



Town Council - Meeting Agenda

March 17, 2026 @ 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:

ACCEPTANCE OF MINUTES:

Accept the minutes from the 3/3/2026 Regular Town Council Meeting

Chair: Shawn O'Neill

PUBLIC HEARING – BUSINESS LICENSE & APPROVALS:

Gabriel Perez, Flip Flops Comedy Club, 40 Old Orchard Street, 205-3-6, Function Hall (Comedy Club) & Victualers without Prep with Beer, Wine, and/or Liquor.

Kristen Krafsgig, 43 Seaside Avenue, 321-25-2, 1 Seasonal Short-Term Rental

Scott W. Smith, 3 Bay Avenue #23, 313-2-11-4, 1 Year-Round Short-Term Rental

Cierra Investments LLC, James Albert, (211-9-1), 215 Saco Avenue, Building A, Units 1 thru 4, four (4) Year-Round Rentals

Chair: Shawn O’Neill

TOWN MANAGER REPORT

NEW BUSINESS:

AGENDA ITEM #8967

Discussion with Action: Renew the liquor license for RAR Surfside Inc, Royal Anchor Resort, 202-1-5, 203 East Grand Avenue, Class I-A Hotel with Food Optional, On-Premise, Beer, Wine & Spirits

Chair: Shawn O'Neill

AGENDA ITEM #8968

Discussion with Action: Set the public hearing date for April 7, 2026, for the Town Council to consider amendments to the Code of Ordinances, Chapter 18, Article XIII, Section 18-623. The purpose of these amendments is to allow food trucks, carts, and stands provide on-site services to guests of events held on private property in the DD1, DD2, BRD, and R3 Zoning Districts.

Chair: Shawn O'Neill

**Temporary Mobile Food Business Ordinance Amendments
INFORMATION SHEET (3.2026)**

1. Ordinance Purpose

- To allow food trucks, carts, and stands provide on-site services to guests of events held on private property.

2. What are Temporary Mobile Food Businesses?

- Food trucks, carts, and stands that are allowed to operate on private property for 72 consecutive hours during a 7 day period for the purpose of serving events on private property.

3. What is an Event?

- For the purpose of this ordinance, an event is a gathering that a sponsoring individual or organization conducts on private property (e.g., wedding).

4. Where are Temporary Mobile Food Businesses for events allowed?

- On private property in the following zoning districts: Downtown Districts 1 and 2, Beachfront Resort District, and Residential 3 District.

5. What is the process to allow Temporary Mobile Food Businesses?

- There are two primary steps:
 1. The property owner that holds event(s) on their property must secure a new business license every year. This license allows mobile food businesses to exist on their property between 1 April and 31 October. One license covers the entire season. The license does not allow the event; it only allows mobile food businesses to operate on the property. Also, the license does not allow individual mobile food businesses- that's where step 2 comes in.
 2. Each mobile food business owner or their representative must notify code enforcement a minimum of 10 business days before operation of the mobile food business. There are specific items they must include with this notification (see sample in number 6, below). The code enforcement officer has authority to approve, approve with conditions, or deny an operations plan.

6. Are there special regulations that apply?

- Yes, the ordinance includes several standards specific to Temporary Mobile Food Businesses including:
 1. Use is limited to serving event guests and event employees only. Service to the general public is prohibited.
 2. All applicable state license and permit approvals, including any inspections, must be secured before serving event guests.
 3. Operator/owner of Temporary Mobile Food Business must notify code enforcement a minimum of 10 business days before operation at an event. The notice must include:
 - A. Location of mobile food business.
 - B. Description, including visual representation, of the mobile food business.
 - C. Dates and times mobile food business will be located on private property.
 - D. Description of the event serviced by the mobile food business.
 - E. Emergency contact information.
 4. The fire department and code enforcement office can inspect the location of the mobile food business and the mobile food business before serving event guests.

7. How is the draft ordinance different from current mobile food business ordinances?

- Current ordinance allows food carts, food trucks and food stands only in the Amusement Overlay District, Campground Overlay District, Residential 2 District (Salvation Army property only), and for Council

approved/sponsored events. The proposed ordinance will expand the areas allowed to the Downtown Districts 1 and 2, Beachfront Resort District, and Residential 3 District but only for serving guests of events held on private property and only on a temporary basis.

- Regarding mobile food businesses on public property or serving the general public, nothing has changed- they are still not allowed unless they're associated with activities approved by Council. This draft ordinance only allows mobile food businesses for events on private property.

8. Can the Temporary Mobile Food Business serve the general public?

- No, it can only serve guests of events held on private property.

9. Does the draft ordinance include regulations for the event?

- No, the ordinance only allows mobile food businesses to operate on a property through the licensing process and regulates the individual mobile food businesses through the code enforcement notification process, each discussed in the ordinance. The event has separate regulations.

TEMPORARY MOBILE FOOD BUSINESS ORDINANCE AMENDMENTS (D1 - 3/2026)

Ordinance additions are underlined

AMENDMENTS TO CHAPTER 18, LICENSING, ARTICLE XIII

Sec. 18-623. – Temporary Mobile Food Business For Events On Private Property

(1) Purpose. The purpose of this section is to allow mobile food businesses to provide services to guest of events on private property.

(2) Applicability. The regulations in this section shall apply to any persons or entities operating, proposing to operate, or providing a location to operate mobile food businesses for events on private property in the following zoning districts: Residential 3 (R3), Downtown District 1 (DD1), Downtown District 2 (DD2), and Beachfront Resort District (BRD).

(3) Definitions. As used in this section the terms listed below have meanings set forth below, whether or not such terms are otherwise defined elsewhere in the Town of Old Orchard Beach Code of Ordinances. Terms not listed below have the same meanings as in applicable Old Orchard Beach Code of Ordinances Chapters including Chapter 78, Section 78-1. If terms conflict, the terms in this section prevail.

Event, a gathering that a sponsoring individual or organization conducts on private property.

Food cart means a non-permanent food and beverage service establishment that is a non-motorized vehicle self-propelled by the operator. This definition shall also include food and beverage service establishments pulled by a motorized vehicle.

Food stand means a non-permanent structure used to sell prepared and/or pre-packaged food and beverages.

Food truck means a motorized vehicle that is completely mobile from which prepared and/or pre-packaged food and beverages are sold. The term "food truck" shall not include ice cream trucks.

Mobile Food Business means a food cart, food stand, or food truck, as defined in this section.

Private Property means the real property as well as any buildings or structures located on real property for which the event is located.

Seasonal means April 1 to October 31 of any year.

Temporary, for the purpose of food carts, food trucks, and food stands serving events, means lasting for a time period not to exceed seventy-two (72) consecutive hours within seven (7) calendar days.

(4) License Required. No owner of private property shall allow any mobile food business to operate at an event on their property without a license issued as outlined Chapter 18, Article II. It shall be the responsibility of the property owner to file a new license application no later than ~~March 1~~ thirty (30) calendar days before the first event held on the property each calendar year. A single license can apply to multiple events each calendar year. For the purposes of this section each license shall expire on ~~March 1~~ November 1 of each year, and each subsequent license shall be considered a new license.

(5) Operation Guidelines. A minimum of ten (10) business days before operation of a mobile food business, each mobile food business owner or their authorized representative shall provide documentation an operations plan to the code enforcement officer documenting that the mobile food business complies with the following:

- (a) Public Property Prohibition. No mobile food business shall operate on public property or be located on public property.
- (b) Serve Event Guests and Employees Only. Mobile food businesses shall serve event guests and event employees only. Service to the general public is prohibited.
- (c) Seasonal and Temporary. Mobile food businesses operations shall be seasonal and temporary, as defined in this section.
- (d) Town Approvals. Mobile food businesses shall secure all applicable license and permit town approvals before serving event guests.
- (e) State Approvals. Mobile food businesses shall secure all applicable state license and permit approvals, including any inspections, before serving event guests. State approval documentation shall be provided to the town code enforcement office before serving event guests.
- (f) Property Owner Approval. The property owner shall provide a signed statement from the property owner authorizing the mobile food business to operate on their property.
- (g) Operation Details. Submission of operation details including, at a minimum, the following:
 - 1. Location of mobile food business.
 - 2. Description of mobile food business. Description shall include a visual representation such as a recent photograph.
 - 3. Dates and times mobile food business will be located on private property.
 - 4. Description of the event serviced by the mobile food business.
 - 5. Emergency contact information.

(5) Documentation Review. The code enforcement officer shall have the authority to approve, approve with conditions, or deny an operations plan.

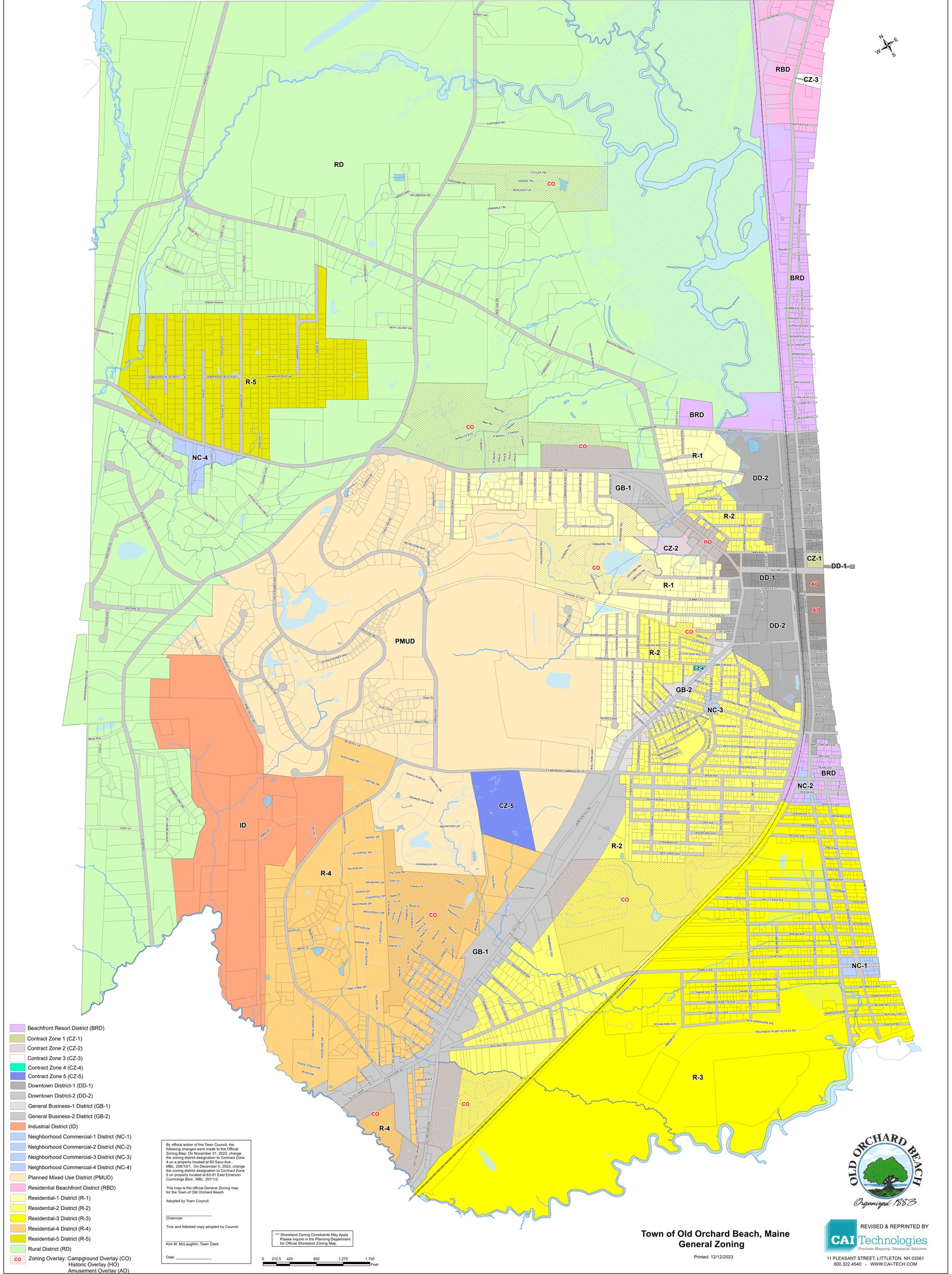
(6) Inspection. The fire department and code enforcement office reserves the right to inspect the location of the mobile food business and the mobile food business before serving event guests.

(7) Exemptions. The following is exempt from this section:

- (a) Mobile food businesses associated with special events authorized by the town council in accordance with Old Orchard Beach Code of Ordinances Chapter 42, Article IV, Division 5.

(8) Other Ordinances Remain Applicable. Owners of private property where mobile food businesses are located are not exempt from other applicable Old Orchard Beach Code of Ordinance standards including but not limited to Chapter 26 (Environment) and Chapter 78 (Zoning).

