

RESOLUTION No. 3114

A RESOLUTION OF THE CITY OF SALISBURY, MARYLAND AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH FIRST MOVE PROPERTIES, LLC TO ALLOW THE USE OF SOIL LOCATED AT THE CITY'S WASTEWATER TREATMENT PLANT FOR THE REDEVELOPMENT OF 130 EAST MAIN STREET, 132 EAST MAIN STREET AND 144 EAST MAIN STREET.

WHEREAS, the City of Salisbury, Maryland (the "City") seeks to encourage development and redevelopment in the Central Business District, the Riverfront Redevelopment Area and the Enterprise Zone; and

WHEREAS, the City recognizes sharing available resources can assist in such development and redevelopment; and

WHEREAS, the City has excess soil stockpiled at the Wastewater Treatment Plant; and

WHEREAS, First Move Properties, LLC is actively redeveloping properties located in the Central Business District and known as 130 East Main Street, 132 East Main Street and 144 East Main Street; and

WHEREAS, First Move Properties, LLC has indicated that soil from the Wastewater Treatment Plant would be a useful resource in its redevelopment of the aforementioned properties; and

WHEREAS, in efforts to encourage this redevelopment, the City desires to enter into the attached Soil Agreement setting forth the conditions upon which First Move Properties, LLC can access the City's stockpiled soil.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND as follows:


Section 1. First Move Properties, LLC will be permitted to use and retain soil from the stockpile at the City's Wastewater Treatment Plant in accordance with the terms and conditions set forth in the Soil Agreement attached hereto and incorporated as if fully set forth herein.

Section 2. The Mayor is authorized to execute and enter into the attached Soil Agreement on behalf of the City.

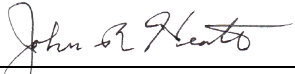
Section 3. Execution and entry into the Soil Agreement by First Move Properties, LLC is a material condition of the City's grant of use and retention of the soil referenced herein, and First Move Properties, LLC's failure or refusal to execute and enter into the Soil Agreement shall invalidate this Resolution.

THIS RESOLUTION was duly passed at a meeting of the Council of the City of Salisbury held on July 12, 2021 and is to become effective immediately upon adoption.

ATTEST:

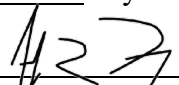


Kimberly R. Nichols, City Clerk



John R. Heath, President
Salisbury City Council

APPROVED BY ME THIS:

22nd day of July, 2021


Jacob R. Day, Mayor

SOIL AGREEMENT

THIS SOIL AGREEMENT (“Agreement”), is made this ____ day of _____ 2021, by and between *City of Salisbury*, a Maryland municipal corporation (the “**City**”), and *First Move Properties, LLC*, a Maryland limited liability company (“**First Move Properties**”) (First Move Properties is hereinafter sometimes referred to as the “**Developer**”) (the City and First Move Properties are hereinafter referred to collectively as the “**Parties**”).

RECITALS

WHEREAS, the seeks to encourage development and redevelopment in the Central Business District, the Riverfront Redevelopment Area and the Enterprise Zone; and

WHEREAS, to support the development and redevelopment of said areas, the City has offered the use and retention of available soil stockpiled at the Wastewater Treatment Plant (hereinafter the “**Soil**”), subject to the terms and conditions of this Agreement; and

WHEREAS, Developer is actively redeveloping properties located in the Central Business District and known as 130 East Main Street, 132 East Main Street and 144 East Main Street (hereinafter referred to as the “**Premises**”); and

WHEREAS, Developer desires to use and retain a quantity of the Soil in furtherance of the redevelopment of the Premises; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties expressly acknowledge, the Parties agree as follows:

1. Effective Date & Term.

(a) The “**Effective Date**” of this Agreement shall be the date upon which this Agreement is approved by a majority vote of the City Council of the City of Salisbury (the “**City Council**”).

(b) The “**Term**” of this Agreement shall commence on the Effective Date and shall continue until Developer obtains a Certificate of Occupancy for the Premises, unless earlier terminated in accordance with the terms and conditions set forth herein.

