

# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: MONDAY, MAY 15, 2023 TIME: 6:30PM

*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\\_zj-A5GoZSYmbHkUrdBZhtg](https://us06web.zoom.us/webinar/register/WN_zj-A5GoZSYmbHkUrdBZhtg)

**6:30PM - ANTICIPATED NON-PUBLIC SESSIONS ARE BEING HELD IN CONFERENCE ROOM A**

1. COLLECTIVE BARGAINING AGREEMENT – RSA 91-A:3, II (a)
2. 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**
- VII. **ACCEPTANCE OF MINUTES – APRIL 17, 2023 CITY COUNCIL MEETING**
- VIII. **RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS**
- 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 10 – Article 5A – CHARACTER-BASED ZONING, Section 10.5A20, Regulating Plan, Subsection 10.5A21.10 Contents of Regulating Plan, Map 10.5A21B – Building Height Standards, Section 10.5A43.30 – Building and Story Heights, Subsection 10.5A43.33, Section 10.5A43.40 – Maximum Building Footprint, Subsections 10.5A43.41-44, and Section 10.5A45 – Community Spaces, Subsection Figures 10.5A45.10 Community Spaces, Section 10.5A46.20 – Requirements to Receive Incentives to the Development Standards, Subsections 10.5A46.21-22, and Article 15 – DEFINITIONS, Section 10.1530 – Terms of General Applicability (**Sample motion – move to pass first reading and refer to the Planning Board for report back and further schedule a public hearing and second reading for July 10, 2023**)

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

### A. CITY MANAGER CONARD

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

1. Approval of License Agreement with the General Services Administration (GSA) ***(Sample motion – move to authorize the City Manager to execute the proposed license agreement with GSA)***
2. Renewal of Prescott Park License Agreements between the City and the Gundalow Company, the Prescott Park Arts Festival, and the New Hampshire Art Association
3. Request for First Reading Regarding Amendments to Chapter 4, the City's Food Licensing and Regulations Ordinance
4. \*Street Naming for 3548 Lafayette Road
5. Approval of the Portsmouth School Department Custodial Collective Bargaining Agreement

## XII. CONSENT AGENDA

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

- A. Letter from Kelly Hartnett, Seacoast Mental Health Center, requesting permission to hold the Bridges 4 Friendship 10k on Saturday, October 14, 2023 ***(Anticipated action – move to refer to the City Manager with Authority to Act)***
- B. Letter from Jason Brewster, Brewster's Bait & Tackle, requesting permission to hold The Blessing of the Fleet on Thursday, July 27, 2023 from 6:00 p.m. – 7:00 p.m. on Four Tree Island ***(Anticipated action – move to refer to the City Manager with Authority to Act)***

## XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS

- A. \*Presentation Regarding Community Health Profile by Health Officer Kim McNamara
- B. \*Presentation from the COVID-19 Recovery Task Force by Abbie Frank
- C. Town of New Castle Sewer Agreement ***(Sample motion – move to request that the City Manager bring forward this wholesale sewer agreement for action at the next City Council meeting)***
- D. Email Correspondence ***(Sample motion – move to accept and place on file)***
- E. Request from Sue Polidura seeking permission to hold a community reading of the Declaration of Independence in front of the North Church on Tuesday, July 4, 2023 at 11:00 a.m. ***(Sample motion – move to refer to the City Manager with Authority to Act)***

- F. Letter from Danville Fire Chief Steven Woitkun regarding the quick action of Portsmouth Electrical Inspector John Plourde for intervening at a fire on Sandown Road in Danville, NH and making sure all residents and pets were evacuated safely from the home ***(Sample motion – move to accept and place on file)***
- G. Letter from Tom Kaufhold, Founder of NH Seacoast LGBTQ History Project, requesting permission to display six panels describing the history of the LGBTQ community on the seacoast at City Hall during the month of June 2023

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

1. Appointment to be Considered:
  - Reappointment of David Adams to the Historic District Commission
2. \*Appointment to be Voted:
  - Peter Splaine to the Cemetery Committee

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

##### **A. COUNCILOR DENTON**

1. Draft Ordinance Codifying the Sustainability Committee ***(Sample motion – move to refer the draft ordinance codifying the Sustainability Committee to the Governance Committee and the Legal Department for review and report back to the City Council for first reading)***

##### **B. COUNCILOR MOREAU**

1. Report of City-Owned Parcels for Potential Reuse as Workforce Housing

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

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the April 6, 2023 meeting ***(Sample motion – move to accept and approve the action sheet and minutes of the April 6, 2023 Parking and Traffic Safety Committee)***
2. Parking and Traffic Safety Committee Action Sheet and Minutes of the May 4, 2023 meeting ***(Sample motion – move to accept and approve the action sheet and minutes of the May 4, 2023 Parking and Traffic Safety Committee)***

##### **D. COUNCILOR LOMBARDI**

1. Economic Development Commission Powers and Duties (Section 1.402) ***(Sample motion – move to refer to the Governance Committee and Legal Department for report back to the City Council)***

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

- A. Acceptance of NHDES 2022-2024 Strategic Planning Grant Program (***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 \$50,000.00 from the NHDES 2022-2024 Strategic Planning Grant Program to assist with paying a portion of the comprehensive planning study and preliminary engineering evaluation of the Lafayette tank pressure zone***)
- B. Acceptance of Donation to the Senior Activity Center from the Portsmouth Garden Club - \$500.00 (***Sample motion – move to approve and accept the donation as presented***)
- C. Acceptance of Various Police Department Grants:
- US Department of Justice for the NH Internet Crimes Against Children Task Force - \$377,882.00
  - 2023 Safe & Active Grant award from the Injury Prevention Center at Dartmouth-Hitchcock for 50 multi-sport helmets, 50 bike lights and educational materials

***(Sample motion – move to approve and accept the grants for the Police Department as presented)***

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

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

## **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**

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: MONDAY, APRIL 17, 2023

PORTSMOUTH, NH  
TIME: 7:00PM

**On a unanimous voice vote 9-0, Councilor Tabor 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 7:10 p.m.

### **IV. ROLL CALL**

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

Mayor McEachern announced that on Wednesday, April 19, 2023 Student Government Day will be held and recognized the students that are sitting on the dais and shadowing the City Council, City Manager, City Attorney and City Clerk this evening.

*Kelly Moriarty, Mayor*  
*James Johnston, Assistant Mayor*  
*Elise Sedam, Councilor Tabor*  
*Logan Reis, Councilor Denton*  
*Josh Ciotti, Councilor Moreau*  
*Isha Shah, Councilor Bagley*

*Oliver Fitzpatrick, Councilor Lombardi*  
*Reilly Collins, Councilor Blalock*  
*Sophie Williams, City Manager Conard*  
*Amanda Yusuf, City Attorney Morrell*  
*Maggie Pataki, City Clerk Barnaby*

Mayor McEachern also recognized students that would be shadowing various department heads on Wednesday.

Mayor McEachern spoke to the threat of an active shooter which occurred last Thursday. He acknowledged the professionalism of Superintendent McLaughlin and his decision to close all schools in Portsmouth that day. He thanked Police Chief Newport for his work on this situation and the apprehension of the suspect.

### **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.

### **PROCLAMATIONS**

1. Portsmouth Rotary Centennial Day

Mayor McEachern read the Proclamation declaring April 20, 2023 as Portsmouth Rotary Centennial Day and urged all citizens to celebrate the essential contributions of Portsmouth Rotarians to the past, present, and future of Portsmouth. City Manager Conard accepted the Proclamation as a Portsmouth Rotarian with thanks and appreciation.

## 2. National Child Abuse Prevention Month

Mayor McEachern read the Proclamation declaring April as Child Abuse Prevention Month and called upon the residents of Portsmouth to support programs and initiatives that create positive, healthy environments for children in the city and throughout the state. Beth Margeson accepted the proclamation with thanks and appreciation.

## 3. Earth Day

Mayor McEachern read the Proclamation declaring April 22, 2023 as Earth Day in Portsmouth and called upon the residents of Portsmouth to combat climate change and environmental degradation, support green economy initiatives, and to encourage others to undertake similar actions. Loreley Godfrey and Grace Webster from Seacoast Students for Sustainability accepted the proclamation with thanks and appreciation.

**Councilor Denton moved to suspend the rules to bring forward Item XV. A.1. – Portsmouth Sustainability Fair. Seconded by Assistant Mayor Kelley and voted.**

Councilor Denton announced that the Portsmouth Sustainability Fair will be held on Friday, April 21, 2023 from 4:00 p.m. – 7:00 p.m. at the Connie Bean Center.

## VII. ACCEPTANCE OF MINUTES – MARCH 31, 2023 SPECIAL CITY COUNCIL MEETING

**Assistant Mayor Kelley moved to accept and approve the minutes of the March 31, 2023 Special City Council meeting. Seconded by Councilor Blalock and voted.**

## VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS

1. Recognition of former City Manager Calvin A. Canney for his 20 years of service to the City of Portsmouth

**Councilor Tabor moved to suspend Council Rule #44 requiring a Work Session for the Naming of a City Facility. Seconded by Councilor Bagley and voted.**

Mayor McEachern announced that we will be recognizing former City Manager Calvin A. Canney by renaming the Prescott Park Marina in his honor for his 20 years of service to the City of Portsmouth.

Mr. Canney thanked the City Council for the honor that is long past. He said he appreciates the effort and work of the city for doing this for him. He said the job of the Council can be frustrating and controversial at times but to do the best you can for your community and the future of the city. He said to the students that you are the future of the city and thanked them for being here this evening and taking part in Student Government Day.

Mayor McEachern said the sign is being made and will be installed this summer which we all look forward to having that ceremony and having Mr. Canney cutting the ribbon. He thanked Mr. Canney for all his work.

## 2. Recognition of Community Members of University of New Hampshire Cheerleaders

Mayor McEachern recognized community members of the University of New Hampshire for being named the 2023 National Cheerleading Association All-Girl Grand National Champions.

### IX. PUBLIC COMMENT SESSION

Mayor McEachern announced that this is the first of two public comment sessions this evening. He advised the public that there will be a second public comment session regarding McIntyre later in the agenda.

Irish Mike spoke to the need for more safety in schools due to the number of active shooter events occurring throughout the states. He said children's safety should come first.

Paige Trace said she wished that more information was provided on McIntyre before the City Council makes their decision.

Petra Huda spoke regarding the need for a rehearing regarding 2454 Lafayette Road matter. She said the AMI is too high for work force housing and should be 60% and not 100%.

Esther Kennedy said she is also asking for a rehearing regarding 2454 Lafayette Road matter. She said the residents have a right to send this matter back to the Planning Board. She spoke to the Planning Board having a thorough discussion on this issue.

Susan Sterry, Co-Chair Cemetery Committee, spoke to the project of cleaning the headstones in the cemeteries. She said that this is a very important project that is in Phase I. She thanked the Public Works Department for their assistance and work on this endeavor.

Arthur Clough (via zoom) spoke on the Lafayette Road matter and how the AMI is too high for work force housing. He asked that the City Council rescind their vote on this matter.

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

#### Public Hearing/Second Reading of Ordinance:

- A. Public Hearing/Second Reading of Ordinance amending Chapter 1, Article IV, Section 1.411 – Cemetery Committee – Membership and Term

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

**Councilor Tabor moved to pass second reading and hold third and final reading at the May 1, 2023 City Council meeting. Seconded by Councilor Lombardi.**

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

**Motion passed.**

Public Hearing/Adoption of Resolution:

- B. Public Hearing/Adoption of Resolution on a proposed Resolution Authorizing a Bond Issue and/or Notes of up to One Million Eighty-Three Thousand Five Hundred Dollars (\$1,083,500.00) for Additional Costs for Constructing the Greenland Road Recreation Facility (Skateboard Park)

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

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

Amy Mae Court spoke in support of the Resolution and the efforts of the Skateboard Park Committee to raise funds for the lighting at the park. She spoke to the grassroots effort of the committee to raise funds for the park.

Jesse Court said he and his friends support the motion for the park. He said the park will be taken care of by its users and they hope to be utilizing the park by the fall.

Christine Burke, K-12 Wellness Coordinator, said that the skatepark is important to the youth of the community. She said there is stress and anxiety for the children, and they are constantly waiting for the next shoe to drop. She stated this is something we can do to help the children and the community. She spoke in support of the initiative and adoption of the resolution.

Steve Detrollo spoke in support of the Resolution and said that this should be considered an investment for the city. He said this could create a new economic engine in the city.

Dave Cosgrove said the recreation facility will serve the wellness and most vulnerable in the community. He stated the skatepark will be the gateway to the West End and the park would be utilized year-round. He said that this is a rare opportunity to create a park for everyone and this is what can be accomplished if you set your mind to it. He thanked the city staff for their work on the project and the City Council.

Esther Kennedy asked everyone to stand that will be skateboarding at the park. She stated there are over 50 students making a statement this evening and this will be an amazing park that everyone can be proud of.

Anna Nuttal (via zoom), spoke in support of the Skateboard Park and said that this will help with students' anxiety and stress. She said we need peer to peer interactions, and this will build new community ties and break barriers.

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

Councilor Blalock thanked the students for their work and said that this is a true investment for the city.

Councilor Cook said she is a mom and knows firsthand the struggles of our children and the difficulties they are experiencing. She said it is hard to find an outlet to get outside if you're not part of a team. She said there is a need to provide an outlet for the students. She stated she would support the motion because it is a priority for the city.



Councilor Bagley thanked former Councilor Kennedy for getting this process started. He also spoke to the work of Seamus who worked on this project even though this would not come into fruition until after he graduated.

Mayor McEachern thanked everyone for coming out and thanked former Councilor Kennedy for navigating the process with the students. He said it is more about skateboarders and what they need and want to be part of the community. He stated we should be proud as a community, and he is impressed with the resilience of the students, and he would be supporting the motion.

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

**Second Reading of Ordinance:**

- C. Second Reading of 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

**Councilor Moreau moved to amend the ordinance as presented by the Legal Department. Further, move to continue second reading and hold a public hearing at the May 1, 2023 City Council meeting. Seconded by Councilor Blalock.**

**Councilor Moreau moved to suspend the rules to hear from speakers on this ordinance. Seconded by Councilor Tabor and voted.**

Byron Matteo spoke in support of the ADU's and work force housing which will address housing issues in the city. He said we need to show the true costs because there is strong resistance.

Elizabeth Bratter spoke in support of the ordinance. She said there is a difference between an ADU and apartments. She said that ADU's are not going to provide low-income housing and we need to agree that the ordinance submitted is a far better version.

Liza Hewitt asked the Council to amend the ordinance with changes proposed by the Legal Department. She said she would like the third and final reading approved on May 1<sup>st</sup>. She said ADU's will remain for families to live in. She said Councilor Bagley is bringing politics into this issue and his proposed motions are against the goals of the City Council. She said parking is a big concern for residents and feels that Councilor Bagley is throwing things against the wall to see what will stick.

Petra Huda urged the City Council to pass with amendments put forward by the Legal Department. She expressed her opposition to Councilor Bagley's suggested amendments and for bringing them forward at this time.

Tracey Kozak said she has an ADU and that they provide options for families. She said that the design standards could backfire.

Esther Kennedy said we need ADU's, but it comes down to logistics and processes. She spoke against Councilor Bagley's amendments and asked that he withdraws them.

Zelita Morgan (via zoom), said she is confused with the last-minute changes being proposed. She strongly recommended that the City Council not support the amendments proposed by Councilor Bagley.

With no further speakers, Mayor McEachern ended the public comment session.

**Councilor Denton moved to suspend the rules to bring forward Item XV. B.1. – ADU Ordinance under Councilor Bagley's name. Seconded by Councilor Bagley and voted.**

**Councilor Bagley moved to remove all optional aesthetic requirements for attached ADUs as is allowed by the RSA except in HDC districts. Keep design standards for the HDC districts. Seconded by Councilor Cook.**

Councilor Bagley spoke to his amendment and said that Principal Planner Cracknell felt the design standards would be helpful when looking at the ADU.

Councilor Moreau said a great deal of time was spent looking at permitted uses. She said it would be inappropriate to take them out.

Councilor Blalock said that he agrees with Councilor Moreau and the work that has been completed should be reviewed.

Councilor Denton said of the three changes Councilor Bagley has brought forward he would only support the second proposal.

Mayor McEachern said design guidelines will be a great deal of work and why do we need so many rules. He said he spoke with Principal Planner Cracknell and there are changes for what it should look like, but it seems unnecessary to have more guidelines upfront. He said based on that he would not support the amendments.

Councilor Cook said she shares Councilor Bagley's concerns on design guidelines. She said she would like to approve the guidelines and the process. She spoke to the process of the land use boards and how it can take a great deal of time. She suggested reviewing this again in a year's time.

Councilor Tabor said we need to remember what comes with design criteria and that land use wants to create a handbook on the process and criteria to follow directions for smooth approvals.

Councilor Lombardi echoed Councilor Tabor's comments. He said the history of architecture is important in the historic district and feels that general guidelines will streamline the process. He said that this is a good concept of what needs to be accomplished.

On a roll call vote 1-8, motion **failed** to pass. Councilor Bagley voted in favor. Assistant Mayor Kelley, Councilors Tabor, Denton, Moreau, Lombardi, Blalock, Cook and Mayor McEachern voted opposed.

**Councilor Bagley moved to remove any parking requirements for ADUs as this will trigger the 3-parking space required rule, decrease permeable land, and increase the city's heat signature for a relatively small increase in housing as well as replace green space with parking in our residential neighborhoods. Seconded by Councilor Cook.**

Councilor Bagley spoke to his motion.

Assistant Mayor Kelley said Councilor Bagley is failing to recognize that these are in the ordinance. She said the amendments were made through a series of compromises and that standard designs and neighborhood abutters were discussed.

Councilor Denton said he would support the motion and conditional use permits and how he chooses not to have a vehicle.

Councilor Moreau said she sat through Planning Board meetings on this matter and spoke to parking requirements.

Councilor Tabor said if we want to get more ADUs we need to remove parking requirements.

Councilor Cook said she appreciates the work of the Land Use Committee. She spoke to watching all of the Land Use and Planning Board meetings on this matter. She spent time looking at the original report and what was passed. She said that we are only hearing from a small segment of people and that many residents are not represented in these issues. She stated that the parking requirements are a disadvantage to some neighborhoods.

Mayor McEachern said that parking should be settled at Parking and Traffic Safety Committee level. He said this is a big issue and we should try to have a parking program in the city.

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

At 9:10 p.m., Mayor McEachern declared a recess in order for the students to leave the meeting. At 9:25 p.m., Mayor McEachern called the meeting back to order.

**Councilor Bagley moved to increase ADU size to a maximum of 850 sq ft. Seconded by Councilor Denton.**

Councilor Moreau suggested reviewing this in a year.

On a roll call vote 1-8, motion **failed** to pass. Councilor Bagley voted in favor. Assistant Mayor Kelley, Councilors Tabor, Denton, Moreau, Lombardi, Blalock, Cook and Mayor McEachern voted opposed.

**Main motion to amend the ordinance as presented by the Legal Department. Further, move to continue second reading and hold a public hearing at the May 1, 2023 City Council meeting passed.**

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

### A. CITY MANAGER CONARD

#### 1. Paperless Billing Initiative

Finance Director Belanger explained the initiative to have paperless billing for tax and water and sewer bills. She spoke of the reduction in mailing fees. She said this is a voluntary process whereby the resident would opt in. She indicated that we expect 35% enrollment into the program.

Councilor Moreau asked if people could still have access to look up tax bills on-line. Tax Collector Bates said that process would be changing .

Councilor Cook said that this is a great initiative.

**Councilor Tabor moved to approve the optional paperless billing initiative according to NH RSA 76:11. Seconded by Councilor Moreau and voted.**

## XII. CONSENT AGENDA

- A. Letter from Brian Miller, New England Run For The Fallen, requesting permission to hold the 3<sup>rd</sup> Annual Run For the Fallen on Sunday, August 20, 2023 ***(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 “On the Tarmac” event on Friday, September 8, 2023 from 5:00 p.m. to 9:00 p.m. ***(Anticipated action – move to refer to the City Manager with Authority to Act)***
- C. Letter from Sandi Clark Kaddy, Seacoast African American Cultural Center, requesting permission to hold the 2<sup>nd</sup> Juneteenth Walk on Sunday, June 19, 2023 at 9:30 a.m. ***(Anticipated action – move to refer to the City Manager with Authority to Act)***
- D. Request from Emily Rives, Aster House, to install a Projecting Sign at 142 Fleet 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***

**Councilor Blalock moved to adopt the Consent Agenda. Seconded by Councilor Moreau and voted.**

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

- A. Presentation Regarding the City's Community Engagement – Monte Bohanan, Director of Communications & Community Engagement

Director of Communications & Community Engagement Bohanan provided a detailed presentation outlining City Council goals, the three pillars of his role, on-line updates, social media, recent surveys, how FlashVote works and why it is in place. He spoke about upcoming engagement opportunities and the work he is conducting that is in progress.

- B. Email Correspondence

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

### **XIV. MAYOR McEACHERN**

1. McIntyre
- Special Public Comment Session

Mayor McEachern said that this is a special public comment session regarding McIntyre. He said the disposition of the McIntyre is before us.

Richard Smith asked the City Council to stop the spending on the McIntyre project and not to keep going this way.

Paige Trace said the City Council has provided no information, no price, no path forward, no way to negotiation, or way out of this lawsuit. She said there are highly qualified developers that want to develop the McIntyre. She expressed her loss of trust in the City Council's ability to manage this matter.

Petra Huda asked if there has been an appraisal of the building. She said residents don't want luxury condominiums or luxury apartments. She urged the Council to withhold any more payment at this time. She said the city could develop the building without a developer. She stated it is time to take back what was taken away from the residents and buy back the property.

Esther Kennedy said this conversation should not be happening at 10:00 p.m. She said we need to have more information going out to residents and the city needs to purchase the building. She spoke to the potential of the building and said the Council needs to make the right decision.

Susan Deneberg urged the City Council not to be thinking of this tonight. She said why are we talking about this at this late hour. She said the Council needs to think through things and we are not developers. She expressed her opposition to purchasing the building.

Greg Mahanna said the city has some leverage in this matter.

Bill Downey said he does not believe the legislature is an option. He stated whatever we do we need to reset the button and the process needs to start from the beginning. He said this project is a once in a lifetime and we need public dialogue. He stated that Bill Binnie still would develop the building.

Marc Stettner (via zoom) recommended the city move to purchase the building because we do not want to see luxury hotels and apartments. He said it could become a mini central park. He stated the possibilities are endless, but you lose control if you do not own the building. He said that this would be an investment.

Rick Becksted (via zoom) said we need to own the building to control what happens. He stated the lawsuit will happen whether we purchase the building or not. He said we need to look at this in a unique way and return the post office to the location. He urged the City Council to continue the talks and start the process to purchase the building.

**Councilor Denton moved to advise the GSA that the city will not be proceeding with a negotiated sale. Seconded by Councilor Bagley.**

Councilor Denton spoke to the history of the property. He stated he does not relate to the passion regarding this building. He thanked the hundreds of residents, board members and staff that have dedicated their time to this matter.

Councilor Bagley said he supports Councilor Denton's option and said this did not work at \$1.00 and will not work for \$20 million. He said it is time to let the GSA put the building out to auction.

Councilor Tabor said he would like to further pursue a negotiated sale. He said we do not need another public process, but we need more public engagement on what to do with the building. He said we need to control how the land will be sold. He stated a negotiation sale is the best option for the city.

Councilor Blalock said he has read the emails and comments from residents, and supports Councilor Denton's motion.

Councilor Moreau said she has gone back and forth on this matter. She said she has great concern on the pricing but feels that walking away seems to be more prevalent.

Councilor Lombardi said that this has been a hard road. He said he does not feel ready to vote because he sees both sides of this but we need to do what is best for the city.

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

Councilor Cook asked what the deadline for a vote from the City Council on this matter is. City Manager Conard said the GSA is expecting a feeling from the City Council on how they wish to proceed.

Discussion followed among the Council.

City Attorney Morrell advised the City Council that an appraisal would determine fair market value.

Mayor McEachern asked what the process would look like if the Council held a public hearing on the number and how would we set a number.

City Attorney Morrell said the process by the federal government does not work well to have a public hearing on developing a number. She said the GSA is looking for a purchase and sales agreement.

Mayor McEachern asked if we were to schedule a public hearing would we have to have a number. City Attorney Morrell said she does not feel we would need a number.

Assistant Mayor Kelley said she struggles with both motions because it is hard to look at potential votes when we do not have a number. She said the range of numbers are two different options. She said there could be a benefit and is tending to lean a vote of no towards this. She said it is hard to say no to continue the conversation.

Councilor Lombardi said if it went to a private sale, it would be difficult to change the zoning. He asked if that would be considered spot zoning. City Attorney Morrell said we could justify some incentives for community space.

Mayor McEachern passed the gavel to Assistant Mayor Kelley.

Mayor McEachern said he is not convinced that it is not a good decision to buy the building. He said this process has gone on for twenty years. He said he would like to have an up or down vote on a number.

Assistant Mayor Kelley returned the gavel to Mayor McEachern.

**Councilor Tabor moved to postpone the vote until the May 1, 2023 City Council meeting and have an estimated figure involved in a negotiated sale. Seconded by Assistant Mayor Kelley.**

Councilor Bagley said there is a risk that GSA would force us to make a decision before May 1<sup>st</sup>.

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

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

- A. Acceptance of Health Trust Wellness Reward - \$2,000.00

**Assistant Mayor Kelly moved to approve and accept the Wellness Reward as presented. Seconded by Councilor Bagley and voted.**

B. Acceptance of FY24 Community Development Block Grant Funds - \$29,546.00

**Assistant Mayor Kelley moved to accept and expend a Community Development Block Grant in the amount of \$529,546.00 from the U.S. Department of Housing and Urban Development. Seconded by Councilor Blalock and voted.**

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

*(There are no City Manager Informational Items this evening)*

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

Councilor Moreau announced that Corey Clark is resigning from the Land Use Board and Andrew Samonas of the Planning Board will be taking his place.

Assistant Mayor Kelley spoke to the success of giving away trees in recognition of Earth Day and the City of Portsmouth 400<sup>th</sup> Anniversary.

Councilor Blalock thanked Mayor McEachern for throwing out the first pitch of Little League over the weekend.

**XIX. ADJOURNMENT**

**At 11:05 p.m., Assistant Mayor Kelley moved to adjourn. Seconded by Councilor Moreau and voted.**



KELLI L. BARNABY, MMC/CNHMC  
CITY CLERK



ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That Chapter 10 – Article 5A – CHARACTER-BASED ZONING, Section 10.5A20, **Regulating Plan**, Subsection 10.5A21.10 Contents of Regulating Plan, Map 10.5A21B – Building Height Standards, Section 10.5A43.30 – **Building and Story Heights**, Subsection 10.5A43.33, Section 10.5A43.40 – **Maximum Building Footprint**, Subsections 10.5A43.41-44, and Section 10.5A45 – **Community Spaces**, Subsection Figures 10.5A45.10 Community Spaces, Section 10.5A46.20 – **Requirements to Receive Incentives to the Development Standards**, Subsections 10.5A46.21-22, and Article 15 – DEFINITIONS, Section 10.1530 – **Terms of General Applicability**, 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 5A: CHARACTER-BASED ZONING**

**Section 10.5A20: Regulating Plan**

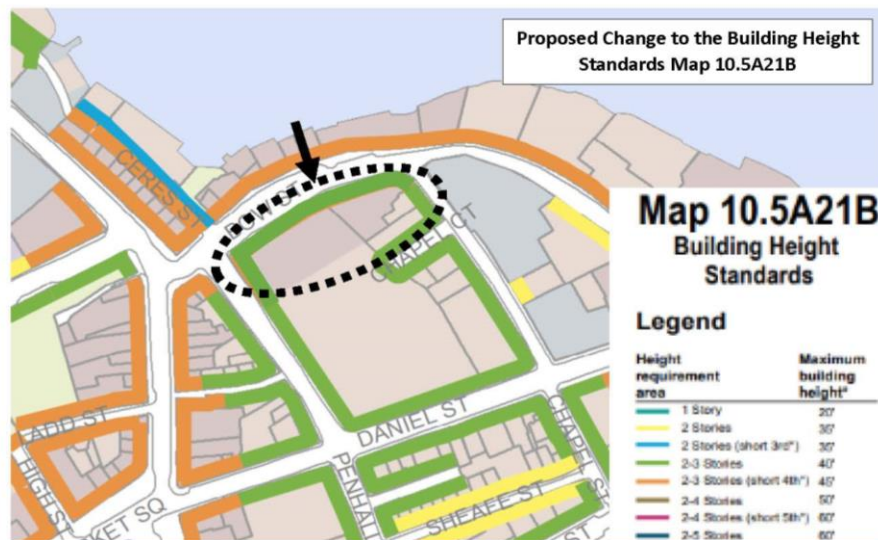
Section 10.5A21 General

10.5A21.10 Contents of Regulating Plan

The **Regulating Plan** is the Zoning Map for the Character districts and Civic districts.

The **Regulating Plan** consists of the following maps:

- Map 10.5A21A – Character Districts and Civic Districts
- **Map 10.5A21B – Building Height Standards**
- Map 10.5A21C – Special Requirements for Façade Types, Front Lot Line Buildout, and Uses



## Section 10.5A43.30: Building and Story Heights

10.5A43.33 **A-For a development** that is not located in an incentive overlay district and that contains at least one acre of **lot area** the Planning Board may grant a conditional use permit to allow ~~shall be allowed~~ an additional **story** in height (up to 150 feet) and a building footprint of up to 50,000 SF if both of the following requirements are met:

- a) **Community Space** – The development shall have at if at least 2050% of the property is assigned and improved as a community space. Given the large scale of the development Such the community space shall include a Plaza or Square of at least 5,000 SF per acre, a Pedestrian Passageway, Wide Pedestrian Sidewalk, and or a Pedestrian Arcade, and a Pocket Park or Playground or Public Observation Deck. Such community space shall count toward the required open space listed in Figures 10.5A41.10A-D (Development Standards). The size, shape, location and type of the community space shall be determined by the Planning Board and be based on the proposed land use and the size and location of the buildings within the development, and the proposed and adjacent uses and public amenities.
- b) **Workforce Housing** - The development shall have either: 1) 10% of any proposed for sale dwelling units within a development, or at least three units, whichever is greater, shall be workforce housing units (affordable to a household with an income of no more than 100 percent of the area median income for a 4-person household); 2) 5% of any proposed for rent dwelling units within a development, or at least two units, whichever is greater, shall be workforce housing units (affordable to a household with an income of no more than 60 percent of the area median income for a 3-person household) and any workforce housing units shall be at least 600 sq. ft. in gross floor areas and be distributed throughout the building wherever dwelling units are located.

## Section 10.5A43.40 Maximum Building Footprint

10.5A43.41 No **building** or **structure** footprint shall exceed the applicable maximum **building footprint** listed in Figures 10.5A41.10A-D (Development Standards) except as provided in Sections 10.5A43.42-44 below.

10.5A43.42 In the CD5 district, a detached **liner building** may have a **building footprint** of up to 30,000 sq. ft. if it meets all other **development** standards and is integrated into a **parking structure** through the provision of **community space** or shared access.

10.5A43.43 For a **building** that contains **ground floor** parking, a **parking garage** or **underground parking levels**, and is not subject to Section 10.5A43.42, the Planning Board may grant a conditional use permit to allow a

**building footprint** of up to 30,000 sq. ft. in the CD4 or CD4-W districts, and up to 40,000 sq. ft. in the CD5 district, if all of the following criteria are met:

- (a) No **story** above the **ground floor** parking shall be greater than 20,000 sq. ft. in the CD4 or CD4-W districts or 30,000 sq. ft. in the CD5 district.
- (b) All **ground floor** parking areas shall be separated from any public or private **street** by a **liner building**.
- (c) At least 50% of the **gross floor area** of the **ground floor** shall be dedicated to parking.
- (d) At least ~~30%~~10% of the property shall be assigned and improved as **community space**. Such **community space** shall count toward the required **open space** listed under Figures 10.5A41.10A-D (Development Standards) and **community space** required under Section 10.5A46.20. The size, location and type of the **community space** shall be determined by the Planning Board based on the size and location of the **development**, and the proposed and **adjacent uses**.
- (e) At least 10% of the **dwelling units** within a **building**, or at least two **dwelling units**, shall be **workforce housing units** for either: 1) rent (**affordable** to a household with an income of no more than 60 percent of the **area median income** for a 3-person household) or sale (**affordable** to a household with an income of no more than 100 percent of the **area median income** for a 4-person household). Such units shall be at least 600 sq. ft. The **workforce housing units** shall be distributed throughout the **building** wherever **dwelling units** are located.
- (e)(f) The **development** shall comply with all applicable standards of the ordinance and the City's land use regulations.

10.5A43.44 The **building footprint** of a **parking structure** shall be no greater than 40,000 sq. ft., and the **façade** length shall be no greater than 300 feet.

## Section 10.5A45: Community Spaces

Figures 10.5A45.10 Community Spaces

### Pedestrian Passageway

A covered pedestrian passageway (a minimum of 8 feet in width) located on the ground floor with street level access to the storefronts and connects to community space areas within the development and to adjacent public ways.

Permitted Districts: All Districts

### **Public Observation Deck**

An open or covered observation deck that provides public access and amenities on either a waterfront boardwalk or deck or, on the roof of a building. The minimum size shall be 500 SF.

**Permitted Districts:** All Districts

### **Pedestrian Arcade**

A covered pedestrian arcade within the ground floor or street level of a building that provides public access to the storefronts and connects to **community space** areas within the development and to adjacent public ways.

**Permitted Districts:** All Districts

## **Section 10.5A46.20 Requirements to Receive Incentives to the Development Standards**

10.5A46.21 For a **lot** located **adjacent** to, or within 100 feet of, North Mill Pond, Hodgson Brook or the Piscataqua River, **the Planning Board may grant a conditional use permit to allow the incentive to the **development** standards listed under Section 10.5A46.20, provided the **development** shall ~~provide~~ include **community space** equal to 20% of the **lot area** that includes a continuous public **greenway** at least 20 feet in width with a multi-use path and that is parallel and located within 50 feet of the waterfront. Trail connections to abutting **street(s)** and sidewalks shall be provided and there shall be no buildings between the waterfront and the greenway unless otherwise approved by the Planning Board. The **greenway** shall include legal and physical access to abutting **lots** or public ways. When access is not available due to current conditions on an abutting **lot**, provisions shall be made for future access in a location determined by the Planning Board.**

10.5A46.22 For a **lot** that is more than 100 feet from North Mill Pond, Hodgson Brook or the Piscataqua River, **the Planning Board may grant a conditional use permit to allow the incentive to the **development** standards listed under Section 10.5A46.20, provided the **development** shall include ~~either~~ both a **community space** ~~or~~ and **workforce housing** as specified below:**

- (1) **Community space ~~option~~** – All of the following criteria shall be met:
  - (a) The **community space** shall be a **community space** type that is permitted within the applicable Character district.
  - (b) The **community space** shall constitute at least ~~20%~~ **10%** of the gross area of the **lot** and shall not have any dimension less than 15 feet.
  - (c) The **community space** shall adjoin the public **sidewalk** and shall be open on one or more sides to the **sidewalk**.

- (d) The **community space** shall include trees and other **landscaping** to provide shade and reduce noise, and pedestrian amenities such as overlooks, benches, lighting and other **street** furniture.
- (e) The **community space** shall be located on or **adjacent** to the same **lot** as the **development**, except as provided in (f) below.
- (f) The Planning Board may grant a conditional use permit to allow a proposed **community space** to be located on a different **lot** than the **development** if it finds that all of the following criteria will be met:
  - (i) An appropriate **community space** cannot feasibly be provided on the same **lot** as the **development**.
  - (ii) The proposed **community space** is within the same Incentive Overlay District as the **development**.
  - (iii) The proposed **community space** is suited to the scale, density, **uses** and character of the surrounding properties.

