



Town Council - Meeting Agenda

September 19, 2023 @ 6:30pm
Council Chambers - 1 Portland Avenue

www.oobmaine.com/town-council

**Members of the public wishing to view the meeting from home may tune into Local Access TV (Channel 3 or 1301 - check with your provider) or by clicking the Meeting Videos link on oobmaine.com.)*

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ACKNOWLEDGEMENTS:

GOOD & WELFARE:

PRESENTATION:

Fire Department Appointments – Chief John Gilboy

ACCEPTANCE OF MINUTES:

Accept minutes from the 9/3/23 Regular Council Meeting.

Chair: Shawn O'Neill

PUBLIC HEARINGS ORDINANCE AMENDMENTS:

Public Hearing #1

Moratorium on Short Term Rentals:

Shall the Council enact an ordinance establishing a Moratorium on Short Term Rentals, whereas no specific regulations governing Short Term Rentals exists under the Town of Old Orchard Beach's Zoning Ordinances and which has raised concerns related to public safety and welfare and potential adverse effects on the fabric of residential neighborhoods.

Chair: Shawn O'Neill

**TOWN OF OLD ORCHARD BEACH
ORDINANCE ESTABLISHING A MORATORIUM
ON SHORT TERM RENTALS**

WHEREAS, residential dwelling units have increasingly been advertised and operated as Short Term Rentals throughout the Town of Old Orchard Beach (“the Town”); and

WHEREAS, no specific regulation governing Short Term Rentals exists under the Town of Old Orchard Beach’s Zoning Ordinances; and

WHEREAS, Short Term Rentals raise a number of concerns related to public safety and welfare, including, but not limited to, potential adverse effects on the fabric of residential neighborhoods and impacts of transient occupation on adjacent residents, and the inability to maintain housing availability for long-term residents; and

WHEREAS, under Section 18-33 of the Town’s Code of Ordinances, any person who owns, operates, or conducts a business, including seasonal rental units, temporary seasonal housing, and year round housing, must obtain a license from the Town Council pursuant to the Fee Schedule in Appendix A of the Code, which does not list Short Term Rentals as a stand-alone category; and

WHEREAS, there have been an increasing number of dwelling units operating as a Short Term Rentals;

WHEREAS, the Town’s current ordinances do not provide an adequate mechanism to regulate and prevent the potential for serious public harm from the increase in Short Term Rentals throughout the Town; and

WHEREAS, the Town’s existing ordinances do not provide an adequate mechanism to regulate and control Short Term Rentals and are inadequate to prevent the potential for serious public harm from the continued use of residential property as Short Term Rentals; and

WHEREAS, the Town needs a reasonable amount of time to study the land use implications of Short Term Rentals and to develop reasonable regulations governing the licensing, permitting, location, and operation of Short Term Rentals and their operation; and

NOW THEREFORE, pursuant to the authority granted to it by 30-A M.R.S. § 4356, be it hereby ordained by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, as follows:

1. DEFINITIONS.

As used in this Ordinance, the following term has the following meaning:

“*Short Term Rental*” means any building or structure, or portion thereof, that is offered or provided to a guest or guests to be used for living or sleeping for a fee for less than 30 consecutive days, with the exception of motels, hotels, bed and breakfast, inns, overnight cabins, and campgrounds. Short-term rental units may be whole house, duplexes, multifamily, apartments, condominiums, condominium hotels/motels, and individual rooms or individual units in homes, duplexes, multifamily, apartments, condominiums, and condominium hotels/motels.

2. APPLICABILITY.

This moratorium shall apply to the issuance of all new business licenses for Short Term Rentals which are requested or arise on or after the effective date of the Ordinance, in the following Zoning Districts only:

- Residential 1 District (R-1)
- Residential 2 District (R-2)
- Residential 3 District (R-3)
- Residential 4 District (R-4)
- Single Family Private Dwelling District (R-5)
- Rural District
- Planned Mixed Use Development

Notwithstanding the provisions of 1 M.R.S.A. § 302, this Ordinance shall apply to applications or requests for business license for Short Term Rentals, whether or not an application or proceeding to establish or expand said use prior to the enactment of this Ordinance

would be deemed a pending proceeding. No person may establish, operate, or rent a Short-Term Rental without a business license during the time this Ordinance is in effect.

This Ordinance does not apply to renewal applications for existing licenses, or for license applications for the operation of Short Term Rentals in dwelling units in which there was a transfer of title and ownership within the year prior to the effective date of this Ordinance.

3. PROHIBITION.

During the time this Ordinance is in effect, no official, officer, board, body, agency, agent or employee of the Town of Old Orchard Beach shall accept, process or act upon any application for any approval, including but not limited to a business permit, building permit, certificate of occupancy, site plan review, conditional use, or any other approval, relating to the establishment, or operation, of a Short Term Rental, other than renewals of existing licenses. No person shall establish or operate a Short Term Rental within the Town of Old Orchard Beach that was not approved and licensed by the Town prior to the effective date of this Ordinance, other than an application for renewal of an existing license, or for license applications for the operation of Short Term Rentals in dwelling units in which there was a transfer of title and ownership within the year prior to the effective date of this Ordinance.

4. ENFORCEMENT, VIOLATION AND PENALTIES.

This Ordinance shall be enforced by the Code Enforcement Officer of the Town of Old Orchard Beach. Any person who violates this Ordinance shall be subject to civil penalties and other remedies as provided in 30-A M.R.S.A. § 4452. If a Short Term Rental is operated in violation of this Ordinance, each day such use continues constitutes a separate violation.

5. EFFECTIVE DATE.

This Ordinance takes effect immediately upon adoption and shall expire on the 181st day thereafter, unless earlier extended, repealed or modified by the Old Orchard Beach Town Council.

6. SEVERABILITY.

Should any section or provision of this Ordinance be declared by any court to be invalid, such a decision shall not invalidate any other section or provision.

Public Hearing #2

Contract Zone Agreement:

Shall the Council approve a Contract Zone Agreement between Land Matters, LLC and the Town of Old Orchard Beach, for the property located at 60 Saco Ave., Map 206, Block 10, Lot 1 in the GB2 district, pursuant to 30A M.R.S.A., Section 4352 (8), Chapter 78, Section 78-31 and Chapter 78, Article IX of the Old Orchard Beach Zoning Ordinance, and Section 410 of the Old Orchard Beach Charter. The purpose of the Contract Zone is to allow the establishment of a 6-unit residential condominium building.

Chair: Shawn O'Neill

THE FRANKLIN CONTRACT ZONE
CONTRACT ZONING AGREEMENT
BETWEEN LAND MATTERS, LLC and THE TOWN OF OLD ORCHARD BEACH

This Contract Zoning Agreement is made this ____ day of _____, 2023 by and between the **TOWN OF OLD ORCHARD BEACH**, a body corporate and politic located in the County of York and State of Maine (hereinafter the “Town”) and **LAND MATTERS, LLC**, a Maine limited liability company with a principle place of business in Saco, Maine, (hereinafter “Property Owner”).

WHEREAS, pursuant to a certain Purchase & Sale Agreement dated April 9, 2021, Property Owner has a right and interest in a parcel of real estate located at 60 Saco Avenue, Town of Old Orchard Beach, Maine (Tax Map 206, Block 10, Lot 1) and which address shall be changed to 9 Fern Park Avenue, Town of Old Orchard Beach, Maine, as depicted on the *Trillium Engineering Group boundary survey (the “Boundary Survey”)* and attached hereto as **Exhibit A** and incorporated herewith (hereinafter the “Property”).

WHEREAS, the Property is currently located in the General Business District 2 (GB-2) (“GB-2”), under the Old Orchard Beach Zoning Ordinance (“OOBZO”).

WHEREAS, the Property consists of approximately **0.325 acres (14,176 sq/ft)** and is located at the corner of Saco Avenue and Fern Park Avenue.

WHEREAS, the Property is not currently in use having previously housed a branch of the U.S. Post Office and is built in the style of a commercial office building.

WHEREAS, Property Owner wishes to further develop and make use of the Property as a six (6) unit residential condominium so as to revitalize the Property and make use of it in conformity with the Town of Old Orchard Beach Comprehensive Plan (“OOB Comp Plan”).

WHEREAS, Property Owner and the Town wish to create a separate zone known as The Franklin Contract Zone which will enable above-described uses to exist on the Property.

WHEREAS, the Town has the authority to enter into a contract re-zoning for the Property pursuant to 30-A M.R.S.A. §4352 and Article IX “Contract Zoning”, et seq., of the OOBZO.

WHEREAS, after notice and hearing and due deliberation on the re-zoning phase, the Old Orchard Beach Planning Board recommended re-zoning of the Property.

WHEREAS, pursuant to Section 78-2138 and 30-A M.R.S.A. § 4352(8), the Planning Board and the Town Council have determined that: the re-zoning is consistent with the Town’s Comprehensive Plan; and, that the re-zoning is consistent with existing uses and allowed uses within the original zone; and, that the conditions described in this Agreement and in the Franklin Contract Zone are sufficient to achieve the purposes described in Section 78-2131.

WHEREAS, the re-zoning has been adopted by the Town Council.

NOW THEREFORE, in consideration of the mutual promises made to each other, the parties covenant and agree as follows:

1. The Town will amend the Zoning Ordinance and map to create and make reference to this Agreement and the The Franklin Contract Zone as depicted on Exhibit A.

2. Subject to final Planning Board approval and after public hearing, of the Site Plan, the Property Owner and/or its heirs, successors and assigns shall be authorized to use the Property for any of the uses set forth in the description of The Franklin Contract Zone attached hereto as **Exhibit B** and incorporated herewith.

3. In reviewing the Site Plan, the Planning Board will apply the standards set forth in the Old Orchard Beach Ordinance except as modified by the description of the Franklin Contract Zone attached hereto as Exhibit B and incorporated herewith. The project shall be developed substantially conforming with the layout shown on the Site Plan, Exhibit A. The Planning Board may make modifications of the Site Plan without amendment of this Agreement.

4. Property Owner shall record the Contract Zoning Amendment in the York County Registry of Deeds and shall submit proof of recording to the Town's Code Enforcement Officer and Planner.

5. The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the Property and shall be amended only upon further written agreement of the Town and Property Owner and/or its heirs, successors and assigns to the Property.

6. The above restrictions, provisions and conditions are an essential part of the re-zoning, shall run with the Property and shall bind Property Owner and/or its heirs, successors and assigns of the Property or any party in possession or occupancy of the Property or any part thereof and shall inure to the benefit of and be enforceable by the Town.

7. If any of the restrictions, provisions, conditions or portions of this Agreement is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portions shall be deemed as separate, distinct and independent provisions and such determination shall not affect the validity of the remaining portions hereof.

8. Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Town of Old Orchard Beach Zoning Ordinance.

9. In the event that Property Owner and/or its successors and assigns fail to develop or operate the Property in accordance with this Agreement or in the event of any other breach of any conditions set forth in this Agreement, the Town Council shall have the authority, after written notice to Property Owner and/or its successors and assigns, and reasonable opportunity to

cure, to terminate this Agreement or to re-zone the Property to the current zone or any successor zone. In the event of such a re-zoning, the Property shall then be used for only such uses or otherwise allowed by law. The Town shall also have the ability to enforce any breach of this Agreement or any other violation of the Zoning Ordinance through the provisions of 30-A M.R.S.A. § 4452.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the ____ day of _____ 2023.

TOWN OF OLD ORCHARD BEACH

Witness

By: _____
Its Town Council

LAND MATTERS, LLC

Witness

By: _____
Its Member & Manager
Thereunto duly authorized

Witness

Tom Gillis

STATE OF MAINE
YORK, ss.

_____, 2023

Personally appeared the above-named _____ as _____ of the Town of Old Orchard Beach and acknowledged the foregoing instrument to be their free act and deed in said capacity on behalf of said Town.

Before me,

Notary Public/Attorney at Law

STATE OF MAINE
YORK, ss.

_____, 2023

Personally appeared the above-named Tom Gillis as Member & Manager of Land Matters, LLC, and acknowledged the foregoing instrument to be his free act and deed in said capacity on behalf of said Land Matters, LLC.

Before me,

Notary Public/Attorney at Law

EXHIBIT B

THE FRANKLIN CONTRACT ZONE

A. Purpose

The Franklin Contract Zone (“FCZ”) shall be located at 9 Fern Park Avenue, Town of Old Orchard Beach, Maine (Tax Map 206, Block 10, Lot 1)(the “Property”).

The purpose of the FCZ is to allow for current structure(s) located on the Property to be developed and used as a residential condominium with up to six (6) units.

The Franklin Contract Zone is consistent with the Old Orchard Beach Comprehensive Plan (“Comprehensive Plan”) Policy A.40 in that it seeks to sustainably maintain and preserve the existing structure, said structure being the former U.S. Post Office. The improvement of the current one story brick structure will include the incorporation of historic architectural materials and details which will reflect and enhance the former character of building and improve the aesthetics of the community consistent with Policy A.26 of the Comprehensive Plan. The footprint of the existing structure shall not be enlarged and the building height will be less than thirty-five (35’) feet.