(9) Violations. The operation of a mobile food business in violation of the requirements of this section shall be a violation of this Chapter 18. Violations shall be subject to fines as set forth in Chapter 18, Section 18-28 and may result in business license revocation.



- Beachfront Resort District (BRD)
- Contract Zone 1 (CZ-1)
- Contract Zone 2 (CZ-2)
- Contract Zone 3 (CZ-3)
- Contract Zone 4 (CZ-4)
- Contract Zone 5 (CZ-5)
- Downtown District-1 (DD-1)
- Downtown District-2 (DD-2)
- General Business-1 District (GB-1)
- General Business-2 District (GB-2)
- Industrial District (ID)
- Neighborhood Commercial-1 District (NC-1)
- Neighborhood Commercial-2 District (NC-2)
- Neighborhood Commercial-3 District (NC-3)
- Neighborhood Commercial-4 District (NC-4)
- Planned Mixed Use District (PMUD)
- Residential Beachfront District (RBD)
- Residential-1 District (R-1)
- Residential-2 District (R-2)
- Residential-3 District (R-3)
- Residential-4 District (R-4)
- Residential-5 District (R-5)
- Rural District (RD)
- Zoning Overlay: Campground Overlay (CO)
- Historic Overlay (HO)
- Amusement Overlay (AO)

By official action of the Town Council, the following changes were made to the Official Zoning Map. On November 21, 2023, change the zoning district designation to Contract Zone 4 on a property located at 60 Saco Ave., MBL 2061011. On December 5, 2023, change the zoning district designation to Contract Zone 5 on property located at 63-91 East Emerson Cummings Blvd., MBL 207112.

This map is the official General Zoning map for the Town of Old Orchard Beach.

Adopted by Town Council:

Chairman _____

True and Attested copy adopted by Council:

Kim M. McLaughlin, Town Clerk

Date: _____

*** Shoreland Zoning Constraints May Apply
Please Inquire in the Planning Department for Official Shoreland Zoning Map.

0 212.5 425 850 1,275 1,700
Feet

**Town of Old Orchard Beach, Maine
General Zoning**

Printed: 12/12/2023



REVISED & REPRINTED BY
CAI Technologies
Precision Mapping. Geospatial Solutions.

11 PLEASANT STREET, LITTLETON, NH 03561
800.322.4540 - WWW.CAI-TECH.COM

AGENDA ITEM #8969

Discussion with Action: Accept grant funds in the amount of \$17,956.00 from the Leary Firefighters Foundation Grant for the purchase of up to two (2) thermal imaging cameras.

Chair: Shawn O'Neill



Old Orchard Beach Fire Department

INTEROFFICE MEMORANDUM

TO: DIANA ASANZA, TOWN MANAGER
BRYNN PATENAUDE, FINANCE DIRECTOR

FROM: JOHN GILBOY III, FIRE CHIEF

SUBJECT: ACCEPTANCE OF LEARY FIREFIGHTERS GRANT

DATE: MARCH 12, 2026

CC: TRAVIS MCDONALD, DEPUTY CHIEF
ZACHARY APGAR, CAPTAIN

Background: This memo is to recommend the acceptance of the Leary Firefighters Foundation Grant in the amount of \$17,956.00. This grant was authored by Deputy Chief McDonald for the purchase of thermal imaging cameras to complete the department's project of replacement, as well as increasing the number of cameras carried by the department. Numerous grant applications were received, and we were fortunate to be one of 64 fire departments spanning across 36 states to be awarded the grant. The grant pays for the entire purchase of two additional thermal imaging cameras; the acquisition of these cameras will complete the department's project of having a thermal imaging camera in the hand of every on-duty firefighter who may have to enter a hazardous environment. These cameras will increase firefighter safety and operational efficiency by allowing firefighters to navigate in smoke-filled areas and find potential victims quicker. We request this be added as a discussion with action item on the next Town Council agenda.

AGENDA ITEM #8970

Discussion with Action: Authorize the Town Manager to sign the Interlocal Agreement Between the Town of Old Orchard Beach and the County of York to establish a cooperative framework for recovery and resiliency projects, including sharing resources, personnel and technical expertise.

Chair: Shawn O'Neill



*York County Emergency Management Agency
149 Jordan Springs Road
Alfred, Maine 04002
(207) 324-1578
(207) 324-4997 Fax*



INTERLOCAL AGREEMENT BETWEEN THE TOWN OF OLD ORCHARD BEACH AND THE COUNTY OF YORK

This Interlocal Agreement ("Agreement") is made this 12th day of March 2026 by and between the Town of Old Orchard Beach and the County of York ("the County"); both of which are public agencies and will be collectively referred to herein as the "Parties."

WHEREAS, the Parties desire to formalize their collaboration for coastal recovery and resiliency projects;

WHEREAS, 2 CFR Part 200.318(e) encourages recipients and subrecipients to enter into State and local intergovernmental agreements for procurement of common or shared goods and services, as such arrangements using strategic sourcing may foster greater economy and efficiency;

WHEREAS, on January 13th, 2024, the County recorded its highest tide in history, which caused significant damage to beaches and dunes throughout the County's coastline, including within the Town of Old Orchard Beach;

WHEREAS, the coastal sand dunes within the Town of Old Orchard Beach provide critical protection to improved infrastructure, and its coastal wetland and sand dune areas support dune grass vegetation that provides natural habitat;

WHEREAS, the Town of Old Orchard Beach's dunes, beachfront, and natural coastal features are an important economic driver, supporting tourism spending and employment;

WHEREAS, action is necessary to implement recovery and resiliency projects within the Town of Old Orchard Beach;

WHEREAS, the Parties recognize that pooling resources for recovery and resiliency efforts is fiscally responsible and will improve overall services while reducing duplication of efforts;

NOW, THEREFORE, the Parties hereby agree as follows:

PURPOSE

The purpose of this Agreement is to establish a cooperative framework between the Town of Old Orchard Beach and the County of York for recovery and resiliency projects. This includes sharing resources, personnel, and necessary technical expertise.

Under this Agreement, the County will serve as the designated fiscal, administrative, and operational entity for purposes of coordinating and implementing recovery and resiliency projects.

SCOPE OF WORK

The focus of this Agreement is the implementation of recovery and resiliency projects to address damage from natural disasters and enhance coastal protection. Specifically, the Parties will collaborate to:

1. Implement recovery and resiliency projects within the Town of Old Orchard Beach, including but not limited to beach restoration, dune reconstruction, and infrastructure protection;
2. Coordinate procurement of materials, equipment, and contractor services necessary to complete the projects;
3. Secure all necessary permits and approvals required for project activities;
4. Document all activities and expenses in accordance with applicable Federal, State, and local funding requirements;
5. Seek reimbursement from applicable funding sources for eligible project costs.

Division of Responsibilities:

The County will:

- Serve as the lead entity for project management and coordination;
- Implement recovery and resiliency activities;
- Secure necessary state and federal permits;
- Manage procurement processes in accordance with 2 CFR Part 200.318 through 200.327;
- Make direct payments to contractors and vendors for all project work;
- Invoice the Town for all costs incurred within thirty (30) days of payment to contractors.

The Town will:

- Serve as the applicant and recipient for Federal, State, and local funding programs as applicable;
- Manage all grant applications, documentation, and reimbursement requests;
- Pay all County invoices in full within thirty (30) days of receipt, regardless of reimbursement status from funding agencies;
- Provide necessary local approvals and site access;
- Coordinate with local stakeholders.

FINANCIAL ARRANGEMENT:

Under this Agreement, the County will serve as the fiscal agent and make direct payments to contractors and vendors for all project work. The County will invoice the Town for all costs incurred, and the Town shall pay each invoice in full within thirty (30) days of receipt.

The Town, as the grant recipient, shall be solely responsible for seeking reimbursement from applicable Federal, State, or local funding sources and shall pursue such reimbursement diligently. The Town's obligation to pay the County's invoices is independent of and not contingent upon receipt of grant reimbursement. If a funding agency denies, reduces, or delays reimbursement for any portion of the project costs, the Town remains fully obligated to pay all County invoices.

The Town acknowledges responsibility for any required cost-share, local match, or non-reimbursable expenses associated with projects undertaken under this Agreement.

PAYMENT AND INVOICING

The County shall submit invoices to the Town on a monthly basis. Each invoice shall include:

- Detailed description of work completed;
- Copies of paid contractor invoices and receipts;
- Documentation supporting grant eligibility;
- Any other documentation reasonably requested by the Town for grant reimbursement purposes.

The Town shall pay all invoices within thirty (30) days of receipt.

TERM AND TERMINATION

This Agreement shall commence upon the date of execution by both Parties and shall continue until the completion of all projects described herein and the receipt of final grant reimbursements, unless terminated earlier by mutual written consent of the Parties.

Either Party may withdraw from this Agreement by providing sixty (60) days written notice to the other Party. In the event of withdrawal, the withdrawing Party shall remain liable for its proportionate share of any outstanding costs incurred prior to the effective date of withdrawal.

INDEMNIFICATION

Each Party agrees to indemnify, defend, and hold harmless the other Party from any and all claims, damages, losses, or expenses arising out of or related to this Agreement, except for damages caused by the gross negligence or willful misconduct of the indemnifying Party.

COMPLIANCE WITH FEDERAL REQUIREMENTS

The Parties acknowledge that this Agreement and all activities conducted hereunder must comply with applicable Federal, State, and local requirements, including but not limited to 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) when Federal funding is utilized. Both Parties agree to maintain documentation and records in accordance with applicable standards and to cooperate fully with any Federal, State, or local audits or reviews.

The County, as the designated fiscal and administrative entity, shall ensure that all procurement transactions conducted under this Agreement comply with 2 CFR Part 200.318 through 200.327 when Federal funding is utilized, including requirements for competition, conflict of interest standards, and proper documentation.

AMENDMENT OF AGREEMENT

This Agreement may be amended upon mutual written agreement of the Parties.

SEVERABILITY

If any provision of this Agreement is found to be invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect.

EXECUTION

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

Town of Old Orchard Beach

By: _____

Name: Diana H. Asanza

Title: Town Manager

Date: _____

County of York

By: _____

Name: Greg Zinser

Title: County Manager

Date: _____

AGENDA ITEM #8971

Discussion with Action: Approve the quote from Wright Pierce for design and engineering services for the Washington Avenue sidewalk, repaving, and stormwater infrastructure upgrades between West Old Orchard Ave., and Atlantic Ave., in the amount of \$49,200.00 with \$24,600.00 from account #50002-50506 Public Works Road Maintenance and Improvements CIP with a balance of \$449,209.34 and \$24,600.00 from account #50002-50507 Public Works Sidewalk Maintenance and Improvements CIP with a balance of \$630,767.77.

Chair: Shawn O'Neill

AGREEMENT BETWEEN
OLD ORCHARD BEACH, MAINE

AND

WRIGHT-PIERCE

FOR

WASHINGTON AVENUE SIDEWALK

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EXHIBIT A – SCHEDULE OF TERMS AND CONDITIONS

Amendment No. 1	_____	dated	_____
Amendment No. 2	_____	dated	_____
Amendment No. 3	_____	dated	_____
Amendment No. 4	_____	dated	_____

AGREEMENT BETWEEN
OLD ORCHARD BEACH, MAINE
AND
WRIGHT-PIERCE
FOR
WASHINGTON AVENUE SIDEWALK

This is an agreement made as of _____, 20 _____ between Old Orchard Beach, Maine ("Client") and Wright-Pierce ("Engineer"). Client intends to re-construct the existing sidewalk along Washington Ave. from West Old Orchard Avenue to Atlantic Avenue including re-paving of the existing road and storm drainage infrastructure upgrades as necessary. (the "Project").

Client and Engineer in consideration of their mutual covenants herein agree in respect to the performance or furnishing of professional Engineering services by Engineer with respect to the Project and the payment for those services by Client as set forth in Section 2 below. Execution of this Agreement by Engineer and Client constitutes Client's written authorization to Engineer to proceed on the date first above written with the Services described in Section 1 below. This Agreement will become effective on the date first above written.