(2) **Workforce housing option** - One ~~or more~~ of the following criteria shall be met:

- (a) At least ~~30%~~ **20%** of the **dwelling units** within a **building**, but no less than three **dwelling units**, shall be **workforce housing units** for sale (**affordable** to a household with an income of no more than 100 percent of the **area median income** for a 4-person household).  
Such units shall be at least ~~the average gross floor area of the proposed units in the building or 1,000~~ **600 sq. ft., whichever is greater**. The **workforce housing units** shall be distributed throughout the **building** wherever **dwelling units** are located; or
- (b) At least 10% of the **dwelling units** within a **building**, or at least two **dwelling units**, shall be **workforce housing units** for rent (**affordable** to a household with an income of no more than 60 percent of the **area median income** for a 3-person household).  
Such units shall be at least ~~the average gross floor area of the proposed units in the building or 800~~ **600 sq. ft., whichever is greater**. The **workforce housing units** shall be distributed throughout the **building** wherever **dwelling units** are located.

## ARTICLE 15: DEFINITIONS

### Section 10.1530: Terms of General Applicability

#### Building footprint

Except for areas where **community space** is uncovered and located immediately above the **story below the grade plane** The the total area of a building at or above 18 inches in elevation as measured from the outside walls at the grade plane of a detached building, or of two or more buildings separated only by fire walls, common walls or property lines.

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.

APPROVED:

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Deaglan McEachern, Mayor

ADOPTED BY COUNCIL:

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Kelli L. Barnaby, City Clerk

## LICENSE AGREEMENT

Agreement made this \_\_\_ day of \_\_\_\_\_ 2023 by and between the CITY OF PORTSMOUTH, NEW HAMPSHIRE, having a business address at 1 Junkins Avenue, Portsmouth, NH 03801 (the "Licensee"), and the GENERAL SERVICES ADMINISTRATION, as agent for the United States of America (the "Government"), having a business address at the Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222.

WHEREAS, the Government is the fee owner of an approximate 2.1-acre parcel, located at 80 Daniel Street, Portsmouth, NH 03801 (the "Property"); and

WHEREAS, the Property has been vacated by the Government and the Licensee is pursuing acquisition of the Property through a Negotiated or public sale in accordance with 40 USC 545 (b)(8) and 40 USC 545 (a)(1); and

WHEREAS, the Government and Licensee executed a six-month license commencing on June 15, 2022, and ending on December 15, 2022.

WHEREAS, the Government and Licensee executed a 90-day extension commencing on January 11, 2023 and ending on April 11, 2023.

WHEREAS, the Licensee failed to submit an application to acquire the Property via Historic Monument/Historic Surplus Property public benefit conveyance administered by the National Park Service. WHEREAS, the Licensee requested an extension of the license (the "Extension Period") in which it will continue to obtain parking revenue from the site and determine whether to pursue the purchase of the property in a Negotiated Sale Process with the GSA.

WHEREAS, pursuant to 41 CFR 102-75.944, the Government is willing to grant to the Licensee a license to enter upon and use the Property prior to conveyance to it or to another, for the purposes, and subject to the restrictions, limitations and conditions, specified herein.

NOW THEREFORE, in consideration of the mutual promises, covenants and other good and valuable consideration set forth herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Term. The Government grants to the Licensee, a license, pursuant to which the Licensee and its employees, agents, contractors, and invitees shall have the right to enter upon and use the Property for the Permitted Uses, described herein (the "License"). The term shall commence on the date on which both of the following have been satisfied: (a) the License is executed and (b) the delivery of the insurance certificate(s) required by Section 5 of this License and shall end on October 13, 2023.
2. Conditions for Conveyance of the Property:

- a. If the Licensee determines that it will commit to the Negotiated Sale Program to acquire the property at its May 1, 2023, City Council meeting, the Licensee shall 15 days thereafter provide the Government with a milestone schedule of activities to be completed during the Extension Period upon execution of the License including, but not limited to:
  - i. Activities associated with the review of financial materials to inform the City's fair market value purchase of the Property, including any research, studies, or materials previously contracted by the City to inform redevelopment of the Property
  - ii. Schedule for required City Council approvals, including public hearings and council votes, to submit a fully executed Offer to Purchase
  - iii. Any additional activities associated with obtaining approval to purchase the Property.
  
- b. The Licensee shall provide the Government with an update on the status of its progress to acquire the Property through a Negotiated Sale at fair market value 15 days from the License commencement date or May 1, 2023, whichever is later, and every 15 days thereafter. The Government agrees to review the Licensee's presentation within 5 days of presentation to determine whether to continue with a Negotiated Sale in lieu of a public sale.
  
- c. In the event the Licensee fails to submit a fully executed Offer to Purchase with the required 10% deposit within 30 days of obtaining the GSA's appraised value of the property, the Government will proceed directly to a public sale of the Property.

Permitted Uses. The Licensee may use the Property to conduct the work necessary to operate, protect and maintain the Property and activities required to inform and advance the Licensee's application to acquire in accordance with 40 USC 545(b)(8) and 40 USC 545(a)(1). The Permitted Uses allowed by this License shall include all inspections, measurements, surveys, engineering and environmental studies, utilities investigations, zoning and architectural studies, title investigations and other such reports, tests and investigations that Licensee deems appropriate. If the work shall include any intrusive investigations, the Licensee shall provide to the Government a scope of work which shall include: (a) the specific location(s) of any proposed sampling activities; (b) the purpose and nature of the sampling; (c) the identity of contractors and staff who will be performing the work for security purposes; a copy of the work plan (the Work Plan). The Work Plan shall be reviewed, and any comments or further requirements that the Government has with respect to such Work Plan shall be provided to the Licensee within five (5) days following the Government's receipt of Work Plan. If the Government provides no comments within five days of receipt, the work set forth in the Work Plan shall be deemed approved.



3. Additional Permitted Use: Licensee may use all exterior parking spaces on the Property for any parking related purpose, including the use of the spaces by private parties or members of the public, for which Licensee may collect parking fees. Proceeds from parking fees shall be used solely for the purposes of utilities and operational expenses, as set forth in Paragraph 5. In the event any net revenues are derived from the Additional Permitted Use, the Licensee agrees to remit such net revenues to the Government.
4. Changes or Alterations. Any changes or alterations proposed by the Licensee must be approved in writing by the Government prior to the initiation of the work. These changes or alterations must be reviewed by the New Hampshire State Historic Preservation Office (SHPO). Costs for changes or alterations to the Property shall be the sole responsibility of the Licensee and no reimbursement for these approved changes or alterations will be given to the Licensee. Any changes or alterations approved in accordance with this section will be made by bonded and licensed entities and will comply with local building codes, inspections, and permits.
5. Utilities, Operational Costs, and Capital Expenses. Licensee shall be responsible for and shall pay in full for any and all costs and expenses arising from the operation of the Property, including but not limited to utilities and utility bills including gas, telephone service, electricity, water charges, sewer, security, janitorial services, trash removal, landscaping and snow removal and, capital repairs to building systems (including, but not limited to, roof materials, elevators, HVAC, fire and life safety systems). Costs incurred by the Licensee will not be considered a credit against the purchase price should the Licensee acquire the Property through a Negotiated Sale or public sale. Costs and expenses for part of a month will be prorated. All payments will be made directly to the appropriate provider.
6. Access. Upon execution of the License, the Government shall provide the Licensee with copies of the appropriate keys, key cards, and any additional materials associated with access to, and operation of, the Property. The Licensee agrees to furnish the Government with duplicate keys, key cards, and any additional materials associated with access upon execution of this agreement.
7. Site Conditions. Throughout the Term of this License, Licensee shall, at its sole cost and expense and at no cost or expense to the Government promptly repair or replace any property of the Government damaged or destroyed by the Licensee incident to Licensee's operation, use and occupation of the Property. The Government shall provide the Licensee, upon request, with a copy of all site plans, mappings, and drawings in its possession that show the existence and location of all public and/or private subsurface utilities at the Property.

8. Sole Risk: Indemnity. The exercise of the rights herein contained shall be at the sole risk of the Licensee. Licensee shall indemnify, defend, and hold Government and Government's agents, officers, and employees harmless from any and all third-party claims for losses, damages, costs, expenses (including attorney's fees), statutory fines or penalties, actions, or claims for personal injury (including death), damage to property, or other damage or financial loss of whatever nature, in any way arising out of or in connection with this License, with Licensee's exercise of its rights under this License, and with Licensee's activities on the Property pursuant to this License within the scope and limit (\$1,000,000) of the City's indemnity coverage under the New Hampshire Public Risk Management Exchange (Primex). Except, however, that Licensee shall not indemnify the Government for any and all losses, damages, costs, expenses (including attorney's fees), statutory fines or penalties, or actions of whatever nature in any way arising out of or in connection with: (a) any third-party claims for personal injury (including death), damage to property, or other damage or financial loss related to the condition of the Property, including the presence of hazardous substances (as that term is commonly defined under relevant environmental laws) in the soil, air, structures, or surface/subsurface waters that may require investigation, treatment, special handling, or removal from the Property, but unrelated to Licensee's exercise of its rights under this License and (b) any grossly negligent, willful or intentional actions of the Government or its own agents, officers, or employees.
9. Insurance. As a condition of this License, the Licensee, or its designated consultant performing the work associated with the Permitted Uses, shall provide and maintain, at its sole cost and expense, throughout the duration of this License, the following insurance coverage: (i) Comprehensive General Liability Insurance or public entity risk pool insurance for claims arising from bodily injury, personal injury and property damage occurring upon, in or about the Property on an occurrence basis with combined single limit coverage of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate; and (ii) Workers' Compensation Insurance as required by law.

All such insurance shall be issued by insurers duly authorized and licensed or permitted by law to do business in the State of New Hampshire. All such insurance shall provide that coverage may not be canceled without the insured providing twenty (20) days prior written notice to the Government at the address first listed above. Certificates of Insurance evidencing such insurance policies, in a form reasonably acceptable to the Government, shall be attached to this License as Exhibit A.

10. Release. Licensee, by execution of this License, hereby agrees to release the Government from any and all claims and/or damage to persons or property by it arising out of or in any way related to its entry (and that of its employees, agents and contractors) upon the Property, and does hereby forever waive, release, relinquish, remise and discharge the Government and its agents, employees, successors and assigns from any and all losses, costs or expenses (including reasonable attorneys' fees), damages, demands, liabilities, claims, actions, causes of action, suits, or judgments (collectively, "Claims") whatsoever of every name and nature that arise in connection with such entry, in law and in equity, including without limitation those related in any manner to:

- a. any accident or injury to, or death of, any person, or any damage to property occurring on, in or in the vicinity of the Property, or any part thereof, arising out of the presence in and use by the Licensee and/or its employees and contractors of the Property; or
- b. any condition of the Property or any portion thereof caused by the Licensee or its employees or contractors; or
- c. any failure of the Licensee or its employees or contractors to perform or comply with the terms of this License or the terms of any statute, law, regulation or ordinance affecting the Licensee's use of the Property, which the Licensee, its agents, employees, or contractors ever had, now have or might have (and whether or not asserted) against the Government and its agents, employees, successors or assigns arising from, pursuant to, or bearing any relationship whatsoever to the License or the Property, except only for Claims arising out of the act, omission or gross negligence of the Government.

11. Compliance with Laws. The Licensee shall, at its sole cost and expense, throughout the Term of this License:

- a. obtain and maintain as necessary all permits, licenses and approvals required by any governmental authority with jurisdiction thereof for the use by Licensee, its employees, agents, invitees or licensees of the Property for the Permitted Uses; and
- b. comply with all applicable laws, rules regulations and by-laws of governmental authorities, and with the terms and conditions of all permits, licenses and approvals issued to Licensee in connection with the use by Licensee and its employees and contractors of the Property for the Permitted Uses.

12. Defaults and Remedies. If at any time during the Term of this License, Licensee fails to perform or observe any term, covenant or condition contained in this License to be performed or observed by Licensee, and such failure continues for a period of two (2)

days after the Government gives written notice to Licensee specifying the nature of the default claimed (unless such default shall be of such nature that it cannot be completely cured within such two (2) day period and Licensee commences to cure such default during such two (2) day period and thereafter continues curing the same with reasonable diligence); then, in any such instance, the Government may terminate this License by written notice to Licensee, such termination to be effective on the date specified in such notice.

13. Representations and Warranties of the Parties. Both the Government and the Licensee (each a "Party") represent for themselves that:

- a. each Party has all the requisite power and authority to deliver this License and, as applicable, the releases and indemnification's contemplated herein.
- b. this License has been duly executed and delivered by each Party and, constitutes the legal, valid and binding obligation of each Party enforceable in accordance with its terms.
- c. the execution and delivery of this License by each Party does not, and the consummation of the transactions contemplated by this License and the compliance with its terms, conditions and provisions by each Party will not, conflict with or result in a breach of or constitute a default (or an event which might, with the passage of time or the giving of notice or both, constitute a default) under any of the terms, conditions or provisions of any other agreement or instrument to which either Party is a party or by which either Party may be bound or affected, or any judgment or order of any court or governmental department, commission, board, agency or instrumentality, domestic or foreign, or any applicable law rule or regulation.

14. Miscellaneous Provisions.

- a. No Third-Party Beneficiaries. Nothing in this License agreement, expressed or implied, is intended to confer upon any person, other than each of the parties hereto, and assigns of the Licensee, any benefits, rights, or remedies under or by reason of this License agreement.
- b. Entire Agreement. This License and the attachments hereto, each of which is hereby incorporated herein, set forth all the agreements, promises, covenants conditions and undertakings between the parties with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements, or conditions, express or implied, oral or written.
- c. Amendment. No waiver or modification of any of the terms of this License shall be valid unless in writing and signed by each of the parties hereto. Failure by any

party to enforce any rights under this License shall not be construed as a waiver of such rights, and a waiver by any party of a default hereunder in one or more instances shall not be construed as constituting a continuing waiver or as a waiver of other instances of default.

- d. **No Waiver or Release.** No failure of the Government to exercise or delay by the Government in exercising any right or remedy or option provided for herein shall be deemed to be a waiver of any of the covenants or obligations of the Licensee hereunder or the right of the Government to enforce the same. No forbearance on the part of the Government or any other indulgence given by the Government to the Licensee shall operate to release or in any manner affect the obligations of the Licensee hereunder.
- e. **Partial Invalidity.** In the event any one or more of the provisions contained in this License shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the remainder of this License shall not be affected hereby, and each covenant and provision of this License shall be valid and enforceable to the fullest extent permitted by law.
- f. **Governing Law.** The construction and effect of the terms of this License shall be determined in accordance with federal law.
- g. **Notices.** All notices and other communication which is required or permitted by this License shall be in writing and effective if: (a) delivered by personal service, (b) sent by registered or certified first class US mail, postage prepaid, properly addressed, return receipt requested, or (c) by overnight receipt delivery service such as Federal Express, if intended for the Licensee, addressed to at the address first set forth above, and if intended for the Government, addressed to the Director of Property Utilization and Disposal at the address first set forth above. Receipt of a notice by the party to whom the notice is transmitted as provided above will be deemed to have occurred upon receipt in the case of clause (a), five days from the date of mailing in the case of clause (b) and the next business day in the case of clause (c).
- h. **Signature in Counterparts.** This License may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. The parties hereto confirm that any facsimile copy of another party's executed counterpart of this Agreement (or its signature page thereof) will be deemed to be an executed original thereof.

IN WITNESS WHEREOF, the parties hereto have caused this License to be executed as a sealed instrument under federal law on the day and year first written above.

UNITED STATES OF AMERICA  
Acting by and through the Administrator of General Services

By: \_\_\_\_\_  
John E. Kelly, Director  
Real Property Utilization & Disposal  
Public Buildings Service

CITY OF PORTSMOUTH, NEW HAMPSHIRE

By: \_\_\_\_\_  
Karen Conard  
City Manager

**EXHIBIT A**

**Certificate of Insurance**







## CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex<sup>3</sup>) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex<sup>3</sup> is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex<sup>3</sup> is entitled to the categories of coverage set forth below. In addition, Primex<sup>3</sup> may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex<sup>3</sup>, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex<sup>3</sup> Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only, Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex<sup>3</sup>. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

<i>Participating Member:</i> City of Portsmouth One Junkins Avenue Portsmouth, NH 03801		<i>Member Number:</i> 275	<i>Company Affording Coverage:</i> NH Public Risk Management Exchange - Primex <sup>3</sup> Bow Brook Place 46 Donovan Street Concord, NH 03301-2624		
Type of Coverage		Effective Date (mm/dd/yyyy)	Expiration Date (mm/dd/yyyy)	Limits - NH Statutory Limits May Apply, If Not:	
<input checked="" type="checkbox"/>	<b>General Liability (Occurrence Form)</b>	7/1/2023	7/1/2024	Each Occurrence	\$ 1,000,000
	<b>Professional Liability (describe)</b>			General Aggregate	\$ 2,000,000
	<input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence			Fire Damage (Any one fire)	
				Med Exp (Any one person)	
	<b>Automobile Liability</b> Deductible    Comp and Coll: \$1,000  <input type="checkbox"/> Any auto			Combined Single Limit (Each Accident)	
				Aggregate	
<input checked="" type="checkbox"/>	<b>Workers' Compensation &amp; Employers' Liability</b>	7/1/2023	7/1/2024	<input checked="" type="checkbox"/> Statutory	
				Each Accident	\$2,000,000
				Disease – Each Employee	\$2,000,000
				Disease – Policy Limit	
	<b>Property (Special Risk includes Fire and Theft)</b>			Blanket Limit, Replacement Cost (unless otherwise stated)	
<b>Description:</b> Proof of Primex Member coverage only.					

<b>CERTIFICATE HOLDER:</b>	<b>Additional Covered Party</b>	<b>Loss Payee</b>	<b>Primex<sup>3</sup> – NH Public Risk Management Exchange</b>
			<b>By:</b> <i>Mary Eeth Purcell</i>
GENERAL SERVICES ADMINISTRATION as agent for the United States of America Thomas P. O'Neill Jr, Federal Building 10 Causeway St Boston, MA 02222			<b>Date:</b> 4/27/2023    mpurcell@nhprimex.org
			Please direct inquires to: <b>Primex<sup>3</sup> Claims/Coverage Services</b> 603-225-2841 phone 603-228-3833 fax



**PRESCOTT PARK LICENSE AGREEMENT  
FOR  
Gundalow Company**

**PARTIES.** This license agreement (“**Agreement**”) is by and between the City of Portsmouth, a municipal corporation organized and existing under the laws of the State of New Hampshire, with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (the “**City**”), and

**Licensee,** Gundalow Company, a non-profit corporation, organized and existing under the laws of the State of New Hampshire with a mailing address of 60 Marcy Street Portsmouth, NH 03801.

This Agreement is dated (date of acceptance by City Council): \_\_\_\_\_.

**RECITALS.** This License sets forth the rights, obligations and conditions of Licensee’s use of property and buildings on City property known as Prescott Park and bounded by State Street, Marcy Street and Mechanic Street (the “**Park**”)

- The City owns Prescott Park and is responsible for preserving its historic resources and operating Prescott Park consistent with its fiduciary and charitable obligations.
- The 2017 Prescott Park Master Plan (adopted by the City Council February 6, 2017) is a foundational policy statement guiding the operations and programming authorized in Prescott Park. Further, the recommendations of the Prescott Park Policy Advisory Committee (Final Report December 2017) provide additional guidance in development of park policies and agreements.
- Prescott Park is first and foremost a waterfront open space for the people of Portsmouth. The “Park First” approach of the 2017 Prescott Park Master Plan is a framework for decision-making, which prioritizes the Park space as a City park and place for respite and quiet enjoyment.
- Ensuring strong connections to maritime history, maximizing waterfront access for the public, and preserving cultural resources in the Park are tenets of the Prescott Park Master Plan.
- Prescott Park’s Shaw Warehouse, Marine Railway Building, and Sheafe Warehouse are invaluable historic and cultural resources, whose value in showcasing and interpreting the historic development of Portsmouth is inestimable.
- A Prescott Park Master Plan Implementation Committee was formed in 2020 to make recommendations on how to implement the Master Plan in phases. Additional environmental and engineering studies were performed and on July 11, 2022, the City Council approved the recommendations of the Prescott Park Master Plan Implementation Committee to move forward with Phase 1A Master Plan Improvements. Master Plan Improvements will be constructed during the term of this Agreement. The City will regularly communicate with the Gundalow Company to

provide advance notice of Master Plan Improvements in order for the parties to address potential impacts on operations and programming.

**NOW THEREFORE:** For the public benefit and consideration set forth, the City grants a non-exclusive license to Licensee to use the licensed area defined in this Agreement for limited authorized activities subject to the following terms and conditions.

### GENERAL

1. **PUBLIC BENEFIT.** The City Council has determined that granting this License to the Licensee is in the public benefit. Specifically, the benefit to the public is to facilitate the presence of public access to the waterfront; celebrate and share City's maritime history and culture; and expand knowledge and understanding among residents and visitors of the importance and function of natural resources as well as promote protection and preservation of the Piscataqua River region. The public benefit is further discussed in Paragraph 5 relative to Consideration and Schedule D.
2. **LICENSED AREA.** The City and Licensee agree that it is not the intention of the parties to create a public forum within the Licensed Area, the Park currently has a public forum designated area and there is no intention by this Agreement to expand or alter it. The Licensed Area for the Authorized Activities is as described on Schedule A.
3. **AUTHORIZED ACTIVITIES.** Licensee is permitted to use the Licensed Area for those activities identified in Schedule B and for no other purpose. Licensee shall conduct no other business, enterprise, program or activity in, on or around the Park other than specifically authorized by this Agreement.
4. **SCHEDULE OF PROGRAMMING.** Schedule C of this agreement outlines the submittal timeline for a proposed schedule by the Licensee. The schedule, when approved in writing by the City Manager, shall become a part of this Agreement as Schedule C, Addendum 1. Licensee shall conduct its operations in accord with Schedule C. Licensee shall not schedule, stage or promote any program, act or performance in which pyrotechnics, explosives or display of open flames are involved or used without prior and separate written approval.
5. **PUBLIC BENEFIT & CONSIDERATION.** In recognition of the value of the Licensee's programming to the City and the role the Park has in enabling the Licensee's programming, Licensee agrees to share in the City's expenses associated with the overall administration, maintenance, operations, upkeep, occupancy and related overhead costs to the City in accordance with Schedule D. Licensee and the City recognize the consideration outlined in Schedule D reflects a balance of the following factors: the public benefit of Licensee programming to the residents and to the vitality of the City (cultural, social and economic); the value of the Park's assets to Licensee operations; administrative, maintenance and operational costs to the City; impacts of Phase 1A Master Plan Improvements on operations and programming, if any, and impacts to the

Park and the surrounding area in terms of the wear and tear, transportation and parking, and off-site sound exposure.

6. **TERM.** The term of this Agreement shall be five years commencing on the date of this Agreement and ending five years from that date unless terminated earlier due to default or by agreement.
7. **EXTENSION OF TERM.** Licensee may at the conclusion of year 4 of the term request an extension of the license for up to an additional five-year term. The City shall negotiate in good faith an extension provided: (1) Licensee is not in violation or default of any material term of this Agreement; (2) Licensee has not received more than six (6) notices of default during the term; (3) Licensee has not received more than six (6) notices of infractions per season; and (4) the City has not been obligated to make any financial contributions to maintain the Licensed Area other than those obligations contemplated by this Agreement.
8. **EARLY TERMINATION.** Licensee may terminate this Agreement without penalty by written notice to the City upon the following conditions: (1) Licensee is not in default of any obligation; and (2) the City is provided notice no later than December 31 of the completed season.
9. **FINANCIAL INFORMATION.** In order to promote transparency and public confidence in financial transactions involving the use of the Park, Licensee shall provide timely financial information, including the following (the timing of the submittals below may be modified by the City Manager for good cause upon request of the Licensee presented in writing prior to the dates shown below):
  - A. Financial Profits and Loss Summary for the season immediately preceding shall be submitted annually no later than February 15<sup>th</sup>. The Licensee's fiscal year is a calendar year – January 1 to December 31<sup>st</sup>.
  - B. Audited financial statements and management letter, if available, shall be submitted on an annual basis at a reasonable time following completion and review with the Licensee's Board.
  - C. Other financial information (i.e., policies for cash handling, etc.) and books open for inspection as may be requested by the City.
10. **AS IS CONDITION.** Licensee accepts the Licensed Area “as is” and as fit for the Licensee's intended purposes. City is under no obligation to improve, fit-up or make ready the Licensed Area for Licensee's Authorized Activities. Licensed Area will be made available in “broom clean” condition.
11. **RESPONSIBILITY FOR COSTS OF OPERATIONS.** Unless otherwise stated in this Agreement, Licensee is responsible for all costs and expenses incurred by Licensee for performing its obligations under this Agreement and carrying out its mission and programming. Those costs may include but are not limited to administration, scheduling, set up of exhibits, maintenance of Licensee's equipment, and temporary facilities;

permitting and licensing fees; waste and clean up as set forth in paragraph 14; as well as all subcontracted services and other costs of carrying out this Agreement.

12. **PUBLIC ACCESS TO OTHER PROGRAMMING.** Licensee recognizes the City schedules use of the Park for weddings, dock reservations, public forum area events and Four Tree Island Events. Licensee agrees to cooperate and make reasonable accommodations to facilitate these uses.

### **PROPERTY REQUIREMENTS**

13. **UTILITIES AND TAXES.** All utilities (water and sewer, electricity, fire alarm monitoring, and natural gas) associated with the use of the Licensed Area in Schedule A shall be the responsibility of the City. For the purposes of this section neither telephone nor other telecommunications utilities such as fiber-optics, cable, internet service or the like are utilities.

During the term of this Agreement, the Gundalow Company may apply for an exemption provided under RSA 72:23. Provided that the Gundalow Company meets the test for charitable use set forth in RSA 72:23 (i), no taxes shall be due. The Gundalow Company shall provide documentation to the City's assessor annually by April 15<sup>th</sup> of each year and any further documentation as may be reasonably requested to establish charitable use.

In the event the Gundalow Company does not meet the test for charitable use set forth in RSA 72:23 (I) for any given year in during the term of this Agreement, and taxes are assessed, then it shall have the right, but not the obligation, to terminate the Agreement after providing two (2) months written notice to the City. The taxes due shall be pro-rated to the date of the termination of the Agreement. If the Gundalow Company does not meet the test for charitable use and does not terminate this Agreement, failure to pay duly assessed property taxes when due shall be cause to terminate this Agreement by the City.

14. **MAINTENANCE.** Licensee shall be responsible at its own cost for maintaining any of its temporary structures, staging or exhibits and for ensuring that any of its equipment is in good and sanitary condition and repair. City shall be responsible for all maintenance of its structures including the licensed area in the Sheafe Building. Licensee shall notify the City as soon as possible in writing if Licensee identifies any areas that are in need of maintenance to preserve and protect the structural integrity and historic value of any building or to protect public health and safety.
15. **WASTE AND CLEAN-UP.** The Licensee shall not allow any waste, rubbish or other objectionable materials to accumulate within the Licensed Area or upon the surrounding Park grounds. The Licensee shall arrange and pay for proper solid waste receptacles, the location of which shall be approved by the City Manager. Licensee shall be expressly responsible for cleaning up debris, emptying trash bins and otherwise returning and restoring any exterior Licensed Area to a park-like condition after each use for an event or activity. To the extent the Licensed Area includes building space, the building shall be

kept clean, free of debris and tidy. If the City sponsors or adopts any evaluation or pilot of an alternative waste collection system, Licensee will participate in such evaluation or pilot program.

16. **MASTER PLAN CAPITAL IMPROVEMENTS.** Licensee understands the 2017 Prescott Park Master Plan and the approved recommendations for Phase 1A Master Plan Improvements are the City's plan for all future renovations, modifications, and reconstruction in the Park. The design, timing of implementation, order of improvements, and the type of modifications, improvements, and related construction efforts above and below ground for the Park will be directed by the City. Licensee recognizes that planning, design, and construction of Master Plan improvements will likely move forward during the License term. In particular, construction may cause disruption to Licensee programming and activities. All construction impacts and disruptions associated with execution of the Master Plan improvements will be carried out in close coordination with the Licensees through the creation of detailed Construction Management Plans for each phase.
17. **MODIFICATIONS.** No modifications of any kind to the Licensed Area, including structures within a Licensed Area, are permitted without prior written agreement of the City.  
It is anticipated that the parties may amend Schedules A, B, C and D if construction related to Phase 1A Master Plan Improvements or other Master Plan Improvements disrupt operations and programming.
18. **EQUIPMENT/INSTALLATION OF ADDITIONAL EQUIPMENT.** With the prior written approval of the City, Licensee may install additional machinery, equipment or other personal property; if attached or affixed to the Licensed Area, such machinery, equipment or other personal property shall become the property of the City unless the City otherwise agrees in writing. With advance written consent of the City, Licensee may remove such machinery, equipment and other personal property from the Licensed Area, provided that any removal of machinery, equipment or other personal property does not adversely affect the structural integrity of any structure. If any damage is occasioned by such removal, Licensee agrees to promptly repair such damage at its own expense.
19. **RIGHT OF ENTRY.** The City shall have the right to enter into and upon the Licensed Area including all land and buildings at all times to inspect, make repairs or improvements to City-owned structures and land, to construct improvements related to Phase 1A Master Plan Improvements or other Master Plan Improvements to remove items from the Licensed Area that are in violation of the this Agreement, and to protect the health, safety and welfare of users, employees and visitors or for any purpose; including for administering sound monitoring protocol described elsewhere in this agreement.
20. **INSURANCE.** Throughout the License Term, Licensee shall, at its sole cost and expense, maintain insurance against such risks and for such amounts as are customarily insured

against by entities engaged in the types of activities in which Licensee will be engaged.

A. Types of insurance shall include:

- i. Commercial General Liability coverage protecting Licensee against loss from liability imposed by law or assumed in any written contract or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- ii. Automobile Liability coverage protecting Licensee against loss arising from personal injury, including bodily injury or death, or damage to the property of others, caused by all automobiles with a limit of liability of not less than \$300,000 per occurrence. If Licensee does not own, lease or engage for hire vehicles, the Licensee may so affirmatively represent as such in writing, in which case coverage is not required.
- iii. Licensee shall maintain such coverage necessary to insure its exhibits, equipment and other personal property placed in any municipal building or on any municipal property. Licensee shall also provide property coverage for any of its temporary structures and betterments.
- iv. Workers' compensation insurance to the extent required by the laws of the State of New Hampshire.
- v. Marine insurance/endorsement of at least \$1,000,000 is required if Licensee's Authorized Activities include use of any docking structure or marine activities.

B. The parties acknowledge and agree that insurance coverages may need to be adjusted over the course of the term of this lease due to changes in the City's Member Agreement, due to inflation or changes in Licensee's Authorized Activities. The parties agree to make good faith efforts to mutually agree upon such updates and adjustments to insurance coverage so as to maintain commercially reasonable amounts and to apportion equitably such costs and risks.

C. All insurance required by this Agreement shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by entities engaged in the types of activities in which Licensee will be engaged.

D. The City shall be identified as an additional insured party on a primary and non-contributory basis on all liability policies.

E. Licensee shall provide proof of insurance coverage satisfactory to the City which may include certificates of insurance or policy documents.

F. The City shall maintain existing property and liability coverage on the buildings and property of Prescott Park. If the loss or claim arises in whole or in part from the



activities of Licensee, the liability insurance of Licensee shall be primary and the City's secondary.

21. **INDEMNIFICATION.** Licensee agrees to defend, hold harmless and indemnify the City and its officers, agents and employees against any and all liability for bodily injury, death, and property damage arising from the existence of this Agreement or any activity conducted hereunder or any person or entity operating under Licensee's authority. This provision shall survive termination or expiration of the Agreement.

## **RESTRICTIONS**

22. **NON-DISCRIMINATION.** Licensee shall not discriminate on the basis of race, color, religion, gender, gender expression, age, national origin, disability, marital status, sexual orientation or military status.
23. **NO ALCOHOL, MARIJUANA OR ILLEGAL SUBSTANCES.** No alcohol, marijuana or illegal substances are permitted in the Park. Licensee shall communicate this restriction to all employees, volunteers and contractors and shall take steps to communicate this restriction to all invitees as instructed by the City Manager. No smoking is permitted inside any Park structure, including Licensed Areas.
24. **PARKING.** Licensee understands the North Parking and Water Street Parking lots in the Park are public, off-street parking lots and the City may establish rules and terms of use for these parking lots in accordance with City ordinances which may without limitation include: elimination or reduction in parking within the Park at any time (consistent with the Park Master Plan); metering one or both lots; and changing the 2017 pilot permit parking program. Licensee is expressly not authorized to lease, sub-license, award, or otherwise designate or reserve any parking spot in any area of the Park. The parties agree there is no obligation on behalf of the City to provide parking to the Licensee, paid or unpaid, within or outside the Park.
25. **COMMERCIAL ACTIVITY IN PARK.** As stated in Paragraph 3 above Licensee shall conduct no other business, enterprise, program or activity in, on or around the Park other than specifically authorized by this Agreement. There shall further be no selling of merchandise or concessions, solicitations, monetization of Park grounds, or charging of any fees unless specifically allowed under Authorized Activities.
26. **SIGNAGE.** Licensee shall not display, erect or permit any signage in the Licensed Area or Park which has not been approved by the City and described in Schedule E.
27. **NO AMPLIFICATION.** Licensee shall not employ any sound amplification unless such amplification is allowed under Authorized Activities and Licensee has met all setup, equipment and training conditions prior to commencement of use.

## **OPERATIONS AND RECOURSE FOR INFRACTIONS**

28. **POINT OF CONTACT.** Licensee shall designate in writing a person as a point of contact for City officials. In addition, Licensee shall further identify and publish on its website and other materials a protocol for Licensee to receive and review complaints and concerns from the public. Licensee will track the receipt of such complaints and concerns and Licensee's response and produce such information for inspection upon the City's request.
29. **REVIEW OF PERFORMANCE.** Up to three times per year, the City may request the Licensee to make a representative from its Board as well as administrative leadership available to participate in a public meeting to hear public comment and to respond to questions and concerns. The timing, format and schedule of these public meetings shall be at the discretion and direction of the City Manager.
30. **APPROVAL OF TEMPORARY FACILITIES.** The process for City approval of the Licensee's temporary facilities (authorized facilities erected and disassembled on a seasonal basis) is outlined in Schedule B, Authorized Activities. The purpose of this approval is to ensure: (1) compliance with this Agreement as well as with life safety and building codes and the Americans with Disabilities Act; and (2) incorporation of public safety recommendations and risk management practices into the layout.
31. **RECOURSE FOR INFRACTIONS.** An infraction shall mean an event of non-compliance with this Agreement which the City has elected to treat as less than a Default under paragraph 33. Such infractions may include but are not limited to the following:
- placement of unauthorized signage
  - engaging in other business or activities that are not authorized
  - unauthorized use of amplification
  - failure to maintain clear sidewalks or aisles
  - failure to follow any health and safety directive of an authorized City official

In the event of infraction, the City may at the discretion of the City Manager exercise its right of entry as set forth in paragraph 19 to correct the infraction. In addition, the City may provide written notice to the Licensee of the infraction and assess a penalty of \$250 for each infraction. In the event that the City issues more than three notices of infraction in a thirty-day period, subsequent violations for the remainder of the calendar year may be increased at the City's discretion to \$400 per infraction. The City shall also have the right to demand assurances from Licensee and a plan of action for avoiding further infractions. Penalties shall be paid within 30 days of assessment.

32. **RESTORATION AND DAMAGES.** Licensee shall restore, replace and remedy promptly any damage caused to the Park by Licensee's activities. If the damage is not remedied promptly, the City - after written notice to Licensee - may, through its own

forces or a contractor, restore, replace and remedy the damage in which case Licensee will be charged for that work.

