

City of Biddeford
City Council
October 03, 2023 6:00 PM Council Chambers & Zoom

Please click the link below to join the webinar:
<https://biddeford.zoom.us/j/93637670161?pwd=WjlpM0c3bmpVTjlRZGhNSmV1MG9zdz09>

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Or Telephone:
Dial(for higher quality, dial a number based on your current location):
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International numbers available: <https://biddeford.zoom.us/u/aeCD9xnIu1>

Status:

- 1. Roll Call**
- 2. Pledge of Allegiance**
- 3. Adjustment(s) to Agenda**
- 4. Proclamations**
 - 4.a. Proclamation Ostomy Awareness Day
[20231003 Ostomy Day-PROCLAMATION](#)
- 5. Presentation:**
 - 5.a. Presentation City Mural Art by Erica Sedler
[Esedler Murals](#)
- 6. Appointments:**
 - 6.a. 2023.122 Approval/Appointment Preston Bowden to Wastewater Management Commission
[Preston Bowden-Wastewater Management Commission- ORDER](#)
[20231003 Preston Bowden Application](#)
- 7. Public Addressing the Council...(3 minute limit per speaker for up to a total of 15 minutes)**
- 8. Consideration of Minutes:**
 - 8.a. Approval/Council Minutes 9-19-23
[City Council minutes 9-19-23](#)
- 9. Second Reading:**
 - 9.a. 2023.106 Amendment/Sec 46-5 City Parks, Beaches, and Athletic Fields, add 315 Main Street

20230905 Amendment - Sec. 46-5 City, Parks, Beaches, and Athletic Fields - Add 315 Main St - ORDER 2nd
20230905 Amendment - Sec. 46-5 City, Parks, Beaches, and Athletic Fields - Add 315 Main St - BRIEF
20230808 Biddeford Adopt-a-Park Committee Request - 315 Main as Formal Park - REFERENCE
20230905 315 Main Street - MAP

10. Orders of the Day:

- 10.a. 2023.123 Approval/Bid - Source Well- Remote Construction Compactor
20231003 Purchase of Bomag Compactor - Order
20231003 Purchase of Bomag Compactor - Council BRIEF
20231003 Purchase of Bomag Compactor - Sourcewell PRICING
- 10.b. 2023.124 Approval/Fire Department Phase 2 Roof contract
20231003 Approval Phase 2 Fire Dept Roof Repair - ORDER
20231003 Approval Phase 2 Fire Dept Roof Repair - Council BRIEF
20231003 Approval Phase 2 Fire Dept Roof Repair - Triumph QUOTE
20231003 Approval Phase 2 Fire Dept Roof Repair - Viking QUOTE
- 10.c. 2023.125 Approval/Police Department Pursuit Vehicles
20231003 Purchase of Police Department Pursuit Vehicles - ORDER
20231003 Purchase of Police Department Pursuit Vehicles - Council BRIEF
20231003 Purchase of Police Department Pursuit Vehicles - QUOTES
- 10.d. 2023.126 Approval/Cancellation of November 7, 2023 City Council Meeting
20231003 Approval - Cancellation of November 7, 2023 City Council Meeting - ORDER
20231003 Approval - Cancellation of November 7, 2023 City Council Meeting - BRIEF
- 10.e. 2023.127 Approval/Use of City Seal
20231003 Use of City Seal - ORDER
20231003 Use of City Seal - BRIEF
- 10.f. 2023.128 Approval/One Diamond Development LLC and City of Biddeford Joint Development Agreement Amendments
20231003 One Diamond Project JDA Amendments - ORDER
20231003 One Diamond Project JDA Amendments - BRIEF
20231003 2021 One Diamond Development JDA, Executed - REFERENCE
20231003 One Diamond Phasing Plan - MAP
20231003 One Diamond Development Full Buildout Rendering - ATTACHMENT 2
20231003 One Diamond Development Joint Development Agreement--Redline- JDA
20231003 Diamond Match 2018 Concept Plan Amended - ATTACHMENT 1
- 10.g. 2023.129 Approval/Housing Trust Fund Ordinance
20231003 Housing Trust Fund Ordinance - ORDER
20231003 Housing Trust Fund Ordinance - BRIEF
20231003 Housing Trust Fund Ordinance

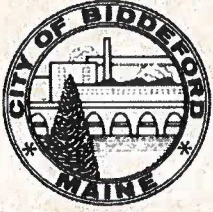
11. Public Addressing the Council..(5 minute limit per speaker)

12. City Manager Report

13. Other Business

- 14. Council President Addressing the Council**
- 15. Mayor Addressing the Council**
- 16. Adjourn**

City of Biddeford

STATE OF  MAINE

PROCLAMATION

Whereas An ostomy is a surgery that creates an opening (stoma) in the abdomen that allows for the removal of bodily waste when a person has lost the normal function of digestive or urinary systems due to medical conditions, including birth defects, cancers, and Crohn's disease, or in cases of severe abdominal or pelvic trauma and

WHEREAS approximately 725,000 to 1 million Americans have an ostomy, with approximately 100,000 new ostomy procedures performed each year and

WHEREAS, ostomy or continent diversion surgery, can occur at any age and affects people from all ethnic backgrounds and

WHEREAS, largely through the efforts of United Ostomy Associations of America, Inc., (UOAA) and its over 275 Affiliated Support Groups, Americans needing these surgeries are becoming more aware of the opportunities for education, advocacy and support that are of such great benefit to them and their families and

WHEREAS, the United States of America celebrates Ostomy Awareness Day with United Ostomy Associations of America, (National Office Headquartered in Biddeford, Maine) annually on the first Saturday of October and

WHEREAS the City of Biddeford is committed to increasing public understanding of "ostomy" to eventually help dispel the fear of those about to undergo this surgery, as well as the fear that confronts their families, and

WHEREAS the City of Biddeford recognizes the need that public education is not only vital to ensure those who are living with an ostomy are accepted as normal, healthy individuals, but also erase the stigma and embarrassment that are sometimes associated with having an ostomy and

WHEREAS the City of Biddeford is committed to the proper care and advancement of knowledge about bowel and urinary diversion surgery as a result of birth defects, disease, injury and other digestive disorders and

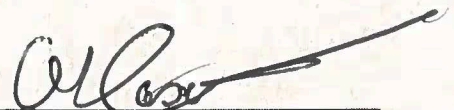
NOW, THEREFORE, I, Alan Casavant, the Mayor of Biddeford, located in York County in the State of Maine do hereby proclaim October 7, 2023 as "Ostomy Awareness Day - Ostomies Are Life-Savers", and I call upon all residents of the City of Biddeford to unite on this day in a showing of support that people living with an ostomy are living proof that ostomies save lives.

*In Witness Whereof, We, the undersigned, have herewith
affixed our signatures this 3rd day of October 20 23*



City Clerk





Mayor



Art by **Erica Sedler**

Interior and exterior murals
& custom paintings



Schools

Daycares

Public settings

Restaurants

**Offices/small
business**

Cafes & bakeries





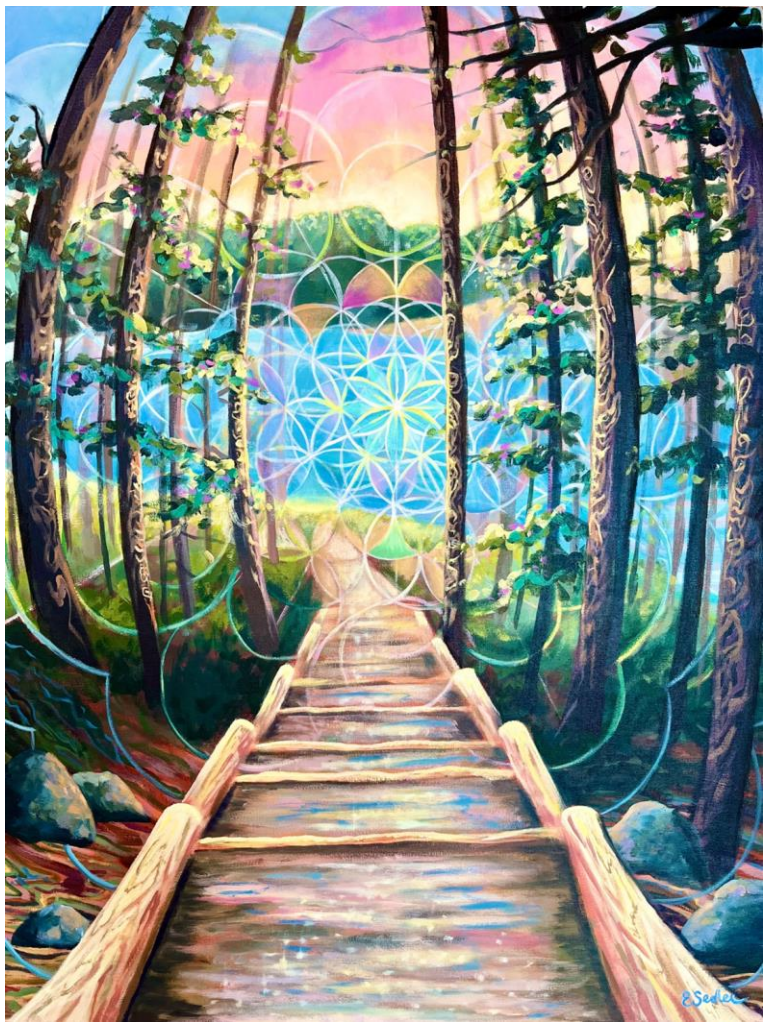
























Contact Information:

Erica Sedler

esedler.art@gmail.com

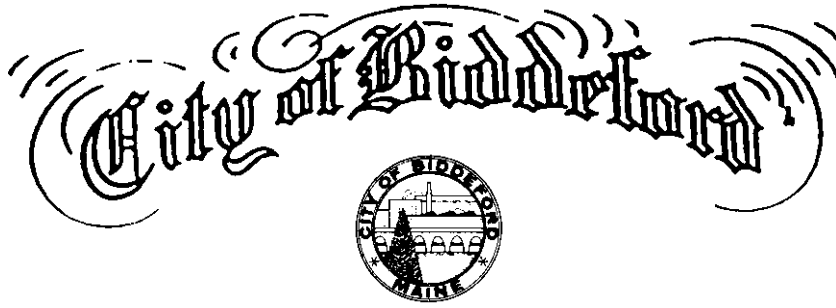
www.artbyericasedler.com

Social Media:

Instagram @esedler_art

Facebook Art by Erica Sedler





2023.122 **IN BOARD OF CITY COUNCIL...OCTOBER 3, 2023**
ORDERED, that I, Alan M. Casavant, Mayor of the City of Biddeford, do hereby
appoint:

Preston Bowden
Ward 3

to the *Wastewater Management Commission*, for a term to expire December 2025.

Attest by: _____
Robin Patterson, City Clerk

CITY OF BIDDEFORD
Committee Application

| Please list any prior experience serving on any Public Boards, Commissions or Committees (and approximate dates)

None.

| Please list any other experience that may be pertinent to the Board or Committee in which you are requesting to serve on.

I currently work for the Ogunquit Sewer District as the office manager. I also have a science-related background, majoring in biology and teaching chemistry for seven years.

| Please provide a brief statement describing your interest in serving the City of Biddeford.

I was born and raised in Biddeford and have a vested interest in seeing this town continue to improve. I also would love to expand my knowledge of the wastewater industry.

Attach any additional information to this application and return it to the City Clerk’s Office.

City of Biddeford
City Council
September 19, 2023 6:00 PM Council Chambers & Zoom

Status:

1. Roll Call

Chairman Belanger - present
Councilor Lessard - present
Councilor Ortiz - absent
Councilor Emhiser - present
Councilor Whiting - present
Councilor Grohman - present
Councilor Mills -present
Councilor Schlaver - present
Councilor LaFountain - present

2. Pledge of Allegiance

3. Adjustment(s) to Agenda

- 3.a. Add Order 2023.120 Approval/Appointment James Bennett as Interim Tax Collector

4. Communications

- 4.a. Upcoming Order for Temporary Change to Council Rules Regarding Zoom Participation in Council Meetings. Order 2023.116

City Manager Jim Bennett presented several options prepared by staff to reduce the exposure to inappropriate Zoom behavior happening in Maine right now. He spoke in support of those who have been impacted by these disruptions and stated that Biddeford is committed to being a place where people feel safe and are free from intimidation.

The options can be combined or used separately but whatever policy the Council passes will be used City wide for all committees and meetings that have public input via zoom.

Council discussed the pros and cons of the options presented, they want to encourage public participation but in a safe and respectful manner.

City Attorney Harry Center explained that for a new Council policy the vote would require a simple majority to pass.

Councilor Belanger – motion to amend Council rules to require that anyone who is participating remotely through Zoom do so with an authenticated Zoom account.

Moved: Councilor Emhiser

Second: Councilor Whiting

Councilor Emhiser – requested that if this is approved that staff publish clear directions for the authentication process.

Several Councilors spoke in favor of public participation and in support of the motion.

Vote: Unanimous in favor.

Motion passed.