SECTION 1 - SCOPE OF SERVICES/SCHEDULE

- I. Data Collection Phase.
 - A. Attend a kick-off meeting with Client to discuss project details, general coordination of the project and schedule, and design deliverables. For the purposes of this agreement, we have assumed this will be an in-person meeting with two employees of Engineer. Engineer will develop and distribute meeting minutes following the meeting.
 - B. Conduct an analysis of existing drainage network where proposed drainage will discharge. Engineer has modelled the Client's stormwater outfalls as part of the 2018 Comprehensive Town Wide Drainage Study. We anticipate updating this model using hydraulic modelling software to confirm the level of control of the existing system. Updated information will be provided to the Client in pdf format to add to the drainage study file.
 - C. Conduct utility coordination to assess known utility locations within the project area that may impact construction, utility alignment, and potential upgrades by utility companies in the future.
- II. Preliminary and Final Design Phase
 - A. Once the survey file is provided by Client to Engineer, Engineer will prepare preliminary (60%) design plans. Preliminary engineering plans are anticipated to include the following sheets:

- (1) Cover Sheet
 - (1) General Notes Sheet
 - (1) Overall Site Plan Sheet
 - (1) Existing Conditions and Demolition Sheet
 - (1) Typical Section Sheet
 - (2) Plan and Profile Sheets
 - (2) Detail Sheets
 - (1) Erosion Control Notes and Details Sheet
- B. Prepare an engineer's opinion of probable construction cost (OPCC) to assist with the Client's budgeting process. While not final, we expect the estimate to be appropriate for budgeting purposes and will advise the Client on appropriate levels of conservatism in the OPCC. The OPCC will be tied to the latest ENR Cost Index for use in future adjustments as needed.
- C. Conduct a review meeting with Client. For the purposes of this agreement, Engineer has assumed this meeting will be conducted in-person and will be attended by two Engineer's. Engineer will distribute meeting minutes to the project team following the meeting.
- D. Prepare a project manual, including associated technical specifications. These specifications will be suitable for construction purposes and are based on the latest construction contract recommendations issued by the Engineer's Joint Contract Documents Committee (EJCDC). Technical specifications will reference Maine DOT Standard Specifications and will be supplemented by Wright-Pierce technical specifications where necessary.
- E. Upon receipt of comments from the Client, Engineer will finalize the design documents and compile a final set of engineering plans and specifications. These plans and specifications will be advanced to a level of detail suitable for bidding and construction.
- F. Engineer will finalize the preliminary OPCC once final plans and specifications have been developed. The OPCC will be tied to the latest ENR Cost Index for use in future adjustments as needed.

III. Assumptions and Exclusions

- A. Client will be responsible for conducting public hearings as necessary. Engineer does not anticipate attending any public hearings and therefore excluded attendance from this scope.
- B. Survey will be provided by the Client.
- C. Any utility replacements will occur in the same trench and depths. Therefore, subsurface explorations are not included in this scope.
- D. Bidding phase services are not included in this scope. Client intends to handle bidding phase services.

- E. Construction phase services are not included in this scope. Client intends to handle construction phase services.
- F. Record Drawings are not included in this scope.

IV. Additional Services.

During Engineer's work on the Project, it may become apparent to either Client or Engineer that Additional Services not included in the basic Scope of Services are desired. Engineer will undertake to provide such Additional Services upon Client's written authorization.

SECTION 2 - COMPENSATION

I. Payments to Engineer

Engineer's fee for the services defined in the Scope of Services section of this Agreement is indicated below. Client's responsibilities related to invoices are identified in Exhibit A Article 10.4.

For all Scope Items above, a fee based on Engineer's Standard Billing Rates, plus Reimbursable Expenses times a factor of 1.1 and charges for Consultants' services times a factor of 1.15. Total estimated compensation for these Scope Items is \$49,200.

The maximum total compensation for the Project shall not exceed the total compensation for the scope items above without written authorization from the Client. If it becomes apparent to Engineer at any time that changes in Scope or other issues impact total compensation, Engineer will so notify Client in writing. Client and Engineer will then promptly meet to review the status of the Project and any potential adjustments to Scope and/or compensation. Any resulting adjustments to compensation need to be approved by written authorization.

For authorized Additional Services, Engineer will bill Client a fee based on Engineer's Standard Billing Rates, plus Reimbursable Expenses times a factor of 1.1 and charges for Consultants' services times a factor of 1.15.

SECTION 3 – AUTHORIZED PROJECT REPRESENTATIVES

Client shall designate a specific individual to fulfill its responsibilities under Section 2.1 of Exhibit A - Schedule of Terms and Conditions. Engineer has designated its authorized project representative below.

Engineer Representative (name, title):

Client Representative (name, title):

Jaime Wallace, PE – Project Manager

This Agreement (consisting of pages 1 to 5 plus Exhibit A) constitutes the entire agreement between Client and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

ENGINEER:

CLIENT:



By: Ryan T. Wingard, PE

Title: Senior Vice President

Date: March 10, 2026

By: _____

Title: _____

Date: _____

Address for giving notices:

WRIGHT-PIERCE

11 Bowdoin Mill Island, Suite 140

Topsham, Maine 04086

Address for giving notices:

EXHIBIT A - SCHEDULE OF TERMS AND CONDITIONS

1.0 Standard of Care

The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar conditions at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

2.0 Client's Responsibilities

Except as otherwise provided in this Agreement, CLIENT shall do the following in a timely manner as requested by ENGINEER and shall bear all costs incident thereto:

2.1. Designate in writing a person to act as CLIENT's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret and define CLIENT's policies and decision with respect to ENGINEER's services for the Project.

2.2. Provide all criteria and full information as to CLIENT's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations, and furnish copies of all design and construction standards which CLIENT will require to be included in the Drawings and Specifications.

2.3. Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project as requested by ENGINEER.

2.4. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

2.5. Provide approvals and permits from all governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER and such approvals and consents from others as may be necessary for completion of such portions of the Project.

2.6. Give prompt written notice to ENGINEER whenever CLIENT observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

3.0 Reuse of Documents, Records

3.1. Documents are Instruments of ENGINEER's Service

All documents including Drawings and Specifications provided or furnished by ENGINEER (or ENGINEER's Consultants) pursuant to this Agreement are instruments of service in respect of the Project, and ENGINEER and ENGINEER's Consultants, as appropriate, shall retain an ownership and property interest therein (including the right of reuse by and at the discretion of ENGINEER and ENGINEER's Consultants, as appropriate) whether or not the Project is completed.

ENGINEER grants CLIENT limited license to use the Documents on the Project, subject to receipt by ENGINEER of full payment due or

owing for all services related to the preparation of the Documents. CLIENT may make and retain copies of documents for information and reference in connection with the use and occupancy of the Project by CLIENT. Such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project.

Any such reuse, or modification, without written verification or adaptation by ENGINEER and ENGINEER's Consultants, as appropriate, for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's Consultants, and CLIENT shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by CLIENT and ENGINEER.

3.2. Records Retention/Access to Records.

ENGINEER will retain pertinent records relating to the services performed under this Agreement for a period of three (3) years following completion of the services, during which period the records will be made available to CLIENT at ENGINEER's office during normal business hours with reasonable advance notice. Copies will be prepared by ENGINEER for CLIENT for reasonable cost of reproduction and associated labor.

3.3. Electronic Transmittals

CLIENT and ENGINEER may transmit, and shall accept, project-related correspondence, documents, data, drawings, specifications in electronic media or digital format either directly or through access to a secure file transfer protocol. The method of electronic transmittal will be by a mutually agreeable protocol.

CLIENT and ENGINEER make no representations as to the long-term compatibility, usability, or readability of the item resulting from the recipient's use of software applications, operating systems or computer hardware differing from those used by the transmitter.

CLIENT acknowledges that electronic data is changeable. CLIENT acknowledges that any revisions made to electronic data and any consequences of its direct or indirect use by the CLIENT or its agents are beyond the control of the ENGINEER. The ENGINEER cannot be held responsible for software errors, for deterioration of data due to aging, damage to the computer disk, or for failure of the data to respond as intended if used with software and/or operating systems other than those on which it was developed. The original document maintained by the ENGINEER shall be the controlling document.

4.0 Third Party Information

CLIENT acknowledges and agrees that ENGINEER may solicit and reasonably rely on third party information essential and relative to the performance of ENGINEER's duties created and addressed by this Agreement whenever such information is under the control of a third party; and, ENGINEER will not be responsible or liable for the direct or indirect consequences of its reliance on such third party information. Examples of the type of third party information addressed above include, but are not limited to, any information within the control of any of the following: a public, quasi-public or private utility; a governmental body, agency or government (federal, state or local); water and/or sewer facility, district or entity; or, an agent or employee of CLIENT.

5.0 Estimates of Cost

Since ENGINEER has no control over the cost of labor, materials or equipment or over Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, its estimate of probable project costs provided for herein are to be made on the basis of its experience and qualifications and represent its professional judgment as a design professional familiar with the construction industry, but ENGINEER cannot and does not guarantee that proposals, bids or the project costs will not vary from its estimate of probable costs. If, prior to the Bidding or Negotiating Phase, CLIENT wishes greater assurance as to the project costs, CLIENT shall employ an independent cost estimator. Engineering services to modify the Contract Documents to bring the project costs within any limitation established by CLIENT will be considered Additional Services and paid for as such by CLIENT.

The construction cost of the entire Project (herein referred to as "Construction Cost") means the total cost to construct the project including furnishing and installing all equipment and materials, but it will not include ENGINEER's compensation and expenses, the cost of land, right-of-way, or compensation for or damages to properties unless this Agreement so specifies, nor will it include CLIENT's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project.

6.0 Allocation of Risks

6.1. ENGINEER shall Indemnify CLIENT from Claims caused by ENGINEER's Negligence

To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless CLIENT, CLIENT's officers, directors, partners, and employees from and against any and all costs, losses and damages (including but not limited to reasonable attorneys' fees and all court or other dispute resolution costs) arising from claims by third parties, to the extent caused by the negligent acts, errors or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, agents and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.

6.2. CLIENT shall Indemnify ENGINEER from Claims caused by CLIENT's Negligence

To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, and employees and ENGINEER's Consultants from and against any and all costs, losses and damages (including but not limited to reasonable attorney' fees and court or other dispute resolution costs) arising from claims by third parties, to the extent caused by the negligent acts, errors or omissions of CLIENT or CLIENT's officers, directors, partners, employees, agents and CLIENT's consultants with respect to this Agreement or the Project.

6.3. Environmental Indemnification

In addition to the indemnity provided under Paragraph 6.2 of this Schedule, and to the fullest extent permitted by law, CLIENT shall indemnify and hold harmless ENGINEER and its officers, directors, partners, and employees and ENGINEER's Consultants from and against all claims, costs, losses, and damages (including but not limited to reasonable attorneys' fees and court or other dispute resolution costs) caused by, arising out of or relating to the presence, discharge, release or escape of Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, or other Constituents of Concern at, on, under or from the Project site,

unless such claim is the direct result of ENGINEER's negligence or willful misconduct.

6.4. ENGINEER's Liability Limited to Amount of Insurance Proceeds Paid

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, partners, employees, agents and ENGINEER's Consultants, and any of them, to CLIENT and anyone claiming by, through or under CLIENT, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty express or implied of ENGINEER or ENGINEER's officers, directors, partners, employees, agents or ENGINEER's Consultants or any of them (hereafter "CLIENT's Claims"), shall not exceed the total insurance proceeds paid up to the limits required in Section 7.1 on behalf of or to ENGINEER by ENGINEER's insurers in settlement or satisfaction of CLIENT's Claims under the terms and conditions of ENGINEER's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense and appeal). If no such insurance coverage is recovered with respect to CLIENT's Claims, then the total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, partners, and employees and ENGINEER's Consultants and any of them to CLIENT and anyone claiming by, through or under CLIENT, for any and all such uninsured CLIENT's Claims shall not exceed the ENGINEER's fee or \$100,000, whichever is less.

6.5. Exclusion of Special, Incidental, Indirect and Consequential Damages

To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, ENGINEER and ENGINEER's officers, directors, partners, employees, agents and ENGINEER's Consultants shall not be liable to CLIENT or anyone claiming by, through or under CLIENT for any special, incidental, indirect or consequential damages whatsoever, arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or warranty express or implied of ENGINEER or ENGINEER's officers, directors, partners, employees, agents or ENGINEER's Consultants, or any of them.

6.6. Limitation of ENGINEER's Liability on Comparative Negligence Basis

To the fullest extent permitted by law, ENGINEER's total liability to CLIENT and anyone claiming by, through or under CLIENT for any claim, cost, loss or damages caused in part by the negligence of ENGINEER and in part by the negligence of CLIENT or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of CLIENT, ENGINEER and all other negligent entities and individuals determined on the basis of comparative negligence principles. CLIENT further agrees to hold harmless ENGINEER against any such claim, cost, loss or damages but only to the extent of the percentage share that CLIENT's negligence bears to the total negligence of CLIENT, ENGINEER and all other negligent entities and individuals determined on the basis of comparative negligence principles.

6.7. Florida Individual Liability Statute

For projects performed in the State of Florida, pursuant to Florida Statute 558.0035, employees of the ENGINEER may not be held individually liable for damages resulting from negligence under this agreement.

7.0 Insurance

7.1. ENGINEER's Insurance

ENGINEER shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, from claims or damages because of injury to or destruction of property, and from professional liability claims due to ENGINEER's negligent acts, errors or omissions. Upon request, ENGINEER shall list CLIENT as an additional insured on ENGINEER's general liability insurance policy, and shall provide CLIENT with a copy of the Certificate of Insurance.