33. **PUBLIC SAFETY AND PUBLIC HEALTH.** The City Manager, Chief of Police, Fire Chief and Public Works Director may, at their sole discretion, order additional measures beyond those described in this Agreement to protect the health and safety of Park visitors. Such additional measures may include without limitation the assignment of additional personnel or the erection of barriers. If such additional measures are ordered, Licensee shall pay for the cost of such additional measures. Current billing rates (for representation purposes as they are adjusted annually) are as follows:
- A. Portsmouth Police officer: \$85.90/hour minimum four hours. Cruiser rate: \$14.00/hour.
  - B. Portsmouth Fire Department: Firefighter/Paramedic: \$65.00 /hour – minimum of two hours. No charge for vehicles.
  - C. Department of Public Works (minimum of four hours):
    - Laborer: \$42.99/hour
    - Utility Mechanic: \$47.35/hour
    - Park Foreman 1: \$62.27/hour
    - Vehicles: Pickup Truck: \$15.00/hour; Dump Truck: \$65.00/hour; Backhoe: \$60.00/hour

#### **DEFAULT AND CURE**

34. **DEFAULT.** The following shall be an "Event of Default" under this Agreement:
- A. The failure by Licensee to follow any public health or public safety directive;
  - B. The failure to observe or perform any obligation or covenant of the Agreement; if such failure is unrelated to public health or safety, Licensee shall have a fourteen (14) day period to cure the performance following written notice, unless otherwise indicated below;
  - C. More than six infractions by Licensee in a thirty (30) day period;
  - D. Any false or misleading material statement or representation by Licensee related to this Agreement and performance under it;
  - E. The dissolution or liquidation of Licensee; the failure by Licensee generally to pay its debts as they become due; an assignment by Licensee for the benefit of creditors (excepting such security interests entered into during the normal course of business); the commencement by Licensee (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; the commencement of a case in

bankruptcy or any proceeding under any other insolvency law against Licensee (as the debtor) or Licensee consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of Licensee for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of creditors;

- F. Licensee's loss of 501(c)(3) tax exempt status subject to a sixty (60) day period to cure;
- G. The failure of Licensee to comply with the terms or conditions of any federal, state or local funding sources for monies received subject to a sixty (60) day period to cure.

If by reason of force majeure a party is unable in whole or in part to carry out its obligations under this Agreement, that party shall give written notice of such force majeure event within a reasonable time of its inability to perform. Performance shall be suspended during continuance of the force majeure and for a reasonable time thereafter. The term "force majeure" shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, insurrections, riots, epidemics, natural disasters, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault,

35. **REMEDIES ON DEFAULT.** Whenever Licensee shall commit any Event of Default, the City may with written notice take, to the extent permitted by law, any one or more of the following remedial steps:

- A. Assess to the Licensee any cost incurred by the City to correct, cure or remedy the Event of Default;
- B. Amend or limit the number of Authorized Activities;
- C. Take possession of and/or secure the Licensed Area;
- D. Declare any and all other payments due under this Agreement immediately due and payable;
- E. Take any action as it shall deem necessary to cure any such Event of Default, such action shall not be deemed to constitute a waiver of such Event of Default; and/or
- F. Terminate this Agreement; and take any other action at law or in equity which it deems necessary or desirable to collect the payments or other obligations then due or thereafter to become due hereunder, to secure possession of the Licensed Area, and to enforce the obligations, agreements or covenants of Licensee under this Agreement.

No action taken by the City pursuant to this paragraph (including repossession of the Licensed Area) shall relieve Licensee from its obligations required by this Agreement. After an Event of Default, Licensee shall have the right upon notice to the City to enter the Licensed Area with agents or representatives of the City to remove any Equipment or personal property owned by Licensee if such Equipment or personal property is not part of the Licensed Area.

36. **REMEDIES CUMULATIVE.** No remedy is intended to be exclusive of any other available remedy. Each remedy shall be cumulative and in addition to other remedies now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.
37. **NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.** In the event any obligation contained in this Agreement is breached by any party and thereafter waived by the other party, such waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach hereunder.
38. **NON-RECOURSE.** Notwithstanding any provision hereof to the contrary, or any other express or implied agreement between the parties, or any act or course of conduct hereunder, the obligations of the parties set forth herein shall solely be those of the entities named in the first paragraph of this Agreement. No Councilor, employee or agent of the City shall have any personal liability whatsoever under this Agreement, nor shall any officer, director, shareholder, general or limited partner, employee or agent of Licensee have any personal liability whatsoever under this Agreement, it being understood and agreed that the City shall look solely to the assets of Licensee for recourse hereunder.
39. **TERMINATION OR SURRENDER OF LICENSE.** Upon termination of this Agreement, or mutual cancellation thereof, the Licensee shall immediately surrender the Licensed Area.

#### **MISCELLANEOUS PROVISIONS**

40. **COMPLIANCE WITH LAWS.** The Licensee shall comply with all Federal, State and Municipal laws, ordinances and regulations affecting the Park and Licensed Area, the improvements thereon, or any activity or condition on or in the Licensed Area.
41. **FREE OF LIENS.** Licensee shall keep Park property free and clear of all liens arising out of the Licensee's occupancy and use of the Licensed Area and at all times promptly and fully pay or discharge any claims on which any lien could be based.
42. **NOTICES.** Any notice required under this License or other writing which may be given by either party to the other shall be deemed to have been given when made in writing and

delivered in hand or delivered by U.S. Mail or a courier service with proof of delivery and addressed as follows:

To the City: Karen Conard, City Manager  
City Hall  
1 Junkins Avenue  
Portsmouth, NH 03801

With a copy to: Susan Morrell, City Attorney  
City Hall  
1 Junkins Avenue  
Portsmouth, NH 03801

To the Licensee: John Lamson, Board Chair  
Gundalow Company  
60 Marcy Street  
Portsmouth, NH 03801

With a copy to: Rich Clyborne, Executive Director  
Gundalow Company  
60 Marcy Street  
Portsmouth, NH 03801

- 43. **SEVERABILITY.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision.
- 44. **AMENDMENTS, CHANGES AND MODIFICATIONS.** This Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties.
- 45. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of New Hampshire without regard or reference to its conflict of laws principles.
- 46. **COMPLETE AGREEMENT.** This Agreement and the Schedules A - E appended hereto constitutes the entire agreement between the parties and may be modified only be a writing agreed to by both parties.
- 47. **ASSIGNMENT AND SUBLETTING PROHIBITED.** Licensee shall not assign this Agreement or sublet any portion of the Licensed Area.

IN WITNESS WHEREOF, the parties have executed this License on  
\_\_\_\_\_, 2023.

WITNESS:

**THE CITY OF PORTSMOUTH**

\_\_\_\_\_

\_\_\_\_\_  
Karen Conard, City Manager  
Pursuant to vote by the City Council on  
\_\_\_\_\_

WITNESS:

**GUNDALOW COMPANY**

\_\_\_\_\_

\_\_\_\_\_  
Signature of Duly Authorized Agent

\_\_\_\_\_  
Printed Name of Duly Authorized Agent (above)

**SCHEDULE A: LICENSED AREA**

A. The areas licensed to the Licensee are listed below.

Licensed Area	Authorized Uses As Limited by this Agreement	Square Feet
Sheafe Warehouse (First Floor)	Hosting of educational exhibit, public programming	1076
Sheafe Dock	Docking for The PISCATAQUA Vessel and public access for programs	450
Pavement Area in front of dock entrance	Selling tickets and providing orientation	36



## SCHEDULE B: AUTHORIZED ACTIVITIES

1. **General Authority.** The Licensee is authorized to carry out the following listed Activities in the Licensed Areas.

**A. To offer educational programming in the areas of maritime culture and history, ecology of the Piscataqua as well as river access to members of the public through the following:**

- a. To tie-up the PISCATAQUA (as well as one work boat for Licensee's use only) to operate sails and educational programs onboard the PISCATAQUA.
- b. Install an exhibit for public viewing in the Sheafe Warehouse (first floor).
- c. Sell goods (including tickets for public sails) to the public as limited below.
- d. On a day-to-day basis utilize a small portable table and umbrella located adjacent to the Sheafe Dock entrance for the purpose of selling tickets for scheduled sails and providing orientation to patrons and for no other purpose. The table shall be attended at all times and shall not obstruct the passage of pedestrians. The table and umbrella are to be removed when not in use.
- e. Host educational programming sponsored by the Gundalow Company, including the following:
  - i. Education programs for school groups in conjunction with school group sailing trips;
  - ii. Mission-related educational programs for adults and families;
  - iii. Annual meeting of Gundalow Company members;
  - iv. Gundalow Company monthly board meetings;
  - v. Volunteer training;
  - vi. Educational exhibit with watershed model, touch tanks and interpretive panels, staffed by trained volunteers and opened to the public on a regular schedule;
  - vii. Orientation space for passengers before, after, or in place of a sail on the PISCATAQUA.

**B. Specific Prohibitions.** The following activities are specifically not permitted in Prescott Park, on the ramp or float of the so-called Sheafe Dock, in the quay area, or onboard the PISCATAQUA:

- a. The use of amplified sound or music.
- b. The handling of motor vehicle fuel or the refueling of any boat.
- c. The sale, transport, use, and possession of alcoholic beverages by the Company and its passengers shall be as follows:
  - i. Alcoholic beverages may be kept onboard the PISCATAQUA for consumption at times when the PISCATAQUA is not docked at the Park so long as they are properly secured and locked when not being served. Alcoholic beverages may be consumed but not sold onboard the PISCATAQUA, for a period of twenty (20) minutes before and twenty (20) minutes after the commencement or the conclusion of scheduled

cruises. Alcoholic beverages are not permitted to be consumed or sold on the dock. Other than as provided above, there shall be no sale, transport, use, possession or consumption of alcoholic beverages in the Park or on the dock.

**2. Additional Conditions for Authorized Uses.** The authorized activities are conditioned upon the following:

- A. Public Safety & Crowd Management.** Licensee and City agree the responsibility for ensuring the safety of attendees at events first lies with the Licensee. In furtherance of the goal to ensure public safety and crowd management the preparations the Licensee shall confer directly and in advance with the City Manager’s in order to prepare for any event which may require security measures.
- B. Maintenance of Vessel Seaworthiness and Docking Facility.** In recognition of the Licensee’s specific dock maintenance and operations requirements as well as specialization in marine structures and norms of operating in navigable waters, Licensee is responsible for all necessary maintenance and repair of the Sheafe Dock with City coordination and approval. On termination of this agreement at any time for any reason the Licensee shall be solely responsible for relocating the PISCATAQUA elsewhere from Prescott Park. In addition, annually the Licensee shall provide the City with an annual inspection report detailing the seaworthiness of the PISCATAQUA.
- C. Merchandising.** The Master Plan governance recommendations recognize the value and purpose of open green spaces and urban parks as places of respite, recreation and enjoyment. According to the Plan “maintaining this special status includes limiting commercialization, which, unchecked, can disrupt the Park atmosphere”. Consistent with this orientation, the following is agreed to when it comes to selling merchandise in the Licensed Area.
- a. Authorized Points of Sale and Times.** The First Floor of Sheafe Warehouse and the table and umbrella area in front of the Sheafe Dock are the sole authorized point of sale for merchandise. Merchandise stored at the Sheafe Warehouse may be sold at the table and umbrella, but not stored, displayed, or otherwise hung or presented in the table and chair area. Merchandise approved in this section may be sold at all times a representative of the Licensee (volunteer or staff person) is “staffing” the Sheafe Warehouse.
- b. Appearance and Configuration.** At all times this area shall be kept in a neat and orderly manner and configured in accordance with guidance issued by the City.
- c. Authorized Items for sale.** No merchandise may be sold to the public which is not expressly authorized. Items expressly authorized for sale include those below:
- Gundalow logo wear such as hats and coffee mugs
  - Stainless steel water bottles
  - Pins that say “Celebrate our Rivers” and Gundalow logo on them
  - Cross-Grained & Wily Waters (book that serves as the exhibit catalog)

*Gundalow Company – License Agreement  
City of Portsmouth*

- Children's book about the cat on PISCATAQUA

- Post cards and notecards – historic images of Gundalows and new photos of PISCATAQUA

## **SCHEDULE C: SCHEDULE OF PROGRAMMING**

**1. Timing of Submittal Approval Process.** Prior to February 15<sup>th</sup> of each year, the Licensee shall submit a schedule to the City Manager for his consideration, which proposes the yearly schedule for the use of the Licensed premises. Approval of the schedule from the City Manager shall be issued no later than March 15<sup>th</sup> of each season; this schedule shall include all events types (listed in Schedule B. Authorized Activities)

## **SCHEDULE D: PUBLIC BENEFIT & CONSIDERATION**

**General Purpose.** In acknowledgement of the City's costs in operating Prescott Park and in balance with the benefits to the public of the Licensee programming, the Licensee and the City agree to the following consideration paid to the City in order to reduce the required annual operational subsidy of the Park.

The amounts shown below are due on July 1<sup>st</sup> (one-half of total amount due) and September 1<sup>st</sup> (one-half of total amount due).

**Year 1: \$7,509**

**The amounts due for Years 2 – 5 shall increase from the amount paid the prior year by the Boston Cambridge Nov-Nov CPI.**

The City recognizes that exigent circumstances (such as extraordinary wet weather conditions or other emergency causing prolonged disruption to operations and the implementation of Phase 1A Master Plan Improvements) may occur, which significantly impact the Licensee's ability to pay the amount listed above. Accordingly, the City Manager is authorized to negotiate a lower figure for the affected year.

## **SCHEDULE E- SIGNAGE**

In accordance with the License provision, no signage is authorized to be erected in the Park or in the Licensed Premises without express authorization of the City. The following inventory of signs is authorized:

- a. Two signs to be erected on the Sheafe Dock's gangway or fence adjacent to the gangway related to the current season programming and schedule as well as reference to the Sheafe Warehouse Exhibit, and rack card holder.
- b. A single A-Frame at Water Street
- c. A donor listing shall be permitted on one sign in an agreed upon location on an existing authorized sign above or other approved sign.

**PRESCOTT PARK LICENSE AGREEMENT  
FOR  
Prescott Park Arts Festival, Inc.**

**PARTIES.** This license agreement (“**Agreement**”) is by and between the City of Portsmouth, a municipal corporation organized and existing under the laws of the State of New Hampshire, with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (the “**City**”), and

**Licensee**, Prescott Park Arts Festival, Inc., (“**PPAF**”) a non-profit corporation, organized and existing under the laws of the State of New Hampshire with a mailing address of P.O. Box 4370 Portsmouth, NH 03802.

This Agreement is dated (date of acceptance by City Council): \_\_\_\_\_.

**RECITALS.** This License sets forth the rights, obligations and conditions of Licensee’s use of property and buildings on City property known as Prescott Park and bounded by State Street, Marcy Street and Mechanic Street (the “**Park**”)

- The City owns Prescott Park and is responsible for preserving its historic resources and operating Prescott Park consistent with its fiduciary and charitable obligations.
- The 2017 Prescott Park Master Plan (adopted by the City Council February 6, 2017) is a foundational policy statement guiding the operations and programming authorized in Prescott Park. Further, the recommendations of the Prescott Park Policy Advisory Committee (Final Report December 2017) provide additional guidance in development of park policies and agreements.
- Prescott Park is first and foremost a waterfront open space for the people of Portsmouth. The “Park First” approach of the 2017 Prescott Park Master Plan is a framework for decision-making, which prioritizes the Park space as a City park and place for respite and quiet enjoyment.
- Ensuring a presence for theater, dance, music and visual arts in the Park is a tenet of the Prescott Park Master Plan.
- Prescott Park’s Shaw Warehouse, Marine Railway Building, and Sheafe Warehouse are invaluable historic and cultural resources, whose value in showcasing and interpreting the historic development of Portsmouth is inestimable.
- A Prescott Park Master Plan Implementation Committee was formed in 2020 to make recommendations on how to implement the Master Plan in phases. Additional environmental and engineering studies were performed and on July 11, 2022, the City Council approved the recommendations of the Prescott Park Master Plan Implementation Committee to move forward with Phase 1A Master Plan Improvements. Master Plan Improvements will be constructed during the term of this Agreement. The City will regularly communicate with PPAF to provide advance notice of Master Plan Improvements in order for the parties to address potential impacts on operations and programming.

**NOW THEREFORE:** For the public benefit and consideration set forth, the City grants a non-exclusive license to Licensee to use the licensed area defined in this Agreement for limited authorized activities subject to the following terms and conditions.

### **GENERAL**

1. **PUBLIC BENEFIT.** The City Council has determined that granting this License to the Licensee is in the public benefit. Specifically, the benefit is the provision of arts and arts education programming and family entertainment as well as cultural events in Prescott Park. The public benefit is further described in Paragraph 5 relative to Consideration and Schedule D.
2. **LICENSED AREA.** The City and Licensee agree that it is not the intention of the parties to create a public forum within the Licensed Area, the Park currently has a public forum designated area and there is no intention by this Agreement to expand or alter it. The Licensed Area for the Authorized Activities is as described in Schedule A. The Licensee shall have exclusive programming rights and use of the stage subject to entering into good faith negotiations with the City for some limited use by the City.
3. **AUTHORIZED ACTIVITIES.** Licensee is permitted to use the Licensed Area for those activities identified in Schedule B and for no other purpose. Licensee shall conduct no other business, enterprise, program or activity in, on or around the Park other than specifically authorized by this Agreement.
4. **SCHEDULE OF PROGRAMMING.** Schedule C of this agreement outlines the annual submittal timeline for a proposed schedule for each season by the Licensee as well as standards for approval of a schedule by the City Manager. Schedule Parameters listed in Schedule C establish the standards that shall be the basis for approval of the Licensee's schedule. In addition, Licensee recognizes the parameters represent an "up to" amount of programming eligible to be approved annually in the Park and is not an amount of programming to be allowed "by right" annually. Adjustments to these parameters may be made annually by the City Manager based on Licensee's performance under this Agreement.

The schedule, when approved annually in writing by the City Manager, shall become a part of this Agreement as Schedule C, Addendum 1. Licensee shall conduct its operations in accord with Schedule C. Licensee shall not schedule, stage or promote any program, act or performance in which pyrotechnics, explosives or display of open flames are involved or used without prior and separate written approval.

5. **PUBLIC BENEFIT & CONSIDERATION.** In recognition of the value of the Licensee's programming to the City and the role the Park has in enabling the Licensee's programming, Licensee agrees to share in the City's expenses associated with the overall administration, maintenance and operations in accordance with Schedule D. Licensee and the City recognize the consideration outlined in Schedule D reflects a balance of the



following factors: the public benefit of Licensee programming to the residents and to the vitality of the City (cultural, social and economic); the value of the Park's assets to Licensee operations (including non-realized occupancy costs for office and storage uses to Licensee); administrative, maintenance and operational costs to the City; impacts of Phase 1A Master Plan Improvements or other Master Plan Improvements on operations and programming, if any; and impacts to the Park and the surrounding area in terms of the wear and tear, transportation and parking, and off-site sound exposure.

6. **TERM.** The term of this Agreement shall be five years commencing on the date of this Agreement and ending five years from that date unless terminated earlier due to default or by agreement.
7. **EXTENSION OF TERM.** Licensee may at the conclusion of year 4 of the term request an extension of the license for up to an additional five-year term. The City shall negotiate in good faith an extension provided: (1) Licensee is not in violation or default of any material term of this Agreement; (2) Licensee has not received more than six (6) notices of default during the term; (3) Licensee has not received more than six (6) notices of infractions per season; and (4) the City has not been obligated to make any financial contributions to maintain the Licensed Area other than those obligations contemplated by this Agreement.
8. **EARLY TERMINATION.** Licensee may terminate this Agreement without penalty by written notice to the City upon the following conditions: (1) Licensee is not in default of any obligation; and (2) the City is provided notice no later than December 31 of the completed season.
9. **FINANCIAL INFORMATION.** In order to promote transparency and public confidence in financial transactions involving the use of the Park, Licensee shall provide timely financial information, including the following (the timing of the submittals below may be modified by the City Manager for good cause upon request of the Licensee presented in writing prior to the dates shown below):
  - A. Financial Profits and Loss Summary for the season immediately preceding shall be submitted annually no later than February 15<sup>th</sup>. The Licensee's fiscal year is a calendar year – January 1 to December 31<sup>st</sup>.
  - B. Audited financial statements and management letter shall be submitted on an annual basis at a reasonable time following completion and review with the Licensee's Board.
  - C. Other financial information (e.g., policies for cash handling, etc.) and books open for inspection as may be requested by the City.
10. **AS IS CONDITION.** Licensee accepts the Licensed Area "as is" and as fit for the Licensee's intended purposes. City is under no obligation to improve, fit-up or make ready the Licensed Area for Licensee's Authorized Activities.

11. **RESPONSIBILITY FOR COSTS OF OPERATIONS.** Unless otherwise stated in this Agreement, Licensee is responsible for all costs and expenses incurred by Licensee for performing its obligations under this Agreement and carrying out its mission and programming. Those costs may include but are not limited to administration, scheduling, security and crowd management, staging and production, maintenance of equipment, assets, and temporary facilities; permitting and licensing fees; waste and clean up as set forth in paragraph 14 and 15; as well as all subcontracted services and other costs of carrying out this Agreement.
12. **PUBLIC ACCESS TO OTHER PROGRAMMING.** Licensee recognizes the City schedules use of the Park for weddings, dock reservations, public forum area events and Four Tree Island Events. Licensee agrees to cooperate and make reasonable accommodations to facilitate these uses.

### **PROPERTY REQUIREMENTS**

13. **UTILITIES AND TAXES.** All utilities (water and sewer, electricity, fire alarm monitoring, and natural gas) associated with the use of the Licensed Area in Schedule A shall be the responsibility of the City. For the purposes of this section neither telephone nor other telecommunications utilities such as fiber-optics, cable, internet service or the like are utilities.

During the term of this Agreement, PPAF may apply for an exemption provided under RSA 72:23. Provided that PPAF meets the test for charitable use set forth in RSA 72:23 (i), no taxes shall be due. PPAF shall provide documentation to the City's assessor annually by April 15<sup>th</sup> of each year and any further documentation as may be reasonably requested to establish charitable use.

In the event the PPAF does not meet the test for charitable use set forth in RSA 72:23 (I) for any given year in during the term of this Agreement, and taxes are assessed, then PPAF shall have the right, but not the obligation, to terminate the Agreement after providing two (2) months written notice to the City. The taxes due shall be pro-rated to the date of the termination of the Agreement. If PPAF does not meet the test for charitable use and does not terminate this Agreement, failure to pay duly assessed property taxes when due shall be cause to terminate this Agreement by the City

14. **MAINTENANCE.** Licensee shall be responsible at its own cost for maintaining any of its temporary structures, staging or exhibits and for ensuring that any of its equipment is in good and sanitary condition and repair. City shall be responsible for all maintenance of its structures including the licensed areas in the Shaw Building. Licensee shall notify the City as soon as possible in writing if Licensee identifies any areas that are in need of maintenance to preserve and protect the structural integrity and historic value of any building or to protect public health and safety.

15. **WASTE AND CLEAN-UP.** The Licensee shall not allow any waste, rubbish or other objectionable materials to accumulate within the Licensed Area or upon the surrounding Park grounds. The Licensee shall arrange and pay for proper solid waste receptacles, the location of which shall be approved by the City Manager. Licensee shall be expressly responsible for cleaning up debris, emptying trash bins and otherwise returning and restoring any exterior Licensed Area to a park-like condition after each use for an event or activity. To the extent the Licensed Area includes building space, the building shall be kept clean, free of debris and tidy. If the City sponsors or adopts any evaluation or pilot of an alternative waste collection system, Licensee will participate in such evaluation or pilot program.
16. **MASTER PLAN CAPITAL IMPROVEMENTS.** Licensee understands the 2017 Prescott Park Master Plan and the approved recommendations for Phase 1A Master Plan Improvements are the City's plans for all future renovations, modifications, and reconstruction in the Park. The design, timing of implementation, order of improvements, and the type of modifications, improvements, and related construction efforts above and below ground for the Park will be directed by the City. Licensee recognizes that planning, design, and construction of Master Plan improvements will likely move forward during the License term. In particular, construction may cause disruption to Licensee programming and activities. All construction impacts and disruptions associated with execution of the Master Plan improvements will be carried out in close coordination with the Licensees through the creation of detailed Construction Management Plans for each phase.
17. **MODIFICATIONS.** No modifications of any kind to the Licensed Area, including structures within a Licensed Area, are permitted without prior written agreement of the City. It is anticipated that the parties may amend Schedules A, B, C and D if construction related to Phase 1A Master Plan Improvements or other Master Plan Improvements disrupt operations and programming.
18. **EQUIPMENT/INSTALLATION OF ADDITIONAL EQUIPMENT.** With the prior written approval of the City, Licensee may install additional machinery, equipment or other personal property; if attached or affixed to the Licensed Area, such machinery, equipment or other personal property shall become the property of the City unless the City otherwise agrees in writing. With advance written consent of the City, Licensee may remove such machinery, equipment and other personal property from the Licensed Area, provided that any removal of machinery, equipment or other personal property does not adversely affect the structural integrity of any structure. If any damage is occasioned by such removal, Licensee agrees to promptly repair such damage at its own expense.
19. **RIGHT OF ENTRY.** The City shall have the right to enter into and upon the Licensed Area including all land and buildings at all times to inspect, make repairs or improvements to City-owned structures and land, to construct improvements related to Phase 1A Master Plan Improvements or other Master Plan Improvements, to remove items from the Licensed Area that are in violation of the this Agreement, and to protect

the health, safety and welfare of users, employees and visitors or for any purpose; including for administering sound monitoring protocol described elsewhere in this agreement.

20. **INSURANCE.** Throughout the License Term, Licensee shall, at its sole cost and expense, maintain insurance against such risks and for such amounts as are customarily insured against by entities engaged in the types of activities in which Licensee will be engaged.

A. Types of insurance shall include:

- i. Commercial General Liability coverage protecting Licensee against loss from liability imposed by law or assumed in any written contract or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- ii. Automobile Liability coverage protecting Licensee against loss arising from personal injury, including bodily injury or death, or damage to the property of others, caused by all automobiles with a limit of liability of not less than \$300,000 per occurrence. If Licensee does not own, lease or engage for hire vehicles, the Licensee may so affirmatively represent as such in writing, in which case coverage is not required.
- iii. Licensee shall maintain such coverage necessary to insure its exhibits, equipment and other personal property placed in any municipal building or on any municipal property. Licensee shall also provide property coverage for any of its temporary structures and betterments.
- iv. Workers' compensation insurance to the extent required by the laws of the State of New Hampshire.
- v. Marine insurance/endorsement of at least \$1,000,000 is required if Licensee's Authorized Activities include use of any docking structure or marine activities.

B. The parties acknowledge and agree that insurance coverages may need to be adjusted over the course of the term of this lease due to changes in the City's Member Agreement, due to inflation or changes in Licensee's Authorized Activities. The parties agree to make good faith efforts to mutually agree upon such updates and adjustments to insurance coverage so as to maintain commercially reasonable amounts and to apportion equitably such costs and risks.

C. All insurance required by this Agreement shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by entities engaged in the types of activities in which Licensee will be engaged.

D. The City shall be identified as an additional insured party on a primary and non-contributory basis on all liability policies.

E. Licensee shall provide proof of insurance coverage satisfactory to the City which may include certificates of insurance or policy documents.

F. The City shall maintain existing property and liability coverage on the buildings and property of Prescott Park. If the loss or claim arises in whole or in part from the activities of Licensee, the liability insurance of Licensee shall be primary and the City's secondary.

21. **INDEMNIFICATION.** Licensee agrees to defend, hold harmless and indemnify the City and its officers, agents and employees against any and all liability for bodily injury, death, and property damage arising from the existence of this Agreement or any activity conducted hereunder or any person or entity operating under Licensee's authority. This provision shall survive termination or expiration of the Agreement.

### **RESTRICTIONS**

22. **NON-DISCRIMINATION.** Licensee shall not discriminate on the basis of race, color, religion, gender, gender expression, age, national origin, disability, marital status, sexual orientation or military status.
23. **NO ALCOHOL, MARIJUANA OR ILLEGAL SUBSTANCES.** No alcohol, marijuana or illegal substances are permitted in the Park. Licensee shall communicate this restriction to all employees, volunteers and contractors and shall take steps to communicate this restriction to all invitees as instructed by the City Manager.
24. **PARKING.** Licensee understands the North Parking and Water Street Parking lots in the Park are public, off-street parking lots and the City may establish rules and terms of use for these parking lots in accordance with City ordinances which may without limitation include: elimination or reduction in parking within the Park at any time (consistent with the Park Master Plan); metering one or both lots; and changing the 2017 pilot permit parking program. Licensee is expressly not authorized to lease, sub-license, award, or otherwise designate or reserve any parking spot in any area of the Park. The parties agree there is no obligation on behalf of the City to provide parking to the Licensee, paid or unpaid, within or outside the Park. Parking for tour buses (up to three spaces) may be reserved by PPAF in the area designated by the City in 2017. No idling of tour buses will be permitted.
25. **COMMERCIAL ACTIVITY IN PARK.** As stated in Paragraph 3 above Licensee shall conduct no other business, enterprise, program or activity in, on or around the Park other than specifically authorized by this Agreement. There shall further be no selling of merchandise or concessions (authorized through separate agreement), solicitations, monetization of Park grounds, or charging of any fees unless specifically allowed under Authorized Activities.

26. **SIGNAGE.** Licensee shall not display, erect or permit any signage in the Licensed Area or Park which has not been approved by the City and described in Schedule E.
27. **NO AMPLIFICATION.** Licensee shall not employ any sound amplification unless such amplification is allowed under Authorized Activities and Licensee has met all setup, equipment and training conditions prior to commencement of use.

### **OPERATIONS AND RECOURSE FOR INFRACTIONS**

28. **POINT OF CONTACT.** Licensee shall designate in writing a person as a point of contact for City officials. In addition, Licensee shall further identify and publish on its website and other materials a protocol for Licensee to receive and review complaints and concerns from the public. Licensee will track the receipt of such complaints and concerns and Licensee's response and produce such information for inspection upon the City's request.
29. **REVIEW OF PERFORMANCE.** Up to three times per year, the City may request the Licensee to make a representative from its Board as well as administrative leadership available to participate in a public meeting to hear public comment and to respond to questions and concerns. The timing, format and schedule of these public meetings shall be at the discretion and direction of the City Manager.
30. **APPROVAL OF TEMPORARY FACILITIES.** The process for City approval of the Licensee's temporary facilities (authorized facilities erected and disassembled on a seasonal basis) is outlined in Schedule B, Authorized Activities. The purpose of this approval is to ensure: (1) compliance with this Agreement as well as with life safety and building codes and the Americans with Disabilities Act; and (2) incorporation of public safety recommendations and risk management practices into the layout.
31. **RECOURSE FOR INFRACTIONS.** An infraction shall mean an event of non-compliance with this Agreement which the City has elected to treat as less than a Default under paragraph 33. Such infractions may include but are not limited to the following:
  - placement of unauthorized signage
  - engaging in other business or activities that are not authorized
  - exceedance of sound system limitation
  - failure to maintain clear sidewalks or aisles
  - failure to follow any health and safety directive of an authorized City official

In the event of infraction, the City may at the discretion of the City Manager exercise its right of entry as set forth in paragraph 19 to correct the infraction. In addition, the City may provide written notice to the Licensee of the infraction and assess a penalty of \$250 for each infraction. In the event that the City issues more than three notices of infraction in a thirty-day period, subsequent violations for the remainder of the calendar year may be increased at the City's discretion to \$400 per infraction. The City shall also have the

right to demand assurances from Licensee and a plan of action for avoiding further infractions. Penalties shall be paid within 30 days of assessment.

32. **RESTORATION AND DAMAGES.** Licensee shall restore, replace and remedy promptly any damage caused to the Park by Licensee's activities. If the damage is not remedied promptly, the City - after written notice to Licensee - may, through its own forces or a contractor, restore, replace and remedy the damage in which case Licensee will be charged for that work.
  
33. **PUBLIC SAFETY AND PUBLIC HEALTH.** The City Manager, Chief of Police, Fire Chief and Public Works Director may, at their sole discretion, order additional measures beyond those described in this Agreement to protect the health and safety of Park visitors. Such additional measures may include without limitation the assignment of additional personnel or the erection of barriers. If such additional measures are ordered, Licensee shall pay for the cost of such additional measures. Current billing rates (for representation purposes as they are adjusted annually) are as follows:
  - A. Portsmouth Police officer: \$85.90/hour minimum four hours. Cruiser rate: \$14.00/per hour.
  - B. Portsmouth Fire Department: Firefighter/Paramedic: \$65.00 /hour – minimum of two hours. No charge for vehicles.
  - C. Department of Public Works (minimum of four hours):
    - Laborer: \$42.99/hour
    - Utility Mechanic: \$47.35/hour
    - Park Foreman 1: \$62.27/hour
    - Vehicles: Pickup Truck: \$15.00/hour; Dump Truck: \$65.00/hour; Backhoe: \$60.00/hour

#### **DEFAULT AND CURE**

34. **DEFAULT.** The following shall be an "Event of Default" under this Agreement:
  - A. The failure by Licensee to follow any public health or public safety directive;
  - B. The failure to observe or perform any obligation or covenant of the Agreement; if such failure is unrelated to public health or safety, Licensee shall have a fourteen (14) day period to cure the performance following written notice, unless otherwise indicated below;
  - C. More than six infractions by Licensee in a thirty (30) day period;
  - D. Any false or misleading material statement or representation by Licensee related to this Agreement and performance under it;
  - E. The dissolution or liquidation of Licensee; the failure by Licensee generally to pay its debts as they become due; an assignment by Licensee for the benefit of creditors

(excepting such security interests entered into during the normal course of business); the commencement by Licensee (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; the commencement of a case in bankruptcy or any proceeding under any other insolvency law against Licensee (as the debtor) or Licensee consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of Licensee for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of creditors;

- F. Licensee's loss of 501(c)(3) tax exempt status subject to a sixty (60) day period to cure;
- G. The failure of Licensee to comply with the terms or conditions of any federal, state or local funding sources for monies received subject to a sixty (60) day period to cure.

If by reason of force majeure a party is unable in whole or in part to carry out its obligations under this Agreement, that party shall give written notice of such force majeure event within a reasonable time of its inability to perform. Performance shall be suspended during continuance of the force majeure and for a reasonable time thereafter. The term "force majeure" shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, insurrections, riots, epidemics, natural disasters, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault.

35. **REMEDIES ON DEFAULT.** Whenever Licensee shall commit any Event of Default, the City may with written notice take, to the extent permitted by law, any one or more of the following remedial steps:

- A. Assess to the Licensee any cost incurred by the City to correct, cure or remedy the Event of Default;
- B. Amend or limit the number of Authorized Activities;
- C. Take possession of and/or secure the Licensed Area;
- D. Declare any and all other payments due under this Agreement immediately due and payable;
- E. Take any action as it shall deem necessary to cure any such Event of Default, such action shall not be deemed to constitute a waiver of such Event of Default; and/or
- F. Terminate this Agreement; and take any other action at law or in equity which it deems necessary or desirable to collect the payments or other obligations then due or thereafter to become due hereunder, to secure possession of the Licensed Area, and to enforce the obligations, agreements or covenants of Licensee under this Agreement.



No action taken by the City pursuant to this paragraph (including repossession of the Licensed Area) shall relieve Licensee from its obligations required by this Agreement. After an Event of Default, Licensee shall have the right upon notice to the City to enter the Licensed Area with agents or representatives of the City to remove any Equipment or personal property owned by Licensee if such Equipment or personal property is not part of the Licensed Area.

36. **REMEDIES CUMULATIVE.** No remedy is intended to be exclusive of any other available remedy. Each remedy shall be cumulative and in addition to other remedies now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.
37. **NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.** In the event any obligation contained in this Agreement is breached by any party and thereafter waived by the other party, such waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach hereunder.
38. **NON-RECOURSE.** Notwithstanding any provision hereof to the contrary, or any other express or implied agreement between the parties, or any act or course of conduct hereunder, the obligations of the parties set forth herein shall solely be those of the entities named in the first paragraph of this Agreement. No Councilor, employee or agent of the City shall have any personal liability whatsoever under this Agreement, nor shall any officer, director, shareholder, general or limited partner, employee or agent of Licensee have any personal liability whatsoever under this Agreement, it being understood and agreed that the City shall look solely to the assets of Licensee for recourse hereunder.
39. **TERMINATION OR SURRENDER OF LICENSE.** Upon termination of this Agreement, or mutual cancellation thereof, the Licensee shall immediately surrender the Licensed Area.

