



ECONOMIC DEVELOPMENT COMMITTEE

DATE: March 29, 2017 (Weds.)
TIME: 5:30 – 7:30 p.m.
LOCATION: Room 209, Second Floor
Portland City Hall

A G E N D A

1. **Review and accept Minutes of previous meeting held on March 7, 2017.**
2. **Review and vote to authorize the bid process to sell a small strip of unneeded City-owned 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 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 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.
4. **Review and vote to authorize staff to advertise a Request for Proposals for sale of a portion of City Land on Thames Street**
 - a) See enclosed memo 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.
5. **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
March 7, 2017

A meeting of the Economic Development Committee (EDC) of the Portland City Council was held Tuesday, March 7, 2017 at 5:30 p.m. in Room 24, Basement Conference Room 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 Councilor Justin Costa. Present from City staff were Public Facilities Director Kathy Alves, Associate Corporation Counsel Michael Goldman, City Manager Jon Jennings, Economic Development Director Greg Mitchell, Associate Corporation Counsel Victoria Morales, Waterfront Coordinator William Needelman, and Senior Executive Assistant Lori Paulette.

Item #1: Review and accept Minutes of previous meetings held on January 31, 2017, and February 27, 2017.

On motion made and seconded, the Committee voted unanimously (3-0) to accept both sets of Minutes as presented.

Item #2: Review and vote on sale approach for City-owned former Department of Public Works occupied properties.

Mr. Mitchell said that the EDC discussed these properties at its January 3 meeting; held a public hearing on possible disposition of these lots on January 31; which was followed by an EDC meeting for a tour of the properties with the real estate broker, CBRE/The Boulos Company, on February 27th.

Mr. Mitchell said that the subject Public Works Bayside properties are smaller and do not need to be subdivided and then highlighted the various properties to the Committee. Staff is

looking for direction from the EDC as to whether these properties should be placed on the market with or without restrictions. Staff is recommending no restrictions, as the City's Zoning and Height Overlay regulations, and Planning Board site plan approval process, provide protections to support redevelopment or new development of these sites. In addition, restrictions reduce the property values, and sale revenue is critical to support relocation of the remaining Public Works uses out of Bayside. The City Council has already approved two separate property acquisitions totaling \$6 Million in debt for the purchase of the Canco Road properties; any more debt will likely trigger a community referendum.

Mr. Mitchell noted that the commercial broker "call for offers" approach provides the City the opportunity to evaluate sale and use opportunities which best fit the neighborhood. Mr. Mitchell also said that this will, at a minimum, involve a two-step public hearing process – at an EDC meeting and at a City Council meeting - to approve purchase and sale agreements for property sales.

Mr. Jennings thanked Mr. Mitchell for this overview and staff's recommendations. Mr. Jennings also noted that a year 2000 article in the *Portland Press Herald* indicated that the City is contemplating sale of these properties. Mr. Jennings said that he is pleased to be moving forward now on the sales. Staff has spent a lot of time speaking with the Bayside Neighborhood Association and the neighborhood and has a good sense of what is wanted in Bayside.

Mr. Levine said that most of the properties are in the B-2 zone, which generally has a base height limit of 45-feet. He noted, however, that the lots being offered are in a height overlay that allows for additional height. Lots 3 and 4 are in the B-7 zone and heights can be 125 feet. Regarding residential uses in the B-2 zone, Mr. Levine said that this is at 100-units per acre.

Councilor Thibodeau asked about Lot 1 being a parking lot and potential reuse. Mr. Mitchell said the broker is here but there can be a mix of uses.

Councilor Ali asked about offers and the opportunity for the Committee to see what we have. Mr. Jennings said that the EDC will initially see the offers in executive session because of proprietary information and real estate negotiations.

Councilor Ali understood and noted the opportunity for the public to speak when the Committee reviews these publicly for a recommendation to the City Council.

Chair Brenerman said that by placing no restrictions on the property, does the City have the right to reject any offer(s), and Mr. Mitchell said that it does. The EDC and City Council are in complete control of the process. Mr. Jennings added that once the City Council has approved a Purchase and Sale Agreement, there will be even more public process as the Planning Board reviews the proposed project(s). Mr. Levine also noted that, depending on size, most of the development projects would require a Level 3 Site Plan Review, which includes a neighborhood meeting and Planning Board Workshop, then a Planning Board public meeting and public comment opportunity. Development projects would be reviewed for zoning and compliance with the Comprehensive Plan.

Chair Brenerman asked Boulos Broker Drew Sigfridson about various options for these properties.

Mr. Sigfridson said that he anticipates a variety of uses, noting some might be first floor retail, with upper floors office and residential. For lots 4 and 5, with their higher ceilings, he suggested these could see a similar type of development as with the former Nissan Building on Washington Avenue, as well as with the reuse of buildings at Thompson's Point. He also noted that, over time, because of height and density, additional development could go up.

Chair Brenerman thanked Mr. Sigfridson and asked if there was any public comment on this item.

Steven Scharf of Salem Street said that he is pleased this is moving forward and that any interested buyer could propose a zoning change to B-7 to allow for more height. He then questioned lot #2 being sold, particularly if the City would be retaining any of it for the realignment of Kennebec Street. He also noted that 55 Portland Street is the most marketable piece and suggested it be marketed for a high-rise development.

Joe Brunelle, 61 Kellogg Street, then noted that he would like to read a letter from Ian Jacob who could not be present; please see attached letter.

Nasir Shir, 70 Portland Street, said that the Mosque could use parking and Lot 1 could provide that, as the Mosque does use it now.

Ross Furman, property owner in this section of Bayside, has been there since 1978, when there were many brick buildings and very few people. He now has over 35 tenants within 3 blocks. He applauded the City moving forward on these property sales.

Marcos Miller, 71 Atlantic Street, agreed with Mr. Furman. He suggested that the City encourage Boulos to market these for workforce housing.

Tom Blackburn of Hanover Street said that he has been watching Bayside for over 20 years. Regarding the highest and best use for Lot 4, he noted that the City needs skilled trades and workers. With Portland's growing population of immigrants, converting this building into an apprentice training facility would be a great addition to the area, and good for immigrants. If not, this site should be master planned or carved out of the sale.

Chair Brenerman, noting no further public comment, closed the public comment session.

Mr. Mitchell, in response to Mr. Jacob's letter, said that staff is recommending no

restrictions. He noted that the City put an RFP out for Lot 5, with extensive restrictions for affordable housing. This lot has an assessed value at \$800K, and the City received one proposal from Avesta Housing to purchase it for \$1.00 in order to comply with all the restrictions. Whenever there are restrictions, it results in a lower property value. In real numbers today in terms of cost of redevelopment, half of the total Assessed value is in the land. If the building were demolished, you erase \$400,000 of assessed value. Demolition is at \$5 per sq. ft. or \$65,000 for this building. Other potential costs could include environmental remediation. Due to these costs, among others, staff recommends no restrictions.

Councilor Thibodeau asked about an estimate for remediation, and Mr. Mitchell estimated approximately \$25,000 per property if needed. He also noted that the City has a proposal from Credere to conduct a Phase 1 Environmental Site Assessment (ESA) for all of these properties, which assessments have a 6-month shelf life. In this case, the Phase I ESAs will make sense to provide comfort to a buyer of any existing conditions. Phase I ESAs determine if more testing needs to be done.

Councilor Thibodeau said that Lot 4 would cost \$160,000 to demolish; Lot 5 to demolish is \$65,000; so together this would cost approximately \$225,000 to be demolished and used for housing, with no environmental issues. If there were, it would be even more costly.

Councilor Thibodeau asked about selling each property or all of them at one time, and Mr. Mitchell said that it could either way depending on offers received. The EDC can provide that direction once offers are received and reviewed.

Mr. Mitchell then noted that Lot 2 does overlap with the planned realignment of Kennebec Street, and this would be taken care of during negotiations to protect the City in moving forward with that realignment.

Mr. Levine said that the Comprehensive Plan is not a detailed document but rather policy minded. When offers are in, the City will evaluate them based on elements in the Comprehensive Plan.

Regarding parking for the Mosque, Mr. Jennings said that parking can be a temporary use, but the highest and best use for that lot (#1) is not for parking.

Regarding Lot 4 for apprentice training, Mr. Jennings said that he has been speaking with organized labor for a training facility. Organized labor is important, but organized labor/unions do not have funds for a training facility, and he does not feel this is the place for one. Mr. Jennings further noted that the EDC can provide direction to staff.

Councilor Ali asked Mr. Jennings if he is continuing to work with organized labor. Mr. Jennings said that he is and will continue to do so, noting that SMCC may provide the place for that opportunity.

Councilor Thibodeau said that he would like the broker to try and encourage/leverage workforce housing for Lot 1.

Mr. Sigfridson said that Boulos can make that concerted effort and assist with determining under what terms development of workforce could be a viable option, noting the Housing Tax Credits are granted in October, as well as looking at City resources.

Councilor Thibodeau said that his hope today is to give Boulos direction to market for workforce housing as much as possible and approach those housing developers; Chair Brenerman and Councilor Ali agreed.

Chair Brenerman said that the way the City is doing this is flexible enough so the City can determine what can be done there. This Committee will review offers, looking at price and development proposed. The City can accept or reject any offer/proposal. If it likes a mixed use

offer, it can go with it. The City does need to move forward on this, noting that the former Schlotterbeck & Foss building is being redeveloped into housing.