As long as it remains commercially available, ENGINEER shall procure and maintain the following insurance coverage:

- A. Worker's Compensation: Statutory Limits.
- B. Employer's Liability: \$500,000 per Accident and \$500,000 per Disease per Employee.
- C. Commercial General Liability, including Bodily Injury and Property Damage: \$1,000,000 occurrence and \$2,000,000 aggregate.
- D. Commercial Automobile Liability, including owned, hired and non-owned vehicles: Combined Single Limit of \$1,000,000 per accident.
- E. Excess Umbrella Liability: \$5,000,000 per occurrence and \$5,000,000 aggregate over the Employer's, Commercial General and Commercial Auto Liability.
- F. Professional Liability Insurance: \$1,000,000 per claim and \$3,000,000 annual aggregate.

7.2. CLIENT's Insurance and Contractor's Insurance

CLIENT shall list ENGINEER and ENGINEER's Consultants as additional insureds on any general liability or property insurance policies carried by CLIENT that are applicable to the Project. CLIENT shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to list ENGINEER and ENGINEER's Consultants as additional insureds with respect to such liability, property and other insurance purchased and maintained by Contractor. All policies of property insurance shall contain provisions to the effect that ENGINEER and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against the insured or any additional insureds thereunder.

7.3. Additional Insurance

At any time, CLIENT may request that ENGINEER, at CLIENT's sole expense, provide additional insurance coverage. If so requested by CLIENT, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits or revised deductibles, for such periods of time as requested by CLIENT, at CLIENT's sole expense.

8.0 Subsurface Conditions

8.1. Interpretations and Recommendations Based Solely on Information Available.

CLIENT recognizes that subsurface conditions may vary from those encountered at the location where borings, surveys, or explorations are made by the ENGINEER or ENGINEER's geotechnical Consultant, and that the data, interpretations and recommendations of the ENGINEER or geotechnical Consultant are based solely on the information available to it. The ENGINEER or geotechnical Consultant will be responsible for those data, interpretations, and recommendations, but neither shall be responsible for the interpretation by others of the information developed.

8.2. Utilities

In the prosecution of its work, the ENGINEER, and its Consultants will take reasonable precautions to avoid damage or injury to subterranean structures or utilities. CLIENT agrees to release, indemnify, and hold the ENGINEER, and its Consultants harmless for any damage to subterranean structures or utilities and for any impact this damage may cause where the subterranean structures or utilities are not called to the ENGINEER, and its Consultants' attention or are not correctly shown on the plans furnished.

9.0 Independent Contractors

It is understood and agreed that all contractors and Consultants engaged by the ENGINEER are independent contractors of the ENGINEER and not employees or agents of the ENGINEER; and ENGINEER shall have no right, duty or obligation to direct or control the means, methods or techniques of any such contractors and consultants.

10.0 Compensation

10.1. Direct Labor Costs

Direct Labor Costs means the hourly wages paid to ENGINEER's personnel. For salaried personnel, the imputed direct hourly rate shall be the weekly salary divided by 40.

10.2. Standard Billing Rates

ENGINEER's Standard Billing Rates mean Direct Labor Costs times ENGINEER's Standard Multiplier that is based on ENGINEER's standard and customary overhead rate and profit. Standard Multiplier will be adjusted as may be appropriate to reflect changes in its various elements. All such adjustments will be in accordance with generally accepted accounting practices.

10.3. Reimbursable Expenses

Reimbursable Expenses are those non-labor expenses associated with ENGINEER's conduct of the Project. Some examples of Reimbursable Expenses are meals, transportation, printing and photocopying costs, and field equipment rental. The amount ENGINEER will bill for Reimbursable Expenses will be in accordance with ENGINEER's standard schedule of Reimbursable Expenses Billing Rates or, if the expense item is not listed on the schedule, the cost actually incurred or the imputed cost ENGINEER allocates to the expense item.

10.4. Invoices/Late Payment

Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to CLIENT at least monthly. Invoices are due and payable upon receipt. If CLIENT fails to pay any invoice within thirty days of the invoice date, the amounts due ENGINEER will increase at the rate of 1.0% per month from the thirtieth day following the invoice date; and, in addition, ENGINEER may, after giving seven days' written notice to CLIENT,

suspend services under this Agreement until ENGINEER has been paid in full all amounts due. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment.

10.5. Professional Services Taxes

If at any time ENGINEER's compensation under this Agreement becomes subject to a professional services tax, sales tax, Value Added Tax, gross receipts tax or similar levy imposed by any local, state, federal or other government or quasi-government agency or authority, CLIENT agrees to pay such tax or levy on ENGINEER's behalf or reimburse ENGINEER for its paying such tax or levy.

11.0 Controlling Law

This Agreement is to be governed by the laws of the State of Maine. Any dispute resulting in legal action and not resolved by arbitration, mediation or such other method as may be mutually agreed to by the parties, shall be adjudicated solely and exclusively within the aforementioned jurisdiction.

12.0 Financial Advisor

ENGINEER is not a financial professional firm and makes no recommendations as to the best way for CLIENT to fund the Project. ENGINEER recommends that CLIENT seek the advice of an Independent Registered Municipal Advisor or other financial professional regarding the type and structure of financing appropriate for the Project. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

13.0 Dispute Resolution

The parties hereto agree that prior to filing litigation they will meet to discuss any disputes or matters in question, and will consider alternative dispute resolution techniques to resolve all claims, counterclaims, disputes and other matters in question between the parties arising out of or relating to this Agreement.

14.0 Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

15.0 Precedence

These provisions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document.

16.0 Severability

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed

stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

17.0 Successors and Assigns

CLIENT and ENGINEER each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither CLIENT nor ENGINEER shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body that may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than CLIENT and ENGINEER.

18.0 Survival

All express representations, indemnifications or limitations of liability made in or given in this Agreement will survive the completion of all services of ENGINEER under this Agreement or the termination of this Agreement for any reason.

19.0 Termination

The obligation to provide further services under this Agreement may be terminated:

19.1. For cause

For cause by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such thirty-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided from herein shall extend up to, but in no case more than, sixty days after the date of receipt of the notice.

19.2. By ENGINEER

By ENGINEER upon seven days' written notice if ENGINEER believes that ENGINEER is being requested by CLIENT to furnish or perform services contrary to ENGINEER's responsibilities as a licensed design professional; or upon seven days' written notice if the ENGINEER's services for design or during the construction of the Project are delayed or suspended for more than ninety days for reasons beyond ENGINEER's control.

In the case of termination under this paragraph, ENGINEER shall have no liability to CLIENT on account of such termination.

19.3. For convenience

For convenience by CLIENT effective upon the receipt of notice by ENGINEER.

19.4. ENGINEER's Compensation

In the event of any termination, CLIENT will pay ENGINEER for all services rendered to the date of termination and all reimbursable expenses.

20.0 Force Majeure

ENGINEER shall not be responsible for damages resulting from delays that are caused by Acts of God, fires, natural disasters, epidemics, quarantines, or any other causes not within reasonable control of the ENGINEER. ENGINEER will promptly notify CLIENT of the cause of the delay and the parties agree to amend the Agreement to allow for extended completion time.

21.0 Equal Employment Opportunity

ENGINEER is an Equal Employment Opportunity employer and is committed to recruiting, hiring, training and promoting for all job classifications without regard to race, religion, color, national origin, sex or age, physical or mental handicap, marital status or status as a disabled veteran, veteran of the Vietnam era, ex-offender or former patient of a state institution except where based on a bona fide occupational qualification.

AGENDA ITEM #8972

Discussion with Action: To renew the lease agreement between the Grand Victorian Hotel Condominium Association and the Town of Old Orchard Beach for the use of a portion of the Milliken Street Parking lot for three years with the option to extend the lease agreement for two additional years for the annual amount of \$51,000.00, and authorize the Town Manager to sign the lease agreement on behalf of the Town.

Chair: Shawn O'Neill

TOWN OF OLD ORCHARD BEACH, MAINE PARKING LEASE

LEASE made as of the date shown below, by and between the TOWN OF OLD ORCHARD BEACH, a municipal corporation located at Old Orchard Beach, Maine (“Landlord”), and GRAND VICTORIAN HOTEL CONDOMINIUM ASSOCIATION (“Tenant”), for a portion of the property identified as the Milliken Street Municipal Parking Lot (“Premises”), Map 203, Block 3, Lot 1, located at 77 Milliken Street, Old Orchard Beach, Maine.

WITNESSETH:

1. **PREMISES LEASED:** Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the right to use 51 (fifty-one) exclusive parking spaces at the Milliken Street Municipal Parking Lot of Landlord in Old Orchard Beach, Maine. These spaces shall be for the exclusive use of the Grand Victorian LLC located at 1 East Grand Avenue, Old Orchard Beach, Maine. Premises includes only the section at the southwest end of the Milliken Street Municipal Parking Lot that has an entrance that is separate and distinct from the remaining portion of the Municipal Parking Lot.
2. **TERM:** The term of this Lease shall commence on May 1, 2026, and receipt of rent payment in full and written authorization for the Town Manager as stipulated in Section 3 below and shall continue until April 30, 2029. The Town may, at its option, extend this Lease for a one-year period beginning May 1, 2029, through April 30, 2030, and the Town may, at its option, extend this lease for an additional one-year period beginning May 1, 2030, through April 30, 2031.
3. **RENT:** Tenant covenants and agrees to pay the amount of:
 - a) \$51,000 (fifty-one thousand dollars) rent for the contract period May 1, 2026, through April 30, 2027.
50% due upon signing of the contract, and 50% due by May 1, 2026.
 - b) \$51,000 (fifty-one thousand dollars) rent for the contract period May 1, 2027, through April 30, 2028.
50% due by February 15, 2027, and 50% due by May 1, 2027.
 - c) \$51,000 (fifty-one thousand dollars) rent for the contract period May 1, 2028, through April 30, 2029.
50% due by February 15, 2028, and 50% due by May 1, 2028.
 - d) \$51,000 (fifty – one thousand dollars) rent for the contract period May 1, 2029 through April 30, 2030.
50% due by February 15, 2029, and 50% due by May 1, 2029.

- e) \$51,000 (fifty – one thousand dollars) rent for the contract period May 1, 2030, through April 30, 2031.
50% due by February 15, 2030, and 50% due by May 1, 2030.

No use of the Premises by Tenant is permitted for the term year until payment in full is received and a separate written authorization is provided by the Town Manager.

4. USE: Premises shall be used only for the parking of passenger vehicles and motorcycles used by the owners, renters and guests of the residential units at 1 E. Grand Avenue, further identified in the Town of Old Orchard Beach Assessing records as the property located at Map 306, Block 1, Lot 1. Premises are not to be used for storage of vehicles or any other materials, for commercial vehicles including but not limited to busses, service trucks, tractor-trailers, for motor homes or similar recreational vehicles. Premises are not to be used for sleeping or other transient occupancy in parked vehicles.

5. INSURANCE. During the term of the Lease, Tenant shall provide insurance for comprehensive general liability against claims for personal injury, death or property damage occurring on, in or about the Premises, or arising from or related to use of any vehicle or equipment in connection with the Premises, in the following amounts pursuant to the Maine Tort Claims Act:

Commercial General Liability	
Per occurrence	\$1,000,000
Casualty Insurance (for personal property)	
Per occurrence	\$1,000,000

Landlord shall be named as an additional insured with Tenant on any such policies that cover the Premises. Tenant shall obtain coverage, by an endorsement or otherwise, to its general liability insurance policy to cover Tenant’s defense and indemnification obligations under the Agreement. Such insurance must provide that the Landlord be notified 30 days prior to the cancellation of any of the above policies. Tenant shall furnish the Landlord with copies of all insurance policies prior to assuming responsibility for the operation and maintenance of the Premises and upon request by the Landlord during the Term. Nothing herein shall, nor is intended to, waive any defense, immunity or limitation of liability which may be available to the Landlord or their respective officers, agents and employees, under the Maine Tort Claims Act or any other privileges and/or immunities provided by law.

6. DAMAGES OR DESTRUCTION BY FIRE, EMINENT DOMAIN OR CASUALTY: In the event that the Premises or any part thereof shall be taken by eminent domain or shall be so damaged or destroyed by fire or unavoidable casualty that the Premises are thereby rendered untenable, then either the Landlord or Tenant may terminate this Lease upon written notice to the other and the rent shall be pro-rated as of the date of such termination.

