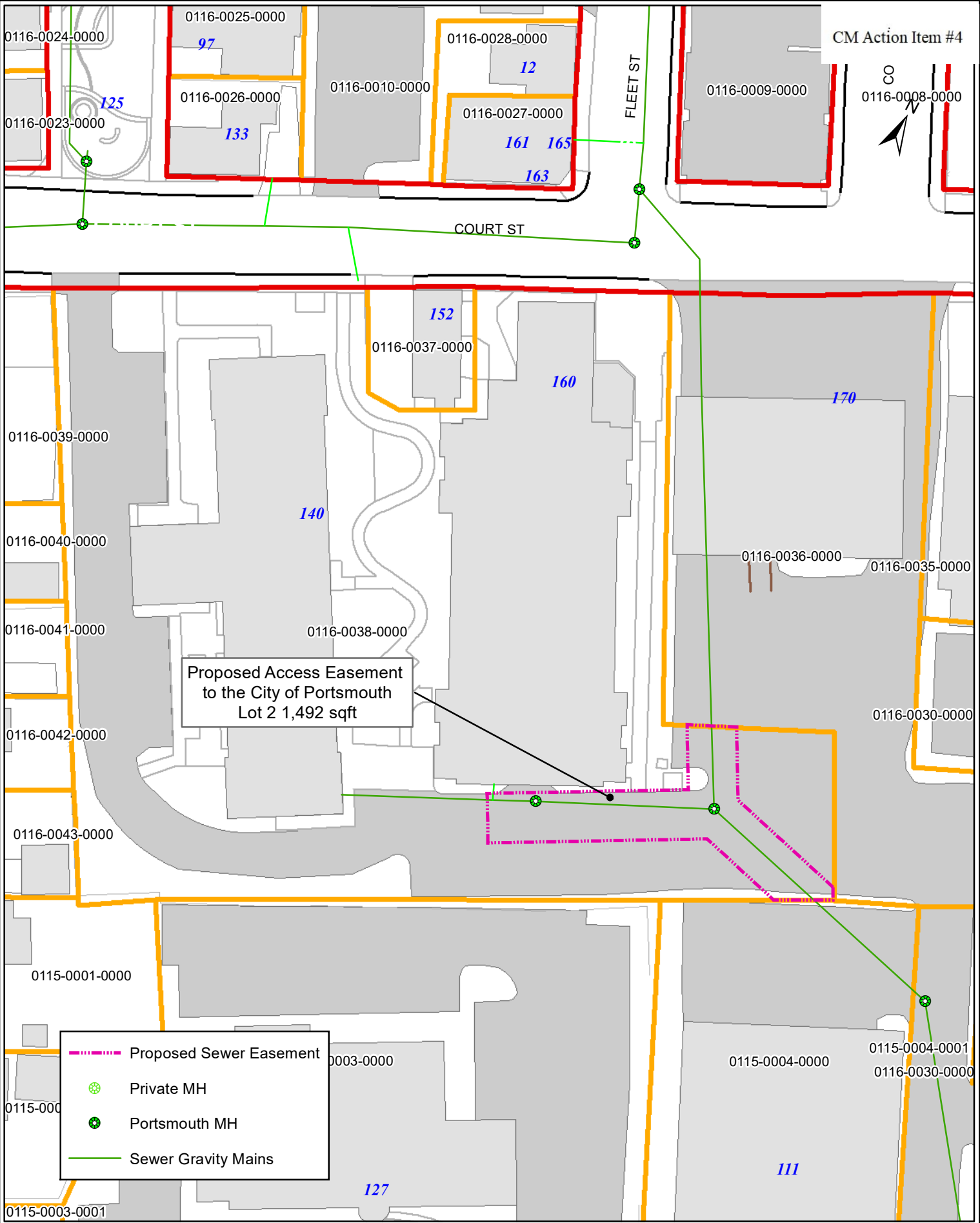
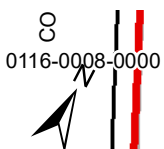
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_





The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2023, by \_\_\_\_\_ as \_\_\_\_\_, of BankProv a Savings  
Bank, on behalf of the corporation.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

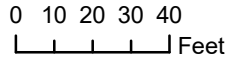




Proposed Access Easement to the City of Portsmouth  
Lot 2 1,492 sqft

-  Proposed Sewer Easement
-  Private MH
-  Portsmouth MH
-  Sewer Gravity Mains

# 160 Court Street Proposed Sewer Easement



After recording return to:  
City of Portsmouth  
Planning Department  
1 Junkins Ave  
Portsmouth, NH 03801

## WORKFORCE HOUSING COVENANT

THIS LAND USE RESTRICTION COVENANT FOR **WORKFORCE HOUSING** ("Covenant") is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2023 between the **City of Portsmouth**, a municipal corporation organized under the laws of the State of New Hampshire and having a place of business at 1 Junkins Avenue, Portsmouth, County of Rockingham, State of New Hampshire ("City") and **2422 Lafayette Road Associates, LLC**, a Delaware limited liability company with an address of with an address of 145 Rosemary Street, Building B, Needham, MA 02494 ("Owner").

### PREAMBLE

WHEREAS, the Owner owns certain real property situate at 2454 Lafayette Road (US Route 1) Map 273, Lot 3 more particularly described in Exhibit A attached hereto (the "Property");

WHEREAS, the Owner has obtained a conditional use permit from the City Planning Board to develop the property pursuant to correspondence from the City Planning Department dated January 19, 2022, as amended on September 30, 2022 (the "Approval");

WHEREAS, as part of the approval process for the Property, Owner agreed to maintain 20% of the completed residential dwellings at the Property, evenly distributed, as workforce housing units as defined herein.

WHEREAS, the Owner further agreed to a stipulation with the Portsmouth Planning Board at the meeting on March 21, 2019 to allow units that are affordable to a household with an income of 100% of the median income for a 3-person household for the Portsmouth-Rochester HUD Metropolitan Fair Market Rent Area to qualify as workforce housing;

WHEREAS, this Covenant is designed to satisfy the aforementioned stipulations placed on the Approval by requiring that 20% percent of the residential dwelling Units (the "Designated Workforce Housing Units"), shall be maintained for a full term of 50 years as workforce housing for a household with an income of 100% of the median income for a 3-person housing

for the Portsmouth-Rochester HUD Metropolitan Fair Market Rent;

WHEREAS, this Covenant is further designed to allow the Owner to sell units that qualify as workforce housing units as defined herein.

WHEREAS, this Covenant shall apply solely to the “Designated Workforce Housing Units” in the Project, and the Parties agree that this Covenant shall not apply to, burden or encumber the remaining dwelling units in the Project, or the tenants of those units;

WHEREAS, this Covenant shall apply to and be enforceable by the City as set forth in this Covenant;

WHEREAS, the City or its designated agent or successor, shall have the authority to monitor and enforce this Covenant;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the City and the Owner do hereby contract and agree as follows:

### **COVENANT**

Section 1. Definitions and Interpretation. In addition to the words and terms defined elsewhere in this Covenant, unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms shall have the respective meanings set forth below for all purposes of this Covenant:

“Affordable” means that the rent or sales shall be affordable to a Qualifying Tenant or Buyer. Rent for any unit shall be set at the 100% Rent Limit for a 3-person household, determined on a per-bedroom basis, as established by the Portsmouth-Rochester HUD Metropolitan Fair Market Rent Areas as published annually by HUD. For sale housing is any unit that is affordable to a household of four earning up to 100% of the Area Median Income.

"Annual Income Certification" means the Annual Income Certification described in Section 4(b) of this Covenant.

"Certification of Continuing Program Compliance" means the Certification of Continuing Compliance described in Section 4(d) of this Covenant and by any document required by the City or the City’s agent confirming compliance.

“Gross Rent” means net rent plus utilities, including electricity, heating and ventilation, water heating, and cooking, but shall not include telephone, television (cable or satellite) services, Wi-Fi, internet services, web-based services, or other such electronic systems or

services. Calculation of utility costs may be based on the Utility Allowance Schedule for New Hampshire, published by the New Hampshire Housing Finance Authority.

"Qualifying Tenant" means any individual (whether prospective tenant or present tenant of the Project) whose income is 100% or less of median income for a three (3) person household in the Portsmouth-Rochester HUD Metropolitan Fair Market Rent as published annually by HUD.

"Qualifying Buyer" means any individual whose income is 100% or less of median income for a family of four earning up to 100% of the Area Median Income.

"State" means the state of New Hampshire.

"Term" or "Term of this Covenant" means the period during which this Covenant is in effect, as determined pursuant to Section 7.

"Workforce Housing" means a dwelling, or group of dwellings, developed as a single project, containing workforce housing units, provided that a housing development that excludes minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this Covenant. All workforce housing units shall include a restrictive covenant that ensures affordability as specified herein for the maximum allowable term but no less than 50 years.

"Workforce Housing Unit" means a housing unit which qualifies as "workforce housing" under this Covenant, including rental housing or for sale housing which is Affordable to a Qualifying Tenant.

All capitalized words and terms used but not defined in this Covenant shall have the common and ordinary meaning ascribed to them unless the word or term is defined in this Covenant including any future amendments hereto to the extent applicable to the Project.

Unless the context clearly requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Covenant and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The titles and headings of the sections of this Covenant have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Covenant or any provision hereof or in ascertaining intent if any question of intent shall arise.

Section 2. Representations, Covenants and Warranties of Owner.

(a) The Owner

(i) is a New Hampshire limited liability company duly organized under the laws of the State of New Hampshire, and is qualified to transact business under the laws of the State,

(ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated by this Covenant, and

(iii) has the full legal right, power and authority to execute and deliver this Covenant and to perform all the undertakings of the Owner hereunder.

(b) The execution and performance of this Covenant by the Owner

(i) will not violate or, as applicable, have not violated a provision of law, rule or regulation, or any order of any court or other agency or governmental body, and

(ii) will not violate or, as applicable, have not violated any provision of any indenture, Covenant, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or its property is bound, and

(iii) will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature. The Owner agrees to obtain the written recordable consent of any prior lienholder to this Covenant, and to record it prior to the issuance of any building permit for this project.

Section 3. Workforce Housing Tenants. The City and the Owner hereby declare their understanding and intent that the Property will be owned, managed and operated to include the 20% “Designated Workforce Housing Units” at all times during the Term of this Covenant. To that end, the Owner hereby represents, covenants and agrees that:

(a) At least 20% of the completed dwelling units to be developed in the Project shall be Workforce Housing as defined herein. The workforce housing units shall be evenly distributed throughout the building.

(b) the Owner shall maintain said Workforce Housing units within the project for a term of fifty (50) from the date of the issuance of a Certificate of Occupancy.

(c) Each of the Designated Workforce Housing Units shall be both Affordable and occupied by Qualifying Tenants.

(d) The form of lease to be utilized by the Owner in renting any units in the Project to any person who is intended to be a Qualifying Tenant shall provide for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the income

certification at the time of lease or the failure by such tenant to execute an income certification annually or within 12 months of disqualifying as a Qualifying Tenant. If a Qualifying Tenant exceeds the income requirements as a result of an improved financial condition, that tenant shall be entitled to ninety (90) day notice of eviction but shall be responsible for complying with all terms of this Covenant and the Tenant's lease after the notice of eviction is served.

(e) The Owner will not knowingly take or permit any action that would result in a violation of the requirements of this Covenant. Moreover, Owner agrees to take any reasonable lawful action (including amendment of this Covenant as may be necessary) to comply fully with all applicable rules, rulings, or additional regulations relating and affecting the Project;

(f) The Owner has not and will not execute any other agreement with provisions inconsistent with the provisions hereof, and that in any event, the requirements of this Covenant are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(g) If the Owner becomes aware of any situation, event or condition which would result in Non-compliance of the Project or the Owner with this Covenant, the Owner shall promptly give written notice thereof to the City;

(h) The Owner shall insure that the Designated Workforce Housing Units occupied by Qualifying Tenants with valid leases shall be of comparable quality to other apartment units of the Project; and the units must be suitable for occupancy, subject to reasonable wear and tear. Notwithstanding the terms of this Section 3(g) the Qualifying Tenant, and not the Owner, shall remain fully responsible for any intentional or negligent acts of Qualifying Tenant, members of the Qualifying Tenants' household, and/or those in the Designated Workforce Housing Units or on the Property at the invitation or control of the Qualifying Tenant, which causes damage to the condition or habitability of the Designated Workforce Housing Units.

(i) Any Qualifying Tenant that does not abide by the terms of the lease or occupancy agreement, or by the terms of this Covenant, may be evicted from any Designated Workforce Housing Unit by the Owner, and said eviction, shall not change the character of the apartment as being designated as one of the two (2) Designated Workforce Housing Units during the time the tenant is being removed from the apartment, provided however, the apartment is re-rented to a new Qualifying Tenant subsequent to the prior Qualifying Tenant's eviction and removal.

#### Section 4. Records and Certifications.

(a) During the Term of this Covenant, the Owner shall deliver to the City, or its designee, any and all documents related to costs, expenses and income for the Workforce Housing Units, required to be provided to the City or that the City's agents may require or request;

(b) During the Term of this Covenant, the Owner will maintain complete and accurate records pertaining to the Designated Workforce Housing Units which are the subject of this Covenant. Without limiting the generality of the foregoing, the Owner will obtain and maintain on file an Annual Income Certification from each Qualifying Tenant.

(c) the Owner will permit any duly authorized representative of the City to inspect, and make copies of the books and records of the Owner pertaining to the incomes of present, past or prospective tenants of the Project upon reasonable notice and at reasonable times; and

(d) At all times during the term of this Covenant, the Owner shall maintain with the Planning Department of the City, or its designee, a Certification of Continuing Compliance including verification that the rent for the Workforce Housing Unit and the Qualifying Tenant meet the definitions as provided in this covenant.

(e) The City may designate a third party to certify and monitor the Designated Workforce Housing Units and the Owner shall pay the reasonable fees for the third party.

Section 5. Reliance. The Owner hereby agrees that the representations and covenants set forth herein and in the Annual Income Certification by the Owner to the City may be relied upon by the City. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Owner. In addition, the City may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the City hereunder in good faith and in conformity with the opinion of such counsel. In performing its duties and obligation hereunder, the Owner may rely upon certificates of Qualifying Tenants reasonably believed to be genuine and to have been executed by the proper person or persons.

Section 6. Sale or Transfer of Project. All Owners (or successors and assigns in interest pursuant to Paragraph c below) of Designated Workforce Housing Units shall be bound to the rent and income limits and all of the provisions set forth in this Covenant for the fifty (50) ear term of this Covenant.

Section 7. Term

(a) This Covenant became effective on \_\_\_\_\_ and shall remain in full force and effect for a period of fifty (50) years following the date of issuance of a certificate of occupancy, for the Designated Workforce Housing Units.

Section 8. Defaults and Remedies & Right to Cure. Any failure by the Owner to perform or comply with any obligation, agreement, Covenant or warranty of the Owner under this Covenant that is not corrected within a reasonable period [after written notice from the City to the Owner setting forth the specific details of the event of default] shall constitute an "event of default" hereunder. For purposes of this Covenant a "reasonable period" is not more than sixty (60) days after such failure is first discovered by the Owner or would have been discovered by the exercise of reasonable diligence.

Upon the occurrence of an event of default hereunder that is not cured within 60 days after City provides Owner with a written notice of default, the City may take whatever action may be permitted at law or in equity or in this Covenant to enforce the obligations of and restrictions applying to the Owner hereunder. The City shall have the right to require the curing of any failure of the Owner to perform or comply with any obligation, agreement, Covenant or

warranty of the Owner under this Covenant prior to the time such failure has become an event of default hereunder as the City may deem necessary.

Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations hereunder would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise. Without limiting the generality of the foregoing, the City shall have the right to seek specific performance of any obligation, agreement, Covenant or warranty of the Owner hereunder, whether or not failure to comply with the obligation, agreement, Covenant or warranty for which specific performance is sought has become an event of default hereunder.

No remedy conferred upon or reserved to the City by this Covenant is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Covenant or any other document now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any failure of the Owner to perform or comply with any obligation, agreement, Covenant or warranty of the Owner under this Covenant shall impair any such right or power or shall be construed to be a waiver thereof.

The terms of this Section 8 are to ensure the Owner's compliance with the terms of this Covenant to the City only, namely, to provide the Designated Workforce Housing Units occupied by Qualifying Tenants as defined herein. At no time shall the terms of this Section 8 or the rights and remedies set forth under the terms of this Section 8, give any Qualifying Tenant any rights or remedies against the Owner for violation of the terms of this Covenant. In addition, at no time shall any Qualifying Tenant use or allege the Owner's breach of the terms of this Covenant, as grounds to avoid eviction from the Designated Workforce Housing Unit, if the Qualifying Tenant is otherwise in violation of the terms of its lease or occupancy agreement with the Owner.

Notwithstanding the terms of this Section 8, the Owner is not waiving any rights, remedies, or defenses, it might have to validly contest any alleged default of the Owner under this Covenant.

Section 9. Recording and Filing; Covenants To Run with the Land; Successors Bound.

(a) A signed executed covenant shall be submitted to the Planning Department for recording at the Rockingham County Registry of Deeds.

(b) This Covenant and the Covenants contained herein shall run with the land. These Covenants and the Covenants contained herein shall bind, and the benefits shall inure to, respectively, the Owner and its successors and assigns and all subsequent Owners of the Project or any interest therein, the City's agent and each of the Qualifying Tenants during said Tenants' occupancy of a Workforce Housing Unit during the Term of this Covenant.

Section 10. Governing Law. This Covenant shall be governed by the laws of the State of New Hampshire.



Section 11. Amendments.

(a) To the extent that the existing terms of the Act shall impose any requirement upon the workforce units in the Project in addition to or more restrictive than those imposed by this Covenant, the Owner agrees that this Covenant shall be deemed to be intended to impose such additional or more restrictive requirements unless counsel to the City, at the expense of the Owner, renders an opinion that such amendment would not be necessary to preserve compliance with the Act. The Owner and the City shall, at the expense of the Owner and without obligation to do so, execute, deliver and, if applicable, file or record any and all documents and instruments necessary to effectuate the intent of this subsection.

Section 12. Notices. Any notice, demand or other communication required or permitted hereunder shall be in writing unless explicitly permitted to be given otherwise than in writing, and shall be deemed to have been given if and when personally delivered, or when deposited in United States express mail, postage prepaid, or with a private courier service guaranteeing next day delivery. Any such notice, demand or other communication shall be addressed as set forth below or to such other address as the entity to receive such notice may have designated to all other entities named in this list by notice in accordance herewith:

If to the Owner:

**2422 Lafayette Road Associates LLC  
11 Elkins Street, Suite 420  
Boston, MA 02127**

If to the City:

**City Manager  
Portsmouth City Hall  
Municipal Complex  
1 Junkins Avenue  
Portsmouth, NH 03801**

Section 13. Severability. If any Provision of this Covenant shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

Section 14. Multiple Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

Section 15. Arbitration. In the event of any controversy or dispute arising out of or relating to this Covenant or the breach or default thereon, such controversy, breach, default or dispute shall be resolved by arbitration in Rockingham County, New Hampshire, in an arbitration proceeding conforming to the rules of the American Arbitration Association.

Section 16. Modification or Amendment. Any modifications or amendments to this covenant shall require approval by the Portsmouth Planning Board.

IN WITNESS WHEREOF, the Owner and the City have caused this Covenant to be executed under seal and by duly authorized representatives, all as of the date first written hereinabove.

**CITY OF PORTSMOUTH**

By: \_\_\_\_\_  
Name and Title: Karen Conard, City Manager  
Date: \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2023,  
by Karen Conard, Portsmouth City Manager.

\_\_\_\_\_  
Notary Public  
(Seal, if any)  
My Commission Expires: \_\_\_\_\_

**2422 LAFAYETTE ROAD ASSOCIATES LLC**

By: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2023,  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
(Seal, if any)  
My Commission Expires: \_\_\_\_\_

After recording return to:  
City of Portsmouth  
Planning Department  
1 Junkins Ave  
Portsmouth, NH 03801

### **EASEMENT FOR PUBLIC ACCESS AND USE OF COMMUNITY SPACE**

**THIS EASEMENT HEREIN IS GRANTED** this \_\_\_\_ day of December, 2022 by 2422 Lafayette Road Associates, LLC, a Delaware limited liability company with an address of with an address of 145 Rosemary Street, Building B, Needham, MA 02494, (“Grantor”) and for consideration of One Dollar (\$1.00) paid by the City, and other good and valuable consideration, receipt of which is acknowledged by Grantor, grants unto the **City of Portsmouth**, a municipal corporation, 1 Junkins Avenue, Portsmouth, New Hampshire (“City”) with warranty covenants, an easement for public access to and use of certain community space as set forth herein as a plaza, pedestrian alley and wide pedestrian sidewalks.

#### **WITNESSETH**

**WHEREAS**, Grantor acquired a tract of land located at 2454 Lafayette Road, City of Portsmouth, County of Rockingham, State of New Hampshire (the “Property”), by Warranty Deed dated May 23, 2013 and recorded at the Rockingham County Registry of Deeds at Book 5442, Page 1463; and

**WHEREAS**, reference is made to a plan entitled “Community Space Easement Plan” prepared by Doucet Survey, dated \_\_\_\_\_, and recorded herewith at the Rockingham County Registry of Deeds (the “Easement Plan”); and

**NOW THEREFORE**, in consideration of the sum of One Dollar (\$1.00), to be paid by the City, and other good and valuable consideration, the receipt of which is hereby acknowledged by the Grantor, Grantor conveys the easements as follows, located in the City of Portsmouth, County of Rockingham, State of New Hampshire (hereinafter collectively referred to as the “Easements”):

:

1. **Easements.** The Grantor hereby grants to the City and declares for the benefit of the public a permanent right to use and enjoy the Plaza as identified on the Easement Plan as “Dog Park Community Space,” “Pickleball Courts Community Space” and “Plaza Seating Community Space.” Said area may be improved by the Grantor with permanent fixtures, such as public fountains, benches and other such landscaping features, at its sole expense, and as depicted in the Easement Plan. The construction of any permanent fixtures not depicted in the Site Plan shall be subject to a modified site plan approval by the Portsmouth Planning Board.

The Easement granted herein shall be subject to the following terms and conditions:

1. **Terms of Public Use:** The Public Use permitted by the Easements shall be governed and determined at the sole discretion of the City, as expressed by the City Manager or the highest-ranking administrative officer of the City, subject to the terms and conditions of these easement. The City shall provide reasonable notice to the Grantor of an extraordinary event to be scheduled for the easement areas but failure to do so shall not be a breach of these easements.
2. **Rights to Private Property:** This easement does not convey any right to the public to access or utilize the private property of the Grantor outside the easement areas. Grantor’s use of the Easements shall be subject to and regulated through the City of Portsmouth’s rules and ordinances governing public sidewalks.
3. **Maintenance:** Maintenance of the easement areas shall be the sole responsibility of the Grantor, its successors or assigns. The City shall have the right, but not the obligation, to access the easement areas for the purpose of maintenance, repair or replacement, after providing reasonable notice to the Grantor of the scope and cost of such work, all as reasonably determined by the City. Such maintenance costs incurred by the City shall be at the sole expense of the Grantor, its successors or assigns.
4. **Encroachments:** The Easements are subject to all existing encroachments of utilities and improvements on, over and under the Easements.
5. **Covenants Run with the Land:** The Easements granted herein shall be perpetual in nature, shall run with the land and shall benefit and be binding upon the Grantor, its successors and assigns. The Easements shall be recorded in the Rockingham County Registry of Deeds.
6. **City Ordinance Application:** Any use, public or private, of the Easements shall be subject to and comply with the City Ordinances of the City of Portsmouth.
7. **Notices:** Any notice, demand, request, or other communication that either party desires or is required to give to the other under this Easement shall be in writing and either served personally or sent by United States mail, postage prepaid, certified, return receipt requested, and shall be mailed to the parties at the following addresses:

To Grantor:

2422 Lafayette Road Associates, LLC  
145 Rosemary Street, Building B  
Needham, NA 02494

To City:

City Manager  
City of Portsmouth, New Hampshire  
1 Junkins Avenue  
Portsmouth, NH 03801

**8. Amendment:** Grantor and Grantee may mutually agree to amend or modify this Easement, provided that any such amendment or modification is approved by the City Council at a noticed public hearing, in writing and signed by both parties, and is consistent with the purpose and intent of the Zoning Ordinance. No amendment or modification of this Easement shall take effect unless and until it is recorded in the Rockingham County Registry of Deeds.

**9. Costs and Liabilities:** Grantor agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property, and to defend, indemnify, hold harmless and release the City of Portsmouth, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, including Grantor, relating thereto. Without limiting the foregoing, the City of Portsmouth shall not be liable to Grantor or any other person or entity in connection with any entry upon the Property pursuant to this Easement, or on account of any claim, liability, damage, or expense suffered or incurred by or threaten against Grantor or any other person or entity, except as such claim, liability, damage, or expense is the result of the City of Portsmouth's, its agents or employee's negligence or willful misconduct.

**10. Applicable Law:** These Easements shall be construed and interpreted according to the substantive law of the State of New Hampshire.

**11. Community Space Easement to Bind Successors:** The provisions of these Easements shall be binding upon and inure to the benefit of Grantor and its successors and assigns. The Easements shall be appurtenant to, and for the benefit of, Grantee and shall run with title to the Property and shall continue in perpetuity.

Meaning and intending to convey an easement over a portion of the Property conveyed to the Grantor by Deed dated May 23, 2013 and recorded at the Rockingham County Registry of Deeds at Book 5442, Page 1463.

This is an exempt transfer pursuant to RSA 78-B:2(I).