Councilor Thibodeau agreed with the Chair. The City is not boxed in in any way. His hope is to see mixed use, which seems to be happening organically now. These should be marketed for sale, particularly encouraging workforce housing on Lot #1.

Chair Brenerman said that it there has been many years talk of moving Public Works out of Bayside. The City is finally doing this, and these sales proceeds are important to continue to move out the remaining uses and not put this on the taxpayers. This will improve the neighborhood.

Councilor Thibodeau then made a motion to have the Boulos Company market all of the properties with no restrictions, with an attempt to encourage workforce housing on Lot 1.

Councilor Ali seconded the motion and it passed unanimously (3-0).

Item #3: Review and vote to recommend to the City Council 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.

Councilor Thibodeau said that he is recusing himself from participating and voting on this item because his employer represents JB Brown on a number of matters.

Mr. Mitchell said that because of the recent City Council Workshop on this matter, he will highlight just a few things and displayed a map showing the locations of the proposed properties to be exchanged, including sale of the Cotton Street surface parking lot in place of the City One Cambridge Street property. The original land exchange was of equivalent value to both the City and JB Brown; the Cambridge Street property got complicated due to area-wide drainage needs and environmental contamination. The Agreement could have been terminated

but both parties continued to discuss possibilities, with the resultant replacement of the Cotton Street surface parking lot, which is jointly owned by the City and JB Brown and the City portion leased to JB Brown. JB Brown owns abutting properties on either side of the surface parking lot. There are 175 total parking spaces; 88 of which are on the City's portion. The Lease expires in 2019, with renewal options.

Mr. Mitchell said that City had appraisals done and based on an analysis, this would net the City \$1.175 Million. Mr. Mitchell noted that the City has occupied the JB Brown property, Parcel 1, from the Fall of 2015 to date at no charge for the sand/salt sheds and vehicle/truck storage.

Mr. Levine added that the Cotton Street property was purchased by the City using CDBG funds. The current leasing partnership with JB Brown nets \$120,000 yearly to the City which revenues go back into the CDBG program, helping the CDBG Program due to declining funding from the Federal Government. Revenues from the sale of this lot can be used for CDBG eligible activities.

Mr. Jennings suggested that a portion of the revenue, \$100,000, be used for the opiate crisis. He has been working with the Greater Portland Addiction Collaborative (GPAC) to address this crisis, and there is a need for more treatment and beds. The funds would go to the Milestone Foundation to enhance their current services, upon Council approval. He also noted that GPAC is seeking federal funding to expand and strengthen Milestone's treatment services.

Mr. Jennings suggested that another portion of the revenue, \$25,000, be used for a pilot program to address the panhandling issue. The pilot program calls for the City employing up to 5 panhandlers daily at minimum wage, and providing breakfast and lunch and connections with social service programs. It is anticipated that another \$18,000 would come from the CDBG

program for a total Pilot cost of \$43,000 for one year. It has been successful in other areas of the country.

Mr. Levine said that his Department conducted an analysis of the best use of the remaining \$1 Million from the sale, considering the annual decline of CDBG funding, and the end of the estimated \$120,000 revenue from the Cotton Street lease proceeds to CDBG programs. This analysis included: (1) spending the revenue annually (\$120,000) until depleted after 8 to 10 years; (2) use of a small revenue stream from Downtown TOD TIF revenue that would be devoted to community development related programs that are TIF eligible, suggesting \$120,000 annually, while expending the \$1 Million in the short term. Mr. Levine noted that social service programs are not TIF eligible. The third analysis includes a combination of the two, that is committing the \$1 Million to social services programs and other TIF-ineligible activities and supplemented with Downtown TIF funds to extend the life of those proceeds. For example, if \$20,000 were taken yearly from the \$1 Million to fund social services, and \$120,000 for CDBG programs were funded out of the Downtown TIF, social service programs would be funded for 50 years. Staff is recommending this approach.

Mr. Jennings agreed, also noting that the City has not heard from the Federal Government about further cuts to CDBG at this time. He thanked Jeff Levine and Mary Davis for their work in this analysis.

Councilor Ali said he has no questions today because they were answered at the Council Workshop.

Chair Brenerman asked about the size of the Downtown TIF, and Mr. Mitchell said that it runs from Washington Avenue to State Street and marries up with the Bayside TIF and Waterfront TIF area. TIF funds are averaging \$400,000 annually, with \$100,000 of that revenue

going to Creative Portland. Mr. Jennings said that TIF revenues can also be used for infrastructure improvements not funded through the CIP.

Chair Brenerman opened the meeting for public comment.

Steven Scharf of Salem Street noted that this is the first opportunity to publicly comment on this. He does support the transaction and looked forward to seeing the surface parking lot redeveloped for its highest and best use. He would discourage the use of Downtown TIF Funds, rather spending the revenue as noted in Mr. Levine's option 1.

Marcos Miller, 17 Atlantic Street, said that he is in favor of this project, noting that there could be an element added to help with the redesign of Spring Street in that area.

Seeing no further public comment, the public comment session was then closed.

Mr. Levine said that City staff did take a look at that area of Spring Street and did not feel that that area would be likely to see any shift.

On motion then made and seconded, the Committee voted 2-0-1 (Thibodeau abstained) to recommend to the City Council approval of the Amended Land Exchange Agreement, with \$100,000 from the sale proceeds to go toward expanding the Milestone Foundation's work with the opiate crisis, \$25,000 go towards the panhandling pilot program, and using the 3rd approach for further use of sale proceeds.

Item #4: Review and vote to recommend to the City Council the Proposed CPB2/MDOT/City of Portland Land Exchange Agreement.

Mr. Needelman said that this was first introduced to the EDC in April 2016 regarding the anticipated three-party land exchange. The exchange takes into consideration a shift of the MDOT right-of-way to the south on City land and property exchange of small parcels, noting the equivalent of which is the City retains the same amount of land. The Planning Board has

approved the Portland Company Master Plan, which includes the right-of-way realignment. The cost for the realignment of the right-of-way will be borne by the Portland Company.

Mr. Jennings said that this a win for the City in providing it more water access, and it is good for all parties involved.

Councilor Ali said that before he takes a vote on this, he would like a tour of the area.

Chair Brenerman asked if there was any public comment.

Joe Brunelle of Kellogg Street appreciated the slight delay to possibly vote on this, as this is the first he has seen this. It would be good to better understand and get the word out.

Steven Scharf of Salem Street said that this is a good exchange and a win for the City.

Mary Costigan, representing the Portland Company, noted that the driving factor was to move the rail and trail closer to the water.

Seeing no further public comment, Chair Brenerman closed the public comment session.

On motion made and seconded, the Committee voted unanimously (3-0) to table this item to the next meeting.

Item #5: Review and vote to authorize the bid process to sell a small strip of Franklin Street right-of-way to an abutter.

Councilor Ali requested a tour of this property before he votes on it.

Chair Brenerman, seeing that members of the public were present for this item, requested that Mr. Mitchell provide a presentation of this item.

Mr. Mitchell said that the property in question is a piece of remnant property associated with the construction of Franklin Street. It has deed restrictions for it to provide an access to lot 28-C-18, essentially it is a driveway to 28-C-18.

(Councilor Thibodeau had to leave the meeting at this point.)

Mr. Mitchell said that an abutter to this remnant piece is interested to buy it for development opportunities. It can be used creatively, i.e., development could occur above or redirect access to 28-C-18. Staff supports its sale and recommends a bid process be authorized to accept bids from the two abutters only.

Chair Brenerman asked if there was public comment.

Marcos Miller of 17 Atlantic Street noted that the parcel being requested to purchase from the City is of no value to the City, but a significant value to the abutter. It increases their opportunity to build and increase tax revenue to the City. With this added piece, a development could have frontage on Franklin Street, which has always been the goal.

Tom Federle of New Height Group, which has the abutting property under contract to purchase, endorsed Councilor Ali's request to tour the property. If New Height Group had this piece of property, the development could then have frontage on Franklin Street, in the same fashion as another development they currently have under construction. He said he would like to participate in the tour.

Steven Scharf of Salem Street asked about a sidewalk on this portion of Franklin Street.

Seeing no further public comment, the public comment session was closed.

Mr. Levine said that regarding the sidewalk, this would be addressed during site plan review.

A motion was then made and seconded to table this item to the next Committee meeting. A vote was then taken and it passed unanimously (2-0).

Item #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**

Chair Brenerman asked if there was any public comment.

Joe Brunelle asked if the Committee would be doing anything further after these items are done, and the Chair indicated in the negative.

There being no further public comment, the public comment was then closed.

On motion made and seconded, the Committee voted unanimously (2-0) to go into executive session at approximately 7:55 pursuant to 1 MR.S.A. 405(6)(C) to provide City staff general policy guidance regarding Items 6(a) and 6(b) above.

At approximately 8:30 p.m., the Committee came out of executive session and the meeting was then adjourned.

Respectfully, Lori Paulette

Public Comment for EDC Meeting March 7, 2017

Councilors and staff,

Five weeks ago you asked the public for feedback regarding the sale of City owned parcels in Bayside and the eastern waterfront. For the Bayside parcels, the majority of the public supported smaller land parcels for a more organic and human scaled development. I would ask the Committee to explain how this feedback will inform their recommendation and guidance to staff.