7. **INDEMNIFICATION.** To the fullest extent permitted by law, Tenant shall indemnify, defend and hold harmless Landlord and their respective officers, agents and employees, against and from all costs, expenses, liabilities, losses, damages, inspections, suits, actions, fines, penalties, claims and demands of every kind and nature (collectively “Claim”), including reasonable counsel fees, asserted by or on behalf of any person, utility or governmental authority whatsoever arising out of (a) any failure by Landlord to perform any of the conditions of this Agreement on Landlord’s part to be performed, or (b) the use of the Premises by Tenant or its employees, agents, guests, invitees, customers, contractors, or officers, however occurring and any matter or thing growing out of the occupation, maintenance, alteration, construction, repair, use or operation of the Premises, appurtenances thereto or any part by Tenant or its employees, agents, guests, invitees, customers, contractors, or officers during the term of this Lease, but excluding any claims to the extent caused by the negligence, acts or omissions of Landlord, their agents, contractors or employees. Nothing herein shall, nor is intended to, waive any defense, immunity or limitation of liability which may be available to Landlord or their respective officers, agents and employees, under the Maine Tort Claims Act or any other privileges and/or immunities provided by law. **THIS DEFENSE AND INDEMNIFICATION OBLIGATION IS INTENDED TO WAIVE ANY EXCLUSIVITY-OF-REMEDY DEFENSE OR EMPLOYER IMMUNITY PROVISIONS THAT MAY OTHERWISE BE AVAILABLE UNDER WORKERS’ COMPENSATION OR SIMILAR LAWS.** The obligations in this Section shall survive termination of the Lease.

8. **REPRESENTATIONS:** Tenant, represents and acknowledges to Landlord the following:

- a. Tenant is responsible for the cleaning and upkeep of the Premises, for winter maintenance including plowing, and will maintain the Premises in a clean, neat and sanitary condition.
- b. Landlord may, at its sole discretion, lease up to 10 parking spaces for non-Tenant use within the same section of the Milliken Street lot as identified in Article 1 above. Landlord will issue municipal permit tags for use by the permit holder for these 10 parking spaces. Tenant will not cause the removal by towing of any vehicle displaying this municipal permit tag authorizing use of this parking area. If Tenant does improperly cause removal by towing of any such vehicle Landlord may assess a fee to Tenant equal to the Towing charge imposed on the municipal permit holder. Payment of fee by Tenant shall be due in full within 14 (fourteen) days of mailing of invoice by Landlord.
- c. That any legal expenses actually incurred by the Landlord in enforcing the terms of this Lease or collecting fees shall be the responsibility of the Tenant.

9. DEFAULT: If Tenant shall default in the performance of its obligations hereunder, Landlord may terminate this Lease with 10 (ten) day written notice.

10. TERMINATION: Landlord may terminate this Lease at any time by sending a notice of termination by registered mail to Tenant at least 90 (ninety) days prior to the date in the notice named for such termination.

Tenant may terminate the second and third year of this Lease by providing written notification to the Landlord at least 90 days prior to the beginning of the second year of the lease agreement. Tenant may terminate the third year of this Lease by providing written notification to the Landlord at least 90 days prior to the beginning of the third year of the lease agreement.

11. ASSIGNMENT: Tenant shall not assign this Lease without prior written consent of Landlord. Tenant shall not authorize the use of the Premises by any user except as provided for in Section 4 herein.

12. AMENDMENTS: This Lease may not be amended or modified by any act or conduct of the parties or by oral agreements unless reduced and agreed to in writing signed by both the Landlord and Tenant. No waiver of any of the terms of this Lease by the Landlord shall be binding on the Landlord unless reduced to writing and signed by the Landlord.

13. MERGER: This Lease evidences the entire agreement between the parties and no changes shall be made except in writing. The failure of either party to insist in any instance on strict performance of any provision hereof shall not be construed as a waiver of such covenant.

Dated: _____, 20__

GRAND VICTORIAN HOTEL CONDOMINIUM
ASSOCIATION

By: _____
Name

Title: _____

TOWN OF OLD ORCHARD BEACH

By: _____
Diana H. Asanza
Town Manager

AGENDA ITEM #8973

Discussion with Action: Approve the Beach Management Agreement with the U.S. Fish & Wildlife Services (USFWS) and the Maine Department of Inland Fisheries & Wildlife (MDIFW); from 2026 to 2028.

Chair: Shawn O'Neill

Town of Old Orchard Beach Beach Management Agreement 2026 through 2028

In 2009, representatives of the Town of Old Orchard Beach (the Town), the U.S. Fish & Wildlife Service (USFWS), and the Maine Department of Inland Fisheries and Wildlife (MDIFW) first developed the following Beach Management Agreement for the Town of Old Orchard Beach. In March 2026, representatives of the Town, MDIFW, and Maine Audubon agreed to draft a renewal of the Beach Management Agreement for 2026-2028.

The intent of this agreement is to implement measures that will protect piping plovers, least terns, and migratory shorebirds on Old Orchard Beach from predator and human-related activities and harm. Success of this agreement depends on the participation and cooperation of the Town, USFWS, and MDIFW. **This agreement does not supersede or replace any local, state, or federal statutes, regulations, or guidelines that apply to private properties.**

IMPORTANT! This agreement is in effect annually from April 1 through August 31 when *nesting activity* is occurring, *which is defined as when territorial pairs, nests, and chicks of Piping Plovers are present.* **When nesting activity is not occurring on the Town's beaches, these guidelines are not in effect.** The Town must keep in weekly communication with MDIFW or its designee to know when Piping Plover *nesting activity* is occurring.

This agreement allows the Town of Old Orchard Beach to continue their beach management program without filing a state Incidental Take Plan (ITP) for each Town activity that occurs near or within Piping Plover nesting areas, as long as the Town implements protection measures outlined in this agreement. Compliance with this agreement exempts the Town from Essential Habitat regulations (section IV – L) for activities specifically addressed here. Other activities that overlap with the portion of Old Orchard Beach designated as an Essential Habitat not addressed in this Agreement require MDIFW review.

There is an incentive for the Town to promote the nesting success of plovers, because plovers that nest successfully in April will fledge their chicks by mid-to-late June, thus removing restrictions on the beach. However, if April nesting fails, or the plovers are forced to nest late, the nesting and chick rearing season will extend into July and August, the peak summer months for beachgoers.

I) Introduction

The Piping Plover (*Charadrius melodus*) is a small sandy-colored shorebird that nests on beaches from South Carolina to Newfoundland and is imperiled throughout much of its range in the United States and Canada. Once common on sandy beaches in southern Maine, the Piping Plover is listed as Endangered under the Maine Endangered Species Act (MESA), and the east coast population is listed as Threatened under the federal Endangered

Species Act (ESA). In 2025, a state record of 174 pairs of Piping Plovers nested in the entire state of Maine, an increase from 143 pairs in 2024.

Habitat loss and lack of undisturbed nest sites are two of the primary factors jeopardizing populations of Piping Plovers. Historically, Maine had more than 30 miles of suitable nesting beaches that may have supported up to 200 pairs of Piping Plovers. However, the construction of seawalls, jetties, piers, homes, parking lots, and other structures along Maine's sand-beaches has dramatically reduced the extent of suitable nesting habitat. Continuing development and intense recreational use of nesting beaches is further reducing the capacity of the remaining habitat to support nesting plovers. Ensuring the availability of this limited habitat is essential for the continued existence of Piping Plovers and other coastal wildlife, such as the state listed endangered Least Tern and federally listed Red Knot that use plover nesting beaches to rest and refuel during migration.

Historical records document that Piping Plovers nested on Old Orchard Beach in recent decades. Unfortunately, development and associated human disturbance and predation greatly reduced the ability of the habitat to support these rare birds. Piping Plovers were a rare summer resident in Maine in the late 1800s, and in the early 1900s, were extirpated as a breeding bird from the state. With protection from the Migratory Bird Treaty Act in 1918, plovers rebounded, and by 1940, they were common on sandy beaches from Kittery to Cape Elizabeth. Nesting of plovers on Old Orchard Beach resumed in 1993. From 1993 to 2008, one to three pairs of Piping Plovers consistently nested on Old Orchard Beach. With increasing support from the Town, the number of nesting Piping Plovers on Old Orchard Beach has ranged from three to 15 pairs from 2014-2025. The high of 15 pairs was unfortunately overshadowed by very low productivity.

In 1995, the MDIFW designated a portion of Old Orchard Beach (PPLT04 and PPLT08) as Essential Habitat for Piping Plovers. In 2010, to incorporate recent nesting locations by Piping Plovers on Old Orchard Beach, MDIFW expanded Essential Habitat to include two more areas (PPLT14 and PPLT15).

II) Authority to Enter Agreement

Maine Endangered Species Act of 1975 (MESA)

Federal Endangered Species Act of 1973 (ESA)

III) Geographic Scope of Agreement

The area under this agreement is the entire, Town-owned beachfront commencing from the Saco/Old Orchard Beach town line at Goosefare Brook, north to the Old Orchard Beach/Scarborough town line. The beachfront includes the seaward side of the frontal dune to the mean low water mark.

The intent of this agreement is to provide a means to protect Piping Plovers on Old Orchard Beach. Success of this agreement depends on the participation and cooperation of the Town and MDIFW.

This agreement does not supersede or replace any local, state, or federal statutes, regulations, or guidelines that apply to private properties.

IV) Beach Management Guidelines for Piping Plovers

IMPORTANT! These guidelines are in effect from April 1 through August 31 when *nesting activity* is occurring, *which is defined as when territorial pairs, nests, and chicks of Piping Plovers are present.* The Town must keep in weekly communication with MDIFW or its designee to know when Piping Plover *nesting activity* is occurring. When *nesting activity* is not occurring on the Town's beaches, these guidelines are not in effect.

A) Daily Pickup of Trash Barrels on the Town's Beaches and Rights-of-ways.

The Town does not place trash barrels on the beach near plover nest sites. If the Town does decide to place trash barrels on the beach, the Town must place them as far away from areas of plover *nesting activity* as possible but no closer than 100 feet from a stake and twine symbolic fence. Any Town vehicle picking up waste from the barrels shall have a trained spotter (trained by MDIFW or its designee) walk in front of the vehicle, which shall proceed no faster than walking speed.

Trash pickup using All Terrain Vehicle (ATV) does not require a spotter if:

1. Personnel picking up trash are in weekly communication with the Town's Plover Monitoring Coordinator and MDIFW or its designee to know the location of nesting plovers and their chicks;
2. ATV operators are trained by MDIFW or its designee; and
3. ATV vehicles proceed no faster than walking speed.

All vehicles will travel as close as possible to the mean high-water mark, to assure no conflicts between piping plovers and vehicular traffic.

B) Seaweed and Debris Cleanup

The Town will follow these beach-cleaning guidelines during periods of Piping Plover nesting activity.

1. All beach-cleaning vehicle entrances/exits to the beach will be at locations agreed upon by the Town and MDIFW.
2. The Town will coordinate with the Town's Plover Monitoring Coordinator to determine current plover nest and/or brood locations. The Plover Monitoring Coordinator or a spotter, trained by MDIFW or its designee will guide all Town beach-cleaning vehicles within 500 feet of nesting areas or plover brood locations.
3. Spotters will use the map given to them by the Town's Plover Monitoring Coordinator (see Section IV, H). They will record observations of adult birds, nests, eggs, and chicks, every 100 feet of the beach prior to vehicular access to that section. If the spotter does not observe plover activity, the cleaner will rake those 100 feet while the spotter stands and watches in that zone. Records of these observations will be submitted to MDIFW at the end of the nesting season or at any time upon request.
4. The spotter will proceed to the next area (approximately 100 feet down the beach), spotting, locating, and watching before giving the signal to allow the vehicles to enter the area.

5. Beach cleaning will not occur within 100 feet of stake-and-twine symbolic fencing. This gives the birds a buffer from disturbance by vehicles and leaves additional foraging habitat intact.
6. The Town will clean rights-of-way by hand unless it is clearly outside any area of plover ***nesting activity*** or conducted outside the plover-nesting season. Instances of need for heavy seaweed removal have historically been few. However, should heavy seaweed removal require using a dump truck and an excavator, a trained spotter will be required on site. No such work will take place within 100 feet of a stake-and-twine symbolic fence.

C) Lifeguards.

Lifeguard stands will be at least 100 feet from a stake-and-twine symbolic fence. In the event that a site does not allow for the required 100-foot buffer, MDIFW and the Town will determine an appropriate placement for the lifeguard stand as far as possible from the stake-and-twine symbolic fence. This mutually agreed-upon location will maintain the public safety requirements as well as protect nesting Piping Plovers. When feasible and appropriate, as determined by the Town, lifeguards will assist in educating the public about safeguarding plovers.

Any vehicles used by lifeguards must use a spotter with similar requests for seaweed cleaning in Section IV-B (above).

D) Police, Emergency, and Non-Emergency Vehicle use

It will be the policy of the Town of Old Orchard Beach that essential (non-emergency) vehicle use will not occur within 100 feet of designated Piping Plover nesting areas. The Town will coordinate with the Town's Plover Monitoring Coordinator to determine current plover nest and/or brood locations. At least two employees shall respond to any non-emergency incident (such as removal of dead or injured marine mammals) within an area of plover ***nesting activity***, with one employee acting as the spotter to and from the scene.

The following USFWS guidelines should be followed within 500 feet of nesting areas and/or brood locations to minimize the probability that chicks will be crushed by essential (non-emergency) vehicles:

- Essential vehicles should travel through chick habitat areas only during daylight hours and should be guided by a qualified monitor who has first determined the location of all unfledged plover chicks.
- Speed of vehicles should not exceed five miles per hour.
- Use of open 4-wheel motorized all-terrain vehicles or non-motorized all-terrain bicycles are recommended whenever possible for monitoring and law enforcement because of the improved visibility afforded operators.