2. Warranties and Obligations of the City: The City does hereby warrant and agree for the benefit of Developer as follows:

(a) Beginning immediately, the City shall allow Developer to access, use and retain the Soil stockpiled at the Wastewater Treatment Plant.

(b) Except in the event of default of this Agreement, the City shall provide access, use and retention of the Soil at no cost to Developer.

(c) The City makes no representation or warranty as to the quality or quantity of the Soil. The City shall offer the Soil to interested Developers on a first-come first-served basis.

3. Warranties and Obligations of the Developer. The Developer does hereby warrant and agree for the benefit of the City as follows:

(a) Developer shall use the Soil exclusively for the redevelopment of the Premises.

(b) Developer shall be responsible for loading and transporting the Soil, which work shall be performed solely with Developer’s equipment. Developer may leave equipment at the Wastewater Treatment Plant at its own risk, and only with the permission of the Director of Water Works.

(c) Developer shall access the soil between the hours of 8a.m. and 3p.m. on weekdays only.

(d) Developer shall adhere to all applicable laws and regulations governing sediment and erosion control measures.

(e) Developer shall begin transport of the Soil no later than August 1, 2021.

(f) Upon arrival at the Wastewater Treatment Plant each day, Developer shall check in with City personnel at the gate and shall record the number of loads and volume of Soil removed.

(g) Developer shall complete Soil transport and commence site work no later than March 1, 2022.

(h) Developer shall obtain a Certificate of Occupancy no later than September 30, 2023.

(i) If Developer fails to adhere to the requirements and/or timeline set forth in this Paragraph 3, Developer shall pay the City Sixty-Five Dollars (\$65.00) per square yard of Soil removed as of the date of such default. This payment shall be made within thirty (30) days of the date of such default.

(j) Developer takes and accepts all Soil "AS IS." Developer agrees that the City makes no warranty, guaranty or representation of any kind, express or implied, as to the merchantability or fitness for any purpose of the Soil, including any environmental representations or guarantees of any kind that the Soil is adequate for Developer's needs. Developer agrees it is not entitled to any payment for any losses arising in any way from the Soil.

(k) Developer releases, indemnifies, defends and saves harmless the City and its officers, employees and agents from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, whether known or unknown, including interest and attorneys' fees, in any way connected to any injury to any person, including death, or damage to any property or any loss to the City or third parties arising from the Soil, including by hazardous substances originating or tied to the Soil or its use by Developer. This release and indemnity specifically include the obligation of Developer to perform any remedial or other activities required or ordered by any properly empowered government official, or otherwise reasonably necessary to avoid injury or liability to any person or to prevent the spread of pollution originating thereon. Developer shall perform all such work in its own name in accordance with applicable laws.

4. **Termination.**

(a) The parties may terminate this Agreement at any time by providing written notice of said termination. The provisions of Paragraphs 2(d), 3(d), 3(i), 3(j) and 3(k) shall survive any such termination.

(b) If this Agreement is terminated by Developer prior to obtaining the Certificate of Occupancy for the Premises, Developer shall the City Sixty-Five Dollars (\$65.00) per square yard of Soil removed as of the date of termination. This payment shall be made within thirty (30) days of the date of termination.

5. **Miscellaneous.**

(a) **Assignment.** None of the Permittees may assign this Agreement or any of their respective rights or obligations hereunder, in whole or in part, without the prior written consent of the City.

(b) **Notices.** All notices and other communications given by a party to any other party hereto which relate to this Agreement shall be in writing and shall be deemed delivered to the addressee thereof: (i) when delivered in person on a business day at the address set forth below; or, (ii) on the third (3rd) business day after being deposited in any main or branch United States Post Office, for delivery by properly addressed, postage prepaid certified or registered mail, return receipt requested, at the address set forth below; or, (iii) when delivered by a nationally-recognized delivery service company at the address set forth below, with written proof of delivery.

All notices and other communications to the City shall be addressed to, and delivered at, the following address:

The City of Salisbury
c/o _____

Salisbury, Maryland 21801

With a copy to:

Heather R. Konyar, Esquire
Cockey, Brennan & Maloney, P.C.
313 Lemmon Hill Lane
Salisbury, Maryland 21801

All notices and other communications to Developer shall be addressed to, and delivered at, the following address:

First Move Properties, LLC

c/o _____

Salisbury, Maryland 21801

(c) **Section Headings.** The section headings contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect any of the provisions of this Agreement.

