

BID INFORMATION

ISSUE DATE: **JANUARY 4, 2011**

PURCHASE OF: **250 OLD RIVER ROAD, WILKES-BARRE, PENNSYLVANIA 18702**
Luzerne County Parcel Identification Number: **73-H9SW3-13A-001-000**
Luzerne County Deed Book: 3010 Page 168130
(Former Old River Road Bakery)
(Hereinafter referred to as the "*Property*")

DUE DATE: **WEDNESDAY, FEBRUARY 15, 2012 by 12:00 Noon, Local Time**

BIDS DUE TO: Office of the City Clerk
40 East Market Street
Wilkes-Barre, Pennsylvania 18701

INSTRUCTIONS FOR BIDDERS

1. OVERVIEW: The City of Wilkes-Barre is seeking bids for the purchase of the Property referenced above, subject to the terms and conditions outlined in these Instructions. The Property will be sold, subject to the rights of the City of Wilkes-Barre contained herein, based on the criteria set forth in these Instructions, including, but not limited to, a combination of the highest and best use of the Property, the bid price, availability of financing, and the best integration with the existing neighborhood. Interested bidders are required to follow these Instructions, as failure to do so may result in a disqualification of the bid in its entirety. The final bids will be open before City Council on **FEBRUARY 23, 2012** or at another date and time after that said date. Notice of the final date of the bid opening shall be provided to all bidders prior to the same.

2. INSPECTION OF PROPERTY: In preparing to bid on the Property, any interested party is permitted to enter the Property to inspect the same by contacting **Gregory Barrouk** at 570.208.4103 to arrange an inspection time and date. All interested bidders, and their agents, enter the Property at their own risk, and hold the City of Wilkes-Barre, its agents and employees harmless from any injury or damage which may occur as a result of entrance upon the said Property.

3. CONDITION OF PROPERTY: The sale of the Property is in its "as is" condition. The City of Wilkes-Barre makes no representations as to the condition of the Property and the successful bidder shall be solely and completely liable for the condition of the said Property immediately upon settlement, and the

City of Wilkes-Barre shall have no obligation as to its condition in any manner. The successful bidder shall hold the City of Wilkes-Barre, its agents and employees, harmless from any liability as a result of the condition of the Property. The City of Wilkes-Barre has never occupied this Property. The City of Wilkes-Barre has been notified by the prior owner that one of the buildings is over a large basement and there may be issues with the structural integrity of the floor in the said building. **The proposed bidder assumes any and all risk of entrance upon the Property at any time. The City of Wilkes-Barre will not be responsible for any damage to person or property as a result of any inspection, entrance upon or use of the Property in any manner up to and through the date of Settlement. This condition shall survive any settlement hereunder.**

4. SURVEY: A copy of the survey map dated October 1, 2009 by Burke Land Surveying is available for inspection at Wilkes-Barre City Hall by contacting **Gregory Barrouk** at 570.208.4103.

5. ZONING: The Property is currently zoned *Residential* as the non-conforming nature of the former Old River Road Bakery has expired. The successful bidder is solely and completely responsible for seeking a change in zoning and/or a variance and/or a special exception and/or a conditional use, based on the intended use, and any costs and fees associated with the same. The City of Wilkes-Barre makes no representation as to any approvals or denials of any application made to the Wilkes-Barre Zoning Hearing Board or to the Wilkes-Barre City Planning Commission. The City of Wilkes-Barre will agree to make the zoning issues a condition of the ultimate sale in the Agreement of Sale to be executed once the successful bid is awarded.

6. TAX ASSESSMENT: The Property is currently assessed at \$438,200 by Luzerne County. The successful bidder is solely and completely responsible for appealing any tax assessments, should they so choose. Being that the City of Wilkes-Barre is exempt from payment of property taxes, the City has elected not to appeal the assessment.

7. PENNSYLVANIA REALTY TRANSFER TAX. Under Pennsylvania Law, upon the transfer of real estate, the parties must pay Pennsylvania Realty Transfer Tax. However, municipalities, and specifically the City of Wilkes-Barre, are exempt from the requirement to pay Pennsylvania Realty Transfer Tax. (See 72 P.S. § 8102-C.2). This statute does not, however, relieve the successful bidder from the payment of transfer tax. Therefore, the successful bidder shall be required to pay 100% of the Pennsylvania Realty Transfer Tax. (See 72 P.S. § 8102-C.2).