- Essential vehicles should avoid driving on the wrack line, and travel should be infrequent enough to avoid creating deep ruts that could impede chick movements.

All emergency response personnel will account for and avoid nesting areas and chicks to the maximum extent practicable, consistent with the nature and urgency of the emergency. All Public Safety or Town personnel assigned or normally required to use vehicles (including ATV's) on the beach shall annually receive specialized education and training from MDIFW or its designee in the spotting and protection of plover habitat (see Training below). All other personnel shall have training materials and aids available to assist in spotting plover nests, chicks, and fledglings, during their beach management activities. Training workshops shall be available for each nesting season.

E) Recreational Activities

1. **Beach parties, clambakes, volleyball, fires, etc.:** Because these activities could seriously threaten plover nests, eggs, and young, the Town will discourage such activities within 100 feet of symbolic stake-and-twine fencing.
2. **Kite, sand surfer (wind-driven sand cart), parasail, or paraboard sail.** The town will discourage these activities within 650 feet of symbolic stake and twine.
3. **Fireworks.** If the Town approves a fireworks display, MDIFW and USFWS require that:
 - a. The fireworks launch site be located a minimum of 1/2 mile from the nearest Piping Plover nesting and/or foraging area.
 - b. For smaller, weekly fireworks displays, at least one uniformed officer is available to control crowds around nesting areas.
 - c. For the annual 4th of July fireworks display, the Town has adequate law enforcement personnel, as defined by MDIFW, to protect nesting areas and assist MDIFW staff/volunteers.

F) Animal Control

Dogs can be a significant source of disturbance and mortality for Piping Plovers. Ideally, dogs should not be allowed on Piping Plover nesting beaches when territorial pairs, nests, and chicks are present. According to Section 14-6 of the Town ordinances, dogs will not be permitted to enter the beach between the hours 9:00 A.M. and 5:00 P.M. inclusive, from May 15 to Labor Day and must be on-leash after 5 P.M.

The Town agrees not to allow dogs within 100 feet of symbolic stake-and-twine fencing and to erect signs alerting beach-goers of the prohibition on dogs in those areas. Signage will be provided by MDIFW and design and verbiage agreeable between the Town and MDIFW. The Town, MDIFW, and USFWS enforcement officers will enforce this prohibition. If the enforcement of this prohibition is ineffective other options will be discussed for the next season. This prohibition will be in effect from April 1 through August 31, unless MDIFW determines that Piping Plovers are no longer attempting to nest on the beach.

G) Stake-and-twine Fencing and Nest Enclosures

Plover nests that are not quickly fenced are vulnerable to disturbance. In an effort to afford plovers the immediate protection they require, the Town of Old Orchard Beach grants MDIFW or its designee, approval to erect symbolic stake-and-twine fencing and nest enclosures, as needed.

Stake-and-twine Fencing: Temporary, stake-and-twine fencing and signage is for managing recreational use of the beach in the vicinity of Piping Plover nesting areas, and for protecting nesting and feeding habitat for plovers. Ideally, when courtship and nest scraping first occur, biologists erect stake-and-twine fences and signs around the nesting area. Plover nesting areas are fenced using wooden stakes and baling twine; MDIFW or its designee, provide the signs. Only persons engaged in Piping Plover monitoring should enter the fenced areas. Fenced areas should extend 150 feet on either side of the nest whenever feasible. If the 150-foot radius is inadequate to protect incubating adults and unhatched chicks, biologists may expand the fenced area. In some instances, fenced areas may encompass more than one nest. Monitoring of nesting territories should occur frequently (daily if possible) until nests are located. Stake-and-twine fencing will remain on the beach until all chicks in the vicinity have fledged.

Nest Enclosures. Predation by crows, gulls, foxes, dogs, and cats is a major source of nest failure for Piping Plovers. Therefore, MDIFW or its designee, will erect approximately eight-foot diameter nest enclosures around each nest after the birds lay their third egg; this helps protect the eggs and young until hatching is completed. Nest enclosures consist of 2 x 4-inch welded wire fence supported by metal stakes. Biologists string bird netting over the top of the enclosure to help deter avian predators. Guidelines for constructing and maintaining enclosures are in Appendix F of the federal Piping Plover Revised Recovery Plan (U.S. Fish and Wildlife Service 1996).

MDIFW or its designee will remove nest enclosures when territorial pairs, nests, and chicks are no longer present.

H) Monitoring

The goal of monitoring is to establish regular, daily observational walks to maintain an up-to-date account of Piping Plover activity on Old Orchard Beach to better protect them from predation and human activities. Monitoring of Piping Plovers requires frequent visits by plover biologists and volunteer monitors each week throughout the nesting season to ascertain nesting status, nest location, nest success, and success of young. As the season progresses, monitors may discover new nests at any time as re-nesting occurs, or as new pairs establish nests on the beach. Adult birds and their chicks commonly move 325 to 650 feet away from the nest to preferred foraging areas (wrack line and intertidal flats). Frequent visits are required to track the survival and movements of family groups.

The keystone of the monitoring program is deployment of trained, Volunteer Plover Monitors (Monitors). The Town's Plover Monitoring Coordinator (Coordinator) recruits and supervises these Monitors.

Plover Monitoring Coordinator: The Town will provide the Plover Monitoring Coordinator as needed for the months of April through August. The Coordinator will work under the supervision of the Director of Public Works. In the event the Town cannot find or hire a Plover Monitoring Coordinator, a municipal employee (determined by the Town) will be assigned to coordinate weekly with MDIFW or its designee, regarding piping plover nesting activity.

The Plover Monitoring Coordinator will be in charge of recruiting and scheduling volunteer plover monitors. The Coordinator will communicate with landowners adjacent to Old Orchard Beach to inform them of Piping Plover biology and management needs, and to solicit their support for the monitoring project. The Coordinator will collect daily reports from the volunteer monitors, compile data, and act as liaison between the Town and MDIFW. At the end of each week, The Coordinator will have all volunteers register, submit, and enter their respective time and mileage online (<https://mdifw-surveyforms.plumsail.io/51476fa6-fe9b-4e36-a641-aa5192450fbf>) managed by MDIFW. Neither the Coordinator nor the volunteer plover monitors will be involved in enforcement of regulations.

Volunteer Plover Monitors: Volunteer Plover Monitors must be available for training and should pledge to make at least a weekly commitment of time. Monitors may also be asked to attend a monthly meeting for program review and reinforcement of training. Monitors shall fill out a standard daily report (provided by MDIFW) following their monitoring activities and deliver it to the established collection point for pick up by the Coordinator. Monitors will report on the location of Piping Plover nests and on adherence to the provisions of this beach management plan. The Town will provide free parking, if necessary, for Monitors during the time of their monitoring activities.

I) Education and Outreach

Educational efforts will take many forms, and will rely heavily on local organizations to promote proper stewardship of the Piping Plover and other shorebirds on Old Orchard Beach. Local organizations should be encouraged to include educational materials in their newsletters, at meetings, on bulletin boards, and through other forms of communication.

The Plover Monitoring Coordinator and Volunteer Plover Monitors will utilize opportunities for face-to-face contact with adjacent property owners and beach users to educate them about Piping Plovers and the importance of respecting their habitat.

MDIFW will develop educational packets specifically designed to acquaint renters that use the beach with the guidelines affecting beach use. The Town will encourage landowners and local realtors who handle rental properties to deliver the educational packets to renters. Educational packets will be provided to the Chamber of Commerce, hotels, libraries, Planning Department, Conservation Commission, Town Manager, and the Town Clerk to reach day visitors and citizens of Old Orchard Beach and surrounding communities. MDIFW will put information about regulations governing dogs on the beach in the renters' packet and in the newsletter mailed to landowners. Volunteer Plover Monitors will also distribute copies of the dog regulations on the beach.

J) Training

In support of the volunteer monitoring program, MDIFW or its designee will conduct annual training sessions for the Plover Monitoring Coordinator, Volunteer Plover Monitors, lifeguards, police and summer reserves, appropriate Department of Public Works employees, Emergency Responders, and other appropriate employees of the Town. These training sessions will be held in April and May, and will include information regarding Piping Plover biology, conservation/management, monitoring protocol, record keeping, and regulations, including dogs on the beach. When possible, MDIFW or its designee will include enforcement personnel of the USFWS and MDIFW for these training sessions to address issues of "take" under the federal ESA and Maine ESA. MDIFW will provide a Volunteer Monitoring Handbook developed by Maine Audubon, to the Volunteer Plover Monitors, which contains background and training materials, regulations (including those pertaining to dogs on the beach), and daily monitoring check-off sheets.

When feasible and appropriate, MDIFW or its designee will train all Town personnel, including the Conservation Commission, at the same time, unless it is not reasonable to do so.

K) Beach Restoration, Maintenance, Nourishment, and Dune Creation

Activities within the sand dune system at Old Orchard Beach occur within a protected resource area under the jurisdiction of the Maine Department of Environmental Protection (DEP). The U.S. Army Corps of Engineers (Corps) has federal jurisdictional responsibilities within the sand dune system; however, all federal activities are subject to review by the USFWS under the Endangered Species Act. Many projects and activities (such as moving sand, altering vegetation, repairs to jetties and seawalls) require a permit from DEP and/or the Corps. Projects located in designated Essential Habitat may need a "Project Review" from MDIFW, Old Orchard Beach will contact MDIFW regional biologist before such projects are permitted (see section L). Therefore, all proposed beach nourishment, sand fencing, planting, and trail plans should be coordinated by the Town of Old Orchard Beach and reviewed by MDIFW, DEP, USFWS, and the Corps to ensure that state and federal regulations are adhered to and that Piping Plovers are not adversely affected.

L) Permit Review Process

Landowners and the Town of Old Orchard Beach must apply for and obtain all appropriate, necessary environmental permits before conducting activities or projects that require environmental review. This Cooperative Beach Management Agreement does not negate this responsibility and legal requirement, nor does it supersede or replace state and federal law.

This Cooperative Beach Management Agreement can facilitate state and federal environmental review and permitting provided that such activities and projects are consistent with other federal and state statutes. Concurrence from the USFWS and MDIFW on any future project that could affect plovers or their habitat within the

geographic area subject to this Agreement is contingent upon the successful implementation of all Piping Plover protection measures described in this Agreement and demonstration that these protection measures have proven adequate in avoiding "take" as defined under the federal Endangered Species Act (harass, harm, pursue, hunt, shoot, kill, trap, capture, or collect) of the federal Threatened Piping Plover (U.S. Fish and Wildlife Service 1973), or "take" as defined under the Maine Endangered Species Act (...the act or omission that results in the death of any endangered or threatened species.") (12 MRSA §12808) and "harass" as defined under state statute as any "intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns" (12 MRSA §10001(29)) of the state Endangered Piping Plover.

Essential Habitat: Any project requiring a permit or license from, or to be funded or carried out by, a state agency or municipal government partly or wholly within a Piping Plover and Least Tern nesting, feeding, and brood-rearing area designated as Essential Habitat shall not be permitted licensed, funded or carried out unless MDIFW determines that the project will not significantly alter the Essential Habitat.

Old Orchard Beach is encouraged to contact MDIFW regional biologist early in the planning process of projects located within designated Essential Habitat.

Certain activities/projects described within this agreement that are located in Essential Habitat do not need a "Project Review" by MDIFW as long as the Town agrees to follow guidelines described within the agreement.

These activities/projects include:

- Daily Pickup of Trash Barrels;
- Seaweed and Debris Cleanup;
- Placement of Lifeguard stands;
- Emergency and Non-emergency Vehicle use;
- Small weekly fireworks display located off the pier

Activities/projects that will need an Essential Habitat Review include but are not limited to:

- Annual July 4th fireworks display;
- Dredging, bulldozing, or removing or displacing soil, sand, vegetation, or other materials;
- Draining, filling, including adding sand or other material to a coastal sand dune;
- Beach nourishment or dune restoration;
- Organized group activities including camping and sporting events on the beach

Situations, activities, or projects may arise that are not addressed in this Agreement that affect the Piping Plovers on Old Orchard Beach. Successful resolution of such eventualities requires communication and coordination; landowners and the Town of Old

Orchard Beach are encouraged to seek early and frequent consultation with MDIFW and the USFWS prior to initiating activities or projects that may affect Piping Plovers.

V) Time Frame of Agreement

Recognizing that habitat and other management issues may arise that could require modified management, appropriate members of the Town as determined by the Town Council, USFWS, and MDIFW will meet annually in the winter to review this agreement. This Agreement will commence April 1, 2026 and terminate on October 1, 2028.

VI) Amendments

Amendments to this agreement can be made with the concurrence of all signatory parties to the agreement. Amendments shall not be effective unless documented in writing, dated, signed by all parties, and attached to the agreement.