#### **MISCELLANEOUS PROVISIONS**

40. **COMPLIANCE WITH LAWS.** The Licensee shall comply with all Federal, State and Municipal laws, ordinances and regulations affecting the Park and Licensed Area, the improvements thereon, or any activity or condition on or in the Licensed Area.
41. **FREE OF LIENS.** Licensee shall keep Park property free and clear of all liens arising out of the Licensee's occupancy and use of the Licensed Area and at all times promptly and fully pay or discharge any claims on which any lien could be based.

42. **NOTICES.** Any notice required under this License or other writing which may be given by either party to the other shall be deemed to have been given when made in writing and delivered in hand or delivered by U.S. Mail or a courier service with proof of delivery and addressed as follows:

To the City: Karen Conard, City Manager  
City Hall  
1 Junkins Avenue  
Portsmouth, NH 03801

With a copy to: Susan Morrell, City Attorney  
City Hall  
1 Junkins Avenue  
Portsmouth, NH 03801

To the Licensee: John Tabor, Board Chair  
Prescott Park Arts Festival, Inc.  
P.O. Box 4370  
Portsmouth, NH 03802

With a copy to: Courtney Perkins, Executive Director  
Prescott Park Arts Festival, Inc.  
P.O. Box 4370  
Portsmouth, NH 03802

43. **SEVERABILITY.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision.
44. **AMENDMENTS, CHANGES AND MODIFICATIONS.** This Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties.
45. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of New Hampshire without regard or reference to its conflict of laws principles.
46. **COMPLETE AGREEMENT.** This Agreement and the Schedules A - E appended hereto constitutes the entire agreement between the parties and may be modified only be a writing agreed to by both parties.
47. **ASSIGNMENT AND SUBLETTING PROHIBITED.** Licensee shall not assign this Agreement or sublet any portion of the Licensed Area.

IN WITNESS WHEREOF, the parties have executed this License on  
\_\_\_\_\_, 2023.

WITNESS:

**THE CITY OF PORTSMOUTH**

\_\_\_\_\_

\_\_\_\_\_  
Karen Conard, City Manager  
Pursuant to vote by the City Council on

\_\_\_\_\_

WITNESS:

**PRESCOTT PARK ARTS FESTIVAL, INC.**

\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Duly Authorized Agent

\_\_\_\_\_  
Signature of Duly Authorized Agent

**SCHEDULE A: LICENSED AREA**

A. The areas licensed to the Licensee are listed below and depicted on the map figure in this Schedule. In the event of discrepancy between the two, the words below shall govern.

Licensed Area	Authorized Uses As Limited by this Agreement	Square Feet
*Shaw Warehouse Building	The parties anticipate that this schedule will be amended when the Shaw Warehouse becomes unavailable due to construction of Phase 1A Master Plan Improvements	
Section A, Floor 2	Office Use	826
Section A, Floor 3	Storage	1140
Section C, Floor 1	Storage and Backstage support uses	920
Stage	Staging of performances as authorized under this Agreement	2320
Seasonal Back Stage Area	Operational and Storage area in Support of Stage Programming	6768
Wooden Deck Structure	Tables and Chairs	456
Permitted Table and Chair Area		
Section A.	Tables and Chairs	
Section B.	Tables and Chairs	
Merchandise/Sound Booth Building	Technical Support of Productions/Storage/Sale of Items	430
Outdoor Merchandise area	Display of Authorized For Sale Items	605
“Old” Sound Booth Building	Storage	168
Lighting Poles in Stage area	Hosting Lighting Equipment	4

## SCHEDULE B: AUTHORIZED ACTIVITIES

1. **General Authority.** The Licensee is authorized to carry out the following listed Activities in the Licensed Areas.

**A. The staging, promotion, and production of musical concerts, theater performances, dance performances, theatre classes, youth camps, community showcases (stage performances featuring local performers, acts and organizations), up to three food festivals located within the Park, outdoor movies subject to the following:**

1. A schedule of programming shall be approved annually in accordance with Schedule C.
2. There shall be a variety of programming with a musical theater production core to the Festival Season; and
3. All programming shall be appropriate for all ages and include a mix of opportunities for local performers as well as local workforce.

**B. Maintain office space and store materials and equipment required for the operation of the Licensee's programming.**

1. Licensee is authorized to use the following licensed areas (Shaw Building) for the purposes described and as limited below until the Phase 1A Master Plan Improvements prohibit its use:
  - a. Utilize the second floor of Section A of the Shaw Building (see map in Schedule A, Licensed Areas) for office use.
  - b. Utilize the third floor of Section A of the Shaw Building for storage of costumes and other non-bulky items.
  - c. Utilize Section C of the Shaw building for storage of materials and equipment directly related to the seasonal operation of the Licensee.
  - d. There shall be no storage of hazardous materials and no smoking in the Licensed buildings.
  - e. Licensee recognizes the restroom facility on the second floor of Shaw is a shared bathroom space for use by the City personnel assigned to the Park when other restrooms are winterized.

**C. Solicitation of Donations within the Park subject to the following:**

1. Donations must be collected in a manner, by signage or otherwise, which clearly informs donors their contribution is voluntary;
2. Donation booths permitted only where designated on the License Area Map; and
3. Donations within the Park may be sought beginning two hours prior to the scheduled start of an authorized program and end no later than the end of the program.

**D. Erection of Temporary Facilities within the park subject to the following:**

1. All temporary facilities placed in or erected in the Park on a seasonal basis shall be in substantial conformance with the number, type and layout as deployed during the 2017 season and comply with all life safety and building codes as determined by the City's Chief Building Inspector.
2. Temporary facilities may be placed in the Park no earlier than May 1<sup>st</sup>.
3. All temporary facilities will be removed from the Park by October 1<sup>st</sup>.
4. All "back stage" temporary facilities shall be located within an authorized footprint not to exceed 94 feet by 72 feet inclusive of all fencing.
5. Licensee shall be responsible for all costs of the temporary facilities and obtaining all necessary electrical, building and other permits.
6. No installation, construction or erection of temporary facilities shall take place until all appropriate building permits have been issued.

**E. Reservation of space (monetization of Park grounds) in exchange for payment in authorized spaces (this means restricting access to the use of a portion of the Park on the basis of payment) and is subject to the following:**

1. May only be done during programming authorized under this agreement;
2. Reservation of tables and chairs is limited to the Licensed Area Tables and Chairs A and B; and
3. The number of tables and chairs on the Table and Chairs Areas A and B must not exceed occupancy limits established in the Life Safety Code (15 feet per square foot per person with table and chair).

**F. Merchandizing is permitted subject to Additional Conditions set forth in Section 2.**

**2. Additional Conditions for Authorized Uses.** The authorized activities are conditioned upon the following:

**A. Public Safety & Crowd Management.** Licensee and City agree the responsibility for ensuring the safety of attendees at events first lies with the Licensee. In furtherance of the goal to ensure public safety and crowd management the preparations and the Licensee agrees to the following:

- a. **Event Classification.** For the purposes of planning for site security and crowd management the following event labeling system will be used, which matches audience size targets addressed in the Schedule Parameters in Schedule C. Events will be described in accordance with the anticipated audience size; Type 1 (up to 1,500 people), Type 2 (between 1,500 and 3,400), and Type 3 (events where attendance swells beyond authorized level of 3,400).
- b. **Public Safety & Crowd Management Planning Meeting.** At the call of the City Manager and prior to the approval of the season schedule, a meeting will

be held to plan for site security and crowd management in the Park for the upcoming season, including projection of events by type for the purposes of ensuring adherence to the terms in this section and planning out staff requirements. This planning shall be inclusive of all necessary traffic safety and parking mitigation strategies required.

- c. **Event Coordinator.** Licensee shall identify an Event Coordinator for each scheduled event. Name and contact information shall be provided to the City Manager’s office, Fire Department, Police Department and Department of Public Works. The coordinator shall be certified in Crowd Management and be directly responsible for supervising crowd managers on site.
- d. **Crowd Managers.** Licensee is required to use crowd managers as set forth in this section. The use of crowd managers is critical to ensuring aisle ways are kept clear at all times and to assist in any emergency. The use of crowd managers avoids the use barricades or other barriers that could become a tripping or other hazard.
  - i. A crowd manager shall have crowd manager training. Training is available at Fire Marshal Support Services, LLC (<https://www.crowdmanagers.com/training>). An equivalent training program may be approved in advance by the Fire Chief.
  - ii. Names of all trained staff persons or volunteers who may serve as crowd managers shall be provided to the City Manager’s office.
  - iii. Crowd managers for each event shall: wear bright/distinctive shirt tops, all the same color; have flashlights for evening events; and perform no other role during the event other than crowd management.
  - iv. Crowd managers shall be present and actively working to enforce clearing aisle ways, the number of crowd managers for each event shall be determined in accordance with the following chart and reviewed in advance as part of the planning meeting discussed above. Coverage for crowd manager shall be a factor of the audience size divided by 250 (per NFPA 1 Fire Code).

Event Identifier	Event Type Requiring Crowd Managers	Audience Size Anticipated	Aisle ways Kept Clear	Estimate #/Year	Crowd Managers
Type 1 (up to 1,500 people)	Movies	300	Yes	10	1
	Plays	900	Yes	36	4
	Regular Concerts (incl. music festivals)	850	Yes	22	6

Type 2 (1,500 > 3,400)	Large concerts	up to 3,500	All events	Up to 3	6-14
Type 3 (3,400>)		>3,500	All events	Zero	14

- e. **Required Details of Public Safety Personnel.** The Licensee agrees to schedule and pay for all costs associated with the following police, fire and public works detail requirements:

Type	Police	Fire	DPW
Type 1 (Concert only) (up to 1,500 people)	1 detail officer	None Required	Discretion of Director
Type 2 Event (1,500 > 3,400)	2 detail officers	Discretion of on-call Chief	Discretion of Director
Type 3 Event (3,400>)	Discretion of Shift Commander	Discretion of on-call Chief	Discretion of Director

- f. **Notice Required for Event Relocation and Cancellation.** If an event is relocated due to weather – the Licensee is obligated to advise the City as well as the on-call Fire Chief and the Police Department.
- g. **Stage Announcement.** At the beginning of each event, Licensee shall make an announcement from the stage which will cover, at a minimum, the following information:
- i. Possession or consumption of alcohol in Prescott Park or any City Park is prohibited;
  - ii. Smoking is not permitted;
  - iii. Aisle ways and paths must be kept clear at all times;
  - iv. Introduce and identify one or more crowd managers and make clear that the directions of crowd managers must be followed; and
  - v. Identify the exits.

**B. Parking and Traffic Mitigation.**

1. Licensee recognizes programming in the Park increases parking and traffic-related issues in the vicinity of the neighborhood. In addition to cooperating on mitigation and planning from a safety perspective as part of Crowd Management and Site Security below, the Licensee will take the following affirmative actions to assist in mitigating impacts related to Licensee programming:



- a. List available parking assets for patrons on its website and related materials. Due to construction, Peirce Island shall not be listed as a parking resource until such time as notified by the City.
- b. Promote the use of public transportation buses and shuttles.
- c. Continue efforts for off-site drop-off of students attending camps with supervised crossing in to Park.

**C. Merchandising.** The Master Plan governance recommendations recognize the value and purpose of open green spaces and urban parks as places of respite, recreation and enjoyment. According to the Plan “maintaining this special status includes limiting commercialization, which, unchecked, can disrupt the Park atmosphere”. Consistent with this orientation, the following is agreed to when it comes to selling merchandise in the Licensed Area.

- a. **Authorized Points of Sale and Times.** Points of sale for merchandise authorized under this section are the Merchandise/Sound Booth and Outdoor Merchandize Area and no other location.
- b. **Appearance and Configuration.** At all times this area shall be kept in a neat and orderly manner and configured in accordance with public safety and crowd management guidance issued by the City.
- c. **Authorized Items for sale.** No merchandise may be sold to the public which is not expressly authorized. Items expressly authorized for sale include.
  - Apparel including T-shirts, hats, flip-flops, and sweatshirts.
  - Items to Support Attendees enjoyment of productions including blankets, chairs, sunscreen, sunglasses, bug repellent, water canteens, wrapped candy, chocolate and bottled water.
  - Fairy House Tour items including wings, wands, fairy halo, and tiaras.
  - Kites
  - Season memberships
  - Toys and miscellaneous items with a relationship to a production including stuffed toys, tote bags, pins, posters and stickers.
  - Light-up items including fiber wand and light saber.
  - Park type toys such as Frisbees and play swords.
  - Books, Posters and vinyl Records/CDs/Cassettes

**D. Blanket and Chair Policy.** The Licensee is responsible for administering and enforcing a policy on blankets and chairs as outlined below.

- a. Licensee and the City shall identify and agree upon prior to the commencement of the season an area in front of the stage to be reserved for blankets.
- b. Neither unattended blankets nor lawn chairs shall be placed on the lawn earlier than 3:00 p.m. or four hours prior to a performance. No plastic or other tarps shall be permitted.

*Prescott Park Arts Festival License Agreement  
City of Portsmouth*

- c. The Licensee's blanket reservations will be limited to six per event; reserve blanket placements shall be subject to the same terms in this section.
- d. Licensee shall discourage the use of rocks from the Park and its shoreline as anchor weights for blankets placed in the audience area. Licensee shall be responsible for the removal of remaining anchor weights following the conclusion of Licensee-sponsored events consistent with section 14 and 15 of this agreement.
- e. This provision will not prevent blankets or lawn chairs from being placed in the lawn area in front of the stage prior to the restricted time of day if they are attended.
- f. The Licensee shall clearly communicate this Blanket and Chair Policy on materials advertising its programming, and on its website as well as signage in the audience area.

**E. Off-Site Sound Mitigation and Sound System Design and Setup.** Licensee and the City agree that management of impacts of programming in the Park with and outside of the Park is key to success of Park programming. The following action will be carried out by the Licensee prior to and during the authorized schedule of activities for each year during the License term:

- a. **Sound Monitoring Requirements.** Licensee will cooperate with a sound monitoring, recording, and reporting system to be utilized to confirm adherence to agreed upon sound level standards established in this section.
  1. The Licensee will reimburse the City \$2,500 each season (an amount equal to one-half of the City's expense). This amount will be due July 1<sup>st</sup> each year.
  2. Licensee agrees to limit sound levels in accordance with standards utilized during the 2017 season; limit of 90 dBA as measured at the Sound Booth.
  3. The same monitoring and alert systems will be used (lighting system), which was used in 2017, which is geared to the limit above:

*Green* – neither condition below is true (target sound level range)

*Yellow* – 10-second Leq exceeds 90 dBA

*Red* – 1-second Leq exceeds 95 dBA

Sound engineers are instructed to respond as follows:

*Yellow* – Gradually reduce overall level until green illuminates.

*Red* – Immediately reduce overall level by at least 5 dB until green illuminates.

4. Continuous data monitoring and recording of sound levels in the Park, will be kept and a bi-weekly report on the results will be provided to the City, the Licensee and the public. Draft copies of the reports will first be made available to the Licensee prior to finalization.

## SCHEDULE C: SCHEDULE OF PROGRAMMING

**1. Timing of Submittal Approval Process.** Prior to May 1st each year, the PPAF shall submit a schedule to the City Manager for her consideration and approval. The scheduling parameters below will be the basis for approval of the schedule submittal by the City Manager.

Approval of the schedule from the City Manager shall be issued no later than May 15<sup>th</sup> of each season. The proposed schedule submittal shall show all events (all types) for the Festival Season. The events shall be shown in calendar form by month with start times for each event/performance. The names of all acts/artists/performers are not required to be submitted at time of submittal, however each date will be identified and labeled “Type 1” or “Type 2” in keeping with the typology in the section on Crowd Management and Public Safety Schedule B.

The parties agree some events are not known, committed or confirmed as of the schedule submittal date above. Changes and additions from the approved schedule shall be permissible so long as the overall schedule conforms with the schedule parameters for the season.

**2. Recognition of Overall Purpose of Scheduling Parameters.** The Licensee and City recognize the establishment of these scheduling parameters have two goals, listed below. In addition, Licensee recognizes the parameters below represent an “up to” amount of programming eligible to be approved annually in the Park and is not an amount of programming to be allowed “by right” annually. Adjustments to these parameters may be made annually by the City Manager based on Licensee’s performance under this agreement.

- A. The City’s desire to seek a balance between the park programming and impacts on the condition of the Park itself; on transportation & parking in the vicinity of the Park; off-site sound exposure; and limited times on days and evenings when the Park is available as a place of respite and for quiet enjoyment.
- B. Provide clarity and predictability from year-to-year about the amount, type, and frequency scheduled programming eligible to be approved in advance of creation of the schedule and commitment to artists and performers.

**3. Establishment of Parameters.** The scheduling parameters below will be the basis for approval of the schedule submittal by the City Manager as outlined below.

**A. Program Type and Mix:**

- a. There shall be a variety of programming to be offered in the Park with a musical theater production core to the Festival Season. In addition, programming in the Park shall be appropriate for all ages and include a mix of opportunities for local performers as well as local workforce.

**B. Festival Season Start and End dates:**

- a. Season bookends shall be established for the regular festival season.

- b. The start of the season **shall be no sooner than the Friday of the week school year concludes** (using the Portsmouth School Board first adopted school year calendar).
- c. The end of season **shall be no later than the Sunday night of Labor Day weekend**. However, no events which end after 7:00 p.m. on a night before a school day will be permitted.
- d. The establishment of the season bookends above does not preclude separate approval of “Special Events” (ex. Chowder Festival, Road Race), which have traditionally fallen outside of the regular season schedule. All special events outside of the season **bookends shall end by 7:00 p.m. on Sunday through Thursday and by 10:30 p.m. on Friday and Saturday**.

**C. Program Times:**

- a. All programming Sunday through Thursday **shall end at 10:00 p.m.** Exception: one weekly Movie offering shall end no later than 10:45 p.m.
- b. All programming on Friday and Saturday **shall end at 10:30 p.m.** Exception: Play offerings on Fridays and Saturdays shall end no later than 10:45 p.m. In recognition that unusual circumstances may cause the end time of plays or movies offered on Fridays or Saturdays to extend beyond the 10:45 p.m. termination time, the City Manager will be notified (via text message or phone call) when an event may extend past 10:45 p.m. but no later than 11:00 p.m.
- c. For the purposes of this section all programming includes rehearsals, sound checks and the like.
- d. These are hard stop requirements and inclusive of intermission and delays of any kind to the program start, including inclement weather.

**D. Weekly Schedule**

- a. There shall be one “Non-Performance” day (versus two “Non-Performance” days) and one “Low-Impact” day per week. The PPAF recognizes the agreement to move to one “non-performance” day versus two “Non-Performance” day, is made based on the assumption that the recommendations made as part of the 2017 Sound System Review by Reuter Associates (and any other recommendations) to concentrate sound in the Park and lessen off-site sound migration that has been in place since the 2018 Festival Season.
- b. There shall be **at least one** day per week where there is no performance or event on the stage or in the Park (Non-Performance Day). This prohibition includes rehearsals, sound checks and the like as well events not requiring or utilizing amplified sound or music. Exception for daytime camp activities.
- c. There shall be **at least one** day (in addition to the Tuesday, Non-Performance Day) where the event held (and anytime during the day) is “Low-Impact” programming. For the purposes of this provision, “low-impact” is defined as programming reasonably expected to attract attendance levels consistent with those of “movie nights” and create sound impacts lesser than concert or musical theater programming. For the purposes of this section, a “movie night” is an example of low-impact programming.

- d. The Non-Performance Day in a week, shall be on **“Tuesday” for each week of the Festival season.**
- e. There shall be no more than two (2) music concerts per week. There shall be **no more than 25** concerts during a Festival season, which includes all music concerts, including music festivals. Any week (up to three per year) within the season bookends PPAF can have a total of three concerts, so long as one is a festival and the other two concerts are demonstrated by PPAF to be lower impact/attendance. The approvals for these concert/festival weeks would be special exceptions sought by the PPAF and approved separately at the time the full schedule is approved.
- f. Programming (all types, including rehearsals, sound checks, performances, meet and greets etc.) on weekend days (Saturday and Sundays) will not begin before 12:00 p.m. Exceptions shall include cast **“Meet and Greets”** and **“Camp Shows”** (events traditionally held on weekend mornings) commencing **no earlier than 10:00 a.m.** which shall be permitted to take place on up to 6 weekend days.
- g. There will be more musical theater performances than any other performance type.

**E. Intensity (audience size):**

- a. The PPAF may schedule up to 3 Type 2 events where the attendance will not exceed 3,400 persons, so long as City public safety officials determine events with this attendance can be safely held in the Park. For all other events: No event shall be scheduled where its attendance is reasonably anticipated to exceed 1,500 persons.
- b. Compliance with paragraph a. above (as well as other agreement terms to be determined), will be a factor in annual reviews of the schedule parameters.
- c. No events or performances in Prescott Park shall be held, which cannot be safely accommodated in the Park.

**SCHEDULE D: PUBLIC BENEFIT & CONSIDERATION**

**General Purpose.** In acknowledgement of the City's costs in operating Prescott Park and in balance with the benefits to the public of the Licensee programming, the Licensee and the City agree to the following consideration paid to the City in order to reduce the required annual operational subsidy for the Park.

The amounts shown below are due on July 1<sup>st</sup> (one-half of total amount due) and September 1<sup>st</sup> (one-half of total amount due)

**Year 1: 23,107**

**The amounts due for Years 2 – 5 shall increase from the amount paid the prior year by the Boston Cambridge Nov-Nov CPI.**

The City recognizes that exigent circumstances (such as extraordinary wet weather conditions or other emergency causing prolonged disruption to operations) may occur, which significantly impact the Licensee's ability to pay the amount listed above. Accordingly, the City Manager is authorized to negotiate a lower figure for the affected year.

**SCHEDULE E- SIGNAGE**

In accordance with the License provision, no signage is authorized to be erected in the Park or in the Licensed Premises without the express authorization. The following inventory of signs is authorized:

<b>Sign</b>	<b>Permanent</b>	<b>Seasonal</b>	<b>Nightly</b>	<b>Location</b>
Bathrooms Arrow	1			Support Building
"Employees only"	2			Pavilion
"Private"	2			Support Building
Concert series poster	1			Support Building
Family Friendly directional	2			Pavilion
Federal Savings bank VIP Seating	1			VIP Deck
Handicap accessible/family friendly	1			Pavilion
Main entrance and accessible ramp this way	2			Garden Gate
Men's (restroom sign)	1			Pavilion
Menu board	1			Pavilion
Movie poster	1			Support Building
Musical poster	1			Support Building
PPAF Est. 1974	1			Marcy Street Lamp Post
Prop logo sign	1			Pavilion
Rent chairs/blankets here	2			Support Building
Welcome signs	2			Pavilion
Women's (restroom sign)	2			Pavilion
"Fog/Strobe in use"		4		Gates
Annual fund donor list		1		Support Building
Bagged ice available at the Pavilion		1		Dock gate
Bowls and baskets here pizza below		2		Pizza Recycling Holders
Chairs for rent		1		Support Building
Do not climb		4		Light Poles
Donation Thank You		4		Gates
For the record poster		1		Support Building
Lobster poster		1		Sound Booth
Mainstage Signs		2		Stage
Marcy Street Sign		1		Marcy/State Street Fence
No alcohol, No dogs signs		9		Gates
No Smoking Sign		2		Light Poles

PPAF Banner	2	Park Lamp Post
Quote signs	5	Support Building
Ride your bike	1	Support Building
Road race/chili/do good poster	1	Support Building
We recycle pizza boxes	4	Pizza Recycling Holders
Blanket and table chalk board		1 Support Building
Chairs for rent Adirondack		1 Chairs/Support Building
Concessions chalk boards		2 Pavilion
For the record sign on box		1 Support Building
Keep Off Stage sign		1 Stage
Play, but don't keep		2 Lego Table
No Unattended blankets/chairs signs		4 Lawn
Sponsor banners		4 Gates
Treasure bar		1 Support Building
Trash and Compost		2 In Park
Win this bike		1 Display Bike



**PRESCOTT PARK LICENSE AGREEMENT  
FOR  
NH Art Association**

**PARTIES.** This license agreement (“**Agreement**”) is by and between the City of Portsmouth, a municipal corporation organized and existing under the laws of the State of New Hampshire, with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (the “**City**”), and

**Licensee**, NH Art Association, a non-profit corporation, organized and existing under the laws of the State of New Hampshire with a mailing address of 136 State Street Portsmouth, NH 03801.

This Agreement is dated (date of acceptance by City Council): \_\_\_\_\_.

**RECITALS.** This License sets forth the rights, obligations and conditions of Licensee’s use of property and buildings on City property known as Prescott Park and bounded by State Street, Marcy Street and Mechanic Street (the “**Park**”)

- The City owns Prescott Park and is responsible for preserving its historic resources and operating Prescott Park consistent with its fiduciary and charitable obligations.
- The 2017 Prescott Park Master Plan (adopted by the City Council February 6, 2017) is a foundational policy statement guiding the operations and programming authorized in Prescott Park. Further, the recommendations of the Prescott Park Policy Advisory Committee (Final Report December 2017) provide additional guidance in development of park policies and agreements.
- Prescott Park is first and foremost a waterfront open space for the people of Portsmouth. The “Park First” approach of the 2017 Prescott Park Master Plan is a framework for decision-making, which prioritizes the Park space as a City park and place for respite and quiet enjoyment.
- Ensuring a presence for theater, dance, music and visual arts in the Park is a tenet of the Prescott Park Master Plan.
- Prescott Park’s Shaw Warehouse, Marine Railway Building, and Sheafe Warehouse are invaluable historic and cultural resources, whose value in showcasing and interpreting the historic development of Portsmouth is inestimable.
- A Prescott Park Master Plan Implementation Committee was formed in 2020 to make recommendations on how to implement the Master Plan in phases. Additional environmental and engineering studies were performed and on July 11, 2022, the City Council approved the recommendations of the Prescott Park Master Plan Implementation Committee to move forward with Phase 1A Master Plan Improvements. Master Plan Improvements will be constructed during the term of this Agreement. The City will regularly communicate with NH Art Association to provide advance notice of Master Plan Improvements in order for the parties to address potential impacts on operations and programming.

**NOW THEREFORE:** For the public benefit and consideration set forth, the City grants a non-exclusive license to Licensee to use the licensed area defined in this Agreement for limited authorized activities subject to the following terms and conditions.

### **GENERAL**

1. **PUBLIC BENEFIT.** The City Council has determined that granting this License to the Licensee is in the public benefit. Specifically, the benefit is to ensure visual arts learning programs and exhibits in the Park. The public benefit is further discussed in Paragraph 5 relative to Consideration and Schedule D.
2. **LICENSED AREA.** The City and Licensee agree that it is not the intention of the parties to create a public forum within the Licensed Area, as the Park currently has a public forum designated area and there is no intention by this Agreement to expand or alter it. The Licensed Area for the Authorized Activities is as described in Schedule A.
3. **AUTHORIZED ACTIVITIES.** Licensee is permitted to use the Licensed Area for those activities identified in Schedule B and for no other purpose. Licensee shall conduct no other business, enterprise, program or activity in, on or around the Park other than specifically authorized by this Agreement.
4. **SCHEDULE OF PROGRAMMING.** Schedule C of this agreement outlines the submittal timeline for a proposed schedule by the Licensee. The schedule, when approved in writing by the City Manager, shall become a part of this Agreement as Schedule C, Addendum 1. Licensee shall conduct its operations in accord with Schedule C. Licensee shall not schedule, stage or promote any program, act or performance in which pyrotechnics, explosives or display of open flames are involved or used without prior and separate written approval.
5. **PUBLIC BENEFIT & CONSIDERATION.** In recognition of the value of the Licensee's programming to the City and the role the Park has in enabling the Licensee's programming, Licensee agrees to share in the City's expenses associated with the overall administration, maintenance and operations, upkeep, occupancy and related overhead costs to the City in accordance with Schedule D. Licensee and the City recognize the consideration outlined in Schedule D reflects a balance of the following factors: the public benefit of Licensee programming to the residents and to the vitality of the City (cultural, social and economic); the value of the Park's assets to Licensee operations; administrative, maintenance and operational costs to the City; impacts of Phase 1A Master Plan Improvements on operations and programming, if any, and impacts to the Park and the surrounding area in terms of the wear and tear, transportation and parking, and off-site sound exposure.
6. **TERM.** The term of this Agreement shall be five years commencing on the date of this Agreement and ending five years from that date unless terminated earlier due to default or by agreement.

7. **EXTENSION OF TERM.** Licensee may at the conclusion of year 4 of the term request an extension of the license for up to an additional five year term. The City shall negotiate in good faith an extension provided: (1) Licensee is not in violation or default of any material term of this Agreement; (2) Licensee has not received more than six (6) notices of default during the term; (3) Licensee has not received more than six (6) notices of infractions per season; and (4) the City has not been obligated to make any financial contributions to maintain the Licensed Area other than those obligations contemplated by this Agreement.
8. **EARLY TERMINATION.** Licensee may terminate this Agreement without penalty by written notice to the City upon the following conditions: (1) Licensee is not in default of any obligation; and (2) the City is provided notice no later than December 31 of the completed season.
9. **FINANCIAL INFORMATION.** In order to promote transparency and public confidence in financial transactions involving the use of the Park, Licensee shall provide timely financial information, including the following (the timing of the submittals below may be modified by the City Manager for good cause upon request of the Licensee presented in writing prior to the dates shown below):
  - A. Financial Profits and Loss Summary for the season immediately preceding shall be submitted annually no later than February 15<sup>th</sup>. The Licensee's fiscal year is a calendar year – May 1<sup>st</sup> to April 30<sup>th</sup>.
  - B. Audited financial statements and management letter, if available, shall be submitted on an annual basis at a reasonable time following completion and review with the Licensee's Board.
  - C. Other financial information (e.g., policies for cash handling, etc.) and books open for inspection as may be requested by the City.
10. **AS IS CONDITION.** Licensee accepts the Licensed Area “as is” and as fit for the Licensee's intended purposes. City is under no obligation to improve, fit-up or make ready the Licensed Area for Licensee's Authorized Activities. Licensed Area will be made available “broom clean”.
11. **RESPONSIBILITY FOR COSTS OF OPERATIONS.** Unless otherwise stated in this Agreement, Licensee is responsible for all costs and expenses incurred by Licensee for performing its obligations under this Agreement and carrying out its mission and programming. Those costs may include but are not limited to administration, scheduling, set up of exhibits, maintenance of Licensee's equipment, and temporary facilities; permitting and licensing fees; waste and clean up as set forth in paragraph 14; as well as all subcontracted services and other costs of carrying out this Agreement.
12. **PUBLIC ACCESS TO OTHER PROGRAMMING.** Licensee recognizes the City schedules use of the Park for weddings, dock reservations, public forum area events and Four Tree Island Events. Licensee agrees to cooperate and make reasonable accommodations to facilitate these uses.

## PROPERTY REQUIREMENTS

13. **UTILITIES AND TAXES.** All utilities (water and sewer, electricity, fire alarm monitoring, and natural gas) associated with the use of the Licensed Area in Schedule A shall be the responsibility of the City. For the purposes of this section neither telephone nor other telecommunications utilities such as fiber-optics, cable, internet service or the like are utilities.

During the term of this Agreement, NHAA may apply for an exemption provided under RSA 72:23. Provided that NHAA meets the test for charitable use set forth in RSA 72:23 (i), no taxes shall be due. NHAA shall provide documentation to the City's assessor annually by April 15<sup>th</sup> of each year and any further documentation as may be reasonably requested to establish charitable use.

In the event the NHAA does not meet the test for charitable use set forth in RSA 72:23 (I) for any given year in during the term of this Agreement, and taxes are assessed, then NHAA shall have the right, but not the obligation, to terminate the Agreement after providing two (2) months written notice to the City. The taxes due shall be pro-rated to the date of the termination of the Agreement. If NHAA does not meet the test for charitable use and does not terminate this Agreement, failure to pay duly assessed property taxes when due shall be cause to terminate this Agreement by the City.

14. **MAINTENANCE.** Licensee shall be responsible at its own cost for maintaining any of its temporary structures, staging or exhibits and for ensuring that any of its equipment is in good and sanitary condition and repair. City shall be responsible for all maintenance of its structures including the licensed area in the Sheafe Building. Licensee shall notify the City as soon as possible in writing if Licensee identifies any areas that are in need of maintenance to preserve and protect the structural integrity and historic value of any building or to protect public health and safety.
15. **WASTE AND CLEAN-UP.** The Licensee shall not allow any waste, rubbish or other objectionable materials to accumulate within the Licensed Area or upon the surrounding Park grounds. The Licensee shall arrange and pay for proper solid waste receptacles, the location of which shall be approved by the City Manager. Licensee shall be expressly responsible for cleaning up debris, emptying trash bins and otherwise returning and restoring any exterior Licensed Area to a park-like condition after each use for an event or activity. To the extent the Licensed Area includes building space, the building shall be kept clean, free of debris and tidy. If the City sponsors or adopts any evaluation or pilot of an alternative waste collection system, Licensee will participate in such evaluation or pilot program.
16. **MASTER PLAN CAPITAL IMPROVEMENTS.** Licensee understands the 2017 Prescott Park Master Plan and the approved recommendations for Phase 1A Master Plan Improvements are the City's plan for all future renovations, modifications, and reconstruction in the Park. The design, timing of implementation, order of improvements, and the type of modifications, improvements, and related construction

efforts above and below ground for the Park will be directed by the City. Licensee recognizes that planning, design, and construction of Master Plan improvements will likely move forward during the License term. In particular, construction may cause disruption to Licensee programming and activities. All construction impacts and disruptions associated with execution of the Master Plan improvements will be carried out in close coordination with the Licensees through the creation of detailed Construction Management Plans for each phase.

17. **MODIFICATIONS.** No modifications of any kind to the Licensed Area, including structures within a Licensed Area, are permitted without prior written agreement of the City.

It is anticipated that the parties may amend Schedules A, B, C and D if construction related to Phase 1A Master Plan Improvements or other Master Plan Improvements disrupt operations and programming.

18. **EQUIPMENT/INSTALLATION OF ADDITIONAL EQUIPMENT.** With the prior written approval of the City, Licensee may install additional machinery, equipment or other personal property; if attached or affixed to the Licensed Area, such machinery, equipment or other personal property shall become the property of the City unless the City otherwise agrees in writing. With advance written consent of the City, Licensee may remove such machinery, equipment and other personal property from the Licensed Area, provided that any removal of machinery, equipment or other personal property does not adversely affect the structural integrity of any structure. If any damage is occasioned by such removal, Licensee agrees to promptly repair such damage at its own expense.

19. **RIGHT OF ENTRY.** The City shall have the right to enter into and upon the Licensed Area including all land and buildings at all times to inspect, make repairs or improvements to City-owned structures and land, to construct improvements related to Phase 1A Master Plan Improvements or other Master Plan Improvements, to remove items from the Licensed Area that are in violation of the this Agreement, and to protect the health, safety and welfare of users, employees and visitors or for any purpose; including for administering sound monitoring protocol described elsewhere in this agreement.

20. **INSURANCE.** Throughout the License Term, Licensee shall, at its sole cost and expense, maintain insurance against such risks and for such amounts as are customarily insured against by entities engaged in the types of activities in which Licensee will be engaged.

