

MEMORANDUM



TO: Business & Economic Development Committee
FROM: Jason Bird, Community and Economic Development Officer
DATE: November 24, 2014

Sale of Old Fire Station #6

The Penobscot Theatre has made an offer to the City to purchase Old Fire Station #6 on the corner of Kenduskeag Avenue and Griffin Road. Based on negotiations, here is what we have settled on for a set of terms and conditions for their offer:

Purchase Price: \$225,000.00

Payment in Lieu of Taxes: Incremental, starting at 50% and going to 100% over 5 year period.

Purchase and Sale Agreement: Execute upon authorization, but we would not close until due diligence can be completed, likely in March. They would provide a \$10,000 earnest money deposit at signing of P&S. Deposit would be returned if appropriate zoning cannot be secured, if there are issues with the property inspection, or the appraised value prohibits sufficient financing. If they do not acquire the property for another reason, then they forfeit the deposit.

Staff supports these terms and conditions and recommends authorizing the City Manager to execute the purchase and sale agreement in a final form approved by the City Solicitor.

Attachment: Draft Purchase and Sale for Old Fire Station #6

CONTRACT FOR SALE

The undersigned Penobscot Theatre Company, a non-profit corporation, (Buyer) of 131 Main Street, Bangor hereby offers to purchase from the City of Bangor, a municipal corporation, (Seller) of 73 Harlow Street, Bangor, a certain lot or parcel of land, located at 14 Griffin Road , Bangor, County of Penobscot, State of Maine, and particularly described in Exhibit A, attached hereto (Premises).

\$225,000.00 is the total purchase price.

\$10,000.00 is the **DEPOSIT** in U.S. Dollars paid herewith, to be held by the Seller in escrow, and is to be applied to the purchase price at closing.

The balance of the purchase price is to be paid in full at closing as follows:

CASH AT CLOSING.

THE DEPOSIT IS RECEIVED AND HELD BY SELLER EXPRESSLY SUBJECT TO THE FOLLOWING CONDITIONS:

1. SETTLEMENT/TITLE: It is agreed that this transaction shall be closed and the Buyer shall pay the balance due and the Buyer and Seller shall execute all papers necessary for the completion of the purchase on or before March 31, 2015, (Closing) unless otherwise agreed to, in writing, by both parties. A Municipal Quitclaim Deed without Covenant conveying good and marketable title, free and clear of all encumbrances, except normal public utilities, building and zoning restrictions of record, and restrictive covenants of record shall be delivered by Seller to the Buyer or its nominee at closing. At Closing, Seller shall also deliver to Buyer an owner's affidavit(s) in customary form to allow Buyer to obtain title insurance coverage through the date of recordation of the deed without exception for parties in possession, and indemnification and lien waivers or releases as necessary to eliminate any liens or claims of persons furnishing labor or materials at the request of Seller for the improvement of the Premises. Closing documents shall also include (a) an affidavit of non-foreign status from Seller, and (b) evidence (including opinions of counsel) satisfactory to Buyer of the due authorization of this Contract and conveyance pursuant hereto by all necessary action on the part of Seller. Seller and Buyer agree to execute such other documents at Closing as necessary to comply with their obligations hereunder and as may be reasonably requested by either of them. If the Seller shall be unable to convey or deliver possession in accordance with the provisions of this Contract, or make the Premises conform with the provisions hereunder, then the Seller shall have a reasonable time period, not to exceed 30 days to cure any title defect, unless otherwise agreed by both parties in writing. The Seller hereby agrees to use diligent efforts to cure any such title defect during such period or make the Premises conform, whichever applies. If Seller is unable to cure such defect, then the Buyer shall have the option to proceed with the purchase of the Premises or to request a return of the Deposit and terminate this Contract.

2. SETTLEMENT COSTS. Seller shall pay for the preparation of the Deed. Seller shall pay for the preparation and recording fees for the removal of any encumbrances against the property. Buyer shall be responsible for the cost of closing and all title search fees. Seller shall deliver to Buyer within five (5) days of the effective date of this Contract all existing title work, surveys, reports and inspections within its possession related to the Premises.

The following items shall be prorated as of the date of Closing:

- a. As real estate taxes are currently not being assessed against the Premises, there shall be no real estate tax proration.

b. All fuel at the property shall convey at no cost to the Buyer.