The Economic Development Department staff memo for today's meeting argues sale restrictions and dividing the parcels into smaller parcels would diminish sale potential, lower the parcels value and sale price, negatively affect tax revenue, and lower the pool of interested developers. I would ask the Committee to have staff substantiate these findings.

The City adopted the Bayside Vision many years ago to help guide, amongst other things, development in the neighborhood. While it may be time to revisit that document, the City does have another document to refer to and that is the new and at this time, draft Comprehensive Plan. The public's contextual feedback and recommendations are in keeping with the visions outlined in the Plan. The Economic Development Departments guidance, is at its simplest, about achieving the highest monetary return devoid of context. While this certainly makes sense in some cases, I would argue it does not in Bayside. I would ask the Committee to explain how the Comprehensive Plan and contextuality will inform their recommendation and guidance to staff.

The staff memo goes on to assure the Committee and the public that there will be adequate opportunity for public process along with protections from zoning and Planning Board review to ensure the proposals are the "best fit for the neighborhood." This would seem to suggest that potential developers will submit proposals that will only require minimal adjustment by staff based on public input. I would ask the Committee to explain how they will ensure that the proposals will be the best fit for the neighborhood.

In summary, I would ask the Committee to share with the public how incorporating public feedback, fair monetary compensation, and the guidance outlined in the Bayside Vision and the Comprehensive Plan, will ensure that the sale of these parcels will be in the best interest of the neighborhood, public at large, and the City.

Thank you for your time and consideration.



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 23, 2017

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

This item was tabled at the March 7, 2017, Economic Development Committee (EDC) meeting in order for Councilor Ali to have a tour of the property prior to voting. This tour has occurred and staff is now placing this back on your March 29, 2017 meeting Agenda.

I. One Sentence Summary

Due to interest from a representative of an abutting property (28-C-13), 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. It is noted that this property does not include the public sidewalk or Franklin Street travel lanes and median.

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 travel way for the owner of 28-C-18 to access Federal 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 (unneeded) 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 Franklin 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 Franklin 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

Hampshire Street

Abutting Parcel
28-C-18

Abutting Parcel
28-C-13

City Parcel
Lot 28-X-1
Location and Area
Subject to Survey

Federal Street

Franklin Street

Franklin Street

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

Note: City GIS Parcel data and Aerial Photos
may not be aligned in area of the subject
parcels. Confirm actual locations with
current land survey by a licenced professional
surveyor. March 2017

Parcel Orientation and Context Potential Sale of City Lot 28-X-1

100 50 0 100 Feet





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 23, 2017

SUBJECT: **Eastern Waterfront – Property Exchange**

This item was tabled at the March 7, 2017, Economic Development Committee (EDC) meeting in order for Councilor Ali to have a tour of the property prior to voting. This tour has occurred and staff is now placing this back on your March 29, 2017 meeting Agenda.

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. The land exchange is considered of equivalent value not requiring financial transactions.

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.

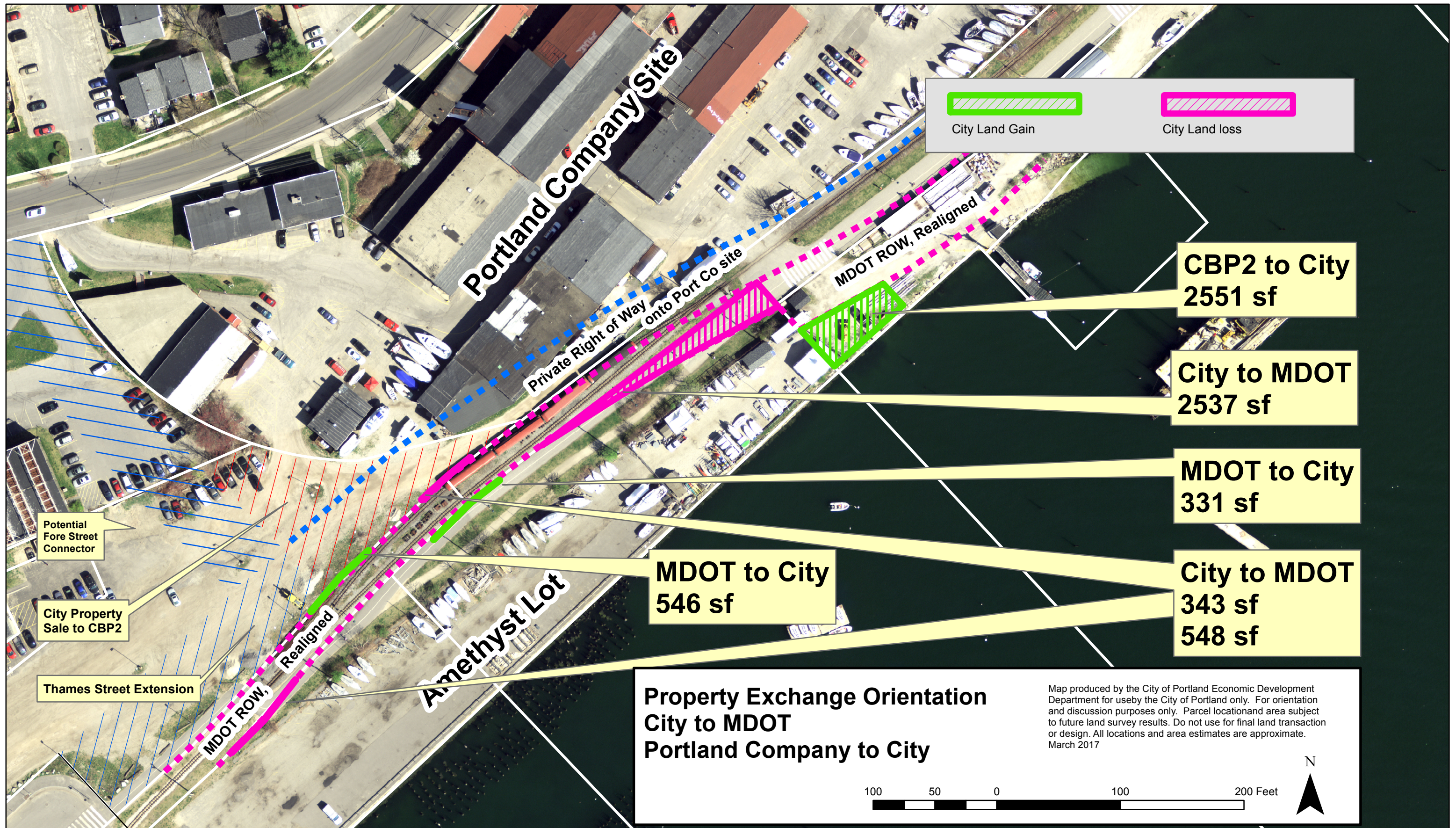
Finally, the geometry of the new right-of-way alignment and the compensating trapezoid has been incorporated into planning for reuse of the Amethyst Lot. Final designs and use of these properties will require review and approval by the full City Council.

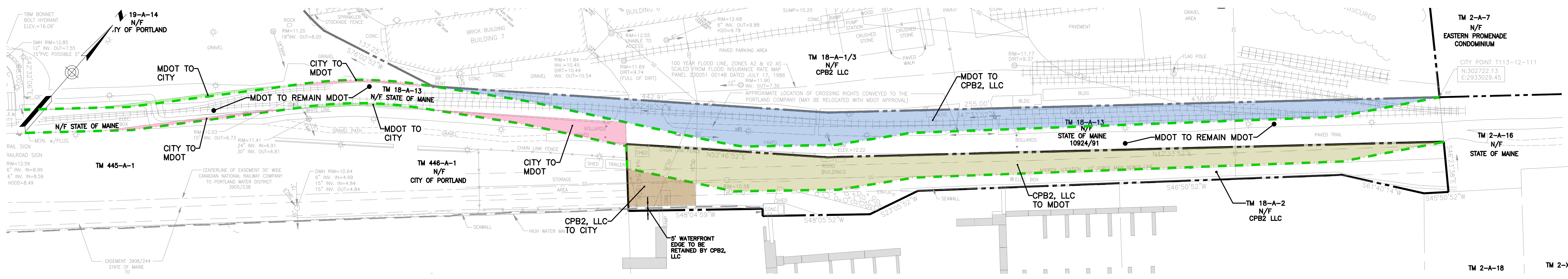
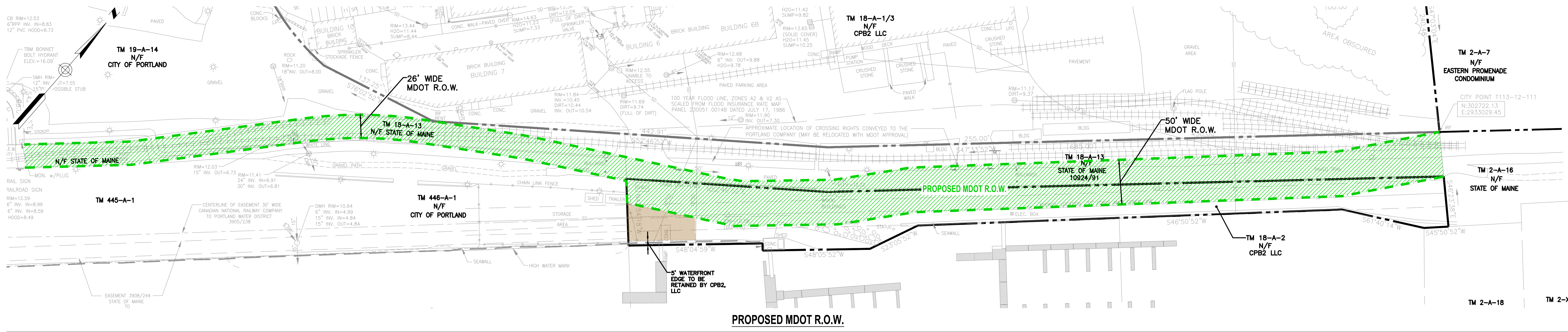
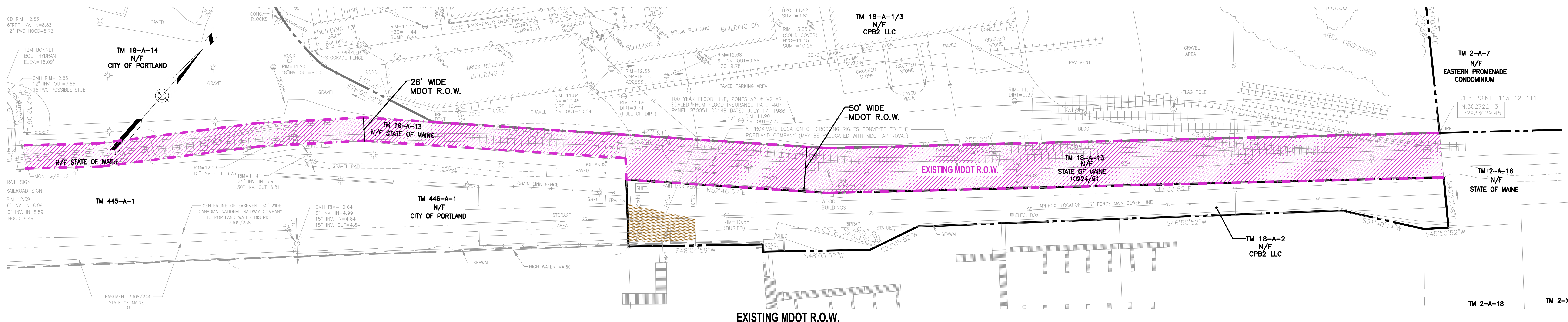
Requested Action:

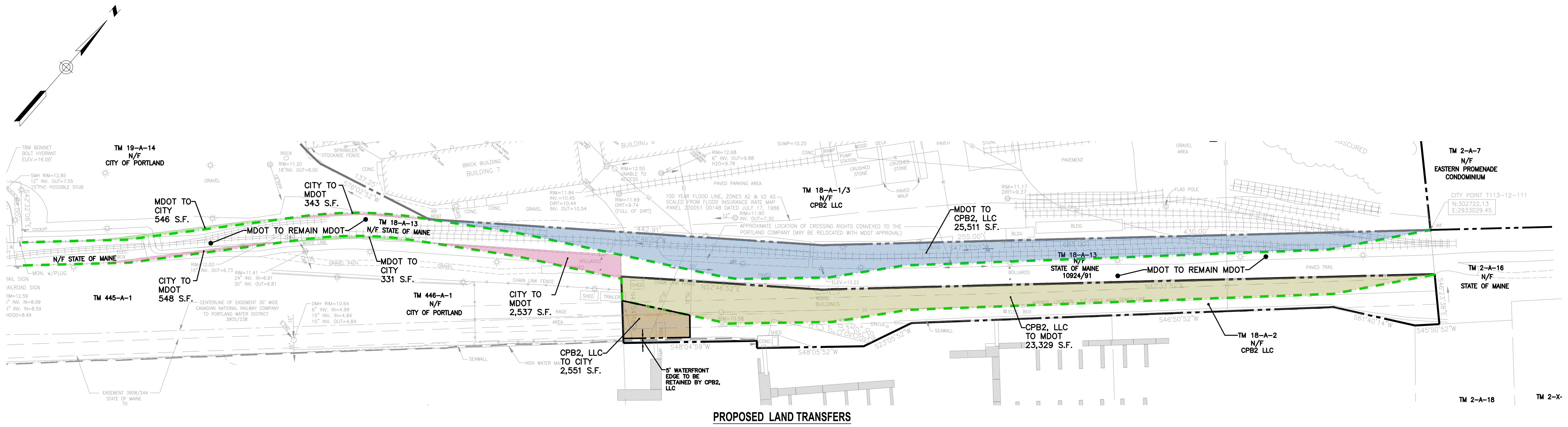
The Economic Development Committee is asked to consider recommending the above-described property exchange to the full City Council. The Economic Development staff recommends the Exchange Agreement, in substantially the form as attached, in support of redevelopment of the Portland Company Complex as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

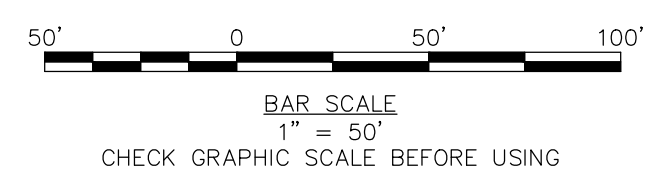
EXISTING CITY LAND TRANSFERRED TO:		NEW CITY LAND TRANSFERRED FROM:	
MDOT	548 S.F.	MDOT	546 S.F.
	343 S.F.		331 S.F.
	2,537 S.F.		
CPB2	0 S.F.	CPB2	2,551 S.F.
	TOTAL: 3,428 S.F.		TOTAL: 3,428 S.F.

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: Economic Development Committee

FROM: Greg Mitchell

DATE: March 24, 2017

SUBJECT: Vote to Authorize Issuance of Request for Proposals to sell a portion of City Owned Thames Street Property

I. ONE SENTENCE SUMMARY

City staff is presenting for public discussion and vote to issue a Draft Request for Proposals (RFP) to sell a portion of the City-owned Thames Street property, including approximately 48,000 square feet, as shown on the attached map.

II. BACKGROUND

Policy for development in the area surrounding Ocean Gateway is informed by the *Master Plan for the Redevelopment of the Eastern Waterfront* (Eastern Waterfront Master Plan, EWMP) which provided graphics, schematic plans, and written policies guiding upland and waterfront development. Along with infrastructure and development scenarios, the Master Plan promoted policies for mixed use development, retention of water-side land for marine use, compatibility of new development with neighboring uses, and economically responsible development. Prior to its adoption, the Eastern Waterfront Master Plan was amended with the addition of Design Guidelines and a Building Height Study. Public infrastructure expansion (as partially implemented by Ocean Gateway with Thames Street and Hancock Street extensions) was a key recommendation of the plan.

The EWMP envisioned a mixed-use build-out of the upland sections of the district establishing a new urban neighborhood based on an expanded street grid, resulting in over a half-million square feet of additional office, retail and residential construction to be supported by additional structured parking. The sale of a portion of the City owned Thames Street property, through this Request for Proposals, will further the EWMP.

The EWMP was adopted into the City's Comprehensive Plan in 2004, and was amended in 2006. In 2009, the City Council further directed staff to market for sale the city-owned portion of the site that has come to be known as the "Thames Street Lot."

At the January 3, 2017 EDC meeting, staff presented an overview of the subject property, followed by a public hearing by the EDC on January 31, 2017. Public hearings will be held at the EDC March 29 meeting when it reviews this Draft RFP for a portion of the Thames Street property. In addition, there will be other future opportunities for public comment when the EDC reviews and recommends a purchase and sale agreement to the City Council, and again at a future City Council meeting when it takes up this matter.

Staff's proposed approach is to solicit proposals for the western portion of the Thames Street property (bounded by Hancock Street/Thames Street/Mountfort Street Connector and adjacent privately owned property which includes the VA Clinic, SMRT, and other tenants.

The recommended approach accomplishes the following:

- ***EWMP.*** Furthers the goals of the EWMP;
- ***Attracts Private Sector Investment and Quality Jobs.*** Enables Portland to attract private sector investment and associated high quality job creation to the site under existing zoning;
- ***Stimulates New Parking Structures.*** Requires investment in structured parking in the East End Area; and,
- ***Preserves Property for Future Public Streets.*** Reserves the City's ability to negotiate future important roadway connections (Mountfort Street Extension and New Connector Road).

III. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Sale and development of a portion of the Thames Street property will:

- Implement long-standing City goals fulfilling the vision of the Eastern Waterfront Master Plan;
- Provide an improved appearance and increased year-round vitality for the Ocean Gateway area; and,
- Promote infill development connecting ongoing construction located west of Hancock Street with the planned redevelopment of the Portland Company complex.

IV. FINANCIAL IMPACT

Sale of this property will generate property sale revenue for the City, attract private sector investment and associated job creation, along with annual property tax revenue to the City. All proposals will be evaluated for the amount of private sector investment and number of quality jobs.

V. STAFF ANALYSIS

Staff analysis is that the City should take advantage of the current strong market position for Portland to place this property on the market to support continued growth of Portland's economy.

Detailed analysis will be done on all proposals, under direction of the EDC and City Council, to select a development program approach for the City.

VI. RECOMMENDATION

Staff recommends the EDC hold a public hearing to discuss issuance of the Draft RFP to sell a portion of the City-owned Thames Street property and vote to authorize its issuance.