A. Types of insurance shall include:

- i. Commercial General Liability coverage protecting Licensee against loss from liability imposed by law or assumed in any written contract or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

- ii. Automobile Liability coverage protecting Licensee against loss arising from personal injury, including bodily injury or death, or damage to the property of others, caused by all automobiles with a limit of liability of not less than \$300,000 per occurrence. If Licensee does not own, lease or engage for hire vehicles, the Licensee may so affirmatively represent as such in writing, in which case coverage is not required.
  - iii. Licensee shall maintain such coverage necessary to insure its exhibits, equipment and other personal property placed in any municipal building or on any municipal property. Licensee shall also provide property coverage for any of its temporary structures and betterments.
  - iv. Workers' compensation insurance to the extent required by the laws of the State of New Hampshire.
  - v. Marine insurance/endorsement of at least \$1,000,000 is required if Licensee's Authorized Activities include use of any docking structure or marine activities.
- B. The parties acknowledge and agree that insurance coverages may need to be adjusted over the course of the term of this lease due to changes in the City's Member Agreement, due to inflation or changes in Licensee's Authorized Activities. The parties agree to make good faith efforts to mutually agree upon such updates and adjustments to insurance coverage so as to maintain commercially reasonable amounts and to apportion equitably such costs and risks.
- C. All insurance required by this Agreement shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by entities engaged in the types of activities in which Licensee will be engaged.
- D. The City shall be identified as an additional insured party on a primary and non-contributory basis on all liability policies.
- E. Licensee shall provide proof of insurance coverage satisfactory to the City which may include certificates of insurance or policy documents.
- F. The City shall maintain existing property and liability coverage on the buildings and property of Prescott Park. If the loss or claim arises in whole or in part from the activities of Licensee, the liability insurance of Licensee shall be primary and the City's secondary.
21. **INDEMNIFICATION.** Licensee agrees to defend, hold harmless and indemnify the City and its officers, agents and employees against any and all liability for bodily injury, death, and property damage arising from the existence of this Agreement or any activity conducted hereunder or any person or entity operating under Licensee's authority. This provision shall survive termination or expiration of the Agreement.

## RESTRICTIONS

22. **NON-DISCRIMINATION.** Licensee shall not discriminate on the basis of race, color, religion, gender, gender expression, age, national origin, disability, marital status, sexual orientation or military status.
23. **NO ALCOHOL, MARIJUANA OR ILLEGAL SUBSTANCES.** No alcohol, marijuana or illegal substances are permitted in the Park. Licensee shall communicate this restriction to all employees, volunteers and contractors and shall take steps to communicate this restriction to all invitees as instructed by the City Manager. No smoking is permitted inside any Park structures, including Licensed Areas.
24. **PARKING.** Licensee understands the North Parking and Water Street Parking lots in the Park are public, off-street parking lots and the City may establish rules and terms of use for these parking lots in accordance with City ordinances which may without limitation include: elimination or reduction in parking within the Park at any time (consistent with the Park Master Plan); metering one or both lots; and changing the 2017 pilot permit parking program. Licensee is expressly not authorized to lease, sub-license, award, or otherwise designate or reserve any parking spot in any area of the Park. The parties agree there is no obligation on behalf of the City to provide parking to the Licensee, paid or unpaid, within or outside the Park.
25. **COMMERCIAL ACTIVITY IN PARK.** As stated in Paragraph 3 above Licensee shall conduct no other business, enterprise, program or activity in, on or around the Park other than specifically authorized by this Agreement. There shall further be no selling of merchandise or concessions, solicitations, monetization of Park grounds, or charging of any fees unless specifically allowed under Authorized Activities.
26. **SIGNAGE.** Licensee shall not display, erect or permit any signage in the Licensed Area or Park which has not been approved by the City and described in Schedule E.
27. **NO AMPLIFICATION.** Licensee shall not employ any sound amplification unless such amplification is allowed under Authorized Activities and Licensee has met all setup, equipment and training conditions prior to commencement of use.

## OPERATIONS AND RECOURSE FOR INFRACTIONS

28. **POINT OF CONTACT.** Licensee shall designate in writing a person as a point of contact for City officials. In addition, Licensee shall further identify and publish on its website and other materials a protocol for Licensee to receive and review complaints and concerns from the public. Licensee will track the receipt of such complaints and concerns and Licensee's response and produce such information for inspection upon the City's request.
29. **REVIEW OF PERFORMANCE.** Up to three times per year, the City may request the Licensee to make a representative from its Board as well as administrative leadership

available to participate in a public meeting to hear public comment and to respond to questions and concerns. The timing, format and schedule of these public meetings shall be at the discretion and direction of the City Manager.

30. **APPROVAL OF TEMPORARY FACILITIES.** The process for City approval of the Licensee’s temporary facilities (authorized facilities erected and disassembled on a seasonal basis) is outlined in Schedule B, Authorized Activities. The purpose of this approval is to ensure: (1) compliance with this Agreement as well as with life safety and building codes and the Americans with Disabilities Act; and (2) incorporation of public safety recommendations and risk management practices into the layout.
31. **RECOURSE FOR INFRACTIONS.** An infraction shall mean an event of non-compliance with this Agreement which the City has elected to treat as less than a Default under paragraph 33. Such infractions may include but are not limited to the following:
- placement of unauthorized signage
  - engaging in other business or activities that are not authorized
  - unauthorized use of amplification
  - failure to maintain clear sidewalks or aisles
  - failure to follow any health and safety directive of an authorized City official

In the event of infraction, the City may at the discretion of the City Manager exercise its right of entry as set forth in paragraph 19 to correct the infraction. In addition, the City may provide written notice to the Licensee of the infraction and assess a penalty of \$250 for each infraction. In the event that the City issues more than three notices of infraction in a thirty-day period, subsequent violations for the remainder of the calendar year may be increased at the City’s discretion to \$400 per infraction. The City shall also have the right to demand assurances from Licensee and a plan of action for avoiding further infractions. Penalties shall be paid within 30 days of assessment.

32. **RESTORATION AND DAMAGES.** Licensee shall restore, replace and remedy promptly any damage caused to the Park by Licensee’s activities. If the damage is not remedied promptly, the City - after written notice to Licensee - may, through its own forces or a contractor, restore, replace and remedy the damage in which case Licensee will be charged for that work.
33. **PUBLIC SAFETY AND PUBLIC HEALTH.** The City Manager, Chief of Police, Fire Chief and Public Works Director may, at their sole discretion, order additional measures beyond those described in this Agreement to protect the health and safety of Park visitors. Such additional measures may include without limitation the assignment of additional personnel or the erection of barriers. If such additional measures are ordered, Licensee shall pay for the cost of such additional measures. Current billing rates (for representation purposes as they are adjusted annually) are as follows:



- A. Portsmouth Police officer: \$85.90/hour minimum four hours. Cruiser rate: \$14.00/hour.
- B. Portsmouth Fire Department: Firefighter/Paramedic: \$65.00 /hour – minimum of two hours. No charge for vehicles.
- C. Department of Public Works (minimum of four hours):
  - Laborer: \$42.99/hour
  - Utility Mechanic: \$47.35/hour
  - Park Foreman 1: \$62.27/hour
  - Vehicles: Pickup Truck: \$15.00/hour; Dump Truck: \$65.00/hour; Backhoe: \$60.00/hour

### **DEFAULT AND CURE**

34. **DEFAULT.** The following shall be an "Event of Default" under this Agreement:
- A. The failure by Licensee to follow any public health or public safety directive;
  - B. The failure to observe or perform any obligation or covenant of the Agreement; if such failure is unrelated to public health or safety, Licensee shall have a fourteen (14) day period to cure the performance following written notice, unless otherwise indicated below;
  - C. More than six infractions by Licensee in a thirty (30) day period;
  - D. Any false or misleading material statement or representation by Licensee related to this Agreement and performance under it;
  - E. The dissolution or liquidation of Licensee; the failure by Licensee generally to pay its debts as they become due; an assignment by Licensee for the benefit of creditors (excepting such security interests entered into during the normal course of business); the commencement by Licensee (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; the commencement of a case in bankruptcy or any proceeding under any other insolvency law against Licensee (as the debtor) or Licensee consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of Licensee for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of creditors;
  - F. Licensee's loss of 501(c)(3) tax exempt status subject to a sixty (60) day period to cure;

- G. The failure of Licensee to comply with the terms or conditions of any federal, state or local funding sources for monies received subject to a sixty (60) day period to cure.

If by reason of force majeure a party is unable in whole or in part to carry out its obligations under this Agreement, that party shall give written notice of such force majeure event within a reasonable time of its inability to perform. Performance shall be suspended during continuance of the force majeure and for a reasonable time thereafter. The term "force majeure" shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, insurrections, riots, epidemics, natural disasters, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault,

35. **REMEDIES ON DEFAULT.** Whenever Licensee shall commit any Event of Default, the City may with written notice take, to the extent permitted by law, any one or more of the following remedial steps:

- A. Assess to the Licensee any cost incurred by the City to correct, cure or remedy the Event of Default;
- B. Amend or limit the number of Authorized Activities;
- C. Take possession of and/or secure the Licensed Area;
- D. Declare any and all other payments due under this Agreement immediately due and payable;
- E. Take any action as it shall deem necessary to cure any such Event of Default, such action shall not be deemed to constitute a waiver of such Event of Default; and/or
- F. Terminate this Agreement; and take any other action at law or in equity which it deems necessary or desirable to collect the payments or other obligations then due or thereafter to become due hereunder, to secure possession of the Licensed Area, and to enforce the obligations, agreements or covenants of Licensee under this Agreement.

No action taken by the City pursuant to this paragraph (including repossession of the Licensed Area) shall relieve Licensee from its obligations required by this Agreement. After an Event of Default, Licensee shall have the right upon notice to the City to enter the Licensed Area with agents or representatives of the City to remove any Equipment or personal property owned by Licensee if such Equipment or personal property is not part of the Licensed Area.

36. **REMEDIES CUMULATIVE.** No remedy is intended to be exclusive of any other available remedy. Each remedy shall be cumulative and in addition to other remedies now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be

construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

37. **NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.** In the event any obligation contained in this Agreement is breached by any party and thereafter waived by the other party, such waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach hereunder.
38. **NON-RECOURSE.** Notwithstanding any provision hereof to the contrary, or any other express or implied agreement between the parties, or any act or course of conduct hereunder, the obligations of the parties set forth herein shall solely be those of the entities named in the first paragraph of this Agreement. No Councilor, employee or agent of the City shall have any personal liability whatsoever under this Agreement, nor shall any officer, director, shareholder, general or limited partner, employee or agent of Licensee have any personal liability whatsoever under this Agreement, it being understood and agreed that the City shall look solely to the assets of Licensee for recourse hereunder.
39. **TERMINATION OR SURRENDER OF LICENSE.** Upon termination of this Agreement, or mutual cancellation thereof, the Licensee shall immediately surrender the Licensed Area.

#### **MISCELLANEOUS PROVISIONS**

40. **COMPLIANCE WITH LAWS.** The Licensee shall comply with all Federal, State and Municipal laws, ordinances and regulations affecting the Park and Licensed Area, the improvements thereon, or any activity or condition on or in the Licensed Area.
41. **FREE OF LIENS.** Licensee shall keep Park property free and clear of all liens arising out of the Licensee's occupancy and use of the Licensed Area and at all times promptly and fully pay or discharge any claims on which any lien could be based.
42. **NOTICES.** Any notice required under this License or other writing which may be given by either party to the other shall be deemed to have been given when made in writing and delivered in hand or delivered by U.S. Mail or a courier service with proof of delivery and addressed as follows:

To the City:                      Karen Conard, City Manager  
   City Hall  
   1 Junkins Avenue  
   Portsmouth, NH 03801

With a copy to:                      Susan Morrell, City Attorney  
   City Hall  
   1 Junkins Avenue  
   Portsmouth, NH 03801

To the Licensee: Kevin Dadoly, President  
NH Art Association  
136 State Street  
Portsmouth, NH 03801

To the Licenses: Amenda Kidd-Kestler, Executive Director  
NH Art Association  
136 State Street  
Portsmouth, NH 03801

43. **SEVERABILITY.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision.
44. **AMENDMENTS, CHANGES AND MODIFICATIONS.** This Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties.
45. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of New Hampshire without regard or reference to its conflict of laws principles.
46. **COMPLETE AGREEMENT.** This Agreement and the Schedules A - E appended hereto constitutes the entire agreement between the parties and may be modified only be a writing agreed to by both parties.
47. **ASSIGNMENT AND SUBLETTING PROHIBITED.** Licensee shall not assign this Agreement or sublet any portion of the Licensed Area.

IN WITNESS WHEREOF, the parties have executed this License on  
\_\_\_\_\_, 2023.

WITNESS:

**THE CITY OF PORTSMOUTH**

\_\_\_\_\_

\_\_\_\_\_  
Karen Conard, City Manager  
Pursuant to vote by the City Council on  
\_\_\_\_\_

WITNESS:

**NH ART ASSOCIATION**

\_\_\_\_\_

\_\_\_\_\_  
Signature of Duly Authorized Agent

\_\_\_\_\_  
Printed Name of Duly Authorized Agent (above)

**SCHEDULE A: LICENSED AREA**

A. The areas licensed to the Licensee are listed below.

Licensed Area	Authorized Uses As Limited by this Agreement	Square Feet
Sheafe Warehouse (First Floor)	Hosting of educational exhibit, public programming	1076
Certain areas immediately surrounding the Sheafe Warehouse	Specifically authorized demonstrations, art classes and public art demonstrations	250

## SCHEDULE B: AUTHORIZED ACTIVITIES

1. **General Authority.** The Licensee is authorized to carry out the following listed Activities in the Licensed Areas.

**A. To offer educational programming and exhibits in the visual arts through the following:**

- a. To conduct its annual Art Show and associated art demonstrations and talks within the Sheafe Warehouse.
- b. To hold temporary outdoor public art installations (up to three per season).
- c. To hold pop-up art classes sponsored by the NH Art Association in areas approved by the City Manager. Classes shall be offered by donation only.
- d. The sale of paintings associated with the Association's Art Show.

**B. Specific Prohibitions.** The following activities are specifically not permitted in Prescott Park:

- a. The storage of combustible materials.
- b. Smoking or use of open flame.
- c. The staging of theatrical or other events involving amplified sound or music.
- d. The sale of any goods, services or tickets other than addressed above.
- e. The sale, transport, use, and possession of alcoholic beverages by the Licensee is prohibited.

2. **Additional Conditions for Authorized Uses.** The authorized activities are conditioned upon the following:

**A. Public Safety & Crowd Management.** Licensee and City agree the responsibility for ensuring the safety of attendees at events first lies with the Licensee. In furtherance of the goal to ensure public safety and crowd management the preparations the Licensee shall confer directly and in advance with the City Manager's in order to prepare for any event which may require security measures.

**B. Merchandising.** The Master Plan governance recommendations recognize the value and purpose of open green spaces and urban parks as places of respite, recreation and enjoyment. According to the Plan "maintaining this special status includes limiting commercialization, which, unchecked, can disrupt the Park atmosphere". Consistent with this orientation, the following is agreed to when it comes to selling merchandise in the Licensed Area.

- a. **Authorized Points of Sale and Times.** The First Floor of Sheafe Warehouse is the sole authorized point of sale for merchandise.
- b. **Appearance and Configuration.** At all times this area shall be kept in a neat and orderly manner and configured in accordance with guidance issued by the City.

Licensee is permitted one donation box, which may be placed in the interior of the Sheafe.

- c. **Authorized Items for sale.** No merchandise may be sold to the public which is not expressly authorized. Items expressly authorized for sale include those below:
- Paintings, sculptures and 3D art pieces by NHAA Artists
  - Note cards (prints of NHAA artworks)
  - Portsmouth Puzzle- NHAA Artist selected annually
  - Other approved NHAA-created objects



## **SCHEDULE C: SCHEDULE OF PROGRAMMING**

1. **Timing of Submittal Approval Process.** Prior to February 15<sup>th</sup> of each year, the Licensee shall submit a schedule to the City Manager for his consideration, which proposes the yearly schedule for the use of the Licensed premises. Approval of the schedule from the City Manager shall be issued no later than March 15<sup>th</sup> of each season; this schedule shall include all event types (listed in Schedule B. Authorized Activities)

## **SCHEDULE D: PUBLIC BENEFIT & CONSIDERATION**

**General Purpose.** In acknowledgement of the City's costs in operating Prescott Park and in balance with the benefits to the public of the Licensee programming, the Licensee and the City agree to the following consideration paid to the City in order to reduce the required annual operational subsidy of the Park.

The amounts shown below are due on July 1<sup>st</sup> (one-half of total amount due) and September 1<sup>st</sup> (one-half of total amount due).

**Year 1: \$1,733**

**The amounts due for Years 2-5 shall increase from the amount paid the prior year by the Boston Cambridge Nov-Nov CPI.**

The City recognizes that exigent circumstances (such as extraordinary wet weather conditions or other emergency causing prolonged disruption to operations and the implementation of Phase 1A Master Plan Improvements) may occur, which significantly impact the Licensee's ability to pay the amount listed above. Accordingly, the City Manager is authorized to negotiate a lower figure for the affected year.

## SCHEDULE E- SIGNAGE

In accordance with the License provision, no signage is authorized to be erected in the Park or in the Licensed Premises without express authorization. The following inventory of signs is authorized:

- a. Limited interpretative signage (erected for one day only) associated with the single-day public art installation.
- b. A sign to be erected on the inside of the exterior door (visible to the outside when opened) to the Sheafe Warehouse related to the Art Show and that season's NH Art programming to take place in the Park.
- c. A single A-Frame at Water Street
- d. A donor listing shall be permitted on one sign in an agreed upon location on an existing authorized sign above or other approved sign.

## ORDINANCE #

## THE CITY OF PORTSMOUTH ORDAINS

That Chapter 4, Article I – **FOOD LICENSING AND REGULATIONS**, Section 4.101 – **Adoption of the FDA 2009 2022 Food Code**, Section 4.102 – **Amendments, Additions and Deletions to Food Code**, Section 4.103 – **Adoption of Specific Parts He-P 2300, as amended**, and Section 4.107 – **Term of License**, 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 I: FOOD LICENSING AND REGULATIONS****Section 4.101: Adoption of the FDA 2022 Food Code**

That a certain document, three copies of which are on file in the office of the City Clerk of the City of Portsmouth, New Hampshire being marked and designated as the Food Code, 2009 2022 Recommendations of the United States Public Health Service/Food and Drug Administration and Annexes “FDA Food Code” as published by the U.S. Department of Health and Human Services, Public Health Services, Food and Drug Administration be, and is hereby adopted, subject to the following amendments, additions and deletions.<sup>1</sup>

If specific provisions of the FDA Food Code are not referenced below, the text remains as written.

<sup>1</sup>For a copy of the FDA Food Code, **2009 2022** go to  
<https://www.fda.gov/food/guidanceregulation/retailfoodprotection/foodcode/ucm2019396.htm.foodcode2009>  
<https://www.fda.gov/food/fda-food-code/food-code-2022>

**Section 4.102: Amendments, Additions and Deletions to Food Code**

1-201.10 Food Establishment.

(2) ~~(B)~~(b) These facilities must be in compliance with Portsmouth Health Department’s Guidelines.

**Add subsection to read as follows:**

**4-301.13 Drainboards.**

**Dual drainboards must be integral to warewashing sinks, in addition, UTENSIL racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be**

provided per necessary **UTENSIL** holding before cleaning and after **SANITIZING**.

~~Add new subsection to read as follows:~~

~~4-302.13 — Temperature Measuring Devices, Manual Warewashing.~~

~~(B) — In hot water mechanical **WAREWASHING** operations, an irreversible registering temperature indicator shall be provided and readily accessible for measuring the **UTENSIL** surface temperature.~~

Change subsection to read as follows:

4-501.16 Warewashing Sinks, Use Limitation.

(A) A warewashing sink may not be used for handwashing as specified under §2-301.15, **and or** drawing potable water, wash produce, or thaw foods.

Annex **2009 2022**, Annex 1, Section 8-905.10 through 8-908.20 and replace with the following:

Section 8-905.10 FOOD LICENSING BOARD OF APPEALS

#### SECTION 8.905.12 LIMITATION OF AUTHORITY

An appeal shall be based on a claim that the Health Officer or Health Department staff improperly interpreted or applied the **2009 2022** FDA Food Code as adopted in this Chapter. The Board may hear and decide appeals from the denial, suspension or revocation of a Food License but shall have no authority to waive requirements of the **2009 2022** FDA Food Code as adopted in this Chapter.

#### SECTION 8.905.15 PROCEDURE FOR HEARING AND DECISION

Add the following as first paragraph of subsection:

Annex **2009 2022**, Annex 7, Model forms Guides and Other Aids.

Model forms are adopted as amended by the Portsmouth Health Department.

## Section 4.103

## Adoption of Specific Parts He-P 2300, as amended:

Specific parts of the N.H. Code of Administrative Rules, Part He-P 2300, Sanitary Production and Distribution of Food (“He-P 2300”) published as of the date this Chapter is adopted, are hereby adopted subject to the following amendments, additions and deletions. Any section not referenced is not adopted.

*Adopt the following definitions:*

He-P 2301 DEFINITIONS **(as defined in He-P 2300, unless otherwise noted):**

- (a) “Acid foods”
- (b) “Acidified foods”
- (c) “Applicant”
- (d) “Bed and breakfast”
- (e) “Beverage”
- ~~(f) “Bulk food”~~
- (g)(f) “Caterer”**
- (g) “Certified food protection manager” means the person in charge who has shown proficiency of required information through passing a test that is part of an accredited program or as stated in 2-102.12(A) of the Food Code.**
- (h) “Change of ownership” Change of ownership means any time a controlling interest in a sole proprietorship, joint venture, partnership, corporation, limited liability company, or any other kind of entity is transferred to another sole proprietor, joint venture, partnership, corporation, limited liability company or any other kind of entity. The transfer of a business entity to a trust and its controlling interest to a trustee for estate planning purposes will not be deemed a change of ownership, provided that the transfer is not made to avoid compliance with this Chapter.
- (i) “Continental breakfast”
- (k) “Corrective Action Plan (CAP)”
- (l) “Critical control point”
- (m) “Critical limit”
- (n) “Department” means the Portsmouth Health Department.**
- (ab) “Low acid foods”
- (av) “Soup kitchen”
- (aw) “Time/Temperature Control for Safety (TCS) food”
- (p) “Food”
- (q) “Food Code” means the US Department of Health and Human Services, Public Health Services, Food and Drug Administration, Food Code, 2022 edition.**

- (r) **“Food establishment” means “food service establishment” as defined in RSA 143-A:3, IV, or “retail food store” as defined in RSA 143-A:3, VII.**
- (s) “Food processing plant”
- (u) “Foodborne disease outbreak”
- (x) “Immediately endangers public health or safety”
- (y) “Imminent health hazard”
- (z) “License”
- (aa) “License holder”
- (ab) **“Low-acid foods” means “low-acid foods” as defined by 21 CFR 114.3(d), namely, “any foods, other than alcoholic beverages, with a finished equilibrium pH greater than 4.6 and a water activity (aw) greater than 0.85. Tomatoes and tomato products having a finished equilibrium pH less than 4.7 are not classed as low-acid foods.”**
- (ac) “Major food allergen”
- (ad) “Mobile food unit” means a food service establishment mounted on wheels or otherwise designed to be immediately moveable **and works out of a licensed commissary.**
- (af) “Package”
- (ah) “Potentially hazardous food”
- (al) “Public water system” means “public water system” as defined in RSA 485:1-a, XV
- (ap) “Regulatory authority”
- (aq) “Remodeled”
- (ar) **“Retail food store” means “retail food store” as defined in RSA 143-A:3, VII**
- (as) “Sanitization”
- (au) “Sewage”

***Adopt the following subsection in its entirety:***

#### **He-P 2304.15 Trade Secrets and Confidentiality**

- (a) **The department shall treat as confidential, in accordance with RSA 350-B, information that meets the criteria specified in RSA 350-B for a trade secret and is contained on inspection report forms. In the plans and specifications submitted as specified under He-P 2304.12 and in any HACCP plans submitted.**
- (b) **Consumer complaints received regarding illness or sanitation of a food establishment shall have the name, address, and phone number or other identifying information of the individual making the complaint maintained as confidential and such information shall not be released without written permission of the complainant.**

***Adopt the following subsection as amended:***

**He-P 2305.02 Correction of Deficiencies Identified During an Inspection of Food Processing Plants**

- (a) All deficiencies identified in the inspection report shall be corrected at the time of inspection, as practicable.**
- (b) For food processing plants; if any violation is found during an inspection and cannot be corrected immediately and permanently in the presence of the inspector, the applicant or licensee shall:**
  - (1.) Agree to temporarily correct the violation and to permanently correct it in a specified time frame, not to exceed 10 calendar days after the inspection; or**
  - (2.) Complete a Corrective Action Plan (CAP) in the presence of the inspector in accordance with He-P 2305.03**

***Adopt the following subsection as amended:***

**He-P 2305.03 Corrective Action Plan (CAP):**

- (a) When a deficiency identified in the inspection report cannot be corrected either immediately and permanently in the presence of the inspector or permanently within 10 calendar days after the inspection, pursuant to He-P 2305.02(b), the licensee shall complete, date, and sign, at the time of inspection, a Corrective Action Plan form provided by the inspector, including:**
  - 1. How the licensee intends to correct each deficiency;**
  - 2. The date by which each deficiency shall be corrected; and**
  - 3. What measures will be put in place to ensure that the deficiency does not recur.**
- (b) The department shall review and accept each CAP that:**
  - 1. Achieves compliance with RSA 143, RSA 143-A, He-P 2300;**
  - 2. Addresses all deficiencies and deficient practices as cited in the inspection report;**
  - 3. Prevents a new violation of RSA 143, RSA 143-A, He-P 2300, or Chapter 4 as a result of the implementation of the CAP, and**
  - 4. Specifies the date upon which the deficiencies will be corrected.**



(c) The department shall verify the implementation of any CAP that has been accepted by:

1. Reviewing materials submitted by the licensee; or
2. Conducting a follow-up inspection;

(d) If the department finds the licensee to be out of compliance with the CAP by the specified completion date at the time of the next inspection, the department shall:

1. Revoke the license in accordance with Section 4.107 Term of License.

**Section 4.107 Term of License.**

Food service licenses shall be issued upon compliance with all of the provisions of this Chapter. All annual licenses expire September 30<sup>th</sup>. Seasonal licenses are valid from April 15 through October 15 of the calendar year. Temporary licenses are valid for the length of the event, **not to exceed a period of 3 days.**

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.

APPROVED:

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Deaglan McEachern, Mayor

ADOPTED BY COUNCIL:

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Kelli L. Barnaby, City Clerk

THOMAS M. CLOSSON  
ATTORNEY AT LAW, PLLC

To: City Manager Conard, Mayor McEachern, and Members of the City Council  
From: Tom Closson  
Re: Tentative Agreement with the School Custodian Union  
Date: May 10, 2023

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Attached for your consideration is a Tentative Agreement that the Portsmouth School Board's negotiating team has reached with the School Custodian Union. This Tentative Agreement calls for a collective bargaining agreement through June 30, 2025. The Tentative Agreement includes these material financial terms:

- The same 6.132% wage adjustment that the City/School District has given all other personnel;
- Base wage increases tied to the rolling 10-year CPI-U average, with a floor of 2% and a ceiling of 5%, plus an additional 1.0%, effective July 1, 2023, and July 1, 2024; and
- The addition of Juneteenth as a holiday.

The Tentative Agreement also includes language/policy changes that are outlined in the attached document. These include a reduction in the length of the probationary period; the expansion of benefits available during the probationary period; and a modest reduction in the amount that this group pays for health insurance, all to help recruit and retain personnel.

Negotiations on this Tentative Agreement started in 2021. The reason for the significant delay in getting to this point is that the Chief Negotiator from AFSCME retired in the middle of negotiations. Because the Union members themselves (that is, Portsmouth's employees) always negotiated in good faith and were not to blame for the delay, the School Board's negotiating team also agreed to a small retroactivity payment to partially account for the delay. Both this payment, and the other financial terms of this Tentative Agreement, are outlined in the attached costing analysis prepared by Nathan Lunney.

The School Board and the Union have ratified this Tentative Agreement. I am pleased to recommend it to you.

**SCHOOL CUSTODIANS UNION - 05/01/23**

NH Retirement Rate	<b>14.06%</b>	14.06%	13.53%	13.53%
FICA Rate	<b>7.65%</b>	7.65%	7.65%	7.65%
COLA Rate		6.132%	3.55%	3.00%
Aux COLA Rate		0.00%	0.00%	0.00%

**CONTRACT - CUST SUPV GROSS BUDGET (Steps only/No COLA)**

	FY22 Base	FY23	FY24	FY25	Projected 3-Yr Total
Wages	796,973	819,707	855,431	887,817	2,562,955
Longevity	7,083	7,083	8,101	8,101	23,285
NH Retirement	113,050	116,247	116,836	121,218	354,301
FICA	61,510	63,249	66,060	68,538	197,847
	978,616	1,006,286	1,046,428	1,085,674	3,138,388

<b>Year-to-Year</b>	<b>Gross Budget Change</b>	27,670	40,142	39,246
<b>% Change</b>		2.83%	3.99%	3.75%

107,058	Total Yr-to-Yr Increase
10.94%	Change FY22 to FY25
3.65%	Avg % Change

**PROPOSED TENTATIVE AGREEMENT - CUST SUPV GROSS BUDGET**

	FY22 Base	FY23	FY24	FY25	Projected 3-Yr Total
Wages	796,973	868,691	937,810	1,002,186	2,808,687
Longevity	7,083	7,508	8,875	9,132	25,515
NH Retirement	113,050	123,194	128,086	136,831	388,111
FICA	61,510	67,029	72,421	77,366	216,816
	978,616	1,066,422	1,147,192	1,225,515	3,439,129

<b>Year-to-Year PROPOSED Gross Budget Change</b>	87,806	80,770	78,323
	8.97%	7.57%	6.83%

246,899	Total Yr-to-Yr Increase
25.23%	Change FY22 to FY25
8.41%	Avg % Change per yr

**BREAKDOWN OF TENTATIVE AGREEMENT COSTS OVER "CURRENT" GROSS BUDGET**

**YEAR-TO-YEAR Change Over Prior Year Base**

	FY22 Base	FY23	FY24	FY25	Projected 3-Yr Total
Wages	-	48,984	33,395	31,990	114,369
Longevity	-	425	349	257	1,031
NH Retirement	-	6,947	4,303	4,363	15,613
FICA	-	3,780	2,581	2,467	8,828

<b>TOTAL COST OF TENTATIVE AGREEMENT</b>	-	60,136	40,628	39,077
		6.15%	4.04%	3.73%

139,841	Total Yr-to-Yr Increase
14.29%	Change FY22 to FY25
4.76%	Avg % Change

**Retroactive one-time payment of 2.0% of earnings between January 1, 2022 and June 30, 2022**

Wages	7,048
NH Retirement	991
FICA	539
	<b>8,578</b> Total cost

CITY OF PORTSMOUTH/PORTSMOUTH SCHOOL BOARD  
And  
SCHOOL CUSTODIANS  
TENTATIVE AGREEMENT

Article 8 (Union Security) – Delete.
Article 9 (Probation Period) – Change to <u>“This period will be no less than ninety (90) calendar days but may be extended up to one hundred and eighty (180) calendar days.”</u>
Article 9 (Probation Period) – Add personal days to list of benefits available during probation.
Article 10 (Holidays) – Add Juneteenth (provided it is not a regular school day).
Article 14 (Earned Time) – Modify as follows: “Applicable request forms will be completed, signed by the Custodial Supervisor and approved by the Facilities Director prior to the use of earned time, whenever possible. <u>Submitted requests for time off shall be answered by the supervisor within ten (10) days of submission.</u> ”
Article 14 (Earned Time) – Modify to permit the accrual of earned time to begin on the date of hire; to set the rate of accrual in the first year of employment to be prorated from the first day of work until the end of the initial fiscal year (June 30); and to permit the use of earned time to begin after the successful completion of the probation period.
Article 40 (Personal Days) – Modify as follows: “All employees shall be entitled to five (5) non-accumulative personal days per year. <u>Personal days are provided for employees to attend to personal business and shall not require an explanation of the nature of the personal business.</u> All paid personal leave taken will be counted as hours worked when computing overtime.”
Article 64 (Substitutes) - Modify as follows: “The School Department will attempt to establish and maintain a list of qualified substitute custodians as well as a list of employees desiring work beyond their regular schedules. <u>The list of substitutes will be posted in an accessible place for review.</u> For purposes of this provision, a substitute will mean a temporary replacement for a regular employee. Substitutes may be used for absences of one or more days. A reasonable effort will be made to find substitutes to replace members of the bargaining unit who are out of work for four (4) or more consecutive work-days.”
Article 87 (Health Insurance) - Change to “Effective <u>July 1, 2023</u> , the School District will pay 92% of the premium and the employees will pay 8% of the premium.”
Article 87 (Health Insurance) – Eliminate “Cadillac Tax” language.

Article 91 (Dental) - Change dental plan language to refer to explanation of benefits available on City/School District Human Resources website.

Article 95 (Wages/Time Frame) - B. COLA Adjustments

**Retroactive to 1/1/2022 – 2% COLA to wages, to be paid in the first full pay period after full execution of this Agreement.**

Effective 7/1/2022 - COLA to wages equal to 10-year rolling average CPI-U for Boston-Cambridge-Newton (2.05%) plus an additional four percent (4%).

Effective 7/1/2023 - COLA to wages equal to 10-year rolling average CPI-U for Boston-Cambridge-Newton (not less than 2% and not more than 5%) plus an additional one percent (1%).

Effective 7/1/2024 - COLA to wages equal to 10-year rolling average CPI-U for Boston-Cambridge-Newton (not less than 2% and not more than 5%) plus an additional one percent (1%).

Article 95 (Wages/Time Frame)

Add provision allowing management to bring in new hires at salary step level commensurate with prior relevant experience.

Article 101 (Duration) – Change to duration through June 30, 2025.

**Custodial Rate Scale**

8/12/2022

		COLA + 1%	COLA + 1%
<b>Tentative Agreement</b>	6.132%	3.55%	3.00%
	<i>(Fixed)</i>	<i>(Minimum)</i>	<i>(Minimum)</i>

<u>Shift</u>	<u>Step</u>	<u>Current</u>	<u>Proposed 2022-23</u>	<u>Estimated 2023-24</u>	<u>Estimated 2024-25</u>
Day	1	15.25	16.19	16.77	17.28
Day	2	16.18	17.18	17.79	18.33
Day	3	17.18	18.24	18.89	19.46
Day	4	19.07	20.24	20.96	21.59
Day	5	20.39	21.65	22.42	23.10
Night	1	16.05	16.99	17.57	18.08
Night	2	16.98	17.98	18.59	19.13
Night	3	17.98	19.04	19.69	20.26
Night	4	19.87	21.04	21.76	22.39
Night	5	21.19	22.45	23.22	23.90

**Longevity**

	<u>Current</u>	<u>2022-23</u>	<u>2023-24</u>	<u>2024-25</u>
After 5 years	758	804	833	858
After 10 years	866	919	952	981
After 15 years	975	1,035	1,072	1,104
After 20 years	1,085	1,152	1,193	1,229
After 25 years	1,191	1,264	1,309	1,348
After 30 years	1,341	1,414	1,459	1,498
After 35 years	1,491	1,564	1,609	1,648



## CITY OF PORTSMOUTH

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

Karen S. Conard  
City Manager

**Date:** May 11, 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 May 15, 2023

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

- A. **First Reading of Ordinance Amending Chapter 10 – Article 5A – CHARACTER-BASED ZONING, Section 10.5A20- Regulating Plan, Subsection 10.5A21.10, Contents of Regulatory Plan, Map 10.5A21B Building Height Standards; Section 10.5A43.30 – Building and Story Heights, Subsection 10.5A43.33; Section 10.5A43.40 – Maximum Building Footprint, Subsections 10.5A43.41-44; Section 10.5A45 – Community Spaces, Subsection Figures 10.5A45.10 Community Spaces; Section 10.5A46.20 – Requirements to Receive Incentives to the Development Standards, Subsections 10.5A46.21-22; and Article 15 – DEFINITIONS, Section 10.1530 – Terms of General Applicability:**

The Land Use Committee has recently reviewed the type and quality of community space and the lack of workforce housing in several recently approved or pending large developments in downtown Portsmouth. The Committee concluded that the existing density incentives do not fully achieve the community's objectives of providing reasonable and realistic opportunities for workforce housing and meaningful community space. The Committee has reviewed and recommends amending the City's zoning ordinance to address these concerns. The optional density incentives address these issues and are provided in [the attached amendment](#).

