



ECONOMIC DEVELOPMENT COMMITTEE

DATE: March 7, 2017 (Tuesday)
TIME: 5:30 – 7:00 p.m.
LOCATION: Room 24/Basement
 Portland City Hall

A G E N D A

1. **Review and accept Minutes of previous meeting held on January 31, 2017 and February 27, 2017.**
2. **Review and vote on sale approach for City-owned former Department of Public Works occupied properties.**
 - a) See enclosed memo from Greg Mitchell.

Note: Pursuant to 1 M.R.S.A. 405(6)(C), the Committee may go into executive session to provide City staff general policy guidance regarding real estate negotiations.
3. **Review and vote, to recommend to the City Council, the Proposed Amendments to the JB Brown and City of Portland Land Exchange Agreement including the possible sale of the City-owned Cotton Street surface parking lot.**
 - a) See enclosed memo from Greg Mitchell.

Note: Pursuant to 1 M.R.S.A. 405(6)(C), the Committee may go into executive session to provide City staff general policy guidance regarding real estate negotiations.
4. **Review and vote to recommend to the City Council the Proposed CPB2/MDOT/City of Portland Land Exchange Agreement.**
 - a) See enclosed memo from Greg Mitchell.

Note: Pursuant to 1 M.R.S.A. 405(6)(C), the Committee may go into executive session to provide City staff general policy guidance regarding real estate negotiations.
5. **Review and vote to authorize the bid process to sell a small strip of Franklin Street right-of-way to an abutter.**
 - a) See enclosed public and confidential memos from Greg Mitchell.

Note: Pursuant to 1 M.R.S.A. 405(6)(C), the Committee will go into executive session to provide City staff general policy guidance regarding real estate negotiations.
6. **Executive Session: Pursuant to 1 M.R.S.A. 405(6)(C), the Committee will go into executive session to provide City staff general policy guidance regarding:**
 - a. Proposed amendments to the City and Bay Ferries Lease; and,
 - b. Possible sale of 7 Acres of City-owned property at Riverside Street
 (See enclosed confidential memos from Greg Mitchell.)
7. **Review of 2017 Updated Economic Development Committee Accomplishments to send to the City Council as a communication.**
 - a. See enclosed memo from Greg Mitchell and 2016 Updated EDC Accomplishments.

Public Comment will be accepted on action items.

Next Meeting Date: April 4, 2017

Councilor David Brenerman/Chair

Minutes
Economic Development Committee
January 31, 2017

A meeting of the Economic Development Committee of the Portland City Council was held Tuesday, January 31, 2017 at 5:30 p.m. in City Council Chamber of Portland City Hall. Present from the Committee was its Chair Councilor David Brenerman and members Councilors Pious Ali and Spencer Thibodeau. Also present from the City Council was Mayor Ethan Strimling. Present from City staff were Public Works Director Christopher Branch, Economic Development Director Greg Mitchell, Planning Division Director Tuck O'Brien, and Senior Executive Assistant Lori Paulette.

Item #1: Review and accept Minutes of previous meeting held on January 3, 2017.

On motion made and seconded, the Committee voted unanimously to accept the Minutes as presented.

Item #2: Public Hearing to receive public comment on the possible sale of the following two City-owned properties:

- a) **Thames Street surface parking lot; and,**
- b) **West Bayside former Department of Public Works occupied properties, including updates on two street projects which include the extension of Somerset from Elm to Hanover Street and the realignment of Kennebec Street to Forest Avenue.**

Chair Brenerman said that the purpose of this meeting is to solicit public comment on these two property disposition matters. He noted that Greg Mitchell would first provide a presentation/orientation of where and why the City is interested in the sale of these properties, and then public comment will be taken.

Mr. Mitchell noted that this meeting was noticed by sending notices to property owners within a 500' radius of all properties, a press release, as well as an article in the *Portland Press Herald*. The Cotton Street Parking Lot was also originally intended to be on this Agenda but the

decision was made to have this discussed in a future City Council Workshop. Notices went out to those property owners within a 500' radius of that property of this meeting, followed up by another notice that it was pulled from this Agenda.

Mr. Mitchell then highlighted the properties in question with a PowerPoint displaying maps of these areas, beginning with the Bayside Public Works properties which have been in this area for well over 50 years. Property #2, former railroad strip, is not a single development site and sale of this may be negotiated with a direct abutter. He also noted that the City needs to retain adequate right-of-way for Kennebec Street improvements. Property #4 includes a 40,000 sq. ft. building which is vacant, and Property #5 includes a 13,000 sq. ft. building which is vacant.

Mr. Mitchell said that the Bayside Vision of 2000 has a goal of the Public Works Department being relocated from Bayside. This has been occurring with the City's recent purchase of properties out at Canco Road, together with a partnership with JBBrown.

Mr. Mitchell said that Public Works Fleet Services is still active on Hanover Street. There are not enough funds yet to relocate remaining Public Works activities, noting that once properties are sold, those funds will assist in this relocation. Public Works Administration at 55 Portland Street will be marketed for sale and would be sold only depending on what offers the City receives to assist in that relocation as well. Property #1's best future use is likely parking.

Mr. Mitchell said that CBRE/The Boulos Company will be the broker for sale, which sales are anticipated to be based on highest and best use and highest return to the City, with restrictions only being for zoning. Brokers would present offers to staff, and then staff to the EDC for negotiation. The EDC would then recommend a Purchase and Sale Agreement to the City Council for its final approval.

Mr. Mitchell said the plans for Somerset Extension have been in discussion for a number of years. The City has some Federal funds for this, which requires right-of-way acquisition to connect to Somerset and Kennebec Street, and then plans for the realignment of Kennebec Street to Forest Avenue and not using any Post Office property, restoring it to two-way traffic; it would be entirely on City and private property. The Plan would also be to continue Bayside Trail up to Forest Avenue and then into Deering Oaks.

Mayor Strimling asked about Lancaster Street, and Mr. Mitchell said that Lancaster, from Hanover to Alder Street, has been discontinued with half of the ownership to Bayside Bowl, and the other half to the City. Mr. Branch added that the portion of Lancaster Street under Fleet Services has also been abandoned. Should a purchaser want to re-establish the Street, it could go through a process to determine whether it could be re-established.

Councilor Thibodeau said that he has received emails regarding concerns of big box retail development. Mr. Mitchell said that the real estate is not large enough to support that type of development, together with its surface parking needs. The footprints are too small; normally this type of development needs 75,000 sq. ft. or larger. Mr. O'Brien added that even if all the buildings were torn down, the property is in a B2b zone which limits uses, drive-thrus, setbacks, and parking – which does not fit the big box retail development business model.

Mr. Branch said that he was a consultant prior to this position, noting that big box development needs about four times as much acreage for that type of development. He also said that the Public Works properties have substantial grade differences, also not conducive for that type of development.

Chair Brenerman said that if all the other Public Works services were moved out, why keep 55 Portland Street, and Mr. Branch said that it would be ideal to relocate the 55 Portland

Street operation, together with its 50-60 employees out to Canco. Canco Road, however, has parking and building cost issues, noting that 55 Portland Street has 18,000 sq. ft. on three floors, and the City would need funding to offset new building construction at Canco Road.

Mr. Mitchell then provided an orientation of the Thames Street gravel parking lot with approximately 2.5 acres. He described the street network as contemplated in the Eastern Waterfront Master Plan (EWMP), with Thames Street ultimately extending further east and then up to Fore Street. The City currently has a Purchase and Sale Agreement with CPB2, owner and developer of the Portland Company site, for a triangular shaped piece of property. He also noted that City Council action will need to be taken to fund the construction of Thames Street east to the Portland Company site just before the triangular shaped piece of property. It is anticipated that this will be done within the next few months. The next phase would be to extend Thames Street up to Fore Street. This street network would support development of the property in this area. The extension of Mountfort Street to Thames is also in the EWMP, and if extended, would divide the Thames Street gravel parking lot into two parcels. He also noted that the Thames Street lot includes a rail right-of-way and highlighted where that was on the map.

Mr. Mitchell said that staff is recommending to sell this lot through the RFP process, with noted public benefit goals, including the creation of structured parking in the area but not on this City property. He then described the developments currently underway in the area. The goals would be to see more intense development, and the Thames Street lot is proposed to be sold for its highest and best use. He noted zoning in this area, including “no build” zones which will need to be addressed to properly align right-of-ways with privately-owned property.

Councilor Thibodeau requested confirmation that structured parking would be not built on the City's Thames Street gravel parking lot, and Mr. Mitchell confirmed that it would be at another location or behind a development on the City property.

Mayor Strimling asked about the RFP process; would the public see all the proposals or just the one chosen; and, what kind of development is expected. Mr. Mitchell said that there is no action today on the RFP. The proposed RFP would be brought back to this Committee for review, discussion, and public comment prior to issuance. Regarding the type of development, the RFP would be refined through the EDC.

Regarding proposals received, Mr. Mitchell said that once opened, they are public documents.

Mayor Strimling requested that it be as open possible. He noted for the public that he needed to leave at 6:30 and looked forward to receipt of public comment.

Chair Brenerman then opened the meeting for public comment.

Ian Jacob, 59 State Street, read his statement (attached), asking he would like to know the process for abandoning streets. Regarding the Bayside property, in summary, he would like to see smaller developments and mixed use.

Jim Brady, 118 Congress Street, said that he is with CPB2 and is focused on the Eastern Waterfront and supports staff's recommendations, which will insure private investment. This area needs additional parking, including for Ocean Gateway and private development. He encouraged the City to facilitate the creation of the street network as contemplated in the EWMP, and to move clearly forward and clean up the "no build" zone.

Joe Brunelle, 61 Kellogg Street, noted that he plans on running for an At-Large City Council seat this Fall. Regarding noticing for this meeting, the press release was issued on 1/25,

and the *Portland Press Herald* article appeared yesterday, noting there is room for improvement for noticing. Regarding the Bayside property, this is some of most valuable property in Portland and in Maine. He agreed with Mr. Jacob in that development needs to be on a human scale, smaller developments, with some housing, for a neighborhood feel. He did not think the property should be sold to just one or two developers.

Chair Brenerman noted that the City has no control when the *Portland Press Herald* publishes its articles; he was interviewed for it two weeks ago.

Lee Burnett spoke to encouraging the use of new building technology, that being Mass Timber which lessens the carbon footprint of the built environment.

Ashley Salsbury of 26 Brackett Street, agreed with Mr. Jacob for the Bayside properties, breaking them into smaller parcels and using local developers, and maintaining public and community assets with open space. Regarding Thames Street, she suggested that the City wait a year after all development in the area has been constructed, noting that this would add new car trips and increased public transportation.

Tim Wells wanted to know the time frame for developments. He is not against the sale of the properties, particularly because they have their own zoning restrictions. Mr. Wells noted that Maine has the best land in the County.

Mark Johnson of 50 Wall Street said that Thames Street is a golden opportunity for place making and supports the EWMP vision, including extending infrastructure. Regarding the Bayside properties, he concurs about sensitivity to scale and community building. He suggested that Portland needs a Redevelopment Authority.

(Mayor Strimling had to leave at this time.)

Maggie Wolf of St. Lawrence Street said that she just learned about this meeting from the newspaper, noting that the City should notice all of Portland. Ms. Wolf then agreed with Mr. Jacob about Bayside properties. Regarding Thames Street, she noted traffic concerns, and that it is on the best and last properties along water and would not like to see large scale development, noting not to privatize.

Sean Kerwin of 18 Parris Street said that he is a member of the Bayside Neighborhood Association (BNA) but was speaking as a Portland resident. He suggested that Bayside is not the right location for affordable housing, and is better for market rate and mixed use. Mr. Kerwin also noted that there should be more public input when negotiating sale.

Joe Pinto of 280 Brackett Street said that there needs to be a definition of best use, which should include public goals and the public good, noting that perhaps the sale of the Bayside properties needs to slow down. Regarding Thames Street RFP, he would provide public comment when the RFP is drafted and reviewed by this Committee, noting he supports the EWMP.

Eric Holstein of Silver Street and Fork Food Lab said that sale of the Bayside properties will define the area, suggesting to choose not just money but people going in and to get the backing of the neighborhood and community.

Nick Kaufman of the West End said that sales of the properties should be based both on dollar amount and the development. He also noted that there should be a requirement for housing in the Thames Street RFP.

Tom Blackburn of Hanover Street, said that Bayside should be developed to support the neighborhood and economic development. The Public Works General Store is of interest for training for constructions workers, including New Americans. He suggested that the General

Store be carved out of the Bayside properties for sale. There has already been submitted to the Council a plan for this training program in the General Store.

Laura Cannon of Parris Street said that Bayside needs long-term residents and residential elements should be included in any development. She noted that the Bayside Vision document is 20 years old and is showing its age. Regarding the Midtown project, she noted that the organization that filed the lawsuit was not the Bayside neighborhood. She also noted that Grow Smart Maine is creating documents to help developers and residents have a discussion, which is a good opportunity for both.

Steve Hirshon of 18 Hanover Street said that there is a lot of opportunity in Bayside, including a training center which would dovetail with an innovation center, and is concerned that nothing will get done. Bayside needs workforce housing at 80%-120% of average median income. Businesses are also needed in the area, noting that two of Portland's fastest growing companies are neighbors of the Bayside properties – Winxnet and Apothecary By Design – suggesting more opportunity for corporate development/headquarters and the need for forward looking thinking.

George Rowe of 28 Hanover Street in Bayside said that he is hearing that it is important to follow the EWMP, which is almost the same age of the Bayside Vision. He cautioned about selling the property for its highest and best use and monetary return to the City, and would rather see smaller type of development.

Karen Steiger noted she owns property on Waterville and Gilman Streets. She is hearing today from the majority that smaller developments in Bayside is what is preferred. She agreed that the Bayside properties should be focused on the working class and middle class residential development, and break them up into smaller properties. Regarding Thames Street, she noted

that the City should not do a fast sale, and it should be developed for local residents through the proper channels, focusing, again, on the working class, as well as opportunity for green space.

Kelly Wallace of 28 Hanover Street said that Bayside is a great community taking care of the area. She agreed with Mr. Jacob.

Steven Sharf of Salem Street asked about the timetables for the Midtown development, the Somerset Street extension, and the Kennebec Street realignment. Regarding the latter, he questioned the no Federal property acquisition, noting it makes sense to acquire it for the realignment. He asked what would happen with the discontinued right-of-way section at Enterprise. Mr. Sharf supported an intensive use of the Bayside properties, including 55 Portland Street, as that is what cities do - you build up. Regarding Thames Street, he suggested that it be sold to nearby business or property owners so that it can be developed quicker, adding that selling it has been a goal for 10 years.

Barbara Vestal, 7 Fore Street, said that, regarding Thames Street, she was a member of EWMP and design guidelines committee. She questioned who the City was hoping to respond to the RFP. Regarding Mountfort Street, it still makes sense for its continuation down to Thames Street and make two buildable lots for the Thames Street property. She also noted that the “no build” sites were intentional parts of the EWMP for maintaining water views; this would be a policy decision of the Council. Any development should comply with design guidelines of EWMP.

John Naylor of 45 Fleetwood Street, said that he is in the food industry which is large and growing. He suggested that the City look for opportunities that would grow light industrial businesses that support jobs and tax base, and where the local food industry can compete.

Jordan Kramer of 8 Pleasant Avenue suggested breaking the Bayside property into smaller lots, which may give the City more leverage and less legal challenges.

Jay Arness of 173 Eastern Promenade said that he is hearing just to go slowly, and he agrees - go slower and explore better visions for both.

Councilor Thibodeau noted that the Thames Street District Councilor Belinda Ray is not a member of this Committee.

Chris Corson of Grant Street said that he is very familiar with the Bayside property, noting that there are appalling conditions there, as well as great restaurants. He is concerned that the process will drag on, and would rather see something happen. Regarding Thames Street, he noted that the City needed a good dock.

June Sellers of Peaks Island said that this was incredibly thoughtful, noting that parking for islanders is an issue and requested that this be considered in any sale of the Thames Street property. She asked how this fits with the Comp Plan.

Susan Purcell of Brunswick and Fork Food Lab Manager said that Bayside needs space for the food community for storage, production, and training. She also suggested that the opportunity to build business in the community is a use to be considered, not just the monetary return to the City.

Craig Duray of Washington Avenue also suggested that the City slow down and figure out what helps the City and the neighborhoods.

Ron Spinella, Bayside resident, said he is concerned about the property being land banked, noting that some kind of master plan would be helpful. It is a very important piece of Bayside.

See no further public comments, Chair Brenerman closed the public hearing.

Chair Brenerman thanked everyone for their comments and invited others to email them in as well. He then asked Mr. Mitchell for his feedback.

Mr. Mitchell said that Mr. Wells asked for a timeline. The Bayside properties are further along, with an Agreement with CBRE/The Boulos Company to broker these properties being finalized as we speak, which has been discussed at public meetings before. Thames Street has a different approach through an RFP, which draft would be reviewed by this Committee and discussed publicly; its timing would be under the purview of this Committee's review.

Regarding Mr. Sharf's questions, Mr. Mitchell said that timeline for development of the Midtown lot continues to be discussed with the project developer. The timing for the extension of Somerset Street and Kennebec Street realignment is anticipated to start in 2018. The City is not using the Post Office property because it would take an act of Congress for the City to purchase all or any portion of the property, so it is moving forward as highlighted and MDOT is onboard as well.

Regarding the extension of Mountford Street, Mr. Mitchell said that this would depend on cooperation from adjacent property owners. It would reduce access and the scale of development by dividing the Thames Street lot.

Chair Brenerman asked about a connection to the Comprehensive Plan (CP), and Mr. O'Brien said that the CP will have another draft issued this week, followed by a public forum, Planning Board review, City Council Workshop, City Council vote, and State acceptance. The CP is a high visioning document, with disposition of City property not singularly called out, rather neighborhood and target nodes – both Bayside and the Eastern Waterfront are focal points.

Mr. O'Brien responded to Mr. Jacobs' question about abandoning City Streets, noting that this is done first by a notice to abutters, followed by City Council action. He said he could follow-up with Mr. Jacobs if needed.

There being no further comments/questions, the meeting was then adjourned at approximately 7:47 p.m.

Respectfully, Lori Paulette

TO: Economic Development Committee
FROM: Ian Jacob, 59 State St.

DATE: January 31, 2017

Chair Brenerman and Councilors Thibodeau and Ali,

Thank you for the opportunity for public input regarding the potential sale of the city owned parcels in the Bayside Neighborhood. Asking the public to use the economic concept of highest and best use (HBU) is, however, not the most useful approach. It fails to consider context and the vision of the neighborhood, as they relate to the recommendations outlined in the Bayside Vision (1999) and the Bayside Community Design Workshops (2000 and 2001) - see attached.

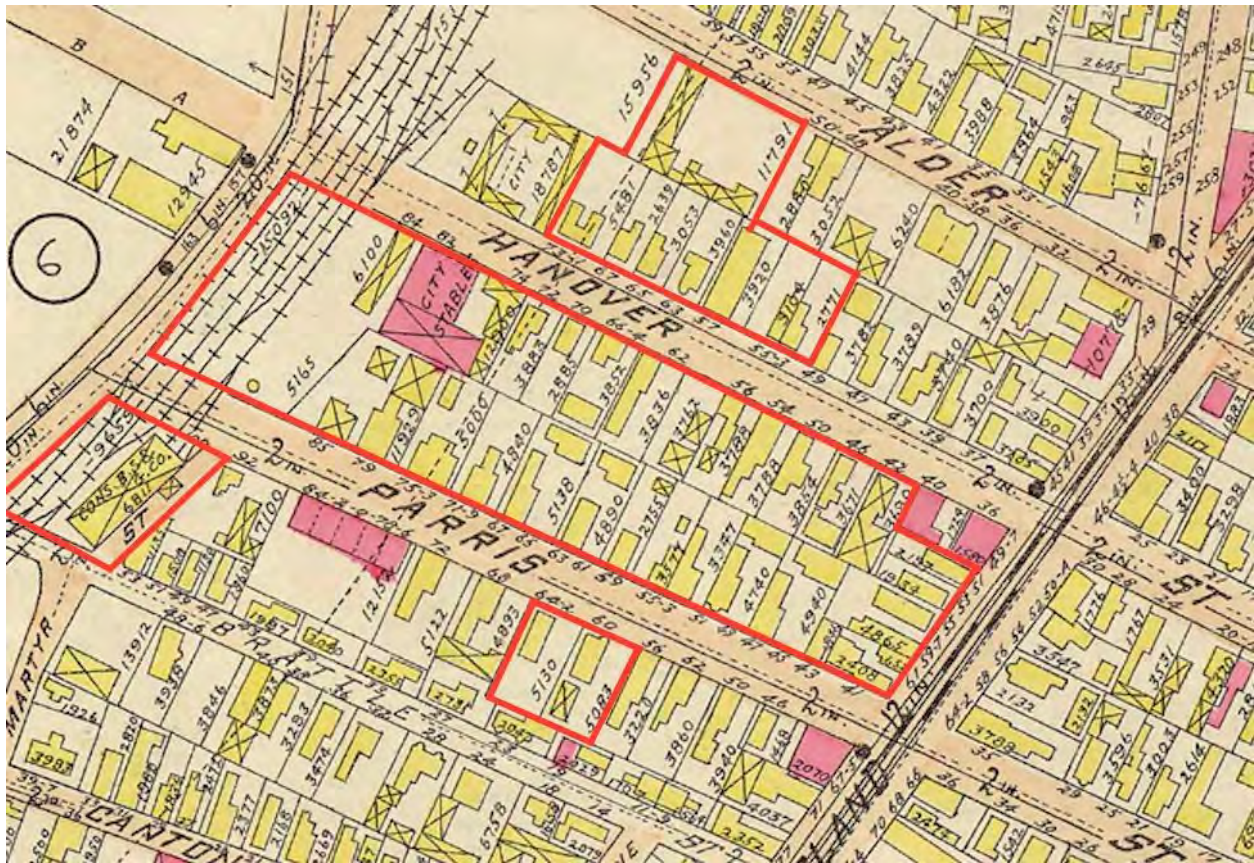
The parcels in question, prior to the Slum Clearance and Urban Renewal program enacted by the city, were part of a mixed use, human scale neighborhood. The recent visions, along with the zoning, for this neighborhood clearly reference this desire to return to such a neighborhood quality- see map, old photos, and vision and zoning excerpts.