Consistent with the Comprehensive Plan, The Franklin Contract Zone includes the installation of an additional five (5’) foot wide sidewalk, landscaping, and seating, along the southwesterly side of Fern Park Avenue, which shall improve pedestrian safety.

Consistent with the Comprehensive Plan, Policy A.3, The Franklin Contract Zone conforms to the predominately residential nature of the GB-2 District and the surrounding neighborhood and will add up to six (6) moderately priced residential condominium units, with rental term(s) of less than thirty (30) days prohibited, to the Town’s housing stock, which is in conformity with the Comprehensive Plan Policy A.3 to assure opportunities for affordable housing while allowing the proper workings of the real estate marketplace.

Consistent with the Comprehensive Plan, The Franklin Contract Zone will restore and improve the visual character of the premises which is prominently situated on Saco Avenue, the major gateway to the Town center. It will have no negative impact on traffic on Saco Avenue nor will it add any additional traffic to Fern Park Avenue.

Consistent with the Comprehensive Plan, the Franklin Contract Zone will not place additional burden upon the Town to provide municipal services as electric, telecommunication, water and sewer services already exist upon the Property; and, The Franklin Contract Zone shall provide private carting services for trash removal and the

removal of waste. Snow removal within the Franklin Contract Zone will be effectuated by private contractor.

Consistent with the Comprehensive Plan, Policy A.42, ample on-site parking will be provided for residents and guests consistent with Policy A 42 and in conformity with the existing on- site requirements of the Town.

B. Permitted Uses

The following uses shall be permitted in The Franklin Contract Zone (FCZ):

- (1) Single-family detached, two-family, and multifamily dwellings.
- (2) Accessory buildings, structures, or uses.
- (3) Business, professional, and governmental offices.
- (4) Retail uses of less than 5,000 square feet of gross leasable area.
- (5) Artist and craftsman studios.
- (6) Lodges and fraternal organizations.
- (7) Lodging establishments.
- (8) Municipal uses.
- (9) Community living arrangements.
- (10) Residential Condominium. For purposes of the FCZ “Residential Condominium” shall mean a residential condominium project, which units are individually owned, one hundred (100%) percent of which are used for residential purposes and not for transient use as short-term rentals.

C. Conditional Uses

The planning board may authorize the following uses in the FCZ provided that the conditions of Article VII, Chapter 78, OOBZO are met:

- (1) Automotive service and/or repair.
- (2) Retail uses in excess of 5,000 square feet of gross leasable area.
- (3) Public/private utility facility.
- (4) Wireless telecommunication facilities: architectural siting only.
- (5) Home occupations.
- (6) Cafes.

D. Prohibited Uses

Prohibited uses in the FCZ are as follows:

- (1) Truck terminals/motor freight business.
- (2) Drinking establishments.
- (3) Mobile homes.
- (4) Contractor storage yard 1 and 2.

E. Space and Bulk Requirements

Space and bulk requirements for the FCZ are as follows:

Standard	Residential Uses	Nonresidential Uses
Minimum lot area	2,300 sq. ft. NDD*	5,000 sq. ft. NDD*
Minimum lot area per unit	2,300 sq. ft.	5,000 sq. ft.
Minimum lot frontage	60 feet	60 feet
Minimum lot width	50 feet	50 feet
Minimum front yard setback, all structures	15 feet	15 feet
Minimum side yard setback, all structures	10 feet	10 feet
Minimum rear yard setback, all structures	15 feet	15 feet
Commercial use abutting a residential property	NA	25 feet
Maximum building coverage	35%	50%
Maximum building height	35 feet	35 feet

*NDD = Net development density

F. Performance Standards

(a) *Parking*. In addition to parking standards specified in Division 4, Article VIII, Chapter 78, OOBZO, all uses in the FCZ shall conform to the following parking requirements:

- (1) Where the town establishes parallel parking on Saco Avenue, properties fronting such facilities may reduce the required amount of on-site parking, specified under Division 4, Article VIII, Chapter, OOBZO, in the following manner:

Use Size	Required Off-Street Parking
<500 square feet net leasable area	None
500—1,500 square feet net leasable area	50% of required
1,500+ square feet net leasable area	100% of required

- (2) All required off-street parking shall be located in the side or rear yards of a property and not in the front yard fronting Saco Avenue.
- (b) *Driveway locations.* Notwithstanding driveway location standards specified in Division 4, Article VIII, Chapter 78, OOBZO, corner lots with less than 100 feet of frontage on Saco Avenue shall establish driveways on side streets and not access Saco Avenue directly. The combined frontage of two adjacent parcels shall be applied to the 100-foot frontage requirement, provided that the parcels share a single curb cut and driveway.
- (c) *Site improvements.* Site improvements are as follows:
 - (1) *Curbs and sidewalks.* Where nonresidential development or multifamily residential development or apartment houses in excess of five units fronts a public street, the property owner shall construct a public sidewalk and street curb within the street right-of-way for the length of the property frontage. All sidewalks and curb designs shall conform to specifications as established by the Planning Board.
 - (2) *Lighting.* Notwithstanding the standards for parking lot lighting specified in Division 4, Article VIII, Chapter 78, OOBZO, all freestanding site lighting shall:
 - a. Not exceed the height of the principal building or 14 feet, whichever is less.
 - b. From a nonresidential use, not shed more than 0.5 footcandle onto surrounding residential or nonresidential properties.
 - c. Be shielded to prevent point source glare.
 - (3) *Street trees.* Where nonresidential development or multifamily residential development in excess of five units fronts a public street, the property owner shall install street trees within the highway right-of-way or within a conservation easement fronting the property as specified by the planning board.
- (d) *Signage.* All signs in the FCA must conform to the following standards in addition to those of Division 5, Article VIII, Chapter 78, OOBZO:
 - (1) *Materials.* All proposed signage shall be constructed of either wood, metal, or fabric.
 - (2) *Lighting.* All proposed signs may be illuminated by one or more shielded external light fixtures affixed to the building, the sign, or uprights emanating from the ground. Internally illuminated signs shall be permitted.
 - (3) *Area and dimensions.* Area and dimensions are as follows:
 - a. Total aggregate signage located on the site, displayed on retractable awnings, affixed to the building, and displayed in the windows shall not exceed one square foot of signage for every two linear feet of building or storefront frontage on a public street.
 - b. Maximum aggregate signage for any business shall not exceed 40 square feet.

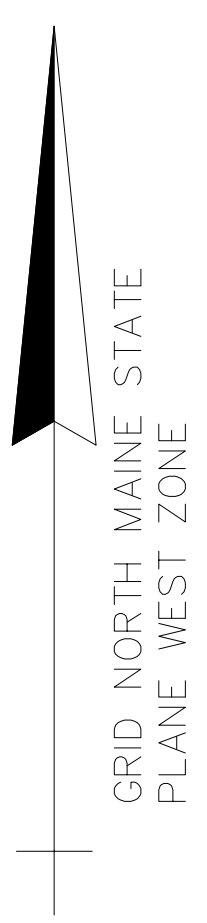
- c. Freestanding signs shall not exceed 15 feet in height and shall not exceed the allowable square footage. Square footage of signage allocated for the freestanding sign shall be subtracted from the maximum allowable square footage.
- d. Permitted sign area is not transferable between sides of the building located on a corner lot.

G. **Flood Plains**

Any construction or development within a flood plain, as defined by the Old Orchard Beach Flood Plain Management Ordinance, shall additionally comply with the terms of that Ordinance.

H. **Site Plan Review**

Any proposals as described in Chapter 78, Article IV (Site Plans), of the OOBZO shall be subject to site plan review and approval by the Planning Board prior to receipt of a building permit or plumbing permit.



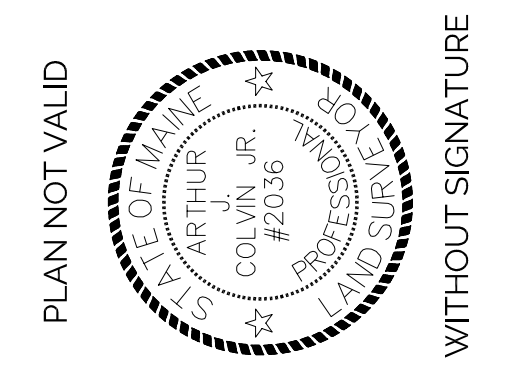
LEGEND	
●	IRON PIPE/ROD FOUND
○	5/8" REBAR SET
□	CONCRETE MONUMENT



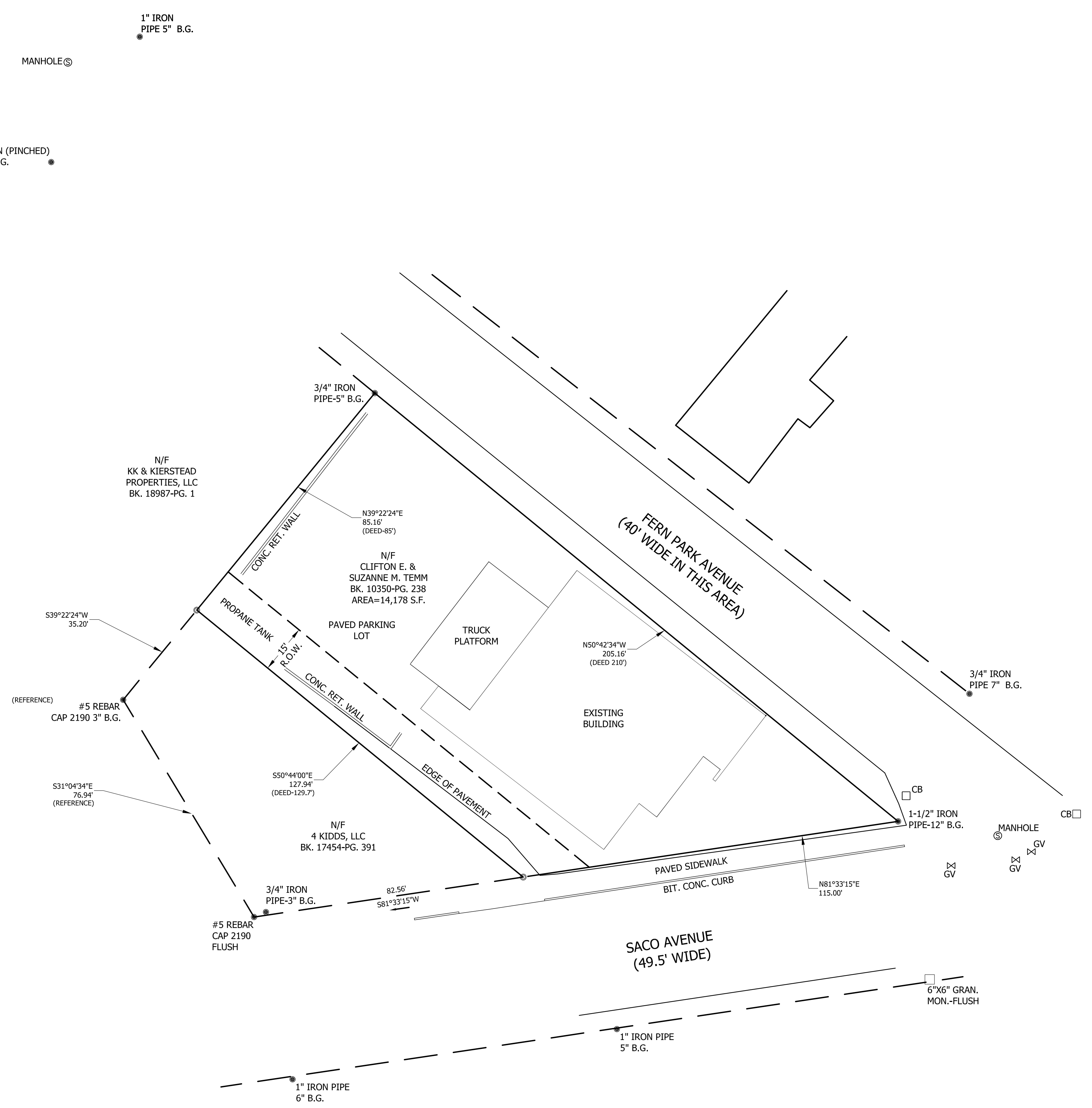
PROPERTY LOCATION:
60 SACO AVENUE
OLD ORCHARD BEACH, ME 04064
YORK COUNTY

CLIENT:
THOMAS GILLIS

PO BOX 468
OLD ORCHARD BEACH, ME
04064



CLIFTON E. & SUZANNE M. TEMM PROPERTY
 60 SACO AVENUE OLD ORCHARD BEACH, MAINE YORK COUNTY
 BOUNDARY SURVEY



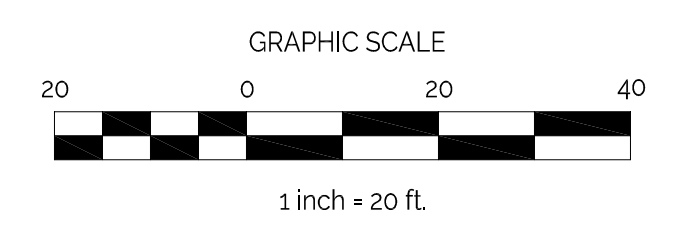
- NOTES:**
1. BEARINGS ARE RELATIVE TO MAGNETIC NORTH 2023.
 2. PROPERTY ID 206-10-1 ON OLD ORCHARD BEACH GIS MAPPING PAGE.
 3. SURVEYED PARCEL CONTAINS 14,178 S.F.
 4. PROPERTY IS LOCATED IN THE GB-2 ZONE.