3. POSSESSION: Seller shall deliver to Buyer possession of the Premises immediately upon transfer, free of any tenants and occupants. The Premises shall be then in substantially the same condition as at present. Buyer shall have the option to inspect the property prior to closing. Risk of loss or damage to the Premises by any casualty shall be assumed by the Seller until transfer of title. In the event of such loss or damage to the Premises prior to closing, Buyer may elect to terminate this Contract and receive back its Deposit or Buyer may elect to proceed with this transaction and accept all insurance proceeds due to Seller as a result of such loss or damage. Seller shall keep the Premises heated at its own expense until the Closing.

4. DEFAULT: If the Buyer fails to make any payments or to perform any of the agreements on its part made or entered into, this Contract shall, at the option of the Seller be terminated, and the Buyer shall forfeit said earnest money deposit. In the event Seller fails to tender the Deed described in paragraph 1 above or otherwise fails to fulfill any of Seller's obligations hereunder then Buyer's said Deposit shall be returned to Buyer and, at Buyer's election, the parties shall be relieved of any further obligations pursuant to this Agreement or Buyer may pursue its other remedies at law or equity, including but not limited to specific performance.

5. INSPECTIONS: The Buyer is encouraged to seek information from professionals regarding any specific issue or concern. The Seller makes no warranties regarding the condition, permitted use or value of the Premises.

6. SELLER'S REPRESENTATIONS AND WARRANTIES: The Seller represents and warrants to the Buyer (which representations and warranties shall be true as of the date of closing and shall survive closing) that:

(a) Zoning, Land Use, and Environmental Conditions. (i) During ownership of the Premises by Seller, no letters, notices, orders, subpoenas, citations or other documents were received by Seller from any regulatory agency or governmental entity regarding any zoning or land use violation or environmental conditions on or alleged to be on the Premises; (ii) during ownership of the Premises by Seller, there have been no spills, discharges, releases or emissions of hazardous substances, pollutants or contaminants onto the Premises by Seller or others and Seller has operated the Premises in conformity and compliance with all zoning, land use, and environmental laws, ordinances and regulations; and (iii) no portion of the Premises contains any underground tanks or underground storage facilities of any kind or description. For purposes of this Contract the terms "hazardous substances", "pollutants", "contaminants" and "contamination" shall be given the broadest possible meaning as designated under current federal, state and local environmental statutes and regulations, and by common law.

(b) Condemnation. There is no pending condemnation or similar proceeding or assessment affecting the Premises or any part thereof no such proceeding is threatened by any governmental entity.

(c) Litigation. There is no pending litigation, arbitration or administrative hearing before any governmental authority concerning or affecting the Premises and no such proceeding is threatened as of the date hereof.

7. OTHER CONDITIONS:

A. Property Taxes:

The parties acknowledge that as of the date of the execution of this Contract Buyer is exemption from real estate taxes on the Premises. Notwithstanding said exemption, Buyer agrees to pay to the City an annual payment in lieu of taxes (PILOT) as follows:

for Fiscal Years 2016, 2017, and 2018 in the amount equal to 50% of the real estate taxes that would have been assessed by the City against the Premises if it was not exempt from taxation.

for Fiscal Year 2019 in the amount equal 90% of the real estate taxes that would have been assessed by the City against the Premises if it was not exempt from taxation.

for Fiscal Year 2020 and every year thereafter in the amount equal 100% of the real estate taxes that would have been assessed by the City against the Premises if it was not exempt from taxation.

The provision for payment of a PILOT shall be included in the Deed of conveyance and shall bind Buyer, its successors and assigns.

The parties agree that the payment in lieu of taxes shall be paid in two installments, the first installment for one-half of said amount to be paid on or before September 1st and the second installment for the remaining amount to be paid on or before March 1st of each City of Bangor fiscal year.