8. RESERVE PURCHASE PRICE. The City of Wilkes-Barre is not setting a reserve price on the sale of this Property. However, the Bid Price (Purchase Price) is exclusive of Pennsylvania Realty Transfer Tax, any recording fees, costs, title search costs, title insurance, inspection fees, filing fees or any other incidental costs.

9. TITLE SEARCH/TITLE INSURANCE. The City of Wilkes-Barre makes no representations as to the title of the Property. Any interested bidder is completely and solely responsible for completing any title search and, upon successful award, obtaining title insurance.

10. PROOF OF FINANCING. Any interested bidder must present proof that financing is immediately available for the development of the Property at the time the bids are submitted. Failure to provide proof of immediate availability of financing shall automatically disqualify the said bid. The City of Wilkes-Barre will not finance the sale of this Property.

11. PLAN PRESENTATION. At any time between the Issue Date and the Due Date, any interested bidder may present plans to the Mayor of the City of Wilkes-Barre to outline the intended use of the Property. The City of Wilkes-Barre acknowledges that many intended uses are proprietary in nature, so all proposed plan presentations to the Mayor will be held in strict confidence. However, the interested bidders understand and acknowledge that the Mayor of the City of Wilkes-Barre cannot and will not be making any decisions on the said plans since the formal bid submissions will be made to the City Clerk of the City of Wilkes-Barre and opened and reviewed by the Mayor and City Council at an open, public meeting, where all information will immediately be made public, including the intended and proposed use. The purpose of this presentation, if desired by the interested bidder, is to discuss feasibility and logistics only. Final plans for the Property shall be submitted as part of the bid submission on the Due Date.

12. AGREEMENT OF SALE. The successful bidder and the City of Wilkes-Barre shall enter into the Agreement of Sale attached hereto. No material modifications may or will be made, subject only to a substantial change in conditions of or to the Property after the award is made. Execution of the Agreement of Sale must be made concurrently with the submission of the Bid to the City Clerk.

13. ASSIGNMENT OF BID. No bid made by the Due Date may be assigned to any other party, entity, company, corporation or individual.

14. BID TERM. Bids submitted by the Due Date must remain valid through April 15, 2012. No bid may be withdrawn after the Bids are opened by City Council.

15. DEPOSIT. The successful bidder shall provide a deposit to the City of Wilkes-Barre in the amount of ten percent (10%) of the total Purchase Price bid within ten (10) days of the award.

16. RIGHT OF REVERSION. The City of Wilkes-Barre shall place in the deed an automatic right of reversion which will immediately and automatically return title to the City of Wilkes-Barre if the construction and improvements are not completed, in full, within eighteen (18) months of the date of

settlement. Any extension or delay in the reversion can only be granted by Wilkes-Barre City Council. The successful bidder hereby waives any right to improvements, costs, amounts paid, and to the Property, itself, in the case of a reversion, and the successful bidder holds the City of Wilkes-Barre, its agents and employees harmless for the same, and indemnifies the City of Wilkes-Barre, its agents and employees from any claim, cause of action, suit, or other action arising from any vendor, party, company, entity, or individual resulting from the failure to complete construction and improvements.

17. LICENSING AND PERMITS. Any and all construction must be performed by contractor's licenses within the City of Wilkes-Barre, and the successful bidder agrees that it shall obtain permits for all work performed, and notify the City of Wilkes-Barre regarding inspections.

18. RIGHT OF REJECTION. The City of Wilkes-Barre reserves the right to reject any and all bids, or portions thereof, and to waive any informality in the bidding. The selection of the successful bidder shall be made in the best interest of the City of Wilkes-Barre, as solely determined by the Mayor of the City of Wilkes-Barre and Wilkes-Barre City Council. Bidders acknowledge this by submitting a bid.

19. CITY'S NON-DISCRIMINATION. The City of Wilkes-Barre does not discriminate on the basis of race, color, national origin, sex, religion, age, family and handicapped status in the award of any bids.

20. BID INFORMATION SHEET. All bids must be submitted on the City of Wilkes-Barre Bid Information Sheet, as supplied, through supporting documentation may be attached thereto, as necessary or required.

21. NO CONTINGENCIES. Any contingencies under the Agreement of Sale and this bid have been outlined herein. Any bid which is submitted with any additional contingencies may be immediately rejected by City Council, at their sole option, without regard to the Purchase Price or compliance with all other conditions.