#### **Chapter 10, Article 5A, Section 10.5A20 - Regulating Plan, amending Map 10.5A21B (Building Height Standards)**

The proposed amendment to the Building Height Standards Map 10.5A21B will reduce the allowed building height along the portion of Bow Street depicted in the map from 4 stories/45 feet to 3 stories/40 feet.

#### **Chapter 10, Article 5A, Section 10.5A43.40 - Building and Story Heights**

This proposed amendment provides changes to the existing optional density incentive for large parcels over one (1) acre in a Character District. This density incentive may be granted by the Planning Board through a conditional use permit to allow an additional story in height up to

15 feet and an increase in building footprint size up to 50,000 SF. In order to qualify for this density incentive, the project must provide both an increase in community space and workforce housing as set forth in [the attached amendment](#). The amendment also creates more options for community space by adding pedestrian passageways, public observations decks, and pedestrian arcades to the existing definition of community space types.

#### **Chapter 10 Article 5A, Section 10.5A43.40 - Maximum Building Footprint**

The existing ordinance provides that the Planning Board may grant a conditional use permit to allow an increased building footprint if specific types of parking are provided for the project in exchange for community space. [The attached amendment](#) would reduce the community space requirement and add the requirement that the project also include workforce housing as described.

#### **Chapter 10 Article 5A, Section 10.5A46.20 - Requirements to Receive Incentives to the Development Standards**

The existing ordinance currently allows developments in the Overlay District to add an additional story and a larger footprint in exchange for community space. The amendment will require the Planning Board to grant a conditional use permit for all lots requesting this density incentive within the Overlay District. Further, all lots greater than 100 feet from the North Mill Pond will be required to provide both community space and workforce housing.

Additional amendments include adding new community space types in Figures 10.5A45.10 Community Spaces, and amending the definition of building footprint in Section 10.1530.

*I recommend that the City Council move to pass first reading and refer to Planning Board for report back and further schedule a public hearing and second reading for July 10, 2023.*

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

#### **1. Approval of License Agreement with the General Services Administration (GSA):**

The City's current license agreement with the GSA relative to the maintenance of the McIntyre property and use of the parking spaces expired on April 11, 2023, but has been extended by verbal agreement and confirmed by email. The GSA is prepared to enter into a renewed license agreement for a period of 180 days that would allow the City to continue to use the parking spaces for the maintenance of the building. This license agreement has provisions which allow the City to enter into a negotiated sale if the City elects to pursue that route. As reported previously, the parking revenues cover the City's expenses to maintain the McIntyre property.

*I recommend that the City Council authorize the City Manager to execute [the proposed license agreement with GSA](#).*



2. **Renewal of Prescott Park License Agreements between the City and the Gundalow Company, the Prescott Park Arts Festival, and the New Hampshire Art Association:**

Presented for Council review and approval are three License Agreements for Prescott Park. These License Agreements are between the City of Portsmouth and the Gundalow Company, the Prescott Park Arts Festival and the NH Art Association. The Agreements presented for Council’s consideration are five-year renewals of the License Agreements that were originally approved by the Council on May 21, 2018, with a few minor updates and modifications.

By way of background, during the finalization of the Prescott Park Master Plan in 2017, a Prescott Park Policy Advisory Committee was formed. After the Master Plan was adopted, the Advisory Committee issued a Final Report that recommended key issues identified during the Committee’s policy discussions be converted to specific provisions in future license agreements. Some of the provisions that were the product of these recommendations in the 2018 Agreements defined authorized activities in the license area, capital improvement and maintenance responsibilities, public safety plans, signage, merchandizing, sound and amplification. Another recommendation was that all Agreements for each organization be in a form that does not vary significantly from organization to organization but also include separate Schedules that are specifically tailored to each organization’s operations and programs.

The City and the Gundalow Company, the Prescott Park Arts Festival and the NH Art Association would attest to the fact that the detailed provisions included in the 2018 License Agreements have, over the past five years, clarified roles and responsibilities, improved communication and most importantly, improved operations and the public’s enjoyment of Prescott Park.

On July 11, 2022, the City Council voted to approve Phase 1A of the Prescott Park Master Plan Improvements. The current License Agreements have been modified to acknowledge that the organizations’ programs and operations may be disrupted as a result of these improvements, and the License Schedules may be amended, if needed. The City will continue to communicate the schedule of the Phase 1A Master Plan Improvements and work with each organization to anticipate and minimize their impact. The current Agreement also adds required statutory language regarding real estate tax exemptions and other general edits to dates and personnel.

The City’s Legal Department and the Gundalow Company, the Prescott Park Arts Festival and the NH Art Association have approved the form of [the attached License Agreements](#).

**Motions:**

**A) Gundalow Company:**

*I recommend the City Council move to approve the Prescott Park License Agreement between the City and the Gundalow Company in a form similar to [the attached](#) and to authorize the City Manager to execute the Agreement.*

**B) Prescott Park Arts Festival:**

*I recommend the City Council move to approve the Prescott Park License Agreement between the City and the Prescott Park Arts Festival in a form similar to [the attached](#) and to authorize the City Manager to execute the Agreement.*

**C) NH Art Association:**

*I recommend the City Council move to approve the Prescott Park License Agreement between the City and the NH Art Association in a form similar to [the attached](#) and to authorize the City Manager to execute the Agreement.*

**3. Request for First Reading Regarding Amendments to Chapter 4, the City's Food Licensing and Regulations Ordinance:**

The City's Food Licensing and Regulations Ordinance, Chapter 4, (aka the City's Food Code Ordinance) was last amended in late 2017. At that time, the City Council adopted amendments to our Food Code Ordinance (Chapter 4) by adopting the 2009 version of the FDA Food Code with local amendments, along with portions of the NH Code of Administrative Rules, Part He-P 2300, Sanitary Production and Distribution of Food, with local amendments.

The proposed amendments to Chapter 4 include the adoption of the recently released 2022 version of the FDA Food Code with local amendments. Adopting the most recent version of the 2022 FDA Food Code is necessary in order to maintain the "uniform system of provisions that address the safety and protection of food offered at retail and in food service." (FDA.gov). The amendments to Chapter 4 also include adding definitions and other sections of He-P 2300 that specifically apply to food processing/food manufacturing plants.

The adoption of both these updated codes, along with our local amendments, is necessary for our Retail Food program and our Manufactured Food program to align with our State regulatory partners for regulatory consistency. Additionally, adopting the updated codes will allow us to take advantage of newer, more efficient food service inspection software.

I therefore recommend that the Council vote to schedule first reading of the amended Chapter 4 at its June 5, 2023 meeting. Of note, consistent with the City's past practice, the Health Department will schedule a public information session on June 8, 2023. Prior to that informational public meeting, the City will establish a separate webpage that contains a copy of Chapter 4 as amended.

*I recommend that the City Council move to schedule first reading of the amendments to Chapter 4, the City's Food Licensing and Regulations Ordinance, at the June 5, 2023 City Council meeting.*

**4. Street Naming for 3548 Lafayette Road:**

The property owners of 3548 Lafayette Road where Monarch Village is being constructed are requesting approval to name the private street Monarch Way.

The Department of Public Works has reviewed the request of Monarch Way with the State e911 and they have no objection to the name. Additionally, there are no duplicate names in this zip code.

*I recommend that the City Council authorize the use of Monarch Way as the private street name for the development at 3548 Lafayette Road.*

5. **Approval of the Portsmouth School Department Custodial Collective Bargaining Agreement:**

Attached please find a memorandum from the City's Labor Negotiator, Tom Closson, regarding the School Department Custodial Collective Bargaining Unit.

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

### ***XIII. Presentations and Written Communications:***

A. **Presentation Regarding Community Health Profile by Health Officer Kim McNamara:**

The City's Health Officer, Kim McNamara, will provide a brief presentation regarding the Community Health Profile.

B. **Presentation from the Covid-19 Recovery Task Force:**

Abbie Frank, member of the Covid-19 Recovery Task Force, will present at this evening's meeting.

C. **Town of New Castle Sewer Agreement:**

The attached agreement between the City of Portsmouth and the Town of New Castle will update the City's terms for providing the Town with sewer service. New Castle independently owns and operates all their sewer pipes, pumps and infrastructure. Their sewage is transmitted to the City's Peirce Island Wastewater Treatment Facility where it is metered and treated. City staff have been working with the town for many months to update these terms. [The attached letter from the Town provides more detail.](#) The City also had our rate consultant, David Hyder of Stantec, review the agreement and assess the recommended wholesale rate for their service.

We will be available at the May 15, 2023 meeting to brief the City Council on this matter. Representatives from New Castle will also be there to answer any questions.

It is of mutual benefit to enter into this agreement.

*I recommend that the City Council move to request that the City Manager bring forward this wholesale sewer agreement for action at the next city council meeting.*

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

### **A. Acceptance of NHDES 2022-2024 Strategic Planning Grant Program - \$50,000:**

The City has been awarded a grant for \$50,000 from the NHDES 2022-2024 Strategic Planning Grant Program to assist with paying a portion of the comprehensive planning study and preliminary engineering evaluation of the Lafayette tank pressure zone.

*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 \$50,000 from the NHDES 2022-2024 Strategic Planning Grant Program to assist with paying a portion of the comprehensive planning study and preliminary engineering evaluation of the Lafayette tank pressure zone.*

### **B. Acceptance of Donation to the Senior Activity Center from the Portsmouth Garden Club - \$500:**

Attached please find a donation from the Portsmouth Garden Club for the Senior Activity Center in the amount of \$500.

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

### **C. Acceptance of Various Police Department Grants:**

At the February 27, 2023 Police Commission meeting, the Board of Police Commissioners approved and accepted the following:

- A grant in the amount of \$377,882 from the US Department of Justice for the NH Internet Crimes Against Children Task Force.

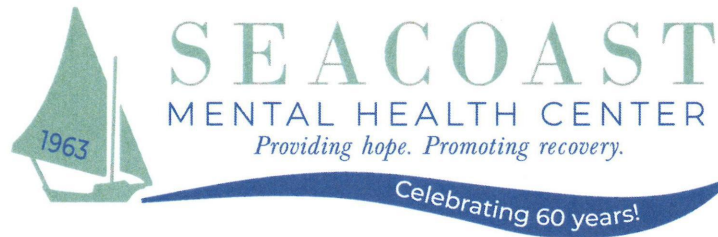
At the April 18, 2023 Police Commission meeting, the Board of Police Commissioners approved and accepted the following grant:

- A 2023 Safe & Active grant award from the Injury Prevention Center at Dartmouth-Hitchcock for 50 multi-sport helmets, 50 bike lights and educational materials.

*I recommend that the City Council move to approve and accept the grants for the Police Department as presented.*

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

There are no City Manager informational items for consideration at this evening's meeting.



April 26, 2023

Mr. Deaglan McEachern, Mayor  
City of Portsmouth  
1 Junkins Ave  
Portsmouth, NH 03801

Dear Mayor McEachern,

In recognition of Seacoast Mental Health Center's (SMHC) 60<sup>th</sup> Anniversary, the Center is seeking City approval to reinstate the "**Bridges 4 Friendship 10K**" in 2023. SMHC is proposing an event date of **Saturday, October 14<sup>th</sup>, 2023**. The race would begin tentatively at 10:00 am and would start and end at our office at 1145 Sagamore Ave.

The "Bridges 4 Friendship 10K" occurred annually from 1998 to 2007 and averaged roughly 200 participants. The event was created as a fundraiser to benefit the "Community Bridges" program which was a mentorship program for patients of the Center.

To honor and reflect on the milestone anniversary, SMHC would like to recreate the event to raise funds to support our levels of uncompensated care. In FY22, the Center provided over \$300,000 to patients and their families.

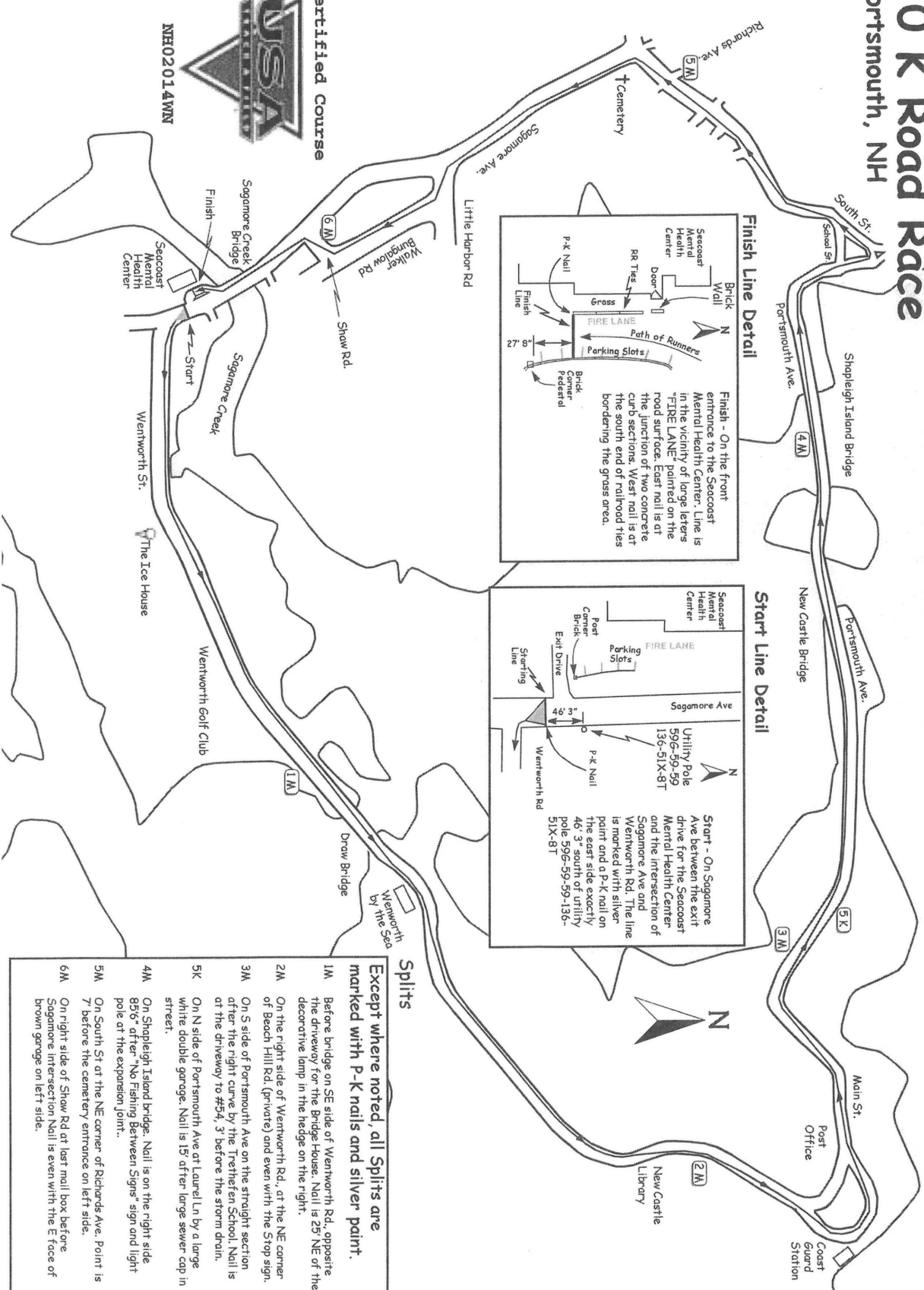
Please find the original race route attached. SMHC intends to coordinate with all necessary City departments and contract an official racing company to manage logistical elements.

I look forward to speaking with you to share further details on the proposed event.

With sincere thanks,

Kelly Hartnett  
Vice President of Community Relations  
khartnett@smhc-nh.org  
603-957-5885

# Community Bridges 4 Friendship 10 K Road Race Portsmouth, NH



**Finish Line Detail**

Finish - On the front entrance to the Seacoast Mental Health Center. Line is in the vicinity of large letters "FIRE LANE" painted on the road surface. East nail is at the junction of two concrete curb sections. West nail is at the south end of railroad ties bordering the grass area.

**Start Line Detail**

Start - On Sagamore Ave between the exit drive for the Seacoast Mental Health Center and the intersection of Sagamore Ave and Wentworth Rd. The line is marked with silver paint and a P-K nail on the east side exactly 46' 3" south of utility pole 59G-59-59-136-51X-8T.

- Splits**
- Except where noted, all Splits are marked with P-K nails and silver paint.
- 1M Before bridge on SE side of Wentworth Rd, opposite the driveway for the Bridge House. Nail is 25' NE of the decorative lamp in the hedge on the right.
  - 2M On the right side of Wentworth Rd, at the NE corner of Beach Hill Rd. (private) and even with the Stop sign.
  - 3M On S side of Portsmouth Ave on the straight section after the right curve by the Trethefen School. Nail is at the driveway to #54, 3' before the storm drain.
  - 5K On N side of Portsmouth Ave at Laurel Ln by a large white double garage. Nail is 15' after large sewer cap in street.
  - 4M On Shapleigh Island bridge. Nail is on the right side 85G' after "No Fishing Between Signs" sign and light pole at the expansion joint.
  - 5M On South St at the NE corner of Richards Ave. Point is 7' before the cemetery entrance on left side.
  - 6M On right side of Show Rd at last mail box before Sagamore intersection Nail is even with the E face of brown garage on left side.

05/09/2023

Ms. Karen Conard, City Manager  
City of Portsmouth  
One Junkins Avenue  
Portsmouth, NH 03801

Dear City Manager Conard,

2023 will be a year of many events celebrating the 400th anniversary of Portsmouth's settlement by European settlers and the indigenous people who lived here prior. Most of the more than 100 events tied to the 400<sup>th</sup> celebrations will be organized and executed by Portsmouth organizations large and small. One such event is the Blessing of the Fleet, details below.

**The Blessing of the Fleet**

July 27<sup>th</sup> 6-7 pm  
Four Tree Island

In conjunction with Sail Portsmouth and the Propeller Club we are bringing back the Blessing of the Fleet to Portsmouth for its 400<sup>th</sup> anniversary. The event will add to the already grand procession of tall ships and commercial and private boats down the Piscataqua on the 27<sup>th</sup> of July 2023 between 6-7 pm.

We are going to have an incredibly diverse group of faith and religions assembled to carry on the tradition, including the head speakers of the Cowasuck Band of the Pennacook Abenaki People.

Parking for the participants will be provided by the sponsor at Brewster's Bait & Tackle.

We will work with the DPW to cordon off only a small area on Four Tree Island for Clergy and participants with an estimation of up to twenty people. Map attached.

We request approval to use a bull horn for the clergy as they bless the fleet, facing the river. No other amplification will be used.

We will ensure that no trash will be left in our cordoned off area.

Please advise if additional information is needed prior to the next City Departmental Logistics meeting.

Thank you for your support of the return of one of Portsmouth's favorite traditions.

Respectfully,

Jason Brewster  
Brewster's Bait & Tackle  
121 Mechanic St  
Portsmouth, NH 03801  
[03801phone@gmail.com](mailto:03801phone@gmail.com)

"My Mother the Wind" Sculpture

Four Tree Island

Piscataqua River

Piscataqua River







# Town of New Castle

NEW CASTLE, NH 03854-0367

SETTLED 1623  
INCORPORATED 1693

May 8, 2023

Karen S. Conard  
City Manager  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801

City Manager Conard,

As you know, the Town of New Castle would like to enter into a formal 20-year sewer agreement with the City of Portsmouth. The last 30-year agreement expired in 2008 and the City has continued to provide wastewater treatment services to New Castle since that time through an informal billing arrangement based on the City's annually adopted sewer rates.

State and federal regulators have indicated that a more formal agreement should be adopted. New Castle is considered a co-permittee with Portsmouth under the National Pollutant Discharge Elimination System (NPDES) given its discharges into the City system and treatment of wastewater at the Peirce Island Wastewater Treatment Facility.

The proposed agreement has been earnestly negotiated in good faith between the City, represented by Deputy City Manager, Atty. Suzanne Woodland and Deputy Director of Public Works, Brian Goetz; and the Town of New Castle, represented by Normand Houle, Chairman of the New Castle Water and Sewer Commission and myself, David McGuckin Select Board Chair, along with pivotal assistance from City Engineer, Erich Fiedler and New Castle's Superintendent of Public Works, Chris Robillard. A copy of the proposed agreement is attached.

The Town of New Castle believes that the agreement is now ready to be brought forward to the City Council for its consideration and action. City staff has indicated that they would be prepared to speak to the agreement and representatives of the Town of New Castle will be available at the City Council meeting to speak in support of the agreement.

The New Castle Select Board is prepared to vote affirmatively on the negotiated agreement. We hope the City Council will do the same.

Sincerely,

David B. McGuckin  
Select Board Chair  
Town of New Castle, NH

cc:

[smwoodland@cityofportsmouth.com](mailto:smwoodland@cityofportsmouth.com)  
[bfgoetz@cityofportsmouth.com](mailto:bfgoetz@cityofportsmouth.com)  
[nhouleccp@gmail.com](mailto:nhouleccp@gmail.com)  
[bill.stewart@newcastlenh.org](mailto:bill.stewart@newcastlenh.org)

## **NEW CASTLE WHOLESALE, BULK SEWER AGREEMENT**

This New Castle Wholesale, Bulk Sewer Agreement (“Agreement”) is by and between the City of Portsmouth (“Portsmouth”) and the Town of New Castle (“New Castle”), both parties being municipalities duly established and existing under New Hampshire Revised Statutes annotated (“RSA”) Chapter 31.

### **RECITALS**

1. Municipalities in the State of New Hampshire are required by State and Federal law to satisfactorily treat sanitary sewage prior to discharge to a waterbody.
2. Portsmouth operates as part of an integrated system of billing, operation and maintenance, two wastewater treatment facilities, one at the Pease International Tradeport that serves Tradeport tenants and the Peirce Island Wastewater Treatment Facility (PI WWTF) that serves customers in Portsmouth, Rye, and Greenland;
3. New Castle owns and operates a wastewater collection system consisting of sewer lines, pumps stations, force mains, and other appurtenances that collect sanitary sewage from New Castle residents and conveys it to the Peirce Island WWTF;
4. Under U.S. EPA rules, New Castle is considered a co-permittee to the Peirce Island WWTF National Pollution Discharge Elimination System (NPDES) No. NH100234 (Portsmouth) and NHCO 010234 (New Castle);
5. Portsmouth and New Castle entered into an Agreement dated February 22, 1978, pursuant to which Portsmouth agreed to accept sewage from New Castle for treatment at the PI WWTF;
6. The parties have continued their relationship with a rate adjustment occurring in 2009 and billing to date being based off New Castle’s flow meter readings at the River Road pump station;
7. New Castle desires to continue to secure long-term wastewater treatment services from Portsmouth at a wholesale rate;
8. Portsmouth completed a wastewater master plan in 2010 and upgraded its PI WWTF subsequent thereto increasing its capacity and level of treatment;
9. Portsmouth has sufficient capacity to continue to provide bulk wastewater treatment service to New Castle;

10. Portsmouth's rate consultant has conducted an updated wholesale sewer rate analysis which is attached as Exhibit A; and
11. Portsmouth and New Castle have determined to enter into this Agreement to secure wastewater treatment services for New Castle in accordance with an updated wholesale sewer rate and additional conditions.

NOW THEREFORE, in consideration of the mutual promises and covenants herein set forth, the parties agree as follows:

### ARTICLE I – DEFINITIONS

For all purposes of this Agreement, including any amendments, the following terms shall have the meanings set forth below:

- A. "Abnormal Occurrence" means any unplanned or unanticipated discharge to the sewer system which has the reasonable potential to result in: an upset of the PI WWTF processes; damage to the PI WWTF facility; or a discharge from the PI WWTF in excess of authorized effluent limitations.
- B. "Capacity Use Surcharge" means that charge set annually as part of the Portsmouth budget for new/expanded sewer connections.
- C. "Collection System" means New Castle's facilities for collection, storage, pumping, metering, and transmission of wastewater.
- D. "Connection Point" means where New Castle's River Street Pump Station force main physically connects to the flow meter at the PI WWTF headworks building.
- E. "Excessive Flow" means sewer flows that exceed those allowed by this Agreement.
- F. "Force Majeure" means Acts of god, strikes, lockouts, or other industrial disturbances, acts of any public enemy, wars, blockades, riots, acts of armed forces, epidemics, delays by carriers, inability to obtain materials or rights-of-way on reasonable terms, acts or failures to act by public authorities not under the control of either party to this Agreement, or acts or failures to act by regulatory authorities.
- G. "PI WWTF" means the Peirce Island Wastewater Treatment Facility located in Portsmouth, NH.
- H. "Person" means any individual, firm, company, association, society, corporation, political subdivision, fire district, or group.

**ARTICLE II – GENERAL PROVISIONS**

- A. The Recitals set forth above are true and correct.
- B. Portsmouth agrees to accept and treat domestic and sanitary sewage including reasonable infiltration delivered by New Castle to Portsmouth in accordance with the terms and conditions contained herein, the rules and regulations of the State of New Hampshire Department of Environmental Services (NHDES) and the U.S. Environmental Protection Agency (EPA).
- C. New Castle acknowledges and agrees that in order for Portsmouth to meet its obligations to NHDES and EPA and the National Pollution Discharge Elimination System (NPDES) permits issued to Portsmouth, New Castle may be required to adopt or adhere to portions of Portsmouth’s Sewer Use Ordinance as it may be amended over the term of this Agreement so as to facilitate and implement programs for NPDES permit compliance.
- D. The parties agree that neither assumes any financial responsibility for the operation and maintenance of the other’s sewer system.
- E. Portsmouth shall notify New Castle as soon as practicable of an emergency event that will cause disruption of service. Portsmouth shall provide as much advance warning as is reasonable under the circumstances. An example of “an emergency event” would include a force main break or failure of equipment at the headworks. Septage hauling trucks or temporary emergency piping would be utilized where needed to manage/transport sewage. If the emergency event was a result of a failure (e.g. whether due to an operational issue, equipment malfunction or infrastructure break) in the Portsmouth system, i.e. from the Connection Point to the PI WWTF, the City would be responsible for the cost. If the emergency event were the result of a failure within the Collection System (e.g. whether due to an operational issue, equipment malfunction or infrastructure break), New Castle would be responsible for the cost

**ARTICLE III – BULK SEWER TREATMENT SERVICE**

- A. New Castle may collect and transmit sewage to the Connection Point and Portsmouth agrees to accept and treat the sewage from New Castle’s collection system at rates of flow not to exceed the following:

Average Day Flow Rate	180,000 gallons per day
Maximum Day flow Rate	450,000 gallons per day
Peak Hourly flow Rate	37,500 gallons per hour

- B. Portsmouth shall not be liable for any damages, direct, indirect or consequential, resulting from its inability or failure to provide sewage treatment services on a temporary or emergency basis due to a Force Majeure event. Portsmouth will use its best efforts to provide the treatment capacity required hereunder. If restrictions are imposed by governmental regulatory authorities, Portsmouth reserves the right to temporarily reduce the capacity treated pursuant to this Agreement, but only for such time as the capacity cannot be accommodated as the result of the imposed governmental restrictions.
- C. In the event of an Abnormal Occurrence, New Castle agrees to provide proper notification to Portsmouth and to any applicable governmental regulatory agency as soon as possible and as may be required by law.
- D. Portsmouth's ability to provide service to new customers from New Castle is not guaranteed. The City will apply to New Castle the same standards relative to new service as applied to Portsmouth's customers.
  - 1. New Castle shall provide to Portsmouth within thirty (30) days a copy of each application for any new sewer service. In the case of a property that is being modified, re-developed or expanded and that has a reasonable likelihood to increase existing sewer flows from the property by more than 30%, an application for increased sewer service should also be completed and provided to Portsmouth.
  - 2. Each application shall be accompanied by a completed service application data form, identifying each plumbing fixture and estimates of flow and peak demand as may be reasonably requested by Portsmouth for which service will be required. At the discretion of Portsmouth, this information may be provided in a letter signed by the Applicant's architect or engineer.

#### **ARTICLE IV – OWNERSHIP, MAINTENANCE AND REPAIRS**

- A. New Castle will, in accordance with applicable laws and regulations, own and maintain at its own expense its Collection System to the Connection Point. New Castle agrees to construct and maintain its Collection System to meet design hydraulic conditions reasonably established by Portsmouth. New Castle improvements to its Collection System will be sized to function properly under variation in flow, hydraulic conditions, and other factors which may reasonably be expected to occur over time in the New Castle service area.
- B. Portsmouth will, in accordance with applicable laws and regulations, own and maintain, at its own expense, that portion of the sewage treatment system from the Connection Point to and within the PI WWTF, including the sewer flow meter at the Connection Point. The Connection Point determines the limits of maintenance and ownership for both parties. The parties will maintain their facilities in accordance with the standards prescribed by applicable regulatory agencies and will maintain a level of performance, maintenance and repair that will not adversely affect customers of either party.
- C. Sewage flow shall be metered at the Connection Point by Portsmouth.

The sewage flow meter at the Connection Point will be tested by Portsmouth and recalibrated, when necessary, at least annually in accordance with the American Water Works Association Standards for Meter Testing or other mutually agreeable standard. New Castle has the right to observe the annual test and recalibration of the sewage flow meter. Portsmouth may retain the services of a third party to perform the sewage flow meter test to verify the calibration. Portsmouth agrees to provide New Castle with copies of the annual test report. The parties reserve the right to conduct additional meter testing at their own expense. Portsmouth shall notify New Castle, in writing, at least fourteen (14) calendar days in advance of any meter testing and/or recalibration.

i. If the meter registers an accuracy error greater than the American Water Works Association standards, as it may be updated over time (currently 98.5% to 101.5% accurate when tested), and the meter is out of calibration on the high side, that is, greater than 101.5% then Portsmouth shall refund to New Castle the amount billed in error for one-half the period since the last test. The one-half period will not exceed six (6) months, provided, however, that if it can be shown that the error was due to a cause, the date of which can be determined, the overcharge will be computed back to such date.

ii Whenever the meter is found to register less than the standard described above, that is less than 98.5%, then Portsmouth may bill New Castle an additional amount that will be due for one-half the period since the last test. The one-half period may not exceed six (6) months, provided, however, that if it can be shown that the error was due to some cause, the date of which can be determined, the undercharge will be computed back to such date.

D. Facilities within New Castle's service area shall be repaired by New Castle if: (1) there are Excessive Flows due to a storm, a sudden surge of groundwater, infiltration and inflow, or other like conditions; or, (2) if any generally accepted testing or method of determining the condition of sewer lines indicates that a line is in need of repair or replacement. Lines or equipment may be repaired or replaced if they are not functioning in accordance with applicable design standards. Portsmouth shall notify New Castle upon the occurrence of any Excessive Flows. If Portsmouth reasonably determines repairs or replacements are needed, New Castle shall have ninety (90) days from written notification from Portsmouth to evaluate the Collection System and develop a plan of action acceptable to both parties to perform any necessary improvements or repairs to the Collection System. If New Castle's evaluation of the Collection System reflects that the Collection System does not need to be repaired, New Castle shall inform Portsmouth of those results. If New Castle's evaluation reflects that improvements to the Collection System are required, these improvements shall be completed within a reasonable period of time. If, after notification, New Castle fails to perform the required evaluation and necessary improvements or repairs, and that failure contributes to an Abnormal Occurrence, New Castle may be held responsible for its proportional share of any resulting monetary fines or required improvements ordered by any regulatory agency which are directly related to the Abnormal Occurrence.

#### **ARTICLE V – BULK SEWER FEES AND CONNECTION CHARGES**

A. In consideration for the sewage treatment services provided by Portsmouth, New Castle shall pay to Portsmouth the wholesale rate of \$11.39 as described in Exhibit A. The rate

may be adjusted annually during the course of this Agreement provided that: (1) the rate adjustment is based on the analysis of a qualified rate consultant; and (2) New Castle has an opportunity to review a draft of the proposed study or report recommending a rate adjustment and providing comment.

- B. Portsmouth agrees that it will meet annually with New Castle representatives in October or November of each year to review any issues and to provide Portsmouth with an opportunity to forecast any changes to the wholesale rate, such changes to be set by Portsmouth during its budget process and to become effective July 1.
- C. Portsmouth will invoice New Castle, on a monthly basis, for sewage treatment based upon the sewer flow meter readings taken by the City as described herein. New Castle will make payment within thirty (30) calendar days after receipt of an invoice from Portsmouth. Portsmouth will, as part of the setting of the wholesale rate described in paragraph A, credit amounts due to New Castle to account for the Shapleigh Island property owners (who are Portsmouth residents and billed by Portsmouth) who discharge into the Collection System at the retail rate New Castle charges its customers.
- D. Portsmouth will assess and New Castle shall pay the Capacity Use Surcharge for all new or modified sewer connections based on the applications submitted under Article III, (D) to the extent such Capacity Use Surcharge would be charged to a Portsmouth customer.
- E. Where the use of developed property is modified or where property is re-developed or expanded, Portsmouth may require the payment of a Capacity Use surcharge.

#### **ARTICLE VI – DISCHARGE AND PERMITTED FLOWS**

New Castle will reasonably cooperate with Portsmouth to coordinate flows to the Connection Point and ultimately to Portsmouth's sewer treatment plant to mitigate the potential for any Abnormal Occurrence within Portsmouth's sewer system. New Castle will require present and future commercial customers of New Castle to install and maintain devices deemed necessary by the NHDES and EPA and consistent with Portsmouth's industrial pre-treatment requirements to trap and remove certain identified wastes other than domestic sewage from the sewage generated by commercial customers.

#### **ARTICLE VII – TERM, RENEWAL AND TERMINATION**

- A. This Agreement shall be effective seven (7) days after the approval of this Agreement by the Portsmouth City Council and the New Castle Board of Selectmen for a term of twenty (20) years, subject to termination prior to the end of the term as set forth in paragraphs B and C, below. This Agreement represents the entire and integrated Agreement between New Castle and Portsmouth and supersedes all prior negotiations, representations, or agreements, whether written or oral with respect to the subject matter hereto. All other prior agreements with respect to the subject matter hereto are considered terminated and have no further force or effect from the date of execution of this agreement.
- B. Unless either party provides notice to the other of its intent to terminate this Agreement not less than two years before the end of the then current term, the Agreement will automatically renew for an additional five years. Termination of this Agreement by New

Castle under this section shall not relieve New Castle of its obligation to pay Portsmouth for any services rendered pursuant to this Agreement prior to the date of termination.

- C. Either party may terminate this Agreement prior to the time specified in Article VII if the other party has violated any covenant or duty of this Agreement. Except as otherwise expressly stated herein, the party seeking to terminate for cause shall give the offending party sixty (60) days written notice, specifying the particulars of the violation claimed, prior to termination. If at the end of sixty (60) days, the party so notified has not removed or remedied the cause of complaint with prompt, reasonable, and substantial efforts resulting in compliance with this Agreement, then the termination of this Agreement shall be deemed complete. Termination of this Agreement by New Castle under this section shall not relieve New Castle of its obligation to pay Portsmouth for any services rendered

### **ARTICLE VIII INSURANCE AND INDEMNITY**

- A. New Castle shall, to the extent of available coverage, indemnify and save harmless Portsmouth from all claims and demands for injuries to persons, loss of life, damage to property, or other losses arising out of the negligent acts or omissions or willful misconduct of the Town of New Castle relating to the performance of this Agreement which Portsmouth is obligated or legally bound to pay, excepting such claims and demands that are the result of Portsmouth's negligent acts or omissions or willful misconduct.. The phrase "claims and demands" shall include but shall not be limited to damages; judgments; settlements; and costs for the defense of legal actions, claims, proceedings, or appeals. New Castle shall maintain pooled risk management liability coverage in the amount of \$1,000,000 bodily injury and property damages.