5. Proclamation:

5.a. Constitution Week

[Constitution Week -PROCLAMATION](#)

Mayor Casavant read the proclamation

5.b. Hispanic Heritage Month

[Hispanic Heritage Month -PROCLAMATION](#)

Mayor Casavant read the proclamation

6. Public Hearing

6.a. Approval/Liquor License - Peng's Pizza Pies

[Peng's Pizza Pies Liquor License Application](#)

[Legal Liquor ad Peng's pizza pies September 2023](#)

Public Hearing began at: 6:37 pm

There were no public comments

Public Hearing closed at: 6:38 pm

7. Liquor License Consideration

7.a. Approval /Liquor License - Peng's Pizza Pies

[Legal Liquor ad peng's pizza pies September 2023](#)

[Peng's Pizza Pies Liquor License Application](#)

Motion: Councilor Belanger

Second: Councilor Lessard

Vote: Unanimous in favor.

Motion passed.

8. Public Addressing the Council...(3 minute limit per speaker for up to a total of 15 minutes)

No public comments

9. Consideration of Minutes:

- 9.a. Council minutes 8-29-2023
[City Council Minutes 8-29-2023](#)

Motion: Councilor Mills
Second: Councilor Lessard
Vote: Unanimous in favor.
Motion passed.

- 9.b. Council Minutes 9-5-2023
[City Council minutes 9-5-23](#)

Motion: Councilor Mills
Second: Councilor Lessard
Vote: Unanimous in favor.
Motion passed.

10. Second Reading:

- 10.a. 2023.102 Amend/Harbor Ordinance Sec 74-35 Wharfs, Piers, Landings
[20230905 Amendment to Harbor Ordinance Sec 74-35 - ORDER 2nd](#)
[20230905 Amendment to Harbor Ordinance Sec 74-35 - BRIEF](#)

Motion: Councilor Mills
Second: Councilor Lessard
Vote: Unanimous in favor.
Motion passed.

11. Orders of the Day:

- 11.a. 2023.116 Approval/Temporary Change to Council Rules Regarding Zoom Participation in City Council Meetings
[20230919 Change to Council Rules Regarding Zoom Participation in Meetings - BRIEF](#)

See item 4.a.

- 11.b. 2023.117 MMA Annual Business Meeting Voting Credentials
[20230919 MMA Annual Business Meeting Voting Credentials - ORDER](#)
[20230919 MMA Annual Business Meeting Voting Credentials - BRIEF](#)
[MMA Annual Business Meeting and Voting Credentials](#)

Motion: Councilor Grohman
Second: Councilor Lessard
Vote: Unanimous in favor.
Motion passed.

- 11.c. 2023.118 Appointments to Ad hoc Eastern Fire/EMS Building Committee

[Ad Hoc Eastern Fire-EMS Building Committee-APPOINTMENTS Order](#)
[Appointment Application- James Plamondon -Eastern Fire.EMS Building Committee](#)
[Appointment Application- Paul Brady- Eastern Fire.EMS Building Committee](#)
[AppointmentApplication- Scott Joslin - Eastern Fire.EMS Building Committee](#)

Motion: Councilor Grohman
Second: Councilor Lessard

Councilor LaFountain – asked if there were additional committee members needed.
Response – there could be 1 Councilor, 1-2 more community members and 2 staff people on the committee.

Vote: Unanimous in favor.
Motion: Motion passed.

- 11.d 2023.119 Approval/Request to Waive Property Taxes for Map 30 Lot 58, Winding Creek Lane, former Gervais Dube Properties
[20230919 Request to Waive Taxes - Map 30 Lot 58 former Gervais Dube Property - ORDER](#)
[20230919 Request to Waive Taxes - Map 30 Lot 58 former Gervais Dube Property - BRIEF](#)
[20230919 Request to Waive Taxes - Map 30 Lot 58 former Gervais Dube Property - REFERENCE](#)

Motion: Councilor Belanger
Second: Councilor Lessard

City Manager Bennett provided an overview of the property history, this was part of the land swap of 100 acres from Mr. Dube to the City for Clifford Park in exchange for 6 acres. The timing of the property transfer was delayed due to appraisals and no fault of the property owner.

Councilors Grohman and Mills spoke in support of the order.

Vote: Unanimous in favor.
Motion passed.

- 11.e. 2023.120 Approval/Appointment of James Bennett as Interim Tax Collector
Motion: Councilor Mills
Second: Councilor Belanger

City Manager Bennett gave an overview of the issues created by the Finance Department vacancies and upcoming deadlines in the lien process that require a Tax Collector.

Several Council members expressed their support for the City Manager but concerns with all of the responsibility with one person, asked if there were others who could do this.

City Manager Bennett explained the processes for bonding, training and risks of another person and further explained the recruiting process to date. This is an interim situation, staff is working diligently to fill the vacancies in Finance.

Councilor Belanger – motion to amend to name James Bennett as Interim Tax Collector until the second Council meeting in November and come up with another person at that point in time.

Second – Councilor LaFountain.

Vote on the amendment:

3 yeas – Councilors Belanger, Whiting and LaFountain

5 nays – Councilors Lessard, Mills, Schlaver, Grohman and Emhiser

Amendment failed.

Councilors Lessard and LaFountain asked for additional information about the tax collector responsibilities and financial impact.

City Manager explained the plan for each position when the Finance department is fully staffed. There are 100 liens in the next week. Property tax liens will be coming as well once the prescribed tax dates are followed.

Vote on the original order:

5 yeas – Councilors Belanger, Whiting, Schlaver, Emhiser and Mills.

3 nays – Councilors Lessard, LaFountain and Grohman.

Motion passed.

12. Public Addressing the Council..(5 minute limit per speaker)

No public comments

13. City Manager Report

City Manager Bennett gave an update on the extra duties that he and COO Phinney will take on to cover the vacancies in the Finance department. He requested that Councilors let him know of any projects they want included in the next budget cycle so staff can get pricing.

14. Other Business

Councilor Lessard – provided current data on the US economy and debt.

Councilor LaFountain – excellent job by everyone on Household Hazardous Waste day.

Councilor Grohman - will be grilling at the Biddeford Recovery Community Softball game on Saturday, September 30th.

15. Council President Addressing the Council

Council President Belanger did not address the Council.

16. Mayor Addressing the Council

Mayor Casavant spoke about the current tax bills, the process is controlled by State law and the City has to follow the set values or there are financial penalties on individual exemptions and State subsidies to the City. Citizens should reach out to their Council representative, the City Assessor or the Mayor with questions.

17. Executive Session

17.a. Executive Session 1 MRSA 405 (6) (c) Economic Development

Motion to go into executive session by Councilor Mills at 7:32 pm

Second: Councilor Lessard

Vote: Unanimous in favor.

Motion passed.

Motion to come out of executive session by Councilor Mills at 8:38 pm

Second: Councilor Belanger

Vote: Unanimous in favor.

Motion passed.

18. Adjourn

Motion to adjourn by Councilor Mills at 8:38 pm

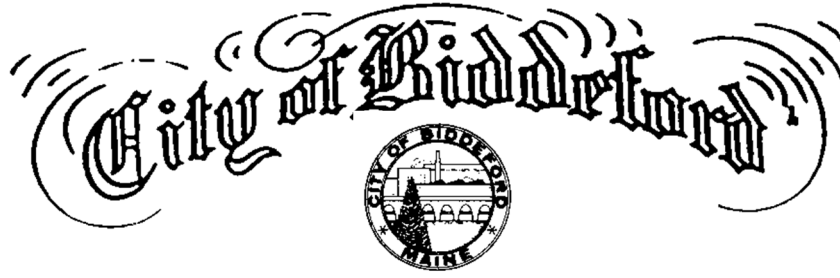
Second: Councilor Belanger

Vote: Unanimous in favor.

Meeting adjourned.

Attest: _____

Robin Patterson, City Clerk



2023.106 **IN BOARD OF CITY COUNCIL... SEPTEMBER 5, 2023**
BE IT ORDAINED, by the Biddeford City Council to amend the Biddeford Code of Ordinances at Part II, Chapter 46-Parks, Sec. 46-5 City parks, beaches and athletic fields by adding or ~~deleting~~ text as follows:

Name	Assessor's Map and Lot Numbers
Biddeford Pool Bath House/Gilbert Boucher Park Gilbert Place	GIS 59-107
Biddeford Pool Mini-Park 0 Lest B. Orcutt Blvd.	GIS 59-117
Cannon Plaza 59 South Street	GIS 39-201
Canopy Park 65 Bacon Street	GIS 39-129
City Square Park 58 Lincoln Street	GIS 38-132
Clifford Park 130 Pool Street	GIS 39-334, Parcels 8-1 and 8-3-1
Doran Field 314 South Street	GIS 32-4
F.O.A.V. Court Park 2 FOAV Court	GIS 39-137
Fortunes Rocks Beach	
J. Richard Martin Community Center Playground 189 Alfred Street	GIS 34-228
Liberty Park 2 Water Street	GIS 41-129
Pierson's Lane Community Park 40 Pierson's Lane	GIS 39-116
	GIS 30-117
Mechanics Park 3 Main Street	GIS 41-1
Memorial Park 130 May Street	GIS 27-34
Middle Beach	
Park in the Pines 194 Hills Beach Road	GIS 55-51
River Walk Plaza/River Walk Phase 2 2 Main Street	GIS 71-11
Rotary Park 550 Main Street	GIS 32-2
St. Louis Field	GIS 28-270
Shevenell Park 149 Main Street	GIS 38-372
Veteran's Memorial Park 2 Pool Street	GIS 38-419
Vines Landing End of Lester B. Orcutt Boulevard	GIS 59-117
Washington Street School Park 75 Washington Street	GIS 38-312-1
Williams Court Park South Street and Green Street	GIS 38-183, 182, 169-1
<u>315 Main Street</u>	<u>GIS 38-144</u>

September 5, 2023

Motion: Councilor Belanger

Second: Councilor Lessard

Vote: Unanimous in favor.

Motion passed.

October 3, 2023

Attest by:_____

Robin Patterson, City Clerk



City Council

Meeting Date: September 5, 2023

Meeting Time: 6:00 PM

Agenda Item No: 9.f.

Item Description: 2023.106 Amendment/Sec 46-5 City Parks, Beaches, and Athletic Fields – add 315 Main St

Submitted by: Brian S. Phinney, COO

Supporting Information/Documentation:

Order 2023.106

Locus Map – 315 Main St

Biddeford Adopt-a-Park Request

Key Terms:

N/A

Executive Summary:

Action on this item would add the current green space at 315 Main Street to the list of parks codified under Sec 46-5 of the Biddeford Code of Ordinances.

Detailed Review:

Biddeford Adopt-a-Park submitted a request for the City Council to consider adding the green space at 315 Main Street to the formal list of parks. As 315 Main Street is currently listed as city property the measure is symbolic to some extent until such time as the Council appropriates funds for any park redesign, improvements, or maintenance. The Public Works Department does not currently maintain this green space.

The green space is located at a very prominent location within the community. There have been improvements to the green space over the years with varying results. It does make sense to consider developing a formal plan for design and upkeep given the prominence of the parcel and the considerable investment in Main Street improvements.

Staff supports the proposal in concept with the understanding that right, title, and interest should be confirmed and, if there is a desire to proceed, that the FY25 budget process will need to include a resource allocation for the green space.

Funding Source:

N/A]

Staff Recommendation:

Staff recommends tabling this item until the right, title, and interest is confirmed. Upon confirmation adoption could proceed if desired.

Phinney, Brian

Subject: FW: Status of 315 Main St green space

From: Mirlea Saks <mirlea.saks@gmail.com>

Sent: Tuesday, August 8, 2023 1:37 PM

To: Demers, Jeff <Jeff.Demers@Biddefordmaine.org>; Thompson, Lisa <Lisa.Thompson@biddefordmaine.org>; Bennett, James <James.Bennett@Biddefordmaine.org>; Phinney, Brian <Brian.Phinney@Biddefordmaine.org>; Galbraith, David <David.Galbraith@biddefordmaine.org>

Cc: holly culloton <holly.mhcg@gmail.com>; joan BROOKS <jobrooks189@hotmail.com>

Subject: Status of 315 Main St green space

EXTERNAL: This email originated from outside of the City of Biddeford email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good day,

We, members of Biddeford's Adopt-a-Park committee, would like to petition the City to please formalise the status of the green space at 315 Main Street, as a city park. We're aware that the City owns the property, but it has apparently never officially received formal park status.

For many years this treed corner has been tended and beautified by AAP volunteers. Public Works provides basic services such as trash removal, weed whacking the groundcover and watering the three concrete planters, but any further involvement by this department is somewhat limited as it isn't really a city park!

This lack of status can cause confusion. For example, recently, Public Works passed on a water bill to the AAP for this area *even though our organization has no city funding*. (The payment of this has since been resolved.)

This strategically-placed space is one of the main entry points to Main Street and the downtown. As such, we'd like to see this important corner continue to be beautified and maintained to its full potential but for that we need some clarity about the City's future plans for this corner.

Please consider adding 315 Main Street to our portfolio of 12 city parks. Your formal recognition will make a positive difference and would surely reinforce Biddeford's reputation as a burgeoning, happening little city.