IN WITNESS WHEREOF, Grantor and City have executed this Community Space Easement as set forth, below.

Grantor:

2422 Lafayette Road Associates, LLC

By: \_\_\_\_\_

Grantee:

City of Portsmouth, New Hampshire

By: \_\_\_\_\_

Karen Conard, City Manager

Per vote of the City Council on  
DATE.

#### ACKNOWLEDGEMENTS

STATE OF NEW HAMPSHIRE

COUNTY OF ROCKINGHAM

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared \_\_\_\_\_ of \_\_\_\_\_, a New Hampshire limited liability company, proved to me through satisfactory evidence of identification, which was a valid driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public:

My Commission Expires:

STATE OF NEW HAMPSHIRE

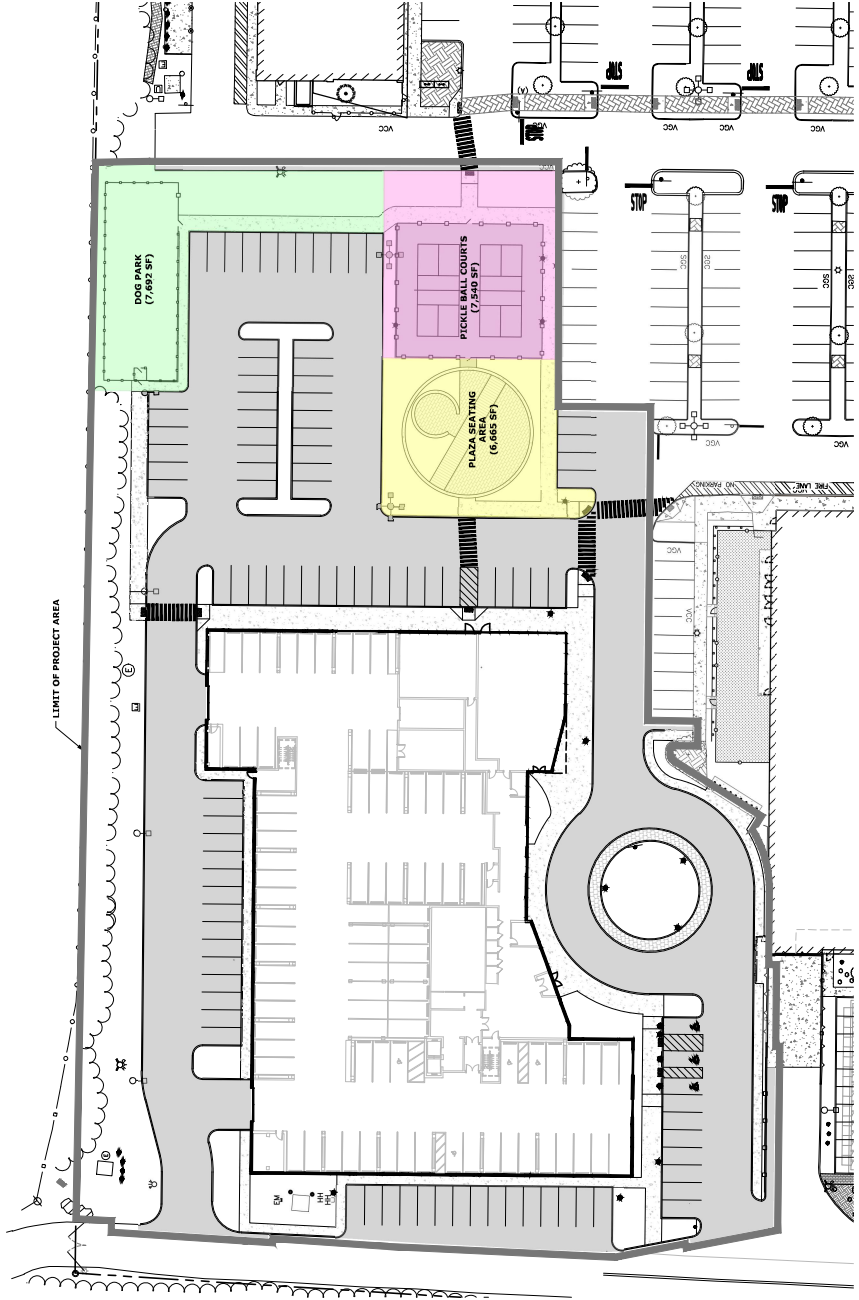
COUNTY OF ROCKINGHAM

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before: me, the undersigned notary public, personally appeared Karen Conard, Manager of the City of Portsmouth New Hampshire, proved to me through satisfactory evidence of identification, which was a valid driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it in his capacity as stated therein and voluntarily for its stated purpose.

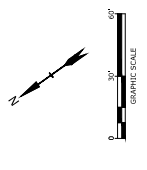
\_\_\_\_\_  
Notary Public:  
My Commission Expires:



# PROPOSED MULTI-FAMILY DEVELOPMENT PORTSMOUTH, NEW HAMPSHIRE COMMUNITY SPACE EXHIBIT



COMMUNITY OPEN SPACE:	REQUIRED	PROVIDED
DOG PARK COMMUNITY SPACE		7,692 SF
PICKLEBALL COURTS COMMUNITY SPACE		7,540 SF
PLAZA SEATING AREA COMMUNITY SPACE		6,665 SF
TOTAL PROJECT AREA: 150,350 SF	15,870 SF 10.6%	24,897 SF 16.6%



**Tighte&Bond**

November 22, 2021  
TS047-201-C-EXHIBIT.dwg

## EASEMENT DEED

Richard P. Fusegni, a single person, with a mailing address of 201 Kearsarge Way, Portsmouth, NH 03801, (herein called "Grantor") for consideration paid, grants to the CITY OF PORTSMOUTH, a municipal body with a mailing address of 1 Junkins Avenue, Portsmouth New Hampshire 03901 (hereinafter "Grantee"), with QUITCLAIM COVENANTS, upon the conditions hereafter set forth, a permanent access easement (hereinafter the "Easement") over and upon land of the Grantor located in the City of Portsmouth, County of Rockingham State of New Hampshire.

Said Easement being shown as "Proposed Access Easement to the City of Portsmouth." on a plan entitled, "Subdivision Plan Tax Map 218-Lot 5, Owner: Richard P. Fusegni, 201 Kearsarge Way, City of Portsmouth, County of Rockingham, State of New Hampshire", prepared by Ambit Engineering, Inc. dated June 2022 and recorded in the Rockingham County Registry of Deeds as Plan # \_\_\_\_\_ said Easement being more particularly bounded and described as follows:

Beginning at a point on the northerly side of Birch Street which is N 46°02'10" E a distance of 10.01 feet from an iron rod at an angle point in Birch Street; thence turning and running over and across the land of the Grantor N 48°13'46" E a distance of 19.25 feet; N 41°46'14" E a distance of 23.59 feet and S 46°58'50" E a distance of 26.65 feet to the northerly side of Birch Street; thence running along the northerly side of Birch Street on a curve to the left with an arc length of 24.29 feet, a radius of 70.00 feet, and a delta angle of 19°52'46" to the point of beginning.

The above described easement containing 519 square feet, more or less (hereinafter "Easement Area") and connects to the existing access and utility easement in favor of Grantor described in Easement Deed dated February 12, 2019 and recorded in the Rockingham County Registry of Deeds at Book 5981, Page 2019, et seq.

Grantor grants to Grantee non-exclusive access over, across and under the easement area for all purposes for which roads are customarily used, including but not limited to vehicular, pedestrian and equipment access and travel and the installation and maintenance of utilities. The Grantee shall promptly repair damage to portions of the driveway or other improvements built within the Easement Area caused by the Grantee's use of the easement at Grantee's sole cost and expense.

Reserving to Grantor, their successors and assigns, and Grantee, their successors and assigns, access and utility rights in the Easement Area, together with the use and enjoyment of said Easement Area for such purposes only as will in no way interfere with the perpetual use thereof by the Grantee, its successors and assigns for the purposes contained herein; and to that end, the Grantor, its successors and assigns shall not erect any building, structures sidewalks, parking areas, surface curbs, landscaping and other similar improvements on said Easement Area; provided however, that Grantor may install underground utility structures or systems within the Easement Area which do not interfere with Grantee's use of the Easement Areas, Grantor reserves all rights to cross the Easement Area and all rights and easements necessary or desirable for the use, occupation, repair, maintenance and replacement of any improvements now or hereafter located upon Grantor's remaining land.

This Easement Deed and the rights and privileges granted hereby are perpetual and shall run with the land.

The easements, covenants and conditions herein shall be binding and/or to the benefit of the parties hereto, their heir, successors and assigns.

Meaning and intending to convey an easement over a portion of the premises conveyed to Richard P. Fusegni by Elda Fusegni dated September 5, 2013 and recorded on September 6, 2013 in the Rockingham County Registry of Deeds at Book 5476 Page 2661.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2023.

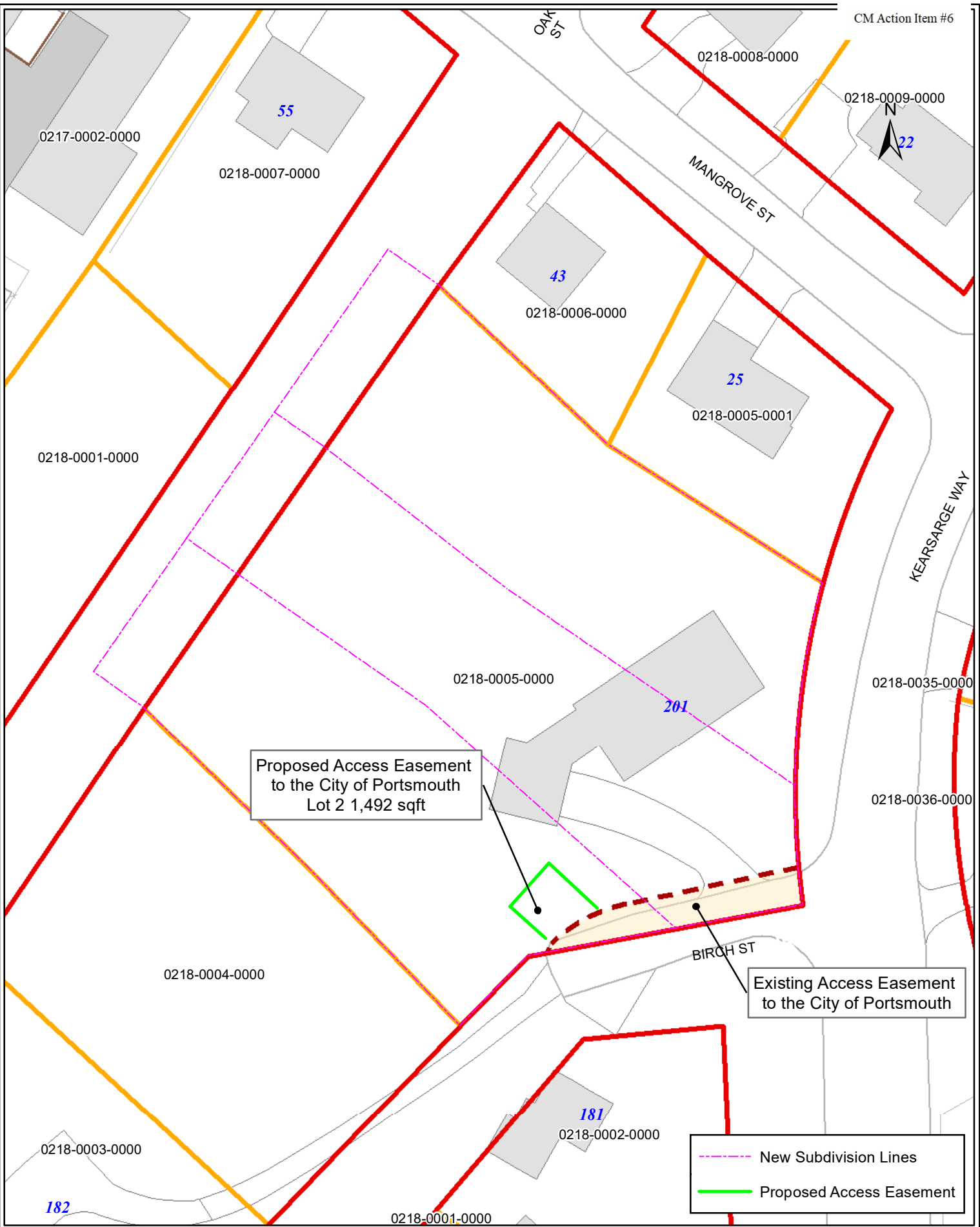
\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Richard P. Fusegni

State of New Hampshire  
County of Rockingham

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2023 by Richard P. Fusegni.

\_\_\_\_\_  
Notary Public/Justice of the Peace

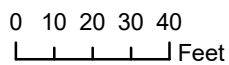


Proposed Access Easement  
to the City of Portsmouth  
Lot 2 1,492 sqft

Existing Access Easement  
to the City of Portsmouth

--- New Subdivision Lines  
— Proposed Access Easement

**201 Kearsarge Way  
Proposed Access Easement**



Return To:  
 Legal Department  
 City Hall  
 1 Junkins Ave.  
 Portsmouth, NH 03801

## **STORMWATER AND DRAINAGE EASEMENT DEED**

GRANTOR, **HCA REALTY, INC.**, a Tennessee corporation, with an address of One Park Plaza, Nashville, Tennessee 37203 (hereinafter, the "Grantor"), for consideration paid, grants to the **CITY OF PORTSMOUTH**, a municipal body politic, having a mailing address of 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (hereinafter, the "Grantee") with QUITCLAIM COVENANTS, the following easements with respect to Grantor's real property situated on Borthwick Avenue in the City of Portsmouth, State of New Hampshire:

1. **Permanent Easement Areas:** A permanent easement for the purpose of drainage and stormwater management over the land of Grantor shown as "Proposed Stormwater Easement, 5,805 sq. ft, 0.12 Acres" and "Proposed 20' Wide Stormwater Easement, 1,038 sq. ft., 0.02 Acres" on a plan of land entitled "Easement Plan, Land of HCA Realty, Inc., Tax Map 234 Lot 7-4A, Borthwick Avenue Extension, Portsmouth, New Hampshire" dated October 27, 2022 and recorded in the Rockingham County Registry of Deeds as Plan #D-\_\_\_\_\_ (hereinafter, the "Plan") (the "Permanent Easement Areas"). The Permanent Easement Areas are more particularly bounded and describes as follow:

### PROPOSED STORMWATER EASEMENT:

Beginning at an iron pin in a stone wall at the southeasterly sideline of Borthwick Avenue at the northwesterly corner of land now or formerly of Public Service Co. of NH being the northeasterly corner of the within described easement area as shown on said Plan; thence running along said stone wall and said Public Service Co. of NH land S12°24'46"E a distance of 36.37 feet to a drill hole in said stone wall; thence continuing along said stone wall S27°50'55"E a distance of 10.09 feet to a point; thence turning and running S61°22'48"W a distance of 74.40 feet; thence turning and running N30°59'54"W a distance of 17.57 feet; thence turning and running S58°42'03"W a distance of 76.13 feet; thence turning and running N41°41'10"W a distance of 34.99 feet to a point at the sideline of Borthwick Avenue as shown on said Plan; thence turning and running along said Borthwick Avenue N59°00'06"E a distance of 20.35 feet; thence turning and running S41°41'10"E a distance of 14.55 feet; thence turning and running N58°42'03"E a distance of 59.60 feet; thence turning and running on a curve to the right with a radius of 22.50 feet and an arc length of 14.53 feet to a point at the sideline of Borthwick Avenue as shown on said Plan; thence turning and running along said Borthwick Avenue on a curve to the right with a radius of 470.00 feet and an arc length

of 83.39 feet to the iron pin in the stone wall at the point of beginning. Said easement area containing 5,805 sq. ft. (.13 acres), according to said Plan.

**PROPOSED 20' WIDE STORMWATER EASEMENT:**

Beginning at a point in the southeasterly sideline of Borthwick Avenue at the northeasterly corner of the within described easement area as shown on the Plan; thence running S31°03'31"E a distance of 51.87 feet; thence turning and running S58°56'03"W a distance of 20.00 feet; thence turning and running N31°03'31"W a distance of 51.89 feet to a point at the sideline of Borthwick Avenue as shown on said Plan; thence turning and running along said Borthwick Avenue N59°00'06"E a distance of 20.00 feet to the point of beginning. Said easement area containing 1,038 sq. ft. (.02 acres), according to said Plan.

2. **Purpose and Rights:** The Grantee shall have a permanent and non-exclusive easement and right of way in, under, across and over the Permanent Easement Areas for the purpose of installing, maintaining, inspecting, repairing, and replacing drainage and stormwater infrastructure. The Grantor reserves the right to install pavement, sidewalks, a retaining wall and other site utilities within the easement area provided that they do not interfere with the purposes of this easement.
3. **Construction and Maintenance of Easement Areas and Infrastructure:** The Grantor shall construct the retaining wall, riprap and culvert within the "20 Wide Stormwater Easement, 1,038 Sq. Ft., 0.02 Acres" area as shown on the Plan. The ongoing maintenance of the retaining wall and the riprap shall be the responsibility of the Grantor with the Grantee having the right, but not the obligation, to maintain same. The maintenance of the culvert shall be the responsibility of the Grantee.

Within the "Proposed Stormwater Easement, 5,805 Sq. Ft., 0.13 Acres" area, as shown on the Plan, the Grantor shall construct all of the stormwater infrastructure but the ongoing maintenance shall be the responsibility of the Grantee. Any stormwater leaving the stormwater infrastructure on land of the Grantor, shall be the responsibility of the Grantor.

4. **Grantee's Responsibility to Restore:** In the event of Grantee-performed maintenance within the Permanent Easement Areas, all disturbed areas shall be restored at the Grantee's expense. Paving and curbing and similar materials shall also be restored at the Grantee's expense.
5. **Grantor's Retained Rights:** Grantor retains the right to freely use and enjoy its interest in the Permanent Easement Areas insofar as the exercise thereof does not endanger or interfere with the purpose of this instrument. Grantor shall not, however, substantially change the grade or slope, or install any other permanent fixtures, other than those described in Paragraph 2 above, or otherwise depicted on the Plan, in the Permanent Easement Areas without prior written consent of the Grantee.

6. **Easement to Run with Land:** All rights and privileges, obligations and liabilities created by this instrument shall inure to the benefit of, and be binding upon, the heirs, devisees, administrators, executors, successors and assignees of the Grantee and of the Grantor, the parties hereto and all subsequent owners of the premises and shall run with the land.

MEANING AND INTENDING to convey an easement over a portion of the premises conveyed to the within Grantor by deed of Islington Woods, LLC dated November 24, 2004 and recorded in Book 4400, Page 2048 of the Rockingham County Registry of Deeds.

This is an exempt transfer per RSA 78-B:2(I).

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

HCA REALTY, INC.

By: \_\_\_\_\_  
Nicholas L. Paul, Vice President

STATE OF TENNESSEE  
COUNTY OF DAVIDSON, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, personally appeared Nicholas L. Paul, duly authorized Vice President of HCA Realty, Inc., known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained on behalf of the corporation.

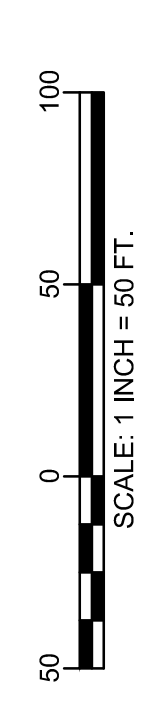
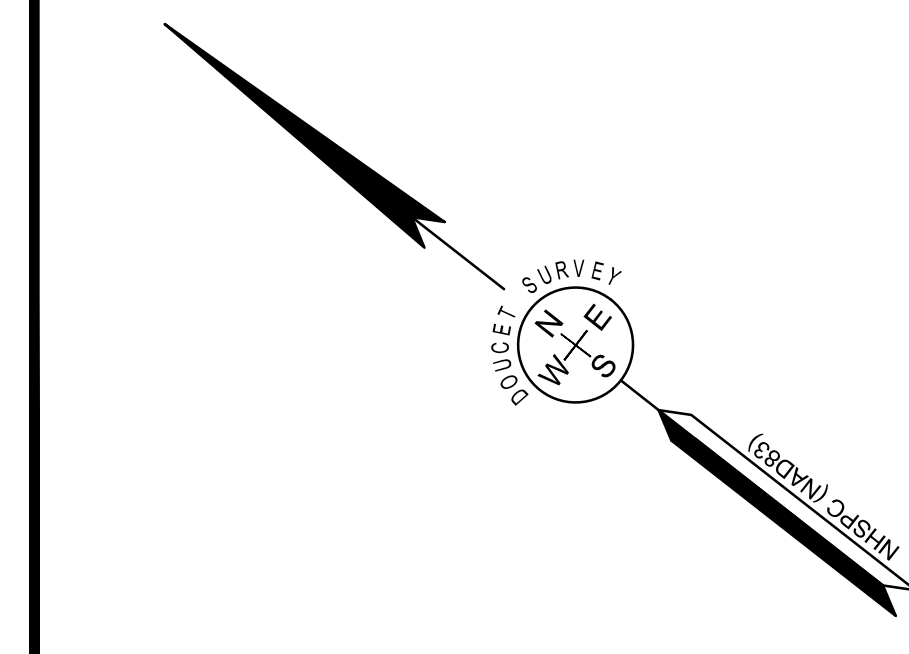
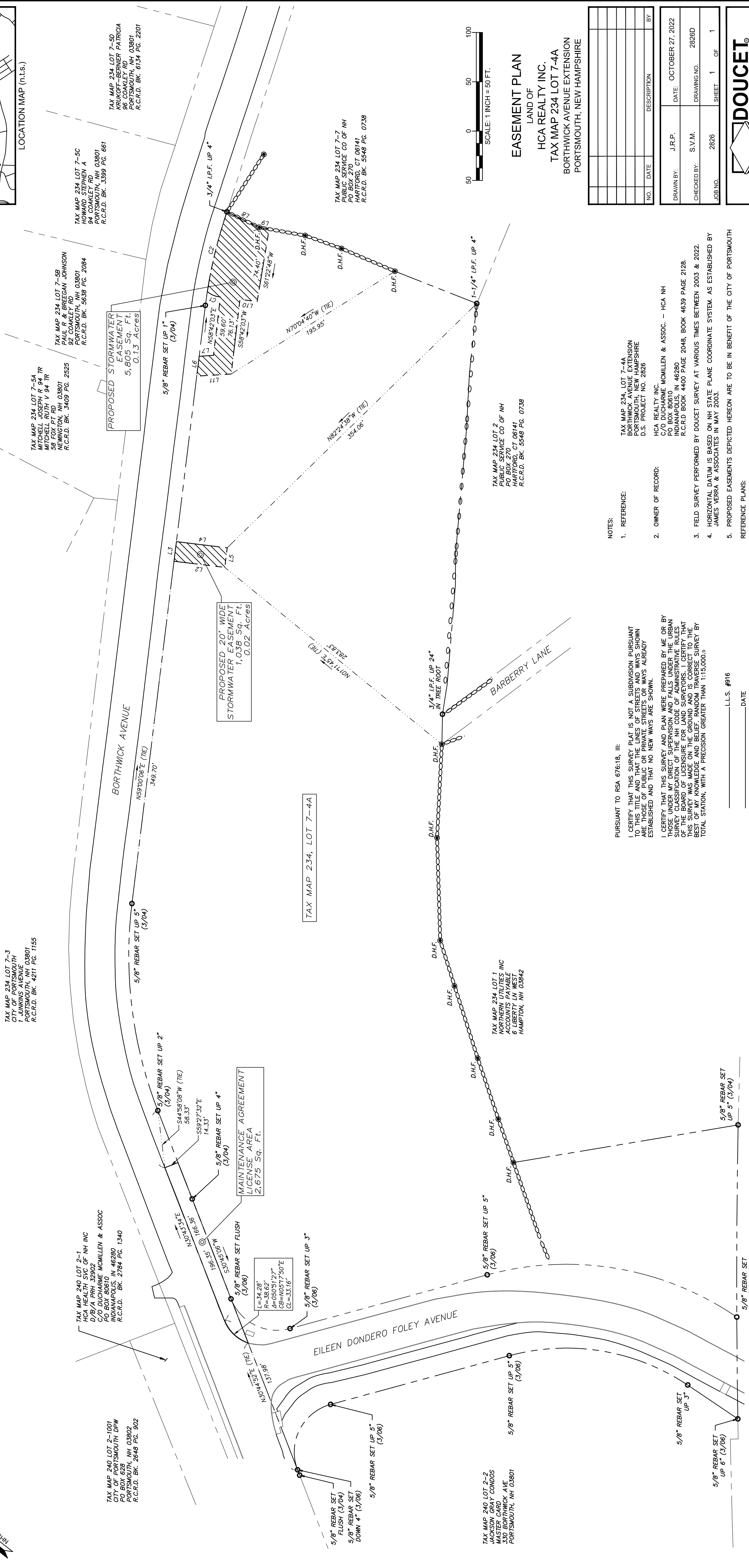
\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

- LEGEND**
- LOT LINE
  - - - - - APPROXIMATE ABUTTERS LINE
  - - - - - RIGHT OF WAY LINE
  - - - - - TIE LINE
  - - - - - PROPOSED EASEMENT
  - ▨ STONE WALL
  - REMNANT STONE WALL
  - DRILL HOLE FOUND
  - IRON PIPE/ROD
  - D.H.F.