Signatories to the Agreement

DATE:

Old Orchard Beach Town Manager

Chairman, Old Orchard Beach Town Council

Maine Department of Inland Fisheries & Wildlife

AGENDA ITEM #8974

Discussion with Action: Authorize the Town Manager to enter into a five (5) year agreement with Baseball by the Beach Inc. for the use of the Ballpark as its home facility for its baseball season beginning March 18, 2026 through January 31, 2031. In consideration of the use of the Ballpark and its designated home field, Baseball by the Beach, Inc. (BBTB) will pay to the Town a non-refundable annual user fee in the amount of \$13,000, increasing \$1,000 annually for each subsequent year during the five (5) year term, in addition to the annual user fee, BBTB. will pay the Town a per-game usage fee of \$650 for each game at the Ballpark.

Chair: Shawn O'Neill

1 **Agreement for use of The Ballpark with**
2 **Baseball by the Beach Inc.**

3 This agreement, dated the March 17, 2026, is made between The Baseball by the Beach a private
4 corporation organized and operating under the laws of the State of Maine, having its corporate
5 and mailing address at 41 Hutchins Dr, Building 3 1st & 2nd Floor, Portland, ME 04102
6 (hereinafter referred to as the "BBTB"), and the Town of Old Orchard Beach, a municipal
7 corporation of the State of Maine, with its mailing address at 1 Portland Avenue, Old Orchard
8 Beach, Maine "Town" (hereinafter referred to as the "Town").

9 Collectively referred to as the "Parties," the purpose of this Agreement is to establish the terms
10 of use of the Old Orchard Beach Ballpark by The BBTB and to authorize certain related
11 activities, as outlined herein.
12

- 13 **1.) The Facility:** The Town possesses and manages public amenities situated at 7
14 Ballpark Way within the Town, recognized as the Old Orchard Beach Ballpark ("The
15 Ballpark"). This venue comprises an open-air stadium designed for baseball events,
16 accommodating up to 4,000 spectators. It features public address and press boxes
17 equipped with audio and scoreboard systems. The Ballpark encompasses a baseball
18 field complete with a diamond, bases, fencing, lighting, and dugouts, in addition to
19 associated parking areas. It further includes a clubhouse, housing offices, restroom
20 facilities, concession and merchandise stands, as well as a ticket booth, among other
21 structures. The Town organizes specific events at the Ballpark and grants licenses to
22 various athletic and community organizations to utilize the facility for hosting athletic
23 contests or other outdoor gatherings.
24
- 25 **2.)** BBTB will participate as a BBTB in the and use the Ballpark as its home facility for
26 the 2026 Season and other summer seasons as outlined in this Agreement
27
- 28 **3.) Term of the Agreement:** This Agreement shall commence on February 1, 2026, and
29 shall remain in effect through January 31, 2031, constituting a five-year term. The
30 home game schedule for each individual summer season shall be established
31 collaboratively by the Old Orchard Beach Recreation Field Manager, subject to final
32 approval by the Recreation Director.
33
- 34 **4.) Non-exclusive Use and Scheduling of the Ballpark:** The utilization of the Ballpark
35 by BBTB shall not confer exclusive rights. The Town retains the prerogative, and the
36 BBTBBBTB acknowledges this right to arrange other events at the Ballpark during
37 periods when BBTB do not have a home game.

38 The Town commits to collaborating with BBTB scheduling events at the Ballpark and
39 endeavors to reasonably accommodate practice days, rain makeup days, and the
40 scheduling of any postseason games for BBTB. However, the Town reserves its right,
41 as acknowledged by BBTB to schedule other events and users for the Ballpark.
42 BBTB shall adjust its schedule around Town events previously established. Once The

43 BBTB schedule is finalized and submitted, the Town shall make efforts to
44 accommodate it.

45 **5.) User Fee, Security Deposit, Ticket Sales, Payment to the Town:**

46
47 a. User Fee and Per-Game Charges. In consideration of the use of the Ballpark
48 as its designated home field, BBTB shall pay to the Town a non-refundable
49 annual User Fee in the amount of Thirteen Thousand Dollars (\$13,000.00) for
50 the 2026 season. The annual User Fee shall increase by One Thousand Dollars
51 (\$1,000.00) for each subsequent contract year during the five-year term of this
52 Agreement.

53
54 b. In addition to the annual User Fee, BBTB shall pay the Town a per-game
55 usage fee of Six Hundred Fifty Dollars (\$650.00) for each game conducted at
56 the Ballpark, without limitation as to the number of games. The per-game
57 usage fee shall apply uniformly to all games, whether conducted during
58 daytime or nighttime hours, and shall include the use of the public address
59 system and announcer's box, press box, electronic scoreboard, parking lot,
60 merchandise building, and restroom facilities.

61 c. Security Deposit: BBTB shall submit a security deposit amounting to \$3,750
62 (Three Thousand Seven Hundred Fifty Dollars) to the Town on or before May
63 1. This security deposit will serve as a fund for covering the expenses
64 associated with repairs or replacements necessitated by any damage to the
65 Ballpark facility incurred as a result of BBTB usage at the end of the season.
66 Additionally, the security deposit may be utilized by the Town to address
67 expenses directly attributed to The BBTB use of the Ballpark, not otherwise
68 covered by the user fee. The BBTB shall have the opportunity to promptly
69 repair or replace, to the Town's satisfaction, any items damaged during their
70 usage. Upon completion of all necessary repairs and replacements to the
71 Town's satisfaction, any remaining balance of the security deposit will be
72 refunded to BBTB 30 days after contract is completed.

73 **d. User Fee and Security Deposit Payment:**

74 i. The first installment of the user fee, amounting to \$4,500 (Four
75 Thousand Dollars- Five hundred), is due and payable to the Town by
76 1:00 PM on March 1.

77 ii. The second installment of the user fee, totaling \$4,500 (Four Thousand
78 Dollars- Five hundred), is due and shall be remitted by The BBTB to
79 the Town by June 1.

80 iii. The remaining balance of the user fee, \$4,000 (Four Thousand
81 Dollars), is to be paid to the Town by The BBTB by the last regular
82 season game.

83 iv. The security deposit in the amount of \$3,750 shall be paid to the Town
84 by March 1.

85 v. The Town retains the right to suspend BBTB use of the Ballpark or
86 terminate this agreement if the user fee and security deposit payments
87 are not received by the specified due dates. All user fee payments
88 made to the Town are non-refundable to BBTB.

89 **e. Ticket Sales, Payments, and Parking Areas:**

90 i. The ticket sales booth shall remain available and accessible for the
91 Town's utilization during Town-sponsored events.

92 ii. BBTB assumes sole responsibility for all ticket sales pertaining to The
93 BBTB and events.

94 iii. The Town maintains exclusive authority to supervise, manage, and
95 oversee the utilization of parking areas affiliated with the Ballpark.

96 iv. Neither the Town nor BBTB shall collect revenues for the usage of, or
97 parking in, the parking areas.

98 **6.) Insurance:** Before May 1, BBTB must furnish proof of insurance coverage and
99 maintain the following policies throughout the Agreement period at its own expense:

100 **a. Comprehensive General Liability Policy:**

101 • Coverage for personal injury, death, and property damage claims at the
102 Ballpark.

103 • Limits:

104 • \$1,000,000 single limit for injury or death of one person.

105 • \$2,000,000 for injury or death of multiple persons in a
106 single accident.

107 • Not less than \$300,000 for property damage.

108

109 **b. Automobile Liability Insurance:**

110 • Coverage for BBTB, subcontractors, and the Town against claims arising
111 from operations under the Agreement.

112 • Minimum coverage: \$400,000, or as per the Maine Tort Claims Act.

113 **c. Workers' Compensation Insurance:**

114 i. Coverage as required by Maine law, including Employer's Liability
115 Insurance.

116 ii. Protection for employees engaged in hazardous work under the
117 Agreement.

118

BBTB

- 119 d. BBTB shall name the Town as an additional insured on the comprehensive
- 120 general liability and automobile liability policies with respect to any liability
- 121 arising under this Agreement.
- 122 e. During the term of this Agreement, BBTB shall ensure that all subcontractors
- 123 and suppliers provide and maintain liability and other insurance as set forth in
- 124 this section.
- 125 f. BTTB must provide certification of each policy to the Town.
- 126 g. **Nothing in this Agreement does, nor is intended to, waive any defense,**
- 127 **immunity or limitation of liability which may be available to the Town or**
- 128 **its respective officers, agents and employees, under the Maine Tort**
- 129 **Claims Act or any other privileges and/or immunities provided by law.**

130 **7.) Indemnification:** BBTB To the fullest extent permitted by law, BBTB shall defend,
 131 indemnify and hold harmless the Town, and the Town’s directors, officers, agents,
 132 consultants, and employees in their official and individual capacities from and against
 133 claims, damages, losses and expenses, including but not limited to attorneys’ fees, related
 134 to, arising out of or resulting from the BBTB’s use of the Ballpark, including but not limited
 135 to bodily injury, sickness, disease or death, or to injury to or destruction of tangible
 136 property, or liens on the Town’s property, if caused in whole or in part by the acts or
 137 omissions, whether negligent, intentional or otherwise, or breach of the Agreement by the
 138 BBTB or the acts or omissions, whether negligent, intentional or otherwise, of its
 139 subcontractor, sub-subcontractor, or suppliers, anyone directly or indirectly employed by
 140 them or anyone for whose acts they may be liable, regardless of whether or not such claim,
 141 damage, loss or expense is caused in part by a party indemnified hereunder.

142 **In claims against any person or entity indemnified under this section by an employee**
 143 **of the BBTB, a subcontractor, anyone directly or indirectly employed by them, or**
 144 **anyone for whose acts they may be liable, this defense and indemnification obligation**
 145 **is intended to waive any exclusivity-of-remedy defense or employer immunity**
 146 **provisions that may otherwise be available to employer under workers’**
 147 **compensation, disability benefit, or other employee benefit acts and the obligations**
 148 **shall not be limited by a limitation on the amount of damages, compensation, or**
 149 **benefits payable by or for the employer under workers’ compensation acts, disability**
 150 **benefit acts, or other employee benefit acts.** The obligations in this Section survive
 151 termination of the Agreement.
 152

153 **8.) Concessions, Merchandise, and Sponsorship:**

154 **a. Concessions:**

- 155
- 156
- 157 i. The Town shall retain sole and exclusive responsibility for the
- 158 management, operation, staffing, and oversight of all food and
- 159 beverage concessions located at or operated within the Ballpark.

- 160 ii. The Town shall maintain exclusive rights to all concession sales,
161 service areas, and all associated revenue streams within the Ballpark
162 facility.
163 iii. The Town reserves the sole discretion to determine whether
164 concessions will be operated during any scheduled BBTB games or
165 events, and shall have no obligation to operate concessions at any
166 specific game or event, except as otherwise provided herein.
167
168 iv. The Town of Old Orchard Beach shall maintain full control over all
169 Food and Beverage sales, including but not limited to product
170 selection, pricing, staffing, service locations, and vendors.
171 v. As part of the revenue structure for Public Games, BBTB agrees to
172 pay the Town a minimum fee of Three Hundred Dollars (\$300.00) per
173 game day. This minimum fee shall apply in the event that established
174 or mutually agreed upon food and beverage revenue targets are not
175 met.
176 vi. The Town agrees to make commercially reasonable efforts to offer
177 beer service through the Ballpark concession stands during scheduled
178 games, subject to staffing availability, licensing requirements, supply
179 availability, and any applicable local, state, or regulatory restrictions.
180

181 **b. Merchandise Sales:**

- 182 i. BBTB shall be solely responsible for the sale of BBTB merchandise.
183 ii. BBTB retains 100% of the proceeds from merchandise sales.
184 iii. The Town may, at its discretion and based on availability and
185 suitability, provide additional space at the Ballpark to BBTB at no
186 extra cost.
187

188 **c. Sponsorships:**

- 189 i. BBTB shall be solely responsible for the solicitation, negotiation,
190 execution, activation, and management of all sponsorships obtained
191 from businesses, organizations, or other third-party entities or
192 individuals related to BBTB operations, games, or associated
193 promotional activities at the Ballpark, unless otherwise agreed to in
194 writing by the Town.
195 ii. Net sponsorship revenue shall be distributed on a seventy percent
196 (70%) to BBTB and thirty percent (30%) to the Town., For purposes
197 of this Agreement, "Net Sponsorship Revenue" shall mean total
198 sponsorship revenue actually received by BBTB, less only those
199 direct, pre-approved sponsorship fulfillment costs agreed to in writing
200 by the Town.
201 iii. BBTB shall provide the Town with a comprehensive sponsorship
202 report at the beginning of each season. The report shall include, at a
203 minimum, a list of all secured sponsors, sponsorship categories,
204 contract values, fulfillment elements, and projected gross and net
205 sponsorship revenues for the upcoming season.