VII. LIST ATTACHMENTS

- Draft RFP for Sale of a Portion of the City-owned Thames Street Property

City of Portland, Maine
“Sale of Portion of City Owned Thames Street Property”
Request for Proposals

NOTICE AND SPECIFICATIONS

Sealed proposals for furnishing the Economic Development Department with proposals related to the “Sale of Portion of City Owned Thames Street Property,” as specified herein, will be received by the Purchasing Office, Room 103, City Hall, 389 Congress Street, Portland, Maine 04101, until 3:00 p.m., four weeks from advertisement at which time they will be publicly opened. Proposals shall be submitted with the attached forms, and returned in sealed envelopes plainly marked on the outside “Thames Street Proposal”, together with an electronic copy. Proposals that are late and or submitted via tele-facsimile shall not be accepted. All proposals shall be held open to acceptance for sixty days from opening.

All questions **must** be submitted in writing to the Purchasing Office. Questions may be mailed, hand delivered, faxed to (207) 874-8652 or e-mailed to mff@portlandmaine.gov and must be received no later than ten (10) business days prior to the opening date. Questions received after this time will not be addressed. Any interpretation, correction or change of this document will be made only by written addenda. Changes in any other manner will not be binding on the City and cannot be relied upon by proposers. Proposers cannot have contact with any City staff with regard to this Request for Proposals unless to obtain general public information as specified in the document.

The disposal of this real estate shall be on the basis of a negotiated proposal, with the City of Portland reserving the right to refuse any and all proposals. All proposers are advised that the property will be sold “as-is” and “where is,” in its existing condition, with no warranties to be expressed or implied. The City disclaims any and all responsibility for injury to proposers, their agents or others while examining the property or at any other time. The property will be conveyed by quitclaim deed.

INTRODUCTION

The Eastern Waterfront Master Plan (EWMP) envisioned the build-out of the area establishing a new neighborhood based on a new street grid, with over a half-million square feet of additional office, retail and residential construction to be supported by additional structured parking. The City adopted design guidelines for the Eastern Waterfront redevelopment. The sale of a portion of the City-owned Thames Street property, through this Request for Proposals, will further the EWMP.

Use of additional land, either contiguous or non-contiguous to the City property being made available through this RFP, is encouraged in order to best fulfill the development goals described in the EWMP.

Thames Street Property Overview

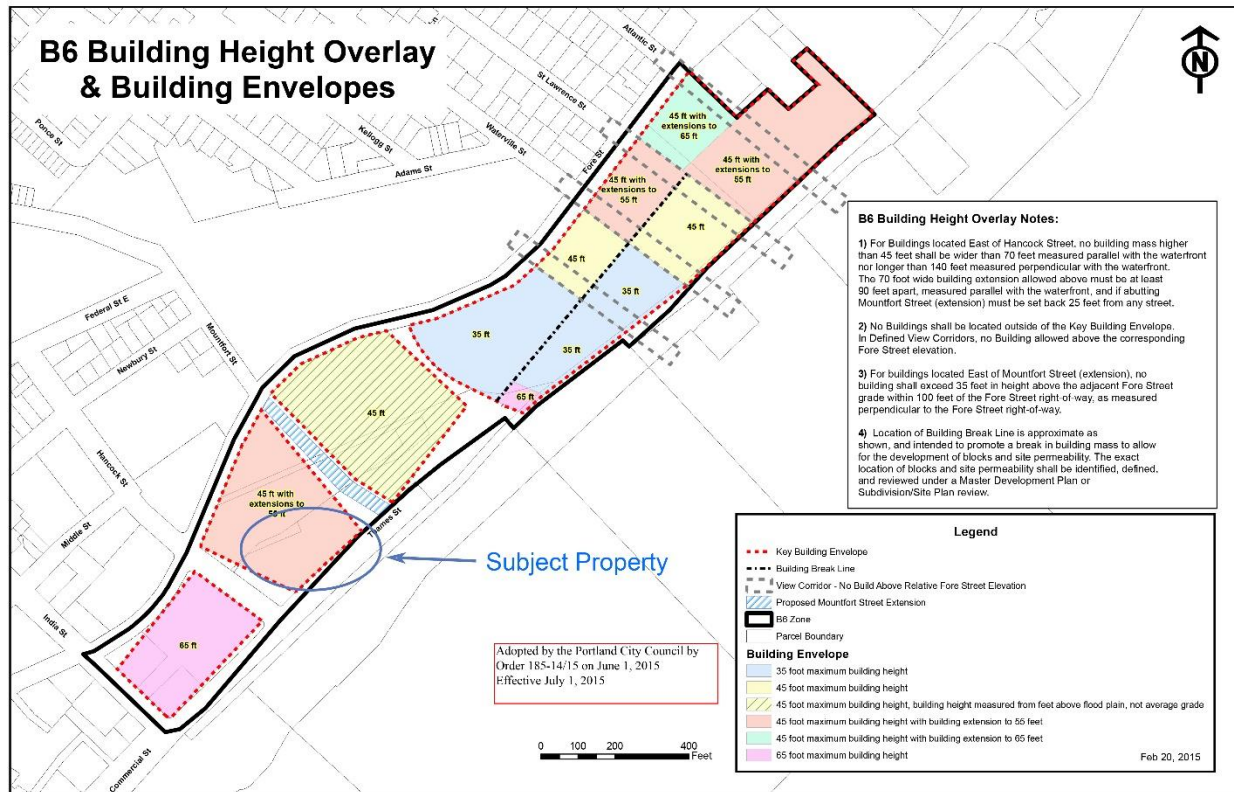
The portion the City is considering selling includes approximately 48,000 square feet located along Thames Street between Hancock Street and the Proposed Mountfort Street Extension. The City is not prepared, at this time, to sell the remainder of the City Thames Street property. See attached map.

Existing Zoning Summary

This property is located in the B-6 zoning district, which permits a variety of uses, including residential, office, retail and hospitality. The zoning allows heights of 45 feet, with some allowances up to 55 feet, as regulated by the B6 Building Height Overlay and Building Envelope Map (B6 Height Overlay.) As shown on the B6 Height Overlay, there are portions of the subject parcel - at the corners of Hancock Street and the proposed Mountfort Street extension with Thames Street - that lie outside of the “Key Building Envelope” established within the Overlay. These areas are intended to preserve and create view corridors from public streets to the water. While not available for buildings, these areas may be used for landscaping, plaza space, outside dining, or other similar use.

The B6 Zone is additionally subject to Design Guidelines for the Eastern Waterfront.

<http://www.portlandmaine.gov/DocumentC>



enter/Home/View/6725

Note: All respondents should investigate specific legal and zoning requirements for proposed projects prior to submission of proposal. The City's Zoning Administrator can be contacted at (207) 874-8695. The City's Planning Office can be contacted at (207) 874-8719.

SELECTION PROCESS

Proposals will be reviewed by a staff evaluation committee that will score the proposals based upon the best opportunity for negotiating the highest quality and most appropriate use of the property. The highest scoring respondents to the RFP may be selected for an on-site interview at the discretion of the evaluation committee. These firms may be re-scored after the evaluation committee has completed its interview process and reviews any additional information. The staff committee's scoring will be forwarded to the Portland City Council Economic Development Committee for its deliberation and subsequent recommendation to the City Council. Final approval for sale of City property and the negotiated public-private partnership will be with the Portland City Council.

Key Proposal Goals (3)

1. ***Private Sector Investment.*** The City desires to further the build-out of private sector investment to meet City goals as outlined in the Eastern Waterfront Master Plan, economic development efforts, and community development goals.
2. ***Parking.*** The majority of the City's Thames Street property should be utilized for development. The majority of new structured parking, located within the City's Thames Street property, if needed, shall be surrounded by active uses and screened from view. All new proposed structured parking facilities, located in the Eastern Waterfront Area (not on the Thames Street property) should be located within a reasonable walking distance from the Thames Street property. All proposals shall address City replacement parking needs and accommodate parking requirements for new proposed private investment.
3. ***Future Streets (New Connector Road and Mountfort Street Extension).*** At this time, the City is not prepared to provide commitments to design and construct Mountfort Street Extension or the New Connector Road. However, all proposals should address the need for Mountfort Street Extension and the New Connector Road as future public rights-of-way to support proposed private investment on the City property located between Hancock and Mountfort Streets. Alternative approaches to meeting the goals of permeability and accessibility across this block will be considered.

Thames Street Extension Note: The City Council approved a Purchase and Sale Agreement with CPB2 to sell a triangular shaped property to CPB2 along with an expected City commitment to invest in extending Thames Street easterly to this property.

GENERAL INFORMATION

1. **City Property Location:** Corner of Hancock and Thames Street (See attached map.)
2. **General Dimensions:** Portion site under consideration for sale includes 48,000 +/- square feet.
3. **Current use:** Unimproved municipal parking lot.
4. **Condition of the property at the time of sale:** The property is within a B-6 Eastern Waterfront Mixed Zone and is being used as a municipal parking lot.
5. **Environmental Conditions:** The City of Portland does not have any specifics with regard to environmental conditions and makes no representations or guarantees with respect to the environmental condition of the site.

6. **License Agreement with adjacent property owner Jack Rabbit (copy attached):** The City acknowledges the existing License Agreement with Jack Rabbit which needs to be addressed with the sale of City property.
7. **Road Extensions (Thames Street, New Connector Road and Possible Mountfort Street Extension):** See attached plan showing the planned extension of Thames Street, the New Connector Road and Mountfort Street Extension. At this time, the City is not prepared to provide commitments to design and construct Mountfort Street Extension or the New Connector Road. The Thames Street extension is incorporated into a City Council approved City and CPB2 P&S Agreement, while the New Connector Road and Mountfort Street Extension, or suitable alternatives, need to be designed, funded, and constructed.