CURVE TABLE			LINE TABLE		
CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	14.53'	22.50'	0.365939°	N15°43'37"W	14.28'
C2	83.39'	470.00'	0.0109155°	N65°48'30"E	83.28'

LINE	BEARING	DISTANCE
L2	N37°03'31"W	51.89'
L3	N59°00'06"E	20.00'
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L5	S56°56'03"W	20.00'
L6	N59°00'06"E	20.35'
L7	S41°41'10"E	14.55'
L8	S12°24'46"E	36.37'
L9	S27°50'55"E	10.08'
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L11	N41°41'10"W	34.99'



**EASEMENT PLAN**  
 LAND OF  
**HCA REALTY INC.**  
 TAX MAP 234 LOT 7-4A  
 BORTHWICK AVENUE EXTENSION  
 PORTSMOUTH, NEW HAMPSHIRE

NO.	DATE	DESCRIPTION	BY

DRAWN BY:	J.R.P.	DATE:	OCTOBER 27, 2022
CHECKED BY:	S.V.M.	DRAWING NO.:	2828D
JOB NO.:	2826	SHEET:	1 OF 1

**DOUCET SURVEY**  
 Surveying, Professional Surveying & Mapping Needs  
 102 Mt Pleasant Rd  
 Portsmouth, NH 03801  
 2 Commerce Drive (Suite 202) Bedford, NH 03110 (603) 814-4060  
 10 Storer Street (Riverview Suite) Kennebunk, ME (207) 502-7005  
<http://www.doucetsurvey.com>

- NOTES:**
- REFERENCE:  
 TAX MAP 234, LOT 7-4A  
 BORTHWICK AVENUE EXTENSION  
 PORTSMOUTH, NEW HAMPSHIRE  
 D.S. PROJECT NO. 2826
  - OWNER OF RECORD:  
 HCA REALTY, INC.  
 C/O DUCHARME MUILLEN & ASSOC. - HCA NH  
 PO BOX 80610  
 INDIANAPOLIS, IN 46280  
 R.C.R.D. BOOK 4400 PAGE 2048, BOOK 4639 PAGE 2128.
  - FIELD SURVEY PERFORMED BY DOUCET SURVEY AT VARIOUS TIMES BETWEEN 2003 & 2022.
  - HORIZONTAL DATUM IS BASED ON NH STATE PLANE COORDINATE SYSTEM. AS ESTABLISHED BY JAMES YERRA & ASSOCIATES IN MAY 2003.
  - PROPOSED EASEMENTS DEPICTED HEREON ARE TO BE IN BENEFIT OF THE CITY OF PORTSMOUTH

PURSUANT TO RSA 676:18, III:  
 I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.  
 I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY ME OR BY THOSE UNDER MY DIRECT SUPERVISION AND FALLS UNDER THE URBAN SURVEY CLASSIFICATION OF THE NH CODE OF ADMINISTRATIVE RULES AND REGULATIONS. I CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND AND IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. RANDOM TRAVERSE SURVEY BY TOTAL STATION, WITH A PRECISION GREATER THAN 1:15,000.0

THE CERTIFICATIONS SHOWN HEREON ARE INTENDED TO MEET REGISTRY OF DEED REQUIREMENTS AND ARE NOT A CERTIFICATION TO TITLE OR OWNERSHIP OF PROPERTY SHOWN. OWNERS OF ADJOINING PROPERTIES ARE ACCORDING TO CURRENT TOWN ASSESSORS RECORDS.

\_\_\_\_ L.L.S. #916  
 \_\_\_\_\_ DATE



**License and Maintenance Agreement  
for 444 Borthwick Avenue, Portsmouth, New Hampshire**

The **CITY OF PORTSMOUTH** (hereinafter the "City"), a municipal corporation with an address of 1 Junkins Ave, Portsmouth, New Hampshire 03801 for good and valuable consideration as set forth herein and as approved by the City Council on \_\_\_\_\_, hereby grants this Revocable License to **HCA REALTY, INC.** (hereinafter "Licensee"), a Tennessee corporation, with an address of One Park Plaza, Nashville, Tennessee 37203, pursuant to the following terms and conditions:

1. **Areas of License and Use**: The City authorizes Licensee to use the public sidewalks within the area shown as "Maintenance Agreement License Area, 2,675 Sq. Ft.") (the "License Area") as shown in the plan titled Easement Plan, Land of HCA Realty Inc., Tax Map 234 Lot 7-4A, Borthwick Avenue Extension, Portsmouth, New Hampshire" dated October 27, 2022, attached hereto as Exhibit A.
2. **Use**: Licensee shall make use of the Licensed Area for the purposes for which public sidewalks are typically used, mainly ingress and egress from Licensee's parking lot area to and from Portsmouth Hospital, and to maintain the same in accordance with paragraph 7, below.
3. **Term**: This license shall be in effect until terminated by the City.
4. **Notice**: Licensee shall provide notice to the City's Director of Public Works when the Licensee assumes control and use of the Licensed Areas.
5. **Indemnification**: Licensee agrees to indemnify and hold harmless the City of Portsmouth for any and all property damage, bodily injury or personal injury which arises as a result of its utilization of the License Area. This obligation survives termination or revocation of this agreement.
6. **Insurance**: At all times the Licensee shall maintain insurance for bodily injury and property damage in the amount of at least \$1,000,000 per occurrence. Licensee will provide proof of insurance to the City, and such proof of insurance shall name the City as an additional insured.
7. **Maintenance of Area**: During the course of this License and Maintenance Agreement, Licensee shall maintain the License Area in a safe, neat, and orderly fashion and shall perform all necessary maintenance including winter clearing, sanding and salting, as reasonably necessary.
8. **Damage**: Licensee agrees to remedy any damage to the License Area caused by the Licensee's activities. The City may elect to accept reasonable reimbursement from the Licensee in lieu of remedy.

9. **Compliance with Other Laws:** This License and Maintenance Agreement does not relieve Licensee from compliance with any other applicable local, state or federal laws or regulations or conditions imposed by any local board or department. Failure to abide by any local, state or federal laws or regulations or any condition of approval may, at the City's discretion, result in revocation.
10. **Revocation:** The City may terminate this License and Maintenance Agreement or any provision contained in this agreement on 72 hours written notice provided to the Licensee at the address listed on the Licensee's tax card. In the event of such termination, the City shall resume all ordinary maintenance obligations of the License Area.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023

City of Portsmouth, NH

By: \_\_\_\_\_  
Karen Conard, City Manager  
Pursuant to a vote of the City Council on \_\_\_\_\_

HCA REALTY, INC.

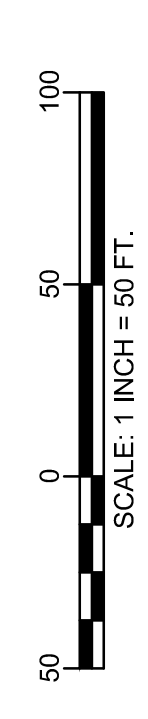
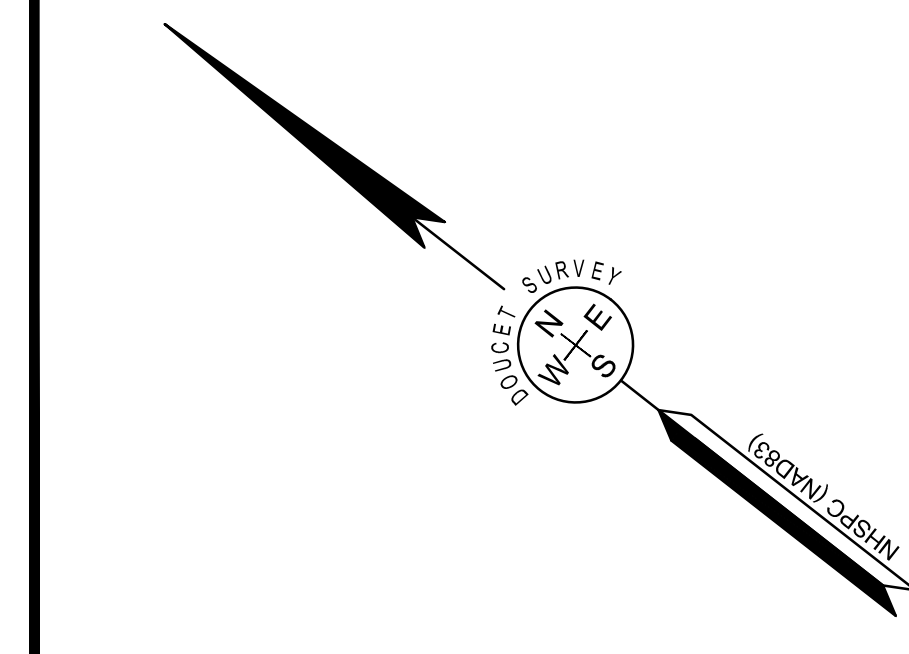
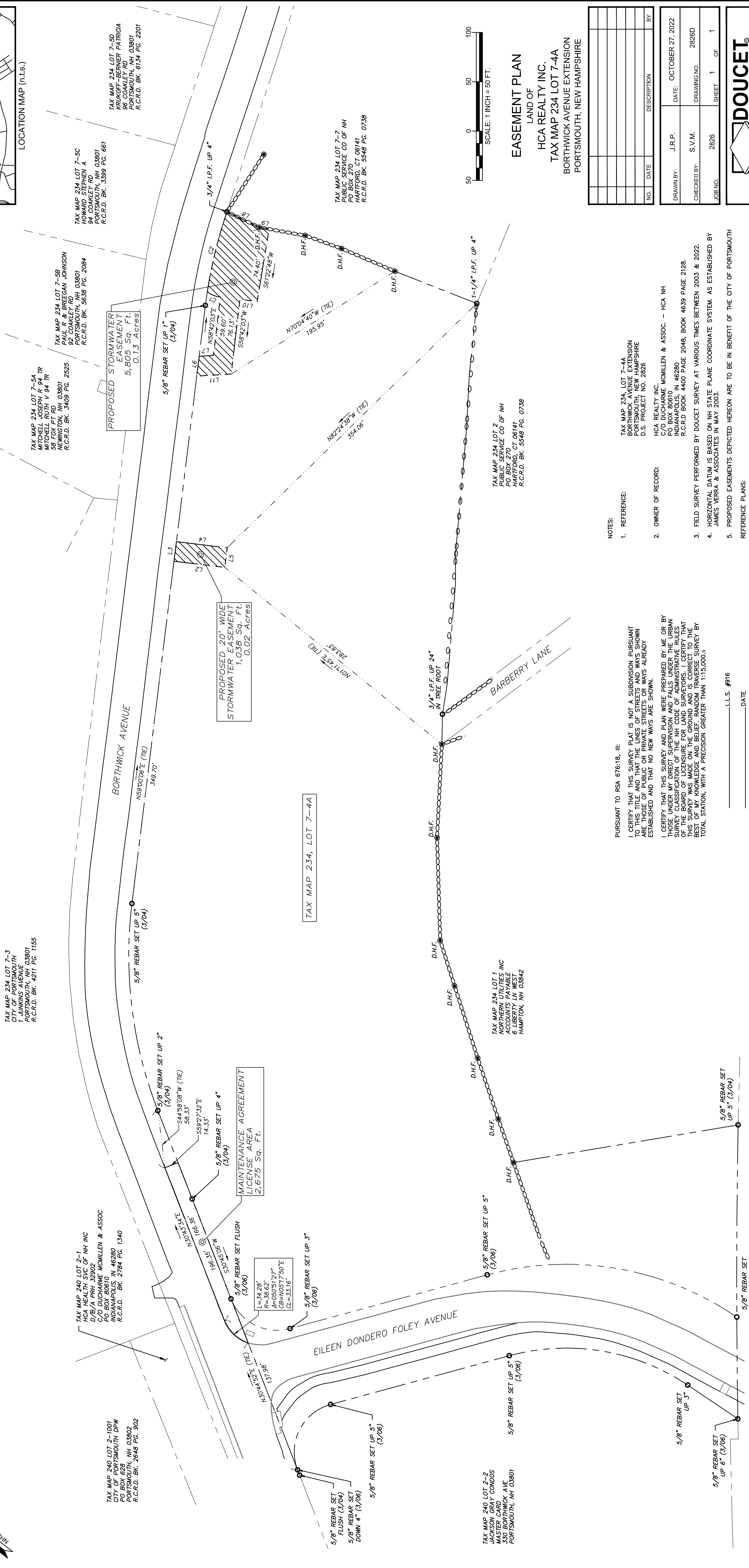
By: \_\_\_\_\_  
Nicholas L. Paul, Vice President

- LEGEND**
- LOT LINE
  - - - - APPROXIMATE ABUTTERS LINE
  - - - - RIGHT OF WAY LINE
  - - - - TIE LINE
  - - - - PROPOSED EASEMENT
  - ▨ STONE WALL
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**EASEMENT PLAN**  
 LAND OF  
**HCA REALTY INC.**  
 TAX MAP 234 LOT 7-4A  
 BORTHWICK AVENUE EXTENSION  
 PORTSMOUTH, NEW HAMPSHIRE

NO.	DATE	DESCRIPTION	BY

DRAWN BY:	J.R.P.	DATE:	OCTOBER 27, 2022
CHECKED BY:	S.V.M.	DRAWING NO.	2828D
JOB NO.	2826	SHEET	1 OF 1

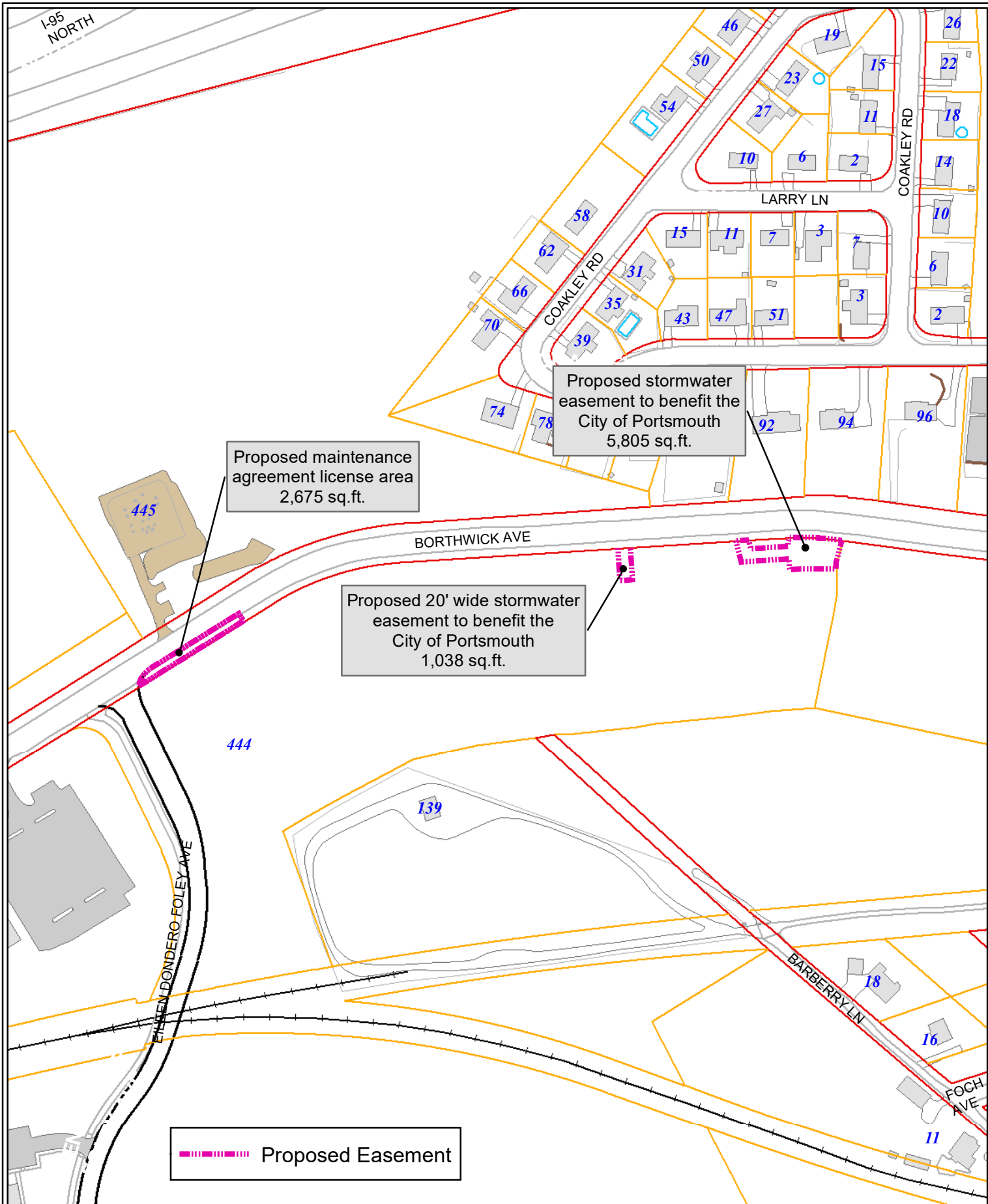
**DOUCET SURVEY**  
 Surveying, Professional Surveying & Mapping Needs  
 102 Commercial Blvd., Portsmouth, NH 03801  
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- NOTES:**
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 TAX MAP 234, LOT 7-4A  
 BORTHWICK AVENUE EXTENSION  
 PORTSMOUTH, NEW HAMPSHIRE  
 D.S. PROJECT NO. 2826
  - OWNER OF RECORD:  
 HCA REALTY, INC.  
 C/O DUCHARME MUILLEN & ASSOC. - HCA NH  
 PO BOX 80610  
 INDIANAPOLIS, IN 46280  
 R.C.R.D. BOOK 4400 PAGE 2048, BOOK 4639 PAGE 2128.
  - FIELD SURVEY PERFORMED BY DOUCET SURVEY AT VARIOUS TIMES BETWEEN 2003 & 2022.
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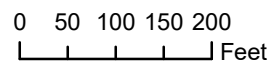
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\_\_\_\_\_, L.L.S., #916  
 \_\_\_\_\_ DATE



# 444 Borthwick Avenue Proposed Sidewalk Maintenance Agreement & Stormwater Easements

Map Prepared by Portsmouth Department of Public Works



Printed: 3/28/2023

**CITY OF PORTSMOUTH  
LEGAL DEPARTMENT  
MEMORANDUM**

**TO: KAREN CONARD, CITY MANAGER**

**FROM: JANE FERRINI, ASSISTANT CITY ATTORNEY** JF

**DATE: MARCH 28, 2023**

**RE: AGENDA ITEM- FINALIZATION OF EASEMENTS AND A LICENSE AMENDMENT FOR WEST END YARDS**

---

**WEST END YARDS**

On September 26, 2019, the Planning Board granted site plan approval for an application from Cate Street Development, LLC ("CSD") for the construction of a mixed – use development located at 428 US Route 1 Bypass. This project, known as West End Yards, involved a series of complicated real estate transactions involving several parcels of land. The project included a land swap between CSD and the City that made possible the construction Hodgdon Way and the reconfiguration of the Cate Street Connector Road, now known as Cate Street. The Council granted approval for some of these conveyances, including several easements and a landscape license, on May 4, 2020.

During the final stages of construction of any project in the City, the project is reviewed for compliance with the site plan. During the review for West End Yards, it was discovered that the site plan had not been recorded, the internal access and utility easements between the parcels had not been conveyed and several easements to the City had not been accepted by the City Council.

**Background**

For every land use approval, the City utilizes a work flow system through opengov that requires an ordered sequence of "sign offs" before the next step can be completed. It appears that there was an error in the work flow process which allowed the West End Yard project to move forward without these easements having been accepted and conveyed. Additional administrative steps have been added to the City's current land use approval process to prevent this from happening for future projects. The City now requires a separate easement plan identifying easements associated with the project to be filed with the initial application and has created a separate step for Council approval of easements to the work flow before building permits can be issued.

The following easements and license amendment have been identified as needing Council approval:

**A. Site Line Easement**

The Council approved one of two required site line easements along Cate Street on May 4, 2020. The second site line easement attached restricts plantings or other obstructions that would interfere with sight lines at the intersection Cate Street and the private driveway of 55 Cate Street owned by Cate Street, LLC. The site line easement deed has been recorded at the Rockingham County Registry of Deeds at Book 6472, Page 467. It is now being presented to Council for its approval. The easement has been reviewed and approved by the Planning and Legal Department.

*I recommend that the City Council move to grant authority for the City Manager to accept the Site Line Easement Deed on behalf of the City.*

**B. Release of Sewer Easement**

New water/sewer infrastructure was constructed as a part of the reconfiguration of Hodgdon Way and the Cate Street Connector, making the existing easements for obsolete water/sewer infrastructure no longer necessary. The attached easement will release the City's interest to that water/sewer infrastructure. The easement has been reviewed and approved by the Planning and Legal Department and is being presented to Council for its approval.

*I recommend that the City Council move to grant authority for the City Manager to execute the Easement Release Deed to release the City's interest in obsolete water/sewer infrastructure in a form similar to the attached.*

**C. Amendment to West End Yards Landscaping Installation and Maintenance License Agreement**

One of the documents approved by the Council on May 4, 2020 as part of the land swap was the attached West End Yards Landscaping Installation and Maintenance License Agreement ("License Agreement"). This License creates rights and obligations for CSD to install, maintain and replace landscaping in the Greenway that abuts Hodgdon Way as more fully described in the Plan attached as Greenway A. (This Plan will be updated to reflect minor revisions and is also referenced in both community spade easements set forth in D and E below.) When the License Agreement was executed, the Cate Street Connector Road was not constructed. The Greenway continues along Cate Street to the intersection of Cate and Bartlett. The attached amendment to the License Agreement extends CSD's obligation to install and maintain landscaping along that portion of the Greenway that abuts Cate Street described on the Plan as Greenway Area B and Greenway Area C.

*I recommend that the City Council move to grant authority for the City Manager to execute an Amendment to West End Yards Landscaping Installation and Maintenance License Agreement in a form similar to the attached.*

**D. Corrective Community Space Easement from Cate Street, LLC**

The West End Yard project is in the G1 district. Community space is a standard requirement for the G1 district, not related to any incentive or density bonus. Part of the community space calculated for the West End Yard Development was the Greenway referenced above. In addition, several types of community space were approved for the project on different parcels. These easements include a park/common, a wide pedestrian sidewalk and a pocket park. These easements have been constructed on the parcels but have not been accepted by Council.

After the site plan was approved, one of the three parcels that comprise the project was conveyed to a different owner. In order to preserve the City's interest in the community space on that parcel, the current owner granted and recorded a community space easement prior to Council approval. A corrective deed needs to be filed to include the City's signature and date of Council approval, in addition to an edit to the description and a reference to an updated Plan. The corrective community space easement attached is presented to Council for its approval and has been reviewed and approved by the Planning and Legal Department.

*I recommend that the City Council move to grant authority for the City Manager to accept and execute a Corrective Easement for Public Access and Use of Community Space in a form similar to the attached.*

**E. Community Space Easements from Cate Street Development, LLC**

The owner of Parcels A and B of the West End Yards is CSD. CSD recorded a Notice of Agreement at the Rockingham County Registry of Deeds, acknowledging that it would not sell or transfer the property until all conditions of the site plan had been satisfied. Some of these conditions include the granting of a community space easement attached for a park/common and wide pedestrian sidewalks. The City will release the Notice of Agreement once all site plan conditions have been satisfied. The community space easement deed has been reviewed and approved by the Planning and Legal Department and is being presented to Council for its approval.

*I recommend that the City Council move to grant authority for the City Manager to accept and execute the Easement for Public Access and Use of Community Space in a form similar to the attached and to execute a Release of a Notice of Agreement once site plan conditions have been met.*

Book: 6472 Page: 467

E # 23007105 03/15/2023 11:13:27 AM  
 Book 6472 Page 467 Page 1 of 2  
 Register of Deeds, Rockingham County



RECORDING 14.00  
 SURCHARGE 2.00

### SIGHT LINE EASEMENT DEED

**NOW COMES CATE STREET, LLC**, a New Hampshire limited liability company having principal office address of 60 K Street, Boston, Massachusetts 02127 (the "Grantor"), for consideration paid, grants to **THE CITY OF PORTSMOUTH**, a municipality whose address is 1 Junkins Way, Portsmouth, New Hampshire 03801 (the "Grantee") with Quitclaim Covenants, the following described easement:

A **SIGHT LINE EASEMENT** over certain land of the Grantor in Portsmouth, County of Rockingham, State of New Hampshire, said easement area being a portion only of proposed Parcel C as shown on a plan (the "Plan") prepared by Doucet Survey, LLC, entitled, "Subdivision & Easement Plan for Cate Street Development LLC, of Tax Map 163, Lots 33 & 34, Tax Map 165, Lot 2, Tax Map 172, Lot 1, Tax Map 173, Lot 2, Cate Street & US Route 1 Bypass, Portsmouth, New Hampshire" dated July 3, 2019, and recorded at the Rockingham County Registry of Deeds as Plan D-42151. The "Easement Area" is depicted as "Sight Line Easement (See Note 13T)" on the Plan, and is more particularly bounded and described on the Plan as follows:

Beginning at point on the southerly side of the proposed Cate Street Extension right of way, said point being N 72° 43' 43" W for a distance of 12.95 feet from a granite bound to be set;

Thence running S 16° 02' 11" W for a distance of 6.47 feet to a point;

Thence turning and running N 69° 11' 35" W for a distance of 96.20 feet to a point at the southerly side of the proposed Cate Street Extension right of way;

Thence along said proposed Cate Street Extension right of way the following two courses:

Along a curve turning to the right through an angle of 05° 10' 02", having a radius of 133.00 feet, and whose long chord bears N 75° 18' 44" W for a distance of 11.99 feet and an arc length of 11.99 feet to a granite bound to be set;

Thence, S 72° 43' 43" E for a distance of 83.89 feet to the point of beginning.