- 206 iv. Payment of the Town’s sponsorship revenue share shall be made in
207 full no later than the date of the BBTB’s final regular season home
208 game, unless otherwise agreed to in writing by both parties.
209 v. The Town reserves the right to review, approve, or deny any
210 sponsorship that conflicts with existing Town agreements, municipal
211 policies, community standards, or exclusive rights previously granted
212 by the Town.
213 vi. True-Up Requirement. BBTB shall provide updated sponsorship
214 reporting to the Town if additional sponsorships are secured, modified,
215 or terminated during the season. Any additional Town revenue share
216 resulting from in-season sponsorship activity shall be reconciled and
217 paid to the Town no later than thirty (30) days following the BBTB’s
218 final regular season home game, unless otherwise agreed to in writing
219 by both parties.
220

221 **9.) Condition and Suitability**

- 222 a. BBTB acknowledges that, as of the Effective Date of this Agreement, the
223 condition of the Ballpark premises is acceptable and suitable for its intended
224 use under this Agreement.
225 b. BBTB acknowledges and agrees that the Ballpark is an older facility and,
226 while currently in reasonable working condition, certain systems, components,
227 or structural elements may require ongoing maintenance, repair, or
228 replacement during the Term of this Agreement or any extension thereof.
229 Such elements may include, but are not limited to, stadium lighting systems,
230 seating structures, mechanical systems, field infrastructure, utility systems,
231 and other stadium-related components.
232 c. BBTB further acknowledges that the Town, due to budgetary limitations,
233 capital improvement planning schedules, emergency priorities, public safety
234 considerations, or other municipal operational constraints, may elect not to
235 immediately repair or replace certain systems or components that become
236 inoperable or unserviceable during the Term. Accordingly, the Ballpark may
237 not be fully operational at all times during the Term of this Agreement.
238 d. In the event of a condition that materially affects BBTB’s ability to host
239 games or events, the Town shall provide notice to BBTB as soon as
240 reasonably practicable after discovery. Prior to relocating or rescheduling
241 events to an alternate venue, BBTB shall provide the Town with a reasonable
242 opportunity to evaluate, address, and attempt to remedy the condition
243 affecting use of the Ballpark.
244 e. The Town shall use commercially reasonable and good-faith efforts to
245 maintain the Ballpark, including stadium structures, field surfaces, utilities,
246 mechanical systems, lighting, seating, and supporting infrastructure, in a
247 condition suitable for scheduled games and permitted uses under this
248 Agreement, subject to available funding, staffing, and municipal operational
249 priorities.
250 f. BBTB agrees not to engage in, permit, or promote any activity that would
251 cause damage to, accelerate deterioration of, or otherwise negatively impact

252 the condition of the Ballpark or its systems, except for normal wear and tear
253 associated with typical baseball operations and approved event use.

254
255 **10.) Force Majeure and Unavailability of Facility**

- 256 a. The Town shall not be deemed in default of this Agreement if the Ballpark, or
257 any portion thereof, becomes unavailable for use due to events or conditions
258 beyond the reasonable control of the Town, including but not limited to: acts
259 of God; severe weather events; flooding; fire; structural failure; utility
260 outages; governmental orders; public health emergencies; acts of terrorism;
261 labor disputes; supply chain failures; or other similar force majeure events.
262 b. In the event of such occurrence, the Town shall notify BBTB as soon as
263 reasonably practicable after becoming aware of the condition and shall make
264 commercially reasonable efforts to restore facility operations within a
265 reasonable timeframe, subject to funding availability, contractor availability,
266 safety requirements, and regulatory approvals.
267 c. BBTB acknowledges that temporary closure, restricted use, or operational
268 limitations of the Ballpark may occur as a result of such events, and such
269 conditions shall not constitute breach of this Agreement by the Town.
270 d. The Town and BBTB agree to cooperate in good faith to evaluate reasonable
271 alternatives, including rescheduling of games or identifying alternate
272 locations, if feasible and mutually agreed upon.
273 e. Unless otherwise specifically provided in this Agreement, the Town shall not
274 be liable for any indirect, incidental, or consequential damages, including lost
275 revenue, resulting from facility unavailability due to Force Majeure events.

276
277 **11.) Facility Access, Maintenance, and Operational Responsibilities**

- 278 a. Facility Access and Use
279 i. During BBTB usage as described in Section 3 of this Agreement,
280 BBTB shall be granted access to and may utilize the following
281 Ballpark facilities:
282 1. The playing field
283 2. The stadium seating and spectator areas
284 3. The designated BBTB office space
285 4. Conference Room (Game Days only)
286 5. Ticket Office (Game Days only)
287 6. Officials' Room (as needed and when available)
288
289 b. The assignment and scheduling of all clubhouse rooms shall be coordinated
290 and mutually agreed upon by both Parties prior to the start of each season or
291 as otherwise agreed in writing. No additional clubhouse rooms or Ballpark
292 spaces may be used or occupied without prior written approval from the
293 Recreation Director.
294 c. BBTB personnel, players, staff, or associates shall not be permitted to remain
295 overnight in any Ballpark or clubhouse facility.

- 296 d. No Ballpark property, equipment, fixtures, or infrastructure may be altered,
297 modified, relocated, or removed without prior written approval from the
298 Recreation Director.
299 e. Field and Game Preparation Maintenance.
300 f. The Town acknowledges that field quality is critical to player safety, game
301 play, and spectator experience. The Town shall be responsible for routine field
302 maintenance, seasonal preparation, and game-day field preparation necessary
303 to maintain the field in safe and playable condition, subject to weather
304 conditions, staffing availability, and municipal operational priorities.
305 g. The Town shall maintain the field using commercially reasonable efforts
306 consistent with municipal facility maintenance standards.
307

308 **12.) Facility Cleanliness and Maintenance Supplies**

- 309
310 a. The Town shall be responsible for maintaining general cleanliness of Ballpark
311 facilities following BBTB games and approved events, including spectator
312 areas, public restrooms, and common use spaces.
313 b. The Town shall also maintain general cleanliness standards within BBTB's
314 designated clubhouse areas, including floors, restrooms, and trash removal.
315 c. The Town shall provide and be responsible for the cost of standard cleaning
316 and maintenance supplies used in maintaining Ballpark facilities and
317 designated clubhouse areas.
318

319 **13.) Off-Season Security and Key Control**

- 320 a. During the off-season, BBTB shall return all issued keys, access cards, or
321 other access devices to the Recreation Director no later than August 31 of
322 each season, unless otherwise authorized in writing by the Town.
323 b. BBTB shall be responsible for the cost of replacement for any lost, stolen, or
324 unreturned keys or access devices.
325 c. Damage Responsibility: BBTB shall be responsible for any damage to
326 Ballpark facilities, equipment, or infrastructure caused by BBTB personnel,
327 players, staff, vendors, contractors, or guests, excluding normal wear and tear
328 associated with approved use.
329 d. The Town reserves the right to invoice BBTB for repair or replacement costs
330 associated with such damage.
331

332 **14.) Vendor Approval and Insurance Requirements**

- 333 a. All third-party vendors, contractors, or service providers brought onto
334 Ballpark property by BBTB must be pre-approved in writing by the Town.
335 b. All vendors must provide proof of insurance meeting Town insurance
336 requirements prior to performing any work or services at the Ballpark.
337

338 **15.) Storage and Use of Ballpark Space**

- 339 a. BBTB storage shall be limited to designated areas approved by the Recreation
340 Director.
341 b. The Town reserves the right to relocate or remove improperly stored materials
342 or equipment for safety, operational, or maintenance purposes.
343

344 **16.)Safety and Code Compliance**

- 345 a. BBTB shall comply with all applicable Town, State, and Federal laws, safety
346 regulations, fire codes, occupancy limits, and facility use policies.
347 b. Failure to comply with applicable safety or code requirements may result in
348 suspension of facility use privileges until compliance is achieved.
349

350 **17.)Utilities and Other Expenses:**

- 351 a. The Town is solely responsible for the expenses of
352 supplying gas, water, sewer, internet, and electricity services as currently serve
353 the Ballpark.
354
355

356 **18.)Broadcast Rights, Surveys, and Community Involvement / Service**

- 357 a. Broadcasting Rights: BBTB shall have the exclusive responsibility for
358 arranging, producing, and financing the broadcast of all games conducted at
359 the Ballpark. The Town shall provide internet service at the Ballpark for
360 BBTB's use; however, the Town makes no representations or warranties
361 regarding the availability, reliability, or continuity of such service and shall
362 not be liable for any interruptions, outages, or resulting impacts to BBTB's
363 broadcasting activities.
364 b. Each summer season, BBTB shall, at its sole cost and expense, establish,
365 maintain, and regularly update a publicly accessible website. The website
366 shall be used to provide schedules, game information, announcements, and
367 promotional materials related to BBTB and its games and activities conducted
368 at the Ballpark.
369

370 **19.)Early Termination**

- 371 a. This Agreement may be terminated by either Party in the event of a material
372 breach or for other justifiable reasons supporting early termination.
373 Termination shall become effective upon receipt of written notice by the other
374 Party. Such notice shall be sent via certified mail, return receipt requested, to
375 the address set forth herein, or to such other address as the Parties may
376 mutually agree in writing.
377 b. Material breaches and circumstances supporting early termination include, but
378 are not limited to: acts of God or other events rendering the Ballpark
379 unavailable for use; repeated failure by either Party to maintain; BBTB's
380 failure to comply with the payment obligations specified in Section 5 and
381 8(c)of this Agreement; condemnation, closure, or restriction of the Ballpark
382 by State or Federal authorities; significant or repeated improper accounting
383 practices or cash-handling deficiencies related to concession or ticket sale

384 revenues by either Party; blatant or repeated violations of the terms of this
385 Agreement by either Party; actions or omissions that make it impractical or
386 impossible to host BBTB home games at the Ballpark; insolvency,
387 bankruptcy, or financial incapacity of either Party; or material illegal or
388 criminal conduct by either Party.

- 389 c. Notwithstanding the foregoing, the Town shall have the right to immediately
390 terminate this Agreement, with a sixty (60) day notice or opportunity to cure,
391 upon written notice to BBTB, in the event of:
- 392 i. non-payment of any amounts due to the Town when required under
393 this Agreement;
 - 394 ii. conduct by BBTB, its officers, employees, contractors, players, or
395 agents that poses a threat to public health, safety, or welfare;
 - 396 iii. material illegal or criminal activity related to BBTB operations at the
397 Ballpark;
 - 398 iv. loss, suspension, or material lapse of required insurance coverage; or
399 v. any violation of this Agreement that, in the reasonable determination
400 of the Town, cannot be cured or would cause immediate harm to the
401 Town, the Ballpark, or the public.
- 402 d. In the event of early termination, BBTB acknowledges and agrees that it shall
403 not seek to recover any direct, indirect, incidental, consequential, or other
404 damages, refunds, or compensation of any kind from the Town, and hereby
405 expressly waives any and all rights to the same.
406

407 **20.)Entire Agreement; Amendments**

- 408 a. This Agreement constitutes the entire agreement between the Parties and
409 supersedes all prior or contemporaneous written or oral agreements,
410 representations, promises, negotiations, or understandings between the Parties
411 relating to the subject matter herein. Any amendment, modification, or waiver
412 of this Agreement shall be in writing and executed by duly authorized
413 representatives of both Parties.
414

415 **21.)Severability**

- 416 a. If any provision of this Agreement is determined by a court of competent
417 jurisdiction to be invalid, illegal, or unenforceable as to any Party, such
418 determination shall not affect the validity or enforceability of the remaining
419 provisions of this Agreement, which shall remain in full force and effect and
420 shall be enforced to the fullest extent permitted by law.
421

422 **22.)Assignment; Transfer**

- 423 a. Neither Party may assign, transfer, convey, or otherwise dispose of its rights
424 or obligations under this Agreement, in whole or in part, without the prior
425 written consent of the other Party, which shall not be unreasonably withheld,
426 conditioned, or delayed. Any attempted assignment or transfer without such
427 consent shall be null and void.
428

429 **23.)Governing Law**

430 a. This Agreement shall be governed by and construed in accordance with the
431 laws of the State of Maine, without regard to its conflict-of-laws principles.

432 The Baseball by the Beach

433 Date: _____

434 _____
435 Authorized Signature

436 _____
437 Printed Name

438 _____
439 _____
440 Title

441

442

443 Town of Old Orchard Beach

444 Date: _____

445 _____
446 Authorized Signature

447 _____
448 Printed Name

449 _____
450 _____
451 Title

452

AGENDA ITEM #8975

Discussion with Action: To confirm the appointment and to renew the three-month contract for Diana H. Asanza as the Town Manager for the Town of Old Orchard Beach effective March 7, 2026, through July 3, 2026.

Executive Session: The Town Council will be holding an Executive Session for the discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency under Title 1 M.R.S.A. Section 405 (6) (A), and the Council anticipates that the discussion will be held in executive session.

Chair: Shawn O'Neill

ADJOURNMENT

Chair: Shawn O'Neill