New Castle agrees to furnish a certificate of the above-mentioned coverage to Portsmouth within fourteen (14) days from the date of this agreement and to provide renewal certificates timely. Such certificate shall state that in the event of cancellation or material change, written notice shall be given to the City Attorney, City of Portsmouth, 1 Junkins Avenue, Portsmouth, NH 03801 at least thirty (30) days in advance of such cancellation or change. Such obligation to indemnify shall be up to New Castle's pooled risk management liability coverage policy limits.

- B. Portsmouth shall, to the extent of available coverage, indemnify and save harmless New Castle from all claims and demands for injuries to persons, loss of life, damage to property, or other losses arising out of the negligent acts or omissions or willful misconduct of Portsmouth relating to the performance of this Agreement which New Castle is obligated or legally bound to pay, excepting such claims and demands that are the result of New Castle's negligent acts or omissions or willful misconduct on the part of New Castle. The phrase "claims and demands" shall include but shall not be limited to damages; judgments; settlements; and costs for the defense of legal actions, claims, proceedings, or appeals. Portsmouth shall maintain pooled risk management liability coverage in the amount of \$1,000,000 bodily injury and property damages.

Portsmouth agrees to furnish a certificate of the above-mentioned coverage to New Castle within fourteen (14) days from the date of this agreement and to provide renewal certificates timely. Such certificate shall state that in the event of cancellation or material change, written notice shall be given to the Board of Selectmen, Town of New



Castle, PO Box 367, 49 Main St, New Castle, NH 03854 at least thirty (30) days in advance of such cancellation or change. Such obligation to indemnify shall be up to Portsmouth's pooled risk management liability coverage policy limits.

**ARTICLE IX – MISCELLANEOUS TERMS AND CONDITIONS**

- A. Record, Accounts and Audits. Portsmouth shall maintain records of all financial transactions with New Castle in accordance with State law. The records shall be available for inspection at the office of Portsmouth during normal business hours.
- B. Governing Law. This Agreement shall be governed by the laws of the State of New Hampshire.
- C. Liability for Accident. Neither Portsmouth nor New Castle shall be liable in damages or otherwise for failure to perform any obligation under this Agreement due to Force Majeure or the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause provided such cause is not within the control of such party and provided such act, omission or circumstances such party is unable to prevent or overcome by the exercise of reasonable care.
- D. Liability Resulting from Negligence. Neither New Castle nor Portsmouth shall be relieved of liability for loss resulting from its negligence, intentional actions, or its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch. Such causes or contingencies affecting performances shall not relieve New Castle from its obligations to make payments of amount then due with respect to Sewer theretofore supplied.
- E. Notices. All notices and other writings sent pursuant to this Agreement shall be addressed as follows:

Portsmouth Department of Public Works  
ATTENTION: Director  
680 Peverly Hill Road  
Portsmouth, NH 03801

City of Portsmouth  
ATTENTION: City Attorney  
1 Junkins Avenue  
Portsmouth, NH 03801

New Castle Select Board  
ATTENTION: Chairperson  
Town Hall  
PO Box 367, 49 Main Street  
New Castle, NH 03854

or at such other address as is indicated by written notice to the other party.

F. Amendment. The provisions, terms and conditions of this Agreement may be modified only by written amendments, executed with the same formality as this agreement.

G. Assignment. No assignment by New Castle of its rights or duties under this Agreement shall bind Portsmouth unless Portsmouth consents to such an assignment in writing. No assignment by Portsmouth of its rights or duties under this Agreement shall bind New Castle unless New Castle consents to such an assignment in writing.

H. Waiver. Failure of either party to exercise any right granted by this Agreement shall not be deemed a waiver of such party to exercise at some future time any rights it may have.

I. Severability. If any clause or provision of this Agreement or application thereof shall be held unlawful or invalid, no other clause or provision or its application shall be affected and this Agreement shall be construed and enforced as if such unlawful or invalid clause or provision had not been contained herein.

IN WITNESS WHEREOF, this Agreement is executed in multiple counterparts each of which shall be deemed an original this \_\_\_ day of \_\_\_\_\_, 2023.

In the Presence of:

**NEW CASTLE SELECT BOARD**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

As approved by the Select Board dated:

\_\_\_\_\_

**CITY OF PORTSMOUTH**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Karen S. Conard  
City Manager

As Approved by Vote of the City Council dated:

\_\_\_\_\_

**Memorandum**

To: Suzanne Woodland, Deputy City Attorney

From: Stantec Consulting Services

Re: Town of New Castle Sewer Rate Analysis

Date: April 18, 2022

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The purpose of this memorandum is to outline Stantec Consulting Services (Stantec)'s analysis of the sewer rates assessed to the Town of New Castle for sewer treatment services provided by the City of Portsmouth.

**Background**

The City of Portsmouth provides the Town of New Castle with wastewater treatment at the City's Pierce Island Wastewater Treatment Facility. The Town maintains its wastewater collection and transmission system leading to the treatment facility and therefore is only charged for wastewater treatment service. The Town is currently billed based on the Town's metered water readings which are provided to the City for billing. The Town is billed for all usage at the City's retail Tier 1 sewer rate (currently \$14.89 per unit) given that the Town is serving residential customers that are likely not exceeding the first-tier usage on an individual customer basis.

The Town has recently reached out to the City to formalize a new agreement with the City for the continued treatment of the Town's wastewater flows. As part of the correspondence from the Town, a "Portsmouth Sewer Rate Analysis" was provided to the City that calls into question the current sewer rate charged to the Town. Stantec has had the opportunity to review the Town's analysis and the remainder of this memorandum outlines our findings regarding the analysis as well as industry standard approaches for determining sewer rates.

**Overview of Town's Analysis and Key Findings**

The City's sewer rates consist of two components: a unit rate for operating and maintenance (O&M) costs (currently \$4.64 per unit) and a capital unit rate to fund capital expenses (debt service and cash funded capital) within the sewer system (currently \$10.25 per unit). The Town's rate analysis is not calling into question the O&M rate but believes that the capital rate is not correct for the Town. To examine the capital rate, the Town has identified the capital costs associated with the Pierce Island Treatment Facility which consist of principal and interest payments for debt service related to the recent completion of upgrades and expansion of the facility. The analysis identifies the total debt service related to the treatment facility as \$4,929,600 in FY 2022, from the City's budget documents. The Town's analysis then simply proportions this debt service amount between City customers and the Town based on the Town's billed use and the estimated total billed use on the system. The total system use for FY 2022 of 1,079,390 units was pulled from the City's budget and this was compared with the Town's estimated use of 32,880 units which equates to 3% of the total system use. The Town then takes this 3% of the debt service which equates to \$147,888 and divides it by the Town's use to arrive at a capital unit rate of \$4.50 per unit, as compared to the current capital rate of \$10.25.

Based on our review of the methodology and analysis completed by the Town we have identified a couple of items that should be considered related to the pricing of sewer service for the Town. It should be noted that the data sources cited and used by the Town are consistent with City budget documents and Stantec's

rate study materials. Additionally, based on discussions with City staff the only measurable capital expenditures at the Pierce Island Treatment Facility are the annual debt service payments. Limited or no cash funded capital is currently incurred at the facility and therefore the annual debt payments would be the appropriate cost basis for the capital rate at the treatment facility.

One of the primary considerations is that the Town’s analysis does not consider that the City operates two wastewater treatment facilities and the total estimated consumption within the City includes wastewater treated at the City’s Pease Treatment Facility as well as the Pierce Island Treatment Facility. As a result, the Town is understating its portion of the flows at the Pierce Island Facility. The Pease facility makes up approximately one-third of the total system usage or equivalent to 345,000 units. This results in estimated usage associated with the Pierce Island Facility of 734,390 units. Removing the Pease flows would result in the Town’s portion of the Pierce Island Facility increasing from 3% to 4.5%. It is important to note that this correction in the methodology does not mean that the Town is being allocated any of the costs associated with the Pease Treatment Facility. It simply reflects the split in usage at the Pierce Island Treatment Facility between the Town and City of Portsmouth and thereby allocates the debt service associated with the Pierce Island Treatment Facility between the Town and City of Portsmouth.

Table 1 demonstrates the effect of taking the Pease Treatment Facility into account and the impact on the calculated capital sewer rate in comparison to the current rate and the rate proposed by the Town.

**Table 1 - Town of New Castle Sewer Rate per Unit**

Rate Component	Current	Town Proposal	Recommended Rate
Capital	\$10.25	\$4.50	\$6.75
O&M	\$4.64	\$4.64	\$4.64
<b>Total</b>	<b>\$14.89</b>	<b>\$9.14</b>	<b>\$11.39</b>

The table shows that the rate proposed by the Town is not appropriate since the analysis does not account for flows to the Pease facility when allocating capital costs at the Pierce Island Treatment Facility. However, based on available data, it appears that the current capital rate for treatment services to the Town may not be appropriate.

### Additional Consideration

While the only capital costs at the Pierce Island Facility today are related to existing debt service, it will be important to ensure that the capital rate for the Town is updated periodically to account for additional capital expenditures at the facility.

CITY COUNCIL E-MAILS

Received: May 1, 2023 (after 5:00 p.m.) –May 11, 2023 (before 9:00 a.m.)

May 15, 2023 Council Meeting

**Submitted on Tue, 05/02/2023 - 10:45**

**Full Name**

Peter Somssich

**Email**

[peter.somssich@gmail.com](mailto:peter.somssich@gmail.com)

**Subject**

McIntyre Building

**Address**

34 Swett Ave.

**Message**

Dear Councilors,

I understand the intimidating idea of purchasing the McIntyre building. However, I believe it is a legacy opportunity that our city should not walk away from lightly. We should find ways to ensure that whatever the useage may be in the future, our city ensures a significant public benefit from that sight. It would occur through a purchase, or zoning requirements or by limiting the type of development that would diminish the public benefit at that location., Walking away from the project would be a complete surrender to developers who would love to see the city leave everything to them.

Best Regards, Peter Somssich , 34 Swett Ave.

**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, 05/02/2023 - 11:49**

**Full Name**

Beth Margeson

**Email**

[bmargeson@myfairpoint.net](mailto:bmargeson@myfairpoint.net)

**Subject**

McIntyre and Prescott Park

**Address**

24 Marcy Street

**Message**

I write to comment on the remarks made last night about the costs of renovating Prescott Park. The Master Plan for Prescott Park was approved in early 2017. At that time, the hope was that the funding for the renovations for the park would come from the redevelopment of the McIntyre site.

The Historic Monument Program requires that "all income in excess of costs for repair, rehabilitation, restoration, and maintenance shall be used by the Grantee -- the City of Portsmouth -- only for public historic preservation, or park or recreational purposes (when all preservation needs have been adequately addressed)." This is on page 14 of the Application for Obtaining Real Property for Historic Monument Purposes.

The city's failure to obtain the McIntyre Building through the Historic Monument Program has cut off this source of funding for Prescott Park's renovation - as well as other public historic preservation and park and recreational projects throughout the city.

**Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting.** Yes

---

**Submitted on Tue, 05/02/2023 - 12:31**

**Full Name**

Carol Bird

**Email**

[cbird5564@gmail.com](mailto:cbird5564@gmail.com)

**Subject**

Last night's meeting

**Address**

170 Mechanic St

**Message**

Thank you to all the councilors who voted to NOT buy the McIntyre building, especially Councilors Bagley and Denton who were not afraid to broach the subject and act on their constituent's wishes! As evident by the attendance at last night's meeting, I believe the majority of

the town is all done with trying to acquire this property. The money already spent would likely be peanuts in comparison with what lies ahead and as Councilor Cook wisely suggested, why not direct the financial resources we have to the Prescott Park master plan, a resource available to all?

As said by others, including the well-respected mayor's father I believe, the city should not be in the development business.

Thank you again for letting common sense prevail!

**Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting.** Yes

---

**Submitted on Tue, 05/02/2023 - 15:41**

**Full Name**

Paul Ringuette

**Email**

[paulnringuette@gmail.com](mailto:paulnringuette@gmail.com)

**Subject**

8-1 Vote

**Address**

308 Richards Ave

**Message**

Congratulations for allowing common sense to prevail on the monstrosity of McIntyre. Hopefully the leftover legal BS can get resolved soon enough. Please don't entertain any additional "opportunity" to evaluate it. We had a shot for \$1 and couldn't get it done, so onto other important work, like affordable housing!

**Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting.** Yes

---

**Submitted on Tue, 05/09/2023 - 09:53**

**Full Name**

Richard DiPentima

**Email**

[rdipentima@gmail.com](mailto:rdipentima@gmail.com)

**Subject**

Childhood Lead Poisoning in Portsmouth

**Address**

16 Dunlin Way,

**Message**

This is a series of articles we had hoped to be published in the Herald. For some reason they have not, Tis is the work of a local committee including the city health officer. DHHS made a presentation to the School Board on this topic on April 11. You should view that presentation. Please read. Thank you.

The Long Neglected Silent Epidemic

A Two-Part Article About Childhood Lead Poisoning

Part 1: The History, Public Health, and Economic Impacts

Part 2: Potential Solutions to Reduce/End Lead Poisoning

Part 1: History, Public Health and Economic Impacts:

Considering the advances in science and technology over the past 4000 years you would expect that humankind would have figured out how to control and eliminate a threat to humans known since before 2,000 BC. Unfortunately, when it comes to lead poisoning, especially of children, this is not the case. In fact, child lead poisoning represents the longest-lasting childhood epidemic in the United States, but has never been treated as one. (Bloomberg News) Consider that over the past century in America tens of millions of children have been and continue to be poisoned by lead-based paint in their homes even though the hazards of lead paint were well known over a hundred years ago. In fact, Australia banned lead in paint in 1914, and in 1925 lead was banned in paint by an international convention that America was not a signatory to. It was not until 1978 that lead in household paint was banned in the United States. And just recently we witnessed over 9,000 children less than 6 years of age in Flint, Michigan being exposed to high levels of lead in their drinking water from old lead water pipes. a problem the Roman Empire dealt with over 2,000 years ago.

How did we allow this epidemic to begin even though we knew the hazards of lead, and why have we been unable or unwilling to end it?

There are a number of major sources from which children can become exposed and thus poisoned by lead. The primary source of exposure to children is lead-based paint in the home in the form of peeling, chipping lead-based paint, and lead dust from deteriorating paint and from friction surfaces like windows where lead-based paint is present. Lead in paint was introduced in colonial times and peaked in the

19Th Century. It was added to paint for its durability, faster drying time and is moisture resistant. Although lead in household paint was banned in 1978, the legacy of allowing it to be used in America for more than 50 years after Australia banned it continues to expose children to this day. Layers of paint applied to homes built before 1978, especially before 1950, contain lead up to 70% by weight. As a result, millions of tons of lead-based paint remain a risk to children in millions of dwelling units built before 1978 across the nation, and right here in Portsmouth, NH. As Portsmouth celebrates its 400th Anniversary, we are reminded of the age of our housing stock. Approximately 77% of our housing was built before 1978 of which 42% were built before 1950. Most of these units, especially those built before 1950 contain lead-based paint with a population of over 1,100 children under age 6 in Portsmouth, there are certainly many children potentially at risk.

The second major source of lead exposure to children is from soil and other environmental sources from the prior use of lead-based gasoline. Lead was added to gasoline in the 1920's to improve engine operation. Lead in gasoline for on-road vehicles began to be phased out in the 1970's and was completed in 1996 when the EPA banned the sale of gasoline with lead for on-road vehicles. Unfortunately, by this time 4-5 million tons of lead was deposited in the environment across the nation. When children play in soil contaminated with lead, they can consume it by ingesting lead from soil on their hands. It only takes the amount of lead the size of a grain of sugar to poison a child! Another important source of lead exposure to children is from drinking water. The problem being old lead water supply pipes put in place prior to 1986 and plumbing fixtures that contain lead and lead solder. When water has a corrosive quality, lead can be dissolved in the water and thus consumed. This is exactly what took place in Flint.

Other possible sources of lead exposure include old toys with lead paint, do-it-yourself home improvement projects involving lead paint, firing ranges, hobbies that involve lead like fishing sinkers, reloading ammunition, and adults bringing home lead dust from work. Lead is a very potent neurotoxin, which means that it attacks the brain as well as other organs in the body. It is especially a danger to children less than 6 years of age because their brain has not yet fully developed and lead can more easily get to a child's brain in the absence of a fully developed blood-brain barrier. Lead is so toxic to children that there is no level of lead above zero that is considered not to have health effects. A child is considered to be lead poisoned when their blood lead level is 5ug/dL or higher, equivalent to 0.68 ppb. There are no symptoms when a child becomes lead poisoned unless the exposure is extremely high, thus the "silent epidemic." Although, there are no symptoms of lead in a child's body will cause serious subtle neurologic damage. These effects include; attention deficits, decreased executive function, lowered IQ's, spatial disorders, behavior challenges, speech and language problems and problems with fine and gross motor functions. These problems will result in the need for special education, and often result in risky behavior, teen pregnancy, school behavior issues, school drop-out, substance abuse, child abuse and neglect and adult criminality. The damage caused by lead poisoning to the child's neurological system is irreversible even with medical intervention, and presents a life-long challenge to the child. As a result, lead poisoning represents a serious and costly problem not only for the child and their family but also for the entire community. New Hampshire, including Portsmouth, are not strangers or immune to lead poisoning in children. In fact, the last case of fatal lead poisoning in America took place in Manchester, NH in 2000, with the death of a 2-year-old child. The source of her lead was from old peeling paint in her apartment. In NH from 2015-2019 3,402 children were identified as lead poisoned. (NHDHHS 2019) In Portsmouth, during the years 2016-2020 40 children were found to be poisoned. As bad as these numbers are, they are most likely artificially low because only 61% of 1 year old children and 53% of 2-year-old children in the Seacoast Region were tested for lead even though NH law requires that providers conduct blood lead screening in all 1- and 2-year-old children. As mentioned above, the cost to manage the effects of lead poisoning in the community are extensive. The costs associated with childhood lead poisoning not only include the medical expenses, direct costs related to lead abatement. Many socioeconomic factors which can be influenced by elevated blood lead levels are difficult to calculate and portray in monetary terms, such as education attainment, special needs education programs, participation in the labor force, wage rates, lifetime earnings, criminal justice issues and more. Other costs include litigation costs, court settlement costs, insurance rates, etc. While a hard financial cost cannot be directly calculated for child lead poisoning, the costs both obviously hidden are astronomical. These costs are a burden not only to families of poisoned children, and property owners but are an even greater cost to governments at all levels and the taxpayers who support them. Obviously, preventing lead poisoning would save a great deal of unnecessary preventable costs and human suffering. In part 2 of this article, we will discuss the possible solutions to reduce childhood lead poisoning with a goal of finally ending this epidemic forever.

## Part 2: Possible Solutions to Reduce/End Lead Poisoning

As a society we have long ignored and down-played the child lead poisoning problem. When loons began to die in NH a number of years ago as a result of ingesting lead from fishing tackle, the Legislature acted with lightning speed to pass a law banning lead from fishing tackle used in freshwater. Unfortunately, when it comes to childhood lead poisoning other economic and political issues interfere with doing what is needed to end this epidemic.

As evidence of our long struggle trying to control and eliminate the scourge of childhood lead poisoning, the Centers for Disease Control and Prevention (CDC) in 1991 released their Strategic Plan for the Elimination of Childhood Lead Poisoning. While some spotty and uncoordinated progress has been achieved over the past 32+ years since that document was released we still lack a national, state or local government commitment to implement the recommendations outlined in that report. That continued delay in managing the problem has resulted in many more children becoming lead poisoned and the costs to implement the 1991 plan have skyrocketed. And going forward, without finally addressing this problem aggressively, will only result in the continued lead poisoning of children and the costs to resolve the epidemic continuing to rise. The 1991 CDC report included a cost benefit analysis of lead abating all pre-1950 housing of which 80% contain lead-based paint. They concluded that if all pre-1950 lead-painted housing in the U.S. were abated over 20 years the 1991 value of dollars saved over the cost of the abatements would have been \$28,002,830,000! If we were to perform those same abatements today the cost

benefit at an average inflation rate of 2.46% for every \$1 saved in 1991 would be \$2.18 saved today. The money saved by governments, individuals and communities would be vastly more than the costs of the abatements. While it is unknown how many pre-1950 homes have been abated over the past 32 years, there are still a substantial number still presenting a lead hazard across the nation, in New Hampshire and right here in Portsmouth. The message is that if we started to abate all the remaining pre-1950 housing units today, we could achieve the same cost benefits adjusted for inflation as estimated by the CDC in 1991. If we included the abatement of all housing pre-1978 that contain lead over a 20-year period the cost benefit would even be greater. Of course, the problem is that the costs to abate a lead home are immediate, while the savings that result from those abatements are not easily recognized and take place over a period of years. We know how to end this human initiated epidemic, but we lack the collective will to take the necessary economic and political action to do so. While the final solution to this problem would be the abatement of all pre-1978 housing that contain lead paint, if the impact of the CDC's 1991 plan is any guide it is unlikely to take place on a national or even a state level where it should be primarily addressed, but on a local level. Each community must decide how best to alleviate the burden of lead poisoning with an ultimate goal of removing lead paint from every home. I will present a recommendation to achieve that goal below. In the meantime, there are other steps that can be taken on the city and/or State level to prevent and reduce the number of children who become lead poisoned.

These would include:

1. The State and City should develop a comprehensive State-wide lead poisoning prevention implementation plan.
2. Improve the state's infrastructure to provide more training programs for licensed lead abatement professionals, laboratory capacity, assure prompt investigations of all lead poisoning cases, and case management for lead poisoned children and their families.
3. Efforts by the State and City to reach out to health providers to ensure that all children age 1 and 2 are screened for lead as required by law.
4. Door-to-door screening of children in high-risk neighborhoods has proven to be an effective means of reaching high-risk children.
5. Increase outreach to families with children below 6 years of age to ensure that they have their child/children tested for lead.
6. Identify children who lack a usual source of health care and link them to providers.
7. Increase the infrastructure at the State and City level to support lead poisoning prevention efforts. The city should consider hiring a full-time person to the Health Department to coordinate all City lead poisoning prevention efforts.
8. Identify all pre-1978 homes in the State or City that contain lead paint and assign a risk /level to each home identified and work with those property owners to abate those homes before a child becomes poisoned. Current State law requires an abatement of a home only after a child has been poisoned. We need to reverse this paradigm.
9. The city should require a building permit for any renovations on a pre-1978 home identified as having lead paint.
10. Any home with lead paint must notify any prospective buyer of the home of the lead hazard prior to the sale of any such home.
11. The State and/or City should provide financial incentives to property owners of homes with lead paint to have those homes abated. The incentives could be a cost sharing program from a fund that the Legislature could establish through general funds, grants and/or a surcharge placed on the sale of every gallon of paint in New Hampshire. The fund would be used to share the cost of lead abatement with the property owners. The City could provide a property tax credit, like the veteran credit, to a property with a lead contaminated home that they demonstrate has been lead abated by a licensed lead abatement professional.
12. Increase public awareness of the lead poisoning problem and how to identify possible lead hazards.

The above recommendations, if implemented, would go a long way toward eliminating childhood lead poisoning. However, the only way to end the silent epidemic is to completely remove the major hazard causing it. To take lesser steps will only prolong the inevitable. We have been kicking this lead can down the road for over 50 years while children continue to become poisoned. As Einstein said. "Continuing to do the same thing over and over and expecting different results is the definition of insanity." While there is little that can be done other than educating parents with regard to other sources of lead exposure like soil, the removal of the lead paint hazard in dwelling units occupied by young children is long past due. Although the symptoms of lead poisoning are silent, responsible leaders and child advocates cannot continue to remain silent about what needs to be done to end this silent epidemic. Our generation has an opportunity to make history by putting in place a process to finally end the surge of child lead poisoning. While we cannot undo the harm caused in the past, we can celebrate commitment to future generations of children.

**Please indicate if you would like your comment to be part of the public record for the upcoming City Council meeting.** Yes



**Submitted on Tue, 05/09/2023 - 17:22**

**Full Name**

Erik Anderson

**Email**

[andy42152@aol.com](mailto:andy42152@aol.com)

**Subject**

City Budget

**Address**

38 Georges Terrace

**Message**

Dear Councilors,

It was appreciated at the 5/8/23 special city council meeting to comment on the proposed 2024 city budget as presented by the city manager. If understood correctly this was the first occasion for the public and the city council to see the make-up of this budget. It was also understood that a prior city council voted request to the city manager that the 20243 city budget not exceed 4.5 % of last years budget. As presented this years budget is 6.13% over last years budget which did not accomplish the request of the the city council. If this budget is approved a cumulative summary would be that under your tenure as a city council the cities budget has increased by 19.2 million dollars in two years. Additionally an increase of 37 city employees has occurred.

While there is a public opportunity to comment on this subject and as I have participated in those opportunities the FINAL budget rests in the hands of the you, city councilors, to make adjustments where needed and within the request that you made and voted on prior to the construction of the 2024 budget season.

Again, you as a collective city council and individual councilors have the only and ultimate authority to make changes to the city budget. This message is to request your position on the presented 2024 city manager's budget.

- 1) Will you be making any recommendations to reduce the 2024 city budget?
- 2) Will you hold the 2024 city budget to the 4.5% city council vote?

As this is in opinion one of the principal and fundamental responsibilities of a city councilor I thank you and respect your time and consideration to this subject. I also welcome and ask any reply to this message.

With thanks,

Erik Anderson

**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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May 3, 2023

Dear Mayor McEachern and City Council,

As in previous year, I would like to request permission to hold a community reading of the Declaration of Independence in front of the North Church this July 4<sup>th</sup> at 11:00 a.m. I have already checked with the North Church office and they don't have any events going on that day.

Best Regards,

Sue Polidura

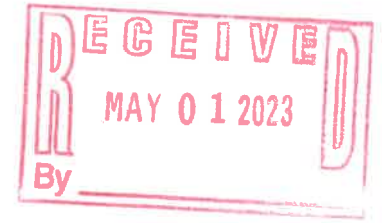
# DANVILLE FIRE DEPARTMENT

206 Main Street, Danville, New Hampshire 03819-0911

Web: <http://fire.townofdanville.org>

Phone: 603-382-5133 Fax: 603-382-7352 Email: [danvillefd@comcast.net](mailto:danvillefd@comcast.net) EMERGENCY - 911

April 25, 2023



Ms. Kelli Barnaby

On April 25, 2023 at approximately 7:30 AM your electrical inspector John Plourde was driving on Sandown Rd in Danville NH, he noticed smoke and flames coming out a window at 272 Sandown Rd. Mr. Plourde stopped and assessed situation and grabbed a garden hose from front yard and began to spray water into the room where 2 couches were actively burning as well as room contents. With no regard for his own safety John extinguished a bulk of the fire and made sure all residents and pets were evacuated safely.

I have been in the Fire Service for 40 years and I know had John not intervened when he did the outcome would have been disastrous. Our members have to respond from home and get apparatus and then respond to the emergency and this incident was 6 to 8 minutes from station, this fire would have tripled to quadrupled in size.

My hat is off to Mr. John Plourde and Thank you again.

Chief Steven J Woitkun

Danville Fire Department

May 10, 2023

Tom Kaufhold  
Founder Seacoast LGBTQ History Project

Dear Mayor McEachern and City Council,

The Seacoast LGBTQ History Project would like permission to place six panels describing the history of the LGBTQ community on the seacoast at City Hall during the month of June 2023. The panels are 3 feet by 6 feet and are free standing. Each panel is a color of the rainbow and covers a specific area of history: Arts and Culture, Health, Politics, Commerce, Social Groups and Spirituality. These panels were created for a 2019 exhibit at the Portsmouth Public Library and have since been loaned out to various organizations and religious groups. I would take responsibility for putting them up and taking them down and can place them where they best fit.

Thank you for considering this.

Tom Kaufhold  
Founder Seacoast LGBTQ History Project



# CITY OF PORTSMOUTH, N.H. BOARDS AND COMMISSIONS

## APPOINTMENT APPLICATION

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

Committee: HDC

RECEIVED  
MAY 02 2023  
Renewing applicant  
By

Name: David B. Adams Telephone: 603 479 1673

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

Street address: 210 Gates St.

Mailing address (if different): Same

Email address (for clerk's office communication): housefixr@aol.com

How long have you been a resident of Portsmouth? 48 years

Occupational background:

Preservation Carpenter

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

Reasons for wishing to continue serving: not done yet

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

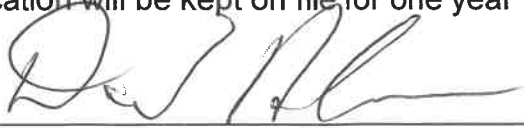
None besides HDC  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please list two character references not related to you or city staff members:  
(Portsmouth references preferred)

- 1) Dan Desrochers 213 Gates St. 603 856 6699  
Name, address, telephone number
- 2) Peter Happay 66 Rock St. 603 436 4859  
Name, address, telephone number

**BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:**

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

Signature:  Date: May 2, 2023

**CITY CLERK INFORMATION ONLY:**

New Term Expiration Date: 06/01/2026  
 Annual Number of Meetings: 22 (2022) Number of Meetings Absent: 1  
 Date of Original Appointment: 10/19/2020

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

## ARTICLE IV: COMMISSIONS AND AUTHORITIES

### Section 1.401: RESIDENCY REQUIREMENT

Eligibility for appointment to Commissions and Authorities of the City of Portsmouth shall be limited to residents of the City of Portsmouth. Any individual who is a resident of the City at the time of appointment to a Commission or Authority shall become ineligible to remain on that Commission or Authority in the event that the individual shall discontinue residency in the City. [This residency requirement does not apply to students on a Commission or Authority that attend, or could attend, classes in the Portsmouth School District.](#)

### Section 1.413: SUSTAINABILITY COMMITTEE

A. **Membership and Term:** The Sustainability Committee will consist of a City Councilor to be designated by the Mayor, a School Board Member to be designated by the School Board Chair, one member of city staff to be designated by the City Manager, two students to be designated by the Portsmouth School District, and initially of all the interested community members on the Blue Ribbon Committee on Sustainable Practices. The City Councilor will serve for the duration of their two-year City Council term, the School Board Chair will serve for a term to coincide with the City Councilor's term, the designated students from the Portsmouth School District will rotate, and the community members from the Blue Ribbon Committee on Sustainable Practices will be appointed to staggered three-year terms. After attrition causes the number of former Blue Ribbon Committee on Sustainable Practices community members to fall under ten, the Mayor with the approval of the City Council can appoint new community members to three-year terms on the Sustainability Committee. Afterwards, the Sustainability Committee will have between six and ten community members that have a demonstrated experience in or passion for sustainability, mitigating climate change, and protecting our eco-system. The Blue Ribbon Committee on Sustainable Practices member who has the most seniority will be the Chair of the Sustainability Committee, until the Sustainability Committee votes for a Chair at their first meeting. The Sustainability Committee will then vote for a Chair to serve a two-year term at their first meeting in all even years.

B. **Powers and Duties:** The Sustainability Committee shall provide advice and guidance to the City Council, the City Manager, and City Boards with respect to:

1. Implementation of the Climate Action Plan, achieving Portsmouth's Renewable Energy Policy, and additional recommendations on increasing energy efficiency, reducing greenhouse gas emissions, and taking measures to build resiliency against climate change.

2. Increasing awareness of sustainable practices among residents, businesses, visitors, municipal staff, and other stakeholders to ensure that Portsmouth remains a leader as an Eco-municipality.

3. Standing for environmental justice while protecting our eco-systems.

C. **Limitations:** Nothing herein shall limit the power of the City Council or City Manager to take immediate action in the event of exigent circumstances. Nor shall anything herein limit the

ability of the Sustainability Committee to appoint subcommittees or determine the format of how to best structure meetings.

D. Effective Date: This ordinance will take effect upon adoption of Portsmouth's Climate Action Plan.

DRAFT



May 8, 2023

To: Beth Moreau, City Councilor, and Chair of the Land Use Commission

Re: Staff Review of City-Owned Parcels for Potential Reuse as Workforce Housing

As requested, the planning staff reviewed the total list of 197 city-owned parcels to evaluate the potential reuse of any parcels for workforce housing.<sup>1</sup> Importantly, as part of the initial review, staff focused on the city-owned parcels over one acre in size as these offered the biggest opportunity to produce higher density, multi-family workforce housing. Staff utilized the city's mapping software (MapGeo) and other information collected on a site visit to each of the 12 properties potentially suitable for multi-family, workforce housing.<sup>2</sup> The site suitability assessment identified site constraints including, but not limited to, the following:

- Lot Shape and Size
- Access Availability
- Wetland Resources
- Natural Features
- Steep Slopes
- Soil Conditions
- Available Utilities and Infrastructure
- Proximity to Employment Centers, Services and Recreational Amenities
- Conservation, Utility, or Other Easements
- Existing Use(s)
- Abutting Land Use(s) and Development Patterns

After an evaluation of these site constraints (Shown in Table 1), staff shortlisted 12 properties for further evaluation and performed an on-the-ground site-visit.<sup>3</sup> The site-visit proved to be invaluable in understanding the attributes of these properties and assessing their suitability for use as a multi-family workforce housing project.

In nearly all instances, the shortlisted properties had significant and obvious conservation value as active or passive park land. Additionally, a number of properties also had the presence of active recreational facilities such as regulation-sized ball fields with associated parking, concessions, and lighting. Other properties, such as the Sagamore Creek parcel behind the High

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<sup>1</sup> Although this study was focused on city-owned properties the PHA owns several parcels that may be suitable for redevelopment or expanded housing. Given the Committee's focus on workforce housing, such a review would be helpful.

<sup>2</sup> Note that all the short-listed large parcels are currently zoned "municipal" so they would require rezoning if sold and redeveloped by a for-profit developer.

<sup>3</sup> Note that 195 Greenleaf Ave. was added to the list after discussion at the Land Use Committee on 5-5-23.

School, demonstrated enormous ecological and passive recreational value with the potential to become landmark parks with walking trails and substantial wildlife conservation areas.

In summary, our preliminary review and recommendation to the land use committee would be to focus on four (4) of the larger city-owned properties for further study and reuse potential as multi-family, workforce housing.<sup>4</sup> The properties and their projected developable area are as follows:

1. 1 Junkins Ave. (the lower city hall parking lot – approx. 1 acre)
2. Falkland Way (the open parcel in front of the PHA property / approx. 1 acre)
3. 35 Sherburne Rd. (the Lister Academy / approx. 5 acres)
4. 195 Greenleaf Ave. (Greenleaf Rec Center / approx. 3 acres)

Importantly, this assessment is not an endorsement for any particular density or layout on any of these properties. Rather, it is simply a recognition that these properties – either due to their available land area and/or existing buildings that may lend themselves to redevelopment – appear to offer opportunities for multi-family housing.

Table 1 below illustrates the assessment criteria we used when evaluating each property.<sup>5</sup> If requested by the City Council we can provide further detail on this assessment at a subsequent City Council or Land Use Committee meeting.