Book: 6472 Page: 468

This **SIGHT LINE EASEMENT** is granted to the City of Portsmouth for the purpose of maintain sight distance. Within the Easement Area, no plantings or obstructions taller than three (3) feet will be permitted, in order to maintain sight distance.

The Grantee shall be responsible for all construction and maintenance in the Easement Area and shall indemnify and hold the Grantor harmless from any claims for damages or injury arising out of the use or maintenance of the easement. This easement shall run with the land and shall be binding upon the Grantor and the Grantee and their respective heirs, successors and assigns.

For reference to the Grantor's title, see Warranty Deed of Portsmouth Land Acquisition LLC to the Grantor recorded at the Rockingham County Registry of Deeds at Book 5959, Page 109.

**THIS IS A CONVEYANCE EXEMPT FROM TRANSFER TAX PURSUANT TO NH RSA 78-B:2,I.**

Signed this 15 day of March, 2023.

Cate Street, LLC

By:

  
Scott O'Neill, Manager

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

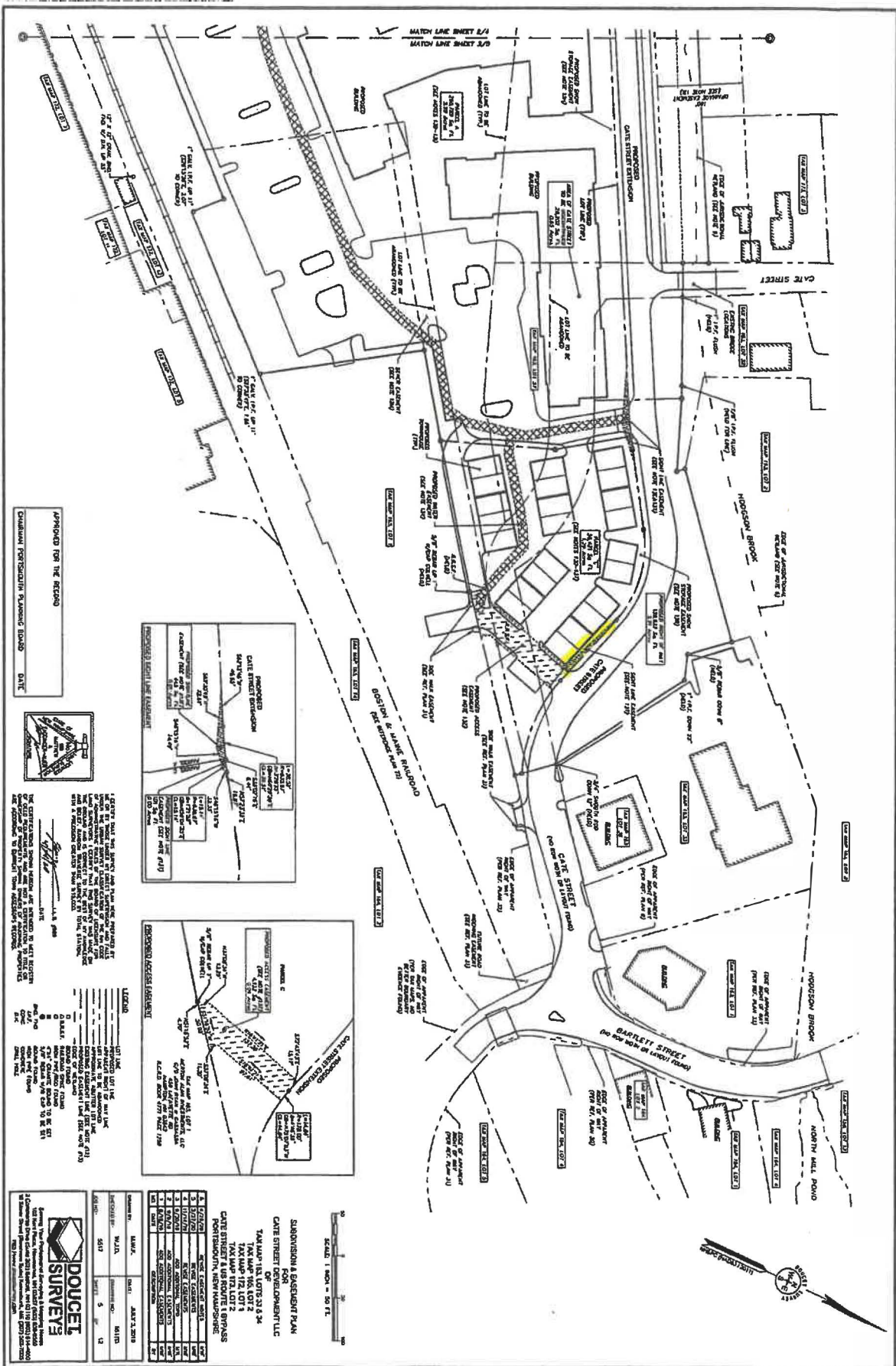
Personally appeared this 15 day of March, 2023, Scott O'Neill, duly authorized Member Cate Street, LLC who acknowledged that he executed the foregoing instrument as its free act and deed for the purposes contained herein.

Before me,

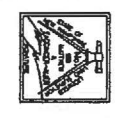
  
Notary Public  
My commission expires:



11



APPROVED FOR THE RECORD  
 CHAIRMAN, PORTSMOUTH PLANNING BOARD DATE



LEGEND  
 --- PROPOSED RIGHT-OF-WAY  
 --- PROPOSED EASEMENT  
 --- EXISTING EASEMENT  
 --- EXISTING RIGHT-OF-WAY  
 --- EXISTING LOT BOUNDARY  
 --- EXISTING STRUCTURE  
 --- EXISTING UTILITY LINE  
 --- EXISTING DRIVEWAY  
 --- EXISTING SIDEWALK  
 --- EXISTING CURB  
 --- EXISTING GROUND SURFACE  
 --- EXISTING ADJACENT PROPERTY

NOTICE: THIS PLAN IS A PRELIMINARY PLAN AND IS SUBJECT TO THE APPROVAL OF THE PORTSMOUTH PLANNING BOARD AND THE RECORDING OFFICE. THE SURVEYOR'S LIABILITY IS LIMITED TO THE ACCURACY OF THE SURVEY DATA AND THE CORRECTNESS OF THE LEGAL DESCRIPTIONS. THE SURVEYOR DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT OR THE COMPLETION OF THE PROJECT.

**DOUCET SURVEYS**  
 1000 Main Street, Portsmouth, NH 03801  
 Phone: (603) 833-1111  
 Website: www.doucetsurveys.com

PROJECT:	DATE:
SCALE:	DATE:

**SUBDIVISION & EASEMENT PLAN**  
 CATE STREET  
 TOWN MAP 122, LOTS 1 & 2  
 TOWN MAP 122, LOT 1  
 TOWN MAP 122, LOT 2  
 CATE STREET & GARBRETT STRESS  
 PORTSMOUTH, NEW HAMPSHIRE

B

**EASEMENT RELEASE DEED**

KNOW ALL MEN BY THESE PRESENTS, that **THE CITY OF PORTSMOUTH**, a municipality whose address is 1 Junkins Way, Portsmouth, New Hampshire 03801, hereby releases any right, title or interest it may have in a sewer and water easement over the land of **CATE STREET DEVELOPMENT, LLC**, a New Hampshire limited liability company having an address of 11 Elkins Street, Suite 420, Boston Massachusetts.

The easement was created in a deed from Margaret Coakley, Jane Garland, Patrick J. Coakley, Ann San Antonio and Cornelius F. Coakley, to the City of Portsmouth, dated July 18, 1958, and recorded at the Rockingham County Registry of Deeds at **Book 1476, Page 252**. Successor in interest to Coakley, Cate Street Development, LLC, acknowledges, consents and accepts the City's release of this easement.

The City of Portsmouth hereby **TERMINATES** said easement per authorization of the City of Portsmouth City Council dated \_\_\_\_\_.

**THE CITY OF PORTSMOUTH**

Date: \_\_\_\_\_

By: \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me on \_\_\_\_\_ by Karen S. Conard, the duly authorized City Manager of the City of Portsmouth.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My Commission Expires

CATE STREET DEVELOPMENT, LLC

Date: \_\_\_\_\_

By: \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me on \_\_\_\_\_ by  
\_\_\_\_\_, the duly authorized \_\_\_\_\_ of Cate Street Development, LLC.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My Commission Expires

C

**AMENDMENT TO WEST END YARDS  
LANDSCAPING INSTALLATION AND MAINTENANCE LICENSE AGREEMENT**

**WHEREAS** the CITY OF PORTSMOUTH, New Hampshire, a municipal corporation with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (“City”) and CATE STREET DEVELOPMENT, LLC, a New Hampshire limited liability company having a principal office address of 60 K Street, Boston, Massachusetts 02127 (“CSD”), entered into a Landscaping Installation and Maintenance License Agreement (“Landscape Agreement”) approved by the City Council on May 4, 2020 and attached as Exhibit A.

**WHEREAS** the Landscape Agreement was part of the City and CSD’s “land swap” in connection with the mixed-use project know as West End Yards that created what is now known as Hodgdon Way and the Cate Street Connector Road.

**WHEREAS** the License Agreement includes CSD’s obligation to install, maintain and replace landscaping in the Greenway abutting Hodgdon Way (“Greenway A”), it did not include CSD’s obligation to install, maintain and replace landscaping in the Greenway abutting the Cate Street Connector Road (“Greenway B”), as more fully set forth in a Plan entitled “Cate Street Development, LLC Development Standards Site Plan, Route 1 ByPass/Hodgdon Way, Lots 72-1, 163-34, 165-2, 172-2, Portsmouth, New Hampshire” dated 11/1/2021, last revised \_\_\_\_\_, to be recorded at the Rockingham County Registry of Deeds as Plan \_\_\_\_\_ and attached as Exhibit B (“Plan”).

**WHEREAS** the parties agree to amend paragraph 1 of the Landscape Agreement to include that portion of Greenway B as depicted in the Plan and more fully described in metes and bounds description attached and incorporated as Exhibit C.

All other terms and conditions of the Landscape Agreement not amended herein remain in full force and effect.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2023

**CITY OF PORTSMOUTH**

By: \_\_\_\_\_  
Karen Sawyer Conard, City Manager  
Authorized by vote of the City Council on \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

\_\_\_\_\_, 2023

Personally appeared before me, the above named Karen Sawyer Conard, City Manager of the City of Portsmouth, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed same for the purposes therein contained. In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

**CATE STREET DEVELOPMENT, LLC**

By: \_\_\_\_\_  
Joseph P. Bisognano III, Manager

STATE OF NEW HAMSHIRE  
COUNTY OF ROCKINGHAM

\_\_\_\_\_, 2023

Personally appeared before me, the above named Joseph P. Bisognano III, Manager of Cate Street Development, LLC, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed same for the purposes therein contained. In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

CA

**WEST END YARDS  
LANDSCAPING INSTALLATION AND MAINTENANCE LICENSE AGREEMENT**

THIS LANDSCAPING MAINTENANCE LICENSE AGREEMENT ("Agreement") is made as of the 2<sup>nd</sup> day of June, 2020 by and between the CITY OF PORTSMOUTH, NEW HAMPSHIRE a municipal corporation with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 ("City"), and CATE STREET DEVELOPMENT LLC, a New Hampshire limited liability company having principal office address of 60 K Street, Boston, Massachusetts 02127 ("CSD").

WITNESSETH THAT

WHEREAS, in connection with the mixed-use project known as West End Yards, and pursuant to the conditional subdivision and site plan approval granted to CSD by the City Planning Board on September 26, 2019 ("Planning Board Approval") and the Development Agreement by and between the City and CSD dated November 7, 2019 related thereto, CSD will be conveying fee title to the City to that certain parcel of land shown as "Proposed Area A" on a plan prepared by Doucet Survey LLC, entitled, "Subdivision & Easement Plan for Cate Street Development LLC of Tax Map 163, Lots 33 & 34, Tax Map 165, Lot 2, Tax Map 172, Lot 1, Tax Map 173, Lot 2, Cate Street & US Route 1 Bypass, Portsmouth, New Hampshire" dated July 3, 2019, last revised April 28, 2020, and recorded at the Rockingham County Registry of Deeds as Plan \* (the "Plan"), upon which the new public roadway known as Cate Street Extension will be constructed;

*(D-4215)*

WHEREAS, the Planning Board Approval and the Plan contemplate the ~~installation and~~ maintenance of plantings and other landscaping upon a certain portion of "Proposed Area A" as shown on the Plan and described below; and

WHEREAS, the City and CSD wish to enter into this Agreement in order for the City to grant to CSD a non-exclusive license to allow CSD access to the Landscape Area, as such term is defined below, for the purpose of installing, maintaining, and replacing landscaping.

NOW THEREFORE, in consideration of the mutual covenants, agreements and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and CSD agree as follows:

AGREEMENT

1. The City hereby grants to CSD a non-exclusive irrevocable license for the purpose of installing, maintaining, and replacing landscaping within that portion of "Proposed Area A" as shown on the Plan and defined and described as follows:

Beginning at a point on the easterly side of the US Route 1 Bypass in the City of Portsmouth, said point being N 39° 05' 21" W a distance of 111.43 feet from a granite bound to be set at the proposed southerly side of the proposed Cate Street Extension;

Thence along the US Route 1 Bypass N 21° 59' 16" W for a distance of 28.10 feet to a point;

Thence, N 70° 52' 40" E for a distance of 374.75 feet to a point;

Thence, N 63° 35' 26" E for a distance of 385.52 feet to a granite bound to be set at the edge of the existing Cate Street right of way;

Thence, S 25° 06' 26" E along the existing Cate Street right of way for a distance of 24.70 feet to a point;

Thence, S 62° 13' 46" W for a distance of 371.79 feet to a point;

Thence along a curve turning to the right through 16° 31' 54", having a radius of 490.00 feet, and whose long chord bears S 70° 29' 43" W for a distance of 141.38 feet and an arc length of 140.89 feet to a point;

Thence along a curve turning to the left through an angle of 09° 18' 59", having a radius of 160.50 feet, and whose long chord bears S 74° 06' 10" W for a distance of 26.10 feet and an arc length of 26.07 feet to a point;

Thence, S 69° 26' 40" W for a distance of 188.44 feet to a point;

Thence along a curve turning to the right through an angle of 48° 45' 02", having a radius of 39.50 feet, and whose long chord bears N 86° 10' 49" W for a distance of 33.61 feet and an arc length of 32.60 feet to a point;

Thence S 28° 11' 42" W for a distance of 7.40 feet to the point of beginning (the "Landscape Area").

2. The purpose of this Agreement is to grant a non-exclusive license to allow CSD access to the Landscape Area for the purpose of accessing, installing, and maintaining landscaping. CSD shall be solely responsible for maintaining the Landscape Area and its landscaping installed thereon, and shall use reasonable efforts to keep the Landscape Area and its landscaping in a clean and attractive condition. Notwithstanding the foregoing, should the City determine that CSD has neglected or refused to keep the Landscape Area or its landscaping in a clean and attractive condition, the City shall have the right to clean and maintain the Landscape Area and landscaping at CSD's sole cost and expense.

3. CSD shall be required to obtain any necessary permits or approvals for the above-referenced landscaping prior to installing same. Nothing in this Agreement should be construed as a waiver of any applicable laws, regulations, or ordinances related to landscaping or otherwise.



Signed this 2<sup>nd</sup> day of June, 2020.

**CITY OF PORTSMOUTH**

By: [Signature]  
Karen Sawyer Conard, City Manager

As authorized by the City Council vote of May 4, 2020

**STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM**

June 2, 2020

Personally appeared before me, the above named Karen Sawyer Conard, City Manager of the City of Portsmouth, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed same for the purposes therein contained. In witness whereof I hereunto set my hand and official seal.

Synthia M. Ravell  
NOTARY PUBLIC  
State of New Hampshire  
My Commission Expires 11/25/2024

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 11/25/2024

**CATE STREET DEVELOPMENT, LLC**

By: [Signature]  
Joseph P. Bisognano III, Manager

**STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM**

May 28, 2020

Personally appeared before me, the above named Joseph P. Bisognano III, Manager of Cate Street Development LLC, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed same for the purposes therein contained. In witness whereof I hereunto set my hand and official seal.



[Signature]  
NOTARY PUBLIC  
My Commission Expires:



**Exhibit C**

CC

**Greenway – Area B**

Beginning at an iron pipe on the easterly side of Cate Street in the City of Portsmouth, County of Rockingham, State of New Hampshire said point marking the southwest corner of land of Sharan R. Gross Revocable Trust (Tax Map 163, Lot 32);

Thence along land of said Sharan R. Gross Revocable Trust the following two courses;

N 65° 44' 42" E, running through an iron pipe a distance of 119.82' to a rebar set;

Thence N 69° 04' 00" E, a distance of 85.18' to a mag nail set at the northerly side of Cate Street;

Thence along Cate Street the following seven courses;

Along a curve turning to the right with a delta of 00° 00' 01", a radius of 5816374.29' and a length of 17.85' to a point;

Thence along a curve turning to the right with a delta of 10° 06' 50", a radius of 100.00' and a length of 17.65' to a point;

Thence S 62° 13' 46" W, a distance of 162.09' to a point;

Thence S 62° 13' 46" W, a distance of 14.52' to a point;

Thence along a curve turning to the right with a delta of 19° 53' 14", a radius of 28.50' and a length of 9.89' to a point;

Thence N 26° 37' 49" W, a distance of 13.00' to a point;

Thence N 65° 44' 42" E, a distance of 8.85' to the iron pipe at the point of beginning..

Said area contains 3,172 square feet or 0.07 acres, and is shown as "Greenway" on a plan entitled "Cate Street Development, LLC, Development Standards Site Plan, Route 1 Bypass/Hodgdon Way, Lots 72-1, 163-34, 165-2, 172-2, Portsmouth, New Hampshire" dated May 19, 2022 by Fuss & O'Neill.

**Greenway – Area C**

Beginning at a mag nail set on the northerly side of Cate Street in the City of Portsmouth, County of Rockingham, said point being at the common lot corner with land of Sharan R. Gross Revocable Trust (Tax Map 163, Lot 32);

Thence along land of said Sharan R. Gross Revocable Trust N 38° 11' 17" W, a distance of 10.00' to a rebar set at land of Industrial Rents-NH, LLC (Tax Map 163, Lot 2);

Thence along land of said Industrial Rents-NH, LLC, N 50° 12' 54" E, a distance of 210.36' to a rebar set at land of Eldredge Brewery Realty Partnership (Tax Map 163, Lot 35);

Thence along land of said Eldredge Brewery Realty Partnership the following three courses;

S 40° 55' 22" E, a distance of 54.00' to a rebar;

Thence N 71° 55' 42" E, a distance of 30.64' to an iron pipe;

Thence S 58° 18' 39" E, a distance of 179.69' to an iron rod at the easterly side of Cate Street;

Thence along Cate Street the following four courses;

Along a curve turning to the right with a chord bearing of S 75° 55' 59" W, a delta of 01° 43' 20.3", a radius of 256.40' and a length of 7.71' to a point;

Thence N 63° 42' 18" W, a distance of 142.14' to a point;

Thence along a curve turning to the left with a delta of 64° 10' 47", a radius of 150.00' and a length of 168.02' to a point;

Thence S 52° 06' 55" W, a distance of 100.61' to the mag nail at the point of beginning.

Said area contains 7,297 square feet or 0.17 acres, and is shown as "Greenway" on a plan entitled "Cate Street Development, LLC, Development Standards Site Plan, Route 1 Bypass/Hodgdon Way, Lots 72-1, 163-34, 165-2, 172-2, Portsmouth, New Hampshire" dated May 19, 2022 by Fuss & O'Neill.

D

After recording return to:

City of Portsmouth  
Planning Department  
1 Junkins Avenue  
Portsmouth, NH 03801

**CORRECTIVE EASEMENT FOR PUBLIC ACCESS AND USE OF  
COMMUNITY SPACE**

**THIS CORRECTIVE EASEMENT FOR PUBLIC ACCESS AND USE OF COMMUNITY SPACE (this “Easement”) IS GRANTED** this \_\_\_\_ day of \_\_\_\_\_, 2023 by CATE STREET, LLC, a New Hampshire limited liability company having an address of 105 Bartlett Street, Portsmouth, New Hampshire 03801 (the “Grantor”) and for consideration of One Dollar (\$1.00) paid by the City, and other good and valuable consideration, receipt of which is acknowledged by Grantor, grants unto the **City of Portsmouth**, a municipal corporation having an address of 1 Junkins Avenue, Portsmouth, New Hampshire (the “City” or “Grantee”) with warranty covenants, an easement for public access to and use of certain community space as set forth herein as a pocket park.

WITNESSETH

**WHEREAS**, Grantor is the owner of certain real estate located in Portsmouth, New Hampshire, shown as Parcel C on a plan entitled “Subdivision & Easement Plan for Cate Street Development LLC of Tax Map 163, Lots 33 & 34, Tax Map 165, Lot 2, Tax Map 172, Lot 1, Tax Map 173, Lot 2, Cate Street & US Route 1 Bypass, Portsmouth, New Hampshire” dated July 3, 2019 as revised, by Doucet Survey, LLC, and recorded at the Rockingham County Registry of Deeds as Plan D-42151 (the “Property”), conveyed to Grantor by deed of Cate Street Development, LLC, which deed is dated October 6, 2020 and recorded at the Rockingham County Registry of Deeds in Book 6175, Page 2817, (“Grantor’s Deed”); and;

**WHEREAS**, reference is made to a plan entitled “Cate Street Development, LLC, Development Standards Site Plan, Route 1 Bypass/Hodgdon Way, Lots 72-1, 163-34, 165-2, 172-2, Portsmouth, New Hampshire” prepared by Fuss & O’Neil dated November 1, 2021, most recently revised on \_\_\_\_\_ and recorded herewith at the Rockingham County Registry of Deeds as Plan D- \_\_\_\_\_ (the “Site Plan”); and

WHEREAS, on March 16, 2023, the Grantor recorded an Easement for Public Access and use of Community Space which was recorded in the Rockingham County Registry of Deeds at Book 6472, Page 1163. This Corrective Easement for Public Access and Use of Community Space is being recorded to correct the size of the Pocket Park described in Exhibit A.

**NOW THEREFORE**, in consideration of the sum of One Dollar (\$1.00), to be paid by the City, and other good and valuable consideration, the receipt of which is hereby acknowledged by the Grantor, Grantor conveys the following easement for public access and use of community space as follows, on a portion of the land conveyed by Grantor's Deed, located in the City of Portsmouth, County of Rockingham, State of New Hampshire (hereinafter referred to as the "Easement"):

**Pocket Park.** The Grantor hereby grants to the City, and declares for the benefit of the public, a permanent right to use and enjoy the Pocket Park identified on the Site Plan, which consists of 2,621.58 square feet, as more particularly bounded and described as follows:

See Exhibit A

The Easement granted herein shall be subject to the following terms and conditions:

- Terms of Public Use:** The Public Use permitted by the Easements shall be governed and determined at the sole discretion of the City, as expressed by the City Manager or the highest-ranking administrative officer of the City, subject to the terms and conditions of this Easement. The City shall provide reasonable notice to the Grantor of an extraordinary event to be scheduled for the easement area, but failure to do so shall not be a breach of this Easement.
- Rights to Private Property:** This Easement does not convey any right to the public to access or utilize the private property of the Grantor outside the easement areas. The Grantor's use of the easement shall be subject to and regulated through the City of Portsmouth's rules and ordinances governing public sidewalks.
- Maintenance:** Maintenance of the easement areas shall be the sole responsibility of the Grantor, its successors or assigns, at the cost and expense of Grantor, its successors and assigns. The City shall have the right, but not the obligation, to access the easement areas for the purpose of maintenance, repair or replacement, after providing reasonable notice to the Grantor of the scope and cost of such work, all as reasonably determined by the City. Such maintenance costs incurred by the City shall be at the sole expense of the Grantor, its successors or assigns.
- Encroachments:** The Easements are subject to all existing encroachments of utilities and improvements on, over and under the Easements.
- Covenants Run with the Land:** The Easements granted herein shall be perpetual in nature, shall run with the land and shall benefit and be binding upon the Grantor, its successors and assigns. This Easement shall be recorded at the Rockingham County Registry of Deeds.

6. **City Ordinance Application:** Any use, public or private, of the Easements shall be subject to, and comply with, all ordinances of the City of Portsmouth.

7. **Notices:** Any notice, demand, request, or other communication that either party desires or is required to give to the other under this Easement shall be in writing and either served personally or sent by United States mail, postage prepaid, certified, return receipt requested, and shall be mailed to the parties at the following addresses:

To Grantor:

Cate Street, LLC  
105 Bartlett Street  
Portsmouth, NH 03801

(as may be hereafter specified to the City by written notice on behalf of Grantor or its successors or as listed and at the address shown on the City's current Tax Records)

To City:

City Manager (or the highest-ranking administrative officer)  
City of Portsmouth, New Hampshire  
1 Junkins Avenue  
Portsmouth, NH 03801

8. **Amendment:** Grantor, or its successors and/or assigns, and City may mutually agree to amend or modify this Easement, provided that any such amendment or modification is approved by the City Council at a noticed public hearing, is in writing, signed by both parties, and is consistent with the purpose and intent of the City of Portsmouth Zoning Ordinance. No amendment or modification of this Easement shall take effect unless and until it is recorded at the Rockingham County Registry of Deeds.

9. **Costs and Liabilities:** Grantor agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property, and to defend, indemnify, hold harmless, and release the City of Portsmouth, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, including Grantor, relating thereto. Without limiting the foregoing, the City of Portsmouth shall not be liable to Grantor or any other person or entity in connection with any entry upon the Property pursuant to this Easement, or on account of any claim, liability, damage, or expense suffered or incurred by or threatened against Grantor or any other person or entity, except as such claim, liability, damage, or expense is the result of the City of Portsmouth's, its agent's or employee's negligence or willful misconduct.