PROPOSAL REQUIREMENTS

1. All proposers shall signify, by signing the attached proposal form, that the proposer has read and understands all conditions concerning the development of the land being offered, as outlined in this request for proposals, and that the proposal is made in accordance with this request.
2. Each proposal submitted must specifically outline the proposed development or re-use of this City property and indicate the intended end use(s). At a minimum, the proposal shall include:
 - **Site Concept Plan.** Concept for the proposed use of the land including end use(s);
 - **Project Timeline.** Timetable from beginning to completion of the project;
 - **Future Road Rights-of-Way.** Any future streets right-of-way needed and offer of property if applicable;
 - **Parking.** Sale of this City property will displace upwards of 150 parking spaces utilized by the City staff and others. Construction of suitable City replacement parking must be located within a reasonable walking distance in the Eastern Waterfront Area from the Thames Street property along with plans for new structured parking to accommodate new private sector investment. A parking management plan shall be provided showing the proposed locations for all new structured parking and options, including costs, to accommodate City replacement parking needs for upwards of 150 City parking spaces. The parking management plan should address public access to parking, weekend/evening hour use of parking, and snow ban parking.

3. Each proposer must present the City with evidence of its financial ability to undertake and complete the project as outlined in its proposal.
4. Responses should include a clear demonstration the proposer's ability to complete all elements of the project as described in the proposal including a description of the development team and past experience with similar projects, project readiness and timeframe for completion as evidenced by lease commitments or the like, and financial feasibility analyses detailing a development budget, operating pro-forma's, and any other provided information.
5. 12 copies, with the original being so marked, of each proposal shall be submitted, together with an electronic version.
6. Additional data, exhibits, statements, drawings, renderings of buildings, etc., are invited to insure a total understanding and proper evaluation of each proposal by the City.

SELECTION CRITERIA (5)

1. Community Integration as Guided by the Eastern Waterfront Master Plan

As described above, development proposals should be guided by the Eastern Waterfront Master Plan, which envisioned the build-out of over a half-million square feet of additional office, retail and residential construction. The City is requiring development of new structured parking as part of this redevelopment. Any successful response to this Request for Proposals will fulfill those goals.

See web link: <http://www.portlandmaine.gov/DocumentCenter/Home/View/3391> - to the Eastern Waterfront Master Plan.

2. Public Benefit to the City

The City would like to obtain the most favorable public benefit associated with the sale of this property, and will rate proposals based upon that return. This will mean that a proposal will score higher as it ascribes the greatest value to the City-owned land and offers the greatest public benefit to the City. Those factors could include, but are not limited to:

- **Net new jobs to the City.** The City desires to attract new full-time quality (wage compensation and access to benefits) type jobs to the city. Proposals should include estimates of the numbers and types of full-time jobs associated with project private sector investment.
- **Future Mountfort Street Extension and New Connector Road Rights-of-Way.** At this time, the City is not prepared to provide commitments to design and construct Mountfort Street Extension or the New Connector Road. All proposals should address the need for Mountfort Street Extension and the New Connector Road as future public rights-of-way to support proposed private investment on the portion of City property

located between Hancock and Mountfort Street Extension. Alternative approaches to meeting the goals of permeability and accessibility across this block will be considered.

3. Purchase Price

The City expects to receive Fair Market Value (“FMV”) for the property and would recognize anything less than FMV as a financial incentive to the successful developer.

4. Additional Financial Benefit to the City

Above and beyond the proposed purchase price, including but not limited to:

- **Net new property tax revenue.** Estimates for the value of new private construction should be provided with each proposal. The City will review this information to determine an estimated total municipal assessed value for the proposed project and associated property taxes.
- **Parking.** The City requires investment of additional privately owned and operated parking structures located in the Eastern Waterfront Area (preferably not on the Thames Street property) to support City replacement parking, activities at the Portland Ocean Terminal, including the Ocean Gateway, parking for island residents and to provide opportunities for continued growth of the land side of the Eastern Portland Waterfront. A parking management plan shall be provided showing the proposed locations for all new structured parking and options, including costs, to accommodate City replacement parking needs for upwards of 150 City parking spaces. The parking management plan should address public access to parking, weekend/evening hour use of parking, and snow ban parking.

5. Proposers Proven Capacity and Relevant Experience

Responses should clearly demonstrate the proposer’s ability to complete all elements of the project as described in the proposal including a description of the development team and past experience with similar projects, project readiness and timeframe for completion as evidenced by lease commitments or the like and financial feasibility analyses detailing a development budget, operating pro-forma’s, and any other provided information.

SCORING MATRIX

Subject to the Reservation of Rights as described herein below, the City Council Economic Development Committee will recommend to the City Council the proposal which in its judgment offers the best opportunity for negotiating the highest quality and most appropriate use of the property, even though such proposal may not contain the highest purchase price offered.

The criteria used for the rating of the Proposals by the Evaluation Committee will include:

- 1. Community Integration as Guided by the Eastern Waterfront Master Plan (25 Points)**

2. **Public Benefit to the City (25 Points)**
3. **Property Sale Price (20 Points)**
4. **Additional Financial Benefits to the City (15 Points)**
5. **Proposers Proven Capacity and Relevant Experience (15 Points)**

RFP Evaluation and Timeframe

The following process will be used:

1. Upon closing of the Request for Proposal application period, all proposals will be reviewed for completeness.
2. All complete proposals will be reviewed under the scoring factors and preference guidelines as described herein. The proposal evaluation team may confer with the applicants and/or third parties to clarify or verify information and request additional information for the purpose of allowing the evaluation team to ask questions of the finalists and to further clarify any Proposer's written responses.
3. All proposals and scoring information will be forwarded to the City Council's Economic Development Committee for review. The Committee may hold interviews with any, all or none of the proposers. The Committee's recommendation will then be forwarded to the full City Council for its review and final action.
4. When the evaluation and review process is complete, the Economic Development Committee will select the proposal to begin negotiations toward finalizing a Purchase and Sale Agreement including all conditions of sale to recommend to the City Council for final action.

Proposers will be notified of the scoring results and all pertinent meeting review dates.

CONFIDENTIALITY

Proposals received by the City shall become a matter of public record, subject to public inspection, except to the extent, which an applicant designates in writing, proprietary data to be confidential and submits that data under separate cover, such information may be held from public inspection, as provided in Maine law: 5 MRSA Sections 13119-A.

LEGAL REQUIREMENTS

The Purchase and Sale Agreement for the sale of the property will be executed only after satisfactory review and final approval by the City Council. At closing, the City shall convey the property by quitclaim deed. There will also be covenants that restrict the re-sale of the property, requires City Council approval of any new owners within a negotiated period of time, or allows the City to repurchase the property in the case of non-performance.

RESERVATION OF RIGHTS

The City reserves the right, at its sole discretion, to reject any and all proposals for the property, based on the quality and merits of the proposals received, or when it is determined to be in the public interest to do so. Furthermore, the City may extend deadlines and timeframes, as needed.

The City reserves the right to substantiate any Proposer's qualifications, capability to perform, availability, past performance records and to verify that the proposer is current in its financial obligations to the City.

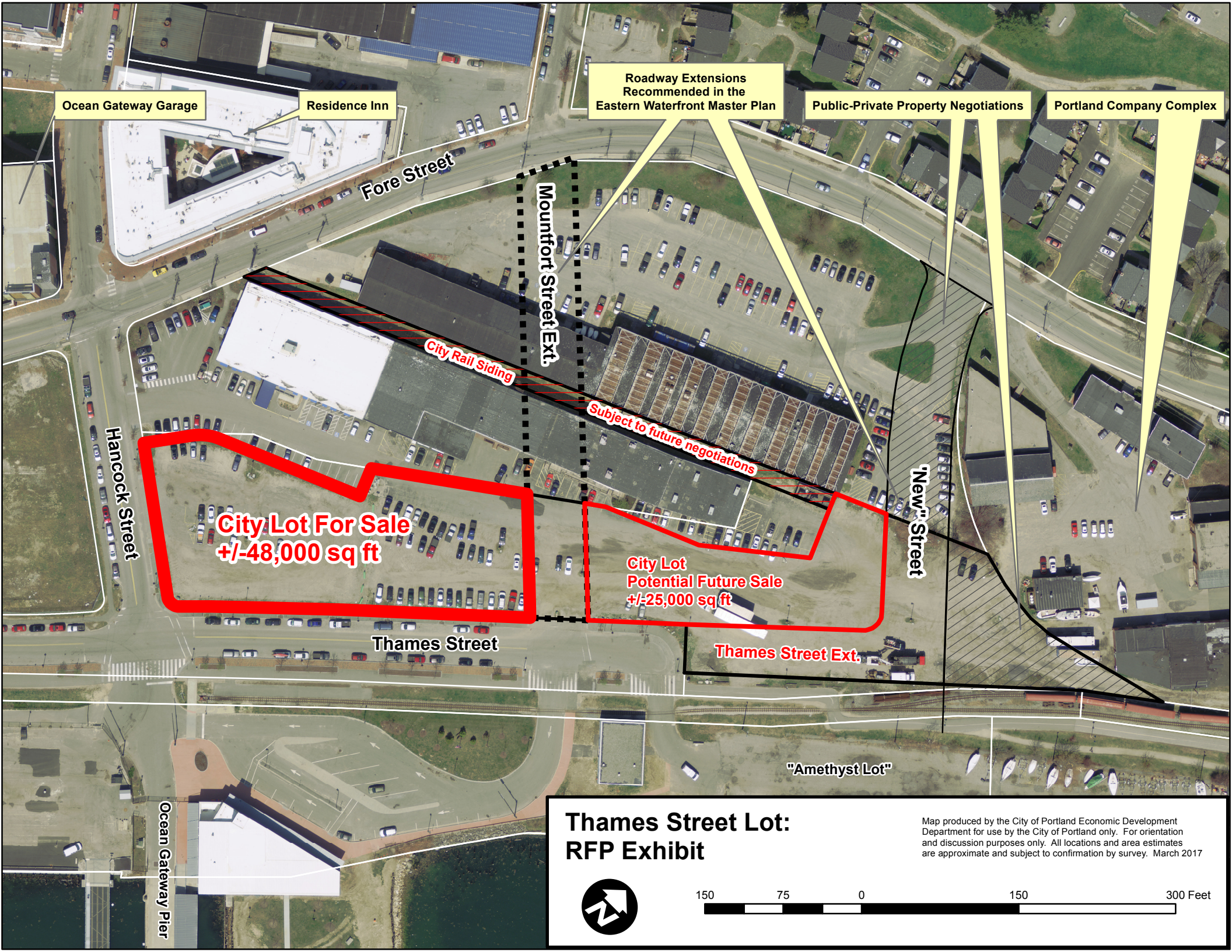
The City reserves the right to waive any informalities in proposals, to accept any proposal or portion thereof, and to reject any and all proposals, should it be in the best in the best interest of the City to do so.