Keeping the parcels as currently proposed will result in larger scale projects not in keeping with the neighborhood vision and will undoubtedly face resistance by the neighborhood. Like previous attempts at larger scale projects in the neighborhood, the developer and associated city departments will need to go through a lengthy and costly compromise process with the public, exacerbating the current distrust the citizens have of the city and its relationship to profit driven developers.

Instead, begin by breaking up the parcels into a mix of sizes from smaller residential building lots to medium sized lots. This will give access to small residential development by individuals while still accommodating the land size desired by some developers. Any existing structures should be prioritized and restricted, if sound and vision appropriate, to adaptive reuse and can cater to developers with grander visions or deeper pockets. This will help ensure that we stay true to a vision of mixed use, a diversity of building forms, and a vibrant, human-scaled neighborhood. It will be up to the city to implement the necessary mechanisms, be it form-based code, covenants, etc., to achieve this desired vision.

Thank you for your consideration.

Ian



Richards Atlas of Portland Maine 1914

Adler and Hanover St. Parcel

- 8 Building Lots
- 10 Structures

Hanover and Parris St. Parcel

- 24 Building Lots
- 47 Structures

Parris and Brattle St. Parcel

- 2 Building Lots
- 3 Structures

Kennebec Parcel

- 1 Building Lot
- 2 Structures

THE NEIGHBORHOOD
DATE: 1925
mainmemory.net





A NEW VISION FOR BAYSIDE April 2000. BOOK TWO: IMPLEMENTATION

Adopted by the City Council 12.20.1999 as part of the City of Portland Comprehensive Plan

CRITICAL ACTION: BUILD MORE HOUSING (page 13)

-*An urban district must have a mix of residences* and critical mass of dwellings to be truly vital. The Bayside Plan will *fill in, extend and enhance the existing residential fabric* with a substantial amount of new housing units. (emphasis added)

-*A diversity of dwelling types* with enable citizens from a wide range of economic levels, age groups and life circumstances to live in Bayside. Careful attention to design, scale, density and variety will strive to create a healthy and compatible neighborhood *similar to other successful urban neighborhoods on the Portland peninsula*. (emphasis added)

DEMONSTRATING SUCCESSFUL HOUSING DEVELOPMENT (page 18)

-One of the *largest barriers to both small 1-6 unit infill development* and larger multi-family rental or condominium projects is the *availability of land*. (emphasis added)

DRAWING CONCLUSIONS FOR A GREAT NEIGHBORHOOD

The Bayside Community Design Workshops 2000 and 2001

Groups: Architalx, Bayside NA, Muskie School, and Portland Planning Dept. (120+ participants)

Public Works Land

- Design housing to urban densities, utilizing a variety of housing forms.
- Emphasize pedestrian-friendly, vibrant streetscapes.
- Reconnect the historic street grid through the block.
- Adapt and reuse appropriate Public Works buildings (several teams showed artists' housing in these spaces).
- Place parking to the interior of blocks [....].

Sketch by Team 5 of Public Works Land

-The Public works site is broken into a finer grain of blocks by the introduction of a pedestrian esplanade and the creation of an alley. The housing types range from Single Room Occupancy to Elderly Housing to triple deckers to rowhouses.

Design Leader for 2001 Workshop: Joan Goody, FAIA, Architect, Educator, Urban Planner

Ms. Goody's guidelines include:

- Create a diversity of housing forms in a mixed-use environment.
- Design housing that fronts the street with porches and stoops to create a transitional space between the public realm and private domain.
- Emphasize streets with on-street parking, small block, and meaningful public spaces.
- Give human scale and individual identity to residences with larger structures.

City of Portland
Code of Ordinances
LAND USE
Chap. 14
Rev. 1-15-2014

Sec. 14-181 Purpose.

(a) B-2 Community Business Zone

The purpose of the B-2 community business zone is:

3. The B-2 zone will provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns.

(b) B-2b Community Business Zone

The B-2b zone is intended to provide neighborhood and community retail, business and service establishments that are oriented to and built close to the street. The B-2b zone is appropriate in areas where a more compact urban development pattern exists such as on-peninsula or in areas off-peninsula where a neighborhood compatible commercial district is established which exhibits a pedestrian scale and character. Such locations may include the peninsula and other arterials and intersections with an existing urban or neighborhood oriented building pattern.

Sec. 14-182. Permitted uses. [B-2 and B-2b Zoning]

a) Residential:

1. Attached single-family and two-family dwellings;
2. Multi-family dwellings;
3. Handicapped family units;
4. Combined living/working spaces including, but not limited to, artist residences with studio space; and

b) Business (Too many to list. Suffice it to say the list is varied, from restaurants to hotels to offices to bakeries to personal services)

Minutes
Economic Development Committee
February 27, 2017

A meeting of the Economic Development Committee of the Portland City Council was held Monday, February 27, 2017, at 12:00 Noon for a tour of the Public Works Department Bayside properties being considered for sale. The meeting started with a brief overview in the Public Works Conference room.

Present from the Committee was its Chair Councilor David Brenerman and members Councilors Pious Ali and Spencer Thibodeau. Also present from the City Council was Mayor Ethan Strimling and Councilor Jill Duson. Present from City staff were Public Facilities Director Kathy Alves, Public Works Director Christopher Branch, City Manager Jon Jennings, Business Programs Manager Nelle Hanig, Economic Development Director Greg Mitchell, Planning Division Director Tuck O'Brien, and Senior Executive Assistant Lori Paulette.

Single Item on Agenda: Provide the Committee with a walking tour and discussion of the former Public Works Bayside Properties being considered for sale.

Chair Brenerman welcomed everyone to the meeting and introductions were then made.

Mr. Jennings noted that Lee Goldberg from Channel 6 was shadowing him for a day in the life of the City Manager. He also noted that staff has previously received clear guidance from the City Council for the disposition of these lots.

Mr. Mitchell followed up saying that the City now has the Boulos Company under contract for marketing/selling properties. Boulos brokers present today include Drew

Sigfridson and Nate Stevens.

Mr. Sigfridson thanked the City for the opportunity to play a part in this important area of the City. He said that the Bayside area is a stagnant block compared to others in this section of the peninsula. Mr. Sigfridson said that he anticipates that there would be more than one developer interested in these properties, and that some would be redeveloped, perhaps even adding more floors in some areas, and others would be new construction. He does not see any big box development as the sites are too small. Mr. Sigfridson said that he anticipates developments will occur in the fashion of those that have occurred at Thompson's Pont site and the former Nissan building to name a couple of examples.

Mr. Jennings said that 55 Portland Street is not proposed to be sold right now, but rather placed on the market to see what the City could realize if sold.

Mr. Mitchell then briefly highlighted the road projects – extension of Somerset Street, and realignment of Kennebec Street.

Mayor Strimling asked about next steps, and Chair Brenerman said that this would be brought to the EDC meeting on March 7th to confirm the sales approach for these properties.

Mr. Sigfridson said that the Boulos would then begin with creating marketing brochures for all the parcels with details of each and marketed. Boulos would then provide the City with offers it has received for review by the EDC and recommendation to the City Council.

Mayor Strimling asked about restrictions, for example, housing – noting that he would like to see some housing development, and Mr. Jennings said that in the past property parcel #5 had been placed out for sale through an RFP process, which site is valued at \$1 Million, with restrictions for affordable housing. One proposal was received to purchase for \$1.00 by

Avesta. The project did not go through, and this is why staff recommended using a broker and the lots being sold for their highest and best use. The EDC would then analyze the offers and recommend any offer(s) to the City Council. The development projects would then have go through the standard Planning reviews/approvals.

Mr. O'Brien added that scale and design would be reviewed at the site plan level.

Mr. Sigfridson said that Boulos will be proactive to market to developers who do mixed use development, noting that affordable housing is very expensive to do, with limited financing resources.

Mr. Jennings said that he anticipates that there will be mixed use development projects.

Chair Brenerman asked about single family development, and Mr. Sigfridson said that he does not see a high demand for that in this area.

Councilor Thibodeau asked about the Bayside properties being demolished for single housing, asking if this would be cost prohibitive. Mr. Mitchell said that he would talk with Boulos and get back to him.

The Committee then began the walking tour at approximately 12:30, with the tour ending at approximately 1:20.

Respectfully, Lori Paulette



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Chair and Members of the Economic Development Committee

FROM: Greg Mitchell, Economic Development Director

DATE: March 1, 2017

SUBJECT: **Review and Vote to Authorize the Sale Approach of City-owned Bayside Former Department of Public Works Occupied Properties**

Meeting Purpose and Requested Action

Staff is looking for a vote, from the EDC, to determine whether or not restrictions should be placed on the sale of City-owned Bayside former Department of Public Works occupied properties.

Overview and Staff Recommendation

The City issued a Request for Proposal (RFP) for real estate brokers to market the former Department of Public Works occupied properties in Bayside. CBRE/The Boulos Company was the successful proposer, and the City now has them under contract.

The question is whether or not restrictions (i.e. parcel size or use, etc.) should be placed on these properties. City staff does not support the placement of restrictions on these properties for the following reasons:

General Comments

The commercial broker “call for offers” approach provides the City, at a single point in time, the opportunity to evaluate sale and use opportunities which best fit the neighborhood.

There will be, at a minimum, a two-step public hearing process (at an Economic Development Committee meeting and at a City Council meeting) for the City to approve purchase and sale agreements for property sales. This process will allow enough time for public input and feedback regarding each property sale.

Additionally, the City Zoning and Height Overlay regulations and the Planning Board site plan approval process provides adequate protections to support redevelopment or new development of these sites.

Placing additional development restrictions on these properties will reduce property values, lower property sale prices, or possibly require public subsidy to support new private sector investment.

Besides limiting the value of the immediate sale price and the value of future tax revenue, any additional property restrictions will significantly reduce the pool of interested developers.

Sale revenue from these properties is needed to support relocating the "Fleet Services" use, or possibly relocating 55 Portland Street office uses, out of Bayside, to the City Canco Road Complex.

Property sale tax revenue is the best revenue source to support this relocation without the need for a community referendum.

The sites are currently configured with enough separation (i.e. public streets) or size to ensure that appropriately scaled redevelopment or new construction will result. See sites specific comments below.

Site Specific Comments (see attached map for parcel references)

Parcel #1 is a single development site which should not be reduced in size.

Parcel #2 is not a single development site, and it is best incorporated into adjacent property development opportunities.

Parcel #3 is not large enough for a single development site and will likely be combined with adjacent property ownership or be redeveloped as parking.

Parcel #4 is an ideal redevelopment project for mixed use, but it lacks property to support parking.

Parcel #5 should be sold as a single site because it includes two buildings with a common wall and small parking lot.

Parcel #6 is the Fleet Services building and site. This site is the most uncertain in terms of redevelopment opportunities. This site could support parking needs of adjacent uses along with new construction.

Parcel #7 will be marketed for sale, but enough revenue needs to be generated to support the relocation and new building construction at Canco Road. The relocation of the office uses, located in this building, have not been included in the City Canco Road Complex plans.

Summary

Staff looks forward to discussing this matter with you at the March 7th EDC meeting.

Attachments:

- Map of City Bayside Properties

2/2017

PROPOSED CITY PROPERTY SALE – VARIOUS BAYSIDE PROPERTIES

Properties identified below for disposition with broker assistance:

Parcel 1: 56 Parris Street

Parcel 4: 82 Hanover Street and 158 Kennebec Street

Parcel 5: 65 Hanover Street and 52 Alder Street

Parcel 6: 44 Hanover Street and Parris and Lancaster Streets

Sites that may be considered for sale with broker assistance:

Parcel 2: 181 Forest Avenue

Parcel 3: 178 Kennebec Street

Parcel 7: 55 Portland Street and Hanover and Parris Streets.





Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Chair and Members of the Economic Development Committee

FROM: Greg Mitchell, Economic Development Director

DATE: March 3, 2017

SUBJECT: Proposed Amendments to the JB Brown and City of Portland Land Exchange Agreement including the possible sale of the City owned surface parking lot located in the City block bounded by Center/Spring/Free and Cross Streets

I. SUMMARY OF ISSUE

The City Council approved the JB Brown and City of Portland original Land Exchange Agreement (LEA) on July 20, 2015 followed by City Council approval to amend the LEA on November 16, 2015. See attached fully executed Amended LEA. At that time, this LEA established easements over City and JB Brown property and exchanged City and JB Brown property which was determined to be of equivalent value.

Under the direction of the Economic Development Committee (EDC) during 2016 and 2017, amendments to the City Council approved JB Brown and City of Portland Land Exchange Agreement are proposed to substitute different City property included in this transaction, including the possible sale of a City-owned surface parking lot located in the City block bounded by Center/Spring/Free and Cross Streets. Acquisition of the JB Brown owned property, included in the JB Brown and City Land Exchange Agreement, is critically important to complete the new Canco Road Municipal Service Campus to house personnel from the Parks and Recreation, Public Works, and Public Facilities Departments.

II. REASON FOR SUBMISSION

JB Brown is no longer interested in acquiring the City's One Cambridge Street property because it cannot be utilized for expected industrial purposes. Additionally, staff recommends retaining the City's One Cambridge Street property to support future development opportunities located on available vacant land at Morrill's Corner.

Amendments are needed to the JB Brown and City Land Exchange Agreement in order to substitute the sale of the City-owned surface parking lot (located in the City block bounded by Center/Spring/ Free and Cross Streets) in place of the City-owned One Cambridge Street property to proceed with acquiring JB Brown property.

III. INTENDED RESULT

Discussion and vote to recommend to the City Council approval of the Amended and Restated LEA.

IV. FINANCIAL IMPACT

Here is a comparison of the approved JB Brown and City Land Exchange Agreement to the Proposed Amended and Restated Land Exchange Agreement including all City financial impacts.

Approved JB Brown and City Land Exchange Agreement

The approved and executed Amended LEA (copy attached) included the transfer of one City-owned property, located at One Cambridge Street (see attached map), in exchange for two JB Brown owned properties (Parcel 1 & 2 on the attached map) and two easements (one located over JB Brown property and one located over City-owned property per the attached map). This land exchange was determined to be of equivalent value without any funds changing hands. See attached property location map for Canco and Quarry Road properties.

The primary changes to this Agreement include the following:

Property Substitution.

The sale of the City-owned surface parking lot (located in the City block bounded by Center/Spring/Free and Cross Streets) is proposed in place of the City transferring the portion of One Cambridge property, which is not contaminated, to proceed with acquiring JB Brown property included in the Amended and Restated Agreement. See attached property location map for City-owned surface parking lot.

Easement Adjustment and Termination.

The “Transportation Access” permanent easement over 250 Canco Road (City-owned property) to allow vehicle and pedestrian access to Quarry Road warehouses is proposed for termination. It is noted that the Quarry Road warehouses were owned by JB Brown at the time of Council approval of the Land Exchange Agreement, but they have since been sold to another party (Quarry Warehouse, LLC).

Additionally, a time frame adjustment is proposed to the five year Temporary Storage Easement (over private property now associated with the Quarry Road warehouse ownership) related to the current location of the City’s sand and salt sheds. This time frame adjustment has been reduced to two years. It is noted that the City began using this property in the Fall of 2015 at no cost to the City to date.

Proposed Amended and Restated Land Exchange Agreement

Property market appraisals support this property transaction. Here is the listing of property ownership associated with this transaction, including their related market values (see attached map for parcel references).

Property Ownership	Location	Agreement Reference	Market Value
JB Brown	Tax Map 151A-A-23	Parcel 1	\$215,000
JB Brown	Tax Map 154-B-45 and 151A-A-24	Parcel 2	\$80,000
City of Portland	38-A-14-15-16; 38-I-1-2-3-4	Parcel 3	\$1,675,000

Easements	Market Value
JB Brown to City for Temporary Storage	\$38,000 for five years, or \$7,600 per year.
City to JB Brown for transportation access + value adjustment to 90 Quarry Road	\$125,000

JB Brown is the logical buyer for the City-owned surface parking lot for the City to realize maximum sale price, because JB Brown owns property located on both sides of the City block, and they control an access easement over the City property.

The sale price of the City owned surface parking lot was reduced to \$1,470,000 for the following reasons:

- The Transportation Access Easement, over 250 Canco Road and enhanced value to 90 Quarry Road, total appraised value is \$125,000. Terminating the “Transportation Access” permanent Easement is a big win for the City because it enables maximum City development utilization of this property.
- Next, from the Fall of 2015 to date, JB Brown has allowed the City free use of their “Parcel 1” for the City sand/salt sheds and vehicle/truck storage while JB Brown has continued to pay property taxes and foregone other tenant leasing opportunities. Annual property taxes paid by JB Brown for this property is \$5,700. Also, estimated lease expense for this property is over \$100,000 per year, or over \$200,000 for the two years.
- The value of the JB Brown lost revenue for two years associated with temporary storage easement totals \$15,200.
- Also, combining the City surface parking lot ownership with JB Brown’s adjacent property will enable this property redevelopment potential to be maximized at highest and best use instead of selling this property to a different owner.

- Additionally, JB Brown feels that this property appraisal over values this property because the surface parking lot operates as a single parking lot with 175 parking spaces (88 City + 87 JB Brown) versus two separate parking lots under separate property ownership. If the City property was managed as a separate parking lot, the number of parking spaces would be reduced to as few as sixty (60) spaces, thereby decreasing revenue and reducing the property market value. Also, the property appraisal does not discount the value of the property related to JB Brown's access easement over the City property. The estimated value reduction based upon sixty parking spaces is a property sale price of \$1,498,500.
- Lastly, upon the sale of the City-owned surface parking lot to JB Brown, the property will become taxable next year. Property taxes on this property associated with existing parking use is estimated at \$1,675,000 million, are over \$35,000 annually.

Summary:

Parcel 3 Sale Price	\$1,675,000
Deductions Outlined Above:	<u>- 205,000</u>
Difference:	\$1,470,000
City Acquisition costs for	
Parcels 1 and 2:	<u>\$ 295,000</u>
Net to City:	\$1,175,000

V. STAFF ANALYSIS

The proposed property transaction is supported by property market appraisals and has been determined to be a fair transaction for the City.

Additionally, it is noted that Federal HUD funds were utilized to create this surface parking lot, and parking lot revenue has been used to fund the City annual CDBG program investments. See enclosed Memorandum from Jeff Levine regarding this matter and restrictions placed upon use of property sale proceeds. Additionally, the City Manager is proposing recommendations for use of property sale proceeds.

VI. RECOMMENDATION

City staff recommends approval of the Amended and Restated Land Exchange Agreement as presented.

VII. LIST ATTACHMENTS

- Map highlighting JB Brown Property, City Property, and Easements
- Map highlighting the City-owned surface parking lot (located in the City block bounded by Center/Spring/Free and Cross Streets)
- Memorandum from Jon P. Jennings regarding possible use of Sale Revenue Proceeds
- Memorandum – revised - from Jeff Levine regarding Federal HUD funds.

- JB Brown and City of Portland Land Exchange Agreement dated November 30, 2015 as approved by the City Council.
- Access Easement Agreement dated March 22, 2016 between City, JB Brown, and Fore River Warehousing & Storage Co., Inc.
- Temporary Storage Easement of March 22, 2016 between City and JB Brown.
- Easement of December 7, 2015 between JB Brown and Central Maine Power.
- Proposed Amended and Restated Land Exchange Agreement.
- Amended Subdivision Plan for JB Brown of February 26, 2016.
- Plan of Topography for JB Brown of August 14, 1981.
- Draft Letter Agreement of October ____, 2016 between the City, Fore River Warehousing & Storage Co., Inc., and Quarry Warehouse, LLC.

**City
One Cambridge St Property**

**JB Brown to City
Easement
Temporary Storage**

**JB Brown to City
Parcel 1**

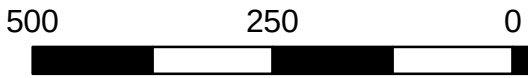
**City to JB Brown Easement
Transportation Access**

**JB Brown to City
Parcel 2**

**City Acquired for
DPW
and other
City Use**

Canco Road

Canco Road Properties





City to JB Brown
Parcel 3

Free Street

Center Street

Spring Street

Cotton Street

Cotton Street, Free Street Lot

150

75

0

150 Feet

7 of 52



Executive Department
Jon P. Jennings, City Manager

MEMORANDUM

TO: Chair and Members of the Economic Development Committee

FROM: Jon P. Jennings, City Manager

DATE: March 3, 2017

SUBJECT: Possible Uses for Cotton St. Lot Proceeds

As the Cotton Street lot was developed using Community Development Block Grants (CDBG) funds, the proceeds must be used in accordance with CDBG guidance on such funds. The sale is expected to yield about \$1.175 million to the City. The U.S. Department of Housing and Urban Development (HUD), which administers the CDBG program, defines the sale proceeds as “miscellaneous revenues” and thus may be used for any eligible CDBG activity.

The accompanying memo from Jeff Levine details HUD requirements, as well as the City Planning and Urban Development Department’s use of annual revenue from the Cotton Street parking lot.

To this end, I suggest the following considerations for the sale proceeds:

1. \$100,000 to seed the improvements required to expand capacity at the Milestone Foundation facility. The need for substance abuse addiction treatment is at a crisis level, given the rampant overdoses from opiates and the lack of facilities for treatment. The Greater Portland Addiction Collaborative, of which the City is a part, is also seeking federal funding, as there is significant renovation to complete to expand and strengthen Milestone’s treatment services. The City can use this money as part of our commitment to address this challenge and to leverage additional public and private funding.
2. \$25,000 for the panhandling pilot set to begin this Spring. This initiative builds on successful models in other cities in which day labor at minimum wage, plus breakfast and lunch, are offered to panhandlers. They are then connected with needed services, and ideally can continue building their work experience. Five programs were researched and all have had compelling results.



Jeff Levine, AICP
Director, Planning & Urban Development Department

Memorandum

To: Economic Development Committee

From: Jeff Levine, Planning & Urban Development Director
Mary Davis, Housing & Community Development Director

Date: March 3, 2017

Re: Cotton Street Lot- Community Development Impacts of Sale

Following up on our December 28, 2016 memo (attached) I offer a few different options for how to utilize some of the sales proceeds from the Cotton Street lot to maintain our community development programs.