It is the intent of the parties hereto, and Buyer hereby agrees that it does hereby waive, to the extent provided above, for itself and any successors in interest, all right or privilege of exemption from municipal taxation of the Premises and any buildings, structures, or improvements which may be or may become located thereon, as may be available by reason of Buyer's or such successors' legal status, or for any other reason whatsoever, and that the City, in its capacity as a taxing authority, may assess all taxes as would otherwise be applicable to the property, buildings, structures or improvements which may be or may become located thereon, as if such exemption did not exist, provided that for each year that they qualify as exempt from taxation on the property, Buyer's obligation each year to pay any such taxes shall not exceed the percentage as agreed herein of the real estate taxes that would have been assessed by the City of Bangor against the Premises if it was not exempt from taxation. Buyer further agrees, for itself and any successors in interest, to pay any assessments on or before the date upon which they become delinquent. The City agrees that Buyer, or its successors in interest, shall have the right to contest the amount of such taxes or assessments in the manner prescribed by law. In the event that Buyer becomes not exempt from real estate taxes on the Premises it shall pay 100% of the taxes assessed.

B. Zone Change

A portion of the Premises is zoned High Density Residential (HDR) and another portion Government and Institutional Service District (G&ISD). Buyer shall take appropriate steps, if deemed necessary for Buyer's planned use of the Premises, to rezone the property to Government and Institutional Service District (G&ISD), or another appropriate zone for its use,

no later than February 1, 2015. Seller agrees to cooperate in Buyer's efforts to rezone the Premises. If Buyer is unable to obtain a zone change, despite all due diligence, Buyer may terminate this agreement and Seller shall return Buyer's Deposit.

C. Property Inspection

Buyer may inspect the Premises. If no later than thirty (30) days from this Contract's effective date Buyer is not satisfied for any reason, Buyer may terminate this Contract and Seller shall return Buyer's Deposit.

D. Financing

This Contract is contingent upon Buyer obtaining financing for the purchase of the Premises. If no later than February 15, 2015 Buyer has not secured financing, Buyer may terminate this Contract and Seller shall return Buyer's Deposit.

E. Real Estate Brokers
Any real estate commission due as a result of this transaction shall be paid by the party which has engaged said broker.

THIS CONTRACT is binding upon the parties hereto, and their respective heirs, personal representatives, successors and assigns. If this **CONTRACT** is not fully understood, parties should consult an **ATTORNEY**. This Contract constitutes the entire agreement between the parties hereto, there are no promises or verbal understandings not clearly specified in it. The use of the singular includes the plural and the use of any gender includes the other. If any provision of this Contract is found to be invalid or unenforceable, such finding shall not affect the validity or enforceability of any other provision hereof. This Contract shall be construed and enforced in accordance with and governed by the laws of the State of Maine. The parties hereby acknowledge that the date in which the last party executes this Contract shall constitute the effective date of this Contract.

BY THEIR SIGNATURES HERETO RECEIPT OF A COPY OF THIS CONTRACT IS
ACKNOWLEDGED BY ALL PARTIES.

The Buyer hereby offers and agrees to purchase the Premises at the price and upon the terms and conditions set forth.

Dated this _____ day of _____ 2014 at Bangor, Maine

PENOBSCOT THEATRE COMPANY

Witness

Name:
Title:

The Seller hereby accepts the offer and agrees to deliver the Premises at the price and upon the terms and conditions stated above.

Signed this _____ day of _____ 2014

CITYOF BANGOR

Witness

Catherine M. Conlow
City Manager

SCHEDULE A
Legal description

Beginning at a point formed by the intersection of the southerly right-of-way line of Strickland Road, as altered by the City Council on October 13, 1969 and recorded in Penobscot Registry of Deeds in Vol. 2170, Page 114, and the easterly right-of-way line of Kenduskeag Avenue; thence North $71^{\circ} 07' 00''$ East along said altered Strickland Road right-of-way line for a distance of 225.00 feet to a point; thence South $21^{\circ} 10' 30''$ East along a line parallel to and 225 feet distant from the easterly right-of-way line of Kenduskeag Avenue for a distance of 225.00 feet; thence South $71^{\circ} 07' 00''$ West along a line parallel to and 225 feet distant from said altered line of Strickland Road for a distance of 225.00 feet to a point on the easterly right-of-way line of Kenduskeag Avenue; thence North $21^{\circ} 10' 30''$ West along said easterly right-of-way line of Kenduskeag Avenue for a distance of 225.00 feet to the point of beginning.

Meaning and intending to describe a parcel of land measuring 225 feet square, located on the southeast corner of Strickland Road and Kenduskeag Avenue, said parcel having a total area of 50,625 feet.