March 24, 2017

Matthew F. Fitzgerald
Purchasing Manager

Appendices

- Thames Street Property Map
- City and Jack Rabbit License Agreement



Ocean Gateway Garage

Residence Inn

Roadway Extensions
Recommended in the
Eastern Waterfront Master Plan

Public-Private Property Negotiations

Portland Company Complex

Fore Street

Mountfort Street Ext.

City Rail Siding

Subject to future negotiations

City Lot For Sale
+/-48,000 sq ft

City Lot
Potential Future Sale
+/-25,000 sq ft

New Street

Thames Street Ext.

"Amethyst Lot"

Hancock Street

Thames Street

Ocean Gateway Pier

Thames Street Lot: RFP Exhibit

Map produced by the City of Portland Economic Development Department for use by the City of Portland only. For orientation and discussion purposes only. All locations and area estimates are approximate and subject to confirmation by survey. March 2017



LICENSE AGREEMENT

This **LICENSE AGREEMENT** is made between the **City of Portland**, a body corporate and politic located at 389 Congress Street, Portland, Maine (hereinafter the "City"), and **JACKRABBIT, LLC**, a Maine limited liability company with a mailing address of 44 Oak Street, Portland, Maine, 04101 (hereinafter "Jackrabbit").

WHEREAS, the City and Jackrabbit each own property adjacent to Jackrabbit's building located at 144 Fore Street in the City of Portland, Maine; and

WHEREAS, the City wishes to have access to a portion the Jackrabbit's above-described property (hereinafter the "Jackrabbit Property"), and Jackrabbit wishes to have access to a portion of the City's above-described property (hereinafter the "City Property") for the purposes of vehicular traffic, travel and parking as described in the Agreement;

NOW THEREFORE, the City does hereby grant to Jackrabbit, its successors and assigns in ownership of the Jackrabbit Property, a revocable license to enter upon and to use the City Property for the purpose of vehicular traffic and travel, and Jackrabbit does hereby grant to the City, its successors and assigns in ownership of the City Property a revocable license to enter upon and use the Jackrabbit Property for the purpose of vehicular traffic, travel and parking, subject to the following terms and conditions:

1. **Location.** The City Property and Jackrabbit Property are described and delineated in Exhibit A, attached hereto and incorporated herein by reference.

2. **Use of City Property by Jackrabbit.** The City Property shall be used by Jackrabbit as shown on Exhibit A attached hereto for vehicular traffic, travel and minimal parking related to Jackrabbit's ownership and Jackrabbit's and his tenants' and invitees' use of Jackrabbit's building located at 144 Fore Street, only. All of Jackrabbit's parking shall be immediately adjacent to the building located at 144 Fore Street and at either end of the building, as shown on Exhibit A attached hereto. Vehicles shall not block the flow of traffic in the shared travel lane. Any vehicles that park on City Property not in accordance with this paragraph and do not display a City hang tag or permit will be subject to ticketing, booting and towing at the City's discretion. All use of the City's Property by Jackrabbit must be in compliance with state and federal law, and local ordinance, including but not limited to local land use ordinances.

3. **Use of Jackrabbit Property by the City.** The Jackrabbit Property shall be used by the City as shown on Exhibit A attached hereto for vehicular traffic, travel and parking related to the City's activities, including but not limited to providing parking for users of the Eastern Promenade Trail after 5:00 p.m. Monday through Friday and all day on weekends and holidays. All use of the Jackrabbit Property by the City must be in compliance with state and federal law, and local ordinance, including but not limited to local land use ordinances.

4. **Signage.** Jackrabbit agrees to post signs on or around its building located at 144 Fore Street, at its own expense, indicating that parking adjacent to the building is reserved for tenants and customers of the building.

5. **Maintenance.** Jackrabbit shall be responsible for maintenance and repair,

including snow plowing and removal, of the Jackrabbit property and the shared travel lane indicated on Exhibit A. City shall be responsible for maintenance and repair, including snow plowing and removal, of the City property.

6. **No Fees.** Jackrabbit shall be liable for no fees for its use of the City Property in accordance with this License Agreement, and the City shall be liable for no fees for its use of the Jackrabbit Property in accordance with this License Agreement.

7. **Event Revenue.** Jackrabbit shall retain any revenue from parking for special events only for parking spaces located on Jackrabbit property. The City shall retain any revenue from parking for special events for parking spaces located on City property.

8. **Insurance: City.** City is self insured and any claims which are the responsibility of the City under this agreement shall be covered by said self insurance fund.

9. **Insurance: Jackrabbit.** Jackrabbit shall procure and maintain throughout the term of this License Agreement, or provide through its contractor(s), comprehensive general liability insurance in the minimum amount of Four Hundred Thousand Dollars (\$400,000) covering Jackrabbit's activities hereunder and naming the City as an additional insured thereon. In addition, Jackrabbit shall provide evidence of automobile liability insurance in said minimum amount, and workers compensation insurance in the statutory amount, if applicable. All contractors to Jackrabbit performing work under this License shall provide the City with evidence of the above insurance coverages with the City as an additional insured, and workers compensation and employers liability insurance in the statutory amounts which shall have an endorsement waiving subrogation against the City. Such contractor insurance may be in place of that required of Jackrabbit so long as it remains in effect and names the City as an additional insured.

Certificates evidencing such insurance policies shall be delivered to City and shall provide the City with no less than thirty (30) days prior notice of cancellation or non-renewal.

All insurance policies hereunder shall be primary to any insurance, or self-insurance, maintained by City.

10. **Effective Date.** This License is effective as of the date of execution.

11. **Term.** This license shall have a term of ten (10) years and shall automatically continue for successive ten year periods unless the parties agree upon and establish functionally equivalent access to the Jackrabbit Property or the affected portion of it on terms similar to this Agreement as mutually agreed upon by Jackrabbit and the City. If the parties fail to agree, then on written notice from either party any dispute shall first be submitted to nonbinding mediation by a single mediator. If no mediation occurs or if no agreement is reached within 30 days thereafter, then on written notice from either party the dispute shall be submitted to arbitration, to a single arbitrator to be agreed upon within 20 days of the date on which the notice is served. If the parties cannot agree on a single arbitrator then on written notice from either part the dispute shall be submitted to a panel of three arbitrators and the notice shall specify the name and address of the person designated to act as an arbitrator on its behalf. Within 20 days after the service of such notice, the other party shall specify the name and

address of the person designated to act an arbitrator on its behalf. If the other party fails to notify the initiating party of the appointment of its arbitrator within the time above specified, then the appointment of the second arbitrator shall be made by the first arbitrator. The two arbitrators so chosen shall meet within 15 days after the second arbitrator is appointed and if, by 30 days after the date of the appointment of the second arbitrator, the two arbitrators shall not agree upon a resolution of the dispute, they shall together appoint a third arbitrator. The three arbitrators shall meet and render a decision within 30 days after the date of the appointment of the third arbitrator. The decision of a majority of the arbitrators shall be final. All arbitrators appointed must be employed or active in the real estate industry, including without limitation, as managers, real estate brokers, bankers, attorneys, developers, investors or otherwise.

The party's shall share the costs of providing a functionally equivalent access equally, but if the City's proportionate share based on the original square footage of the portion of the access relocated on its land to all of the original square footage of the access from the City to Jackrabbit access is less, then it shall pay the lesser share.

12. Termination. In the event either party does not comply with the terms of this Agreement, the aggrieved party must first request the other party to cure the problem. In the event the problem is not cured within thirty (30) days, the party can terminate the Agreement upon thirty (30) days written notice.