As mentioned in that memo, we have received an average of \$119,426 annually over the last 5 years in revenue from that lot to fund our community development programs. Of those funds, approximately 20% are used for city staff and administration, and the balance goes into social services and development activities. This funding has been helpful in light of the 22% decline in CDBG funding since FY2010.

The net proceeds from sale of the Cotton Street lot are expected to be \$1,175,000. Of that amount, \$100,000 is recommended to be programmed for strategies to address the opioid crisis. In addition, \$65,000 will be programmed for emergency management (see additional memos.) That leaves \$1,010,000 of remaining sales proceeds.

Based on the assumption that the City would like to see these funds, or alternative funds, used to maintain our community development programs, I have outlined two possible options:

1. *Place the Funds in Escrow and Spend Down:* The City could place this \$1,010,000 in a special account and spend it down over several years. Assuming the current average expenditure of \$119,426, these funds would be available for eight years, with partial funding available for a ninth year. If the average expenditure were reduced to \$100,000 annually, these funds would last for ten years. After that time, the City would have to address the loss of these funds. Unfortunately, any interest that the funds earn would need to be returned to the federal government, so there is no incentive to create an endowment to help preserve the principal.

Advantages

- Maintains current funding levels for the short term
- Guaranteed return.

Disadvantages

- Funding will be eliminated in 8-10 years
2. *Use the Downtown TIF for Community Development Program Funding:* Under this approach, the sales proceeds would be expended in the short term for community development related programs and not necessarily retained in the long term. As an alternative funding stream for community development programs, a small portion of the Downtown TIF revenue stream would be devoted to community development related programs that are also eligible for TIF funding. The City would agree to set aside \$120,000 of the TIF revenue for community development programs over the life of the TIF. The Downtown TIF can be used for some community development programs, but not all of them (see attachment.) Most notably, these funds cannot be used for social service programs.

Advantages

- Fairly long term funding stream for community development program
- Would allow for a short term significant investment in community development activities as well as a long-term revenue stream

Disadvantages

- Funding would be limited to TIF-eligible activities rather than the full range of community development programs
 - Specifically, these funds could not currently be used for social service programs, resulting in a loss to these programs of about \$20,000 a year.
3. *A Hybrid Approach:* Both of these approaches have some advantages and disadvantages. Approach #1 provides the most flexible funding for community development programs in the short term, but is time limited. Approach #2 provides a more long-term solution but cannot fund certain community development activities, such as social services. A third approach would be a combination of the two. For example, the \$1,010,000 in sales proceeds could be committed to social service programs and other TIF-ineligible activities and supplemented with Downtown TIF funds to extend the life of those proceeds. If only \$20,000 a year were taken out of the \$1,010,000 to fund social services, and the balance of the \$119,426 were funded out of the Downtown TIF, for example, social service programs would be funded for 50 years. Given the fact that the CDBG program is 42 years old at present, that would be close to a permanent funding arrangement.

Advantages

- Provides a long-term strategy for funding all community development programs

- Provides flexibility if the City has an acute community development need in one particular year, as a larger amount could be pulled from the \$1,010,000 if needed.

Disadvantages

- More complex than either of the first two options

To: Economic Development Committee

From: Jeff Levine, Planning & Urban Development Director
Mary Davis, Division Director, Housing and Community Development

Date: December 28, 2016

Re: Cotton Street Parking Lot – CDBG Program Income

The Cotton Street parking lot is a City-owned parcel established many years ago, through the urban renewal program. The rental income from the lot is received by the City as CDBG program income and is incorporated into the annual CDBG budget.

Revenue History

Since Fiscal Year 2007, the CDBG Program has received \$1,061,069 in program income from this parking lot revenue. A review of the last five years is included in the table below.

Fiscal Year	Annual Program Income Received	Administration Adjustment	Social Service Allowance	Development Activity Adjustment
2011-2012	\$129,239.02	\$25,847.80	\$19,385.85	\$103,391.22
2012-2013	\$114,821.21	\$22,964.24	\$17,223.18	\$91,856.97
2013-2014	\$110,159.21	\$22,031.84	\$16,523.88	\$88,127.37
2014-2015	\$110,393.94	\$22,078.79	\$16,559.09	\$88,315.15
2015-2016	\$132,527.59	\$26,505.52	\$19,879.14	\$106,022.07

Use of Parking Lot Rental Revenue

We use this revenue to supplement our CDBG allocation to provide additional grants, social service programs, and to fund some staff to help run the program. Our annual CDBG allocation is about \$1,800,000, so this additional funding allows us to increase our CDBG program funding by about 7.0% annually. Those funds go towards physical improvements, like public works projects in eligible locations, as well as towards social service programs such as homeless services and community policing.

The long-term trend in CDBG funding has been downward, particularly when accounting for inflation. The City's CDBG allocation in FY10 at \$2,300,000, so the decline since that time has been about 22%.

All of the salaries and expenses of the Housing & Community Development division are funded through federal sources and revenue from federal investments, including

a portion of this parking lot revenue. In addition, a portion of other staff in the Planning & Urban Development Department is funded through CDBG funding. In FY2017, \$405,000 is allocated from CDBG sources for these City expenses. Of that \$405,000, around \$25,000 (6.25%) is coming from parking lot revenue from the Cotton Street lot.

Use of Sales Proceeds

We are permitted to sell the parking lot, but have been given the guidance that any revenue received from the sale of the parking lot must be used for CDBG eligible activities. These include administrative costs, social service activities or development activities. HUD has confirmed that the use of a portion of the sale proceeds to purchase a site for the City's sand and salt shed is an eligible use of the funds. The use of this revenue must be identified in our HUD 5-Year Consolidated Plan and a separate accounting of these funds must be maintained.

A portion of the sales proceeds from the Cotton Street lot could continue to be used for eligible City operating expenses. However, unlike the annual rental revenue, this funding would not be recurring and would have to be programmed judiciously.

ELIGIBLE USES OF DOWNTOWN TOD TIF FUNDS

value (the “TIF Revenues”) to fund infrastructure improvements and other administrative costs, all as further described in Table 1 hereinbelow. The City reserves the right to capture less than the full 12% in year one and less than the 22% in years 2 through 30, depending on the then-current needs of the City with respect to the approved project costs. Any reduction in the captured value percentage shall adjust the amount of assessed value eligible for sheltering with respect to the tax shift benefit correspondingly. Although all TIF Revenues will be retained by the City at this time, the City reserves the right in the future to negotiate and execute credit enhancement agreements pursuant to City Council approved TIF Policy of up to twenty years, or limited to the balance of District term at that time, and up to sixty-five percent (65%) of the TIF Revenues, within sole Council discretion. City TIF Policy is attached as Exhibit B. Such future credit enhancement agreements would require a public hearing and City Council approval.

In designating the District and adopting this Development Program, the City can accomplish the following goals:

- Maintain existing tax revenues;
- Invest in the Downtown public infrastructure;
- Invest in the Creative Portland Corporation annually;
- Invest in new and enhanced transit services;
- Enjoy enhanced future tax revenues generated by new development within the District; and
- Create long-term, stable employment opportunities for area residents because of these TIF investments.

In addition, by creating the District, the City will “shelter” the increase in municipal valuation that development in the District will bring about. This tax shift benefit mitigates the adverse effect that the District’s increased assessed property value has upon the City’s share of state aid to education, municipal revenue sharing, and its county tax assessment. An estimate of the tax shift benefits is shown in Exhibit D-2 attached hereto.

The City’s designation of the District and pursuit of this Development Program constitute a good and valid public purpose pursuant to Chapter 206 of Title 30-A because it represents a substantial contribution to the economic well-being of both the City and the region by providing jobs, contributing to property taxes, and diversifying the region’s economic base.

B. The Projects

Development within the District will provide a revenue source for the City’s economic development projects. The City intends to use TIF Revenues to further its overall plan to attract and retain businesses that want to take advantage of Portland’s business-friendly location, while offering their employees a rich, dynamic, and high quality of life. This includes funding of Creative Portland Corporation, of which the City of Portland is the Corporator, of up to \$100,000 annually, as well as City plans to invest in its public infrastructure in these investment focus areas:

- Sidewalk and Other Pedestrian Enhancements
- Streetscape
- Lighting
- Street Alignment
- Utilities
- Bicycle Improvements
- Public Transit
- Wayfinding
- Economic Development Department administrative costs and staff salaries, and prorated salaries of the City Manager and Planning and Urban Development Director

The District projects at this time are highlighted in Table 1 below:

TABLE 1

NOTE 1: All Citations refer to Title 30-A, Chapter 206, Section 5225

NOTE 2: While this Development Program lists particular projects, the Development Program shall not serve as an appropriation of TIF Revenues for any of these specific purposes, nor shall it commit the City to completing any particular project. The projects will only be undertaken following proper appropriation through the annual budget process and any other applicable required approvals.

Project	Downtown Revitalization Plan Reference by page no.	Statutory Citation	Estimated Cost
In District: Capital Infrastructure Investments, for example: - Sidewalk and Other Pedestrian Enhancements - Roadway Realignment/Paving - Intersection Redesigns - Bicycle Infrastructure - Stormwater Management, including water and sewer upgrades - Communications Infrastructure improvements/enhancements - Wayfinding (signage) - Public plaza intersection improvements	5, 6, 7, 9, 34 5, 6, 34 5, 6 5, 9, 11 5, 34 5, 33 5, 9, 33 8, 34	(1)(A) (1)(A) (1)(A) (1)(A) (1)(A) (1)(A) (1)(A) (1)(A)	\$200K annually; \$6 Million over life of District

In and out of District: New and Enhanced Transit Services, including operational costs, for example (see Exhibit K – Transit Map): - Creation of high frequency bus service on Congress Street at 15-minute intervals between the Portland Transportation Center (PTC) and Washington Avenue; - Enhancing Stevens Avenue- Allen Avenue- Congress Street bus service areas; - Corresponding costs for these enhancements, including transit operator salaries; transit vehicle fuel, and transit vehicle parts replacements. - Transit capital costs including transit vehicles and related equipment; bus shelters and other related structures; benches; signs, and other transit-related infrastructure.	3, 6, 32, 33	(1)(A) and (1)(C)(7)	\$110K annually; \$3.3 Million over life of District
In and out of District: City Marketing and Promotion through Creative Portland Corporation (CPC), for example (see Exhibit M Arts District Map within Downtown TOD TIF District): - In District: Center for the Arts, including rental residential space; - In District: capital, financing, real property assembly and professional service costs; - In and out of District: CPC staffing, administrative and marketing expenses; revolving loan or investment fund.	7	(1)(C)(1)	Up to \$100K annually; \$3 Million over life of District

In and out of District: Economic Dev. Dept. administrative costs and staff salaries at 100%, and prorated salaries of City Manager and Planning Urban Development Director *	7	(1)(A)(5) and (1)(C)(1)	\$250K annually; \$7.5 Million over life of District
In District: Small Public Capital Infrastructure and Equipment, for example (Downtown Plan pp. 6 and 7) - Parking meters - Vehicles for Public Services Dept. (formerly Public Works Dept.), and Fire Dept., including ambulances	7	(1)(A)(1)(a)	\$100K
In District: Relocation of Displaced Persons (TIF Application, p. 6)	(see TIF application, p. 6)	1(A)(6)	Not budgeted/not anticipated at time of TIF application
In District: CEAs as Approved by City Council (TIF application p. 2)	(see TIF application p. 2)	(1)(A)	Unknown at time of TIF application
Total Estimate of TIF Revenue Expenditure over 30 year term:			\$19,900,000

*This item is not unique to this TIF District, it is also included in the Bayside TIF District, Waterfront TIF District, and Riverwalk TIF District.

C. Strategic Growth and Development

This Development Program and the Downtown Plan meld various studies and plans for the District into one document, thereby promoting those studies and plans and making investments at the appropriate time. The studies and plans noted in the Downtown Plan represent a series of community initiatives, both completed and underway, or in planning process. The Development Program and Project List (Table 1) noted hereinabove represents the best thinking of City staff about current opportunities for realizing the City's longstanding, evolving vision for its Downtown.

D. Improvements to the Public Infrastructure

As further set forth in Table 1 hereinabove, the City may use certain TIF Revenues for sidewalk and other pedestrian improvements, roadway realignments/paving, intersection redesigns, bicycle infrastructure, stormwater management improvements (including water and sewer maintenance), communications infrastructure improvements/enhancements, wayfinding, and public plaza intersection improvements that are directly related and made necessary by development in the District.

LAND EXCHANGE AGREEMENT

This Land Exchange Agreement (this "Agreement") is made as of the 30th day of November, 2015, by and between the J.B. BROWN & SONS ("JBB") and FORE RIVER WAREHOUSING & STORAGE CO., INC. ("FRW&S"), each a Maine corporation with offices in Portland, Maine, and their respective successors and permitted assigns (JBB and FRW&S shall be collectively referred to herein as "JBBrown"), and CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("City").

Section 1. Introduction.

Each of the parties owns real property in Portland, Maine. The parties have agreed to exchange certain property, and to provide for certain appurtenant easements in connection with the exchange, all on the terms and conditions set forth in this Agreement. Exhibit A is an aerial photograph that generally depicts the properties that are the subject of the exchange.

Section 2. Property to be Exchanged.

In the exchange:

- (i) City will convey to JBBrown the parcel of land acquired from Norman S. Reef and Raymond H. Reef as Trustees of the R.F. Investment Trust, located at or near Cornell Street and Morrill Street (Tax Map 151A-A-013) and depicted on Exhibit A as "Parcel 1," except that the City shall retain the portion of said parcel that is cross-hatched on Exhibit A. The City shall be solely responsible for the prompt remediation of all hazardous materials on Parcel 1 as described in a certain July 20, 2015 Phase I Environmental Site Assessment by Sebago Technics;
- (ii) City will convey to JBB and FRW&S an access easement deed for vehicle and pedestrian ingress and egress (including an area for the specific purpose of a safe and reasonable "turn around" for large commercial trucks, i.e., eighteen wheel tractor trailers), from and to Canco Road across the City's property located at or near 250 Canco Road (Tax Map 154-B-001) to JBB's and FRW&S' respective properties located on Quarry Road, which easement area shall be constructed and maintained by the City and is depicted on Exhibit A as "Parcel 2";
- (iii) JBBrown will convey to City the parcel of land depicted on Exhibit A as Parcel 3 and identified as Tax Map 148-A-002 ("Parcel 3");
- (iv) JBBrown will convey to City a portion of the parcel of land depicted on Exhibit A as Parcel 4A and identified as Tax Map 151A-A-014 and a portion of land identified as Tax Map 151A-A-23 ("Parcel 4A");
- (v) JBBrown will convey a five-year easement to the City over a portion of the parcel of

land depicted on Exhibit A as Parcel 4B and identified as Tax Map 151A-A-023 (“Parcel 4B”). The purpose of this easement shall be to grant the City vehicle and pedestrian access to the easement area, and to allow the City, without limitation, to construct, install, operate, maintain, replace, and repair salt sheds and other structures and equipment, and any appurtenances and fixtures thereto, that the City deems necessary to conduct its winter salt and sand operations, and any other rights the City deems reasonably necessary to effectuate the purpose of this easement.

(vi) JBBrown will convey to City the parcel of land depicted on Exhibit A as Parcel 5 and identified as Tax Map 154-B-045 (“Parcel 5”); and

(vii) JBBrown will convey to City the parcel of land depicted on Exhibit A as Parcel 6 and identified as Tax Map 151A-A-021, except that JBBrown shall retain the portion of said parcel that is cross-hatched on Exhibit A (“Parcel 6”);

All of these conveyances will be on the terms and conditions set forth in this Agreement.

Section 3. Equivalent Value.

The parties agree that (i) the value of the property including the easement that JBBrown is conveying to the City and the easement that City is conveying to JBBrown in this exchange is equivalent to the value of the properties that JBBrown is conveying to City in this exchange, and (ii) each party’s conveyance is in full consideration of the other party’s conveyance. Except as provided in Section 10 below (regarding closing adjustments), neither party is seeking any monetary payment to the other party in connection with the exchange.

Section 4. Property Being Exchanged “As-Is”.

(a) Parcel 1. Except as described in Section 2(i) above and as hereinafter set forth, JBBrown acknowledges that it is acquiring Parcel 1 “as is” and that City has made no representations or warranties of any kind whatsoever with respect to the condition of Parcel 1 or the compliance of Parcel 1 with any laws, rules, regulations, or ordinances, including (without limitation) any relating to zoning, the environment, or hazardous materials. Notwithstanding the foregoing, it shall be a condition of JBBrown’s obligations to close that (i) Parcel 1 is no longer subject to a Contract Zone Agreement and reverts to the I-L Industrial Zone, and (ii) JBBrown is satisfied with the title and environmental condition (including as to any hazardous materials as described in an environmental report to be provided to JBBrown by the City).

(b) Parcel 2. City will construct and maintain the easement for JBBrown (Parcel 2) described in Section 2(ii). The City will install a directionals sign at a location chosen by the City on Parcel 2 or Parcel 5 near the Canco Road entrance way to Parcel 2 that will direct traffic to JBBrown properties, provided that such a sign is consistent with section 14-371(f) of the City’s Land Use Ordinance, has all necessary permits, and otherwise complies with all applicable legal requirements. Upon approval by the City, the sign shall be installed by the City at JBBrown’s sole cost and expense. JBBrown shall also be responsible for all costs associated with maintaining,

repairing, or replacing the sign. JBBrown's obligations under this paragraph shall survive the closing of the Agreement..

(c) Parcels 3, 4A&B, 5 and 6. City acknowledges that it is acquiring Parcels 3, 4A&B, 5 and 6 "as is" and that JBBrown has made no representations or warranties of any kind whatsoever with respect to the condition of Parcels 3, 4A&B, 5 and 6 or the compliance of Parcels 3, 4A&B, 5 and 6 with any laws, rules, regulations or ordinances, including (without limitation) any relating to zoning, the environment, or hazardous materials. Notwithstanding the foregoing, it shall be a condition of City's obligations to close that City is satisfied with the title and environmental condition of Parcels 3, 4A&B, 5 and 6. Further, upon the expiration of the easement for Parcel 4B, the City shall ensure, prior to said expiration of the easement, that the City shall remedy any hazardous material contamination existing as a result of the City's use of Parcel 4B.

Section 5. Title.

(a) Title Examinations; Objections. The parties will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the sixtieth (60th) day after the date of this Agreement (the "Due Diligence Period") to complete their respective title examinations. Title shall be good, marketable and insurable title, free and clear of all encumbrances except (i) as set forth in Exhibit B, (ii) easements for utilities servicing the property, (iii) zoning ordinances, and (iv) real estate taxes not yet due and payable. Each party will have until the end of the Due Diligence Period to deliver to the other party any written objections to matters (other than the permitted exceptions identified herein) that materially affect marketability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the date of this Agreement may be made at any time prior to the closing.

(b) Option to Cure. In the event of a title objection, the party owning the property that is the subject of the title objection will have the option, but not the obligation, to cure the objection and will notify the other party of its election within ten (10) business days after receipt of the title objection. In the event that the party owning the property that is the subject of the objection elects to cure the title objection, that party thereupon will have thirty (30) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the party owning the property that is the subject of the objection does not elect to cure the objection, or having elected to cure the objection fails to timely do so, the other party will have the option either to terminate this Agreement (after which neither party will have any further obligation or liability to the other under this Agreement) or to waive the objection and close.

Section 6. Conditions Precedent to Closing.

(a) Parcel 1 is subject to JBBrown's satisfactory review of an Environmental Report (Phase I) described in Section 2(i) above.

(b) The City shall cause the termination or provide satisfactory evidence to JBBrown that a

certain Contract Zone affecting Parcel 1 has terminated, and that upon termination the Parcel 1 property shall be located in the City's I-L Industrial Zone.

(c) (i) JBBrown is satisfied in its sole discretion in the condition or plans for the construction of the easement as described above over Parcel 2, and (ii) the sign described in Section 4(b) above is authorized by the City to be installed.

(d) Parcels 3, 4A&B, 5 and 6 are subject to City's satisfactory review of environmental issues.

(e) The City is satisfied in its sole discretion that Parcel 6 conforms with applicable land use ordinances.

Section 7. Closing.

The closing will be on or before the thirtieth (30th) day after the later to occur of: (i) the expiration of the Due Diligent Period, and (ii) the date on which the Conditions to Closing described in Section 6 above are completed to the satisfaction of each party to this Agreement, to be held at Verrill Dana, LLP, One Portland Square, Portland, Maine, or on such other date or at such other place as the parties may agree.

Section 8. Deeds.

(a) Deed to City. At the closing, JBBrown will deliver to City a fully-executed Quitclaim Deed conveying Parcels 3, 4A&B, 5 and 6.

(b) Deed to JBBrown. At the closing, City will deliver to JBBrown a fully-executed Municipal Quitclaim Deed conveying Parcel 1; and City will deliver to JBB and FRW&S a fully-executed Easement Deed as to Parcel 2.

(c) Property Descriptions. The property descriptions contained in each deed will be survey descriptions based on a survey plan (the "Plan") that will more specifically describe the properties shown on Exhibit A hereto. The Plan will be distributed to the parties hereto prior to the expiration of the Due Diligence Period and the parties will agree on property descriptions prior to the closing.

(d) Abutter Status. Each deed will recite that the grantee is an abutter to the grantor.

Section 9. Closing Deliverables.

(a) City Deliverables. At the closing, and as a condition to closing, City will deliver in connection with its conveyance to JBBrown:

(i) the executed contract zone termination described in Section 6(b) above;

(ii) the executed deed described in Section 8(b) above;

(iii) an executed State of Maine Real Estate Transfer Tax Declaration;

(iv) an executed notice pursuant to 38 M.R.S.A. § 563(6) stating that, to the best of City's knowledge, no underground storage facility for the storage of oil or petroleum exists on the property being conveyed to JBBrown;

(v) documentation acceptable to JBBrown indicating that this transaction has been duly authorized and that the person executing documents on behalf of City and City's general partner is duly authorized to do so;

(vi) an executed owner's affidavit indicating no tenants or other occupants presently in possession and indicating no debts due for labor or services performed or materials used that could give rise to mechanic's liens.