Thank you,

Holly Culloton,
Joan Brooks
Mirlea Saks

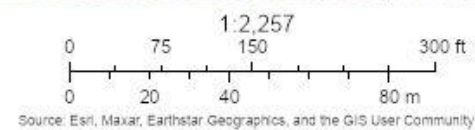
Biddeford Adopt-a-Park



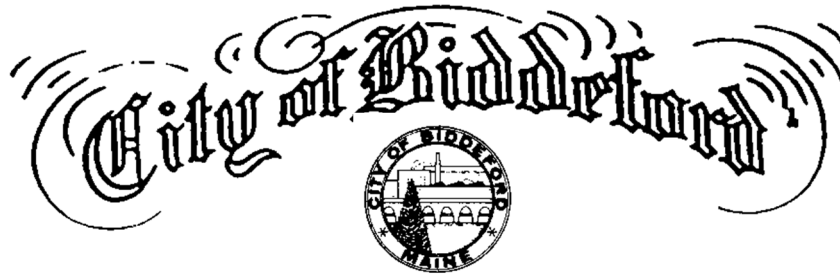
Locus Map - 315 Main Street



August 31, 2023



Data and scale shown on this map are provided for planning and informational purposes only.
Powered by Esri Technology



2023.123

IN BOARD OF CITY COUNCIL.. October 3, 2023

BE IT ORDERED, that the Biddeford Public Works Department purchase one Bomag compactor from C.N.Wood in the amount of \$38,293.00.

Note: Funding for this purchase is from the FY 24 Waste Water capital improvement fund.

Attest by: _____



City Council

Meeting Date: October 3, 2023

Meeting Time: 5:00 PM

Agenda Item No: 10.a.

Item Description: 2023.123) Authorization/Purchase of Bomag Compactor

Submitted by: Jeff Demers - Public Works Director

Supporting Information/Documentation:

Source Well Pricing

Executive Summary:

Approval to purchase Bomag Compactor

The Public works department is looking for the approval to purchase (1) Bomag construction compactor.

Detailed Review:

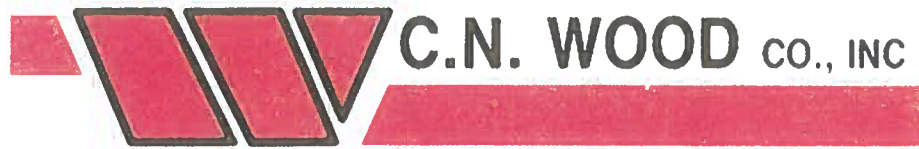
The Public works department is requesting approval to purchase a Bomag compactor. This unit will allow compacting of all trenches deeper than 3 feet while staff remains above grade. This remote control unit makes deeper excavation compaction safer for city staff. Public works used the source well bidding process for this item. See the attached Quote from Sourcewel # 032119-BAI

Funding Source:

This item was budgeted in FY2024 waste water CIP.

Staff Recommendation:

Staff recommends approval of the purchase of (1) Compactor from C.N Wood Co, for an amount of \$38,293.00. Staff will be available for any further questions.



**Bomag BMP8500 Quote
Sourcewell # 032119-BAI**

To: City of Biddeford Public Works
C.N. Wood Enviro, LLC is pleased to offer the following quotation.

Date: 8/2/2023

New Bomag BMP8500

Drum extensions (24/33.5in)
Hydrostatic articulated steering, maintenance free
Combination remote control cable/radio
Dual directed-vibration system
Two travel speed ranges 2 amplitudes
Intelligent Vibration Control (IVC)
Electric starter
BOMAG Operator Safety System
2 scrapers per drum
Battery disconnect switch
Automatic shutdown at low oil level
Automatic engine shut down at a lateral tipping angle of 45°
Full protection hoods made of impact resistant compound material
Single point lifting device
Lockable engine cover and dashboard
Diagnostic module with fault code display and Hour meter
3-2-1 Warranty

Subtotal \$ 38,293.00 SOURCEWELL PRICING

Tax EXEMPT

Total \$ 38,293.00

Expires: 8/16/2023

Thank you for considering C.N. Wood for your equipment needs.

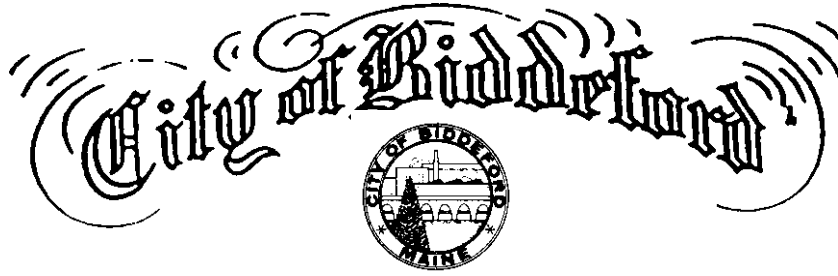
Fred T Griego Sales Representative

207-217-4750

fgriego@cn-wood.com

No warranties are made other than those extended by the manufacturer of the equipment, and in the event of an alleged breach of warranty, expressed or implied, the liability of C. N. Wood Co., Inc., shall be limited to the liability of the manufacturer to it, and shall be subject to all limitations and conditions imposed by the manufacturer. The seller shall not be liable for any default or delay in delivery, because of shipping delays, strikes, fires, lockouts, or inability to procure materials.

*Due to current market conditions and on-going supply chain issues pricing and availability is subject to change without notice.



2023.124

IN BOARD OF CITY COUNCIL...October 3, 2023

BE IT ORDERED, that the City Manager is authorized to enter into an agreement with Viking Roofing for the roof replacement of Biddeford Central Fire Station in the amount of \$103,082.00

Attest by:_____



City Council

Meeting Date: 09/27/2023

Meeting Time: 6:00 PM

Agenda Item No: 10.b.

Item Description: 2023.124) Approval/Award Roof Replacement Project for Biddeford Central Fire Station

Submitted by: Deputy Chief Thorpe

Supporting Information/Documentation:

Draft Council Order

Vendor Quotes

Key Terms:

N/A

Executive Summary:

This request is to replace the roof over entire apparatus bay area and fire museum.

Detailed Review:

Phase one of the central station roof replacement project was completed last year and included roof repair/replacement over the fire station's administration offices and living quarters including the maintenance shop housing the emergency generator. This is phase two of the project and covers the entire apparatus bays and Museum. The RFP process was followed according to city policy. The Fire Department received two proposals. The first was Triumph Roofing Company from Baldwinville, MA in the amount of \$114,000.00. The second was from Viking Roofing from Hollis, NH in the amount of \$103,082.00

Funding Source:

Budgetary Capital Improvement Projects.

Staff Recommendation:

Staff recommends awarding the work to Viking Roofing in the amount of \$103,082.00. This is the company that completed phase one of the roof and the work was exceptional. Viking Roofing also worked with the city for recycling a large portion of the roofing material for other smaller projects in the city. The bid met the requirements for the work and was the lower of the two bids received.

**CITY OF BIDDEFORD
AFFIDAVIT OF NON-COLLUSION**

I swear (or affirm) under the penalty of perjury

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation)
2. That the attached proposal submitted in response to the Project # 2023-24 Request for Proposed Solution has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment or services described in the Request for Proposed Solution, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Responder's Firm Name: Triumph Roofing Inc

Authorized Signature: 

Date: 09/21/2023

Subscribed and sworn to me this 21 day of Sept 2023

Notary Public: 

My commission expires: 7/26/30



BID – CONTRACT

PROJECT IDENTIFICATION: Biddeford Fire Department

Roofing Projects 2022-23

THIS BID SUBMITTED TO: City of Biddeford, Maine

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents, to complete all work as specified or indicated in the Contract Documents for the Contract Price, and within the Contract Time indicated in this Bid and in accordance with the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Instructions to Bidders, including without limitations those dealing with the disposition of Bid Security. This Bid will remain open for a minimum of four months after the Bid opening. BIDDER will sign the Agreement and submit the contract security and other documents required by the contract Documents within fifteen (15) days after the date of OWNER'S Notice of Award.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that

(a) BIDDER has examined copies of all the Contract Documents and the following addenda:

Date 09/21/2023

Number 1

\$ 165.00 / panel \$ 800.00 / steel

(receipt of all which is hereby acknowledged) and also copies of the Invitation to Bid and the Instructions for Bidders;

(b) BIDDER has examined the site and locality where the work is to be performed, the legal requirements (federal, state, and local laws, ordinances, rules, and regulations) and the conditions affecting cost, progress, or performance of the work and has made such independent investigation as BIDDER deems necessary;

(c) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or

corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm, or a corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for himself any advantage over any other BIDDER or over OWNER.

4. **BIDDER agrees that the work will be completed by TBD.**



Respectfully submitted,

By: Triumph Roofing Inc.

Name and Title Derek Houde
Project Executive

For:

(Seal if by a Corporation)

Address: 46 Elm St Unit 3
Baldwinville, MA 01436

COMMERCIAL GRADE SPECIFICATIONS

OUTLINE OF WORK

1. Removal & disposal of roofing and debris.

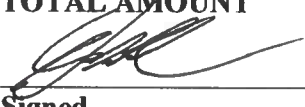
COMMERCIAL GRADE SPECIFICATIONS

OUTLINE OF WORK

1. Removal & disposal of existing Roofing and debris.

BIDDER will complete the work for the following prices:

PRICE QUOTE: oz. Please Note Addendum #1 Pricing

<u>Item No.</u>	<u>Units</u>	<u>Per Unit</u>	<u>In Words</u>	<u>Figures</u>
1.	1.0	lump sum	one hundred fourteen Thousand	\$114,000.00
TOTAL AMOUNT			one hundred fourteen thousand	\$114,000.00
Signed 			09/21/2023 Date	

END OF SECTION BID

BID – CONTRACT

PROJECT IDENTIFICATION: Biddeford Fire Department

Roofing Projects 2022-23

THIS BID SUBMITTED TO: City of Biddeford, Maine

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents, to complete all work as specified or indicated in the Contract Documents for the Contract Price, and within the Contract Time indicated in this Bid and in accordance with the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Instructions to Bidders, including without limitations those dealing with the disposition of Bid Security. This Bid will remain open for a minimum of four months after the Bid opening. BIDDER will sign the Agreement and submit the contract security and other documents required by the contract Documents within fifteen (15) days after the date of OWNER'S Notice of Award.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that
 - (a) BIDDER has examined copies of all the Contract Documents and the following addenda:

Date 8/9/2023

Number 1

(receipt of all which is hereby acknowledged) and also copies of the Invitation to Bid and the Instructions for Bidders;

(b) BIDDER has examined the site and locality where the work is to be performed, the legal requirements (federal, state, and local laws, ordinances, rules, and regulations) and the conditions affecting cost, progress, or performance of the work and has made such independent investigation as BIDDER deems necessary;

(c) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or

corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm, or a corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for himself any advantage over any other BIDDER or over OWNER.

4. **BIDDER agrees that the work will be completed by TBD.**

Respectfully submitted,

By: *Viking Roofing Inc*

Name and Title
Andi L. Quinn; V.P.

For:

(Seal if by a Corporation)

Address:

*10 Clinton Drive
Harris NH 03049*

COMMERCIAL GRADE SPECIFICATIONS

OUTLINE OF WORK

1. Removal & disposal of roofing and debris.

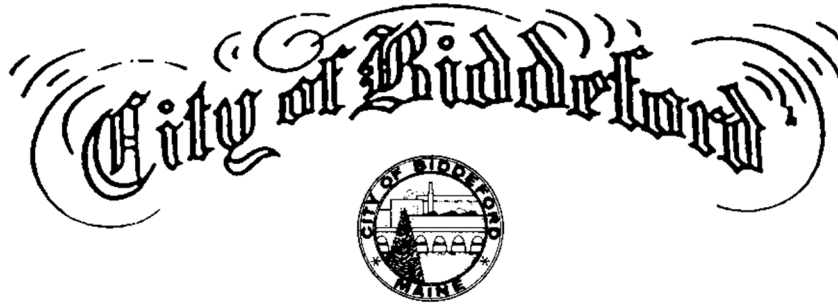
COMMERCIAL GRADE SPECIFICATIONS

OUTLINE OF WORK

1. Removal & disposal of existing Roofing and debris.

PRICE QUOTE: oz.

END OF SECTION BID



2023. 125

IN BOARD OF CITY COUNCIL... October 3, 2023

BE IT ORDERED, that the City Council authorizes the City manager to purchase two (2) 2023 Dodge Police Pursuit vehicles from Quirk Ford, Belfast ME. The purchase amount is not to exceed \$83,447.00.

Attest by:_____



City Council

Meeting Date: October 3, 2023

Meeting Time: 5:00pm

Agenda Item No: 10.c

Item Description: 2023.125) Approval/Purchase of Police Department Pursuit Vehicles

Submitted by: JoAnne W. Fisk, Chief of Police

Supporting Information/Documentation:

Quirk Ford of Belfast quote

Executive Summary:

Approval to purchase two (2) 2023 new Dodge Durango Pursuit SUV/AWD vehicles

Detailed Review:

The police department is seeking approval on this pilot program, which is to move away from the current Ford Interceptor SUV's in the current fleet to the Dodge Durango Pursuit SUV. This move is due to known transmission issues with the Ford Interceptor. The Ford Interceptor transmission issues are 1) Harsh engagement 2) Harsh shifting 3) Delayed Shifting. Ford appears unwilling or unable to correct this transmission issue, which has been prevalent since 2020 (see attached Technical Service Bulletin). Given the types of driving police emergency vehicles are utilized for these operational issues have created a substantial safety concern.