- EASEMENTS OF RECORD:**
1. PROPERTY IS SUBJECT TO A 15 FOOT WIDE RIGHT-OF-WAY LYING ADJACENT TO THE SOUTHWESTERLY SIDELINE.

- PLAN REFERENCES:**
1. 74 SACO AVENUE CONDOMINIUM PLAT, DATED AUGUST 2015, PREPARED BY BH2M.
 2. PLAN OF LANDS OF FERN PARK LAND CORPORATION, OLD ORCHARD BEACH MAINE, DATED JULY 1930, PREPARED BY LIBBY AND DOW ENGINEERS, RECORDED IN THE YORK COUNTY REGISTRY OF DEEDS IN PLAN BOOK 11, PAGE 43.
 3. MAINE STATE HIGHWAY COMMISSION, RIGHT OF WAY MAP, STATE HIGHWAY 9, DATED JANUARY, 1956, S.H.C. FILE NUMBER 16-113..

CERTIFICATION:
 To the best of my knowledge, information, and belief, and in my professional opinion, this survey conforms to the Standards of Practice promulgated by the Maine Board of Licensure for Professional Land Surveyors.

ADVANCE COPY



No.	REVISION	DR. BY	CHK. BY	DATE

SHEET TITLE:
BOUNDARY SURVEY
 SURVEYOR: AJC
 DRAWN: AJC
 DATE: 04-17-23
 PROJECT NUMBER: 22-231

S-1

Public Hearing #3

Traffic and Vehicle Restrictions and Prohibitions:

Shall the Council amend the Code of Ordinances, Section 54, Traffic and Vehicles, Section 187, Restrictions and Prohibitions, York Street, changing the designation of the first two parking spaces on the left side facing the ocean, from East Grand Avenue, as handicap parking, to designating the second and third parking spaces on the left side facing the ocean, from East Grand, as handicap parking spaces.

Chair: Shawn O'Neill

NOTICE OF PUBLIC HEARING
MUNICIPAL OFFICERS OF THE TOWN OF
OLD ORCHARD BEACH

The Municipal Officers of the Town of Old Orchard Beach, Maine hereby give Public Notice that there will be a Public Hearing held at the Town Hall, Council Chambers, on September 19th, 2023, at 6:30 p.m. to consider the following:

Shall the Town Council of the Town of Old Orchard Beach amend the Code of Ordinances, Chapter 54, Traffic and Vehicles, Section 54-187, Restrictions and Prohibitions, York Street, by adding the underscored language and deleting the strikethrough language as follows:

York Street. No vehicle shall be parked on the southwesterly side of York Street (right side facing the ocean). The ~~first two~~ second and third parking spaces on the left side facing the ocean, from East Grand Avenue, shall be designated handicap parking.

Per Order of the Municipal Officers this _____ day of _____, 2023.

A True Copy
Attest:

Kim M. McLaughlin, Town Clerk

PUBLIC HEARING – BUSINESS LICENSE & APPROVALS:

Dylan J. Ball, (314-11-2), 93 Ocean Ave, three seasonal short-term rentals.

David Stone, (308-1-12), 18 Pine Ave, one seasonal short-term rental.

BK Properties, LLC, Shamayel Kargar, (305-2-1-83), 32 East Grand Ave #83,
one seasonal short-term rental.

John Morich, (313-2-1-24), 1 Bay Ave, one seasonal short-term rental.

Chair: Shawn O’Neill

PUBLIC HEARING – SPECIAL AMUSEMENT PERMITS & APPROVALS:

The Beachwood, John and Shannon Cloutier, (307-1-4), 29 West Grand, DJ, guitar, karaoke, outside, 11:00am to 10:00pm, (no change).

GFB Scottish Pub, Kelly and Robert Greenlaw, (205-3-1), 32 Old Orchard St., DJ and live bands, inside, 12:00 pm to 12:30 am, (change from 2022, 12:00 am).

Chair: Shawn O’Neill

TOWN MANAGER REPORT

NEW BUSINESS:

AGENDA ITEM #7993

Discussion with Action: Appoint Jennifer Leeman as Deputy Code Enforcement Officer, and Licensed Plumbing Inspector term to expire 7/1/2024.

Chair: Shawn O'Neill

AGENDA ITEM #7994

Discussion with Action: Adopt the Sexual Abuse and Molestation Prevention Policy as required by Traveler's insurance.

Chair: Shawn O'Neill

Sexual Abuse and Molestation Prevention Policy

Adopted: _____

The Town of Old Orchard Beach does not condone, permit or allow sexual abuse or molestation to occur in its workplace or at any activity sponsored by or related to it. To make this “zero—tolerance” policy clear to all employees, contractors, volunteers, and board members, we have adopted mandatory procedures that employees, volunteers, contractors, board members, individuals and victims must follow when they learn of or witness sexual abuse or molestation. Those reasonably suspected or believed to have committed sexual abuse or misconduct will be appropriately disciplined, up to and including termination of employment or membership, as well as reported to the appropriate authorities for criminal prosecution. No employee, volunteer, board member or other person, regardless of his or her title or position, has the authority to commit or allow sexual abuse or misconduct. Sexual abuse includes sexual assault, exploitation, molestation, or injury. It does not limit or take away from conduct covered under the Town’s sexual harassment policy, which is another form of behavior which is prohibited by the Town.

Reporting Procedure

Immediately report suspected sexual abuse or misconduct to the Director of Human Resources, the Town Manager or any supervisor or department head. It is not required to directly confront the person who is the source of the report, question, or complaint before notifying any of the individuals listed. The Town will take every reasonable measure to ensure that those named in the complaint of misconduct or are too closely associated with those involved in the complaint will not be part of the investigative team.

Investigation & Follow Up

The Town will take all allegations of sexual abuse or misconduct seriously and will promptly, thoroughly, and equitably investigate whether misconduct has taken place. The Town may utilize an outside third party to conduct an investigation of misconduct. Our organization will cooperate fully with any investigation conducted by law enforcement or other regulatory/protective services agencies. To the fullest extent possible, but consistent with our legal obligation to report suspected abuse to appropriate authorities, we will endeavor to keep the identities of the alleged victims and investigation subject confidential.

If the investigation substantiates the allegation, our policy provides for disciplinary penalties, including but not limited to termination of the actor’s relationship with our organization.

Retaliation Prohibited

We prohibit any retaliation against anyone, including an employee, volunteer, board member, student or individual, who in good faith reports sexual abuse, alleges that it is being committed or participates in the investigation. Intentionally false or malicious accusations of sexual abuse are prohibited.

Anyone who improperly retaliates against someone who has made a good faith allegation of sexual abuse, or intentionally provides false information to that effect, will be subject to discipline, up to and including termination.

Reporting to Law Enforcement or Appropriate Child or Adult Protective Services

The Town is committed to following the state and federal legal requirements for reporting allegations or incidents of sexual abuse or misconduct to appropriate law enforcement and/or child or adult protective services organizations. It is the policy of the Town not to attempt to investigate or assess the validity or credibility of an allegation of sexual or physical abuse as a condition before reporting the allegation to proper law enforcement authorities or protective services organizations.

EMPLOYEE RECEIPT AND ACKNOWLEDGEMENT OF PERSONNEL POLICIES AND PROCEDURES

Adopted: _____

I acknowledge that I have received a copy of the Town of Old Orchard Beach Sexual Abuse and Molestation Prevention Policy and understand that it is my responsibility to become familiar with its contents.

Printed Name: _____

(Signature)

(Date)

AGENDA ITEM #7995

Discussion with Action: Appoint Fire Chief John Gilboy as Old Orchard Beach Forest Fire Warden, term indefinite, Deputy Chief Clifton Whitten, Captains Zachary Apgar and Corey Pelletier as Old Orchard Beach Deputy Forest Fire Wardens, terms indefinite.

Chair: Shawn O'Neill

AGENDA ITEM #7996

Discussion with Action: Accept the proposal from Witmer Public Safety Group for the purchase of five (5) ballistic vests in the amount of \$5,847.56. To be funded by grant funds from Maine Municipal Safety Grant in the amount of \$3,000 and the balance of \$2,847.56 from account number 20138-50501 Fire Department Operating Equipment with a balance of \$36,618.29.

Chair: Shawn O'Neill

AGENDA ITEM #7997

Discussion with Action: Accept the proposal from Witmer Public Safety Group for the purchase of twenty-seven (27) Glock G45 9mm Handguns and twenty-seven (27) Safariland holsters in the amount of \$26,746.65 from account 52002- 50909 CIP Police Officer Equipment with a balance of \$37,500.05.

Chair: Shawn O'Neill

Quote#	QUO115419
Date	08/10/2023
Exp. Date	09/09/2023

Bill To:

Old Orchard Beach Police Dept.
 16 E Emerson Cummings Blvd
 Old Orchard Beach, ME
 04064-1460
 United States

Ship To:

Will Watson
 Old Orchard Beach Police Dept.
 16 E Emerson Cummings Blvd
 Old Orchard Beach, ME
 04064-1460
 United States

Glock 45MOS package-509T, holsters

ID	Name	Terms	Sales Rep	Shipping Method
1511	Old Orchard Beach Police Dept.	Net 30	Donna Brazell	FedEx Ground

#	Item Name	Description	Quantity	Unit Price	Amount
1	Glock-PA45S302MOS6H1	Glock G45 MOS 9mm 3-17rd magazines, Holosun 509T RD direct mount installed, Ameriglo Black Outline Tritium front / Non-Tritium rear *	27	836.08	22,574.16
2	SAF-7360RDS-28325-411	Safariland 7360RDS 7TS ALS/ SLS Level III Mid-Ride, Right Hand, SafariSeven Black Fits: G19 MOS Gen 5 with Trij RMR/ TLR1-HL	27	153.00	4,131.00

<p>ACCEPTANCE OF QUOTATION</p> <p>The above prices, specifications, and conditions are satisfactory and are hereby accepted.</p> <p>Freight charges are estimated at the time of quote. Applicable freight costs will apply at time of shipment.</p> <p>Quotation is valid until Sep 09, 2023</p> <p>Signature: _____ Date: _____</p>	Subtotal:	26,705.16
	Discount:	0.00
	Tax Total:	0.00
	Freight:	41.49
	Total:	26,746.65

AGENDA ITEM #7998

Discussion with Action: Set the Public Hearing Date for October 3, 2023, for the Town Council to consider amendments to the Code of Ordinances, Section 54, Traffic and Vehicles, Section 187 (a), Restrictions and Prohibitions. This amendment proposes changes on Colby Avenue, by changing the time allowed to park on the southwest side (right side facing the ocean) from West Grand to Seaside Avenue from Five-minute parking to Fifteen - minute parking.

Chair: Shawn O'Neill

For Council Agenda to Set Public Hearing and Change parking time.

Sec. 54-187. - Restrictions and prohibitions.

Colby Avenue. ~~Five~~-Fifteen minute parking shall be allowed on the southwest side (right side facing the ocean) from West Grand Avenue to Seaside Avenue. No parking shall be allowed on either side of Colby Avenue from Clover Street (Fourth Street) to West Grand Avenue except in four designated spaces on the right side of Colby Avenue (facing the Ocean) just west of the intersection of Clover Street (Fourth Street) before the tennis courts.

We would like to propose the **five minute parking** on Colby Avenue be changed to **fifteen minute parking**. The current signage is for fifteen Minute parking which has been in place for some time and is not consistent with current ordinance which states five minutes. Fifteen minutes appears to be a sufficient amount of time based on the location of the Post Office and other area businesses in proximity to the existing spaces. This discrepancy was discovered during a recent review of a GIS Parking Overlay that is being created through CAI.

AGENDA ITEM #7999

Discussion with Action: Set the Public Hearing Date for October 3, 2023, for the Town Council to consider amendments to the Code of Ordinances, Section 54, Traffic and Vehicles, Section 187 (a), Restrictions and Prohibitions. This amendment proposes changes on Bay Avenue, by designating no parking on the parking space closest to 1 Bay Avenue (MBL 313-2-1) on the right side of the road.