(b) JBBrown Deliverables. At the closing, and as a condition to closing, JBBrown will deliver in connection with its conveyance to City:

(i) the executed deed described in Section 8(a) above;

(ii) an executed State of Maine Real Estate Transfer Tax Declaration;

(iii) an executed notice pursuant to 38 M.R.S.A. § 563(6) stating that, to the best of JBBrown's knowledge, no underground storage facility for the storage of oil or petroleum exists on the property being conveyed to City;

(iv) documentation acceptable to City indicating that this transaction has been duly authorized and that the person executing documents on behalf of JBBrown is duly authorized to do so;

(v) an executed certificate of non-foreign and Maine Residency status; and

(vi) an executed owner's affidavit indicating no tenants or other occupants presently in possession and indicating no debts due for labor or services performed or materials used that could give rise to mechanic's liens.

Section 10. Closing Costs and Apportionments.

(a) Real Estate Taxes and Assessments. The parties acknowledge that the City is exempt from taxes or assessments on its property and that Parcels 1 and 2 are exempt from real estate taxes for fiscal year 2016. As to Parcels 3, 4A and B, 5 and 6, JBBrown shall be liable for all real estate taxes and assessments for fiscal year 2016. JBBrown shall pay all such taxes on or before the closing date.

(b) Real Estate Transfer Tax. Each real estate transfer tax declaration will state that the value of the properties that is the subject of the declaration is the assessed value, and JBBrown will pay its share of real estate transfer taxes. The parties acknowledge that, pursuant to 36 M.R.S.A. § 4641-C(1), City is exempt from real estate transfer taxes.

(c) Recording Fees. City will pay the recording fees for the termination of contract zone, if necessary, and for the deed from JBBrown on Parcels 3, 4 A and B, 5 and 6. JBBrown will pay the recording fee for the deeds from City on Parcels 1 and 2.

(d) Legal Fees and Expenses. The parties each will bear the cost of their respective legal fees and expenses.

Section 11. Representations and Warranties.

(a) City. City represents and warrants that:

(i) It has full power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

(ii) This Agreement has been duly authorized, executed, and delivered by City and is a legal, valid, and binding agreement of City, enforceable in accordance with its terms. The execution, delivery, and performance of this Agreement by City will not violate any judgment or order applicable to City or City's instruments of organization, governance or operation, and will not result in any material breach of, or constitute a material default under, or result in the creation of any material lien, charge, security interest, or other encumbrance upon Parcel 1 or any note, bond, indenture, mortgage, deed of trust, bank loan, or credit agreement to which City is a party or by which Parcel 1 is bound.

(iii) City has not received any written notice of any pending condemnation, violation of law, or other legal action of any kind materially and adversely affecting Parcel 1.

(iv) City has no knowledge of any pending or threatened litigation, administrative action, or governmental investigation or examination (including, but not limited to, environmental investigations, examinations, claims, and demands) concerning Parcel 1.

(v) No third party has any right to acquire all or any part of Parcel 1.

(b) JBBrown. JBBrown represents and warrants that:

(i) JBBrown has full power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

(ii) This Agreement has been duly authorized, executed, and delivered by

JBBrown and is a legal, valid, and binding agreement of JBBrown, enforceable in accordance with its terms. The execution, delivery, and performance of this Agreement by JBBrown will not violate any judgment or order applicable to JBBrown or result in any material breach of or constitute a material default under any agreements to which JBBrown is a party.

(iii) JBBrown has not received any written notice of any pending condemnation, violation of law, or other legal action of any kind materially and adversely affecting Parcels 3, 4 A and B, 5 and 6.

(iv) JBBrown has no knowledge of any pending or threatened litigation, administrative action, or governmental investigation or examination (including, but not limited to, environmental investigations, examinations, claims, and demands) concerning Parcels 3, 4 A and B, 5 and 6.

(v) No third party has any right to acquire all or any part of Parcels 3, 4A&B, 5 or 6.

(c) Survival. All representations and warranties contained herein are intended to remain true and correct as of the closing, are deemed to be restated at the closing, and will survive the closing.

Section 12. General Provisions.

(a) Assignment. Neither this Agreement nor any of the rights or obligations of any party pursuant to this Agreement may be assigned without the prior written consent of the other party.

(b) Brokers. Each party will indemnify and hold harmless the other from and against any claims for brokerage commissions arising out of any brokerage agreements entered into by the indemnifying party.

(c) Governing Law. This Agreement is governed by, and is to be construed and enforced in accordance with, the laws of the State of Maine (without regard to conflicts-of-laws principles that would require the application of any other law).

(d) Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the exchange of the property that is the subject of this Agreement, supersedes all prior oral or written offers, negotiations, agreements, understandings, and courses of dealing between the parties relating thereto, and is subject to no understandings, conditions or representations other than those expressly stated herein. This Agreement may be modified or amended only by means of a writing signed by the parties.

(e) Notices. Notices in connection with this Agreement must be in writing, delivered by

certified mail or by Federal Express or a similar overnight delivery carrier to the addresses set forth below:

To JBBrown:

Vincent P. Veroneau
J.B. Brown & Sons
36 Danforth Street
P.O. Box 207
Portland, Maine 04112-0207

with a copy to:

David L. Galgay, Jr., Esq.
Verrill Dana

Mailing address: P.O. Box 586
Portland, Maine 04112-0586

Street address: One Portland Square
Portland, Maine 04101

To City:

Gregory A. Mitchell
Director of Economic Development
City of Portland
389 Congress Street
Portland, Maine 04101 with

a copy to:

Danielle West-Chuhta, Esq.
Corporate Counsel
City of Portland
389 Congress Street
Portland, Maine 04101

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

J.B. Brown & Sons
By: 
Vincent P. Veroneau
Its President

Fore River Warehousing & Storage Co., Inc.

By: 
Vincent P. Veroneau
Its President

City of Portland

By: 
Jon P. Jennings
Its City Manager

Approved as to Form: 
Corporation Counsel

Approved as to Funds: 
Finance Dept.

**Parcel 6 – Approximate Area
– J.B. Brown to City,
excepting hatched area**

**Parcel 1 – City Tax-Acquired
Property to J.B. Brown,
excepting hatched area**

**Parcel 4B – Approximate
Easement Area - J.B. Brown to
City**

Parcel 5 – J.B. Brown to City



**Parcel 4A – Approximate
Area - J.B. Brown to City**

**Parcel 2 – Approximate
Easement Area - City to J.B.
Brown**



Parcel 3 – J.B. Brown to City

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT is made as of the 22nd day of March, 2016, by the **CITY OF PORTLAND**, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 (hereinafter referred to as "**City**"), **J.B. BROWN & SONS**, a Maine corporation, having an office at 10 Free Street, Suite 100 in Portland, Maine and a mailing address of P.O. Box 207, Portland, Maine 04112-0207, **FORE RIVER WAREHOUSING & STORAGE CO., INC.**, a Maine corporation having an office at 10 Free Street, Suite 100 in Portland, Maine and a mailing address of P.O. Box 207, Portland, Maine 04112-0207 (hereinafter collectively referred to as "**JBBrown**").

WITNESSETH:

WHEREAS, JBBrown and City entered into a certain Land Exchange Agreement dated as of November 30, 2015, as amended by a First Amendment dated as of January 28, 2016, as amended by a Second Amendment dated as of February 8, 2016 (as amended from time to time, hereinafter referred to as the "**Land Exchange Agreement**"); and

WHEREAS, JBBrown owns property located on Quarry Road in Portland identified on the City of Portland tax maps as Lots 150-A-2, 150-A-3, 151A-A-16, 151A-A-22 and 151A-A-15 and identified as Lot 2 and Lot 3 on a plan titled "Amended Subdivision Plan on Quarry Road, Portland, Maine made for record owner J.B. Brown & Sons, 10 Free Street, Portland, Maine" (the "**Plan**") dated February 26, 2016 by Owen Haskell, Inc. Falmouth, Maine and to be recorded in the Cumberland County Registry of Deeds. (collectively, the "**JBBrown Properties**"); and

WHEREAS, pursuant to the terms of the Land Exchange Agreement, the City is to convey to JBBrown an easement to access the JBBrown Properties over a portion of property the City owns known as 250 Canco Road, which portion is more particularly described on Exhibit A attached hereto (hereinafter referred to as the "**Easement Area**").

NOW THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, each to the other paid, it is hereby agreed as follows:

I. Access Easement for Benefit of JBBrown:

1. The City does hereby grant and convey unto JBBrown, its successors, assigns, to benefit the JBBrown Properties, its successors or assigns, and with any of their respective tenants or occupants of buildings located on the JBBrown Properties, an access easement over the Easement Area to and from the JBBrown Properties for vehicle and pedestrian ingress and egress, including for the specific purpose of a safe and reasonable "turn around" for large commercial trucks (i.e., eighteen wheel tractor trailers) (hereinafter referred to as the "**Access Easement**"). This Access Easement is not exclusive to JBBrown, and in particular, but not by way of limitation, the City retains the right to use the Easement Area for vehicle and pedestrian ingress and egress and to place or extend utilities of any and all types in the Easement Area and

to grant such rights to others, provided, however, that no building or any kind of permanent structure that would impede vehicle access to and across the Easement Area shall be erected on the Easement Area. The above easements and rights shall be perpetual and shall run with the JBBrown Properties.

2. The City will construct and maintain the Easement Area and install a directional sign at a location chosen by the City in the Easement Area, or on property that JBBrown will convey to the City pursuant to the terms of the Land Exchange Agreement that is adjacent to the Easement Area and identified on the City of Portland Tax Maps as Lot 154-B-045. The City will install the sign near the Canco Road entrance way to the Easement Area, and the sign will direct traffic only to the properties located on Lot 3 of the Plan, provided that such a sign is consistent with section 14-371(f) of the City's Land Use Ordinance, has all necessary permits, and otherwise complies with all applicable legal requirements. Upon approval by the City, the sign shall be installed by the City but at JBBrown's sole cost and expense. JBBrown shall also be responsible for all costs associated with maintaining, repairing or replacing the sign.

3. Except as set forth herein, JBBrown acknowledges that it is acquiring the Easement Area "as is" and that the City has made no representations or warranties of any kind whatsoever with respect to the condition of the Easement Area or the compliance of the Easement Area with any laws, rules, regulations or ordinances, including (without limitation) any relating to zoning, the environment, or hazardous materials.

4. Except when injury, loss or property damage are the result of intentional or negligent acts or omissions of the City, its officers, employees or agents, JBBrown, its successors and assigns covenant and agree, to indemnify and hold the City, its successors and assigns, harmless for any personal injury, loss of property or damages (including the cost of defending against any such claims or enforcing this indemnity, including reasonable attorneys' fees) resulting from the use of the Easement area by JBBrown, its successors and assigns.

II. Miscellaneous

1. Grant of Easements Only. JBBrown and City are not hereby conveying any land or title thereto, but merely are granting the rights, privileges and easements hereinabove set forth.

2. Notices. Any notice, request or other communication required or permitted to be given hereunder must be in writing. All notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one Business Day after deposit with such courier, (b) sent by certified or regular U.S. mail, postage prepaid, in which case notice shall be deemed delivered two Business Days after deposit in such mails, (c) sent by facsimile or electronic mail, in which case notice shall be deemed delivered upon the mechanical confirmation of delivery or (d) sent by personal delivery, in which case notice shall be deemed delivered upon receipt or refusal of delivery, or if such receipt or delivery occurs on a day that is not a Business Day, on the next Business Day. All notices shall be addressed to each party at its address first set forth above. Any party may designate a change of address by written notice to the other party delivered at least ten (10) days before such change of address is to become effective.

3. Amendment. The provisions of this Agreement may be abrogated, modified, rescinded or amended in whole or in part only with the consent of the parties hereto, their successors and assigns, in a written instrument duly executed, delivered and recorded.

4. Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced exclusively in accordance with the provisions hereof and the laws of the State of Maine.

5. Unilateral Termination Event. In the event the parties do not complete all of the transfers contemplated by the Land Exchange Agreement by September 30, 2016, the owner of the land on which the Easement Area is located may notify JBBrown in writing in accordance with Section II, paragraph 2 above, that unless the parties mutually agree in writing, the easement hereby granted shall be terminated in sixty (60) days by the owner of the burdened property with the recording of an affidavit in the Cumberland County Registry of Deeds certifying that the Land Exchange Agreement was not completed and that this Easement is terminated.

6. Binding Effect. The easement rights, obligations and restrictions created hereby shall be rights, obligations and restrictions running with the land and shall be binding upon and inure to the benefit of the owner of the Easement Area and the owner of the JBBrown Properties and their respective successors, assigns, and any other transferees.

Dated as of the date first above written.

J.B. BROWN & SONS

By: 
Vincent P. Veroneau
Its President

**FORE RIVER WAREHOUSING &
STORAGE CO., INC.,**

By: 
Vincent P. Veroneau
Its President

CITY OF PORTLAND

By: 
Jon P. Jennings
Its City Manager

STATE OF MAINE
County of Cumberland, ss.

March 22, 2016

PERSONALLY APPEARED before me the above-named Jon P. Jennings, the City Manager of the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of the City of Portland.

Sonia T. Bean

Notary Public

[affix notary seal]

Print Name: Sonia T. Bean

My commission expires: January 10, 2017

STATE OF MAINE
County of Cumberland, ss.

March 22, 2016

PERSONALLY APPEARED before me the above-named Vincent P. Veroneau, the President of J.B. Brown & Sons, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of J.B. Brown & Sons.

Jude A. Cluff

Notary Public

[affix notary seal]

Print Name: JUDE A. CLUFF

NOTARY PUBLIC, MAINE

MY COMMISSION EXPIRES OCTOBER 27, 2020

My commission expires: _____

STATE OF MAINE
County of Cumberland, ss.

March 22, 2016

PERSONALLY APPEARED before me the above-named Vincent P. Veroneau, the President of Fore River Warehousing & Storage Co., Inc., and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of J.B. Brown & Sons.

Jude A. Cluff

Notary Public

[affix notary seal]

Print Name: JUDE A. CLUFF

NOTARY PUBLIC, MAINE

MY COMMISSION EXPIRES OCTOBER 27, 2020

My commission expires: _____

Exhibit A

A certain lot or parcel of land, located along the northwesterly line of Canco Road in the City of Portland, County of Cumberland, and State of Maine, more particularly bounded and described as follows:

COMMENCING at an iron rod found along the northwesterly sideline of Canco Road at the most northeasterly corner of land conveyed by 212 Canco Realty LLC to the City of Portland and recorded in Deed Book 32914, Page 38 in the Cumberland County Registry of Deeds;

THENCE N 29° 15' 08" E 392.27 feet along the northwesterly sideline of Canco Road to the **POINT OF BEGINNING**;

THENCE N 60° 44' 52" W 261.15 feet through land conveyed by Bottling Group LLC to the City of Portland and recorded in Deed Book 32620, Page 185 in the Cumberland County Registry of Deeds to a point;

THENCE N 58° 25' 30" W 239.68 feet through said land conveyed by Bottling Group LLC to a point;

THENCE S 77° 30' 51" W 200.17 feet through said land conveyed by Bottling Group LLC to a point along land now or formerly of J.B. Brown and Sons;

THENCE N 29° 15' 08" E 163.34 feet along said land now or formerly of J.B. Brown and Sons to a point;

THENCE S 58° 25' 30" E 389.66 feet through said land conveyed by Bottling Group LLC to a point;

THENCE S 60° 44' 52" E 260.66 feet through said land conveyed by Bottling Group LLC to a point along the northwesterly sideline of Canco Road;

THENCE S 29° 15' 08" W 24.00 feet along the northwesterly sideline of Canco Road to the **POINT OF BEGINNING**.

Said lot or parcel of land contains 26,012 square feet, more or less, and is part of a lot or parcel of land conveyed by Bottling Group LLC to the City of Portland and recorded in Deed Book 32620, Page 185 in the Cumberland County Registry of Deeds and as shown on a plan titled "Amended Subdivision Plan on Quarry Road, Portland, Maine made for record owner J.B. Brown & Sons, 10 Free Street, Portland, Maine" dated February 26, 2016 by Owen Haskell, Inc. Falmouth, Maine and to be recorded in the Cumberland County Registry of Deeds.

WHEN RECORDED RETURN TO:

VERRILL DANA, LLP
One Portland Square
Portland, ME 04112-0586
Attention: David L. Galgay, Jr.

TEMPORARY STORAGE EASEMENT AGREEMENT

THIS TEMPORARY STORAGE EASEMENT AGREEMENT is made as of the 22nd day of March, 2016, by **J.B. BROWN & SONS**, a Maine corporation, having an office at 10 Free Street, Suite 100 in Portland, Maine and a mailing address of P.O. Box 207, Portland, Maine 04112-0207 (hereinafter referred to as "**JBBrown**"), and **CITY OF PORTLAND**, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 (hereinafter referred to as "**City**").

WITNESSETH:

WHEREAS, JBBrown and City entered into a certain Land Exchange Agreement dated as of November 30, 2015, as amended by a First Amendment dated as of January 28, 2016, as amended by a Second Amendment dated as of February 8, 2016 (as amended from time to time, hereinafter referred to as the "**Land Exchange Agreement**"); and

WHEREAS, pursuant to the terms of the Land Exchange Agreement, JBBrown will convey to City a portion of a certain parcel of land situated northeasterly of Read Street and northwesterly of Canco Road identified on the City of Portland Tax Maps as Lot 151A-A-23 (hereinafter referred to as "**Lot A-23**").

WHEREAS, a small portion of Lot A-23 shall be excluded from the conveyance described in the previous Whereas clause, which excluded portion is a certain trapezoid shaped parcel of land (approximately 10,062 square feet) and more particularly described on Exhibit A attached hereto (hereinafter referred to as the "**Temporary Easement Area**"); and

WHEREAS, the remaining portion of Lot A-23 excluding the Temporary Easement Area that will be conveyed to the City under the terms of the Land Exchange Agreement is hereinafter referred to as the "**Future City Property**"; and

NOW THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, each to the other paid, it is hereby agreed as follows:

I. Temporary Storage Easement for Benefit of City:

1. JBBrown does hereby grant and convey unto the City, for the benefit of the City, a temporary easement for the storage of its salt sheds and related items within the Temporary Easement Area (hereinafter referred to as the “**Temporary Storage Easement**”). The purpose of this Temporary Storage Easement shall be to grant to the City vehicle and pedestrian access to the Temporary Easement Area, and to allow the City, without limitation, to construct, install, operate, maintain, replace, and repair salt sheds and other structures and equipment, and any appurtenances and fixtures thereto, that the City deems necessary to conduct its winter salt and sand operations, and any other rights the City deems reasonably necessary to effectuate the purpose of this said easement. Access to the Temporary Easement Area shall be through the Future City Property. The easement hereby granted shall include during the Easement Term (as hereinafter defined in Section I, paragraph 4 below) the right to enter the Temporary Easement Area with persons and equipment for the above stated purposes at the City’s sole cost and expense.

2. The City shall be solely responsible for all costs, expenses and other obligations associated with its work within the Temporary Easement Area.

3. City acknowledges that it is acquiring the Temporary Easement Area “as is” and that JBBrown has made no representations or warranties of any kind whatsoever with respect to the condition of the Temporary Easement Area or the compliance of the Temporary Easement Area with any laws, rules, regulations or ordinances, including (without limitation) any relating to zoning, the environment, or hazardous materials. Further, upon the expiration of the Easement hereby granted, the City shall ensure, prior to said expiration of the Temporary Storage Easement, that the City shall remedy any hazardous material contamination existing as a result of the City’s use of the Temporary Easement Area.

4. The “**Easement Term**” shall commence on the date hereof and expire on April 30, 2021, without any further notice or writing. At the end of the Easement Term, the City shall vacate the Temporary Easement Area and restore it to the same condition it was in prior to its use as described in paragraph 1 above.

5. Except when injury, loss or property damage are the result of intentional or negligent acts or omissions of JBBrown, its officers, employees or agents, City, its successors and assigns, covenant and agree, City will indemnify and hold JBBrown, its successors and assigns, harmless for any personal injury, loss of property or damages (including the cost of defending against any such claims or enforcing this indemnity, including reasonable attorneys’ fees) resulting from City’s use of the Temporary Easement Area and/or access thereto. The parties hereto agree that this provision is an indemnity agreement and nothing herein shall be construed to be a contract of insurance waiving the defense of governmental immunity, including

without limitation any defenses and immunities afforded the City by the Maine Tort Claims Act and other applicable law.

II. Miscellaneous

1. Grant of Easements Only. JBBrown and City are not hereby conveying any land or title thereto, but merely are granting the rights, privileges and easements hereinabove set forth.

2. Notices. Any notice, request or other communication required or permitted to be given hereunder must be in writing. All notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one Business Day after deposit with such courier, (b) sent by certified or regular U.S. mail, postage prepaid, in which case notice shall be deemed delivered two Business Days after deposit in such mails, (c) sent by facsimile or electronic mail, in which case notice shall be deemed delivered upon the mechanical confirmation of delivery or (d) sent by personal delivery, in which case notice shall be deemed delivered upon receipt or refusal of delivery, or if such receipt or delivery occurs on a day that is not a Business Day, on the next Business Day. All notices shall be addressed to each party at its address first set forth above. Any party may designate a change of address by written notice to the other party delivered at least ten (10) days before such change of address is to become effective.

3. Amendment. The provisions of this Agreement may be abrogated, modified, rescinded or amended in whole or in part only with the consent of the parties hereto, their successors and assigns, in a written instrument duly executed, delivered and recorded.

4. Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced exclusively in accordance with the provisions hereof and the laws of the State of Maine.

5. Binding Effect. The easement rights, obligations and restrictions created hereby shall be rights, obligations and restrictions running with the land until the expiration of the Easement Term or earlier termination of this Easement and shall be binding upon and inure to the benefit of the owner of the Future City Property and the owner of the JBBrown Property land, and their respective successors and assigns.

6. Unilateral Termination Event. In the event the parties do not complete all of the transfers contemplated by the Land Exchange Agreement by September 30, 2016, the owner of the land on which the Temporary Easement Area is located may notify the City in writing in accordance with Section II, paragraph 2 above, that unless the parties mutually agree in writing, the easement hereby granted shall be terminated in sixty (60) days by the owner of the burdened property with the recording of an affidavit in the Cumberland County Registry of Deeds certifying that the Land Exchange Agreement was not completed and that this Easement is terminated.