Funding Source:

The FY 2024 budget has appropriated \$ 70,000 for two vehicles. Actual cost is \$ 83,447.00 which includes the trade in of two 2014 Ford Taurus sedans, valued at \$1,500.00 each for a total of a \$3,000.00 credit. Both Taurus's have in excess of 115,000 miles and are in transmission failure. The balance of \$13,447.00 will come from the departments Asset Forfeiture account.

Staff Recommendation:

Staff is recommending the purchase of two (2) 2023 Dodge Durango Pursuit vehicles for the price of \$83,447.00.

DEAL# 9154
CUST# 712521

244 MAIN STREET
BELFAST ME 04915
PHONE: (207)338-1300 FAX: (207)991-5546



MAINE AUTOMOBILE DEALERS ASSOCIATION, INC.

PURCHASER: CITY OF BIDDEFORD

PURCHASER(S):

ADDRESS: 371 HILL ST

CITY: BIDDEFORD

STATE: ME

ZIP: 04005-4335

Email:

DATE 09/20/2023

STOCK #

APPROX. DEL. DATE
09/20/2023

SALES PERSON
LIONEL C CHICOINE JR

TELEPHONE (H): (207)282-1579

TELEPHONE (B): (207)282-5127

TELEPHONE (C):

I hereby agree to purchase from you under the terms and conditions specified below and on the reverse side hereof, the following:

XX ☐ NEW ☐ DEMO ☐ USED	YEAR 2023	MAKE DODGE	MODEL DURANGO	TYPE SUV
VIN NO. 1C4SDJFT1PC677247			MILEAGE	COLOR

PURCHASER(S) DISCLOSURE

USED CAR TRADE-IN: #1
MAKE FORD MODEL SEDAN POLI YEAR 2014
MILEAGE 119200 TYPE 4DR SDN A COLOR BLACK
VIN NO. 1FAHP2MK6EG129631
PRINCIPAL USE OF VEHICLE POLICE
MECHANICAL DEFECTS KNOWN: UNKNOWN

TYPE OF DAMAGE IF ANY KNOWN, INCLUDING ANY THAT WAS REPAIRED
NONE DISCLOSED

HAS THE AIRBAG BEEN DEACTIVATED? ☐ YES ☒ NO

BALANCE OWED TO:

ADDRESS

USED VEHICLE ALLOWANCE	\$ 1500.00
PAY OFF OWED ON VEHICLE	\$ N/A
OTHER LICENSE/ENCUMBRANCES	\$ N/A
NET ALLOWANCE	\$ 1500.00

USED CAR TRADE-IN: #2
MAKE MODEL YEAR
MILEAGE TYPE COLOR
VIN NO.
PRINCIPAL USE OF VEHICLE
MECHANICAL DEFECTS KNOWN:

TYPE OF DAMAGE IF ANY KNOWN, INCLUDING ANY THAT WAS REPAIRED

HAS THE AIRBAG BEEN DEACTIVATED? ☐ YES ☐ NO

BALANCE OWED TO:

ADDRESS

USED VEHICLE ALLOWANCE	\$ N/A
PAY OFF OWED ON VEHICLE	\$ N/A
OTHER LICENSE/ENCUMBRANCES	\$ N/A
NET ALLOWANCE	\$ N/A

XX
☐ The vehicle has been inspected in accordance with Title 29-A, Section 1751 of Maine law, and is in the condition and meets the standards required by the statute and the rules and regulation promulgated thereunder.

☐ Unsafe Motor Vehicle

RETAIL PRICE	\$ 43046.00
Taxable Accessories & Products:	
	N/A
	N/A
NO SKID PLATE OPTION	0.00
	N/A
	N/A
	N/A
	N/A
ADMINISTRATIVE/DOCUMENT FEES	N/A
TOTAL PRICE	\$ 43046.00
LESS: Trade-in Allowance	1500.00
NET TRADE DIFF. (Taxable Amount)	41546.00
SUB TOTAL	\$ 41546.00
STATE SALES TAX	\$ N/A
STATE TITLE FEE	\$ N/A
STATE ARBITRATION FEE	\$ 1.00
STATE INSPECTION FEE	\$ N/A
STATE TEMPORARY PLATE FEE	\$ N/A
	\$ N/A
BALANCE DUE ON TRADE	\$ N/A
TOTAL	41547.00
	N/A
DEPOSIT ☐ Cash ☐ Check	\$ N/A
FACTORY INCENTIVES	N/A
	N/A
	N/A
	N/A
AMOUNT DUE UPON DELIVERY:	41547.00

Purchaser(s) hereby certifies and guarantees that the above information regarding the used car trade-in is true and complete, has disclosed any and all liens on the vehicle, and further states that title to the vehicle trade-in is NOT a salvage, rebuilt or not actual mileage title.

Purchaser (s) Signature

41547.00

DEALER'S DISCLOSURE (USED VEHICLE OR DEMONSTRATOR SALE)

ON REQUEST:

PREVIOUS OWNER'S NAME

STREET ADDRESS

CITY, STATE, ZIP

PRINCIPAL USE OF VEHICLE N/A

How Acquired: ☐ Trade-In ☐ Repossession

USED CAR WARRANTY

DEALER HEREBY DOES

DEALER HEREBY DOES NOT

DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY

AND FITNESS FOR A PARTICULAR PURPOSE

DEAL# 9153
CUST# 712521

QUIRK FORD CDJR OF BELFAST
244 MAIN STREET
BELFAST ME 04915
PHONE: (207)338-1300 FAX: (207)991-5546



MAINE AUTOMOBILE DEALERS ASSOCIATION, INC.

PURCHASER: CITY OF BIDDEFORD

PURCHASER(S):

ADDRESS: 371 HILL ST

CITY BIDDEFORD

STATE: ME

ZIP: 04005-4335

Email:

DATE 09/20/2023

STOCK #

APPROX. DEL. DATE
09/20/2023

SALES PERSON

LIONEL C CHICOINE JR

TELEPHONE (H): (207)282-1579

TELEPHONE (B): (207)282-5127

TELEPHONE (C):

I hereby agree to purchase from you under the terms and conditions specified below and on the reverse side hereof, the following:

XX ☐ NEW ☐ DEMO ☐ USED	YEAR 2023	MAKE DODGE	MODEL DURANGO	TYPE SUV	MILEAGE 9	COLOR BLACK
--	--------------	---------------	------------------	-------------	--------------	----------------

PURCHASER(S) DISCLOSURE

USED CAR TRADE-IN: #1
MAKE FORD MODEL SEDAN POLI YEAR 2014
MILEAGE 117002 TYPE 4DR SDN A COLOR BLACK
VIN NO. 1FAHP2MK4EG129630
PRINCIPAL USE OF VEHICLE POLICE
MECHANICAL DEFECTS KNOWN: NEW

TYPE OF DAMAGE IF ANY KNOWN, INCLUDING ANY THAT WAS REPAIRED
NEW

HAS THE AIRBAG BEEN DEACTIVATED? ☐ YES ☒ NO

BALANCE OWED TO:

ADDRESS

USED VEHICLE ALLOWANCE	\$ 1500.00
PAY OFF OWED ON VEHICLE	\$ N/A
OTHER LICENSE/ENCUMBRANCES	\$ N/A
NET ALLOWANCE	\$ 1500.00

USED CAR TRADE-IN: #2

MAKE MODEL YEAR
MILEAGE TYPE COLOR

VIN NO.

PRINCIPAL USE OF VEHICLE

MECHANICAL DEFECTS KNOWN:

TYPE OF DAMAGE IF ANY KNOWN, INCLUDING ANY THAT WAS REPAIRED

HAS THE AIRBAG BEEN DEACTIVATED? ☐ YES ☐ NO

BALANCE OWED TO:

ADDRESS

USED VEHICLE ALLOWANCE	\$ N/A
PAY OFF OWED ON VEHICLE	\$ N/A
OTHER LICENSE/ENCUMBRANCES	\$ N/A
NET ALLOWANCE	\$ N/A

XX
☐ The vehicle has been inspected in accordance with Title 29-A, Section 1751 of Maine law, and is in the condition and meets the standards required by the statute and the rules and regulation promulgated thereunder.

☐ Unsafe Motor Vehicle

RETAIL PRICE	\$ 43399.00
Taxable Accessories & Products:	
	N/A
	N/A
SKID PLATE OPTION	0.00
	N/A
	N/A
	N/A
	N/A
	N/A
ADMINISTRATIVE/DOCUMENT FEES	N/A
TOTAL PRICE	\$ 43399.00
LESS: Trade-in Allowance	1500.00
NET TRADE DIFF. (Taxable Amount)	41899.00
SUB TOTAL	\$ 41899.00
STATE SALES TAX	\$ N/A
STATE TITLE FEE	\$ N/A
STATE ARBITRATION FEE	\$ 1.00
STATE INSPECTION FEE	\$ N/A
STATE TEMPORARY PLATE FEE	\$ N/A
	\$ N/A
BALANCE DUE ON TRADE	\$ N/A
TOTAL	41900.00
	N/A
DEPOSIT ☐ Cash ☐ Check	\$ N/A
FACTORY INCENTIVES	N/A
	N/A
	N/A
AMOUNT DUE UPON DELIVERY:	41900.00

Purchaser(s) hereby certifies and guarantees that the above information regarding the used car trade-in is true and complete, has disclosed any and all liens on the vehicle, and further states that title to the vehicle trade-in is NOT a salvage, rebuilt or not actual mileage title.

Purchaser (s) Signature

41900.00

DEALER'S DISCLOSURE (USED VEHICLE OR DEMONSTRATOR SALE)

ON REQUEST:

PREVIOUS OWNER'S NAME

STREET ADDRESS

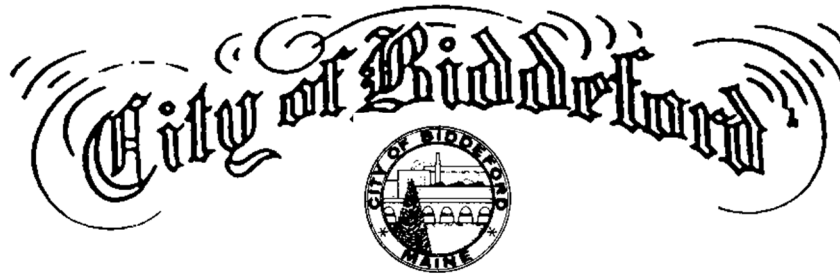
CITY, STATE, ZIP

PRINCIPAL USE OF VEHICLE N/A

USED CAR WARRANTY

DEALER HEREBY DOES

DEALER HEREBY DOES NOT



2023.126

IN BOARD OF CITY COUNCIL... October 3, 2023

BE IT ORDERED, that the City Council of the City of Biddeford does hereby cancel the City Council Meeting scheduled for November 7, 2023.

Attest by: _____
Robin Patterson, City Clerk



City Council

Meeting Date: October 3, 2023

Meeting Time: 6:00 PM

Agenda Item No: 10.d.

Item Description: 2023.126) Approval/Cancellation of November 7, 2023 City Council Meeting

Submitted by: Brian S. Phinney, COO

Supporting Information/Documentation:

N/A

Key Terms:

N/A

Executive Summary:

Approval of this item will serve to cancel the regular city council meeting scheduled for November 7, 2023 that coincides with the 2023 referendum election.

Detailed Review:

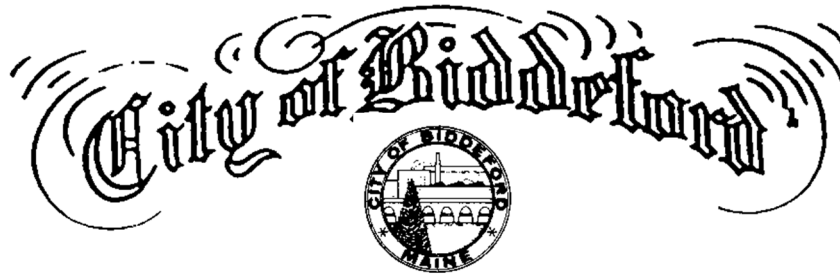
The referendum election date is November 7, 2023. The City Council may consider cancelling the regular meeting of the City Council scheduled for that same day. The cancellation will allow citizens the opportunity to vote without potentially missing the city council meeting or missing action that would otherwise be taken at the meeting.

Funding Source:

N/A

Staff Recommendation:

Staff is neutral as this is a policy decision.

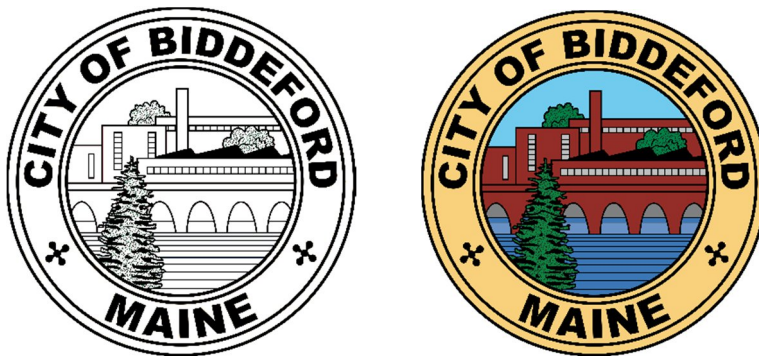


2023.127 **IN BOARD OF CITY COUNCIL... OCTOBER 3, 2023**
BE IT ORDERED, that the City Council amend the Biddeford Code of Ordinances at Part II, Chapter 2 – Administration, Article I – In General, Sec. 2-1 – Seal by [adding](#) or ~~deleting~~ text as follows:

Sec. 2-1 Seal.