10. **Applicable Law:** This Easement shall be construed and interpreted according to the substantive laws of the State of New Hampshire.

**11. Community Space Easement to Bind Successors:** The provisions of this Easement shall be binding upon and inure to the benefit of Grantor and its successors and assigns. The Easement shall be appurtenant to, and for the benefit of, the City and shall run with title to the Property and shall continue in perpetuity.

Meaning and intending to convey an easement over a portion only of the Property conveyed to the Grantor by Grantor's Deed, as more particularly described above.

This is an exempt transfer pursuant to RSA 78-B:2(I).

IN WITNESS WHEREOF, Grantor and City have executed this Easement for Public Access and Use of Community Space as set forth, below.

Grantor:  
**Cate Street, LLC**

By: \_\_\_\_\_  
Scott O'Neill, duly authorized Member

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Scott O'Neill, duly authorized Member of Cate Street, LLC, proved to me through satisfactory evidence of identification, which was a valid driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public:  
My Commission Expires:



Grantee:  
**City of Portsmouth, New Hampshire**

By: \_\_\_\_\_  
\_\_\_\_\_

As authorized by vote of the Portsmouth City Council taken on \_\_\_\_\_.

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before: me, the undersigned notary public, personally appeared \_\_\_\_\_, \_\_\_\_\_ of the City of Portsmouth, New Hampshire, proved to me through satisfactory evidence of identification, which was a valid driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it in her capacity as stated therein and voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public:  
My Commission Expires:

DA

## EXHIBIT A

Beginning at a point on the southerly side of Cate Street in the City of Portsmouth, County of Rockingham, State of New Hampshire, said point being S 74° 25' 35" W, a distance of 37.45' from a drill hole set in a concrete sidewalk marking the easterly most corner of frontage of land of Cate Street LLC (Tax Map 163, Lot 34);

Thence running around the proposed Pocket Park the following four courses;  
Thence S 01° 02' 14" E, a distance of 21.09' to a point;

Thence S 51° 17' 52" W, a distance of 74.32' to a point;

Thence N 38° 42' 08" W, a distance of 16.21' to a point;

Thence N 16° 41' 21" E, a distance of 56.19' to a point on the southerly side of Cate Street, said point being S 77° 47' 36" E, a distance of 31.43' from a railroad spike set marking a tangent point along Cate Street;

Thence along Cate Street and a curve turning to the left with a delta of 16° 40' 38", a radius of 178.00' and a length of 51.81' to the point of beginning.

Excepting and reserving a 12'6" x 1'7" area for an existing granite sign.

Said area contains 2,621.58 square feet, and is shown as "Pocket Park" on a plan entitled "Cate Street Development, LLC, Development Standards Site Plan, Route 1 Bypass/Hodgdon Way, Lots 72-1, 163-34, 165-2, 172-2, Portsmouth, New Hampshire" dated May 19, 2022 by Fuss & O'Neill.

E

After recording return to:  
City of Portsmouth  
Planning Department  
1 Junkins Avenue  
Portsmouth, NH 03801

**EASEMENT FOR PUBLIC ACCESS AND USE OF COMMUNITY SPACE**

**THIS EASEMENT FOR PUBLIC ACCESS AND USE OF COMMUNITY SPACE (this “Easement”) IS GRANTED** this \_\_\_\_ day of \_\_\_\_\_, 2023 by **CATE STREET DEVELOPMENT LLC**, a New Hampshire limited liability company having an address of 11 Elkins Street, Suite 420, Boston, Massachusetts 02127 (the “Grantor”) and for consideration of One Dollar (\$1.00) paid by the City, and other good and valuable consideration, receipt of which is acknowledged by Grantor, grants unto the **City of Portsmouth**, a municipal corporation having an address of 1 Junkins Avenue, Portsmouth, New Hampshire (the “City” or “Grantee”) with warranty covenants, an easement for public access to and use of certain community space as set forth herein as a Park/Common and Wide Pedestrian Sidewalk.

**WITNESSETH**

**WHEREAS**, Grantor is the owner of certain real estate located in Portsmouth, New Hampshire, shown as Parcel A and Parcel B on a plan entitled “Subdivision & Easement Plan for Cate Street Development LLC of Tax Map 163, Lots 33 & 34, Tax Map 165, Lot 2, Tax Map 172, Lot 1, Tax Map 173, Lot 2, Cate Street & US Route 1 Bypass, Portsmouth, New Hampshire” dated July 3, 2019 as revised, by Doucet Survey, LLC, and recorded at the Rockingham County Registry of Deeds as Plan D-42151 (the “Property”), conveyed to Grantor by deed of Portsmouth Land Acquisitions, LLC, which deed is dated October 30, 2018, and recorded at the Rockingham County Registry of Deeds in Book 5959; Page 109 (“Grantor’s deed”); and;

**WHEREAS**, reference is made to a plan entitled “Cate Street Development, LLC, Development Standards Site Plan, Route 1 Bypass/Hodgdon Way, Lots 72-1, 163-34, 165-2, 172-2, Portsmouth, New Hampshire” prepared by Fuss & O’Neil dated November 1, 2021, last revised \_\_\_\_\_, and recorded herewith at the Rockingham County Registry of Deeds as Plan D-\_\_\_\_\_ (the “Site Plan”); and

**NOW THEREFORE**, in consideration of the sum of One Dollar (\$1.00), to be paid by the City, and other good and valuable consideration, the receipt of which is hereby acknowledged by the Grantor, Grantor conveys the easements for public access and use of community space as follows, on a portion of the land conveyed by Grantor's Deed, located in the City of Portsmouth, County of Rockingham, State of New Hampshire (hereinafter referred to as the "Easements") as set forth in the Site Plan:

1. Park/Common. The Grantor hereby grants to the City, and declares for the benefit of the public, a permanent right to use and enjoy the Park/Common identified on the Site Plan that consists of 3,808 Square Feet, as more particularly bounded and described on the Site Plan as follows:

See Exhibit A

2. Wide Pedestrian Sidewalk. The Grantor hereby grants to the City, and declares for the benefit of the public, a permanent right to use and enjoy the Wide Pedestrian Sidewalk identified on the Site Plan that consists of 17,901 Square Feet, as more particularly bounded and described on the Site Plan as follows:

See Exhibit B

The Easements granted herein shall be subject to the following terms and conditions:

1. **Terms of Public Use:** The Public Use permitted by the Easements shall be governed and determined at the sole discretion of the City, as expressed by the City Manager or the highest-ranking administrative officer of the City, subject to the terms and conditions of this Easement. The City shall provide reasonable notice to the Grantor of an extraordinary event to be scheduled for the easement areas, but failure to do so shall not be a breach of this Easement.
2. **Rights to Private Property:** This Easement does not convey any right to the public to access or utilize the private property of the Grantor outside the easement areas. The Grantor's use of the easement shall be subject to and regulated through the City of Portsmouth's rules and ordinances governing public sidewalks.
3. **Maintenance:** Maintenance of the easement areas shall be the sole responsibility of the Grantor, its successors or assigns. The easement area includes the Greenway depicted on the Site Plan. Grantor is solely responsible for maintenance and costs related to the Greenway as more fully set forth in an Amendment to the West End Yards Landscaping Installation and Maintenance License Agreement. The City shall have the right, but not the obligation, to access the easement areas for the purpose of maintenance, repair or replacement, after providing reasonable notice to the Grantor of the scope and cost of such work, all as reasonably determined by the City. Such maintenance costs incurred by the City shall be at the sole expense of the Grantor, its successors or assigns.
4. **Encroachments:** The Easements are subject to all existing encroachments of utilities and improvements on, over and under the Easements.

5. **Covenants Run with the Land:** The Easements granted herein shall be perpetual in nature, shall run with the land and shall benefit and be binding upon the Grantor, its successors and assigns. This Easement shall be recorded at the Rockingham County Registry of Deeds.

6. **City Ordinance Application:** Any use, public or private, of the Easements shall be subject to, and comply with, all ordinances of the City of Portsmouth.

7. **Notices:** Any notice, demand, request, or other communication that either party desires or is required to give to the other under this Easement shall be in writing and either served personally or sent by United States mail, postage prepaid, certified, return receipt requested, and shall be mailed to the parties at the following addresses:

To Grantor:

Cate Street Development, LLC  
11 Elkins Street, Suite 420  
Boston, MA 02127

(as may be hereafter specified to the City by written notice on behalf of the Grantor or its successors or as listed and at the address shown on the City's current Tax Records)

To City:

City Manager (or the highest-ranking administrative officer)  
City of Portsmouth, New Hampshire  
1 Junkins Avenue  
Portsmouth, NH 03801

8. **Amendment:** Grantor, or its successors and/or assigns, and City may mutually agree to amend or modify this Easement, provided that any such amendment or modification is approved by the City Council at a noticed public hearing, is in writing, signed by both parties, and is consistent with the purpose and intent of the City of Portsmouth Zoning Ordinance. No amendment or modification of this Easement shall take effect unless and until it is recorded at the Rockingham County Registry of Deeds.

9. **Costs and Liabilities:** Grantor agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property, and to defend, indemnify, hold harmless, and release the City of Portsmouth, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, including Grantor, relating thereto. Without limiting the foregoing, the City of Portsmouth shall not be liable to Grantor or any other person or entity in connection with any entry upon the Property pursuant to this Easement, or on account of any claim, liability, damage, or expense suffered or incurred by or threatened against Grantor or any other person or entity, except as such claim, liability, damage, or expense is the result of the City of Portsmouth's, its agent's or employee's negligence or willful misconduct.

10. **Applicable Law:** This Easement shall be construed and interpreted according to the substantive laws of the State of New Hampshire.

11. **Community Space Easement to Bind Successors:** The provisions of this Easement shall be binding upon and inure to the benefit of Grantor and its successors and assigns. The Easement shall be appurtenant to, and for the benefit of, the City and shall run with title to the Property and shall continue in perpetuity.

Meaning and intending to convey easements over a portion only of the Property conveyed to the Grantor by Grantor's Deed, as more particularly described above.

This is an exempt transfer pursuant to RSA 78-B:2(I).

IN WITNESS WHEREOF, Grantor and City have executed this Easement for Public Access and Use of Community Space as set forth, below.

Grantor:  
**Cate Street Development, LLC**

By: \_\_\_\_\_  
Joseph P. Bisognano III, Manager

Grantee:  
**City of Portsmouth, New Hampshire**

By: \_\_\_\_\_  
\_\_\_\_\_

As authorized by vote of the Portsmouth City Council taken on \_\_\_\_\_.

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Joseph P. Bisognano III, duly authorized Manager of Cate Street Development LLC, proved to me through satisfactory evidence of identification, which was a valid driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public:  
My Commission Expires:

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before: me, the undersigned notary public, personally appeared \_\_\_\_\_ of the City of Portsmouth, New Hampshire, proved to me through satisfactory evidence of identification, which was a valid driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it in her capacity as stated therein and voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public:  
My Commission Expires:

EA

EXHIBIT A

PARK/COMMON

Beginning at a point on the northwest side of land of the Boston & Maine Railroad (Tax Map 165, Lot 14) in the City of Portsmouth, County of Rockingham, State of New Hampshire, said point being S 26° 15' 36" E, a distance of 2.07' from a galvanized pipe and marking the southwest corner of the area herein described;

Thence along land of said Boston & Maine Railroad N 46° 59' 07" W, a distance of 32.02' to a point;

Thence N 43° 00' 50" E, a distance of 122.00' to a point;

Thence S 46° 59' 07" E, a distance of 32.02' to a point at land of said Boston & Maine Railroad;

Thence along land of said Boston & Maine Railroad S 43° 00' 53" W, a distance of 122.00' to the point of beginning.

Said area contains 3,906 square feet or 0.09 acres, and is shown as "Park/Common" on a plan entitled "Cate Street Development, LLC, Development Standards Site Plan, Route 1 Bypass/Hodgdon Way, Lots 72-1, 163-34, 165-2, 172-2, Portsmouth, New Hampshire" dated November 1, 2021, last amended \_\_\_\_\_ by Fuss & O'Neill.



EB

EXHIBIT B

WIDE PEDESTRIAN SIDEWALK

Area A

Beginning at a point being S 88° 58' 15" E, a distance of 16.28' from a railroad spike set marking the northeast corner of land of Cate Street Development LLC (Tax Map 172, Lot 1) in the City of Portsmouth, County of Rockingham, State of New Hampshire;

Thence running along a sidewalk on the westerly, southerly and easterly sides of Building A as shown on the below mentioned plan the following 13 courses;

N 57° 02' 32" E, a distance of 19.00' to a point;

Thence N 57° 03' 24" E, a distance of 5.50' to a point;

Thence S 32° 57' 01" E, a distance of 10.00' to a point;

Thence S 57° 02' 59" W, a distance of 14.50' to a point;

Thence S 32° 56' 35" E, a distance of 104.08' to a point;

Thence N 43° 00' 50" E, a distance of 278.50' to a point;

Thence N 33° 10' 10" W, a distance of 58.53' to a point;

Thence N 55° 56' 04" E, a distance of 9.50' to a point, said point being S 64° 50' 45" W, a distance of 137.98' from a rebar set at the northwest corner of land of Cate Street LLC (Tax Map 165, Lot 1);

Thence S 33° 10' 10" E, a distance of 66.12' to a point;

Thence S 43° 00' 38" W, a distance of 298.25' to a point;

Thence along a curve turning to the right with a delta of 07° 48' 19", a radius of 19.50' and a length of 2.66' to a point;

Thence along a curve turning to the right with a delta of 03° 16' 31", a radius of 19.50' and a length of 1.11' to a point;

Thence N 32° 56' 35" W, a distance of 122.54' to the point of beginning.

Said area contains 4,680 square feet or 0.11 acres, and is shown as "Pedestrian Sidewalk" on a plan entitled "Cate Street Development, LLC, Development Standards Site Plan, Route 1

Bypass/Hodgdon Way, Lots 72-1, 163-34, 165-2, 172-2, Portsmouth, New Hampshire" dated November 1, 2021, last revised on \_\_\_\_\_ by Fuss & O'Neill.

**Area B**

Beginning at a point being S 60° 27' 37" W, a distance of 37.78' from a drill hole set in a concrete sidewalk marking the northwest corner of land of Cate Street LLC (Tax Map 163, Lot 34) in the City of Portsmouth, County of Rockingham, State of New Hampshire;

Thence running along a sidewalk on the easterly and southerly side of Building B as shown on the below mentioned plan the following 16 courses;

Along a curve turning to the right with a delta of 34° 32' 43", a radius of 19.50' and a length of 11.76' to a point;

Thence S 35° 02' 16" E, a distance of 82.13' to a point;

Thence along a curve turning to the right with a delta of 90° 00' 00", a radius of 14.50' and a length of 22.78' to a point;

Thence S 54° 57' 44" W, a distance of 123.57' to a point;

Thence S 86° 49' 50" W, a distance of 22.69' to a point;

Thence S 62° 13' 46" W, a distance of 30.08' to a point;

Thence along a curve turning to the left with a delta of 85° 11' 35.5", a radius of 30.50' and a length of 41.29' to a point, said point being N 81° 07' 08" W, a distance of 157.76' from a rebar set at the northwest corner of land of Cate Street LLC (Tax Map 165, Lot 1);

Thence S 62° 13' 46" W, a distance of 9.53' to a point;

Thence along a curve turning to the right with a delta of 86° 20' 12", a radius of 40.00' and a length of 60.27' to a point;

Thence N 62° 13' 46" E, a distance of 32.16' to a point;

Thence N 86° 49' 50" E, a distance of 22.05' to a point;

Thence N 54° 57' 44" E, a distance of 120.86' to a point;

Thence along a curve turning to the left with a delta of 90° 00' 00", a radius of 5.00' and a length of 7.85' to a point;

Thence N 35° 02' 16" W, a distance of 82.13' to a point;

Thence along a curve turning to the left with a delta of  $29^{\circ} 31' 45''$ , a radius of 14.14' and a length of 7.29' to a point;

Thence N  $27^{\circ} 13' 44''$  E, a distance of 8.67' to the point of beginning.

Said area contains 3,185 square feet or 0.07 acres, and is shown as "Pedestrian Sidewalk" on a plan entitled "Cate Street Development, LLC, Development Standards Site Plan, Route 1 Bypass/Hodgdon Way, Lots 72-1, 163-34, 165-2, 172-2, Portsmouth, New Hampshire" dated November 1, 2021, last revised on \_\_\_\_\_ by Fuss & O'Neill.

### **Area C**

Beginning at a point being S  $21^{\circ} 44' 56''$  E, a distance of 34.81' from a mag nail set marking the southeast corner of land of AREC 13, LLC (Tax Map 173, Lot 10) in the City of Portsmouth, County of Rockingham, State of New Hampshire;

Thence running along a sidewalk on the easterly and southerly side of Building C as shown on the below mentioned plan the following 23 courses;

N  $57^{\circ} 24' 57''$  E, a distance of 20.89' to a point;

Thence along a curve turning to the right with a delta of  $89^{\circ} 37' 40''$ , a radius of 20.00' and a length of 31.29' to a point;

Thence S  $32^{\circ} 56' 35''$  E, a distance of 20.89' to a point;

Thence along a curve turning to the right with a delta of  $75^{\circ} 57' 25''$ , a radius of 30.00' and a length of 39.77' to a point;

Thence S  $43^{\circ} 00' 50''$  W, a distance of 64.26' to a point;

Thence along a curve turning to the right with a delta of  $90^{\circ} 00' 00''$ , a radius of 5.00' and a length of 7.85' to a point;

Thence N  $46^{\circ} 59' 10''$  W, a distance of 14.00' to a point;

Thence S  $43^{\circ} 00' 50''$  W, a distance of 96.99' to a point, said point being N  $5^{\circ} 22' 12''$  W, a distance of 93.82' from a rebar marking the northeast corner of land of Cate Street Development LLC (Tax Map 172, Lot 2);

Thence S  $57^{\circ} 25' 45''$  W, a distance of 226.15' to a point;

Thence N  $32^{\circ} 34' 15''$  W, a distance of 20.67' to a point;

Thence N  $57^{\circ} 25' 45''$  E, a distance of 37.40' to a point;

Thence S  $32^{\circ} 34' 15''$  E, a distance of 2.00' to a point;

Thence N 57° 25' 45" E, a distance of 40.67' to a point;

Thence S 32° 34' 15" E, a distance of 2.33' to a point;

Thence N 57° 25' 45" E, a distance of 15.33' to a point;

Thence N 32° 34' 15" W, a distance of 1.67' to a point;

Thence N 57° 25' 45" E, a distance of 120.67' to a point;

Thence S 32° 34' 15" E, a distance of 1.67' to a point;

Thence N 57° 24' 14" E, a distance of 11.33' to a point;

Thence N 32° 34' 15" W, a distance of 17.66' to a point;

Thence N 57° 25' 36" E, a distance of 128.00' to a point;

Thence N 57° 25' 45" E, a distance of 20.00' to a point;

Thence N 32° 34' 15" W, a distance of 58.99' to the point of beginning.

Said area contains 10,036 square feet or 0.23 acres, and is shown as "Pedestrian Sidewalk" on a plan entitled "Cate Street Development, LLC, Development Standards Site Plan, Route 1 Bypass/Hodgdon Way, Lots 72-1, 163-34, 165-2, 172-2, Portsmouth, New Hampshire" dated November 1, 2021, last revised on \_\_\_\_\_ by Fuss & O'Neill.

March 7th, 2023

Mayor and City Council  
City of Portsmouth  
1 Junkins Ave  
Portsmouth, NH 03801

Dear Mayor of Portsmouth and City Council,

Since 2005, Yoga in Action has offered free, therapeutic, community yoga classes in Prescott Park. I am writing today to request again to the City to use Prescott Park as the site of our annual series: "Yoga in the Park." For the past eighteen summers, local teachers and studios have volunteered their time to share free classes to the public in our beautiful park on Marcy Street.

Yoga in the Park is part of YIA's community outreach programming designed to make yoga accessible to Seacoast residents and visitors regardless of experience, health and wellness, or finance. We offer over 23 free classes per week from Yoga and Cancer to Yoga for people with disabilities and Yoga for Recovery. Our Prescott Park classes are a unique opportunity to bring together not just the at-risk populations we serve, but any yoga and wellness enthusiasts in our area: a perfect expression of inclusion and community.

***We would like to use the Whale Statue lawn for a one-hour class each Tuesday at Noon from June through August.***

I look forward to hearing from you. Please feel free to contact me if you have any further questions.

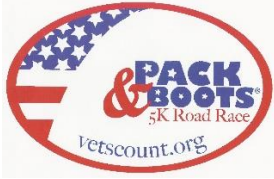
Regards,



Katie Johnson

Community Relations, Yoga in Action





Richard A. Mason, Logistics Chair  
2023 Veterans Count 5K Road Race  
3 Suzanne Drive, Portsmouth, New Hampshire 03801  
[Rmason55@comcast.net](mailto:Rmason55@comcast.net) cell: 603-396-8604

March 28, 2023

Ms. Karen Conard, City Manager  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, New Hampshire 03801

Dear Ms. Conard:

Veterans Count is seeking the appropriate approvals for our Pack & Boots 5K Road Race sponsored by the Seacoast Veterans Count, an affiliate of Easter Seals-NH. The event will be at Pease Tradeport and we have already initiated discussion with them through Chasen Congreves. We offer the following information, and will follow all the details from our May 17, 2014 and July 4, 2022 road races, following the same route.

**DATE/TIME:** July 4, 2023 with an 8:00 am start with the 1-mile Pack & Boots race restricted to the immediate area of 14 Manchester Square followed at 8:30 am with the 5K road race (times may be earlier).

**LOCATION:** The 5k portion's location will be the same as the race we sponsored in 2014 and late year. The beginning of the race will be in front of 14 Manchester Square and will cross International Drive on to Corporate Drive and stay on Corporate Drive until it intersects again with International Drive. The race will go on International Drive until turning back on to Manchester Square to the finish line. We have developed the 1-mile survival run which goes about a half mile onto Corporate Drive and back to Manchester Square.

**ATTENDEES:** We are hoping for about 300 runners in the 5K and possibly 30 in the Pack & Boots race.

**TIMEFRAME:** We anticipate being cleaned and off premises at 11:00 am.

**FOOD:** As in the past we will have donated off-site prepared food, we will seek the appropriate permits and information. There will be no alcohol at this event.

**SANITATION:** We will have the appropriate number of porta-potties on site, working with the Portsmouth Health Officials.

**POLICE:** We will work with the Portsmouth Police Department to have details as required as we have previously.

I am available at the above contact information for further questions or if you wish me to attend a logistics meeting with the City Officials.

Thanks!

Richard Mason

CC: Richard Hartley (Race Director)  
Genevieve Wolfe (Easter Seals)  
Bryan Curley (Logistics Team)  
Chasen Congreves (PDA)

Attachment: COI City of Portsmouth



To: The Honorable Mayor Deaglan McEachern and Portsmouth City Council

From: The Seacoast Half Marathon Organizing Committee

Date: March 28, 2023

Dear Mr. Mayor and Members of the City Council,

The Seacoast Half Marathon Organizing Committee is formally requesting the city's permission to hold the 18<sup>th</sup> Annual Seacoast Half Marathon on Sunday, October 29<sup>st</sup> 2023. This is a charity event with 100% of the proceeds going to a new Seacoast non-profit beneficiary every year. The organizing committee is volunteer only. This year's recipient is Gather (2<sup>nd</sup> time). The race has raised over \$1.4M in its 17 years, in most years contributing \$100K to its selected beneficiary.

As in the past we intend to cap the registrations to have no more than 1,000 runners and walkers (possibly less determined by covid-related limits in each community) on course with walkers starting at 8:00AM and the runners at 8:30AM. Our official course closing time is 11:30AM.

The start is at the base of Summit Ave by the high school and the finish is at the parking area by the cafeteria of the high school. PHS has already agreed to reserve the date for an outside event. The route of the event includes South St. from the HS to Broad St. to Jones and then Sagamore heading towards Foye's Corner (Circle) to Pioneer into Rye. The return re-enters Portsmouth at Foye's back down Sagamore turning right onto Wentworth Rd to New Castle and re-entering Portsmouth along the causeway from New Castle to New Castle Ave. and up South St. back to PHS.

Each year in the past we met with the head of the DPW and Police Department and agree on a safety detail and hire the recommended police for traffic control (no road closures). In addition, we have over 45 volunteers on course at each intersection and blind curve to keep runners and drivers safe. In addition to our beneficiary, we give \$500 each to 5 non-profit organizations to host the water stops along the way in safe locations away from traffic.

We submit this request fully aware that Covid-19 safety considerations are fluid and in all of our promotions intend to reference the State of NH and CDC safety guidelines as our minimum to keep all runners and volunteers safe.

Thank you for your consideration and I look forward to an opportunity to discuss this request in more detail once you have an opportunity to review.

With Best Regards

Bruce Hurley

Seacoast Half Marathon Organizing Committee

Cell (603) 373-8323 [bhurley@globallaminates.com](mailto:bhurley@globallaminates.com)

[www.seacoasthalfmarathon.com](http://www.seacoasthalfmarathon.com)

CITY COUNCIL E-MAILS

Received: March 20, 2023 (after 5:00 p.m.) – March 30, 2023 (before 9:00 a.m.)