(d) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties with respect to all matters set forth herein, and any and all prior negotiations, writings and understandings relating to the subject matter of this Agreement are merged herein and are superseded and canceled by this Agreement.

(e) **Waiver - Amendments.** Any of the terms or conditions of this Agreement may be waived but only in writing by the party which is entitled to the benefit thereof, and this Agreement may be amended or modified in whole or in part only by an agreement in writing, executed by all of the Parties to this Agreement.

(f) **Binding Nature of Agreement.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

(g) **Further Assurances.** The Parties covenant and agree with one another, upon the request of any party to this Agreement, to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged or delivered, any such further act(s), deed(s), document(s), assignment(s), transfer(s), conveyance(s), power(s) of attorney or assurance(s) as may be reasonably necessary or desirable to give full effect to this Agreement and the transactions contemplated by the terms contained herein.

(h) **Severability.** Whenever possible, each provision and term of this Agreement shall be interpreted in a manner to be effective and valid, but if any provision or term of this Agreement is adjudged by a court of competent jurisdiction to be prohibited or invalid, then such provision or term will be ineffective only to the extent of such prohibition or invalidity and without invalidating or affecting in any manner whatsoever the remainder of such provision or term or the remaining provisions or terms of this Agreement.

(i) **Legal Representation.** Permittees acknowledge and understand the law firm of Cockey, Brennan & Maloney, P.C. have served as counsel to the City in the preparation of this. Developer expressly acknowledges that it has been advised of its right to obtain independent counsel of its own selection in connection with the negotiation and preparation of the terms of this Agreement so that Developer may have its attorney(s) answer any questions it may have regarding this Agreement and any terms contained herein. By Developer's execution of this Agreement, Developer expressly acknowledges that it regards the terms of this Agreement to be fair and reasonable and that it has executed this Agreement freely and voluntarily either with or without the advice of counsel.

(j) **Construction.** This Agreement, and all the terms and conditions contained herein, shall not be construed or enforced in favor of or against any party hereto by reason of the fact that party or that party's agent or attorney drafted all or any part of this Agreement. Unless otherwise expressly provided, the words "hereof", "herein" and "hereunder" and similar references refer to this Agreement in its entirety and not to any specific section or subsection hereof, the words "including" or "includes" do not limit the preceding words or terms and the word "or" is used in the inclusive sense. As used herein, any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and the singular shall include the plural.

(k) **Governing Law; Venue; Attorneys' Fees.** This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland, without regard to its conflict of laws principles. The Parties for themselves and for their respective successors and assigns, without regard to domicile, citizenship or residence, hereby expressly and irrevocably consent to and subject themselves to the jurisdiction of the Maryland courts and to venue in Wicomico County, Maryland with respect to any matter arising from or in connection with this Agreement.

(l) **Waiver of Jury Trial.** Each of the Parties hereby expressly waive trial by jury in any action, proceeding or counterclaim brought by any party hereto against any other party on any matter whatsoever arising out of or in any way connected with this Agreement, the relationship of the Parties to one another and/or any claim, injury or damage arising from or consequent upon this Agreement.

(m) **Recitals.** The Recitals set forth hereinabove are incorporated by reference herein, and made a part hereof, as if fully set forth in this Agreement.

(n) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals and acknowledged this Soil Agreement as of the day and year first above written.