[Code 1975, § 2-1]

The design shown in this section shall be the device of the Seal of the City of Biddeford, and the inscription in the margin without the inner circle shall be "City of Biddeford, Maine."



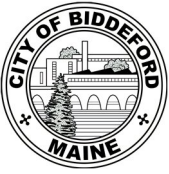
[CITY SEAL – BLACK AND WHITE \(LEFT\), COLOR \(RIGHT\)](#)

[The City Seal is the property of the City of Biddeford and has been established and designated to identify official city facilities, events, sponsorships and publications.](#)

[Per State of Maine Title 30-A, C. 101 §2006, "A person may not use or display an imitation, likeness, imprint, representation, facsimile or copy of a seal of a municipality except by written permission of the municipality from the municipal clerk." Under this statute, the City Seal may not be used for purposes of supporting or opposing the nomination or election of a candidate to any City or other public office, or for purposes of supporting or opposing any ballot measure, or for use on any writing distributed for purposes of influencing the action of the electorate or any part thereof, in any election.](#)

If used by an outside organization upon the approval of the municipal clerk or designee, the Seal must remain in entirety with no alternations. Elements may not be isolated and/or used alone or in combination with any other art. The colors of the seal may not be altered without permission from the City.

Attest by:_____



City Council

Meeting Date: October 3, 2023

Meeting Time: 6:00 p.m.

Agenda Item No: 10.e.

Item Description: Amendment/Sec 2-1 City Seal

Submitted by: Danica Lamontagne, Assistant to the City Manager

Supporting Information/Documentation:

Order 2023.127

Key Terms:

N/A

Executive Summary:

Staff recommends that the City adopt a policy outlining the appropriate use of the City Seal and update the Code of Ordinances to reflect the design of the City Seal that is currently in use.

Detailed Review:

It recently came to staff's attention that the City does not have guidelines outlining the appropriate use of the City Seal. City Seals are intended to be used to identify official sources of municipal information. Policies governing their use are common in many communities around the country to prevent or provide recourse for situations where the seal is used to misrepresent information as being endorsed or distributed by the City.

Upon further research while crafting language for a new proposed policy, it was discovered that there is an existing State law that prohibits unauthorized use of municipal seals. Title 30-A, C. 101 §2006 reads: *A person may not use or display an imitation, likeness, imprint, representation, facsimile or copy of a seal of a municipality except by written permission of the municipality from the municipal clerk. A municipality may file an action in Superior Court applying for an order to enjoin a person from using or displaying the municipal seal in violation of this section. A violation of this section is a Class E crime.*

Regardless of whether the proposed language is adopted, the City will still be covered by this statute. However, including a reference to the State statute in our Code of Ordinances affirms our commitment to preventing the Seal's unauthorized use and allow local enforcement of violations. The proposed language also sets standards for the use of the City Seal in situations when it is authorized to be used by other entities.

In the process of reviewing this Ordinance, it was found that the City Seal in the Code of Ordinances was never updated when the current Seal was put into use in 2015. These changes would officially adopt the design that we currently use on our documents and in our branding.

The Policy Committee reviewed the proposed amendment on September 25, 2023 and moved to submit it to the City Council for consideration and adoption.

Staff Recommendation:

Add the proposed language clarifying the design and use of the City Seal to the Code of Ordinances.



2023.128) **IN BOARD OF CITY COUNCIL..OCTIOBER 3, 2023**
BE IT ORDERED, that the City Manager is hereby authorized to execute an Agreement to amend certain terms of a Joint Development Agreement dated December 9, 2021 between ONE DIAMOND, LLC and City of Biddeford as shown within the attached Amended Joint Development Agreement.



City Council

Meeting Date: October 3, 2023

Meeting Time: 6pm

Agenda Item No: 10.f

Item Description: 2023.128) Approval/One Diamond Development LLC Joint Development Agreement Amendments

Submitted by: James Bennett, City Manager

Supporting Information/Documentation:

- Joint Development Agreement dated December 9, 2021 between ONE DIAMOND DEVELOPMENT, LLC AND CITY OF BIDDEFORD.
- Conceptual Site Plan for Diamond Match Parcel dated November 30, 2018
- Proposed Redline amendments to the City Council approved JDA.
- Plan entitled "OVERALL SITE PLAN dated 04/12/2023". I note that property shaded in green includes additional property added to the Project.
- One Diamond Project PHASING PLAN.

Key Terms:

Joint Development Agreement (JDA)

Executive Summary:

Amendments to the existing City Council approved JDA are needed to address One Diamond Project additional property and residential units along with developer performance requirements. No amendments to the City Council approved JDA are proposed related to Project developer requirements to construct the Riverwalk and maintaining public open space acreage and public access.

Detailed Review:

Amendments to the existing City Council approved JDA are needed to address One Diamond Project additional property and residential units along with developer performance requirements. No amendments to the approved JDA are proposed related to Project developer requirements to construct the Riverwalk and maintenance of public open space acreage and public access.

Specific Project changes related to property size, open space, residential units, commercial space square footage and number of parking spaces are outlined in the below chart.

PARAMETER	CONCEPT DESIGN COMPARISON		AGREEMENT REQUIREMENTS	
	ORIGINAL JDA	REVISED JDA	ORIGINAL JDA	REVISED JDA
PARCEL AREA (ACRES)	13.3	18.2		
OPEN SPACE (ACRES)				
RIVERWALK TRAIL	0.4	0.4		
PASSIVE OPEN SPACE	5.6	5.6	2.0	2.0
DEVELOPMENT AREA (ACRES)				
	7.7	12.6		
PROGRAM SUMMARY				
RESIDENTIAL UNITS	340	478		
COMMERCIAL SPACE (SF)	0	14,150		
PARKING SPACES	454	606		

Specific amendments to the JDA along with my comments include the following:

- Additional property referenced in Amended JDA Exhibit A;
- Change all references from Property to Properties;
- Change the timing of the transfer of the City property (Biddeford Tax Map 40, Lot 2, Block 25) to “after final approval of the One Diamond Project from City Planning Board, the State of Maine, and any other necessary regulatory agencies.”; and
- Change the timing for Project substantial completion to within five (5) years of the start of construction. The delayed start of this Project relates to the City responsibility to amend City Shoreland Zoning which was approved by the Maine DEP on January 24, 2023.

Also, I note that the City Council approved JDA includes the following language:

1. **TIF District:**

The Parties agree that there will be no credit enhancement for the benefit of One Diamond in the development of the Project. However, the Parties further understand that the City will seek approval of a TIF District encompassing the City Property and the Diamond Properties, with the proceeds from the TIF District to be used to advance affordable housing within the City of Biddeford.

There are no changes, to this language, in the Proposed JDA Amendments.

Funding Source:

Not applicable.

Staff Recommendation:

City staff recommends approval of the proposed amendments to the One Diamond JDA.

JOINT DEVELOPMENT AGREEMENT

This Joint Development Agreement (the "Agreement") dated December 9, 2021 is executed by ONE DIAMOND DEVELOPMENT, LLC, the assignee of Lord & Harrington, LLC ("One Diamond") and the CITY OF BIDDEFORD ("City"). (One Diamond and the City are referred to individually as a "Party" and collectively as the "Parties.")

RECITALS

WHEREAS, One Diamond desires to develop a multi-unit, multi-building residential project with incidental commercial uses (the "Project") on property located at 1 Diamond Street, Biddeford, Maine (the "Diamond Property") and the adjacent Property owned by the City of Biddeford (Map 40, Lot 2, Block 25) (the "City Property"); and

WHEREAS, the City desires to create additional housing options in the City, including individually owned and rental units; and

WHEREAS, the City seeks to expand its RiverWalk pedestrian trail network and provide access to the RiverWalk through a portion of the Diamond Property and the City Property as well as provide passive open space for public recreational use on the Properties; and

WHEREAS, the City agrees to convey the City Property to One Diamond after One Diamond's satisfaction of the commitments contained herein; and

WHEREAS, the combined RiverWalk and the passive open space are expected to have a joint development value of \$900,000.00 - \$1,200,000.00;

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein and other consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I

COMMITMENTS

1. One Diamond Commitments:

- a. One Diamond shall develop a multi-unit, multi-building residential project, with incidental commercial uses, on the Diamond Property and the City Property. The residential units shall be both ownership and rental units provided that at least 30% of the units shall be held in fee ownership.

- b. One Diamond shall construct a pedestrian pathway along the entire shoreline of the Saco River along the Diamond Property and the City Property that will connect with and become a part of the City's existing RiverWalk (the "RiverWalk Extension"). One Diamond agrees that it will construct the RiverWalk Extension pursuant to plans approved by the City as to location, dimension and design. The specifications, construction components, and details shall be substantially similar to the currently existing RiverWalk. Construction of the RiverWalk Extension shall be completed prior to the first occupancy permit being granted to One Diamond, or One Diamond shall provide a Bond in a form and amount acceptable to the City to ensure the completion of the RiverWalk Extension. After completion of the RiverWalk Extension, One Diamond shall grant an easement to the City for use of the RiverWalk Extension by members of the public. The City shall be responsible for maintenance of the RiverWalk Extension in the same manner as its maintenance of the existing RiverWalk.
- c. One Diamond shall develop and maintain in perpetuity a passive open space adjacent to the RiverWalk Extension (the "Open Space"). The Open Space shall be a minimum size of two (2) acres. One Diamond shall grant an easement to the City for the passive recreational use of the Open Space by members of the public. One Diamond also shall provide six (6) free public parking spaces adjacent to or in close proximity to the Open Space and RiverWalk Extension. Design of the Open Space and public parking shall be

in general accordance with the plans submitted by One Diamond to the City. After completion of construction, the Open Space and parking spaces shall be maintained by One Diamond.

d. At the closing of the City's transfer of the City Property to One Diamond (the "Closing"), One Diamond shall place the sum of \$1,000,000.00 into an interest bearing escrow account maintained by the City, said sum to be held in escrow as set forth below:

(i) If One Diamond identifies a property acceptable to the City Council within one (1) year after the Closing, and submits, within an additional year, a redevelopment plan acceptable to the City Council to develop the property into a multi-unit residential and/or mixed use building, the City agrees that the \$1,000,000.00 plus accrued interest held in escrow will be paid to One Diamond.

(ii) In the event that One Diamond does not identify a property acceptable to the City Council within one (1) year after the Closing, or if One Diamond fails to submit, within an additional year, a redevelopment plan acceptable to the City Council to develop said property into a multi-unit residential and/or mixed use building, One Diamond agrees that the \$1,000,000.00 plus accrued interest held in escrow will be paid to the City.

2. City Commitments:

- a. Upon One Diamond's completion of the undertakings set forth in Article I, Paragraph 1 above, the City shall convey to One Diamond, by a Municipal Release Deed, the City Property located adjacent to the Diamond Property, identified as Biddeford Tax Map 40, Lot 2, Block 25. The Parties agree that the City shall retain an easement on the City Property for any necessary stormwater/sewer maintenance and separation projects including, but not limited to, the installation of a combined sewer overflow tank, if required by the Department of Environmental Protection or other State agency, below the two (2) acre Open Space.
- b. The City will actively work with One Diamond, and assist as needed, during the permit and construction period.

3. TIF District:

The Parties agree that there will be no credit enhancement for the benefit of One Diamond in the development of the Project. However, the Parties further understand that the City will seek approval of a TIF District encompassing the City Property and the Diamond Property, with the proceeds from the TIF District to be used to advance affordable housing within the City of Biddeford.

ARTICLE II

TIME OF PERFORMANCE

One Diamond shall file site plan and subdivision review applications with the City Planning Board, any other City agencies, and the State of Maine within six (6) months of the date of execution of this Agreement. Failure to timely submit an application shall render this Agreement null and void at the City's sole discretion. Construction of the Project must begin within two (2) years of final Planning Board approval. Construction of the Project shall be substantially completed by December 31, 2024.

ARTICLE III

LIMIT OF LIABILITY

Notwithstanding any other provision of this Agreement, in no event shall the Parties or any of their Affiliates, by reason of any of their respective acts or omissions relating to the development, negotiation, design, financing, ownership, construction, operation or maintenance of the Project, or relation to any of their obligations under this Agreement, be liable whether in contract, tort, misrepresentation, warranty, negligence, strict liability, or otherwise for any special, indirect, or consequential damages arising out of or in connection with this Agreement, or the performance, non-performance or breach thereof.

ARTICLE IV

INDEMNIFICATION

Each Party shall indemnify, defend, and hold harmless the other Party and its agents, servants, officers, directors, employees and affiliates from and against any loss, cost, liability, claim, damage, expense (including, without limitation, all out-of-pocket expenses, reasonable attorneys' and paralegal fees, disbursements and costs), penalty or fine incurred in connection with any claim or cause of action arising from or in connection with any claim or cause of action arising from or in connection with the Project or this Agreement to the extent caused by the negligence, misrepresentation, fraud, fault or misconduct of the indemnifying Party or any of its affiliates.