Chair: Shawn O'Neill

For Council Agenda to Set Public Hearing to designate a No Parking Space on Bay Avenue

Sec. 54-187. - Restrictions and prohibitions.

Bay Avenue. No vehicle shall be parked on the northeasterly side of Bay Avenue (left side facing the ocean). **Added Language (There shall be one no parking space located on the Southwesterly side of Bay Avenue (right side facing the Ocean) in front of 1 Bay Avenue (MBL 313-2-1).**

The purpose of this requested change is due to a request from residents of 1 Bay Avenue (Golden Shores Condominium Association) who expressed concern regarding vehicles parking nearby the exit of the complex and the garage area located on the building. After checking the parking space in question we determined the space appears to be in a hazardous location for vehicles coming and going from the complex or the garage located in the main building.



Maine Condo Companies

September, 6, 2023

Chief Elise Chard
Old Orchard Police Department
16 E. Emerson Cummings Blvd.
Old Orchard Beach, ME 04064

Dear Chief Chard,

I am writing on behalf of the Golden Shores Condo Association at One Bay Avenue in Old Orchard Beach. I have met with Gregory Bunce, the Parking Supervisor and spoken with the Dept. of Public Works Deputy Director who encouraged me to follow up with you regarding a particular parking spot at One Bay Avenue that has created some issues for residents.

The parking spot is located by the opening of the garage door and creates obstruction of view from those exiting the garage. Additionally the senior citizen who parks in the parking lot spaces 9 and 28 is challenged with navigating the vehicles parked behind in the next building and the vehicles parking in the public parking spot on the side of the garage door. Senior citizens worry about visibility, obstruction from the vehicles parking along the garage and often some vehicles in the public spot and building behind overlap into the drive entry/exit. Exit from the garage is often obstructed by the public spot. This public parking spot for the last year has had many construction vehicles and oversized vehicles including min-van's, beach goers, etc. parked and creating challenges for the residents at 1 Bay Ave and especially the parking spot number 9. Some residents who are senior citizens are concerned that should they hit a vehicle due to their age, their insurance company or whomever would pursue license revocation or increase rates. These are legitimate concerns and it is a navigation nightmare at 1 Bay Avenue.

It would be appreciated if the Chief would consider making this a no parking spot. If that is not an option then a compact car spot only or any other suggestions are appreciated. Towing of a vehicle is not the answer as that comes challenges legally and also the owner of the vehicle becomes potentially hostile. See photo from google earth attached.

Thank you for your time and consideration.

Kind regards,

Jackie Aiken

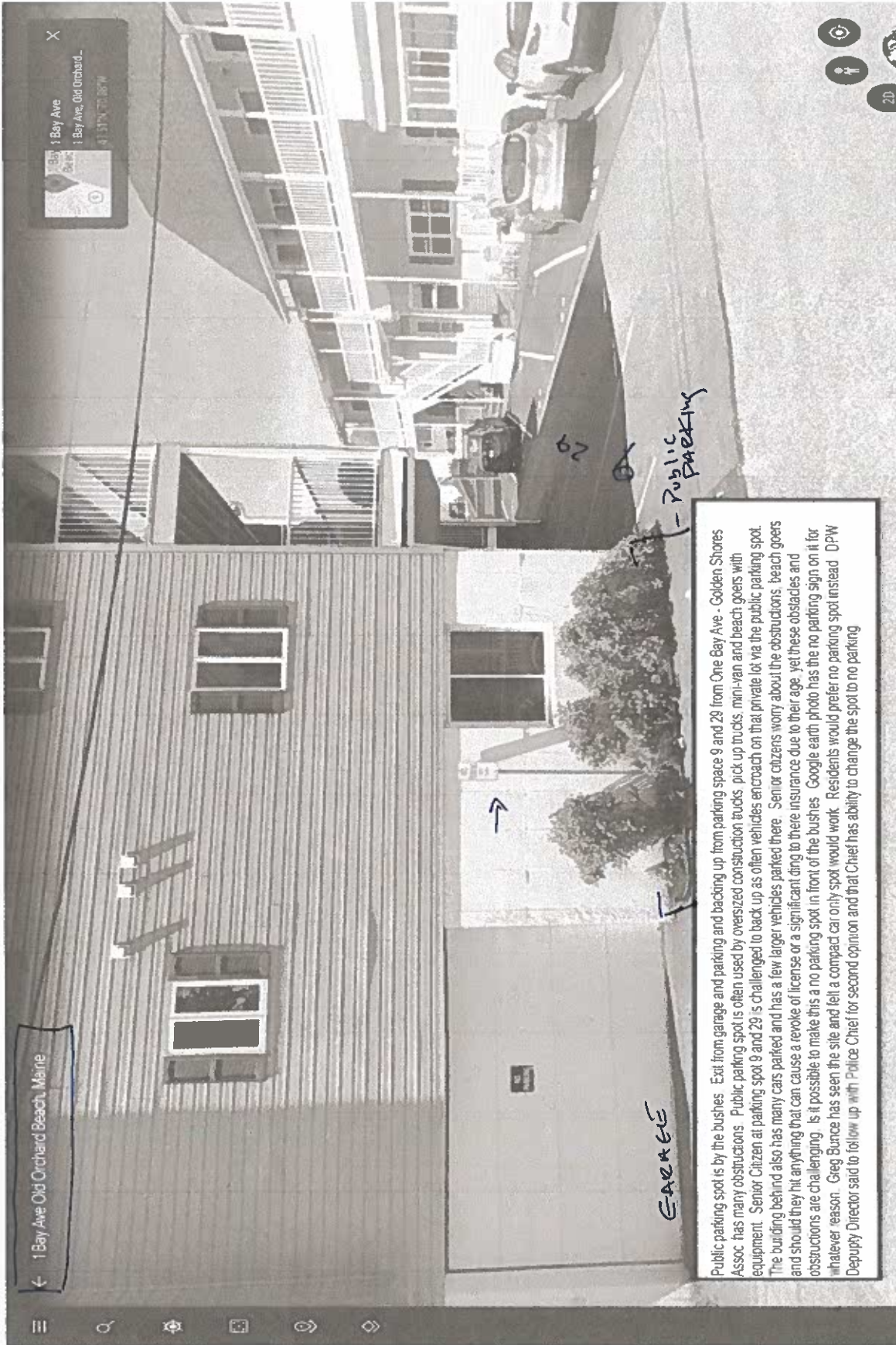
Maine Condo Companies, LLC
Scarborough, ME 04074
207-831-7894
jaiken@mainecondocompanies.com

PS: Once you advise, I will follow up as requested with the DPW Deputy Director who asked me to consider to follow-up with Police Chief. Then DPW can perhaps make some changes.

www.mainecondocompanies.com



Maine Condo Companies



www.mainecondocompanies.com

Google Earth Photo - Shows No Park Sign
9/6/23

AGENDA ITEM #8000

Discussion with Action: Approve the quote from HACH for Inline Dissolved Oxygen Probes for the Wastewater Treatment Facility for \$5,992.00 from account # 20161-50330 Wastewater Treatment, Equipment Replacement with a balance of \$24,649.71.

Chair: Shawn O'Neill



Be Right™

Quotation

Quote Number: 100949524v1
Use quote number at time of order to ensure that you receive prices quoted

Hach
PO Box 608
Loveland, CO 80539-0608
Phone: (800) 227-4224
Email: quotes@hach.com
Website: www.hach.com

Quote Date: 08/18/2023

Quote Expiration: 10/17/2023

TOWN OF OLD ORCHARD BEACH
1 PORTLAND AVE
OLD ORCHARD BEACH, ME 04064-2245

Name: Dan Fraser
Phone: 207-934-4416
Email: DFRASER@OOBMAINE.COM

Customer Account Number : 005375

PRICING QUOTATION

Line	Part Number	Description	Qty	Net Unit Price	Extended Price
1	9020000	Hach LDO sc Model 2 , DO Probe with Luminescent Dissolved Oxygen Technology. Standard lead time 5 days.	2	2,996.00	5,992.00
				Grand Total	\$ 5,992.00

TERMS OF SALE

Freight: Ground Prepay and Add

FCA: Hach's facility

ALL LEAD TIMES ARE ESTIMATED AND NOT GUARANTEED.

All purchases of Hach Company products and/or services are expressly and without limitation subject to Hach Company's Terms & Conditions of Sale ("Hach TCS"), incorporated herein by reference and published on Hach Company's website at www.hach.com/terms. Hach TCS are contained directly and/or by reference in Hach's offer, order acknowledgment, and invoice documents. The first of the following acts constitutes an acceptance of Hach's offer and not a counteroffer and creates a contract of sale "Contract" in accordance with the Hach TCS: (i) Buyer's issuance of a purchase order document against Hach's offer; (ii) acknowledgement of Buyer's order by Hach; or (iii) commencement of any performance by Hach pursuant to Buyer's order. Provisions contained in Buyer's purchase documents (including electronic commerce interfaces) that materially alter, add to or subtract

from the provisions of the Hach TCS are not part of the Contract.

Due to International regulations, a U.S. Department of Commerce Export License may be required. Hach reserves the right to approve specific shipping agents. Wooden boxes suitable for ocean shipment are extra. Specify final destination to ensure proper documentation and packing suitable for International transport. In addition, Hach may require : 1). A statement of intended end-use; 2). Certification that the intended end-use does not relate to proliferation of weapons of mass destruction (prohibited nuclear end use, chemical / biological weapons, missile technology); and 3). Certification that the goods will not be diverted contrary to U.S. and/or applicable laws in force in Buyer's jurisdiction.

ORDER TERMS:

Terms are Subject to Credit Review

In order for Hach to process the order as quickly as possible, please provide the following information.

- Complete Billing address.
- Complete Shipping address.
- Part numbers and quantities of items being ordered.
- Please reference the quotation number on your purchase order

If the order is over \$25,000 Hach will also require the following additional information.

- Pricing
- Purchase Order Number
- Freight terms and INCO term FOB Origin or FCA Shipping Point
- Required delivery date
- Vendor name should specify "Hach Company" with the Loveland address:
 - o Hach, PO Box 389, Loveland, CO 80539
- Credit terms of payment. Default payment terms are Net 30.
- Indicate if order needs to ship complete or if it can ship partial.
- Tax status
- Special invoicing instructions

Sales tax is not included on quote. Applicable sales tax will be added to the invoice based on the U.S. destination, if applicable provide a resale/exemption certificate.

Shipments will be prepaid and added to invoices unless otherwise specified.

Equipment quoted operates with standard U.S. supply voltage.

Hach standard terms and conditions apply to all sales.

Additional terms and conditions apply to orders for service partnerships.

Prices do not include delivery of product. Reference attached Freight Charge Schedule and Collect Handling Fees.

This Quote is good for a one time purchase

Virtual and/or on-site training must be scheduled/completed within 30 days of order, or the price will be subject to change.



HACH COMPANY

Headquarters
P.O. Box 389
5600 Lindbergh Drive
Loveland, CO 80539-0389

Purchase Orders
PO Box 608
Loveland, CO 80539-0608

WebSite: www.hach.com

U.S.A.
Phone: 800-227-4224
Fax: 970-669-2932
E-Mail: orders@hach.com
quotes@hach.com
techhelp@hach.com

Export
Phone: 970-669-3050
Fax: 970-461-3939
Email: intl@hach.com

Remittance
2207 Collections Center Drive
Chicago, IL 60693

Wire Transfers
Bank of America
231 S. LaSalle St.
Chicago, IL 60604
Account: 8765602385
Routing (ABA): 071000039

Quotation Addendum

ADVANTAGES OF WORKING WITH HACH

Hach Service	Pick&Ship™	Technical Support
<p><i>Protect your investment & peace of mind</i></p> <ul style="list-style-type: none"> ✓ A global partner who understands your needs ✓ Delivers timely, high-quality service you can trust ✓ Provides team of unique experts to help you maximize instrument uptime ✓ Ensure data integrity ✓ Maintain operational stability ✓ Reduce compliance risk <p>www.hach.com/service-contracts</p>	<p><i>Pick&Ship™ Program offers a better way to keep your supplies in stock</i></p> <ul style="list-style-type: none"> ✓ Convenience of one purchase order for the entire year ✓ Flexibility to change, cancel or create new orders ✓ Savings from locking in prices & thus avoiding price surges and rush charges ✓ Peace of mind with automatic, reliable shipments just as you need them <p>www.Hach.com/pickandship</p>	<p><i>Provides post-sale instrumentation and application support</i></p> <ul style="list-style-type: none"> ✓ Hach's highly skilled Technical Support staff is dedicated to helping you resolve technical issues before, during and after the sale. ✓ Available via phone, e-mail, or live online chat at Hach.com! ✓ Fast access to answers at https://support.hach.com ✓ Toll-free phone: 800-227-4224 ✓ E-mail: techhelp@hach.com <p>www.Hach.com</p>