April 3, 2023 Council Meeting

**Submitted on Thu, 03/23/2023 - 17:02**

**Email**

[churromwhite@gmail.com](mailto:churromwhite@gmail.com)

**Subject**

Moped Parking Limits

**Message**

Hello,

Recently we've noticed mopeds getting parking tickets for being parked over three days. This seems to be new as I've never seen this before or it's just started getting enforced. The 3 day moped parking limit only affects residents and downtown workers and there is an abundance of moped parking available on the sidewalks, so I guess I'm just curious as to why there is a limit and if it's possible to sell sticker permits for residents and workers. Many residents don't have parking at their homes and having a moped out front helps us to support businesses that are over a mile away. As for workers, the parking options are very limited and if they ride their moped to work three days in a row they are at risk for getting a ticket. I understand that they may get in the way but they can just be part of parking bans and they can be ticketed if they are in middle of sidewalk, but if they're out of the way it just doesn't make sense.

**Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting.** Yes

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*City Manager Conard's Response to above:*

Good morning all –

In response to this inquiry, Chapter XVII, Section 7.1702(H) of the City Ordinance states that mopeds cannot park beyond 72 hours on a public way or public property. Enforcement does take place on a regular basis.

Should you have additional questions, I would be happy to provide answers.

Regards,

Karen Conard

City Manager

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**Submitted on Sun, 03/26/2023 - 20:48**

**Full Name**

Julia Sinelnikova

**Email**

[rainstarfire@gmail.com](mailto:rainstarfire@gmail.com)

**Subject**

Plagiarism for \$100k of Portsmouth Tax Dollars for Public Art

**Address**

1717 Troutman St 205

Ridgewood, New York. 11385

**Message**

Dear Portsmouth NH City Council,

I am a visual artist whose sketch was a top finalist for Portsmouth's new sculpture park. It is a public art design contest funded by taxpayer dollars which, for me, started with my September 2022 proposal.

I noticed that on 3/17/23, a local article was published about a public artwork that PortsmouthNH400 intends to fund for \$100k.

My original design proposal for Portsmouth had been heavily plagiarized during this request for proposals, and after attempting to resolve with the committee unsuccessfully, I have created a folder of evidence. This includes the selected artist's current and past plagiarism of my publicly known, registered artworks.

I wanted to share the drawing that I proposed to Portsmouth400 in September 2022 for \$80k. The rendering by Sijia Chen, "Endeavor," was published recently in 2023. My similar work has been built and in the public realm for many years, while her portfolio looks nothing like this.



In the first week of December, the full committee interviewed me on video, and informed the other six finalists including Sijia of each other's interviews. Later in December, I was cut, and recently, Sijia's design was announced.

I am a queer, disabled, first generation immigrant artist. I am shocked to see this possible design appropriation and defensive city response. Will anyone support the smaller, underfunded artist or does the institution always win?

I am asking the local community to stand with me. The right thing for the committee to do would be to start the contest over, nullify the contest, and/or ideally compensate me for the incredible loss to my studio due to the aggressive damages by this committee, publicity etc. Every day that press off this plagiarized artwork and the city's press release remains online, is material damage to the reputation of my art studio and original, registered designs. The bare minimum that I am fighting for, is for the committee and the artist to agree to cease the replication and fabrication of my original artwork. If this is a real artist who was selected, making an original design would be quick and easy. This should be nearly identical to the other finalist's proposal, as would be clear to any professional with college art history training. I am not sure if this described the background of Portsmouth's public art committee.

To contact the committee, and Ernie Greenslade representative:

[sculpture@portsmouthnh400.org](mailto:sculpture@portsmouthnh400.org)

The committee refuses to speak to me. They think a city funded lawyer is the best interface with me. This is evidenced in my drive folder. If you have time, it is possible to contact her as well, to state how wrong this is. Suzanne Woodland states that no one has to reply to my inquiry from the city, as evidenced in my folder or screenshots from March 2023.

[smwoodland@cityofportsmouth.com](mailto:smwoodland@cityofportsmouth.com)

Here is the full evidence and city's response:

[https://drive.google.com/drive/folders/1mkog-Z1T7zWHAS8XIH\\_VmzABV-L0Fzkl?usp=share\\_link](https://drive.google.com/drive/folders/1mkog-Z1T7zWHAS8XIH_VmzABV-L0Fzkl?usp=share_link)

<https://www.seacoastonline.com/story/news/2023/03/17/portsmouth-nh-residents-invited-for-visioning-with-artist-sijia-chen/70008107007/>

I pray that the New Hampshire arts community is interested in honest justice for artist rights, and proper use of the public arts process and public funds. I need any support I can get.

Thank you for your time.

Kind regards,

Julia Sinelnikova

<https://www.juliasinelnikova.com>  
[www.sijiachen.com](http://www.sijiachen.com)  
[www.endeavorforportsmouth.com/](http://www.endeavorforportsmouth.com/)

--

Julia Sinelnikova  
aka THE ORACLE  
juliasinelnikova.com

**Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting. Yes**

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**Submitted on Tue, 03/28/2023 - 15:29**

**Full Name**

Benjamin Boyles

**Email**

[tinytigermedia@gmail.com](mailto:tinytigermedia@gmail.com)

**Subject**

STOP FUNDING ENDEAVOR SCULPTURE

**Address**

7509 60th Ln  
BROOKLYN, New York. 11385

**Message**

To whom it may concern,

It has come to my attention that the City of Portsmouth intends to fund a project by Sijia Chen, which is nearly identical to the proposal drawing of fellow finalist artist Julia Sinelnikova. Personally, I believe you should be ashamed of this extreme disrespect to working tax paying artists and to your civic duty as city council members using tax payers funding to create art that will be on public display. Ms. Sinelnikova has an extensive public arts record, and the artwork proposal by Ms. Chen is too similar to be considered valid for public funding. Artists cannot afford to defend themselves legally when designs are appropriated. Please do the right thing and apologize for this situation, while also steering the selected artist away from plagiarism of a fellow finalist artist's design. Each artists' original designs are owned by them alone, and Ms. Sinelnikova's body of work, including art nearly identical to the proposed "Endeavor" sculpture, has been on public display for over a decade.

Kind regards,

Benjamin Boyles

**Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting. Yes**

---

**Submitted on Wed, 03/29/2023 - 06:16**

**Full Name**

Gabe DiSaverio

**Email**

[gabe@graniteridgeestate.com](mailto:gabe@graniteridgeestate.com)

**Subject**

SRO

**Address**

9 Falkland Place, Unit B1

**Message**

Hi Portsmouth City Council,

This is Gabe DiSaverio from the Atlantic Heights neighborhood. Hope your week is going well. I was vocal last year about the need for an SRO in Portsmouth Elementary schools, and am going to continue to be. I have a daughter in Kindergarten and sadly I doubt these school shootings are going to be stopping anytime soon. In addition to the ability to meet evil with immediate force, it appears that the SRO also has a critical deterrent effect. Please read the short article below. As you can imagine as a father with a 6yr in a school (NFS) with no SRO, I am highly concerned and hope that the city council, school board, and local law enforcement will approve one in the new budget, if not sooner. I can't imagine any better use of our dollars than protecting, and potentially saving the lives of our children. Looking forward to hearing from you, thank you

Verified

Police say the 28-year-old suspected of killing six people at a Christian school Monday actually had another location chosen but decided to forego it because it had a higher level of security.

The suspect in the Christian school shooting was named by police as 28-year-old Audrey Hale. During an afternoon question and answer session with reporters, Metropolitan Nashville Police Chief John Drake noted that Hale left behind a manifesto.

A reporter then asked if Covenant School was the only school that was targeted. Drake answered, "Yes," but noted there was another location the suspect considered striking as well. However, he said the suspect did "a threat assessment" of the other location and decided there was "too much security."

Following the July 20, 2012, Aurora movie theater attack, gun scholar John Lott noted that the shooting suspect had targeted a Cinemark theater, which was the only one within close proximity of his home where concealed carry permit holders were barred from being armed. Lott wrote:

Out of all the movie theaters within 20 minutes of his apartment showing the new Batman movie that night, it was the only one where guns were banned. In Colorado, individuals with permits can carry concealed handgun in most malls, stores, movie theaters, and restaurants. But private businesses can determine whether permit holders can carry guns on their private property.

Most movie theaters allow permit holders carrying guns. But the Cinemark movie theater was the only one with a sign posted at the theater's entrance.

Lott noted that the Cinemark was not closest to Holmes' apartment, but was chosen for the gun-free status. By: @awr\_hawkins

Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting. Yes

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**Submitted on Wed, 03/29/2023 - 10:50**

**Full Name**

Katherine Tobin

**Email**

[dockate21@gmail.com](mailto:dockate21@gmail.com)

**Subject**

Corner of Congress and Fleet streets

**Address**

579 Sagamore Avenue, Unit 60

**Message**

I do not drive downtown frequently but in the past few months I have seen two incidents of cars on Congress Street driving through a red light at the corner with Fleet Street. The drivers likely didn't see the signal lights because of their location. I think this should be addressed before there is a significant car and/or pedestrian accident.

Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting. Yes

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**Submitted on Wed, 03/29/2023 - 12:09**

**Full Name**

Emmanuelle Blanchard

**Email**

[eblanchard2027@sau52.org](mailto:eblanchard2027@sau52.org)

**Subject**

Portsmouth City Hall and Municipal Building Electricity Usage and Cost

**Address**

155 Parrott Ave, Portsmouth, NH 03801

**Message**

Hello, my name is Emmanuelle Blanchard, and I am an Eighth Grade student at Portsmouth Middle School. In my science class, we are constructing a proposal for a new solar plan. For my project (and the benefit of the city) I have decided to focus my efforts on the City Hall and Municipal buildings. There are wide, flat roofs, and a parking lot that may support an elevated solar platform. However, I have a small favor to ask. Would it be possible for you to share with me the electricity bill data for the City Hall and Municipal buildings. I would use the information in my solar proposal, and the only person who would be exposed to the information would be my teacher, Chris Rose. I understand if it is confidential.

Thank you,

Emmanuelle Blanchard

Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting. Yes

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**Submitted on Wed, 03/29/2023 - 15:27**

**Full Name**

Petar Ramadanovic

**Email**

[petarr@unh.edu](mailto:petarr@unh.edu)

**Subject**

use of Community Campus football field

**Address**

393 UNION ST

**Message**

Dear City Council,

I am a member of the group called Portsmouth Pickup Soccer. We've been playing for close to a decade. We are people of all ages, both male and female, some in their teens, some in their twenties, many in their thirties, and a few in their fifties and sixties. Many of us live or

work in Portsmouth. There are about 100 rotating members, with 30 showing up regularly, even in the winter for pickup games. No one is refused. And everyone is there to have fun.

I am writing now because, with our growing numbers, it has been hard for us to find a suitable field. As you may know, PHS fields preference PHS students, and CC fields preference kids organized sports. So much so that we cannot find even ONE slot -- after the usual working hours -- during the work week. I am addressing you because the use of CC fields is a matter of City priorities. I have kids -- two in the Portsmouth school system -- and am not against prioritizing children by any means. I am, however, asking you to recognize that there is at least one other community group that is just as deserving as our children are and to direct our great Recreation Department to accommodate Portsmouth Pickup Soccer group with one slot during the work week btw 5:30 and 7. I am prepared to come with other members to one of your meetings if you would like to hear in more detail about this request. Please, let me know. Thanks for all the great work you are doing!

Petar

**Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting. Yes**

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# 5K Fun Run - Proposal

Hosted by the YMCA of the Seacoast

June 24<sup>th</sup>, 2023 11:00am

To Mayor McEachern and the Portsmouth City Counsel,

The YMCA of the Seacoast would like to host a 5K Fun Run this summer on June 24<sup>th</sup> to kick off summer vacation for kids and raise money for our organization. The “fun” part of the run will be a slime theme. We plan to have multiple stations throughout the route where volunteers will squirt brightly colored slime at participants. The slime is a nontoxic, non-staining mix of powder and water from Amazon. It is safe for kids, pets and aquatic life. Our goal is host a community event that encourages Portsmouth residents to be active and have fun with each other. We expect to have about 100 participants.

The race will begin at 11:00am with check-in starting at 10:00am. As participants cross the finish line they will be presented with a medal, a piece of fruit and water. Following the race will be a cookout with various food trucks and food options for purchase which will take place in the parking lot of the YMCA. The race will be mainly operated by YMCA employees and volunteers along with police detail as necessary.

## **Route Options:**

The YMCA has not hosted a 5K in about 20 years so we would like feedback on the race route.

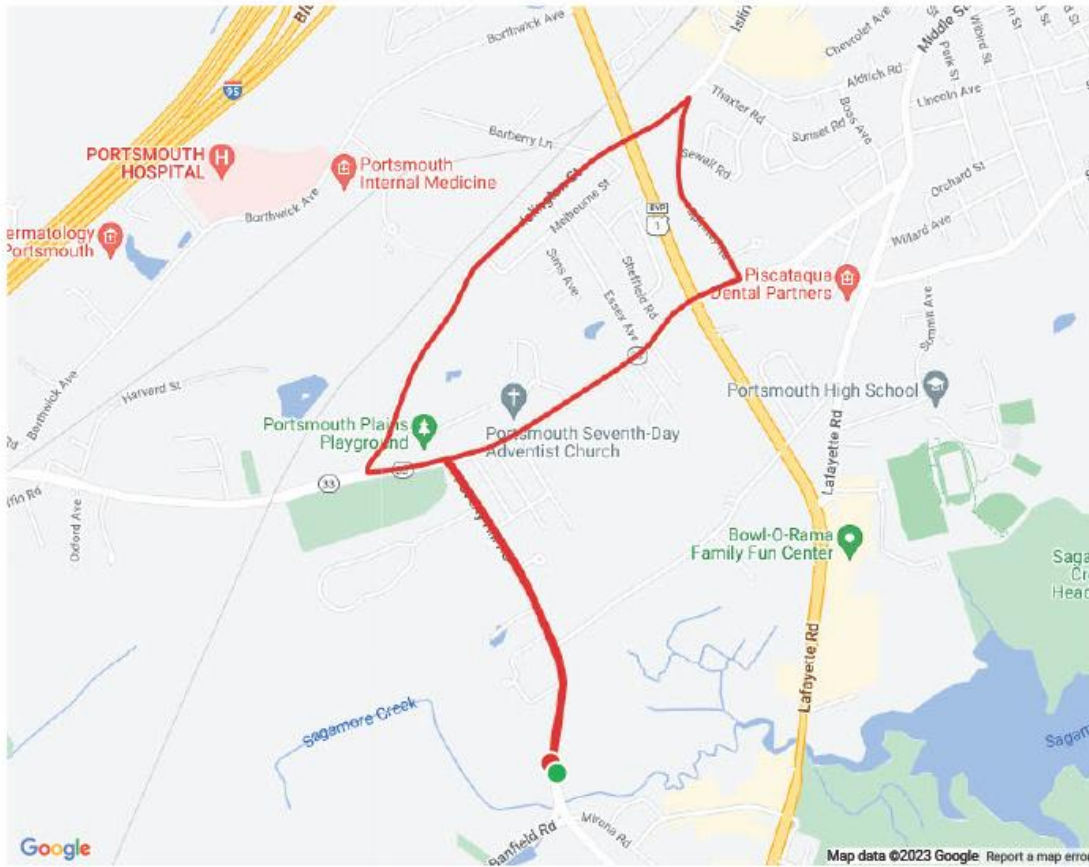
Below are two options both starting and ending in the YMCA parking lot.

**3.13 mi**  
Distance

**99 ft**  
Elevation Gain

**Run**  
Activity Type

**Notes**

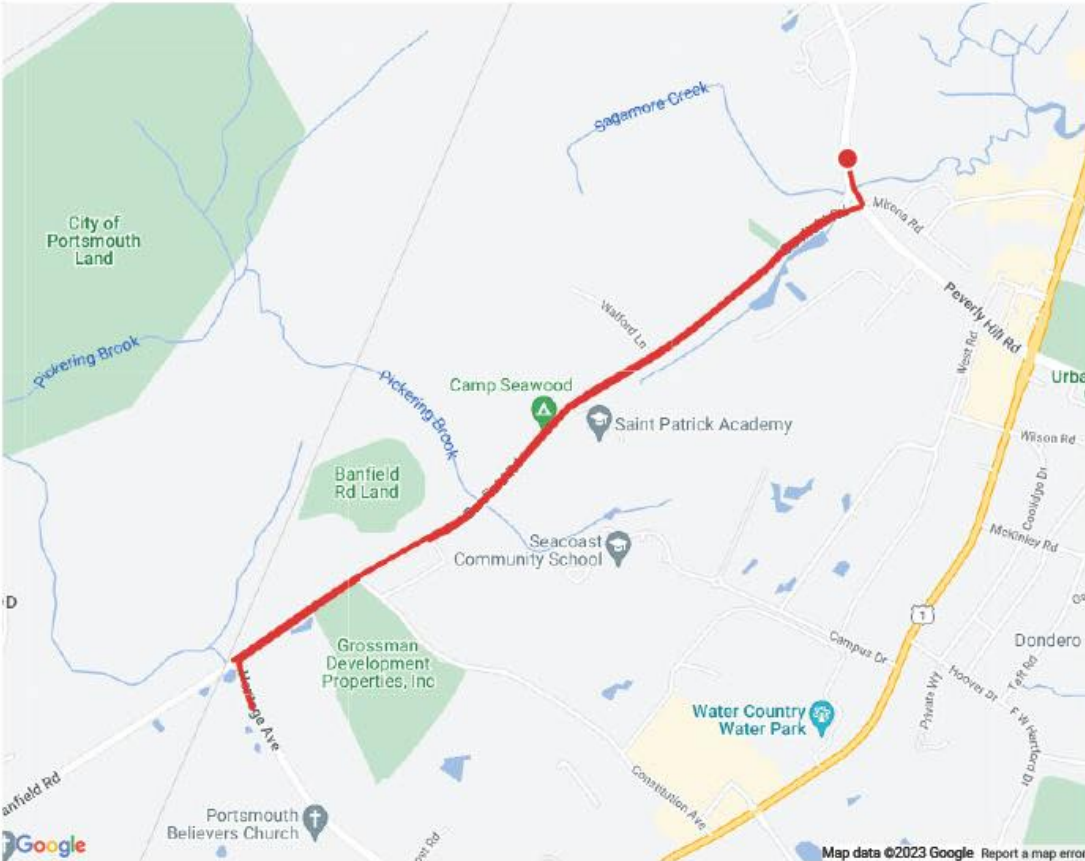


**3.17 mi**  
Distance

**108 ft**  
Elevation Gain

**Run**  
Activity Type

**Notes**



This route was used in the early 2000's. It starts in the YMCA parking lot and turns around in the post office parking lot.

The YMCA will provide liability insurance for this event. If you have any further questions, please contact Maggie Walsh; [mwalsh@graniteymca.org](mailto:mwalsh@graniteymca.org) 603-431-2334. Thank you for taking the time to read through and for considering our event.

**Julia Sinelnikova**

[www.juliasinelnikova.com](http://www.juliasinelnikova.com)

1717 Troutman St. 205 • Ridgewood, NY 11385

[718.207.8676](tel:718.207.8676) • [julia.sinelnikova@gmail.com](mailto:julia.sinelnikova@gmail.com)

March 28<sup>th</sup>, 2023

**Portsmouth, New Hampshire City Council**

**Attn:** City Clerk's Office

**Re:** April 3<sup>rd</sup> Town Hall, Plagiarism for \$100K of Taxpayer Funds in Portsmouth

Dear Portsmouth NH City Council,

I am a visual artist whose sketch was a top finalist for Portsmouth's new sculpture park. It is a public art design contest funded by taxpayer dollars which, for me, started with my September 2022 proposal.

I noticed that on 3/17/23, a local article was published about a public artwork that PortsmouthNH400 intends to fund for \$100k.

My original design proposal for Portsmouth had been heavily plagiarized during this request for proposals, and after attempting to resolve with the committee unsuccessfully, I have created a folder of evidence. This includes the selected artist's current and past plagiarism of my publicly known, registered artworks.

I wanted to share the drawing that I proposed to Portsmouth400 in September 2022 for \$80k. The rendering by Sijia Chen, "Endeavor," was published recently in 2023. My similar work has been built and in the public realm for many years, while her portfolio looks nothing like this.

In the first week of December, the full committee interviewed me on video, and informed the other six finalists including Sijia of each other's interviews. Later in December, I was cut, and recently, Sijia's design was announced.

I am a queer, disabled, first generation immigrant artist. I am shocked to see this possible design appropriation and defensive city response. Will anyone support the smaller, underfunded artist or does the institution always win?

I am asking the local community to stand with me. The right thing for the committee to do would be to start the contest over, nullify the contest, and/or ideally compensate me for the incredible loss to my studio due to the aggressive damages by this committee, publicity etc. Every day that press off this plagiarized artwork and the city's press release remains online, is material damage to the reputation of my art studio and original, registered designs. The bare minimum that I am fighting for, is for the committee and the artist to agree to cease the replication and fabrication of my original artwork. If this is a real artist who was selected, making an original design would be quick and easy. This should NOT be nearly identical to



the other finalist's proposal, as would be clear to any professional with college art history training. I am not sure if this described the background of Portsmouth's public art committee.

Please withdraw the "Endeavor" rendering, plagiarized from my design to the sculpture committee, from city press releases, publications, and artist websites immediately to cease material damage to my studio. This is the minimum compromise I can allow to avoid further action in defending my original studio practice. If Ms. Chen is an artist and the sole artist the committee chooses to support, an *original* design will be the easiest thing to draw.

During the open call, the committee changed the terms and funding amount from the original RFP which is still hosted on the city's website server. This is not professional or the norm – I work with cities to create public works full time. Finalists typically receive a finalist fee. The original funding amount was \$200k for one or more sculptures. I was questioned about lowering my \$80K price tag during my video interview. The press about "Endeavor" states a \$100K budget for one artwork. This series of events show inconsistency, dishonesty in the RFP presentation, a lack of transparency, and possibly discrimination.

To contact the committee, and Ernie Greenslade representative:

[sculpture@portsmouthnh400.org](mailto:sculpture@portsmouthnh400.org)

The committee refuses to speak to me. They think a city funded lawyer is the best interface with me. This is evidenced in my drive folder. If you have time, it is possible to contact her as well, to state how wrong this is to legally threaten a single disabled artist as a city. Suzanne Woodland states that no one has to reply to my inquiry from the city, as evidenced in my folder or screenshots from March 2023.

[smwoodland@cityofportsmouth.com](mailto:smwoodland@cityofportsmouth.com)

Here is the full evidence and city's response and other examples of plagiarism of my work by the artist:

[https://drive.google.com/drive/folders/1mkog-Z1T7zWHAS8XIH\\_VmzABV-L0Fzkl?usp=share\\_link](https://drive.google.com/drive/folders/1mkog-Z1T7zWHAS8XIH_VmzABV-L0Fzkl?usp=share_link)

<https://www.seacoastonline.com/story/news/2023/03/17/portsmouth-nh-residents-invited-for-visioning-with-artist-sijja-chen/70008107007/>

I pray that the New Hampshire arts community is interested in honest justice for artist rights, and proper use of the public arts process and public funds. I need any support I can get.

Thank you for your time.

Kind regards,

Julia Sinelnikova

<https://www.juliasinelnikova.com>  
[www.sijjachen.com](http://www.sijjachen.com)  
[www.endeavorforportsmouth.com/](http://www.endeavorforportsmouth.com/)

## **Request for update from staff on public engagement**

One of our council goals this term is to

*“Invite and honor input from the community and encourage increased participation”*

Creating and now filling a dedicated position adds to the city’s commitment to this goal.

The traditional local government methods of engagement – public comment, public hearings, project meetings for affected neighborhoods with DPW, email to councilors, etc. have many strengths: they provide easy open access to elected officials, they attract well-informed, engaged residents, and they often get press coverage, so the input is amplified.

But these methods can be dominated by watchdogs/critics at one end of the spectrum, and diehard issue advocates at the other. Our goal should be to get input from the best cross section of residents and taxpayers in ways that give us the most thoughtful input and useful data to make policy decisions. We can’t help but win when 1) the most people possible have been asked to participate and 2) the resulting input synthesizes and presents multiple points of view. Another goal should be a process that includes residents early on in the process of major city projects or new laws. If residents are included at the formulation stage of projects and policies, the end product is better and rolls out with more support.

For example, for the city’s 2005 Master Plan, more than 310 residents participated in Portsmouth Listens study circles. The resulting vision for the city prioritized historic preservation, green space, a flourishing arts and culture scene, more walkability and environmental sustainability. Residents felt invested in the resulting Master Plan, so much so that when a proposal to build a new middle school at the former Jones Avenue landfill emerged, residents said it conflicted with the Master Plan– it was less walkable, less environmentally sustainable and did not honor the city’s history compared to renovating the old school. When the Joint Building Committee in charge of the project deadlocked, citizens were again invited to a dialogue process and asked what criteria city should use in building a new Middle School. The resulting dialogue produced strong support for criteria in line with the Master Plan, making renovating the existing school the clear choice. This was not cheapest or simplest solution, but it was the desire of the residents.

The extensive public engagement up front in the process enabled the council and school board to vote unanimously to renovate PMS and move forward with support instead of division.

That process – a Portsmouth Listens dialogue titled “Renovate or Relocate” -- included a lengthy information session and facilitated study circles that met over four nights, In exit surveys, 76% of participants said they came to respect other points of view better at the end than the start, and 32% said they changed their mind.

This seems a crucial element of good public engagement. Rather than rely solely on the often polarizing public hearings, where people come in with set opinions and generally leave with them, too, a process that empowers residents to reason together to solve a problem will include

more diverse points of view, and through dialogue find the best ideas. It allows residents to test different solutions, to change their mind, and to collaborate. This gives the City Council higher quality input and engenders greater public support from the start.