Respectfully,

Nicholas Cracknell, Principal Planner

Cc: Peter Britz, Planning Director

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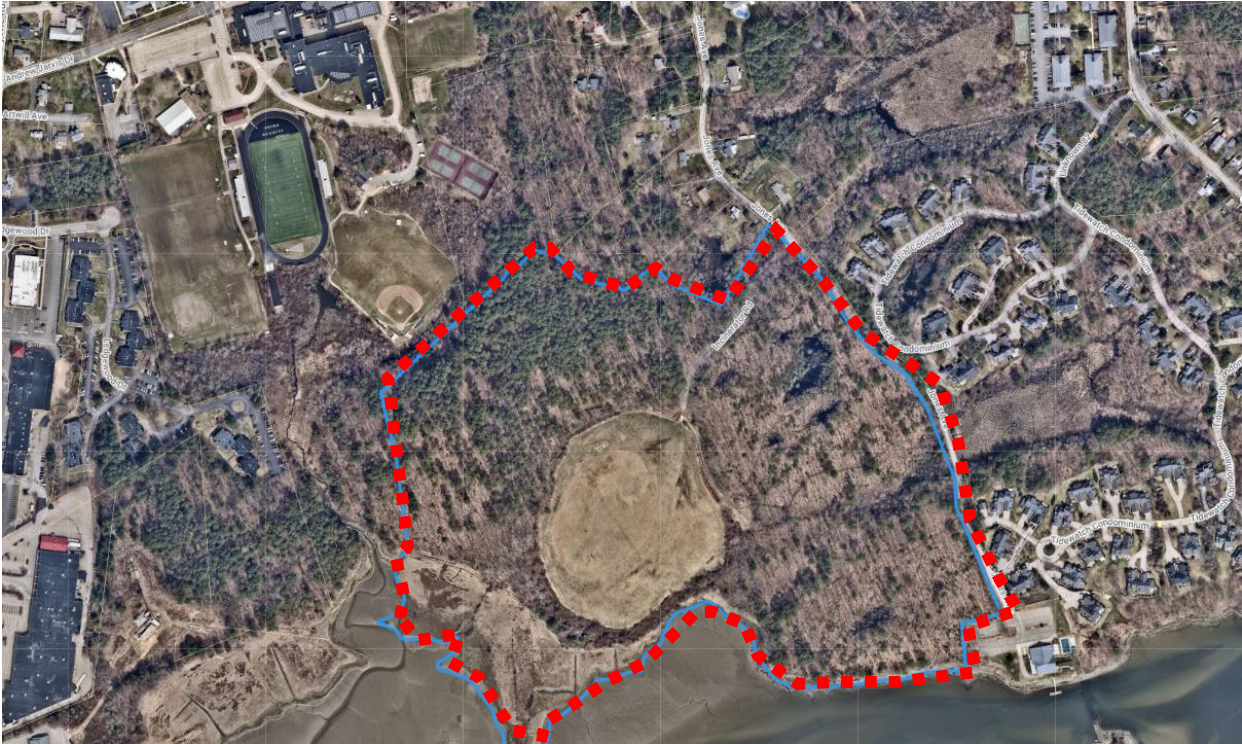
<sup>4</sup> Although some city-owned smaller parcels could support additional workforce housing opportunities, staff initially focused on these larger parcels to provide a substantial likelihood of supporting larger, multi-family housing projects.

<sup>5</sup> Rather than a detailed assessment and evaluation of engineering or geo-technical information, Table 1 represents preliminary staff findings after map review and a site visit. Thus, further investigation would be recommended for any of the short-listed parcels prior to a final determination of suitability for multi-family housing. Similarly, the project size and density of any multi-family housing development on these properties as not been determined given the need for further site information.

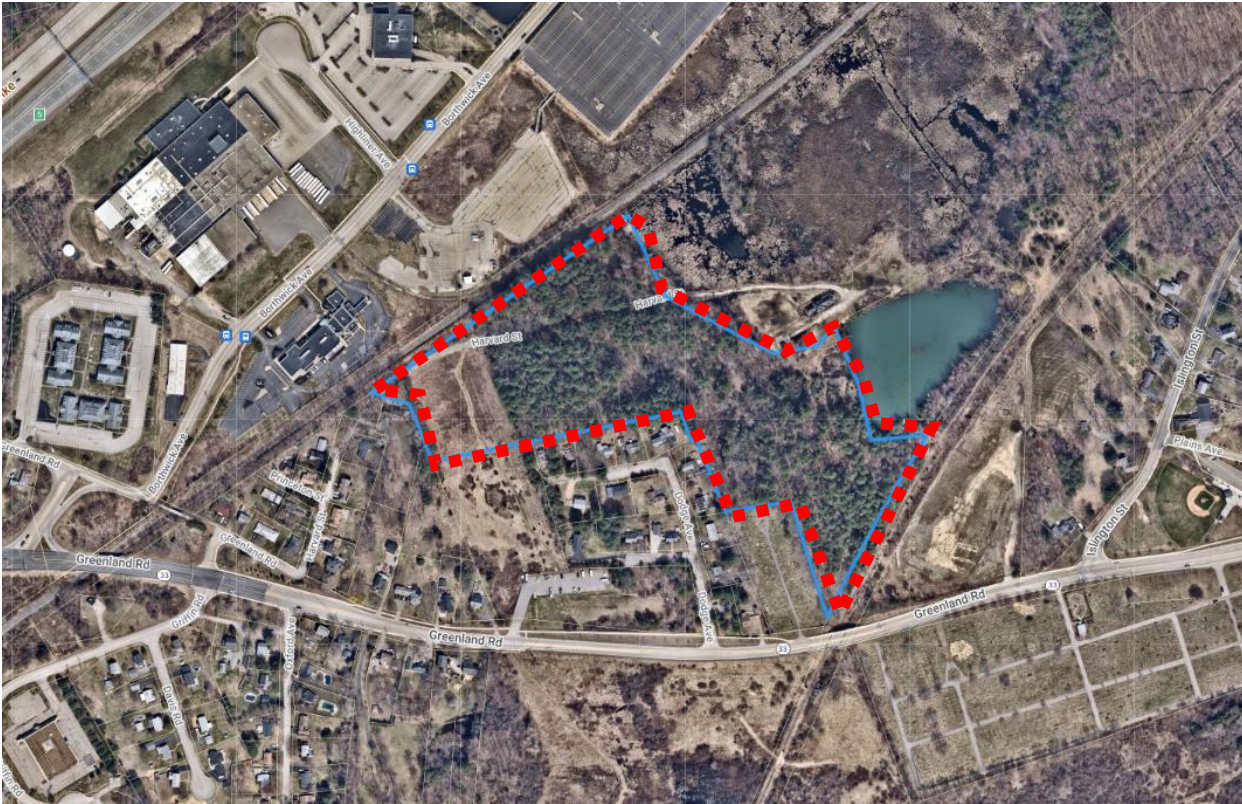
**Table 1 – Property Assessment Matrix**

SITE ASSESSMENT CRITERIA (5 = Highest and 1 = Lowest)														
PROPERTY	Location	Lot Shape	Developable Area (Ac.)	Access Availability	Wetland Resources	Natural Features	Steep Slopes	Soil Conditions	Available Utilities and Infrastructure	Proximity to Employment Centers, Services and Recreational Amenities	Conservation, Utility, or Other Easements	Existing Use(s)	Abutting Land Use(s) and Development Patterns	Total Score
1	Jones Avenue	3	3	2	3	2	2	2	2	2	1	2	2	26
2	Greenland Road	2	3	1	2	2	4	2	3	3	1	2	2	27
3	Sagamore Avenue	3	1	4	2	2	3	2	4	2	1	2	2	28
4	Sherburne Road	2	3	2	3	3	2	3	3	2	3	3	2	31
5	445 Borthwick Avenue	3	3	3	1	2	3	1	5	3	2	2	3	31
6	Sagamore Avenue	4	4	3	3	2	3	3	3	2	1	1	3	32
7	134 Preble Way	5	2	4	3	2	3	3	5	3	3	2	2	37
8	25 Granite Avenue	3	4	4	4	3	4	4	5	5	5	1	4	46
9	Falkland Way	3	2	4	5	4	4	4	5	3	5	5	4	48
10	1 Junkins Avenue	5	3	5	5	5	3	4	5	5	5	5	4	54
11	195 Greenleaf Ave.	5	5	5	3	4	5	4	5	5	5	3	5	54
12	35 Sherburne Road	5	5	5	4	5	3	4	5	4	5	5	5	55

**Exhibit 1 – Aerial Images of Properties**



1. Jones Ave. (66A) – Passive Recreational Park and Conservation Area



2. Greenland Road (30A) – Passive Recreation and Conservation Area



3. Sagamore Ave. (16A) – Passive Recreation and Conservation Area



4. Sherburne Road (4.3A) – Passive Recreation and Conservation Area



5. 445 Borthwick Ave. (17A) – Passive Conservation Area



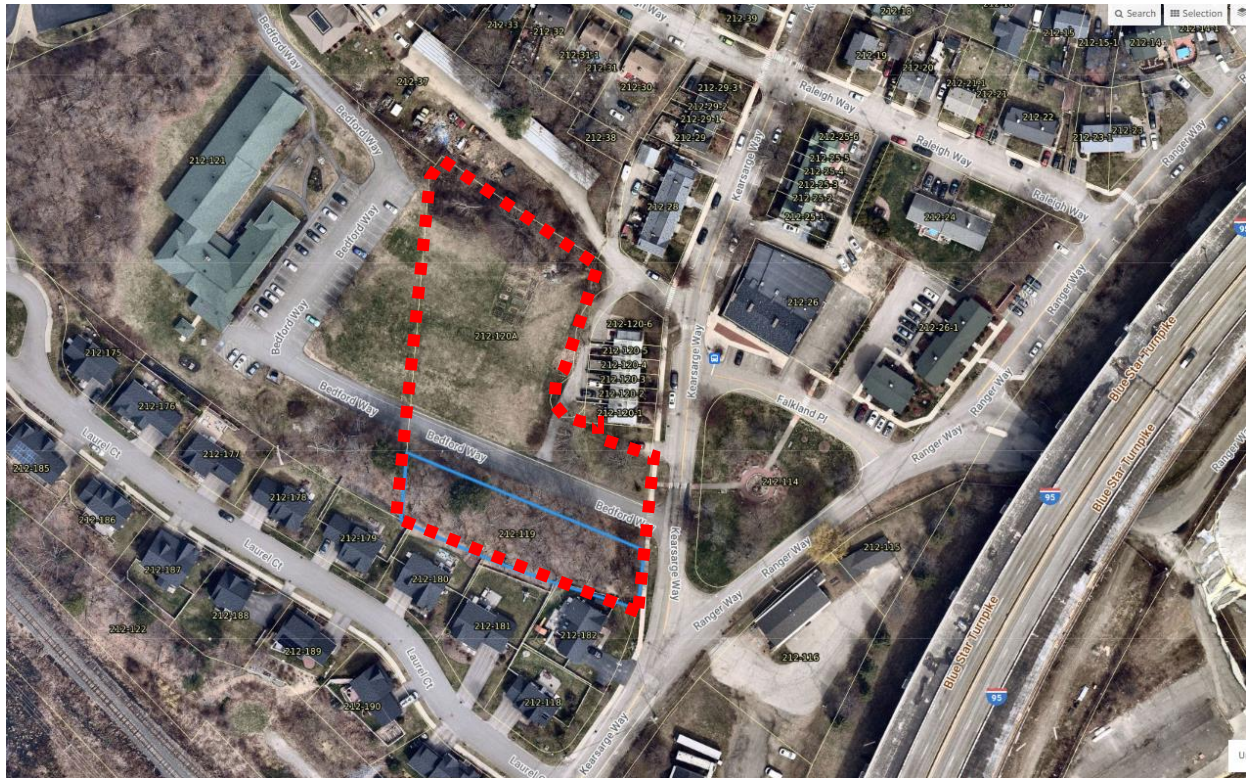
6. Sagamore Ave. (10.6A) – Passive Conservation Area



7. 134 Preble Way (5.2A) – Active and Passive Recreational Facility



8. 25 Granite Ave. (4A) – Active Recreational Facility

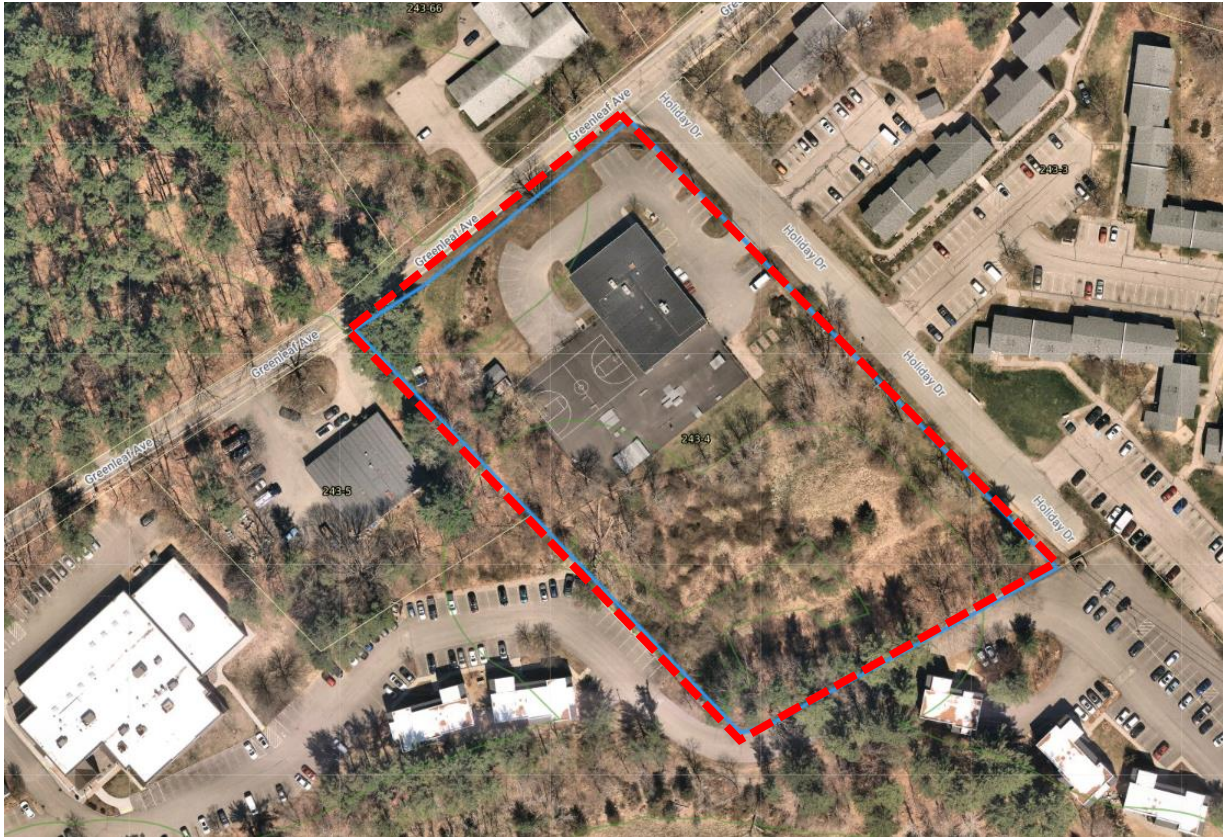


9. Falkland Way (.9A) – Potential for Multi-Family Housing



10. Lower Parking Lot – 1 Junkins Ave. (1A) – Potential for Multi-Family Housing





11. 195 Greenleaf Ave. (3.5 A) – Multi-Family Housing and Active Recreational Facility



12. 35 Sherburne Rd. (5.3A) – Potential Reuse as Multi-Family Housing

# PARKING and TRAFFIC SAFETY COMMITTEE

## ACTION SHEET

8:30 A.M. – April 6, 2023  
Conference Room A

**PRESENT:** Members: Chairman Andrew Bagley; Deputy Police Chief Mike Maloney; Public Works Director Peter Rice; Erica Wygonik; Mary Lou McElwain; Harold Whitehouse; Mark Syracuse; Stefanie Casella, Planning Department

City Staff: City Engineer Eric Eby, Parking Director Ben Fletcher

ACTION ITEMS FOR CITY COUNCIL
<ul style="list-style-type: none"><li>• None</li></ul>

- Roll Call
- Financial Report: **Voted** to accept and place on file Financial Report dated February 28, 2023.
- Public Comment Session: There were three speakers: Elizabeth Bratter commented on several subjects including the Islington Street speed limit, Islington Street cross streets, and Woodbury Avenue. Tom Kunysz and Ben VanCamp spoke regarding loading zone parking.
- Loading zones, request to lengthen time limits to 1 hour, by business owner: **Voted** to refer to staff for report back.
- Islington Street and Bartlett Street intersection, request for pedestrian improvements, by resident: **Voted** to refer to staff for report back at next meeting.
- Woodbury Avenue, request for traffic calming, by residents: **Voted** to approve revised traffic calming plan, with speed cushion trial for 2023.
- Dennett Street, request for traffic calming, by residents: Report back on proposed bump out, discussion of alternatives. **Voted** to install a speed feedback sign and report back.
- Monthly Accident Report from Police: Informational; no action required.
- Bartlett Street at Thornton Street, update on temporary roundabout trial: Informational; no action required.
- Market Street, update on closure for utility project: Informational; no action required.
- Outdoor dining barrier placement update: Informational; no action required.
- Adjournment: **Voted** to adjourn 9:20 A.M.

*Respectfully submitted by: Leila Birr*

**PARKING and TRAFFIC SAFETY COMMITTEE**  
PORTSMOUTH, NEW HAMPSHIRE

**CONFERENCE ROOM A**  
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

*Members of the public also had the option to join the meeting over Zoom.*

**8:30 AM**

**April 6, 2023**

**MINUTES**

**I. CALL TO ORDER**

Chairman Andrew Bagley called the meeting to order at 8:30 a.m.

**II. ATTENDANCE**

Members Present:

Chairman Andrew Bagley  
Public Works Director Peter Rice  
Deputy Police Chief Mike Maloney  
Stefanie Casella, Planning Department  
Erica Wygonik (Alternate)  
Harold Whitehouse  
Mary Lou McElwain  
Mark Syracuse

Absent

Steve Pesci  
Fire Chief William McQuillen

City Staff Present:

Parking Director Ben Fletcher  
City Engineer – Parking, Transportation and Planning Eric Eby

**III. FINANCIAL REPORT**

[00:05:56] Harold Whitehouse moved to accept the Financial Report dated February 28, 2023, and place it on file, seconded by Mary Lou McElwain. **On a unanimous vote, motion passed 8-0.**

**IV. PUBLIC COMMENT (15 MINUTES)**

This is the time for all comments on any of the agenda items or non-agenda items.

[00:07:07] There were three speakers: Elizabeth Bratter commented on several subjects

including the Islington Street speed limit, Islington cross streets, and Woodbury Avenue. Tom Kunysz and Ben VanCamp spoke regarding loading zone parking.

[00:29:23] Peter Rice moved to suspend the rules to take up item B under New Business on the agenda first, seconded by Mark Syracuse. **Motion passed on a unanimous vote 8-0.**

## V. PRESENTATIONS

None

## VI. NEW BUSINESS

*(No public comment during Committee discussion without Committee approval.)*

- A. [00:29:27] Loading zones, request to lengthen time limits to 1 hour, by business owner. Mark Syracuse moved to refer to staff for report back, seconded by Mary Lou McElwain. **Motion passed on unanimous vote, 8-0.**
- B. [00:31:08] Islington Street and Bartlett Street intersection, request for pedestrian improvements, by resident. Mary Lou McElwain made a motion to refer to staff for report back at next meeting, seconded by Mark Syracuse. **On a unanimous vote, motion passed 8-0.**

## VII. OLD BUSINESS

- A. [00:33:06] Woodbury Avenue, request for traffic calming, by residents. Report back on neighborhood meeting, changes to plan. Peter Rice moved to approve revised traffic calming plan, with speed cushion trial for 2023, seconded by Mary Lou McElwain. **Motion passed on a unanimous vote, 8-0.**
- B. [00:43:33] Dennett Street, request for traffic calming, by residents. Report back on proposed bump out, discussion of alternatives. Peter Rice moved to install a speed feedback sign and report back, seconded by Mary-Lou McElwain. **Motion passed on a unanimous vote, 8-0.**

## VIII. INFORMATIONAL

- A. [00:50:48] Monthly Accident Report from Police.
- B. [00:51:15] Bartlett Street at Thornton Street, update on temporary roundabout trial. We are waiting for the asphalt plants to open.
- C. [00:51:42] Market Street, update on closure for utility project. Market Street will be closed between Bow Street and Market Square for 4 weeks beginning Monday. It will be open nights and weekends.

D. [00:52:52] Outdoor dining barrier placement update. We will begin placing barricades the last week of April.

**IX. MISCELLANEOUS**

[00:53:24] There is a Rail Trail preconstruction meeting taking place this morning.

**X. ADJOURNMENT**

Harold Whitehouse moved to adjourn at 9:20 a.m., seconded by Peter Rice. **On a unanimous vote, motion passed 8-0.**

Respectfully submitted,

Leila Birr  
Administrative Assistant  
Department of Public Works

# PARKING and TRAFFIC SAFETY COMMITTEE

## ACTION SHEET

8:30 A.M. – May 4, 2023  
Conference Room A

**PRESENT:** Members: Chairman Andrew Bagley; Deputy Police Chief Mike Maloney; Public Works Director Peter Rice; Erica Wygonik; Mary Lou McElwain; Harold Whitehouse; Mark Syracuse; Stefanie Casella, Planning Department; Fire Chief Bill McQuillen

City Staff: City Engineer Eric Eby, Parking Director Ben Fletcher, Associate Engineer Tyler Reese

ACTION ITEMS FOR CITY COUNCIL
<ul style="list-style-type: none"><li>• None</li></ul>



- **Roll Call**
- **Financial Report:** Voted to accept and place on file Financial Report dated March 31, 2023.
- **Public Comment Session:** There were five speakers: Barbara Pamboukas spoke regarding traffic on Cutts Street. Anne Weidman and Roger Goun spoke in support of increased handicap parking at Prescott Park during events. Anne Poubeau and William Davis spoke regarding the roundabout at Bartlett and Thornton Streets. Ms. Poubeau also mentioned the upcoming bicycle rodeo.
- **Hanover Street, request to renew valet license, by the 100 Club:** Voted to approve renewal of valet license for 1 year.
- **Prescott Park parking lot, proposal to provide additional handicap parking for events, and discussion of inclusion of lot in Zone A, by Chairman:** Voted to approve additional handicap parking spaces during events.
- **Islington Street and Bartlett Street intersection, request for pedestrian improvements, by resident:** Report back on traffic signal cycle adjustments and crosswalks.
- **Loading zones, request to lengthen time limits to 1 hour, by business owner:** Voted to place item on file.
- **Loading zones, report back on sharing loading zones as parking inventory at designated times, by DPW:** Voted to approve change in parking hours at specified loading zones.
- **Monthly Accident Report from Police:** Informational; no action required.

- **McKinley Road, update on traffic calming measures**: Informational; no action required.
- **Bartlett Street at Thornton Street, update on temporary roundabout trial**: Informational; no action required.
- **Market Street, update on closure for utility project**: Informational; no action required.
- **Outdoor dining barrier placement update**: Informational; no action required.
- **Bicycle Rodeo and Mayor's bike ride**: Informational; no action required.
- **Adjournment**: **Voted** to adjourn 9:20 A.M.

*Respectfully submitted by: Leila Birr*

**PARKING and TRAFFIC SAFETY COMMITTEE**  
PORTSMOUTH, NEW HAMPSHIRE

**CONFERENCE ROOM A**  
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

*Members of the public also had the option to join the meeting over Zoom.*

**8:30 AM**

**May 4, 2023**

**MINUTES**

**I. CALL TO ORDER**

Chairman Andrew Bagley called the meeting to order at 8:30 a.m.

**II. ATTENDANCE**

Members Present:

Chairman Andrew Bagley  
Public Works Director Peter Rice  
Deputy Police Chief Mike Maloney  
Fire Chief William McQuillen  
Stefanie Casella, Planning Department  
Erica Wygonik (Alternate)  
Harold Whitehouse  
Mary Lou McElwain  
Mark Syracuse

Absent

Steve Pesci

City Staff Present:

Parking Director Ben Fletcher  
City Engineer – Parking, Transportation and Planning Eric Eby  
Associate Engineer Tyler Reece

**III. FINANCIAL REPORT**

[00:06:39] Peter Rice moved to accept the Financial Report dated March 31, 2023, and place it on file, seconded by Chief McQuillen. **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.

[00:07:58] There were five speakers: Barbara Pamboukas spoke regarding traffic on



Maplewood Avenue at Cutts Street. Anne Weidman and Roger Goun spoke in support of increased handicap parking at Prescott Park during events. Anne Poubeau and William Davis spoke regarding the roundabout at Bartlett and Thornton Streets. Ms. Poubeau also mentioned the upcoming bicycle rodeo.

**V. PRESENTATIONS**

None

**VI. NEW BUSINESS**

*(No public comment during Committee discussion without Committee approval.)*

- A. [00:19:15] Hanover Street, request to renew valet license, by the 100 Club. Mary Lou McElwain moved to approve renewal of valet license for 1 year, seconded by Erica Wygonik. **Motion passed on unanimous vote, 9-0.**
- B. [00:19:46] Prescott Park parking lot, proposal to provide additional handicap parking for events, and discussion of lot in Zone A, by Chairman. Mark Syracuse moved to approve additional handicap parking spaces during events. **Motion passed on a unanimous vote, 9-0.**

**VII. OLD BUSINESS**

- A. [00:26:33] Islington Street and Bartlett Street intersection, request for pedestrian improvements, by resident. Report back on traffic signal adjustments and crosswalks.
- B. [00:28:55] Loading zones, request to lengthen time limits to 1 hour, by business owner. Peter Rice made a motion to place item on file, seconded by Chief McQuillen. **On a unanimous vote, motion passed 9-0.**
- C. [00:33:19] Loading zones, report back on sharing loading zones as parking inventory at designated times, by DPW. Erica Wygonik moved to approve change in parking hours at specified loading zones, seconded by Mary Lou McElwain. **Motion carried on a unanimous vote 9-0.**

**VIII. INFORMATIONAL**

- A. [00:34:54] Monthly Accident Report from Police.
- B. [00:35:30] McKinley Road, update on traffic calming measures.
- C. [00:37:08] Bartlett Street at Thornton Street, update on temporary roundabout trial.
- D. [00:48:53] Market Street, update on closure for utility project.

- E. [00:49:53] Outdoor dining barrier placement update.
- F. [00:50:23] Bicycle Rodeo and Mayor's bike ride, May 20.

**IX. MISCELLANEOUS**

[00:51:48] Harold Whitehouse commented that it would be beneficial for the City Manager to continue attending Parking and Traffic Safety Committee meetings. Discussion ensued that she has other significant demands on her time and staff does report back to her on these meetings.

[00:54:22] Mary-Lou McElwain asked about parking ticketing practices.

[00:58:13] Erica Wygonik requested an update on the Middle Street and Middle Road intersection reconstruction.

[00:58:52] The store at 147 Congress Street, at the corner of Maplewood Avenue and Congress Street, will be undergoing renovations. The sidewalks on that corner will be closed for a month or more.

**X. ADJOURNMENT**

Mark Syracuse moved to adjourn at 9:25 a.m., seconded by Mary Lou McElwain. **On a unanimous vote, motion passed 9-0.**

Respectfully submitted,

Leila Birr  
Administrative Assistant  
Department of Public Works

# City of Portsmouth



MEMORANDUM

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**TO:** City Council

**CC:** Karen Conard, City Manager; Sean Clancy, Assistant City Manager for Economic Development

**FROM:** Phil Cohen, Chair, Economic Development Commission (EDC)

**DATE:** May 10, 2023

**SUBJECT:** EDC Powers and Duties (Section 1.402)

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The purpose of this memo is to provide an outline of requested changes to the City of Portsmouth Administrative Code Chapter One, Article IV Commissions and Authorities, section 1.402- Powers and Duties of the Economic Development Commission (the “EDC”).

Current Language:

- ~~B. Powers and Duties: The Commission shall encourage the establishment of business and industry in Portsmouth and the surrounding area and promote the welfare of local industry and general business. (Adopted as amended 12/03/90)~~
- ~~C. 1. The Commission shall make recommendations to the City Council concerning the acquisition, bonding, developing, building, leasing and mortgaging of commercial and industrial land and buildings and other matters incidental to attracting business and industry to Portsmouth. (Adopted as amended 12/03/90)~~
- ~~2. It shall be the general responsibility of the Economic Development Commission to increase and sustain the business and personal prosperity of all residents of this community while protecting and maintaining the quality of our natural environment and historic and cultural assets. This process should consist of the encouragement of a broad, productive community effort to coordinate and enhance the utilization of all community resources involved in any respect with economic development. The process should further ensure that adequate financing sources are available to those qualified enterprises, which desire to start up, expand, and/or locate in our Community. (Adopted as amended 12/03/90)~~

**Section 1.402 ECONOMIC DEVELOPMENT COMMISSION -**  
Delete existing Subsections B and C and replace with the following:

- B. Powers and Duties: The Commission shall develop and recommend to the City Council and other departments and boards and committees of the City policies, procedures, regulations, and ordinances and take such other actions that encourage and promote economic and business development, including business recruitment, retention, and growth, and the creation and maintenance of a healthy, diversified, and sustainable business community in the City and broad prosperity in the community.
- C. Functions: In furtherance of its duties set out in Subsection B, the Commission may perform one or more of the following functions:
1. Assist the City Council and staff in the formulation of economic development goals for the City.
  2. Assess existing economic development policies of the City for the purpose of recommending such modifications as may be appropriate to promote the economic development goals of the City.
  3. Formulate or assist in the formulation of new economic development strategies, policies, regulations, and ordinances for the purpose of achieving the economic development goals of the City in collaboration with the Assistant City Manager for Economic Development or as designated by the City Manager.
  4. Prepare and submit recommendations to the City Council, other boards and commissions and staff on a broad range of matters generally related to economic development, including, business development, public-private partnerships, maintenance and development of commercial, industrial and business districts, and business retention and attraction programs.
  5. Make recommendations to the City Council regarding the acquisition, bonding, developing, building, leasing, financing and mortgaging of commercial and industrial land and buildings and other matters incidental to retaining and attracting business and industry to the City.
  6. Respond to inquiries of the City Council on matters relating to economic development.
  7. Conduct research into the economic conditions and trends of the community and the greater regional economy.
  8. Survey the business community regarding its condition, needs for and obstacles to its continued health, success, and growth.
  9. Meet and confer with businesses, civic organizations, developers, educational institutions, landowners, and citizens to learn the resources and needs of the community and to promote the merits of economic development.
  10. Provide leadership and guidance to assigned department heads and staff in the planning of economic development and redevelopment.
  11. Perform such other duties as and provide such other information, assistance, and advice to the City Council, other boards and commissions and staff as is consistent with Subsection B herein.

**Recommendation and Action Requested**

**I would recommend the City Council move to refer to the Governance Committee and Legal Department for report back to the City Council.**



The State of New Hampshire  
**Department of Environmental Services**

**Robert R. Scott, Commissioner**



April 29, 2022  
VIA EMAIL

Brian Goetz  
Deputy Director of Public Works, City of Portsmouth  
[bfgoetz@cityofportsmouth.com](mailto:bfgoetz@cityofportsmouth.com)  
680 Peaverly Hill Road  
Portsmouth, NH 03801

Subject: 2022-2024 Strategic Planning Grant  
City of Portsmouth **PWS# 1951010**  
**Project# SPL-ARPA-013**

Dear Mr. Goetz,

Congratulations on your successful application to the 2022-2024 Strategic Planning Grant Program. The Department of Environmental Services intends to award a **grant for \$50,000** to the City of Portsmouth for this important project.

To award the grant funds we must enter into a Grant Agreement and obtain Governor and Executive Council approval. Attached is the Grant Agreement paperwork. Please review these documents carefully and if everything is acceptable, please complete the documents as follows:

1. Print the attached Grant Agreement and have the authorized representative sign page 1 and initial and date pages 2 and 3.
2. Print the attached Exhibits A – C and have the authorized representative sign initial and date the bottom of each page.
3. Print the attached Consultant Selection Justification Form and indicate which consulting firm your community will be contracting with and how that consultant was selected. If the qualified consultant was selected based on an established, current relationship, please provide justification and explain how that experience will benefit the proposed project in the Non-competitive/Sole Source section.
4. Submit an original [Certificate of Vote](#) signed and notarized.
5. Submit a current certificate of insurance in compliance with our coverage requirements as outlined in the Grant Agreement. The Certificate Holder should be “State of New Hampshire, Department of Environmental Services, 29 Hazen Drive, PO Box 95, Concord, NH 03302-0095.”

Please return **single-sided hard copy versions** of the completed documents to the attention of Luis Adorno at the address below. **Please note that any work funded by the grant cannot be completed until after the Governor and Council’s approval.** All paperwork needs to be in no later than **May 30, 2022** to assure that we get all of the proper approvals in place. A checklist has been included for your reference.

Once the required paperwork is returned, NHDES will submit the funding package to Governor and Council for approval. As we move forward through the project, your NHDES assigned engineer for technical project review and reimbursement requests will be Jen Mates. They can be reached at 559-0028 or [jennifer.s.mates@des.nh.gov](mailto:jennifer.s.mates@des.nh.gov). Please feel free to contact Luis Adorno at 271-2472 or [luis.s.adorno@des.nh.gov](mailto:luis.s.adorno@des.nh.gov) if you have any questions about your grant agreement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kathryn Moran", with a horizontal line extending to the right.

KC Moran, PE  
Environmentalist III  
Drinking Water and Groundwater Bureau

Cc: Jennifer Mates, PE, NHDES Engineer  
Luis Adorno, NHDES Program Administrator

Attachments: Grant Agreement  
Exhibits A-C  
Consultant Selection Justification Form  
Planning Grant Checklist Reference

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	
<b>1.3. Grantee Name</b> City of Portsmouth		<b>1.4. Grantee Address</b> 680 Peverly Hill Road, Portsmouth, NH 03801	
<b>1.5. Grantee Phone #</b> 603-766-1420	<b>1.6. Account Number</b> 03-44-44-441018-2476-072	<b>1.7. Completion Date</b> July 1, 2024	<b>1.8. Grant Limitation</b> \$ 50,000.00
<b>1.9. Grant Officer for State Agency</b> Luis Adorno		<b>1.10. State Agency Telephone Number</b> 603-271-2472	
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>	
<b>Grantee Signature 2</b>		<b>Name &amp; Title of Grantee Signor 2</b>	
<b>Grantee Signature 3</b>		<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").

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.

# 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:	5/5/23
Department/ Contact Person:	Senior Activity Center, Nicole Finitis, Senior Services Supervisor
Donation Amount:	500.00

Are Funds to be directed to a particular department, program or fund? – If yes, please provide detail below:

Senior Luncheon Funds

Is there a particular purpose intended with this donation:

**Purchase of annual and perennial flowers, solar bird bath, pavers, soil for our front garden beds maintained by Portsmouth Garden Club.**

Other Information/Special Conditions:

## Donor Information

First & Last Name:	
Business Name:	Portsmouth Garden Club
Address*:	PO Box 8431, Portsmouth, NH 03801
Phone*:	
Email*:	<a href="mailto:portsmouthnhgardenclub@gmail.com">portsmouthnhgardenclub@gmail.com</a>

*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 POLICE COMMISSION**

**MEMORANDUM**

DATE: MAY 8, 2023  
TO: KAREN CONARD, CITY MANAGER  
FROM: STEFANY SHAHEEN, PORTSMOUTH POLICE COMMISSION CHAIR  
MARK D. NEWPORT, CHIEF OF POLICE  
RE: GRANTS

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On behalf of Chair Stefany Shaheen~

At the February 27<sup>th</sup>, 2023 Police Commission meeting, the Board of Police Commissioners approved and accepted the following grant:

- a. A grant in the amount of \$377, 882 from the US Department of Justice for the NH Internet Crimes Against Children Task Force.**

At the April 18<sup>th</sup>, 2023 Police Commission meeting, the Board of Police Commissioners approved and accepted the following grant:

- a. A 2023 Safe & Active grant award from the Injury Prevention Center at Dartmouth-Hitchcock for 50 multi-sport helmets, 50 bike lights and educational materials.**

We submit the information to you pursuant to City Policy Memorandum #94-36 and respectfully request for this item to be added to the agenda for the City Council's consideration and approval at their May 15<sup>th</sup>, 2023 meeting. If the May 15<sup>th</sup> meeting is intended for another purpose, i.e. budget preparation, please let me know and I will request another future date.

Respectfully submitted,



Jacqueline D. Burnett  
Office of the Chief

copies: Business Asst. Patti Smallwood  
Business Ops. Mgr. Karen Senecal