ADVANTAGES OF SIMPLIFIED SHIPPING AND HANDLING

Safe & Fast Delivery	Save Time – Less Hassle	Save Money
<ul style="list-style-type: none"> ✓ Receive tracking numbers on your order acknowledgement ✓ Hach will assist with claims if an order is lost or damaged in shipment 	<ul style="list-style-type: none"> ✓ No need to set up deliveries for orders or to schedule pickup ✓ Hach ships order as product is available, at no additional charge, when simplified shipping and handling is used. 	<ul style="list-style-type: none"> ✓ No additional invoice to process – save on time and administrative costs ✓ Only pay shipping once, even if multiple shipments are required

STANDARD SIMPLIFIED SHIPPING AND HANDLING CHARGES ^{1, 2, 3, 4} Pricing Effective 6/3/2023						Collect ⁴
Total Price of Merchandise Ordered	Standard Surface (Mainland USA)	Second Day Delivery (Mainland USA)	Next Day Delivery (Mainland USA)	Second Day Delivery (Alaska & Hawaii)	Next Day Delivery (Alaska & Hawaii)	Handling Fee Effective 6/3/2023
\$0.00 - \$49.99	\$10.00	\$25.01	\$46.64	\$40.14	\$76.30	\$8.00
\$50.00 - \$149.99	\$12.00	\$35.37	\$66.74	\$50.72	\$96.42	\$8.00
\$150.00 - \$349.99	\$14.00	\$37.35	\$76.08	\$51.51	\$98.85	\$8.00
\$350.00 - \$649.99	\$16.00	\$41.84	\$83.20	\$52.30	\$101.27	\$8.00
\$650.00 - \$949.99	\$16.00	\$50.69	\$104.55	\$61.58	\$119.19	\$8.00
\$950.00 - \$1,999.99	\$28.00	\$59.54	\$125.90	\$70.86	\$137.10	\$8.00
\$2,000.00 - \$3,999.99	\$28.00	\$73.62	\$153.60	\$84.76	\$164.64	\$8.00
\$4,000.00 - \$5,999.99	\$50.00	\$87.69	\$181.30	\$98.66	\$192.18	\$8.00
\$6,000.00 - \$7,999.99	\$60.00	\$101.39	\$209.64	\$110.51	\$213.06	\$8.00
\$8,000.00 - \$9,999.99	\$90.00	\$151.46	\$295.96	\$162.06	\$307.35	\$8.00
Over \$10,000	1.0% of Net Order Value	1.8% of Net Order Value	2.8% of Net Order Value	1.8% of Net Order Value	2.8% of Net Order Value	\$8.00

- Shipping & Handling charges shown are only applicable to orders billing and shipping to U.S. destinations. Shipping & Handling charges will be prepaid and added to invoice. Shipping & Handling for the Pick&Ship Program is charged on each shipment release and is based on the total price of each shipment release. Shipping & Handling charges are subject to change without notice.
 - Additional Shipping & Handling charges will be applied to orders containing bulky and/or especially heavy orders. Refrigerated and all weather Samplers do not qualify for simplified Shipping & Handling charges, and are considered heavy products. Dissolved Oxygen Sensors can be damaged if exposed to temps below freezing, causing sensor failure. Must be shipped over night or 2nd day air during the cold weather months.
 - Orders shipping to Alaska or Hawaii: Additional Shipping & Handling charges may be applied at time of order processing. Second Day and Next Day delivery is not available to all destinations.
 - Hach Company will assess a collect handling fee on orders with collect shipping terms. This handling fee covers the additional costs that Hach Company incurs from processing and managing collect shipments.
- Due to variations in component characteristics, regulatory transportation requirements and/or associated shipping and handling costs, individual kit components may or may not be packaged together in a single carton at time of final packaging and shipping.

SALES TAX

Sales Tax is not included in the attached quotation. Applicable sales and usage taxes will be added to your invoice, at the time of order, based on U.S. destination of goods, unless a valid resale/exemption certificate for destination state is provided to the above address or fax number, attention of the Tax Dept.

TERMS & CONDITIONS OF SALE FOR HACH COMPANY PRODUCTS AND SERVICES

This document sets forth the Terms & Conditions of Sale for goods manufactured and/or supplied, and services provided, by Hach Company of Loveland, Colorado ("Hach") and sold to the original purchaser thereof ("Buyer"). Unless otherwise specifically stated herein, the term "Hach" includes only Hach Company and none of its affiliates. Unless otherwise specifically stated in a previously-executed written purchase agreement signed by authorized representatives of Hach and Buyer, these Terms & Conditions of Sale establish the rights, obligations and remedies of Hach and Buyer which apply to this offer and any resulting order or contract for the sale of Hach's goods and/or services ("Products").

1. **APPLICABLE TERMS & CONDITIONS:** These Terms & Conditions of Sale are contained directly and/or by reference in Hach's offer, order acknowledgment, and invoice documents. The first of the following acts constitutes an acceptance of Hach's offer and not a counteroffer and creates a contract of sale ("Contract") in accordance with these Terms & Conditions: (i) Buyer's issuance of a purchase order document against Hach's offer; (ii) acknowledgement of Buyer's order by Hach; or (iii) commencement of any performance by Hach pursuant to Buyer's order. Provisions contained in Buyer's purchase documents (including electronic commerce interfaces) that materially alter, add to or subtract from the provisions of these Terms & Conditions of Sale are not a part of the Contract.

2. **CANCELLATION:** Buyer may cancel goods orders subject to fair charges for Hach's expenses including handling, inspection, restocking, freight and invoicing charges as applicable, provided that Buyer returns such goods to Hach at Buyer's expense within thirty (30) days of delivery and in the same condition as received. Buyer may cancel service orders on ninety (90) day's prior written notice and refunds will be prorated based on the duration of the service plan. Inspections and re-instatement fees may apply upon cancellation or expiration of service programs. Seller may cancel all or part of any order prior to delivery without liability if the order includes any Products that Seller determines may not comply with export, safety, local certification, or other applicable compliance requirements.

3. **DELIVERY:** Delivery will be accomplished FCA Hach's facility located in Ames, Iowa or Loveland, Colorado, United States (Incoterms 2010). Legal title and risk of loss or damage pass to Buyer upon transfer to the first carrier. Hach will use commercially reasonable efforts to deliver the Products ordered herein within the time specified on the face of this Contract or, if no time is specified, within Hach's normal lead-time necessary for Hach to deliver the Products sold hereunder. Upon prior agreement with Buyer and for an additional charge, Hach will deliver the Products on an expedited basis. Standard service delivery hours are 8 am – 5 pm Monday through Friday, excluding holidays.

4. **INSPECTION:** Buyer will promptly inspect and accept any Products delivered pursuant to this Contract after receipt of such Products. In the event the Products do not conform to any applicable specifications, Buyer will promptly notify Hach of such nonconformance in writing. Hach will have a reasonable opportunity to repair or replace the nonconforming product at its option. Buyer will be deemed to have accepted any Products delivered hereunder and to have waived any such nonconformance in the event such a written notification is not received by Hach within thirty (30) days of delivery.

5. **PRICES & ORDER SIZES:** All prices are in U.S. dollars and are based on delivery as stated above. Prices do not include any charges for services such as insurance; brokerage fees; sales, use, inventory or excise taxes; import or export duties; special financing fees; VAT, income or royalty taxes imposed outside the U.S.; consular fees; special permits or licenses; or other charges imposed upon the production, sale, distribution, or delivery of Products. Buyer will either pay any and all such charges or provide Hach with acceptable exemption certificates, which obligation survives performance under this Contract. Hach reserves the right to establish minimum order sizes and will advise Buyer accordingly.

6. **PAYMENTS:** All payments must be made in U.S. dollars. For Internet orders, the purchase price is due at the time and manner set forth at www.hach.com. Invoices for all other orders are due and payable NET 30 DAYS from date of the invoice without regard to delays for inspection or transportation, with payments to be made by check to Hach at the above address or by wire transfer to the account stated on the front of Hach's invoice, or for customers with no established credit, Hach may require cash or credit

card payment in advance of delivery. In the event payments are not made or not made in a timely manner, Hach may, in addition to all other remedies provided at law, either: (a) declare Buyer's performance in breach and terminate this Contract for default; (b) withhold future shipments until delinquent payments are made; (c) deliver future shipments on a cash-with-order or cash-in-advance basis even after the delinquency is cured; (d) charge interest on the delinquency at a rate of 1-1/2% (one and one half percent) per month or the maximum rate permitted by law, if lower, for each month or part thereof of delinquency in payment plus applicable storage charges and/or inventory carrying charges; (e) repossess the Products for which payment has not been made; (f) recover all costs of collection including reasonable attorney's fees; or (g) combine any of the above rights and remedies as is practicable and permitted by law. Buyer is prohibited from setting off any and all monies owed under this from any other sums, whether liquidated or not, that are or may be due Buyer, which arise out of a different transaction with Hach or any of its affiliates. Should Buyer's financial responsibility become unsatisfactory to Hach in its reasonable discretion, Hach may require cash payment or other security. If Buyer fails to meet these requirements, Hach may treat such failure as reasonable grounds for repudiation of this Contract, in which case reasonable cancellation charges shall be due Hach. Buyer grants Hach a security interest in the Products to secure payment in full, which payment releases the security interest but only if such payments could not be considered an avoidable transfer under the U.S. Bankruptcy Code or other applicable laws. Buyer's insolvency, bankruptcy, assignment for the benefit of creditors, or dissolution or termination of the existence of Buyer, constitutes a default under this Contract and affords Hach all the remedies of a secured party under the U.C.C., as well as the remedies stated above for late payment or non-payment. See [120](#) for further wire transfer requirements.

7. **LIMITED WARRANTY:** Hach warrants that Products sold hereunder will be free from defects in material and workmanship and will, when used in accordance with the manufacturer's operating and maintenance instructions, conform to any express written warranty pertaining to the specific goods purchased, which for most Hach instruments is for a period of twelve (12) months from delivery. Hach warrants that services furnished hereunder will be free from defects in workmanship for a period of ninety (90) days from the completion of the services. Parts provided by Hach in the performance of services may be new or refurbished parts functioning equivalent to new parts. Any non-functioning parts that are repaired by Hach shall become the property of Hach. No warranties are extended to consumable items such as, without limitation, reagents, batteries, mercury cells, and light bulbs. **All other guarantees, warranties, conditions and representations, either express or implied, whether arising under any statute, law, commercial usage or otherwise, including implied warranties of merchantability and fitness for a particular purpose, are hereby excluded.** The sole remedy for Products not meeting this Limited Warranty is replacement, credit or refund of the purchase price. This remedy will not be deemed to have failed of its essential purpose so long as Hach is willing to provide such replacement, credit or refund.

8. **INDEMNIFICATION:** Indemnification applies to a party and to such party's successors-in-interest, assignees, affiliates, directors, officers, and employees ("Indemnified Parties"). Hach is responsible for and will defend, indemnify and hold harmless the Buyer Indemnified Parties against all losses, claims, expenses or damages which may result from accident, injury, damage, or death due to Hach's breach of the Limited Warranty. Buyer is responsible for and will defend, indemnify and hold harmless the Hach Indemnified Parties against all losses, claims, expenses or damages which may result from accident, injury, damage, or death due to negligence, misuse or misapplication of any goods or services, violations of law, or the breach of any provision of this Contract by the Buyer, its affiliates, or those employed by, controlled by or in privity with them. Buyer's workers' compensation immunity, if any, does not preclude or limit its indemnification obligations.

9. **PATENT PROTECTION:** Subject to all limitations of liability provided herein, Hach will, with respect to any Products of Hach's design or manufacture, indemnify Buyer from any and all damages and costs as finally determined by a court of competent jurisdiction in any suit for infringement of any U.S. patent (or European patent for Products that Hach sells to Buyer for end use in a member state of the E.U.) that has issued as of the delivery date, solely by reason of the sale or normal use of any Products sold to Buyer hereunder and from reasonable expenses incurred by Buyer in defense of such suit if Hach does not undertake the defense thereof, provided that Buyer promptly notifies



TERMS AND CONDITIONS OF SALE FOR HACH® PRODUCTS

Hach of such suit and offers Hach either (i) full and exclusive control of the defense of such suit when Products of Hach only are involved, or (ii) the right to participate in the defense of such suit when products other than those of Hach are also involved. Hach's warranty as to use patents only applies to infringement arising solely out of the inherent operation of the Products according to their applications as envisioned by Hach's specifications. In case the Products are in such suit held to constitute infringement and the use of the Products is enjoined, Hach will, at its own expense and at its option, either procure for Buyer the right to continue using such Products or replace them with non-infringing products, or modify them so they become non-infringing, or remove the Products and refund the purchase price (prorated for depreciation) and the transportation costs thereof. The foregoing states the entire liability of Hach for patent infringement by the Products. Further, to the same extent as set forth in Hach's above obligation to Buyer, Buyer agrees to defend, indemnify and hold harmless Hach for patent infringement related to (x) any goods manufactured to the Buyer's design, (y) services provided in accordance with the Buyer's instructions, or (z) Hach's Products when used in combination with any other devices, parts or software not provided by Hach hereunder.