ARTICLE V

MISCELLANEOUS

1. Representations and Warranties:

Each Party represents and warrants to the other that:

- a. it is duly qualified to do business and is in good standing in the State of Maine;

- b. it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- c. the execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary action by such Party; and
- d. the execution and delivery of this Agreement by such Party and the performance of the terms, covenants and conditions contained herein will not violate the charter, articles of incorporation or by-laws of such Party, or any order of a court or arbitrator, and will not conflict with and will not constitute a material breach of, or default under, the provisions of any material contract by which either Party is bound.

2. **Right to Require Performance:**

The failure of either Party at any time to require performance by the other Party of any provisions hereof shall in no way affect the right of such Party thereafter to enforce same. Nor shall waiver by either Party of any breach of any provisions hereof be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of any provision itself.

3. **Governing Law:**

This Agreement is and shall constitute a contract under and is to be construed in accordance with 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 within the jurisdiction of the State of Maine.

4. **Relationship of Parties:**

a. This Agreement is not intended to supersede the authority granted by law to any regulatory board or agency of the City. Therefore, nothing in this Agreement shall be construed or implied to require the City Planning, Zoning or other regulatory boards or agencies (however designated) to approve the plans for any aspect of the Project or other action required under this Agreement.

b. The Parties acknowledge that the obligations set further herein may be further described in other agreements and or deeds as agreed to by the Parties. The City and One Diamond agree to cooperate in good faith with regard to each and every aspect required for the completion of all construction and operations contemplated by this Agreement. The Parties

recognize, however, that the land use regulatory agencies of the City must perform their responsibilities in accordance with the law governing that performance and consequently are not obligated in any way by this Agreement. The City and One Diamond further agree to negotiate in good faith and to enter such other and further agreements as may be necessary to implement any aspect of design, engineering, construction or facility operation contemplated under this Agreement.

- c. This Agreement shall not be interpreted or construed to independently create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent of representative of, or to otherwise bind, the other Party.

5. **Breach by One Diamond:**

- a. The City shall provide notice to One Diamond of a breach in writing, identifying the nature of the alleged breach and requested remedy. A breach shall be cured if remedied within thirty (30) days of receipt of the notice, or such other time as mutually agreed.

- b. If a breach is not cured as set forth above, the City may bring an action, in law or in equity, to enforce this Agreement as for damages, or both.
- c. If a breach is not cured as set forth above prior to the City's conveyance of the City Property to One Diamond, the City's obligation to convey the City Property shall be terminated.

6. **Breach by City:**

- a. One Diamond shall provide notice to the City of a material breach in writing, identifying the nature of the alleged breach and requested remedy. A material breach shall be cured if remedied within thirty (30) days of receipt of the notice, or such other time as mutually agreed.
- b. If a material breach is not cured as set forth above, One Diamond may bring an action, in law or in equity, to enforce this Agreement or for damages, or both.

7. **Integration:**

This Agreement, along with any exhibits, appendices, addenda, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the Parties,

whether oral or written. The Parties hereby acknowledge and represent, by affixing their hands and seals hereto, that the Parties have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this Agreement, made by or on behalf of any other Party or any other person or entity whatsoever, prior to the execution of this Agreement. The Parties hereby waive all rights and remedies, at law or in equity, arising or which may arise as the result of a Party's reliance on such representation, assertion, guarantee, warranty, collateral contract or other assurance, provided that nothing herein contained shall be construed as a restriction or limitation of the Party's right to remedies associated with the gross negligence, willful misconduct or fraud of any person or party taking place prior to, or contemporaneously with, the execution of this Agreement.

8. **No Oral Modifications:**

This Agreement may not be changed or terminated orally. This Agreement and all the covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Except for an affiliated single purpose entity organized by L&H to construct and operate the Project, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated by any Party, without the prior written consent of the other Party. This Agreement is not intended to confer any rights or benefits to any entity other than to the City and to

One Diamond, its affiliate entity organized to construct and operate the Project, and its affiliates.

9. **Mutual Cooperation and Further Agreements:**

The Parties acknowledge that the obligations set further herein may be further described in other agreements as agreed to by the Parties. The City and One Diamond agree to cooperate in good faith with regard to each and every aspect required for the completion of all construction and operations contemplated by this Agreement. The Parties recognize, however, that the land use regulatory agencies of the City must perform their responsibilities in accordance with the law governing that performance and consequently are not obligated in any way by this Agreement. The City and One Diamond further agree to negotiate in good faith and to enter such other and further agreements as may be necessary to implement any aspect of design, engineering, construction or facility operation contemplated under this Agreement.

10. **Notice:**

All notices required to be given to City or One Diamond under this Agreement shall be in writing and deemed given upon the earlier of actual receipt by personal

delivery or two (2) days after being mailed by U.S. Express, registered or certified mail, return receipt requested, or a reputable overnight courier as follows:

CITY: City of Biddeford
c/o James A. Bennett, (or the then current) City Manager
P.O. Box 566
205 Main Street
Biddeford, Maine 04005

With a copy to: City Attorney as designated in writing by the City

L&H: One Diamond Development, LLC
2 Livewell Drive, Suite 201
Kennebunk, ME 04043

With a copy to: One Diamond's attorney as designated in writing by L&H

11. **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 the parties, who agree that the Agreement shall be reformed to replace such stricken provisions or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provisions.

12. **Survival:**

All express representations, warranties, indemnifications or limitations of liability made in or given in this Agreement shall survive the expiration or the termination of this Agreement for any reason.

13. **Mediation/Arbitration:**

The Parties hereto agree that prior to filing litigation they will consider alternative dispute resolution techniques such as mediation and arbitration to resolve all claims, counterclaims, disputes and other matters in question between the Parties arising out of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals as of the day, month and year first above written.

Vakene Gordon
Witness

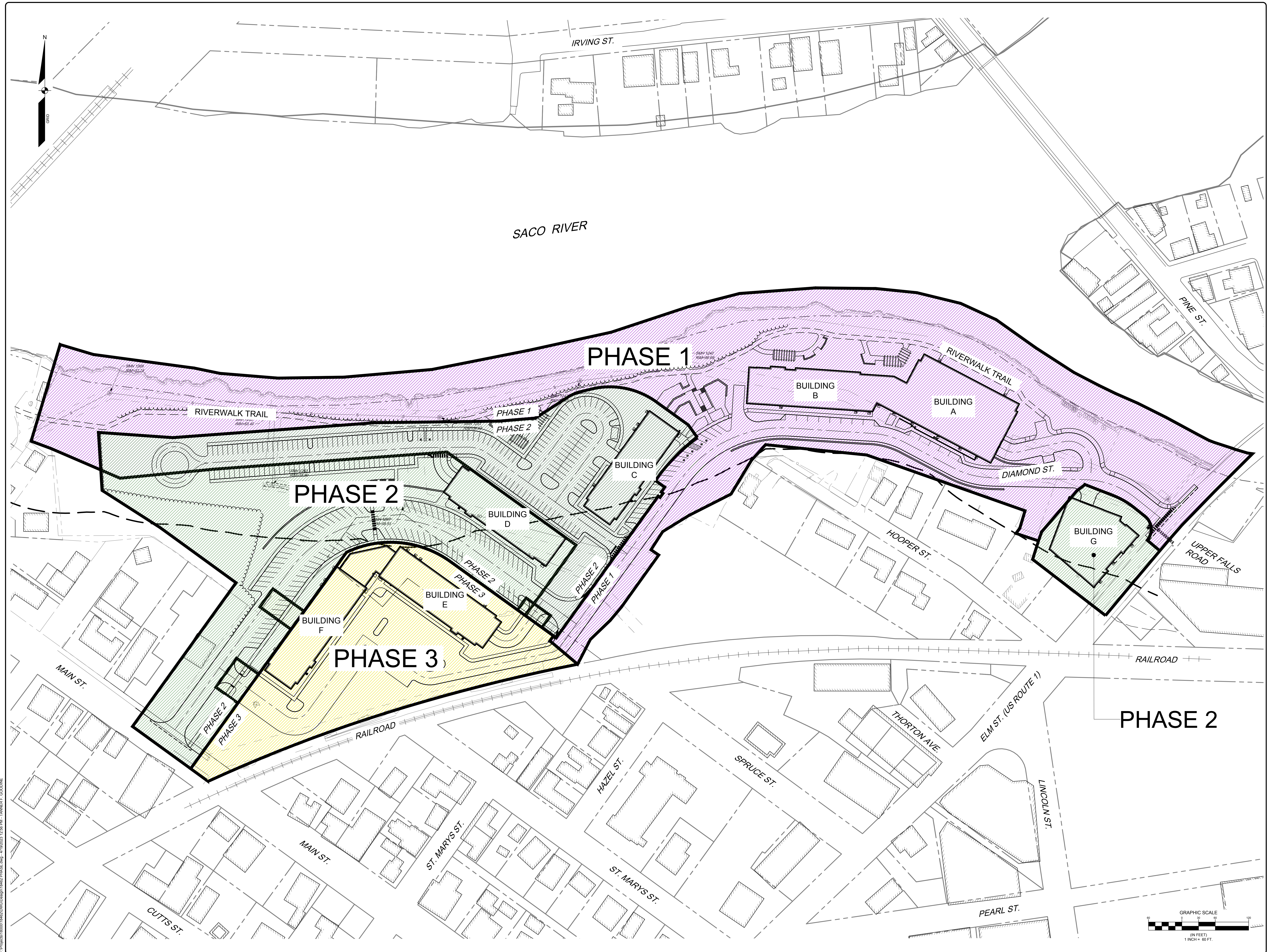
ONE DIAMOND DEVELOPMENT, LLC

By: [Signature]
Name: Timothy Harrington
Title: Member

[Signature]
Witness

CITY OF BIDDEFORD

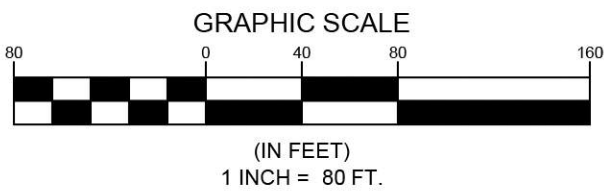
By: [Signature]
James A. Bennett, City Manager



F:\Projects\18462\18462-CD\CD\Design\18462_RENDERINGS.dwg 7/10/2023 11:47 AM BRUNA A. MCMAHON



PARAMETER	CONCEPT DESIGN COMPARISON		AGREEMENT REQUIREMENTS	
	ORIGINAL JDA	REVISED JDA	ORIGINAL JDA	REVISED JDA
PARCEL AREA (ACRES)	13.3	18.2		
OPEN SPACE (ACRES)				
RIVERWALK TRAIL	0.4	0.4		
PASSIVE OPEN SPACE	5.6	5.6	2.0	2.0
DEVELOPMENT AREA (ACRES)				
	7.7	12.6		
PROGRAM SUMMARY				
RESIDENTIAL UNITS	340	478		
COMMERCIAL SPACE (SF)	0	14,150		
PARKING SPACES	454	606		



DESIGNED	TFG
DRAWN	DAB
CHECKED	CAB
DATE	04/12/2023
SCALE	1" = 80'
PROJECT	18462

SHEET 1 OF 1

OVERALL SITE PLAN
OF:
ONE DIAMOND STREET
ELM STREET
BIDDEFORD, MAINE
FOR:
ONE DIAMOND DEVELOPMENT, LLC
2 LIMEWELL DRIVE, SUITE 201
KENNESBUNK, ME 04045

SEBAGO
TECHNICS
WWW.SEAGOTECHNICS.COM
75 S. Roseville Rd.
South Portland, ME 04106
Tel: 207-260-2100

E	D/R	06/22/2023	RE	ISSUED TO SACO RIVER CORRIDOR COMMISSION
D	CAB	06/07/2023	REVIEW	ISSUED TO SACO RIVER CORRIDOR COMMISSION
C	CAB	04/18/2023	REVIEW	ISSUED TO SACO RIVER CORRIDOR COMMISSION
B	CAB	04/12/2023	REVIEW	ISSUED TO CITY OF BIDDEFORD FOR SKETCH PLAN
A	CAB	03/28/2023	FOR JDA AGREEMENT	STATUS:
REV.	BY:	DATE:		

THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM SEBAGO TECHNICS, INC. ANY ALTERATIONS AUTHORIZED BY OTHER AGENCIES SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO SEBAGO TECHNICS, INC.

NOT FOR
CONSTRUCTION

PROGRESS
PRINT

DANIEL L. RILEY, P.E. 0687

06/22/2023

AMENDED JOINT DEVELOPMENT AGREEMENT

This Amended Joint Development Agreement (the "Amended Agreement") dated _____, 2023 is executed by ONE DIAMOND DEVELOPMENT, LLC, ("One Diamond") and the **CITY OF BIDDEFORD** ("City"). (One Diamond and the City are referred to individually as a "Party" and collectively as the "Parties").

