

CITY COUNCIL MEETING

AGENDA ITEM X



CITY OF FRANKLIN
COUNCIL AGENDA REPORT
City Council Meeting August 2014

From: Elizabeth A. Dragon – City Manager

Subject: City Council to consider authorizing assignment of option agreement dated January 6, 2014 for property located at 81 Memorial Street (R&D Paving, Inc.)

Suggested Motion:

1.

a. Councilor moves:

“I move that the Council authorize the assignment of a certain Option Agreement dated January 6, 2014 by and between R&D Paving, Inc. of 765 Central Street, Franklin and the City, as follows:

1. Said assignment shall be for property located at 81 Memorial Street in the City of Franklin, NH (Merrimack County Registry of Deeds, Book 2608, Page 1344) and further described as Tax Map Parcel 117-261-00.
2. This assignment shall be upon the same terms and conditions as contained in the original option and is made in accordance with Section 7 (“Assignment”) of said document.
3. The assignment shall be to Franklin Business and Industrial Development Corporation, PO Box 114, the Franklin Proulx Center, Franklin NH.”

b. Mayor calls for a second, discussion, and the roll call vote.

Discussion: For a great many years, the City and FBIDC have worked with R& D paving in attempt to relocate them to a site within the city better suited for their heavy truck traffic. R & D recently purchased 563 South Main Street and is relocating.

81 Memorial Street has been referenced in various plans (including the most recent plans created by Todd Workman and the Odell park realty & advisory group). This property has been identified as a key property for future parking to make the Mill buildings more attractive for redevelopment.

81 Memorial Street was, up until a few weeks before the Option agreement, assessed by the city at a value of \$86,800. Recently the assessed value dropped to \$78,600. Through negotiations with the property owner Richard Dubreuil -he agreed to give the City first right of refusal and in return was seeking a price close to his assessed value. Attorney Fitzgerald recommended the best way to lock in this piece of property was through use of an Option Agreement. Attorney Fitzgerald drafted an Option agreement and it was approved by the City Council in a Non-Public session in December 2013.

Through conversations with FBIDC the board agreed to purchase the property at the assessed value of up to \$80,000. The City agreed that at closing up to \$2,000 of property taxes for the 81 Memorial Street would be prorated and paid by Optionee (City). In addition, a \$3,000 contribution from the City Manager's contingency fund would be used to complete the transaction. This \$3,000 could potentially be recouped when the property is sold by FBIDC in the future as part of the overall development plans in that area.

Attachments/Exhibits: Signed Option Agreement dated January 6, 2014

OPTION AGREEMENT

CITY OF FRANKLIN, NEW HAMPSHIRE AND R & D PAVING, INC.

This Agreement is entered into this 6th day of January, 2014, by and between R & D PAVING, INC., a New Hampshire business corporation in the County of Merrimack, with an address of 765 Central Street, Franklin, New Hampshire, 03235 (hereinafter known as the "Optionor") and the CITY OF FRANKLIN, a New Hampshire municipal corporation, located in the County of Merrimack, with an address of 316 Central Street, Franklin, New Hampshire 03235, (hereinafter known as the "Optionee").

1. **Grant of Option.** For consideration paid, receipt of which is hereby acknowledged, Optionor hereby grants to Optionee the exclusive Option to purchase the Premises defined below.

2. **Premises.** The property subject to this Option is the property of the Optionor located at 81 Memorial Street, Franklin, New Hampshire, as described in a certain deed running to the Optionor, said deed recorded in the Merrimack County Registry of Deeds at Book 2608, Page 1344, dated December 22, 2003 and further described as Tax Map Parcel 117-261-00. The property conveyed upon the exercise of this Option shall be the real estate and any improvements thereon.

3. **Expiration Date.** This Option shall commence upon execution by the Optionor and shall expire at 11:59 p.m. on DEC, 1, 2014.

4. **Notice of Exercise.** Optionee may exercise this Option by giving written notice to the Optionor, at his above address, by registered or certified mail, prior to the Expiration Date. Upon receipt of written notice of the exercise of this Option, Optionor shall cooperate in all ways

with Optionee in scheduling a closing on the transaction promptly on a date, time and location of mutual convenience.

5. **Purchase Price.** The total Purchase Price for the Premises shall be the sum of Eighty-Three Thousand Dollars (\$83,000.00). Closing and transfer of title shall occur at the parties' mutual convenience and upon conclusion of the Optionee having a reasonable time (not to be less than thirty (30) days) to obtain an appropriate examination of title. In the event title is found to be defective, Optionee may, at its sole discretion, withdraw from the transaction and terminate the Option. Alternatively, Optionee may extend the date of closing to allow for the Optionor to cure such title defects as may be identified.

Upon closing and transfer of title, Optionee shall pay the Purchase Price to the Optionor and Optionor shall deliver to the Optionee a Warranty Deed, conveying good and marketable title to the Premises and any improvements thereon. Property taxes, to the extent relevant, shall be prorated between Optionor and Optionee as of the date of closing and transfer of title, with up to Two Thousand Dollars (\$2,000.00) of property taxes due to the City of Franklin at the time of closing to be paid by the Optionee on behalf of the Optionor.

6. **Failure to Exercise Option.** If Optionee does not exercise this Option by the Expiration Date provided in paragraph 3 hereof, then this Option shall lapse and neither party shall have any further claim against the other by reason of this Option Agreement.

7. **Assignment.** This Option may be assigned by the Optionee to a third party upon the same terms and conditions contained herein. During the term of this Option, Optionor shall not voluntarily sell, lease, encumber or otherwise grant any interest in the Premises to third parties, without the express written consent of the Optionee.

8. **Amendment.** No term or provision of this Agreement shall be altered, amended or changed in any way except in writing, with such amendment being executed by the parties hereto.

9. **Entire Agreement.** It is agreed that all understandings and representations heretofore between the parties are merged into this Agreement, which alone fully and completely expresses their agreement and that the same is entered into after full investigation, neither party relying upon any statement or representation not embodied in this Agreement.

10. **Agreement Binding.** This Agreement shall be binding upon and be to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties.

11. **Governing Law.** This contract shall be governed by, and interpreted in accordance with, the laws of the State of New Hampshire. It is specifically agreed that the courts of the State of New Hampshire shall have jurisdiction over any dispute arising herefrom.

12. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes but all of which shall constitute one in the same agreement.

13. **Approval.** This Agreement was approved by vote of the Franklin City Council on December 2, 2013.

This Option Agreement is entered into on the day and year first written above.

OPTIONOR:

R & D Paving, Inc.

Nancy DuBraul
Witness

By: Richard J. DuBraul
Richard J. DuBraul, President
Duly Authorized

OPTIONEE:

City of Franklin, New Hampshire

Sue E. May
Witness

By: Elizabeth Dragon
Elizabeth Dragon, City Manager
Duly Authorized