10. **TRADEMARKS AND OTHER LABELS:** Buyer agrees not to remove or alter any indicia of manufacturing origin or patent numbers contained on or within the Products, including without limitation the serial numbers or trademarks on nameplates or cast, molded or machined components.

11. **SOFTWARE AND DATA.** All licenses to Hach's separately-provided software products are subject to the separate software license agreement(s) accompanying the software media and/or included as an Appendix to these Terms & Conditions of Sale. Except to the extent such express licenses conflict with the remainder of this paragraph, the following also applies relative to Hach's software: Hach grants Buyer only a personal, non-exclusive license to access and use the software provided by Hach with Products purchased hereunder solely as necessary for Buyer to enjoy the benefit of the Products. A portion of the software may contain or consist of open source software, which Buyer may use under the terms and conditions of the specific license under which the open source software is distributed. Buyer agrees that it will be bound by all such license agreements. Title to software remains with the applicable licensor(s). In connection with Buyer's use of Products, Hach may obtain, receive, or collect data or information, including data produced by the Products. In such cases, Buyer grants Hach a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of such data, or to aggregate such data for use in an anonymous manner, solely to facilitate marketing, sales and R&D activities of Hach and its affiliates.

12. **PROPRIETARY INFORMATION; PRIVACY:** "Proprietary Information" means any information, technical data or know-how in whatever form, whether documented, contained in machine readable or physical components, mask works or artwork, or otherwise, which Hach considers proprietary, including but not limited to service and maintenance manuals. Buyer and its customers, employees and agents will keep confidential all such Proprietary Information obtained directly or indirectly from Hach and will not transfer or disclose it without Hach's prior written consent, or use it for the manufacture, procurement, servicing or calibration of Products or any similar products, or cause such products to be manufactured, serviced or calibrated by or procured from any other source, or reproduce or otherwise appropriate it. All such Proprietary Information remains Hach's property. No right or license is granted to Buyer or its customers, employees or agents, expressly or by implication, with respect to the Proprietary Information or any patent right or other proprietary right of Hach, except for the limited use licenses implied by law. Hach will manage Customer's information and personal data in accordance with its Privacy Policy, located at <http://www.hach.com/privacypolicy>.

13. **CHANGES AND ADDITIONAL CHARGES:** Hach reserves the right to make design changes or improvements to any products of the same general class as Products being delivered hereunder without liability or obligation to incorporate such changes or improvements to Products ordered by Buyer unless agreed upon in writing before the Products' delivery date. Services which must be performed as a result of any of the following conditions are subject to additional charges for labor, travel and parts: (a) equipment alterations not authorized in writing by Hach; (b) damage resulting from improper use or handling, accident, neglect, power surge, or operation in an environment or manner in which the instrument is not designed to operate or is not in accordance with Hach's operating manuals; (c) the use of parts or accessories not provided by Hach; (d) damage resulting from acts of war, terrorism or nature; (e) services outside standard business hours; (f) site

prework not complete per proposal; or (g) any repairs required to ensure equipment meets manufacturer's specifications upon activation of a service agreement.

14. **SITE ACCESS / PREPARATION / WORKER SAFETY / ENVIRONMENTAL COMPLIANCE:** In connection with services provided by Hach, Buyer agrees to permit prompt access to equipment. Buyer assumes full responsibility to back-up or otherwise protect its data against loss, damage or destruction before services are performed. Buyer is the operator and in full control of its premises, including those areas where Hach employees or contractors are performing service, repair and maintenance activities. Buyer will ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of services. Buyer is the generator of any resulting wastes, including without limitation hazardous wastes. Buyer is solely responsible to arrange for the disposal of any wastes at its own expense. Buyer will, at its own expense, provide Hach employees and contractors working on Buyer's premises with all information and training required under applicable safety compliance regulations and Buyer's policies. If the instrument to be serviced is in a Confined Space, as that term is defined under OSHA regulations, Buyer is solely responsible to make it available to be serviced in an unconfined space. Hach service technicians will not work in Confined Spaces. In the event that a Buyer requires Hach employees or contractors to attend safety or compliance training programs provided by Buyer, Buyer will pay Hach the standard hourly rate and expense reimbursement for such training attended. The attendance at or completion of such training does not create or expand any warranty or obligation of Hach and does not serve to alter, amend, limit or supersede any part of this Contract.

15. **LIMITATIONS ON USE:** Buyer will not use any Products for any purpose other than those identified in Hach's catalogs and literature as intended uses. Unless Hach has advised the Buyer in writing, in no event will Buyer use any Products in drugs, food additives, food or cosmetics, or medical applications for humans or animals. In no event will Buyer use in any application any Product that requires FDA 510(k) clearance unless and only to the extent the Product has such clearance. Buyer will not sell, transfer, export or re-export any Hach Products or technology for use in activities which involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use Hach Products or technology in any facility which engages in activities relating to such weapons. Unless the "ship-to" address is in California, U.S.A., the Products are not intended for sale in California and may lack markings required by California Proposition 65; accordingly, unless Buyer has ordered Products specifying a California ship-to address, Buyer will not sell or deliver any Hach Products for use in California. Any warranty granted by Hach is void if any goods covered by such warranty are used for any purpose not permitted hereunder.

16. **EXPORT AND IMPORT LICENSES AND COMPLIANCE WITH LAWS:** Unless otherwise specified in this Contract, Buyer is responsible for obtaining any required export or import licenses. Buyer will comply with all laws and regulations applicable to the installation or use of all Products, including applicable import and export control laws and regulations of the U.S., E.U. and any other country having proper jurisdiction, and will obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all Products and technology delivered hereunder. Buyer will comply with all local, national, and other laws of all jurisdictions globally relating to anti-corruption, bribery, extortion, kickbacks, or similar matters which are applicable to Buyer's business activities in connection with this Contract, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"). Buyer agrees that no payment of money or provision of anything of value will be offered, promised, paid or transferred, directly or indirectly, by any person or entity, to any government official, government employee, or employee of any company owned in part by a government, political party, political party official, or candidate for any government office or political party office to induce such organizations or persons to use their authority or influence to obtain or retain an improper business advantage for Buyer or for Hach, or which otherwise constitute or have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business or any improper advantage, with respect to any of Buyer's activities related to this Contract. Hach asks Buyer to "Speak Up!" if aware of any violation of law, regulation or our Standards of Conduct ("SOC") in relation to this Contract. See <http://danaher.com/integrity-and-compliance> and www.danaherintegrity.com for a copy of the SOC and for access to our Helpline portal.

17. **RELATIONSHIP OF PARTIES:** Buyer is not an agent or representative of Hach and will not present itself as such under any circumstances unless and to

TERMS AND CONDITIONS OF SALE FOR HACH® PRODUCTS

the extent it has been formally screened by Hach's compliance department and received a separate duly-authorized letter from Hach setting forth the scope and limitations of such authorization.

18. **FORCE MAJEURE:** Hach is excused from performance of its obligations under this Contract to the extent caused by acts or omissions that are beyond its control of, including but not limited to Government embargoes, blockages, seizures or freeze of assets, delays or refusals to grant an export or import license or the suspension or revocation thereof, or any other acts of any Government; fires, floods, severe weather conditions, or any other acts of God; quarantines; labor strikes or lockouts; riots; strife; insurrections; civil disobedience or acts of criminals or terrorists; war; material shortages or delays in deliveries to Hach by third parties. In the event of the existence of any force majeure circumstances, the period of time for delivery, payment terms and payments under any letters of credit will be extended for a period of time equal to the period of delay. If the force majeure circumstances extend for six months, Hach may, at its option, terminate this Contract without penalty and without being deemed in default or in breach thereof.

19. **NON ASSIGNMENT AND WAIVER:** Buyer will not transfer or assign this Contract or any rights or interests hereunder without Hach's prior written consent. Failure of either party to insist upon strict performance of any provision of this Contract, or to exercise any right or privilege contained herein, or the waiver of any breach of the terms or conditions of this Contract will not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same will continue and remain in force and effect as if no waiver had occurred.

20. **FUNDS TRANSFERS (PAYMENTS):** Buyer and Hach both recognize that there is a risk of banking fraud when individuals impersonating a business demand payment under new banking or mailing instructions. To avoid this risk, Buyer must verbally confirm any new or changed bank transfer or mailing instructions by calling Hach at +1-970-663-1377 and speaking with Hach's Credit Manager before mailing or transferring any monies using the new instructions. Both parties agree that they will not institute mailing or bank transfer instruction changes and require immediate payment under the new instructions but will instead provide a ten (10) day grace period to verify any payment instruction changes before any new or outstanding payments are due using the new instructions.

21. **LIMITATION OF LIABILITY:** **None of the Hach Indemnified Parties will be liable to any Buyer Indemnified Parties under any circumstances for any special, treble, incidental or consequential damages, including without limitation, damage to or loss of property other than for the Products purchased hereunder; damages incurred in installation, repair or replacement; lost profits, revenue or opportunity; loss of use; losses resulting from or related to downtime of the products or inaccurate measurements or reporting; the cost of substitute products; or claims of any Buyer Indemnified Parties' customers for such damages, howsoever caused, and whether based on warranty, contract, and/or tort (including negligence, strict liability or otherwise). The total liability of the Hach Indemnified Parties arising out of the performance or nonperformance hereunder or Hach's obligations in connection with the design, manufacture, sale, delivery, and/or use of Products will in no circumstance exceed in the aggregate a sum equal to twice the amount actually paid to Hach for Products delivered hereunder.**

22. **APPLICABLE LAW AND DISPUTE RESOLUTION:** The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the laws of the State of Colorado, without regard to its principles or laws regarding conflicts of laws. If any provision of this Contract violates any Federal, State or local statutes or regulations of any countries having jurisdiction of this transaction, or is illegal for any reason, said provision shall be self-deleting without affecting the validity of the remaining provisions. Unless otherwise specifically agreed upon in writing between Hach and Buyer, any dispute relating to this Contract which is not resolved by the parties shall be adjudicated in order of preference by a court of competent jurisdiction (i) in the State of Colorado, U.S.A. if Buyer has minimum contacts with Colorado and the U.S., (ii) elsewhere in the U.S. if Buyer has minimum contacts with the U.S. but not Colorado, or (iii) in a neutral location if Buyer does not have minimum contacts with the United States.

23. **ENTIRE AGREEMENT, TERM & MODIFICATION:** These Terms & Conditions of Sale constitute the entire agreement between the parties and supersede any prior agreements or representations, whether oral or written. Upon thirty (30) days prior written notice, Hach may, in its sole discretion, elect to terminate any order for the sale of Products and provide a pro-rated refund for any pre-payment of undelivered Products. No change to or modification of these Terms & Conditions shall be binding upon Hach unless in a written instrument specifically referencing that it is amending these Terms & Conditions of Sale and signed by an authorized representative of Hach. Hach

rejects any additional or inconsistent Terms & Conditions of Sale offered by Buyer at any time, whether or not such terms or conditions materially alter the Terms & Conditions herein and irrespective of Hach's acceptance of Buyer's order for the described goods and services.

24. **APPENDICES:** If checked, the following Appendices are attached hereto and incorporated by reference into these Terms & Conditions of Sale:

CLAROS SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT

* * *

AGENDA ITEM #8001

Discussion with Action: Approve the proposal from Vortex Services for the storm drain line work on Third St. and Cedar Ave, for an amount not to exceed \$11,760.00 from account number 50002-50931 Stormwater Maintenance and Improvement with a balance of \$884,681.88.

Chair: Shawn O'Neill



Mike Hersey
Old Orchard Beach Public Works
1 Portland Avenue
Old Orchard Beach, ME 04064
9/6/2023

Greetings Mike,

Thank you for giving us the opportunity to provide you with this proposal.

Scope of Work: Root Cut and CCTV 615' of XC Storm drain between Third St and Cedar Ave in Old Orchard Beach.