ATTEST/WITNESS:

THE "DEVELOPER":

First Move Properties, LLC

By: _____ (Seal)
_____, Authorized Representative

THE "CITY":

City of Salisbury, Maryland

Kimberly R. Nichols

By:  _____ (Seal)
Jacob R. Day, Mayor



City of
Salisbury
Jacob R. Day, Mayor

To: Julia Glanz, City Administrator
From: Amanda H. Pollack, P.E., Director of Infrastructure and Development
Date: June 2, 2021
Re: Resolution – The Ross/First Move Properties Agreement for soils

AP

Attached is Resolution No. 2989 which authorized the Mayor to enter into an agreement with First Move Properties, LLC to use excess soil at the WWTP for redevelopment of 130, 132 and 144 East Main Street. The dates in the agreement have expired, therefore attached is a revised agreement for consideration. The agreement defines the terms for which the City will provide excess soil to be used at the proposed development. A soil stockpile was created during the construction at the Wastewater Treatment Plant. The soil is not needed at the WWTP, although it can be used by any City Department. The soil would provide benefit to developers. Since the City seeks to encourage development and redevelopment in the Central Business District, we recommended providing excess fill to First Move Properties, LLC per the terms of the agreement. Any remaining soil could be offered to other developers and projects on a first come, first serve basis, as appropriate.

Unless you or the Mayor has further questions, please forward a copy of this memo, Resolution and Agreement to the City Council.

RESOLUTION No. 2989

A RESOLUTION OF THE CITY OF SALISBURY, MARYLAND AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH FIRST MOVE PROPERTIES, LLC TO ALLOW THE USE OF SOIL LOCATED AT THE CITY'S WASTEWATER TREATMENT PLANT FOR THE REDEVELOPMENT OF 130 EAST MAIN STREET, 132 EAST MAIN STREET AND 144 EAST MAIN STREET.

WHEREAS, the City seeks to encourage development and redevelopment in the Central Business District, the Riverfront Redevelopment Area and the Enterprise Zone; and

WHEREAS, 130 East Main Street, 132 East Main Street and 144 East Main Street are located in the Central Business District; and

WHEREAS, the purpose of this agreement is to share resources to assist in the development of these parcels; and

WHEREAS, the City has excess soil stockpiled at the Wastewater Treatment Plant; and

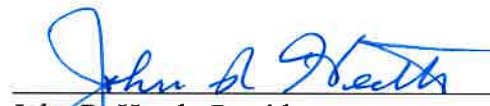
WHEREAS, the City desires to enter into the attached Memorandum of Understanding to specify the requirements for the owner/developer to have access to the City's stockpiled soil.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND, that the Mayor is authorized to sign and enter into the attached Memorandum of Understanding with First Move Properties, LLC.

THIS RESOLUTION was duly passed at a meeting of the Council of the City of Salisbury held on January 13, 2020, and is to become effective immediately upon adoption.

ATTEST:


Kimberly R. Nichols, City Clerk


John R. Heath, President
Salisbury City Council

APPROVED BY ME THIS:

21st day of JANUARY, 2020


Jacob R. Day, Mayor

AGREEMENT

AN AGREEMENT BETWEEN THE "PARTIES"; FIRST MOVE PROPERTIES, LLC, "DEVELOPER", AND THE CITY OF SALISBURY, "CITY";

WHEREAS, CITY seeks to encourage development and redevelopment in the Central Business District, the Riverfront Redevelopment Area and the Enterprise Zone; and

WHEREAS, to support the redevelopment of said areas, CITY has made available soil located at the Wastewater Treatment Plant at no charge to be used exclusively at the property described herein as 130 East Main Street, 132 East Main Street and 144 East Main Street in Salisbury, Maryland.

NOW, THEREFORE, DEVELOPER agrees to all of the provisions set forth herein for use of the soil.

DEVELOPER will load on site, and transport the soil to be used exclusively at the property described herein.

DEVELOPER will utilize his own equipment to load and transport the soil.

DEVELOPER may leave equipment at the WWTP at its own risk.

DEVELOPER may access the soil stockpile at the WWTP between the hours of 8 am and 3 pm on weekdays only.

DEVELOPER will adhere to all regulations governing sediment and erosion control measures.

DEVELOPER will begin soil pickup no later than June 1, 2020, will check-in each day with City personnel at the gate, and will record each load removed and the amount of soil removed.

DEVELOPER will complete soil transport and commence site work no later than December 31, 2020.

DEVELOPER will obtain a certificate of occupancy no later than August 15, 2021.

Failure to meet the prescribed timeline may result in a charge for the soil at a cost of \$65 per square yard, payable to the City of Salisbury no later than 30 days after missing any one or more of the deadlines.