[Signature Page Follows]

Dated as of the date first above written.

J.B. BROWN & SONS

By: Vincent P. Veroneau
Vincent P. Veroneau
Its President

"JBBrown"

CITY OF PORTLAND

By: Jon P. Jennings
Jon P. Jennings
Its City Manager

"City"

STATE OF MAINE
County of Cumberland, ss.

March 21, 2016

PERSONALLY APPEARED before me the above-named Jon P. Jennings, the City Manager of the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of the City of Portland.

Sonia T. Bean
Notary Public

[affix notary seal]

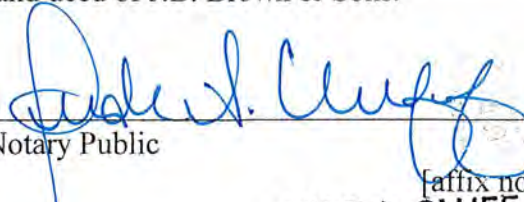
Print Name: Sonia T. Bean

My commission expires: January 10, 2017

STATE OF MAINE
County of Cumberland, ss.

March 22, 2016

PERSONALLY APPEARED before me the above-named Vincent P. Veroneau, the President of J.B. Brown & Sons, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of J.B. Brown & Sons.



Notary Public [affix notary seal]
JUDE A. CLUFF
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES OCTOBER 27, 2020
Print Name: _____
My commission expires: _____

Exhibit A
(Temporary Easement Area)

A certain lot or parcel of land, located northwesterly of and not adjacent to Canco Road in the City of Portland, County of Cumberland, and State of Maine, more particularly bounded and described as follows:

COMMENCING at an iron rod found along the northwesterly sideline of Canco Road at the most northeasterly corner of land conveyed by 212 Canco Realty LLC to the City of Portland and recorded in Deed Book 32914, Page 38 in the Cumberland County Registry of Deeds;

THENCE N 39° 46' 52" W 417.34 feet along the northeasterly property line of said land conveyed to the City of Portland and land now or formerly of Bottling Group LLC to an iron rod found;

THENCE N 54° 31' 52" W 261.82 feet along said northeasterly property line and land now or formerly of Bottling Group LLC to the northwesterly corner of said land conveyed to the City of Portland;

THENCE N 54° 31' 52" W 9.77 feet along land now or formerly of J.B. Brown and Sons and land now or formerly of said Bottling Group LLC to the **POINT OF BEGINNING**;

THENCE S 87° 43' 50" W 210.40 feet along a proposed property line through land now or formerly of J.B. Brown and Sons to a point;

THENCE N 26° 22' 48" E 69.86 feet through land now or formerly of J.B. Brown and Sons to a point;

THENCE N 78° 31' 03" E 81.34 feet through land now or formerly of J.B. Brown and Sons to a point;

THENCE S 54° 41' 57" E 121.90 feet through land now or formerly of J.B. Brown and Sons to the **POINT OF BEGINNING**.

Said lot or parcel of land contains 10,063 square feet, more or less, and is part of Lot 3 as shown on a plan titled "Amended Subdivision Plan on Quarry Road, Portland, Maine made for record owner J.B. Brown & Sons, 10 Free Street, Portland, Maine" dated February 26, 2016 by Owen Haskell, Inc. Falmouth, Maine and to be recorded in the Cumberland County Registry of Deeds.

Easement

WO# 10300172988

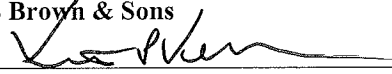
Form 1199, Rev. 07/08

J.B Brown & Sons, a Maine Company with a mailing address of 36 Danforth Street, P.O. Box 207, Portland, ME, (Grantor(s)), for consideration given, grants to CENTRAL MAINE POWER COMPANY, a Maine Corporation with an office at 83 Edison Drive, Augusta, Maine 04336, and no telephone company, and their respective successors and assigns (collectively Grantees), with warranty covenants, the right and easement to erect, bury, maintain, rebuild, respace, patrol, operate, and remove and do all other actions involving electric and communication distribution equipment and facilities, consisting of poles, wires and cables, anchors, guywires or pushbraces, together with all necessary fixtures and appurtenances over, across and under a portion of the surface of the land of the Grantor(s) in the City/Town of Portland, Cumberland County, Maine. The said equipment and facilities are attached to a line commencing at Pole/Pad 4.7, Quarry Road, Portland and extending to include Pole(s)/Pad(s) 4.8, Quarry Road. This easement affects land conveyed to the Grantor(s) in a deed from Read Street Realty Corp, dated October 15, 1981, and recorded in the Cumberland County Registry of Deeds in Book 04869 Page 183. This easement is an easement in gross and is not for the sole purpose of serving the Grantor(s) or Grantor's land. The rights granted herein include the right to cut down and trim trees and other vegetation and to use formulations registered with the Environmental Protection Agency or its successor to eliminate vegetation, and modify the growth of trees, which vegetation or growth, in the judgment of Grantees, may interfere with the operation and maintenance of its equipment or facilities; and the right to restrict the construction of buildings, structures and improvements within 15 feet of its equipment and facilities; and the right to keep the surface of ground above its underground cables and other electrical equipment free from structures, improvements and growth which, in the judgment of the Grantees, may interfere with the proper operation or maintenance of said underground cables; and the right to enter upon the land of the Grantor(s) for any and all of the foregoing purposes.

WITNESS the hand(s) and seal(s) of Grantor(s) duly authorized representatives on December 7, 2015.

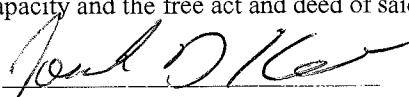
Signed, Sealed and Delivered in the presence of:

J.B Brown & Sons


Vincent P. Veroneau, President

State Of Maine
County Of Cumberland

The above-named Vincent P. Veroneau, personally appeared before me this 7th day of December, 2015 and acknowledged the foregoing instrument to be their free act and deed in their said capacity and the free act and deed of said J.B Brown & Sons.



Notary Public/Attorney

Printed Name:

My Commission Expires:

JOSEPH D. KANE
Notary Public, Maine
My Commission Expires July 24, 2021

WO# 10300172988

Easement
Aerial Rights Only

Form 1199, Rev. 07/08

J.B Brown & Sons, a Maine Company with a mailing address of P.O. Box 207, Portland, ME, 04112 (Grantor(s)), for consideration given, grants to CENTRAL MAINE POWER COMPANY, a Maine Corporation with an office at 83 Edison Drive, Augusta, Maine 04336, and no telephone company, and their respective successors and assigns (collectively Grantees), with warranty covenants, the right and easement to erect, maintain, rebuild, respace, patrol, operate, and remove and do all other actions involving electric and communication distribution equipment and facilities, consisting of wires and cables, together with all necessary fixtures and appurtenances over a portion of the surface of the land of the Grantor(s) in the City/Town of Portland, Cumberland County, Maine. The said equipment and facilities are attached to Pole/Pad 4.7, Quarry Road, Portland. This easement affects land conveyed to the Grantor(s) in a deed from Fore River Warehousing and Storage CO, Inc., dated December 28, 1995, and recorded in the Cumberland County Registry of Deeds in Book 12284 Page 271. This easement is an easement in gross and is not for the sole purpose of serving the Grantor(s) or Grantor's land. The rights granted herein include the right to cut down and trim trees and other vegetation and to use formulations registered with the Environmental Protection Agency or its successor to eliminate vegetation, and modify the growth of trees, which vegetation or growth, in the judgment of Grantees, may interfere with the operation and maintenance of its equipment or facilities; and the right to restrict the construction of buildings, structures and improvements within 15 feet of its equipment and facilities; and the right to enter upon the land of the Grantor(s) for any and all of the foregoing purposes.

WITNESS the hand(s) and seal(s) of Grantor(s) duly authorized representatives on December 7, 2015.

Signed, Sealed and Delivered in the presence of:

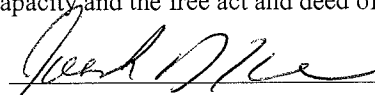
J.B Brown & Sons



Vincent P. Veroneau, President

State Of Maine
County Of Cumberland

The above-named Vincent P. Veroneau, personally appeared before me this 7th day of December, 2015 and acknowledged the foregoing instrument to be their free act and deed in their said capacity and the free act and deed of said J.B Brown & Sons.



Notary Public/Attorney

Printed Name:

My Commission Expires:

JOSEPH D. KANE
Notary Public, Maine
My Commission Expires July 24, 2021

AMENDED AND RESTATED LAND EXCHANGE AGREEMENT

THIS AMENDED AND RESTATED LAND EXCHANGE AGREEMENT is made as of the ____ day of October, 2016, by and between J.B. BROWN & SONS, a Maine corporation with offices in Portland, Maine, and its successors and permitted assigns (“JBBrown”), and the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 (“City”); and

WHEREAS, City, JBBrown and Fore River Warehousing & Storage Co., Inc. (“FRW&S”) entered into a certain Land Exchange Agreement dated November 30, 2015 as amended by a First Amendment to Land Exchange Agreement dated January 28, 2016, a Second Amendment to Land Exchange Agreement dated February 8, 2016, a Third Amendment to Land Exchange Agreement dated March 22, 2016, and as further amended by a Fourth Amendment to Land Exchange Agreement dated August 30, 2016 (collectively, the “Agreement”) with respect to certain real property as more fully described in the Agreement; and

WHEREAS, because the Agreement has been amended on several occasions, FRW&S and its properties are no longer involved in the exchange, and the remaining parties propose to effect additional and material amendments thereto, the parties desire, for their mutual benefit and for administrative ease, to amend and restate the Agreement as provided for herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and JBBrown hereby agree to amend and restate the Agreement so that it reads in its entirety as follows:

Section 1. Introduction.

Each of the parties owns real property in Portland, Maine. The parties have agreed to exchange certain property on the terms and conditions set forth in this Agreement. Attached as Exhibit A hereto is a reduced copy of a certain survey entitled “Amended Subdivision Plan on Quarry Road, Portland, Maine” dated February 24, 2016 and recorded in the Cumberland County Registry of Deeds in Plan Book 216, Page 83 (the “Plan”), and said Plan includes Parcel 1 and Parcel 3 (as defined below) and generally depicts the properties that are to be transferred to the City.

Section 2. Property to be Exchanged.

In the exchange:

- (i) JBBrown will convey to City the parcel of land depicted on Exhibit A as the 4.295 +/- acres property - Tax Map 151A-A-23 (“Parcel 1”), which Parcel 1 has an agreed upon fair market value of \$215,000;
- (ii) JBBrown will convey to City the parcel of land depicted on Exhibit A as the 2.325 +/- Acre property - Tax Maps 154-B-045 and 151A-A-24 (“Parcel 2”), which Parcel 2 has an agreed upon fair market value of \$80,000; and

(iii) The City will convey to JBBrown that certain surface parking lot located in the City of Portland bounded by Fore, Cotton, Middle and Cross Streets and depicted in cross-hatching and outlined on a reduced copy of a "Plan of Topography" for J.B. Brown & Sons dated August 14, 1981 and attached hereto as Exhibit B ("Parcel 3"), which Parcel 3 has an agreed upon fair market value of \$1,470,000;

All of these conveyances will be on the terms and conditions set forth in this Agreement.

Section 3. Equivalent Value.

The parties agree that (i) the value of the Parcels 1 and 2 in this exchange have an aggregate value of \$295,000, and the value of Parcel 3 is \$1,470,000. At closing, JBBrown will be credited with the value of Parcel 1 and 2 (\$295,000) against the value of Parcel 3 (\$1,470,000). Accordingly, JBBrown will pay to the City at closing in lawful currency of the United States \$1,175,000 in readily available funds.

Section 4. Property Being Exchanged "As-Is".

(a) City acknowledges that it is acquiring Parcels 1 and 2 "as is" and that JBBrown has made no representations or warranties of any kind whatsoever with respect to the condition of Parcels 1 and 2 or the compliance of Parcels 1 and 2 with any laws, rules, regulations or ordinances, including (without limitation) any relating to zoning, the environment, or hazardous materials. Notwithstanding the foregoing, it shall be a condition of City's obligations to close that City is satisfied with the title and environmental condition of Parcels 1 and 2.

(b) JBBrown acknowledges that it is acquiring Parcel 3 "as is" and that City has made no representations or warranties of any kind whatsoever with respect to the condition of Parcel 3 or the compliance of Parcel 3 with any laws, rules, regulations or ordinances, including (without limitation) any relating to zoning, the environment, or hazardous materials. Notwithstanding the foregoing, it shall be a condition of JBBrown's obligations to close that JBBrown is satisfied with the title and environmental condition of Parcel 3.

Section 5. Title.

(a) Title Examinations; Objections. The parties will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on ~~November 30, 2016~~February 28, 2017 (the "Due Diligence Period") to complete their respective title examinations. Title shall be good, marketable and insurable title, free and clear of all encumbrances except (i) as set forth in Exhibit B, (ii) easements for utilities servicing the property, (iii) zoning ordinances, and (iv) real estate taxes not yet due and payable. Each party will have until the end of the Due Diligence Period to deliver to the other party any written objections to matters (other than the permitted exceptions identified herein) that materially affect marketability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the date of this Agreement may be made at any time prior to the closing.

(b) Option to Cure. In the event of a title objection, the party owning the property that is the subject of the title objection will have the option, but not the obligation, to cure the objection and will notify the other party of its election within ten (10) business days after receipt of the title objection. In the event that the party owning the property that is the subject of the objection elects to cure the title objection, that party thereupon will have thirty (30) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the party owning the property that is the subject of the objection does not elect to cure the objection, or having elected to cure the objection fails to timely do so, the other party will have the option either to terminate this Agreement (after which neither party will have any further obligation or liability to the other under this Agreement) or to waive the objection and close.

Section 6. Conditions Precedent to Closing.

The transfer of Parcel 3 by the City to JBBrown will terminate that certain Parking Lease Agreement dated August 10, 2009 (the "Parking Lease") between the City and JBB Parking Company, LLC, as assignee of Fore River Parking Company's lessee interest, and the City expressly hereby agrees that with the conveyance of Parcel 3 to JBBrown or its assignee, as contemplated hereby, that notwithstanding any alternative interpretation or construction of the language of the Parking Lease, the termination of the Parking Lease as a result of the conveyance of Parcel 3 to JBBrown shall NOT, under any circumstances, result in the reversion of the title to the City. After the termination of the Parking Lease and the conveyance of Parcel 3 to JBBrown, JBBrown hereby agrees to continue to operate the surface parking lot on Parcel 3 as a public parking lot until such time as JBBrown redevelops Parcel 3. JBBrown's obligations under this paragraph shall survive the closing on Parcel 3.

Section 7. Closing.

The closing will be on or before ~~December~~ March 31, 201~~6~~7, to be held at Verrill Dana, LLP, One Portland Square, Portland, Maine, or on such other date or at such other place as the parties may agree.

Section 8. Deeds.

(a) Deed to City. At the closing, JBBrown will deliver to City a fully-executed Quitclaim Deed conveying Parcels 1 and 2.

(b) Deed to JBBrown. At the closing, City will deliver to JBBrown or its designee a fully-executed Municipal Quitclaim Deed conveying Parcel 3.

(c) Property Descriptions. The property descriptions contained in each deed will be survey descriptions based on surveys that will more specifically describe the properties shown on Exhibit A and Exhibit B. The survey descriptions will be distributed to the parties hereto prior to the expiration of the Due Diligence Period and the parties will agree on property descriptions prior to the closing.

(d) Abutter Status. Each deed will recite that the grantee is an abutter to the grantor.

Section 9. Closing Deliverables.

(a) City Deliverables. At the closing, and as a condition to closing, City will deliver in connection with its conveyance to JBBrown:

- (i) the executed deed described in Section 8(b) above;
- (ii) an executed State of Maine Real Estate Transfer Tax Declaration;
- (iii) an executed notice pursuant to 38 M.R.S.A. § 563(6) stating that, to the best of City's knowledge, no underground storage facility for the storage of oil or petroleum exists on the property being conveyed to JBBrown;
- (iv) documentation acceptable to JBBrown indicating that this transaction has been duly authorized and that the person executing documents on behalf of City is duly authorized to do so;
- (v) an executed owner's affidavit indicating no tenants or other occupants presently in possession and indicating no debts due for labor or services performed or materials used that could give rise to mechanic's liens.

(b) JBBrown Deliverables. At the closing, and as a condition to closing, JBBrown will deliver in connection with its conveyance to City:

- (i) the executed deed described in Section 8(a) above;
- (ii) an executed State of Maine Real Estate Transfer Tax Declaration;
- (iii) an executed notice pursuant to 38 M.R.S.A. § 563(6) stating that, to the best of JBBrown's knowledge, no underground storage facility for the storage of oil or petroleum exists on the property being conveyed to City;
- (iv) documentation acceptable to City indicating that this transaction has been duly authorized and that the person executing documents on behalf of JBBrown is duly authorized to do so;
- (v) an executed certificate of non-foreign and Maine Residency status; and
- (vi) an executed owner's affidavit indicating no tenants or other occupants presently in possession and indicating no debts due for labor or services performed or materials used that could give rise to mechanic's liens.

Section 10. Closing Costs and Apportionments.

(a) Real Estate Taxes and Assessments. The parties acknowledge that the City is exempt from taxes or assessments on its property and that Parcel 3 is exempt from real estate

taxes for fiscal year 2016-17. As to Parcels 1 and 2, JBBrown shall be liable for all real estate taxes and assessments for fiscal year 2016-17. JBBrown shall pay all such taxes on or before the closing date.

(b) Real Estate Transfer Tax. Each real estate transfer tax declaration will state that the value of the properties that is the subject of the declaration is the assessed value, and JBBrown will pay its share of real estate transfer taxes. The parties acknowledge that, pursuant to 36 M.R.S.A. § 4641-C(1), City is exempt from real estate transfer taxes.

(c) Recording Fees. City will pay the recording fees for the deed from JBBrown on Parcels 1 and 2. JBBrown will pay the recording fee for the deed from City on Parcel 3.

(d) Legal Fees and Expenses. The parties each will bear the cost of their respective legal fees and expenses

(e) Payment in Full of Promissory Note. On or about January 30, 2015 JBBrown was assigned all of Fore River Company's interest as holder under that certain promissory note given by the City of Portland to Fore River Company in the original principal amount of \$56,220.25 dated January 10, 2010 ("City Note"). The City shall pay in full to JBBrown at closing the then outstanding balance of all unpaid principal, accrued interest and fees (if any) under the City Note.

Section 11. Representations and Warranties.

(a) City. City represents and warrants that:

(i) It has full power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

(ii) This Agreement has been duly authorized, executed, and delivered by City and is a legal, valid, and binding agreement of City, enforceable in accordance with its terms. The execution, delivery, and performance of this Agreement by City will not violate any judgment or order applicable to City or City's instruments of organization, governance or operation, and will not result in any material breach of, or constitute a material default under, or result in the creation of any material lien, charge, security interest, or other encumbrance upon Parcel 1 or any note, bond, indenture, mortgage, deed of trust, bank loan, or credit agreement to which City is a party or by which Parcel 3 is bound.

(iii) City has not received any written notice of any pending condemnation, violation of law, or other legal action of any kind materially and adversely affecting Parcel 3.

(iv) City has no knowledge of any pending or threatened litigation, administrative action, or governmental investigation or examination (including, but not limited to, environmental investigations, examinations, claims, and demands) concerning Parcel 3.

(v) No third party has any right to acquire all or any part of Parcel 3.

(b) JBBrown. JBBrown represents and warrants that:

(i) JBBrown has full power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

(ii) This Agreement has been duly authorized, executed, and delivered by JBBrown and is a legal, valid, and binding agreement of JBBrown, enforceable in accordance with its terms. The execution, delivery, and performance of this Agreement by JBBrown will not violate any judgment or order applicable to JBBrown or result in any material breach of or constitute a material default under any agreements to which JBBrown is a party.

(iii) JBBrown has not received any written notice of any pending condemnation, violation of law, or other legal action of any kind materially and adversely affecting Parcels 1 and 2.

(iv) JBBrown has no knowledge of any pending or threatened litigation, administrative action, or governmental investigation or examination (including, but not limited to, environmental investigations, examinations, claims, and demands) concerning Parcels 1 and 2.

(v) No third party has any right to acquire all or any part of Parcels 1 and 2.

(c) Survival. All representations and warranties contained herein are intended to remain true and correct as of the closing, are deemed to be restated at the closing, and will survive the closing.

Section 12. General Provisions.

(a) Assignment. Neither this Agreement nor any of the rights or obligations of any party pursuant to this Agreement may be assigned without the prior written consent of the other party.

(b) Brokers. Each party will indemnify and hold harmless the other from and against any claims for brokerage commissions arising out of any brokerage agreements entered into by the indemnifying party.

(c) Governing Law. This Agreement is governed by, and is to be construed and enforced in accordance with, the laws of the State of Maine (without regard to conflicts-of-laws principles that would require the application of any other law).

(d) Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the exchange of the property that is the subject of this Agreement, supersedes all prior oral or written offers, negotiations, agreements, understandings, and courses of dealing between the parties relating thereto, and is subject to no understandings, conditions or representations other than those expressly stated herein. This Agreement may be modified or amended only by means of a writing signed by the parties.