Project Responsibilities

Old Orchard Beach Public Works: To help achieve a smooth and successful project, you will be considered the owner of the project and it will be your responsibility to perform the following:

- Provide a designated contract coordinator
- Provide access to all areas to complete the project
- Provide all items not explicitly called out in Vortex Services, LLC responsibilities
- Provide a designated onsite project coordinator
- Provide all access to both upstream and downstream manholes of the mainline pipeline segments
- Provide notification to all affected homeowners, businesses and stakeholders
- Provide water source for root cutting
- Provide disposal site

Vortex Services, LLC

- Provide a designated project manager
- Provide an XC Cleaning and CCTV team with all labor, materials, and equipment to complete the project.
- Provide flaggers for narrow neighborhood roads

Vortex Services, LLC Employees

- Project Manager (Off Site)
- PACP Certified CCTV Operator
- Technician
- Jet/Vac Operator
- Water Truck Operator

Vortex Services, LLC Equipment

- Municipal Vac
- Mainline CCTV Unit
- Water Tank Truck



Billable Units

Item	Description	Qty	Unit	Unit Price	Price
1	XC Root Cut and CCTV	1	DY	\$5,880.00	\$5,880.00
Total Estimated Cost of Services					\$5,880.00

Terms and Conditions

All quotes are good for 30 days from date of inquiry.
 Payment is due Net 30 from the date the project is completed.
 If not provided, water and disposal charged at actual cost plus 10%

General Conditions: Owner recognizes and acknowledges: (a) that the specialized nature of VORTEX SERVICES, LLC’s services as they relate to pipes and structures involves the removal of light to heavy debris, often preventing adequate flow; (b) that the services to be provided under this Agreement involve robotic CCTV inspection and may implicate conditions not readily discernable prior to the start of work by the Owner; and (c) that pipe cleaning, including the removal of debris, flushing, and vacuuming of structures or pipes, may be impacted by pipe damage or conditions such as broken, cracked, offset, collapsed, eroded, corroded or otherwise deteriorated pipe. VORTEX SERVICES, LLC shall not be responsible to Owner or any third party for any sums of money on account of any claims or suits arising by reason of the condition of the pipe or structures encountered by VORTEX SERVICES, LLC in rendering services hereunder, including conditions precipitating pipe collapse, deteriorated/corroded pipe, the compromised structural integrity of pipe, and unanticipated back up and discharge flows, including resultant residential or third party impacts.

We appreciate the opportunity to provide you with this proposal and we look forward to the chance to work with you. Please sign and return signed copy upon acceptance of this proposal.

Sincerely,

Ivory Petroff
Project Manager

Accepted by:

Print name:

Title: _____

Date: _____

AGENDA ITEM #8002

Discussion with Action: Authorize the Town Manager to enter into an agreement between the Maine Department of Transportation (MaineDOT) and the Portland Area Comprehensive Transportation System (PACTS) for proposed improvements to Old Orchard Road, beginning at Saco Ave. (Route 5) and extending south 0.42 of a mile to the Saco town line, at the estimated cost of \$275,000.00 funded through PACTS Federal allocation funding with a projected local municipal share of \$175,000.00 from account # 50002-50506 CIP Road Maintenance Improvements, with a balance of \$737,645.10.

Chair: Shawn O'Neill



<i>MaineDOT use only</i>	
TEDOCS #:	_____
CTM #:	_____
CSN #:	_____
PROGRAM:	<u>Bureau of Planning</u>

State of Maine
DEPARTMENT OF TRANSPORTATION
Portland Area Comprehensive Transportation System
Municipal Partnership Initiative Agreement
Proposed Improvements to Old Orchard Road
(Payable to Municipality)

<i>MaineDOT Use Only</i>	
Project Location: <u>Old Orchard Beach</u>	Estimated Project Amount: <u>\$275,000.00</u>
State WIN: <u>027768.00</u>	MPO Share: <u>\$100,000.00</u>
PACTS ID#: <u>PACTS</u>	Municipal Share: <u>\$175,000.00</u>
Municipality Id#: <u>VC1000069554</u>	Agreement Begin Date: _____
	Agreement End Date: _____

This Cooperative Agreement (the “Agreement”) is entered into by and between the Maine Department of Transportation (MaineDOT), an agency of state government, the Town of Old Orchard Beach (the “Municipality”), a municipality in the State of Maine, and the Portland Area Comprehensive Transportation System, the designated Metropolitan Planning Organization for the Portland Urbanized Area (PACTS), and Greater Portland Council of Governments (GPCOG), a fiduciary agent for PACTS. (MaineDOT, the Municipality, PACTS, and GPCOG) are collectively referred to as the “Parties”).

RECITALS

- A.** MaineDOT, through its partnership with Maine’s Metropolitan Planning Organizations (MPOs), is charged with managing and dispersing state and federal funds to support capital improvement projects programmed by the MPOs. PACTS is MaineDOT’s MPO partner for the Portland Urbanized Area.
- B.** PACTS has created and administers a Municipal Partnership Initiative program (the “PACTS MPI Program”), the purpose of which is to participate in the funding of approved collector and/or arterial roadway projects (the “MPI Project(s)”) with the intention of restoring substandard State and State Aid highways to MaineDOT and PACTS minimum standards.

- C. MPI Projects are administered by the municipality in which the project is being constructed. PACTS' participation in an MPI Project is accomplished through its acceptance of the Project into the PACTS MPI Program, and the contribution of state funds allocated to PACTS and disbursed by MaineDOT to the administering municipality on PACTS' behalf (the "PACTS Share"). MPI Project costs not paid by the PACTS Share are paid by the administering municipality.
- D. The work that is the subject of this Agreement consists of a mill and fill on Old Orchard Road, beginning at Saco Avenue (Route 5) and extending south 0.42 of a mile to the Saco town line, in Old Orchard Beach, Maine (the "Project"), and is generally outlined in **Appendix A**, made a part herewith.
- E. PACTS has selected the Project for inclusion in the 2023-2024-2025 MaineDOT Work Plan, using state capital improvement funding allocated by MaineDOT.
- F. The Municipality has approved the Project and supports the decision by MaineDOT and PACTS to program the Project, and is prepared to administer and fund the Project in accordance with the terms of this Agreement.
- G. The Parties have a mutual interest in ensuring that the Project is delivered on a reasonable schedule and within the programmed budget, using a process that maximizes communication and cooperation between the Parties.
- H. This Agreement is intended to cover the roles and responsibilities of the Parties through full Project development and construction, and to establish the financial obligations of each Party.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing, the Parties agree as follows:

1. Appendices:

The following appendices are hereby incorporated into this Agreement:

- Appendix A - PACTS Letter to MaineDOT Outlining Scope and Cost of MPI Project
- Check if no appendices attached

2. Project Cost Sharing and Payment Schedule:

a. Financial Obligations:

i. Total Project Costs.

- 1. PACTS and the Municipality agree to share in all costs associated with all phases of the Project through construction (the "Total Project Costs") in accordance with the allocations outlined below (the "Party Shares") unless otherwise negotiated by mutual agreement of the Parties.

- a. **PACTS Share** (provided through PACTS' state allocation and disbursed by MaineDOT) - 50% of eligible Project costs, up to a maximum of \$100,000.00.
 - b. **Municipal Share** (provided through the Municipality's obligation of funds) - 50% of eligible Project costs, plus 100% of any and all remaining Project Costs once the PACTS Share has been exhausted (the "Overage").
2. The estimated Total Project Costs are \$275,000.00 (the "Estimated Total Project Costs"), and are allocated in the table below. If the Estimated Total Project Costs are adjusted to reflect updated costs, the Municipality will consult with PACTS before such adjustments are approved and implemented.

Total Project Costs	PACTS Share (State MPO Funds) 50% (Max. \$100,000.00)	Municipality's Share 50% + Overage	Estimated Total Cost
Estimated Total Project Costs: <u>\$ 275,000.00</u>			
Estimated Allocated Shares	\$100,000.00	\$100,000.00 +\$75,000.00	\$275,000.00
Total Party Share of Estimated Total Project Costs	\$100,000.00	\$175,000.00	\$275,000.00

- b. **Payment Schedule:** The Municipality shall be the sole administrator of the Project contract(s) and shall pay up front all Project costs, subject to cost sharing by the Municipality and PACTS as specified above.
 - i. The Municipality may begin invoicing PACTS for the PACTS Share of eligible Project costs upon 1/3 Project completion. Invoices shall be submitted no more than monthly with a maximum number of invoice submittals not to exceed five (5) invoices for the total Project.
 - ii. The Municipality shall submit to PACTS for reimbursement detailed invoice(s) documenting actual amounts incurred for Project related costs, together with evidence of such invoices having been paid by the Municipality, and identifying PACTS' share of each invoice submitted.
 - iii. Each invoice shall include the Municipality's certification that all amounts claimed are correct, and not previously claimed.
 - iv. PACTS shall review each such invoice and, upon approval, shall forward each invoice to MaineDOT for payment to the Municipality out of PACTS'

allocated state MPO funds. MaineDOT shall reimburse the Municipality accordingly within thirty (30) days of its receipt of such approved invoice(s) in an aggregate amount not to exceed the total PACTS Share.

- v. The Municipality shall submit all invoices for reimbursement to PACTS no later than twelve (12) months after the date upon which the Municipality has certified to MaineDOT that the Project is complete. PACTS retains the right, at its sole discretion, to reject any invoices received after that time.

3. Project Milestones: The Municipality agrees to share information about the Project with PACTS and MaineDOT at the following milestones, as appropriate:

- Project kickoff/initial team meeting/formal public contact;
- Horizontal/Vertical Alignment Complete (HVAC);
- Preliminary public meeting;
- Preliminary Design Report (PDR) complete;
- Formal public meeting(s);
- Plan Impacts Complete (PIC);
- Peer reviews;
- Plans, Specifications and Estimate (PS&E) complete;
- Changes in the Project schedule or engineer's estimate of costs.

4. Project Design, Construction Plans and Specifications:

- a. The Municipality shall prepare, or cause to be prepared, all plans, specifications, engineer's estimates and contract documents for the Project within the scope of work identified above, using a standard project development process to ensure adherence to federal and state regulations (the "Preliminary Project Development Materials").
- b. The Municipality shall retain a Professional Engineer licensed in the State of Maine to oversee all Project activities (the "Project Engineer").
- c. The Project must be designed by a Professional Engineer licensed in the State of Maine (the "Design Engineer") and in compliance with MaineDOT's design standards (the "Design Standards").
 - i. The Design Engineer shall provide certification to the Parties that, in his/her professional opinion, the Project will provide a smooth ride and not reduce the safety, mobility or structural quality of the affected State and/or State Aid Highway.
 - ii. All design documents must be stamped and signed by the Design Engineer in accordance with the provisions of this Section.
- d. MaineDOT reserves the right to review and comment on all plans and specifications with the focus on ensuring that the Project will achieve the anticipated benefits and will not degrade safety.

- e. The Municipality, through its Project Engineer, shall obtain written approval from MaineDOT for any exceptions to the “Design Standards”. Submitted documentation shall compare the proposed design to the existing conditions for each proposed exception. Any and all exceptions shall be listed on the cover sheet accompanying the Project plans and submitted to MaineDOT, accompanied by a request for acceptance of the Project’s design exceptions. All such requests must include the signature and professional stamp of the Professional Engineer responsible for the design of the Project.
- f. In developing the Project, the Municipality shall ensure that the following elements are satisfied:
 - i. The Project improvements must have a minimum useful life of ten (10) years;
 - ii. The safety of the corridor and the life of the resulting structural and design elements shall be equal to or better than the existing conditions and design;
 - iii. The structures, roadways and design features affected by the Project work shall, at a minimum, be of equal dimensions to the existing features or structures and shall be of improved quality in terms of materials and utility;
 - iv. The Project shall not introduce any unanticipated safety hazards to the traveling public;
 - v. The Project shall retain the same level or an improved level of mobility of travel within the corridor;
 - vi. The Project shall not in any manner decrease the life expectancy of the affected component(s) of Maine’s transportation system;
 - vii. The Project shall meet the most recent Americans with Disabilities Act of 1990 (ADA) design requirements;
 - viii. Traffic control and the safety of pedestrians, bicyclists and the traveling public shall be provided for at all times.
- g. The Municipality shall coordinate with affected utilities to identify existing utility locations and/or any utility relocation impacts that may be created by the development of the Project.
- h. It is expected that the Project can be constructed within the existing right-of-way limits. If that is not the case, the Municipality must provide MaineDOT with a detailed explanation of the property rights required for the Project and shall acquire any such property rights in accordance with all applicable state and federal laws. The PACTS Share may only be applied to costs associated with the acquisition of property rights required for the implementation of the Project.

- i. The Municipality shall perform all necessary federal, state and local permitting activities required in connection with the Project.
- j. Project construction must commence within twelve (12) months and must be certified as complete within twenty-four (24) months of the date of execution of this Agreement. If this timeline is not met, and the Municipality cannot show that it has made a good faith effort to meet this timeline, PACTS retains the right to withdraw any unpaid portion of the PACTS Share and reallocate its remaining funding to other eligible projects in its service area.
- k. Upon completion of Project construction, the Municipality shall provide certification to MaineDOT from the Project Engineer stating that the Project is complete and has been constructed in accordance with the plans and specifications.

5. Public Involvement:

The Municipality shall be responsible for implementing and leading any and all required public involvement processes and activities, including those required by Maine's Sensible Transportation Policy Act, and any necessary media coordination associated with the any phases of the Project covered by this Agreement.

