

Order 153-06/07
Given first reading on 2/21/07
Postponed on 3/5/07

Public Hearing, Amended & Passed on 3/19/07 8-1 (Leeman)

NICHOLAS M. MAVODONES (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JAMES I. COHEN (5)
JAMES F. CLOUTIER (A/L)
JILL C. DUSON (A/L)
EDWARD J. SUSLOVIC (A/L)

**ORDER APPROVING MEMORANDUM OF UNDERSTANDING
WITH THE PORTLAND PUBLIC LIBRARY**

ORDERED, that the Memorandum of Understanding with the Portland Public Library substantially in the form attached (Attachment 1) is hereby approved;

BE IT FURTHER ORDERED, that this Order is enacted as an Emergency to take effect immediately, pursuant to Article II, Section 8 of the Portland City Charter, in order to permit the MOU to be implemented immediately.

ATTACHMENT 1

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF PORTLAND AND THE PORTLAND PUBLIC LIBRARY REGARDING THE PORTLAND PUBLIC MARKET

This Memorandum of Understanding made this ____ day of _____, 2007, by and between the CITY OF PORTLAND, a municipal corporation (the "City"), and the PORTLAND PUBLIC LIBRARY, a Maine not-for-profit corporation (the "Library").

RECITALS

WHEREAS, the Library has obtained a Letter of Intent for the possible acquisition of the Portland Public Market (the "Public Market Building") from its owner, Canal Congress, LLC, a copy of which is attached hereto; and

WHEREAS, the opportunity to relocate the Downtown Branch of the Library to the Public Market Building is a once in a lifetime opportunity to locate the Main Branch of the Library in the landmark structure that has already, in its short existence, become a public destination and gathering place and which can, with suitable refitting, become a first class library space complementing the redevelopment of the Congress Street corridor and Bayside area of the City; and

WHEREAS, the Library has underway a \$4,500,000 capital campaign for the renovation of its existing building at 5 Monument Square raising funds to complement a \$4,000,000 bond issue authorized by the citizens of Portland in November 2004; and

WHEREAS, in response to the unique opportunity presented by the availability of the Public Market Building, the Library and the City desire to work together to seize the moment and (1) buy the Public Market Building and (2) sell the 5 Monument Square Building (subject to the continued use of the basement in that building by the Library) in order to help fund the acquisition and refitting of the Public Market Building (the "Project"); and

WHEREAS, the preliminary estimated costs of the Project indicated in the attached budget disclose a need for additional funds for completion and the existing bond authorization requires voter approval for the redirection of the previously approved bond funds to the Project rather than to the renovation of the 5 Monument Square building; and

WHEREAS, it is understood and agreed between the Library and the City that the disposition of the 5 Monument Square building (subject to the reservation of the basement space to the Library) shall be handled primarily by the City, working in conjunction with the Library with the understanding that the net proceeds of any such disposition would be maximized and applied to the Project up to an amount specified below; and

WHEREAS, the City and the Library acknowledge that the potential for the sale of the 5 Monument Square building (with a possible additional build-out capacity of up to 50,000 square feet of rentable space) presents an opportunity to the City to continue its revitalization of Monument Square, enhance the City's tax base and bring more people and businesses to the Downtown Area;

NOW, THEREFORE, the City and the Library agree as follows:

1. The Library and the City will work jointly to enter into a contract with the Seller for the purchase of the Public Market property consistent with the Letter of Intent.

2. The Library and the City will continue their joint efforts to complete title and environmental reviews and the feasibility study (collectively the "Due Diligence") within the timeframes outlined in the Letter of Intent. The City will obtain an independent appraisal of the 5 Monument Square Building.

3. The City will set for public vote a proposed amendment to the existing Library renovation bond authorized in November 2004, increasing the face amount of the bonds from \$4,000,000 to \$5,000,000 and authorizing the use of those funds for the Project, with the expectation that a vote (the "Bond Vote") will be set for June 12th, 2007.

4. The Library and the City will work expeditiously to facilitate the sale of the Library Building at 5 Monument Square. The sale will be subject to the right of the Library to continue to occupy the basement in the Library for Library purposes for a ten (10) year lease term with two (2) options to renew of ten (10) years each. However, if there is an opportunity (by virtue of a bona fide offer to purchase the 5 Monument Square property free of any Library leasehold interest) which would generate sufficient funds to relocate the library operations to a reasonable alternative location from the basement at 5 Monument Square, then the Library is willing to relocate those operations to a reasonable alternative location so long as the additional funds are sufficient for the relocation and the City appropriates them for that purpose.

5. The Library and the City will work in good faith to expedite the sale of the Library Building with the intent of maximizing the price to be obtained in order to provide essential funds for the Project, it being agreed that the Library will not vacate the upper floors of the Library Building until the Public Market Building is ready for the Library's occupancy. In this regard the City and the Library acknowledge a sale/leaseback to a potential buyer is likely the best way to secure funds for completing the work on the Public Market Building while enabling the Library to remain open.

6. The Library and the City will structure the sale of 5 Monument Square in such a way that all or most of the loading dock/parking areas behind the Library building be included with and become part of the Public Market Building property dedicated for future library use.

7. Inasmuch as the 5 Monument Square building is owned by the City although dedicated to Library use, so also will the new Public Market Building be owned by the City and dedicated to Library use and consequently the Purchase and Sale Agreement for the acquisition of the Public Market Building (the "Contract") will be signed by the City as purchaser.

8. The Earnest Money Deposit contemplated by the Letter of Intent and the Purchase and Sale Agreement shall be provided by the Library with the firm understanding that if either the City or the Library is not, as a result of the Due Diligence, unconditionally (but for the Bond Vote) willing to commit to the purchase of the property, that they will not proceed beyond the Due Diligence deadline and will instead terminate the Contract so that the Library can receive a full refund of any Earnest Money Deposits.

9. Funds from the bond issue supplemented by capital funds raised by the Library shall be used for the acquisition and renovation of the Public Market Building. If there is voter approval, the Public Market Building shall be purchased using \$2,000,000 from the Bond Issue and \$750,000 from funds raised by the Library.

10. The Library agrees that any expenditure for renovation at the Public Market Building shall not be made or contracted for unless the Library has the requisite funds "in hand" either in the form of cash on hand, proceeds from the sale of 5 Monument Square, or committed loan funds from a lender to the Library and Library Bond Funds, and has the approval of the City Manager except for architectural and engineering design costs, which will be paid by the library from its capital campaign funds. Any money approved for expenditure by the City manager will be spent pursuant to the City's Procurement Ordinance.

11. The City, upon approval of this Memorandum of Understanding, will simultaneously (a) adopt an irrevocable appropriation order authorizing the appropriation of proceeds of the sale of 5 Monument Square (net of sale/leaseback and carrying costs) in an amount not to exceed \$3.375 million dollars, for use in refitting the Public Market Building for Library use, (b) authorize the City Manager to execute a Purchase and Sale Agreement for the purchase of the Public Market Building, (c) pass any other orders or resolutions as will be necessary or appropriate to undertake the Project, including setting a June 12, 2007 date for a Public Vote on the Library Bond Amendment.

12. The Library and the City strongly believe that the Project as contemplated will provide Portland with a library system for the 21st Century of which the City and its entire citizenry will be proud and well served.

IN WITNESS WHEREOF, the City and the Library have caused this instrument to be duly executed by their respective City Manager and Executive Director thereunto duly authorized as of the day and year first above written.

WITNESS:

CITY OF PORTLAND

By: _____
Joseph E. Gray, Its City Manager

PORTLAND PUBLIC LIBRARY

By: _____
Steve Podgajny, Its Executive Director