Any notice of an Event of Default delivered pursuant section 12 of this license agreement must be sent by certified mail, return receipt requested to Jackrabbit at the address for Jackrabbit set forth above, or at such other address as Jackrabbit may provide to the City in writing from time to time. In addition following a notice sent to the City by certified mail, return receipt requested, by a party identifying itself as the holder of a mortgage on Jackrabbit's Property, the City shall concurrently send such mortgagee a copy of any notice of an Event of Default which the City sends to Jackrabbit.

Notwithstanding any other provision herein, in the event that a notice of an Event of Default is delivered to Jackrabbit pursuant to section 12 hereof, any mortgagee of Jackrabbit's Property who has identified itself to the City shall be entitled to cure such default within the time frames set forth above, and the City agrees to accept such performance by any such mortgagee of Jackrabbit's obligations hereunder.

In the event the adjacent Thames Street Lot, owned by the City, is redeveloped and the use of City Property by Jackrabbit pursuant to this Agreement presents an encumbrance to redevelopment of said lot, the City shall provide Jackrabbit and any mortgagee of Jackrabbit's Property who has identified itself to the City one (1) years notice of termination of this Agreement, provided that the City must provide functionally equivalent access to the Jackrabbit Property on terms similar to this Agreement in order for such notice of termination to be effective.

In the event the City takes by eminent domain proceedings a portion of the Jackrabbit Property necessary for a future extension of Mountfort Street, then this License shall terminate with respect to that portion of the License area necessary for such extension of Mountfort Street, and the City shall not be required to pay damages for such partial

termination or for any increased value of the portion of the Jackrabbit Property so taken attributable to this License Agreement.

12.No Interest in Land. The City shall have no authority to modify or make any changes to the Jackrabbit Property subject to this License without the prior consent of Jackrabbit, and Jackrabbit shall have no authority to modify or make any changes to the City Property subject to this License without the prior consent of the City, provided that the parties hereby consent to the changes identified in the City's minor site plan approval issued on August 16, 2010.

13. This Agreement amends and restates in its entirety a prior License Agreement between the parties dated October 14, 2010.

Dated as of January 21st, 2011

JACKRABBIT, LLC

By: [Signature]
name: Mike Marino
its Gen.

CITY OF PORTLAND

By: [Signature]
name: Joseph C. Gray, Jr.
its City Manager

STATE OF MAINE
CUMBERLAND, ss.

January 21, 2011

PERSONALLY APPEARED before me the above named mike marino in his said capacity, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said limited liability company.

[Signature]
Notary Public/Attorney at Law
Print name: Barbara J Brewer

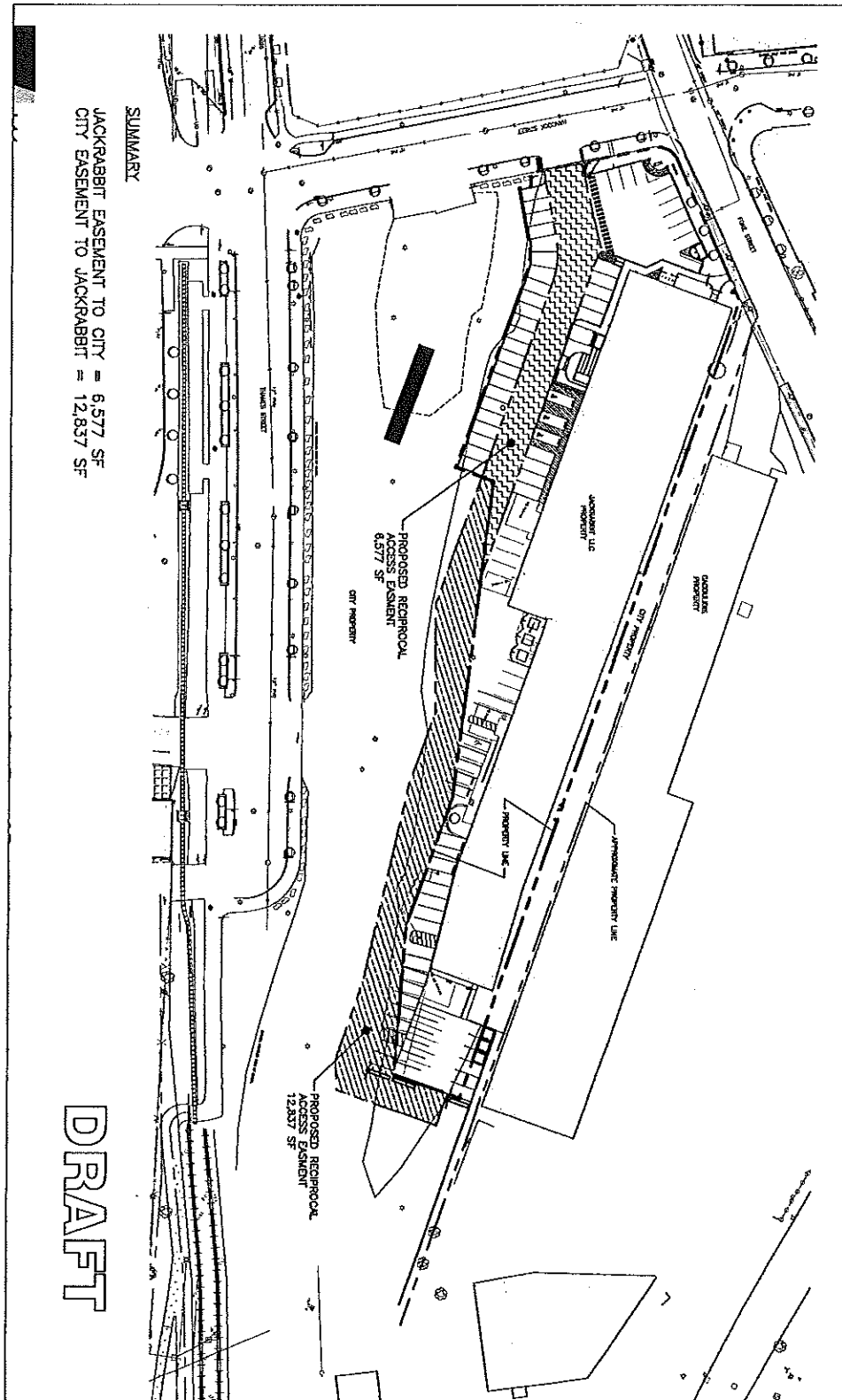
STATE OF MAINE
CUMBERLAND, ss.

January 21, 2011

PERSONALLY APPEARED before me the above named Joseph E. Gray, Jr. in his/her said capacity, and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of the City of Portland.

[Signature]
Notary Public/Attorney at Law
Print name:

Exhibit A





Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Economic Development Committee

FROM: Greg Mitchell, Economic Development Director

DATE: March 24, 2017

SUBJECT: DRAFT 2017 Economic Development Committee Work Plan

For discussion purposes at your meeting on March 29, this memorandum outlines the status of the EDC 2017 Work Plan activities, including 2017 Mayor and City Council economic development goals.

Broadband Access (2017 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.

Eastern Waterfront Public Infrastructure Investment/Increase Utilization of the Portland Ocean Terminal (POT) (2017 Mayor and City Council Goal)

Establish direction on the future of the Portland Ocean Terminal, including waterfront concerts and Compass Park. 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 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.

Tax Increment Financing Policy and Districts (2017 Mayor and City Council Goal)

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.

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 will be presenting a draft RFP for sale of a portion of the Thames Street lot at the EDC's meeting on March 29, 2017. *Please refer to "City Properties" section for the Thames Street property item.*

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.

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 an April 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, coupled with waterfront concerts use and Compass Park use. 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 discussed proposed amendments to the Bay Ferries Lease for guidance and direction. 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 will be proposed in 2017.

Spring Street Parking Garage Commercial tenant leases including the former Pirates space, with 1,172 square feet.

Casco Bay Island Transit District (CBITD) Lease: Staff is beginning its review of the existing Lease to recommend, at the appropriate time, amendments. This current 30-year lease expires June 2018.

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. At a special meeting of the EDC on February 28, 2017, it was provided an update by CBRE/The Boulos Company on their methods of marketing, followed by a tour of the properties. The EDC then met on March 7, 2017, and discussed these properties and voted unanimously on a sales approach for Boulos to market these properties with no restrictions, and for Boulos to encourage/leverage workforce housing on Parcel 1, now a parking lot. Public Comment was received at the March 7, 2017, EDC meeting. It is further noted that the public will have an opportunity for public comment 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 discussed interest in this property and receive guidance on future negotiations. A draft Purchase and Sale Agreement will be presented to the EDC in public session in April.

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. The draft RFP will be presented to the EDC on March 29, 2017, for review and recommendation to issue the RFP for sale of a portion of the lot. 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 was on the March 7, 2017, EDC Agenda for a review and recommendation to the City Council, which resulted in a 2-0-1 vote (Thibodeau abstained) to forward to the City Council for approval. The public had an opportunity to comment at the March 7, 2017, EDC meeting and will have an opportunity for public comment again at the City Council when it takes up the matter on April 5, 2017.

Former Reed School. City issued a Request for Proposals for sale and redevelopment of the Reed School. An appraisal has been received by the City, and staff will bring this item to the EDC for its review and recommendation to the City Council when ready.

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 will 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.

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.

In addition, the Thompson's Point TOD TIF may be brought to the EDC for possible amendments, which amendments would need to be authorized by the City Council.

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.

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.

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.

City Development Impact Fees Establishment: Staff will work with the EDC on drafting a policy.

Other Unanticipated Matters as they come up.