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Deleted: the assignee of Lord & Harrington, LLC

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RECITALS

WHEREAS, One Diamond desires to develop a multi-unit, multi-building residential project with incidental commercial uses (the "Project") on property located at 1 Diamond Street, Biddeford, Maine and on adjacent properties as identified on the attached Exhibit A (the "Diamond Properties") and the adjacent Property owned by the City of Biddeford (Map 40, Lot 25, Block 2) (the "City Property"); and

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WHEREAS, the City desires to create additional housing options in the City, including individually owned and rental units; and

WHEREAS, the City seeks to expand its RiverWalk pedestrian trail network and provide access to the RiverWalk through a portion of the Diamond Properties and the City Property as well as provide passive open space for public recreational use on the Properties; and

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WHEREAS, the City agrees to convey the City Property to One Diamond ~~as set forth hereinafter~~; and

Deleted: after One Diamond's satisfaction of the commitments contained herein

WHEREAS, the combined RiverWalk and the passive open space are expected to have a joint development value of \$900,000.00 - \$1,200,000.00;

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein and other consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I

COMMITMENTS

1. One Diamond Commitments:

- a. One Diamond shall develop a multi-unit, multi-building residential project, with incidental commercial uses, on the Diamond Properties and the City Property. The residential units shall be both ownership and rental units provided that at least 30% of the units shall be held in fee ownership.

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b. One Diamond shall construct a pedestrian pathway along the entire shoreline of the Saco River along the Diamond Properties and the City Property that will connect with and become a part of the City's existing RiverWalk (the "RiverWalk Extension"). One Diamond agrees that it will construct the RiverWalk Extension pursuant to plans approved by the City as to location, dimension and design. The specifications, construction components, and details shall be substantially similar to the currently existing RiverWalk. Construction of the RiverWalk Extension shall be completed prior to the first occupancy permit being granted to One Diamond, or One Diamond shall provide a Bond in a form and amount acceptable to the City to ensure the completion of the RiverWalk Extension. After completion of the RiverWalk Extension, One Diamond shall grant an easement to the City for use of the RiverWalk Extension by members of the public. The City shall be responsible for maintenance of the RiverWalk Extension in the same manner as its maintenance of the existing RiverWalk.

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c. One Diamond shall develop and maintain in perpetuity a passive open space adjacent to the RiverWalk Extension (the "Open Space"). The Open Space shall be a minimum size of two (2) acres. One Diamond shall grant an easement to the City for the passive recreational use of the Open Space by members of the public. One Diamond also shall provide six (6) free public parking spaces adjacent to or in close proximity to the Open Space and RiverWalk Extension. Design of the Open Space and public parking shall be

in general accordance with the plans submitted by One Diamond to the City. After completion of construction, the Open Space and parking spaces shall be maintained by One Diamond.

- d. At the closing of the City's transfer of the City Property to One Diamond (the "Closing"), One Diamond shall place the sum of \$1,000,000.00 into an interest bearing escrow account maintained by the City, said sum to be held in escrow as set forth below:

- (i) If One Diamond identifies a property acceptable to the City Council within one (1) year after the Closing, and submits, within an additional year, a redevelopment plan acceptable to the City Council to develop the property into a multi-unit residential and/or mixed use building, the City agrees that the \$1,000,000.00 plus accrued interest held in escrow will be paid to One Diamond.
- (ii) In the event that One Diamond does not identify a property acceptable to the City Council within one (1) year after the Closing, or if One Diamond fails to submit, within an additional year, a redevelopment plan acceptable to the City Council to develop said property into a multi-unit residential and/or mixed use building, One Diamond agrees that the \$1,000,000.00 plus accrued interest held in escrow will be paid to the City.

2. **City Commitments:**

- a. Upon ~~final approval of the One Diamond Project from the City Planning Board, the State of Maine, and any other necessary regulatory agencies,~~ the City shall convey to One Diamond, by a Municipal Release Deed, the City Property located adjacent to the Diamond Property, identified as Biddeford Tax Map 40, Lot 2, Block 25. The Parties agree that the City shall retain an easement on the City Property for any necessary stormwater/sewer maintenance and separation projects including, but not limited to, the installation of a combined sewer overflow tank, if required by the Department of Environmental Protection or other State agency, below the two (2) acre Open Space.
- b. The City will actively work with One Diamond, and assist as needed, during the permit and construction period.

Deleted: One Diamond's completion of the undertakings set forth in Article I, Paragraph I above

3. **TIF District:**

The Parties agree that there will be no credit enhancement for the benefit of One Diamond in the development of the Project. However, the Parties further understand that the City will seek approval of a TIF District encompassing the

City Property and the Diamond Properties, with the proceeds from the TIF District to be used to advance affordable housing within the City of Biddeford.

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ARTICLE II

TIME OF PERFORMANCE

One Diamond shall file site plan and subdivision review applications with the City Planning Board, any other City agencies, and the State of Maine within six (6) months of the date of execution of this Amended Agreement. Failure to timely submit an application shall render this Amended Agreement null and void. Construction of the Project must begin within two (2) years of final Planning Board approval. Construction of the Project shall be substantially completed within five (5) years of the start of construction.

Deleted: by December 31, 2024

ARTICLE III

LIMIT OF LIABILITY

Notwithstanding any other provision of this Amended Agreement, in no event shall the Parties or any of their Affiliates, by reason of any of their respective acts or omissions relating to the development, negotiation, design, financing, ownership, construction, operation or maintenance of the Project, or relation to any of their obligations under this Amended Agreement, be liable whether in contract, tort,

misrepresentation, warranty, negligence, strict liability, or otherwise for any special, indirect, or consequential damages arising out of or in connection with this Amended Agreement, or the performance, non-performance or breach thereof.

ARTICLE IV

INDEMNIFICATION

Each Party shall indemnify, defend, and hold harmless the other Party and its agents, servants, officers, directors, employees and affiliates from and against any loss, cost, liability, claim, damage, expense (including, without limitation, all out-of-pocket expenses, reasonable attorneys' and paralegal fees, disbursements and costs), penalty or fine incurred in connection with any claim or cause of action arising from or in connection with any claim or cause of action arising from or in connection with the Project or this Amended Agreement to the extent caused by the negligence, misrepresentation, fraud, fault or misconduct of the indemnifying Party or any of its affiliates.

ARTICLE V

MISCELLANEOUS

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Each Party represents and warrants to the other that:

- a. it is duly qualified to do business and is in good standing in the State of Maine;
- b. it has full power and authority to execute, deliver and perform its obligations under this Amended Agreement;
- c. the execution, delivery and performance of this Amended Agreement has been duly and validly authorized by all necessary action by such Party; and
- d. the execution and delivery of this Amended Agreement by such Party and the performance of the terms, covenants and conditions contained herein will not violate the charter, articles of incorporation or by-laws of such Party, or any order of a court or arbitrator, and will not conflict with and will not constitute a material breach of, or default under, the provisions of any material contract by which either Party is bound.

2. **Right to Require Performance:**

The failure of either Party at any time to require performance by the other Party of any provisions hereof shall in no way affect the right of such Party thereafter to enforce same. Nor shall waiver by either Party of any breach of any provisions

hereof be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of any provision itself.

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This Amended Agreement is and shall constitute a contract under and is to be construed in accordance with 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 within the jurisdiction of the State of Maine.

4. **Relationship of Parties:**

- a. This Amended Agreement is not intended to supersede the authority granted by law to any regulatory board or agency of the City. Therefore, nothing in this Amended Agreement shall be construed or implied to require the City Planning, Zoning or other regulatory boards or agencies (however designated) to approve the plans for any aspect of the Project or other action required under this Amended Agreement.

b. The Parties acknowledge that the obligations set further herein may be further described in other agreements and or deeds as agreed to by the Parties. The City and One Diamond agree to cooperate in good faith with regard to each and every aspect required for the completion of all construction and operations contemplated by this Amended Agreement. The Parties recognize, however, that the land use regulatory agencies of the City must perform their responsibilities in accordance with the law governing that performance and consequently are not obligated in any way by this Amended Agreement. The City and One Diamond further agree to negotiate in good faith and to enter such other and further agreements as may be necessary to implement any aspect of design, engineering, construction or facility operation contemplated under this Amended Agreement.

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5. **Breach by One Diamond:**

- a. The City shall provide notice to One Diamond of a breach in writing, identifying the nature of the alleged breach and requested remedy. A breach shall be cured if remedied within thirty (30) days of receipt of the notice, or such other time as mutually agreed.
- b. If a breach is not cured as set forth above, the City may bring an action, in law or in equity, to enforce this Amended Agreement as for damages, or both.
- c. If a breach is not cured as set forth above prior to the City's conveyance of the City Property to One Diamond, the City's obligation to convey the City Property shall be terminated.

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- a. One Diamond shall provide notice to the City of a material breach in writing, identifying the nature of the alleged breach and requested remedy. A material breach shall be cured if remedied within thirty (30) days of receipt of the notice, or such other time as mutually agreed.
- b. If a material breach is not cured as set forth above, One Diamond may bring an action, in law or in equity, to enforce this Amended Agreement or for damages, or both.

7. **Integration:**

This Amended Agreement, along with any exhibits, appendices, addenda, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the Parties, whether oral or written. The Parties hereby acknowledge and represent, by affixing their hands and seals hereto, that the Parties have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this Amended Agreement, made by or on behalf of any other Party or any other person or entity whatsoever, prior to the execution of this Amended Agreement. The Parties hereby waive all rights and remedies, at law or in equity, arising or which may arise as the result of a Party's reliance on such representation, assertion, guarantee, warranty, collateral contract or other assurance, provided that nothing herein contained shall be construed as a restriction or limitation of the Party's right to remedies associated with the gross negligence, willful misconduct or fraud of any person or party taking place prior to, or contemporaneously with, the execution of this Amended Agreement.

8. **No Oral Modifications:**

This Amended Agreement may not be changed or terminated orally. This Amended Agreement and all the covenants, terms and provisions contained herein

shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Except for an affiliated single purpose entity organized by one Diamond to construct and operate the Project, neither this Amended Agreement nor any of the rights, interests or obligations under this Amended Agreement may be assigned or delegated by any Party, without the prior written consent of the other Party. This Amended Agreement is not intended to confer any rights or benefits to any entity other than to the City and to One Diamond, its affiliate entity organized to construct and operate the Project, and its affiliates.

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9. **Mutual Cooperation and Further Agreements:**

The Parties acknowledge that the obligations set further herein may be further described in other agreements as agreed to by the Parties. The City and One Diamond agree to cooperate in good faith with regard to each and every aspect required for the completion of all construction and operations contemplated by this Amended Agreement. The Parties recognize, however, that the land use regulatory agencies of the City must perform their responsibilities in accordance with the law governing that performance and consequently are not obligated in any way by this Amended Agreement. The City and One Diamond further agree to negotiate in good faith and to enter such other and further agreements as may be necessary to implement any aspect of design, engineering, construction or facility operation contemplated under this Amended Agreement.

10. Notice:

All notices required to be given to City or One Diamond under this Amended Agreement shall be in writing and deemed given upon the earlier of actual receipt by personal delivery or two (2) days after being mailed by U.S. Express, registered or certified mail, return receipt requested, or a reputable overnight courier as follows:

CITY: City of Biddeford
 c/o James A. Bennett, (or the then current) City Manager
 P.O. Box 566
 205 Main Street
 Biddeford, Maine 04005

With a copy to: City Attorney as designated in writing by the City

L&H: One Diamond Development, LLC
 2 Livewell Drive, Suite 201
 Kennebunk, ME 04043

With a copy to: One Diamond's attorney as designated in writing by One
Diamond

Deleted: L&H

11. **Severability:**

Any provision or part of the Amended 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 the parties, who agree that the Amended Agreement shall be reformed to replace such stricken provisions or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provisions.

12. **Survival:**

All express representations, warranties, indemnifications or limitations of liability made in or given in this Amended Agreement shall survive the expiration or the termination of this Amended Agreement for any reason.

13. **Mediation/Arbitration:**

The Parties hereto agree that prior to filing litigation they will consider alternative dispute resolution techniques such as mediation and arbitration to resolve all claims, counterclaims, disputes and other matters in question between the Parties arising out of this Amended Agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals as of the day, month and year first above written.