(e) Notices. Notices in connection with this Agreement must be in writing, delivered by certified mail or by Federal Express or a similar overnight delivery carrier to the addresses set forth below:

To JBBrown:

Vincent P. Veroneau
J.B. Brown & Sons
10 Free Street, Suite 100
P.O. Box 207
Portland, Maine 04112-0207

with a copy to:

David L. Galgay, Jr., Esq.
Verrill Dana LLP
One Portland Square
Portland, Maine 04112-0586

To City:

Gregory A. Mitchell
Director of Economic Development
City of Portland
389 Congress Street
Portland, Maine 04101

with a copy to:

Michael Goldman, Esq.
Corporation Counsel's Office
City of Portland
389 Congress Street
Portland, Maine 04101

Signature Page Follows

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

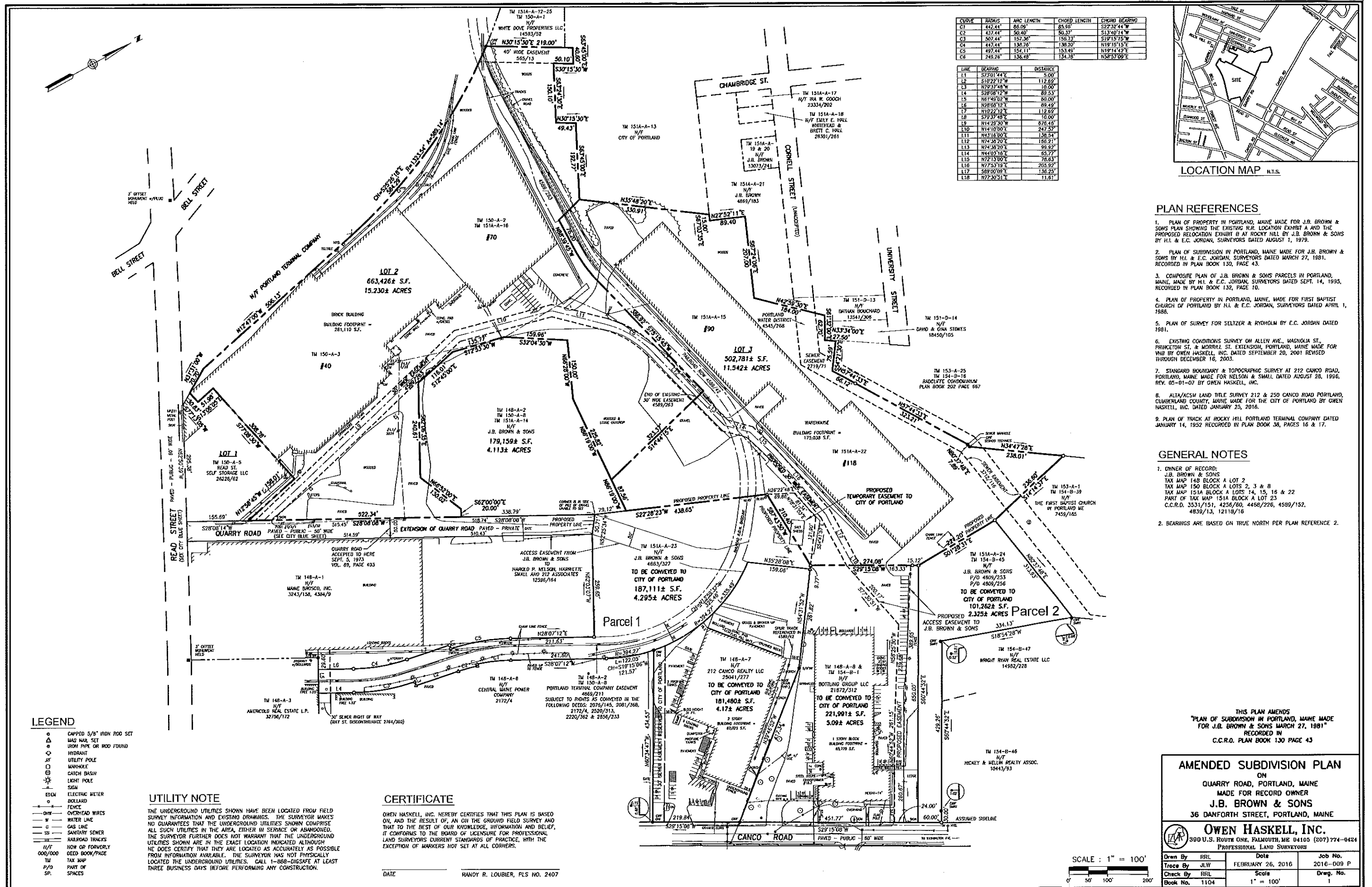
J.B. Brown & Sons

By: _____
Vincent P. Veroneau
Its President

City of Portland

By: _____
Jon P. Jennings
Its City Manager

EXHIBIT A



CURVE	BEGIN	END	CHORD BEARING	CHORD LENGTH
C1	442.44'	86.09'	S27°32'44" W	5.00'
C2	437.44'	50.40'	S13°40'14" W	10.00'
C3	507.44'	152.30'	S19°15'15" W	89.53'
C4	497.44'	136.76'	N19°15'15" E	96.92'
C5	497.44'	136.76'	N19°14'42" E	247.52'
C6	248.28'	136.48'	N58°57'09" E	11.81'

LINE	BEARING	DISTANCE
L1	S27°32'44" W	5.00'
L2	S10°22'12" W	112.69'
L3	N79°37'48" W	10.00'
L4	S28°08'12" W	89.53'
L5	N19°15'15" E	96.92'
L6	N28°08'12" E	89.49'
L7	S10°22'12" E	112.69'
L8	S79°37'48" E	10.00'
L9	N19°15'15" W	96.92'
L10	N14°10'00" W	247.52'
L11	N43°16'00" E	136.54'
L12	N74°38'20" E	166.21'
L13	N74°38'20" E	96.92'
L14	N44°03'10" E	85.27'
L15	N72°13'00" E	76.83'
L16	N77°53'19" E	205.92'
L17	S89°00'09" E	136.25'
L18	N77°30'51" E	11.81'

PLAN REFERENCES

1. PLAN OF PROPERTY IN PORTLAND, MAINE MADE FOR J.B. BROWN & SONS SHOWING THE EXISTING R.R. LOCATION EXHIBIT A AND THE PROPOSED RELOCATION EXHIBIT B AT ROCKY HILL BY J.B. BROWN & SONS BY H.L. & E.C. JORDAN, SURVEYORS DATED AUGUST 1, 1929.
2. PLAN OF SUBDIVISION IN PORTLAND, MAINE MADE FOR J.B. BROWN & SONS BY H.L. & E.C. JORDAN, SURVEYORS DATED MARCH 27, 1981, RECORDED IN PLAN BOOK 130, PAGE 43.
3. COMPOSITE PLAN OF J.B. BROWN & SONS PARCELS IN PORTLAND, MAINE MADE BY H.L. & E.C. JORDAN, SURVEYORS DATED SEPT. 14, 1935, RECORDED IN PLAN BOOK 132, PAGE 10.
4. PLAN OF PROPERTY IN PORTLAND, MAINE, MADE FOR FIRST BAPTIST CHURCH OF PORTLAND BY H.L. & E.C. JORDAN, SURVEYORS DATED APRIL 1, 1986.
5. PLAN OF SURVEY FOR SELTZER & RYDHOLM BY E.C. JORDAN DATED 1981.
6. EXISTING CONDITIONS SURVEY ON ALLEN AVE., MAGNOLIA ST., PRINCETON ST. & MORRILL ST. EXTENSION, PORTLAND, MAINE MADE FOR WH BY OWEN HASKELL, INC. DATED SEPTEMBER 20, 2001 REVISED THROUGH DECEMBER 16, 2003.
7. STANDARD BOUNDARY & TOPOGRAPHIC SURVEY AT 212 CANCO ROAD, PORTLAND, MAINE MADE FOR NELSON & SMALL DATED AUGUST 28, 1996, REV. 05-01-07 BY OWEN HASKELL, INC.
8. ALTA/ACSM LAND TITLE SURVEY 212 & 250 CANCO ROAD PORTLAND, CUMBERLAND COUNTY, MAINE MADE FOR THE CITY OF PORTLAND BY OWEN HASKELL, INC. DATED JANUARY 25, 2016.
9. PLAN OF TRACK AT ROCKY HILL PORTLAND TERMINAL COMPANY DATED JANUARY 14, 1952 RECORDED IN PLAN BOOK 38, PAGES 16 & 17.

GENERAL NOTES

1. OWNER OF RECORD:
J.B. BROWN & SONS
TAX MAP 150 BLOCK A LOTS 2, 3 & 8
TAX MAP 151A BLOCK A LOTS 14, 15, 16 & 22
PART OF TAX MAP 151A BLOCK A LOT 23
C.C.R.D. 3531/151, 4256/60, 4488/226, 4589/152, 4839/13, 12118/16
2. BEARINGS ARE BASED ON TRUE NORTH PER PLAN REFERENCE 2.

LEGEND

- CHIPPED 5/8" IRON ROD SET
- WATER LINE
- HYDRANT
- UTILITY POLE
- MANHOLE
- CATCH BASIN
- LIGHT POLE
- SEW
- ELECTRIC METER
- BOLLARD
- FENCE
- OVERHEAD WIRES
- WATER LINE
- GAS LINE
- SANITARY SEWER
- RAILROAD TRACKS
- HOW OR FORMERLY
- DEED BOOK/PAGE
- TAX MAP
- P/D
- SP.

UTILITY NOTE

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES. CALL 1-888-DIGSAFE AT LEAST THREE BUSINESS DAYS BEFORE PERFORMING ANY CONSTRUCTION.

CERTIFICATE

OWEN HASKELL, INC. HEREBY CERTIFIES THAT THIS PLAN IS BASED ON, AND THE RESULT OF, AN ON THE GROUND FIELD SURVEY AND THAT TO THE BEST OF OUR KNOWLEDGE, INFORMATION AND BELIEF, IT CONFORMS TO THE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS CURRENT STANDARDS OF PRACTICE, WITH THE EXCEPTION OF MARKERS NOT SET AT ALL CORNERS.

DATE _____ RANOW R. LOUBIER, PLS NO. 2407

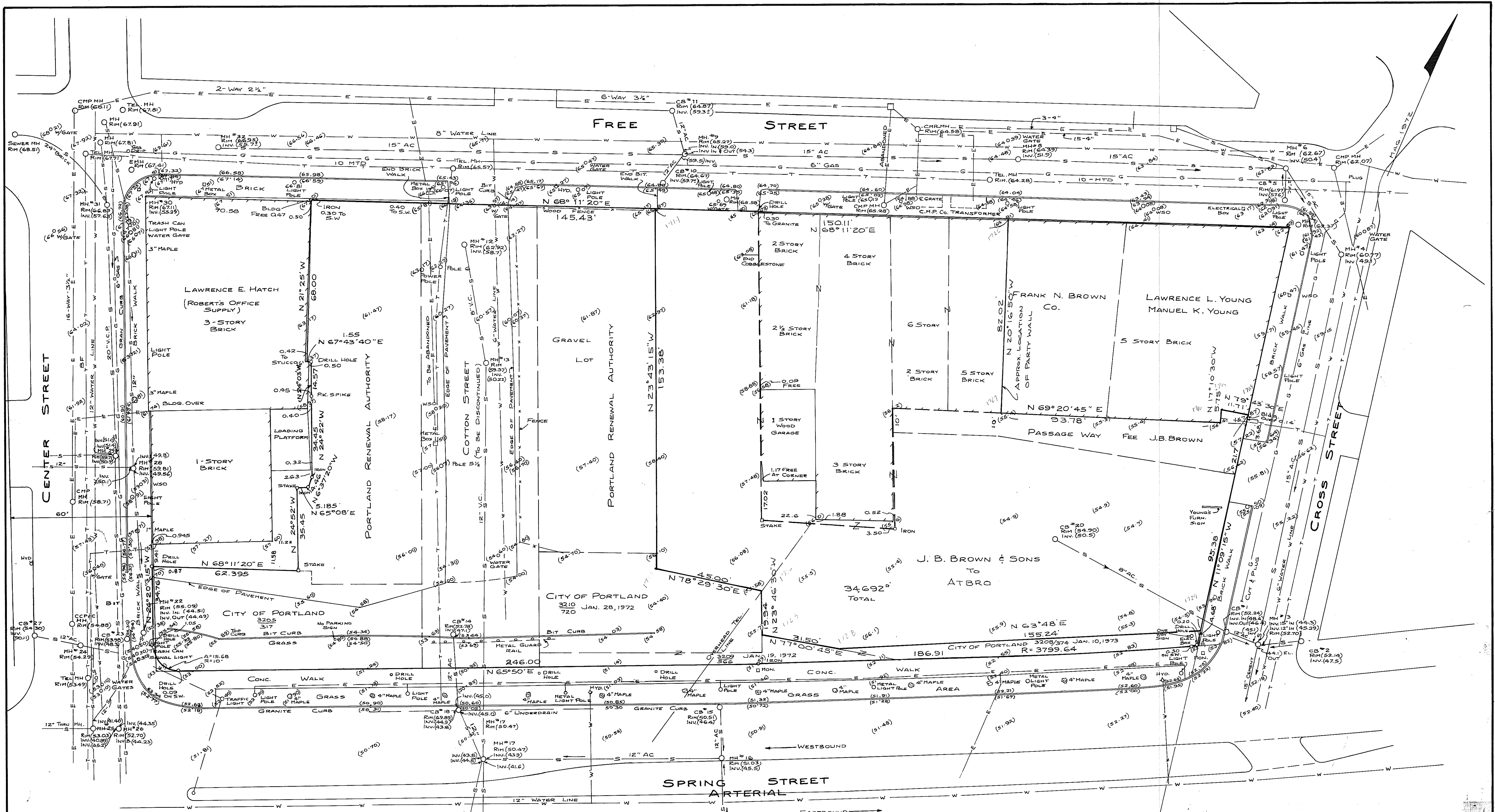
THIS PLAN AMENDS
"PLAN OF SUBDIVISION IN PORTLAND, MAINE MADE
FOR J.B. BROWN & SONS MARCH 27, 1981"
RECORDED IN
C.C.R.D. PLAN BOOK 130 PAGE 43

AMENDED SUBDIVISION PLAN
ON
QUARRY ROAD, PORTLAND, MAINE
MADE FOR RECORD OWNER
J.B. BROWN & SONS
36 DANFORTH STREET, PORTLAND, MAINE

OWEN HASKELL, INC.
390 U.S. ROUTE ONE, FALMOUTH, ME 04105 (207) 774-0424
PROFESSIONAL LAND SURVEYORS

Drawn By	RRL	Date	FEBRUARY 26, 2016	Job No.	2016-009 P
Check By	JLW	Scale	1" = 100'	Drawn No.	1
Book No.	1104				

SCALE: 1" = 100'



Registered Land
Surveyor No. 356
John P. M. Gough

Aug. 14, 1981		Update of Property Lines To Atbro	
DATE		REVISION	
PLAN OF TOPOGRAPHY			
IN			
PORTLAND, MAINE			
MADE FOR			
J. B. BROWN & SONS			
H. I. & E. C. JORDAN - SURVEYORS			
Division of EDWARD C. JORDAN CO., INC.		DATE Sept. 29, 1976	
ENGINEERS & PLANNERS		PORTLAND, OREGON, PRESQUE ISLE	
SURVEY	PLOT	TRACED	FIELD BOOK
PD	PD	DUG	738/6
JHCg	JHCg		696/132
		OTHER PLAN NOS.	REC. NO.
		98	98
			PLAN FILE NO.
			L-98



Executive Department
Jon P. Jennings, City Manager

October __, 2016

Vincent Veroneau, President
J.B. Brown & Sons
10 Free Street
Portland Maine 04101

Vincent Veroneau, President
Fore River Warehousing & Storage Co., Inc.
10 Free Street
Portland Maine 04101

Andrew Gilman, Manager
Quarry Warehouse, LLC
c/o Hyde Park Holdings, LLC
570 Lexington Avenue, 44th Floor
New York, NY 04101

RE: Access and Temporary Storage Easement Agreements

Dear Vin and Andrew:

This letter agreement is by and between the City of Portland ("City"), on the one hand, and J.B. Brown & Sons, a Maine corporation, and Quarry Warehouse, LLC, a Maine limited liability company as successor owner of the applicable real estate to Fore River Warehousing & Storage Co., Inc. (J.B. Brown & Sons and Quarry Warehouse, LLC collectively herein referred to as "JBBrown"), on the other, in reference to (i) an access easement over City property benefitting JBBrown, and (ii) a temporary storage easement on property owned by Quarry Warehouse, LLC benefitting the City.

The Temporary Storage Easement Agreement and the Access Easement Agreement were each dated March 22, 2016, and recorded in the Cumberland County Registry of Deeds in Book 32991, pages 25 and 31, respectively. Each of the easement agreements contains a unilateral termination provision allowing the owner of the burdened property the right to terminate the respective easement agreement if the City and J.B. Brown & Sons do not close the transfer of certain properties by

September 30, 2016, which deadline was extended by letter agreement dated September 30, 2016.

This letter memorializes our recent discussions and agreements on or about October 5, 2016 as follows:

1. J.B. Brown & Sons and Quarry Warehouse, LLC will execute a termination of the Access Easement in a recordable form as requested by City; and
2. The City and Quarry Warehouse, LLC shall execute a modified Temporary Storage Easement Agreement with a termination date of December 31, 2018 in a recordable form as agreed to by Quarry Warehouse, LLC and the City.

The parties shall execute and record the above-described documents at the closing on certain real property transfers contemplated by that certain Amended and Restated Land Exchange Agreement between the City and J.B. Brown & Sons dated _____, 2016. Please sign and date below to indicate your agreement with the terms hereinabove described. I appreciate your continued cooperation in this matter.

Sincerely,

Jon P. Jennings. City Manager

SEEN AND AGREED TO BY:

Vincent P. Veroneau, President,
J.B. Brown & Sons

Date: _____

Vincent P. Veroneau, President
Fore River Warehousing & Storage Co., Inc.

Date: _____

Andrew Gilman, Manager
Quarry Warehouse, LLC

Date: _____

389 Congress Street, Room 211, Portland ME 04101
www.portlandmaine.gov / tel. 207.874.8480 / tty. 207.874.8936 / fax. 207.874.8497

9829777_1_____



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Chair and Members of the Economic Development Committee
FROM: Bill Needelman, Waterfront Coordinator
Cc: Greg Mitchell, Economic Development Director
DATE: March 3, 2017
SUBJECT: Eastern Waterfront – Property Exchange

Introduction:

As part of the ongoing negotiations between the City and CBP2 in the Eastern Waterfront, the Economic Development Committee is asked to review and recommend an exchange of properties required to allow development of private roads and rights of way as envisioned in the CBP2 master plan for redevelopment of the Portland Company properties.

Background:

The exchange of lands involves CBP2, the State of Maine Department of Transportation (MDOT,) and the City of Portland. The CBP2 approved master plan shows southerly shift in location of an existing MDOT rail right-of-way to accommodate the new private roadway extending from Thames Street onto the Portland Company complex. The shift in right-of-way encroaches onto the northerly corner of the City's "Amethyst Lot" resulting in a 2,537 sq ft transfer of land from the City of Portland to MDOT. CBP2 compensates the City for this loss with a grant of an equivalent area of land located along the water. Taken together with four other discrete "slivers" of property transfers proposed along the MDOT right-of-way, the total land area owned by the City would remain consistent.

Supporting Material:

Attached to this memo, please find the following:

1. An orientation graphic on an aerial photo showing the relative location of previous land negotiations between CBP2 and the City and the proposed property exchange under consideration. Given that five separate exchanges, in addition to previous land transfers negotiated with CBP2, this image is provided to place this transaction within

the context of the Thames Street right-of-way extension and the ongoing Amethyst Lot planning process.

2. 58 Fore Street, MDOT R.O.W. Figures 1 and 2. Woodard and Curran, on behalf of CBP2, has produced a graphic describing existing conditions and post transfer results as an exhibit to the three party exchange agreement.
3. A three party exchange agreement between CBP2, MDOT, and the City of Portland. This document was drafted by CBP2's attorneys and has been edited by MDOT and the City's Corporation Counsel.

Property Transfer Summary:

Economic Development staff introduced the adjustment of the MDOT rail right-of-way in April of 2016 to the EDC as a component of integrated project planning for the Eastern Waterfront.

As planned, the CBP2 master plan shows an extension of public and private roadway right-of-way from the current terminus of Thames Street onto the Portland Company property. The extended roadway, consistent with the current Thames Street ROW, is located northerly of and adjacent to the MDOT rail right-of-way as occupied by the Maine Narrow Gauge Railroad and the Eastern Promenade Trail.

The planned roadway transitions from a public right-of-way to private at the location of the recent transfer of property from the City to CBP2 at the northerly end of the so-called "Thames Street Lot." As the private right-of-way extends northeast to serve the redevelopment of the Portland Company, the CBP2 master plan shows the road curving to the south toward the Fore River. The southerly shift in the private roadway requires a corresponding shift of the MDOT ROW onto a thin triangle of City land at the Amethyst Lot (shown in pink on Attachment 1). The area of the encroachment is currently occupied by the Eastern Prom Trail is proposed to be transferred from the City to MDOT.

CBP2 proposes to compensate the City for this loss of land by extending the Amethyst Lot to the northeast by an equivalently sized (2,551 sf) trapezoid of Portland Company land located along and 5 feet northerly of the Fore River seawall. The 5-foot seawall setback keeps the seawall under CBP2 ownership. CBP2 would retain maintenance responsibilities for the seawall, as well as submerged lands rights extending into the Fore River. A significant portion of the compensating trapezoid is subject to a 30-foot wide Portland Water District sewer easement which extends easterly through the Amethyst Lot onto and along the Portland Company's water frontage.

The proposed shifts in the MDOT right-of-way also result in minor adjustments of property located to the west. These adjustments create slivers of land of a few hundred square feet apiece and result in no net loss to the City.

With the use of land (both from and to the City) anticipated staying in trail and/or open space, the parcels in play are considered equal in value. CBP2 has included Portland Trails in their planning through their master planning process.