Portsmouth Listens-style dialogues are not the only methods for public engagement early in the process. Surveys (which can be followed by dialogues), charettes, real time electronic voting at info sessions, multiple public input sessions convened on a series of key topics (used for the Prescott Park Master Plan), even combined polling and comment platforms such as **Consider.it** (used by the Sustainability Committee) or **FlashVote** all have benefits, empower residents and widen representation.

Developing new and better public engagement methods in a way citizens come to trust becomes very germane when we apply it to issues we face as a Council:

- Polling provided valuable data for our decisions on street dining and Neighborhood Parking Permits. It made sure all stakeholders had a say (not just those appearing at meetings). Recalling those decisions, it's easy to see how valuable that data was.
- After slowing down consideration of workforce housing at the Sherburne School, is there an opportunity for a public dialogue with the neighborhood in conjunction with sharing Land Use Committee findings? Is there an opportunity for public engagement that asks the residents what are their values and priorities (criteria) while also considering the city's acute housing shortage?
- Are there opportunities to engage the public in early 2024 to create a vision for the 2025-2035 Master Plan? What mix of surveys, workshops and dialogues will work best?

An update on the July 27, 2022 Public Engagement would give the staff a chance to update us on FlashVote and other initiatives in these contexts. It would be helpful if a report back touched on the above issues, and how public engagement could be developed for them. Also, the city has many veterans of public process as either elected officials or citizen volunteers. Is there a way to tap their expertise?

# PARKING and TRAFFIC SAFETY COMMITTEE

## ACTION SHEET

6:30 P.M. – March 15, 2023  
City Council Chambers

**PRESENT:** Members: City Manager Karen Conard, Deputy Police Chief Mike Maloney, Public Works Director Peter Rice, Fire Chief Bill McQuillen, Chairman Andrew Bagley, Erica Wygonik, Mary Lou McElwain, Steve Pesci, Mark Syracuse

City Staff: City Engineer Eric Eby, Parking Director Ben Fletcher, Associate Engineer Tyler Reese, Assistant City Engineer Zach Cronin

ACTION ITEMS FOR CITY COUNCIL
<ul style="list-style-type: none"><li>• None</li></ul>

- None

- **Roll Call**
- **Financial Report:** Voted to accept and place on file Financial Report dated January 31, 2023.
- **Public Comment Session:** There were six speakers: Jonathan Sandberg spoke regarding pedestrian crossing at Bartlett Street and Islington Street signal. Petra Huda commented on Woodbury Avenue, as well as inquired about the cost of the Bartlett Street and Thornton Street roundabout trial. Kenneth Ferrer commented on Woodbury Avenue and spoke in support of changes at Market and Daniel Streets. Matthew Glenn (Z) spoke in support of Woodbury Avenue traffic calming, Sagamore Avenue shoulder improvements, and commented on the multi-use path under I-95. Justin Richardson commented on Woodbury Avenue pedestrian crossing. Anne Poubeau spoke in support of traffic calming measures on Woodbury and Sagamore Avenues and commented on the need for a flashing light at Bartlett and Cate Streets.
- **Presentations:** Speed Limit Review Progress Report, by speed limit working group members. **Public Questions:** Alice Wahl had questions regarding the process of parking and traffic requests. Liza Hewitt requested more information on street classifications and voiced support for a citywide speed limit.
- **Daniel Street, request for lighted flashing stop sign at Market Square:** Voted to place on file.
- **Woodbury Avenue, request for traffic calming by residents:** Voted to hold an additional public meeting, to present revised plan incorporating speed cushions.
- **Dennett Street, request for traffic calming, by residents:** Voted to approve temporary bump-out north of Sparhawk Street, with public outreach conducted prior to implementation of the pilot, and if there is negative feedback from the public, there will be a report back to the Committee prior to implementation.

- **Sagamore Avenue, request to slow traffic, by resident:** Voted to approve installation of additional speed limit sign and speed feedback sign.
- **Sagamore Avenue, update on cross-section improvement project:** Informational; no action required.
- **Monthly Accident Report:** Informational; no action required.
- **Response to resident concerns regarding Chevrolet Avenue sidewalks and speeding, Gallagher's Place crosswalk on Islington Street, and traffic speeds on Miller Avenue near Spring Street:** Informational; no action required.
- **Downtown parking study status update:** Informational; no action required.
- **Bartlett Street at Thornton Street, update on temporary roundabout trial:** Informational; no action required.
- **Adjournment:** Voted to adjourn 8:06 P.M.

*Respectfully submitted by: Leila Birr*

**PARKING and TRAFFIC SAFETY COMMITTEE**  
PORTSMOUTH, NEW HAMPSHIRE

**CITY COUNCIL CHAMBERS**  
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

*Members of the public also had the option to join the meeting over Zoom*

**6:30 PM**

**March 15, 2023**

**MINUTES**

**I. CALL TO ORDER**

Chairman Andrew Bagley called the meeting to order at 6:30 p.m.

**II. ATTENDANCE**

Members Present:

Chairman Andrew Bagley  
Steve Pesci  
Erica Wygonik (Alternate)  
Public Works Director Peter Rice  
City Manager Karen Conard  
Deputy Police Chief Mike Maloney  
Mary Lou McElwain  
Mark Syracuse  
Fire Chief William McQuillen

Absent

Harold Whitehouse (excused)

City Staff Present:

Parking Director Ben Fletcher  
City Engineer – Parking, Transportation and Planning Eric Eby  
Associate Engineer Tyler Reese  
Assistant City Engineer Zach Cronin

**III. FINANCIAL REPORT**

[00:05:32] Karen Conard moved to accept the Financial Report dated January 31, 2023, and place it on file, seconded by Peter Rice. **On a unanimous vote, motion passed 9-0.**

**IV. PUBLIC COMMENT (15 MINUTES)**

This is the time for all comments on any of the agenda items or non-agenda items.

[00:05:42] There were six speakers: Jonathan Sandberg spoke regarding pedestrian crossing at Bartlett Street and Islington Street traffic signal. Petra Huda commented on Woodbury Avenue, as well as inquired about the cost of the Bartlett Street and Thornton Street roundabout trial. Kenneth Ferrer commented on Woodbury Avenue and spoke in support of changes at Market and Daniel Streets. Matthew Glenn (Z) spoke in support of Woodbury Avenue traffic calming, Sagamore Avenue shoulder improvements, and commented on the multi-use path under I-95. Justin Richardson commented on Woodbury Avenue pedestrian crossing. Anne Poubeau spoke in support of traffic calming measures on Woodbury and Sagamore Avenues and commented on the need for a flashing light at Bartlett and Cate Streets.

## V. PRESENTATIONS

[00:18:44] Speed Limit Review Progress Report, by speed limit working group members.

Questions from the public were taken following the presentation. Alice Wahl had questions regarding the process of parking and traffic requests. Liza Hewitt requested more examples of road classifications and voiced support for a citywide speed limit.

## VI. NEW BUSINESS

*(No public comment during Committee discussion without Committee approval.)*

A. [01:03:13] Daniel Street, request for lighted flashing stop sign at Market Square, by resident. Peter Rice moved to place on file, seconded by Mark Syracuse. **Motion passed on a unanimous vote, 9-0.** The Committee is working on a comprehensive overview of Market Square.

## V. OLD BUSINESS

A. [01:03:45] Woodbury Avenue, request for traffic calming, by residents. Peter Rice made a motion to hold an additional public meeting to present the revised plan incorporating speed cushions. Seconded by Karen Conard. **On a unanimous vote, motion passed 9-0.** Eric Eby gave a brief review of the modified plan.

B. [01:16:35] Dennett Street, request for traffic calming, by residents. Mark Syracuse made a motion to approve a temporary bump-out north of Sparhawk Street, seconded by Karen Conard. Public outreach will be conducted prior to implementation of the pilot, and if there is negative feedback from the public, there will be a report back to the Committee prior to implementation. **Motion passed on a unanimous vote, 9-0.**

C. [01:23:21] Sagamore Avenue, request to slow traffic, by resident. Peter Rice moved to approve installation of an additional speed limit sign and speed feedback sign, seconded by Mary Lou McElwain. **Motion passed unanimously, 9-0.**

**VI. INFORMATIONAL**

- A. [01:24:36] Sagamore Avenue, update on cross-section improvement project. Presented by Assistant City Engineer, Zach Cronin
- B. [01:30:29] Monthly Accident Report from Police. Additional information was provided regarding the recent pedestrian accident at Congress Street and Maplewood Avenue.
- C. [01:34:54] Response to resident concerns regarding Chevrolet Avenue sidewalks and speeding, Gallagher's Place crosswalk on Islington Street, and traffic speeds on Miller Avenue near Spring Street.
- D. [01:37:36] Downtown parking study status update.
- E. [01:38:28] Bartlett Street at Thornton Street, update on temporary roundabout trial.

**VII. MISCELLANEOUS**

None

**VIII. ADJOURNMENT**

Mary Lou McElwain moved to adjourn at 8:06 P.M., seconded by Karen Conard. **On a unanimous vote, motion passed 9-0.**

Respectfully submitted,

Leila Birr  
Administrative Assistant  
Department of Public Works





## CITY OF PORTSMOUTH

CITY COUNCIL POLICY No. 2023 - \_\_\_\_\_

### **Donation Policy**

#### **1. Objective and Purpose**

Donations of every type are offered to the City of Portsmouth for general or specific purposes. This policy will guide the review and acceptance of such donations, confirm that the City has relevant and adequate resources to manage such donations, and ensure that the City appropriately acknowledges the generosity of the donor. Partnership opportunities for donations for community benefits should respect relevant statutory limitations and guidance, honor policy goals and occur within an ethical framework that preserves the integrity of municipal decision-making processes.

The purpose of this policy is to:

- Establish guidelines that ensure donations occur at arm's length from any City decision-making process;
- Provide criteria and process for the acceptance of donations; and
- Confer upon and confirm the authority of the City Manager, the School Board, the Police Commission, the Fire Commission and the Library Board of Trustees, to accept and spend donations consistent with State law, the parameters contained herein, and their adopted policies and practices.

#### **2. Scope**

**2.1** This policy is intended to encompass all donations made to the City, its boards, committees and commissions, and programs as well as donations requested or encouraged by staff directed to other organizations or community agencies. That stated, this policy is not intended to interfere with or displace the policies and procedures of the School Board, and Library Trustees which have certain authority granted to them under Charter, ordinance, and law. The City of Portsmouth desires to encourage donations, while at the same time considering fiscal impacts and on-going maintenance and operational costs. While this policy predominantly focuses

on material donations, this policy should be considered to have broad applicability for unseen future donations.

## 2.2 This policy does not apply to:

- a. Donations of public art which are the subject of a separate ordinance and policy;
- b. Individual volunteers who may serve in various capacities within municipal departments as part of an academic or other program, or individual volunteers who assist at various municipal-sponsored or run events, functions or programs;
- c. Gifts to individual employees which are governed by Ordinance under Chapter 1, Article 8 and subject to the policies and procedures implemented by the City Manager;
- d. Grants from any source are not covered by this Donation Policy and must be brought forward to the City Council for acceptance; and
- e. Trust instruments which must be brought forward to the City Council for approval (although the general policy considerations expressed in this policy may be applicable and useful).

## 2.3 Definition

*"Donations"* are cash and other monetary instruments, tangible property including land, or in-kind contributions directed to the City or its boards, commission, committees, or programs. Donations do not constitute a business relationship since no reciprocal consideration is sought.

## 2.4 Examples of Donations:

- **Memorials:** trees, park benches, plaques
- **Monetary:** including cash from event ticket sales and payments for auction items associated with fundraisers that may be conducted by third parties and donated to the City, as well as gift certificates and discount deals from local businesses and nonprofits
- **In-kind services:** this includes organized multi-person volunteer activities by businesses and non-profits to repair, improve municipal facilities and properties
- **Tangible Items other than Art:** laptops and other equipment, instruments, food

## 2.5 Donation Process

The City Manager shall develop and implement such forms and processes necessary to comply with this policy and work with the Charter Departments and Library Trustee to align their policies and practices as needed for consistency of implementation. If the

donation is for a restricted purpose, that purpose should be clearly defined or described and any time limitation on the expenditure of those restricted funds identified.

### **3. Accepting Donations**

#### **3.1 General Authority**

The City may elect to accept or decline any donation.

#### **3.2 Accepting Authority**

- The School Board shall have authority to accept donations directed to the School Department and its programs provided it is consistent with this policy.
- The Library Board of Trustees shall have authority to accept donations directed to the Portsmouth Public Library and its programs provided it is consistent with this policy.
- The City Manager shall have the authority to accept donations of value of \$100 or less without action by the City Council. The City Manager shall prepare for informational purposes only a quarterly report to the City Council identifying all such donations so accepted. Generally, the name of the donor and the amount of the donation and any program or trust to which the donation was directed will be identified in the report.
- All other donations shall be submitted to the City Council for acceptance.

**3.3** Occasionally the City receives cash donations in circumstances in which it is unable or impractical to identify the donor. Such examples include when staff is directed to “keep the change” or to “round up . Nothing in this policy limits the City’s ability to accept these donations.

**3.4** There are donors and situations where it is preferred that the donation be treated as anonymous, to the extent possible, and as may be permitted by the State’s open meeting and public records laws. In addition, some departments, such as the Police Department, prefer to limit certain donor information to the Chief and the Police Commission due to their officers’ enforcement role. Nothing in this policy limits the City Manager’s authority to accept donations in instances where the donation is to be treated as anonymous to the extent allowable by law.

### **4. General Conditions**

**4.1** No advantage is to accrue to the donor (donor’s family, business or other close relations or interests) as a result of the donation.

**4.2** No donation shall be accepted which violates this policy, the City Charter or ordinances, or any State, federal law or order.

## **5. Eligible Uses**

- 5.1** Eligible donations are those that support approved programs and services, durable assets; capital facilities or projects; asset improvement, restoration or capital maintenance; or cash for such purposes.
- 5.2** Donations must be for purposes consistent with the receiving Departments' mandate, programs, services and activities and must be deemed to be in the public interest of the City.
- 5.3** Donations are only to be accepted if the receiving Department has the capacity to meet the initial and ongoing costs and obligations associated with the gift.
- 5.4** Donors who wish to make donations that support special purposes to be provided by an organization independent of the City should be directed, where possible, to the intended organization.

## **6. Ineligible Donors and Donations**

To the extent reasonably practical, donations from ineligible donors should be declined. Ineligible donors include, but are not limited to:

- Persons who may be suffering from mental illness, disability or duress;
- A party, committee, association, fund, or other organization (regardless of incorporation) that is regulated by election laws;
- Any organization that is required to be registered with the secretary of state under the lobbyist registration act;
- Proven or suspected criminal organizations;
- Organizations that promote hatred against individuals or groups; and
- Individuals, businesses, or organizations when adverse to the City in pending litigation.
- Persons and entities with pending applications for permits or other municipal approvals.

Donations from certain persons and entities such as arms manufacturers, certain drug manufacturers/distributors, and tobacco companies are not ineligible donors but donations from such entities may require special attention and consideration and evaluation of potential conflicts.

Donations shall not be accepted for programs, projects or other purposes which would be in violation of any anti-discrimination policies of the City of Portsmouth or any local, state or federal laws.

**7. Authority to Accept and Spend Cash Donation**

The City Manager (and as applicable the department heads by extension) and Charter Departments shall have the authority to expend accepted donations for the purposes intended.

**8. Declining Donations**

As stated above under Section 3, the City reserves the right to decline any donation for any reason. If the donation is not accepted, the City may, at its discretion, notify the donor of the reason the donation was declined.

**9. Costs Associated with the Proposed Donation**

The City also has an interest in knowing in advance the full cost that may be associated with a donation, namely those which may relate to purchase, installation, maintenance and operation during the gift's expected life cycle. In the ordinary course the amount of the donation should be sufficient to cover all such expenses.

- Neither purchase nor installation shall commence until the donor's donation has been accepted and funds have been received by the City for such purposes.
- As to donations requiring on-going operation and maintenance, amounts which are estimated to exceed \$1,000 on an annual basis, the donation shall include an endowment sufficient to cover them, i.e. 20x the estimated amounts.

In rare and unusual circumstances where the City has determined that the value of the donation substantially exceeds the cost associated therewith, these requirements may be waived.

**10. Procurement Decisions:**

**10.1** Voluntary donations for community benefits may not be solicited and offers may not be made by or accepted from a bidder, proponent or applicant to procurement, or their representative, concurrent to the procurement solicitation and award process.

**10.2** The City shall not accept donations that are conditional upon the endorsement of any product, service or supplier. Current and prospective suppliers to the City that decline solicitations for donations shall not be penalized in procurement decisions of the City.

**11. Donations of Personal or Real Property**

- 11.1** Donations of real property should include consideration of any future or ongoing obligations arising from the donation. Where appropriate, approval of a donation of real property is to include the use and disposition of the real property including the net proceeds arising from a property transaction. Donations of real property will be held in the name of the City.
- 11.2** Donations of personal property will also be reviewed and considered by this policy and subject to approval by the appropriate department head.

## **12. Managing and Reporting Donations**

To cultivate an ongoing relationship with donors:

- Treat individual donors' names and amounts given, and any other private or personal information, with respect and, except where the donor authorizes release of such information, with confidentiality to the extent provided by the law;
- Reasonably limit the frequency of solicitations; and
- Respond promptly to a donor's question or complaint.

The City shall manage and record in accord with generally accepted governmental accounting principles donations that are restricted for uses or programs, whether such restrictions are temporary or permanent.

## **13. Acknowledgements, Forms and Receipts**

The City is committed to the highest standards of donor stewardship and accountability. This includes appropriate acknowledgement and recognition for donations. Accordingly, for donations valued at \$100 or more, a formal letter of acknowledgement and gratitude will be sent to the donor by the City.

## **14. Accounts**

- 14.1** Donations designated for specific purposes or for the general purpose of a specific program, are to be used by the program for the purpose specified by the donor. For purposes of financial control and accountability, donations are to be credited to appropriate accounts of the City.
- 14.2** Donations may not be managed informally or held in personal or external accounts or trust funds. This would not apply to independent community fundraising campaigns until such time that the campaign contributions are donated to the City.

- 14.3** Donations of cash or property to the City, where the purpose is not specified and which are not part of an approved fundraising initiative, are deemed to be undesignated and become contributions to general revenue of the City or assets of the City, unless the recipient Department seeks council approval for the requested purpose.

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

Adopted by the Portsmouth City Council on \_\_\_\_\_, 2023.

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Kelli L. Barnaby, CMC/CNHMC  
City Clerk

# Gift and Donation Submission Form

*Donations received by the City of Portsmouth must be accepted by the City Council. Please complete this form and submit it to the City Manager for inclusion on an upcoming agenda.*

Date:	3.24.23
Department/ Contact Person:	Portsmouth Fire Department Fire Chief William McQuillen
Donation Amount:	\$100.00

Are Funds to be directed to a particular department, program or fund? – If yes, please provide detail below:

**Yes. Portsmouth Fire Department**

Is there a particular purpose intended with this donation:

**No. At Department Discretion**

Other Information/Special Conditions:

**Fire Commission accepted 3.21.23**

## Donor Information

First & Last Name:	Shirley Van Aken
Business Name:	
Address*:	Portsmouth NH
Phone*:	
Email*:	

*Please note that gifts/donations to individual employees with a value of \$100 or more are not permitted. Information with an asterisk (\*) indicates it will not be publicly distributed.*





# Portsmouth Fire Department

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## *Administration*

**To:** City Manager Karen Conard  
**From:** Fire Chief William McQuillen  
**Date:** 3/20/2023  
**Re:** Assistance to Firefighters Grant Program

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In 2022 the Department submitted an application for a Federal Department of Homeland Security's FY 2021 Assistance to Firefighters Grant Program - (AFG). This program is administered by the Department of Homeland Security's Federal Emergency Management Agency in cooperation with the U.S. Fire Administration.

Round 15 of the competitive FY 2021 AFG announcements had Portsmouth awarded a grant recipient, in the amount of \$333,294.54 As a result of this grant I am requesting the CIP project VE-21-FD-06: Self Contained Breathing Apparatus (SCBA) Replacement be amended to eliminate the FY 25 & FY26 appropriations.

I would appreciate your support of this grant and having this placed on the upcoming March 20, 2023 agenda for the City Council for their acceptance.

I am available if there are any questions or concerns.

*Department Memorandum*



# PUBLIC WORKS DEPARTMENT

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

TO: Karen Conard, City Manager

FROM: Peter Rice, Director of Public Works  
Brian Goetz, Director of Water Resources, Deputy Director Public Works Director  
Erich Fiedler, City Engineer  
Ronnieann Rakoski, Business Administrator

CC: Andrew Purgiel, Deputy Finance Director  
Kelli Barnaby, City Clerk

DATE: March 22, 2023

SUBJECT: State Aid Grant Award (SAG) Peirce Island WWTF Upgrade – Council Authorization to Accept

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## **BACKGROUND MATERIAL:**

SAG funds provide financial assistance to New Hampshire communities to offset eligible costs for the engineering and construction of wastewater infrastructure projects as defined in RSA 486. The state reimburses the municipality 20% or 30% of the eligible costs incurred during the design and construction of wastewater facilities, plus a proportionate share of interest on borrowing for the project. SAG eligibility is determined through NHDES involvement during design review and throughout project construction.

The Peirce Island WWTF Upgrade project is a key piece of an overall strategy to improve water quality in New Hampshire's Great Bay Estuary. The project is the largest capital project in the City of Portsmouth's history and has transformed the WWTF from one of the last advanced primary treatment facilities in the country to a modern WWTF that meets limit-of-technology effluent nitrogen limits. The project is constrained in a very small footprint but incorporates numerous sustainable features and has met all Consent Decree milestones.

In 2022, the City of Portsmouth (City) submitted a State Aid Grant (SAG) application through the NH Department of Environmental Services (NHDES). In March of 2023, the city was awarded 30% of the cost of the project paid out over the next 30 years, principal and interest \$35,031,456. (Please see attached amortization schedule). This grant will help lower the rate increase needs related to sewer debt.

*(Sample motion– Move to approve and accept the State Aid Grant in the amount of \$35,031,456 payable over 30 years pursuant to amortization schedule).*

G&C Approved:  
3/8/2023

C-959  
City of Portsmouth  
Peirce Island WWTF Upgrade

Final State Aid Grant Amortization Schedule

<b>Fiscal Year</b>	<b>Principal</b>	<b>Interest</b>	<b>Total</b>
2023	\$949,728	\$1,221,756	\$2,171,484
2024	\$917,308	\$560,763	\$1,478,071
2025	\$917,308	\$538,332	\$1,455,640
2026	\$917,308	\$515,836	\$1,433,144
2027	\$917,308	\$493,339	\$1,410,647
2028	\$917,308	\$475,273	\$1,392,581
2029	\$917,308	\$452,776	\$1,370,084
2030	\$917,308	\$430,280	\$1,347,588
2031	\$917,308	\$407,783	\$1,325,091
2032	\$917,308	\$385,286	\$1,302,594
2033	\$917,308	\$362,789	\$1,280,097
2034	\$917,308	\$340,292	\$1,257,600
2035	\$917,308	\$317,796	\$1,235,104
2036	\$917,308	\$298,253	\$1,215,561
2037	\$917,308	\$277,233	\$1,194,541
2038	\$917,308	\$256,214	\$1,173,522
2039	\$917,308	\$235,194	\$1,152,502
2040	\$917,308	\$214,174	\$1,131,482
2041	\$917,308	\$193,154	\$1,110,462
2042	\$917,308	\$172,135	\$1,089,443
2043	\$767,308	\$151,115	\$918,423
2044	\$767,308	\$136,003	\$903,311
2045	\$767,308	\$120,892	\$888,200
2046	\$767,308	\$105,780	\$873,088
2047	\$767,308	\$90,669	\$857,977
2048	\$767,308	\$75,557	\$842,865
2049	\$767,308	\$60,446	\$827,754
2050	\$767,308	\$45,334	\$812,642
2051	\$767,308	\$30,223	\$797,531
2052	\$767,315	\$15,112	\$782,427
<b>Total</b>	<b>\$26,051,667</b>	<b>\$8,979,789</b>	<b>\$35,031,456</b>

Payment Due: April



The State of New Hampshire  
**Department of Environmental Services**



**Robert R. Scott, Commissioner**

January 23, 2023

Mr. Albert Pratt  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801

Subject: 2023 Local Source Water Protection Program Grant: SWP-344

Dear Mr. Pratt:

Congratulations on your successful application to the 2023 Local Source Water Protection Grant Program to complete work described in the *Bellamy Reservoir Conservation Easement – Fernald Parcel* grant application. The Department of Environmental Services intends to award **\$25,000** to The City of Portsmouth for this important project.

To award the grant funds, we must enter into a grant agreement, approved by the Governor and Council. Enclosed is the grant agreement paperwork. **Please review these documents carefully.** If everything is satisfactory, please submit the following:

- 1. Original, signed, and initialed grant agreement (attached).**  
Please print the grant agreement and exhibits **single-sided**.
- 2. Original, signed, and notarized Certificate of Vote of Authorization (example attached).**
- 3. Certificate of Good Standing.**
- 4. Certificate of Insurance.**

The Certificate Holder should be "State of New Hampshire, Department of Environmental Services, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095."

Once the required paperwork is submitted, the process will begin for Governor and Council approval. **Please note work cannot be completed until approval from the Governor and Council is received.** Since these grants are made possible by federal funding of New Hampshire's environmental programs, applicants are expected to go through a competitive bid process for contractor selection for construction services. Competitive bidding is not required for non-construction or planning projects. Applicants are requested to make a good faith effort to utilize disadvantaged businesses for any services, equipment and/or supplies purchased. A list of disadvantaged businesses is available at <http://www.nh.gov/dot/business/contractors.htm>. We look forward to working with you on your source water protection project. Please contact me at 271-2950 or [Melissa.E.Macheras@des.nh.gov](mailto:Melissa.E.Macheras@des.nh.gov) if you have any questions.