6. Changes to Project Scope:

The Municipality will consult with MaineDOT and PACTS before implementing any adjustments to the Project scope.

7. Termination:

- a. In the event the Municipality decides to terminate the Project for any reason prior to the award of a contract to construct the Project and that termination under this clause is not directed by MaineDOT and PACTS, the Municipality shall be responsible for covering all Project costs incurred up to the time of termination.
- b. This Agreement may be terminated at any time by mutual written agreement of all Parties.
- c. In no event, shall any such action taken under this subsection be deemed a breach of contract, nor shall it represent any individual Party's waiver of claims for breach of contract or its right to any other remedy it may have pursuant to this Agreement, or at law or in equity.
- d. In the event of Project termination, all provisions of this Agreement shall become null and void except for the financial obligations set forth herein, as well as those provisions to this Agreement that by their very nature are intended to survive.

8. Miscellaneous Provisions:

- a. Quality of Work. PACTS reserves the right to require the Municipality to refund all reimbursements made and to repay PACTS fully for all Projects costs incurred if the work is found to be unsatisfactory.
- b. Reprogramming of Remaining PACTS Funds. Any state MPO funds allocated to the Project that remain unspent following payment of the final invoice and reconciliation of the Project shall be made available to PACTS for reprogramming once the Project is closed out.
- c. Indemnification. To the extent permitted by law, the Municipality and PACTS shall each individually indemnify, defend and hold harmless MaineDOT, its officers, agents and employees from all claims, suits or liabilities arising from the indemnifying Party's own negligent or wrongful acts, errors or omissions or by that Party's officials, employees, agents, consultants or contractors. Nothing herein shall waive any defense immunity or limitation of liability that may be available under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. This provision shall survive the termination or expiration of the Project.
- d. Assumption of Responsibility. The Municipality hereby assumes responsibility for all damage to public or private property of any kind resulting from any act, omission, neglect or misconduct of the Municipality, its employees, agents or representatives, and shall ensure that its contractor(s) assume the same responsibility for all damage to public or private property of any kind resulting from any act, omission, neglect or misconduct of its own employees, agents or representatives. This assumption of responsibility shall also include damage to vehicles passing through the Project limits.
- e. Obligation of State Funds. Notwithstanding anything herein to the contrary, the Municipality and PACTS acknowledge and agree that, although the execution of this Agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this Agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
- f. Performance. The Parties will avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.
- g. Obligation of Municipal Funds. The Municipality represents that it has received all necessary approvals or authorizations by its governing authorities to approve the Project and enter into this Agreement, and that it has obligated the necessary funds to satisfy its Municipal Share of the Project Costs set out herein.
- h. State of Maine's Rights of Set-Off. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State of Maine's option to withhold for the purposes of set-off monies due the Municipality under a specific project contract up to any amounts due and owed to

MaineDOT with regard to this Agreement, and any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State of Maine for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller.

- i. Assignment. No assignment of this agreement is contemplated, and in no event, shall any assignment be made without the express written permission of the Parties.
- j. Independent Capacity. The Municipality and PACTS, their respective employees, agents, representatives, consultants and contractors shall not act as officers, employees or agents of MaineDOT.
- k. Governing Law. This Agreement shall be construed under the laws of the State of Maine. Additionally, all activities under this Agreement shall be performed in accordance with applicable federal laws and regulations, including without limitation Title 23 in the U.S. Code (USC) for statutory law, Title 23 in the Code of Federal Regulations (CFR) for administrative law, and Title 2 CFR, Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
- l. Binding Effect. The Parties shall be bound by the terms of this Agreement. This provision shall apply to the Agreement's executors, their successors, administrators and legal representatives.
- m. Notice. Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier such as, but not limited to Federal Express, that requires a return receipt delivered to the sending party. Alternatively, communication may be sent via email and shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving party. Said communications, requests or notices shall be sent to the other party as follows:

MaineDOT: Maine Department of Transportation
16 State House Station
Augusta, ME 04333-0016
Attn.: Darryl Belz, PE, Statewide Planning Engineer
Email: darryl.belz@maine.gov

Municipality: Town of Old Orchard Beach
Department of Public Works
103 Smithwheel Road
Old Orchard Beach, ME 04064
Attn.: Joseph Cooper, Director of Public Works

Email: jcooper@oobmaine.com

FACTS: Portland Area Comprehensive Transportation System
970 Baxter Boulevard, Suite 201
Portland, ME 04103
Attn.: Elizabeth Roberts, PE, Transportation Engineer
Email: eroberts@gpcog.org

Each Party agrees to promptly notify all other Parties of any changes to the above referenced contact information.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective on the day and date last signed.



DocuSigned by:
Kristina Egan
EF67A54B0DDE4EB...

Date 8/25/2023

Kristina Egan, Executive Director *
Greater Portland Council of Governments and
For Portland Area Comprehensive Transportation System
Duly authorized

Date _____

Diana Asanza, Town Manager *
Municipality of Old Orchard Beach
Duly authorized

Date _____

Dale F. Doughty, Director, Bureau of Planning *
Maine Department of Transportation
Duly authorized

** I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.*



Darryl Belz, P.E.
Safety/MPO Engineer
Bureau of Planning
Maine Department of Transportation
16 State House Station
Child Street
Augusta, Maine 04433-0016

June 16, 2023

PACTS 2024 Municipal Partnership Initiative Project: Old Orchard Beach, Old Orchard Road Paving Project

Darryl,

The following is a request to develop a Municipal Partnership Initiative (MPI) agreement for the above project for the 2024 PACTS MPI program.

On April 25th, 2023 the PACTS Executive Board approved programming \$100,000 of PACTS' CY2024 state funding allocation for the following project:

Old Orchard Beach, Old Orchard Road Paving Project

Mill and fill paving between Saco Ave (Route 5) and Saco town line.

The Route Log Miles start at 0.00 and end at 0.42 along Old Orchard Road (Route # 3140014) for a total project length of 0.42 miles.

The scope consists of mill and fill pavement restoration. The total cost estimate is \$275,000. Construction complete year is scheduled to be 2024.

The funding is 50% state/50% local with a cap of \$100,000 for the state share.

PACTS is requesting a WIN for the project and a three-party agreement to follow.

The municipal contact is Diana Asanza. She is aware of contract documents needed such as, a scope of work, unit prices and complete specifications. These documents will be similar or the same as a MaineDOT "Book Project", including a set of plans as necessary to be outlined in the pending agreement.

Thank you for your attention to this matter. If you have any questions, please call.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Chop". The signature is fluid and cursive, with a large initial "C" and "H".

Chris Chop
PACTS

cc: Chris White, Town of Old Orchard Beach
Elizabeth Roberts, GPCOG
Harold Spetla, GPCOG

AGENDA ITEM #8003

Discussion with Action: Approve the quote from Casco Bay Ford for the purchase of a 2023 Ford F-350 Regular Cab 4X4 Truck for the Wastewater Department in the amount of \$47,525.50, to be financed through a lease purchase agreement with Gorham Leasing Group paid in five (5) annual installments in the amount of \$10,517.28 annually, with an interest rate of 5.30%, from account number 20197-50330 Debt Service Lease Purchase, with a balance of \$358,990.59.

Chair: Shawn O'Neill

AGENDA ITEM #8004

Discussion with Action: Approve the quote from Precision Collision for \$15,000.00 for additional costs associated with the refurbishment of the Public Works John Deere 624K Loader, and an amount not to exceed \$10,000 for the parts required to refurbish the cab, for a total of \$25,000.00 from account number 20151-50452 Operating Equipment Repair Expense with a balance of \$173,378.67.

Chair: Shawn O'Neill

United Construction & Forestry
 396 County Road
 Westbrook, ME 04092
 Phone: (207) 773-3777
 Fax: (207) 773-6325
 info@ucfne.com

UNITED
 Construction & Forestry
 www.unitedcf.com



PARTS QUOTATION

Invoice To Account No: 606795



Deliver To:

TOWN OF OLD ORCHARD BEACH 1 PORTLAND AVENUE OLD ORCHARD BEACH ME 04064 US	TOWN OF OLD ORCHARD BEACH HIGHWAY DEPT 103 SMITHWHEEL ROAD OLD ORCHARD ME 04064 Home Ph: Mob Ph: Work Ph: (207)934-5714	Quotation No: 1248575 Date: 8/25/2023 Page: 1 of 1
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Supplied Quantity	Back Order Quantity	Part Number	Part Description	Bin Loc	List Price	Net Price	Extended Price
1.00	0	AT361805	Panel		939.19	939.19	\$939.19
1.00	0	AT361802	Panel		1,181.89	1,181.89	\$1,181.89
1.00	0	AT470564	Pedal	UD1A4	1,123.14	1,123.14	\$1,123.14
1.00	0	AT470563	Pedal	S4E	588.85	588.85	\$588.85
1.00	0	AT346311	Linkage		866.32	866.32	\$866.32
1.00	0	RE327083	Evaporator		873.03	873.03	\$873.03
1.00	0	AT392560	CORE		284.71	284.71	\$284.71
1.00	0	AT365431	Blower Motor	UD3C2	615.68	615.68	\$615.68
1.00	0	AT498725	Thermostat	V10EA3	179.41	179.41	\$179.41
2.00	0	T224529	Bracket		259.82	259.82	\$519.64
1.00	0	AT328356	Bracket		471.39	471.39	\$471.39
1.00	0	AT328357	Bracket		369.56	369.56	\$369.56
6.00	0	T178368	Support	UD3A3	198.00	198.00	\$1,188.00
1.00	0	T250948	Bracket		223.96	223.96	\$223.96
1.00	0	AT228414	Door		749.08	749.08	\$749.08
14.00	0	T152076	WASHER		10.83	10.83	\$151.62
4.00	0	19M7888	Cap Screw		13.53	13.53	\$54.12
6.00	0	19M8791	Screw		36.50	36.50	\$219.00
1.00	0	AT227279	Level Gauge	V10HA1	128.31	128.31	\$128.31
1.00	0	T197300	Label	F1DR	11.27	11.27	\$11.27

Customer PO No: 624K Tax Exempt No: ME 2099-12-31 GV Salesperson: SULLIVAN SMITH	Delivery Note: no lead time	Sub Total: \$10,738.17 Sales Tax: \$0.00 <hr/> Total: \$10,738.17 Deposit Received: \$0.00 <hr/> Balance Due: \$10,738.17 EXCLUDES TAX
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AGENDA ITEM #8005

Discussion with Action: Approve the FY 23 Line Item Transfer of \$387,990.93 from the following accounts with credit balances:

\$102,351.21 from account 20138-50102 FD Regular employee salary with a balance of \$102,351.21

\$13,255.75 from account 20138-50105 FD Fire Inspection Wage with a balance of \$13,255.75

\$5,000 from account 20138-50121 FD Annual Stipend Expense with a balance of \$5,000

\$6,812.52 from account 20138-50251 FD Conferences and Training with a balance of \$6,812.52

\$7,824.20 from account 20138-50405 FD Heating Fuel Expense with a balance of \$7824.20

\$5,541.86 from account 20138-50452 FD Operating Equipment with a balance of \$5,541.86

\$7,477.95 from account 20138-50453 FD Vehicle Repair with a balance of \$7,477.95

\$14,654.74 from account 20138-50501 FD Operational Supplies with a balance of \$14,654.74

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\$225,072.70 from account 20197-50395 Interest Expense with a balance of \$252,937.64

Total Credit Balance to Transfer: \$387,990.93

To the following accounts with deficit balances:

\$22,069.80 to account 20138-50101 FD Department Head Salary with a balance of (\$22,069.80)

\$75,395.57 to account 20138-50106 FD Full Time Employee Expense with a balance of (\$75,395.57)

\$78,358.56 to account 20138-50107 FD Part Time Employee Expense with a balance of (\$78,358.56)

\$212,167.00 to account 20138-50111 FT Overtime Wages with a balance of (\$212,167.00)

Total Deficit: \$387,990.93

Chair: Shawn O'Neill

AGENDA ITEM #8006

Discussion with Action: Renew the liquor license for The Beachwood, John and Shannon Cloutier, (307-1-4), 29 West Grand, m-s-v in a class I-A, hotel – food optional.

Chair: Shawn O’Neill

AGENDA ITEM #8007

Discussion with Action: Renew the liquor license for the Alouette Beach Cafe, Alouette OOB Ocean Front Resort Inc., D/B/Alouette Beach Café, (303-1-11), 91 East Grand, m-s-v in a class I restaurant.

Chair: Shawn O'Neill

AGENDA ITEM #8008

Discussion with Action: Renew the liquor license for the GFB Scottish Pub, Kelly and Robert Greenlaw, (205-3-1), 32 Old Orchard St., m-s-v in a class A restaurant/lounge.

Chair: Shawn O'Neill

ADJOURNMENT

Chair: Shawn O'Neill