BID INFORMATION SHEET

BIDDER: _____

ADDRESS: _____

CONTACT NUMBER: _____ EMAIL: _____

CONTACT NAME: _____

PURCHASE PRICE (BID): \$ _____

PROPOSED USE OF PROPERTY: _____

ESTIMATED CONSTRUCTION/IMPROVEMENT COMPLETION DATE: _____

IS PROOF OF FINANCING ATTACHED? _____ YES _____ NO _____ NOT TO BE FINANCED

By executing this Bid Information Sheet, I certify that I have authority to submit this bid, and that I have read, understand and agree to all of the terms and conditions of the Agreement of Sale, and the Bid Instructions. I further acknowledge that I understand that the City of Wilkes-Barre has the right to reject all bids for any reason whatsoever.

DATE

SIGNATURE

TITLE: _____

BIDS DUE NO LATER THAN FEBRUARY 15, 2012 AT 12 NOON TO THE OFFICE OF THE CITY CLERK, 40 EAST MARKET STREET, WILKES-BARRE, PENNSYLVANIA 18701

AGREEMENT OF SALE

This Agreement of Sale ("Agreement") is made and entered into this _____ day of _____, 2012, by and among

CITY OF WILKES-BARRE, a Third Class City Operating and Existing under a Home Rule Charter, with a principal place of business of 40 East Market Street, Wilkes-Barre, County of Luzerne, Commonwealth of Pennsylvania, (hereinafter referred to as "**Seller**"),

And

_____ of _____, County of _____, Commonwealth of Pennsylvania, (hereinafter referred to as "**Buyer**").

RECITALS

WHEREAS, Seller currently owns the property and dwelling located at **250 OLD RIVER ROAD, WILKES-BARRE, COUNTY OF LUZERNE, COMMONWEALTH OF PENNSYLVANIA**, and referenced under Luzerne County Parcel Identification Number: **73-H9SW3-13A-001-000**, and Luzerne County Deed Book: 3010 Page 168130. This is the property referred to as the former "Old River Road Bakery" (hereinafter referred to as the "Property"); and

WHEREAS, Buyer and Seller seek to enter into this Agreement in order to fully effect the sale and transfer of the Property; and

WHEREAS, the Buyer, through this Agreement, shall purchase the Property from the Seller for full and adequate consideration, more fully set forth hereinafter.

NOW, THEREFORE, incorporating the foregoing recitals and the material part hereof, and intending to be legally bound hereby, Buyer and Seller agree as follows:

COVENANTS

1. **SALE OF PROPERTY**. Seller shall sell to Buyer and Buyer shall purchase from Seller the aforementioned Property, free from all liens, encumbrances and security interests. However, the Property shall be sold in its "as is" condition and the City of Wilkes-Barre makes absolutely no warranties as to the condition of the Property. Further, the Buyer acknowledges that the Buyer has conducted inspections and has seen the Property prior to

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(b) The Buyer shall be responsible for the payment of County, City and School District Taxes upon Settlement. Notice shall be provided to the taxing bodies of the new Buyer, and the Buyer shall be responsible for any appeal of the tax assessment. The City of Wilkes-Barre has not appealed the tax assessment for Luzerne County which is currently at \$438,200.00.

(c) Buyer shall be solely responsible for the costs associated with recording the Deed to the Property after settlement in the Luzerne County Recorder of Deeds Office;

(d) Any costs associated with title searches and/or title insurance shall be paid solely by the Buyer in the event that the same is required as part of a financing agreement or at the option of the Buyer; and

(e) Buyer and Seller will receive notice of estimated closing costs prior to settlement.

6. **TITLE TO PROPERTY.** Purchase of the Property shall be contingent upon the Seller presently holding valid title to the Property free from any and all liens, encumbrances, security interests, easements and outstanding mortgages, and subsequently transferring the same to the Buyer. In the event a title search conducted at any time prior to the date of Settlement reveals a defect of any kind, the Buyer shall have the right to terminate this Agreement, and Buyer shall return all deposit money to the Seller within twenty (20) days of Notice of Termination. Buyer shall have the right to waive these defects in title and proceed to Settlement. Buyer has seen the survey map of October, 2009, which identifies the current boundaries.

The Property is currently zoned *Residential* as the non-conforming nature of the former Old River Road Bakery has expired. The Buyer is solely and completely responsible for seeking a change in zoning and/or a variance and/or a special exception and/or a conditional use, based on the intended use, and any costs and fees associated with the same. The City of Wilkes-Barre makes no representation as to any approvals or denials of any application made to the Wilkes-Barre Zoning Hearing Board or to the Wilkes-Barre City Planning Commission. The City of Wilkes-Barre will agree to make the zoning issues a condition of the ultimate sale in the Agreement of Sale to be executed once the successful bid is awarded. Buyer shall make an immediate application to change the zoning, if necessary, so as to properly and timely settle on this Property no later than April 15, 2012. Should the Buyer fail to take the steps necessary to effectuate a zoning change, if necessary in time for a closing on or before April 15, 2012, the Buyer shall be required to close and shall take the Property subject to the current zoning.