Sincerely,

Melissa Macheras  
Drinking Water and Groundwater Bureau

GRANT AGREEMENT

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

1. Identification and Definitions.

<b>1.1. State Agency Name</b> NH Department of Environmental Services		<b>1.2. State Agency Address</b> 29 Hazen Drive, Concord, NH 03302-0095	
<b>1.3. Grantee Name</b> City of Portsmouth		<b>1.4. Grantee Address</b> 1 Junkins Avenue, Portsmouth, NH 03801	
<b>1.5. Grantee Phone #</b> 603-520-0622	<b>1.6. Account Number</b> 03-44-44-441018-4718-072	<b>1.7. Completion Date</b> May 31, 2024	<b>1.8. Grant Limitation</b> \$ 25,000
<b>1.9. Grant Officer for State Agency</b> Melissa Macheras, NHDES		<b>1.10. State Agency Telephone Number</b> 603-271-2950	
If Grantee is a municipality or village district: "By signing this form we certify that we have complied with any public meeting requirement for acceptance of this grant, including if applicable RSA 31:95-b."			
<b>1.11. Grantee Signature 1</b>		<b>1.12. Name &amp; Title of Grantee Signor 1</b>	
Grantee Signature 2		Name & Title of Grantee Signor 2	
Grantee Signature 3		Name & Title of Grantee Signor 3	
<b>1.13. State Agency Signature(s)</b>		<b>1.14. Name &amp; Title of State Agency Signor(s)</b> Robert R. Scott, Commissioner, NHDES	
<b>1.15. Approval by Attorney General (Form, Substance and Execution) (if G &amp; C approval required)</b>			
By:		Assistant Attorney General, On: / /	
<b>1.16. Approval by Governor and Council (if applicable)</b>			
By:		On: / /	

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

3. AREA COVERED. Except as otherwise specifically provided for herein, the Grantee shall perform the Project in, and with respect to, the State of New Hampshire.
4. EFFECTIVE DATE: COMPLETION OF PROJECT.
- 4.1. This Agreement, and all obligations of the parties hereunder, shall become effective on the date on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire if required (block 1.16), or upon signature by the State Agency as shown in block 1.14 (“the Effective Date”).
- 4.2. Except as otherwise specifically provided herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.7 (hereinafter referred to as “the Completion Date”).
5. GRANT AMOUNT: LIMITATION ON AMOUNT: VOUCHERS: PAYMENT.
- 5.1. The Grant Amount is identified and more particularly described in EXHIBIT C, attached hereto.
- 5.2. The manner of, and schedule of payment shall be as set forth in EXHIBIT C.
- 5.3. In accordance with the provisions set forth in EXHIBIT C, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.
- 5.4. The payment by the State of the Grant amount shall be the only, and the complete payment to the Grantee for all expenses, of whatever nature, incurred by the Grantee in the performance hereof, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee other than the Grant Amount.
- 5.5. Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Grant limitation set forth in block 1.8 of these general provisions.
6. COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS. In connection with the performance of the Project, the Grantee shall comply with all statutes, laws regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Grantee, including the acquisition of any and all necessary permits and RSA 31-95-b.
7. RECORDS and ACCOUNTS.
- 7.1. Between the Effective Date and the date seven (7) years after the Completion Date, unless otherwise required by the grant terms or the Agency, the Grantee shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.
- 7.2. Between the Effective Date and the date seven (7) years after the Completion Date, unless otherwise required by the grant terms or the Agency pursuant to subparagraph 7.1, at any time during the Grantee’s normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, “Grantee” includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these provisions
8. PERSONNEL.
- 8.1. The Grantee shall, at its own expense, provide all personnel necessary to perform the Project. The Grantee warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.
- 8.2. The Grantee shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform the Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.
- 8.3. The Grant Officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.
9. DATA: RETENTION OF DATA: ACCESS.
- 9.1. As used in this Agreement, the word “data” shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, paper, and documents, all whether finished or unfinished.
- 9.2. Between the Effective Date and the Completion Date the Grantee shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, disposal, or for any other purpose whatsoever.
- 9.3. No data shall be subject to copyright in the United States or any other country by anyone other than the State.
- 9.4. On and after the Effective Date all data, and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason, whichever shall first occur.
- 9.5. The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.
10. CONDITIONAL NATURE OR AGREEMENT. Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such termination.
11. EVENT OF DEFAULT: REMEDIES.
- 11.1. Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as “Events of Default”):
- 11.1.1 Failure to perform the Project satisfactorily or on schedule; or
- 11.1.2 Failure to submit any report required hereunder; or
- 11.1.3 Failure to maintain, or permit access to, the records required hereunder; or
- 11.1.4 Failure to perform any of the other covenants and conditions of this Agreement.
- 11.2. Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:
- 11.2.1 Give the Grantee a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Grantee notice of termination; and
- 11.2.2 Give the Grantee a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Grant Amount which would otherwise accrue to the Grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and
- 11.2.3 Set off against any other obligation the State may owe to the Grantee any damages the State suffers by reason of any Event of Default; and
- 11.2.4 Treat the agreement as breached and pursue any of its remedies at law or in equity, or both.
12. TERMINATION.
- 12.1. In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Grantee shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the “Termination Report”) describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Grantee to receive that portion of the Grant amount earned to and including the date of termination.
- 12.2. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Grantee from any and all liability for damages sustained or incurred by the State as a result of the Grantee’s breach of its obligations hereunder.
- 12.3. Notwithstanding anything in this Agreement to the contrary, either the State or, except where notice default has been given to the Grantee hereunder, the Grantee, may terminate this Agreement without cause upon thirty (30) days written notice.
- 12.4. CONFLICT OF INTEREST. No officer, member of employee of the Grantee, and no representative, officer or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or

Grantee Initials \_\_\_\_\_  
Date \_\_\_\_\_

- approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.
14. GRANTEE'S RELATION TO THE STATE. In the performance of this Agreement the Grantee, its employees, and any subcontractor or subgrantee of the Grantee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.
  15. ASSIGNMENT AND SUBCONTRACTS. The Grantee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Grantee other than as set forth in Exhibit B without the prior written consent of the State.
  16. INDEMNIFICATION. The Grantee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee or subcontractor, or subgrantee or other agent of the Grantee. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.
  17. INSURANCE.
    - 17.1 The Grantee shall, at its own expense, obtain and maintain in force, or shall require any subcontractor, subgrantee or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:
      - 17.1.1 Statutory workers' compensation and employees liability insurance for all employees engaged in the performance of the Project, and
      - 17.1.2 General liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and
    - 17.2. The policies described in subparagraph 17.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Grantee shall furnish to the State, certificates of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy.
  18. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure of waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Grantee.
  19. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses first above given.
  20. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire, if required or by the signing State Agency.
  21. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.
  22. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.
  23. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.
  24. SPECIAL PROVISIONS. The additional or modifying provisions set forth in Exhibit A hereto are incorporated as part of this agreement.

Grantee Initials \_\_\_\_\_  
Date \_\_\_\_\_

March 24, 2023

Good Morning Karen,

Piscataqua Savings Bank would like to cover the costs of lunch associated with the upcoming Student Government Day.

Best,  
Ben

**Benjamin S. Wheeler**

Vice President / Business Development Officer

**P:** (603) 610-1810 | **TF:** (800) 286-5254 | **C:** (603) 828-4388

15 Pleasant St. Portsmouth NH 03801 | [piscataqua.com](http://piscataqua.com)



**PISCATAQUA  
SAVINGS BANK**





GRANT AGREEMENT

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

1. Identification and Definitions.

<b>1.1. State Agency Name</b> Department of Business and Economic Affairs (BEA)		<b>1.2. State Agency Address</b> 100 N. Main Street, Suite 100, Concord, NH 03301	
<b>1.3. Grantee Name</b> City of Portsmouth		<b>1.4. Grantee Address</b> 1 Junkins Ave, Portsmouth, NH 03801	
<b>1.5 Grantee Phone #</b> 603-610-7281	<b>1.6. Account Number</b> DEMO22-100	<b>1.7. Completion Date</b> December 31, 2024	<b>1.8. Grant Limitation</b> \$125,600.00
<b>1.9. Grant Officer for State Agency</b> Andrew Dorsett, Housing Finance Director		<b>1.10. State Agency Telephone Number</b> 603-931-2109	
If Grantee is a municipality or village district: <b>“By signing this form we certify that we have complied with any public meeting requirement for acceptance of this grant, including if applicable RSA 31:95-b.”</b>			
<b>1.11. Grantee Signature 1</b>		<b>1.12. Name &amp; Title of Grantee Signor 1</b> Karen S. Conard, City Manager	
Grantee Signature 2		<b>Name &amp; Title of Grantee Signor 2</b>	
Grantee Signature 3		<b>Name &amp; Title of Grantee Signor 3</b>	
<b>1.13 State Agency Signature(s)</b>		<b>1.14. Name &amp; Title of State Agency Signor(s)</b>	
<b>1.15. Approval by Attorney General (Form, Substance and Execution) (if G &amp; C approval required)</b>			
By:		Assistant Attorney General, On: / /	
<b>1.16. Approval by Governor and Council (if applicable)</b>			
By:		On: / /	

2. **SCOPE OF WORK:** In exchange for grant funds provided by the State of New Hampshire, acting through the Agency identified in block 1.1 (hereinafter referred to as “the State”), the Grantee identified in block 1.3 (hereinafter referred to as “the Grantee”), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT B (the scope of work being hereinafter referred to as “the Project”).

Grantee Initials \_\_\_\_\_  
Date \_\_\_\_\_

3. AREA COVERED. Except as otherwise specifically provided for herein, the Grantee shall perform the Project in, and with respect to, the State of New Hampshire.
4. EFFECTIVE DATE: COMPLETION OF PROJECT.
- 4.1. This Agreement, and all obligations of the parties hereunder, shall become effective on the date on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire if required (block 1.16), or upon signature by the State Agency as shown in block 1.14 (“the Effective Date”).
- 4.2. Except as otherwise specifically provided herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.7 (hereinafter referred to as “the Completion Date”).
5. GRANT AMOUNT: LIMITATION ON AMOUNT: VOUCHERS: PAYMENT.
- 5.1. The Grant Amount is identified and more particularly described in EXHIBIT C, attached hereto.
- 5.2. The manner of, and schedule of payment shall be as set forth in EXHIBIT C.
- 5.3. In accordance with the provisions set forth in EXHIBIT C, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.
- 5.4. The payment by the State of the Grant amount shall be the only, and the complete payment to the Grantee for all expenses, of whatever nature, incurred by the Grantee in the performance hereof, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee other than the Grant Amount.
- 5.5. Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Grant limitation set forth in block 1.8 of these general provisions.
6. COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS. In connection with the performance of the Project, the Grantee shall comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Grantee, including the acquisition of any and all necessary permits and RSA 31-95-b.
7. RECORDS and ACCOUNTS.
- 7.1. Between the Effective Date and the date seven (7) years after the Completion Date, unless otherwise required by the grant terms or the Agency, the Grantee shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.
- 7.2. Between the Effective Date and the date seven (7) years after the Completion Date, unless otherwise required by the grant terms or the Agency pursuant to subparagraph 7.1, at any time during the Grantee’s normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, “Grantee” includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these provisions
8. PERSONNEL.
- 8.1. The Grantee shall, at its own expense, provide all personnel necessary to perform the Project. The Grantee warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.
- 8.2. The Grantee shall not hire, and it shall not permit any subcontractor, subgrantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform the Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.
- 8.3. The Grant Officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.
9. DATA: RETENTION OF DATA: ACCESS.
- 9.1. As used in this Agreement, the word “data” shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, paper, and documents, all whether finished or unfinished.
- 9.2. Between the Effective Date and the Completion Date the Grantee shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, disposal, or for any other purpose whatsoever.
- 9.3. No data shall be subject to copyright in the United States or any other country by anyone other than the State.
- 9.4. On and after the Effective Date all data, and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason, whichever shall first occur.
- 9.5. The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.
10. CONDITIONAL NATURE OR AGREEMENT. Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such termination.
11. EVENT OF DEFAULT: REMEDIES.
- 11.1. Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as “Events of Default”):
- 11.1.1 Failure to perform the Project satisfactorily or on schedule; or
- 11.1.2 Failure to submit any report required hereunder; or
- 11.1.3 Failure to maintain, or permit access to, the records required hereunder; or
- 11.1.4 Failure to perform any of the other covenants and conditions of this Agreement.
- 11.2. Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:
- 11.2.1 Give the Grantee a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Grantee notice of termination; and
- 11.2.2 Give the Grantee a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Grant Amount which would otherwise accrue to the Grantee during the period from the date of such notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and
- 11.2.3 Set off against any other obligation the State may owe to the Grantee any damages the State suffers by reason of any Event of Default; and
- 11.2.4 Treat the agreement as breached and pursue any of its remedies at law or in equity, or both.
12. TERMINATION.
- 12.1. In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Grantee shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the “Termination Report”) describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination.
- 12.2. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Grantee to receive that portion of the Grant amount earned to and including the date of termination.
- 12.3. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Grantee from any and all liability for damages sustained or incurred by the State as a result of the Grantee’s breach of its obligations hereunder.
- 12.4. Notwithstanding anything in this Agreement to the contrary, either the State or, except where notice default has been given to the Grantee hereunder, the Grantee, may terminate this Agreement without cause upon thirty (30) days written notice.
13. CONFLICT OF INTEREST. No officer, member of employee of the Grantee, and no representative, officer or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or

Grantee Initials \_\_\_\_\_  
Date \_\_\_\_\_

- approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.
14. GRANTEE'S RELATION TO THE STATE. In the performance of this Agreement the Grantee, its employees, and any subcontractor or subgrantee of the Grantee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.
  15. ASSIGNMENT AND SUBCONTRACTS. The Grantee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Grantee other than as set forth in Exhibit B without the prior written consent of the State.
  16. INDEMNIFICATION. The Grantee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee or subcontractor, or subgrantee or other agent of the Grantee. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.
  17. INSURANCE.
    - 17.1 The Grantee shall, at its own expense, obtain and maintain in force, or shall require any subcontractor, subgrantee or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:
      - 17.1.1 Statutory workers' compensation and employees liability insurance for all employees engaged in the performance of the Project, and
      - 17.1.2 General liability insurance against all claims of bodily injuries, death, or property damage, in amounts not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and
    - 17.2. The policies described in subparagraph 17.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Grantee shall furnish to the State, certificates of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy.
  18. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure of waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Grantee.
  19. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses first above given.
  20. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire, if required or by the signing State Agency.
  21. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.
  22. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.
  23. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.
  24. SPECIAL PROVISIONS. The additional or modifying provisions set forth in Exhibit A hereto are incorporated as part of this agreement.

Grantee Initials \_\_\_\_\_  
Date \_\_\_\_\_

## EXHIBIT A SPECIAL PROVISIONS

### 1. Additional Provisions

The following provisions are added to the Form G-1:

25. FUTURE ACTIONS BY THE U.S. DEPARTMENT OF TREASURY. This Grant is paid with state funds obtained through an American Rescue Plan Act (ARPA) Coronavirus State and Local Fiscal Recovery Fund (CSLFRF) grant provided by the U.S. Department of Treasury to the State of New Hampshire and expended by the State of New Hampshire for the provision of government services under CSLFRF eligible use category (EC) 6.1. Pursuant to current Treasury policy, this Grant does not constitute a federal subaward or a use of federal funds and is not subject to the requirements of the CSLFRF Final Rule, the Uniform Guidance (2 CFR 200), or other federal requirements pertaining to the use of federal funds. However, this Grant remains subject to any additional requirements the U.S. Department of Treasury may choose to impose on funds expended under CSLFRF EC 6.1 in the future.
26. REPORTING. During the construction period of the Project, the Grantee shall report monthly on the status of the Project, as detailed in Exhibit B(8).
27. RETURN OF UNEXPENDED FUNDS. All funds not expended by the Grantee pursuant to the terms of the Municipal Demolition Grant Program and this agreement as of December 31, 2025, shall be returned by the Grantee to the State.

### 2. Definitions

As applies to this agreement, the following terms shall have the meaning stated below:

- a. Affordable: Affordable to a household making 80% of the Area Median Income (AMI) for the county or fair market rent area in which the Project is located.
- b. Award: The specific funds approved for disbursement to the Grantee for development of the Project which are subject to the terms and conditions of the Municipal Demolition Grant Program and as stated in this document.
- c. Grant: The award of funds pursuant to the Municipal Demolition Grant and this agreement. The use of this term herein is not dependent on the actual method by which funds are disbursed or payment is structured.
- d. Grantee: The municipality to whom the Grant is awarded.
- e. Program: The InvestNH Municipal Demolition Grant Program.
- f. Project: The demolition project for which this Grant has been awarded.

Grantee Initials \_\_\_\_\_  
Date \_\_\_\_\_

## EXHIBIT B SCOPE OF SERVICES

1. **Overview:** The State has awarded funds to the Grantee for a specific demolition project (“Project”) which is part of a larger greening or revitalization effort, and which will positively impact the shortage of available housing in New Hampshire. Award funds shall be distributed on a reimbursement basis for costs associated with the Project.
2. **Identification of the Project:** The Project for which the Grant Award has been approved is identified as Woodbury Avenue Co-op Site Improvements at 1338 Woodbury Ave., Portsmouth, NH 03801. Grant funds may only be used for eligible demolition costs associated with this Project.
3. **Approval by Governor and Executive Council (G&C):** The Grant Award (“Award”) for the Project is contingent upon approval by the G&C and continued availability of funding. The Grantee shall not be eligible to receive funds absent approval of the Award and Project by the G&C.
4. **Nature of the Award:** Funds shall be disbursed to the Grantee on a reimbursement basis for actual eligible costs incurred after May 4, 2022.
5. **Allowed/Disallowed Expenditures:** Funds may be used for any demolition related costs for the Project, including environmental abatement necessitated by the demolition and permit review costs.  
  
The Grantee may only request reimbursement for costs incurred after May 4, 2022, and before December 31, 2024.
6. **Project Completion Deadline:** The Project shall be complete by December 31, 2024.
7. **Procurement & Conflict of Interest:** The Grantee shall comply with all applicable State of New Hampshire procurement and conflict of interest requirements, as well as abiding by its own municipal policies and procedures.
8. **Reporting:** The Grantee shall report monthly on the Project’s status using the form provided by the State. The State may modify the reporting requirements, modify the reporting form, and/or request additional information at any time. Reporting will include monthly progress reports.

Grantees will also periodically be required to report information about the community impact of the larger greening or revitalization effort the Project serves, including, but not limited to, the details of any affordable housing being created and the relationship between the demolition itself and the creation of new affordable housing.

9. **Compliance:** The Grantee must comply with all applicable State of New Hampshire and federal regulations and guidance, including any changes introduced by the U.S. Department of the Treasury after execution of this agreement. BEA reserves the right conduct periodic audits to confirm compliance and verify reported expenses during and after the completion of the project.

Grantee Initials \_\_\_\_\_  
Date \_\_\_\_\_

**10. Responsibilities of Grantees Acting as Pass-Through Entities:** If the Grantee is not carrying out the demolition itself and instead is passing Award funds on to an independent developer:

- a. The Grantee is solely responsible for ensuring that the independent developer carries out the Project in compliance with all Program terms and conditions. The Grantee is also responsible for collecting and transmitting the required Project status reports to the State and for ensuring the accuracy of those reports.
- b. Reimbursement requests must be submitted by the Grantee, and the Grantee is responsible for ensuring the accuracy of those requests and any supporting documentation. Reimbursement payments will be made to the Grantee.
- c. If the Grantee becomes aware of any non-compliant reimbursement expense or any action taken beyond the authorized scope of the Project, the Grantee must immediately notify the BEA of the non-compliance and complete mitigation necessary to bring the Project into compliance. Resolution of non-compliance is the sole responsibility of the Grantee.

**11. Closeout:** All expenses chargeable to the Award must be incurred before December 31, 2024, and the project must be complete on or before December 31, 2024. All required reports and requests for reimbursement must be submitted on or before January 31, 2025.

**12. Requirements Not Enumerated Here:** The Municipal Demolition Grant Program Guidance, Municipal Demolition Grant Program FAQ, and all New Hampshire State Grant Requirements are incorporated by reference into this agreement. This agreement and any subsequent addendums or amendments shall govern in the event of inconsistent or contradictory terms.

Grantee Initials \_\_\_\_\_  
Date \_\_\_\_\_

## **EXHIBIT C METHODS AND CONDITIONS OF PAYMENT**

### **1. Reimbursement Process**

The Grantee may seek reimbursement for actual construction costs incurred on the Project using the form provided by the State. The Grantee may submit reimbursement requests monthly. The Grantee shall submit supporting documentation (receipts, proof of purchase) for each expense. The State may require, and the Grantee shall provide, additional documentation or justification for any expense prior to reimbursement.

If the State determines that an expense is not an allowable expense, lacks sufficient documentation, is disproportionate or unreasonable, or otherwise violates basic cost principles, then the State may in its discretion deny reimbursement for that expense.

### **2. Method of Disbursement**

The Grantee must register with the Department of Administrative Services for a State of New Hampshire Vendor number in order for a payment to issue. Registration is available at: [https://apps.das.nh.gov/vendorregistration/\(S\(inw3n42wcfgd4dk1b5rzcdz\)\)/welcome.aspx](https://apps.das.nh.gov/vendorregistration/(S(inw3n42wcfgd4dk1b5rzcdz))/welcome.aspx)

Reimbursement by the State shall be completed by check or Electronic Funds Transfer (“EFT”) in accordance with the vendor registration.

The State shall disburse to the Grantee a maximum of \$125,600.00., over the period of performance for the purposes of performing the services described in Exhibit B.

Grantee Initials \_\_\_\_\_  
Date \_\_\_\_\_



# Portsmouth Fire Department

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## *Administration*

**To:** Deputy City Manager Suzanne Woodland

**From:** Fire Chief William McQuillen

**Date:** 3/15/2023

**Re: Rail Car Safety training**

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In response to your inquiry about the Fire Department's readiness to handle a rail car incident considering the derailment in Ohio, the Fire Department conducted its most recent rail car training in September of 2022. Command staff has contact information for the rail car safety official for CSX (the current owner/operator of the rail lines in Portsmouth) in the event of a safety concern or emergency. Additional training specific to rail car risks is scheduled for April of this year. Fire Department personnel also routinely participate in trainings and receive updates relative to hazardous materials, chemical spills and similar risks more generally.

By way of background on the most recent training, the Center for Rural Development (CRD) was awarded a grant from the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration to provide hazardous materials training for responses to incidents that involve rail shipments of crude oil, ethanol, and other flammable liquids. The CRD partnered with the All-Hazards Training Center to accomplish the training. In September of 2022, all members of the Portsmouth Fire Department participated in this grant-funded training which consisted of an 8-hour class. This learning opportunity was made available to area departments and our regional Hazardous Materials Team as well.

Topics discussed during training included:

*Department Memorandum*



March 15, 2023

- Rail car design features and aspects of construction that would impact response strategies
- Characteristics of chemicals and toxicology focusing on crude oil, ethanol and other flammable liquids
- Hazardous materials recognition and identification strategies
- Offensive, defensive, and non-intervention response strategies for fire and spill incidents
  - Firefighters also reviewed freight rail car incidents involving hazardous materials, and learned the potential hazards at a train derailment, properties of specific chemicals, and various incident control, confinement and containment techniques. There was also a hands-on scenario using a mock rail car to emphasize the objectives of the training, that proved to be very valuable.

**CITY OF PORTSMOUTH**

March 27, 2023

**Portsmouth DPW Hosts Household Hazardous Waste Collection Day on April 29, 2023**

Portsmouth, New Hampshire -- The Portsmouth Department of Public Works will hold its biannual Household Hazardous Waste Collection Day on Saturday, April 29, 2023, at the Public Works facility at 680 Peverly Hill Road. Residents of Portsmouth, Greenland and Newington are encouraged to bring household chemicals for safe disposal between 8 am and 12 noon. Proof of residency is required.

Household hazardous waste collections help residents safely dispose of items that can harm their health, the environment and drinking water supplies.

**Items that qualify for collection include the following:**

- From the yard: fertilizer with pesticides or fungicides, insect spray, lighter fluid, pest strips/traps, pesticides, poisons and pool chemicals;
- From the garage: acids, car waxes/polish, creosote, driveway sealer/tar, flea powder, gasoline, radiator fluid and roofing tar;
- From the house: bathroom cleaner, disinfectants, furniture polish, metal polish, mothballs, oven cleaner, photo chemicals, rug cleaner and wood strippers; and
- From the workbench: brush cleaner, corrosives, lead and oil-based paint/stain/finish, rust preventive solvents, thinner/turpentine and wood preservatives.

**Items that do NOT qualify include:**

- Empty containers for household items, which may be disposed of in the regular trash collection;
- Explosives;
- Asbestos;
- Medical waste; and
- Latex paint. To prepare latex paint for regular disposal at the Recycling Center or through trash pick-up, solidify the paint by adding kitty litter, sawdust or SpeediDri; or open the can to allow the liquid to dry out before disposal.

For more information on Household Hazardous Waste Day:

<http://cityofportsmouth.com/publicworks/solidwaste-recycle-hhw.htm>

For more information on the Recycling Center:

<https://www.cityofportsmouth.com/publicworks/solid-waste-recycling>