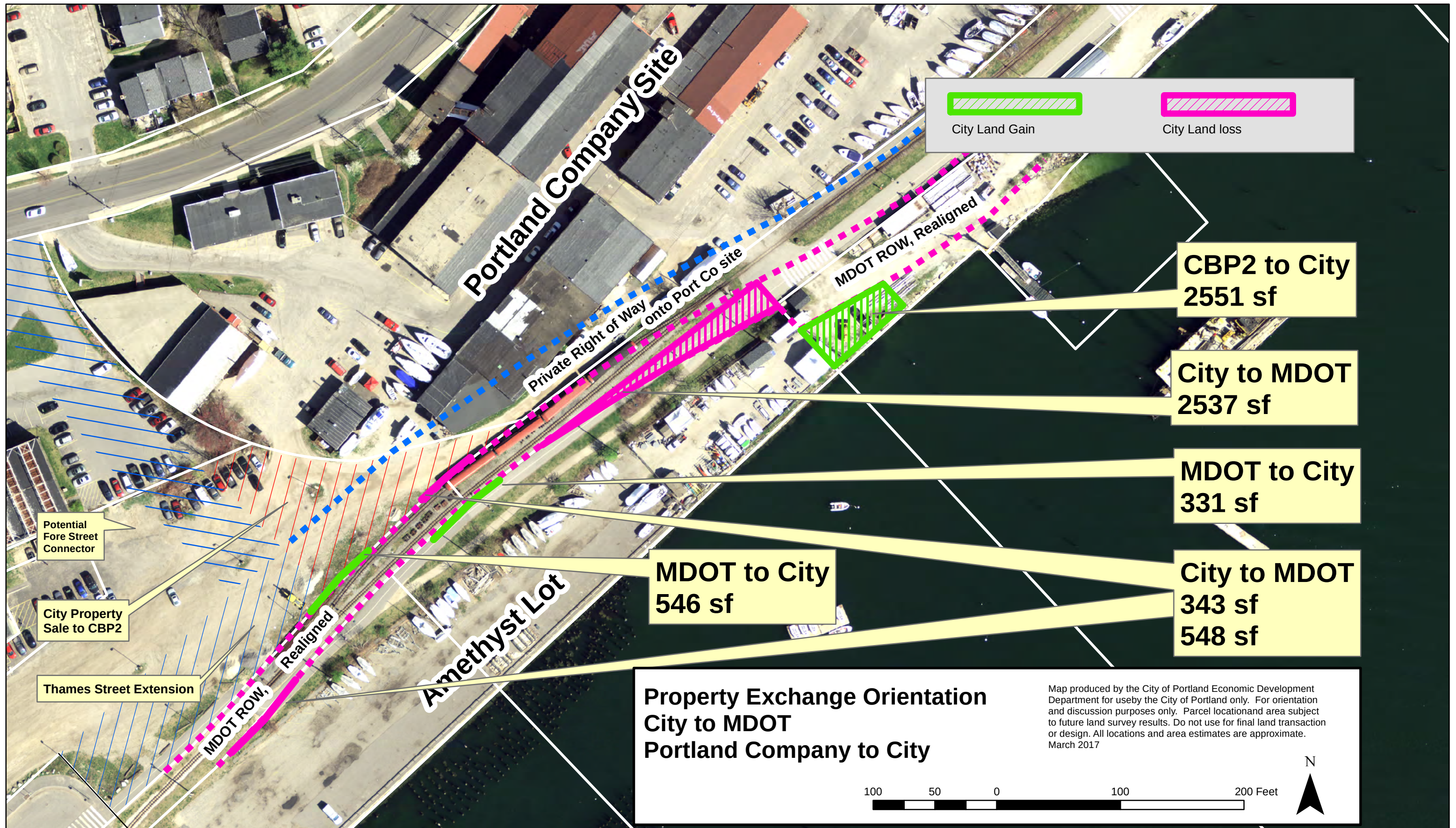
Finally, the geometry of the new right-of-way alignment and the compensating trapezoid has been incorporated into planning for reuse of the Amethyst Lot. Final designs and use of these properties will require review and approval by the full City Council.

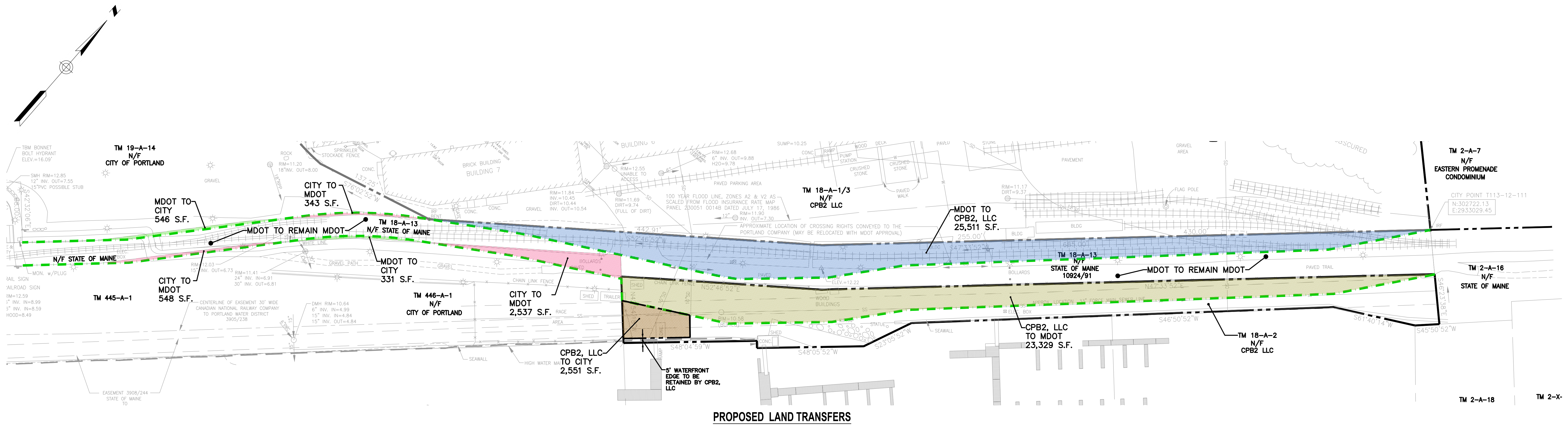
Requested Action:

The Economic Development Committee is asked to consider recommending the above-described property exchange to the full City Council. The Economic Development staff recommends the Exchange Agreement, in substantially the form as attached, in support of redevelopment of the Portland Company Complex as consistent with the policies of the Eastern Waterfront Master Plan.

Attachments:

1. Orientation Graphic
2. 58 Fore Street, MDOT ROW Figures 1 and 2
3. Exchange Agreement





PROPOSED LAND TRANSFERS

CITY

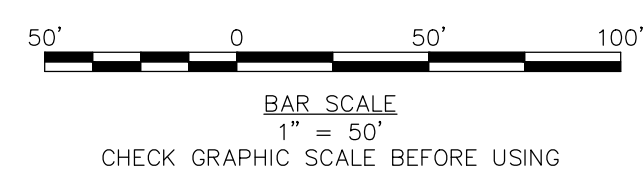
EXISTING CITY LAND TRANSFERRED TO:		NEW CITY LAND TRANSFERRED FROM:	
MDOT	548 S.F.	MDOT	546 S.F.
	343 S.F.		331 S.F.
	2,537 S.F.		
CPB2	0 S.F.	CPB2	2,551 S.F.
	TOTAL: 3,428 S.F.		TOTAL: 3,428 S.F.

MDOT

EXISTING MDOT LAND TRANSFERRED TO:		NEW MDOT LAND TRANSFERRED FROM:	
CITY	546 S.F.	CITY	548 S.F.
	331 S.F.		343 S.F.
			2,537 S.F.
CPB2	25,511 S.F.	CPB2	23,329 S.F.
	TOTAL: 26,388 S.F.		TOTAL: 26,757 S.F.

CPB2

EXISTING CPB2 LAND TRANSFERRED TO:		NEW CPB2 LAND TRANSFERRED FROM:	
CITY	2,551 S.F.	CITY	0 S.F.
MDOT	23,329 S.F.	MDOT	25,511 S.F.
	TOTAL: 25,880 S.F.		TOTAL: 25,511 S.F.



PLAN REFERENCE
SOURCE OF EXISTING CONDITIONS: PLAN ENTITLED "BOUNDARY & TOPOGRAPHIC SURVEY AT 58 FORE STREET, PORTLAND, ME," PREPARED BY OWEN HASKELL, INC., FALMOUTH, ME 04105, DATED AUGUST 19, 2016 (REV. DATE 10/3/2016).
HORIZONTAL DATUM: NAD83, MAINE STATE PLAIN, WEST ZONE, US FOOT
VERTICAL DATUM: CITY OF PORTLAND DATUM

58 FORE STREET
MDOT R.O.W. FIGURE - 2

EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT (this "Agreement") made this _____ day of _____, 2017 by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine (hereinafter referred to as "CITY"), CPB2 LLC, a Delaware limited liability company, having a mailing address of c/o CPB2 Management LLC, P.O. Box 7987, Portland, Maine 04112 (hereinafter referred to as "CPB2"), and STATE OF MAINE DEPARTMENT OF TRANSPORTATION, an agency of the State of Maine, having a mailing address of 16 State House Station, Augusta, Maine 04333-0016 (hereinafter referred to as "DOT"). For the purposes of this Agreement, the CITY, CPB2 and DOT are sometimes hereinafter collectively referred to as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, CITY is the owner of that certain real property located along the eastern waterfront that is designated on the official tax map for the City of Portland as Block 448, Lot A-1 (the "CITY Property"); and

WHEREAS, CPB2 is the owner of that certain real property known as 58 Fore Street in the City of Portland, County of Cumberland and State of Maine, which is more particularly described in deeds dated July 19, 2013 and April 1, 2014 and recorded in the Cumberland County Registry of Deeds in Book 30879, Page 75 and Book 31425, Page 267 respectively (the "CPB2 Property"); and

WHEREAS, DOT is the owner of that certain right of way along the eastern waterfront that is designated on the official tax map for the City of Portland as Block 18, Lot A-13 (the "DOT Right of Way"); and

WHEREAS, in connection with the construction of the Thames Street extension and the development of the CPB2 Property, CITY and CPB2 have proposed the relocation of a portion of the DOT Right of Way in the manner shown on the Land Transfer Plan prepared by Woodard & Curran dated December 1, 2016 and revised January 10, 2017, a copy of which is attached hereto as Exhibit A (the "Plan"); and

WHEREAS, DOT has approved the relocation of the DOT Right of Way, as shown on the Plan; and

WHEREAS, in order to accomplish such relocation, the parties have agreed to certain property transfers, as identified herein; and

WHEREAS, the parties hereto desire to memorialize their agreements;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **EXCHANGE.** In accordance with the terms and conditions set forth in this Agreement, (i) CITY agrees to transfer to DOT the property designated on the Plan as “City to MDOT” (the “CITY/DOT Exchange Property”) by municipal quitclaim deed, (ii) DOT agrees to transfer to CITY the property designated on the Plan as “DOT to City” (the “DOT/CITY Exchange Property”) by deed of vacation, (iii) DOT agrees to transfer to CPB2 the property designated on the Plan as “DOT to CPB2” (the “DOT/CPB2 Exchange Property”) by deed, of vacation (iv) CPB2 agrees to transfer to DOT the property designated on the Plan as “CPB2 to DOT” (the “CPB2/DOT Exchange Property”) by quitclaim deed, and (v) CPB2 agrees to transfer to CITY the property designated on the Plan as “CPB2 to City” (the “CPB2/CITY Exchange Property”) by quitclaim deed, together with an easement in a form satisfactory to the CITY and CPB2 allowing public access over the entire five foot strip of land separating the CPB2/CITY Exchange Property from the water(said properties being hereinafter collectively referred to as the “Exchange Properties” and individually referred to as an “Exchange Property”).
2. **CONSIDERATION.** The parties agree that the properties being conveyed are of a comparable size and value and that there is no additional consideration being paid or received by any party in connection with the exchanges.
3. **SURVEY.** CPB2 shall, at its sole expense, cause an ALTA survey to be prepared that will more specifically describe, by metes and bounds, the Exchange Properties. CPB2 shall provide such survey and associated property descriptions to the CITY and to DOT on or before the expiration of the Due Diligence Period (as defined in Paragraph 4.a) for their review and approval.
4. **TITLE.**
 - a. **Due Diligence Period.** Each Party will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is one hundred eighty (180) days after the date of this Agreement (the “Due Diligence Period”) to complete its title and survey examinations.
 - b. **Title and Survey Objections.** Each Party will have thirty (30) days from the expiration of the Due Diligence Period (the “Due Diligence Response Period”) to deliver to the other Parties any written objections to title or survey matters (other than the permitted exceptions identified herein), including, but not limited to, those affecting marketability or use. Objections not made prior to the end of the Due Diligence Response Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the date of this Agreement may be made at any time prior to the closing.
 - c. **Option to Cure.** In the event of (i) an objection to the title or the survey pursuant to Paragraph 4.b or (ii) an objection to the results of the Inspection (as defined in Paragraph 5.a) pursuant to Paragraph 5.f, the Party who owns the property to which such objection relates (the “Notice Recipient”) will have the option, but not the obligation, to cure the objection and will notify the

Party who gave the objection notice (the “Notice Sender”) of its election within ten (10) business days after receipt of the objection. In the event that the Notice Recipient elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the Parties may agree, to cure the objection to the satisfaction of the Notice Sender. In the event that the Notice Recipient does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to the satisfaction of the Notice Sender, then the Notice Sender will have the option to (1) terminate this Agreement (after which the Parties will not have any further obligation or liability to the other Parties under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so). In the event the Notice Sender elects to cure such objection, but the Notice Sender is unable to cure such objection to its reasonable satisfaction within said 60-day period, then the Notice Sender will have the option to (1) terminate this Agreement (after which the Parties will not have any further obligation or liability to the other under this Agreement), or (2) waive the objection and close.

- d. CPB2 shall convey its property at the closing in fee simple by a quitclaim deed. The City shall convey its property at the closing in fee simple by municipal quitclaim deed. Title shall be free and clear of all encumbrances, except (i) easements for utilities servicing the property, (ii) zoning ordinances, and (iii) real estate taxes not yet due and payable.
- e. DOT shall convey its property at the closing as a full release of whatever property interest(s) DOT holds by a deed of vacation. Title shall be free and clear of all encumbrances, except (i) easements for utilities servicing the property, and (ii) zoning ordinances.

5. INSPECTIONS.

- a. During the Due Diligence Period and the Due Diligence Response Period, each Party and their respective employees, consultants, contractors and agents shall have the right, at such Party’s expense (except as otherwise set forth herein), to enter on the Exchange Property being conveyed to them, at reasonable times, in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as such Party determines, in its sole discretion, to be required to determine the suitability of such Exchange Property for such Party’s intended use (collectively, the “Inspections”). The Parties acknowledge that such Inspections may include the digging of test pits, which each Party hereby approves.
- b. To the extent permitted by law, the Party performing the Inspections agrees to defend, indemnify and hold harmless the Party on whose property the Inspections are being performed against any mechanics’ liens that may

arise from the activities of said Party and its employees, consultants, contractors and agents on the property.

- c. Each Party shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and the Party performing the Inspections hereby releases the Party on whose property the Inspections are being performed from, and agrees to indemnify, defend, and hold said Party harmless, to the extent permitted by law, against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by said Party on account of any injury to person or damage to property arising out of the exercise by the other Party of its rights hereunder, except to the extent that such Damages result from the act or omission of the Party on whose property the Inspections are being performed. Nothing in this Agreement shall waive any defense, immunity or limitation of liability that may be available to CITY and/or DOT under the Maine Tort Claims Act (14 M.R.S. § 8101 et seq.) or any other privileges or immunities provided by law. Any other provision of this Agreement to the contrary notwithstanding, this provision shall survive any termination or expiration of this Agreement.
- d. The Party (other than DOT and the CITY) performing the Inspections shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance and general commercial or public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage and also Workers' Compensation Insurance coverage to the extent required by law. DOT and the City are self-insured.
- e. In the event that the Party performing the Inspections does not acquire the property in question for any reason or for no reason, said Party agrees to either return the property in question as nearly as possible to its original condition after conducting the Inspections, or, at the option of the Party who owns the property in question, reimburse the Party owning the property for any physical damage caused to the property in question in connection with the Inspections; provided, however, the Parties hereby acknowledge and agree that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the property caused by such inspections, studies, tests, exams, and assessments, and that the Party performing such Inspections shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.
- f. The parties hereto acknowledge and agree that it is a condition to each Party's obligations under this Agreement that the results of the Inspections be acceptable to the Party performing such Inspections in its sole discretion. If the results of such due diligence are not acceptable to the Party performing such Inspections in its sole discretion, then such Party

shall notify the Party who owns the property to which such results relate, and the provisions of Paragraph 4.c shall apply. If such Party ultimately exercises its right to terminate this Agreement, then the Parties shall not have any further obligations or liabilities under this Agreement to each other except as expressly set forth in this Agreement.

6. TAXES, PRORATIONS AND RECORDING FEES.

- a. CPB2 shall be liable for all real estate taxes attributable to the CPB2/DOT Exchange Property and the CPB2/CITY Exchange Property through the end of the fiscal year in which the closing occurs. CPB2 shall be liable for all real estate taxes attributable to the DOT/CPB2 Exchange Property beginning as of the start of the fiscal year following the closing and continuing thereafter. Because the DOT/CPB2 Exchange Property, the DOT/CITY Exchange Property, and the CITY/DOT Exchange Property are currently owned by entities that are exempt from real estate taxes, no taxes have been assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated for those properties at the closing.
- b. The DOT/CPB2 Exchange Property, the CPB2/DOT Exchange Property, and the CPB2/CITY Exchange Property are the only Exchange Properties subject to Maine real estate transfer tax at closing, and any transfer tax due shall be paid for by CPB2 in accordance with 36 M.R.S. § 4641-A. CITY and DOT are exempt from paying the transfer tax pursuant to 36 M.R.S. § 4641-C.
- c. The recording fees for the various deeds shall be paid for by CPB2.

7. DEFAULT AND REMEDIES. In the event that any Party defaults under this Agreement, any of the non-defaulting Parties shall have the right (i) to the extent permitted by law, to pursue specific performance or (ii) in lieu of specific performance, as its sole remedy to terminate this Agreement (after which the Parties will not have any further obligation or liability to the other under this Agreement).

8. RISK OF LOSS. The risk of loss or damage to any of the Exchange Properties by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the owner of the Exchange Property in question. The Exchange Properties are to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event any Party is not able to deliver their Exchange Property as stated, any of the other Parties may terminate this Agreement, and the Parties shall not have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

9. PROPERTY SOLD “AS IS, WHERE IS.” Except as otherwise set forth in this Agreement, each Party acknowledges (i) that, by the end of the Due Diligence Response Period, it will have had an opportunity to inspect the Exchange Property it is receiving, or to hire professionals to do so; (ii) that such Exchange Property will be sold “as is, where is” and “with all faults;” and (iii) that the current owner of such

Exchange Property, and its agents, shall not be deemed to have made any representations or warranties with respect to such Exchange Property, including, without limitation, the accuracy of any statement relating to boundaries or acreage, or relating to any other matters contained in any description of such Exchange Property, or relating to the fitness of such Exchange Property for a particular purpose, or relating to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of such Exchange Property. Acceptance by a Party of the deed at closing to the Exchange Property it is receiving shall be deemed to be full performance and discharge by the Party conveying such Exchange Property of every agreement and obligation contained herein.

10. CLOSING. Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of CPB2's counsel at a time agreeable to the Parties on or before the earlier of that date that is 30 days after the date that the CITY receives the last of the Thames Street Extension Approvals, as that term is defined below, or January 31, 2018, so long as the Due Diligence Response Period has expired. Provided, however, that if the CITY has not received the last of the Thames Street Extension Approvals by January 1, 2018, the closing date, may, upon the mutual agreement of the Parties, be extended to a later date agreed to by the Parties. At the closing:

- a. each Party shall execute, acknowledge and deliver the deed required under this Agreement to convey title to the Exchange Property in question, free and clear of all encumbrances other than those approved by the recipient of such Exchange Property in its sole discretion;
- b. each Party shall execute, acknowledge and deliver such affidavits and indemnifications, to the extent permitted by law, in form and substance reasonably satisfactory to the applicable Parties, regarding mechanics' liens, materialmen's liens and parties in possession sufficient to eliminate any title insurance exceptions for these matters;
- c. each Party shall deliver to the others such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement; and
- d. DOT will grant to CPB2 an easement in accordance with the provisions of Paragraph 1(b) of an associated MOU, as such MOU is defined in Paragraph 11 below.

For the purposes of this Agreement, the term "Thames Street Extension Approvals" shall mean CITY'S receipt of all necessary permits and regulatory approvals to construct the Thames Street extension and related utilities and the appropriation by the Portland City Council of the funds necessary to do so.

11. CONTINGENCIES. DOT and CPB2 entered into a certain Memorandum of Understanding dated March 31, 2015 relating to the portion DOT Right of Way that

bisects the CPB2 Property, which memorandum contemplated the exchange of property between the parties thereto (the “MOU”). DOT and CPB2 acknowledge and agree that DOT’s obligations under this Agreement are contingent upon (i) the submission to DOT of the geological tests of the soils required by Paragraph 3 of the MOU and, if applicable, the performance of the work described in Paragraphs 3.b of the MOU, (ii) the consent of the CITY to the relocation of the Trail Corridor (as defined in the MOU), as contemplated by Paragraph 7 of the MOU, and (iii) if applicable, CPB2 obtaining the consent of the Trust for the Preservation of Maine Industrial History and Technology (the “Narrow Gauge”) to the relocation of the narrow gauge railroad track or to the terms of a lease agreement between the Narrow Gauge and CPB2 to replace the terms of the Narrow Gauge’s existing lease with DOT, as contemplated by Paragraphs 4 and 7 of the MOU.

12. ENVIRONMENTAL ASSESSMENT.

As outlined in the MOU, if it is determined by CPB2 that a Phase I Environmental Site Assessment of the existing Rail Corridor, as such is defined in the MOU, is required in connection with the exchange contemplated herein, CPB2 agrees to obtain, at its sole cost and expense, such Phase I Assessment and to submit the resulting report to DOT for review.

- a. If, as a result of the findings of the Phase I Assessment, it is determined that a Phase II Environmental Site Assessment is required, CPB2 agrees to obtain, at its sole cost and expense, such Phase II Assessment and to submit the resulting report and all data and associated documentation to DOT for review.
- b. If it is determined that environmental remediation is required in connection with the existing Rail Corridor, the Parties acknowledge that DOT shall not be required to perform such remediation unless CPB2 agrees to pay for all associated costs or DOT is otherwise reimbursed for such costs.