7. **CONDITION OF PROPERTY.** Buyer shall take possession of the Property in its "as is" condition as of the date of this Agreement first set forth above. "As is" condition refers to the physical condition of the Property, as well as any easements, rights-of-way, or any

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other encumbrances which might affect the Property. Buyer has acknowledged the condition of the Property as outlined in Paragraph 1 hereunder. No person or entity may make any improvements, alterations or changes to the Property prior to Settlement.

8. **RIGHT OF REVERSION.** The City of Wilkes-Barre shall place in the deed, and this Agreement incorporates an automatic right of reversion which will immediately and automatically return title to the City of Wilkes-Barre if the construction and improvements are not completed, in full, within eighteen (18) months of the date of Settlement. Any extension or delay in the reversion can only be granted only by resolution of Wilkes-Barre City Council. The Buyer hereby waives any right to improvements, costs, amounts paid, and to the Property, itself, in the case of a reversion, and the Buyer holds the City of Wilkes-Barre, its agents and employees harmless for the same, and indemnifies the City of Wilkes-Barre, its agents and employees from any claim, cause of action, suit, or other action arising from any vendor, party, company, entity, or individual resulting from the failure to complete construction and improvements.

9. **CHOICE OF LAW.** This Agreement is to be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflict of laws principles. Jurisdiction and venue for any dispute hereunder shall be exclusively in the Court of Common Pleas of Luzerne County, Pennsylvania, and all parties shall use said forum in the event of litigation.

10. **SEVERABILITY.** In the event that any section, paragraph, or portion of this Agreement shall be or be deemed to be by any Court having lawful jurisdiction over the subject matter of this Agreement, void, voidable, or invalid for any reason, this Agreement shall be otherwise valid and enforceable as if the said void, voidable or invalid section, paragraph, or portion of this Agreement had not been a part hereof in the first instance.

11. **SURVIVAL.** This Agreement and all its provisions, including promises, covenants, representations, warranties, and agreements by, between or among the parties hereto, shall survive settlement hereunder and shall not be merged thereupon.

12. **BINDING EFFECT.** This Agreement shall be legally binding on all parties hereto, including the Buyer and Sellers, their successors, heirs, executors, administrators and assigns upon execution by all parties hereto. Each party that executes this Agreement shall be immediately bound hereby, notwithstanding the execution by other parties. Assigned counterparts of this Agreement shall have the full force and effect of an original Agreement.

13. **INTEGRATION.** This Agreement constitutes and expresses the whole agreement of the parties hereto with reference to the subject matter hereof and specifically the sale of the interests in the Property to the Buyer, or hereinbefore discussed or mentioned, all prior promises, undertakings, representations, agreements, understandings and arrangements relative thereto being superceded and herein merged. This Agreement may be modified only in

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writing executed by all parties hereto. To the extent that there is any conflict between a provision of this Agreement and any provision of any subsequent document, agreement, or writing, this Agreement shall control unless such subsequent writing explicitly states that it shall control over this document. This Agreement may not be assigned to any party, person or entity.

14. **TIME.** Buyer and Sellers agree that time shall be of the essence for all references thereto, including the date and time for Settlement. For purposes of counting days from the date of this Agreement, "Day 1" shall be *the day after* the date of execution of this Agreement.

15. **TERMINATION.** Should this Agreement be terminated prior to the Settlement due to the Buyer's violation of any term or condition hereunder, a violation of the bidding procedures set forth in the initial bid, or if the Buyer fails to close for any reason which is not the direct fault of the City of Wilkes-Barre, the Seller shall have the option to (a) force the settlement of the Property or (b) keep the Deposit as damages. The decision as to which to pursue shall be the sole decision of the Seller.

IN WITNESS WHEREOF, Seller, **CITY OF WILKES-BARRE**, and Buyer, _____, being authorized to do so, and intending to be legally bound hereby, have duly executed and entered into this Agreement on the date first set forth above.

CITY OF WILKES-BARRE:

JIM RYAN, CITY CLERK

THOMAS M. LEIGHTON, MAYOR

KATHY KANE,
CITY CONTROLLER

BUYER:

WITNESS:

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