DEVELOPER takes and accepts all soil "AS IS." CITY makes no warranty, guaranty or representation of any kind, expressed or implied, as to the merchantability or fitness for any purpose of the soil provided, including any environmental representations or guarantees of any kind that the soil is adequate for DEVELOPER'S needs. DEVELOPER is not entitled to any payment for any losses or damages tied in any way to the soil.

DEVELOPER shall indemnify, defend and save harmless CITY and its officers, employees and agents from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including interest and attorneys' fees, in any way

connected with any injury to any person or damage to any property or any loss to CITY or third parties occasioned in any way with the soil, including by hazardous substances originating or tied to the soil or its use by DEVELOPER. This indemnity specifically includes the obligation of DEVELOPER to perform any remedial or other activities required or ordered by any properly empowered government official, or otherwise reasonably necessary to avoid injury or liability to any person or to prevent the spread of pollution, originating thereon. DEVELOPER shall perform all such work in its own name in accordance with applicable law, as herein defined.

The PARTIES may terminate this agreement at any time by providing written notice of said termination.

If terminated by DEVELOPER, DEVELOPER will pay City for all soils removed.

NOW, THEREFORE, BE IT RESOLVED that the PARTIES agree to the above provisions of Memorandum of Understanding.

ATTEST:

Developer

City of Salisbury

Nick Simpson

Date

Jacob R. Day
Mayor

Date



City of
Salisbury
Jacob R. Day, Mayor

To: Julia Glanz, City Administrator
From: Amanda H. Pollack, P.E., Director of Infrastructure and Development
Date: December 5, 2019
Re: Resolution – First Move Properties MOU for soils

AP

Attached is a letter from First Move Properties, LLC dated November 5, 2019 requesting to use excess soil for redevelopment of a property. Attached is the Memorandum of Understanding between the City and First Move Properties, LLC, the developers of 130, 132 and 144 East Main Street. The MOU is for the City to provide excess soil to be used at the proposed development. A soil stockpile was created from the construction at the Wastewater Treatment Plant. The soil is not needed at the WWTP. The soil would provide benefit to the development. Since the City seeks to encourage development and redevelopment in the Central Business District, we recommended providing excess fill to First Move Properties, LLC per the terms of the MOU.

The soil stockpile may also be used by the City for our own purposes. Any soil remaining could be offered to other developers and projects as appropriate.

Unless you or the Mayor has further questions, please forward a copy of this memo, Resolution and MOU to the City Council.

FIRST MOVE PROPERTIES, LLC
P.O. Box 4365
Salisbury, MD 21803

November 5, 2019

City of Salisbury, Maryland
Department of Infrastructure & Development
Attn: Amanda H. Pollack, P.E., Director (apollack@salisbury.md)
125 N. Division Street, Room 202
Salisbury, Maryland 21801

Re: *First Move Properties, LLC's Request for Soil; Redevelopment of 144 E. Main Street, Salisbury, Maryland 21801 (Map 0107, Grid 0015, Parcel 858 and 878), 130 E. Main Street, Salisbury, Maryland 21801 (Map 0107, Grid 0015, Parcel 0855), and 132 E. Main Street, Salisbury, Maryland 21801 (Map 0107, Grid 0015, Parcel 0856). Referred to collectively as the "Property"*

Dear Ms. Pollack:

On behalf of First Move Properties, LLC ("First Move"), please accept this letter as First Move's formal request to the City of Salisbury for excess soil located at the Wastewater Treatment Plant for First Move's redevelopment the Property. First Move will provide all necessary equipment to load and transport the soil and will exclusively use the material at the Property.

First Move proposes to begin pickup of the soil no later than June 1, 2020 and complete the transport no later than December 31, 2020 and expects to receive a Certificate of Occupancy for the redevelopment of the Property by August 15, 2021.

During the transportation process First Move representatives will check-in each day with city personnel at the Wastewater Treatment Plant and will record each load removed to ensure no more than 3,200 tons of soil is transported to the Property.

If City staff has any questions or needs additional information regarding the matters addressed in this correspondence, please do not hesitate to contact me. Thank you for your time and consideration of this request.

Sincerely,



Nicholas Simpson,
First Move Properties, LLC