13. RELATED WORK.

- a. If CPB2 elects to relocate the narrow gauge railroad track, as contemplated by Paragraph 4.a of the MOU, and if the Narrow Gauge has consented to such relocation, then CPB2 agrees to relocate the same at no expense to DOT or to the Narrow Gauge. DOT acknowledges that such work will be done in connection with the redevelopment of the portion of the DOT/CPB2 Exchange Property on which the narrow gauge railroad tracks currently exist and will likely occur after the closing.
- b. CPB2 agrees further to relocate the Trail Corridor (as defined in the MOU) at no expense to DOT or to CITY. DOT and CITY acknowledge that such work will be done in connection with the redevelopment of the marina or the redevelopment of the portion of the CPB2 Property that runs along the shoreline, and will likely occur after the closing. If the new location of the Trail Corridor, as shown on an approved site plan, is partly on the CPB2 Property, then CPB2 agrees to grant to

CITY an easement over such portion on substantially the same terms and conditions as set forth in the easement granted by DOT to CITY.

- c. In connection with the relocation of the narrow gauge railroad tracks and/or the relocation of the Trail Corridor, DOT agrees to grant to CPB2 a temporary, construction right over the relocated DOT Right of Way to the extent reasonably required to relocate the narrow gauge railroad tracks and/or the Trail Corridor. If requested by CPB2, CITY also agrees to grant to CPB2 a temporary, construction right in form and substance reasonably satisfactory to the CITY, over the relocated Trail Corridor to the extent reasonably required to relocate the narrow gauge railroad tracks and/or the Trail Corridor.
- d. DOT acknowledges that the relocation of the narrow gauge railroad tracks and/or the Trail Corridor may require site plan approval or other governmental approval, and DOT agrees to reasonably cooperate with CPB2 in connection with such approvals and to execute and deliver any documents reasonably requested by CPB2 or any governmental entity, department or agency in connection therewith, provided such documents are in form and substance reasonably satisfactory to DOT and do not require DOT to undertake any construction work in connection with such relocation or relocations.
- e. The provisions of this Paragraph 13 shall survive the closing.

14. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the Parties and supersedes any prior agreement or understanding, written or oral, between the Parties with respect to the acquisition or exchange of the Exchange Properties hereunder. This Agreement cannot be amended except by written instrument executed by the CITY, CPB2 and DOT.

15. NON-WAIVER. No waiver of any breach of any one or more of the conditions of this Agreement by a Party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

16. HEADINGS AND CAPTIONS. The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

17. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, administrators, successors and assigns.

18. TIME IS OF THE ESSENCE. The CITY, CPB2 and DOT each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

19. GOVERNING LAW. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. The Parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising

from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

20. NOTICE. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE CITY: City of Portland
ATTN: CITY MANAGER
389 Congress Street
Portland, ME 04101

With a copy to: The Office of the Corporation Counsel at the same address.

FOR CPB2: CPB2 LLC
c/o CPB2 Management LLC
P.O. Box 7987
Portland, Maine 04112

With a copy to: Bernstein, Shur, Sawyer & Nelson, P.A.
Attention: Mary E. Costigan, Esq.
100 Middle Street, West Tower
Portland, Maine 04101

FOR DOT: STATE OF MAINE DEPARTMENT OF
TRANSPORTATION
Attention: Toni Kemmerle, Esq.
16 State House Station
Augusta, Maine 04333-0016

21. SIGNATURES; MULTIPLE COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

22. BROKERS. The CITY, CPB2 and DOT each represent and warrant that they have not dealt with a real estate broker in connection with this transaction. CPB2 agrees to indemnify and hold harmless the CITY and DOT from any claims made by any broker should CPB2's representation in this paragraph be false. To the extent permitted by law,

the CITY and DOT agree to indemnify and hold harmless CPB2 from any claims made by any broker should the representation by the CITY or DOT in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive the closing.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals on the day and year first written above.

CITY OF PORTLAND

WITNESS

By: _____
Jon P. Jennings
Its: City Manager

CPB2 LLC

By: CPB2 Management LLC, Manager

WITNESS

By: _____
Name: _____
Its: _____

**MAINE DEPARTMENT OF
TRANSPORTATION**

WITNESS

By: _____
David Bernhardt
Its Commissioner

Approved as to Form:

Corporation Counsel's Office



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Chair and Members of the Economic Development Committee

FROM: Greg Mitchell, Economic Development Director

DATE: March 1, 2017

SUBJECT: Review and Vote to Authorize Bid Process to Sell Small Strip of Franklin Street Right-of-Way to an Abutter

I. One Sentence Summary

Due to interest from a representative of an abutting property, City staff is recommending to the EDC that it vote to authorize the bid process to negotiate the sale of an unneeded small strip of Franklin Street Right-of-Way, currently utilized as a driveway access to private property with deed restrictions, to an abutter only.

II. Background

An abutter to the strip of land, designated by the Assessor as 28-X-1, with approximately 1,800 sq. ft., is interested in acquiring this property to support a redevelopment project (see attached map). This property was acquired by the City to support the Franklin Street Arterial Project. When the City sold property in this area, it retained this strip as a 12-foot wide way for the owner of 28-C-18 to access an accepted City Street; otherwise 28-C-18 would be landlocked as access was not allowed onto the Franklin Street Arterial. The Deed stipulates for the 12-foot wide way that it be: "... for the purposes of travel by vehicles and pedestrians and for access to land herein conveyed to the Grantee, provided that no structures or buildings of any kind or nature shall be erected or maintained on said strip of land and no vehicles shall be parked thereon."

A City-wide Department survey was conducted, including the Mayor, District Councilor, and At-Large Councilors, to determine if this was excess or not to the City's needs.

Survey results from the Parking, Parks and Recreation, Planning, Public Works, and School Departments indicated they had no need for this property. Planning further noted that the sale would permit more options for infill development or redevelopment on adjacent property, and for the easement to continue.

Jeremiah Bartlett of Public Works Engineering indicated that the Federal Street Master Plan calls for Federal Street to connect to Franklin Street, and does not see a reason for the City to retain the lot; it would not adversely impact the Federal Street Master Plan if the City sold it. He also noted that it would be highly unlikely that curb cuts from Franklin Street to 28-X-1 would be allowed.

Councilor Ray had a few questions; please see below with staff responses:

1. How does this affect the Master Plan for Franklin Street that the Council adopted back in 2015?
 - a. Jeremiah Bartlett responded that the sale of this property will not adversely impact the Franklin Street Master Plan, nor future Franklin Street reconnection from Federal Street.
2. Councilor Ray wanted an understanding of what the abutter intends to do with the land, noting that it appeared that the abutter does not plan to build directly on it, but that a portion of their building (an awning or arbor or something similar) will over hang it. So would it be a sidewalk? Green Space? A sort of front yard? Would they anticipate public interaction with this space or might it be fenced off for private use?
 - a. The abutter has been working with City Planning staff to possibly build above this narrow strip of land, noting that the parcel allows them to have frontage on Franklin Street. Frontage on Franklin Street allows them additional development rights under the Form Based Code. The abutter is generally planning townhouses on the back of the site and a larger building fronting Franklin Street (housing) that would likely build above the easement, though their plans are still under development.
3. Would the developer be planning on any curb cuts for direct entry into their building through this land, or would they, perhaps, be hoping for a Federal Street reconnection to facilitate access?
 - a. Staff is not aware of any new proposed development curb cut requests to Franklin Street. Jeremiah Bartlett indicated that it would be doubtful that any new curb cuts would be allowed from Franklin Street.

III. Intended Result and/or Council Goal Addressed

The intended result would be for the City to sell this strip of land, together with its Deed stipulations, to an abutter.

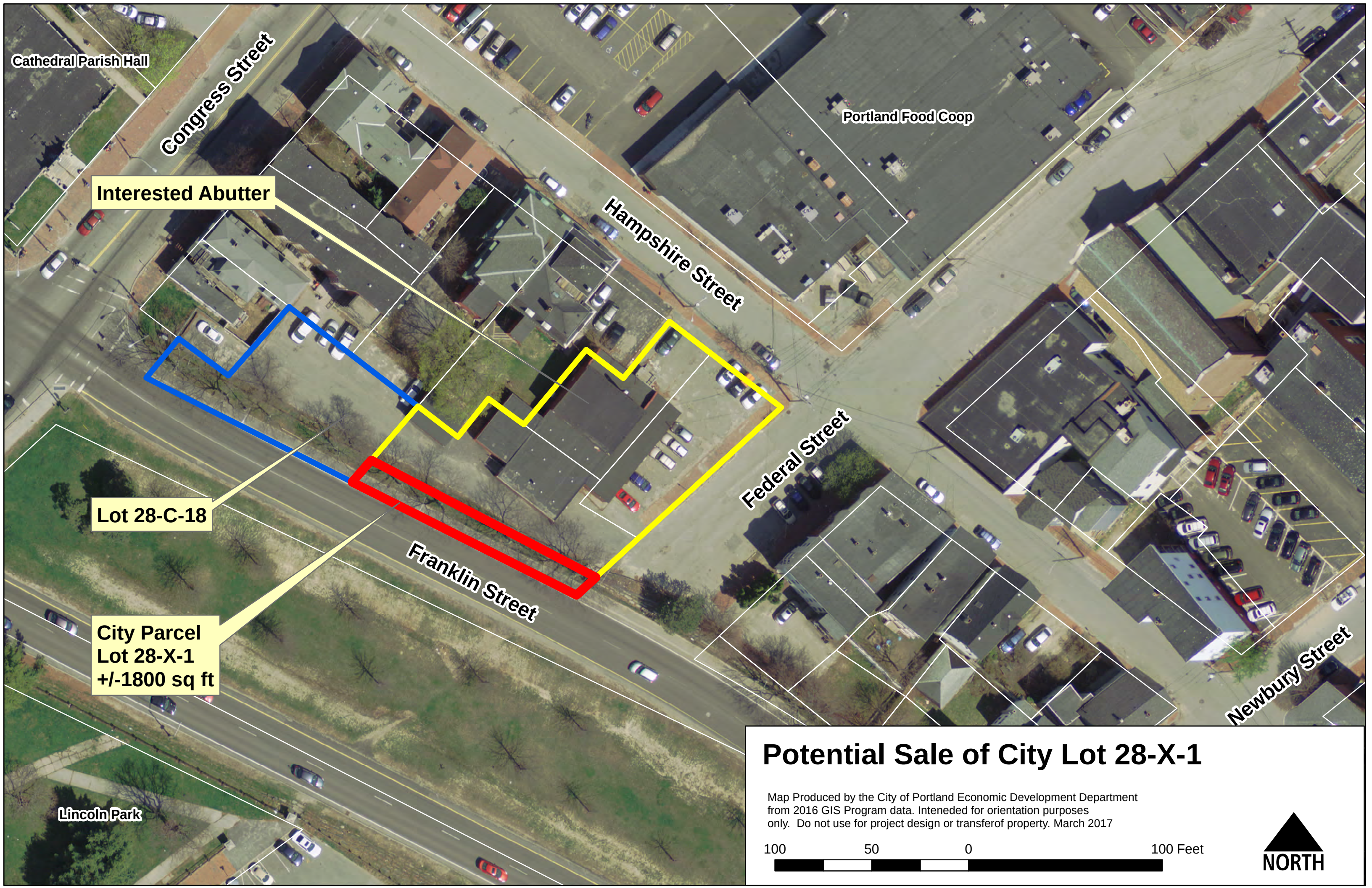
IV. Financial Impact

If sold, the City would realize property sale proceeds and possible further development on an abutting lot.

V. Staff Analysis and Recommendation

The City's City-owned and Tax-Acquired Property Committee (COTAPC) reviewed this request and survey results. Because there is no apparent need for the City to retain this parcel as noted above, COTAPC recommended to the City Manager that the strip be placed out to bid to sell to a property abutter with no minimum purchase price.

Attachments: Map Highlighting the Properties



Cathedral Parish Hall

Congress Street

Portland Food Coop

Interested Abutter

Hampshire Street

Federal Street

Lot 28-C-18

Franklin Street

Newbury Street

City Parcel
Lot 28-X-1
+/-1800 sq ft

Lincoln Park

Potential Sale of City Lot 28-X-1

Map Produced by the City of Portland Economic Development Department
from 2016 GIS Program data. Inteneded for orientation purposes
only. Do not use for project design or transfer of property. March 2017





Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Economic Development Committee

FROM: Greg Mitchell, Economic Development Director

DATE: March 1, 2017

SUBJECT: DRAFT 2017 Economic Development Committee Work Plan

For discussion purposes at your meeting on March 7, this memorandum outlines the status of the EDC 2017 Work Plan activities, including 2016 Mayor and City Council economic development goals.

Broadband Access (2016 Mayor and City Council Goal). High speed infrastructure; broad band.

IN PROCESS AND NEXT STEPS. At the July 26th, 2016, EDC meeting, staff provided a summary of a proposed Master Lease Agreement with Verizon to support small cell technology investment in Portland. The City Council approved this Master Lease on August 1, 2016.

Also, it is noted the City issued a News Release on July 19th, 2016, with the topic “City Seeks Citizens to Complete Internet Services Survey” and noting “Selects SiFi Networks to explore potential citywide fiber network”. Staff continues to work with SiFi Networks to move forward with a public-private partnership.

A City Council workshop was held on December 12, 2016 with Council direction to refer negotiations to the EDC to finalize partnership documents for recommendation to the City Council.

City staff is continuing negotiations with SiFi Networks and will be updating the EDC when ready.

Increase Utilization of the Portland Ocean Terminal (POT) (2016 Mayor and City Council Goal)

Establish direction on the future of the Portland Ocean Terminal. With as much as 70,000 square feet of vacant space, the Portland Ocean Terminal on the Maine State Pier needs a plan for investment and optimized utilization. Existing uses, including City cruise ship port of call support, Portland Tugboat, and Ready Seafood, provide a solid basis for growth; however, the building's age, condition, location within a Federal security area, and lack of supporting infrastructure (parking, loading, sidewalks ...) severely limit the potential reuse of the building as currently configured.

See next sections entitled “Eastern Waterfront Public Infrastructure Investment” and “Establishing New Policy Direction” for more information and inter-relationship with approaches to improving utilization of the POT.

Payment In Lieu of Taxes (PILOT) New City Policy

Staff is preparing draft policy for EDC consideration for non-profit tax exempt organizations to contribute annually to cover the cost of municipal services

Establish Development Impact Fees

Staff will work with the EDC to create a formula that standardizes fees - providing certainty to the development community and City resources.

Eastern Waterfront Public Infrastructure Investment

Investing in public infrastructure is an important municipal government responsibility to attract private sector investment. Locations which require public infrastructure planning include both implementation of existing policies and creating new policy direction for investment:

Implementing Existing Policy:

Private Development Integration. The Economic Development Department is leading a Planning, Public Works, and Parks & Recreation Department discussion to plan road, parking garage, and utility extensions in Portland’s Eastern Waterfront, facilitating planned and future development consistent with the Eastern Waterfront Master Plan (EWMP.)

Next Steps. This item was discussed with the EDC at its January 3, 2017 meeting regarding issuing a Request for Proposals to stimulate parking garage development in the block of Hancock, Fore, and Thames Street, and the new Thames Street to Fore Street Connector Road, in exchange for selling the City-owned Thames Street lot and securing public right-of-way for the new Connector Road. Staff is working on a draft RFP for EDC consideration at a future public meeting.

Amethyst Lot Open Space Development. Implementing recommendations from the EWMP and conditions of approval from Ocean Gateway, to define program and design elements for signature waterfront open space promoting recreation and active use of the water in a park-like setting.

Next Steps. In May of 2016, the City Council approved \$80,000 in funding to support a planning and public process scope for the Amethyst Lot. An RFP was issued for design services which generated 10 credible proposals from firms with local, national, and international experience. A staff review committee recommended hiring Stantec and the contract has been finalized. A group of City employees are now working with Stantec in furthering the design process. The EDC will be kept updated on the process, with an update planned for the April 4, 2017, EDC meeting.

Establishing New Policy Direction:

Ocean Gateway to discuss reconfiguration of the “queuing area” located behind the fence to free up property for more diversified marine activity, support for the Portland Ocean Terminal, and expanded access to the water for commercial and public uses.

Possible new Pier development between Ocean Gateway and the Maine State Pier to support increased commercial use of the waterfront and support for the marine passenger industry.

Portland Ocean Terminal (POT). Evaluate supporting infrastructure to attract increased commercial and marine tenant use of available 25,000 +/- square feet of vacant second floor office space and 70,000 square feet of vacant ground floor marine industrial space. It is noted that this is a separate Mayor and City Council Goal and tightly aligned with potential Ocean Gateway queuing area changes contemplated below.

Next Steps. Next steps include City staff working on funding and planning opportunities to clarify new policy direction for the queuing area, possible new pier, and more intensive use of the POT. Updates will be provided to the EDC when appropriate.

Portland Transportation Center (PTC)

In partnership with the MDOT, NNEPRA, and private sector property owners, work to develop an expanded intermodal passenger station in the Thompson Point area.

Next Steps. Staff to work with the transportation agencies and private partners to establish timeline and work plan for PTC improvements. Present briefing to the EDC when appropriate.

Lease of City Properties

Leasing City owned properties requires City Council approval. Policy discussion regarding the leasing of City owned properties needs to be discussed. Examples of commercial leases requiring EDC (in the form of a recommendation to the City Council) and City Council action include:

Ocean Gateway to support ferry operator lease. At the March 7, 2017 EDC meeting in executive session, staff will discuss proposed amendments for guidance and direction from the EDC. This will be followed by a public meeting of the EDC for its recommendation and vote to the City Council for action prior to 2017 season.

Portland Ocean Terminal tenant leases including Ready Seafood Companies. Amendments to this Lease may be proposed in 2017.

Spring Street Parking Garage Commercial tenant leases including the former Pirates space, with 1,172 square feet. ED Staff is soliciting proposals from commercial brokers to market this vacant space at 94 Free Street.

Next Steps include presenting commercial leases to the EDC when ready.

City Properties

Sales

Bayside former Public Works properties. City staff issued a Request for Proposals for commercial broker services to assist the City with the sale of these properties; CBRE/The Boulos Company was chosen after review of the proposals. Staff will work with the EDC and ultimately the City Council regarding any final property sale decisions.

At the January 3, 2017 EDC meeting, staff presented an overview of the Bayside properties, followed by a public hearing by the EDC on January 31, 2017. The EDC then was provided an update by CBRE/The Boulos Company on their methods of marketing, followed by a tour of the properties. The EDC will discuss these properties and vote on sales approach at its March 7, 2017 meeting. It is noted that the public will have an opportunity for public comment at this meeting, as well as when the EDC reviews and recommends purchase and sale agreements to the City Council, and again at the City Council when it takes up the matter.

Riverside Street Seven (7) Acre Industrial Property. City staff has been marketing this property for sale and has attracted an interested developer which has been discussed, in executive session, with the EDC during 2016.

At the January 3, 2017 EDC meeting, staff presented an overview of the Riverside Street property and the 7-acre site, including the recent need to install a City communication tower for its emergency management system. At the March 7, 2017 EDC meeting in executive session, staff will discuss interest in this property and receive guidance on future negotiations.

Thames Street Gravel Parking Lot. At the January 3, 2017 EDC meeting, staff presented an overview of this property, followed by a public hearing by the EDC on January 31, 2017. Next step is to finalize a Request for Proposals for sale to stimulate development on the site and a parking garage in the area for EDC review and recommendation to place out to bid. This will be another opportunity for public comment, as well as when the EDC reviews and recommends a purchase and sale agreement to the City Council, and again at the City Council when it takes up the matter.

Cotton Street Parking Lot. At the January 3, 2017 EDC meeting, staff presented an overview of this property – as well as update in executive session, followed by a City Council workshop on the proposed Amended and Restated Land Exchange Agreement with JB Brown, substituting the Cotton Street Parking Lot for the City's One Cambridge Street lot. This item will be on the March 7, 2017, EDC Agenda for a review and recommendation to the City Council. The public will have an opportunity for public comment, and again at the City Council when it takes up the matter.

Former Reed School. City issued a Request for Proposals for sale and redevelopment of the Reed School. After an appraisal is received by the City, staff will bring this item to the EDC for its review and recommendation to the City Council. We expect to see this appraisal in within the next few days.

Acquisitions

Redlon Woods: The Land Bank Commission is interested in accepting donations, acquiring private property vacant land, and placing tax-acquired vacant parcels in this area of the City into the Land Bank. Because of the property acquisition, this may come before the EDC, as well as the Land Bank Commission for recommendations to the City Council. At the January 3, 2017 EDC meeting, staff presented an overview of the Redlon area. Updates will be provided to the EDC following real estate negotiations.

Tax Increment Financing Policy and Districts

TIF Policy Guidelines-Review for Possible Proposed Amendments to the City Council: Pursuant to City Council Order #61 passed unanimously on 9/19/2016, the Council referred to the EDC the current TIF Policy for consideration of amendments including, but not limited to, the addition of provisions for:

- Local Hire
- Ethnic and Gender Diversity
- Economically Disadvantaged Participation;
- Veteran Preference;
- Adherence to State of Federal Prevailing Wages; and,
- Participation in a Job Training or Apprentice Ship Program.

Following EDC consideration of such amendments, it shall report its findings and recommendations on amending the current TIF Policy to the City Council.

Next Steps: The EDC will consider proposed amendments during the first half of 2017.

TIF Districts: Annually the Economic Development Department issues a City Fiscal Year Report related to Portland TIF District activity. This report is available on the City web page at: <http://www.portlandmaine.gov/529/Tax-Increment-Financing>

One recommended TIF District amendment to discuss, in 2017, is the possible geographic expansion of the Waterfront TIF District. The areas to consider including in the Waterfront TIF District are East and West Commercial Street properties due to planned private sector investment projects and supporting public infrastructure needs.

Next Steps: Presenting any private TIF District requests to the EDC for direction, along with revisiting the Waterfront TIF District boundaries for possible expansion.

Outdoor Seating for Food Service Establishments

Review current permitting process/ordinance and any barriers, particularly for older buildings.

Re-write of Land Use Code Chapter 14

Intern Program for both High School and College Students, perhaps 5 to 10 hours per week.

This could be a public/private collaboration, perhaps with a task force and working with the School Department.

Food Trucks: Expand areas/times for the trucks to be in operation. (This may be a joint meeting of the EDC and the Health and Human Services Committee.)

Explore closing Exchange Street on certain days; more open storefronts. Work with Portland Downtown in exploring these ideas.

Convention Center: EDC to be provided periodic updates from the Maine Convention Center Collaborative.

Open Forum for Restauranteurs: Forum for restaurant owners to talk about what is going well, what is not, and any other issues or comments they may have.

Other Unanticipated Matters as they come up.