ONE DIAMOND DEVELOPMENT, LLC

Deleted:

Witness

By: _____
Name: _____
Title: _____

CITY OF BIDDEFORD

Witness

By: _____
James A. Bennett, City Manager

EXHIBIT A

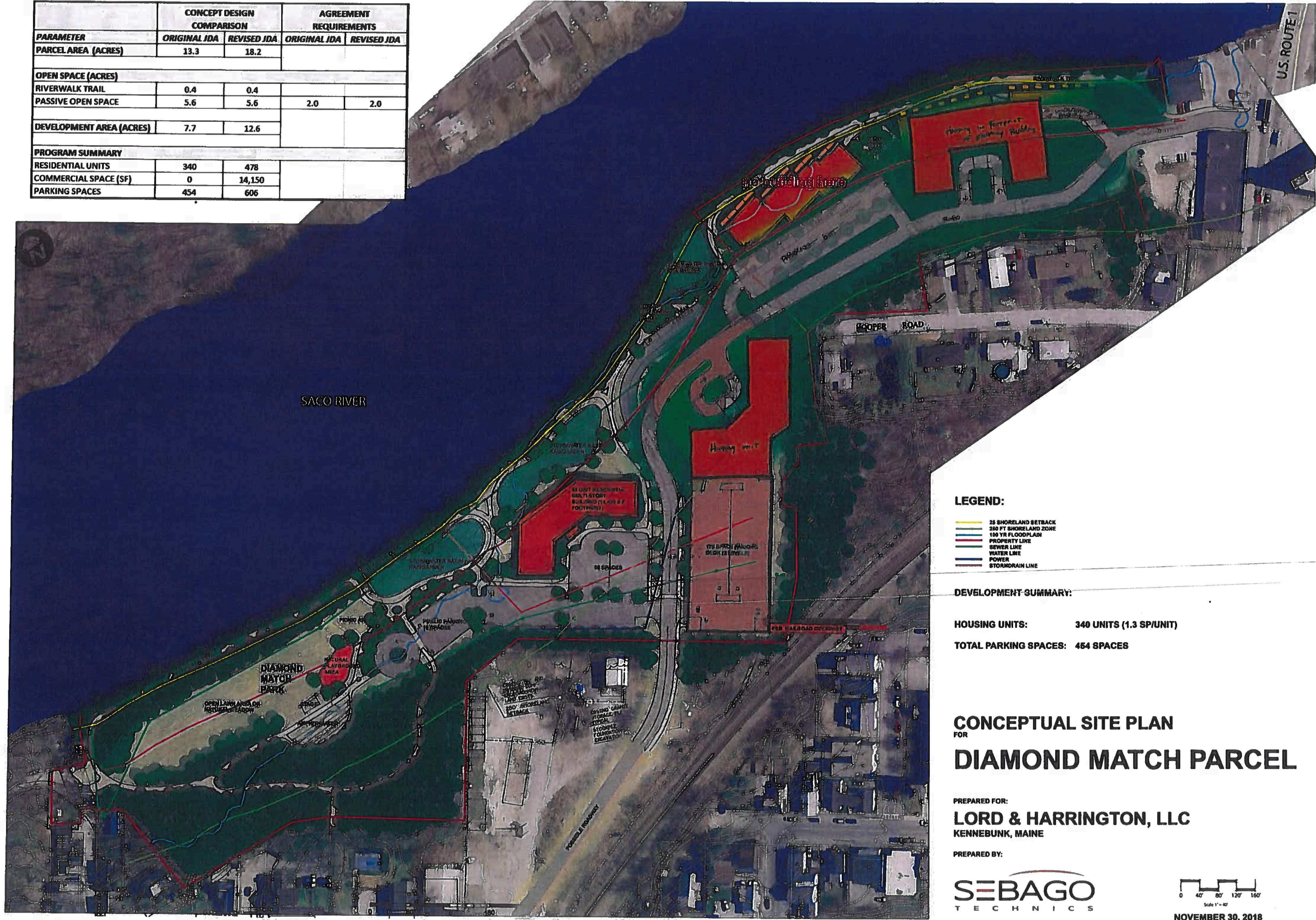
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ONE DIAMOND PROPERTIES

<u>Property</u>	<u>Tax Map / Lot</u>	<u>Right, Title & Interest</u>
<u>1 Diamond Street</u>	<u>40 / 25-1</u>	<u>Book 18913, Page 96</u>
<u>Off Main St. (City)</u>	<u>40 / 25-2</u>	<u>Joint Development Agreement</u>
<u>Off Main St. (Union Oil)</u>	<u>40 / 74</u>	<u>P&S Agreement</u>
<u>52 Elm Street</u>	<u>40 / 25</u>	<u>Book 18941, Page 344</u>
<u>68 Elm Street</u>	<u>40 / 24</u>	<u>Book 18996, Page 930</u>
<u>368 – 376 Main St.</u>	<u>37 / 35 & 35-1</u>	<u>Book 18941, Page 668</u>
<u>378 Main Street</u>	<u>37 / 34</u>	<u>Book 18941, Page 666</u>

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PARAMETER	CONCEPT DESIGN COMPARISON		AGREEMENT REQUIREMENTS	
	ORIGINAL IDA	REVISED IDA	ORIGINAL IDA	REVISED IDA
PARCEL AREA (ACRES)	13.3	18.2		
OPEN SPACE (ACRES)				
RIVERWALK TRAIL	0.4	0.4		
PASSIVE OPEN SPACE	5.6	5.6	2.0	2.0
DEVELOPMENT AREA (ACRES)				
	7.7	12.6		
PROGRAM SUMMARY				
RESIDENTIAL UNITS	340	478		
COMMERCIAL SPACE (SF)	0	14,150		
PARKING SPACES	454	606		



LEGEND:

- 25 SHORELAND SETBACK
- 250 FT SHORELAND ZONE
- 100 YR FLOODPLAIN
- PROPERTY LINE
- SEWER LINE
- WATER LINE
- POWER
- STORMDRAIN LINE

DEVELOPMENT SUMMARY:

HOUSING UNITS: 340 UNITS (1.3 SP/UNIT)

TOTAL PARKING SPACES: 454 SPACES

CONCEPTUAL SITE PLAN
FOR
DIAMOND MATCH PARCEL

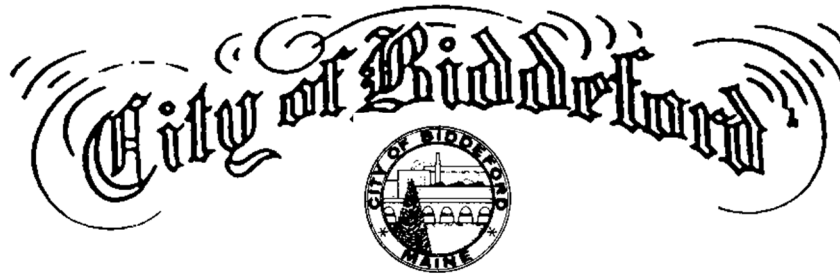
PREPARED FOR:
LORD & HARRINGTON, LLC
KENNEBUNK, MAINE

PREPARED BY:

SEBAGO
TECHNICS



NOVEMBER 30, 2018



2023.129

IN BOARD OF CITY COUNCIL... OCTOBER 3, 2023

BE IT ORDERED, that the Code of Ordinances, Part II, Chapter 38 be amended by
~~deleting~~ or adding text as refernced in the accompanying draft ordinance.

Attest by: _____



City Council Meeting

Meeting Date: October 3, 2023

Meeting Time: 6:00 pm

Agenda Item No: 10.g

Item Description: Housing Trust Fund Ordinance (New) – Amend Code of Ordinances, Part II: Chapter 38 (currently reserved)

Submitted by: David C.M. Galbraith, Acting Planning & Development Director

Supporting Information/Documentation:

Attached are City of Biddeford revised Housing Trust Fund Ordinance with redline revisions following the September 25, 2023 Policy Committee meeting.

Key Terms:

N/A

Executive Summary:

Based upon direction from the Policy Committee, on September 25, 2023, Staff has prepared the attached revised Housing Trust Fund Ordinance, for City Council discussion and passage. The only text amendment being proposed by the Policy Committee, other than formatting, is a modification to Section 38-2.a, which originally included a reference to the draft Inclusionary Zoning (IZ) Ordinance, which has not yet been adopted by the City Council. Therefore, the Policy Committee recommended striking the draft language of this section and modifying the language as being “reserved”. If / when the Inclusionary Zoning (IZ) Ordinance is adopted by the City, it is anticipated that Staff will return to the Council with updated verbiage for this section.

Detailed Review:

The Housing Trust Fund Ordinance is a new Ordinance which is being proposed to be located within the City's Code of Ordinances, Part II: Chapter 38 - Housing Trust Fund which is currently a reserved chapter. As such, this Ordinance does not fall within the Planning Board's land use review authority. As the proposed Ordinance is a new Chapter in the City's Code of Ordinances, the entire document is shown as black underline. Policy Committee amendments are shown as blue underline for text additions, and deleted text is shown in ~~red strikethrough~~.

The proposed Ordinance includes a purpose statement, rules for establishing the Trust Fund, regulations for the management of the Trust Fund, standards for annual reporting and rules for the distribution of the Fund's assets.

It should be noted that City staff is preparing revisions to the City Code of Ordinances to comply with LD2003 including: revisions to the existing City Housing Density Bonus Regulations; Rezoning initiatives to allow for increased residential densities; Frontage Reduction Ordinance and; an Inclusionary Zoning Ordinance and will present them as soon as they are ready for public discussion at

future Planning Board and City Council meetings. The City Council also recently adopted a Back-Lot Ordinance which will also allow for additional residential development.

The proposed Housing Trust Fund Ordinance is another tool Staff is recommending for adoption as it seeks to increase the City's supply of housing, particularly affordable housing, for all economic groups and to limit the net loss of housing units in the City.

Funding Source:

Not applicable.

Staff Recommendation:

At this time Staff is seeking City Council approval of the Housing Trust Fund Ordinance, as written / amended by the Policy Committee.

*** NOTE: The Housing Trust Fund does not require Planning Board review and approval and may be forwarded directly to the City Council for consideration*

Sec. 38-1 Purpose

The purpose of enacting this section is:

- a) To establish a City of Biddeford Housing Trust Fund for the promotion, retention, and creation of an adequate supply of housing, particularly affordable housing, for all economic groups and to limit the net loss of housing units in the city.
- b) To serve as a vehicle for addressing very low, low, and median income housing needs through a combination of funds as set out in this article.

Sec. 38-2 Establishment of the Housing Trust Fund

The City Council shall establish a special revenue account under the name “City of Biddeford Housing Trust Fund” (Housing Trust Fund). Deposits into the fund shall include:

- a) * ~~Reserved In-lieu fees collected as defined under Article VI (Performance Standards), Section 40—(Inclusionary Zoning) Subsection 6a.~~
- b) Funds appropriated to be deposited into the fund by vote of the City Council.
- c) Voluntary contributions of money or other liquid assets to the fund.
- d) Any federal, state, or private grant or loan funds provided to the fund.
- e) Interest from fund deposits and investments.
- f) Repayments of loans made from the fund.

Sec. 38-3 Management of the Trust Fund

The City Manager, or his or her designee, shall serve as the manager of the Housing Trust Fund. The responsibilities of the manager, subject to the orders of the City Council, shall include:

- a) Maintaining the financial and other records of the Housing Trust Fund.
- b) Disbursing and collecting Housing Trust Fund monies in accordance with the Housing Trust Fund Annual Plan.
- c) Monitoring the use of monies distributed to successful applicants for Housing Trust Fund support to assure on-going compliance with the purposes of the fund and the conditions under which these monies were granted or loaned.

Sec. 38-4 Housing Trust Fund Annual Plan

Each fiscal year, the City Council shall adopt a Housing Trust Fund Annual Plan. The City Manager shall submit to the City Council a recommended Housing Trust Fund Annual Plan, utilizing the revenues of the Housing Trust Fund as well as any other funds the City Manager may propose as appropriate.

~~Sec. 38-1~~

Sec. 38-5 The Housing Trust Fund Annual Plan shall include:

1. A description of all programs to be funded in part or in full by the Housing Trust Fund.
2. A description of how funds from the Housing Trust Fund will be distributed among very low-income, low-income and moderate-income households.
3. The amount of funds budgeted for programs funded in part or in full from the Housing Trust Fund.
4. Priority for the expenditure of funds collected pursuant to Subsection 6a shall be given to the creation of new housing stock, through either new construction or conversion of nonresidential buildings to residential use.

~~Sec. 38-5~~

Sec. 38-6 Distribution and use of the Housing Trust Fund's Assets

1. All distribution of principal, interest, or other assets of the Housing Trust Fund shall be made in furtherance of the public purposes set out in Section 6a.
2. During each year, the Housing Trust Fund shall disburse as grants or loans so much of the Housing Trust Fund's assets as the City Council in its discretion has approved in the Housing Trust Fund Annual Plan.
3. Funds shall not be used for City administrative expenses.
4. Funds shall not be used for property operating expenses or supporting services.
5. No grants or loans shall be awarded by the Housing Trust Fund to corporations, partnerships, or individuals who are delinquent at the time of application in the payment of property taxes or other fees to the City of Biddeford, who have been convicted of arson, who have been convicted of discrimination in the sale or lease of housing under the fair housing laws of the State of Maine, or who have pending violations of current City electrical, plumbing, building, or housing codes or zoning ordinances.

~~Sec. 38-6~~

Sec. 38.7 Term of Affordability

6. Whenever funds from the Housing Trust Fund are used for the acquisition, construction, or substantial rehabilitation of an affordable rental or cooperative unit, the City of Biddeford shall impose enforceable requirements on the owner of the housing unit that the unit remain affordable for the remaining life of the housing unit, assuming good faith efforts by the owner to maintain the housing unit and rehabilitate it as necessary. The remaining life of the housing unit shall be presumed to be a minimum of 30 years.
7. Whenever funds from the Housing Trust Fund are used for the acquisition, construction, or substantial rehabilitation of ownership housing, the City of Biddeford shall impose enforceable resale restrictions on the owner to keep the housing unit affordable for the longest feasible time, while maintaining an equitable balance between the interests of the owner and the interests of the City of Biddeford.
8. The affordability restriction requirements described in this subsection shall run with the land and the City of Biddeford shall develop appropriate procedures and documentation to enforce these requirements and shall record such documentation in the York County Registry of Deeds.